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2013 IL App (4th) 120806WC-U

NO. 4-12-0806WC

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JOANN DOYLE,	)	Appeal from
Appellant,	)	Circuit Court of
v.	)	Macon County
THE ILLINOIS WORKERS' COMPENSATION	)	No. 11MR28
COMMISSION <i>et al.</i> (ADM Corn Sweeteners, Appellee).	)	
	)	Honorable
	)	James R. Coryell,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The Commission's decision that claimant did not sustain accidental injuries that arose out of and in the course of her employment was supported by the record and not against the manifest weight of the evidence.

¶ 2 On September 23, 2009, claimant, Joann Doyle, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2008)), alleging work-related, repetitive trauma injuries to her upper extremities and seeking benefits from the employer, ADM Corn Sweeteners. Following a hearing, the arbitrator denied claimant benefits, finding she did not sustain accidental injuries that arose out of and in the course of her employment and the employer was not given timely notice of her alleged accident. On review, the Workers' Compensation Commission (Commission), with one commissioner

dissenting, affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Macon County confirmed the Commission. Claimant appeals, arguing (1) the Commission's decision that she failed to prove her bilateral upper extremity conditions were causally related to her work for the employer was against the manifest weight of the evidence, (2) the Commission erred in denying her benefits for past and prospective medical expenses, and (3) the Commission erred in finding she failed to give timely notice of her injury to the employer. We affirm.

¶ 3

### I. BACKGROUND

¶ 4

At arbitration, claimant testified, on September 9, 2009, she was working for the employer and had worked there for approximately nine years. She worked a seven day rotating swing shift. Claimant began on the labor crew but, after four or five months, became a utility person. In January 2009, claimant began working in the employer's alcohol department, where she worked in September 2009. Claimant described her job duties at that time, stating "[i]n general I railroad which means I am a switchman." She stated she drove the engine, drove a track mobile, loaded and unloaded railcars, loaded trucks, filled out paperwork, changed cuno filters, and got samples.

¶ 5

When loading a railcar, claimant began with a pre-load inspection and was required to check on approximately 62 items. Next, she used an aluminum ramp that ran across the top of the railcar and a brass T-bar to remove bolts from the railcar's lid. Claimant testified the T-bar was quite heavy and weighed from 10 to 20 pounds. Claimant would then remove the lid which could be difficult to open depending upon the pressure in the railcar. Claimant further described her job duties when loading a railcar as follows:

"Then I changed the gasket on the car and there is a ring around it.

Usually they were pretty easy to put in there. Sometimes you had to use a screwdriver to make them fit in there. Then I took the spout off the chain and I had to use one arm and then pull the spout over and stick it down in the car and turn on everything proper inside the building to start loading the cars. Before I did that I had to go to the bottom of the car and there is a cap on the bottom. I had to remove the cap. I used a three-foot aluminum pipe wrench and a very tight position to get the caps off. The caps weighed anywhere from 2 to 10 pounds. I did not open the bottom. We just took the bottoms off so while they were loading we could check for leaks. Then I went in and did all the proper paperwork. I had to make sure they were grounded also. I am sorry, put two clamps on them. I put one clamp and one grounding bar on them. Made sure they were all chalked. Went in and programmed them into the computer, the Accuload and started loading."

Claimant testified it took an hour to an hour and a half to load the railcars, depending upon whether she had to change the cuno filters.

¶ 6 Claimant testified, when offloading railcars, she had to hook offloading hoses to the bottom of the cars and turn valves to start a pump. She stated the valves were opened manually but a button was pushed to start the pumps.

¶ 7 When changing cuno filters, claimant used a ratchet wrench to loosen 20 to 25 bolts on a lid that weighed about 100 pounds. She then "cranked" the lid up and moved it to the

side. Depending on if she was working on a railcar or truck, there were 19 to 29 filters to change. Claimant stated each filter was about three-feet tall. After each filter was replaced, claimant put the lid back on and had "to crank down the bolts and tighten them back up." She testified that cuno filters were not changed every day. If the product began to flow slower, she knew she had to check the filters.

¶ 8 During a shift, she could be required to load 4, 8, or 12 railcars. Occasionally, she would not have to load any cars. On those days, claimant performed other work like changing cuno filters, cleaning, or loading trucks. When loading the trucks, she had to complete paperwork and process it into the computer. She assisted the truck drivers with hooking up hoses. Claimant also started the pumps and turned on the valves.

¶ 9 Claimant testified, in September 2009, her hands and arms felt "pretty sore" and her hands would fall asleep at night. She also felt a burning sensation in her elbows and described them as being really achy. Claimant stated her shoulders felt the same. On September 4, 2009, she saw Dr. Thomas Bilyeu, her family doctor, and reported pain in her wrist and elbows. Dr. Bilyeu noted claimant had "a very hard physical job at ADM pushing and pulling wrenches, etc." He stated she had not reported her condition to anyone at work and informed her that she needed to do that because it "sounds consistent with [a] repetitive work injury." Dr. Bilyeu assessed claimant as having bilateral lateral epicondylitis. He also noted claimant was a smoker and encouraged her to quit smoking.

¶ 10 Claimant testified, in September 2009, she reported her problems to her foreman who reported the issue to claimant's supervisor. At arbitration, the employer agreed claimant gave it notice of her alleged injury at that time. On September 9, 2009, claimant reported to the

employer's medical department and saw Dr. Ronald Barnes. Claimant complained of bilateral hand, wrist, forearm, elbow, and shoulder pain. She stated her hand pain had been present for more than a year, her right elbow pain had been present for greater than six months, her left elbow pain had been present for more than two months, her bilateral forearm pain had been present for six months, and she had experienced bilateral shoulder pain for a few months. Dr. Barnes referred claimant to Dr. Zaheer Ahmed, a neurologist, for nerve conduction studies.

¶ 11 On September 15, 2009, Dr. Ahmed authored a letter, stating claimant presented "with complaints of tingling, numbness and achy pain involving both upper extremities, particularly the hands, elbows and shoulders." He noted her symptoms had been present "for the past more than six months" and were gradually progressing. On exam, Dr. Ahmed found a hint of bilateral hand weakness and positive Tinel's sign at the elbows but not the wrists. He determined claimant's nerve conduction studies were abnormal and found "ulnar neuropathy across the left elbow consistent with Cubital Tunnel Syndrome" and "median neuropathy at both the wrists consistent with mild bilateral Carpal Tunnel Syndrome."

¶ 12 Claimant testified, on September 17, 2009, Dr. Barnes performed an inspection on her job. She observed him standing and talking with other employees and picking up and holding a pipe wrench. Dr. Barnes records state he went to the employer's facility "to personally see the job tasks [claimant] performed day to day." He noted claimant worked loading railcars with product from the employer's plant. Dr. Barnes stated an individual named Greg Gurski explained the job and Dr. Barnes learned claimant would load up to eight railcars during a shift. He further noted as follows:

"[The railcars] are done in segments of four cars at a time.

With each set of cars, the employee climbs the stairs to access the top of the cars. She will loosen four bolts on the top cover with a T-bar (which weighs about 15 lbs). She then attaches the hose to fill the car. She next proceeds to the top of the next car and performs the same duties. She does this for each of the four railcars. Once all four cars are done, she goes down the stairs and removes the cap on the bottom of the railcar with a pipe wrench (which weighs about 15-20 lbs). The pipe wrench is approximately 30 in[ches] long and is made of aluminum. Once the set of four cars is filled, she then proceeds to remove the hose, replaces the topside cover, tightens the six bolts with the T-bar and then torques each of those bolts with a torque wrench to 110 lbs for each of the four cars. She then will replace the caps on the bottom of the cars and tighten them with the pipe wrench. Some days she may only do a set of four cars."

Dr. Barnes further noted claimant changed filters once every two to three weeks.

¶ 13 Based upon the information he learned, Dr. Barnes did "not find sufficient forces acting on the hand/wrist, elbows, [or] shoulders as the result of [claimant's] job to explain her symptoms and possible carpal tunnel syndrome." Instead, he opined it was unlikely that claimant's symptoms were related to her work activities.

¶ 14 On September 22, 2009, claimant returned to Dr. Bilyeu's office and saw a nurse. She requested a referral to Dr. Mark Greatting, an orthopedic surgeon, for her elbows and wrist.

Claimant reported she had "reached the point where she [was] ready to have something done."

¶ 15 On September 25, 2009, claimant returned to see Dr. Barnes. He noted he reviewed with claimant his assessment of her job activities. Claimant agreed with his assessment but stated she worked on 8 to 12 railcars per day and "probably averaged closer to 12." Dr. Barnes recommended claimant follow up with her primary care physician.

¶ 16 On November 5, 2009, claimant saw Dr. Greatting for bilateral arm complaints. She reported working for the employer for about nine years as a laborer. Claimant described performing various railroad and railcar activities, including loading railcars with 45-pound lids, lifting lids, throwing switches, driving a Bobcat, setting and releasing hand brakes, and connecting air hoses. Dr. Greatting noted claimant began having problems in both arms and, in January 2009, began working with ethanol cars. Claimant reported having to use a very large brass T-bar to open the tope of the railcar and having to forcefully hit the tops with her hands. Dr. Greatting noted claimant also had to use a very large wrench on the bottom of the railcars. He stated claimant's "hands and wrists were primarily bothering her when she was doing the initial railcars, and then the elbows and shoulders started bothering her more when she started doing the ethanol cars in January 2009."

¶ 17 Dr. Greatting diagnosed claimant with bilateral shoulder impingement syndrome, bilateral lateral epicondylitis, bilateral cubital syndrome, and bilateral carpal tunnel syndrome. He opined claimant's work activities caused or aggravated her conditions. Dr. Greatting recommended therapy, anti-inflammatory medication, and possibly injections if claimant did not respond to therapy. Further, he noted claimant might ultimately require surgery.

¶ 18 On December 9, 2009, claimant saw Dr. Greatting and received corticosteroid

injections. She continued to follow up with Dr. Greatting and, on April 8, 2010, Dr. Greatting recommended a magnetic resonance imaging (MRI) of claimant's left shoulder. On April 21, 2010, Dr. Greatting noted claimant underwent an MRI, showing tendinitis of the supraspinatus and infraspinatus, AC joint arthritis, and possible mild abnormalities of the long head of the biceps and posterior labrum. He stated she had not responded to conservative treatment and recommended "left shoulder scope with subacromial decompression and distal clavicle excision and fasciotomy and partial ostectomy of the left lateral epicondyle."

¶ 19 At arbitration, claimant presented Dr. Greatting's deposition. He opined claimant's work activities either caused or aggravated her bilateral upper extremity conditions. Dr. Greatting based his opinion on the job duties claimant described and her medical history which showed no other reasons why she would have upper extremity problems. On cross-examination, Dr. Greatting testified he did not review claimant's medical records from either Dr. Bilyeu or the employer's medical facility. He noted some literature suggested an association between smoking and carpal tunnel syndrome but claimant told him she did not smoke.

¶ 20 Dr. Greatting acknowledged he did not make note of the number of railcars claimant worked with on a given day and claimant did not tell him that she might have worked on as few as four cars in one day. He agreed that if claimant only worked on four or eight railcars in a given day, she would not have to open and close very many lids over an eight-hour shift. Dr. Greatting agreed that such activity "would probably not require or qualify as repetitive \*\*\* if that [was] all [claimant] did."

¶ 21 Claimant acknowledged having previous problems with her hands and seeking medical treatment. However, she testified the symptoms in her elbows and shoulders appeared

while she was working in the employer's alcohol department. The employer submitted claimant's medical records going back to 1981. On June 18, 1992, her records show complaints of persistent right shoulder pain with a note that claimant "had this before." She was assessed as having "right shoulder strain chronic." On April 27, 2000, claimant saw Dr. Bilyeu and reported problems with her right hand. Dr. Bilyeu noted she worked at Firestone as a tire inspector and "pull[ed] tires all night and turn[ed] them around." He found "[p]ositive Tinel's on the [right]" and assessed claimant as having "[e]arly carpal tunnel." Dr. Bilyeu believed claimant's problems were caused by "repetitive type work trauma." Claimant testified she was prescribed anti-inflammatory medication and her symptoms went away. She further asserted she underwent pre-employment tests with Firestone in 2000, and did not have carpal tunnel at that time.

¶ 22 On May 15, 2006, claimant saw Dr. Bilyeu and complained of an injury to the third and fourth fingers of her right hand. She reported that she had fallen on some ice during the winter and injured her fingers. Dr. Bilyeu noted claimant had continued "problems with flexion of the fingers" and they were very painful. On November 7, 2007, she reported to Dr. Bilyeu that she had "pain and aching of her fingers of both hands" and that her right hand would fall asleep. Dr. Bilyeu noted claimant did a "hard physical job" and also that she did not "want to have carpal tunnel surgery yet." He further made a notation of "[c]arpal tunnel on the [right]." Dr. Bilyeu recommended claimant wear a wrist splint on her right wrist, especially at nighttime.

¶ 23 Dr. Bilyeu's records further show, on February 20, 2009, claimant reported that her hands hurt, particularly her right hand. Dr. Bilyeu noted claimant worked "as a manual laborer and grabs metal all day," making her hands very sore. Claimant reported numbness and tingling at times in her right hand with her right second knuckle causing her discomfort. Again,

Dr. Bilyeu noted "[right] carpal tunnel" and recommended a wrist splint for claimant's right wrist.

¶ 24 Claimant testified she "battled smoking forever" but finally quit. She estimated that, two years previously, she smoked a pack a day. In 2009, she was an "on again off again" smoker. She stated she only smoked when drinking alcohol and that she did not drink very often.

¶ 25 On June 8, 2010, the arbitrator issued a decision, denying claimant benefits under the Act and finding (1) the employer was not given timely notice of the alleged work-related injuries to claimant's hands and wrists and (2) claimant failed to prove her hand, wrist, elbow, and shoulder conditions of ill-being were causally related to any accidental injuries that arose out of and in the course of her employment. On January 18, 2011, the Commission, with one commissioner dissenting, affirmed and adopted the arbitrator's decision without further comment. On July 31, 2012, the circuit court of Macon County confirmed the Commission.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, claimant challenges the Commission's decision that she failed to prove repetitive-trauma injuries arising out of and in the course of her employment. She argues the record contains ample evidence that her work activities were repetitive and a causative factor of her upper extremity conditions of ill-being. She maintains the medical opinions of Dr. Greatting should be relied upon over those of Dr. Barnes and also contends the chain of events supports her claim for benefits, showing increased problems with her arms after January 2009, when she was transferred to the employer's alcohol department.

¶ 29 Under the Act, an employee's injury is compensable only when it arises out of and in the course of his or her employment. *Tower Automotive v. Illinois Workers' Compensa-*

*tion Comm'n*, 407 Ill. App. 3d 427, 434, 943 N.E.2d 153, 160 (2011). " 'In the course of employment' refers to the time, place and circumstances surrounding the injury" and requires that an injury "generally must occur within the time and space boundaries of the employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). "The 'arising out of' component is primarily concerned with causal connection" and, to satisfy that requirement, the claimant must show "that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro*, 207 Ill. 2d at 203, 797 N.E.2d at 672. "To result in compensation under the Act, a claimant's employment need only be a causative factor in his condition of ill-being; it need not be the sole cause or even the primary cause." *Tower Automotive*, 407 Ill. App. 3d at 434, 943 N.E.2d at 160.

¶ 30 "An employee who suffers a repetitive-trauma injury still may apply for benefits under the Act, but must meet the same standard of proof as an employee who suffers a sudden injury." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 313, 901 N.E.2d 1066, 1079 (2009). " 'In cases relying on the repetitive-trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability.' " *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081 (quoting *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209, 614 N.E.2d 177, 180 (1993)); see also *Darling v. Industrial Comm'n*, 176 Ill. App. 3d 186, 193, 530 N.E.2d 1135, 1141 (1988) (Finding medical testimony to be very important in repetitive-trauma cases).

¶ 31 "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." *City of Springfield*, 388 Ill. App. 3d at 312, 901 N.E.2d at 1079. It is the Commission's function "to judge the credibility of the witnesses, determine the weight to be given their testimony, and resolve conflicting medical evidence." *Tower Automotive*, 407 Ill. App. 3d at 435-36, 943 N.E.2d at 161. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent." *City of Springfield*, 388 Ill. App. 3d at 312-13, 901 N.E.2d at 1079.

¶ 32 "A reviewing court is not to discard the findings of the Commission merely because different inferences could be drawn from the same evidence." *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill. App. 3d 915, 920, 828 N.E.2d 283, 289 (2005). "The appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion." *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013, 944 N.E.2d 800, 803 (2011).

¶ 33 Here, the record contains sufficient evidence to support the Commission's denial of benefits. Claimant alleged repetitive work activities that resulted in injury to both upper extremities. The record reflects, at the time of arbitration, claimant worked for the employer for approximately nine years, however, when describing her alleged repetitive work activities, she focused on her duties after January 2009, when she began working in the employer's alcohol department. Initially, the Commission noted many of claimant's upper extremity complaints predated either her work for the employer or her work in the employer's alcohol department. Specifically, medical records show (1) in June 1992, claimant reported persistent right shoulder pain and was assessed as having a chronic right shoulder strain; (2) in April 2000, she reported

right hand problems which Dr. Bilyeu noted as "early carpal tunnel" and found it caused by "repetitive type work trauma" as a result of claimant's work for a different employer; (3) in May 2006, claimant reported injury to the third and fourth fingers of her right hand from falling on ice; and (4) in November 2007, claimant reported pain and aching in the fingers of both hands and Dr. Bilyeu noted carpal tunnel on the right.

¶ 34            Additionally, the record shows Dr. Barnes, who worked in the employer's medical department, inspected claimant's job and determined it was unlikely that her symptoms were related to her work activities. Dr. Barnes provided a detailed description of claimant's job duties, noting she typically loaded up to eight railcars per shift. He stated he did "not find sufficient forces acting on the hand/wrist, elbows, [or] shoulders as the result of [claimant's] job to explain her symptoms and possible carpal tunnel syndrome."

¶ 35            Claimant challenges Dr. Barnes' opinions on the basis that he did not observe her performing her job duties. However, not only was Dr. Barnes' description of claimant's job duties similar to the description claimant provided at arbitration, the record reflects Dr. Barnes discussed his findings with claimant and she agreed with his assessment. Claimant noted only that, rather than working on 8 railcars per shift as Dr. Barnes found, she worked on 8 to 12 railcars per shift and "probably averaged closer to 12." We note, at arbitration, claimant testified she loaded 4, 8, or 12 railcars a day and, on occasion, was not responsible for loading any cars during a particular shift.

¶ 36            Further, although Dr. Greatting offered an opinion that claimant's work activities caused or aggravated her upper extremity conditions of ill-being, the record shows his opinions were not based upon a complete review of claimant's medical history or made with full knowl-

edge of claimant's work activities. Dr. Greatting acknowledged that he did not review Dr. Bilyeu's medical records, which showed claimant made upper extremity complaints that predated either her work for the employer or her work in the employer's alcohol department. He also failed to review records from the employer's medical facility, showing claimant's treatment with Dr. Barnes. Moreover, Dr. Greatting offered his opinion without noting the number of railcars claimant worked on in a given day. He was unaware that claimant may have worked on as few as four cars in a day and testified that working on only four or eight railcars per shift "would probably not require or qualify as repetitive."

¶ 37 As stated, it was the Commission's responsibility to weigh the evidence, make credibility determinations, and resolve conflicts in medical evidence. In this instance, the Commission gave more weight to Dr. Barnes' opinions, noting he "had the benefit of viewing the workplace" while Dr. Greatting offered opinions without the benefit of claimant's full medical history or detailed knowledge regarding her work activities. The record contains evidence to support the Commission's findings and its determination that claimant failed to establish accidental, repetitive-trauma injuries that arose out of and in the course of her employment was not against the manifest weight of the evidence.

¶ 38 Claimant argues the facts of this case are similar to those presented in *City of Springfield*, 388 Ill. App. 3d at 314, 901 N.E.2d at 1080, wherein this court determined the evidence showed the claimant's work was repetitive in nature even though his work varied. However, in that case, we affirmed the Commission's decision as not being against the manifest weight of the evidence and noted medical testimony supported the Commission's finding that the claimant's work was repetitive in nature. *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d

at 1081. As discussed, the medical evidence in this case was not similarly supportive and, instead, provided a sufficient basis for the Commission to find claimant's upper extremity conditions of ill-being did not arise out of and in the course of her employment.

¶ 39 Because the Commission committed no error in finding claimant's alleged accidental injuries did not arise out of and in the course of her employment, it is unnecessary to address claimant's contention that the Commission erred in failing to award past or prospective medical expenses. Additionally, on appeal, claimant challenges the Commission's finding that she failed to provide the employer with timely notice of her alleged accidental injuries. However, because the Commission determined claimant failed to establish a compensable injury under the Act and that decision was not against the manifest weight of the evidence, the issue of notice is moot. See *Hartsfield v. Industrial Comm'n*, 241 Ill. App. 3d 1055, 1065, 610 N.E.2d 702, 709 (1993).

¶ 40

### III. CONCLUSION

¶ 41

For the reasons stated, we affirm the circuit court's judgment.

¶ 42

Affirmed.