

2012 Il App (4th) 110480WC-U

Workers' Compensation
Commission Division
Filed: September 18, 2012

No. 4-11-0480WC

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).

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

CONNIE WHEELER,)	Appeal from the
)	Circuit Court of
Appellant,)	Cass County
)	
v.)	
)	No. 10 MR 21
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, et al.,)	
(Excel Corp.,)	Honorable
)	Bob G. Hardwick, Jr.,
Appellee).)	Judge Presiding.

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

ORDER

¶ 1 Held: The finding of the Workers' Compensation Commission that claimant's left shoulder rotator cuff injury is not causally related to her employment is not against the manifest weight of the evidence or contrary to law.

¶ 2 The claimant, Connie Wheeler, appeals from a judgment of the Circuit Court of Cass County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) finding, in part, that her left shoulder rotator cuff injury is not causally related to her employment with Excel Corporation (Excel). For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearings conducted in this matter.

¶ 4 The claimant worked at Excel for approximately 13 years, until March 2003. In July 2003, the claimant saw Dr. Leo Ludwig for treatment of bilateral shoulder pain she had experienced for "quite a while," and Dr. Ludwig formed the impression that she suffered from bilateral shoulder pain and bilateral shoulder impingement. In October 2003, after the claimant had begun working at a new job, Dr. Ludwig wrote that the claimant's bilateral shoulder impingement syndrome was "unchanged" and "not significantly symptomatic," and he opined that shoulder surgery was unnecessary. In a November 2003 treatment note, Dr. Ludwig wrote that the claimant "seem[ed] to be slowly resolving" her shoulder problem.

¶ 5 The claimant testified that, in "July or August" 2003, she began working for a union that employed her as a laborer during the warmer months. She said that her duties would vary depending on the needs of the contractor and the job, but she recalled that much of her work involved holding up flags or signs. The claimant testified that she sometimes would have trouble holding up the signs against strong wind.

¶ 6 The claimant did not see Dr. Ludwig again until October 2005, when she told him that her shoulders "pop[ped] a lot" and were painful, and that her right shoulder was worse than her left. Dr. Ludwig formed the impression that the claimant suffered from "[b]ilateral shoulder chronic impingement with AC joint arthropathy," and he ordered an MRI of the claimant's right shoulder. That MRI, taken in November 2005, revealed a right rotator cuff tear.

¶ 7 On December 15, 2005, the claimant participated in an arbitration hearing, pursuant to section 19(b) of the Act, related to her entitlement to medical expenses relating to her bilateral carpal tunnel syndrome, right rotator cuff tear, and left shoulder impingement syndrome. On December 22, 2005, after the arbitration hearing, the claimant reported to Dr. Ludwig that her left shoulder hurt as much as her right, and Dr. Ludwig ordered an MRI of that shoulder as well. That MRI, taken in January 2006, revealed a rotator cuff tear.

¶ 8 On January 19, 2006, the arbitrator issued findings following the December 2005 hearing. In his written findings, the arbitrator summarized Dr. Ludwig's treatment records to that point as well as a deposition Dr. Ludwig had given. Dr. Ludwig's deposition does not appear in the record on appeal. According to the arbitrator's decision, Dr. Ludwig testified that, at the time of the deposition, he believed the claimant was suffering from a right rotator cuff tear, impingement syndrome of the left shoulder, and bilateral carpal tunnel syndrome. Based on the claimant's job description at Excel, he further opined that the claimant's work for Excel either caused or aggravated both her right rotator cuff tear and her left shoulder impingement syndrome. In reaching that conclusion, Dr. Ludwig stated that "there was nothing in his histories or examinations to suggest that the rotator cuff had been aggravated in the interim between his examinations in 2003 and 2005." The arbitrator found Dr. Ludwig's testimony to be credible. The the arbitrator found that the claimant's conditions of bilateral carpal tunnel syndrome, right rotator cuff tear, and left shoulder impingement syndrome were all causally related to her employment with Excel, and he awarded her \$5487.50 in medical expenses as well as costs for future treatment of her right rotator cuff. Neither party sought review of the arbitrator's decision.

¶ 9 Beginning in February 2006, the claimant began working as a laborer for various construction projects. She testified that her first duties required her to bring supplies to other laborers and that, in another job, she acted as a foreman for a crew that would clear out demolition debris. The claimant said that, during this time, her shoulder pain continued "pretty

much the same as it always was."

¶ 10 The claimant next saw Dr. Ludwig in October 2006, when she told him that her shoulders had become more symptomatic because she had been asked to do "more sweeping activities" at her job. She underwent surgery to repair the left shoulder tear in November 2006, and a course of physical therapy followed. Dr. Ludwig also ordered her off of work following the surgery.

¶ 11 In August 2007, the claimant underwent surgery on her right rotator cuff, and she again underwent physical therapy following the surgery.

¶ 12 In March 2008, Dr. Ludwig wrote that the claimant had not reached maximum medical improvement (MMI) but that he believed it was "probably time to just bite the bullet and try to return to work" in April. By August 2008, Dr. Ludwig believed that the claimant had reached MMI with respect to her shoulders.

¶ 13 The claim next came on for hearing before an arbitrator on January 13, 2010. The claimant offered no medical opinion testimony at that arbitration hearing. Excel presented the report of Dr. George Paletta, Jr., who examined the claimant at Excel's request. Dr. Paletta noted that the claimant had no documented complaints of shoulder pain prior to her leaving Excel's employ, and he also observed that medical records in April 2003 showed no limitations in the range of motion or strength in her shoulders. Dr. Paletta further noted that, when she treated with Dr. Ludwig in July and August 2003, the claimant did not have severe rotator cuff symptoms and reported that her right shoulder was worse than her left. This non-severe symptomology, Dr. Paletta wrote, continued through 2003, and the more severe symptoms did not appear until late 2005, after she had worked at another job. In Dr. Paletta's opinion, these facts "strongly suggest[ed] that the development of her rotator cuff pathology occurred some time in 2005" and that it was "extremely difficult to develop a clear causal relationship between her left shoulder rotator cuff tear and her job activities" at Excel. He expressed the same opinion with respect to the claimant's right shoulder, but elsewhere in his report he noted the arbitrator's previous finding

that a causal relationship existed between the claimant's work with Excel and her right shoulder condition. He also opined that the claimant had yet to reach MMI with respect to her right shoulder rotator cuff tear.

¶ 14 On March 1, 2010, the arbitrator filed his decision, awarding the claimant permanent partial disability (PPD) benefits for 5% loss of use of her left hand, 5% loss of use of her right hand, 10% loss of use of her left arm, and 30% loss of use of her right arm. The arbitrator did not award benefits relating to the claimant's left shoulder rotator cuff tear, which he found was not causally related to her employment with Excel. In his decision, the arbitrator noted that the claimant presented no medical testimony regarding the causal link between her left shoulder rotator cuff tear and her employment with Excel, and he quoted Dr. Paletta's report at length. To conclude that the claimant had failed to prove a causal link, the arbitrator relied on "the two year gap in medical treatment, change in [the claimant's] left shoulder complaints after leaving [Excel's] employ, and the opinion of" Dr. Paletta. The arbitrator found instead that the claimant suffered a left shoulder impingement during her employment with Excel and that the condition reached MMI by November 2003.

¶ 15 The claimant sought review before the Commission of the arbitrator's decision of March 1, 2010. The Commission unanimously adopted and affirmed the arbitrator's decision. Thereafter, the claimant sought judicial review of the Commission's decision in the circuit court of Cass County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 16 The claimant's sole contention on appeal is that the Commission's finding, that her left shoulder rotator cuff tear is not causally related to her work for Excel, is against the manifest weight of the evidence or contrary to law. We disagree.

¶ 17 A prerequisite to the right to recover benefits under the Act is some causal relationship between the claimant's employment and the injury suffered. *Schwartz v. Industrial Comm'n*, 379

Ill. 139, 144-45, 39 N.E.2d 980 (1942). The claimant in a workers' compensation case has the burden of establishing, by a preponderance of the evidence, some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63, 541 N.E.2d 665 (1989). Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984). The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005 (1987). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992).

¶ 18 In challenging the Commission's causation finding in this case, the claimant relies strongly on the arbitrator's prior unchallenged decision regarding her medical expenses. In the claimant's view, the Commission's findings are at odds with the reasoning underlying the prior arbitration decision, and, under the law-of-the-case doctrine, must be set aside. " 'The rule of law of the case is a rule of practice, based on sound policy that, where an issue is once litigated and decided, that should be the end of the matter and the unreversed decision of a question of law or fact made during the course of litigation settles that question for all subsequent stages of the suit.' " *Irizarry v. Industrial Comm'n*, 337 Ill. App. 3d 598, 606, 786 N.E.2d 218 (2003) (quoting *McDonald's Corp. v. Vittorio Ricci Chicago, Inc.*, 125 Ill. App. 3d 1083, 1086, 466 N.E.2d 1116 (1984)). However, as Excel observes in its brief, the law-of-the-case doctrine is not applicable here, because the arbitrator's prior decision did not consider the causal relationship between the claimant's left rotator cuff tear and her employment with Excel.

¶ 19 Notwithstanding this point, the claimant asserts that the reasoning of the arbitrator's prior decision is inconsistent with the Commission's finding of no causal relationship, and that the

conflict means that the Commission's current decision is erroneous. According to the claimant, the arbitrator's prior decision established that the claimant's left-shoulder condition, which at that time was diagnosed only as impingement, was related to her employment with Excel. As the claimant further points out, the arbitrator's previous decision appeared to rely on deposition testimony from Dr. Ludwig, who opined, among other things, that there was nothing to indicate that the claimant's activities after leaving Excel contributed to her left-shoulder condition. Thus, the claimant contends, the Commission's finding of no causal relationship upsets the arbitrator's original findings.

¶ 20 As Excel points out in its brief, however, the Commission had ample evidence on which to base a finding that the claimant's left rotator cuff tear was caused by her activities following her employment with Excel. The Commission saw not only Dr. Paletta's opinion to that effect, but also supporting medical records indicating that the claimant's shoulder condition remained stable and did not exacerbate until long after she had left Excel's employ. Further, as the Commission observed, the claimant offered no medical testimony to refute Dr. Paletta's opinions.

¶ 21 The finding that the rotator cuff tear occurred after the claimant left Excel also finds no inconsistency with the arbitrator's prior decision. That prior decision considered the causation of only the claimant's left shoulder impingement syndrome, a condition Dr. Paletta opined had reached MMI before the claimant developed her left shoulder rotator cuff tear. Likewise, to the extent the arbitrator's prior decision can be read to adopt Dr. Ludwig's opinion that the claimant's activities following her leaving Excel did not contribute to her left shoulder condition, again, that opinion was offered only in the context of evaluating her left shoulder impingement. Dr. Ludwig offered no opinions regarding the left rotator cuff tear. In fact, as Dr. Paletta observed, Dr. Ludwig hardly could have offered an opinion on the matter, because the claimant did not report that her left shoulder pain surpassed that of her right until December 22, 2005, one week after the first arbitration hearing took place.

No. 4-11-0480WC

¶ 22 For these reasons, we conclude that the Commission's finding, that the claimant's left shoulder rotator cuff tear is not causally related to her employment with Excel, is not against the manifest weight of the evidence or contrary to law; and we, therefore, affirm the judgment of the circuit court which confirmed the decision of the Commission.

¶ 23 Affirmed.