2017 IL App (1st) 170608WC-U
No. 1-17-0608WC
Order filed: December 22, 2017

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

C'ANDRE GRIFFIN,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 16-L-50359
	)	
PEPSI AMERICA and ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION,	)	Honorable
	)	James M McGing,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Harris, and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: Claimant's applications for adjustment of claim were untimely where they were filed outside applicable limitations periods, and, as neither was timely, there was nothing to relate back to; moreover, causes of action alleged in the two applications did not grow out of the same transaction or occurrence.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, C'Andre Griffin, appeals an order of the circuit court of Cook County which confirmed an order of the Illinois Workers' Compensation Commission (Commission) finding

the claims he filed pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2006)) were time barred. See 820 ILCS 305/6(d) (West 2006). For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 Claimant was employed by respondent, Pepsi America, as a forklift operator. He filed his original application for adjustment of claim on December 10, 2010. In it, he alleged a psychological injury to his head—severe depression—resulting from an incident on September 15, 2007, where a co-worker threatened him with a gun. Thus, claimant's original application was filed more than three years after the alleged accident, which would render it time barred. See 820 ILCS 305/6(d) (West 2006).

¶ 6 Claimant attempted to remedy this defect by filing an amended application for adjustment of claim on June 4, 2015. The amended application alleged that claimant's injuries resulted from the incident set forth in the first application and also "pranks at work." It stated that claimant's injuries occurred on December 27, 2007, which was claimant's last day working for respondent. The amended application was filed over seven years after the alleged date of injury, which would obviously make it untimely. The only way it could be deemed timely is if the amended application relates back to claimant's original application and the date of the alleged injury in the amended application is used in conjunction with the day the original application was filed.

¶ 7 The arbitrator first determined that the original application was not timely filed. He then held that the amended application did not relate back to the original application. He explained that, while the original application set forth one event occurring at a specific time, the amended application raised "a new theory" by alleging "multiple events [and] cumulative trauma." The Commission affirmed, simply adopting the decision of the arbitrator.

¶ 8 The trial court confirmed the Commission. It first noted that the facts were undisputed, the Commission drew no inferences, and it simply applied the law to undisputed fact. As such, it concluded its review was *de novo*. The trial court then considered claimant's argument that this case should be analyzed like a repetitive-trauma case, with December 27, 2007, being deemed the manifestation date. The trial court observed that no Illinois case law supported the application of this theory to a case involving a psychological injury. In *Pathfinder Co. v, Industrial Comm'n*, 62 Ill. 2d 556, 563 (1976), our supreme court held that a claimant can recover under the Act where he or she "suffers a sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm * * *, though no physical trauma or injury was sustained." However, the trial court noted, neither the supreme court nor this court has ever used a manifestation date in the context of a psychological injury. Further, the trial court held that the Commission's finding that the repetitive-trauma theory contained in the amended application did not grow out of the same transaction as the acute-trauma theory set forth in the original application was correct. The trial court then confirmed the Commission, and this appeal followed.

¶ 9 III ANALYSIS

¶ 10 As noted, neither the original nor the amended applications are timely on their face. The former was filed about three months after the three-year limitations period ran. See 820 ILCS 305/6(d) (West 2006). The latter, which alleged a repetitive-trauma injury manifesting on December 27, 2007, was not filed until June 4, 2015—over four years after the running of the limitations period. *Id.* Thus, we must consider whether the amended application relates back to the original application such that the date of filing of the original application becomes the effective filing date of the amended application. As the trial court noted, the facts are

undisputed, the Commission was required to draw no inferences from the record, and it simply applied the law to undisputed facts, so review is *de novo*. *Flynn v. Industrial Comm'n*, 211 Ill. 2d 546, 553 (2004).

¶ 11 To begin, we note that the controlling law is the Code of Civil Procedure (Code). 735 ILCS 5/2–101 *et seq.* (West 2006). The Code applies where some aspect of procedure is not governed by the Act. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 154 (2000). The relation-back doctrine, embodied in section 2-616 of the Code (735 ILCS 5/2–616 (West 2006)), is one such rule. *Id* at 155.

¶ 12 Section 2-616 provides, in pertinent part, as follows:

> "The cause of action * * * set up in any amended pleading shall not be barred by lapse of time * * *, if the time prescribed or limited had not expired when the original pleading was filed, and if it shall appear from the original and amended pleadings that the cause of action asserted * * * grew out of the same transaction or occurrence set up in the original pleading, even though the original pleading was defective in that it failed to allege the performance of some act or the existence of some fact or some other matter which is a necessary condition precedent to the right of recovery or defense asserted, if the condition precedent has in fact been performed, and for the purpose of preserving the cause of action * * * set up in the amended pleading, and for that purpose only, an amendment to any pleading shall be held to relate back to the date of the filing of the original pleading so amended." 735 ILCS 5/2–616(b) (West 2006)).

This statute presents a number of problems for claimant.

¶ 13 First is the requirement that the original pleading be timely filed. 735 ILCS 5/2–616(b) (West 2006)) ("The cause of action * * * set up in any amended pleading shall not be barred by

lapse of time * * *, *if the time prescribed or limited had not expired when the original pleading was filed*." (Emphasis added.)). As already explained, the original application was filed approximately three months too late. Thus, there is no properly filed predicate pleading for the amended application to relate back to.

¶ 14 Second, as the Commission observed, the causes of action set forth in the two applications do not grow "out of the same transaction or occurrence." 735 ILCS 5/2–616(b) (West 2006)). The original application alleged a single, discrete event that resulted in an acute injury. The amended application alleged a series of events that caused a repetitive-trauma injury. The only overlap is that the single event alleged in the original application was alleged to be part of the series of events that formed the basis of claimant's repetitive-trauma theory (they both list the same body part as the location of the injury, albeit through a different mechanism of injury).

¶ 15 Arguing for a different result, claimant cites *McLean Trucking v. Industrial Comm'n*, 96 Ill. 2d 213, 218 (1983). However, that case did not concern the timeliness of the assertion of the cause of action. Indeed, it expressly distinguished a case the respondent sought to rely on because it involved the statute of limitations. *Id.* at 218. Instead, at issue was a motion to allow an amendment to conform the pleadings to the proofs. *Id.* at 218-19. As such, *McLean* provides no meaningful guidance here. Claimant similarly cites *Freeman United Coal Mining Co. v. Industrial Comm'n*, 297 Ill. App. 3d 662 (1998); however, that case also does not concern the timeliness of a claim. Claimant, of course, bears the burden of establishing error on appeal. See *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008). Claimant's failure to identify any authority where a pleading has been deemed to relate back under circumstances similar to those present here is a failure to carry that burden.

¶ 16 In sum, claimant's claim fails for two reasons: neither application was filed within the period set forth in section 6(d) of the Act (820 ILCS 305/6(d) (West 2006)) and the amended application does not relate back to the original application (even if it did, we reiterate that the original application was also untimely).

¶ 17 IV. CONCLUSION

¶ 18 In light of the foregoing, the judgment of the circuit court of Cook County confirming the decision of the Commission is affirmed.

¶ 19 Affirmed.