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2014 IL App (3d) 130689WC-U

Worker's Compensation
Commission Division

Order filed: September 19, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

WASTE MANAGEMENT OF ILLINOIS,)	Appeal from the Circuit Court
)	Tenth Judicial Circuit
)	Tazewell County, Illinois,
Petitioner-Appellant,)	
)	Appeal No. 3-13-0689WC
v.)	No. 13 L 73
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION and SCOTT ARMSTRONG,)	Honorable
)	Paul P Gilfillan,
Respondents-Appellant.)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The decision of the Commission was affirmed, where its findings that the claimant's injuries arose out of and in the course of his employment with Waste Management, and that he provided Waste Management with timely notice of those injuries, were not against the manifest weight of the evidence.

¶ 2 The employer, Waste Management, appeals from the decision of the circuit court confirming the findings of the Illinois Workers' Compensation Commission (Commission) that the claimant, Scott Armstrong, provided timely notice of his injuries to Waste Management as required under section 6(c) of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/6(c) (West 2010)), and that those injuries arose out of and in the course of the claimant's employment. For the following reasons, we affirm the decision of the circuit court.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on June 20, 2012. The claimant testified that he was employed by Waste Management from August of 1999 through January of 2010, as a residential route driver and trash collector. He worked the entire period on a "full time plus" basis, often working between 50 to 60 hours per week. The claimant generally worked alone in a one-man truck which provided unlimited service, meaning that the claimant was required to retrieve any item left for pickup weighing up to 50 pounds. According to the claimant, this often included items such as couches, mattresses, box-springs, toilets and chairs. The claimant testified that the back end of the truck, or the "hopper," came up about waist-high, and he would lift and then dump the cans over the back of the hopper and into the truck. If there were "totes" at a residence, he could operate the flipper on the back of the truck to dump the contents of those into the hopper. The claimant indicated that in the period between January 2009 and January 2010, about ten percent of his pickups were of the type for which he could use the flipper to dump the totes.

¶ 4 The claimant testified that he first began to experience shoulder problems in the summer of 2009, when his left shoulder was achy and increasingly sore, and it was becoming harder to

raise his arm. According to the claimant, the pain was not the result of any one accident, but had progressed over a period of time. He did not seek medical treatment that summer, but instead decided to "work with" the condition. In January of 2010, Waste Management lost its contract with the City of Peoria and the claimant began working for his current employer, Peoria Disposal Company (Peoria). His position with Peoria held the same job title and responsibilities as that with Waste Management. The claimant remained on unrestricted duty during his employment with Peoria.

¶ 5 On July 5, 2010, the claimant went for his annual physical examination with Dr. Volkan Sumer, and reported to the doctor that he was experiencing problems in both shoulders, with the pain in the left shoulder being more severe. Dr. Sumer ordered an MRI of the claimant's left shoulder which was performed on July 8. On July 9, 2010, the claimant was contacted by the MRI facility and diagnosed with a torn left rotator cuff. The claimant testified that, although he was working for Waste Management at the time his shoulder problems began, he did not personally notify them regarding his diagnosis or his injury, apart from filing the workers' compensation claim against them. He further indicated that he had not yet had the surgery because he was concerned about being paid during the time that he would require off of work for recovery. The claimant denied suffering any injury or accident involving his shoulder prior to July of 2009.

¶ 6 The claimant testified that he sought treatment from Dr. Steven K. Below, an orthopedic surgeon. During the claimant's examination on July 21, 2010, he informed Dr. Below regarding the history of his left shoulder, telling him that he had never suffered a distinct accident but that the condition had been growing steadily worse over the past year.

¶ 7 At the request of Waste Management, the claimant was examined by Dr. Jay Levin. He informed Dr. Levin that he had been a trash collector for 24 years, working for another disposal company for ten years prior to joining Waste Management in 1999. The claimant told Dr. Levin that he had suffered no specific injury, but that he had begun experiencing left shoulder pain in early 2003 or 2004, which he believed originated from the repetitive activities on the job for Waste Management.

¶ 8 In his deposition, Dr. Below testified that an examination of the claimant's MRI showed a complete tear of the supraspinatus tendon with some minimal involvement of the infraspinatus tendon, which is another tendon in the rotator cuff complex. The MRI also disclosed some degenerative changes in the acromioclavicular (AC) joint and some signs of subacromial bursitis. A clinical examination supported these findings, and Dr. Below accordingly recommended that the claimant undergo arthroscopic surgery to repair his rotator cuff, subacromial decompression, acromioplasty, distal clavicle excision, and evaluation of the biceps tendon which had shown some tenderness. Dr. Below testified that, in summarizing his medical history, the claimant related that he had left shoulder pain that had developed over the past year, without any definite injury. The claimant explained that his work required him to do a lot of lifting and that this definitely increased the tenderness and pain in his shoulder. Dr. Below indicated that, although the claimant did state that he had been engaged in the same line of work for 20 years and that his current employer was Peoria, he had not mentioned prior employers or said anything about changing jobs or working for Waste Management.

¶ 9 Dr. Below could not give a definite opinion as to whether, based upon the claimant's medical records and the circumstances of his condition, his work activities at Waste Management

caused his rotator cuff pathology. He did believe, however, that the type of work activities in which he engaged, including the heavy lifting and lifting of his arms above his head or away from his body, definitely aggravated his rotator cuff pathology and AC joint inflammation. The doctor was similarly unable to ascertain from the MRI the exact point in time at which the rupture in the claimant's left rotator cuff occurred. However, based upon the lack of significant muscle atrophy in the area, the doctor believed the injury occurred within the past year. Further, although Dr. Below was unable to state which "employment period" had the greater cumulative effect on the claimant's left shoulder, he testified that, based upon the claimant's reports of pain over the past few years which escalated over the last year, his current condition "started during that period with Waste [Management] and then carried on through Peoria." Dr. Below also believed that, when the claimant started employment with Peoria, he probably had a preexisting condition in his left shoulder.

¶ 10 The arbitrator held Waste Management liable for the cost of the prospective shoulder surgery for the claimant under section 8(a) of the Act (820 ILCS 305/8(a) (West 2006)), with the exact amount of the claimant's award, including any wage-loss benefits, reserved for determination at a later date. Initially, the arbitrator found that the claimant had provided Waste Management with the requisite 45-day notice of his injury under section 6(c) of the Act (820 ILCS 305/6(c) (West 2010)), noting that the date of the manifestation of his injury is July 9, 2010, that the Application for Adjustment of Claim (application) is file-stamped on July 26, 2010, and that the notice date to the parties on the Commission's initial status sheet is July 28, 2010, all clearly within the 45 day period mandated under section 6(c). The arbitrator further concluded that, for purposes of worker's compensation, the claimant was an employee of Waste

Management at the time of his injury. He noted the claimant's un rebutted testimony that his daily responsibilities for that company consisted of repetitive lifting, that he first noticed shoulder problems during his employment with Waste Management, and that he associated his injury with that employment. Accordingly, his injury related back to that employment.

¶ 11 Waste Management sought review before the Commission. On April 26, 2013, the Commission affirmed and adopted the arbitrator's decision.

¶ 12 Waste Management then sought judicial review of the Commission's decision in the circuit court of Tazewell County. On September 6, 2013, the circuit court confirmed the Commission's decision, and the instant appeal followed.

¶ 13 Waste Management first argues that there was insufficient evidence to sustain the Commission's finding that the claimant had provided timely notice of his injury as required under section 6(c) of the Act. Significantly, Waste Management does not dispute that the date of manifestation of the claimant's injury was properly stated as July 9, 2010, or that his application was stamped as received by the Commission on July 26, 2010. Rather, it seeks reversal solely on the basis that there is no other evidence proving if or when it received notice of those injuries. It further points to the proof of service section of the application, in which the date line was left blank.

¶ 14 The giving of notice under section 6(c) is jurisdictional and is thus a prerequisite to the right to maintain a claim under the Act. *Interstate Contractors v. Industrial Comm'n*, 81 Ill. 2d 434, 410 N.E.2d 837 (1980); *Ristow v. Industrial Comm'n*, 39 Ill. 2d 410, 235 N.E.2d 617, (1968). Section 6(c) states that "notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident." 820 ILCS 305/6(c) (West 2010). The

rule further provides that, as long as some notice is given, "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration *** unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." 820 ILCS 305/6(c); *White v. Workers' Compensation Comm'n*, 374 Ill. App. 3d 907, 873 N.E.2d 388 (2007). The purpose of the notice requirement is to enable the employer to investigate the alleged accident. *Atlantic & Pacific Tea Co. v. Industrial Comm'n*, 67 Ill. 2d 137, 143, 364 N.E.2d 83 (1977). Our supreme court has held that compliance with the notice requirement is accomplished by placing the employer in possession of the known facts related to the accident within the statutory period. *Fenix-Scisson Construction Co. v. Industrial Comm'n*, (1963), 27 Ill. 2d 354, 357, 189 N.E.2d 268. Accordingly, the notice requirement under section 6(c) is satisfied by the proper filing of an application for adjustment of claim with the Commission. *Seiber v. Industrial Comm'n*, 82 Ill. 2d 87, 95, 411 N.E.2d 249, 252 (1980). With regard to service of the application, rules promulgated under the Act require that the claimant "serve one copy" upon all opposing parties, and that a dated certificate evidencing service be filed with the Commission. 50 Ill. Adm. Code 7020.20(a) (1999). Once the application is filed, the Commission shall "send the information on the Application on a Notice of Hearing to the opposing party at the address supplied by the filing party." *Id.*, at 7020.20(d). In the event the notice of hearing is returned to the Commission because of a wrong address, the Commission must inform the filing party, to enable him to obtain the correct address. *Id.*

¶ 15 In this case, the application was completed and signed by the claimant and his attorney on July 15, 2010, and received by the Commission on July 26, 2010. The proof of service section of the application, though undated, is executed by the claimant's attorney, and states that the document was placed in the mail to Waste Management, Inc., 3552 E. Washington St., East

Peoria, "at 4:30 p.m." As recognized by the arbitrator, the Commission's initial status sheet reflects a "notice date" to the parties of July 28, 2010, and sets an upcoming status hearing. We find that this is sufficient to create an inference that Waste Management received proper notice within the 45 day period under section 6(c). This inference is justified particularly because Waste Management never affirmatively states that it did not receive the Commission's July 28 notice, or that the address on the application was not its correct business address. Further, there is no evidence that the application or the status notice were returned to the Commission due to an invalid address. Accordingly, Waste Management's argument fails.

¶ 16 Next, Waste Management contends that the finding that the claimant's injury was causally related to his employment at Waste Management, rather than Peoria, was contrary to the manifest weight of the evidence. In particular, it maintains that Dr. Below was unable to conclusively state that the claimant's duties at Waste Management, though substantially the same as those he performed at Peoria, were the reason for his rotator cuff tear, when the injury could have occurred during the seven months he was employed at Peoria prior to obtaining his diagnosis.

¶ 17 We will not reverse a decision by the Commission unless it is contrary to law or against the manifest weight of the evidence. *Durand v. Indus. Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918 (2006). It is the Commission's role to evaluate medical evidence and to draw reasonable inferences there from; a reviewing court should not disturb the Commission's decision on a factual issue simply because other inferences can be drawn. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 65, 442 N.E.2d 908 (1982); *Mobil Oil Corp. v. Industrial Comm'n*, 309 Ill. App. 3d 616, 624, 722 N.E.2d 703 (1999). On review, the appropriate analysis is whether there is evidence in the record to support the Commission's decision. *Benson v. Industrial*

Comm'n, 91 Ill. 2d 445, 450, 440 N.E.2d 90 (1982). In repetitive trauma cases, the employee bears the burden of proving by a preponderance of the evidence that his injury was the result of work-related stress or trauma, rather than normal degeneration due to age. See, e.g., *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill.App.3d 288, 591 N.E.2d 894 (1992).

¶ 18 Here, there was sufficient evidence to support the Commission's decision that the injury was caused by the claimant's employment at Waste Management. It was undisputed that the claimant worked for Waste Management for over 11 years, where he spent 50 to 60 hours per week lifting heavy and often bulky items above his waist and projecting them into his refuse truck. It was also undisputed that he first began to experience left shoulder problems in 2009, and possibly as early as 2003, within the duration of his employment with Waste Management, and that these problems became progressively worse until the claimant received treatment from Dr. Below in 2010. Dr. Below believed that, based upon the MRI, the rotator cuff tear likely occurred within the past year, and further testified that, in light of the claimant's reports of escalating pain over the past few years, the pathology probably started during the period with Waste Management. There is no basis to disturb these findings.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court, which confirmed the decision of the Commission.

¶ 20 Affirmed.