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2015 IL App (5th) 140241WC-U

NO. 5-14-0241WC

NOTICE
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IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

GILSTER-MARY LEE CORPORATION,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Union County.
	)	
v.	)	No. 13-MR-120
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMPENSATION COMMISSION *et al.*	)	Charles C. Cavaness,
(James Peterman, Appellee).	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's determination that the claimant's current condition of ill-being arose out of and in the course of his employment with the employer was not against the manifest weight of the evidence where his work for the new employer aggravated his original injury but did not constitute an intervening cause sufficient to break the causal connection between his condition of ill-being and his employment with the employer. Because we determined that the claimant's employment with the new employer was not an independent intervening accident, and his current condition of ill-being was a natural consequence that flowed from an injury that arose out of and in the course of his employment with the employer, the Commission's award of medical expenses was not against the manifest weight of the evidence.

¶ 2 The claimant, James Peterman, filed an application for adjustment of claim against

his employer, Gilster-Mary Lee Corporation, seeking workers' compensation benefits for a repetitive-trauma injury to his elbows and arms with a manifestation date of May 10, 2010. The claim proceeded to an expedited arbitration hearing under section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/19(b) (West 2010)). The arbitrator found that the claimant did sustain an accident that arose out of and in the course of his employment and that his condition of ill-being was causally related to the accident. The employer was ordered to pay all reasonable and necessary medical bills. The arbitrator ordered the employer to pay for prospective medical care as recommended by Dr. Calfee, including, but not limited to, corrective surgery on the left elbow and possibly the right elbow. The employer appealed to the Illinois Workers' Compensation Commission (the Commission). The Commission affirmed the arbitrator's decision. The employer filed a timely petition for review in the circuit court of Union County, which confirmed the Commission's decision. The employer appeals.

¶ 3 BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing on September 17, 2012.

¶ 5 The claimant testified that he worked for the employer as an over-the-road truck driver for just over 12½ years. He stated that he spent 70 hours per week driving a truck. Each week he drove to California and back. He stated that when he drives, he rests his left arm on the steering wheel and his right arm on the gear shift. There is a constant pounding and vibrating that comes through the steering wheel and the gears. The claimant testified that his fingers started going numb. The symptoms became

progressively worse, and he sought medical help.

¶ 6 Board-certified orthopedic surgeon Dr. Ryan Calfee testified by evidence deposition. He testified that he first examined the claimant on May 11, 2010. In the patient history, Dr. Calfee wrote that the claimant complained of pain in both elbows. The claimant did not receive an injury or trauma to his right elbow, but experienced increasing pain over the prior three to six months over the posterior medial side associated with some tingling progressing to numbness in the right small and ring fingers. The claimant complained of left lateral-sided elbow pain for the prior year. Dr. Calfee diagnosed the claimant with right-sided cubital tunnel syndrome and left-sided tennis elbow. He recommended stretches for the tennis elbow and gave the claimant a steroid injection. He ordered a nerve conduction study for the right side.

¶ 7 Dr. Heidi Prather examined the claimant on May 24, 2010, on referral from Dr. Calfee. She performed bilateral median motor nerve, bilateral ulnar motor nerve, bilateral ulnar sensory nerve, bilateral median and ulnar transcarpal sensory nerve, and bilateral superficial radial sensory nerve studies. She found right ulnar motor sensory neuropathy consistent with compression at the elbow and left ulnar sensory neuropathy. Dr. Calfee testified that the electrodiagnostic studies were consistent with right ulnar compression at the elbow and findings of sensory nerve changes of the ulnar nerve on the left side, both anticipated to represent cubital tunnel syndrome. On May 27, 2010, the claimant reported his condition to his employer.

¶ 8 The claimant testified that on July 17, 2010, he had a work accident that resulted in an injury to his knee. Due to this injury the claimant was unable to work for a period

of time. He stated that his care and treatment for his elbows with Dr. Calfee occurred while he was off of work for his knee injury.

¶ 9 Dr. Calfee examined the claimant again on October 12, 2010. He noted that the claimant attempted physical therapy, but continued to have lateral elbow pain. The claimant complained of mild numbness and tingling in the left small and ring fingers and constant numbness and tingling in the right small and ring fingers. Dr. Calfee recommended a decompression of the ulnar nerve on the right side followed by a later surgery on the left side including a debridement of the tennis elbow and a decompression of the ulnar nerve. If the ulnar nerves were unstable once decompressed he recommended transposition.

¶ 10 On April 7, 2011, Dr. Calfee performed a left tennis elbow debridement and a left elbow ulnar nerve decompression. Dr. Calfee examined the claimant on April 20, 2011, for a followup to his surgery. The claimant was still experiencing some tingling in the small and ring fingers and on the dorsal aspect of the hand. Dr. Calfee recommended physical therapy. Dr. Calfee examined the claimant on May 17, 2011. The claimant complained of some tingling through the upper arm when driving. He recommended continued physical therapy.

¶ 11 On June 2, 2011, Dr. Calfee performed a right cubital tunnel release on the claimant. Dr. Calfee examined the claimant on July 20, 2011. He cleared the claimant for work conditioning and hardening. He opined that the claimant could return to work with no restrictions. Dr. Calfee wrote in his patient notes that he told the claimant that because the nerve was compressed and not transposed, he needed to keep pressure off it

and to not rest his elbow on the console while driving.

¶ 12 Dr. Calfee examined the claimant on October 19, 2011. The claimant reported no pain at rest, but when driving he had aching in the left elbow on the lateral aspect. Dr. Calfee recommended that the claimant wear a wrist brace for lifting and driving.

¶ 13 The claimant testified that on December 21, 2011, he went to work for S&J Potashnick Transportation (PTI) and was working there at the time of the arbitration hearing. The claimant testified that he has the same job duties at PTI as he did for the employer except that he drives to Texas instead of California. The claimant testified that he felt his job with PTI aggravated his left elbow symptoms. He stated that they were never relieved as a result of his first surgery.

¶ 14 The claimant testified that he currently drives a 2013 Freightliner Cascadia truck with just over 13,000 miles on it. When he worked for the employer he drove Peterbilts and Freightliners, and all of them except one had over one million miles on them. He stated that because trucks are built to haul 80,000 pounds of product and are not built like luxury cars, the amount of miles on the truck causes little difference in terms of vibration. He testified "it doesn't matter if it has 13,000 miles on them or a million miles, they all vibrate and shake fiercely."

¶ 15 Dr. Calfee examined the claimant on February 1, 2012. Dr. Calfee noted that six weeks prior the claimant had returned to driving a truck. The claimant complained of tingling in the small and ring finger bilaterally. He also reported pain or burning on the lateral aspect of the left elbow. Dr. Calfee found that the claimant was doing "fairly well" overall but that he had some persistent symptoms following his ulnar nerve

decompression and tennis elbow release. He prescribed medicine in an attempt to "hold things down enough so that we would not have to pursue any further revision surgery for the nerves."

¶ 16 Dr. Calfee examined the claimant on March 14, 2012. He complained of pain in the small fingers bilaterally in the ulnar aspect of the hand, mild aching of the lateral elbow on the left side, and symptoms consistent with that on the right. Dr. Calfee opined that the claimant's work as an over-the-road truck driver stressed his arms and that he was still having some residual symptoms from his bilateral cubital tunnel releases as well as some lateral elbow pain. He increased the dosage of the claimant's medicine.

¶ 17 Dr. Calfee examined the claimant on April 18, 2012. He complained of persistent numbness and tingling in his small and ring fingers bilaterally. Dr. Calfee noted that since the claimant had returned to driving a truck he has had recurrent symptoms. The claimant's symptoms worsen significantly after driving. He reported neurologic symptoms with both hands and that it was difficult to get relief for several hours after driving. Because the symptoms had not subsided, Dr. Calfee recommended an ulnar nerve transposition on the left side. If the claimant exhibited a relevant and substantial improvement of his symptoms and was able to withstand his work, then Dr. Calfee recommended proceeding with surgery on the right side. Dr. Calfee testified that revision surgery is more likely than not to improve the claimant's conditions.

¶ 18 Dr. Calfee testified that the claimant's job duties contributed to his current symptoms. He stated that he made his judgments based on the claimant's reports of when he became symptomatic. The claimant never described home activities as causing

symptoms but told Dr. Calfee that when he returned to work his fingers start "buzzing" again and his other symptoms returned. Dr. Calfee testified that hanging onto a vibrating steering wheel and sitting with an elbow resting on the ulnar nerve or spending a substantial amount of time with fixed elbows were factors associated with cubital tunnel syndrome. He averred that the claimant's job duties put more stress on his arms and caused his symptoms to return. He stated that there were no clear-cut co-morbidities that the claimant had that would explain or otherwise cause the claimant's cubital tunnel syndrome. He testified that the claimant's weight did not cause his cubital tunnel syndrome and did not cause or aggravate his tennis elbow or ulnar neuropathy.

¶ 19 Board-certified plastic surgeon Dr. Richard Evan Crandall testified by evidence deposition. On April 18, 2012, he performed an independent medical examination of the claimant at the employer's request. He wrote in his report that the claimant complained of numbness and tingling in the fourth and fifth fingers on the right hand into the palm, and elbow pain. On the left side he complained of numbness and tingling in the fourth and fifth fingers into the palm, vibrating-type numbness on the fourth finger, pain from the little finger to the hand and wrist, and elbow pain to the forearm. Dr. Crandall referred the claimant for a nerve conduction study that day.

¶ 20 Dr. Daniel Phillips conducted an EMG/NCV study on the claimant. He found no evidence of carpal tunnel. He wrote in his patient notes that the ulnar motor and sensory NCV studies were normal. Dr. Crandall reviewed the nerve conduction study and opined that it showed that the claimant had normal nerve conduction across the wrist and elbow.

¶ 21 Dr. Crandall testified that in his physical examination of the claimant, he found it

significant that the claimant had normal sensation. He stated that the claimant did not have severe ulnar neuropathy. He opined that the claimant did not need revision surgery.

¶ 22 Dr. Crandall stated that based upon the claimant's original nerve conduction study, it was reasonable to offer right and left ulnar nerve surgeries. He opined that he disagreed with the type of technique that was used.

¶ 23 Dr. Crandall averred that the claimant's work as an over-the-road truck driver did not cause or aggravate his tennis elbow or ulnar neuropathy. Dr. Crandall further opined that the surgeries performed by Dr. Calfee on the claimant's elbows were not causally related to his work activities as a truck driver for the employer. He averred that there is no information in the medical literature to suggest that tennis elbow, cubital tunnel syndrome, or carpal tunnel syndrome have any association with driving. He strongly disagreed with Dr. Calfee's opinion that driving was a cause of those types of conditions.

¶ 24 Dr. Crandall testified that there is a high correlation between nerve compression syndrome, especially carpal tunnel, and high body mass index. There is also a smaller correlation between smoking and carpal tunnel syndrome. The claimant smokes and is overweight. Dr. Crandall testified that the claimant's greatest risk factor for his condition was morbid obesity.

¶ 25 Dr. Crandall testified that if the claimant has a subsequent surgery on his ulnar nerve, there is a chance that his condition will improve. However, there is an equal chance that it will get worse.

¶ 26 The claimant testified that his surgeries with Dr. Calfee helped at first but did not relieve his symptoms. The claimant stated that after his surgery, his symptoms subsided

some, but they never vanished. He stated that currently he had left side tingling and numbness in his ring and pinky fingers, shooting pain through his pinky and the palm of his hand, and pain in his elbow. He also had right side symptoms. The claimant stated that his symptoms are worse than they were before he went back to driving a truck.

¶ 27 The arbitrator held that the claimant did sustain an accident that arose out of and in the course of his employment and that his condition of ill-being was causally related to the accident. The employer was ordered to pay for the claimant's reasonable and necessary medical services. It was also ordered to authorize and pay for the treatment recommended by Dr. Calfee, including, but not limited to, the left elbow surgery and possibly the right elbow surgery. The arbitrator found that the claimant was a credible witness. He found that there was no evidence contrary to the claimant's testimony that he worked 70 hours per week and that his upper extremities were subjected to nearly constant vibration and shaking as a result of his contact with the steering wheel and gear shift lever. The arbitrator found that the testimony of Dr. Calfee was more credible than the testimony of Dr. Crandall.

¶ 28 The employer sought review of this decision before the Commission. The Commission affirmed and adopted the arbitrator's decision.

¶ 29 The employer sought judicial review of the Commission's decision in the circuit court of Union County. The circuit court confirmed the Commission's decision. The employer now appeals.

¶ 30 ANALYSIS

¶ 31 The employer argues that the Commission's finding of causal connection between

the claimant's current condition of ill-being and his repetitive-trauma injury that manifested on May 10, 2010, was contrary to law because the injury did not arise out of and in the course of his employment with the employer. It argues that the claimant's employment with PTI was an independent intervening cause that broke the causal chain between the original work-related injury and the current condition of ill-being. The employer argues that this court must review the issue under the *de novo* standard of review.

¶ 32 Whether an injury arose out of and in the course of 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 v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 312, 901 N.E.2d 1066, 1079 (2009). A finding of fact is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Id*. at 312-13, 901 N.E.2d at 1079. An employee who suffers from a repetitive-trauma injury must meet the same standard of proof as an employee who suffers a sudden injury. *Id*. at 313, 901 N.E.2d at 1079.

¶ 33 The employer argues that the claimant's current condition of ill-being could not arise out of his employment with it because he was employed with PTI when the current condition of ill-being arose. To obtain compensation under the Act, the claimant must show, by a preponderance of the evidence, that he has suffered a disabling injury that arose out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). In the course of employment refers to the time, place, and circumstances surrounding the injury. *Id.* To satisfy the arising out of

component, the injury must have 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. *Id*. at 203, 797 N.E.2d at 672.

¶ 34 In repetitive-trauma cases, the claimant generally relies on medical testimony establishing a causal connection between the work performed and the claimant's disability. *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081. Dr. Calfee testified that holding a vibrating steering wheel and sitting with an elbow resting on the ulnar nerve or keeping the elbow in a fixed position for a substantial period of time were factors associated with cubital tunnel syndrome. He opined that the claimant had some residual symptoms from his bilateral cubital tunnel releases. He testified that the claimant's job duties contributed to his current symptoms because the duties put stress on the claimant's arms and caused his symptoms to return.

¶ 35 While Dr. Crandall testified that the claimant's work as an over-the-road truck driver did not cause or aggravate his tennis elbow or ulnar neuropathy, the Commission found that Dr. Calfee was more credible than Dr. Crandall. "It is within the province of the Commission to resolve disputed questions of fact, including those of causal connections, to draw permissible inferences from the evidence, and to judge the credibility of the witnesses." *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. This court will not reject permissible inferences drawn by the Commission simply because different inferences might be drawn from the same facts, nor will this court substitute its judgment for that of the Commission on such matters unless its findings are contrary to the

manifest weight of the evidence. *Id*. The Commission determines which medical opinion to accept regarding causation, and it may attach greater weight to the treating physician's opinion. *Homebrite Ace Hardware v. Industrial Comm'n*, 351 Ill. App. 3d 333, 340, 814 N.E.2d 126, 133 (2004). Dr. Calfee was the claimant's treating physician. The Commission accepted his causation opinion and rejected the opinion of Dr. Crandall.

¶ 36 The employer argues that the claimant's symptoms ceased before he began working for PTI and that his employment with PTI was an intervening accident that broke the causal connection to the original repetitive-trauma injury that manifested itself on May 10, 2010. We disagree.

¶ 37 "Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *National Freight Industries*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. When performing an independent intervening cause analysis, compensability for an ultimate injury or disability is based upon a finding that the employee's condition was caused by an event that would not have occurred "but for" the original injury. *Id*. "A non-employment-related factor which is a contributing cause with the compensable injury in an ensuing injury or disability does not constitute an intervening cause sufficient to break the causal connection between the employment and claimant's condition of ill-being." *Lasley Construction Co. v. Industrial Comm'n*, 274 Ill. App. 3d 890, 893, 655 N.E.2d 5, 8 (1995). It is irrelevant whether other incidents, work-related or not, may have aggravated the claimant's condition. *Id*. "This

court has recognized repeatedly that, when the claimant's condition is weakened by a work-related accident, a subsequent accident that aggravates the condition does not break the causal chain." *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 787, 821 N.E.2d 807, 813 (2005).

¶ 38 The employer argues that the claimant's condition was not a natural consequence that flowed from the original injury. "For an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition." *Global Products v. Illinois Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 411, 911 N.E.2d 1042, 1046 (2009). The claimant's employment need only remain a cause, not the sole cause or even the principal cause, of his condition. *Id*. at 412, 911 N.E.2d at 1046. "So long as a 'but-for' relationship exists between the original event and the subsequent condition, the employer remains liable." *Id*.

¶ 39 The employer argues that there was no testimony or evidence that indicated that the claimant's initial condition and subsequent treatment for that condition weakened his body to where any further action would be considered an aggravation of the prior injury. It asserts that the claimant's condition of ill-being was not a continuation of symptoms but was a new onset of symptoms, following improvement after surgery, release without restriction, and subsequent employment doing the same type of job that caused the condition in the first place. The employer concludes that the claimant's condition of ill-being, for which surgery is requested, occurred as a driver for PTI and stemmed from risks associated with his employment as a truck driver for PTI.

¶ 40 The employer argues that the claimant's symptoms of bilateral elbow pain constituted new symptoms, which arose during his employment with PTI. The claimant began working for PTI on December 21, 2011. At an appointment with Dr. Calfee on February 1, 2012, he reported tingling in the small and ring fingers bilaterally and pain or burning on the lateral aspect of the left elbow. On March 14, 2012, he complained of pain in the small fingers bilaterally, mild aching of the lateral elbow on the left side, and similar symptoms on the right side. When the claimant was first examined by Dr. Calfee on May 11, 2010, he complained of bilateral elbow pain and right-sided numbness and tingling in his small and ring fingers. On October 12, 2010, Dr. Calfee examined the claimant, who complained of numbness and tingling bilaterally in the small and ring fingers. On April 7, 2011, Dr. Calfee performed surgery on the claimant's left elbow. In April and May 2011, the claimant told Dr. Calfee that he was still experiencing tingling in his small and ring fingers and that he had tingling in his upper arm when driving. On June 2, 2011, Dr. Calfee performed a right cubital tunnel release on the claimant. On October 19, 2011, the claimant told Dr. Calfee he had aching in his left elbow when driving. The claimant only reported no pain while at rest. Although the employer contends that the claimant developed new symptoms after he began working for PTI, the record shows that the claimant's symptoms remained the same.

¶ 41 Contrary to the employer's assertion that the claimant was symptom-free when he began his employment with PTI, the record shows that the claimant continued to suffer from his condition of ill-being since the manifestation of his injuries. The claimant testified that while his surgeries with Dr. Calfee helped at first, they did not cure his

condition. He stated that his symptoms subsided to some degree, but they never vanished. The Commission found that the claimant was credible.

¶ 42 On May 17, 2011, following his April 7, 2011, surgery, the claimant told Dr. Calfee that he experienced tingling through his upper left arm when driving. On October 19, 2011, after the claimant had surgery on both arms, he reported to Dr. Calfee that he experienced no pain while at rest but that when driving he had aching in the left elbow. After the claimant began working for PTI, his symptoms intensified. Dr. Calfee examined the claimant on February 1, 2012, and found that he had some persistent symptoms following his ulnar nerve decompression and tennis elbow release. There is sufficient evidence in the record to support a finding that the claimant was never symptom-free before starting work for PTI and that his symptoms were not new symptoms, but were the same symptoms that he had before his surgeries.

¶ 43 The claimant's condition of ill-being remains causally connected to the injuries he suffered while working for the employer. The symptoms the claimant experienced after working for PTI were the same as those he experienced while working for the employer. Dr. Calfee testified that the claimant's condition of ill-being that manifested itself on May 10, 2010, was causally related to his work for the employer. The record reflects that the claimant's symptoms abated following his surgeries and while he was not working but never completely subsided. When the claimant began working for PTI, his symptoms intensified. But for his original repetitive trauma, the claimant's current condition of ill-being would not have occurred. His work for PTI aggravated his original injury but did not constitute an intervening cause sufficient to break the causal connection between his

condition of ill-being and his employment with the employer. The Commission's determination that the claimant's current condition of ill-being arose out of and in the course of his employment with the employer is not against the manifest weight of the evidence.

¶ 44 The employer argues that the claimant's current condition of ill-being arose out of and in the course of his employment with PTI, and any award of prospective medical treatment for his condition should be borne by PTI. A claimant is entitled to recover reasonable medical expenses that are determined to be required to diagnose, relieve, or cure the effects of the claimant's condition of ill-being. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18, 24 (2001). Whether a medical expense is reasonable and necessary is a question of fact for the Commission, and its determination will not be overturned unless it is against the manifest weight of the evidence. *Id*. In the instant case, the employer does not argue that the medical expenses allowed by the Commission were not reasonable or necessary. Instead, it argues that it was not liable for them because of an independent intervening cause and that PTI should be responsible for the payment of the medical expenses. Because we have determined that the claimant's employment with PTI was not an independent intervening accident, and his current condition of ill-being was a natural consequence that flowed from an injury that arose out of and in the course of his employment with the employer, the Commission's award of medical expenses is not against the manifest weight of the evidence.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, we affirm the judgment of the circuit court of Union County confirming the decision of the Commission, and remand 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.