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2014 IL App (5th) 130344WC-U

Order filed June 13, 2014

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

INTERNATIONAL PAPER,)	Appeal from the Circuit Court
)	of Shelby County, Illinois.
)	
Appellant,)	
)	
v.)	Appeal No. 5-13-0344WC
)	Circuit No. 12-MR-18
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> , (Manpower, GSI, and)	Honorable
Ricky E. Riley, Appellees).)	Daniel E. Hartigan,
)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's finding that the claimant sustained an accidental injury arising out of and in the course of his employment with International Paper on May 22, 2008, was not against the manifest weight of the evidence.

¶ 2 The claimant, Ricky E. Riley, filed three applications for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), seeking benefits for bilateral carpal tunnel syndrome resulting from repetitive trauma injuries. The first application

named International Paper (International) as his employer and gave an injury date of May 22, 2008. The second application named Manpower as a loaning employer, GSI as the borrowing employer, and listed an injury date of June 20, 2008. The third application also named International as the employer and gave an accident date of September 23, 2008. After a section 19(b) hearing, the arbitrator found that the claimant's current condition of ill-being (bilateral carpal tunnel syndrome) was the result of repetitive trauma arising out of and in the course of his employment with International on May 22, 2008 (his last day of employment with International). Both International and the claimant sought review before the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision. International then sought judicial review of the Commission's decision in the circuit court of Shelby County, which confirmed the Commission's decision. International then filed a timely appeal with this court arguing that the appropriate date of injury should be June 20, 2008, thus making Manpower and GSI the employers responsible for the claimant's injury compensation. Both Manpower and GSI entered separate appearances and filed separate briefs in support of the Commission's decision. The claimant appeared and filed a brief as an appellee. However, his brief argues in favor of the appellant, International.

¶ 3 The appellant, International Paper, raises a single issue on appeal: whether the Commission's finding that the claimant sustained accidental injury arising out of and in the course of his employment with International on May 22, 2008, was against the manifest weight of the evidence.

¶ 4 **FACTS**

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on November 17, 2010.

¶ 6 The claimant had been employed by International for 32 years. His job duties during

that period required him to move large rolls of paper that weighed between 1,500 to 2,000 pounds. He testified that he had to manually push these rolls into a machine several times per day on a daily basis. He also had to lift up to 30 pounds on a regular basis throughout his normal work day. In addition, he used on a daily basis a variety of hand tools including wrenches, screw drivers, T-handles, and Allen wrenches, all in a twisting and repetitive manner.

¶ 7 The claimant first experienced numbness and tingling in his hands in 2000, at which time he sought treatment from a chiropractor. He testified that, at the time, he suspected that his condition was related to his work duties at International. The claimant testified that he began to notice persistent pain and numbness in both of his hands sometime during 2007. He told his group leader, Larry Demascal, about these symptoms several times in 2007 and 2008. The claimant did not, however, seek any further medical treatment while he was employed at International. The claimant was able to satisfactorily perform all his job duties.

¶ 8 On May 22, 2008, the claimant was terminated by International because of a safety violation. On June 6, 2008, the claimant contacted Manpower and on or about June 9, 2008, he was placed by Manpower at GSI. The claimant testified that his job duties at GSI involved assembling leg stiffeners on grain bins by tightening bolts with his hands and with the use of an air wrench. He also testified that his job duties involved repetitive use of his hands and wrists. The claimant testified that within a few days of starting employment at GSI, he began to notice increasing symptoms of bilateral wrist pain. On June 20, 2008, the claimant sought treatment for his wrist pain from his primary care physician, Dr. Robert Frost. Dr. Frost's nurse practitioner ordered diagnostic testing. On August 13, 2008, an EMG imaging test was performed from which Dr. Frost diagnosed severe bilateral carpal tunnel syndrome. The claimant was then referred to Dr. Patrick Stewart, an orthopedic surgeon at the Southern Illinois Hand Center in Effingham, Illinois.

¶ 9 On September 23, 2008, the claimant was first examined by Dr. Stewart. The claimant gave a history of bilateral wrist pain beginning in 2007 and gave a description of his job duties at International and GSI. The claimant reported to Dr. Stewart that he had experienced some degree of numbness and tingling in his wrists and hands for approximately 10 years. Dr. Stewart diagnosed severe bilateral carpal tunnel syndrome and recommended that the claimant undergo carpal tunnel releases on both wrists. Dr. Stewart opined that there was a causal connection between the claimant's severe bilateral carpal tunnel syndrome and his repetitive job duties over many years at International. The claimant had surgery on his right wrist on October 13, 2008, and the left wrist on October 29, 2008.

¶ 10 On April 21, 2010, the claimant was examined at the request of Manpower by Dr. James Williams, a board-certified orthopedic hand surgeon. In addition to examining the claimant, Dr. Williams also reviewed the claimant's work history, including work duties at International and GSI. Dr. Williams noted that the claimant reported bilateral wrist and hand pain for approximately 10 years. Dr. Williams also noted that the claimant "himself recognized his problems as he admits today [they] are related to his work at International Paper." Dr. Williams opined that the claimant's bilateral carpal tunnel syndrome was not causally related to the claimant's employment at GSI as the condition had been persistent and well known to the claimant while he worked at International. Based upon the medical records and the claimant's stated history, Dr. Williams opined that there was a causal connection between the claimant's bilateral carpal tunnel syndrome and his employment with International.

¶ 11 The arbitrator determined that the manifestation date for the claimant's repetitive trauma injury was May 22, 2008. The arbitrator found that both the fact of the claimant's bilateral carpal tunnel syndrome and its relationship to his employment at International were present on May 22, 2008, the claimant's last day of employment with International. Specifically, the arbitrator found

that May 22, 2008, was the last date on which the claimant was exposed to job activities causally related to his bilateral carpal tunnel syndrome. The arbitrator likewise determined that the claimant gave proper notice to his supervisor, and that his current condition of ill-being was causally connected to injuries sustained while in the employ of International.

¶ 12 Both International and the claimant sought review before the Illinois Workers' Compensation Commission. The Commission affirmed and adopted the arbitrator's findings. International then sought judicial review of the Commission's decision in the circuit court of Shelby County, which confirmed the Commission's decision. International now appeals, arguing that the Commission's decision was against the manifest weight of the evidence.

¶ 13 ANALYSIS

¶ 14 International maintains on appeal that the Commission erred in finding that the claimant's bilateral carpal tunnel syndrome manifested itself on May 22, 2008. It argues that August 13, 2008, the date on which the EMG test clearly established the claimant's bilateral carpal tunnel syndrome, was the appropriate date upon which the claimant's bilateral carpal tunnel syndrome was manifested. It further maintains that the claimant's work duties at GSI were the cause of his bilateral carpal tunnel syndrome since the fact of his condition of ill-being and its relationship to employment could not have occurred prior to August 13, 2008. Thus, according to International, it was against the manifest weight of the evidence for the Commission to find that GSI was not the responsible employer.

¶ 15 The determination of a manifestation date is a factual inquiry for the Commission (*Palos Electric Co. v. Industrial Comm'n*, 314 Ill. App. 3d 920, 930 (2000)) which will only be overturned on appeal if it is against the manifest weight of the evidence. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53 (2006). The test for establishing the manifestation date is "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's

employment would have become plainly apparent to a reasonable person." *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 503-31 (1987).

¶ 16 International maintains that the only appropriate date of manifestation in the instant matter is August 13, 2008, the date the claimant received a diagnosis of bilateral carpal tunnel syndrome. While it acknowledges that a formal medical diagnosis is not required (*Durand*, 224 Ill. 2d at 72), International insists that in the instant case, the claimant was not aware that his tingling and numbness was the result of bilateral carpal tunnel syndrome until after he received a diagnosis. It argues that no reasonable person in the claimant's situation would know that he had an injury related to his employment until after he had a diagnosis. It maintains that, had the claimant possessed a reasonable understanding that his bilateral tingling and numbness was related to his employment at International, he would have filed an application for benefits. The fact that he did not file a claim until after he left the employ of International, suggests that the claimant had no reason to connect his condition with his employment at International. It further maintains that the Commission erred in relying upon medical opinion testimony to establish the causal connection, since the manifestation date is not the date upon which the claimant's condition and its relationship to his employment was apparent to a physician, but when it was apparent to a reasonable employee. *Durand*, 224 Ill. 2d at 73.

¶ 17 International's argument is seriously undercut by two facts: (1) the claimant sought medical treatment for the tingling and numbness in his hands while he was still employed at International; and (2) the claimant acknowledged that the hand tingling and numbness that he had been experiencing for 10 years was related to his work activity at International. These two facts distinguish the instant matter from *Durand*, where the claimant had only a vague awareness of a possible injury with no symptoms warranting medical attention. *Durand*, 224 Ill. 2d at 59. The record in the instant matter therefore supports the Commission's finding that the claimant

had knowledge of both his condition of ill-being and the causal relationship between his condition and his job duties at International. Given these two operative facts, the Commission's finding that the manifestation date of the claimant's repetitive trauma injury was May 22, 2008, was not against the manifest weight of the evidence. A person in the claimant's position could reasonably be expected to connect the tingling and numbness in both hands and wrists to the repetitive nature of his job duties. The mere fact that he did not seek a medical diagnosis and continued to work with the pain did not change the fact that he had knowledge of his condition of ill-being. Likewise, the fact that the claimant made statements to his supervisor regarding his condition as well as other statements which would indicate that he attributed his condition to his job duties at International, would support a finding that the claimant was aware that his problem was causally related to his employment at International.

¶ 18

CONCLUSION

¶ 19 For the foregoing reasons, we affirm the judgment of the Shelby County circuit court, which confirmed the Commission's decision. The matter is remanded to the Commission for further proceedings.

¶ 20 Affirmed and remanded.