

NOTICE

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2015 IL App (4th) 14-0501WC-U

FILED: April 23, 2015

NO. 4-14-0501WC

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CARGILL,)	Appeal from
)	Circuit Court of
Appellant,)	Edgar County
)	No. 13MR1
v.)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> (Scot Grimes, Appellee).)	
)	Honorable
)	Steven L. Garst,
)	Judge Presiding.

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 determination that claimant's work injury did not result in a permanent partial disability was not against the manifest weight of the evidence.

¶ 2 On October 18, 2010, claimant, Scot Grimes, filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)), seeking benefits from the employer Cargill. He alleged repetitive trauma to his hands resulting in bilateral carpal tunnel syndrome, identifying the manifestation date as September 22, 2010. Following an April 23, 2012, hearing, the arbitrator concluded that claimant sustained a repetitive trauma accidental injury arising out of and in the course of his employment for the employer, and that his bilateral carpal tunnel syndrome was causally related to the accident. The

arbitrator ordered the employer to pay claimant 5 6/7 weeks' temporary total disability (TTD) benefits from the period of October 5, 2010, through November 14, 2010, and to pay reasonable and necessary medical services of \$16,329.40. The arbitrator found that claimant suffered no permanent partial disability (PPD) as a result of the accident and denied PPD benefits. The arbitrator further concluded penalties and fees were not warranted.

¶ 3 On review, the Illinois Workers' Compensation Commission (Commission) unanimously affirmed the arbitrator's decision.

¶ 4 On judicial review, the circuit court of Edgar County reversed the Commission's decision regarding permanent partial disability, finding that claimant's injury resulted in a permanent partial disability in the amount of 15% loss of use of each hand. This appeal followed.

¶ 5 I. BACKGROUND

¶ 6 The following factual evidence was elicited at the April 23, 2012, arbitration hearing. Because the only issue on appeal is whether claimant suffered a permanent partial disability, with the exception of basic background information, we discuss only those facts relevant to our disposition.

¶ 7 At the time of arbitration, claimant had worked for the employer for 21 years. On September 22, 2010, he was working as a fumigator. Claimant's job duties as a fumigator included removing product from "hopper cars" (railroad freight cars) and cleaning the cars. These tasks required "cranking and twisting" to open the "hoppers" (openings at the bottom of the car) and manually removing the expelled product with a shovel and a wheelbarrow. After removing the product from the hopper car, claimant would then clean out the hopper cars with pressurized air from a hose. Claimant's job duties also included cutting stainless steel woven

wire, keeping the work area clean, and chemically spraying the area to keep bugs down. Three years prior to the date of arbitration, he worked as a fork lift operator. Both positions required claimant to use his hands.

¶ 8 On July 28, 2010, claimant sought treatment with Dr. Phipps Leland, his family physician. According to Dr. Leland's medical report, claimant presented with numbness, tingling, and weakness of his hands. Dr. Leland suspected claimant suffered from carpal tunnel syndrome and scheduled him for an EMG nerve conduction study. On September 21, 2010, claimant underwent an EMG nerve conduction study which revealed moderately severe bilateral carpal tunnel syndrome requiring surgical relief.

¶ 9 On September 29, 2010, claimant saw Dr. Louis Mendella, an orthopedic surgeon. According to Dr. Mendella's evidence deposition, he agreed with Dr. Leland's bilateral carpal tunnel syndrome diagnosis and recommended carpal tunnel decompression surgery on both wrists. On October 5, 2010, Dr. Mendella performed a left carpal tunnel release on claimant. On October 26, 2010, Dr. Mendella performed a right carpal tunnel release on claimant. According to Dr. Mendella, both surgeries went well.

¶ 10 At a follow-up appointment on November 8, 2010, Dr. Mendella stated that claimant had "[a] little bit of dysesthesia, but no pain or discomfort to keep him awake at night." Claimant returned to work the following Monday, November 15, 2010, without restrictions. Dr. Mendella reported that he last saw claimant on November 22, 2010. According to Dr. Mendella, at that time claimant reported "the tingling and numbness and parasthesia was completely gone; on the right hand he still had a little bit of dysesthesia into the thumb and index on the left, but really no pain." Dr. Mendella recommended claimant "continue to work on the scar with what we call transfrictional massage."

¶ 11 On April 6, 2010, claimant saw Dr. Michael Cohen, an orthopedic surgeon, for an independent medical evaluation at the request of the employer. Dr. Cohen's medical report from that date notes that claimant's "numbing and tingling has completely resolved. He has no night awakenings. He states he still has a little bit of tenderness over the scars on both hands and a little bit of numbness directly over the wound, the healed wound areas." According to Dr. Cohen, claimant had experienced "complete resolution of his carpal tunnel symptomatology" and required no further medical treatment, although he noted claimant "would benefit by continuing massaging of the scar areas to further relieve the remaining pillar pain which seems to be resolving nicely on its own." No definition for pillar pain was provided.

¶ 12 Claimant testified that following his carpal tunnel surgeries, he returned to his job as a fumigator, a position he still held at the time of arbitration. The following colloquy ensued:

"Q. What do you notice about your hands at this point?

A. Well, they've been repaired and after I had the surgeries done I felt a hundred percent better.

Q. Do you have any issues with them as far as any tingling or numbness at this point?

A. No I do not."

On cross-examination, claimant agreed that he had not sought any medical treatment for his hands after his last visit with Dr. Mendella on November 22, 2010.

¶ 13 On June 6, 2012, the arbitrator issued his decision, finding claimant sustained a repetitive trauma accidental injury arising out of and in the course of his employment for the employer, and that his bilateral carpal tunnel syndrome was causally related to the accident. The arbitrator ordered the employer to pay claimant 5 6/7 weeks' TTD benefits from the period of

October 5, 2010, through November 14, 2010, and to pay reasonable and necessary medical services of \$16,329.40. The arbitrator found that claimant suffered no permanent partial disability as a result of the accident and denied PPD benefits. The arbitrator further concluded penalties and fees were not warranted.

¶ 14 On December 12, 2012, the Commission unanimously affirmed the arbitrator's decision.

¶ 15 On May 21, 2014, the circuit court reversed the Commission's decision in part, finding that the Commission's decision to award no PPD benefits was against the manifest weight of the evidence. Specifically, the court found that the Commission "totally ignored the doctors' reports," and it concluded that although claimant's symptoms of tingling and numbness had subsided, he still had scars and scar tissue. Accordingly, the court found that claimant's injury resulted in a permanent partial disability in the amount of 15% loss of use of each hand. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 The employer asserts that the Commission's finding that claimant did not sustain an injury causing permanent partial disability was not contrary to the manifest weight of the evidence. "A worker has a permanent partial disability when the injury received leaves the worker permanently partially incapacitated from pursuing his or her usual and customary employment, and is reasonably certain to permanently prevent the worker from earning as much as the worker would have earned absent the injury." *DiFoggio v. Retirement Board of County Employees Annuity and Benefit Fund of Cook County*, 156 Ill. 2d 377, 379, 620 N.E.2d 1070, 1071 (1993) (citing *Guest Coal Co. v. Industrial Comm'n*, 324 Ill. 268, 275, 155 N.E.326, 328 (1927)).

¶ 18 Initially, we note that claimant's request for a hearing submitted on March 8, 2012, does not include permanent partial disability as an issue for arbitration. Further, at the arbitration hearing, the arbitrator noted as follows: "Issues, then, are accident arising out of and in the course of, causal relationship, liability for medical expenses, temporary total disability and penalties and attorney's fees. Is there anything either or both parties want to add?" The parties responded, "[n]o, sir" and "[l]ooks good to me." Nonetheless, following the hearing, the arbitrator concluded that claimant did not suffer a permanent partial disability—a finding adopted by the Commission. Thus, we address the issue of whether claimant suffered a permanent partial disability.

¶ 19 The nature and extent of a claimant's permanent disability is a question of fact to be resolved by the Commission, whose finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Baumgardner v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 274, 278-79, 947 N.E.2d 856, 860 (2011). A decision is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Mobil Oil Corp. v. Industrial Comm'n*, 309 Ill. App. 3d 616, 624, 722 N.E.2d 703, 709 (2000). On appeal, we review the Commission's decision, not the circuit court's judgment. *Dodaro v. Illinois Workers' Compensation Comm'n*, 403 Ill. App. 3d 538, 543, 950 N.E.2d 256, 260 (2010).

¶ 20 The evidence in this case reveals that claimant's carpal tunnel decompression surgeries went well. Claimant returned to work as a fumigator without restrictions on November 15, 2010. As of November 22, 2010, the last time claimant sought any treatment for his hands, with the exception of "a little bit of dysesthesia into the thumb and index on the left [hand,]" all tingling, numbness, and parasthesia associated with claimant's bilateral carpal tunnel syndrome had completely subsided.

¶ 21 As of April 6, 2010, approximately 4 1/2 months later, claimant reported that his "numbing and tingling has completely resolved," and that he no longer woke at night due to pain. At that time, claimant was experiencing some pillar pain which, in Dr. Cohen's medical opinion, was "resolving nicely on its own." Although massage was recommended to relieve the remaining pillar pain, Dr. Cohen opined that claimant had experienced "complete resolution of his carpal tunnel symptomatology."

¶ 22 Approximately two years later at the arbitration hearing, claimant presented no evidence that he suffered from any remaining pain in his hands or wrists. Instead, claimant stated he "felt a hundred percent better" after the surgeries were completed. When asked whether he had "any issues with them as far as any tingling or numbness," claimant responded, "[n]o I do not."

¶ 23 Neither Dr. Mendella nor Dr. Cohen opined on the issue of permanent partial disability.

¶ 24 "The appropriate test is not whether this court might have reached the same conclusion, but whether the record contains sufficient evidence to support the Commission's determination." *Kawa v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120469WC, ¶ 78, 991 N.E.2d 430. Measured against this standard, we find that the record contains sufficient evidence to support the Commission's determination that claimant's injury did not result in a permanent partial disability. Accordingly, the circuit court erred in reversing the Commission's decision regarding permanent partial disability.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we reverse the circuit court's judgment and reinstate the Commission's decision.

¶ 27

Judgment of the circuit court reversed. Commission's decision reinstated.