2016 IL App (5th) 140480WC-U

Order filed: May 2, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

HEYL, ROYSTER, VOELKER & ALLEN,	)	Appeal from the Circuit Court
	)	of the Third Judicial Circuit,
	)	Madison County, Illinois.
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 5-14-0480WC
	)	Circuit No. 14-MR-147
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (Lisa Petty, Appellee).	)	Honorable Donald M. Flack, 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 original determination that the claimant failed to establish that she gave proper notice of her repetitive trauma injuries to the employer was against the manifest weight of the evidence. The Commission's finding on remand that the claimant had given proper notice and that her current condition of ill-being was causally related to her employment were not against the manifest weight of the evidence.

¶ 2 The claimant, Lisa Petty, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), seeking benefits for bilateral

carpal tunnel injuries which she claimed were caused by work-related repetitive trauma sustained while she was employed as a legal secretary by respondent, Heyl, Royster, Voelker & Allen (employer). The claimant alleged she gave the employer proper notice on or about April 10, 2009, for injuries with a manifestation date of March 9, 2009. After conducting a hearing, an arbitrator found that the claimant had proven that her bilateral carpal tunnel injuries were causally related to her employment as manifested on March 9, 2009. The arbitrator also found that the claimant's current condition of ill-being in both wrists and her need for medical treatment was causally related to the claimant's employment. The arbitrator awarded the claimant temporary total disability (TTD) benefits for 4 1/7 weeks covering the period from October 15, 2009, through November 13, 2009. The arbitrator further ordered the employer to pay reasonable medical expenses in the amount of $16,348.51, and awarded permanent partial disability (PPD) benefits pursuant to section 8(e) of the Act (820 ILCS 305/8(e) (West 2010)) to the extent of 20% loss of the use of the left hand and 20% loss of use of the right hand.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission unanimously reversed the arbitrator's decision, finding that the claimant failed to give timely notice of her injuries to the employer and thus was precluded from recovering under the Act.

¶ 4 The claimant then sought judicial review of the Commission's decision in the circuit court of Madison County. The circuit court reversed the Commission's ruling. The employer then sought review in this court which dismissed the appeal for lack of appellate jurisdiction over a nonfinal order. *Heyl, Royster, Voelker & Allen v. Illinois Workers' Compensation Comm'n*, (5-12-0382WC, June 6, 2013).

¶ 5 On remand, the Commission issued a decision reversing its prior order. The Commission affirmed the original decision of the arbitrator with a modification reducing the PPD award to 15% of the loss of use of each hand.

¶ 6 The employer sought timely judicial review of the Commission's decision in the circuit court of Madison County, which confirmed the Commission's decision. The employer then filed this timely appeal.

¶ 7 The employer raises the following issues on appeal: (1) whether the Commission's original order finding that the claimant had failed to satisfy the statutory 45-day notice requirement was against the manifest weight of the evidence or otherwise erroneous; (2) whether the Commission's order on remand finding that the claimant suffered repetitive trauma injuries manifesting on March 9, 2009, was against the manifest weight of the evidence or otherwise erroneous; and (3) whether the Commission's findings on remand that the claimant proved a causal connection between her bilateral carpal tunnel injuries and her employment, and entitlement to medical expenses, TTD and PPD benefits were against the manifest weight of the evidence;

¶ 8 FACTS

¶ 9 The claimant testified that she was employed by the employer as a legal secretary, a position she held from June 7, 2004, until being laid off March, 2009. The claimant further testified that she typically spent 7 to 7½ hours per day performing typing activities. She noted that her work activities often contained deadlines that required her to keep working after her usual quitting time in order to complete her job duties. In addition to typing, the claimant would also perform other duties such as photocopying and filing.

¶ 10 The claimant testified that she initially noticed problems with her hands before starting

work with the employer. She underwent a nerve condition study in 2003 that was negative for carpal tunnel syndrome. Claimant testified that her hand problems had completely resolved prior to starting to work for the employer. She testified that she first noticed problems with her hands sometime during 2007; however, she did not seek medical attention since she did not want to take any time off work.

¶ 11 On March 9, 2009, the claimant was laid off by the employer due to economic conditions. Specifically, the claimant was laid off due to lack of work and not as a result of any deficiencies in her work performance.

¶ 12 On April 2, 2009, the claimant signed an Application for Adjustment of Claim, in which she alleged a manifestation date of March 9, 2009, which corresponded to the last day she worked for the employer.

¶ 13 The claimant testified that beginning sometime in January 2009, she began to experience pain in both wrists and hands. She suspected at that time that she might have carpal tunnel syndrome, but since she was not a physician she was not able to make such a diagnosis. She testified that, despite her pain, she never missed work and was able to perform all her work duties without limitation at all times prior to her last day of employment on March 9, 2009.

¶ 14 On May 5, 2009, at the suggestion of her attorney, the claimant sought treatment from Dr. David Brown, a board certified orthopedic surgeon. Dr. Brown recorded a patient history of bilateral hand pain, which worsened after long periods of typing. He further noted the claimant's prior history of bilateral hand pain and negative test results for carpal tunnel syndrome in 2003. Dr. Brown conducted diagnostic testing for carpal tunnel syndrome and noted positive results. He diagnosed bilateral carpal tunnel syndrome and opined that the claimant's condition was caused or aggravated by her job activities for the employer. Specifically, he noted that repetitive

motions of the fingers while typing caused inflammation of the synovitis of the flexor tendons within the carpal tunnel surrounding the medial nerve, a classic cause of carpal tunnel syndrome. He recommended surgical intervention.

¶ 15 On July 23, 2009, the claimant was examined at the request of the employer by Dr. Richard Howard, a board certified orthopedic surgeon. Dr. Howard diagnosed bilateral carpal tunnel syndrome, however he opined that the claimant's typing 7 to 7½ hours per day was not a causative factor for the claimant's carpal tunnel syndrome. Rather, he opined that the fact that she was an overweight middle-aged female caused her condition of ill-being.

¶ 16 On August 21, 2009, the claimant underwent a series of nerve condition studies conducted by Dr. Daniel Phillips. Dr. Phillips diagnosed moderate right tunnel pathology and mild left tunnel pathology.

¶ 17 On October 5, 2009, the claimant underwent right carpal tunnel release surgery. On November 5, 2009, she underwent left carpal tunnel release surgery. The surgeries were performed by Dr. Stephen Benz, a board certified orthopedic surgeon. Dr. Benz released the claimant to return to work on November 13, 2009.

¶ 18 The claimant testified that she found employment as a legal secretary at another law firm. She further testified that, at the time of the hearing, she continued to have occasional pain in her wrists that radiates upward into her arms, and occasional cramping in her hands that is associated with her work activities. She testified that she does not have any numbness or tingling in her hands.

¶ 19 The arbitrator found that the claimant sustained bilateral carpal tunnel injuries which arose out of and in the course of her employment with the employer and which manifested itself on March 9, 2009. The arbitrator further determined that the claimant proved by a

preponderance of the evidence that her injuries manifested on March 9, 2009, which corresponded to the claimant's last day of employment. The arbitrator noted that the claimant was aware of gradually increasing symptom, however, he noted that the claimant had no way of knowing what her condition was until it was diagnosed by a medical professional. Finding that March 9, 2009, was the date of manifestation, the arbitrator concluded that the claimant provided timely notice to the employer on April 10, 2009.

¶ 20 The arbitrator also found that the claimant's current condition of ill-being was causally related to her employment and ordered medical expenses and TTD benefits for the period the claimant was off work after her surgeries. The arbitrator's causation finding was based upon Dr. Brown's diagnosis and opinion regarding causality. Regarding the nature and extent of the claimant's permanent injuries, the arbitrator awarded 20% of the loss of the use of each arm without a specific explanation regarding his rationale.

¶ 21 The employer appealed the arbitrator's decision to the Commission, which unanimously rejected the arbitrator's award. The Commission found that the claimant failed to provide timely notice of her accidental injuries. Referring to the claimant's testimony that she "had a pretty good feeling that [her pain] was probably carpal tunnel from what [she] heard in the past, but [she] was so busy at [her] job that [she] was not willing to take time off to go get the surgeries done," the Commission concluded that the claimant knew of her injuries and its causal link to her work as early as January 2009. Thus, the Commission held that her notice given on April 10, 2009, was untimely.

¶ 22 The claimant then sought judicial review of the Commission's decision in the circuit court of Madison County, which reversed the Commission's ruling. The court acknowledged the requirement to defer to the Commission's factual findings, but found the Commission's judgment

to be in conflict with the law as articulated in *Durand v. Industrial Comm'n*, 224 Ill. 2d 53 (2006) and *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607 (1988). The court noted that, under *Durand*, courts set "the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities." *Durand*, at 72. Here, since the claimant was able to work without limitation up to the date she was laid off, and did not require medical attention until afterwards, the court found that the Commission erred as a matter of law in holding that the claimant did not provide the statutorily required notice. The court remanded the matter to the Commission for further proceedings.

¶ 23 On remand, the Commission reversed itself on the issue of notice, finding that the claimant had provided proper notice to the employer. The Commission affirmed and adopted the arbitrator's prior findings with regard to causation, medical expenses, and TTD benefits. Regarding the award of PPD benefits, the Commission modified the arbitrator's award of 20% loss of the use of each arm, reducing the award to 15% loss of use of each arm. The Commission explained that in doing so it was "rely[ing] upon similar prior Commission decisions, the claimant's release to full duty one month post operatively, her uncomplicated recovery, and lack of any medical documentation of continuing residual symptoms."

¶ 24 The employer sought review of the Commission's decision in the circuit court, which confirmed the Commission's decision upon remand. The employer then filed this appeal, noting it was appealing both the court's reversal of the original Commission ruling as well as the decision on remand. *Pace Bus Co. (South Division) v. Industrial Comm'n*, 337 Ill. App. 3d 1066, 1069 (2003).

¶ 25 ANALYSIS

¶ 26 1. Notice and Accident Date

¶ 27 The Commission issued two separate decisions regarding notice and the accident date. As the employer points out, we must review the original decision of the Commission before addressing the decision on remand. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 530 (2001). We will, therefore, address the original Commission order first.

¶ 28 The employer maintains that the Commission's original order finding that the claimant did not give timely notice was not against the manifest weight of the evidence. The employer further maintains that the circuit court erred in subjecting the Commission's decision to what amounted to *de novo* review. In such cases, we review the decision of the Commission, not the decision of the circuit court. *Farris v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130767WC, ¶ 72.

¶ 29 The Commission's decision regarding whether the claimant gave sufficient notice of his claim is a question of fact for the Commission to determine, and that determination will not be overturned on appeal unless it is against the manifest weight of the evidence. *Three 'D' Discount Store, Inc. v. Industrial Comm'n*, 198 Ill. App. 3d 43, 46 (1989). A factual decision is against the manifest weight of the evidence when the opposite conclusion is clearly apparent from the record. *D.J. Masonry Co. v. Industrial Comm'n*, 295 Ill. App. 3d 924, 928 (1998). However, where the Commission's decision involves a question of law, courts will review the decision *de novo*. *Johnson v. Illinois Workers' Compensation Comm'n*, 2011 IL App (2d) 100418WC, ¶ 22.

¶ 30 In a repetitive trauma case, the claimant must allege and prove a single definable accident date from which notice must be given. *White v. Illinois Workers' Compensation Comm'n*, 374 Ill. App. 3d 907, 910 (2007). The date of such an accident is the date when the injury "manifests

itself." *Id*. The phrase "manifests itself" signifies "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987). The test is objective, and each case should be decided from its own facts and circumstances. *Three 'D' Discount Store*, 198 Ill. App. 3d at 46. The 45-day notice requirement is to be liberally construed. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 96 (1994).

¶ 31 In the instant case, there is no dispute that the claimant filed an Application for Adjustment of Claim notifying the employer of a claim on April 10, 2009. To be timely, this notice would have to indicate an accident date after February 26, 2009. The claimant's original Application for Adjustment of Claim gave an accident date of March 9, 2009.

¶ 32 The employer maintains on appeal that March 9, 2009, was not the date of manifestation. Rather, it maintains that the true manifestation date was at some unspecified date as around January 2009, when according to the claimant's testimony, she realized she probably had carpal tunnel syndrome. Thus, the employer maintains that the Commission's original finding that the claimant had failed to give proper notice was not against the manifest weight of the evidence, while the Commission's finding on remand was against the manifest weight of the evidence.

¶ 33 The employer's position, and the Commission's original order, are based upon the incorrect proposition of law that once an employee experiences symptoms and may attribute those symptoms to his work activities he or she must then give notice to the employer. This proposition of law has been repeatedly rejected by our courts:

> " 'By their very nature, repetitive-trauma injuries may take years to develop to a point of severity precluding the employee from performing in the workplace. An employee who

discovers the onset of symptoms and their relationship to the employment, but continues to work faithfully for a number of years without significant medical complications or lost working time, may well be prejudiced if the actual breakdown of the physical structure occurs beyond the period of limitation set by statute. [Citation.] Similarly, an employee is also clearly prejudiced in the giving of notice to the employer [citation] if he is required to inform the employer within 45 days of a definite diagnosis of the repetitive-traumatic condition and its connection to his job since it cannot be presumed the initial condition will necessarily degenerate to a point at which it impairs the employee's ability to perform the duties to which he is assigned. Requiring notice of only a *potential* disability is a useless act since it is not until the employee actually becomes disabled that the employer is adversely affected in the absence of notice of the accident.' (Emphasis in original.)" *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 68 (2006) (quoting *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607, 611 (1988)).

¶ 34 It is well-settled that the date of manifestation of a traumatic injury is subject to a "flexible standard" that "ensure[s] a fair result for both the faithful employee and the employer's insurance carrier." *Id.* at 71. Our courts typically uphold various factors which set the manifestation date as "either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities." *Id.* at 72. Moreover, because repetitive-trauma injuries are gradual and progressive in nature, "the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work." *Id.*

¶ 35 In the instant matter, the record established that sometime in January 2009 the claimant

began exhibiting symptoms that would ultimately be diagnosed as carpal tunnel syndrome. Being somewhat familiar with the concept of carpal tunnel syndrome, the claimant surmised at that time that she "probably" had carpal tunnel syndrome. However, the record also clearly established that the claimant did not reach "either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities" prior to the date on which her employment was terminated on March 9, 2009. Prior to that date, the claimant had performed her work activities without limitation. In fact, it was not until Dr. Brown examined the claimant, that she was diagnosed with carpal tunnel syndrome and her condition was causally linked to her employment.

¶ 36 Here, we hold that the Commission's original finding that the claimant was obligated to give the employer notice in January 2009 of her *potential* disability is against the manifest weight of the evidence. As the *Durand* court noted, " '[r]equiring notice of only a *potential* disability is a useless act since it is not until the employee actually becomes disabled that the employer is adversely affected in the absence of notice of the accident.' (Emphasis in original.)" *Durand*, 224 Ill. 2d at 68. The record in the instant matter established only that the claimant had a *potential* disability. While she obviously was aware that she began suffering bilateral wrist pain sometime in January 2009, the fact remains that she was able to continue to perform her work duties without interruption or limitation until her last date of employment on March 9, 2009. Moreover, the record is uncontroverted that the claimant did not have a need for medical attention until she decided to seek treatment from Dr. Brown on May 5, 2009. Given that the claimant did not seek medical attention for her symptoms and did not encounter any limitations on her ability to perform her work, the Commission's original finding on notice was both against the manifest weight of the evidence and erroneous as a matter of law.

¶ 37 We apply the same analysis to the Commission's decision on remand. The Commission "after reviewing the entire record" reversed itself on the issue of notice. Reviewing that decision under the manifest weight standard of review, we find that the record supports the Commission's finding, *i.e.*, under the facts of this case, the manifestation date could be no earlier than the last day of employment.

¶ 38 2. Causation

¶ 39 The employer next argues that the Commission's finding that the claimant's bilateral carpal tunnel syndrome and the need for bilateral release surgery was causally related to her employment is against the manifest weight of the evidence. The employer maintains that the claimant had nonemployment related risk factors that more likely caused her condition of ill-being: (1) female; (2) over age 40; (3) history of hypothyroidism; and (4) history of obesity.

¶ 40 To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A finding by the Commission that a claimant's injuries are causally related to employment activities is a question of fact and the finding will not be overturned unless it is against the manifest weight of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Repetitive trauma claims generally rely upon medical testimony to establish the causal connection between the work performed and the claimant's disability. *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 477 (1987).

¶ 41 Here, the claimant's original treating physician, Dr. Brown, opined that the claimant's typing activities were a causative factor toward her condition. It is sufficient that the claimant's employment be a causative factor and not the sole or even primary causative factor. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). The employer maintains that Dr. Howard's

opinion that the four nonemployment risk factors were the sole cause of the claimant's carpal tunnel syndrome was entitled to more weight.

¶ 42 Our review of the record establishes that the Commission's determination that the claimant's condition of ill-being was the result of repetitive trauma was not against the manifest weight of the evidence. Ultimately, the conflict here is between two sets of competing medical opinions as to causation. It is the function of the Commission alone to determine the weight to be accorded to evidence, to weigh competing medical opinions, and to draw reasonable inferences from the evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 411 (1984). Here, the Commission exercised its proper function and simply found the opinions of Dr. Brown to be more persuasive on the issue of causation than Dr. Howard's. There is nothing in the record which would lead to a conclusion that the weight accorded to the medical opinion evidence by the Commission was against the manifest weight of the evidence.

¶ 43 3. Benefits

¶ 44 The employer further alleges that the Commission's award on remand of TTD benefits, PPD benefits, and reimbursement for medical expenses is against the manifest weight of the evidence. However, since these arguments are based solely upon the premise that the Commission's findings on notice and causation were erroneous, premises which we have 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).

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County, which confirmed the Commission's decision on remand.

¶ 47 Affirmed.