No. 1-09-3243WC

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

FEDERAL MOGUL CORPORATION,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County.
	)	
v.	)	No. 09-L-50278
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION *et al.*	)	
(Martin Paz,	)	Honorable
	)	James Tolmaire, III,
Appellee).	)	Judge, presiding.

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

O R D E R

Held: The decision of the Illinois Workers' Compensation Commission that the claimant sustained a work related injury to his lower back arising out of and in the course of his employment when he twisted sharply to the left while performing his duties at his work station is not against the manifest weight of the evidence.

Federal Mogul Corporation (the employer or Federal Mogul) appeals from a decision of the circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (the Commission) awarding benefits pursuant to the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)) to Martin Paz (the

claimant). The employer raises issues concerning the appropriate standard of review and whether the Commission's decision that the claimant's injury arose out of and in the course of his employment is against the manifest weight of the evidence. We affirm the decision of the circuit court confirming the decision of the Commission and remand this cause to the Commission for further proceedings.

BACKGROUND

On September 29, 1999, the claimant filed an application for adjustment of claim against the employer seeking workers' compensation benefits for an injury to his back he allegedly sustained while he was moving machine parts. The claim proceeded to an expedited arbitration hearing on January 16, May 21, and May 24, 2001, under section 19(b) of the Act. 820 ILCS 305/19(b) (West 1998). At the first phase of the arbitration hearing, the claimant testified that, on September 13, 1999, he had been employed by Federal Mogul for over 13 years. On that date, he was working at a job in which he set up dies and operated a kick press machine. While working at that machine, he was allowed to either sit or stand to do his work, but at the time of the accident, he was standing as he put parts on the machine and took them off. The part he was transferring at the time of the accident was a head gasket that he estimated weighed about three pounds. He stated that he took the head gasket from the table, placed it on the machine, removed it from the machine, and then placed it on the table to his left. When he turned to the left, he felt a sharp pain in his low back and could not move for several minutes. When he could walk, he went to his supervisor, Connie Loeper, and told her what had happened. He stated that Loeper filled out a report about the incident, but he did not read it before he signed it. Loeper took him to the plant nurse, who gave him some pain pills and told him to go back to work but to take it easy.

He finished the rest of his shift that day. The next day, he worked his full shift but continued to have back pain. On the second day after his accident, he went to the nurse again, and she made an appointment for him to see Dr. Edward Sclamberg. Dr. Sclamberg noted that the claimant had right lower back pain from a work injury that had occurred on September 13, 1999, when he twisted while placing parts. He ordered x-rays and a magnetic resonance imaging (MRI) test, but did not schedule him for a follow-up visit. The claimant continued working through October 1999. On October 27, 1999, he went to Dr. Joseph Mejia. He stated that the treatments Dr. Mejia prescribed for him did not relieve his pain and that he just kept getting "a little worse and worse and worse."

He continued working through November and December 1999. On December 8, 1999, he saw Dr. Michael Treister, who ordered an electromyogram (EMG), another MRI, and a myelogram. He was off work for two weeks at the beginning of April 2000, and on April 17, 2000, Dr. Treister performed surgery on his low back. He was in the hospital for three days after the surgery, and then followed-up with Dr. Treister and had physical therapy. He thought his condition was worse after the surgery than it had been before. Dr. Treister did not release him to return to work after his surgery. He had also been off work from January 7 through 23, 2000.

In 1990, the claimant had been injured while working for Federal Mogul. After that injury, he was off work and received treatment for his back from about July 1991 until sometime in 1992. He testified that, after 1992 until he re-injured his back on September 13, 1999, he did not have any back problems, was not treated for any back problems, and was able to do his job.

Two weeks before the hearing, Dr. Treister had ordered him to remain off work another three months and had recommended that he attend a work-hardening program. He

testified that, at the time of the hearing, his pain was getting worse every day but that he was not receiving any pain medication. He testified that the pain was in his left side and leg and that he felt pain in his back and left leg when he stood up more than 15 minutes. At that time, he could not walk more than one-half block. His activities consisted of driving his daughter to and from her school and going to the grocery store. He could not shovel snow or rake leaves. He could sit for 30 to 45 minutes without pain, but when he did so, he could not stand normally after sitting for that length of time.

On May 21, 2001, at the second phase of the arbitration hearing, the claimant testified that Dr. Treister allowed him to return to work on April 5, 2001, but restricted him from lifting more than 20 pounds. He testified that he showed Dr. Treister's note regarding his work restrictions to the plant nurse, and she told him to go see Dr. Sclamberg. He saw Dr. Sclamberg on April 23, 2001. After that, he did not return to work. The plant nurse called him at home on May 8, 2001. She told him to report to work that day at his previous job, but he decided to see Dr. Treister before returning to work. He had an appointment with Dr. Treister on May 29, 2001, eight days after that phase of the hearing.

On April 12, 2001, the claimant was terminated from his employment with the employer because he had been "unable to return to regular full-time employment within one year." On May 16, 2001, the employer sent the claimant a second termination letter, stating that on May 14, 2001, he did not report to work, and, as a result, the employer assumed that he had "voluntarily resigned" his position at Federal Mogul.

Loeper testified that, on September 13, 1999, the claimant was an employee under her supervision. The claimant came to her on that date and told her that he had hurt his back when he twisted to his left as he was "going to straighten out a stack of parts." He told her he felt a sharp pain in his back and could not walk for a few minutes. According to Loeper,

the claimant said he had nothing in his hands when he felt the pain. She instructed him to go see the plant nurse, and she filled out an investigation report. She showed the claimant No. the investigation report and asked him if it was accurate. He acknowledged that it was accurate before he signed it. The report, which was admitted into evidence, stated that the claimant was working on a kick press and about to straighten a stack of parts when he twisted his body to the left and felt a sharp pain in the right side of his lower back, but he was not lifting anything at the time.

Loeper believed that the claimant could return to his former job because it did not require him to lift more than 20 pounds. She stated that the machine he was using in his former job did not require any twisting, but did require the machine operator to pick up parts on one side of the machine, place them on the machine, and then put them down on the other side, with the same process being repeated continuously throughout the shift.

In Dr. Treister's report from his examination of the claimant on December 8, 1999, he indicated that the claimant had injured his lower back on September 13, 1999, when working on a machine at Federal Mogul. In the report, Dr. Treister noted that the claimant "made a sharp turn to his left" and "immediately felt a sharp pain over the right side of his lower back." In his examination, Dr. Treister found that the claimant had pain on the right side of his lower back radiating to his right ankle, that he had occasional pain on the left side of his lower back, and that the pain was exacerbated by any lower back range of motion. In a report dated February 11, 2000, Dr. Treister noted, "Very clearly this man was injured at work" and stated his opinion that the claimant was not exaggerating.

In his notes dated April 4, 2000, Dr. Treister indicated that the claimant was returning "for post myelogram follow up" and that he was experiencing "a lot of pain" in the base of his neck that was much worse since the test. Dr. Treister found that the claimant had a "very

large disc herniation on the right side at the L3-4 with extremely obvious involvement of L4, L5, S1, and some of the lower roots." He scheduled the claimant for a laminectomy based upon his pre-surgery diagnosis of "HNP L3-4 central to right and lateral recess stenosis multiple levels."

In an evidence deposition, Dr. Treister opined that the claimant's disc herniation was caused by the twisting injury he received at work, which could have caused an asymptomatic condition to become symptomatic. He based his opinion, in part, upon the fact that, for at least two years before his work injury, the claimant did not have any back pain. He testified that it was the twisting motion that caused the claimant's back injury regardless of the amount of weight in his hand. As of the date of the deposition, March 30, 2001, Dr. Treister had not released the claimant to return to work under any restrictions.

In an evidence deposition, Dr. Mejia testified that he initially saw the claimant on October 27, 1999, for an "evaluation of lower-back pain and stiffness subsequent to injury sustained in a work-related incident which occurred September 13, 1999." Dr. Mejia stated that the claimant "was operating a machine and twisted when he felt a severe discomfort in his middle back" and that he was still in pain when Dr. Mejia saw him in late October. Dr. Mejia noted that the claimant had been "pain-free before the incident." He diagnosed the claimant with "lumbar-sacral sprain."

On July 6, 2001, the Arbitrator entered a decision in favor of the claimant, finding that his injuries arose out of and in the course of his employment, that the claimant's average weekly wage was $588, and that he was entitled to receive $392 per week for 59 4/7 weeks of temporary total disability. He ordered the employer to pay $3,875.20 for the claimant's unpaid necessary medical expenses. The Arbitrator based his decision upon his finding that the "act of twisting was required in performing his duties as a machine operator" and that "the

act of twisting while operating a machine would not have existed but for" his employment.

On June 20, 2002, the Commission entered an order staying the proceedings pursuant to an October 29, 2001, order of the U.S. Bankruptcy Court because the employer had filed for bankruptcy. On November 21, 2008, the Commission entered an order finding that the employer's bankruptcy stay had been lifted.

On January 30, 2009, the Commission modified the Arbitrator's decision to change the award of temporary total disability from 59 4/7 weeks to 60 weeks but otherwise affirmed and adopted his decision. On February 23, 2009, the Commission issued a corrected decision that changed the award of temporary total disability from 60 weeks back to 59 4/7 weeks.

On November 3, 2009, the circuit court entered an order confirming the Commission's decision and finding that it was not against the manifest weight of the evidence. This appeal followed.

ANALYSIS

Before addressing the issues raised by the employer on appeal, we are compelled to comment on its failure to file a brief in compliance with Supreme Court Rules 341(h)(9) and 342(a). 210 Ill. 2d R. 341(h)(9) and 342(a). Rule 341(h)(9) provides that the appellant's brief shall include an appendix as required by Supreme Court Rule 342(a). Rule 342(a) provides that, "in cases involving proceedings to review orders of the *** Commission, the appellant's brief shall also include as part of the appendix copies of decisions of the arbitrator and the Commission." 210 Ill. 2d R. 342(a). Here, the employer's brief includes an appendix, but that appendix does not include copies of the decisions of the Arbitrator or the Commission. Supreme Court Rules are not merely suggestions. *People v. Love*, 393 Ill. App. 3d 196, 203, 911 N.E.2d 1015, 1021 (2009). They have the force of law and are mandatory. *Love*, 393 Ill. App. 3d at 203, 911 N.E.2d at 1021. Briefs that do not conform No. 1-09-3243WC

may be stricken and new briefs ordered. *Budzileni v. Department of Human Rights* 392 Ill. App. 3d 422, 440, 910 N.E.2d 1190, 1204 (2009). However, we will not strike the employer's brief in this case. Fortunately, the claimant filed an appendix that includes the decisions of the Arbitrator and the Commission.

The employer claims that the facts in this case are undisputed and argues that the trial court erred in reviewing this case under the manifest weight of the evidence standard. The employer argues that "the record is clear that Mr. Paz sustained an injury when he twisted his body to turn to the left," and accordingly, the proper standard of review is *de novo*. The employer claims that the undisputed facts are susceptible of only one reasonable inference, that the claimant's injury could have occurred any time he twisted, and therefore, his injury did not arise out of his employment. We disagree that the evidence allows only one reasonable inference. Accordingly, the manifest weight of the evidence standard of review applies. "It is well settled that if undisputed facts upon any issue permit more than one reasonable inference, the determination of such issue[] presents a question of fact, and the conclusion of the Commission will not be disturbed on review unless it is contrary to the manifest weight of the evidence." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 52, 60, 541 N.E.2d 665, 668 (1989). Fact determinations are against the manifest weight of the evidence only if no rational trier of fact could have made them. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173-74, 866 N.E.2d 191, 199 (2007).

The employer argues that the claimant's injury was not caused by a risk that was incidental to or connected with his employment but that it resulted from a hazard he was equally exposed to apart from his employment. Basically, the employer contends that the act of twisting from right to left, which was the claimant's action immediately before his injury, is one that anyone can do at any time, without relation to his work duties. The

claimant argues that his testimony that he was twisting to his left to place a head gasket onto his work table when the injury occurred was sufficient to show a causal connection between his employment and the injury.

It is the claimant's burden to establish the elements of his right to compensation under the Act. *Wal-Mart Stores, Inc. v. Industrial Comm'n*, 326 Ill. App. 3d 438, 443, 761 N.E.2d 768, 773 (2001). For accidental injuries to be compensable, the claimant must show that they arose out of and in the course of his employment. *Wal-Mart Stores, Inc.*, 326 Ill. App. 3d at 443, 761 N.E.2d at 773.

> "To arise out of one's employment, an injury must (1) have an origin in some risk connected with or incidental to the employment; or (2) be caused by some risk to which the employee is exposed to a greater degree than the general public by virtue of his employment. [Citation.] Typically, an injury arises out of employment if, at the time of the occurrence, the employee was performing an act that he or she was instructed by the employer to perform, an act that he or she had a common-law or statutory duty to perform, or an act that the employee might reasonably be expected to perform incident to the assigned duties. [Citation.] *** An injury that results from a hazard to which an employee would have been equally exposed apart from the employment or a risk purely personal to the employee is not compensable." *Wal-Mart Stores, Inc.*, 326 Ill. App. 3d at 443-44, 761 N.E.2d at 773.

Thus, in this case, the issue is whether the claimant's injury arose out of his employment or if it was merely the result of a hazard to which he was equally exposed apart from his employment. The record supports the Commission's determination that his injury arose out of his employment. Loeper, the employer's supervisor who was on duty at the time of the claimant's injury, testified that the claimant's work as a machine operator required him

to pick up a part on one side of his machine, place the part on the machine, take the part off the machine, and place it on the opposite side of the machine. This is a task that he was required to repeat continually throughout each shift. The claimant testified that, at the time of the accident, he was standing as he put parts on the machine and took them off. The part he was transferring was a head gasket that he estimated weighed about three pounds. He took the head gasket from the table, placed it on the machine, removed it from the machine, and then placed it on the table to his left. As he turned to the left, he felt a sharp pain in his back and could not move for several minutes. Additionally, Dr. Treister expressed his opinion that the claimant's act of twisting while doing his job caused his injury.

The risk the claimant faced from the motions required to do his job is not one to which the general public was equally exposed. Rather, when he was injured, he was performing an act that his employer had instructed him to perform and that arose out of his employment. The Commission's decision that the injury was compensable under the Act is supported by the record and is not against the manifest weight of the evidence.

CONCLUSION

We affirm the decision of the circuit court confirming the decision of the Commission and remand this cause to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*,.78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

Affirmed and remanded.