

No. 1-23-0984WC

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

KIMBERLY MASTERS,)	Appeal from the
)	Circuit Court of
Appellant,)	Cook County
)	
v.)	No. 22L050131
)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> ,)	Honorable
)	Daniel P. Duffy,
(ExpressJet Airlines, Inc., Appellee).)	Judge, Presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Mullen, and Cavanagh concurred in the judgment.

¶ 1 *Held:* We affirm the judgment of the circuit court confirming the decision of the Commission, where the Commission's finding that claimant failed to prove she sustained an accidental injury arising out of an in the course of her employment was not against the manifest weight of the evidence.

¶ 2 On June 11, 2018, claimant, Kimberly Masters, filed an application for adjustment of claim pursuant to the Workers Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2018)), seeking benefits for injuries she sustained to both elbows, both knees, and her person as a whole when she slipped and fell while working for employer, ExpressJet Airlines, Inc. on December 17, 2017.

Following an arbitration hearing held pursuant to section 19(b) (*id.* § 19(b)), the arbitrator issued a corrected decision on May 24, 2021,¹ finding that claimant sustained accidental injuries arising out of and in the course of her employment and that her current condition of ill-being was causally related to the accident. Accordingly, the arbitrator awarded claimant benefits under the Act but also awarded employer a credit for benefits paid.

¶ 3 Employer filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). The Commission, with one commissioner dissenting, issued a decision on February 22, 2022, reversing the arbitrator's decision on the issue of accident. The Commission found that claimant failed to prove, by a preponderance of the evidence, that she sustained accidental injuries arising out of and in the course of her employment on December 17, 2017. In so finding, the Commission determined that claimant's testimony regarding the alleged accident lacked credibility. The Commission found all other remaining issues, including issues relating to causation and the arbitrator's award of benefits, moot. The Commission affirmed the arbitrator's award of credit to employer for benefits paid.² The dissenting commissioner, like the arbitrator, found that claimant testified credibly regarding the accident and met her burden of proving she sustained a compensable accidental injury on December 17, 2017.

¶ 4 Claimant sought judicial review of the Commission's decision before the circuit court of Cook County. The court entered an order on May 3, 2023, confirming the Commission's decision. Claimant timely appealed.

¶ 5 I. Background

¹ An arbitrator issued a decision on April 21, 2021, but left the Commission shortly thereafter. The parties agreed via written consent to allow a different arbitrator to issue the corrected decision.

² Although the arbitrator issued a decision on temporary issues pursuant to section 19(b), the Commission did not remand the matter back to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 6 The following factual recitation was taken from the evidence adduced at the arbitration hearings held on July 23, 2020, and August 20, 2020, as well as the decisions of the arbitrator and Commission. Additional facts will be recited as necessary in the analysis portion of this order.

¶ 7 Claimant testified that she began working for employer as a pilot, or “First Officer,” on April 25, 2005. Claimant remained employed in that capacity on December 17, 2017. Claimant’s job duties required her to conduct pre- and post-flight inspections of the aircraft.

¶ 8 Claimant testified that she conducted an aircraft inspection while working for employer on December 17, 2017. While walking around an aircraft on that date, claimant slipped on de-icing fluid and fell. Claimant testified that she landed very hard at a 45-degree angle. According to claimant, a man standing next to her asked if there was anything he could do and claimant responded that he could help her up. Claimant could not recall the positioning of her hands when she fell. Claimant testified that she continued to feel pain all over her body, especially in her knees and arms, after she fell. Claimant claimed that she was covered in de-icing fluid due to the fall and that she felt no pain prior to the fall. Claimant testified that she completed her scheduled shift on December 17, 2017, and was then off for the Christmas holiday. On cross-examination, claimant admitted that she continued to work through December 19, 2017, before she was off for Christmas.

¶ 9 Claimant testified that she first sought medical treatment for her injuries on January 5, 2018. Claimant called her “chief pilot” and provided notice of the accident after she received treatment on January 5, 2018.

¶ 10 Claimant’s medical records indicated that she sought medical treatment with Dr. Bradley Sloan at Jefferson City Medical Group on January 5, 2018. Claimant reported pain and swelling in her left knee, which worsened while walking and bending. Claimant advised Dr. Sloan that her symptoms began when she slipped while walking at the airport on December 17, 2017. X-rays

taken of claimant's left knee revealed mild degenerative changes. Dr. Sloan recommended physical therapy and an MRI scan, which claimant underwent on January 24, 2018. The MRI revealed a nondisplaced incomplete fracture of claimant's patella. The MRI findings were compatible with a late subacute or early chronic injury.

¶ 11 At a follow-up appointment with Dr. Sloan on January 25, 2018, claimant reported pain in both knees and her right elbow, which she attributed to the December 17, 2017, fall. Dr. Sloan prescribed a straight leg brace and crutches as needed for claimant's left knee. Dr. Sloan also prescribed a right wrist splint. Dr. Sloan listed his diagnosis as nondisplaced fracture of the left patella, bursitis, and right medial epicondylitis. Dr. Sloan placed claimant under restrictions for her left knee. Claimant declined Cortisone injections at that time. At a subsequent appointment on February 8, 2018, claimant reported numbness and pain in her left leg, along with pain in both elbows. Claimant reported that the pain in her elbows was worse than her knees.

¶ 12 At follow-up appointments with Dr. Sloan in March and April 2018, claimant reported improvements in her pain since she began physical therapy. Claimant advised that she fell on Easter Sunday. Claimant reported that her pain worsened after the fall and that she was forced to quit therapy.

¶ 13 Claimant testified that she next presented to Dr. George Paletta for an independent medical evaluation at employer's request in May 2018. Claimant's medical records indicated that she then sought treatment with Dr. Corey G. Solman, Jr., an orthopedic surgeon at the Orthopedic Sports Medicine & Spine Care Institute, on June 20, 2018. Claimant reported bilateral knee and elbow pain. Dr. Solman noted the following description of claimant's December 17, 2017, work injury:

"On the day of the alleged work-related injury, she was walking on the tarmac to inspect the plane before a trip and slipped on some wet painted areas. The paint was not wet itself, but the area was slick. She states that her right leg went out in front of her at a 45 degree angle and then she landed on her bent left knee, thus striking her patella, and then her torso went

backwards and she landed with her arms fully extended and forearms fully supinated with her wrists fully extended and landed on both hands. She had fairly significant pain at that time and had to be helped up by one of the workers on the tarmac. She tried to work following that but had continued pain and has been out of work since December 20, 2017.”

Dr. Solman noted that claimant denied a history of patella issues prior to the December 17, 2017, injury, but that claimant reported a prior injury to her left knee in 2014. Dr. Solman opined that if claimant provided an accurate history of the December 17, 2017, work accident, the accident was likely the cause of her current symptoms.

¶ 14 At a follow-up appointment on September 12, 2018, Dr. Solman recommended that claimant undergo surgery on her left knee. Dr. Solman also recommended that claimant receive injections in her right knee and both elbows. Dr. Solman further recommended that claimant remain off work.

¶ 15 Claimant had the recommended surgery and received the recommended injections on October 23, 2018. Claimant continued to follow up with Dr. Soloman from November 2018 to January 2020. She participated in therapy but continued to experience pain in both knees and elbows.

¶ 16 Employer submitted into evidence the job description of First Officer, the “Flight Operations Manual,” and claimant’s “Pairing Schedule.” The job description confirmed claimant’s testimony that she was required to perform pre-and post-flight inspections of the aircraft. The job description further indicated that claimant was required to assist with pre-flight preparation and communications, assist in all phases of flight, and assist in emergency situations. Claimant testified that she completed the required duties from December 17 to December 19, 2017, but the captain assisted with inspections on those dates.

¶ 17 The Flight Operations Manual included a Reportable Incidents section, which indicated that that “[a]n employee is responsible for submitting an [Irregular Operations Report] no later

than the end of his/her duty period of the day of the event.” Claimant testified that she was aware of the requirement to submit an injury report on the same date of the injury, but she did not fill out a written report on the date of the injury. Claimant testified that employer did not discipline her for failing to file a written report on the date of the injury.

¶ 18 The Pairing Schedule indicated that claimant worked Sunday, December 17, 2017, Monday, December 18, 2017, and Tuesday, December 19, 2017. Contrary to earlier testimony that she completed her shift on December 17, 2017, and was then off for the Christmas holiday, claimant admitted that she continued working from December 17, 2017, to December 19, 2017.

¶ 19 On redirect, claimant testified that she was very sore on the days she worked after the alleged work accident. When asked why she did not seek medical treatment on the date of her accident, claimant testified that “[i]t was a Sunday. The chief pilot wasn’t in the office. Well, I don’t know if the chief—no, the chief pilot wasn’t—I don’t know. But I know that the medical people in Chicago, they don’t have, they are not open on Sunday.” Claimant testified that she was not required to perform any intense labor duties, such as removing a cabin window, taking out the cockpit or exit doors, or physically fly with the yoke, after she fell on December 17, 2017.

¶ 20 Following the arbitration hearing, the arbitrator issued a corrected decision on May 24, 2021, finding that claimant sustained accidental injuries arising out of and in the course of her employment and that her current condition of ill-being was causally related to the accident. Accordingly, the arbitrator awarded claimant benefits under the Act but also awarded employer a credit for benefits paid.

¶ 21 Employer filed a petition for review of the arbitrator’s decision before the Commission. The Commission, with one commissioner dissenting, issued a decision on February 22, 2022, reversing the arbitrator’s decision on the issue of accident. The Commission found that claimant

failed to prove, by a preponderance of the evidence, that she sustained accidental injuries arising out of and in the course of her employment on December 17, 2017. In so finding, the Commission determined that claimant lacked credibility. The Commission highlighted various inconsistencies in claimant's testimony and noted that claimant failed to report the injury or seek medical treatment for 19 days after the alleged accident. The Commission found all other remaining issues, including issues relating to causation and the arbitrator's award of benefits, moot. The Commission affirmed the arbitrator's award of credit to employer for benefits paid. The dissenting commissioner, like the arbitrator, found that claimant testified credibly regarding the accident and met her burden of proving she sustained a compensable accidental injury on December 17, 2017.

¶ 22 Claimant sought judicial review of the Commission's decision before the circuit court of Cook County. The court entered an order on May 3, 2023, confirming the Commission's decision. Claimant timely appealed.

¶ 23 II. Analysis

¶ 24 On appeal, claimant argues that the Commission's finding that she failed to prove she sustained an accident arising out of and in the course of her employment was against the manifest weight of the evidence. In support, claimant asserts that the Commission failed to consider evidence that corroborated claimant's testimony regarding her accident, the Commission failed to consider that employer presented no evidence to rebut claimant's testimony regarding the accident, and the Commission's decision relied on speculative alternate causes that had no basis in evidence. We disagree.

¶ 25 To obtain benefits under the Act, a claimant must establish by a preponderance of the evidence that he sustained an accidental injury "arising out of" and "in the course of" the claimant's employment. 820 ILCS 305/1(d) (West 2018); *McAllister v. Illinois Workers' Compensation*

Comm’n, 2020 IL 124848, ¶ 32; *Sisbro, Inc. v. Industrial Comm’n*, 207 Ill. 2d 193, 203 (2003) (collecting cases). The question of whether a claimant’s injury arose out of his or her employment is a question of fact to be resolved by the Commission, whose finding will not be disturbed unless it is against the manifest weight of the evidence. *McAllister*, 2020 IL 124848, ¶ 30; *Johnson Outboards v. Industrial Comm’n*, 77 Ill. 2d 67, 71 (1979).

¶ 26 “It is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence.” *Hosteny v. Industrial Comm’n*, 397 Ill. App. 3d 665, 674 (2009); see also *McAllister*, 2020 IL 124848, ¶ 30; *O’Dette v. Industrial Comm’n*, 79 Ill. 2d 249, 253 (1980). The Commission’s factual findings are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent—that is, only when no rational trier of fact could have agreed with the Commission. *McAllister*, 2020 IL 124848, ¶ 30; *Durand v. Industrial Comm’n*, 224 Ill. 2d 53, 64 (2006). “Although an employee’s testimony about an alleged accident might be sufficient, standing alone, to justify an award of benefits under the Act, it is not enough where consideration of all facts and circumstances demonstrate that the manifest weight of the evidence is against it.” *Hosteny*, 397 Ill. App. 3d at 677 (citing *Caterpillar Tractor Co. v. Industrial Comm’n*, 83 Ill.2d 213, 218 (1980)).

¶ 27 Applying these deferential standards, we cannot say that the Commission’s finding that claimant failed to sustain her burden of proving that she sustained an accident arising out of and in the course of her employment was against the manifest weight of the evidence. In so finding, the Commission determined that claimant’s testimony regarding the alleged accident lacked credibility. The Commission noted that the record contained “multiple inconsistencies” with

respect to claimant's alleged accident, including claimant's actions on the date of the alleged accident and during the next 19 days.

¶ 28 As the Commission correctly noted, claimant did not report the alleged accident or seek medical treatment for her alleged injuries for 19 days. Claimant testified that she did not fill out a written report on the date of the alleged accident, despite her awareness of employer's requirement that she do so. Claimant also initially testified that she was off work after she sustained the alleged injury but later admitted that she worked for two days after the alleged accident without reporting the alleged accident or seeking medical treatment for her injuries. While claimant testified that she could not report the alleged accident or seek medical treatment because the alleged accident occurred on a Sunday, the Commission found it incredible that claimant could not receive medical treatment at the airport or a surrounding hospital on a Sunday. The Commission also noted, and claimant's testimony confirmed, that claimant continued to work for two consecutive days without reporting the alleged accident or seeking medical treatment. The Commission found it incredible that claimant could physically perform her job by traversing stairs and by inspecting each aircraft for three days with a fractured patella. Claimant's testimony also demonstrated that she traveled with her family for the Christmas holiday the week following her injury. Claimant's testimony further demonstrated that she did not notify employer of the injury or seek medical treatment for her injuries until January 5, 2018—19 days after the alleged accident. Claimant testified that she called the chief pilot and notified him of the alleged accident following her appointment with Dr. Sloan.

¶ 29 While claimant argues that injured workers frequently attempt to work through injuries without reporting an accident or seeking medical treatment in hopes the condition improves, we note claimant provided no testimony that this was the reason she did not report the alleged accident

or seek medical treatment. She, instead, testified that she was unable to report the injury or seek medical treatment because the alleged accident occurred on a Sunday. She did not provide testimony explaining why she did not report the alleged accident or seek medical treatment in the two days she worked following the alleged accident.

¶ 30 We acknowledge that claimant provided a consistent history of the alleged accident to medical providers when she sought treatment for her injuries; however, the Commission did not find claimant's account of the accident credible. In light of this, the Commission could have discounted the medical records, as the medical providers merely documented claimant's account of her alleged accident and resulting injuries.

¶ 31 In sum, although claimant testified that she sustained a work accident on December 17, 2017, and employer did not present evidence that claimant did not sustain an accident on that date, the Commission did not find claimant's testimony credible. As previously stated, in resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny*, 397 Ill. App. 3d at 674. The Commission, after considering the evidence, determined that claimant lacked credibility and that claimant failed to prove she sustained an accident arising out of and in the course of her employment on December 17, 2017. While this court may have reached a different conclusion, we cannot say that an opposite conclusion is clearly apparent. Therefore, we will not disturb the Commission's factual finding that claimant failed to prove she sustained an injury arising out of and in the course of her employment.

¶ 32 III. Conclusion

¶ 33 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's

decision.

¶ 34 Affirmed.