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NOTICE
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2012 IL App (4th) 110761WC-U

NO. 4-11-0761WC

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

RENEE JOHNSON, Appellant,)	Appeal from the
)	Circuit Court of
)	Sangamon County.
)	
v.)	No. 11 MR 71
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION, <i>et al.</i> , (St. John's Hospital, Appellee).)	John P. Schmidt
)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice McCullough and Justices Hoffman, Hudson, and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission did not abuse its discretion in holding that the

manifestation date of the claimant's repetitive-trauma injury was the date she became aware she had bilateral carpal and cubital tunnel syndrome and that it might be work related. The Commission's award of medical expenses and prospective medical expense is not against the manifest weight of the evidence where there is medical evidence to support the decision.

¶ 2 The claimant, Renee Johnson, filed an application for adjustment of claim against her employer, St. John's Hospital, seeking workers' compensation benefits for repetitive trauma injuries to her hands allegedly caused by her work-related duties. The claim proceeded to an arbitration hearing under Section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)). The arbitrator found that the claimant sustained injuries that arose out of and in the course of her employment. He found that the repetitive trauma accidental injury manifested itself on May 26, 2009, and that the claimant gave timely notice of the accident. The employer was ordered to pay \$4,824 for medical services and to authorize the recommended bilateral carpal tunnel release and ulnar nerve transposition. The arbitrator found that the claimant had yet to reach maximum medical improvement.

¶ 3 The employer appealed to the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the decision of the arbitrator. One Commissioner dissented.

¶ 4 The employer filed a timely petition for review in the circuit court of Sangamon County. The circuit court reversed the Commission, finding that the claimant failed to provide timely notice of her injury to the employer. The award of medical expenses and prospective medical expenses was vacated. The claimant appealed.

¶ 5

BACKGROUND

¶ 6 The claimant testified at the arbitration hearing that she had worked for the employer for 20 years. Her work as a registered nurse circulator in the general surgery department involved pushing beds and stretchers, moving patients to and from stretchers and beds to operating room tables, preparing patients for surgery by holding their extremities while the surgeon draped them, scrubbing and shaving patients for surgery, inserting Foley catheters, opening five to ten sterile packages per surgery, and data entry on the computer. The claimant testified that she spent approximately four hours per day entering patient information into the computer. She stated that typically she prepared three to four patients for surgery per shift. The claimant stated that to transfer patients to and from stretchers, beds and operating tables, she clenched a sheet on a roller board and used it to pull and push the patient.

¶ 7 The claimant testified that there was no specific incident or trauma that caused her symptoms. She stated that in 1994 she began to notice tingling in her hands. She stated that during her 1997 or 2000 pregnancy, she complained of tingling and numbness to her gynecologist who ordered bilateral splints. She stated that she wore the splints during her pregnancy and that shortly after she gave birth the symptoms lessened. Her gynecologist did not diagnose her with carpal tunnel or cubital tunnel syndrome or refer her to a specialist. The claimant testified some time after 2000 when she started seeing Dr. Drake as her primary care physician, she told him that she experienced numbness and tingling in her hands, but he did not prescribe any treatment or refer her to anyone for those complaints. The claimant testified that, over time, the symptoms progressed to the

point where she feared dropping sterile items and patient limbs. At that point, she sought medical treatment from Dr. Michael Watson.

¶ 8 Dr. Watson, a board certified orthopedic surgeon, testified by evidence deposition. Dr. Watson stated that he first examined the claimant on May 26, 2009. She complained of bilateral hand pain with numbness and tingling. Dr. Watson wrote in his patient notes that she had numbness in the distribution of the median nerve on both hands particularly when she typed, wrote, held objects during the day, or spent time with her elbows in a flexed position. Dr. Watson stated that it was his clinical impression that the claimant had carpal tunnel and cubital tunnel syndrome of both hands. He recommended nerve conduction studies with Dr. Trudeau.

¶ 9 Dr. Edward Trudeau examined the claimant on June 3, 2009. In his patient notes he wrote that, based on electrodiagnostic studies, the claimant had bilateral carpal tunnel syndrome moderately severe on either side, and mild bilateral cubital tunnel syndrome. He wrote that possible treatment options included conservative measures, injections, or hand operative intervention. He wrote that treatment was "very much a judgment call."

¶ 10 Dr. Watson examined the claimant again on July 27, 2009, and recommended carpal tunnel release surgery and ulnar nerve transposition done in stages. Dr. Watson testified that he was familiar with the claimant's work duties because he worked with her and based on the description she gave him. He testified that any repetitive activity of the hands, whether at the workplace or at home, can contribute to the development of carpal and cubital tunnel syndrome. He stated that he asked her if there was anything outside the work environment that required repetitive activity with her hands, and she told him no. Dr. Watson

testified that the only medical risk factors that might predispose the claimant to the development of carpal or cubital tunnel syndrome were her weight and her gender. Dr. Watson testified that in his opinion, to a reasonable degree of orthopedic certainty, there is a direct causal connection between the claimant's work activities and the development of her carpal and cubital tunnel syndrome.

¶ 11 Oliver Gross testified that, in 2009, he was the operating room manager and that the claimant was under his supervision. He stated that he had worked as a circulating nurse in the past. He stated that the circulating nurse conducts a brief interview of the patient prior to surgery. He testified that a circulating nurse brings the patient back to the operating room, checks to see if everything is "in line," positions the patient, and documents all the care that is provided to the patient from a nursing aspect. The circulating nurse also helps with surgical preparations including helping with draping, hooking up wires, cords, and suction lines, gowning and gloving the surgeons and other members of the surgical team, assisting anesthesia in putting the patients to sleep, opening supplies, getting the room prepared and keeping it clean as the case goes on, assisting at the end of surgery with the dressings, waking patients up, helping transfer the patient back to the bed after the case and taking them to the recovery room. They also have to clean up after the previous patient and prepare the room for the next patient. Mr. Gross estimated that documenting each patient's case would take approximately 15 to 20 minutes.

¶ 12 Mr. Gross testified that he learned of the claimant's injury when he received an incident report completed by the claimant on May 27, 2009. He stated that prior to that date, the claimant had not complained to him of hand or arm pain, or

about difficulty performing her job duties. He testified that he had not received any reports related to her hands from co-workers.

¶ 13 On May 26, 2009, the claimant completed a workmen's compensation injury report form. She wrote that her left and right hands and fingers were injured. In explaining how she was injured, the claimant wrote:

"In my role as circulator I use my hands for everything I do, every time I work. The repetitious and sometimes continuous hand and arm movements have included: moving and positioning patients, prepping and shavings pts., holding heavy and sometimes fractured extremities while prepping with the other hand, spiking saline bags, inserting foley catheters, opening saline and water bottles, separating and bagging counted sponges, thumbing through charts, completing paperwork, using computer keyboard and mouse, holding phone up to doctors' ears, connecting bovie cords and suction tubing, and opening sterile packages."

¶ 14 On May 27, 2009, the claimant completed an employee incident report. In the report, she wrote that the incident date was May 27, 2009, and that her hands and fingers went numb with repetitive hand and arm movements.

¶ 15 On July 2, 2009, Dr. R. Evan Crandall performed an independent medical examination of the claimant and reviewed Dr. Trudeau's medical records. In a letter he wrote summarizing his evaluation, he stated that the nerve conduction study performed by Dr. Trudeau showed severe carpal tunnel syndrome and moderate ulnar neuropathy. He stated that the findings were consistent with carpal tunnel syndrome which had been present for a long period of time. Dr. Crandall wrote that the claimant required carpal tunnel surgery, but not an ulnar nerve transposition because she did not "specifically have elbow pain."

¶ 16 Dr. Crandall wrote the following:

"I do not believe there is any relationship between her job duties as a circulating nurse and her carpal tunnel syndrome. In order for carpal tunnel syndrome to occur from physical activity, the physical activity has to exceed the OSHA and NIOSH guidelines which are above levels of athletic and sport training activities."

He wrote that based on his past analysis of the claimant's job and his personal knowledge of a circulating nurse's job duties, the claimant's job was not one that causes repetitive motion syndromes. He opined that the claimant's carpal tunnel syndrome is a medical disease caused by her age, gender, high blood pressure, and high body mass. Dr. Crandall concluded, "It is not caused by, changed by, aggravated or altered by work."

¶ 17 The claimant testified that as of the time of the arbitration hearing, she had not had surgery. She testified that she still suffered from numbness and tingling in her hands and that she had trouble grasping items. She continues to work, but the symptoms slow her down.

¶ 18 The arbitrator found that, on May 26, 2009, the claimant sustained a repetitive trauma accidental injury that arose out of and in the course of her employment. He found that timely notice of the accident was given to the employer. The arbitrator found the claimant's testimony to be credible. He adopted the opinion of Dr. Watson that the claimant's bilateral carpal tunnel and cubital tunnel syndrome were causally related to the May 26, 2009, work accident. The employer was ordered to pay \$4,824 for medical services. The arbitrator ordered the employer to authorize the bilateral carpal tunnel release and ulnar

nerve transposition procedures recommended by Dr. Watson. The arbitrator found that the claimant had not yet reached maximum medical improvement.

¶ 19 The employer sought review of the arbitrator's decision. The Commission affirmed and adopted the arbitrator's decision. The Commission remanded the case to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). One Commissioner dissented.

¶ 20 The employer appealed the Commission's decision to the circuit court. The circuit court found that the Commission's finding that the claimant gave timely notice of her injury was against the manifest weight of the evidence. It found that the "record [was] replete with evidence that would tell a reasonable person the injury was work related several years earlier." The court reversed the Commission's decision on the ground that the claimant failed to provide timely notice of her injury to the employer. The award of medical expenses and prospective medical expenses was vacated. The claimant filed a timely notice of appeal.

¶ 21 ANALYSIS

¶ 22 The claimant argues that the Commission's determination that she sustained a repetitive-trauma accidental injury which manifested itself on May 26, 2009, when she became aware that she had bilateral carpal and cubital tunnel syndrome and that it might be work-related, was not against the manifest weight of the evidence. A reviewing court will set aside the Commission's decision only if its decision is contrary to law or its fact determinations are against the manifest weight of the evidence. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because

other reasonable inferences could have been drawn." *Id.* The appropriate test for whether the Commission's decision is supported by the manifest weight of the evidence is whether there is sufficient evidence in the record to support the Commission's determination. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010).

¶ 23 An employee who suffers a repetitive-trauma injury still may apply for benefits under the Act, but must meet the same standard of proof as other claimants alleging a sudden accidental injury. *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. Categorizing an injury as due to a repetitive trauma and establishing an injury date are necessary to fulfill the purpose of the Act to compensate workers who have been injured as a result of their employment. *Edward Hines Precision Components*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773, 780 (2005). An employee suffering from a repetitive-trauma injury must point to a date within the limitations period on which both the injury and its causal link to the employee's work became plainly apparent to a reasonable person. *Durand*, 224 Ill. 2d at 65, 862 N.E.2d at 924. Establishing an injury date allows an employee to be compensated for injuries that develop gradually, without requiring the employee to push his body to the precise moment of collapse. *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d at 194, 825 N.E.2d at 780.

¶ 24 Determining the manifestation date is a fact determination for the Commission. *Durand*, 224 Ill. 2d at 65, 862 N.E.2d at 925. Fact determinations are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924.

¶ 25 Repetitive-trauma injuries, by their very nature, may take years to develop to the point of severity precluding an employee from performing in the workplace.

Oscar Mayer & Co. v. Industrial Comm'n, 176 Ill. App. 3d 607, 611, 531 N.E.2d 174, 176 (1988). "To always require an employee suffering from a repetitive-trauma injury to fix, as the date of accident, the date the employee became aware of the physical condition, presumably through medical consultation, and its clear relationship to the employment is unrealistic and unwarranted." *Oscar Mayer & Co.*, 176 Ill. App. 3d at 610, 531 N.E.2d at 176. An employee who discovers the onset of symptoms and their relationship to the employment may be able to work faithfully for a number of years without significant medical complications or lost working time, or may never degenerate to the point at which his condition impairs his ability to perform the duties to which he is assigned. *Oscar Mayer & Co.*, 176 Ill. App. 3d at 611, 531 N.E.2d at 176. "Requiring notice of only a *potential* disability is a useless act since it is not until the employee actually becomes disabled that the employer is adversely affected in the absence of notice of the accident." (Emphasis in original.) *Id.* "[B]ecause repetitive-trauma injuries are progressive, the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work." *Durand*, 224 Ill. 2d at 72, 862 N.E.2d at 929.

¶ 26 In the instant case, the claimant's injury developed gradually. The claimant admitted that she began noticing tingling in her hands in 1994. She also testified that during one of her pregnancies, she experienced tingling and numbness in her hands and that her gynecologist prescribed splints. She stated that her symptoms lessened shortly after she gave birth. The claimant testified that, even though she discussed her symptoms with Dr. Drake and her gynecologist, neither physician diagnosed her with carpal tunnel or cubital tunnel syndrome, and aside from the

splints, neither physician prescribed any treatment for her symptoms, or referred her to another health care provider. The claimant's symptoms were not constant or severe enough to warrant reassignment to different work or even special accommodations at her job. The claimant testified that over the course of time, her symptoms progressed to the point where she sought medical treatment from Dr. Watson on May 26, 2009. At this point, she feared dropping sterile items and experienced difficulty holding patient's limbs when preparing them for surgery. While the claimant experienced symptoms for years, it was not until May 26, 2009, that the claimant's condition degenerated to the point it impaired her ability to perform her work duties. This court will not penalize the claimant for diligently working through progressive pain until it affected her ability to work and forced her to seek medical treatment. There is sufficient evidence in the record to support the Commission's determination that the manifestation date of the claimant's repetitive-trauma injury was May 26, 2009.

¶ 27 The claimant reported her injury to the employer on May 27, 2009. Notice of an accident must be given to the employer as soon as practicable, but not later than 45 days after the accident. 820 ILCS 305/6(c) (West 2008). The claimant timely notified the employer of her accident.

¶ 28 The claimant argues that the Commission's award of medical expenses and prospective medical expenses is not contrary to the manifest weight of the evidence. "Whether a medical expense is either reasonable or necessary is a question of fact to be resolved by the Commission, and its determination will not be overturned on review unless it is against the manifest weight of the evidence." *Absolute Cleaning/SVML v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165 (2011).

¶ 29 Dr. Watson testified that, on July 27, 2009, he examined the claimant and reviewed the nerve conduction studies performed by Dr. Trudeau. Dr. Watson recommended surgery for carpal tunnel release and ulnar nerve transposition. Dr. Trudeau examined the claimant on June 3, 2009, and diagnosed her with bilateral carpal tunnel syndrome and mild bilateral cubital tunnel syndrome. He wrote that possible treatment options included conservative measures as well as operative intervention and that treatment was "very much a judgment call." Dr. Crandall recommended surgery for the claimant's carpal tunnel syndrome, but did not recommend an ulnar nerve transposition. It is the Commission's function to decide questions of fact, judge the credibility of witnesses, and resolve conflicting evidence, including medical evidence. *Edward Hines Precision Components*, 356 Ill. App. 3d at 196, 825 N.E.2d at 782. The Commission adopted the opinions of Dr. Watson, found that the claimant's medical treatment had been reasonable and necessary, and found that she needed the procedures recommended by Dr. Watson. There is sufficient evidence in the record to support the Commission's finding; therefore, its decision is not against the manifest weight of the evidence.

¶ 30 In its brief the employer argues that this court should affirm the trial court's order vacating the award for medical expenses and prospective medical expenses because the claimant failed to establish causation. The employer withdrew this argument at oral argument. As a result, we need not address the argument.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court is reversed, the decision of the Commission is reinstated, and this cause is remanded to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 33 Reversed and remanded.