2012 IL App (5th) 110207WC-U

NO. 5-11-0207WC

Order filed: April 24, 2012

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CONTINENTAL TIRE NORTH AMERICA, INC., Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Kerry Jones, Appellee).	))))))))	Appeal from Circuit Court of Jefferson County. No. 10-MR-49 Honorable Mark R. Stanley, Judge, presiding.

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

ORDER

¶ 1 *Held*: The Workers' Compensation Commission's finding that claimant proved he sustained repetitive trauma injuries on August 1, 2006, was not against the manifest weight of the evidence.

¶ 2 On August 13, 2007, claimant, Kerry Jones, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 through 30 (West 2006)),

seeking benefits from employer, Continental Tire North America, Inc., for repetitive trauma injuries suffered to his "bilateral lower extremities" on August 1, 2006.

¶ 3 After a hearing, an arbitrator found claimant proved he sustained repetitive trauma injuries arising out of and in the course of his employment with employer and awarded claimant total temporary disability (TTD) benefits in the amount of $553.60 per week for a period of 17 3/7 weeks; benefits under section 8(e) of the Act (820 ILCS 305/8(e) (West 2006)) in the amount of $480.00 per week for a period of 107.5 weeks, representing a 45% loss of use of the right leg and a 5% loss of use of the left leg; and medical expenses in the amount of $115,981.16.

¶ 4 Employer filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On review, a majority of the Commission modified the arbitrator's decision, reducing the right leg award to 40% loss of use of the right leg, and vacating the left leg award. In all other respects, the Commission affirmed and adopted the arbitrator's decision.

¶ 5 Thereafter, employer filed a petition seeking judicial review in the circuit court of Jefferson County. On April 27, 2011, the circuit court confirmed the Commission's decision.

¶ 6 On appeal, employer argues the Commission's finding that claimant proved he sustained repetitive trauma injuries on August 1, 2006, was against the manifest weight of the evidence. We affirm.

¶ 7 The parties are aware of the facts taken from the evidence presented at the arbitration hearing on October 22, 2008, and they will not be reviewed in detail. Following the hearing, the arbitrator found claimant proved he sustained repetitive trauma injuries arising out of and in the course of his employment with employer. In support of his finding, the arbitrator stated:

> "Considering that [Dr. Joseph] Williams neither examined the Petitioner nor had a complete job description, his testimony is given little weight. Both doctors did agree, however, that the underlying arthritic condition was due to a gradual progression and not a single acute event. Based on the above the Arbitrator finds that the heavy pushing and repetitive work by the Petitioner did sufficiently aggravate his underlying arthritis to a point that he ultimately needed the arthroscopic surgery and subsequent partial knee replacement. More weight is given to the opinion of the treating physician Dr. [Norman] Cohen."

The arbitrator awarded claimant TTD benefits in the amount of $553.60 per week for a period of 17 3/7 weeks; benefits under section 8(e) of the Act (820 ILCS 305/8(e) (West 2006)) in the amount of $480.00 per week for a period of 107.5 weeks, representing a 45% loss of use of the right leg and a 5% loss of use of the left leg; and medical expenses in the amount of $115,981.16.

¶ 8 Employer argues the Commission's decision finding claimant proved he sustained repetitive trauma injuries on August 1, 2006, is contrary to law and against the manifest weight of the evidence. Employer argues claimant admitted he suffered a "traumatic injury" approximately six months earlier and did not provide notice of the injury to employer. Employer asserts the "unreported traumatic event" is the "true cause of [claimant's] need for surgery."

¶ 9 Section 6(d) of the Act provides that an injured employee must file a workers' compensation claim within three years after the date of the accident. 820 ILCS 305/6(d) (West 2006). When the accident is a discrete event, the date of the accident is easy to determine: it is,

obviously, the date that the employee was injured. When the accident is not a discrete event, this date is harder to specify. See *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). An employee who suffers a repetitive trauma injury still may apply for benefits under the Act, but must meet the same standard of proof as an employee who suffers a sudden injury. *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. An employee suffering from a repetitive trauma injury must still point to a date within the limitations period 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 64, 862 N.E.2d at 924.

¶ 10 The manifestation date is a fact determination for the Commission. *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. 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, 1008 (1987). For a finding of fact to be contrary to 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, 896 (1992).

¶ 11 Here, employer argues the "true cause" of claimant's injuries was a sudden accident that occurred approximately six months before claimant sought treatment with Dr. Cohen on August 1, 2006. We disagree. Claimant experienced worsening knee pain for approximately four years, including knee popping and swelling. On cross-examination, claimant testified regarding an incident where his knee popped and he experienced pain. Claimant stated:

> "When I had my knee scoped in [2006], the main one that stands out in my mind was probably six months before I went to Dr. Cohen, although I had trouble before that. So I don't know if, you

> know, if that particular incident was the one that brought on the torn cartilage that I had or not, I don't know. All I know is I went to Dr. Cohen, and he did the MRI, and it showed I had torn cartilage."

Claimant did not report this knee popping incident, or any other knee popping incident, to employer.

¶ 12 In *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 505 N.E.2d 1026 (1987), our supreme court stated:

> "Requiring complete collapse in a case like the instant one would not be beneficial to the employee or the employer because it might force employees needing the protection of the Act to push their bodies to a precise moment of collapse. Simply because an employee's work-related injury is gradual, rather than sudden and completely disabling, should not preclude protection and benefits. The Act was intended to compensate workers who have been injured as a result of their employment. To deny an employee benefits for a work-related injury that is not the result of a sudden mishap or completely disabling penalizes an employee who faithfully performs job duties despite bodily discomfort and damage."
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> *Peoria County*, 115 Ill. 2d at 529-30, 505 N.E.2d at 1028.

¶ 13 In the instant case, the evidence shows claimant suffered a repetitive trauma injury that

arose out of and in the course of his employment with employer. Claimant experienced worsening knee pain for approximately four years. He experienced knee popping and swelling. Claimant testified regarding an incident where his knee popped and he experienced pain. Claimant continued to work. He did not seek treatment until approximately six months later when he was no longer able to tolerate the discomfort. At the arbitration hearing, the parties stipulated that claimant suffered an accident on August 1, 2006, and provided timely notice of the accident to employer. Employer admits in its brief before this court that claimant provided timely notice of his repetitive trauma injuries. "We decline to penalize an employee who diligently worked through progressive pain until it affected h[is] ability to work and required medical treatment." *Durand*, 224 Ill. 2d at 74, 862 N.E.2d at 930.

¶ 14 We affirm the judgment of the circuit court confirming the Commission's decision.

¶ 15 Affirmed.