2024 IL App (1st) 221878WC

Workers' Compensation
Commission Division
Order Filed: July 19, 2024

No. 1-22-1878WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

KEVIN CRONK, Son of Richard Cronk, Deceased	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	
	)	No. 20L050534
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	Honorable
	)	Daniel P. Duffy,
(Kimball Hill Homes, Appellee).	)	Judge, Presiding.

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

OPINION

¶ 1 On December 4, 2009, claimant, Kevin Cronk, son of Richard Cronk (decedent), filed an application for adjustment of claim seeking survivor benefits on behalf of decedent under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2006)). The application alleged that decedent suffered a heart attack and died while shoveling snow for employer, Kimball Hill

Homes, on December 6, 2006.

¶ 2 Following an arbitration hearing held on March 13, 2019, the arbitrator issued a written decision on April 12, 2019. The arbitrator found that claimant failed to prove decedent sustained an accident arising out of and in the course of his employment on December 6, 2006, and that decedent's death was causally related to an alleged work accident. The arbitrator further found that claimant failed to prove he was entitled to survivor benefits under section 7(a) of the Act (820 ILCS 305/7(a) (West 2018)) and denied benefits. Claimant sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission).

¶ 3 On November 13, 2020, the Commission, with one commissioner dissenting, issued a decision affirming and adopting the arbitrator's decision denying benefits under the Act. The dissenting commissioner found that claimant proved that decedent sustained accidental injuries arising out of and in the course of his employment on December 6, 2006, resulting in his death, and that such injuries were causally related to decedent's employment. The dissenting commissioner further found that claimant was a dependent of decedent at the time of his death, pursuant to section 7(a) of the Act. Thus, the dissenting commissioner would have awarded claimant benefits under the Act. Claimant sought judicial review of the Commission's decision before the circuit court of Cook County.

¶ 4 On November 17, 2022, the circuit court entered an order confirming the Commission's decision. Claimant filed a timely notice of appeal.

¶ 5 I. BACKGROUND

¶ 6 The following factual recitation was taken from the evidence adduced at the arbitration hearing held on March 13, 2019, as well as the decisions of the arbitrator and Commission. Additional facts will be recited as necessary in the analysis portion of this opinion.

¶ 7 Claimant testified that he was born to decedent and Barbara Cronk on May 1, 1988. Decedent and Barbara divorced on January 15, 1990, when claimant was about 1 ½ years old. On November 7, 1998, decedent married Barbara Annette Mullner (hereinafter Rowe-Cronk) and had one child, Miranda Mullner, who was a minor at the time of decedent's death on December 6, 2006.

¶ 8 The coroner, Dr. Bryan Mitchell, filed an initial report, which indicated that decedent, a construction manager, complained of difficulty breathing while shoveling snow at a home build site.[1] Coworkers contacted 911 and paramedics responded. The paramedics observed decedent alert and oriented sitting in his truck. Decedent rated his difficulty breathing as a 7 out of 10. Decedent then went into cardiac arrest in front of the paramedics. An additional ambulance arrived and transported decedent to the emergency room. The report further indicates that decedent had no known medical history, rarely used alcohol, and took a daily multi-vitamin. Decedent, however, smoked a pack of cigarettes every day and recently experienced stress due to his mother's recent health issues.

¶ 9 On December 7, 2006, the coroner conducted an autopsy of decedent. The autopsy found cardiomegaly, 560g, with left ventricular hypertrophy, 1.6cm; coronary atherosclerosis, with 50% occlusion of the right coronary artery and 50% occlusion of the left circumflex artery, and left anterior descending, two. Dr. Mitchell concluded, indicating on decedent's death certificate, that the immediate cause of death as "Hypertensive Cardiovascular Disease," with coronary atherosclerosis as a factor significantly contributing to his death.

¶ 10 On March 4, 2007, at employer's request, Dr. Richard Carroll, a cardiologist, authored a

[1]The record is devoid of any normal activities performed by decedent as part of his job as construction manager.

record review report. Dr. Carroll found decedent's coronary artery disease was most likely due to genetic factors, low "good" cholesterol, and daily cigarette smoking. Dr. Carroll stated that the "wording of the death certificate certainly makes the physical exertion of snow shoveling less suspect" as a contributing factor to decedent's death because it listed the cause of death as hypertensive cardiovascular disease instead of an acute myocardial infarction. Dr. Carroll believed physical exertion did not precipitate decedent's death, in part because "only shoveling a 10 x 10 section of driveway would not seem overly exertive to me." Dr. Carroll concluded his report, however, stating that "given the temporal relationship between his shoveling activities and his development of chest pain, it would make sense that the two were related." Dr. Carroll authored an addendum report on April 8, 2007, after he reviewed the autopsy report and records.

¶ 11 In Dr. Carroll's addendum report, he acknowledged that decedent had multi-vessel coronary artery disease with 50% narrowing noted in the left anterior descending coronary artery, the circumflex coronary artery, and the right coronary artery. Dr. Carroll reported that there was no evidence of occlusion or thrombosis or that decedent suffered an acute heart attack. Dr. Carroll opined that the immediate cause of death was likely a fatal cardiac arrythmia as a result of decedent's abnormal heart muscle. Dr. Carroll believed that decedent's cardiac arrest was unrelated to physical activity, given that the minimal amount of activity performed and the degree of narrowing noted on the autopsy would not have been so significant to precipitate an acute heart attack or fatal arrhythmia. Dr. Carroll noted that patients with cardiomegaly experience such arrhythmias spontaneously, separate and distinct from any physical activity, because of the abnormal architecture of the heart.

¶ 12 On March 23, 2007, decedent's second wife, Rowe-Cronk, filed an application for adjustment of claim seeking survivor benefits. The application was entered as an exhibit at the

arbitration hearing. Rowe-Cronk obtained a record review from Dr. Thomas Tamlyn, an interventional cardiologist. Dr. Tamlyn opined that decedent's cardiac arrest most likely resulted from cardiac ischemia and unstable angina or transient coronary occlusion. Dr. Tamlyn found that decedent had cardiac hypertrophy and that the fatal event was "obviously brought on or aggravated by physical exertion," because decedent developed symptoms consistent with cardiac ischemia while shoveling snow. Dr. Tamlyn further stated that "spontaneous cardiac arrythmia [does] not manifest as several minutes of chest pain and shortness of breath" but consists instead of "either brief lightheadedness followed by loss of consciousness[,] or they are so sudden that they do not cause symptoms before arrest." Rowe-Cronk and employer entered into a settlement agreement to resolve her claim for survivor benefits, which the Commission approved on April 27, 2009. In the settlement, employer denied that decedent sustained accidental injuries arising out of and in the course of his employment and denied a causal relationship between decedent's condition of ill-being and any injury arising out of his employment.

¶ 13 Specific to claimant's application for adjustment of claim seeking survivor benefits, the arbitrator issued a decision on April 12, 2019, finding that the accident did not arise out of and in the course of decedent's employment and that decedent's condition of ill-being was not causally related to his employment. In finding the accident did not arise out and in the course of decedent's employment, the arbitrator determined that claimant did not present testimony regarding the accident and that there was "no indication of the amount of snow or weight of snow contained in the record." In finding decedent's death was not causally related to his employment, the arbitrator, relying on the opinion of Dr. Carroll, found the physical activity preceding decedent's death unrelated to decedent's death. The arbitrator determined that claimant failed to establish entitlement to survivor benefits under section 7(a) of the Act because, at the time of decedent's

death, he was not enrolled full-time in school and over the age of 18, and did not testify to having any dependency upon the decedent.

¶ 14 Claimant filed a petition for review of the arbitrator's decision before the Commission. The Commission, with one commissioner dissenting, issued a decision on November 13, 2020, affirming and adopting the arbitrator's decision. The dissenting commissioner found that claimant proved by a preponderance of the credible evidence that decedent sustained accidental injuries that arose out of and in the course of employment, and that decedent's injuries were causally related to his employment. The dissenting commissioner further found that a literal reading of section 7(a) of the Act entitled claimant to survivor benefits as decedent's dependent.

¶ 15 Claimant sought judicial review of the Commission's decision before the circuit court of Cook County, which the court confirmed. Claimant timely appealed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, claimant raises three issues: (1) whether decedent suffered an accidental injury arising out of and in the course of his employment; (2) whether decedent's condition of ill-being was causally related to his alleged work accident; and (3) whether claimant was considered a survivor under the Act. We address these issues in turn.

¶ 18 A. Arising out of and in the Course of Employment

¶ 19 On appeal, claimant argues that the circuit court erred in confirming the Commission's finding that he failed to prove that decedent sustained an accident arising out of and in the course of his employment. In support, claimant asserts that shoveling snow at one of employer's home build sites was a duty that employer reasonably expected decedent to perform. Claimant further argues the Commission erred in requiring claimant to identify the amount of weight of the snow shoveled by decedent.

¶ 20 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). An injury occurs "in the course" of employment when it occurs during employment, at a place where the employee may reasonably perform employment duties, and while a worker fulfills those duties or engages in some incidental employment duties. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 194 (2002). The question of whether a claimant's injury arose out of his 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).

¶ 21 "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. Illinois Workers' Comp. 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). The test is whether there is sufficient evidence in the record to support the decision of the Commission, not whether the reviewing court might have reached a different conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

¶ 22 Here, the Commission, in affirming and adopting the arbitrator's decision, found that decedent shoveled snow at a worksite for employer when he began complaining of difficulty

breathing. However, due to the "lack of evidence" submitted by claimant as to the "amount of snow or weight of snow," the Commission found that claimant failed to prove that the injury arose out of and in the course of decedent's employment. On appeal, employer asks this court to affirm the Commission's decision because claimant cannot prove that employer instructed decedent to shovel snow or that shoveling snow was an act employer could reasonably expect decedent to perform. We disagree and find that the decision of the Commission was against the manifest weight of the evidence.

¶ 23 An injury occurs "in the course" of employment when it occurs during employment, at a place where the employee may reasonably perform employment duties, and while a worker fulfills those duties or engages in some incidental employment duties. *Baggett*, 201 Ill. 2d at 194. The evidence, here, indicates that decedent was an employee of employer. On the date of the accident, decedent, a construction manager, shoveled snow leading to the entrance of a home, built by employer, in anticipation of the arrival of prospective buyers. When determining if the injury occurred in the course of decedent's employment, claimant need not prove some particular amount or weight of snow to show that decedent engaged in employment duties. Rather, claimant must show that the injury occurred while performing a duty during employment, at a place decedent would be reasonably expected by employer to perform the duty, and while decedent fulfilled that duty or other incidental duties. *Id.* In our opinion, it is a reasonably expected duty of decedent, as construction manager, to clear snow from the driveway and sidewalk of a newly built house in anticipation of prospective buyers. Therefore, the manifest weight of the evidence demonstrates that decedent's cardiac arrest while shoveling snow at one of employer's newly built homes occurred in the course of his employment.

¶ 24 B. Causally Related

¶ 25 Claimant next contends that the Commission erred in finding that decedent's condition of ill-being was not causally related to his employment. Claimant argues that the Commission's decision was against the opinions of both medical experts, and therefore against the manifest weight of the evidence.

¶ 26 In cases involving a preexisting condition, an employee's recovery depends "on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Sisbro, Inc.*, 207 Ill. 2d at 204-05. "[E]ven though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor." *Id.* at 205. "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." (Emphasis in original.) *Id.* (citing *Rock Road Construction Co. v. Industrial Comm'n*, 37 Ill. 2d 123, 127 (1967)).

¶ 27 "Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the Industrial Commission." *Id.* "[A] reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Id.* at 206. "[T]o the extent that the medical testimony might be construed as conflicting, it is well established that resolution of such conflicts falls within the province of the Commission, and its

findings will not be reversed unless contrary to the manifest weight of the evidence." *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 37 (1982).

¶ 28 Here, the Commission, in affirming and adopting the arbitrator's decision, found that claimant failed to establish that decedent's death was causally related to his employment. The Commission relied upon Dr. Carroll's medical opinion that decedent's death was not related to the snow shoveling because of decedent's "abnormal heart muscle." On appeal, employer asks this court to affirm the Commission's decision, arguing that the medical opinion of Dr. Carroll confirms that the decedent's fatal cardiac arrythmia was unrelated to physical exertion. We disagree and find the Commission's decision was against the manifest weight of the evidence.

¶ 29 The manifest weight of the evidence shows that decedent's employment-related activity was a causative factor in his cardiac arrest. Dr. Tamlyn's report indicated that the "event was obviously brought on or aggravated by physical exertion," where decedent developed symptoms consistent with cardiac ischemia while shoveling snow. Additionally, Dr. Tamlyn opined that a spontaneous cardiac arrhythmia—like what employer is contending occurred—does not manifest itself as several minutes of chest pain and shortness of breath as decedent reported experiencing. Dr. Tamlyn instead noted that such spontaneous ventricular arrhythmias usually manifest as brief lightheadedness followed by loss of consciousness, or they are so sudden that there are no symptoms before arrest. Both medical experts acknowledged that shortly after decedent started to shovel snow, decedent experienced difficulty breathing. Decedent's coworkers called 911 and by the time paramedics arrived, decedent rated his difficulty breathing as a 7 out of 10. Once paramedics moved decedent to the ambulance, he went into cardiac arrest. The record indicates that 10 minutes after coworkers called 911, decedent suffered cardiac arrest. While eschewing finding a causal relationship, Dr. Carroll indeed stated in his initial report that "given the temporal

relationship between his shoveling activities and his development of chest pain, it would make sense that the two were related." In his subsequent report, however, Dr. Carroll stated that he "stood by" his opinions that decedent's condition of ill-being was unrelated to the shoveling, despite his previous opinions that a temporal relationship existed between the shoveling and development of chest pains.

¶ 30 The Commission, in affirming and adopting the arbitrator's decision, found Dr. Carroll's testimony more credible. Decisions concerning conflicting medical testimonies are given deference so long as they are not against the manifest weight of the evidence. *Caterpillar Tractor Co.*, 92 Ill. 2d at 37. Here, we cannot agree with the Commission's reliance on Dr. Carroll's testimony, where the manifest weight of the evidence, as acknowledged in the testimonies of both medical experts, demonstrates that shoveling the snow was *a* contributing factor in decedent's resulting condition of ill-being. This reveals a causal relationship even if such physical activity is not the sole or primary causative factor. *Sisbro, Inc.*, 207 Ill. 2d at 204-05 ("[E]ven though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor."). Accordingly, the Commission's decision was against the manifest weight of the evidence.

¶ 31 C. Survivor Benefits

¶ 32 Claimant next contends that the Commission erred by affirming and adopting the finding of the arbitrator that claimant was not entitled to compensation as a survivor under section 7(a) of the Act. We agree.

¶ 33 "This issue presents a question of statutory interpretation, and our review is, therefore, *de novo*." *Ravenswood Disposal Services v. Illinois Workers' Compensation Comm'n*, 2019 IL App

(1st) 181449WC, ¶ 22. "Our primary objective in construing a statute is to give effect to the legislature's intent, which is best indicated by the plain and ordinary language of the statute." *Id.* When statutory language is unambiguous and clear, it will be given effect without reliance on other devices of construction. *Id.*

¶ 34 Section 7(a) of the Act provides, in pertinent part, as follows:

> "If the employee leaves surviving a widow, widower, child or children, the applicable weekly compensation rate computed in accordance with subparagraph 2 of paragraph (b) of Section 8, shall be payable during the life of the widow or widower and if any surviving child or children shall not be physically or mentally incapacitated then until the death of the widow or widower or until the youngest child shall reach the age of 18, whichever shall come later; provided that if such child or children shall be enrolled as a full time student in any accredited educational institution, the payments shall continue until such child has attained the age of 25. In the event any surviving child or children shall be physically or mentally incapacitated, the payments shall continue for the duration of such incapacity." 820 ILCS 305/7(a) (West 2022).

¶ 35 Here, the Commission, in affirming and adopting the arbitrator's decision, found that claimant was not entitled to survivor benefits because claimant was over the age of 18 and not enrolled in school at the time of decedent's death. The Commission found that granting benefits to claimant would "prevent any finality or closure of benefits when there remains a child over 18 at the time of death, requiring parties to wait until that child reaches the age of 25." We disagree with the Commission's reasoning.

¶ 36 We find *Drives, Inc. v. Industrial Comm'n*, 124 Ill. App. 3d 1014 (1984), instructive. In that case, the appellate court determined that a surviving child was entitled to benefits because she

was under the age of 25 and a full-time student. *Id* at 1017. The court rejected an argument that because the surviving child's full-time education was interrupted between undergraduate and graduate school, she should be denied benefits. *Id.* The court recounted that the Act was amended to "provide a broader eligibility test," wherein a child qualifies for benefits if he or she is (1) under the age of 18; (2) under the age of 25 and a full-time student; or (3) physically or mentally handicapped. *Id.* at 1016-17. Adopting a liberal reading of the statute, the appellate court found that the statute "makes no exceptions to the 25-year-age rule and does not expressly terminate benefits in the event of a break in the education continuum." *Id.* at 1017. This "unqualified eligibility until age 25 avoids a host of problems" like breaks in education resulting from illness, pregnancy, work, suspensions, and many more. *Id.*

¶ 37 In our own reading of section 7 of the Act, we, too, find the "broader eligibility test" described in *Drives.* The plain language of sections 7(a) and section 7(c) (820 ILCS 305/7(c) (West 2012)), when read together, demonstrate the legislature's intent to provide broad eligibility to surviving children up to the age of 25.

¶ 38 Section 7(c) of the Act provides, in pertinent part, as follows:

> "If no compensation is payable under paragraphs (a) or (b) of this Section and the employee leaves surviving any child or children who are not entitled to compensation under the foregoing paragraph (a) but who at the time of the accident were nevertheless in any manner dependent upon the earnings of the employee, or leaves surviving a parent or parents who at the time of the accident were partially dependent upon the earnings of the employee, then there shall be paid to such dependent or dependents for a period of 8 years weekly compensation payments at such proportion of the applicable rate if the employee had left surviving a widow or widower as such dependency bears to total dependency. In

the event of the death of any such beneficiary the share of such beneficiary shall be divided equally among the surviving beneficiaries and in the event of the death of the last such beneficiary all the rights under this paragraph shall be extinguished." *Id.*

¶ 39 Even if a surviving child were entirely precluded from receiving benefits under section 7(a) of the Act, section 7(c) of the Act still provides for benefits if the child is "in any manner dependent upon the earnings of the employee." *Id.* Sections 7(a) and 7(c) of the Act, when read together, demonstrate the legislature's intent to provide broad eligibility for benefits to surviving children. *Drives, Inc.*, 124 Ill. App. 3d at 1016-17.

¶ 40 Similar to *Drives, Inc.*, 124 Ill. App. 3d at 1017, where the court rejected an argument that the surviving child should be denied benefits because of an interruption to full-time education between undergraduate and graduate school, here, an interruption in claimant's education while under the age of 25 does not preclude him from benefits. Claimant, who was 18 years old and a recent high school graduate on the date of decedent's death, enrolled in college in the Fall 2007 after taking a gap year following his high school graduation in May 2006. Thus, with reliance on *Drives*, we cannot conclude that claimant should be denied benefits under section 7(a) of the Act. We find that because of the broad eligibility for surviving child benefits intended within the Act, claimant is entitled to benefits under section 7(a) of the Act.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we reverse the circuit court's judgment confirming the Commission's decision and remand for further proceedings.

¶ 43 Reversed and remanded.

Kevin Cronk, son of Richard Cronk, Deceased

v.

Workers' Compensation Commission of Illinois and Kimball Hill Homes

2024 IL App (1st) 221878W

Appeal from the Circuit Court of Cook County. No. 20 L 050534,
Honorable Daniel P. Duffy, Judge, presiding.

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