2013 IL App (4th) 120144WC-U

Workers' Compensation
Commission Division
Filed: May 21, 2013

No. 4-12-0144WC

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

LANDRETH LUMBER COMPANY, Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION, et al., (Oscar Dean Landreth, Appellee).	))))))))))	Appeal from the Circuit Court of Macoupin County No. 11 MR 16 Honorable Kenneth R. Deihl, Judge Presiding.

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

ORDER

¶ 1 Held: The Commission did not err in its finding that the claimant's knowledge of his own injury satisfied the notice requirement of section 6(c) of the Workers' Compensation Act (Act) (820 ILCS 305/6(c) (West 2004)), or in its finding that an injury actually occurred.

¶ 2 Landreth Lumber Company (Landreth Lumber) appeals from an order of the Circuit Court of Macoupin County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), awarding the claimant, Oscar Dean Landreth, benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2006)), for a neck injury he allegedly received while in its employ. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on October 25, 2010.

¶ 4 The claimant testified that, in February 2005, he was the president of Landreth Lumber, a company that had approximately 80 employees. On February 11, 2005, he slipped and fell on ice during the course of his work duties. The claimant said that, the next morning, he began to feel pain in his neck, shoulder, and right side and that he sought medical treatment the following Monday.

¶ 5 According to the claimant, Landreth Lumber's procedure for injured employers called for them to contact their direct manager, who would in turn notify the claimant of the injury. The claimant said that he had employees who would deal with workers' compensation issues for the company and who normally became involved in communications with the company's workers' compensation insurance carrier.

¶ 6 The claimant testified that he gave no notice of his injury to his workers' compensation employee and turned in no paperwork to his employee or to his insurance carrier. He explained that he delayed his notice because he "had no intention of doing anything until [he] ended up with [a] situation that seemed like was going to be ongoing." He also agreed that he submitted none of his bills to his insurance carrier until after he filed his workers' compensation claim approximately three years later. The claimant agreed on cross-examination that his claim was likely the only one, among the many his company dealt with, that was not reported within 45 days to the company's insurance carrier.

¶ 7 In an evidence deposition, Diane Cole, a claims examiner for Landreth Lumber's workers' compensation insurance carrier, testified that Landreth Lumber was involved in 66 workers' compensation claims. She said that the carrier's first notice of the claimant's injury came in March 2008. Cole stated that she contacted the Landreth Lumber employee who dealt with workers' compensation matters but that the employee had no knowledge of the claimant's injury.

Cole said that all of Landreth Lumber's other workers' compensation claims were reported by a Landreth Lumber employee who dealt with workers' compensation matters.

¶ 8 The claimant's injury eventually led to three surgeries: a discectomy and fusion at C3-4 on April 5, 2005; a discectomy and fusion at C5-6 and C6-7 on September 13, 2005; and a decompressive laminectomy at C4 with the addition of hardware from C3-C7 on July 21, 2008. As of the time of his testimony, the claimant still experienced constant headaches, tingling in his right arm, and soreness in his shoulders.

¶ 9 Following the hearing, the arbitrator found that the claimant was entitled to benefits under the Act and awarded him $567.87 per week for 275 weeks, because his injuries caused the permanent partial disability of 55% of his man as a whole. On the issue of notice, the arbitrator found that the claimant was the president and owner of Landreth Lumber, that the company's practice was that injuries be reported to him, and thus that his knowledge of his own injury constituted notice to his employer.

¶ 10 Landreth Lumber sought review of this decision before the Commission. On June 1, 2011, the Commission issued a ruling affirming and adopting the arbitrator's decision.

¶ 11 Landreth Lumber sought judicial review of the Commission's decision in the circuit court of Macoupin County. On January 20, 2012, the circuit court confirmed the Commission's decision. Landreth Lumber now appeals.

¶ 12 Landreth Lumber's sole contention on appeal is that the Commission erred in concluding that the claimant provided his employer timely notice of his injury. "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).

¶ 13 Normally, 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. However, here, the relevant historical facts are undisputed, and Landreth Lumber's entire argument hinges on our interpretation of the notice provisions of the Act. Thus, the parties present us a question of law, which we consider de novo. Elliott v. Industrial Comm'n, 303 Ill. App. 3d 185, 187, 707 N.E.2d 228 (1999); see Washington District 50 Schools v. Illinois Workers' Compensation Comm'n, 394 Ill. App. 3d 1087, 1090, 917 N.E.2d 586 (2009) ("Since our decision turns on statutory construction, we review the Commission's decision de novo.")

¶ 14 Landreth Lumbar argues that the claimant's knowledge of his own injury does not suffice as "notice" as required by section 6(c) of the Act, and that the claimant in fact was required to provide notice to one of his employees who handled workers' compensation matters, or to his insurance carrier. It thus asks to interpret that section of the Act. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Washington District 50 Schools, 394 Ill. App. 3d at 1090. The best indication of the legislature's intent is the language of the statute, which must be given its plain and ordinary meaning. Washington District 50 Schools, 394 Ill. App. 3d at 1090.

¶ 15 Here, the relevant statutory language provides that "[n]otice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident." 820 ILCS 305/6(c) (West 2004)). As the claimant points out in his brief, the plain meaning of this statutory language is quite clear–it requires that notice be given "to the employer." The claimant, as part-owner and president of Landreth Lumber, and as the person to whom workplace injuries were regularly reported, unquestionably qualifies as "the employer" for notice purposes. Although Landreth Lumber argues that the claimant also should have taken steps to notify his company's insurance carrier or lower employees who might notify his insurance carrier, no such requirement

appears in the plain language of the Act. The Act requires only that the employer be notified, and the employer here obtained notice of the injury upon its occurrence.

¶ 16 To urge another result, Landreth Lumber observes that section 6(c) also explains that the notice "may be given orally or in writing." 820 ILCS 305/6(c) (West 2004). Landreth Lumber relies on this language to argue that the claimant did not satisfy the statute, because his notice (to himself) was not given "orally" or "in writing." We disagree with Landreth Lumber's interpretation that the quoted statutory language sets out a requirement that notice be either oral or written. Instead, we interpret the statute's use of the word "may" to be permissive, so that it expressly allows those two methods of notice but does not necessarily exclude others. See e.g., Vacos v. LaSalle Madison Hotel Co., 21 Ill. App. 2d 569, 572, 159 N.E.2d 24 (1959) (legislature's use of the word "may" in section 5(b) of the Act read to allow a choice, not create a mandate).

¶ 17 Landreth Lumber also argues that, by failing to record his injury or report it to his insurance carrier, the claimant violated section 6(b) of the Act (820 ILCS 305/6(b) (West 2004)), which requires employers to submit timely reports of workplace accidents. However, as Landreth Lumber itself observes in its brief, "Section 6(b) is not a bar to [the claimant's] receiving benefits under the Act," even if it underscores what Landreth Lumber terms the claimant's "unique dual role as both injured worker as well as" employer to whom injuries were to be reported.

¶ 18 In a related argument, Landreth Lumber asserts that the Commission erred in finding that a work accident occurred at all. Landreth Lumber concedes that the Commission's determination on this point is a factual finding that we will not disturb unless it is against the manifest weight of the evidence. See Orsini v. Industrial Comm'n, 117 Ill. 2d 38, 44, 509 N.E.2d 1005 (1987). 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 To argue that no accident actually occurred, Landreth Lumber relies largely on the notion that the claimant provided no notice of any accident. However, for the reasons stated above, we reject this position and conclude that the claimant did provide notice of his accident. In any event, the claimant testified that he suffered an injury due to a work-related accident, and his testimony amply supports the Commission's finding that an accident did occur.

¶ 20 For these reasons, we affirm the judgment of the circuit court, which confirmed the decision of the Commission.

¶ 21 Affirmed.

¶ 22 PRESIDING JUSTICE HOLDRIDGE, specially concurring:

¶ 23 I concur with the judgment to affirm the judgment of the trial court, which confirmed the decision of the Commission. I write separately in order to state my position that the issue of whether the employer received notice of the claim can be easily resolved by the law of agency, which provides that service of legal notice upon a corporation can be effectuated by serving notice on its president. *Capital One Bank, N.A. v. Czekala*, 379 Ill. App. 3d 737 (2008). A president is empowered to act for the corporation during the ordinary course of business. *La Salle National Bank v. Fifty-Third Ellis Currency Exchange, Inc.*, 249 Ill. App. 3d 415, 431 (1993). Given the undisputed facts in this matter, the employer (Landreth Lumber Company) received notice when its president, Oscar Dean Landreth, was aware of the alleged accident giving rise to the claim. Whether the corporate officer in this matter made the employer's insurance carrier aware of the claim is of no relevance to whether proper notice was given under the Act.