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2021 IL App (4th) 190630WC-U

Order filed

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

FILED
February 3, 2021
Carla Bender
4th District Appellate
Court, IL

WORKERS' COMPENSATION COMMISSION DIVISION

RICK REESE,)	Appeal from the Circuit Court
)	of Macoupin County, Illinois,
Appellant,)	
)	
v.)	
)	Appeal No. 4-19-0630WC
THE ILLINOIS WORKERS')	Circuit No. 19-MR-27
COMPENSATION COMMISSION <i>et al.</i>)	
)	
(Mike Frerichs, State Treasurer and <i>Ex-Officio</i>)	Honorable
Custodian of the Rate Adjustment Fund, and)	April G. Troemper,
Tri County Coal, Appellees).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding that the claimant suffered a disease which arose out of and in the course of his employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Rick Reese, appeals an order of the circuit court of Macoupin County reversing a decision of the Illinois Workers' Compensation Commission (Commission) awarding him benefits pursuant to the Illinois Workers' Occupational Diseases Act (Act) (820 ILCS 310/1

et seq. (West 2012)). The Commission modified, in part, the decision of the arbitrator, finding that the claimant established that he suffered from emphysema that arose out of and in the course of his employment and his current condition of ill-being was causally related to his employment.

¶ 3

I. BACKGROUND

¶ 4

The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on April 24, 2018, and the Commission's Decision and Opinion on Review dated February 19, 2019. While the Commission found that the claimant failed to prove that he suffered from employment-related coal workers' pneumoconiosis or asthma, the only issue on appeal concerns the findings related to the claimant's emphysema. Therefore, we limit the facts to those related to the emphysema claim.

¶ 5

The claimant testified that he was 57 years old. He worked in the coal mines for 32 years, 11 of which were underground. During that time, he was exposed to silica dust, roof bolting glue fumes, diesel fumes, coal dust, and smoke from coal fires. He last worked in the mines on June 21, 2013, when he retired. He started to have breathing problems and coughing towards the end of his career. He noticed that he had trouble walking up 22 steps. He would get hoarse and tired, and his breathing problems worsened until he left the mine. Removing himself from exposure in the mine helped with his breathing. The claimant stated that he started smoking in 1975 and quit in 2002, though he reported to a doctor that he quit in 2013. In 2015, he was diagnosed with colon cancer that metastasized to his bladder. He had surgery to remove part of his colon and bladder. His cancer then metastasized to his lungs, and he was undergoing chemotherapy.

¶ 6

The claimant offered into evidence his medical records from the Springfield Clinic, including CT scans performed on January 7, 2016, April 15, 2016, and June 5, 2017. The medical records from these dates noted that the claimant suffered from pulmonary emphysema. These CT

scans were taken after the claimant and/or his records were examined by Dr. Glennon Paul and Dr. James Castle in connection with this case. The respondent acknowledged that the claimant had been diagnosed with emphysema. No one, either for the claimant or the respondent, opined as to the etiology of the claimant's emphysema.

¶ 7 However, both Dr. Paul and Dr. Castle testified generally about emphysema. Dr. Paul testified via evidence deposition. He was a senior physician at the Central Illinois Allergy and Respiratory Clinic, specializing in allergy and pulmonary diseases. He was board certified in allergy, immunology, and asthma. Dr. Paul stated that coal mine exposure like the claimant's could result in or aggravate emphysema. He stated that emphysema was multifactorial in origin and inhaling dust or fumes could cause or progress emphysema. He testified that if a person has emphysema, they need to avoid agents that could cause or aggravate it. Dr. Castle was board certified in internal medicine, specializing in pulmonary disease, and also testified via evidence deposition. Dr. Castle stated that the National Institute for Occupational Safety and Health (NIOSH) performed a study and determined that coal mine dust can cause emphysema. The risk of emphysema from mining was similar to the risk from smoking. He agreed that NIOSH, the Department of Labor, and the American Thoracic Society had all concluded that emphysema can be multifactorial in etiology, and the result of impairment from all the contributors can be additive.

¶ 8 The arbitrator found that there was no credible evidence or opinions by any healthcare providers to support a finding that the claimant's diagnosis of emphysema was caused or aggravated by his work in the coal mine. The arbitrator found it significant that the claimant had a history of smoking "that could have caused or contributed to his diagnosis of emphysema."

¶ 9 The Commission disagreed with the decision of the arbitrator as to the claimant's emphysema, stating that the evidence supported that the claimant had a lengthy history working in

and around the coal mine and exposure to hazardous fumes. It thus found that the claimant's emphysema was causally related to his job duties. The claimant sought review of the Commission's decision before the circuit court of Macoupin County. On September 5, 2019, the circuit court reversed the Commission's decision regarding the cause of the claimant's emphysema.

¶ 10

II. ANALYSIS

¶ 11

The claimant argues that the Commission's finding that he suffered a disease which arose out of and in the course of his employment was not against the manifest weight of the evidence. As there is no dispute that the claimant suffered from emphysema, the only question is whether such was causally related to his coal mine exposure.

¶ 12

Whether a claimant suffers from an occupational disease that is causally related to his employment presents a question of fact. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 21. We will only disturb the Commission's findings if they are against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence when the opposite conclusion is clearly apparent. *Id.* It is the Commission's province to judge the credibility of witnesses, to draw reasonable inferences from the evidence, to determine what weight the testimony is to be given, and to resolve conflicts in the evidence. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 38. We owe substantial deference to the Commission's resolution of medical testimony as its expertise has long been recognized. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). On review, it is not the prerogative of the appellate court to reweigh the evidence or substitute its judgment for that of the Commission. *Setzekorn v. Industrial Comm'n*, 353 Ill. App. 3d 1049, 1055 (2004).

¶ 13 We find that the Commission’s decision that the claimant’s emphysema arose out of and in the course of his employment was not against the manifest weight of the evidence. The record provides two causes for the claimant’s emphysema: coal mine dust inhalation and cigarette smoking. Both Dr. Paul and Dr. Castle testified that emphysema can be multifactorial in etiology, and when it is, the resulting impairment can be additive. This was based on the NIOSH, Department of Labor, and American Thoracic Society official conclusions of the same. These authorities have further stated that the risk of emphysema from coal mine dust is comparable to that from smoking. Dr. Paul stated that, after a diagnosis of emphysema, the claimant should not have any further exposure to the coal mine environment. As the evidence presented shows that emphysema can have multiple causes, including both smoking and coal mine dust, the Commission’s decision that the claimant’s coal mine exposure was a causative factor of his emphysema was not against the manifest weight of the evidence. See *Gross*, 2011 IL App (4th) 100615WC, ¶ 26 (where the claimant had significant exposure to both coal dust and cigarette smoking, the evidence failed to support that one exposure was the sole cause of the claimant’s condition).

¶ 14 As it found a lack of a causal connection, the circuit court made no finding on the issues of timely disablement and nature and extent of the injury, which were raised by the respondent. Therefore, we remand for the circuit court to consider these issues.

¶ 15 III. CONCLUSION

¶ 16 For the foregoing reasons, we reverse the judgment of the circuit court of Macoupin County, which reversed the Commission’s decision, and remand for further proceedings.

¶ 17 Reversed and remanded.