No. 2--10--0756WC

Order filed June 22, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CATERPILLAR INC.,	)	Appeal from the Circuit Court
	)	of the 16th Judicial Circuit,
Appellant,	)	Kane County, Illinois
	)	
v.	)	No. 09--MR--620
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION *et al.*	)	Michael J. Colwell,
(Richard Petoskey, Appellee).	)	Judge, Presiding

JUSTICE HOLDRIDGE delivered the judgment of the court.

Presiding Justice McCullough and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

Held: The Commission's findings that the claimant proved that he sustained a compensable injury to his left thumb on March 7, 2003, and that he gave timely notice of his injuries were not against the manifest weight of the evidence.

The claimant, Richard Petoskey, sought workers' compensation benefits from his employer, Caterpillar Inc., for an injury to his left thumb allegedly sustained on February 7, 2006. The claim proceeded to an arbitration hearing under section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/19(b) (West 2002)), where the arbitrator found that the claimant had

failed to establish that his condition of ill-being arose out of and in the course of his employment. The claimant appealed to the Illinois Workers' Compensation Commission (Commission), which, with one dissent, reversed the arbitrator's decision, finding that the claimant was entitled to compensation for injuries to his left thumb, albeit for an injury sustained on March 3, 2003. The employer appealed this finding to the Kane County circuit court, which confirmed the Commission's decision. The employer then appealed to this court.

BACKGROUND

The claimant testified that he had worked for the employer for 34 years. For the last three years, he worked as a tube bender. As a tube bender, he operated three machines: a saw, an end finisher, and a tube bender. Tubes are metal pipes, approximately 20 inches to 20 feet in length and weighing approximately 50 to 80 pounds each. The claimant testified that he would slide the tubes down a conveyor into the saw with his right hand and hold them in place with his left hand. After he used the saw, the claimant then transferred the tube to an end finisher which required him to put the tube in the machine, then flip it over and put the opposite end of the tube in the machine, requiring the use of both hands. He would then transfer the tube to a tube bender and feed the tube into the machine to bend it to appropriate specifications. He then repeated the process for each tube, placing each finished tube in a cart. Loading the tubes required the use of both hands. On several occasions, he would hit the tubes with his palm and left thumb. The claimant testified that he goes back and forth between the three machines all day long and performed this operation from 75 to 300 times per day.

The claimant further testified that the tubes were heavy, and working with them caused his elbows and hands to hurt and his left thumb to ache. He testified that he often applied extra

pressure with his left hand to push the tubes on the tube bender. On occasion, the tubes would not fit properly into the mandrels[1] of the tube bender, and he would have to push the tube very hard to get it through the machine. This difficulty would continue for hours until the mandrels were changed to smaller sizes so that the tubes would fit more easily into the machine.

The claimant testified that he had complaints of pain in his left hand and thumb prior to 2006 and reported such on at least two occasions to the employer's clinic physician, Dr. William R. Roggenkamp. Dr. Roggenkamp noted the claimant's job duties required forceful use of the hands and that the job was hand intensive. Ultimately, however, Dr. Roggenkamp viewed an x-ray of the claimant's left hand and diagnosed non-work related arthritis. The claimant continued to work full duty and continued to have pain in his left thumb and both elbows. He further testified that, when the pain continued in his hand, he decided to pursue treatment with a physician other than the company doctor. He contacted his primary care physician, Dr. Joseph Hindo, who referred him to Dr. Vic T. Tsai, whom he saw on February 7, 2006. The claimant recalled completing a questionnaire when he saw Dr. Tsai, indicating his concern that his thumb pain was work-related. Dr. Tsai gave him injections and splints for his left elbow, thumb and wrist. The injection helped, but the pain returned. The claimant followed up with Dr. Tsai once more and continued working.

The claimant testified that he sought another opinion from Dr. Howard Freedberg on March 6, 2006, with further treatment from Dr. Freedberg on May 1, 2006, and June 12, 2006. The claimant received injections in his elbows and left thumb. Although the pain returned, the

---

[1] Cylindrical taped steel used for shaping or forging other metal objects. (Oxford American Dictionary, 347 (1995)).

claimant observed that his elbow pain was improved. His left thumb continued to be painful when he used it, and the pain was more severe than in 2006. He described the pain as a 7 on a scale of 1 to 10. He noticed the pain in his left thumb both on the job and at home. The claimant testified he liked to work around the house and play the guitar, but he had to curtail these activities due to the pain in his left thumb. The claimant also testified that his job required that he meet a quota, and he had experienced a significant drop in his production over the prior year due to his left thumb pain.

On cross-examination, the claimant testified that he previously underwent carpal tunnel surgery on the right wrist in September 2002 and on the left wrist on March 10, 2003. On March 7, 2003, just before the left carpal tunnel surgery, the claimant sought an appointment with Dr. Roggenkamp because he wanted to get his complaints of pain in his left thumb on record with the employer. In conjunction with Dr. Roggenkamp's examination, the claimant completed an incident report. The record contained a company clinic report indicating that on March 7, 2003, the claimant completed an employee incident report which stated that he worked in the medium spindle cell operations as a fabricator and experienced soreness and pain in the left thumb. The claimant attributed his pain to his job duties which included lifting heavy tools, and pushing and pulling parts. The claimant testified that on March 7, 2003, he worked as a fabrication specialist, not a tube bender. He testified that he missed 10 weeks of work following the left carpal tunnel surgery. In late September 2003, he applied for the tube bender position and started in that position in October of 2003.

The claimant also testified that on August 17, 2004, he treated with Dr. Ram Pankaj, a member of Dr. Hindo's practice. Dr. Pankaj diagnosed early arthritis of the thumb and prescribed

a splint. The claimant testified that he believed he took Dr. Pankaj's records to the company clinic.

The claimant also testified that on November 9, 2005, he treated with Dr. Hindo because his thumb continued to cause him pain. He also was examined again by Dr. Roggenkamp during this time frame, although he believed his visits about his thumb only appear once in the records. The claimant identified for the record what appeared to be an incident report dated March 12, 2006, relating to his left thumb. The claimant acknowledged that he had not seen a physician for his left thumb since June of 2006.

Charles Jensen testified on behalf of the employer. He testified that his job title was "environmental health and safety associate" and that he had worked in that capacity for the employer since 2001. His job duties included investigating injury incidents, taking safety walks, holding safety meetings, and conducting training classes for employees. Jensen was asked by the employer to do an ergonomic evaluation of the claimant's job for risks to the left hand and thumb. Jensen testified that he observed the claimant nine times over five days, fifteen minutes each time. He observed the claimant for multiple days so he could see the different jobs that he performed. Jensen testified that he did not observe any repetitive use of his left thumb or any risk of injury to the claimant's left thumb.

On cross-examination, Jensen acknowledged that he did not have a degree or certification in ergonomics. Other than the time spent watching the claimant, Jensen had no knowledge of the physical tasks the claimant engaged in while performing his job duties. Jensen further acknowledged that he could only record his observations of the claimant but could not give an

opinion as to the cause of the claimant's thumb pain since he is not a doctor. Jensen also acknowledged that many injured workers will work through pain.

The medical records of Dr. Hindo's practice were entered into evidence. Those records indicated that on August 17, 2004, the claimant was seen by Dr. Pankaj primarily for left elbow pain. However, because the claimant reported left thumb pain, Dr. Pankaj's examined and ordered x-rays of the left thumb. He noted early degenerative changes at the carpometacarpal (CMC) joint of the left thumb. Dr. Pankaj diagnosed early degenerative arthritis of the CMC joint of the thumb. Dr. Pankaj prescribed a brace for the elbow and for the thumb at night time, along with medication. On October 20, 2004, the claimant saw Dr. Pankaj, who noted the left elbow had improved, but the left thumb continued to be a problem. Dr. Pankaj recommended that the claimant consult with a hand surgeon. On November 8 and 9, 2005, the claimant reported continued pain in the left thumb.

The records of Dr. Tsai were also entered into evidence and included a questionnaire completed by the claimant on February 7, 2006. The claimant indicated that he had pain in the lower joint of the left thumb which sometimes radiated down through the thumb. The claimant reported repetitive activity at work, which he described as continuously moving tubes and using heavy tools. The claimant wrote that on November 29, 2005, he had undergone an x-ray.

Dr. Tsai noted pain in the left first CMC joint area with some clicking. Dr. Tsai further noted that the claimant had been referred by Dr. Hindo for pain to the left thumb for several years, but the pain had been worse the past four or five months. The claimant reported to Dr. Tsai that he worked as a machine operator and he did repetitious movements for 40 hours per week. He noted a history of bilateral carpal tunnel surgery. Dr. Tsai's records indicated that the

claimant was also seen by Dr. Simba, who had referred the claimant to Dr. Fanto, who recommended a cortisone injection which the claimant did not receive. On February 27, 2006, Dr. Tsai again noted the claimant's complaints of pain when using the left thumb.

On March 6, 2006, the claimant was examined by Dr. Howard Freedberg, an orthopedic surgeon. On April 3, 2006, Dr. Freedberg opined that the claimant's left thumb condition was most likely a cumulative stress disorder. He noted that the claimant had seen a company doctor three to four years earlier and had been told that he had arthritis in the CMC joint that was not related to his employment. Dr. Freedburg opined, however, that the claimant's job was the primary cause of the claimant's condition. However, Dr. Freedburg was under the mistaken impression that the claimant had worked as a tube bender for 32 years. He prescribed treatment, including injections, and noted a possible need for surgical intervention.

On May 1, 2006, the claimant again treated with Dr. Freedberg, who again indicated that, because of ongoing symptoms, the claimant would likely require surgery. On June 12, 2006, the claimant reported significant improvement following injections, but Dr. Freedberg opined that the relief would be short lived, he expected the claimant's symptoms would return, and the claimant would need further treatment.

Dr. Freedberg's medical records were entered into evidence. The records established an initial consultation on March 6, 2006. Dr. Freedberg noted that the claimant was being seen for an injury to his hand from repetitive work injuries as well as injury to his elbow and wrist. The claimant gave a date of injury as February 7, 2006. The claimant reported that he had been with the company for 30 years, and he did a lot of pushing and pulling to perform his job. The claimant reported that he had been seen for left thumb pain about two years prior and was told he

had degenerative arthritis. He had a cortisone shot which decreased the pain, but the pain eventually returned. The claimant was also seen for complaints in the elbow for which he received an injection and pain medication. He was told to return in a month.

Dr. Freedberg testified via evidence deposition taken on January 23, 2007. He testified that the claimant told him that he was an assembler and worked with pipes. He further testified that on March 6, 2006, when he examined the claimant, his diagnosis was disease of the CMC joint. On June 16, 2006, the doctor saw the claimant for the last time. Dr. Freedberg also testified that the claimant was required to push and pull metal tubes constantly and had been with the company for thirty years. He explained that it is well known that repetitive work like this can produce physiologic problems with the body, such as carpal tunnel syndrome, arthritis of the basal hand joints (especially when pushing with the thumbs), and tendinitis of the elbows, all of which are common overuse problems. Dr. Freedberg opined that the claimant's work could have, in whole or in part, caused, aggravated, or accelerated the conditions for which he was rendering treatment. The doctor also testified that the treatment rendered was reasonable, necessary, and related to work injury. The doctor explained that his opinions were based on the claimant's 30-year work history and his description of his job duties. Dr. Freedberg noted that all of the claimant’s diagnosed injuries were overuse problems. Dr. Freedberg believed that the claimant would require further treatment, ranging from conservative measures (possibly injections, braces, physical therapy, and anti-inflammatory medications) to possible surgery on the left thumb.

On cross-examination, Dr. Freedberg testified that the claimant did not exhibit any changes in his objective condition between the x-ray taken on November 29, 2005, and the one taken in March 2006. The doctor did not recall any other type of injury or activities that might

have contributed to the claimant's condition. Dr. Freedberg acknowledged that he did not see a job video or ergonomic study. He did not know if the claimant had changed jobs during his 30 years of employment. He explained that risk factors have to be considered, such as repetition, force, posture, position, rest, magnitude of the load, and whether the machine being used is functioning properly. He also acknowledged that while the claimant performed a repetitive job for years, he did not know details of the risk factors of that job. Dr. Freedberg testified that he understood there were heavier tubes and the claimant had to exert varying degrees of force to complete his tasks. He based his opinion on the claimant's 32 years of constant, repetitive use of the upper extremities and the claimant having the three most common overuse problems of the upper extremities (arthritis, tendinitis, and carpal tunnel syndrome). Dr. Freedberg gave his opinion within a reasonable degree of medical certainty that the claimant's condition of ill-being was causally related to his work duties. He further opined that the claimant's symptoms were consistent with a chronic repetitive overuse injury.

On June 27, 2007, the claimant was examined by Dr. John Showalter, the employer's examiner, who opined that the claimant developed gradual progressive symptoms related to osteoarthritis of the basal joint. Dr. Showalter testified that, although there was no definable causal episode to precipitate the degeneration through the claimant's work activities, the claimant described work duties that could be considered aggravating factors to the underlying degenerative process. Dr. Showalter opined that the claimant had not reached maximum medical improvement (MMI) and recommended three surgical options: trapeziometacarpal arthrodesis; ligament reconstruction with tendon arthroplasty; or artelon implant. He explained that the choice would depend on the claimant's preference and his work requirements, although any of

the procedures should allow the claimant to handle a load of 30 to 40 pounds one-handed after a complete recovery.

Dr. Showalter noted the claimant's 30-year-plus work history as a machinist with the employer and a somewhat spontaneous development of basal joint pain four to five years earlier. Although there was no incident of direct trauma, the claimant had been working at a lathe and gear shaver handling parts by hand before switching to five machines, including lathes and washing units, for about three years. Dr. Showalter also noted that the pain in the petitioner's thumb continued after he was placed in the tube bending position. He also noted the claimant's description of strains to the base of his hand with power gripping, pulling, or local pressure which caused pain in the thumb and base region accompanied by a feeling of weakness. Dr. Showalter also noted that the claimant had treated with Dr. Tsai and Dr. Freedberg and, despite treatment which included injections, the claimant's basal joint pain continued. Dr. Showalter noted that Dr. Freedberg recommended surgery. Dr. Showalter reviewed x-rays indicating gradual progressive degeneration of the trapeziometacarpal joint of the left wrist.

On June 27, 2007, Dr. Showalter wrote a second report. The report was virtually identical to the initial report, except the doctor commented on Jensen's ergonomic evaluation. Dr. Showalter confirmed the history of gradual progressive symptoms related to osteoarthritis of the basal joint. He stated that there was no definable causal episode to precipitate the degeneration, although he acknowledged that the work tasks described by the claimant could be considered an aggravating factor for the underlying degenerative process. Dr. Showalter confirmed his initial recommendations for surgery but did not impose any work restrictions. He

opined that the duties of a tube bender as described in the employer's ergonomic evaluation did not impose an additional threat to the claimant's condition.

Based upon the evidence presented, the arbitrator determined that the claimant had failed to establish that his left thumb condition was causally related to his employment on February 7, 2006. The arbitrator noted that, when dealing with repetitive trauma claims, a flexible standard for determining the manifestation date of a condition of ill-being is to be utilized (*Durand v. Industrial Comm'n*, 224 Ill. 2d 53 (2006)), which takes into account the date of the onset of symptoms, the date of diagnosis and knowledge of the relationship of the symptoms to work, the date last worked, and the date medical treatment begins. The arbitrator acknowledged that March 7, 2003, the date that the claimant reported his left thumb condition to Dr. Roggenkamp, was a possible manifestation date. However, the arbitrator rejected that date as the date of manifestation, finding that there was no evidence to establish that the claimant's current occupation as a tube bender caused or aggravated his left CMC arthritis. The arbitrator noted that, although the claimant's left thumb arthritis was initially aggravated by the work he was doing in 2003, his job changed shortly thereafter, and he received no medical treatment for his left thumb until February 7, 2006. The arbitrator also rejected Dr. Freedberg's opinion regarding causation, noting that his opinion had been based upon the erroneous supposition that the claimant had been doing tube bender work for 32 years. In fact, the claimant had switched jobs after returning to work following carpal tunnel surgery in 2003. Likewise, the arbitrator noted that, while Dr. Showalter opined that the claimant's work prior to switching to the tube bender position may have aggravated his arthritis, he further opined that the job duties of the tube bender position posed no risk of repetitive trauma injury.

The Commission reversed the decision of the arbitrator. It found that the claimant's current condition of ill-being of his left thumb was causally related to his employment and manifested on March 7, 2003, not February 7, 2006. The Commission noted that the arbitrator agreed that March 7, 2003, was a possible manifestation date and also noted that there was no time limitation issue since the application for adjustment of claim had been filed on February 14, 2006. The Commission exercised its authority, under *Freeman United Coal Mining Co. v. Industrial Commission*, 247 Ill. App. 3d 662, 667 (4th Dist. 1998), to amend an application in a repetitive trauma claim and exercised that authority in this matter by amending the application, on its face, to reflect a date of accident of March 7, 2003.

With regard to the issue of the accident date, the Commission found that a manifestation date of March 7, 2003, was supported by the record. The claimant had completed a preprinted employee incident report on that date indicating his belief that the work he performed in the spindle cell, including lifting heavy tools, and pushing and pulling parts caused him to develop soreness and pain in the left thumb. The Commission also noted that the claimant saw Dr. Roggenkamp at the company clinic the same day, and the doctor wrote that the work the claimant did as a fabricator required forceful use of his hands and described his job as hand intensive. The Commission also noted that, at the hearing, the claimant credibly testified that he completed the incident report because he wanted to make a record of his thumb complaints prior to undergoing left carpal tunnel surgery. The Commission also found it to be significant that the claimant testified that he was a fabrication specialist prior to being off work for 10 weeks following surgery and that he did not begin working as a tube bender until he came back from surgery in October 2003. The Commission also noted the claimant's testimony that he saw Dr.

Roggenkamp over and over again for his left thumb pain. The claimant testified credibly, according to the Commission, that he did not know why the company clinic records reflected that he was seen on only one occasion.

The Commission found it significant that the claimant sought treatment for his left thumb pain in 2003, 2004, 2005, and 2006. The Commission also noted the claimant's testimony that, since the onset of thumb pain, he had experienced similar complaints on an ongoing basis. While the arbitrator did not view March 7, 2003, as an appropriate manifestation date based upon a finding that the claimant had sought no medical treatment for his left thumb between March 7, 2003, and February 7, 2006, the Commission viewed the evidence differently. The Commission found that the claimant had continued to seek medical care for his left thumb periodically between March 7, 2003, and February 7, 2006, and that he had consistent complaints of thumb pain beginning with his March 7, 2003, appointment with Dr. Roggenkamp in the company clinic.

The Commission also found it significant that the claimant had worked for the employer for over 30 years and performed work requiring significant use of his hands. At the time of the hearing, the claimant had lost no time from work as a result of his left thumb condition. However, when the claimant began to experience thumb pain, he had already been diagnosed with bilateral carpal tunnel syndrome and was awaiting surgery. At the hearing, the parties stipulated that the claimant sustained bilateral elbow injuries arising out of and in the course of his employment. The claimant also completed an incident report for his bilateral elbow complaints on March 13, 2006, indicating his belief that his elbow symptoms also stemmed from the performance of his work duties. The Commission concluded that on March 7, 2003, when

the claimant saw Dr. Roggenkamp, he clearly understood the relationship of his condition to the work duties performed as evidenced by the incident report completed on March 7, 2003.

With regard to the issue of causal connection, the Commission found that the claimant's left thumb complaints began when he was working for the employer as a fabrication specialist, not as a tube bender. The incident report completed by the claimant on March 7, 2003, and Dr. Roggenkamp's clinic notes on March 7, 2003, both reflect the repetitive job duties the claimant performed at the time his thumb pain began. Dr. Showalter, the employer's examiner, wrote about the claimant's job duties in some detail. Dr. Showalter noted that the claimant worked as a lathe and gear shaver handling parts by hand, that he switched to five machines, including lathes and washing units, for about three years, and that he was eventually relocated as a tube bender. The Commission interpreted this evidence to show that the claimant switched jobs to become a tube bender after he had undergone bilateral carpal tunnel surgery and after he began to experience thumb pain. The Commission believed that the timing of the claimant's move to tube bender was significant since the claimant started working in his new position in October 2003, not long after the onset of thumb pain. The Commission found that the opinion of Dr. Roggenkamp that the claimant suffered from mild degenerative disease of the left thumb CMC joint, but that the condition was not aggravated by his employment, was self-serving and unworthy of credence. The Commission noted that, in the same note expressing this opinion, Dr. Roggenkamp acknowledged the hand-heavy nature of the claimant's job at a time when the claimant was undergoing surgery for carpal tunnel syndrome. The Commission also noted that: (1) Dr. Pankaj had diagnosed early degenerative arthritis in the CMC joint; (2) Dr. Tsai noted the claimant was being seen for pain in the left CMC joint and thumb; and (3) the claimant had

provided Dr. Tsai with a history of repetitive work activity including moving tubes and using heavy tools at work.

The Commission also found that Dr. Freedberg's opinion was sufficient to establish causal connection. Dr. Freedberg noted that the claimant had symptoms for years prior to February 7, 2006. Dr. Freedberg was aware that the claimant performed extensive repetitive pushing and pulling movements in performing his job. He reported that the claimant had, for years, been performing repetitive motions which put strain upon his thumb and, based upon this observation, opined that the claimant suffered a repetitive trauma injury after working over 30 years for the employer. The Commission noted Dr. Freedberg's testimony included an explanation that repetitive work activity, such as the claimant reported, often resulted in injury. The Commission noted that the claimant, in fact, sustained three of the most common conditions resulting from repetitive work: carpal tunnel syndrome, arthritis of the basal joints, and tendinitis of the elbow. With this in mind, the Commission accepted Dr. Freedberg's conclusion that the claimant's condition could have, in whole or in part, been caused, aggravated, or accelerated by the performance of his work duties. The Commission noted Dr. Freedberg's candid acknowledgment that he did not know some of the details of the risk factors for the work duties the claimant actually performed, such as repetition, force, posture, position, rest, and magnitude of the load, and that he understood there were significant tasks which required the claimant to often and repeatedly exert force with his hands and thumbs. The Commission found that Dr. Freedberg's description of the claimant's job duties was sufficiently consistent with the claimant's own testimony.

The Commission also considered the opinion of Dr. Showalter, the employer's examiner, in finding that the claimant's condition of ill-being was causally related to his employment. Dr. Showalter authored two reports, the second after his review of the ergonomic evaluation. He opined that the claimant's work history was consistent with gradual progressive symptoms relating to osteoarthritis of the basal joint. Dr. Showalter opined that the clamant's job duties as a fabricator could have been an aggravating factor in increasing the symptoms of the underlying degenerative process. The Commission noted that Dr. Showalter agreed with Dr. Freedberg that the claimant was a left thumb surgical candidate. It found significant the fact that Dr. Showalter addressed the job duties the claimant performed as a fabricator, the position he held prior to his transfer to the tube bending position. Dr. Showalter noted that the claimant had been working as a lathe and gear shaver, handling parts by hand, and had switched to five machines, including lathes and a washing unit, for about three years. Dr. Showalter also noted that the claimant's thumb pain continued even after he was transferred to the tube bending position. The Commission also noted that Dr. Showalter's second report stated that the claimant could continue to work as a tube bender because the work duties of that position did not impose an additional threat. The Commission noted, however, that Dr. Showalter confirmed his original opinion that the work loads required in that position could have been an aggravating factor in the underlying disease process. Dr. Showalter also pointed out that, after the initial onset of thumb complaints, the claimant's thumb pain continued. The Commission concluded that Dr. Showalter, the employer's own examiner, found a causal connection between the claimant's job duties as both a fabricator and a tube bender and the condition of ill-being of the claimant's left thumb.

Additionally, the Commission assigned no weight to Jensen's ergonomic evaluation or opinion. It noted that Jensen only observed the claimant performing his job duties a total of 2 1/4 hours and, according to the claimant's credible testimony, did not observe all of the claimant's job duties.

Having found that the claimant sustained a repetitive trauma injury to his left thumb which manifested itself on March 7, 2003, and that his condition was causally related to those injuries, the Commission further found that the claimant provided timely notice to the employer. The Commission noted that the incident report the claimant completed on March 7, 2003, and his visit with Dr. Roggenkamp at the company clinic on March 7, 2003, constituted sufficient and timely notice. The Commission further noted that the claimant clearly indicated in the incident report that he believed his left thumb condition was work-related. The Commission thus found that the relationship between the claimant's left thumb condition and his job duties could not have come as a surprise to the employer.

The dissenting commissioner took issue with the majority's characterization of Dr. Freedberg's opinion regarding the existence of a causal connection between the claimant's left thumb pain and the claimant's job duties as a fabricator. The dissenter also was not convinced that a single report of thumb pain on March 7, 2003, was sufficient to establish that date as a possible manifestation date for the claimant's repetitive trauma claim. The dissenter would have affirmed and adopted the arbitrator's findings.

The employer sought review in the Kane County circuit court which confirmed the decision of the Commission. The employer then filed a timely appeal to this court. The employer raises three issues on appeal: (1) whether the Commission erred in finding that the

claimant proved he sustained a compensable injury to his left thumb; (2) whether the Commission erred in *sua sponte* amending the application for adjustment of claim to indicate an accident date of March 7, 2003, instead of February 7, 2006; and (3) whether the Commission erred in finding that the claimant gave timely notice of his accidental injuries.

DISCUSSION

A reviewing court may set aside a decision of the Commission only if the decision is contrary to law or based on factual findings that are against the manifest weight of the evidence. *Fitts v. Industrial Comm'n*, 172 Ill. 2d 303 (1996). Questions of law are reviewed *de novo*. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187 (2002). In deciding whether a factual finding is against the manifest weight of the evidence, the applicable test is "whether there was sufficient factual evidence in the record to support the Commission's determination." *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 450 (1995); see also *Greene v. Industrial Comm'n*, 87 Ill. 2d 1 (1981) (a reviewing court may not disregard or reject permissible inferences drawn by the Commission merely because the court would have drawn other inferences). In resolving any questions of fact, it is the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, and assign weight to be accorded the evidence. *Modern Drop Forge Corp. v. Industrial Comm'n*, 284 Ill. App. 3d 259, 267 (1996). Moreover, in repetitive injury claims, whether an injury has occurred and the date upon which the injury was manifested are questions of fact for the Commission to determine in light of both fairness and flexibility. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 71 (2006).

1. Injury

There is no question that the claimant has degenerative arthritis in the CMC joint of the left thumb. The employer maintains that the Commission erred in finding that the claimant had proven that he sustained this injury to his left thumb on February 7, 2006. The employer points out that the claimant alleged he suffered an injury to his left thumb on that date as a result of the repetitive nature of his job as a tube bender. The employer further maintains that the manifest weight of the evidence failed to establish that the claimant's job duties as a tube bender caused or aggravated his condition of ill-being as it related to the CMC joint of the left thumb.

The employer's argument that the claimant failed to prove that he sustained a compensable injury on February 7, 2006, is misplaced. Since the Commission determined that February 7, 2006, was not the date upon which the claimant's condition of ill-being and its connection to his employment was manifest, the Commission did not find that the claimant sustained a compensable injury on February 7, 2006. Rather, the Commission determined that the claimant's injury and its causal connection to his employment manifested on March 7, 2003, thus effectively rendering any discussion of February 7, 2006, irrelevant to this appeal. The question for appellate review is whether the Commission erred in finding that March 7, 2003, was the date upon which the claimant's condition manifested.

2. Manifestation Date

The crux of the employer's argument before this court is its disagreement with the Commission's finding that the claimant suffered a compensable injury on March 7, 2003, and its action in *sua sponte* changing the accident date on the application for adjustment of claim from February 7, 2006, to March 7, 2003.

We begin by noting that is within the province of the Commission to determine the date of accident in a repetitive trauma case, and, as such, the Commission is free to assign a new accident date to a timely filed application, as long as its determination of the accident date is not contrary to the manifest weight of the evidence. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 297 Ill. App. 3d 662, 666 (1998). Allowing the Commission to amend an application, particularly in repetitive trauma cases, comports with the notion that an application should be amended to conform to the proofs contained in the record before the Commission. *Id.* at 667.

The employer maintains that *Freeman United* is distinguishable from the instant matter in that the claimant herein is attempting to establish what amounts to an entirely new injury arising out of an entirely different accident. We disagree. At issue is whether the claimant's arthritic condition of the CMC joint of his left thumb was caused or aggravated by the repetitive nature of his employment. The fact that the claimant changed jobs from fabricator to tube bender in 2003 and whether both or neither of those jobs required repetitive actions which might have caused the claimant's condition are matters that go to the determination of the appropriate accident date and do not establish that the claimant suffered two distinct accidental injuries. The record clearly established that the claimant suffered one condition of ill-being, pain, and limited use of the left thumb as the result of arthritis of the CMC joint. The only question is whether that condition of ill-being was caused or aggravated by the repetitive nature of the claimant's employment. The Commission determined that the claimant's condition of ill-being manifested on March 7, 2003. Under the precedent established in *Freeman United,* the Commission was permitted to do so, provided that the conclusion was supported by the manifest weight of the evidence.

For an employee suffering from a repetitive trauma injury, there must be established a date 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. Setting this date is a fact determination for the Commission. *Palos Electric Co. v. Industrial Comm'n*, 314 Ill. App. 3d 920, 930 (2000). The facts surrounding repetitive trauma injuries must be examined on a case by case basis to determine the manifestation date. *Durand*, 224 Ill. 2d at 72.

Here, the Commission found both the claimant's injury to his left thumb and the causal link to his employment was established through the claimant's credible testimony regarding his report of left thumb pain to Dr. Roggenkamp on March 7, 2003, and his testimony that he reported the same pain to Drs. Tsai and Freedberg. The Commission's conclusion is also supported by Dr. Roggenkamp's report of the claimant's March 7, 2003, clinic visit and notations made by the other physicians in their treatment records. Given the record of the claimant's reporting left thumb pain on March 7, 2003, and the record evidence tending to support a finding that the same left thumb pain continued throughout the years up to the date of the hearing, it cannot be said that the Commission's finding that the claimant's injury manifested on March 7, 2003, was against the manifest weight of the evidence.

The more problematic question is whether the causal link between the pain and physical limitation associated with the claimant's arthritic CMC joint became plainly apparent to a reasonable person on March 7, 2003. The Commission supported its finding that the causal link was established by noting that the incident report completed by the claimant on March 7, 2003, and Dr. Roggenkamp's clinic notes on March 7, 2003, both reflect the repetitive job duties the claimant performed at the time his thumb pain began. The Commission also noted that Dr.

Showalter, the employer's own medical examiner, seemed to support a finding that the claimant's condition of ill-being in his left thumb was present and related to his job duties as a fabricator before he switched jobs to become a tube bender. Additionally, Dr. Freedberg's opinion as to causal connection, although based upon an incomplete understanding of the difference in the job duties of a fabricator and a tube bender, was sufficient to establish a causal link. The Commission found that Dr. Freedberg was aware that the claimant's job for several years had required repetitive motion sufficient to cause other repetitive nature injuries such as carpal tunnel and tendinitis and that his opinion as to causation was not invalidated by his inexact understanding of the claimant's job duties.

Moreover, the Commission noted the claimant's testimony that he thought his left thumb pain was causally linked to his employment and filed his incident report and sought treatment from Dr. Roggenkamp at the company clinic specifically to establish that fact. Given the record, the weight given to medical testimony, and the credibility determinations made by the Commission, it cannot be said that the Commission's determination of March 7, 2003, as the accident manifestation date was against the manifest weight of the evidence.

3. Notice

Section 6(c) of the Act requires that the claimant notify the employer within 45 days of an accidental injury. 820 ILCS 305/6(c) (West 2002). Whether the claimant has provided the proper notice of an accident to the employer is a question of fact for the Commission to determine, and its determination will not be reversed on appeal unless it is against the manifest weight of the evidence. *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43 (1989). A factual decision is against the manifest weight of the evidence only when the opposite

conclusion is clearly apparent from the record. *D.J. Masonry Co. v. Industrial Comm'n*, 295 Ill. App. 3d 924 (1998). Compliance with the notice requirement is accomplished by placing the employer in possession of the known facts related to the accident within the statutory period of 45 days. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 96 (1994). A claim is barred only if no notice whatsoever has been given. *Id.* If some notice is given, although inaccurate, incomplete, or otherwise defective, the employer must show that it has been unduly prejudiced. *Silica Sand Transport, Inc. v. Industrial Comm'n*, 197 Ill. App. 3d 640, 651 (1990).

Here, the Commission found that the incident report the claimant completed on March 7, 2003, along with his consultation at the company clinic with Dr. Roggenkamp on the same date, constituted sufficient and timely notice. The Commission further found that in the incident report the claimant clearly indicated that he believed his left thumb condition was work related. The Commission thus found that the relationship between the claimant's left thumb condition and his job duties could not have come as a surprise to the employer. Given the record, it cannot be said that the Commission's finding that the claimant gave sufficient and timely notice was against the manifest weight of the evidence.

CONCLUSION

The order of the circuit court of Kane County confirming the Commission's decision is affirmed. The cause is remanded to the Industrial Commission for further proceedings.

Affirmed and remanded.