

NOTICE

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2012 IL App (5th) 110528WC-U
NO. 5-11-0528WC
IN THE
APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

OLIN CORPORATION,)	Appeal from the
)	Circuit Court of
Appellant,)	Madison County.
)	
v.)	No. 11-MR-151
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Patricia Williams,)	Clarence W. Harrison II,
Appellee).)	Judge, presiding.

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

ORDER

- ¶ 1 *Held:* When the claimant first reported problems with her hands on April 19, 2005, and continued to report the symptoms to various physicians throughout the years, the Commission's determination that April 19, 2005, was the accident date of the claimant's repetitive-trauma injury was not against the manifest weight of the evidence. In a repetitive-trauma injury case where the manifestation date is at issue, a claimant is entitled to pursue multiple theories as to the date of the accident without binding herself to one theory. The Commission's determination that the claimant provided the employer with timely, nondefective, and nonprejudicial notice was supported by the manifest weight of the evidence where the claimant testified she reported her symptoms to her manager, the employer's medical department, and the employer's "safety man," and where the employer continuously monitored her condition and was afforded every opportunity to direct her medical care.
- ¶ 2 The claimant, Patricia Williams, filed two applications for adjustment of claim against her employer, Olin Corporation, seeking workers' compensation benefits for injuries allegedly caused by her work-related duties. The first claim proceeded to an arbitration

hearing under section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/19(b) (West 2008)). The parties stipulated to causal connection of the claimant's bilateral carpal tunnel and ulnar tunnel syndromes. The arbitrator noted that the claimant chose not to pursue her second application for adjustment of claim. The arbitrator found that the claimant sustained injuries that arose out of and in the course of her employment. He found that the repetitive-trauma accidental injury manifested itself on April 19, 2005, and that the claimant gave timely notice of the accident. The employer was ordered to authorize and to pay for the recommended surgeries.

¶ 3 The employer appealed to the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the decision of the arbitrator. One commissioner dissented. The employer filed a timely petition for review in the circuit court of Madison County. The circuit court confirmed the Commission's decision, and the employer appealed.

¶ 4 **BACKGROUND**

¶ 5 At the start of the hearing, the arbitrator noted that the claim was two-pronged. One prong involved injury to the claimant's neck and the other involved a repetitive- trauma carpal tunnel claim. The arbitrator acknowledged that the claim involving the claimant's neck had been accepted as compensable and that the neck condition was not going to be addressed because it had not reached maximum medical improvement. Only the compensability of the carpal tunnel claim was addressed.

¶ 6 The claimant testified that she started working for the employer in 1972. In 2005, her job duties involved inspecting and packing ammunition. She stated that on April 19, 2005, she injured her neck and shoulder while performing her job. The pain traveled down her left arm into her hand. The claimant testified that she reported her injury to her supervisor, Frank Kwas, and then went to the employer's dispensary. The claimant stated that while she was at the dispensary, the employer's safety man came to speak to her. She told him about her

injury and he "pulled [her] off the job." The claimant testified that she told the treating staff at the employer's dispensary that she had weakness in both hands. She stated that she did not have problems with her hands prior to April 2005.

¶ 7 The employer's dispensary records show that the claimant went to the dispensary on April 19, 2005. The only note appearing in the record states "rtw no restriction to fu on 04/26/2005 given otc ibuprofen and ice to neck prn." The record on that date does not include a description of the claimant's complaints or of the accident. The records show that the claimant returned to the dispensary on April 20, 2005, with neck, arm, and chest pain. The claimant testified that she followed up with her primary doctor, Dr. Vera Carter-Shields.

¶ 8 The claimant filed her application for adjustment of claim against her employer on July 5, 2005, alleging "repeat trauma" to the "upper body and back" on April 19, 2005. She checked that notice of the accident was given to the employer orally.

¶ 9 On July 14, 2005, Dr. Dan Riew, a cervical spine surgeon, examined the claimant on a referral from Dr. Carter-Shields. The claimant testified that she saw Dr. Riew for a surgical consult on her neck. In the new-patient visit notes, Dr. R. Shay Bess, an associate of Dr. Riew, wrote that the claimant presented with weakness of the left entire upper extremity and numbness of the left index, long, ring, and small fingers. Dr. Bess wrote that the claimant occasionally had difficulty picking up small objects. At this visit, the claimant completed a spine patient questionnaire, which was admitted into evidence. The questionnaire contained a series of drawings with a list of symptoms, and the claimant was asked to shade body areas that suffered from these symptoms. The claimant shaded both hands and noted symptoms of aching, numbness, pins and needles, burning sensation, and stabbing pain. She indicated that her arm below her elbow and her wrist/hand was an area that had bothered her or limited her function in the past week. She indicated that she suffered from numbness or tingling in the arm and/or hand and weakness in the arm and/or hand most of the time in the

past week. She said that, in the past week, the numbness or tingling in the arm and/or hand had been very bothersome and the weakness in the arm and/or hand had been extremely bothersome. She noted that her symptoms were getting much worse. Dr. Riew diagnosed the claimant with cervical spondylosis, disc herniation, and radiculopathy on the left side.

¶ 10 The claimant sought further medical attention, primarily for her neck. On February 8, 2006, she was sent for an independent medical evaluation. Dr. James J. Coyle, a spine surgeon, examined her and wrote a letter summarizing the examination to the case management consultant for the employer. He wrote that the claimant gave a history of neck pain beginning in April 2005. He stated that her chief complaints were swelling in her left shoulder, numbness in both hands, and difficulty moving her neck. His exam showed nondermatomal tingling in both hands. Dr. Coyle diagnosed the claimant with probable left upper extremity cervical radiculopathy, cervical spondylosis, and a soft tissue mass over her left clavicle. He recommended that she have a nerve conduction study.

¶ 11 Dr. Lizette Alvarez performed an electrodiagnostic evaluation of the claimant on February 8, 2006. In a letter to Dr. Coyle, Dr. Alvarez wrote: "The patient says that since April of 2005 she has been experiencing neck pain with radiation into the left arm, with weakness of the left arm. She also had numbness in both hands." Dr. Alvarez concluded that there was electrodiagnostic evidence consistent with bilateral carpal tunnel syndrome, mild to moderate on the left and mild on the right. On February 28, 2006, a member of the employer's dispensary staff made a note in the dispensary records that there is "evidence of carpal tunnel, mild to moderate on the left and mild on the right."

¶ 12 The claimant was referred to Dr. William W. Sprich, a neurosurgeon, who examined her on March 24, 2006. In his office notes, he wrote that the claimant was injured the previous year and that she has had weakness and complaints throughout her left upper extremity, particularly in her thumb and index finger. He wrote that she had no complaints

in her right upper extremity. The claimant denied telling him that all her complaints were on her left side. She testified that she told him she had complaints on both sides. His clinical impression was that the claimant had cervical radicular issues.

¶ 13 Dr. Matthew Gornet, an orthopedic spine surgeon, first examined the claimant on August 10, 2006. In his patient notes he wrote that the claimant presented with a complaint of "neck pain to the anterior left chest with weakness and numbness in the left hand." She told him that the problem began on April 19, 2005. He wrote that the claimant "denies right-sided symptoms." Dr. Gornet performed a discectomy and cervical fusion on the claimant on September 21, 2007.

¶ 14 The claimant testified that her primary doctor, Dr. Carter-Shields, left her practice so she started seeing Dr. Aton. In May 2008, she went to Dr. Aton and told him that for two months she had suffered from numbness and tingling in her hands. He referred her to Dr. Ahmed for a nerve conduction study.

¶ 15 On June 4, 2008, the claimant had an EMG nerve conduction velocity study to evaluate pain and numbness of the upper and lower extremities. Dr. Carlos Yu interpreted the study and wrote in his patient notes that there was an entrapment of the neuropathy of the bilateral median nerves at the flexor retinaculum primarily affecting sensory fibers, that there was bilateral ulnar sensory neuropathies at the wrist, and that there was no evidence of cervical radiculopathy.

¶ 16 Dr. Noor Ahmed examined the claimant on July 7, 2008. In her patient notes, she wrote that the claimant was referred for right carpal tunnel symptoms of numbness and tingling and "has had the symptoms off and on for 2-3 months." Dr. Ahmed noted that the EMG confirmed ulnar and median nerve involvement. She recommended that the claimant try splints or medication before surgery was considered. On July 28, 2008, the claimant followed up with Dr. Ahmed and complained that after wearing the splints for three weeks,

she had no relief. Dr. Ahmed discussed surgery with her.

¶ 17 At a follow-up visit with Dr. Gornet on September 29, 2008, he wrote in his patient notes that she was at maximum medical improvement with respect to her cervical spine. He noted that she still had hand problems, particularly in her right wrist. He diagnosed potential carpal tunnel and referred her to Dr. Michael Beatty.

¶ 18 On December 11, 2008, Dr. Beatty examined the claimant. Dr. Beatty recommended bilateral carpal tunnel and ulnar tunnel releases.

¶ 19 On June 1, 2009, Dr. Henry Ollinger performed an independent medical evaluation of the claimant. In his patient notes, he wrote that "[a]lso gleaned from the records is description of occasional hand problems since the accident date 4/19/05." Dr. Ollinger wrote that the claimant's persistent symptoms led to her evaluation by Dr. Ahmed who diagnosed the claimant with bilateral carpal tunnel syndrome and bilateral ulnar sensory neuropathies at the wrist. Dr. Ollinger noted that on December 11, 2008, Dr. Beatty reported that the claimant had bilateral hand tingling and numbness. Dr. Ollinger diagnosed the claimant with bilateral carpal tunnel syndrome and bilateral ulnar tunnel syndrome/Canal of Guyon compression of ulnar nerve at the wrists. He recommended operative decompression of the median nerves and ulnar nerves.

¶ 20 On August 5, 2009, the claimant completed another application for claim alleging repetitive trauma to both hands. She stated that the date of accident was June 4, 2008.

¶ 21 The employer meticulously monitored the claimant's condition after April 19, 2005, as evidenced by the detailed dispensary records. From the date of the accident until August 15, 2008, there are 105 notations relating to the claimant's condition.

¶ 22 The arbitrator found that, on April 19, 2005, the claimant sustained a repetitive-trauma accidental injury that arose out of and in the course of her employment. He found that the claimant gave timely notice of the accident to the employer. The arbitrator found the

claimant's testimony to be credible. He ordered the employer to authorize and pay for the recommended surgeries. The arbitrator noted that the claimant elected not to pursue the claim presented in the application for adjustment of claim filed August 5, 2009.

¶ 23 The employer sought review of the arbitrator's decision. The Commission affirmed and adopted the arbitrator's decision. The Commission found that the claimant provided timely notice of the events giving rise to her bilateral carpal tunnel syndrome. It also found that the employer was not prejudiced by the manner in which the claimant presented her claim for that condition. The Commission 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). One commissioner dissented.

¶ 24 The employer appealed the Commission's decision to the circuit court. The circuit court confirmed the Commission. The court found that Dr. Alvarez noted on February 8, 2006, that the claimant had numbness in both hands, and that there was ample evidence in the employer's dispensary records and the claimant's testimony that she had symptoms in both hands shortly after the accident and into 2006 to support the Commission's decision. The employer filed a timely notice of appeal.

¶ 25 ANALYSIS

¶ 26 The employer argues that the Commission's determination that the accident date of the claimant's bilateral carpal tunnel and ulnar condition was April 19, 2005, was against the manifest weight of the evidence. It argues that the Commission should have found the manifestation date was June 4, 2008, the date that the claimant underwent a nerve conduction study and the date of injury she alleged on her second application for adjustment of claim.

¶ 27 A reviewing court will set aside the Commission's decision only if its decision is contrary to law or its fact determinations are against the manifest weight of the evidence. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). "A reviewing

court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Id.* The Commission's decision is not against the manifest weight of the evidence when there is sufficient evidence in the record to support the Commission's determination. *R&D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010).

¶ 28 An employee who suffers a repetitive-trauma injury may apply for benefits under the Act, but must meet the same standard of proof as a claimant who alleges a single, definable accident. *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. The employee must identify a manifestation date which is a date within the limitations period on which both the injury and its causal link to the employee's work became plainly apparent to a reasonable person. *Id.* at 65, 862 N.E.2d at 924. "The test of when an injury manifests itself is an objective one, determined from the facts and circumstances of each case." *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 47, 556 N.E.2d 261, 264 (1989). Determining the manifestation date is a fact determination for the Commission. *Durand*, 224 Ill. 2d at 65, 862 N.E.2d at 925. Fact determinations are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Id.* at 64, 862 N.E.2d at 924.

¶ 29 The employer argues that the claimant's repetitive-trauma injury did not manifest itself until June 4, 2008. It argues that the claimant's left upper extremity symptoms between April 2005 and when she had cervical spine surgery on September 21, 2007, were due to her cervical disc pathology. The employer asserts that while the claimant was diagnosed with carpal tunnel syndrome in February 2006, she continued working over an extended period of time without medical treatment for the condition until 2008 when she was forced to undergo medical treatment because of her worsening symptoms. It argues that the manifestation date is June 4, 2008, the date the claimant underwent the nerve conduction

study which was ordered by Dr. Aton and which indicated carpal tunnel syndrome, and the date that appears on her second application for adjustment of claim.

¶ 30 While an employee who continues to work on a regular basis despite her progressive ill-being should not be punished for trying to perform her duties without complaint, it is also not this state's policy to encourage disabled workers to silently push themselves to the point of medical collapse before giving the employer notice of an injury. *Three "D" Discount Store*, 198 Ill. App. 3d at 49, 556 N.E.2d at 265. "[T]he peculiar facts of each case must be closely analyzed in repetitive-trauma cases to be fair to the faithful employee and his employer as well as to the employer's compensation insurance carrier." *Id.*

¶ 31 In the instant case, the Commission determined that the accident date was April 19, 2005. The claimant testified that on April 19, 2005, she injured her neck and shoulder while performing her job and that the pain traveled down her left arm into her hand. She went to the employer's dispensary on April 19 and 20, 2005, where she testified she reported weakness in both hands. On July 14, 2005, she was examined by Dr. Riew and Dr. Bess. Dr. Bess wrote in the new-patient visit notes that the claimant presented with weakness of the left upper extremity and numbness of the left index, long, ring, and small fingers. On the questionnaire the claimant completed at that visit, she indicated she had symptoms of aching, numbness, pins and needles, burning sensation, and stabbing pain in both hands. She also noted that she suffered from numbness or tingling, and weakness in her arm and/or hand in the past week. On the questionnaire, she indicated that the numbness or tingling had been very bothersome, and the weakness had been extremely bothersome. She wrote that the symptoms were getting much worse.

¶ 32 At an independent medical evaluation on February 8, 2006, Dr. Coyle's exam showed nondermatomal tingling in both the claimant's hands. He recommended a nerve conduction study. Dr. Alvarez performed the nerve conduction study that day. She concluded that the

claimant had bilateral carpal tunnel syndrome, mild to moderate on the left and mild on the right.

¶ 33 In Dr. Sprich's March 24, 2006, office notes, he wrote that the claimant had weakness throughout her left upper extremity, particularly in her thumb and index finger.

¶ 34 The claimant went to Dr. Aton in May 2008 complaining of numbness and tingling in her hands. He referred her for a nerve conduction study. The study was conducted on June 4, 2008. On July 7, 2008, Dr. Ahmed examined the claimant for right carpal tunnel symptoms and found that the nerve conduction study confirmed ulnar and median nerve involvement. She prescribed splints. The claimant wore the splints, but returned to Dr. Ahmed complaining that they offered no relief. Dr. Ahmed discussed surgery with her.

¶ 35 On September 29, 2008, the claimant had a follow-up visit with Dr. Gornet for her cervical spine. He noted that the claimant still suffered from problems with her hands, diagnosed her with potential carpal tunnel syndrome, and referred her to Dr. Beatty. On December 11, 2008, Dr. Beatty examined the claimant. He diagnosed her with bilateral carpal tunnel syndrome and recommended bilateral carpal tunnel and ulnar tunnel releases.

¶ 36 On June 1, 2009, Dr. Ollinger performed an independent medical evaluation of the claimant. In his patient notes, he wrote that the medical records showed that the claimant had suffered from hand problems since April 19, 2005. He wrote that her persistent symptoms led to the evaluation by Dr. Ahmed who diagnosed the claimant with bilateral carpal tunnel syndrome and bilateral ulnar sensory neuropathies at the wrist. Dr. Ollinger diagnosed the claimant with bilateral carpal tunnel syndrome and bilateral ulnar tunnel syndrome/Canal of Guyon compression of the ulnar nerve at the wrists. He recommended surgery.

¶ 37 The claimant started complaining of tingling, numbness, and weakness in both her hands on April 19, 2005. The medical records show that she reported these symptoms to various physicians throughout the years. In February 2006, she was diagnosed with carpal

tunnel syndrome. While no treatment was given to her at that time, she continued to complain to her treating physicians about her hand problems.

¶ 38 The employer argues that the claimant's "left upper extremity symptoms between April 2005 and Dr. Gornet's surgery on September 21, 2007, were undoubtedly due to cervical disc pathology." On September 29, 2008, in a follow-up visit with Dr. Gornet relating to her cervical spine surgery, he noted that the claimant *still* suffered from problems with her hands. From this, the Commission could infer that the claimant's hand problems were not due to cervical disc pathology and that they related back to April 19, 2005.

¶ 39 The employer argues that the claimant's second application for adjustment of claim listing an accident date of June 4, 2008, was an admission against interest. An application for adjustment of claim is in the nature of a pleading. *Caterpillar Tractor Co. v. Industrial Comm'n*, 215 Ill. App. 3d 229, 238, 574 N.E.2d 1198, 1203-04 (1991). In workers' compensation cases, pleadings and procedures are informal and are designed to expedite and to achieve a right result. *Id.* at 239, 574 N.E.2d at 1204. "Thus, the Commission must decide a case on the evidence presented and on the merits of the case before it and must not be restricted to the information provided on a form." *Id.* In a repetitive-trauma injury case where the manifestation date is at issue, a claimant is entitled to pursue multiple theories as to the date of the accident without binding herself to one theory. The Commission will examine the evidence and decide the issue on the facts presented.

¶ 40 In the instant case, the Commission examined the evidence and determined that the manifestation date of the claimant's repetitive-trauma injury was April 19, 2005. There is sufficient evidence in the record to support the Commission's finding; therefore, its decision is not against the manifest weight of the evidence.

¶ 41 The employer next argues that the Commission's determination that the claimant provided it with timely, nondefective, and nonprejudicial notice was against the manifest

weight of the evidence. Notice of an accident must be given to the employer as soon as practicable, but not later than 45 days after the accident. 820 ILCS 305/6(c) (West 2008). The employer argues that there is no evidence in the record that the claimant notified it that she sustained a work-related injury within 45 days of June 4, 2008.

¶ 42 The Commission determined that the manifestation date of the claimant's repetitive-trauma injury was April 19, 2005, and this determination is not against the manifest weight of the evidence. As a result, the claimant was required to give notice of the accident within 45 days of April 19, 2005. "The findings of the Commission regarding notice will not be disturbed on review unless they are against the manifest weight of the evidence." *S&H Floor Covering, Inc. v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 264, 870 N.E.2d 821, 825 (2007).

¶ 43 The Commission found that the claimant provided timely notice of the events giving rise to her bilateral carpal tunnel syndrome. It further found that the employer was not prejudiced by the manner in which the claimant presented her claim for that condition. The Commission noted that the employer stipulated to causation at the arbitration hearing. It found that the claimant testified that while performing her job duties on April 19, 2005, she developed neck pain and radicular symptoms going all the way down to her hands. She stated that she reported these symptoms to Mr. Kwas, the employer's medical department, and its "safety man." The Commission noted that the employer continuously monitored the claimant's condition after April 19, 2005, as evidenced by the detailed notes in the employer's dispensary records. The employer's nurse case manager arranged for the claimant to see Dr. Coyle on February 8, 2006, and he arranged for an EMG the same day. Dr. Alvarez performed the nerve conduction study and noted bilateral hand numbness. On February 28, 2006, personnel in the employer's dispensary documented that on February 8, 2006, the nerve conduction study demonstrated evidence of bilateral carpal tunnel syndrome. The

Commission held, "In a case such as this, where the employee immediately reported symptoms secondary to activities which the employer agreed could cause carpal tunnel syndrome, and where the employer was afforded every opportunity to direct the employee's treatment and obtain diagnostic testing, no prejudice is evident to the Commission." As shown by the Commission's analysis, there is evidence in the record to support the Commission's decision that the claimant provided timely, nonprejudicial notice to the employer.

¶ 44 Finally, the employer argues that the Commission's award of prospective medical treatment is against the manifest weight of the evidence. It argues that because the claimant failed to provide it with timely notice of her June 4, 2008, accident, her claim was barred and the court should vacate the Commission's award of prospective medical treatment. As discussed, the manifestation date of the claimant's repetitive-trauma injury was April 19, 2005, and she provided the employer with timely notice. Thus, the claimant's claim was not barred. In addition, the employer stipulated to causal connection, and Dr. Ollinger, who performed an independent medical evaluation at the request of the employer, recommended surgery. The Commission's award of prospective medical treatment is not against the manifest weight of the evidence.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the judgment of the circuit court confirming the decision of the Commission is affirmed, and the cause is remanded to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 47 Affirmed and remanded.