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

| | | |
|-------------------------------------|---|-------------------------------|
| CARDINAL HEALTH 400, INC., |) | Appeal from the Circuit Court |
| AUTOMATIC LIQUID PACKAGING, INC., & |) | of McHenry County. |
| SEDGWICK CLAIMS, |) | |
| |) | |
| Plaintiffs-Appellants, |) | |
| |) | |
| v. |) | No. 08—MR—368 |
| |) | |
| ILLINOIS WORKERS' COMPENSATION |) | |
| COMMISSION and AURORA ROSALES, |) | Honorable |
| |) | Michael T. Caldwell, |
| Defendants-Appellees. |) | Judge Presiding. |

PRESIDING JUSTICE MCCULLOUGH delivered the judgment of the court.
Justices Hoffman, Hudson, Holdridge and Stewart concurred in the judgment.

ORDER

Held: The Workers' Compensation Commission's finding that claimant proved she sustained accidental injuries arising out of and in the course of her employment with employer was not against the manifest weight of the evidence.

On August 22, 2006, claimant, Aurora Rosales, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 through 30 (West 2006)), seeking benefits from employer Cardinal Health 400, Inc., Automatic Liquid Packaging, Inc., and Sedgewick Claims (hereinafter employer), for repetitive-trauma injuries suffered to her upper right

shoulder. Following a hearing, an arbitrator found claimant failed to prove she sustained accidental injuries arising out of and in the course of her employment with employer and denied claimant benefits.

On review, the Workers' Compensation Commission (Commission) reversed the arbitrator's decision, finding claimant proved she sustained accidental injuries arising out of and in the course of her employment with employer and awarded claimant 63 weeks of temporary total disability (TTD) benefits at \$373.27 per week (820 ILCS 305/8(b) (West 2006)) and \$41,122.88 for necessary medical expenses incurred by claimant. The Commission remanded the matter back to the arbitrator pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). The circuit court confirmed the Commission's decision.

Employer appeals, arguing (1) the Commission's finding that claimant proved she sustained accidental injuries arising out of and in the course of her employment with employer is against the manifest weight of the evidence, (2) the Commission's finding that claimant's upper-right-shoulder injury was causally related to a work-related accident is against the manifest weight of the evidence, and (3) the Commission failed to give reasons for credibility findings contrary to those of the arbitrator, and therefore, the matter must be remanded back to the Commission with directions to make the necessary findings. We affirm and remand to the Commission for further proceedings..

_____The parties are aware of the facts of the case and they will not be reviewed in detail.

_____After the hearing, the arbitrator found claimant failed to prove she sustained accidental injuries arising out of and in the course of her employment with employer and denied claimant benefits. Specifically, the arbitrator found claimant's "answers and demonstrations *** inconsistent" and adopted the testimony and medical opinion of Dr. Scott Sagerman.

Claimant filed a petition for review of the arbitrator's decision before the Commission. The Commission reversed the arbitrator's decision, finding claimant proved she sustained accidental injuries arising out of and in the course of her employment with employer. The Commission found claimant worked using her arms "at or above shoulder level *** significantly more repetitive and frequent than the 'occasional' classification given to it in [employer's] job description." Further, the Commission found Dr. Sagerman's opinion "based on incomplete and inaccurate information regarding [claimant's] job." The Commission found claimant's upper-right-shoulder injury was causally related to a work-related accident based on (1) her testimony, (2) no prior history of right shoulder pain before December 2005, (3) a gradual onset of pain while working, and (4) the opinions of Drs. Manuel Perez, Daryl Luke, and Michael Terry. The Commission awarded claimant 63 weeks of temporary total disability (TTD) benefits at \$373.27 per week (820 ILCS 305/8(b) (West 2006)) and \$41,122.88 for necessary medical expenses incurred by claimant. The Commission remanded the matter back to the arbitrator pursuant to *Thomas*. Employer sought judicial review of the Commission's decision in the Circuit Court of McHenry County. The circuit court confirmed the Commission's decision, and this appeal followed.

Employer argues that the Commission's finding that claimant proved she sustained accidental injuries arising out of and in the course of her employment with employer is against the manifest weight of the evidence. Employer argues that claimant failed to prove a compensable repetitive-trauma injury.

Whether an injury arose out of and in the course of one's employment is a question of fact for the Commission to decide, and its determination will not be disturbed unless it is against the manifest weight of the evidence. *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 944,

856 N.E.2d 602, 608 (2006). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086, 837 N.E.2d 937, 940 (2005).

An employee's injury is compensable under the Act only if it arises out of and in the course of her employment. 820 ILCS 305/2 (West 2006). "In the course of" employment refers to the time, place, and circumstances under which the accident occurred. *Lee v. Industrial Comm'n*, 167 Ill. 2d 77, 81, 656 N.E.2d 1084, 1086 (1995). "For an injury to 'arise out of' the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58, 541 N.E.2d 665, 667 (1989). Additionally, an injury arises out of the employment if the claimant was exposed to a risk of harm beyond that to which the general public is exposed. *Brady v. L. Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921, 923 (1991).

An employee who suffers a repetitive-trauma injury may apply for benefits under the Act but must meet the same standard of proof as an employee who suffers a sudden injury. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 65, 862 N.E.2d 918, 924-25 (2006).

In the present case, sufficient evidence supports the Commission's finding that claimant's injuries arose out of and in the course of her employment with employer. Claimant worked for employer as an assembly-line packer for approximately eight years. Claimant worked four 12-hour shifts each week. She worked at each station for approximately one hour and then moved to a new station. Each station required repetitive work. Claimant testified that she used her arms at or above shoulder level regularly.

Claimant began feeling pain in her right shoulder while working in November or December 2005. She complained to her supervisor of worsening right shoulder pain on January 5, 2006.

Claimant first presented to Dr. Perez on January 9, 2006. Claimant reported right shoulder pain for approximately one year. Claimant underwent a magnetic resonance-imaging (MRI) scan on January 16, 2006. Dr. Perez diagnosed claimant with (1) right shoulder internal derangement and (2) right subacromial bursitis.

Claimant first presented to Dr. Luke on May 25, 2006. Dr. Luke opined that claimant's shoulder condition was either caused by or accelerated by the type of work that she was doing.

In the instant case, the evidence shows that claimant's work was repetitive. She worked on an assembly line and performed the same tasks over and over again. The Commission's finding that claimant suffered a repetitive-trauma injury that arose out of and in the course of her employment with employer is not against the manifest weight of the evidence. Further, the medical evidence also supported the finding that claimant's work was repetitive in nature. In particular, the testimony of Drs. Perez, Luke, and Terry supports the finding that claimant's work was repetitive in nature and that her injuries arose out of and in the course of her employment with employer. It is the function of the Commission to judge the credibility of witnesses and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 223-24 (1980). The Commission's finding that claimant suffered a repetitive-trauma injury is not against the manifest weight of the evidence.

Employer next argues that the Commission's finding that claimant's upper-right-shoulder injury is causally related to a work-related accident is against the manifest weight of the evidence. Whether a causal connection exists is a question of fact for the Commission, and a reviewing court

will overturn the Commission's decision only if it is against the manifest weight of the evidence. *Navistar International Transportation Corp. v. Industrial Comm'n*, 331 Ill. App. 3d 405, 415, 771 N.E.2d 35, 44-45 (2002). In resolving questions of fact, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 223-24. "In cases relying on the repetitive-trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209, 614 N.E.2d 177, 180 (1993). A factual finding by the Commission will not be set aside on review unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005, 1008 (1987). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910, 851 N.E.2d 72, 77 (2006). If there is sufficient factual evidence in the record to support the Commission's determination, it will not be set aside on appeal. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 450, 657 N.E.2d 1196, 1199 (1995).

Here, the factual evidence presented at the arbitration hearing was sufficient to support the Commission's determination that claimant's upper-right-shoulder injury was causally related to claimant's work activities. Dr. Luke opined that claimant's shoulder condition was either caused by or accelerated by the type of work that she was doing. Dr. Terry clearly linked the repetitive nature of claimant's work and the condition for which he treated her to the functions of her employment. His opinion was expressed without qualification or reservation.

Dr. Sagerman, who examined claimant pursuant to section 12 of the Act, rendered an opinion based in part upon the job description proffered by employer, which was impugned by claimant as

inaccurate. Further, Dr. Sagerman admitted overhead work could exacerbate a preexisting condition necessitating surgery. The Commission found Dr. Sagerman's opinions lacked the unequivocal credibility of the claimant's treating physicians. His testimony was qualified and contradicted. As noted, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 223-24. The record contains a sufficient evidentiary basis for the Commission's determination that claimant's upper-right-shoulder injury was causally related to her employment with employer.

Employer next argues the Commission failed to give reasons for credibility findings contrary to those of the arbitrator, and therefore, we must remand the matter back to the Commission with directions to make the necessary findings.

In *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010), this court opined that "[w]hen the Commission gives no reasons for a contrary credibility determination, its decision may be lacking in findings which make meaningful judicial review possible; and, in such cases, the appropriate remedy is to remand the matter back to the Commission with directions to make the necessary findings." However, when, as in this case, the Commission gives its reasons for making credibility findings contrary to those made by the arbitrator, our inquiry on review is whether the findings are against the manifest weight of the evidence. *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 223-24. Whether this court might have reached the same conclusion is not the test of whether the Commission's determination is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90, 93 (1982).

In this case, the arbitrator adopted the opinion of Dr. Sagerman. Dr. Sagerman opined that there was no causal connection between claimant's work and the conditions giving rise to her symptoms. The arbitrator found Dr. Sagerman's opinions more persuasive than those of Drs. Perez, Luke, and Terry.

In contrast, the Commission found that claimant proved her work was repetitive and that her injuries arose out of and in the course of her employment with employer. In arriving at its decision, the Commission relied upon the opinions of Drs. Perez, Luke, and Terry. The Commission found Dr. Sagerman's opinion denying causal connection based on "incomplete and inaccurate information regarding [claimant's] job." Dr. Sagerman conceded that if the job description provided to him by employer was not accurate, it would compromise the basis of his opinion. Contrary to the arbitrator's finding that claimant "did not raise her arm at shoulder level or above," the Commission found it "undisputed that [claimant] did work at shoulder level and even [employer's] job analysis admits this."

The Commission exercises original jurisdiction and is not bound by an arbitrator's findings. *Thiel*, 398 Ill. App. 3d at 866, 923 N.E.2d at 877. The Commission resolved the question of whether claimant proved she sustained accidental injuries arising out of and in the course of her employment with employer. Although contrary to the findings of the arbitrator, the Commission's decision is not contrary to the manifest weight of the evidence.

We affirm the judgment of the circuit court confirming the Commission's decision and remand to the Commission for further proceedings.

Affirmed and cause remanded to the Commission.