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2022 IL App (4th) 210496WC-U

Order filed

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IN THE  
APPELLATE COURT OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
October 12, 2022  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

WORKERS' COMPENSATION COMMISSION DIVISION

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GERALDINE JACKSON, Executor of the	)	Appeal from the Seventh Judicial of the
Estate of James Jackson, deceased,	)	Circuit, Macoupin County, Illinois
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 4-21-0496WC
	)	Circuit No. 19-MR-37
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, (Monterey Coal Co., <i>et al.</i> ,	)	April Troemper,
Appellees).	)	Judge, Presiding.
	)	

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PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Hoffman, Hudson, Cavanagh, and Barberis concurred in the judgment.

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**ORDER**

¶ 1 The Commission's did not err by adopting the arbitrator's decision despite the fact that the arbitrator had failed to consider evidence that the Commission ruled should have been considered by the arbitrator; (2) the Commission's finding that the claimant failed to prove that he sustained an occupational disease was not against the manifest weight of the evidence.

¶ 2 The claimant, Geraldine Jackson, as executor of the estate of James Jackson, appeals from a decision of the Illinois Workers' Compensation Commission (Commission) denying a claim for

benefits under the Illinois Workers' Occupational Disease Act (Act) (820 ILCS 310/1 *et seq.* (West 2008)) that had been filed by her now-deceased husband, James Jackson (Jackson). In that claim, Jackson alleged that he suffered from an occupational disease, including coal workers' pneumoconiosis (CWP) and/or chronic obstructive pulmonary disease (COPD), as a result of exposure to coal dust and other materials during his employment with Monterey Coal Co. (employer). After Jackson died, the claimant filed a separate claim under the Act alleging that the same occupational diseases Jackson had alleged in the initial case had causally contributed to Jackson's death. The claims were consolidated for hearing before an arbitrator. This appeal involves only the initial claim that was brought by Jackson.

¶ 3 During the arbitration hearing, the arbitrator denied the claimant's request to admit the expert report and deposition testimony of Dr. Suhail Istanbuly in the initial case, even though the arbitrator admitted that evidence in the other consolidated case. The arbitrator subsequently found that the claimant failed to prove that Jackson had suffered from an occupational disease and that Jackson's conditions of ill-being prior to his death were causally related to his employment with the employer.

¶ 4 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). In her petition for review, the claimant argued that the arbitrator had erred by refusing to admit Dr. Istanbuly's report and deposition testimony in the initial case. She asked the Commission to reverse the arbitrator's ruling on that evidentiary issue and to "hear the case de novo to include the report and deposition of Dr. Istanbuly." Before reviewing the merits of the Commission's final judgment, the Commission reversed the arbitrator's evidentiary ruling and ordered that Dr. Istanbuly's report and deposition should be considered in both cases.

Subsequently, without remanding the matter to the arbitrator, the Commission affirmed and adopted the arbitrator's decision denying the claimant's claims on the merits.

¶ 5 The claimant sought judicial review of the Commission's decision in the circuit court of Macoupin County. The circuit court affirmed the Commission's decision.

¶ 6 This appeal followed.

¶ 7 ANALYSIS

¶ 8 The claimant argues that the Commission's decision to affirm and adopt the arbitrator's decision without modification in this case was reversible error. She maintains that, by adopting the arbitrator's decision without further analysis, the Commission failed to consider Dr. Istambouly's testimony, thereby violating its own prior evidentiary ruling. The claimant contends that Dr. Istambouly's testimony was "critical" and could have led to a different outcome had the arbitrator or the Commission considered it. She argues that the procedure employed by the Commission was unfair, and that Jackson "deserved all the evidence to be heard" in this case.

¶ 9 We do not find these arguments to be persuasive. When the claimant presented argument to the Commission on the evidentiary issue, she did not ask the Commission to remand the matter to the arbitrator to reconsider its findings in light of Dr. Istambouly's deposition testimony and opinions. Rather, she asked the Commission to reverse the arbitrator's evidentiary ruling and "to hear the case of Mr. Jackson de novo to include the report and deposition of Dr. Istambouly." She further requested that the parties be allowed to submit briefs to the Commission "with the report and deposition of Dr. Istambouly included in the evidence." Thus, even assuming *arguendo* that the Commission erred by not remanded the matter the Commission for reconsideration, any such error was invited by the claimant.

¶ 10 In any event, to conclude that the Commission failed to consider Dr. Istambouly's report

and testimony in rendering its judgment would be speculative and improper. “A presumption exists that the Commission considered all evidence in reaching its decision.” *Setzekorn v. Industrial Comm’n*, 353 Ill. App. 3d 1049, 1054 (2004); see also *English v. Industrial Comm’n*, 151 Ill. App. 3d 682, 686 (1986) (“A reviewing court must presume that the Commission considered all of the evidence” before it.); *Glover v. Industrial Comm’n*, 140 Ill. App. 3d 361, 365 (1985). The failure of the Commission to explicitly discuss certain evidence in its decision does not rebut the presumption that it considered that evidence. *English*, 151 Ill. App. 3d 686.

¶ 11 Moreover, “we review the Commission's judgment, not its reasoning, and we may affirm the Commission's decision on any basis supported by the record.” *Dukich v. Workers’ Compensation Comm’n*, 2017 IL App (2d) 160351WC, ¶ 43 n.6; *General Motors Corp. v. Industrial Comm’n*, 179 Ill. App. 3d 683, 695 (1989). “[I]t is the province of the \* \* \* Commission to weigh the evidence and draw reasonable inferences therefrom in the first instance, and we will not overturn its findings simply because a different inference could be drawn.” *Niles Police Department v. Industrial Comm’n*, 83 Ill. 2d 528, 533–34 (1981). The interpretation of medical testimony is particularly within the province of the Commission. *A.O. Smith Corp. v. Industrial Comm’n*, 51 Ill.2d 533, 536–37, 283 N.E.2d 875, 877 (1972). “Before a reviewing court may overturn a decision of the \* \* \* Commission, it must find that the award was contrary to law or that the Commission's factual determinations were against the manifest weight of the evidence.” *Freeman United Coal Mining Co. v. Industrial Comm’n*, 188 Ill. 2d 243, 245 (1999).

¶ 12 As shown above, the Commission committed no error of law. Moreover, after carefully reviewing the record in this case, we conclude that, even without Dr. Istambouly’s report and opinion testimony, there is ample evidence to support the Commission’s finding that the claimant failed to prove that Jackson had CWP, COPD, or any other occupational disease. Four board

certified radiologists and b-readers (b-readers) reviewed x-ray films of the claimant's lungs and each opined that the claimant did not have CWP. Although the claimant presented the testimony of two other b-readers, each of whom reached a contrary conclusion, the Commission found the employer's experts to be more persuasive, and it was not against the manifest weight of the evidence for the Commission to credit the employer's experts' opinions over those of the claimant's experts. When considered as a whole, the claimant's medical records do not support the existence of any occupational disease, and there was much evidence supporting the opposite conclusion. To address just one example, we point to the expert testimony of Dr. Peter Tuteur, a pulmonologist. Dr. Tuteur opined that the claimant did not have CWP or COPD and that the claimant's mild respiratory issues were the result of cardiovascular problems, not any occupational lung disease. Dr. Tuteur's report was exhaustive and persuasive. Although Dr. Istanbuly challenged the methodology that Dr. Tuteur used to determine the claimant's level of disability, given the entirety of Dr. Tuteur's opinions, and the evidence as a whole, Dr. Istanbuly's opinion testimony would not have tipped the balance in the claimant's favor. The arbitrator considered Dr. Istanbuly's deposition testimony in the other consolidated case and still found (correctly, in our view) that the claimant had failed to establish an occupational disease.

¶ 13 The claimant has the burden of proving that he suffers from an occupational disease and that a causal connection exists between the disease and his employment. *Anderson v. Industrial Comm'n*, 321 Ill. App. 3d 463, 467 (2001). These are questions of fact. *Freeman United Coal Mining Co. v. Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC, ¶ 21. It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *Id.*; *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). Interpretation of medical testimony is particularly within the

province of the Commission. *A.O. Smith Corp. v. Industrial Comm'n*, 51 Ill. 2d 533, 536–37 (1972); *Freeman United Coal Mining Co.*, 2013 IL App (5th) 120564WC, ¶ 21. The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Docksteiner v. Industrial Comm'n*, 346 Ill. App. 3d 851, 856–57 (2004). Factual determinations are against the manifest weight of the evidence only “when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the [Commission].” *Durand v. Industrial Comm'n*, f224 Ill. 2d 53, 64 (2006). The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

¶ 14 The claimant cannot satisfy these exacting standards. For the reasons set forth above, the Commission’s finding that the claimant failed to prove that he sustained an occupational disease was not against the manifest weight of the evidence.

¶ 15 CONCLUSION

¶ 16 We affirm the judgment of the circuit court Macoupin County, which confirmed the Commission’s decision.

¶ 17 Affirmed.