

Workers' Compensation  
Commission Division  
Filed: May 20, 2013

No. 4-11-1079WC

**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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LORRAINE SHOOP,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Livingston County
	)	
v.	)	
	)	No. 11 MR 11
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, et al.,	)	
(PTC Alliance,	)	Honorable
	)	Jennifer H. Kauknecht,
Appellee).	)	Judge Presiding.

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

**ORDER**

Held: The Commission's finding that the claimant failed to give the employer notice of her injury is not against the manifest weight of the evidence.

¶ 1 The claimant, Lorraine Shoop, appeals from an order of the Circuit Court of Livingston County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) denying her benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2006)), for a low-back injury she allegedly received while in the employ of PTC Alliance (PTC) by reason of her failure to give timely notice of her injury. PTC cross-appeals from that portion of the same order confirming the Commission's finding that the claimant proved a work-related injury. For the reasons which follow, we affirm the judgment of

the circuit court and dismiss PTC's cross-appeal.

¶ 2 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on May 12, 2010.

¶ 3 The claimant testified that she began working as a material handler for PTC in September 2006. She identified her immediate supervisor as John Boyd, who she said was "the expeditor on the shift." She testified that, on December 18, 2006, she felt a "pop" in her back while she was working. She said that she reported her injury to Boyd, who "was running the floor that night." When asked if Boyd was the supervisor, the claimant responded, "[p]retty much, yes." The claimant recalled that she told Boyd of her injury, and he told her that she should not go to the hospital because it might cost her a promotion, or even her job.

¶ 4 The claimant said that she nonetheless went to the hospital that day. At the hospital, she reported that she woke up with back pain; in her testimony she explained that she gave that history because she "wanted the promotion." The claimant thereafter continued to seek medical treatment for her back.

¶ 5 On February 21 and 22, 2007, the claimant sent emails to supervisors at PTC asking for sick leave so that she could undergo a surgical procedure on her lower back. The first email, sent on February 21, was sent to Edward Wegner, whom a PTC manager later identified as the claimant's immediate supervisor. Later emails were sent to additional supervisors.

¶ 6 On February 27, 2007, the claimant submitted to PTC a disability claim form, seeking disability time off, so that she could undergo a surgical procedure. The form, which the claimant signed, stated that her injury was not work-related.

¶ 7 On March 2, 2007, the claimant submitted to PTC an accident report indicating that she had injured her back at work on December 21, 2006. The report stated that she told John Boyd that evening about the pop in her back.

¶ 8 On March 6, the claimant sent an email to PTC supervisors informing them of the date of

her surgery. In the note, she added the following:

"It should be under workers comp. It was done on the bundling table around the [d]ate of Dec 21, 2006. I told John Boyd when it happed[ed] but I did not fill out any paper work. However it was done here and so I filled out the injury report on Friday March 2<sup>nd</sup>. \*\*\* I was trying to have my insurance cover all the expense but I cannot [lose] my job over this so am going to do what I should have done in the first place and that it turn it in as workers comp since it did indeed happen here."

¶ 9 The claimant was terminated from PTC's employment on March 7. On March 14, she underwent her first surgery to treat her back condition. She eventually underwent two additional surgeries, on August 9, 2007, and January 21, 2008.

¶ 10 During her testimony, the claimant reiterated that she avoided reporting her injury out of concern for her possible promotion, and the following exchange took place:

"Q So the first time you told anyone of authority at [PTC] that your condition was work related was right before your surgery?

A Correct."

¶ 11 In an evidence deposition conducted on January 9, 2009, Daniel McGinn, a human resources manager at PTC, testified that PTC had a written policy requiring employees to report injuries immediately and to seek medical treatment. PTC introduced into evidence a written copy of that policy, which was signed by the claimant. In her testimony, the claimant affirmed that she was aware of the accident policy.

¶ 12 McGinn testified that he did not receive notice of the claimant's alleged December 2007 injury until "[m]uch later," on March 2, 2007. McGinn recalled that, when he asked the claimant why she had not reported her accident, she responded that "she didn't have her 45 days in the union at the time and she didn't want to lose her job." McGinn said that the claimant later filled out an accident report that, unlike her time-off request, stated that her injury was work-related.

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He said that PTC terminated her employment on the ground that she submitted a falsified document to the company.

¶ 13 Regarding John Boyd's position, McGinn explained that Boyd was an "expeditor," that is, an hourly-paid union member who "works on the floor." McGinn said that Boyd's job "basically [was] machine setup and to disburse employees as to where they should work that particular shift." McGinn stated that Boyd was not a supervisor and had no authority within the company. According to McGinn, no hourly union workers were supervisors at PTC. McGinn also testified that employees were allowed to choose which tables they worked at during a shift.

¶ 14 In her testimony, the claimant stated that she knew Boyd was a member of the union. She said that, at the time of her injury, she understood Boyd to be "the main person on [the] floor," because "[they] didn't have anybody with a white hat which would have been a supervisor." The claimant then clarified that supervisors wore white hats and that she saw nobody on the floor wearing a white hat, so she believed Boyd to be the highest ranking worker. In rebuttal to McGinn's testimony that employees were allowed to choose their work tables, the claimant testified that Boyd normally told her which station to use.

¶ 15 Following a hearing, the arbitrator found that, although the claimant had proven a work-related injury, her claim had to be dismissed because she failed to give timely notice of her injury to PTC. The arbitrator reasoned that Boyd was a co-worker and not a supervisor. In so stating, the arbitrator noted that the claimant knew Boyd did not wear a white supervisor's hat, that his advice to her was of the type more likely to be offered by a co-worker, and that Boyd was an hourly union worker. The arbitrator also cited the claimant's statement, in her March email to PTC supervisors, that she was doing what she should have done earlier and reporting her injury as a workers' compensation matter.

¶ 16 Both parties sought review of this decision before the Commission. On January 6, 2011, the Commission issued a ruling affirming and adopting the arbitrator's decision.

¶ 17 Both parties sought judicial review of the Commission's decision in the circuit court of Livingston County. On November 7, 2011, the circuit court confirmed the Commission's decision. The claimant now appeals, and PTC cross-appeals.

¶ 18 In her appeal, the claimant argues that the Commission erred in finding that she did not give proper notice of her injury to PTC. "The giving of notice to the employer within 45 days of the accident pursuant to section 6(c) of the [Act] is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act. *Ristow v. Industrial Comm'n*, 39 Ill. 2d 410, 413, 235 N.E.2d 617 (1968). A claim is barred if no notice whatsoever is given. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 96, 631 N.E.2d 724 (1994). The Commission's determination as to whether notice has been given is a finding of fact and will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Gano*, 260 Ill. App. 3d at 95. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992).

¶ 19 The claimant agrees that she provided no notice to anyone at PTC other than Boyd within the 45-day period. She argues that the Commission erred here because she viewed Boyd as her supervisor. In support, she cites her testimony that Boyd directed her work and that she saw no higher-ranking employees on the floor at the time of her injury. However, in spite of the claimant's testimony, the Commission had several reasons to conclude that Boyd was not a supervisor capable of receiving notice on PTC's behalf. First, as the Commission noted, the claimant knew that supervisors all wore white hats, and that Boyd did not wear a white hat. Second, the claimant knew that Boyd was a union worker, and, as McGinn explained, none of the PTC supervisors were unionized. Third, the claimant filed a report with PTC asserting that her injury was not work-related. If she believed her conversation with Boyd to constitute notice to a PTC supervisor, then she could not have expected her falsified report to deceive PTC. Fourth, as

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the Commission noted, the nature of Boyd's advice indicated that he was a co-worker and not a supervisor. Indeed, if Boyd were a supervisor, his advice to avoid telling a supervisor would have been impossible to execute, since it was given in response to the claimant's telling him of her injury. Fifth, as the Commission noted, the claimant stated in her March 2 email to McGinn that she had not reported her injury as work-related, even though she should have done so in the first place. All of these points lend strong support to the Commission's determination that the claimant's conversation with Boyd did not constitute notice to PTC of her injury. Thus, we cannot say that the Commission's finding is against the manifest weight of the evidence.

¶ 20 The claimant also argues that her claim cannot be dismissed for lack of notice, because PTC has failed to demonstrate how the lack of notice prejudiced it. However, as PTC observes, the requirement that an employer demonstrate prejudice applies only to defective notices; where there is no notice at all, an employer need not show prejudice. *Ristow*, 39 Ill. 2d at 413-14. Thus, PTC was not required to show that it was prejudiced by the claimant's failure to provide it timely notice.

¶ 21 Our decision to uphold the Commission's dismissal of the claim renders PTC's cross-appeal moot, which asks us to deny the claimant benefits on other grounds. For these reasons, we affirm the judgment of the circuit court, which confirmed the decision of the Commission and dismiss the cross-appeal.

¶ 22 Affirmed; Cross-appeal dismissed.