

NOTICE  
Decision filed 04/21/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

Workers' Compensation  
Commission Division  
Filed: April 21, 2011

No. 4-10-0273WC

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e) (1).

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

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MICHAEL SELDAT	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
Appellant,	)	MACON COUNTY
	)	
v.	)	No. 08 MR 447
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <u>et al.</u> ,	)	
(Bridgestone/Firestone-North	)	
America Tire, Inc.	)	HONORABLE
	)	ALBERT G. WEBBER,
Appellees).	)	JUDGE PRESIDING.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice McCullough and Justices Holdridge,  
Hudson and Stewart concurred in the judgment.

**ORDER**

HELD: The Commission's finding that the claimant's action is barred by the statute of limitations is not against the manifest weight of the evidence.

The claimant, Michael Seldat, appeals from an order of the Circuit Court of Macon County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), denying him benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), for carpal tunnel syndrome in both hands allegedly caused by a repetitive trauma injury he sustained

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while in the employ of Bridgestone/Firestone-North America Tire, Inc. (Bridgestone). For the reasons which follow, we affirm the judgment of the circuit court.

The following factual recitation is taken from the evidence presented at the December 18, 2006, arbitration hearing on the claimant's petition for adjustment of claim.

The claimant, who had worked for Bridgestone for over 22 years, testified at the arbitration hearing that his job duties varied over the course of his employment but included extensive handling of tires that weighed between 15 and 60 pounds. He said that he started noticing numbness and weakness in his hands in October 2001, and reported his problems to his supervisor, who sent him to the company physician. A report of that visit with the Bridgestone physician states that the claimant reported having had "approximately a one month history of waking at night with both hands being numb" and had begun noticing symptoms at work when he was throwing tires. The doctor's assessment was "[c]hronic depression" and "[n]on specific parasthesia's [sic] of the hands with non physiologic century changes of the forearms." In his testimony, the claimant confirmed that he reported noticing numbness in his hands at work. Under cross-examination, the claimant recounted part of his interaction with the company doctor as follows:

"Q. \*\*\* Did you tell [the company physician] the only time you really noticed this difficulty at work is if you

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were throwing tires?

A. Which is what I did most everyday, but, yeah, I handled tires everyday and so it was an everyday occurrence with lifting both hands. Like I said, I just didn't use one hand in handling tires, I used both hands. \*\*\* I carried tires, one tire in each hand. You had to inspect with both hands on the modules \*\*\*. One machine you pull with this hand to pull it on the balancer and \*\*\* you had to use your left hand for this machine. So the way the machines were set up you used both hands.

Q. And so you noticed during the course of your work as you have just described it that you were getting this numbness in both of your hands?

A. Yes."

According to the claimant, he began his visit with the company doctor believing that he had a physical problem with his hands but, when the physician sent him back to work without a diagnosis of a physical problem, he believed the doctor's non-diagnosis. On cross-examination, the claimant could not recall whether the company physician also encouraged him to schedule a follow-up visit with a personal doctor.

The claimant said that he continued to work at that Bridgestone plant until December 2001, when the plant closed.

A January 22, 2002, treatment note from Dr. Rana Mahmood states that, in screening studies, the claimant showed mild

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slowing in both median nerves through the carpal tunnel areas.

A January 24, 2002, treatment note from Dr. Mark Greatting indicates that the claimant had been referred with complaints of numbness and tingling, and decreased grip strength, in both hands. According to the note, the claimant reported that the numbness bothered him while he was at work and occasionally woke him up at night. Dr. Greatting formed an impression that the claimant was suffering from mild bilateral carpal tunnel syndrome, caused or aggravated by the claimant's work activities. Dr. Greatting reiterated that opinion in his evidence deposition.

In early February 2002, through either a transfer or a preferential hiring program, the claimant began work at a different Bridgestone plant in Tennessee.

Records of screening tests performed on the claimant on December 8, 2004, indicate moderate bilateral carpal tunnel syndrome. The claimant testified that his symptoms in 2004 were the same type of symptoms he had suffered when he was initially diagnosed with carpal tunnel syndrome. A December 10, 2004, treatment note from Dr. Marshall F. Brustein states that the claimant continued to report carpal tunnel pain and requested corrective surgery. That surgery was performed on the claimant's right hand on December 16, 2004.

Dr. Greatting's February 15, 2005, treatment note states that the claimant continued to suffer from carpal tunnel syndrome in his left hand and would be scheduled for a carpal tunnel

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release surgery in that hand. The surgery was performed on March 8, 2005, and the plaintiff testified that he missed some work immediately following the surgery. Dr. Greatting's later treatment notes indicate that the claimant's condition improved following the surgery. In his testimony, the claimant stated that Bridgestone's Tennessee plant released him from employment in 2006.

Dr. David Fletcher, who examined the claimant at Bridgestone's request in March 2005, after the claimant's left-wrist carpal tunnel surgery, testified at a deposition that, based on his examination and his review of medical records, the claimant's complaints of carpal tunnel syndrome began in October 2001. Dr. Fletcher acknowledged that the physician who treated the claimant in October 2001 did not diagnose carpal tunnel syndrome, but he explained that his independent review of the case caused him to disagree with that assessment. Dr. Fletcher also agreed that the claimant was not diagnosed with carpal tunnel syndrome until January 22, 2002. Dr. Fletcher opined that the claimant's symptoms exacerbated when he worked in Tennessee, to the point that he required surgical intervention. Dr. Fletcher stated that the claimant's missed work, from October 2004 to March 2005, was attributable to his work in Tennessee, not his work for Bridgestone up until 2002. However, on cross-examination, he agreed that the claimant's pre-2002 employment with Bridgestone had been at least a contributing factor to the

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claimant's state of ill-being.

Following the hearing, in a decision issued in February 2007, the arbitrator denied the claimant's petition for benefits on the grounds that the claimant and Bridgestone did not have an employee-employer relationship as of the alleged date of the injury, that the injury did not arise out of the claimant's employment with Bridgestone, that the claimant failed to give timely notice of the injury, and that the claim was barred by the statute of limitations. Based on evidence regarding the claimant's October 16, 2001, visit to a company physician, the arbitrator found that the claimant was aware of his condition, and knew that it was caused by his work, on that date. On June 27, 2008, the Commission affirmed and adopted the arbitrator's decision. The claimant thereafter filed a petition for judicial review of the Commission's decision in the Circuit Court of Macon County. The circuit court confirmed the Commission's decision, and the claimant now appeals.

On appeal, the claimant challenges all of the alternative bases on which the Commission denied his claim. Because the Commission's reasons work in the alternative to defeat his claim, the claimant must establish that each of the bases was faulty in order to upset the Commission's decision.

The claimant first argues that the Commission erred in concluding that his claim was barred by the statute of limitations, which requires that claimants file their

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applications for workers' compensation within 3 years of the date of a work-related accident. 820 ILCS 305/6(d) (West 2004). The Commission based its conclusion on a finding that the claimant's injury occurred on October 16, 2001, more than three years before the claimant filed the current petition on January 11, 2005. According to the claimant, his injury should be considered to have taken place on January 22, 2002, so that his claim was filed before the expiration of the statutory limitations period.

The claimant challenges the Commission's determination of the date of his injury. For a repetitive trauma injury, such as carpal tunnel syndrome, the date of the injury or accident is considered to be the date on which the injury manifested itself, that is, the date on which both the injury and its causal link to the employee's work became plainly apparent to a reasonable employee. *Durand v. Industrial Commission*, 224 Ill. 2d 53, 63, 72, 862 N.E.2d 918 (2007). "Setting this so-called manifestation date is a fact determination for the Commission." *Durand*, 224 Ill. 2d at 65. A reviewing court will not disturb the Commission's determinations of fact unless they are against the manifest weight of the evidence. *Durand*, 224 Ill. 2d at 64. "Fact determinations are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent--that is, when no rational trier of fact could have agreed with" the Commission. *Durand*, 224 Ill. 2d at 64.

In *Durand*, the claimant notified her supervisor in January

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1998 that she had noticed pain in her hands in September or October of that year and that she believed her pain was work-related. *Durand*, 224 Ill. 2d at 55. The claimant continued to work, but sought medical help in August 2000. In September 2000, her doctors told her that she suffered from carpal tunnel syndrome related to her work. *Durand*, 224 Ill. 2d at 55. In her testimony, the claimant said that, in January 1998, she believed her condition was work-related but did not know precisely what her condition was or that she had carpal tunnel syndrome. *Durand*, 224 Ill. 2d at 58-59. Although the Commission found that the claimant's injury occurred in September or October 1998, the supreme court reversed that finding and fixed the claimant's date of injury instead at September 2000, when she was diagnosed with carpal tunnel syndrome. *Durand*, 224 Ill. 2d at 73-74. To reach this conclusion, the supreme court relied on evidence that, before September 2000, the claimant did not know precisely what she was suffering from, did not seek medical treatment, may have had doubts as to whether she needed medical treatment, and did not suffer from a condition sufficiently severe to warrant a claim before September 2000.

Here, unlike the claimant in *Durand*, the claimant actually sought medical treatment for his condition of ill-being on the date the Commission cited as the date of his injury. Also unlike the claimant in *Durand*, there is no indication that this claimant's condition of ill-being changed appreciably between the

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two possible injury dates, so that we could say that the claimant was forced to wait until the later date to file a viable claim or to determine if he actually required medical attention. Further, the claimant here gave detailed testimony linking his condition to specific work activities, and he testified that he made this connection prior to his October 2001 visit to a company doctor.

Although the claimant testified that the October 2001 medical advice he sought actually dissuaded him from his belief that he suffered from a physical ailment, the record contains ample evidence to support the Commission's decision not to credit this testimony. The record discloses that, despite the company physician's non-diagnosis, the claimant sought further medical advice for the very same physical problems less than four months later. Further, as the arbitrator, and thus the Commission, noted, the claimant was unable to recall during his testimony whether the company physician recommended that he follow up with a personal physician. Based on these two facts, as well as the other evidence of the claimant's awareness of his condition, the Commission could very reasonably have concluded that the company physician's evaluation did not reverse the claimant's conviction that he suffered from a work-related condition of ill-being.

Given the deference we owe to the Commission's findings of fact, then, we conclude that there is sufficient evidence to support the Commission's finding that the claimant reasonably could have known, indeed did know, by October 2001 that he had a

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condition of ill-being caused by his work. Based on that conclusion, the Commission's finding that the date of the claimant's accident was October 16, 2001, the date he reported the pain to his supervisor and to company medical personnel, is not against the manifest weight of the evidence. Accordingly, the claimant's application for benefits, which was filed more than three years after October 16, 2001, is barred by the relevant statute of limitations. Because we agree with the Commission's finding that the statute of limitations barred the claimant's claim, we need not address the remainder of the claimant's challenges to the Commission's decision.

Based upon the foregoing analysis, we affirm the judgment of the circuit court, which confirmed the Commission's decision.

Affirmed.