

FILED: July 26, 2021

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NO. 5-20-0404

IN THE APPELLATE COURT

OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

KELLY MELTON,)	Appeal from the
)	Circuit Court of
Appellant,)	Randolph County.
)	No. 20-MR-41
v.)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Knight Hawk Coal, LLC,)	Eugene E. Gross,
Appellees).)	Judge, Presiding.

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

ORDER

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

¶ 2 The disputed issues in this case are (1) whether claimant, Kelly Melton, reached maximum medical improvement (MMI) with regard to his cervical spine as of March 11, 2015, and (2) whether his current condition of ill-being with regard to his cervical spine was causally related to his work accidents. The arbitrator found a causal connection, awarded claimant all

medical expenses, temporary total disability (TTD) benefits, and disability benefits representing 45% loss of use of the person as a whole. The Illinois Workers' Compensation Commission (Commission) affirmed and adopted this award with the following exceptions: (1) claimant failed to prove his cervical condition after March 11, 2015, was causally related to his work accident, (2) claimant was entitled to medical expenses related to his cervical spine only through March 11, 2015, and (3) the award of 45% loss of use of the person as a whole applies only to claimant's lumbar condition, with no weight placed on claimant's cervical condition.

¶ 3 Claimant appealed to the circuit court of Randolph County. In the circuit court's view, there existed in the record a factual basis for the Commission's decision. Therefore, the court confirmed the Commission's findings and award.

¶ 4 Claimant now appeals to this court, challenging the circuit court's order confirming the Commission's decision.

¶ 5 I. BACKGROUND

¶ 6 Claimant, age 37, worked as a coal runner for employer, Knight Hawk Coal, LLC. His duties included hauling coal from the miner to the feeder in a "ram car." He testified he had no prior injuries or issues with his neck or back. His first accident at issue in this appeal occurred on February 2, 2015, when he "ran over a big rock" and injured his neck. Claimant treated with Fry Chiropractic for his neck injury until March 11, 2015.

¶ 7 On April 15, 2016, claimant suffered his second accident when he hit several potholes, which "twisted, jarred, instant burn from [his] waist, all the way to [his] toes." He suffered a third work-related accident on July 14, 2016, when he was trying to pull his legs out of mud to get out of the way of a ram car. He said he "aggravated [his] low back." All parties stipulated claimant suffered these three work-related accidents and, as a result, sustained injuries.

¶ 8 Claimant began treatment immediately following his first accident in February 2015. He first went to Fry Chiropractic complaining of sharp shooting pains in his neck with headaches. He also saw his primary care physician with complaints of neck pain with a burning sensation radiating down his right upper arm. His physician took X-rays, which were negative for fracture. Claimant continued treating with Fry until March 11, 2015, when he was discharged. He reported some improvement in his condition, though Fry's notes indicated claimant's "neck very stiff and sore today," on March 11, 2015. Claimant continued working and managed his symptoms with medication prescribed by his primary care physician.

¶ 9 After his second accident on April 15, 2016, claimant reported to Quality Healthcare Clinic complaining of lower back problems with shooting pains and burning sensation down both of his legs. An X-ray of his lumbar spine was negative. He was diagnosed with low back strain and prescribed Flexeril and ibuprofen. He returned a week later to the clinic reporting no relief from Motrin and only some relief from Flexeril. His medication was continued. Upon his return on May 6, 2016, claimant reported continued tingling and numbness in his legs. He was referred to physical therapy, and a magnetic resonance imaging (MRI) scan was ordered.

¶ 10 The June 29, 2016, MRI showed several problems with claimant's lumbar spine. (Since causation and treatment for his lumbar-related conditions are not at issue, we need not report detailed information on the findings.) An MRI of claimant's thoracic spine was negative.

¶ 11 On July 5, 2016, claimant attended an independent medical examination (IME) with Dr. James Coyle. Dr. Coyle took the history of claimant's first two accidents and reported claimant had "neck pain and tenderness at the base of his cervical spine." Dr. Coyle noted claimant had crepitus on range of motion with only 60% of normal rotation to the right and 50% to the left but had a negative Spurling's sign. After his review of the lumbar and thoracic MRIs, he opined

claimant had desiccated discs at L4-5 and L5-S1 with a central annular fissure at L4-5. He recommended an MRI of claimant's cervical spine. During his deposition, the following exchange occurred:

“Q. Was it your opinion that his work injuries were the cause of his ongoing symptoms?

A. Yes, I stated that his work injuries appear to be the cause of his ongoing symptoms.

Q. And would that be in both the cervical spine and the lumbar spine?

A. Yes.

Q. And did you have any recommendations for further treatment or further evaluation?

A. Yes. I recommended a cervical MRI.

Q. Why?

A. To see what his cervical spine looked like. I did not recommend any changes in his work status. This was July of 2016, and he was working at full duty, despite claims from February of 2015 and April of 2016, so I felt he could continue in that capacity. *I felt he was not yet at maximum medical improvement.*” (Emphasis added.)

¶ 12 Claimant visited Dr. Coyle again on July 11, 2016, to go over results of the cervical MRI, which showed a disc bulge to the right of midline at C3-4 and a central broad-based protrusion at C5-6. Because claimant did not have any neurologic deficits, Dr. Coyle did not see any reason for surgery, but he recommended epidural steroid injections, physical therapy, and medication.

¶ 13 After his third accident on July 14, 2016, claimant saw Dr. Matthew Gornet, a spine specialist, who noted he was seeing claimant for low back pain with tingling in his legs and “neck pain to the base of his neck with headaches, bilateral trapezial, pain, upper back, pain into both shoulders and intermittent tingling in his hands.” Dr. Gornet took a history which mentioned only the first two work-related accidents. Dr. Gornet reviewed the cervical MRI, which he described as “moderate quality.” However, he noted “an obvious annular tear at C5-6 and one also at C6-7.”

¶ 14 Dr. Gornet believed claimant’s “current symptoms [were] causally connected in his neck and low back to his work[-]related injuries that [were] described in our initial HPI.” He did “not believe [claimant] [was] at [MMI].” He agreed with Dr. Coyle that steroid injections were indicated. He placed claimant on light duty with a 20-pound limit, no overhead work, and no ram car driving.

¶ 15 Claimant returned to Dr. Gornet in October 2016, reporting the injections provided only temporary relief until symptoms returned. In his notes from this visit Dr. Gornet stated: “His neck is still an issue, but we have placed this on hold and are focusing on his low back, which is the bigger problem. Our working diagnosis is disc injury at L4-5 and L5-S1. He should continue to work light duty [per prior restrictions.]” Because conservative treatments did not work, Dr. Gornet recommended lumbar surgery. The doctor “continue[d] to relate his symptoms to two accidents on 2/5/15, particularly the low back more to the second accident of 4/15/16.”

¶ 16 Claimant had a second IME with Dr. Coyle on October 18, 2016. After his examination, Dr. Coyle noted a full range of cervical motion in flexion and extension due to physical therapy since his last evaluation. However, he noted a reduction in rotation and cervical tenderness and trapezius tenderness. He diagnosed cervicgia (neck pain) with a small disc bulge at C3-4 and some right-sided annular fissure at C5-6. Dr. Coyle also noted the continued problems

with claimant's lumbar spine.

¶ 17 On June 14, 2017, claimant underwent a two-level disc replacement surgery at L4-5 and L5-S1. By June 29, 2017, claimant reported to Dr. Gornet with significant improvement in his lumbar region. On July 24, 2017, Dr. Gornet noted claimant was still experiencing neck pain but advised he would not "shift gears" to claimant's neck until his back was doing well.

¶ 18 In September 2017, Dr. Gornet began treating claimant's neck and recommended a new MRI. The September 25, 2017, MRI showed disc pathology at C3-4 and C5-6, but Dr. Gornet believed the C3-4 was the only level causing symptoms and in need of treatment. He recommended a single injection at that level.

¶ 19 When claimant returned to Dr. Gornet in February 2018, he complained of neck pain and headaches. Dr. Gornet noted the bilobular disc herniation at C3-4 and a smaller protrusion at C5-6 with an annular tear. Because claimant's symptoms were axial neck pain and headaches, Dr. Gornet now believed both levels required treatment.

¶ 20 On April 4, 2018, Dr. Gornet performed disc replacement surgery at C3-4 and C5-6. Prosthetic disc devices were placed in both levels. Dr. Gornet videotaped the surgery. After the surgery, claimant reported a "dramatic improvement."

¶ 21 On April 26, 2018, claimant had his third IME with Dr. Coyle. In preparation, Dr. Coyle reviewed the operative report, the report from the C3-4 epidural steroid injection, the September 2017 MRI, a post-operative cervical X-ray, and a February 2018 cervical CT scan with accompanying radiologist's report. At the visit, claimant reported pain with neck movement and left-sided trapezius pain. He had not worked since his lumbar surgery in June 2017. Dr. Coyle disagreed that surgical intervention was necessary for claimant's cervical spine because there appeared to be no cord or nerve compression. He said it "wasn't possible" to say whether claimant

had reached MMI because he was “only two weeks out from the disc replacement surgery.”

¶ 22 In September 2018, Dr. Gornet reported claimant was doing well but he did not believe claimant could work safely as a coal miner. He returned claimant to work with permanent restrictions of no underground coal mining, no lifting over 40 pounds, and no overhead work. In his deposition, Dr. Gornet supported his decision that surgical intervention was necessary to treat claimant’s cervical condition despite Dr. Coyle’s opinion.

¶ 23 On the basis of the foregoing evidence, the arbitrator found claimant suffered a work-related back and neck injury on February 5, 2015. Relying on Dr. Gornet’s records, the arbitrator concluded claimant’s current condition of ill-being was causally related to the accident. The arbitrator found the only reason claimant was not able to receive continuous care for his neck complaints was that he subsequently sustained more severe injuries to his lumbar spine, which diverted the focus of claimant’s care and treatment. Both medical experts agreed claimant suffered injuries to his neck, but Dr. Coyle disagreed that the injuries resulted in dural displacement which warranted surgical intervention.

¶ 24 The arbitrator awarded the claimant the following relief: (1) temporary total disability benefits from February 5, 2015, through February 12, 2015; (2) all medical expenses related to treatment of his cervical spine; and (3) permanent partial disability benefits representing a 45% loss of claimant’s body as a whole.

¶ 25 The Commission partly agreed with the arbitrator’s decision and partly disagreed with it. Specifically, the Commission (1) affirmed and adopted the arbitrator’s decision regarding temporary total disability, medical expenses, and permanent partial disability relating to claimant’s lumbar condition but (2) vacated the finding of causation as it related to claimant’s current condition of ill-being of his cervical spine and his work-related accidents.

¶ 26 The Commission found claimant’s cervical condition had reached MMI as of March 11, 2015, the date of claimant’s last treatment at Fry Chiropractic. The Commission noted claimant had returned to work after his February 2, 2015, accident and continued without restrictions until his lumbar injury on April 15, 2016. The Commission further noted “[t]here are no medical records documenting any ongoing cervical complaints between March 11, 2015[,] and April 15, 2016.” In fact, in finding no causal connection, the Commission noted the “first mention of neck pain following March 11, 2015[,] was not until Dr. Coyle’s July 5, 2016[,] Section 12 examination.” The Commission concluded as follows: “Based upon the lack of supporting records corroborating any ongoing cervical complaints between March 11, 2015[,] and July 5, 2016, the [claimant] failed to prove causal connection.”

¶ 27 The claimant appealed to the Randolph County circuit court, which confirmed the Commission’s finding of no causal connection between claimant’s cervical spine injury and his work-related accident.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 Whether a causal connection exists between a claimant’s condition of ill-being and his employment is an issue of fact to be decided by the Commission. *Sisbro, Inc. v. Industrial Comm’n*, 207 Ill. 2d 193, 205 (2003); see also *Tower Automotive v. Illinois Workers’ Compensation Comm’n*, 407 Ill. App. 3d 427, 434 (2011). In determining causation, it is the Commission’s province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm’n*, 99 Ill. 2d 401, 406-07 (1984); *Hosteny v. Illinois Workers’ Compensation Comm’n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v.*

Industrial Comm'n, 308 Ill. App. 3d 1037, 1041 (1999). 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*, 99 Ill. 2d at 407. The Commission's findings will not be overturned unless they are against the manifest weight of the evidence (*Tower Automotive*, 407 Ill. App. 3d at 434), *i.e.*, unless the record discloses that an opposite conclusion is "clearly apparent." *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992); see also *Gallianetti v. Industrial Comm'n of Illinois*, 315 Ill. App. 3d 721, 729-30 (2000).

¶ 31 However, despite the high hurdle that the manifest weight of the evidence standard presents, it does not relieve us of our obligation to impartially examine the evidence and to reverse an order that is unsupported by the facts. *Boom Town Saloon, Inc. v. City of Chicago*, 384 Ill. App. 3d 27, 32 (2008). In the present case, we believe the Commission's finding on the issue of causation was against the manifest weight of the evidence. While we are reluctant to set aside a Commission's decision on a factual question, we should not hesitate to do so where the clearly evident, plain and indisputable weight of the evidence compels an apparent, opposite conclusion. (*Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993)). Here, an opposite conclusion is compelled.

¶ 32 Applying these standards, we cannot conclude the Commission's causation finding was supported by the evidence. To the contrary, the evidence supports the opposite conclusion. Here, it is undisputed that claimant suffered the first of three work-related accidents on February 5, 2015. It is also undisputed that he hurt his neck. He immediately sought chiropractic treatment, complaining of shooting pains in his neck and headaches. His general practitioner prescribed pain medication. Fry, claimant's chiropractor, discharged him on March 11, 2015, yet his office notes indicated claimant's neck was "very stiff and sore" at the time of discharge.

¶ 33 In July 2016, after the second accident in April 2016, when claimant undisputedly suffered a serious lumbar injury, Dr. Coyle, the IME physician, noted claimant’s “neck pain and tenderness at the base of his cervical spine.” During his deposition, Dr. Coyle testified claimant’s “work injuries appear to be the cause of his ongoing symptoms” in both the cervical spine and the lumbar spine. In Dr. Coyle’s opinion, claimant “was not yet at maximum medical improvement,” directly contrary to the Commission’s finding of MMI on March 11, 2015.

¶ 34 Additionally, in July 2016, Dr. Gornet opined claimant’s “current symptoms are causally connected in his neck and low back to his work[-]related injuries.” He too did not believe claimant was at MMI. Again, this is directly contrary to the Commission’s finding.

¶ 35 As Dr. Gornet explained, claimant’s neck problems were “still an issue,” but treatment was put on hold to address the more serious injuries of his lumbar spine. The record evidence indicates claimant’s cervical spine issues had not resolved and, in fact, continued to be an issue after February 5, 2015, and until his lumbar issues had been surgically treated. The evidence indicated claimant began conservative treatment immediately following the accident and continued such until surgery.

¶ 36 Whether surgery was indicated is not a question before us, as we are to decide only whether claimant sufficiently proved causation. As explained, our review of the evidence indicates he had. It is clear the Commission’s decision, denying a causal connection between claimant’s cervical issues and his work-related accident, was against the manifest weight of the evidence. The testimony and records of the medical experts, combined with the circumstantial evidence, support the opposite conclusion from that reached by the Commission. According to the record before us, claimant had not reached MMI as of March 11, 2015, the injuries to his cervical spine were causally related to his work-related accident, and conservative drug treatment and chiropractic

treatment did not resolve his condition.

¶ 37 As the appellate court has said, “[a]lthough we are reluctant to conclude that a factual determination of the Commission is against the manifest weight of the evidence, we will not hesitate to do so when the clearly evident, plain, and undisputable weight of the evidence compels an opposite conclusion.” *Dye v. Illinois Workers’ Compensation Comm’n*, 2012 IL App (3d) 110907WC, ¶ 10. This is such a case. We therefore reverse that part of the circuit court’s order confirming the Commission’s decision of finding no causal connection.

¶ 38

III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm in part and reverse in part the judgment of the circuit court of Randolph County which confirmed the Commission’s decision in its entirety. Specifically, we affirm the court’s judgment confirming the Commission’s decision to award claimant temporary total disability, medical expenses, and permanent partial disability relating to his lumbar condition. We reverse the court’s judgment confirming the Commission’s decision finding no causal connection between claimant’s current condition of ill-being in his cervical spine and his work-related accidents. Accordingly, we reverse the Commission’s decision finding no causal connection and remand the case to the Commission with directions to reinstate the reversed portions of the arbitrator’s decision.

¶ 40 Circuit court judgment affirmed in part and reversed in part; Commission decision reversed in part and remanded with directions.