

2014 IL App (4th) 130721WC-U
No. 4-13-0721WC
Order filed April 25, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

INNOVATIVE STAFF SOLUTIONS,)	Appeal from the Circuit Court
)	of Moultrie County.
Appellant,)	
)	
v.)	No. 13-MR-7
)	
THE ILLINOIS WORKERS')	
COMPENSATION COMMISSION, et al.,)	Honorable
)	Dan L. Flannel,
(Ronald L. Halbrook, Appellee).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding that claimant sustained a repetitive-trauma injury arising out of and in the course of his employment with respondent is not against the manifest weight of the evidence.

¶ 2 Claimant, Ronald L. Halbrook, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) alleging that he sustained a repetitive-trauma injury to his right shoulder while employed by respondent,

Innovative Staff Solutions. Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)), the arbitrator found claimant's injuries compensable and awarded reasonable and necessary medical expenses, temporary total disability (TTD) benefits, and prospective medical expenses. The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator and remanded the cause for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). On judicial review, the circuit court of Moultrie County confirmed the decision of the Commission. Respondent now appeals, arguing that the Commission's finding that claimant sustained a compensable injury is against the manifest weight of the evidence. We affirm.

¶ 3

I. BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing on March 22, 2012. Respondent operates a temporary employment agency. Claimant began working for respondent in 2008. Respondent placed claimant as a machine operator with a company called Hydro-Gear. Claimant testified that his position at Hydro-Gear required him to work eight hours a day, six days a week and that his duties involved machining aluminum housings for lawnmower transmissions. Admitted into evidence was a description of claimant's job responsibilities, which claimant himself drafted. According to that job description and claimant's testimony, claimant would initially move a pallet of "raw" parts to the staging area. Claimant would then take a part from the pallet and "load" it onto the machine's "fixture" for processing. Each machine had either two fixtures (one upper and one lower) or four fixtures (two upper and two lower) and claimant would operate two or three machines at a time. Claimant estimated that each part weighed between 10 and 20 pounds. Claimant demonstrated the motion required to load a part onto an upper fixture, and the arbitrator observed that claimant

placed his hand at eye level.¹ Once the machine finished processing the parts, claimant would remove them from the machine, inspect them, stack them on another pallet, and repeat the process. Claimant testified that the number of parts he processed each day varied depending on the speed of the machine. He estimated that when he was working with “low volume” parts, he would process about 200 parts per day. However, when he was working with “high volume” parts, he would process between 300 and 400 parts per day.

¶ 5 Claimant stated that in July 2011, he started noticing pain and limited range of motion in his right shoulder. Claimant denied any shoulder injury prior to that time. Claimant notified his supervisor, Lawrence Rose, about his condition. Claimant told Rose that he did not know how he injured his shoulder. Claimant later contacted Brenda Scribner, a human-resources employee at Hydro-Gear, seeking a referral to Dr. Volney Willett.

¶ 6 Dr. Willett examined claimant on July 25, 2011. Dr. Willett’s records reflect that claimant provided a history of right shoulder pain, weakness, and impaired range of motion which began one week prior to his visit. Dr. Willett diagnosed shoulder-joint pain and prescribed ibuprofen and shoulder exercises. A July 26, 2012, intake note from Dr. Willett’s office indicates that claimant called and stated that Hydro-Gear would not allow him to return to work without a release. In response, Dr. Willett issued a note providing that claimant had been unable to work since July 25, but could return to work on July 27. A July 27, 2012, intake note from Dr. Willett’s office states that claimant called, indicating that he attempted to go to work

¹ The location of the lower-level fixtures relative to claimant’s body is unclear from the record. However, at oral arguments, counsel for respondent represented that the lower-level fixtures are “right at shoulder level if not slightly below shoulder level.”

but was unable to shift the gears of his car. Claimant also stated that he was unable to perform the exercises prescribed by Dr. Willett. Dr. Willett recommended that claimant report to the emergency room.

¶ 7 On August 16, 2011, claimant consulted Dr. David Fletcher regarding his shoulder pain. Dr. Fletcher testified by evidence deposition that he is board certified in preventative medicine and occupational health. Claimant told Dr. Fletcher that he awoke on July 25, 2011, with shoulder pain. In particular, claimant complained of burning and aching in his right shoulder and the inability to lift his right arm. Claimant also reported that the pain radiated from the right side of his neck down to his hand. Claimant did not relate the pain to a specific incident, but suspected repetitive trauma from his job duties while working at Hydro-Gear. X rays of claimant's right shoulder did not reveal any bony abnormalities or show any evidence of a chronic history of dislocation or any major degenerative changes. Upon physical examination, Dr. Fletcher noted that claimant's range of motion was "fairly normal," but slow. He also noted an inflammatory compression when claimant swings his arm past 90 degrees and a "clunking sound." Dr. Fletcher testified that his objective findings on physical examination were "very consistent" with claimant's subjective complaints. Dr. Fletcher opined that claimant's symptoms were indicative of shoulder impingement syndrome and a labral tear. Dr. Fletcher administered a steroid injection. Dr. Fletcher recommended an MRI arthrogram to rule out a full thickness tear of the rotator cuff and to guide further treatment. Respondent's insurance carrier denied authorization for the MRI arthrogram.

¶ 8 Dr. Fletcher testified that he received a written description of claimant's job from Hydro-Gear. The job description provided, in relevant part, that the machinist position "requires that individuals be able to lift, push or pull up to 25 pounds regularly and up to 100 pounds

occasionally.” Over respondent’s objection, Dr. Fletcher then responded to the following hypothetical posed by claimant’s attorney:

“Q. Okay. Doctor, in addition to this job description containing the physical demands ***, I want to ask you a hypothetical and ask that you assume these facts to be true.

I would ask that you assume [claimant] worked eight-hour days, often six days a week, as a machine operator. I want you to further assume that he would take transmissions out of a box, lift them into a fixture of a machine, most fixtures of which were overhead, and oftentimes he ran two machines at once. The machines have fixtures where he would place the transmissions in and take them out after anywhere from two to ten to fifteen minutes, depending on the particular machine, and he would process between 100 to 400 transmissions, depending on the machines, during the course of an eight-hour workday.

Assuming these facts to be true, along with the job description ***, do you have an opinion within a reasonable degree of medical certainty whether [claimant’s] work as a machinist caused the right shoulder impingement syndrome which you diagnosed?

* * *

A. Well, based on the hypothetical, I believe that there would be a causal relationship. Those activities could cause a cumulative trauma shoulder condition.”

¶ 9 On cross-examination, Dr. Fletcher acknowledged that he has not seen claimant since August 16, 2011. Dr. Fletcher also acknowledged that he was informed by a representative of Hydro-Gear that, despite the information on the written job description, the materials claimant worked with weighed closer to 10 pounds. Dr. Fletcher testified that a history of waking up and

reporting shoulder pain and then calling into work was not a significant factor in his opinion on causal connection because claimant had sustained a cumulative trauma. Dr. Fletcher agreed that repetitive-trauma injuries could be reduced by rotating a worker through a variety of tasks each day as opposed to having the individual perform the same task repeatedly. On redirect examination, Dr. Fletcher stated that he was aware prior to the date of his deposition testimony that claimant's position involved lifting objects weighing about 10 pounds. He also stated that job rotation is only effective if the worker rotates to jobs that involve different muscle groups as opposed to simply rotating to different machines requiring the same body movements.

¶ 10 Respondent referred claimant to Dr. Stephen Weiss, a board-certified orthopaedic surgeon, for an independent medical examination pursuant to section 12 of the Act (820 ILCS 305/12 (West 2010)). Dr. Weiss met with claimant on January 31, 2012. Prior to examining claimant, Dr. Weiss reviewed the records of Dr. Willett and Dr. Fletcher and various "witness statements" from employees of respondent and Hydro-Gear. In addition, following his examination of claimant, Dr. Weiss reviewed a job description provided by Hydro-Gear. During the examination, claimant told Dr. Weiss that he had no prior difficulties with his right shoulder. Claimant related that his position at Hydro-Gear involved running two machines. Specifically, claimant stated that he had to load parts ranging from two to twenty pounds into the machines and remove them when they were processed. Claimant, who Dr. Weiss noted, is 5'10" tall, reported that he had to reach above shoulder height about 300 times each shift. Upon physical examination, Dr. Weiss found: (1) diminished sensation in the right ring and small fingers; (2) a positive Tinel's sign at the right cubital tunnel; (3) a mild restriction of shoulder motion; (4) atrophy of the supraspinatus and infraspinatus muscles; (5) tenderness at the acromioclavicular

joint and the rotator cuff insertion; and (6) positive impingement signs. Dr. Weiss diagnosed right shoulder impingement syndrome and possible cubital tunnel syndrome.

¶ 11 When asked whether the right shoulder impingement syndrome was caused by claimant's work at Hydro-Gear, Dr. Weiss responded that it depends on which set of facts is correct. Dr. Weiss explained that if claimant's history was correct that he lifted "10 pounds or whatever it was" overhead 300 times per day, then claimant's job was either a causative factor or an aggravating factor of his current condition of ill-being. He opined, however, that if claimant was not lifting overhead or if the number of times he lifted was significantly less than 300 times, then claimant's condition was not related to work and simply represented a degenerative impingement syndrome.

¶ 12 On cross-examination, Dr. Weiss testified that by lifting "overhead," he meant that claimant's arm is elevated above shoulder height. He also stated that he references the frequency of repetitions as 300 per day because that is the number provided by claimant. He stated that if claimant engaged in the same overhead motion 250 times each workday, he would still find the shoulder impingement related to claimant's employment.

¶ 13 At the arbitration hearing, claimant testified that his right shoulder still bothers him. He described the pain as "very, very intense if [he does] the wrong thing" and stated that he has to be careful how he moves around. Claimant asked the arbitrator to award prospective medical, including the MRI arthrogram recommended by Dr. Fletcher.

¶ 14 Testifying on respondent's behalf at the arbitration hearing were Rose, Scribner, Morgan McQueen, and Christopher Zerrusen. According to Rose, claimant telephoned him on July 20, 2011, stating that when he woke up that morning, his shoulder was in pain and he was unable to lift his arm. Rose testified that claimant never indicated that his shoulder condition was

connected to his employment with Hydro-Gear and instead indicated that he “must have slept on it wrong.” Rose documented his contacts with claimant in a written “witness statement” dated August 10, 2011, and admitted into evidence. In his statement, Rose indicated that claimant left him a message on July 21, 2011, stating that his shoulder was not better and he was going to see a doctor. The next message Rose received from claimant was that his doctor wanted him to stay off work for a couple of days.

¶ 15 Rose further testified that he has worked for Hydro-Gear for 18 years and is familiar with the company’s machining operations. According to Rose, the aluminum housings for lawnmower transmissions generally weigh between two and seven pounds. On cross-examination, Rose explained that most of the machines at Hydro-Gear are “double fixture” machines, meaning that they cut two parts simultaneously, although there are also machines that cut four parts. Rose agreed that the “fixture” where the raw parts are placed for machining is at head level.

¶ 16 Scribner testified that Hydro-Gear offers a program with a reduced co-pay for workers experiencing a “personal” injury or illness. Pursuant to this program, claimant contacted Scribner on July 25, 2011, seeking a physician referral. Claimant told Scribner that he sustained a “personal” injury to his shoulder over the weekend. Scribner scheduled an appointment for claimant with Dr. Willett. On cross-examination, Scribner noted that claimant did not specify the mechanism of injury. For his part, claimant denied telling Scribner that he hurt his shoulder over the weekend. According to claimant, he indicated that he did not know how he had hurt his shoulder.

¶ 17 Morgan McQueen testified that in August 2011, she was an office supervisor for respondent and worked at the Hydro-Gear facility. McQueen testified that her responsibilities

included assisting injured employees with paperwork and answering their questions. McQueen testified that respondent received a document indicating that he was able to return to work, but claimant had not returned to work. In response, on August 4, 2011, McQueen spoke with claimant by telephone. At that time, claimant indicated that he was having a problem with one of his shoulders. However, he did not relate that his shoulder problem was related to his work at Hydro-Gear. McQueen saw claimant on August 8, 2011, when he came into her office to pick up a paycheck. McQueen observed claimant open the door and take the paycheck with his right hand. She also observed claimant walk through the parking lot, open his car door with his right hand, and drive away by steering with his left arm and shifting gears with his right arm. McQueen testified that her next contact with claimant was by telephone on August 17, 2011. At that time, claimant told McQueen that he could not afford an MRI and his doctor wanted him to complete workers' compensation paperwork.

¶ 18 On cross-examination, McQueen stated that her office door handle was close to claimant's waist level and that he did not have to reach above his shoulder to open the door. McQueen also acknowledged that she did not know if claimant was in pain while shifting the gears to his car. Finally, McQueen testified that although workers rotate jobs, a machinist would merely go from one machine in the machining department to another. Claimant acknowledged driving to McQueen's office to pick up his paycheck. However, he denied talking to her about his shoulder. In addition, he testified that the car he used that day was his friend's car, which had an automatic transmission and therefore did not require gear shifting.

¶ 19 Christopher Zerrusen testified that he is a safety manager at Hydro-Gear. At the request of respondent's attorney, Zerrusen prepared exhibit No. 5, which describes the jobs claimant performed for Hydro-Gear between May 25, 2011, and the date of his alleged injury. Exhibit

No. 5 specifies the weight of the part that is loaded into the machine, the number of parts a particular machine processes during a typical shift, and the center of the highest loading point for the machine as measured from the floor. Zerrusen testified that during the dates encompassed by exhibit No. 5, claimant never operated a machine that processed raw materials weighing more than seven pounds. Zerrusen further testified that the center of the highest loading point for the machines claimant operated was between 56 inches and 62 inches off the floor. According to Zerrusen, none of the machines at Hydro-Gear involve any overhead work unless the operator is “very short.” Zerrusen added that for claimant, a man of 5’10”, this type of work would not constitute overhead work. On cross-examination, Zerrusen acknowledged that on many of the dates represented in exhibit No. 5, claimant was expected to process in excess of 300 parts per day. Zerrusen also acknowledged on cross-examination that exhibit No. 5 is a more detailed description of claimant’s job duties than the information provided to Dr. Weiss.

¶ 20 Based on the foregoing, the arbitrator determined that claimant sustained a compensable injury arising out of and in the course of his employment. According to the arbitrator, the evidence established that claimant lifted and loaded parts weighing between two and seven pounds to shoulder height or above between 200 and 400 times per day. The arbitrator did not find Dr. Fletcher’s opinion on causation probative because Dr. Fletcher provided no basis for his opinion and the hypothetical and job description presented to him overstated the amount of weight claimant lifted while performing his job. However, the arbitrator concluded that the testimony of Dr. Weiss supported claimant. In particular, the arbitrator noted that Dr. Weiss explained that if claimant lifted parts 250 to 300 times per day with his arms elevated above shoulder height, this activity would be causally related to his impingement syndrome. The arbitrator awarded claimant reasonable and necessary medical expenses, 34-3/7 weeks of TTD

benefits, and prospective medical, including the MRI arthrogram recommended by Dr. Fletcher. The Commission affirmed and adopted the decision of the arbitrator and remanded the cause for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327. On judicial review, the circuit court of Moultrie County confirmed. This appeal by respondent followed.

¶ 21

II. ANALYSIS

¶ 22 On appeal, respondent argues that the Commission erred in finding claimant sustained a compensable accident. In particular, respondent asserts that the medical evidence presented does not support a finding that claimant's diagnosis of right shoulder impingement is causally related to his job duties at Hydro-Gear. Respondent also complains that claimant's testimony was inconsistent. Claimant responds that the Commission's decision is not against the manifest weight of the evidence.

¶ 23 An employee who alleges a repetitive-trauma injury must still meet the same standard of proof as other employees alleging an accidental injury. *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194 (2005). An accidental injury is compensable under the Act only if it both "arises out of" and "in the course of" one's employment. 820 ILCS 305/2 (West 2010); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). "In the course of" refers to the time, place, and circumstances under which the accident occurred. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57 (1989). An injury "arises out of" one's employment if there is a causal connection between the employment and the accidental injury, *i.e.*, the injury has its origin in some risk connected with, or incidental to, the employment or the injury is caused by some risk to which the employee is exposed to a greater degree than the general public by virtue of his or her employment. *Caterpillar Tractor Co.*, 129 Ill. 2d at 58; *Becker v. Industrial Comm'n*, 308 Ill. App. 3d 278, 281 (1999). Whether

an injury arose out of and in the course of one's employment is a factual inquiry for the Commission to resolve and its finding in that regard will not be set aside on appeal unless it is against the manifest weight of the evidence. *Knox County YMCA v. Industrial Comm'n*, 311 Ill. App. 3d 880, 885 (2000). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992).

¶ 24 As noted previously, the Commission, in affirming and adopting the decision of the arbitrator, found that claimant sustained his burden of establishing a work-related repetitive-trauma injury to his right shoulder. The evidence of record supports the Commission's finding. Notably, the record establishes that claimant had no documented complaints involving his shoulders prior to July 2011. At that time, claimant began to notice pain and a limited range of motion of his right shoulder. Claimant initially treated with Dr. Willett. Dr. Willett diagnosed shoulder-joint pain and prescribed ibuprofen and shoulder exercises. Claimant's condition did not improve, so he consulted Dr. Fletcher. An X ray ordered by Dr. Fletcher did not reveal any bony abnormalities or show any evidence of a chronic history of dislocation or any major degenerative changes. Dr. Fletcher diagnosed shoulder impingement syndrome and a labral tear. He also recommended an MRI arthrogram to rule out a full thickness tear of the rotator cuff and to guide further treatment.

¶ 25 Thereafter, claimant underwent an independent medical examination by Dr. Weiss. Dr. Weiss agreed with Dr. Fletcher's diagnosis of right shoulder impingement syndrome. More important, Dr. Weiss testified that if claimant's history regarding the requirements of his position at Hydro-Gear is correct, *i.e.*, he lifted objects "overhead" about 300 times per day, then his employment was either a causative factor or an aggravating factor of his condition of ill-being.

Dr. Weiss explained that by “overhead,” he meant claimant lifts his arm above shoulder height. In fact, there was evidence from which the Commission could reasonably conclude that the machines claimant operated required him to elevate his arm above shoulder height hundreds of times each shift. Claimant testified that his position at Hydro-Gear required him to load a part onto a machine’s “fixture” for processing. According to claimant, each machine had either two fixtures (one upper and one lower) or four fixtures (two upper and two lower), and he would operate two or three machines at a time. Claimant demonstrated the motion required to load a part onto an upper-level fixture, and the arbitrator observed that claimant placed his hand at eye level. Once the machine finished processing the part, claimant then had to remove the part from the fixture. Rose, claimant’s supervisor, agreed that the fixtures where the parts are placed for machining are at head level.

¶ 26 The Commission also had before it the exhibit prepared by Zerrusen, Hydro-Gear’s safety manager. That exhibit shows, *inter alia*, the machines claimant operated at Hydro-Gear between May 25, 2011, and July 25, 2011, and the number of parts each of those machines processes during a typical shift. During the time period represented by the exhibit, claimant worked at Hydro-Gear on 34 days, and was often assigned to operate more than one machine at a time. On 17 of those days, claimant was operating machines that process more than 300 parts per shift. Thus, for instance, the exhibit shows that on May 25, 2011, and the next three days claimant worked at Hydro-Gear, he operated one machine that could process 68 parts per shift and a second machine that could process 274 parts per shift, for a total of 342 parts per shift. In addition, claimant testified that he not only placed the raw materials into the machines, but he had to remove them. This means that on those four dates, claimant would have engaged in 684 movements. We further note that the exhibit prepared by Zerrusen shows an additional seven

days where claimant operated machines that process between 200 and 300 parts per shift. In other words, during the dates encompassed by Zerrusen's exhibit, claimant processed in excess of 200 parts and engaged in at least 400 movements on more than 70% of the days and he processed in excess of 300 parts and engaged in at least 600 movements on 50% of the days.²

¶ 27 In short, the evidence establishes that prior to July 2011, claimant had no documented complaints involving his right shoulder. X rays revealed no evidence of a chronic history of dislocations or any major degenerative changes. Thereafter, claimant was diagnosed by two physicians with right shoulder impingement syndrome. One of those physicians, Dr. Weiss, opined that if claimant's employment required him to lift objects above shoulder level several hundred times each day, then his employment was either a causative factor or an aggravating factor of his condition of ill-being. In fact, there was evidence of record that claimant's position at Hydro-Gear required him to regularly lift more than 200 parts above shoulder level each shift. Based on this evidence, we cannot say that a conclusion opposite to that of the Commission is clearly apparent. As such, the Commission's finding that claimant sustained a repetitive-trauma accident arising out of and in the course of her employment is not against the manifest weight of the evidence.

¶ 28 Despite the foregoing, respondent insists that there was no evidence that claimant's employment required him to engage in "overhead" work. Admittedly, the term "overhead" is a misnomer in the context of this case. Dr. Weiss testified that by "overhead" he meant that claimant would have to elevate his arm above his shoulder. As noted above, however, there was

² The exhibit prepared by Zerrusen shows that on the remaining days, claimant processed between 24 and 120 parts and therefore would have engaged in 48 to 240 movements.

evidence to support the Commission's finding that claimant, in fact, engaged in "overhead" work as that term is used by Dr. Weiss.

¶ 29 Respondent also asks this court to consider several alleged inconsistencies in claimant's testimony. For instance, respondent emphasizes that when claimant called Rose on July 20, 2011, claimant stated that he woke up that morning with shoulder pain, but did not indicate that the condition was employment related. We remind respondent, however, that it is the function of the Commission to judge the credibility of the witnesses and resolve conflicts in, assign weight to, and draw reasonable inferences from the evidence. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995). In this case, the Commission did not find relevant the fact that claimant did not initially relate his condition to his employment. The Commission reasoned that claimant's injury was repetitive and it was not unreasonable for a layperson to fail to pinpoint the cause of an injury absent a diagnosis by a medical professional. The Commission's finding in this regard was reasonable, and we therefore decline to disturb it.

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Moultrie County, which confirmed the decision of the Commission. This cause is remanded for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 32 Affirmed and remanded for further proceedings.