2012 IL App (4th) 110734WC-U

Order filed September 19, 2012

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

TOWN OF NORMAL,	)	Appeal from the Circuit Court
	)	of the 11th Judicial Circuit,
Appellant,	)	McLean County, Illinois
	)	
	)	Appeal No. 4-11-0734WC
v.	)	Circuit No. 10-MR-158
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al*. (Steven Beal,	)	Scott Drazewski,
Appellees).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgement of the court.

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

¶ 1 *Held*: The Commission's findings that: (1) the claimant satisfied the 45-day notice requirement; (2) the claimant sustained an accidental injury arising out of and in the course of his employment on February 9, 2006; (3) the claimant proved a causal connection between his carpal tunnel syndrome and his employment; and (4) the claimant suffered a permanent partial disability equal to 15% loss of use of the right hand were not against the manifest weight of the evidence.

¶ 2 The claimant, Steven Beal, filed an application for adjustment of a claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2006)) seeking benefits for

injuries to his right hand allegedly sustained on June 23, 2005, during his employment in the Water Distribution Department of the Town of Normal. An arbitrator found that the claimant had failed to prove: (1) that he sustained an accidental injury on June 23, 2005; (2) a causal connection between his alleged right hand carpal tunnel syndrome and his employment; and (3) that he had given proper notice of his alleged accident to his employer within 45 days of his alleged injury. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission), which by a vote of two to one, reversed the arbitrator's decision, finding that the claimant had established that he had suffered an accidental injury on February 9, 2006, rather than June 23, 2005, that his carpal tunnel syndrome was causally related to his employment, and that he had given proper notice of his injury to his employer. Accordingly, the Commission awarded the claimant $9,617.35 in reasonable and necessary medical expenses and awarded permanent partial disability (PPD) benefits equal to 15% loss of the use of his right hand. The employer then sought judicial review of the Commission's decision in the circuit court of McLean County, which confirmed the Commission's ruling. The employer then brought this appeal.

¶ 3 ISSUES

¶ 4 The employer raises the following issues on appeal: (1) whether the Commission's decision that the claimant satisfied the 45-day notice requirement was against the manifest weight of the evidence; (2) whether the Commission's finding that the claimant sustained an accidental injury on February 9, 2006, was against the manifest weight of the evidence; (3) whether the Commission's finding that the claimant proved a causal connection between his carpal tunnel syndrome and his employment was against the manifest weight of the evidence; and

(4) whether the Commission's award of permanent partial disability benefits equal to l5% loss of the use of the right hand was against the manifest weight of the evidence.

¶ 5 FACTS

¶ 6 The claimant, a 55-year-old right-hand-dominant "utility worker" in the Water Distribution Department of the Town of Normal, had worked for the employer for 32 years and had worked in his current position for approximately one year. His job duties as a utility worker included repairing water main breaks and fire hydrants and operating a backhoe. On May 12, 2005, the claimant injured his right elbow when he gave a six foot long valve key a "jerk" while sealing a water valve. The claimant sought treatment for his right elbow pain from Dr. Lawrence Nord.[1] Dr. Nord's medical records indicate that the claimant sought treatment on June 14, 2005, for pain in the right elbow. The record contained a history of an accident while manipulating a valve key on May 12, 2005. Dr. Nord diagnosed lateral epicondylitis (inflammation of the humerus and surrounding tissue) of the right elbow. The report contains no mention of symptoms of the wrist or hand.

¶ 7 On June 23, 2005, the claimant retired from employment with the Town of Normal. On January 12, 2006, the claimant sought treatment from Dr. Nord for the continuing right elbow pain related to the May 12, 2005, incident. Dr. Nord ordered an MRI of the right elbow. In a clinical note dated January 19, 2006, Dr. Nord noted the claimant's complaint of paresthesias

[1] Dr. Nord ultimately performed surgery on the elbow. The claimant filed an application for adjustment of claim regarding the elbow injury which was ultimately settled and is not at issue in the instant matter.

(numbness, tingling, prickly sensation with heightened sensitivity) in the fourth and fifth fingers of the right hand, in addition to the elbow complaints. On January 25, 2006, Dr. Nord ordered a nerve conduction velocity (NCV) examination, apparently in response to the claimant's complaints of parasthesias in the right hand. The NCV examination, conducted on February 9, 2006, was significant for right carpal tunnel syndrome. Dr. Nord diagnosed right-hand carpal tunnel syndrome. His notes described the right-hand carpal tunnel syndrome as an "old diagnosis/illness" even though there appears to be no prior documentation of right carpal tunnel syndrome.

¶ 8 On April 11, 2006, the claimant reported continuing paresthesias in the fourth and fifth fingers of the right hand in addition to complaints of elbow pain. On April 12, 2006, Dr. Nord performed surgery on the right elbow, including a cubital tunnel release. The claimant's postoperative recovery was uneventful. On April 13, 2006, and April 25, 2006, the claimant reported paresthesias in the fourth and fifth fingers. In a report dated April 27, 2006, Dr. Nord reported his diagnosis of right-hand carpal tunnel syndrome. In addition, after reviewing the claimant's job description, Dr. Nord opined that there was a causal relationship between the claimant's right hand carpal tunnel syndrome and his employment.

¶ 9 On March 24, 2006, the claimant was examined at the employer's request by Dr. Stephen Weiss, a board-certified orthopedic surgeon. The purpose of that examination was to evaluate the injury to the claimant's right elbow as a result of the May 12, 2005, accident. In the context of that examination, Dr. Weiss noted that the NCV test conducted by Dr. Nord had revealed the presence of carpal tunnel syndrome. He further noted, however, a lack of symptoms normally associated with carpal tunnel syndrome and, thus, he considered the claimant to be asymptomatic

for carpal tunnel syndrome. Dr. Weiss was asked by the employer's insurance carrier for an opinion "as to whether the condition from which the claimant currently suffers is in any way related to the employment by our client." He responded: "Yes, I believe that the lateral epicondylitis is a direct result of the May 12, 2005, work incident. As far as the cubital tunnel syndrome, in my opinion it is a result of the use of the tennis elbow compression band. I believe that the carpal tunnel syndrome is unrelated to the May 2005 work incident."

¶ 10 On May 16, 2006, the claimant reported to Dr. Nord that the paresthesias in the fourth and fifth fingers of the right hand had resolved. However, on June 15, 2006, he reported some recurrent paresthesias and constant aching in those fingers. He also reported difficulty gripping objects with his right hand. Dr. Nord's treatment notes from July 13, 2006, and August 31, 2006, indicated that, once again, the paresthesias had resolved. On September 28, 2006, the claimant once again complained of paresthesias in the fourth and fifth fingers of the right hand. At this time, Dr. Nord scheduled nerve decompression surgery. The surgery was performed on November 14, 2006. On November 28, 2006, the claimant reported that the paresthesias had resolved.

¶ 11 On November 14, 2006, Dr. Nord performed carpal tunnel release surgery on the claimant's right hand/wrist.

¶ 12 On November 16, 2006, the claimant was again examined at the request of the employer by Dr. Weiss. Dr. Weiss noted that the claimant was two days postoperative from carpal tunnel release surgery and that the claimant reported symptom relief. Dr. Weiss reviewed the job description the claimant had previously provided to Dr. Nord. Dr. Weiss opined that the carpal tunnel syndrome was an "incidental finding" noted in the NCV test; however, as he had

previously noted in March 2006, the claimant exhibited no symptoms of carpal tunnel syndrome. Dr. Weiss also noted that other diagnostic tests in March had been negative for carpal tunnel. Dr. Weiss opined that the claimant's carpal tunnel syndrome "came on long after his work activities stopped and therefore represents a normal progression of an underlying, non-work related condition."

¶ 13 On November 28, 2006, the claimant reported that the paresthesias had resolved. On December 19, 2006, he reported only some mild weakness in his right hand. On January 18, 2007, Dr. Nord reported that the right hand appeared normal.

¶ 14 On March 15, 2007, and June 14, 2007, the claimant reported only mild right elbow pain. On December 3, 2007, the claimant began working for another employer, driving an airport shuttle approximately 20 hours per week. On December 11, 2007, he reported the return of mild paresthesias in the fourth and fifth fingers of the right hand.

¶ 15 On June 12, 2008, Dr. Nord reported the claimant's complaints of "low grade discomfort in the right arm with peripheral neuropathy symptoms" as well as vague paresthesias in the fourth and fifth fingers. Dr. Nord prescribed physical therapy. Subsequent tests revealed no significant difference in grip strength between the left and right arms.

¶ 16 At the hearing, the claimant testified that, even after the release surgery, he has less grip strength in his right hand than in his left hand, and he experiences intermittent pain in the right wrist.

¶ 17 The arbitrator found that the claimant had failed to establish that his carpal tunnel syndrome was causally related to his employment. The arbitrator also found that, pursuant to

White v. Workers' Compensation Comm'n, 374 Ill. App. 3d 907 (2007), the claimant had failed to give the employer timely notice of his repetitive trauma claim.

¶ 18 The Commission disagreed with both findings by the arbitrator. The Commission distinguished the instant matter from *White* by noting that the issue here was not whether the claimant had failed to give any notice of his repetitive trauma claim but whether the employer had been prejudiced by deficient notice that was given. *White*, 374 Ill. App. 3d at 912-13. Specifically, the Commission here quoted the *White* court's observation that "[t]he accident date in a repetitive trauma case turns on when certain facts would have become plainly apparent to a reasonable person, and such awareness can arise for first time after termination of employment." *Id.*

¶ 19 Here the claimant had alleged an accident manifestation date of June 23, 2005, the last date of the claimant's employment with the employer. As the Commission observed, this date could not have been the manifestation date since the claimant was not diagnosed with carpal tunnel syndrome until February 9, 2006. Based upon the record, the Commission determined that February 9, 2006, was the date on which it would have become plainly apparent to a reasonable person that the claimant had a repetitive trauma claim. It permitted the claimant to amend his application for adjustment of claim to change the accident date from June 23, 2005, to February 9, 2006. The Commission further determined that amending the date of accident did not prejudice the employer since the employer was aware of a possible repetitive trauma claim for the carpal tunnel syndrome diagnosis since it had sought Dr. Weiss's opinion concerning whether the claim could be related to the claimant's employment sometime between February 9, 2006 and the date of Dr. Weiss's letter to the employer in which he denied a causal connection.

¶ 20 The record established that Dr. Weiss examined the claimant on March 24, 2006, which was 44 days after February 9, 2006. Dr. Weiss's letter indicates that the employer's insurance carrier had specifically inquired of him as to whether Dr. Nord's February 9, 2006, carpal tunnel syndrome diagnosis could be related to his employment. Thus, the employer must have been notified of the possible claim within 45 days of the manifestation date.

¶ 21 After finding that the claimant had given sufficient notice of his repetitive trauma claim, the Commission then found that the claimant had established a causal connection between his employment and his condition of right-hand carpal tunnel syndrome. It found Dr. Nord's causation opinion to be persuasive, given the credible job history given to him by the claimant.

¶ 22 The dissenting commissioner was highly critical of the majority's reasoning, both as to notice and causation. The dissent noted that Dr. Weiss's opinion that the claimant's carpal tunnel syndrome could not have been caused by his employment since he was asymptomatic six months after he retired was "well-informed, well-reasoned, and well-analyzed" and that Dr. Nord's opinion was based upon "hindsight" and information furnished primarily by the claimant's attorney.

¶ 23 The employer sought review in the circuit court of McLean County, which confirmed the decision of the Commission. The employer then filed the instant appeal.

¶ 24 ANALYSIS

¶ 25 1. Notice

¶ 26 The employer maintains that the Commission erred in finding that the claimant gave sufficient notice of an accidental injury within the statutorily required 45-day period. The Commission's decision regarding whether the claimant has given sufficient notice of his claim is

a question of fact for the Commission to determine, and that determination will not be overturned 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, 46 (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, 928 (1998).

¶ 27 In a repetitive trauma case, the claimant must allege and prove a single definable accident date from which notice must be given. *White*, 374 Ill. App. 3d at 910. The date of such an accident is the date when the injury "manifests itself." *Id.* The phrase "manifests itself" signifies "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987). The purpose of the notice requirement is to enable the employer to investigate the employee's alleged industrial accident. *Seiber v. Industrial Comm'n*, 82 Ill. 2d 87 (1980). The statutory 45-day notice requirement of the Act is to be liberally construed. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 96 (1994). Notice need not be in any specific format as long as the employer is in possession of the known facts related to the accident. *Seiber*, 82 Ill. 2d at 97. Where some notice is given, but the notice is in some way defective or inaccurate, the employer must prove that he was unduly prejudiced by the defective or inaccurate notice. 820 ILCS 305(c)(2) (West 2006); *White*, 374 Ill. App. 3d at 910.

¶ 28 In the instant case, the claimant filed his application with an accident date of June 23, 2005, the date he last worked. The Commission permitted the claimant to amend the application to allege an accident date of February 9, 2006, which was the date Dr. Nord diagnosed right-hand

carpal tunnel syndrome. The Commission may allow an application to be amended to conform to the proofs contained in the record, and its decision to do so will not be overturned unless it is against the manifest weight of the evidence. *McLean Trucking Co. v. Industrial Comm'n*, 96 Ill. 2d 213, 218-19 (1983). Here, the Commission found that the record supported a finding that the claimant's claim of right-hand carpal tunnel syndrome could not have manifested on June 23, 2005, as it was not diagnosed until February 9, 2006. The Commission further noted that the record clearly established February 9, 2006, as a likely manifestation date as both the fact of the claimant's right-hand carpal tunnel syndrome and the possible causal relationship of his employment would have become readily apparent to the reasonable person.

¶ 29 The employer challenges this finding, arguing that: (1) even though Dr. Nord diagnosed right-hand carpal tunnel syndrome on February 9, 2006, the claimant was asymptomatic when he was examined by Dr. Weiss approximately 40 days later, on March 24, 2006; and (2) even if the claimant had right-hand carpal tunnel syndrome on February 9, 2006, there was nothing in the record to establish that it was plainly apparent that the claimant's condition was causally related to his former employment.

¶ 30 The Commission found otherwise. It noted that the employer was closely "following" the claimant's condition as a result of the injury to the claimant's right elbow on May 12, 2005, and it was in this context of keeping the employer informed of his condition of ill-being in his right arm that the claimant reported the right-hand carpal tunnel diagnosis. In addition, it noted that, unlike the claimant in *White*, the claimant in the instant matter did not make a statement that his condition was *not* work-related. *White*, 374 Ill. App. 3d at 911. The Commission noted that the employer was aware of the repetitive nature of the claimant's job duties and specifically asked

Dr. Weiss to evaluate whether the claimant's right hand carpal tunnel syndrome could be causally related to his employment. Dr. Weiss, the employer's independent medical examiner, examined the claimant on March 24, 2006, which was within 45 days of the date established by the Commission as the accident manifestation date. In addition, although the Commission did not make note of it, the record established that Dr. Weiss was informed of Dr. Nord's carpal tunnel syndrome diagnosis in a communication from the employer's insurance carrier. Thus, the employer must have been notified of the carpal tunnel diagnosis even before the claimant was examined by Dr. Weiss on March 24, 2006. Finally, the Commission noted that the employer did, in fact, have the claimant's right hand carpal tunnel syndrome examined by Dr. Weiss on March 24, 2006, thus establishing that the employer was given sufficient notice to permit it to investigate the claimant's alleged industrial accident. *Seiber,* 82 Ill. 2d at 91. Moreover, the Commission determined that, since the employer conducted an investigation of the claimant's alleged industrial accident, it was not prejudiced by a defect or inaccuracy in the notice.

¶ 31 Given the facts as established in the record, it does not appear that the Commission's finding that the claimant provided adequate and timely notice of his carpal tunnel syndrome claim and that the employer was not prejudiced by a defect of inadequacy in the notice was against the manifest weight of the evidence.

¶ 32 2. Accidental Injury

¶ 33 The employer next maintains that the Commission erred in finding that the claimant established that he sustained a compensable repetitive trauma injury. The employer specifically argues that the claimant could not have sustained his carpal tunnel syndrome as a result of his employment since he had never manifested any symptoms of right-hand carpal tunnel syndrome

until approximately seven months after he retired. The employer's position is actually a restatement of its argument regarding notice. As previously discussed, the date a repetitive trauma injury "manifests itself" may be a date after the claimant's employment is terminated. *Belwood*, 115 Ill. 2d at 531. The question of the date of manifestation of an industrial accident is a question of fact for the Commission to determine, and its determination will not be overturned on appeal unless it is against the manifest weight of the evidence. *Id.*

¶ 34 For the reasons discussed above regarding notice, the Commission's finding that the date of accident was a date after the claimant's employment terminated was not against the manifest weight of the evidence. The mere fact that the claimant exhibited no symptoms of carpal tunnel syndrome while he was employed does not mean that the Commission's finding that the claimant established the occurrence of an accidental injury was against the manifest weight of the evidence.

¶ 35 3. Causation

¶ 36 The employer next maintains that the Commission erred in finding that the claimant established a causal relationship between his repetitive trauma injury and his employment. Repetitive trauma claims generally rely upon medical testimony to establish the causal connection between the work performed and the claimant's disability. *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 477 (1987). The claimant maintains that his treating physician, Dr. Nord, provided sufficient medical opinion testimony to establish that the repetitive nature of his job duties caused his right-hand carpal tunnel syndrome. The employer maintains that the fact that the claimant was asymptomatic during his employment and the opinion of Dr. Weiss

that the claimant's carpal tunnel syndrome was not causally related to his employment is sufficient to establish that the Commission erred.

¶ 37 A review of the record establishes that the Commission's determination that the claimant's current condition of ill-being was the result of repetitive trauma was not against the manifest weight of the evidence. Ultimately, the conflict here is between two competing medical opinions as to causation. It is the function of the Commission alone to determine the weight to be accorded to evidence, to weigh competing medical opinions, and to draw reasonable inferences from the evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 411 (1984). When different reasonable inferences can be drawn from the facts, the inferences drawn by the Commission will be accepted unless they are against the manifest weight of the evidence. *Gilster Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182 (2001). Here, the Commission exercised its proper function and simply found the opinion of Dr. Nord to be more persuasive on the issue of causation than Dr. Weiss. There is nothing in the record which would lead to a conclusion that the Commission's findings and inferences were against the manifest weight of the evidence or in anyway contrary to law.

¶ 38 4. PPD

¶ 39 The employer lastly maintains that the Commission erred in awarding the claimant a permanency award of 15% loss of the use of the right hand. The employer maintains that the record established that claimant's condition after surgery was "normal." The employer suggests that the permanency award should be reduced to 7.5% loss of use of the right hand, or less.

¶ 40 The Commission's determination that a claimant is permanently partially disabled and the extent of that disability is a question of fact for the Commission to determine, and that

determination will not be overturned on appeal unless it is against the manifest weight of the evidence. *Consolidated Freightways v. Industrial Comm'n*, 237 Ill. App. 3d 549, 553 (1992). A finding by the Commission is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Id.* Here, it cannot be said that the Commission determination to award the claimant a PPD benefit of 15% loss of the use of the right hand was against the manifest weight of the evidence. The claimant testified that he continued to have on-going complaints of decreased strength in his right hand, less grip strength, and occasional pain, particularly during a change in weather. Given that the Commission found the claimant to be credible, this testimony would support the Commission's determination.

¶ 41 CONCLUSION

¶ 42 For the foregoing reasons, we affirm the judgment of the circuit court of McLean County, which confirmed the Commission's decision.

¶ 43 Affirmed.