

2013 IL App (1st) 120408WC-U  
NO. 1-12-0408WC  
Order Filed: January 22, 2013

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DIONNE STIDWELL,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Cook County
THE ILLINOIS WORKERS' COMPENSATION	)	No. 10L51362
COMMISSION <i>et al.</i> (Washington Inventory	)	
Services, Defendant-Appellee).	)	Honorable
	)	Margaret Brennan,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The Commission's decisions as to temporary total disability and permanency were supported by the record and not against the manifest weight of the evidence.

¶ 2 In November 2004, claimant, Dionne Stidwell, filed applications for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2002)), seeking benefits from the employer, Washington Inventory Services. Her claims were consolidated and, following a hearing, the arbitrator determined claimant sustained accidental injuries to her right hand that arose out of and in the course of her employment on April 19, 2004. The

arbitrator awarded claimant (1) 8-3/7 weeks' temporary total disability (TTD) benefits from June 21 through August 18, 2005; (2) 33.25 weeks' permanent partial disability (PPD) benefits for the permanent loss of use of claimant's right hand to the extent of 17.5%; and (3) \$2,666.44 in medical expenses. He further found claimant's work for the employer was not causally related to her current condition of ill-being and determined she was not entitled to prospective medical care under section 8(a) of the Act (820 ILCS 305/8(a) (West 2002)).

¶ 3 On review, the Workers' Compensation Commission (Commission), with one commissioner dissenting, found claimant established an ongoing causal connection between her employment and her current right hand condition of ill-being. It vacated the arbitrator's PPD award and denial of prospective care but affirmed his awards of TTD and medical expenses. The Commission then remanded the matter to the arbitrator for further determinations, if any, of TTD compensation or permanent disability. On judicial review, the circuit court of Cook County found the Commission erred in failing to award claimant certain medical expenses and reversed the Commission as to that issue. The court confirmed the remainder of the Commission's decision. Claimant appeals, arguing (1) the Commission's award of TTD benefits was against the manifest weight of the evidence and (2) the Commission's permanency decision was against the manifest weight of the evidence. We affirm.

¶ 4 Claimant testified the employer provided inventory services for large stores. She worked for the employer for three to four years before taking a year off and then returning to work for another four-year period. Her job duties required her to count items in a store and enter data on a data box and keyboard attached to her waist. Claimant then entered the information

into a computer. Near the beginning of 2004, claimant began to notice numbness and pain in her right hand. She denied having any similar issues in the past.

¶ 5 On April 1, claimant visited Dr. Hiam Eldewek, her family doctor and complained of symptoms in her right hand for the past week. Dr. Eldewek noted claimant "types on a computer all day" and her "hand usually goes numb when in use." She diagnosed claimant with carpal tunnel syndrome and recommended a right wrist splint. On April 19, 2004, claimant returned to Dr. Eldewek, who recommended continued use of the wrist splint and anti-inflammatory medication. She also provided claimant with "a note for workman's comp" showing a diagnosis of carpal tunnel syndrome.

¶ 6 Claimant continued to work for the employer until October 5, 2004 when she was terminated from her employment. At arbitration, she presented the evidence deposition of Mary Miles, her supervisor while working for the employer. Miles testified her area manager informed her that claimant was fired for failing to transport equipment to a store. According to Miles, the manager also expressed that he was unhappy with claimant leaving work to attend hand therapy sessions.

¶ 7 On October 19, 2004, claimant returned to Dr. Eldewek and complained of pain in her right hand that radiated up her arm along with some numbness. Dr. Eldewek recommended an electromyogram (EMG) study and occupational therapy. From October to November 2004, claimant had six therapy sessions. During her last session, she had persistent complaints of pain in her hand with some pins and needles sensations in her palm.

¶ 8 On December 2, 2004, claimant underwent an EMG study which showed "the

presence of mild carpal tunnel syndrome at the level of the right wrist." On December 3, 2004, she returned to Dr. Eldewek, who noted the EMG results. Claimant reported continued difficulty with her hand and that she was dropping things. Dr. Eldewek recommended a referral to a hand surgeon.

¶ 9 On February 24, 2005, claimant saw Dr. Anton Fakhouri at the employer's request.

She provided a description of her work duties, consisting of data entry and computer work. She also reported tingling and numbness in the digits of her right hand, beginning April 2004. Dr. Fakhouri assessed claimant as having "medical evidence of right carpal tunnel syndrome." He found her symptoms and the objective findings to be mild and believed conservative treatment would be appropriate. Dr. Fakhouri opined claimant's work activities were not the cause of her carpal tunnel syndrome. He recommended a wrist splint and cortisone injection, as well as testing to rule out thyroid disease and diabetes. Further, Dr. Fakhouri stated that, if claimant failed to improve with conservative treatment, surgical intervention could be considered. He determined claimant had not reached maximum medical improvement (MMI).

¶ 10 On May 3, 2005, claimant returned to Dr. Eldewek and complained of wrist pain. Dr. Eldewek noted claimant "want[ed] surgery but [was] fighting for worker's [*sic*] compensation" and gave claimant a steroid injection. On May 23, 2005, claimant returned to Dr. Eldewek and reported no improvement from her injection. She complained of numbness, tingling, and weakness. Claimant also reported that she was dropping objects. Dr. Eldewek noted claimant's job had involved the repetitive use of a keyboard and that workers' compensation would cover

the cost of claimant's surgery.

¶ 11 On June 9, 2005, claimant saw Dr. William Heller at Midland Orthopaedic pursuant to Dr. Eldewek's referral. She reported pain, burning, and tingling in her right hand that would wake her at night and asserted she received only temporary relief from previous medical treatment. Dr. Heller discussed surgical intervention with claimant. On June 16, 2005, he performed a right carpal tunnel release on claimant. On June 21, 2005, Dr. Heller provided claimant a note stating she was unable to work until further notice. On June 30, 2005, Dr. Heller recommended a removable splint, hand therapy, and no use of claimant's right hand. In July and August 2005, claimant underwent approximately 20 physical therapy sessions. On August 18, 2005, Dr. Heller determined claimant "had an excellent outcome" from her surgery and had "normal strength." He found claimant to be at MMI and released her to return to full-duty work. Claimant testified she thought her condition improved after surgery, but the numbness and pain symptoms in her hand returned and then persisted.

¶ 12 On November 28, 2005, claimant contacted Dr. Eldewek's office and requested a doctor's note stating she could not lift a certain amount of weight secondary to "CTS." Dr. Eldewek's office instructed claimant to make an appointment with a surgeon for an examination. Further, Dr. Eldewek's records show, on April 3, 2006, claimant returned and complained of "wrist pain in both hands." She also reported she continued to experience pain in her right wrist and was starting to experience symptoms in her left wrist.

¶ 13 On September 11, 2006, claimant sought treatment from Dr. Daniel Mass. Claimant agreed she received no medical treatment for her right hand between her August 2005

visit with Dr. Heller and her September 2006 visit with Dr. Mass. However, she asserted her right hand symptoms persisted during that time.

¶ 14 At arbitration, claimant submitted Dr. Mass's evidence deposition. Dr. Mass testified he was board certified in orthopedic surgery. He believed claimant had palmar scarring following her carpal tunnel release, occurring when "the median nerve was not gliding but was scarred down \*\*\* giving [claimant] chronic discomfort." Dr. Mass determined the palmar scarring contributed to or caused claimant's continued symptoms. On October 10, 2006, he wrote a note, allowing claimant to work left handed with no use of her right hand on a routine basis.

¶ 15 Dr. Mass recommended surgery for claimant to release the nerve. He opined surgery would likely provide claimant with enough relief to return to her regular job. Dr. Mass noted the type of surgery he recommended had an 85% success rate and required a four- to six-week recovery period. He determined that, with no further medical care, claimant's condition would be permanent and would probably worsen. Dr. Mass testified that some type of restriction to her right-handed activities would be advisable if she received no additional medical treatment. He further opined that claimant's work activities contributed to the development of her carpal tunnel symptoms and aggravated her condition.

¶ 16 On December 14, 2006, claimant saw Dr. Jay Pomerance, an orthopedic surgeon, at the employer's request. At arbitration, the employer submitted Dr. Pomerance's evidence deposition. Dr. Pomerance diagnosed claimant with right hand pain and paresthesias. He testified his findings upon examination of claimant were fairly normal and he believed claimant exhibited a lot of subjective complaints that did not have an objective correlation. Dr.

Pomerance opined claimant was able to work with no restrictions.

¶ 17 Claimant testified that, following her June 2005 surgery she began filling out job applications and contacted 20 to 30 employers looking for work. In 2006 or 2007, she attempted to return to work at a restaurant. Her duties included food preparation; peeling, cutting and cleaning vegetables; opening cans; and lifting heavy pans. Claimant attempted that work for two to three weeks but stated it was very difficult for her and she could not do it. She also tried babysitting but had difficulty lifting the children or changing diapers.

¶ 18 Claimant submitted the evidence deposition of Susan Entenberg, a vocational rehabilitation counselor. On July 9, 2007, Entenberg evaluated claimant. She testified she did not believe claimant could return to her past work given Dr. Mass's restrictions of no right-hand work but felt claimant was a candidate for vocational rehabilitation.

¶ 19 At arbitration, claimant testified it was difficult for her to perform her daily activities, including cleaning her house, cooking dinner, playing with her grandchildren, and going to the store. She noticed a lot of pain in her right hand and wrist when performing those activities. Claimant asserted her hand was not as strong and would "giv[e] out." She testified the problems with her hand made it difficult for her to lift certain things and her hand would start "acting up" if she drove for a long period of time. Claimant continued to wear a brace.

¶ 20 On October 27, 2009, the arbitrator issued his decision, finding claimant sustained accidental injuries to her right hand that arose out of and in the course of her employment on April 19, 2004. The arbitrator awarded claimant (1) 8-3/7 weeks' TTD benefits from June 21 through August 18, 2005; (2) 33.25 weeks' PPD benefits for the permanent loss of use of

claimant's right hand to the extent of 17.5%; and (3) \$2,666.44 in medical expenses. However, the arbitrator determined claimant's work was not causally related to her current right hand condition of ill-being and determined she was not entitled to prospective medical care.

¶ 21 On August 3, 2010, the Commission, with one commissioner dissenting, found claimant established an ongoing causal connection between her employment and her right hand condition of ill-being. It vacated the arbitrator's PPD award and denial of prospective care but affirmed his awards of TTD and medical expenses. The Commission remanded the case to the arbitrator for further determinations, if any, of TTD compensation or permanent disability.

¶ 22 On January 13, 2012, the circuit court of Cook County found the Commission erred in failing to award claimant certain medical expenses and reversed the Commission as to that issue. The court confirmed the remainder of the Commission's decision.

¶ 23 This appeal followed.

¶ 24 On appeal, claimant argues the Commission's TTD award was contrary to law and against the manifest weight of the evidence. She contends the Commission erred in only awarding 8-3/7 weeks' benefits from June 21 to August 18, 2005, and argues it should have awarded 105-4/7 weeks' TTD benefits from September 30, 2004, to October 9, 2006. Claimant asserts she was incapable of working during that time frame.

¶ 25 Under the Act, "[a]n employee is temporarily totally disabled from the time that an injury incapacitates her from work until such time as she is as far recovered or restored as the permanent character of her injury will permit." *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 471, 949 N.E.2d 1158, 1166 (2011). An injured



employee's eligibility for TTD benefits ends once his physical condition stabilizes or he reaches MMI. *Absolute Cleaning*, 409 Ill. App. 3d at 471, 949 N.E.2d at 1166. "[T]o prove temporary total disability, the employee must demonstrate not only that he did not work, but also that he was unable to work." *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256, 899 N.E.2d 365, 378 (2008).

¶ 26 "The determination of the period of time during which a claimant is temporarily and totally disabled is a question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Absolute Cleaning*, 409 Ill. App. 3d at 471, 949 N.E.2d at 1166. "Accordingly, when reviewing a decision of the Commission, the relevant test is whether there is sufficient evidence in the record to support it." *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 142-43, 923 N.E.2d 266, 272 (2010).

¶ 27 Indisputably, claimant suffered a work-related injury to her right hand that manifested itself in April 2004. The record reflects she continued to work for the employer until October 5, 2004, when she was terminated. Beginning in April 2004, she sought medical care for her injury from Dr. Eldewek, her family doctor, and was eventually referred to Dr. Heller, who performed surgery in June 2005. In February 2005, claimant also saw Dr. Fakhouri at the employer's request. Prior to claimant's surgery, none of her medical providers placed her under any work restrictions.

¶ 28 On June 16, 2005, Dr. Heller performed a right carpal tunnel release on claimant and restricted her from working from June 21 to August 18, 2005. The Commission awarded

claimant TTD benefits for that time period. On August 18, 2005, Dr. Heller found claimant to be at MMI and released her to return to full-duty work. At that time, he stated claimant "had an excellent outcome" from her surgery and had "normal strength." Thereafter, the record showed only two occasions on which claimant contacted a medical provider, her family doctor, in connection with her right hand injury until September 11, 2006, when she began seeing Dr. Mass. Notably, in November 2005, claimant contacted Dr. Eldewek's office to request a note that would restrict her from lifting a certain amount of weight due to her condition but her request was denied and she was instructed to seek further examination. Although claimant asserts she was incapacitated from work after August 2005, she was under no doctor's restriction until October 10, 2006, when Dr. Mass restricted claimant from using her right hand.

¶ 29

Relative to TTD, the Commission stated as follows:

"The Commission declines [claimant's] request for additional [TTD] benefits from September 30, 2004[,] through June 20, 2005[,] and from August 19, 2005[,] through October 9, 2006, as [claimant] was not under light duty restrictions or kept off work during these periods. [Claimant] was not subject to any work restrictions as of September 30, 2004[,] or her termination on October 4, 2004. Nor was [claimant] subject to any restrictions thereafter until June 21, 2005, when Dr. Heller took her off work following surgery. Dr. Heller found [claimant] capable of full duty on August 18, 2005[,] and no doctor imposed any restrictions

during the interval between August 18, 2005[,] and [claimant's] first visit to Dr. Mass on September 11, 2006. Dr. Mass did not address [claimant's] work capacity until October 10, 2006, when he released [claimant] to primarily left-handed work."

As discussed, the Commission's findings and its TTD award were supported by the record.

Conversely, claimant's assertion that she was incapacitated from work during the disputed time frames was not similarly supported by the medical evidence. The Commission's decision was not against the manifest weight of the evidence.

¶ 30 On appeal, claimant also argues the Commission's decision as to the permanency of her condition was against the manifest weight of the evidence. She contends her condition prevented her from performing the activities of daily living. Claimant argues Dr. Mass deemed her condition permanent and restricted her to one-handed work. Further, she points to the testimony of her vocational rehabilitation counselor who did not believe she could return to her past work given Dr. Mass's restrictions of no right hand work. Claimant argues she proved her entitlement to odd-lot permanent total disability under section 8(f) of the Act (820 ILCS 305/8(f) (West 2002)).

¶ 31 "A determination of the extent or permanency of a claimant's disability is a question of fact, and the Commission's decision will not be set aside unless it is against the manifest weight of the evidence." *Ming*, 387 Ill. App. 3d at 259, 899 N.E.2d at 379. Again, "[t]he test is whether there is sufficient factual evidence in the record to support the Commission's determination, not whether this court, or any other tribunal, might reach a different result."

*Ming*, 387 Ill. App. 3d at 259, 899 N.E.2d at 380.

"If the claimant's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is upon the claimant to prove by a preponderance of the evidence that he fits into the 'odd-lot' category—one who, though not altogether incapacitated to work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market. [Citations.] The claimant ordinarily satisfies his burden of proving that he falls into the 'odd-lot' category in one of two ways: (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market. [Citation.] Whether a claimant falls into the odd-lot category is a factual determination to be made by the Commission, and that determination will not be set aside unless it is against the manifest weight of the evidence." (Internal quotation marks omitted.) *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 544, 865 N.E.2d 342, 357 (2007).

¶ 32 Here, claimant failed to establish that she fit into the "odd-lot" permanent total disability category. With respect to permanency, the Commission found as follows:

"[Claimant] characterizes Dr. Mass's restrictions as 'permanent[,] and claims she is entitled to 'odd lot' permanent total disability benefits as of October 10, 2006. The Commission disagrees with this characterization. Dr. Mass based the left-handed work restriction solely on his surgical recommendation. Dr. Mass made it clear that if [claimant] underwent the surgery he recommended, it was very likely [claimant] would recover within four to six weeks and be able to resume her former occupation."

Again, the Commission's decision is supported by the record.

¶ 33 Evidence showed Dr. Mass examined claimant and opined she suffered from palmar scarring following her carpal tunnel release, occurring when "the median nerve was not gliding but was scarred down \*\*\* giving [claimant] chronic discomfort." He recommended surgery to release the nerve and opined that surgery would likely provide claimant with enough relief to return to her regular job. Dr. Mass noted the type of surgery he recommended had an 85% success rate and required a four- to six-week recovery period. Further, the record shows Dr. Mass's testimony that claimant's condition would be permanent or require permanent restriction was qualified by the assumption that she receive *no further medical care* for her condition, including the surgery he recommended. Based on this evidence, the Commission's permanency decision was not against the manifest weight of the evidence.

¶ 34 We note, on appeal, claimant additionally contends the Commission's denial of certain claimed medical bills was contrary to law and the circuit court correctly reversed the

Commission's decision on that issue. However, as the employer points out, the circuit court's reversal of the Commission's medical expenses decision was not appealed by the employer. As such, the issue is not before this court and we need not address it on appeal.

¶ 35 For the reasons stated, we affirm the circuit court's judgment.

¶ 36 Affirmed.