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2016 IL App (1st) 153479WC-U

Order filed: December 30, 2016

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

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MICHAEL GUNDERSON,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 1-15-3479WC
	)	Circuit No. 15-L-50226
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, <i>et al.</i> , (Weiss Memorial	)	Kay M. Hanlon,
Hospital, Appellees).	)	Judge, Presiding.

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

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**ORDER**

¶ 1 *Held:* (1) The Commission did not err by failing to award the claimant separate awards under section 8(e) of the Workers' Compensation Act for injuries he allegedly sustained to his left arm and his left hand; and (2) the claimant was not entitled to benefits for loss of use of the man-as-a-whole under section 8(d)(2) of the Workers' Compensation Act.

¶ 2 The claimant, Michael Gunderson, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for injuries which he allegedly sustained while working for respondent Weiss Memorial Hospital

(employer). After conducting a hearing, an arbitrator found that the claimant had sustained a work-related accident and awarded him temporary total disability (TTD) benefits, unpaid medical expenses, and permanent partial disability (PPD) benefits for 37.5% loss of use of the left hand. Neither party filed a petition for review the arbitrator's decision within the statutory time limit.

¶ 3 Several months later, the claimant sought additional benefits by filing a Petition for Review with Commission under sections 19(h) and 8(a) of the Act (820 ILCS 305/8(a), 19(h) (West 2008). In his petition, the claimant alleged that he had sustained additional disability to his left arm and to his person as a whole after the arbitrator issued his decision. After conducting a hearing, the Commission unanimously found that the claimant had proved a material increase in his work-related disability since the date of arbitration. The Commission awarded the claimant additional TTD benefits and PPD benefits for an additional 17.5% loss of use of his left hand pursuant to sections 19(h) and 8(a) of the Act. However, the Commission rejected the claimant's claim for a separate PPD award for loss of use of the left arm, and it declined to award the claimant man-as-a-whole benefits under section 8(d)(2) of the Act because it found that the claimant had failed to prove a loss of his occupation.

¶ 4 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County. The claimant argued that he was entitled to benefits for the loss of use of his left arm under section 8(e) of the Act in addition to the benefits the Commission had awarded for the loss of use of his left hand. The claimant also argued that he was entitled to a “man-as-a-whole” award under section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2008)). Circuit Judge Lopez-Cepero remanded the case the Commission for clarification as to why the claimant was “awarded benefits for a hand rather than an award of benefits for the arm and/or man as a

whole.” The Commission subsequently issued a decision on remand which affirmed and clarified its prior decision.

¶ 5 The claimant appealed the Commission’s decision on remand to the circuit court of Cook County. The circuit court (Judge Kay Marie Hanlon) affirmed the Commission’s decision.

¶ 6 This appeal followed.

¶ 7 **FACTS**

¶ 8 The claimant worked for the employer as a stationary engineer. On August 8, 2008, the claimant sustained an undisputed work-related accident when he fell off of a ladder and fractured his left wrist. Two days later, the claimant underwent open reduction and internal fixation surgery on his left wrist.

¶ 9 On August 28, 2008, the claimant filed an application for adjustment of claim seeking benefits for work-related injuries to his left upper extremity. The claimant’s claim was heard before an arbitrator on August 2, 2010. During the arbitration hearing, the claimant testified that he had no left wrist problems prior to the August 8, 2008, work accident. Following surgery, the claimant returned to work light-duty with restrictions that were accommodated by the employer. On October 21, 2008, the claimant was released to return to full duty work. The claimant testified that he voluntarily resigned his employment with the employer on October 26, 2009, and moved to Arizona. He experienced ongoing pain in his left wrist, palm, and back of the hand, which was made worse by driving, pushing and grasping.

¶ 10 The arbitrator issued a decision on August 24, 2010, finding that the claimant was entitled to TTD benefits, unpaid medical expenses, and PPD benefits under section 8(e)(9) of the Act in the amount of \$664.72 per week for a period of 76.875 weeks, representing 37.5% loss of use of the left hand. Neither party filed a petition to review the arbitrator’s decision within the

time limit prescribed by the Act.

¶ 11 On September 28, 2010, the claimant sought treatment with Dr. Stephen Mahoney at the Brown Hand Center in Phoenix, Arizona. The claimant complained of left wrist pain that was as severe as it had been prior to surgery. Dr. Mahoney's medical records indicate that the claimant was experiencing constant soreness in his left wrist which was occasionally severe and was exacerbated by lifting or holding objects. Dr. Mahoney diagnosed left wrist osteoarthritis, which he opined was causally related to the claimant's prior left wrist injury. In order to determine the extent of the osteoarthritis, Dr. Mahoney performed a diagnostic arthroscopy and partial synovectomy<sup>1</sup> on December 3, 2010. The postoperative diagnosis was osteoarthritis and left wrist scapholunate ligament injury.

¶ 12 On December 9, 2010, the claimant returned to Dr. Mahoney and reported that he was experiencing the same pain in his left wrist that he had experienced prior to surgery. At that time, Dr. Mahoney recommended a surgical fusion of the left wrist and a series of steroid injections to relieve the pain. The claimant declined the injections and sought no further medical treatment for approximately eight months.

¶ 13 On May 29, 2012, the claimant was evaluated by Dr. Michael Bednar, the employer's section 12 medical examiner. Dr. Bednar opined that the current condition of arthritis in the claimant's left wrist was causally connected to his August 8, 2008, work accident. Dr. Bednar agreed with Dr. Mahoney that the claimant needed a surgical fusion of his left wrist. He

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<sup>1</sup> A "synovectomy" is a surgical (arthroscopic) procedure performed to remove all or part of the synovial membrane of a joint. When synovial tissue becomes inflamed, it can cause pain and limited mobility. A synovectomy is done to treat early rheumatoid arthritis which has not responded to nonsurgical medical treatments.

measured the claimant's grip strength at 35 pounds in his left hand and 80 pounds in his right hand. In his IME report, Dr. Bednar noted that the claimant stated that he was currently not working "secondary to pain of the wrist."

¶ 14 On August 7, 2012, the claimant returned to Dr. Mahoney complaining of pain in his left wrist, particularly along the dorsal aspect. The claimant reported experiencing pain with extension and flexion, but denied feeling any numbness, tingling, clicking, or popping. Dr. Mahoney opined that the claimant had osteoarthritic changes as a result of his August 8, 2008, work injury. The claimant told Dr. Mahoney that he wanted to proceed with the left wrist fusion surgery that the doctor had previously recommended.

¶ 15 On October 17, 2012, the claimant underwent surgery on his left wrist. The surgery consisted of: (1) a matched resection of the distal ulnar head; (2) arthrodesis<sup>2</sup> of the wrist joint; (3) removal of a previously placed distal radius volar plate; and (4) post-reduction and fixation. The postoperative diagnosis was osteoarthritis involving the left wrist, the proximal and distal carpal tunnel rows, and the distal radioulnar joint.

¶ 16 Dr. Mahoney reevaluated the claimant on October 25, 2012. The claimant had been in a splint since the surgery and had reported no complaints. X-rays of the claimant's left wrist revealed good hardware placement and adequate ulnar resection. Dr. Mahoney removed the claimant's stiches and put a cast on his left arm. On November 27, 2012, Dr. Mahoney removed the cast and performed additional x-rays which revealed good hardware positioning and healing. The claimant had no complaints of pain at that time, and Dr. Mahoney noted that the claimant had excellent range of motion in his fingers. Dr. Mahoney offered the claimant formal physical therapy, which the claimant declined. The claimant performed exercises at home and utilized a

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<sup>2</sup> "Arthrodesis" is the fusion of the bones adjoining a joint space.

bone growth stimulator prescribed by Dr. Mahoney. Dr. Mahoney advised the claimant to wear a splint during activities.

¶ 17 No work restrictions were noted in Dr. Mahoney's medical records. In a work status note dated December 3, 2012, Dr. Mahoney indicated that the claimant was retired.

¶ 18 On December 13, 2012, the claimant returned to Dr. Mahoney for a follow up examination. Although the claimant complained of some slight soreness and stiffness at that time, Dr. Mahoney noted that he had made exceptional gains performing his own physical therapy exercises. Upon examination, Dr. Mahoney found that the claimant had a slightly decreased ability to pronate and supinate his left wrist as compared to his right wrist. His bilateral wrist strength was 40 kilograms on the left and 95 kilograms on the right. Dr. Mahoney recommended that the claimant continue using the bone growth stimulator and performing exercises for active pronation and supination and to increase his grip strength. X-rays of the claimant's left wrist showed some evidence of fusion but did not reveal a complete arthrodesis.

¶ 19 The claimant saw Dr. Mahoney again on January 17, 2013. At that time, the claimant reported that he was not having much pain and was able to touch the tip of his thumb to the base of his small finger. X-rays revealed that the wrist fusion was healing well. Dr. Mahoney advised the claimant to increase his activities. Eight days later, Dr. Mahoney released the claimant to work right-hand duty.

¶ 20 On February 19, 2013, the claimant returned to Dr. Mahoney complaining of pain with pronation and supination of his left wrist. Dr. Mahoney re-tested the claimant's grip strength, which was measured at 55 kilograms on the left and 85 kilograms on the right. Dr. Mahoney released the claimant to return to work with light activity restrictions of the left upper extremity.

¶ 21 The claimant saw Dr. Mahoney again on April 2, 2013. The claimant told Dr. Mahoney

that he had intermittent pain and that he was no longer actively trying to rotate his wrist due to pain. His left wrist strength was 45 kilograms on the left and 95 kilograms on the right. The claimant indicated that he was happy with his level of function and did not wish to undergo additional therapy. Dr. Mahoney told the claimant to follow up as needed and released him from care. An April 16, 2013, Work Status Form contained in Dr. Mahoney's medical records indicated that Dr. Mahoney had released the claimant to work with a ten pound lifting restriction as to his left hand.

¶ 22 A hearing on the claimant's section 19(h) and 8(a) petition took place on July 25, 2013. The claimant introduced Dr. Mahoney's medical records into evidence. During the hearing, the claimant testified that he was unable to rotate his left wrist and that he currently had difficulty buttoning his pants. He also stated that he was unable to use a drive-up ATM machine with his left hand. The claimant testified that these activities were not a problem for him at the time of the August 2, 2010 arbitration. The claimant further stated that he had voluntarily resigned his employment effective October 26, 2009, and moved to Arizona. At the time of the section 19(h) hearing, the claimant was not taking any prescription pain medications and had no pending treatment recommendations for his left hand.

¶ 23 The Commission found that the claimant had proved that he sustained a material increase in his work-related physical disability since the arbitration hearing on August 2, 2010. Specifically, the Commission found that the claimant had "sustained additional permanent disability to his left hand with respect to his range of motion and grip strength," which amounted to "a further loss of 17.5% of the left hand since the prior arbitration award." The Commission found that the claimant's current disability in his left hand was causally related to his August 8, 2008, work accident. Accordingly, the Commission awarded the claimant: (1) TTD benefits from

the date of surgery (October 17, 2012) through January 25, 2013; and (2) additional PPD benefits under section 8(a) of the Act in the amount of \$664.72 per week for a further period of 35.875 weeks as compensation for the additional 17.5% loss of use of his left hand.

¶ 24 However, because the Commission "d[id] not find that the claimant had sustained a loss of [his] occupation" it "d[id] not find an award under § 8(d)(2) for the person-as-a-whole to be appropriate." In support of this conclusion, the Commission noted that: (1) the claimant "voluntarily resigned from his job in October of 2009 and moved to Arizona"; (2) "[n]o physician \*\*\* opined that [the claimant] cannot pursue his former occupation"; and (3) the claimant "has not attempted to find work as an operating engineer."

¶ 25 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County. The claimant argued that he was entitled to benefits for the loss of use of his left arm in addition to the benefits the Commission had awarded for the loss of use of his left hand. The claimant also argued that he was entitled to a "man-as-a-whole" award under section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2008)). Circuit Judge Lopez-Cepero remanded the case the Commission for clarification as to why the claimant was "awarded benefits for a hand rather than an award of benefits for the arm and/or man as a whole."

¶ 26 The Commission subsequently issued an opinion on remand which affirmed and clarified its prior decision. In its opinion on remand, the Commission stated that its award of additional PPD benefits under section 8(a) for additional loss of use of the hand (and not for loss of use of the arm or man-as-a-whole) was "suited to the facts of the case" because the claimant had sustained permanent injury to the left hand "but failed to prove permanent injury to the left arm or a resultant loss of occupation." The Commission noted that it was "undisputed" that the claimant had "voluntarily retired" from his employment with the employer on October 26, 2009,

and moved to Arizona. At the time the claimant retired, he was "working full duty and was not under any restrictions."<sup>3</sup>

¶ 27 The Commission stated that, during the July 25, 2013, section 19(h) and 8(a) hearing, the claimant displayed his surgical scars, which consisted of: (1) an indentation approximately three inches long on the palmar side of the left wrist; (2) a scar approximately one inch long within that indentation containing three stitch marks; (3) a 3/4-inch-long scar extending upward from the knuckle of the long finger on the top of the left hand; and (4) one inch above that scar, a thin 4-inch-long scar extending upward along the middle of the wrist. In addition, the Commission noted that, after his October 2012 surgery, the claimant complained of pain in his left forearm "with wrist rotation," and Dr. Mahoney prescribed exercises following surgery to improve "wrist mobility." Moreover, during the July 2013 hearing, the claimant testified that activities such as buttoning his pants and using a drive-up ATM were difficult "due to his lack of left wrist mobility," which was worse than it was at the time of the initial arbitration hearing.

¶ 28 The Commission stated that "[did] not find any evidence in the record to support a separate award for permanent partial disability of the left arm." In support of this finding, the Commission noted that the claimant's complaints involved "left wrist mobility" and that that the surgical procedures performed on the claimant "involved his left hand and wrist and not significantly the left arm."

¶ 29 Moreover, the Commission found that the claimant "failed to prove a loss of occupation

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<sup>3</sup> The Commission noted that, during the August 2, 2010, arbitration hearing, the claimant testified that he had sought employment at Intel and Arizona State University but he left each of those jobs because he did not believe he was physically capable of performing some of the requirements of those jobs (such as performing CPR and lifting 75 pounds).

as a result of the August 8, 2008 accident." The Commission acknowledged the possibility that limited left wrist mobility "could be a consideration for future employment, even though [the claimant] is right-handed." However, the Commission concluded that "it would be relying on mere speculation to find that [the claimant] has in fact incurred a loss of occupation." In support of this conclusion, the Commission noted that no doctor opined that the claimant is unable to return to his former occupation as a stationary engineer as a result of his left hand injury. Moreover, the Commission observed that the claimant "did not testify that he attempted to find work following his release by Dr. Mahoney in April of 2013." The Commission found that the claimant's testimony about his brief employment at ASU was "immaterial" because it "clearly pertain[ed] to a work attempt that occurred prior to arbitration, as evidenced by the arbitration decision." The Commission "found nothing in the record that shows that [the claimant] took any steps to reenter the workforce following his release by Dr. Mahoney in April of 2013."

¶ 30 Further, although the Commission acknowledged that an April 16, 2013, Work Status Form contained in Dr. Mahoney's records indicated that a ten pound lifting restriction applied, the Commission noted that Dr. Mahoney's treatment note from his last examination of the claimant on April 2, 2013, indicated that the claimant was released from care without addressing work status or restrictions. The Commission noted that the claimant "did not obtain Dr. Mahoney's deposition or a narrative report," and he had "refused formal physical therapy post-operatively and did not undergo functional capacity evaluation testing or vocational testing." Thus, "[w]ithout more," the Commission did "not accept the Work Status Form as conclusive evidence of a permanent ten pound lifting restriction for the left hand."

¶ 31 The claimant appealed the Commission's decision on remand to the circuit court of Cook County. The circuit court (Judge Kay Marie Hanlon) affirmed the Commission's decision.

¶ 32 This appeal followed.

¶ 33 ANALYSIS

¶ 34 On appeal, the claimant argues that the Commission erred as a matter of law by failing to award benefits for the loss of use of his left arm (in addition to loss of use of his left hand) under section 8(e) of the Act, and by failing to award him "man-as-a-whole" benefits under section 8(d)(2) of the Act.

¶ 35 The parties dispute the standard of review that should govern our analysis. The claimant argues that we should review the Commission's decision *de novo* because the relevant facts are undisputed. (For example, the claimant notes that the parties do not dispute that he suffered an additional disability after the initial arbitration hearing or that Dr. Mahoney treated him for additional disabilities and imposed a ten pound lifting restriction.) According to the claimant, this case merely requires us to interpret the requirements of sections 8(e) and 8(d)(1), a pure question of law which we review *de novo*. See, e.g., *Cassens Transport Co. v. Industrial Comm'n*, 218 Ill. 2d 518 (2006). The employer, by contrast, argues that the Commission's determination of the nature and extent of the claimant's disability should be affirmed unless it is against the manifest weight of the evidence.

¶ 36 We agree with the employer. "The determination of the extent or permanency of an employee's disability is a question of fact for the Commission, and its decision will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Will County Forest Preserve Dist. v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110077WC, ¶ 15; see also *Baumgardner v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 274, 278-79 (2011). Even in cases where the facts are undisputed, this court must apply the manifest-weight standard if more than one reasonable inference might be drawn from the facts. *Brady v. Louis*

*Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 549 (1991); *Baumgardner*, 409 Ill. App. 3d at 279. "It is only in those cases where the undisputed facts are susceptible to but a single inference that the inquiry becomes one of law and subject to *de novo* review." *Baumgardner*, 409 Ill. App. 3d at 279; see also *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 349 (2000). In this case, the undisputed facts were subject to competing inferences regarding the extent of the claimant's disabilities. Accordingly, we will uphold the Commission's findings that the claimant was not entitled to benefits for loss of use of his left arm under section 8(e) or for "man-as-a-whole" benefits under section 8(d)(2) unless those findings are against the manifest weight of the evidence.

¶ 37 A factual finding is against the manifest weight of the evidence if the opposite conclusion is "clearly apparent." *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d at 828, 833 (2002). When the evidence is sufficient to support the Commission's causation finding, we will affirm. *Id.*

¶ 38 Applying these standards, we cannot say that the Commission's findings regarding the extent of the claimant's permanent disability were against the manifest weight of the evidence. Although it is undisputed that the claimant suffered a work related injury to his left hand and wrist on August 8, 2008, there is no evidence that he ever suffered a work-related injury to his left arm. The surgeries that the claimant underwent after the initial arbitration hearing were performed on his left wrist and hand, not his left arm. The additional physical disabilities that the claimant suffered after those surgeries (*e.g.*, his decreased grip and wrist strength and his inability to button his pants, use an ATM machine, or twist his wrist without pain) were all

caused by a decrease in the mobility of his left wrist. None of the claimant's disabilities were traceable to any independent injury or permanent disability of his left arm. Dr. Mahoney's post-surgical diagnosis was osteoarthritis of the left hand and wrist. In short, all of the evidence, including the medical records and the claimant's own testimony, established that the claimant had sustained a work related injury to his left wrist and hand. Any resulting limitations in the claimant's physical abilities and any resulting work restrictions were attributable to those injuries, not to any independent injury to his arm. Accordingly, the Commission's finding that the claimant was entitled to benefits for additional loss of use of his left wrist but was not entitled to benefits for the loss of use of his left arm was not against the manifest weight of the evidence.

¶ 39 There is also ample evidence in the record to support the Commission's denial of "man-as-a-whole" disability benefits under section 8(d)(2). Section 8(d)(2) provides for benefits in any of the following three situations: (1) where a claimant sustains serious and permanent injuries not covered by section 8(c) (820 ILCS 305/8(c) (West 2008) (relating to injuries resulting in disfigurement)) or section 8(e) of the Act; (2) where a claimant covered by section 8(c) or 8(e) of the Act also sustains other injuries which are not covered by those two sections and such injuries do not incapacitate him from pursuing his employment but would disable him from pursuing other suitable occupations, or which have otherwise resulted in physical impairment; or (3) where a claimant suffers injuries which partially incapacitate him from pursuing the duties of his usual and customary line of employment but do not result in an impairment of earning capacity. 820 ILCS 305/8(d)(2) (West 2008); *Will County Forest Preserve Dist.*, 2012 IL App (3d) 110077WC, ¶ 14. The only work-related injury the claimant suffered in this case was an injury to his left hand, which was covered by section 8(e). Accordingly, in order to recover "man-as-a-whole" benefits under section 8(d)(2), the claimant was required to prove that he sustained

injuries which "partially incapacitate him from pursuing the duties of his usual and customary line of employment." 820 ILCS 305/8(d)(2) (West 2008).

¶ 40 The claimant presented no evidence in support of this required element. The claimant testified that he voluntarily retired from his employment with the employer in October 26, 2009. At that time, he was working full duty without restrictions. He did not claim that he was forced to leave his occupation because of his work injury. Although the claimant later suffered an increase in disability from his work-related injury, no doctor opined that the claimant was unable to return to his former occupation as a stationary engineer as a result of his left hand and wrist condition. The claimant did not present any evidence regarding the physical requirements of his former occupation. Nor did he present any medical testimony or other evidence suggesting that he would be unable to perform his former job duties while he was under a 10-pound lifting restriction. He never underwent functional capacity evaluation testing or vocational testing. Moreover, there is nothing in the record suggesting that the claimant ever tried to resume his employment as a stationary engineer. Indeed, there is no evidence suggesting that the claimant ever tried to obtain employment of any kind after Dr. Mahoney released him to work in April 2013.

¶ 41 Accordingly, the claimant failed to prove that his work-related injuries partially incapacitated him from pursuing the duties of his usual and customary line of employment, as required by section 8(d)(2). The Commission's denial of benefits under that section was not against the manifest weight of the evidence. In fact, given the complete lack of evidence supporting the claimant's argument on this issue, we would uphold the Commission's finding under any standard of review.

¶ 42

CONCLUSION

¶ 43 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, which confirmed the Commission's decision.

¶ 44 Affirmed.