2025 IL App (1st) 241384WC-U
No. 1-24-1384WC
Order filed March 21, 2025

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CITY OF CHICAGO, Plaintiff-Appellant, v. VERONICA FARMER & ILLINOIS WORKERS COMPENSATION COMMISSION, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Cook County. No. 23-L-50665 Honorable John A. Simon, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's TTD award was not contrary to the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Employer, City of Chicago, appeals the judgment of the circuit court of Cook County confirming the decision of the Illinois Workers' Compensation Commission (Commission) awarding benefits to claimant, Veronica Farmer, pursuant to the provisions of the Illinois Workers'

Compensation Act (Act) (825 ILCS 305/1 *et seq.* (West 2006)). Pertinent here, the Commission awarded claimant 168 weeks of temporary total disability (TTD) at a rate of $652.71 per week (June 25, 2007, to November 4, 2007, and December 8, 2007, to October 15, 2010) and temporary partial disability (TPD) for 4-5/7 weeks at a rate of $231.35 per week (November 5, 2007, to December 7, 2007). On appeal, employer challenges the Commission's award of temporary total disability (TTD), arguing that claimant reached maximum-medical improvement at a date earlier than determined by the Commission. We disagree and affirm.

¶ 4 II. BACKGROUND

¶ 5 It is undisputed that claimant sustained an injury arising out of and occurring in the course of her employment with employer. Claimant was employed by employer as a part-time traffic-control aide. While engaged in her duties on June 24, 2007, she was struck in the face by the side mirror of a passing truck. Claimant was thrown in the air, twisted around, and landed on her face on the pavement. She experienced pain in multiple areas and could not move her left shoulder. Claimant had blood coming from her mouth, and two of her teeth were fractured. Also undisputed is the fact that claimant was concurrently employed, full-time, by a company named Computershare and that her concurrent earnings amounted to $979.09 per week.

¶ 6 At the arbitration hearing, which was held on April 19, 2022, claimant testified that prior to the accident at issue here, she had never injured her cervical spine, lumbar spine, left shoulder, or left front teeth. Her job involved directing traffic, which required her to stand and move her upper extremities for her entire shift. A shift would be between five and eight hours, during which she would get a 15 or 20 minute break.

¶ 7 Following the accident, claimant was transported to the Northwestern Hospital emergency room. After X-rays and a CT scan, claimant was discharged with instructions to follow up with

her personal physician. Following her discharge, her symptoms worsened, and she sought treatment at the emergency room of Loyola Hospital the following day. She was examined by Dr. Probst and Dr. Boehm (a dentist). At employer's direction, claimant was also examined at MercyWorks on June 26, 2007. She continued to receive treatment at MercyWorks through June 16, 2008.

¶ 8 Claimant testified that on July 6, 2007, she returned to Loyola, where she was seen by Dr. Alexander Ghanayem. Dr. Ghanayem recommended physical therapy and ordered an MRI. She was also examined by her family doctor, Dr. Boblick on July 24, 2007.

¶ 9 Dr. Boblick recommended "medication and follow-up care for [her] neck and low back." Claimant continued to treat with Dr. Boblick, and, on November 4, 2007, he ordered physical therapy and muscle relaxers. He also kept claimant off work. On November 4, 2007, Dr. Boblick released claimant to work in a sedentary capacity. She contacted employer, but employer did not offer any work within her restrictions. Claimant returned to work at Computershare on November 5, 2007; however, she was laid off on December 7, 2007.

¶ 10 Claimant testified that on December 21, 2007, she was examined at Loyola by Dr. Gnatz, an orthopedic surgeon. Dr. Gnatz released claimant to "return to work to sedentary duty with no directing traffic."

¶ 11 At the time of the arbitration hearing, claimant continued to treat with Dr. Boblick. In July 2010, claimant underwent MRIs of her lumbar and cervical spine at Dr. Boblick's direction. After these examinations, "Dr. Boblick released [her] to return to work with a permanent work restriction of sedentary duty only with no traffic direction." On May 12, 2011, Dr. Boblick examined claimant and noted ongoing lower back pain and prescribed additional conservative therapy.

¶ 12 On August 17, 2010, claimant testified, she was examined by Dr. Prabhu, a neurosurgeon. Dr. Prabhu reviewed recent MRIs and prescribed cervical epidural injections, anti-inflammatory medication, and physical therapy including traction. Claimant began this course of physical therapy on September 8, 2010.

¶ 13 Claimant testified that, on September 8, 2010, she was examined by Dr. Andrew Zelby on respondent's behalf. On October 12, 2010, Dr. Prabhu prescribed additional physical therapy and referred her for a steroid injection in her left shoulder. She continued to treat with both Dr. Prabhu and Dr. Boblick. Claimant saw Dr. Boblick on January 18, 2011, and he ordered "additional physical therapy and follow-up care." On May 12, 2011, she was examined by Dr. Boblick, who again ordered physical therapy. He recommended claimant use anti-inflammatory medications and muscle relaxants. Dr. Boblick released claimant with "restrictions and to follow up as needed for pain." On November 11, 2011, the teeth claimant fractured in her accident came out. Claimant was examined by Dr. Jeffrey Coe, at her attorney's request, on November 11, 2011. Claimant secured employment with Northern Trust in October 2010.

¶ 14 On cross-examination, claimant agreed that she had not received any treatments to her spine or shoulder since 2011. Claimant stated that Computershare went out of business.

¶ 15 Claimant submitted her medical records in support of her claim, pertinent parts of which we will summarize here. Claimant was initially treated at the Northwestern Hospital Emergency Room and at Loyola the next day. Claimant was seen at MercyWorks on June 26, 2007, where she was diagnosed with "Facial contusions and abrasion; fractured teeth; cervical strain; chest contusion; left shoulder contusion and strain; left elbow contusion; abrasions left forearm; upper and lower thoracic and lumbar contusions and strain; left hip contusion; left knee contusion." Claimant treated with MercyWorks through June 2008.

¶ 16 On July 24, 2007, claimant was examined by Dr. Boblick. He diagnosed a low back strain and facet syndrome, and cervical disc disease. She again saw Dr. Boblick on August 26, 2007, when he recommended an MRI. Claimant continued to experience lower back pain, which, she stated, started with her accident. She was also experiencing abdominal pain. Claimant reported continuing back and shoulder pain when she saw Dr. Boblick on November 4, 2007. In an examination on October 12, 2010, Dr. Boblick noted cervical pain radiating into claimant's left arm.

¶ 17 Claimant saw Dr. Ghanayem on July 6, 2007, at Loyola, who ordered an MRI. Claimant was examined by Dr. Gnatz on December 21, 2007, who released her to sedentary work. Employer had no work available within her restrictions. During further visits with Dr. Boblick, claimant continued to report pain. He examined claimant on July 7, 2010. Claimant continued to complain of neck pain and cervical tenderness. On July 27, 2010, Dr. Boblick released claimant to sedentary work.

¶ 18 On August 17, 2010, claimant was examined by Dr. Prabhu, a neurosurgeon. Claimant complained of left shoulder pain radiating down her arm and lower back pain. Dr. Prabhu prescribed a steroid injection, and they discussed the possibility of surgery to claimant's lower back. Dr. Prabhu also prescribed physical therapy. On September 8, 2010, claimant began a course of physical therapy.

¶ 19 Claimant was examined by Dr. Zelby on September 8, 2010, at respondent's request. Dr. Zelby memorialized his findings in a written report. He notes that claimant reported that she was injured when she was struck by a pickup truck that was traveling 40 to 50 miles per hour. Claimant was treated at the emergency room and released. Her injuries included a dislocated shoulder, neck pain, left shoulder pain, left arm pain, and lower back pain.

¶ 20 Dr. Zelby noted that claimant's MRI taken shortly after her work injury "showed fairly mild degenerative changes with no acute abnormalities, and her lumbar MRI was normal." He added, "Her more recent cervical MRI shows there is now a disc protrusion or extrusion that was not present following her work injury." Accordingly, he concluded that her condition did not result from her accident, and he further opined that her accident did not "make the possibility of a disc herniation in the future more likely." He asserted that claimant was engaged in "symptom magnification" based on her having "3/5 positive Waddell signs." He opined that the restrictions Dr. Boblick placed upon claimant were "arbitrary and inappropriate." He added that claimant would have been able to return to her job "as a traffic control aide within 6 weeks of her injury." According to Dr. Zelby, claimant was at MMI within 6 weeks of the accident and her current condition is not related to the accident.

¶ 21 Claimant was also examined by Dr. Jeffrey Coe, who saw claimant on November 22, 2011. Dr. Coe also authored a report documenting his findings. He reviewed claimant's medical records and conducted a physical examination. He noted that Dr. Zelby discounted a "small, new disc herniation at C5-C6" while finding that claimant had reached MMI and did not require additional treatment. Dr. Coe opined that the accident "aggravated degenerative change in her cervical spine and caused a symptomatic leftsided herniation of the C5-C6 intervertebral disc with chronic cervical discogenic and myofascial pain." He continued, "the accident of June 2007, aggravated degenerative changes in Ms. Farmer's lower back with chronic lumbar myofascial pain and sacroiliac joint irritation." Furthermore, Dr. Coe added, "Based on the findings of this examination, it is my opinion that there is a causal relationship between the injuries suffered by Ms. Farmer at work for the City of Chicago, Office of Emergency Management and Control, on June 24, 2007,

and her current symptoms and state of impairment." He believed that claimant would benefit from "repeat cervical epidural steroid injections as prescribed by Dr. Prabhu."

¶ 22 The arbitrator first found that claimant's condition of ill-being is causally related to her employment with employer. The arbitrator expressly found claimant credible and that the injury, *inter alia*, aggravated a degenerative condition of her spine. The arbitrator also credited the records of claimant's treating physicians—Dr. Boblick, Dr. Prabhu, Dr. Gnatz, and Dr. Ghanayem—as well as the opinions of Dr. Coe. He also noted that MercyWorks physicians documented a causal connection between claimant's condition and her accident. Further, the arbitrator found Dr. Zelby's opinions "to be not persuasive." The arbitrator observed that the chain of events supported a finding of causation, as claimant was in good health prior to the accident. The arbitrator also found that the medical services rendered to claimant were reasonable and necessary. He found that claimant suffered 20% loss of use of the person as a whole and 20 weeks disfigurement and awarded permanent partial disability of 120 weeks at a rate of 587.44 per week.

¶ 23 As for TTD, the arbitrator found that claimant was entitled to 172-5/7 weeks at a rate of $652.71 per week. Employer was entitled to a credit of $47,076.11, as it paid TTD up until Dr. Zelby's examination. However, employer paid TTD based on claimant's wage with it rather than based on her concurrent average weekly wage. The arbitrator also observed that employer never offered claimant work within her restrictions. The arbitrator stated that whether claimant's work with Computershare was within her restrictions was not relevant, as claimant was quickly laid off from that job and that employer went out of business. Moreover, as claimant was injured while working for employer, employer was obligated "to either provide modified employment or pay TTD benefits."

¶ 24 In support of the TTD award, the arbitrator relied on "the credible testimony of [claimant] and the overwhelming medical evidence submitted into evidence at arbitration." He found that "[t]he medical records clearly establish that [claimant's] condition had not stabilized during the aforementioned periods." He observed that claimant "had been under a constant course of medical care for her conditions." The arbitrator rejected employer's reliance on Dr. Zelby's opinion that claimant reached MMI within 6 weeks of her injury, as it was "contrary to at least 8 physicians (including [employer's] chosen medical providers [at MercyWorks]) in this matter and was rendered some three years after the TTD period was said to have ended." He added that Dr. Zelby's opinion was "not persuasive." Accordingly, the arbitrator found that claimant was entitled to TTD from June 25, 2007, through October 15, 2010.

¶ 25 The Commission affirmed and adopted the decision of the arbitrator, with one modification. It vacated the TTD award and substituted the following. It noted that claimant worked for Computershare for 4-5/7 weeks from November 5, 2007, to December 7, 2007. Accordingly, it awarded claimant 168 weeks of temporary total disability (TTD) at a rate of $652.71 per week (June 25, 2007, to November 4, 2007, and December 8, 2007, to October 15, 2010) and temporary partial disability (TPD) for 4-5/7 weeks at a rate of $231.35 per week (November 5, 2007, to December 7, 2007). The circuit court of Cook County confirmed the Commission's decision, and this appeal followed.

¶ 26 III. ANALYSIS

¶ 27 On appeal, employer raises a single issue: whether the Commission's award of TTD was erroneous. Generally, a claimant's entitlement to TTD presents a question of fact. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 759 (2003). Employer argues for the application of the *de novo* standard, asserting that the Commission relied on an erroneous

proposition of law; namely, "that Claimant continued to see a doctor and *ignored the fact* that physicians provided permanent restrictions that allowed Claimant to return to employment." (Emphasis added.) Employer cites no case setting forth a principle of law whereby the Commission is required to give effect to a doctor's restrictions over the fact of a claimant's continued treatment, which is not surprising, as the law is contrary to employer's position. See *Whitney Productions, Inc. v. Industrial Comm'n*, 274 Ill. App. 3d 28, 31 (1995) ("[T]he fact that the employee * * * has the ability to do light work does not necessarily preclude a finding of temporary total disability."). Indeed, employer's articulation of its point—"ignored the fact"—belies its position. Clearly, the Commission's decision relied on resolving a conflict between competing facts. As such, the manifest-weight standard applies. *Bennett Auto Rebuilder v. Industrial Comm'n*, 306 Ill. App. 3d 650, 655 (1999). Accordingly, we will not reverse unless an opposite conclusion to the Commission's is clearly apparent. *Id.* at 654. The Commission, as finder of fact, is primarily responsible for resolving conflicts in the evidence, assessing the credibility of witnesses, assigning weight to evidence, and drawing inferences from the record. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). Further, given the Commission's well recognized expertise regarding medical issues, we owe its decisions on such matters considerable deference. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). Employer contends that it should prevail even under the manifest-weight standard.

¶ 28 Generally, to be entitled to TTD, a claimant must prove that he or she was unable to work. *City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (1996). Moreover, a claimant is only entitled to TTD up until the point that his or her condition has stabilized. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 175 (2000). Thus, "[t]he Commission reviews the evidence to ascertain whether claimant has reached maximum medical

improvement, *i.e.*, the condition has stabilized." *Id.* at 175-76 (citing *Beuse v. Industrial Comm'n*, 299 Ill. App. 3d 180, 183 (1998)). The fact that a claim is capable of light-duty work does not preclude an award of TTD. *Schafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 47 (quoting *Whitney Productions, Inc.*, 274 Ill. App. 3d at 31). "Total disability" as contemplated by the Act does not mean "total incapacity." *Sun Choi v. Industrial Comm'n*, 182 Ill. 2d 387, 393 (1998) (citing *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 120 (1990)). Rather, an employee is totally disabled when, as a result of a work-related injury, the employee is only able to perform services in such a limited manner that no stable labor market exists for them. *Sun Choi*, 182 Ill. 2d at 393 (citing *J.M. Jones Co. v. Industrial Comm'n*, 71 Ill. 2d 368, 373 (1978)).

¶ 29 In support of its finding that claimant was entitled to TTD through October 15, 2010, the Commission (adopting the decision of the arbitrator) relied on "the credible testimony of [claimant] and the overwhelming medical evidence submitted into evidence at arbitration," noting that "[t]he medical records clearly establish that [claimant's] condition had not stabilized during the aforementioned periods." Moreover, the Commission also noted that claimant's testimony that employer never offered her a position within her restrictions was unrebutted. The failure to offer work within a claimant's restrictions provides evidence that claimant is, in fact, not capable of employment. See *Otto Baum Co., Inc. v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100959WC, ¶ 15 ("[T]he Commission was also presented with evidence that the claimant eventually submitted himself for work in December 2008 and that [the employer] refused to accommodate the claimant at that time. Given that evidence, we cannot say that it was clearly apparent that the claimant was not entitled to the TTD benefits for the period from December 10, 2008, through February 18, 2009.").

¶ 30 Against claimant's medical records, testimony, and its failure to accommodate claimant's restrictions, employer points out that claimant was able to work at Computershare for about a month in late 2007. We note that it was undisputed that after this brief stint, employer did not offer claimant employment within her restrictions. Employer also relies on various releases to sedentary work by her treating physicians, specifically: Dr. Gnatz on December 21, 2007, and March 7, 2008, and Dr. Boblick on September 18, 2009, May 25, 2010, and July 27, 2010. Dr. Ghanayem reviewed and agreed with Dr. Gnatz's restrictions. Employer also points out that the doctors stated that these restrictions were permanent, implying that claimant's condition had stabilized. While this evidence provides some support for employer's position, it merely creates a conflict with the evidence on which the Commission relied. Resolving conflicts in the evidence is primarily a matter for the Commission. *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 18. Employer does not explain why the evidence it relies on is so compelling that the Commission was required to credit it over claimant's medical records, testimony, and its failure to accommodate claimant's restrictions. In any event, we cannot say that an opposite conclusion to the Commission's on this point is clearly apparent.

¶ 31 More fundamentally, even if the Commission had attributed weight to the evidence employer relies on, it would not necessarily have had to come to a different conclusion. In *Schafer*, 2011 IL App (4th) 100505WC, ¶ 47, the Commission reversed a decision of the arbitrator awarding the claimant TTD benefits where her treating physician released her to light duty. The Commission reasoned that the release meant the claimant was capable of working in at least a light-duty capacity and that this rendered the claimant ineligible for TTD. *Id.* This court reversed, explaining that the Commission's "conclusion was contrary to law." *Id.* We noted that no evidence indicated that the claimant was capable of anything but light-duty work and that her medical records showed that

she was in a great deal of pain and "severely limited in her physical activities." *Id*. We found the Commission's decision to be contrary to the manifest weight of the evidence. *Id.* ¶ 48. In this case, then, the Commission could attribute greater weight to claimant's medical records than the releases to sedentary work that employer relies on in support of its argument. Quite simply, claimant's release to sedentary labor did not preclude the TTD award.

¶ 32 As for the purported permanency of the restrictions, we note that there was conflicting evidence in the record as well. Most notably, during a visit on August 17, 2010, Dr. Prabhu and claimant discussed the possibility of surgery to claimant's lower back. At this time, he also ordered additional cervical steroid injections. Moreover, throughout the period covered by the TTD award, claimant underwent repeated courses of physical therapy. Thus, there was evidence in the record from which the Commission could infer that claimant's condition could still improve in 2010. Again, resolving such conflicts in the record is primarily a task for the Commission. *Compass Group*, 2014 IL App (2d) 121283WC, ¶ 18. Given the heightened deference we owe the Commission on medical issues (*Long*, 76 Ill. 2d at 566), we cannot say that its resolution of this conflict is against the manifest weight of the evidence.

¶ 33 Employer also calls our attention to the opinions of Dr. Zelby. Respondent notes that Dr. Zelby opined that claimant "would have been able to return to regular employment within 6 weeks." Moreover, he found the restriction imposed by the other doctors "arbitrary." However, the Commission found Dr. Zelby unpersuasive. It explained that his opinion was rendered three years after he believed claimant reached MMI and was "contrary to at least 8 physicians." Employer does not explain why the Commission's rejection of Dr. Zelby's opinions was contrary to the manifest weight of the evidence, and it does not appear to be so to us.

¶ 34 In sum, there was evidence in the record from which the Commission could conclude that claimant could not work and that her condition had not stabilized during the period covered by the TTD award. Employer identifies evidence to the contrary; however, that merely represents a conflict in the record for the Commission to resolve. Having reviewed the record, we cannot say that an opposite conclusion to the Commission's is clearly apparent. In turn, its decision is not against the manifest weight of the evidence.

¶ 35 IV. CONCLUSION

¶ 36 In light of the foregoing, the decision of the circuit court of Cook County confirming the decision of the Commission is affirmed.