

2025 IL App (4th) 240375WC-U
No. 4-24-0375WC
Order filed

FILED
January 15, 2025
Carla Bender
4th District Appellate
Court, IL

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

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

TIM MENELEE,)	Appeal from the
)	Circuit Court of
Appellant,)	Peoria County
)	
v.)	No. 23MR255
)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> ,)	Honorable
)	James A. Mack,
(City of Peoria, Appellee).)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the Illinois Workers' Compensation Commission's decision was not against the manifest weight of the evidence where claimant's proposed earnings were too speculative to support temporary partial disability benefits.

¶ 2 In January 2020, claimant, Tim Menefee, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2020)), seeking benefits from his employer, the City of Peoria (City), regarding a left shoulder injury he sustained from a June 3, 2019, accident.

¶ 3 Following a May 2023 hearing, the arbitrator found claimant's condition was causally related to the June 3, 2019, work accident. The arbitrator found the City was liable for medical care from June 3, 2019, through May 10, 2023. Claimant's average weekly wage was determined to be \$1,238.57. The arbitrator found claimant was entitled to temporary total disability (TTD) benefits from January 20, 2021, through August 30, 2021. However, the arbitrator found claimant was not entitled to temporary partial disability (TPD) benefits from August 31, 2021, through May 10, 2023, because his earnings from other work were too speculative. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision without changes. Upon judicial review by the circuit court of Peoria County, the Commission's decision was affirmed. On appeal, claimant argues the Commission's decision was against the manifest weight of the evidence because his earnings after August 31, 2021, were not too speculative.

¶ 4 I. BACKGROUND

¶ 5 Because claimant only challenges the Commission's finding regarding TPD benefits, we need only discuss the facts relevant to this narrow issue.

¶ 6 Claimant testified he worked for the City as a maintenance worker. He was working on June 3, 2019, when he injured his left shoulder attempting to start a gas-powered blower. The following day, claimant was evaluated by Dr. Edward Moody, who permitted claimant to return to work with restrictions. Claimant was eventually referred to Dr. Lawrence Li for treatment. In December 2019, Dr. Li performed surgery on claimant's left shoulder. In April 2020, Dr. Li performed a second surgery on claimant's left shoulder. Claimant was off work for substantial periods following his two separate shoulder surgeries. He continued to experience issues with his shoulder and eventually consulted Dr. Nicholas Crosby, who recommended he undergo a third

surgery. Claimant was terminated by the City on January 29, 2021. Due to this termination, his benefits had ceased, so claimant stated he was unable to undergo the third surgery for financial reasons. Claimant stated he received off-work benefits through August 30, 2021.

¶ 7 Claimant testified he began working for a different employer, MPSI, on August 31, 2021. He was able to perform work for MPSI within the work restrictions placed by Dr. Li. Claimant's work for MPSI involved armed courier services for cannabis dispensaries. At the time of the hearing, he was still working for MPSI. He described his work as "fill-in," not as a "regular" employee. He stated "[s]ometimes I'd go 2 or 3 weeks and then I went a few months with nothing." Claimant confirmed he had earned \$5,200.00 from MPSI from August 31, 2021, through February 13, 2022. He was unable to recall his MPSI earnings from February 13, 2022, until the time of the arbitration hearing.

¶ 8 Claimant also stated he owned a business called "Precision Products and Coatings" that did not supplement his lost income from the City. He stated this work was also within his work restrictions. He was observed on video operating a dump truck for a friend's business. He stated he attempted this work for about three hours but found it caused him significant pain.

¶ 9 On cross-examination, claimant indicated he had undergone a "therapeutic injection" procedure to his left shoulder at the behest of Dr. Crosby in September 2021, which provided him with "significant relief." He confirmed he had testified at a grievance hearing he was able to return to full-duty work with the City as a result of the injection, but he intended to say he wanted to "try" to see if he could have returned to full-duty work after the injection. A review of the transcript of the February 10, 2022, grievance hearing, shows claimant stated he had "gotten a lot stronger after [his] last procedure" and believed he could perform full-duty work, adding he would "like a chance to try."

¶ 10 Claimant was never released to full-duty work by Dr. Li. However, the record shows claimant last visited Dr. Li in September 2021. Given claimant had stated he intended to follow through with Dr. Crosby's recommended third surgical procedure, it appears Dr. Li was no longer claimant's primary specialist treating his left shoulder injury, though, Dr. Li's medical notes indicated his office would arrange for claimant's "therapy" should he undergo a third surgery. Dr. Crosby agreed with Dr. Li's work restrictions for claimant. Dr. Crosby's evidence deposition noted if claimant's condition had improved, he would not recommend the third surgical procedure.

¶ 11 The arbitrator concluded claimant was eligible for TTD benefits from January 2021, through August 30, 2021, when claimant commenced new employment. Regarding TPD benefits, the arbitrator explained:

“While an award of [TPD] might be available to [claimant] from August 21, 2021 [*sic*], through the time of arbitration, the amount of such benefits is too speculative to discern based upon the scant evidence provided about [claimant's] current earnings.”

¶ 12 The Commission affirmed and adopted the arbitrator's findings without changes. Upon appeal, the circuit court affirmed the Commission's decision.

¶ 13 This appeal followed.

¶ 14 **II. ANALYSIS**

¶ 15 On appeal, claimant argues the Commission's TPD benefits determination was against the manifest weight of the evidence. The parties agree the standard of review in this case is whether the Commission's decision was against the manifest weight of the evidence. See *Lifetouch Portrait Studios v. Illinois Workers' Compensation Comm'n*, 2019 IL App (1st) 182263WC-U, ¶ 118 (applying the manifest weight of the evidence standard to the issue of TPD

benefits). A reviewing court may not substitute its judgment for that of the Commission on these issues merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We will not reverse the Commission's decision unless its findings are against the manifest weight of the evidence. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). "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." *Id.*

¶ 16 Section 8 of the Act provides:

"When the employee is working light duty on a part-time basis or full-time basis and earns less than he or she would be earning if employed in the full capacity of the job or jobs, then the employee shall be entitled to [TPD] benefits. [TPD] benefits shall be equal to two-thirds of the difference between the average amount that the employee would be able to earn in the full performance of his or her duties in the occupation in which he or she was engaged at the time of accident and the gross amount which he or she is earning *** in any other job that the employee is working." 820 ILCS 305/8(a) (West 2020).

¶ 17 Claimant contends his earnings after August 31, 2021, were not too speculative. Specifically, he points to documented evidence of his earnings from MPSI and that he testified at length about his wages, which was sufficient to show he was earning, on average, \$1,000 a month, or \$250 a week.

¶ 18 The City contends, not only were claimant's wages too speculative, none of claimant's other potential sources of income were developed in the record.

¶ 19 While claimant summarizes his earnings as a mere \$250 a week from his work with MPSI, his own testimony suggests this averaging is unreliable. Claimant testified his work with MPSI was irregular and noted at times he could go months without working for MPSI at all. Furthermore, claimant's earnings history with MPSI was unaccounted for after February 13, 2022. Claimant's other wages are also unaccounted for from the record. Claimant stated he briefly worked for a friend driving a dump truck, but it is unclear how much he earned. Additionally, claimant testified he owns a business, but he never provided evidence for how much he earns from this work.

¶ 20 It is clear from the record claimant's income from various employment sources from August 31, 2021, through May 10, 2023, are simply unknown. Under the Act, "[t]he right to recover benefits cannot rest upon speculation or conjecture." *Nunn v. Illinois Industrial Comm'n*, 157 Ill. App. 3d 470, 479 (1987) (citing *Cook County v. Industrial Comm'n*, 68 Ill. 2d 24, 30 (1977)). We find the Commission's determination that claimant's earnings were far too speculative to sufficiently support any TPD benefits was evident from the record. Accordingly, we confirm the Commission's decision.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we affirm the circuit court's judgment confirming the decision of the Commission.

¶ 23 Affirmed.