

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).

Order Filed 4/27/11

NO. 4-10-0669WC

IN THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

Illinois Workers' Compensation Commission Division

GEORGE PRATT,)	Appeal from
Appellant,)	Circuit Court of
v.)	Vermilion County
THE WORKERS' COMPENSATION COMMISSION,)	No. 09MR223
<i>et al.</i> (Risser Electric, Appellee))	
)	Honorable
)	Mark Goodwin,
)	Judge Presiding.

PRESIDING JUSTICE MCCULLOUGH delivered the judgment of the court.

Justices Hoffman, Hudson, Holdridge, and Stewart concurred in the judgment.

ORDER

Held: (1) The Workers' Compensation Commission's finding that claimant failed to prove he sustained accidental injuries to his right middle finger arising out of and in the course of his employment with employer was not against the manifest weight of the evidence.

(2) The Workers' Compensation Commission's finding that claimant failed to prove he sustained left carpal-tunnel syndrome arising out of and in the course of his employment with employer was not against the manifest weight of the evidence.

(3) The Workers' Compensation Commission's finding that claimant failed to prove he sustained right carpal-tunnel syndrome arising out of and in the course of his employment with employer was not against the manifest weight of the evidence.

On August 1, 2006, claimant, George Pratt, filed an application for adjustment of claim (case No. 06-WC-33101) pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1

through 30 (West 2004)), seeking benefits from employer, Risser Electric, for injuries suffered to his "right hand and fingers" on October 1, 2003. On May 16, 2008, claimant filed a second application for adjustment of claim (case No. 08-WC-22644) alleging he sustained injuries to "both hands and fingers" on October 12, 2007. On May 21, 2008, claimant filed an amended application for adjustment of claim (case No. 06-WC-33101) seeking benefits from employer for injuries suffered to his "right hand and fingers and left hand and fingers" on October 1, 2003.

Both claims were consolidated for hearing before an arbitrator. With respect to case No. 06-WC-33101, the arbitrator found claimant failed to give timely notice of his accident on October 1, 2003, and denied claimant benefits. On review, the Workers' Compensation Commission (Commission) modified the arbitrator's decision, finding employer "acknowledged accident, causal connection, and notice regarding Petitioner's right ring finger condition and the medical treatment and lost time regarding that treatment." The Commission awarded claimant 63-6/7 weeks of temporary total disability (TTD) benefits at \$716.87 per week (820 ILCS 305/8(b) (West 2004)) and necessary medical expenses incurred by claimant through September 19, 2005.

With respect to case No. 08-WC-22644, the arbitrator found claimant failed to prove he sustained accidental injuries

on October 12, 2007, arising out of and in the course of his employment with employer and denied claimant benefits. On review, the Commission affirmed and adopted the decision of the arbitrator.

The Commission remanded both matters 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 decisions.

Claimant appeals, arguing (1) the Commission's finding that claimant's right-middle-trigger-finger impairment was not causally related to his injury on October 1, 2003, is against the manifest weight of the evidence; (2) the Commission's finding that claimant's left carpal-tunnel syndrome was not causally related to his injury on October 1, 2003, is against the manifest weight of the evidence; (3) the Commission's finding that claimant's right carpal-tunnel syndrome was not causally related to his injury on October 1, 2003, is against the manifest weight of the evidence; and (4) the Commission erred in denying additional TTD benefits and medical expenses. 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 give timely notice of his accident on October 1, 2003, and

denied claimant benefits (case No. 06-WC-33101). Claimant filed a petition for review of the arbitrator's decisions before the Commission. On review, the Commission modified the arbitrator's decision, finding employer "acknowledged [(at oral argument)] accident, causal connection, and notice regarding Petitioner's right ring finger condition and the medical treatment and lost time regarding that treatment." The Commission awarded claimant 63-6/7 weeks of TTD benefits at \$716.87 per week (820 ILCS 305/8(b) (West 2004)) and necessary medical expenses incurred by claimant through September 19, 2005.

With respect to case No. 08-WC-22644, the arbitrator found claimant failed to prove he sustained accidental injuries on October 12, 2007, arising out of and in the course of his employment with employer and denied claimant benefits. Claimant filed a petition for review of the arbitrator's decisions before the Commission. On review, the Commission affirmed and adopted the decision of the arbitrator.

The Commission remanded both matters back to the arbitrator pursuant to *Thomas*. Claimant sought judicial review of the Commission's decision in the circuit court of Vermilion County. The circuit court confirmed the Commission's decisions, and this appeal followed.

On appeal, claimant challenges only the Commission's decision in case No. 06-WC-33101.

Claimant argues that the Commission's finding that claimant's right-middle-trigger-finger impairment was not causally related to his injury on October 1, 2003, 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 v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 223-24 (1980). 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 was sufficient to support the Commission's finding that claimant's right-middle-trigger-finger impairment was not causally related to the October 1, 2003, work accident. Claimant first reported "catching" of his right middle finger on August 8, 2005, more than 22 months after the alleged accident date of October 1, 2003. Claimant had not worked for employer for more than seven months. Further, Dr. Kaplan returned claimant to work on August 8, 2005, with a five-pound weight limit for three weeks because claimant had not worked, and full use of his right ring finger as of August 29, 2005. Claimant did not receive further treatment of his right ring finger.

Dr. Fletcher testified that claimant's right-middle-finger complaints could have been caused by "an incomplete trigger finger release, but also could be related to the diabetic condition I've talked about" and in combination with smoking. The Commission was entitled to find the evidence was insufficient to establish the existence of a work injury which occurred 22 months after the alleged accident date of October 1, 2003, and more than seven months after claimant last worked for employer. The Commission was not required to give weight to claimant's attempts much later to refer back to the first accident. The record contains sufficient evidence for the Commission to find that claimant's right-middle-trigger-finger impairment was not

causally related to the October 1, 2003, work accident.

We note that in the cases cited by claimant in support of his argument, *International Harvester Co. v. Industrial Comm'n*, 46 Ill. 2d 238, 263 N.E.2d 49 (1970), and *Fermi National Accelerator Lab v. Industrial Comm'n*, 224 Ill. App. 3d 899, 586 N.E.2d 750 (1992), the supreme court and this court, respectively, affirmed the judgment of the circuit court confirming the Commission's decision.

As claimant correctly observes, he provided a detailed account of his right middle finger "catching" beginning on August 8, 2005, and subsequent treatment through October 12, 2007. The Commission indicates at page five of its decision (case No. 06-WC-33101) that claimant "testified only of right *ring* finger complaints until about October 2007." (Emphasis added.) This statement is not consistent with the Commission's factual findings, and it seems likely that "ring" is a typographical or transcription error for "middle." The findings of fact made by the Commission were not against the manifest weight of the evidence.

Claimant next argues that the Commission's finding that his left carpal-tunnel syndrome is not causally related to his work accident on October 1, 2003, is against the manifest weight of the evidence. Specifically, claimant argues that the overuse of his left hand following multiple surgeries caused his left

carpal-tunnel syndrome.

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 his employment. See 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).

Claimant cites *Modern Drop Forge Corp. v. Industrial Comm'n*, 284 Ill. App. 3d 259, 671 N.E.2d 753 (1996). In *Modern Drop Forge Corp.*, this court affirmed the circuit court's judg-

ment, confirming the Commission where the claimant's treating physician gave an opinion that the claimant's carpal-tunnel syndrome was primarily caused by the overuse of his left hand following amputation of his dominant right hand. *Modern Drop Forge Corp.*, 284 Ill. App. 3d at 267, 671 N.E.2d at 758.

In the present case, claimant did not complain of symptoms relating to left carpal-tunnel syndrome until November 2, 2007. Claimant sought treatment with Dr. Mushtaq complaining of "pain in using both hands at his job." Claimant had not worked for 21 months. Upon examination, Dr. Mushtaq found both hands "normal." Dr. Fletcher diagnosed claimant with bilateral carpal-tunnel syndrome on February 13, 2008. Claimant had not worked for two years. Dr. Fletcher acknowledged that "diabetes is a known risk factor for the development of carpal tunnel syndrome." Further, Dr. Fletcher testified that claimant's heavily calloused hands, despite being off work for two years, would indicate that claimant has been very active with his hands. The heavily calloused hands would not have been caused from his work for employer two years earlier. Claimant testified that he lives on approximately 13 acres, and mows and rakes approximately two acres. 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 left carpal-tunnel syndrome was not causally related to his October 1, 2003, work accident.

Claimant next argues the Commission's finding that his right carpal-tunnel syndrome is not causally related to his work accident on October 1, 2003, is against the manifest weight of the evidence. As we have stated, 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*, 331 Ill. App. 3d at 415, 771 N.E.2d at 44-45. 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. A factual finding by the Commission will not be set aside on review unless it is against the manifest weight of the evidence. *Orsini*, 117 Ill. 2d at 44, 509 N.E.2d at 1008. 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*, 365 Ill. App. 3d at 910, 851 N.E.2d at 77. If there is sufficient factual evidence in the record to support the Commission's determination, it will not be set aside on appeal. *Beattie*, 276 Ill. App. 3d at 450, 657 N.E.2d at 1199.

Here, the factual evidence presented at the arbitration

hearing was sufficient to support the Commission's determination that claimant's right carpal-tunnel syndrome was not causally related to claimant's work accident on October 1, 2003. Claimant complained of symptoms relating to right carpal-tunnel syndrome on October 12, 2007. Dr. Kaplan did not relate that condition to claimant's work. His opinion was expressed without qualification or reservation. He further testified that he told claimant during treatment that he did not believe the right carpal-tunnel syndrome was related to his work accident on October 1, 2003.

Dr. Fletcher acknowledged that "diabetes is a known risk factor for the development of carpal tunnel syndrome." Further, Dr. Fletcher testified that claimant's heavily calloused hands, despite being off work for two years, would indicate that claimant has been very active with his hands. 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 right carpal-tunnel syndrome was not causally related to his October 1, 2003, work accident.

Claimant next argues the Commission erred in denying additional TTD benefits and medical expenses for (1) right-middle-trigger-finger impairment, (2) left carpal-tunnel syndrome, and (3) right carpal-tunnel syndrome. Because we have

affirmed the decision of the circuit court, which confirmed all aspects of the Commission's decision, we need not address this argument.

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

Affirmed and cause remanded to the Commission.