2015 IL App (5th) 140579WC-U

Order filed: November 10, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ALISA ADAIR,	)	Appeal from the Circuit Court
	)	of Madison County, Illinois.
Plaintiff-Appellant,	)	
	)	
v.	)	Appeal No. 5-14-0579WC
	)	Circuit No. 14-MR-117
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*, (Madison County	)	Honorable Donald M. Flack,
Circuit Clerk's Office, Defendant-Appellee).	)	Judge, presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's determination that the claimant failed to establish that her current condition of ill-being regarding her wrists was causally related to her employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Alisa Adair, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)), seeking benefits for injuries to her right *digitus minimus* finger and bilateral carpal tunnel allegedly sustained while working for the Madison County Circuit Clerk's Office (employer). She alleged that her injuries were related to repetitive work activities with a manifestation date of January 4, 2011. A hearing was held on May 29, 2013, before Arbitrator Joshua Luskin at which the employer disputed the

issues of accidental injury, causation, and notice. The arbitrator found that the claimant had established that she sustained a compensable injury to the right finger but had failed to establish that her bilateral carpal tunnel condition was causally related to her employment. The arbitrator further found that the claimant had given timely notice of the right finger injury and that the issue of timely notice as to the bilateral carpal tunnel injury was moot. The arbitrator awarded temporary total disability (TTD) benefits of $520.52 per week for the period from April 10, 2012, through May 7, 2012, for a total of four weeks; medical expenses benefits for treatment and surgery related to the finger injury, and permanent partial disability (PPD) equating to a 20% loss of the use of the right fifth finger.

¶ 3 Both the claimant and the employer sought review before the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's award. The claimant then sought judicial review of the Commission's decision in the circuit court of Madison County, which confirmed the decision of the Commission. The claimant then filed a timely appeal with this court, maintaining that the Commission erred in finding that she was not entitled to benefits for her alleged bilateral carpal tunnel injuries.

¶ 4 FACTS

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing.

¶ 6 The claimant, a 41-year-old deputy clerk, had worked for the employer for approximately 22 years. At the time of the claim, she was assigned as a clerk for the judge in the family law division. She testified that her job duties included various clerical tasks, including retrieving files, typing orders, updating computerized case information, reviewing mail and putting correspondence into proper files, answering phone calls, and dealing with walk-in business. Her work hours were Monday through Friday, 8:30 a.m. to 4:30 p.m., with one hour for lunch and

two 15 minute breaks. The claimant testified that she noticed gradual and increasing pain in her hands at night and particular pain in her "pinky" finger. She also testified that the finger would "lock up" on occasion.

¶ 7 On January 4, 2011, the claimant sought treatment from an orthopedic surgeon, Dr. Timothy Penn, for bilateral hand pain. The claimant told Dr. Penn that her bilateral hand pain symptoms began in approximately November 2010. Dr. Penn noted a negative Tinel test result for bilateral carpal tunnel, but noted some positive triggering at the right *digitus minimus* finger. He gave the claimant a steroidal injection at the A1 tendon, recommended wrist splints for possible early carpal tunnel syndrome, and told the claimant to return in approximately one month. The claimant did not return to Dr. Penn for treatment.

¶ 8 The claimant testified that she informed her supervisor prior to her initial appointment with Dr. Penn that she had an appointment with a physician regarding her complaints of bilateral hand pain. The claimant's supervisor, Gina Hargrove, testified that the first time the claimant made her aware that the bilateral wrist and hand pain was work related was on October 24, 2011, when the claimant filled out an injury report. Hargrove testified that the claimant mentioned having treatment and tests, but never specifically attributed her condition to her employment.

¶ 9 On February 21, 2011, her counsel arranged for her to consult with Dr. Michael Beatty, an orthopedic surgeon, who first examined the claimant on April 11, 2011. The claimant gave a history of increasing pain over the previous 9 to 12 months. She gave Dr. Beatty a written job description and advised him that she spent six hours or more each day typing. Dr. Beatty noted positive Tinel's sign on the right, and positive Phalen's test bilaterally. He then ordered additional diagnostic testing. An EMG/nerve conduction test was performed on May 26, 2011, which were read as entirely normal. On June 30, 2011, Dr. Beatty conducted a follow-up

examination of the claimant. Despite the negative diagnostic test results, he maintained his diagnosis of bilateral carpal tunnel syndrome and recommended bilateral release surgery.

¶ 10 On January 6, 2012, the claimant was examined at the request of the employer by Dr. Gerald Lionelli, a board certified orthopedic surgeon. Dr. Lionelli noted negative Tinel's on the right wrist, positive Tinel's on the left wrist, and negative Phalen's bilaterally. He also reviewed the normal EMG/nerve conduction test results. He opined that the claimant had an "atypical" presentation regarding her bilateral wrists, and further opined that the claimant did not have carpal tunnel syndrome, but did have evidence of stenosis and tenosynovitis in the right *digitus minimus* finger. Dr. Lionelli discussed the claimant's job duties and reviewed a formal job analysis provided to him by the employer. After a review of the medical and occupational information, Dr. Lionelli opined that the claimant's employment duties had not caused or contributed to the claimant's condition of ill-being.

¶ 11 On April 10, 2012, Dr. Beatty performed right carpal tunnel release and release of the A1 tendon related to the right *digitus minimus* finger. Dr. Beatty performed a left carpal tunnel release on May 1, 2012. On May 7, 2012, and May 14, 2012, sutures were removed and the claimant was ordered to begin physical therapy. After a course of physical therapy, the claimant was released to full duty on July 2, 2012. Dr. Beatty opined that the claimant had reached maximum medical improvement on July 23, 2012, and the claimant returned to her presurgical employment duties with the employer.

¶ 12 Dr. Beatty testified by deposition on two occasions, before and after the surgical procedures. In the first deposition, on January 19, 2012, he opined that the claimant's bilateral carpal tunnel syndrome was causally connected to her employment activities, based in part on the claimant's statement to him that she spent six hours per day typing. He reiterated in his second deposition on November 14, 2012, that the claimant's typing duties were a significant

factor relating her bilateral carpal tunnel syndrome to her employment. Dr. Beatty was questioned regarding the normal EMG/nerve conduction test results. He dismissed the test results as likely "false negative" results, commenting that the test was not "the gold standard" for the diagnosis of carpal tunnel syndrome.

¶ 13 Dr. Lionelli testified by deposition that he had been provided a copy of the claimant's job description, complete copies of the records of Dr. Penn and Dr. Beatty, as well as the EMG/nerve conduction test results. In addition, Dr. Lionelli testified that he spent a significant amount of time with the claimant detailing her job duties and responsibilities. He determined that, after accounting for lunch and breaks, the claimant worked a total of 6 1/2 hours per day. In addition to typing duties, duties associated with filing, answering the phone and dealing with the public in person, the claimant told Dr. Lionelli that three to five times per day she would walk from her office to the judge's chambers and that each round trip took between 15 and 20 minutes. The claimant estimated that she answered 30 to 50 phone calls per day, each lasting between 3 and 5 minutes. He opined that the claimant's typing duties would were not sufficiently repetitive to cause the claimant's condition. Dr. Lionelli further opined that neither the claimant's subjective complaints nor her objective physical condition were consistent with a diagnosis of carpal tunnel syndrome. Although he acknowledged that the EMG/nerve conduction test is not essential to a proper carpal tunnel syndrome diagnosis, Dr. Lionelli believed that the claimant's negative test results were significant in his reaching the opinion that she did not have carpal tunnel syndrome. When asked about the prevalence of "false negative" results, he noted that the test had at least 20 different components and that it would be "extremely" unlikely that all 20 components would return "false negative" results. Dr. Lionelli opined that the claimant's condition was possibly related to an autoimmune condition rather than carpal tunnel syndrome.

¶ 14 The arbitrator found that the claimant had failed to establish that her bilateral wrist pain was causally related to her employment. He noted that causation of carpal tunnel syndrome via repetitive trauma is an issue normally requiring expert medical testimony to establish. He further noted that, as the claimant's treating physician, Dr. Beatty's opinion was entitled to a certain amount of deference. However, in this case, the arbitrator was convinced that Dr. Beatty's opinion was directly contradicted by the weight of physical and diagnostic evidence. He noted that Dr. Penn's Tinel's test for carpal tunnel had negative results, while Dr. Beatty's tests were contradictory. The arbitrator further noted that Dr. Beatty's Phalen test results were positive, but Dr. Lionelli's results were negative. The arbitrator gave greater weight to Dr. Lionelli's reliance upon the normal EMG/nerve conduction test results and his explanation that the test, while not dispositive, was a useful diagnostic test for carpal tunnel syndrome. The arbitrator further commented that he found Dr. Beatty's discounting of the EMG/nerve conduction test results to be unconvincing in view Dr. Lionelli's disagreement with the "false negative" theory espoused by Dr. Beatty. Weighing the competing medical opinion testimony regarding the carpal tunnel syndrome diagnosis, the arbitrator gave greater weight to the opinion of Dr. Lionelli and found that the claimant had failed to establish that her current condition of ill-being as to her bilateral wrist and hand pain was causally related to her employment.

¶ 15 On the question of whether the claimant's condition of ill-being related to her right *digitus minimus* finger was causally related to her employment, the arbitrator noted that all medical opinion testimony established that the claimant suffered A1 tendon tenosynovitis in that finger. He found that Dr. Beatty's opinion that the claimant's employment likely accelerated that degenerative condition was credible and supports a finding of a causal relationship between her employment and her condition of ill-being.

¶ 16 On the question of notice, the arbitrator found that since there was no compensable injury related to the claimant's bilateral wrist condition, the issue of proper notice was moot. Finding that there was a compensable injury to the claimant's right finger, the arbitrator addressed the issue of notice, finding that the claimant's statement to her employer on January 4, 2011, that she intended to see a doctor regarding her hand pain was sufficient notice to the employer. The arbitrator then awarded TTD benefits from April 10, 2012, through May 7, 2012, the date that the claimant's A1 tendon release surgery was deemed by Dr. Beatty to be sufficiently healed to allow him to proceed with the wrist surgery. The employer was ordered to pay the costs of diagnosis and treatment of the tendon tenosynovitis. The arbitrator further determined that the claimant was entitled to PPD benefits due to the residual condition of the finger reflecting a 20% loss of the use of the subject finger. After the Commission affirmed and adopted the arbitrator's award, the claimant sought judicial review in the circuit court of Madison County, which confirmed the decision of the Commission. The claimant then brought this timely appeal.

¶ 17 ANALYSIS

¶ 18 The claimant maintains that the Commission's finding that she failed to prove repetitive trauma injuries to her wrists arising out of and in the course of her employment is against the manifest weight of the evidence. She contends that the record established that her job duties were repetitive in nature and Dr. Beatty's medical opinion that she suffered bilateral carpal tunnel syndrome as a result of her employment was entitled to deference over Dr. Lionelli's contrary opinion. She maintains that Dr. Lionelli's opinion that the claimant's condition was autoimmune in nature was completely speculative and thus entitled to no weight. She further maintains that the Commission's only possible analysis was to completely disregard Dr. Lionelli's opinion thereby rendering Dr. Beatty's carpal tunnel syndrome diagnosis and causation opinion as the only medical evidence available to the Commission. She cites *Sisbro*,

Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 215 (2003), for the proposition that if there is an adequate basis in the record for finding that an occupational activity aggravated or accelerated a preexisting condition the Commission must award compensation.

¶ 19 A claimant who alleges a repetitive trauma injury must meet the same standard of proof as an employee who alleges a sudden traumatic injury. *City of Springfield v. Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 313 (2009). To establish a compensable injury under the Act, a claimant must show by a preponderance of the evidence that her injury arose out of and in the course of her employment. *Cassens Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330 (1994). An injury is said to "arise out of" one's employment if 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. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). In cases relying upon a repetitive trauma concept, a claimant generally relies upon medical testimony demonstrating a causal connection between the work performed and the claimant's disability. *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209 (1993). The claimant must establish that the injury is work related and not the result of other unrelated circumstances such as the normal degenerative aging process. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530 (1987); *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194 (2005).

¶ 20 As with any workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. 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 (1992). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 21 In support of her claim that she sustained repetitive trauma injuries resulting in bilateral carpal tunnel syndrome arising out of and in the course of her employment, the claimant relies upon the medical records and opinion of Dr. Beatty. In so doing, she maintains that the contrary opinion of Dr. Lionelli is completely unworthy of credence. We disagree. As the arbitrator observed, Dr. Beatty's diagnosis and causation opinion was undermined to some extent by contradictory test results. When the claimant first presented to Dr. Penn, he administered the Tinel test, a standard initial diagnosis test for carpal tunnel syndrome, and noted a negative result. A month later, Dr. Beatty reported a positive Tinel result for the right wrist, but a negative result for the left wrist. In diagnosing bilateral carpal tunnel syndrome, Dr. Beatty apparently ignored the Tinel result for the left wrist. Similarly, Dr. Beatty ignored the negative result of the EMG/nerve conduction test, a test which is, according to Dr. Lionelli's testimony, useful but not definitive in diagnosing carpal tunnel syndrome. While Dr. Beatty offered an explanation for his decision to dismiss the EMG/nerve conduction test results, the Commission chose to view his decision with suspicion, given the fact that he ordered the test, but chose to ignore the results. Moreover, the Commission was swayed by Dr. Lionelli's discrediting of the "false negative" theory adopted by Dr. Beatty.

¶ 22 We further note that Dr. Lionelli's opinion, contrary to the claimant's assertion that it was based entirely upon unsupported speculation, appears to be based upon a thorough analysis of the medical data and the descriptions of the claimant's job duties, as well as a detailed

examination of the claimant herself. Dr. Lionelli's opinion was particularly influenced by the EMG/nerve conduction test results which were negative for bilateral carpal tunnel syndrome. There is nothing in the record to establish that his reliance upon that test was misplaced or overemphasized. To the contrary, Dr. Lionelli testified that the EMG/nerve conduction test is not definitive, but a negative result is generally recognized as being highly relevant to a diagnosis of a lack of carpal tunnel syndrome.

¶ 23 The claimant maintains that Dr. Lionelli's comment that the claimant's condition appeared to be more likely a result of an autoimmune condition without confirming a diagnosis of autoimmune disease rendered his entire opinion "speculative." We disagree. Dr. Lionelli's statement that the claimant's condition might be autoimmune related was not essential to his overall opinion that the claimant's condition was *not* bilateral carpal tunnel syndrome. As we previously noted, the claimant bears the burden of proving that his condition is employment related and not the result of some other unrelated circumstances. *Edward Hines*, 356 Ill. App. 3d at 194. The mere fact that Dr. Lionelli suggested that the claimant's symptoms appeared more related to an autoimmune condition than bilateral carpal tunnel syndrome did not shift the burden to the employer to prove that the claimant did not suffer from bilateral carpal tunnel syndrome. Moreover, Dr. Lionelli did not opine that the claimant's condition was autoimmune in nature, he merely observed that her symptoms were more consistent, in his opinion, with an autoimmune condition than with bilateral carpal tunnel syndrome.

¶ 24 The foregoing demonstrates that the Commission was presented with conflicting medical evidence regarding whether the claimant's symptoms were caused by the repetitive nature, if any, of her work. The Commission resolved this dispute in the employer's favor and we cannot say that the Commission's interpretation of the evidence was against the manifest weight of the evidence as the opposite conclusion is not clearly apparent from the record. *Teska v. Industrial*

Comm'n, 266 Ill. App. 3d 740, 741 (1994). Accordingly, we affirm the Commission's finding that the claimant failed to establish that her bilateral wrist condition of ill-being was causally related to any repetitive nature of her employment.

¶ 25 The claimant further argues that the Commission's award of TTD benefits, PPD benefits, and reimbursement for medical expenses is also against the manifest weight of the evidence. However, since these arguments are based solely upon the premise that the Commission's causation finding is erroneous, a premise we have already rejected, we also reject these contentions without the need for further analysis. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011).

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court which confirmed the decision of the Commission is affirmed.

¶ 28 Affirmed.