

No. 5-23-0687WC

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT  
WORKERS' COMPENSATION COMMISSION DIVISION

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DOLLAR GENERAL,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Montgomery County.
	)	
v.	)	No. 22-MR-3
	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION <i>et al.</i>	)	Honorable
	)	Douglas L. Jarman,
(Sherrie Taylor, Appellee).	)	Judge, Presiding.

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

**ORDER**

¶ 1 *Held:* We vacate the portion of the circuit court's order confirming the Commission's award of prospective medical treatment, vacate the portion of the Commission's decision awarding prospective medical treatment, and remand for further proceedings, where the Commission failed to provide any basis for its award and failed to make any factual finding in support of its award. We affirm the circuit court's order confirming the Commission's decision in all other respects.

¶ 2 Employer, Dollar General, appeals from an order of the circuit court of Montgomery County, which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) awarding claimant, Sherrie Taylor, benefits under the Workers' Compensation Act

(Act) (820 ILCS 305/1 *et seq.* (West 2020)). For the following reasons, we affirm in part, vacate in part, and remand with directions.

¶ 3

#### I. Background

¶ 4 On May 20, 2020, claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for a low back injury she sustained while working for employer on February 13, 2020. The matter proceeded to an arbitration hearing held pursuant to sections 19(b) and 8(a) of the Act (820 ILCS 305/19(b), 8(a) (West 2020)) on February 25, 2021. The following factual recitation was taken from the evidence adduced at the hearing.

¶ 5 Claimant testified that she worked for employer as the manager of the Dollar General store in Virden, Illinois, for approximately a year and a half. Her job duties as manager required her to make bank deposits every morning between 7:15 a.m. and 7:45 a.m. The bank was located a few blocks from the store.

¶ 6 Claimant testified that she sustained an injury to her low back while working for employer on February 13, 2020. Claimant slipped and fell on snow and ice that had accumulated on a ramp when she left the store to make a deposit. She landed on the right side of her back. Claimant felt a “pop” and experienced “a lot of discomfort” with “some pain” in her right lower back, but she was able to get up, get into her car, and drive to the bank.

¶ 7 Claimant testified that she reported the accident to her district manager when she returned to the store. Claimant left the store early and sought medical treatment at Litchfield Family Practice. Claimant’s medical records showed that she reported falling on ice and hearing a “pop” in her back. Claimant testified that she rated her pain as 10/10 after the fall, while her medical records from February 13, 2020, documented a pain rating of 7/10. Claimant testified, and her

medical records confirmed, that she was prescribed pain medication and directed to remain off work. Claimant testified that the medication reduced her pain to 7-8/10.

¶ 8 Claimant testified that she returned to Litchfield Family Practice the following week. At that time, she ranked her low back pain as 7/10. Claimant's medical records demonstrated that she returned for multiple follow-up appointments through May 2020. Claimant's medical records demonstrated that she reported some improvements in her low back but that she continued to experience pain with muscle spasms. Claimant's medical records documented a "right lower thoracic paraspinal muscle spasm and another one over the right SI joint," along with tenderness over the right sacroiliac region. Claimant was diagnosed with right-sided lower back pain with right-sided sciatica. Claimant's treatment provider noted that claimant was awaiting approval for magnetic resonance imaging (MRI). Claimant was directed to remain off work and prescribed physical therapy.

¶ 9 Claimant testified that she attended physical therapy at Litchfield St. Francis Hospital through the end of June 2020, but she believed the physical therapy worsened her back pain. As of June 2020, claimant ranked her low back pain as 3-5/10 on a good day and 7-8/10 on a bad day. Claimant experienced regular pain in the same place in her right lower back. Claimant continued to experience daily low back pain and remained off work through the summer of 2020 at the recommendation of Litchfield Family Practice.

¶ 10 Claimant's medical records demonstrated that claimant underwent the recommended MRI on June 24, 2020. The physician who reviewed the MRI noted "a tiny lipoma of the filum terminale as before" and mild bilateral facet hypertrophy at each of the lumbar levels. The reviewing physician also noted that claimant's kidneys had "bilateral renal masses which could be cysts" that

increased in size when compared to prior imaging. The reviewing physician observed no suspicious mass in the paraspinal soft tissues. The reviewing physician observed no central spine canal stenosis or nerve root impingement in the lumbar region. At a follow-up visit at Litchfield Family Practice, claimant's treatment provider reviewed the MRI with claimant, referred claimant to Dr. Christopher Graves, and directed claimant to remain off work until she was evaluated by a spine surgeon specialist.

¶ 11 On August 3, 2020, claimant presented to Dr. R. Peter Mirkin, M.D., for an independent medical examination (IME) at employer's request. Dr. Mirkin prepared a written report setting forth his findings and opinions regarding claimant's low back condition. Claimant provided Dr. Mirkin with a consistent history of the February 13, 2020, work accident. Dr. Mirkin noted that claimant could "drive and walk around town but she ha[d] not worked." Dr. Mirkin noted that he did not have the results of the MRI claimant underwent on June 24, 2020. Dr. Mirkin conducted a physical examination of claimant and detected no back spasm. Dr. Mirkin reviewed imaging of claimant's lumbar spine that was taken on the date of his examination. According to Dr. Mirkin, the imaging revealed "clips in place in the pelvis from prior surgery" and minimal preexisting degenerative disease. Dr. Mirkin noted that claimant exhibited "severe symptom magnification findings." Dr. Mirkin opined that claimant may have suffered from a lumbar contusion during the February 13, 2020, work accident, but that she was medically stationary and able to work without restrictions at the time of his examination. Dr. Mirkin was "unsure why she was taken off work." Dr. Mirkin opined that no further medical treatment was necessary, and that claimant was at maximum medical improvement (MMI) for the lumbar contusion.

¶ 12 Claimant testified that she sought treatment with Dr. Graves, a spine surgeon, on October

20, 2020. Claimant's medical records from the October 20, 2020, visit indicated that she provided Dr. Graves with a consistent history of the February 13, 2020, work accident. Dr. Graves noted that claimant "had no back problems prior to this fall" but suffered from "persistent axial back pain and severe paraspinal muscle spasm on the right" after the fall. Claimant's medical records showed that Dr. Graves' examination of claimant's lumbar spine revealed "severe tenderness to palpitation over the paraspinal region exacerbated with extension." Dr. Graves' review of the MRI revealed some disc degeneration but no high-grade stenosis and no disc herniations. Dr. Graves recommended a computed tomography (CT) scan of the lumbar spine to evaluate for a "facette fracture" or other instability that may not be visible on radiographs.

¶ 13 Claimant's medical records showed that she followed up with Dr. Graves on December 1, 2020. Dr. Graves noted that the CT scan of claimant's lumbar spine demonstrated no abnormality to explain her symptoms. Dr. Graves noted that claimant did have "some spondylosis L4-5 and L5-S1." Dr. Graves examined claimant's lumbar spine and noted "a painful palpable mass over the right paraspinal region slightly superior to the SI joint." Dr. Graves recommended a soft tissue MRI of claimant's pelvis to further evaluate the mass.

¶ 14 Claimant's medical records showed that she followed up with Dr. Graves on January 7, 2021. Dr. Graves again documented the palpable mass on claimant's right low back. Dr. Graves reviewed the MRI of claimant's pelvis and noted "a small area in subcutaneous fat directly overlying her painful point which may be an area of lipoma or fat necrosis." Dr. Graves administered an injection to claimant's low back, which provided her short-term relief. Dr. Graves advised claimant that she could undergo surgery to remove the mass.

¶ 15 Claimant testified that the MRI ordered by Dr. Graves showed a knot in her right low back, which she could feel when she touched the area. Claimant believed the knot formed from muscle and fatty tissue following her fall. Claimant explained that the knot was in the exact area of her pain. Claimant denied having a knot in her right low back prior to the February 13, 2020, accident.

¶ 16 Claimant testified that the injection Dr. Graves administered on January 7, 2021, completely alleviated her low back pain for 2½ hours. This was the first time she experienced complete relief since her fall on February 13, 2020. Dr. Graves advised claimant that she could have the knot surgically removed. Dr. Graves did not release claimant to return to work.

¶ 17 Claimant testified that she remained off work at the time of the hearing. She continued to experience daily low back pain, which she rated as 6/10. She utilized pain medication and attempted stretches to relieve her pain, but she experienced little relief. Claimant's pain impacted her ability to perform normal daily activities, such as cleaning, walking her dogs, lifting 10-pound items, performing yard work, riding a motorcycle, and riding in cars for more than 45 minutes. Claimant wanted to have the surgery recommended by Dr. Graves.

¶ 18 On cross-examination, claimant testified that she took pain medication after she sustained whiplash during a car accident in 2014. Claimant denied taking pain medication since that time. She also testified that she previously pinched a nerve in her back in 2011 while jumping on a trampoline with her children. She denied jumping on a trampoline in 2020.

¶ 19 On March 16, 2021, the arbitrator issued a decision. The arbitrator found that claimant sustained an injury arising out of and in the course of her employment and that her current condition of ill-being was causally related to the work accident. Later in the arbitrator's decision, the arbitrator found that claimant's "present condition of ill-being may be causally related to the

work accident of February 13, 2020” and noted that a “final finding pertaining to causal connection [would] be made after [claimant’s] prospective medical treatment has been rendered.” The arbitrator awarded claimant reasonable and necessary medical services and prospective medical treatment in the form of the surgery recommended by Dr. Graves. The arbitrator deferred ruling on claimant’s entitlement to temporary total disability (TTD) benefits “pending the diagnosis and prognosis from the prospective medical award.” Employer filed a petition for review of the arbitrator’s decision with the Commission.

¶ 20 On December 20, 2021, the Commission issued a unanimous decision affirming the arbitrator’s decision with changes. The Commission changed the arbitrator’s decision by striking the arbitrator’s finding that claimant’s “present condition of ill-being may be causally related to the work accident of February 13, 2020,” and, instead, finding that claimant’s “current condition of ill-being [was] causally connected as of the date of the February 25, 2021 arbitration hearing.” In doing so, the Commission noted that there was a question as to whether claimant’s condition remained connected to the work accident due to the finding of the “painful palpable mass” in claimant’s right low back, which was characterized as a “tiny lipoma or fat necrosis.” The Commission also noted “that Dr. Graves indicated she could have the mass removed and that [claimant] testified she experienced significant pain relief after Dr. Graves administered an injection at the site of the mass.” Accordingly, the Commission awarded claimant reasonable and necessary medical care through February 25, 2021, as well as the prospective medical treatment in the form of the surgery recommended by Dr. Graves. The Commission remanded the matter back to the arbitrator for further proceedings for a determination of a further amount of temporary compensation or for compensation for permanent disability, if any, pursuant to *Thomas v.*

*Industrial Comm'n*, 78 Ill. 2d 327 (1980). Employer sought judicial review of the Commission's decision before the circuit court of Montgomery County.

¶ 21 On August 15, 2023, the circuit court entered an order confirming the Commission's decision. Employer filed a timely notice of appeal on September 14, 2023.

¶ 22 II. Analysis

¶ 23 On appeal, employer concedes that claimant sustained a contusion to her lumbar spine as a result of her work accident. Employer argues, however, that the Commission's finding that claimant's current low back condition and need for surgery were causally related to her work accident was against the manifest weight of the evidence. Specifically, employer argues that claimant failed to prove that her lipoma or fat necrosis condition, and her need for surgery to alleviate that condition, were causally related to her work accident.

¶ 24 Under section 8(a) of the Act, the claimant is entitled to recover reasonable medical expenses that are causally related to an accident while working and that are determined to be required to diagnose, relieve, or cure the effects of the claimant's injury. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534 (2001). The claimant has the burden of proving that the medical services were necessary and the expenses were reasonable. *Id.* The question of whether medical treatment is causally related to a compensable injury is one of fact to be determined by the Commission, and its finding on the issue will not be reversed on review unless contrary to the manifest weight of the evidence. *Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill. App. 3d 758, 764-65 (2001).

¶ 25 Here, the Commission initially found that claimant's current condition of ill-being was causally related to her work accident as of the date of the arbitration hearing. After making this



finding, the Commission found that there was a question as to whether claimant's condition remained connected to the work accident due to the finding of the "painful palpable mass" in claimant's right low back, which was characterized as a "tiny lipoma or fat necrosis." The Commission did not provide further findings as to whether claimant's condition remained connected to the work accident. The Commission then found "that Dr. Graves indicated she could have the mass removed and that [claimant] testified she experienced significant pain relief after Dr. Graves administered an injection at the site of the mass." The Commission, without further findings or reasoning, awarded claimant reasonable and necessary medical care rendered through the date of the arbitration hearing,<sup>1</sup> as well as prospective medical treatment in the form of the surgery recommended by Dr. Graves.

¶ 26 This court is unable to provide meaningful review of the Commission's decision on the issue of prospective medical treatment because the Commission failed to adequately address its own question of whether claimant's condition remained connected to the work accident due to the finding of the lipoma or fat necrosis. The Commission, instead, awarded the surgery Dr. Graves recommended to remove the lipoma or fat necrosis after briefly discussing the treatment recommended by Dr. Graves and the fact that claimant experienced relief following an injection at the site of the lipoma or fat necrosis. The Commission failed to make a specific finding that claimant's development of the lipoma or fat necrosis was causally related to her work accident. Accordingly, the Commission failed to provide a basis for its award of the prospective medical treatment or make any factual findings to support such award. See *Reinhardt v. Board of Education*

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<sup>1</sup>On appeal, employer does not challenge the Commission's award of medical care rendered through the date of the arbitration hearing. Employer only challenges the Commission's award of prospective medical treatment.

of *Alton Community School District No. 11*, 61 Ill. 2d 101, 103 (1975) (“It is clear that a decision by an administrative agency must contain findings to make possible a judicial review of the agency’s decision.”).

¶ 27 Under these circumstances, we are compelled to vacate the Commission’s award of prospective medical treatment and remand the matter back to the Commission to allow the Commission to make appropriate findings on this issue. The Commission may conduct whatever proceedings it deems necessary to properly resolve this case on remand. *Skzubel v. Illinois Workers’ Compensation Comm’n*, 401 Ill. App. 3d 263, 270 (2010) (citing *Village of South Elgin v. Waste Management of Illinois, Inc.*, 348 Ill. App. 3d 929, 934 (2004)).

¶ 28 III. Conclusion

¶ 29 For the reasons stated, we vacate the portion of the circuit court’s order confirming the Commission’s award of prospective medical treatment, vacate the portion of the Commission’s decision awarding prospective medical treatment, and remand for further proceedings consistent with this order. We affirm the circuit court’s order confirming the Commission’s decision in all other respects.

¶ 30 Circuit court’s order affirmed in part and vacated in part.

¶ 31 Commission’s decision affirmed in part and vacated in part; cause remanded to the Commission for further proceedings.