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2011 IL App (4th) 100809WC-U

Workers' Compensation  
Commission Division  
Filed: September 22, 2011

No. 4-10-0809WC

**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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UNIVERSITY OF ILLINOIS,	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
Appellant,	)	CHAMPAIGN COUNTY
	)	
v.	)	No. 09 MR 911
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <i>et al.</i> ,	)	
(MICHAEL HEALEY,	)	HONORABLE
	)	THOMAS J. DIFANIS,
Appellees).	)	JUDGE PRESIDING.

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

**ORDER**

**HELD:** The Commission's determination that the injuries to both of the claimant's  
shoulders were causally related to his accident while working and compensable  
under the Workers' Compensation Act was not against the manifest weight of the  
evidence.

¶ 1 The University of Illinois (University) appeals from an order of the Circuit Court of

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Champaign County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), awarding the claimant, Michael Healey, benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)) for injuries to both of his shoulders. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 2 The following factual recitation is taken from the record on appeal and the evidence presented at the arbitration hearing conducted on October 23, 2008.

¶ 3 The claimant worked for approximately 17 years as a building service worker for the University. In January 2007, the claimant injured his left shoulder in what the parties agree was a work-related, compensable accident. He did not work for the University again after that injury. In a February 20, 2007, treatment note, Dr. Philbert Chen noted the claimant's difficulty using his left arm and recommended that the claimant perform only right-handed work. Dr. Chen repeated this recommendation in a treatment note the following week.

¶ 4 In a June 1, 2007, treatment note, Dr. Chen observed that the claimant was complaining of increased pain in his right shoulder and that the claimant attributed this pain to his compensating for his left-shoulder injury. During his testimony, the claimant explained that he felt the right-shoulder pain most acutely when he was performing daily household tasks and that his right arm had deteriorated due to the stress and strain of his using it exclusively while he rested his left arm.

¶ 5 On June 17, 2007, the claimant underwent surgery on his left shoulder. In an August 2 treatment note, Dr. Chen noted that the claimant was unable to raise his right arm and that the left-shoulder surgery had put an "extra load on the right side." Dr. Chen wrote that the claimant suffered from a right shoulder impingement. Thereafter, the claimant continued to seek care for, and eventually had surgery to address, his right-shoulder problem.

¶ 6 In a November 5, 2007, letter to counsel for the claimant, Dr. Robert Bane, one of the claimant's physicians, wrote that he agreed that the claimant's added use of his right arm after

his left-shoulder injury exacerbated the claimant's right-shoulder problems. In Dr. Bane's opinion, the claimant "probably ha[d] a gradual tear of attrition of [a right-shoulder tendon]" that became more symptomatic as the claimant was forced to rely more on his right side. Dr. Bane concluded that he believed that the claimant's work led to the right-shoulder problem.

¶ 7 In his deposition testimony, which was introduced as evidence at the arbitration hearing, Dr. Chen recalled that he treated the claimant for a work-related left-shoulder injury beginning in January 2007 and recommended that the claimant use only his right arm for work. By May or June 2007, the claimant reported "new symptoms on the right shoulder," which the claimant attributed to his accommodating the injured left shoulder. Dr. Chen testified that those right-shoulder symptoms eventually led to surgery. In Dr. Chen's opinion, the claimant "had a pre-existing condition \*\*\* on both sides" but that "the right-sided condition \*\*\* was made worse with excessive right-handed only activities \*\*\* and it presumably aggravated the pre-existing right-sided condition." On cross-examination, Dr. Chen clarified his assessment of the claimant's pre-existing condition by observing that "he had underlying shoulder problems on both sides of which the left was provoked initially requiring surgery" and that the claimant's right-side symptoms resembled those of his left. Dr. Chen also agreed that, with respect to the left shoulder only, the claimant reached maximum medical improvement (MMI) by March 2008.

¶ 8 After his examination of the claimant on the University's behalf, Dr. Edward Kolb wrote a letter stating that the claimant's right-arm condition did not appear to be related to any work activity, either because the claimant had an underlying shoulder problem or because the claimant suffered no triggering event while he was still working for the University. Dr. Kolb also offered that the claimant's left shoulder had reached MMI but that the claimant's right shoulder would benefit from further treatment.

¶ 9 On January 7, 2009, following a hearing conducted pursuant to section 19(b) of the Act (820 ILCS 305/19(b)(West 2008)), the arbitrator awarded the claimant temporary total disability

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(TTD) benefits for 144 1/7 weeks as well as medical expenses. Citing Dr. Chen's testimony, the arbitrator found that the injury to the claimant's right shoulder was a natural consequence of the claimant's left-shoulder injury.

¶ 10 The University sought a review of the arbitrator's decision before the Commission, which unanimously affirmed and adopted the arbitrator's decision with the modification that the period of TTD be shortened to 91 6/7 weeks, and remanded the case to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 11 The University filed a petition for judicial review of the Commission's decision in the Circuit Court of Champaign County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 12 On appeal, the University argues that the Commission erred in concluding that the claimant's right-shoulder injury was causally related to his accident while working. We disagree.

¶ 13 A prerequisite to the right to recover benefits under the Act is some causal relationship between the claimant's employment and the injury suffered. *Schwartz v. Industrial Comm'n*, 379 Ill. 139, 144-45, 39 N.E.2d 980 (1942). Further, an employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (West 2006). 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 (1989).

¶ 14 Compensation may be awarded under the Act even though the conditions of employment do not constitute the sole or principal cause of the claimant's injury. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921 (1991). The claimant need only show that some act or phase of the employment was a causative factor. *O'Fallon School District*

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*No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413, 417, 729 N.E.2d 523 (2000). This is a question of fact to be decided by the Commission, and we will not disturb the Commission's causation determination if it is against the manifest weight of the evidence. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 293, 591 N.E.2d 894 (1992). In order for a finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc.*, 228 Ill. App. 3d at 291.

¶ 15 The University argues that the claimant's right-shoulder injury could not have been caused by his employment, and did not arise out of his employment, because it did not come about until after he stopped work for the University and because, by his own admission, it was exacerbated by household tasks unrelated to his work. However, as the Commission noted, and as the claimant argues in his brief, when an injury is shown to have arisen out of and in the course of employment--as the parties agree is true of the claimant's left-shoulder injury--every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent, intervening cause attributable to the claimant's own intentional conduct. *Caterpillar, Inc.*, 228 Ill. App. 3d at 293 (quoting A. Larson, *The Law of Workmens' Compensation* § 13.00, at 3-502 (1990)).

¶ 16 The Commission found that the claimant's right-shoulder injury was a natural consequence that flowed from the left-shoulder injury, even if the right-shoulder injury did not occur until after the claimant stopped work for the University. This conclusion finds support in the evidence, from the claimant's testimony and his medical records, that the claimant's left-shoulder injury caused him to overuse his right arm and that the overuse of the right arm led to his right-shoulder problems. The conclusion also finds support from Dr. Chen, who opined that the right-shoulder problems flowed naturally from the medical orders that the claimant avoid using his left shoulder.

¶ 17 To the extent the University argues that the claimant's right-shoulder injury was solely

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the result of deterioration of a preexisting condition, and thus not a natural consequence of the injury to his opposite shoulder, we again disagree. "It has long been settled that, in preexisting condition cases, recovery will depend 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. v. Industrial Comm'n*, 207 Ill. 2d 193, 204, 797 N.E.2d 665 (2003). Here, there was sufficient evidence, including Dr. Chen's testimony and Dr. Bane's note that the claimant's compensation for his left-shoulder injury aggravated his right-shoulder condition, to support a finding that the claimant's work injury bore a causal relationship to his right-shoulder problems.

¶ 18 We, therefore, affirm the circuit court's order confirming the Commission's decision, and remand the matter to the Commission for further proceedings.

¶ 19 Affirmed and remanded to the Commission.