

2021 IL App (1st) 200024WC-U

Workers' Compensation  
Commission Division  
Order Filed: January 8, 2021

No. 1-20-0024WC

**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

KATHERINE D. BELL,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	No. 2018 L 50414
	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION <i>et al.</i> ,	)	Honorable
	)	Mary Colleen Roberts,
(Chicago Public Schools, Appellee).	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Holdridge and Justices Hudson, Cavanagh, and Barberis concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirmed the circuit court's judgment, confirming the decision of the Illinois Workers' Compensation Commission which denied the claimant's request for an order for prospective medical care in the form of spinal surgery consisting of an arthroplasty at C5-6 and C6-7.

¶ 2 The claimant, Katherine D. Bell, appeals from an order of the circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission). She argues on appeal that the Commission's denial of her request for prospective medical care in the form of spinal surgery consisting of an arthroplasty at C5-6 and C6-7 as recommended by her neurosurgeon is against the manifest weight of the evidence. For the reasons which follow, we affirm.

¶ 3 The following recitation of the facts relevant to a disposition of this appeal is taken from the evidence adduced at the arbitration hearing held on February 28, 2018.

¶ 4 The claimant testified that she had been employed by the Chicago Public Schools (the employer) for 17 years as a porter in a school kitchen. She stated that, on January 10, 2017, she picked up a box of frozen chicken weighing approximately 50 to 75 pounds. As she bent down to put the box in a freezer, she felt a pain in her right arm and shoulder going up to her neck, causing her to drop the box of frozen chicken. According to the claimant, the incident was witnessed by her manager, Gloria McIntosh. She testified that she filled out an accident report with the school's principal, A.S. Thompson, after which she continued working for the remainder of her shift.

¶ 5 The claimant stated that her symptoms worsened, and as a result, she saw Dr. Arnulfo Vielgo at Advocate Medical Group on January 11, 2017. Dr. Vielgo's records of that visit reflect that, on examination, the claimant had pain from the right side of her neck down to her right shoulder and arm and pain under her right arm. X-rays of the claimant's cervical spine taken on that date revealed arthritic changes at C6-7 but were otherwise unremarkable. Dr. Vielgo diagnosed cervical radiculopathy and recommended that the claimant consider physical therapy and have an MRI of her cervical spine if her symptoms worsened.

¶ 6 On January 13, 2017, the claimant returned to the Advocate Medical Group complaining of right arm pain and was seen by Dr. Carol Hayes-Sharples. The records of that visit state that it was for follow-up management of right arm pain.

¶ 7 On January 16, 2017, the claimant had an x-ray of her right shoulder which was normal. She was diagnosed with cervical radiculopathy and carpal tunnel syndrome.

¶ 8 The claimant was next seen on January 17, 2017, at the Advocate Medical Group. The notes of that visit state that the claimant reported a pinched nerve causing arm pain, radiating from her shoulder, and pain and swelling of her hand and knuckles. It was observed that the claimant had received a cortisone injection, but her pain was now worse. The notes also state that the claimant “denies injury.” The claimant was given a Lidocaine patch and referred for pain management.

¶ 9 The claimant underwent the recommended MRI on January 24, 2017. The scan revealed: minimal disc osteophyte at C4-5 with minimal impression on the vertical aspect of the thecal sac without spinal stenosis centrally or foraminal narrowing; significant herniation at C5-6 paracentral to the right; and a broad based herniation at C6-7 with an associated foraminal component projection cephalad. Both herniations were compressing the cervical cord without associated myelomalacia or cord edema.

¶ 10 The claimant presented at the Advocate Medical Group on January 31, 2017, complaining of carpal tunnel syndrome in her right hand. The notes of that visit state that the claimant reported that her pain was worse since the injury to her right arm on January 10, 2017. She stated that she had these symptoms intermittently for the past 5 years.

¶ 11 The claimant was seen on February 23, 2017, by Dr. Vielgo. In his notes of that visit, Dr.

Vielgo recorded that the claimant told him that she had been injured at work prior to the onset of her pain but was in so much pain that she forgot to mention that when she was seen on January 11, 2017. On that date, Dr. Vielgo recommended that the claimant have a CT scan of her cervical spine.

¶ 12 On referral from Dr. Hayes-Sharpley, the claimant was seen by Dr. Ryan Trombly, a neurosurgeon, on March 7, 2017. The claimant gave a history of having injured herself at work on January 10, 2017, as she was lifting a box of frozen chicken. Dr. Trombly reviewed the claimant's MRI scan and diagnosed her as suffering from cervical radiculopathy. The notes of that visit reflect that the claimant had engaged in physical therapy with limited improvement. Dr. Trombly prescribed a cervical collar and oral steroids. He noted that, if the claimant's pain persisted, his recommendation would be an anterior cervical discectomy and fusion.

¶ 13 On March 21, 2017, the claimant underwent the recommended CT scan which showed mild lower cervical degenerative disc disease at C5-6 and C6-7. Dr. Trombly reviewed the CT scan on March 31, 2017, and concluded that there were no findings that required emergency surgery.

¶ 14 During the following months, the claimant continued to treat with Dr. Trombly and participate in physical therapy. When the claimant was seen by Dr. Trombly on August 22, 2017, she reported constant right sided neck and arm pain. In his notes of that visit, Dr. Trombly stated that the claimant had: completed two rounds of physical therapy with no relief; underwent chiropractic therapy with only temporary relief; and tried a soft cervical collar and Medrol dosepak with minimal relief. On examination of the claimant, Dr. Trombly recorded the claimant's right wrist extension at 4/5, right tricep extension at 4/5, and right intrinsic extension at 4/5 when

compared to the left which was normal. Dr. Trombly advised the claimant to have the recommended spinal surgery and ordered a comparison MRI of the claimant's cervical spine.

¶ 15 The claimant had the recommended MRI on September 18, 2017. The report of that scan noted a right paramedian herniated disc with annular fissure at C5-C6 with no significant change from the prior scan, and a tiny broad-based subligamentous disc protrusion at C6-C7 which had improved as compared to the January 24, 2017 MRI.

¶ 16 At the request of the employer, the claimant was examined by Dr. Julie Wehner, an orthopedic surgeon, on November 9, 2017. Dr. Wehner's report of that examination states that the claimant gave a history of a work accident on January 10, 2017, which was consistent with the claimant's testimony at arbitration. In that report, Dr. Wehner enumerated the claimant's medical records which she reviewed, including, but not limited to: an MRI performed on July 17, 2015 and associated records of treatment prior to January 10, 2017; the records of the Advocate Medical Group; x-rays of the claimant's cervical spine taken on January 11, 2017; x-rays of the claimant's right shoulder taken on January 18, 2017; an MRI of the claimant's cervical spine taken on January 24, 2017; Dr. Trombley's records; physical therapy records from ATI; and the CT scan performed on March 21, 2017. Dr. Wehner reported that, on examination, she found: the claimant's neck range of motion was normal; her reflexes, including biceps, triceps and brachial radials, were 2+ and symmetric but caused pain; she had giving way weakness in the entire right arm; she had decreased sensation in the entire right hand; no atrophy or edema; a Phalen's test produced dorsal wrist pain; a Tinel test at the wrist caused local tenderness but was not positive, no abnormal Babinski or clonus; and that Spurling's sign did not produce pain in the neck area. According to Dr. Wehner's report, the claimant's clinical exam showed "normal neck range of motion and

giving way of the entire right upper extremity in a diffuse pattern and decreased sensation in the entire hand in a non-anatomic pattern.” She also observed that the claimant was easily using her hand for activities such as using the telephone in her office. Dr. Wehner diagnosed “cervicalgia with right radiculopathy but a clinical exam that is nonfocal.”

¶ 17 In her report, Dr. Wehner acknowledged that the MRI of the claimant’s cervical spine “does show a significant finding at C5-C6 and C6-C7 on the right which could cause some right cervical radiculopathy.” She concluded, however, that, “[b]ecause her [the claimant’s] subjective complaints of decreased sensation in the entire hand and the giving way weakness are nonfocal, and she has a normal neck range of motion, it is difficult to reconcile her clinical exam with the radiographic findings. It is difficult to reconcile the radiographic findings in a specific distribution with the nonfocal clinical exam.” Dr. Wehner went on to state that, although Dr. Trombly is recommending a C5-C6 and C6-C7 disc replacement surgery, “[t]he standard does not usually indicate a 2-level arthroplasty and usually indicates that an arthroplasty is a 1-level procedure.” She was of the opinion that performing surgery would be reasonable based on the radiographic findings “if they specifically correlated with her [the claimant’s] clinical findings.”

¶ 18 When the claimant was seen by Dr. Trombly on December 26, 2017, he noted that she had undergone 8 weeks of chiropractic treatment, physical therapy, worn a cervical collar, and taken prescribed medication; all without relief. He stated that, on examination, the weakness in the claimant’s right wrist extension and triceps correlated with disc herniations at C5-6 and C6-7. Dr. Trombly concluded that the appropriate medical treatment for the claimant is to perform cervical arthroplasty at C5-6 and C6-7.

¶ 19 The claimant testified that she experiences pain in her right arm and hand and occasionally

experiences pain down her leg to her toes which causes throbbing in her toes. According to the claimant, her neck and shoulder prevent her from “doing a lot of things” with her right hand. She stated that she is mainly using her left hand. The claimant testified that she is presently taking prescription pain medication and intends to proceed with the recommended spine surgery.

¶ 20 Following the arbitration hearing held on February 28, 2018, pursuant to section 19(b) of the Workers’ Compensation Act (Act) (820 ILCS 305/19(b) (West 2016)), the arbitrator issued a written decision on March 29, 2018. The arbitrator found that the claimant failed to prove that she sustained accidental injuries arising out of and in the course of her employment on January 10, 2017, and as a consequence, denied her benefits under the Act.

¶ 21 The claimant filed a petition for review of the arbitrator’s decision before the Commission. On December 4, 2018, the Commission issued a unanimous decision reversing the arbitrator’s decision. The Commission found that the claimant sustained accidental injuries arising out of and in the course of her employment on January 10, 2017, and that her condition as it relates to her cervical spine, right shoulder, and right arm are causally related to the January 10, 2017 accident. The Commission awarded the claimant all reasonable and necessary medical expenses incurred as a result of her accident, 59 1/7 weeks of temporary total disability (TTD) benefits for the period from January 11, 2017, through February 28, 2018, and ordered the employer to authorize and pay for the epidural injection and functional capacity evaluation as recommended by Dr. Wehner. The Commission granted the employer credit for TTD benefits it had previously paid and for the amounts paid for the claimant’s medical expenses by the employers group health plan. However, relying upon the opinion of Dr. Wehner, the Commission found that the claimant is not entitled to the arthroplasty at C5-6 and C6-7 as recommended by Dr. Trombly. Specifically, the Commission

noted that Dr. Wehner “found that the claimant’s clinical exam could not be reconciled with the radiographic findings of the cervical spine.” Finally, the Commission remanded the case to the arbitrator for further proceedings.

¶ 22 The claimant sought a judicial review of the Commission’s decision in the circuit court of Cook County. On May 3, 2019, the circuit court confirmed the Commission’s decision, and this appeal followed.

¶ 23 The claimant’s sole argument on appeal is that the Commission’s determination that she is not entitled to prospective medical care in the form of an arthroplasty at C5-6 and C6-7 as recommended by Dr. Trombly is against the manifest weight of the evidence. She contends that a number of the opinions contained in Dr. Wehner’s report call into question her credibility. Specifically, the claimant notes that, although the Commission relied on Dr. Wehner’s opinion addressing her need for spinal surgery as recommended by Dr. Trombley, it rejected Dr. Wehner’s causation opinion. The claimant argues that, in contrast to Dr. Wehner’s “contradictory and confusing opinion denying \*\*\* [her] need for surgery[,]” her treating physicians “have been consistent in their diagnosis and surgical recommendation made of a two-level arthroplasty.”

¶ 24 It was the function of the Commission to: resolve conflicts in the evidence, including medical testimony; assess the credibility of the witnesses; assign weight to the evidence; and draw reasonable inferences from the evidence. *ABF Freight System v. Illinois Workers’ Compensation Commission*, 2015 IL App (1st) 141306WC, ¶ 19. Questions regarding a claimant’s entitlement to prospective medical care are questions of fact to be decided by the Commission. *Dye v. Illinois Workers’ Compensation Comm’n*, 2012 IL App (3<sup>rd</sup>) 110907WC ¶ 10. 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. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Put another way, the Commission's determination on a question of fact is against the manifest weight of the evidence when no rational trier of fact could have agreed. *Dolce v. Industrial Comm'n*, 286 Ill. App. 3d 117, 120 (1996). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 25 In this case, Dr. Trombly was of the opinion that the appropriate medical treatment for the claimant's condition of cervical spine ill-being is a cervical arthroplasty at C5-6 and C6-7. In contrast, Dr. Wehner opined that the standard does not usually indicate a 2-level arthroplasty as recommended by Dr. Trombly and usually indicates that an arthroplasty is a 1-level procedure. She concluded that surgery would be reasonable based on the radiographic findings if they specifically correlated with the claimant's clinical findings. However, Dr. Wehner found that it is difficult to reconcile the radiographic findings relating to the claimant's cervical spine in a specific distribution with her nonfocal clinical exam. The Commission relied upon Dr. Whener's opinion, and necessarily rejected Dr. Trombly's contrary opinion, on the propriety of performing a cervical arthroplasty at C5-6 and C6-7 to treat the claimant's condition of cervical spine ill-being. It was the function of the Condition to resolve the conflict in medical opinions. It resolved that conflict in favor of Dr. Wehner's opinion, and we are unable to find that an opposite conclusion is clearly apparent. In urging reversal of the Commission's determination that she is not entitled to prospective medical care in the form of an arthroplasty at C5-6 and C6-7, the claimant is asking

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this court to substitute its judgment for that of the Commission on matters of credibility and weight of the evidence. This we decline to do. *ABF Freight System*, 2015 IL App (1st) 141306WC, ¶ 19.

¶ 26 For the reasons stated, we find that the Commission's decision is not against the manifest weight of the evidence, and as a consequence, we affirm the judgment of the circuit court that confirmed the Commission's decision and remand the matter to the Commission.

¶ 27 Affirmed and remanded.