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2014 IL App (3d) 130355WC-U

Order filed September 22, 2014

NO. 3-13-0355WC

IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

THERESE LOPEZ,	)	Appeal from
	)	Circuit Court of
Appellant,	)	LaSalle County
	)	No. 12MR257
v.	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION <i>et al.</i> (Monterey Mushrooms, Inc.	)	Eugene P. Daugherty,
Appellee).	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Hoffman and Hudson concurred in the judgment.  
Presiding Justice Holdridge dissented, joined by Justice Stewart.

**ORDER**

- ¶ 1 *Held:* The Commission's decision that claimant's injuries did not arise out of and in the course of her employment was not against the manifest weight of the evidence.
- ¶ 2 Claimant, Therese Lopez, sought benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2008)), seeking benefits from her employer, Monterey Mushrooms, Inc., for repetitive-trauma injuries suffered to her right and left wrists.
- ¶ 3 Following a hearing on January 30, 2012, the arbitrator denied the claim, finding claimant's condition of ill-being did not arise out of and in the course of her employment. Accordingly, he denied her claim for compensation. On review, the Illinois Workers'

Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of LaSalle County confirmed the Commission's decision.

Claimant appeals, asserting the Commission erred in finding that her injuries did not arise out of an in the course of her employment. We affirm.

¶ 4

#### I. BACKGROUND

¶ 5

The following evidence was elicited at the January 30, 2012, arbitration hearing. The 41-year-old claimant testified she began working for the employer in February 1991 as a mushroom harvester or "picker." For two weeks in December 1991, claimant worked in the employer's packing department, but thereafter returned to work as a mushroom harvester for the duration of her employment which ended in October 2009. Claimant's job duties as a harvester included picking mushrooms by holding them with one hand and cutting with the other, and then placing the mushrooms in containers called "logs." She worked in shifts ranging from 6 to 13 hours.

¶ 6

Beginning in 2007, claimant noticed her wrists and fingers "would fall asleep," she lost strength in them at times, and she had trouble sleeping due to pain. That same year, an ergonomics research study was conducted at the employer's facility by the University of California. In November 2007, claimant received a letter from the study investigator, Dr. Robert Goldberg, suggesting claimant see a doctor for carpal tunnel syndrome. This possible disorder had been identified during a physical examination of claimant's hand and wrist region conducted as part of the study.

¶ 7

On March 11, 2008, claimant sought medical treatment from Dr. Constantino Perales, a primary care physician. He gave her a return-to-work script restricting her to light-duty work because she had limited use of her hands due to "overuse syndrome." Dr. Perales

referred her to Dr. James D. Schlenker, an orthopedic surgeon.

¶ 8 On April 20, 2008, Dr. Schlenker examined claimant. Dr. Schlenker's report noted as follows:

"[Claimant] gave me a history of developing pain and triggering of both thumbs, worse on the the right than the left side and to a lesser degree the index fingers. She said this started two months ago. She also has numbness and tingling in both hands (symptoms of carpal tunnel) worse on the right than the left side for approximately one year. She noticed this initially at work, where she picks mushrooms and cleans them. This work is repetitive in nature. She has worked at her present place of employment for 18 years. The numbness started at work approximately a year ago and gradually became worse. It now wakes her up at night. Her hands fall asleep. At times, she has been dropping objects."

Dr. Schlenker diagnosed bilateral severe stenosing tenosynovitis, triggering of the thumbs, worse on the right than the left side with flexion contracture. He also noted mild triggering or stenosing tenosynovitis involving the index fingers. Finally, he diagnosed bilateral carpal tunnel syndrome, more severe on the left than the right side. Dr. Schlenker opined, "these conditions are the result of repetitive activities she has carried out at work over a longer period of time." He noted claimant's diabetes could be a contributing factor, but he did not believe it was the main cause.

¶ 9 Dr. Schlenker initiated conservative treatment of a cortisone injection for the triggering of the left thumb. Based on the severity of the contracture on the right thumb, he

scheduled claimant for surgery to release the triggering on that thumb the following day. He ordered an EMG and nerve conduction test to confirm carpal tunnel syndrome. Claimant underwent surgery on her right thumb on April 21, 2008. The post-operative diagnosis was stenosing tenosynovitis right thumb. She was restricted from work for two weeks and returned to light-duty work effective May 4, 2008. Claimant was released to return to full-duty work effective July 21, 2008. Claimant testified following her thumb surgery, she started getting bulges or balls on the wrists and inside of her forearms which are more prominent on the right side and are painful.

¶ 10 On June 25, 2008, at the request of the employer, claimant submitted to an independent examination by Dr. Stephen Weiss, an orthopedic surgeon. Dr. Weiss's evidence deposition was admitted into evidence. Dr. Weiss diagnosed probable bilateral carpal tunnel syndrome, status post right trigger thumb release and noted she had a left trigger thumb. He also pointed out claimant was diabetic and on contraceptives. He opined that no causal connection between claimant's injuries and her work activities was evident. In his opinion, "carpal tunnel syndrome has not been shown to be work-related unless the work involved exposure to very vigorous vibration, such as chainsaws or jackhammers" or "forceful repetitive gripping." He felt that claimant's work activities, while highly repetitive, did not require forceful gripping and, thus, did not believe her carpal tunnel syndrome was causally related to her work. Rather, he attributed her carpal tunnel syndrome to diabetes and her use of contraceptives. Further, he did not believe her work activities caused her bilateral trigger thumbs because her work did not involve "forceful thumb flexion and extension or forceful use of the thumb and gripping." Dr. Weiss did believe surgery was appropriate to treat claimant's carpal tunnel syndrome and left trigger thumb.

¶ 11 On October 9, 2008, claimant reported she was still experiencing pain and Dr. Schlenker advised her to "limit repetitive activity at [her] own discretion." On January 18, 2009, Dr. Schlenker noted claimant had more pain in her hands and fingers and restricted her to "less repetitive work" and no more than eight hours effective January 19, 2009.

¶ 12 The results of an April 16, 2009, EMG and nerve conduction test performed by Dr. Rakesh K. Garg, suggested severe carpal tunnel syndrome on both sides, with the right side being worse than the left side. On April 28, 2009, Dr. Perales referred claimant to Dr. Perona for bilateral carpal tunnel syndrome, right worse than left. Dr. Perona's records, if any, are not contained in the record before us.

¶ 13 On June 15, 2009, according to Dr. Schlenker's notes, claimant underwent surgery. His records also contain "no-work scripts" with effective dates of July 16, 2009, and August 16, 2009, "since no one hand [work is] available." Absent from the record is any indication of what the June 15, 2009, surgery entailed, although it appears to have been a carpal tunnel and left trigger thumb release.

¶ 14 On June 1, 2010, Dr. Upendra Sinha, an orthopedic surgeon, examined claimant at the request of her attorney. His evidence deposition was admitted into evidence. Dr. Sinha testified when he first saw claimant, she complained of pain, numbness, and tingling of both hands along the median nerve distribution. He was aware that Dr. Schlenker had performed a carpal tunnel release and trigger thumb releases on both sides approximately one year before. He diagnosed left wrist carpal tunnel syndrome and left and right trigger thumb. He requested another EMG which was performed by Dr. Garg on June 22, 2010. Based on the EMG results, Dr. Garg noted probable left-sided mild carpal tunnel syndrome and the results demonstrated improvement compared to the study conducted on April 16, 2009.

¶ 15 Dr. Sinah opined claimant's medical conditions were causally related to her work activities. He also explained that diabetic patients "are more prone to develop recurrent carpal tunnel." On cross-examination, Dr. Sinah testified his opinion on causation was based on his understanding of claimant's work duties which was "heavier manual work, but—the company had her return to the work doing heavier manual work than the harvester operation. So if heavier manual work involves repetitive motion of the wrist and hand, so that's just quite a bit [of] stress on the carpal tunnel." On redirect-examination, Dr. Sinha explained the EMG test revealed claimant had prolonged conduction velocity and not a pure diabetic neuropathy, meaning something other than diabetes contributed to her carpal tunnel syndrome.

¶ 16 On October 15, 2010, Dr. Weiss examined claimant a second time. He acknowledged since he last saw claimant she had a left carpal tunnel release and trigger thumb release in June 2009, and that a right carpal tunnel release had been recommended by Dr. Schlenker in August 2009. After examining claimant and reviewing additional records, including hospital records, electrical studies, Dr. Schlenker's reports, and a description of her job, Dr. Weiss diagnosed diabetes, status post bilateral trigger thumb releases, status post left carpal tunnel release, right carpal tunnel syndrome, and intersection syndrome. He continued to hold the opinion that claimant's medical conditions were not causally related to her work duties. We note, as did the arbitrator, the additional medical records and job description relied on by Dr. Weiss were not submitted into evidence. While the record does contain a general job description for a "picker" in a separate exhibit, based on his testimony, Dr. Weiss reviewed a different job description that indicated claimant's job duties included lifting

"something that would weigh 10 to 20 pounds maximum. She would have to carry baskets. The maximum load of weight of

hangers that she used could be about 35 pounds. She had to do continuous handling which \*\*\* was consistent with what I knew before, and she had to handle mushrooms as they are picked, cut and placed in containers. Light, continuous grasping was what was necessary with good manual dexterity\*\*\*[. Her work required] highly repetitive, fine manipulation, but not particularly forceful."

¶ 17 On cross-examination, Dr. Weiss acknowledged 85% of carpal tunnel cases are "idiopathic," meaning they result from no known cause. However, he concluded, "I think the work history plays no part in her case. In her case, I think the carpal [tunnel] syndrome is related to the diabetes and to the birth control medication." In his October 25, 2010, medical evaluation report, Dr. Weiss stated as follows:

"I remain of the opinion that [claimant's] job duties were not of sufficient physical force to cause or aggravate her multiple peripheral neuropathies. The job description recently provided does present a more detailed picture of the actual physical demands of her job. However, I continue to believe that these job duties, which are repetitive and light duty in nature, do not involve the frequent, forceful activities necessary to either cause or progress her multiple conditions. In support of this is the fact that the progression of her symptoms, starting first with trigger thumbs, then carpal tunnel symptoms, and now a possible intersection syndrome is consistent with a normal progression of an underlying systemic condition and not an occupational exposure injury.

Further support is found in the fact that diabetes is often found to be a factor in carpal tunnel syndrome."

¶ 18 Humberto Villeguez testified for the employer, where he was employed as a safety coordinator from approximately November 2009 to January 2012. He stated claimant was placed on light-duty work beginning approximately August 19, 2009, through her October 2009 termination for allegedly punching another employee's time card. Light-duty work consisted of cleaning tables, chairs and microwaves in the cafeteria and doing paperwork, making copies, and making time cards in the offices. While working light duty, claimant refused to clean the bathrooms or sweep because it was too hard for her to do. Villeguez further explained as a harvester, working full-duty, claimant would have to lift 10 to 20 pounds, but she was restricted to light-duty, lifting no more than 5 pounds.

¶ 19 Claimant testified she has not worked for employer since 2009. She has been able to work since but it is painful to do so. As of the date of her testimony, she still suffered pain in her wrists, loss of strength at times, and pain from the bulges on her wrists that radiates from the bulges to her shoulder.

¶ 20 On March 27, 2012, the arbitrator denied the claim, finding claimant's injuries did not arise out of and in the course of her employment. Specifically, the arbitrator found the claimant failed to prove the conditions of ill-being in her hands were related to her employment.

¶ 21 On October 23, 2012, the Commission affirmed and adopted the arbitrator's decision. On May 23, 2013, the circuit court of LaSalle County confirmed the Commission's decision.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, claimant asserts the Commission erred in finding that her condition of ill-being did not arise out of and in the course of her employment. More specifically, she asserts the Commission's finding of no causal relationship between her medical conditions and work was against the manifest weight of the evidence. Claimant raises multiple other issues in her brief, none of which were addressed by the Commission and, thus, they are not properly before this court for review.

¶ 25 "To obtain compensation under the Act, an injured employee must show by a preponderance of the evidence that he suffered a disabling injury arising out of and in the course of his employment. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, 993 N.E.2d 473. "The phrase 'in the course of' refers to the time, place, and circumstances under which the accident occurred. [Citation.] The 'arising out of' component addresses the causal connection between a work-related injury and the employee's condition of ill-being." *Id.* "An injury is said to 'arise out of' one's employment if it '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.'" *Id.*, citing *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 672 (2003). The accident need not be the sole or principal cause, as long as it was a causative factor in a claimant's condition of ill-being." *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 944, 856 N.E.2d 602, 608 (2006).

¶ 26 Whether an injury arose out of and in the course of employment is a question of fact to be decided by the Commission and will not be disturbed unless it is against the manifest weight of the evidence. *Id.* "A finding is not against the manifest weight of the evidence if there was sufficient evidence in the record to support the Commission's decision." *Id.* at 944-45, 856

N.E.2d at 608.

¶ 27 In this case, claimant claims the Commission's finding that the condition of ill-being in her hands was not related to her employment was against the manifest weight of the evidence. We disagree.

¶ 28 Here, claimant worked for the employer from February 1991 through October 2009 as a mushroom harvester. Her harvesting duties included holding the mushroom with one hand, cutting it from the plant with the other hand, and then placing the mushroom into a container. She picked mushrooms in shifts ranging from 6 to 13 hours. In 2007, claimant began noticing pain in her hands and wrists and in March 2008, she sought medical treatment and was referred to an orthopedic surgeon. Over the course of the next several years, claimant saw at least three orthopedic surgeons for treatment of her bilateral carpal tunnel syndrome and bilateral thumb triggers.

¶ 29 Dr. Schlenker and Dr. Sinha opined claimant's medical conditions were causally related to her work activities. Based on the history provided to him by claimant, Dr. Schlenker felt claimant's conditions were "the result of repetitive activities she has carried out at work over a long[ ] period of time." Dr. Schlenker acknowledged claimant's diabetes could be a contributing factor to her carpal tunnel syndrome, but in his opinion, the main cause of her medical condition was "the repetitious activities at work."

¶ 30 Dr. Sinha testified that diabetic patients "are more prone to develop recurrent carpal tunnel," but he believed claimant's medical conditions were causally related to her work activities. On cross-examination, Dr. Sinha explained he arrived at his causation opinion based on the job description contained in a letter from claimant's attorney. Specifically that "the company had her return to the work doing heavier manual work than the harvester operation. So

if heavier manual work involves repetitive motion of the wrist and hand, so that's just quite a bit [of] stress on the carpal tunnel." Dr. Sinha testified that EMG tests can differentiate between whether the carpal tunnel syndrome at issue is a pure neurological manifestation, as would be the case if diabetes was the sole factor, or a conduction velocity problem which is caused by a "mechanical blocker" or physical obstruction. In claimant's case, Dr. Sinha testified she had prolonged conduction velocity rather than a pure diabetic neuropathy, indicating in his opinion, her carpal tunnel was not caused by diabetes. Dr. Sinha conceded, however, diabetes can be the sole cause of carpal tunnel syndrome.

¶ 31 In contrast, Dr. Weiss testified that in his medical opinion, claimant's conditions were not caused by her work activities. According to Dr. Weiss, "carpal tunnel syndrome has not been shown to be work-related unless the work involved exposure to very vigorous vibration, such as chainsaws or jackhammers" or "forceful repetitive gripping." He also testified trigger thumb is caused by "forceful thumb flexion and extension or forceful use of the thumb and gripping." Dr. Weiss opined because claimant's work activities did not require *forceful* repetitive gripping or *forceful* use of the thumbs, but rather "light, continuous grasping \*\*\* with good manual dexterity," her medical conditions could not be causally related to her work duties. While claimant's work duties were "highly repetitive" and required "fine manipulation," they were not "particularly forceful." Instead, Dr. Weiss felt claimant's diabetes and use of contraceptives were the cause of her carpal tunnel syndrome.

¶ 32 Following his second examination of claimant in October 2010, Dr. Weiss reiterated his opinion that claimant's "job duties, which are repetitive and light duty in nature, do not involve the frequent forceful activities necessary to either cause or progress her multiple conditions." He further noted, "[i]n support of this [finding] is the fact that the progression of

her symptoms, starting first with trigger thumbs, then carpal tunnel symptoms, and now a possible intersection syndrome is consistent with a normal progression of an underlying systemic condition and not an occupational exposure injury." Although Dr. Weiss testified approximately 85% of carpal tunnel causes are idiopathic, he stated "there is no scientific evidence [that] the type of work she does causes carpal tunnel syndrome or trigger thumbs." Again he attributed claimant's medical conditions to her diabetes and use of contraceptives.

¶ 33 Based on this evidence, the arbitrator found claimant "failed to meet her burden of proof that she sustained an accident that arose out of and in the course of her employment" with the employer. Specifically, he noted "there is no testimony regarding the frequency or force required to complete her job duties as a picker nor in her light duty position of cleaning the cafeteria and doing light office work." The arbitrator acknowledged Dr. Schlenker's opinion that claimant's medical conditions were caused by her repetitive work activities, but noted "there is no evidence the doctor knew exactly what those repetitive actions were." Based on the job description provided in the record, the arbitrator stated that "Dr. Sinha[] was under the incorrect impression that [claimant's] job duties included 'doing heavier manual work.'" The arbitrator found Dr. Weiss's opinion that claimant's medical conditions were not related to her work activities because they did not involve "exposure to very vigorous vibration or forceful repetitive gripping" or "forceful, repetitive thumb flexion or extension" to be more credible. The Commission adopted the arbitrator's findings.

¶ 34 "It is the function of the \*\*\* Commission to decide questions of fact and causation [citation], to judge the credibility of witnesses [citations], and to resolve conflicting medical evidence [citations]." *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 223-24. Here the Commission was presented with medical records and/or testimony from three orthopedic

surgeons. The Commission determined Dr. Weiss's medical testimony was more persuasive than the other doctors. In this case, we cannot say that an opposite conclusion from that reached by the Commission is clearly apparent.

¶ 35 We note claimant argues the letter from Dr. Goldberg in December of 2007, informing her of her possible carpal tunnel syndrome, should be considered as an admission by the employer that it "had some concerns about the work environment of its employees, otherwise it would never have requested, nor allowed the study to be performed." In her reply brief, claimant contends, "[t]his type of evidence should constitute an admission by the [employer] of the propensity of all of their employees to develop this condition, which directly developed in the hands of [claimant.]" In his letter, Dr. Goldberg's simply states that claimant may have carpal tunnel syndrome and suggests she seek medical treatment. We find nothing in the letter to indicate the author was of the opinion claimant's job as a "picker" caused her carpal tunnel syndrome.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the circuit court's judgment, confirming the Commission's decision.

¶ 38 Affirmed.

¶ 39 PRESIDING JUSTICE HOLDRIDGE, dissenting.

¶ 40 I respectfully dissent. I would rule that the Commission's finding that the claimant failed to establish that her carpal tunnel syndrome was causally related to her employment was against the manifest weight of the evidence. It is axiomatic that it is the function of the Commission to weigh the credibility of witnesses and to resolve conflicting medical evidence and that its findings on those questions will not be overturned on appeal unless they are against the manifest weight of the evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). The manifest weight of the

evidence is that which is clearly evident, plain and indisputable such that the opposite conclusion is clearly apparent. *McRae v. Industrial Comm'n*, 285 Ill. App. 3d 448, 451 (1996).

¶ 41 Here, I would find that the conclusion opposite of that reach by the Commission was clearly apparent. The overwhelming weight of the objective medical evidence established that the claimant's employment was *a* causative factor of her carpal tunnel syndrome. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). As the majority noted, the claimant's employment need not be the sole or principal cause of the claimant's injuries, as long it was one of the causes of her current condition of ill-being. Here, Dr. Weiss opined that the claimant's carpal tunnel syndrome was "related" only to her diabetes and to birth control medication. He opined further that the claimant's work history "played no part" in her condition. The overwhelming weight of the objective medical evidence does not support this conclusion.

¶ 42 Both Dr. Schlenker and Dr. Sinah opined that the claimant's employment was a causative factor in the claimant's carpal tunnel syndrome. Both supported their opinions with reference to objective medical testing. Specifically, Dr. Sinah opined that, while the claimant did exhibit symptoms of diabetic neuropathy, objective medical testing in the form of an EMG established that prolonged external exertion factors, in addition to diabetic neuropathy, contributed to her carpal tunnel syndrome. Dr. Weiss, on the other hand, testified that he gave no consideration to objective test results in reaching his conclusion. While Dr. Weiss is entitled to consider any factors he considered to be relevant, I find his rejection of available objective medical evidence to be extremely problematic. Thus, I would find the Commission's reliance solely upon the opinion of Dr. Weiss to be against the manifest weight of the evidence. I would find that the overwhelming weight of the evidence established that the claimant's employment was *a* causative factor relating to her carpal tunnel syndrome. I would, therefore, reverse the decision of the Commission and remand the matter for further proceedings.

¶ 43 Justice Stewart joins this dissent.