2011 IL App (5th) 100557WC-U
No. 5-10-0557WC
Order filed September 30, 2011

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

AMEREN IP,	)	Appeal from the Circuit Court
	)	of Madison County.
Appellant,	)	
	)	
v.	)	No. 10-MR-11
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	Honorable
	)	Clarence W. Harrison II,
(Tom Greco, Appellee).	)	Judge, Presiding

JUSTICE HUDSON delivered the judgment of the court.

Presiding Justice McCullough and Justices Hoffman, Holdridge, and Stewart concurred in the judgment.

ORDER

Held: (1) Claimant's testimony regarding events surrounding accident was sufficient to support Commission's finding that claimant's injury arose out of and in the course of his employment and therefore Commission's finding is not against the manifest weight of the evidence; (2) Commission's finding that claimant's current condition of ill-being was causally related to his accident at work is not against the manifest weight of the evidence where one of claimant's treating physician testified that the event described by claimant could have aggravated his condition and precipitated the need for surgery; and (3) given the Commission's findings regarding accident and

causation, its award of temporary total disability benefits, permanent partial disability benefits, and medical expenses is not against the manifest weight of the evidence.

¶ 1 Claimant, Tom Greco, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2006)) alleging that he sustained an employment-related injury on January 26, 2007, while working for respondent, Ameren IP. Following a hearing, the arbitrator found that an accident arose out of and in the course of claimant's employment, that proper notice of the accident was provided to respondent, and that claimant's condition of ill-being was causally related to the work accident. The arbitrator awarded claimant 7-1/7 weeks of temporary total disability (TTD) benefits, 100 weeks of permanent partial disability (PPD) benefits (representing 20% of the person as a whole), and medical expenses in the amount of $988.01. A majority of the Illinois Workers' Compensation Commission (Commission) summarily affirmed and adopted the decision of the arbitrator. Thereafter, the circuit court of Madison County confirmed. Respondent now appeals, challenging the Commission's findings of accident, causation, and benefits. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Claimant works for respondent as a "gas journeyman leadman." Claimant testified that on January 26, 2007, in the course of his job duties, he was operating a piece of machinery to remove trees and debris from the ground. As claimant was pulling out tree roots and other debris, his head struck the roll bar that enclosed the vehicle. Claimant stated that he felt an initial pain, "but then it was just more or less me being stunned and just getting my wits about me." Claimant did not report the incident immediately, explaining that "many times *** you get bumped around" and that he

"didn't think much of it." Claimant finished working that day and continued to work full duty thereafter. He related, however, that as time passed, what began as soreness of the left trapezius progressed down into his arm, eventually resulting in pain and a burning sensation. On February 22, 2007, claimant reported the injury to respondent through Frank Liedtky.

¶ 4 Claimant admitted to a history of neck problems that predated the event of January 26, 2007. Claimant testified that these problems began in October or November 2006. Claimant's medical records show that he initially presented to Wellness One on November 16, 2006, for treatment of lower back and neck problems with an onset date of two weeks earlier. In response, a course of chiropractic care was administered.

¶ 5 On December 15, 2006, claimant presented to the office of his primary-care physician, Dr. Michael Mulligan, with complaints of pain in the left side of the neck radiating to the left shoulder into the arm. Claimant rated this pain as a 6 on a 10-point scale. Claimant reported that he had been experiencing these problems for four weeks and that chiropractic care had not been beneficial. An X ray of the cervical spine was ordered and Prednisone and Vicodin were prescribed. The X ray revealed mild degenerative disc disease of the cervical spine at the C4-C5 level with minimal degenerative restrolisthesis and resultant minimal narrowing of the osseous canal. On January 4, 2007, claimant returned to Dr. Mulligan's office, again rating his pain at level six. After examining claimant and reviewing the X ray, Dr. Mulligan diagnosed cervical disc degeneration at C4-C5 and C7-T1. Dr. Mulligan prescribed cervical traction and physical therapy. On January 22, 2007, claimant reported no change in his condition following physical therapy. At that time, Dr. Mulligan indicated that claimant's options were to see a pain-management specialist for epidural injections

or a neurosurgeon.

¶ 6 Claimant treated with chiropractor Charles King, Jr., on January 24, 2007, complaining of chronic pain in the neck and burning in the shoulder and arm. On the intake form, claimant indicated that his average pain was at level five and his worst pain was at level seven. King diagnosed cervical radiculitis, prescribed an MRI of the cervical spine, and referred claimant to Dr. Stephen Smith. The MRI was performed on January 27, 2007, and showed a large hard disc or disc/osteophyte complex at C4-C5 centrally to the left with thinning of the anterior and anterolateral left subarachnoid space and left foraminal narrowing.

¶ 7 On January 30, 2007, claimant saw Dr. Smith. Dr. Smith recorded a history of upper back pain, neck pain, and arm pain for approximately nine weeks "without injury or event." Claimant indicated that the pain worsened with time. He rated the pain as an eight or a nine. Dr. Smith diagnosed cervical stenosis and administered an epidural injection. Claimant returned to Dr. Smith's office on February 6, 2007, and February 13, 2007, for repeat injections. During both of those visits, claimant rated his pain as a six. Dr. Smith referred claimant to Dr. K. Daniel Riew.

¶ 8 Claimant was evaluated by Dr. Riew on March 1, 2007. Dr. Riew's notes document a four-month history of pain and numbness in the neck and arm, which "started within days after hitting the top of his head at work." Claimant also reported that his condition worsened within the two weeks preceding his examination. Dr. Riew noted that claimant had been administered conservative treatment unsuccessfully, including epidural injections which provided 50% relief for one week only. An X ray showed spondylosis at C4-C5 with uncinate spurs. An MRI revealed a tight spinal cord at C4-C5 with left worse than right foraminal stenosis and a herniated disc at the C4-C5 level

on the left side. Dr. Riew's impression was herniated disc and spondylosis causing radiculopathy for four months. Dr. Riew told claimant that since he does not have significant numbness or weakness, "he could certainly continue to live with this and see if it gets better on its own." However, claimant told Dr. Riew that because he was in "excruciating pain" and conservative treatment did not help, he wanted to proceed with surgery "as quickly as possible." To that end, on March 5, 2007, Dr. Riew performed an anterior cervical discectomy with fusion and plating at C4-C5. Claimant continued to follow up with Dr. Riew following the surgery. At the arbitration hearing, claimant testified that he continues to experience residual pain in the left trapezius that is relieved with massage and over-the-counter pain medications.

¶ 9 John Schewe, claimant's immediate supervisor, testified that he has daily contact with claimant regarding employment-related matters. Schewe testified that it is respondent's "expectation" that an employee report an injury to his or her immediate supervisor without delay. Schewe related that this policy is discussed with employees four or five times a year during safety meetings. Schewe could not recall the exact date he learned of claimant's alleged injury, but stated that he was told of it by Frank Liedtky, who is Schewe's boss.

¶ 10 Frank Liedtky testified that on February 22, 2007, claimant told him that he was going to need neck surgery. Claimant further related that he believed that the injury necessitating the surgery occurred at work. At that time, claimant was unable to provide Liedtky with a date and place of occurrence. However, claimant told Liedtky that he would check his records and report back. Liedtky testified that it was not until sometime after March 12, 2007, that claimant provided the details of the injury. Liedtky informed claimant that his claim had been denied because of the delay

in reporting the injury.

¶ 11 Dr. Riew testified by evidence deposition. On direct examination, the following exchange occurred between claimant's attorney and Dr. Riew:

> "Q *** Doctor, I want you to assume for me that [claimant's] history was accurate. In other words, that he did have a four-month history of pain and that approximately two weeks prior to him seeing you that pain was increased and that his symptoms were increased following a blow to the head. Would you have an opinion to a reasonable degree of medical and surgical certainty as to the cause or aggravation of the condition for which you treated him?
>
> A Yes, I believe that if he says that a blow to the head increased his pain, it's certainly reasonable that the increase in the pain could precipitate the need for an operation or any subsequent treatment."

Dr. Riew added that the type of procedure claimant underwent is generally an elective procedure and that claimant's pain level was the principal factor in determining whether he should undergo surgery.

¶ 12 On cross-examination, Dr. Riew recognized that there were inconsistencies in his notes regarding when claimant's symptoms first arose. Dr. Riew explained, however, that when he takes a patient history, his concern is not the etiology of the pain. Rather, he is concerned with the factors that determine how to treat the patient such as the degree of pain, the findings on the physical examination, and the findings on the radiological studies. Dr. Riew also testified that he did not review any of the records from Dr. Mulligan (claimant's family physician) or Dr. Smith. Despite not reviewing those records, Dr. Riew stated that he was aware that claimant had neck problems

prior to January 26, 2007. Dr. Riew further stated that his opinion that the incident of January 26, 2007, might have caused or aggravated a preexisting condition was based on the history that was given to him. He stated that if the history was inaccurate, it could impact his opinion. Dr. Riew did not dispute that the disc/osteophyte complex identified in the January 27, 2007, MRI is indicative of a long-standing process, that it was likely present well before the alleged accident of January 26, 2007, or that even the simplest of things could make the condition symptomatic.

¶ 13 Dr. Riew also testified on cross-examination that he was not aware that on January 22, 2007, Dr. Mulligan referred claimant to a neurosurgeon. He stated that a primary care doctor typically treats radiculopathies conservatively for six weeks before a surgical referral is made. Although Dr. Riew did not know if the reason for the referral was the fact that claimant had approached this six-week mark or that his symptoms had worsened, he did agree that the fact that claimant's family physician referred him to a neurosurgeon suggested that claimant had a "significant problem." Dr. Riew also stated that he was not aware of claimant's failure to reference the accident when he saw Dr. Smith on January 30, 2007. Dr. Riew agreed that the fact that claimant did not reference an injury at work on January 26, 2007, when he saw Dr. Smith only four days later suggested that claimant's problems were progressive from the degenerative condition as opposed to being traumatically induced.

¶ 14 On redirect examination, Dr. Riew testified that a disc/osteophyte complex like the one seen on claimant's MRI film can be asymptomatic and that "a blow" could cause symptoms in a preexisting disc/osteophyte complex. On recross-examination, the following colloquy occurred between respondent's counsel and Dr. Riew:

"Q Just a couple more questions. You indicate that a blow to the head could aggravate the situation. In this case isn't it just as likely that this man had a degenerative process dating back to December 2006 and that the symptoms were progressing to surgery independent of anything that happened on 1/26/2007?

A That's a difficult statement to make. He clearly had degenerative changes. He was asymptomatic from degenerative changes as most people are since most people by age 45 will have degenerative changes in their neck. Something triggered it and often it is a spontaneous triggering that no one can put a finger on--idiopathic, as you mentioned--and that clearly went on for a period of time prior to him having an accident. What we don't know as we sit here today is how much did the pain increase from prior to the accident and as compared to right after the accident, and if we have a number that tells us he had a pain at this threshold prior to the accident and it went to a different number after the accident and then we could get into [claimant's] mind to determine would you have had surgery for this number prior to the accident but not had it been--had it been at that level, maybe he wouldn't have had an operation because of increase he would have had an operation, and these are facts that we just don't have before us.

Q So you just can't say whether the injury of 1/26/2007 was a cause for the surgery; you just don't know?

A With the information that's been presented before me today, I would say it's all predicated upon how you pose the question to me."

¶ 15 Dr. R. Peter Mirkin, an orthopaedic surgeon concentrating in spinal conditions, testified by

evidence deposition that he was hired by respondent to conduct an independent medical examination and author a report of his findings. To that end, Dr. Mirkin reviewed claimant's medical records and then examined claimant in a follow-up visit. Claimant told Dr. Mirkin that he was injured at work on January 26, 2007, when his head struck a roll bar as he was operating machinery. Claimant related that he subsequently developed neck pain and pain in the left shoulder. Claimant initially denied any problems with his neck or left shoulder prior to January 26, 2007. However, after Dr. Mirkin showed claimant the medical records from other providers, claimant agreed that his symptomatology prior to January 26, 2007, was very similar to the condition for which he underwent surgery. Dr. Mirkin testified that claimant's January 27, 2007, MRI showed a very large ruptured disc at C4-C5 that compressed the spinal cord and a disc/osteophyte complex. Thus, he agreed that surgery was appropriate for claimant's condition. However, based on his review of claimant's medical records, Dr. Mirkin opined that symptoms consistent with a disc herniation and nerve impingement were present as early as December 2006. He further opined that the need for surgery was present prior to the alleged date of accident and that the alleged accident did not have any impact on the symptomatology leading to the surgery. On cross-examination, Dr. Mirkin testified that the mechanism of injury claimant described as occurring at work could "certainly" have caused or aggravated cervical problems. He also stated that the mechanism of injury could cause someone to become symptomatic or increase preexisting symptoms. On redirect, Dr. Mirkin reiterated his opinion that even before the alleged injury at work, claimant "was well on his way to being seen for a cervical evaluation and very likely having surgery."

¶ 16 Based on the foregoing evidence, the arbitrator determined that claimant sustained accidental

injuries arising out of and in the course of his employment with respondent and that proper notice was provided to respondent. The arbitrator further concluded that claimant's cervical condition was causally related to his accident at work. The arbitrator based her causation finding on the chain of events and the records of claimant's treating physicians. The arbitrator recognized that claimant had a preexisting neck condition. However, relying on the opinion of Dr. Riew, she found that the accident exacerbated his symptoms, resulting in the need for surgery. The arbitrator found that claimant was temporarily totally disabled from March 5, 2007 (the date of surgery), through April 23, 2007 (the date claimant returned to work), a period of 7-1/7 weeks. In addition, the arbitrator awarded claimant 100 weeks of PPD benefits (representing 20% of the person as a whole) and medical expenses in the amount of $988.01.

¶ 17 A majority of the Commission summarily affirmed and adopted the decision of the arbitrator. Commissioner Basurto dissented, concluding that the record did not support a causal connection between claimant's injury and his alleged accident at work. Commissioner Basurto concluded that claimant's symptoms, diagnosis, and treatment predated the alleged date of accident and there was no evidence that claimant's condition was aggravated or worsened due to any work injury. Commissioner Basurto also pointed out that the physician who testified that claimant's condition was causally related to an accident at work did not review the medical records and when given a complete history admitted that claimant's condition was not traumatically induced. The circuit court of Madison County confirmed the decision of the Commission. This appeal ensued.

¶ 18 II. ANALYSIS

¶ 19 On appeal, respondent raises three issues. First, respondent argues that the Commission's

finding that claimant sustained an accident that arose out of and in the course of his employment is against the manifest weight of the evidence. Second, respondent claims that the Commission's finding that claimant's cervical condition is causally connected to the alleged accident at work is against the manifest weight of the evidence. Third, respondent argues that the Commission erred in awarding claimant TTD benefits, PPD benefits, and medical expenses. We address each contention in turn.

¶ 20 A. Accident

¶ 21 We first address respondent's claim that the Commission erred in finding that claimant sustained a compensable accident. To obtain compensation under the Act, an employee must show by a preponderance of the evidence that he or she has suffered a disabling injury that "arose out of" and "in the course of" his or her employment. 820 ILCS 305/2 (West 2006); *Metropolitan Water Reclamation District of Greater Chicago v. Workers' Compensation Comm'n,* 407 Ill. App. 3d 1010, 1013 (2011). Both elements must be present at the time of injury to justify compensation. *Metropolitan Water Reclamation District of Greater Chicago,* 407 Ill. App. 3d at 1013. "Arising out of the employment" refers to the origin or cause of the employee's injury. *Tower Automotive v. Workers' Compensation Comm'n,* 407 Ill. App. 3d 427, 434 (2011). "In the course of the employment" refers to the time, place, and circumstances under which the employee is injured. *Tower Automotive,* 407 Ill. App. 3d at 434. Whether an injury arose out of and in the course of one's employment is a question of fact to be resolved by the Commission, and we will not disturb the Commission's finding unless it is against the manifest weight of the evidence. *Metropolitan Water Reclamation District of Greater Chicago,* 407 Ill. App. 3d at 1013. A finding is against the

manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Metropolitan Water Reclamation District of Greater Chicago*, 407 Ill. App. 3d at 1013. The appropriate test is whether there is sufficient evidence in the record to support the Commission's determination, not whether this court might have reached the same conclusion. *Metropolitan Water Reclamation District of Greater Chicago*, 407 Ill. App. 3d at 1013.

¶ 22 In this case, claimant testified that while in the course of his duties on January 26, 2007, he struck his head against a piece of machinery. Claimant initially felt pain, but, as this was not an unusual occurrence, he did not report the injury immediately. Claimant related, however, that as time passed, what began as soreness of the left trapezius progressed down into his arm, eventually resulting in pain and a burning sensation. As a result, on February 22, 2007, claimant reported the injury to his supervisor's boss, Frank Liedtky. Liedtky confirmed that claimant reported a work-related injury.

¶ 23 Respondent essentially challenges the Commission's finding on the basis that claimant's testimony regarding the accident was not credible. According to respondent, there is no credible evidence that an accident took place. Respondent asserts that claimant was well aware that it was respondent's policy that work accidents be reported immediately to his direct supervisor. Yet, he did not report the accident at issue until several weeks after the alleged occurrence, and he failed to report it to his direct supervisor. Respondent also notes that claimant was treated by Dr. Smith just four days after the alleged accident, but he did not mention the accident at that time. However, it is the function of the Commission to judge the credibility of the witnesses and determine the weight to be given their testimony. *Tower Automotive*, 407 Ill. App. 3d at 435-36. The Commission was

aware of any inconsistencies in claimant reporting the accident. It nevertheless determined that claimant sustained an accident arising out of and in the course of his employment with respondent. Moreover, the fact that claimant did not immediately report the accident to respondent is not dispositive. The Act allows an injured employee 45 days to report an accident. See 820 ILCS 305/6(c) (West 2006). Here, it is undisputed that claimant initially reported the event within the statutory time frame. Accordingly, based upon the record before us, we cannot say that an opposite conclusion is clearly apparent, and we affirm the Commission's finding that claimant sustained an accident arising out of and in the course of his employment.

¶ 24 B. Causation

¶ 25 Next, respondent challenges the Commission's finding that claimant's cervical condition is causally related to the event of January 26, 2007. In cases involving preexisting conditions, one's employment need not be the sole cause or even the primary cause of the condition of ill-being—it need only be *a* causative factor. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003); *Tower Automotive*, 407 Ill. App. 3d at 434. Moreover, a preexisting condition will not prevent recovery under the Act if the preexisting condition was aggravated or accelerated by employment. *Tower Automotive*, 407 Ill. App. 3d at 434. In other words, "in preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Sisbro, Inc.*, 207 Ill. 2d at 204-05. Additionally, it is well established that a finding of a causal relationship may be based on a medical expert's

opinion that an accident "could have" or "might have" caused an injury. *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853 (1996); *Cassens Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 333 (1994). Whether a causal connection exists between an employee's condition of ill-being and his employment and whether an employee's injuries are attributable to an aggravation or acceleration of a preexisting condition are factual issues to be decided by the Commission. *Tower Automotive*, 407 Ill. App. 3d at 434. We will not disturb the Commission's finding on causation unless it is against the manifest weight of the evidence. *Tower Automotive*, 407 Ill. App. 3d at 434. As noted above, a finding of fact is against the manifest weight of the evidence only where an opposite conclusion is clearly apparent. *Metropolitan Water Reclamation District of Greater Chicago*, 407 Ill. App. 3d at 1013.

¶ 26 Here, it is undisputed that claimant experienced neck problems prior to January 26, 2007. However, Dr. Riew, one of claimant's treating physicians, opined that if the blow to the head increased claimant's pain, it was "certainly reasonable that the increase in the pain could precipitate the need for an operation or subsequent treatment." The Commission expressly relied on Dr. Riew's opinion in finding causation. We note additionally that Dr. Mirkin, the independent medical examiner, agreed that the mechanism of injury described could cause or aggravate cervical problems and that it could cause someone to become symptomatic or increase preexisting symptoms. Moreover, the evidence supports the notion that claimant's condition deteriorated following the events of January 26, 2007. We note, for instance, that when claimant first treated with Dr. Mulligan in December 2006, he rated his pain at level six. Further, just two days before January 26, 2007, claimant told chiropractor King that his average pain is a five and at worst it is a seven. After

the accident, when claimant first treated with Dr. Smith, he rated the pain at level eight or nine. Dr. Smith administered a series of epidural injections in early to mid-February 2007, which appeared to reduce claimant's pain. However, the relief was temporary, and when Dr. Riew evaluated claimant early in March 2007, he reported that his condition worsened within the two weeks preceding his examination by Dr. Riew. This time frame coincides with the end of the injections.

¶ 27 Despite the foregoing, respondent insists that there is no credible medical evidence to suggest that the events of January 26, 2007, exacerbated claimant's symptoms. According to respondent, the Commission's reliance on Dr. Riew's opinion is misplaced for three reasons. First, the timetable of events provided to Dr. Riew by claimant was not accurate. Second, Dr. Riew was not provided with the relevant medical records from Dr. Smith, whom claimant saw just four days after the accident. Third, Dr. Riew testified that by the time claimant presented to him for an evaluation, his spine had degenerated to the point that it could have become symptomatic by the simplest of tasks. However, any weaknesses in Dr. Riew's testimony were brought out on cross-examination, and the Commission was certainly aware of them. We reiterate that it is the function of the Commission to judge the credibility of the witnesses, determine the weight to be given their testimony, and resolve conflicting medical evidence. *Tower Automotive*, 407 Ill. App. 3d at 435-36. As such, based on the record before us, we are unable to conclude that the Commission's reliance on Dr. Riew's opinion or its finding that claimant's cervical condition was causally connected to the work accident of January 26, 2007, is against the manifest weight of the evidence.

¶ 28 C. TTD Benefits, PPD Benefits, and Medical Expenses

¶ 29 Respondent's final contention is that the Commission's award of TTD benefits, PPD benefits, and medical expenses is also against the manifest weight of the evidence. However, since these arguments are based solely on the premise that the Commission's findings of accident and causation are erroneous, premises which we have already found unpersuasive, we also reject these contentions without further analysis.

¶ 30 III. CONCLUSION

¶ 31 For the reasons set forth above, we affirm the judgment of the circuit court of Madison County, which confirmed the decision of the Commission.

¶ 32 Affirmed.