2017 IL App (1st) 161238WC-U

NO. 1-16-1238WC

Order filed: December 8, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

KATHERINE DE LA PASQUA,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County.
	)	
v.	)	No. 15-L-50699
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Alexander P. White,
(Park Ridge-Niles School District #64, Appellee).	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Hoffman and Harris concurred.
Presiding Justice Holdridge dissented. Justice Hudson joined in the dissent.

ORDER

¶ 1 *Held:* The Commission's decision to deny the claimant benefits pursuant to the Illinois Workers' Compensation Act (the Act) (820 ILCS 310/1 *et seq* (West 2012)) was not against the manifest weight of the evidence.

¶ 2 The claimant, Katherine De La Pasqua, appeals the judgment of the circuit court of Cook County, which confirmed the decision of the Illinois Workers' Compensation

Commission (Commission), to deny her benefits for the claim she filed pursuant to the Illinois Workers' Compensation Act (the Act) (820 ILCS 310/1 *et seq*. (West 2012)). For the reasons that follow, we affirm the Commission's decision.

¶ 3 FACTS

¶ 4 On September 6, 2012, the claimant filed an application for adjustment of claim with the Commission pursuant to the Act (820 ILCS 310/1 *et seq*. (West 2012)), alleging permanent injury to both of her hands while working for the employer, Park Ridge-Niles School District #64, on or about May 4, 2011. The claimant's application came before the arbitrator for a hearing on August 14, 2014, wherein the following relevant evidence was adduced.

¶ 5 The claimant testified that she was a language arts teacher for seventh and eighth grade students in the employer district. She had been a teacher for 22 years, the last 12 of which she'd spent with the employer. She testified that she taught "four Core language arts classes[,] which are 50 minutes each[,] back to back." She also taught one language arts elective. The claimant testified that she typically started her day at 7:35 a.m., and would spend approximately the first 25 minutes of the day standing next to a desk and working on a writing prompt with her students on a SMART board. She testified that this process could "involve a lot of keyboard work" as she typed edits for the students as they discussed the prompt. She estimated that 90 percent of the first 25 minutes of the day involved typing. She testified that she followed the same routine in all five classes she taught, Monday through Thursday, but that on Fridays, the students worked on reading, so she did not type using the keyboard and SMART board. She testified that for the

remaining 25 minutes of each of the 5 classes, 4 days a week, the students worked on vocabulary, so she physically wrote on their papers, then, for "the last part of the class," she would return to the keyboard and SMART board to type in their homework assignments. She testified that she also used a rolling mouse on the computer when performing these duties.

¶ 6 The claimant testified that in addition to her five classes, she had two planning periods per day, during which she often emailed with parents and input data for student records. She testified that she also did grading and other school functions at home, in the evenings. She later testified that she worked in the evenings for "[a]bout two hours a night," and that "[p]robably 85 percent" of that work involved computer work. She testified that she was not a trained typist, and that the amount of typing and keyboarding required by her job had increased in her 12 years with the employer. With regard to the equipment provided to her by the employer, she testified that she had been requesting a new chair since the 2009-2010 school year, because the chair she had would not stay raised and therefore the desk was "much higher" than the claimant. She testified that she was 5'2" tall, weighed 110 pounds, and had never been diagnosed as "obese."

¶ 7 The claimant testified that in approximately March of 2011, she began to notice symptoms in her hands, which would "ache" like "growing pains," would wake her up, and would cause pain "throughout the day." She testified that "it got to the point where my fingers were going numb, and I couldn't hold a hair dryer or, you know, a stack of papers. And so then I went to the doctor." The claimant testified that she was referred by her primary physician, Dr. Lindeman, to Dr. David Guelich. She agreed that Dr.

Lindeman had noted, in 2008, that the claimant had "issues of carpal tunnel" during a previous pregnancy, but stated she did not remember that at all, and that Dr. Lindeman never mentioned it to her. Her first visit to Dr. Guelich was on May 2, 2011, at which time she received cortisone injections in both hands that "helped for a while." She returned to Dr. Guelich on December 30, 2011, because her pain and symptoms had worsened. She received another injection of cortisone, which she testified, "did not work." She subsequently had an MRI and was referred to Dr. Vitello, who specialized in hands and wrists. The claimant testified that on July 31, 2012, Dr. Vitello performed surgery on her right wrist, which, along with the physical therapy that followed, improved her symptoms. With regard to her previous symptoms, she testified that they were worse at the end of the school day, and that they tended to lessen when school was not in session, such as during the winter holidays and during the summer months.

¶ 8 The claimant testified that her two officemates were aware of her wrist problems during 2011, because she would sometimes discuss her pain with them, and wore braces on her wrists. She testified that an interim principal, Ralph Heatherington, was sometimes present when she discussed her pain and when she wore the wrist braces. She testified about an email exchange she had in 2012 with Kelley Evola, who handled human resource and personnel matters for the employer, in which she and Evola discussed the appropriate date of accident for her workers compensation claim. She agreed that she never had surgery on her left wrist, testifying that she elected not to because once her right wrist was better, she depended less on the left wrist and therefore had less left wrist pain. She testified that her right wrist recovery "was very difficult" and

she didn't want to go through it again. She testified to medical bills in the amount of $7,649.86. Dr. Vitello stopped seeing her in September 2012, although she continued physical therapy for some time after that. The claimant testified that she still had some aching in both wrists, which she would remedy with ice packs, hot compresses, rubbing, and wearing the wrist braces.

¶ 9 On cross-examination, the claimant testified that following her Core classes, she had a 30-minute lunch break, followed by a recess time. She testified she still worked the same job for the employer that she did before, and that she was never prescribed to take a period of time off work. The claimant testified that on September 12, 2013, she underwent an Independent Medical Examination (IME) with Dr. Vender. She testified that other than school-related work, she did "[v]ery little" computer work for her own "personal use." She testified that she did not currently have any restrictions set on her by a doctor.

¶ 10 Ralph Heatherington testified for the employer. He testified that he was a part-time interim co-principal for the employer during the 2009-2010 school year. He testified that he did not remember the claimant ever reporting a work-related accident to him, did not recall her ever wearing wrist braces, and did not recall any conversations with her or her officemates about her having wrist or hand injuries. On cross-examination, Heatherington was asked to read from a report authored and signed by his successor with the employer, Joel T. Martin. He read that the claimant "developed carpal tunnel in both wrists from continual grading and typing for her job." On re-direct examination, Heatherington reiterated that he had no knowledge of any injuries to the

claimant. Following Heatherington's testimony, various documentary exhibits were admitted into evidence, which will be discussed in more detail in the context of the findings of the Commission, below.

¶ 11 On October 30, 2014, the arbitrator issued her decision. Therein, she found, *inter alia*, that the claimant did sustain an accident on May 4, 2011, that arose out of and in the course of her employment with the employer, and that timely notice of the accident was given to the employer. She ordered the employer to pay the claimant's medical bill in the amount of $7,649.86, and to pay the claimant "the sum of $669.64 for the period of 25.6 weeks as the condition has resulted in 10% loss of use of the right hand and 2.5% loss of use of the left hand." The arbitrator specifically found that the claimant "was a credible witness."

¶ 12 On September 24, 2015, the Commission issued its unanimous decision and opinion on review, in which it reversed the decision of the arbitrator and found, *inter alia*, that the claimant "failed to prove she sustained an accidental injury arising out of and in the course of her employment on May 4, 2011, [and] that a causal relationship exists between the alleged May 4, 2011, work accident and [her] present condition of ill-being." The Commission recounted much of the testimony described above, and added that documentary evidence showed that Dr. Lindeman diagnosed the claimant with bilateral carpal tunnel syndrome on February 21, 2011. The Commission recounted additional documentary evidence, including the fact that at her May 2, 2011, appointment with Dr. Guelich, the claimant answered "no" on a patient history form that asked if her injury was work related. The Commission noted that Dr. Guelich diagnosed the claimant with

"bilateral wrist pain with carpal tunnel findings, left greater than right and without any diagnostic evidence of nerve compression," but that Dr. Vitello stated that although the claimant's "subjective complaints and selective physical exam [were] consistent with carpal tunnel syndrome," he "made it clear to her that she had a negative EMG and that her complaints or diagnostic test are not supportive of carpal tunnel syndrome." The Commission found it significant that ultimately, Dr. Vitello opined that there was no work-related injury, although the claimant's activities "may have aggravated a pre-existing condition." The Commission also found it significant that Dr. Vender, who administered the IME, opined that the claimant's "non-repetitive/non-forceful activities were not the type to cause or contribute to the development of upper extremity conditions and as such he found no causal relationship to her work." The Commission also noted problems with the manifestation date given by the claimant, pointing out that the claimant's medical records disclosed "numerous references to earlier complaints dating back to 2008." The Commission concluded that the claimant "failed to prove the threshold issues of accident and causal connection," and further failed to provide adequate notice to the employer as required by the Act. Accordingly, the Commission denied the claimant's claim for compensation in its entirety.

¶ 13 On October 6, 2015, the claimant sought, in the circuit court of Cook County, judicial review of the Commission's decision and opinion. On April 15, 2016, the circuit court affirmed the decision of the Commission, ruling that the Commission's findings were not against the manifest weight of the evidence. This timely appeal followed.

¶ 14 ANALYSIS

¶ 15 On appeal, the claimant contends we should reverse the Commission's findings with regard to both notice and accident/causal connection. We begin with the latter findings. "In cases relying on the repetitive-trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209 (1993). "It is well settled that in workers' compensation cases it is the function of the Commission to decide questions of fact and causation, to judge the credibility of witnesses and to resolve conflicting medical evidence." *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741 (1994). A reviewing court will not overturn findings of the Commission unless the findings are against the manifest weight of the evidence. *Id*. Findings are against the manifest weight of the evidence when an opposite conclusion is clearly apparent. *Id*. at 742.

¶ 16 In this case, the claimant first contends the Commission erred because it "ignored" admissions by an agent of the employer that the claimant's work for the employer "caused" her wrist problems. The claimant points to an Illinois Form 45 injury report and a Sedgwick Claim Management Services incident report, both of which were signed by Principal Joel T. Martin and both of which describe the claimant having "carpal tunnel" in both wrists as a result of "continual typing and grading for her job." The claimant quotes *CFC Investment, L.L.C. v. McLean*, 387 Ill. App. 3d 520, 529 (2008) (quoting *Ficken v. Alton & Southern Ry. Co.*, 291 Ill. App. 3d 635, 647 (1996)), for the proposition that " '[a]ny oral or written out-of-court statement by a party to the action *** which tends to establish or disprove any material fact in a case is an admission and is competent

evidence against that party in the action.' " The claimant also cites *McLean* for the proposition that "[t]he admissibility of such statements of fact rests on the presumption that courts can usually rely on statements made against the speaker's interests." *Id*. at 529. However, the claimant neglects to cite to two additional key propositions from *McLean*: (1) "[t]he presumption does not make speculative or irrelevant statements admissible" and (2) the presumption does not permit testimony about legal conclusions. *Id*. In this case, the reports signed by Martin are speculative, as it is undisputed that Martin was not a doctor, never examined the claimant, and was not offering his or anyone else's medical opinions about the claimant's condition. Moreover, there is nothing in the record to substantiate the claimant's bald assertion that the Commission "ignored" the reports, rather than giving them their due weight, when reaching its decision. To the contrary, the Commission specifically stated in the opening paragraph of its unanimous decision and opinion on review that it had reviewed "the entire record and file," and on pages 2 and 3, the Commission specifically mentioned both reports. There is no merit to this contention of the claimant.

¶ 17 Indeed, the bottom line in this case is that we are faced with a situation in which conflicting medical evidence was presented with regard to whether there existed a causal connection between the claimant's work for the employer as a teacher and her problems with her wrists. It was the province of the Commission to resolve this evidence. The Commission did so, finding particularly significant the opinion of Dr. Vitello that there was no work-related injury, although the claimant's activities "may have aggravated a pre-existing condition," and the opinion of Dr. Vender that the claimant's non-

repetitive/non-forceful activities were not the type to cause or contribute to the development of upper extremity conditions, and that accordingly there was no causal connection to her work. The arguments of the claimant to the contrary on appeal notwithstanding, the conclusion opposite to that reached by the Commission is not clearly apparent in this case; therefore, the Commission's findings and conclusion are not against the manifest weight of the evidence and must be affirmed. Because we conclude that the Commission's finding that the claimant failed to prove a causal connection between her work and her wrist problems is not against the manifest weight of the evidence, and affirm on that basis, we need not consider the correctness of the Commission's decision with regard to notice.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we affirm the circuit court's judgment confirming the decision of the Commission to deny benefits to the claimant.

¶ 20 Affirmed.

¶ 21 PRESIDING JUSTICE HOLDRIDGE, dissenting:

¶ 22 I respectfully dissent. I would reverse the Commission's findings with regard to both notice and accident/causation. With regard to causation, there is no dispute that the claimant suffered from carpal tunnel syndrome, as well as ulnar tunnel syndrome. The overwhelming weight of the evidence established that the claimant's employment activities were a causative factor. Dr. Lindeman diagnosed carpal tunnel and noted that the claimant's job duties required significant repetitive bilateral wrist motion from typing.

Dr. Guelich also diagnosed bilateral carpal tunnel syndrome. Dr. Vitello, who performed the claimant's release surgery, diagnosed both carpal tunnel and ulnar tunnel syndrome. He was not convinced that the claimant's condition was caused by her employment, but he opined that it was possible that her work activities aggravated her preexisting conditions. It is axiomatic that aggravation of a preexisting condition is a compensable form of injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003); *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 199 (2003). Moreover, it is well-settled that medical opinion testimony that injury "could have" or "might have" been caused by the claimant's employment is sufficient to establish causation. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182 (1983); *Cassens Transport Co., Inc. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 332 (1994). At the very least, the record established that the claimant proved that her employment activities aggravated a preexisting condition.

¶ 23 I disagree with the majority's finding to the contrary. I see no competent medical opinion testimony to counter the claimant's evidence regarding causation. The majority points to Dr. Vitello's opinion as "particularly significant" evidence of the lack of a causative relationship between the claimant's employment and her injuries. However, Dr. Vitello opined that the claimant's employment activities "may have aggravated a pre-existing condition," which actually supports a finding of causation. Moreover, the Commission's reliance upon Dr. Vender's opinion that the claimant's job duties were not the "type to cause or contribute to" the claimant's condition of ill-being is unsupported by the record. Dr. Vender did not have an accurate description of the claimant's job activities. His statement that the claimant's activities were merely "that of an English

teacher" is completely at odds with the claimant's unrebutted testimony regarding her pervasive repetitive use of a keyboard/smartboard, which required an excessive amount of repetitive and forceful typing. The claimant's testimony that she spent 90% of the first 25 minutes of each day typing, as well as 85% of two hours each night typing on her computer was unrebutted, as was her testimony that the amount of repetitive typing and keyboarding had significantly increased over her 12 years working for this employer.[1]

¶ 24 Given what I see as the overwhelming evidence that the claimant established that her condition of ill-being was causally related to her employment, I would find that the Commission's finding to the contrary was against the manifest weight of the evidence. In doing so, I recognize that where there is conflicting medical opinion as to causation, it is the province of the Commission to weigh competing medical opinions. *International Harvester, Co. v. Industrial Comm'n*, 46 Ill. 2d 238, 332 (1994). I also recognize that Commission is not required to accept unrebutted medical testimony regarding causation. *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040 (2000). I point out, however, that the Commission may not reject medical opinion testimony in an arbitrary manner. *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1042 (1999). Here, the Commission rejected or ignored Dr. Vitello's opinion that it was possible that the claimant's

[1] The claimant relies heavily upon a theory that the Illinois Form 45 injury report and the claim management incident report signed by Principal Joel T. Martin was an evidentiary admission that the claimant's condition was causally related to her employment. The majority determined that the statements in those documents did not constitute evidentiary party admissions. I do not find this evidence of any great relevance other than noting there is nothing in either document that rebuts the claimant's description of her symptoms or her description of the repetitive nature of her typing/keyboarding activities.

employment caused her condition, without any basis for doing so. It is clearly apparent from the record that the claimant established the requisite causation. The Commission's finding to the contrary was against the manifest weigh of the evidence.

¶ 25 The majority did not address whether the claimant had given notice. Since I would find that the claimant established that her condition of ill-being was causally related to her employment, I will also address that issue. When a claimant's claim rests on a theory of repetitive trauma, the accident date is presumed to be the date upon which the fact of the injury and its connection to the claimant's employment becomes reasonably apparent to the claimant. *General Electric Co. v. Industrial Comm'n*, 190 Ill. App. 3d 847, 857 (1989). The unrebutted evidence established that the claimant and Kelley Evola, the employer's human resources agent, agreed that the claimant had been in communication with the employer regarding her condition since 2009. An exchange of emails between the claimant and Evola clearly established that employer was on notice that the claimant had a potential compensation claim. The fact that both the claimant and Evola struggled to come up with a manifestation date shows that the employer had received some type of notice of a potential claim even though the notice had never been committed to writing until the email exchange between the claimant and Evola. It is clear that the claimant had received some notice of the claimant's potential claim for benefits, although the notice was unquestionably inaccurate and defective. It is equally clear from the evidence that the employer was not prejudiced by the defective notice as it was fully able to investigate the claim.

¶ 26 I would find that the claimant gave some notice and that the employer was not prejudiced by the inaccuracy of the notice. *Luckenbill v. Industrial Comm'n*, 155 Ill. App. 3d 106, 113 (1987).

¶ 27 Because I would find that the claimant gave sufficient notice of her accidental injuries to the employer and proved a casual nexus between her employment and her condition of ill-being, I would reverse the decision of the Commission.