

2021 IL App (3d) 200213WC

FILED: April 6, 2021

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NO. 3-20-0213WC

IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

KEVIN MARONEY,)	Appeal from the
Appellant,)	Circuit Court of
v.)	Peoria County
THE ILLINOIS WORKERS' COMPENSATION)	No. 19MR748
COMMISSION <i>et al.</i>)	Honorable
(Joe's Towing and Recovery, Appellee).)	David A. Brown,
)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Barberis have concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The Commission's decision that claimant's current condition of ill-being was not causally related to his work-related accident was not against the manifest weight of the evidence.

(2) The Commission's decision to award claimant benefits under the Workers' Compensation Act for medical expenses related only to emergency room treatment incurred on December 18, 2016, and December 19, 2016, and permanent-partial disability benefits representing a 5% loss of use of person as a whole was not against the manifest weight of the evidence.

¶ 2 The Illinois Workers' Compensation Commission (Commission) found that

claimant, Kevin Maroney, sustained a work-related accident on December 18, 2016, but, because claimant returned to full duty employment and did not seek subsequent medical treatment until April 2017, his current condition of ill-being was not causally related to the work accident. The Commission awarded benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)) in the form of medical expenses and permanent partial disability. The circuit court confirmed the Commission's decision in full. For the reasons set forth below, we affirm the judgment of the circuit court.

¶ 3

I. BACKGROUND

¶ 4 Claimant filed two applications for adjustment of claims pursuant to the Act. On May 11, 2017, claimant filed the first application seeking benefits for injuries he allegedly sustained on December 18, 2016, while working for Joe's Towing and Recovery (Joe's). The case was docketed as case No. 17-WC-14133. On January 5, 2018, claimant filed the second application seeking benefits for injuries he allegedly sustained on April 19, 2017, also while working for Joe's. The case was docketed as case No. 18-WC-00432. The cases were consolidated, and on August 17, 2019, the arbitrator heard evidence on both of claimant's applications.

¶ 5 Claimant, 48 years old at the time of the hearing, testified he was employed at Joe's and had been there for three years as a flatbed tow truck driver. On December 18, 2016, he was to jump-start a customer's vehicle at her residence. As he walked on her driveway, he slipped on ice that was covered with snow. He fell on his back. The customer told him he was unconscious for approximately 30 seconds. She called an ambulance, and claimant was taken to St. Francis Hospital emergency room. There, he complained of head and lower back pain. He described the pain as sharp and stinging in the middle of his back with a shooting pain down his left leg to his ankle. X-rays and computerized tomography (CT) scans were taken of his head and his lumbar

and cervical spine. The lumbar CT scan showed degenerative disc bulges at L2-L3, L3-L4, L4-L5, and L5-S1. It also showed “[c]hronic compression deformity of the L1 vertebral body with the 60% vertical height remaining in mid body unchanged from previous CT of the abdomen from [March 20, 2012].” There was no mention of an acute fracture or herniation. Claimant was discharged with a diagnosis of syncope (the medical term for “passing out”) and acute back and neck pain. He was prescribed pain medication and told to follow-up with his primary care physician.

¶ 6 Claimant said he saw his primary care physician, Dr. James Adams, two days later. He said he was in severe pain, with spasms and shooting pain down his left leg. No other evidence exists in the record demonstrating further medical treatment at that time.

¶ 7 However, claimant said he tried to seek further medical treatment by calling Joe’s insurance carrier. He said within a week of the accident, he spoke with Tom Moriarti at Western National Insurance Company. Claimant said Moriarti told him his case would be assigned to a caseworker and he or she would be in touch with claimant. He was never provided with authorization to seek additional treatment. He continued to work at Joe’s performing his usual duties but, according to him, at “[a] lot slower pace[].” He said he continued to have back spasms and “shooting sciatic” pain through April 2017.

¶ 8 Claimant said before the fall in December 2016, he had no back pain. He *did* have a lower back injury in 1995 when he suffered a pressure fracture after a 50-foot fall from a roof. He also fractured his left tibia and has a rod inserted. Despite this prior accident, claimant said he had not experienced any ongoing back issues between 1995 and December 2016. His job at Joe’s required him to load and unload vehicles from the flatbed tow truck, which required a lot of “up and down.”

¶ 9 Claimant testified that on April 18, 2017, he was involved in a second incident. On that day, he was assigned to travel from Peoria to Decatur. He drove on a two-lane highway through Lincoln that was “very broken up.” The rough road caused him to do “a lot of bouncing and shifting because of how bad the road was.” He had back spasms for two hours while driving. He said he was in severe pain. However, he did not notify anyone from Joe’s about the increased pain.

¶ 10 On April 19, 2017, claimant went to the emergency room for left lower back pain radiating down his leg. The hospital intake form indicated the “account type” was “workers comp.” According to the hospital records, claimant reported no “new inciting injuries/trauma (states it is likely [due to] bumps while driving as it is an [sic] truck).” The notes further state: “[Patient] states aching pain since the fall but shooting pain since Thursday [(six days prior)].” Claimant said he was given a “severe narcotic.” He was diagnosed with left low back pain with left-sided sciatica. The narcotic eased the pain but, within the days following, he could “hardly move or walk.” He saw Dr. Adams, who recommended a specialist.

¶ 11 Claimant said he contacted his attorney, who referred him to Orland Park Orthopedics. There, he saw Lori Welke, a physician’s assistant to Dr. Blair Rhode, on May 11, 2017. Claimant had a magnetic resonance imaging (MRI) scan which revealed a herniated lumbar disc at L5-S1 on the left side causing nerve compression. He was referred to, and on May 30, 2017, he saw, Dr. Richard Kube at Prairie Spine and Pain Institute. He was taken off work. Claimant said he did not work between April 20, 2017, and October 24, 2017, due to the pain.

¶ 12 Dr. Kube testified he reviewed the May 12, 2017, MRI, which revealed the disc herniation at L5-S1 and early degenerative changes in L3-L4, L4-L5, and L5-S1. He believed, based on the appearance of the disc, that the herniation was caused by a “recent injury,” which

would have “occurred in the last few to several months[.]” Dr. Kube also reviewed X-rays he had ordered on the day of claimant’s first visit on May 30, 2017. Dr. Kube said several times that he did not review any other diagnostic scans or images, including those taken at St. Francis Hospital in December 2016. Based on the images he reviewed and his physical examination of claimant, in Dr. Kube’s opinion, the December 2016 fall likely caused the herniated disc. Dr. Kube recommended surgery, which he performed on claimant in June 2017. Dr. Kube put claimant on “sedentary duty” on August 15, 2017. According to Dr. Kube, claimant reached maximum medical improvement (MMI) on November 21, 2017, and was released to work without restrictions.

¶ 13 Christina Pedigo, the office manager and secretary, testified for Joe’s. She said she learned of the December 18, 2016, accident the same day. Her husband is the president and general manager of Joe’s. She said she was not aware that claimant injured his back in April 2017 on the ride to Decatur. She said claimant called in to work on April 12, 2017, and said his diabetes was causing him problems. He called in on April 15, 2017, and said he could not move or walk. He then worked the next day on April 16, 2017, but did not work again until October 2017. Pedigo testified that claimant called her on April 20, 2017, asking for Western National’s telephone number so he could get a claim number from his December 18, 2016, incident. According to Pedigo, claimant told her he would not be in because his back was bothering him. Pedigo said she received a doctor’s note from St. Francis Hospital releasing him from work on May 15, 2017. Pedigo testified claimant did not request authorization for medical treatment between December 20, 2016, and April 1, 2017.

¶ 14 On June 28, 2017, claimant was examined by Dr. Stephen Weiss at Joe’s request. In his report of that examination, Dr. Weiss noted claimant’s history, including his fall from a building 20 years ago which resulted in fractures to both ankles and to his left tibia. Claimant also

sustained compression fractures at L4 and L5, but he did not undergo surgery. He eventually returned to full-work activity and had no significant problems thereafter. Claimant had also suffered a compression fracture at L1, though the circumstances were not mentioned. With regard to his December 18, 2016, fall, claimant told Dr. Weiss he recalled immediately feeling low back pain, which radiated down his left leg.

¶ 15 According to his report, Dr. Weiss reviewed the December 19, 2016, lumbar CT scan, which specifically stated that the visible L1 compression fracture was unchanged from a prior CT scan on March 20, 2012. Claimant informed Dr. Weiss that he returned to work following his fall but he did so with constant low back pain running down his left lower extremity. Claimant told Dr. Weiss about driving on a bumpy road in April 2017, which caused his pain to significantly worsen. Dr. Weiss noted the emergency room records from April 2017 indicated that claimant's pain was " 'new with radiation.' " This pain led claimant to treatment with Dr. Kube and an MRI, which showed a herniated disc at L5-S1.

¶ 16 According to Dr. Weiss's report, claimant "sustained only a lumbar strain secondary to the work incident in question. This opinion is supported by the fact that [claimant] was able to continue working after the injury in question and his radicular complaints, which required treatment, were not documented until [four] months later (April 2017)." Dr. Weiss opined that claimant reached MMI on December 19, 2016. He wrote that, although claimant's treatment in and after April 2017 was reasonable and appropriate, it was unrelated to his December 18, 2016, work-related fall and resulting lumbar strain.

¶ 17 On November 8, 2018, the arbitrator issued a decision in which he found, in case No. 17-WC-14133, that on December 18, 2016, claimant sustained an accident that arose out of and in the course of his employment and his current condition of ill-being is causally related to the

accident. The arbitrator ordered Joe's to pay (1) reasonable, necessary, and causally related medical expenses in the amount of \$106,168.10, (2) temporary total disability (TTD) benefits for 26-6/7 weeks in the amount of \$366.66 per week for the time period of April 19, 2017, to October 24, 2017, and (3) permanent partial disability (PPD) benefits for 75 weeks in the amount of \$330 per week representing 15% loss of use of the person as a whole.

¶ 18 The arbitrator found the opinions of Dr. Kube to be more persuasive than those of Dr. Weiss and accordingly, found claimant had sufficiently proved that his disc herniation at L5-S1 was causally connected to his work injury on December 18, 2016. The arbitrator noted that Dr. Weiss "did not acknowledge that [claimant] also reported at the hospital [(in April 2017)] that he had been experiencing left low back pain radiating down his left leg to ankle since his fall of December 18, 2016, and that [claimant] continued to experience radiating pain since that date." The arbitrator found claimant to be credible and noted that Joe's "did not offer any credible testimony sufficient to rebut [claimant]'s testimony" regarding his complaints of radiating pain.

¶ 19 Further, the arbitrator found, in case No. 18-WC-00432, claimant did not sustain an accidental injury on April 19, 2017, while working for Joe's. Neither party sought review of the arbitrator's decision, so it is not at issue in this appeal.

¶ 20 On September 6, 2019, upon Joe's timely petition for review, the Commission reversed the arbitrator's decision regarding causal connection, vacated the TTD benefits, and reduced the medical benefits and PPD awards. The Commission found, based on the evidence, that claimant suffered a work-related accident on December 18, 2016, but this accident did not cause and was unrelated to claimant's current condition of ill-being. The Commission found that because claimant immediately resumed his full duties at work and did not seek medical treatment between December 19, 2016, and April 19, 2017, he had reached maximum medical improvement on

December 19, 2016.

¶ 21 The Commission ordered Joe's to pay the medical expenses for the emergency-related treatment rendered at St. Francis Hospital, including the radiology bill, and other reasonable related medical expenses incurred on December 18, 2016, and December 19, 2016, only. The Commission reduced the PPD benefits to reflect that claimant sustained 5% loss of use of the person as a whole to be paid at the sum of \$330 per week for 25 weeks. The Commission struck the arbitrator's conclusions of law and order.

¶ 22 On June 9, 2020, the Peoria County circuit court confirmed the Commission's decision.

¶ 23 This appeal followed.

¶ 24 **II. ANALYSIS**

¶ 25 Claimant contends the Commission's causal connection finding is against the manifest weight of the evidence. He claims the Commission took "an extremely narrow view of the evidence" when it based its decision to reverse solely on the fact that Dr. Kube had not reviewed the CT taken on December 18, 2016. Claimant says the Commission failed to explain why that was significant when Dr. Kube testified he reviewed the May 12, 2017, MRI. He claims, contrary to the Commission's decision, all of the medical records confirm claimant's "problems started on December 18, 2016[,] and remained till after surgery."

¶ 26 "The Commission's determination of factual issues, including the resolution of conflicting medical evidence, and the credibility and weight of testimony, will not be disturbed unless against the manifest weight of the evidence." *McLean Trucking Co. v. Industrial Comm'n*, 96 Ill. 2d 213, 219 (1983). "Fact 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 agency.” *Durand v. Industrial Comm’n*, 224 Ill. 2d 53, 64 (2006).

¶ 27 Contrary to claimant’s position, this case does not involve a battle of the experts. Instead, the two experts, Drs. Kube and Weiss, agree that, according to the May 12, 2017, MRI, claimant suffered a herniated disc. Their opinions differ when it comes to determining when the herniation occurred. Dr. Kube opined that the herniated disc was caused by claimant’s December 2016 fall since no other reported or documented event had occurred that would cause this acute herniation. Dr. Weiss opined that the herniated disc was caused by some intervening event in mid-April 2017, not by claimant’s fall in December 2016.

¶ 28 Dr. Kube testified on multiple occasions that he did not have available to him and had not reviewed claimant’s medical records from his emergency room visit on December 18, 2016. Those records included a lumbar CT scan, which revealed several disc bulges but no herniation. The herniation did not appear until the May 12, 2017, MRI. Thus, Dr. Kube’s opinion that claimant’s December 2016 fall was causally related to the disc herniation was not only *not* supported by the evidence but belied by the evidence.

¶ 29 On the other hand, Dr. Weiss testified he had reviewed the December 2016 hospital records, including the scans. He agreed with the diagnosis at discharge that claimant’s CT showed degenerative changes and did not show disc herniation. Dr. Weiss opined that claimant suffered a lumbar strain after the December 2016 fall with no disc injury. He explained the disc bulges were indicative of degenerative changes and not an acute injury. In Dr. Weiss’s opinion, based upon his review of claimant’s medical records and physical examination, to a reasonable degree of medical certainty, claimant suffered a lumbar strain in the December 2016 fall, and claimant’s June 2017 back surgery was not related to that strain.

¶ 30 Other record evidence supported Dr. Weiss’s opinion that the fall did not cause

claimant's herniated disc. Dr. Weiss explained that the basis of his opinion was that claimant "was able to continue his work and didn't require any follow-up treatment[]" until mid-April 2017. On that subject, Dr. Weiss noted that, if a person was able to continue his full-time duty as a tow truck driver for three or four months after his fall, it indicated to him "that they were not having a serious problem with their back at the time." Only thereafter, in April 2017, did claimant develop left-sided radicular complaints, which, according to Dr. Weiss, supported the fact that "the herniation probably started in or towards the middle of April of 2017 and fully became a radiculopathy shortly thereafter, and, obviously, that's four or five months after the original incident." The symptoms claimant experienced in April 2017, in Dr. Weiss's opinion, were related to the normal progression of an underlying condition.

¶ 31 Dr. Weiss and Dr. Kube both agreed that claimant's symptoms were not related to any type of repetitive trauma injury on or about April 19, 2017. In fact, Dr. Kube testified that one would expect that symptoms related to a herniated disc would manifest themselves shortly after a slip and fall and generally remain until treated. Dr. Kube stated:

"You would expect the symptoms to have, you know, an onset in the early post fall time period and, and that those symptoms, I mean, they can always wax and wane, but you would expect them to be somewhat consistent through that time frame and ultimately, you know, be there as they were at the time that we did the treatment. Either that or, or the guy heals himself and doesn't need anything."

Dr. Kube said his understanding was that claimant had "fairly contemporaneous onset of symptoms and those symptoms more or less remained until we fixed them." However, that "understanding" is not supported by the evidence. Claimant returned to full-duty work immediately after the fall and did not seek further medical treatment for four months.

¶ 32 To obtain compensation under the Act, the claimant must establish by a preponderance of the evidence that he suffered an accident which arose out of and in the course of his employment (*Farris v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130767WC, ¶ 68) and that a causal relationship exists between his employment and his condition of ill-being (*Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984)); both of which are questions of fact to be resolved by the Commission.

¶ 33 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 the Commission's resolution of a fact question to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 39. 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 against 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).

¶ 34 It is 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. *ABBF Freight System v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19. Given this court's standard of review, we cannot say the opposite conclusion is clearly apparent. See *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 847 (1996).

¶ 35 The Commission reasonably concluded that claimant's current condition of ill-being was not related to his December 18, 2016, accident as Dr. Weiss believed. Dr. Weiss's

opinion was supported by reasonable professional explanations and objective medical evidence. Dr. Kube's opinion was not based on *all* of the available medical evidence. See *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 24 (quoting *In re Joseph S.*, 339 Ill. App. 3d 599, 607 (2003) (“ ‘Expert opinions must be supported by facts, and are only as valid as the facts underlying them.’ ”)).

¶ 36 The Commission was persuaded by Dr. Weiss's opinion that there was no disc herniation noted on the December 19, 2016, CT scan. And, that scan, which showed only degenerative changes at multiple levels, showed no changes when compared to a 2012 CT scan of claimant's abdomen and pelvis. Thus, the record evidence supported the Commission's decision that claimant's current condition of ill-being and the necessity for his June 2017 herniated-disc surgery were not related to his December 2016 fall.

¶ 37 Based on this record, there is no reason to disturb the Commission's decision denying causation, vacating the award of TTD, reducing medical benefit payments to cover only the expenses incurred on December 18, 2016, and December 19, 2016, and reducing the PPD benefit to a 5% loss of use of the person as a whole, with payments of \$330 for a period of 25 weeks.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the judgment of the circuit court of Peoria County, which confirmed the decision of the Commission.

¶ 40 Affirmed.