2022 IL App (1st) 211076WC-U
No. 1-21-1076WC
Order filed June 30, 2022

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JUDY BECKER, Plaintiff-Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION & UNITED THERAPIES, Defendants-Appellees.	))))))))))))	Appeal from the Circuit Court of Cook County. Nos. 20-L-50146 20-L-50147 20-L-50148 20-L-50159 Honorable John J. Curry, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: Where evidence of record was conflicting, the Commission's decisions regarding notice was not contrary to the manifest weight of the evidence; reviewing court would not abandon long-standing principles that guide review of decisions of the Commission. Affirmed.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Judy Becker, appeals an order of the circuit court of Cook County confirming the decision of the Illinois Workers' Compensation Commission (Commission) denying claimant's request for benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2014)). The Commission found in favor or respondent, United Therapies, on the issues of accident, causation, and notice. Claimant contends that all three decisions are contrary to the manifest weight of the evidence. She also argues that the Commission applied the incorrect law in assessing accident and causation. For the reasons that follow, we affirm

¶ 4 This appeal actually involves four cases which were consolidated before the arbitrator. All proceeded on a repetitive-trauma theory. In the first case (No. 13WC009007; Commission docket No. 20IWCC0099), claimant alleged bone and soft tissue injuries to her left shoulder and neck occurring on October 17, 2011. In the second case (No. 13WC009009; Commission docket No. 20IWCC0100), she alleged a bone and soft tissue injury to her right elbow occurring on January 14, 2011. The third case (No. 13WC009010; Commission docket No. 20IWCC0101), sought benefits for a bone and soft tissue injury to claimant's right elbow occurring on August 19, 2010. Finally, the fourth case (No. 13WC009011; Commission docket No. 20IWCC0102), asserted a claim for a bone and soft tissue injury to claimant's right shoulder and left arm allegedly occurring on August 23, 2012. While the arbitrator issued a separate decision for each case, he only attached detailed findings to the fourth case and incorporated those findings by reference in the other three. The Commission affirmed and adopted the arbitrator's decisions, and the circuit court confirmed.

¶ 5 II. BACKGROUND

¶ 6 As we resolve this appeal on the issue of notice, we limit our discussion of the facts to those relevant to that issue. At the arbitration hearing, claimant testified on her own behalf. She stated that she was employed by respondent as their "office coordinator and credentialing

coordinator." Claimant alleged she sustained repetitive-trauma injuries to both arms, both shoulders and neck. She alleged the injuries were caused by repetitive activities performed while employed by respondent, particularly filing.

¶ 7 By August 19, 2010, claimant began to notice that her right elbow was starting to hurt. She noted that the pain was worst when she was pulling files. She added that it was "constant," "chronic," and "would never go away." She sought treatment from Dr. James Anderson on August 19, 2010. He administered a steroid injection to her elbow, which provided relief for two to three weeks. She told Anderson that she worked in an office and pulling files at work was bothering her. Anderson prescribed physical therapy. Claimant testified that she told her therapists that work was causing her symptoms. Pulling files continued to be painful.

¶ 8 When claimant began treating at Dryer Medical Clinic in August 2010, she was provided with a brace for her elbow. She wore the brace at work. She did nothing to hide the brace from her coworkers. She wore the brace "as much as [she] possibly could in the beginning." The brace ran from her thumb to her elbow. In December 2012, claimant was provided a brace for her left arm before she had surgery.

¶ 9 Claimant testified that when she saw Anderson in August 2010, she reported "the problems [she] was having with [her] right elbow to" Patti Murphy, claimant's supervisor. She told Murphy when she made an appointment with Anderson. Claimant told Murphy that her "elbow was hurting, and [she] associated it with pulling those files." Murphy told claimant to go to the doctor and that she would be fine. She did not instruct claimant to fill out an accident report. When she got the MRI in January 2011, claimant stated, she "believe[d she] did tell her that [she] had an MRI and that it showed [her] tendon in [her] elbow was torn." She stated that she told Murphy

this because her condition was work related and that claimant "needed to do [her] job, because [she] needed the money."

¶ 10 In August 2012, claimant saw Dr. Thomas White at Dreyer. Claimant was having problems with her right shoulder and arm. Claimant testified that she had informed Murphy that she was undergoing this treatment for her right shoulder and that "the files and the pulling and grasping is—was devastating to [her]—it was hurting [her shoulder] and [her] elbows."

¶ 11 As claimant was recuperating from her right shoulder surgery, she started experiencing chronic pain in her left elbow. She told Murphy that her left elbow was hurting. She first saw White in reference to her left elbow on December 19, 2012, about nine days before the surgery to her right shoulder. White's notes indicate that claimant told him that she could not "recall an injury, but [she] had been using [her] left arm a lot trying to protect the right."

¶ 12 On cross-examination, claimant testified that she was in a supervisory position when employed by respondent. She stated that she was "not necessarily" aware of procedures for reporting work injuries. She clarified that it was her understanding that the policy was that an employee would report injuries to his or her supervisor, but she had never actually received training on the subject. She acknowledged that she had filled out an accident report in February 2000 where she listed Murphy as her supervisor. She did not fill out an accident report regarding the injuries at issue in this case. Claimant testified that, outside of Murphy, she did not tell anyone else at the company of her work-related injuries.

¶ 13 Claimant identified several leave of absence requests and FMLA forms. One, dated April 18, 2013, was a memo from Jackie Ladewig (who is employed by respondent) to claimant. Claimant explained that this memo concerned her "left elbow recovery and right elbow recovery post rotator cuff surgery." However, it does not mention claimant's "conditions or injuries." The

memo concerns approval for "an unpaid personal leave of absence." On May 17, 2013, claimant received a letter from Murphy informing her that she had exhausted all 12 weeks of her FMLA leave and terminating her employment. A letter dated April 3, 2013, from Star Insurance acknowledged receipt of a "First Report of injury" showing an injury date of December 19, 2012.

¶ 14 On redirect-examination, claimant stated that she filed her workers' compensation cases on March 13, 2013. She was terminated two months later. Claimant stated that she had reviewed Murphy's deposition. In it, Murphy claimed that she had no knowledge that claimant had sustained work-related injuries until 2016. Claimant stated that she did not know how this could be true given she had filed her case in 2013. When she moved into the new facility in 2011, she shared office space with Guerra. Prior to the time she spoke with legal counsel, she was not aware that "a repetitive trauma case could qualify as a work reportable accident." Claimant stated that she repeatedly told her treating physicians at Dryer that filing was bothering her, as was "grasping and gripping and typing."

¶ 15 Joanna Guerra-Barr next testified for respondent. Guerra testified that claimant would complain about her injuries. Guerra stated, however, that claimant never told her they were caused by her work. Guerra was aware of respondent's procedures for reporting accidents. After the move, Guerra only worked with patient charts.

¶ 16 On cross-examination, Guerra stated that she was still employed by respondent. Claimant only occasionally mentioned her injuries. Guerra testified that Murphy no longer works for respondent, but Ladewig did. Ladewig now handles credentialing, and she works in a different location than Guerra. Guerra stated that she was aware that there was an incident report on the computer system to be used in the event of an accident. She knew that she had to report accidents to her supervisor.

¶ 17 Respondent then called Kathleen Duprey-Tagge. She worked with claimant. She left employment with respondent in September 2010. From 2005 on, she was the fixed-site manager. She was based at a different facility than claimant, but she would sometimes make trips to claimant's office. She informed her employees about the procedures to follow if they were hurt at work. Duprey-Tagge would prepare an accident or injury report. She did not recall claimant telling her that she had been injured at work. Duprey-Tagge testified that if claimant had done so, she would have prepared a report. She did not recall claimant complaining about her condition at work. She did not remember any other employee relating anything to her about claimant's injuries. On cross-examination, she testified that she did not recall claimant wearing an arm brace.

¶ 18 Thomas Peer next testified for respondent. Peer stated that he was employed by respondent from 2010 to 2012 or 2013. He was a fixed-site manager, who had taken over for Duprey-Tagge. He was claimant's supervisor. He worked at a different site than claimant until the end of his employment with respondent. He met with claimant whenever he visited her facility. Peer did not recall claimant ever telling him that she was having trouble removing files or putting them back into these cabinets.

¶ 19 Peer testified that respondent's policy was for employees who suffered an at-work accident to notify their supervisor. He added, "[T]here was paperwork to fill out." Moreover, supervisors were all given policies pertaining to their department. He did not recall claimant ever asking him to fill out an accident report for her. Prior to being called to testify in this case, he was unaware that claimant was alleging that she had been injured at work.

¶ 20 Respondent's next witness was Jackie Ladewig. At the time of the arbitration hearing, she had been employed by respondent since 1989. She knew claimant but did not work side-by-side with her. She had worked in human resources for respondent for 14 years, until 2013. She

processed FMLA requests and requests for short-term disability. She handled some at-work accident claims, though some were handled by the employee's supervisor. If there were a workers' compensation claim, they turned the matter over to their insurance carrier. She did not recall processing an accident report for claimant.

¶ 21 Ladewig testified that respondent's policy was to notify your supervisor if you were injured at work. If your supervisor was not available, you go to the next person. An employee could also notify human resources. Ladewig was never claimant's supervisor. Ladewig did not recall claimant ever complaining to her about being hurt at work. Respondent received a notice regarding claimant's workers' compensation claim on March 13, 2013; however, Ladewig did not see it at the time.

¶ 22 On cross-examination, Ladewig stated that when she received notice of the workers' compensation claim, she asked Murphy about it. Murphy stated that she was not aware of claimant having a work-related injury. She did not recall discussing the matter with Murphy in 2016. Had she known claimant was making a workers' compensation claim, she would have initiated the claim process immediately.

¶ 23 Patti Murphy testified via evidence deposition. She stated that she was first employed by respondent in 1999 as vice-president of operations. Duprey-Tagge and Peer reported to her. Initially, claimant was responsible for operations at the front desk. After a few years, she was given the job of credentialing. Murphy did not typically work in the same facility as claimant.

¶ 24 Murphy testified that respondent had an employee handbook. It included policies on how to report an occupational injury. Murphy had never seen an accident report completed for claimant. She testified that if claimant had notified either of her supervisors—Duprey-Tagge or Peer—they would have notified her. Neither had done so. She first learned of claimant's claim

about a year after claimant was terminated by respondent. Murphy stated that Ladewig was in charge of human resources at the time claimant was alleging she was injured, and Ladewig never told her about any such injury. Murphy had conversations with claimant while she worked for respondent, and claimant never told her that she had suffered an injury at work. Murphy was aware that claimant had had some type of surgery, but she was not aware what the surgery was for. She added that claimant "wanted it not to be known." Claimant also had a surgery on her shoulder. Murphy stated, "[Claimant] felt a lot of it had to do with—you know, she is a grandmother and lifting the babies." After claimant's surgery, Murphy went to the facility at which claimant worked. She asked how claimant was doing. Claimant stated she was in considerable pain. Murphy related their conversation:

> "Did something happen here? And she said No. And I said, I just want to make sure that there is nothing here, workers' comp related, anything that could have precipitated this pain that you are having or any issues. I want you to tell me what we need to do.
>
> And she said, Absolutely not. Nothing here. There is no workers' comp here. I'm going to be suing my surgeon."

Murphy stated that if an employee is hurt at work, they are referred to Advocate Health to be examined to see if they could be released to return to work.

¶ 25 Claimant's job involved a lot of keyboarding. Respondent has made accommodations for employees with workers' compensation claims.

¶ 26 On cross-examination, Murphy testified that if claimant had hurt herself at work, she would have made sure claimant was taken care of. Murphy stated that she liked claimant. Claimant never told Murphy that repetitive work activities resulted in an injury to her arms or shoulder.

¶ 27 On redirect-examination, Murphy stated that she was retired and that she received no severance package. While she was working for respondent, respondent "paid a massive fraud fine." Their sales representatives were encouraging doctors to tell hospitals that they would take their patients elsewhere if they did not contract with respondent. While she and claimant worked for respondent, Murphy would see claimant about once a week. Murphy did not recall claimant wearing an elbow brace, though she did recall a wrist brace. Murphy did not recall talking about the brace with claimant. Murphy stated that she first learned of claimant's workers' compensation claim in 2016 during a meeting with Ladewig and Nancy Kimbrell (who had taken over human resources). She and Ladewig were both "shocked." When she terminated claimant, she hoped that claimant would get better and return to work.

¶ 28 The arbitrator found that claimant did not sustain injuries arising out of and in the course of her employment with respondent. The arbitrator further found that claimant failed to provide timely notice of her injury to respondent. The arbitrator noted that four witnesses (Murphy, Peer, Duprey-Tagge, and Ladewig) all contradicted claimant's testimony that she had provided notice. He also observed that Guerra, who worked in close proximity to claimant, was unaware of claimant's condition. Further, as she was in a supervisory position, claimant knew of the policy requiring her to report work injuries. In fact, she actually reported an injury in 2008. Based on these findings, the arbitrator rejected claimant's request for benefits under the Act. The Commission affirmed and adopted the decision of the arbitrator. The trial court confirmed, and this appeal followed.

¶ 29 III. ANALYSIS

¶ 30 On appeal, claimant raises three main arguments. First, she asserts that the Commission erred in determining that she failed to prove she suffered a work-related accident. Second, she

argues that the Commission erred in finding that she did not provide notice to respondent. Third, claimant contends that the Commission's determination that she failed to satisfy the causation element is contrary to the manifest weight of the evidence. As we determine that claimant failed to establish that she provided the required notice to respondent, claimant's arguments regarding accident and causation are moot and we will not address them further. Claimant also raises a number of preliminary arguments concerning the standards we apply to review cases originating with the Commission. We will address those preliminary matters first.

¶ 31 Claimant criticizes the Commission's decision because it finds against her on three separate issues, "offering up a list of alternative reasons why that case should be denied if their initial explanation turns out to be meritless." Claimant sees this as evidence of bias but cites no case law to substantiate this assertion. We, conversely, believe that by addressing all pending issues, the course taken by the Commission serves the goal of judicial efficiency. Piecemeal appeals are discouraged. See *Davis v. Loftus*, 334 Ill. App. 3d 761, 766 (2002) ("The rules promote judicial efficiency by discouraging piecemeal appeal."). The procedure advocated for by claimant would require us to consider an issue, and, if we found reversible error, remand the case to allow the Commission to consider the unaddressed issues. In this case, since there were three issues, it would have taken three appeals and at least two remands to resolve the case. By ruling on all issues, the Commission allowed us to resolve this case in a single appeal. It is unclear what virtue claimant's suggested procedure would serve. Claimant states, "The system was set up to protect workers and their families, not for the purpose of burying a worker under a landslide of bad reasoning." She continues, "When the hearing officer so badly mangles the threshold analysis in a claim, we should not rush to the conclusion that there must be wisdom in one of his alternative excuses for denying a claim." However, if the reasoning at issue is "so badly mangled," a party

should not have much difficulty demonstrating error on appeal, regardless of how many issues are involved.

¶ 32 Claimant also suggests that we abandon the manifest-weight standard. We simply cannot do so. Our supreme court has stated that this is the standard to be employed to factual findings in workers' compensation claims. *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370 (2009). We are bound to follow decisions of our supreme court. *Mekertichian v. Mercedes Benz U.S.A., Inc*, 346 Ill. App. 3d 828, 836 (2004). Moreover, even if we were able to grant claimant's request, we find it unpersuasive. She describes the standard as encompassing a "nearly unassailable deference to the agency" and contends that this "level of deference is not consistent with the goals of the Act." However, we note that many cases are reversed by reviewing courts employing this standard. See *e.g.*, *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 56; *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 72 (2006); *Pisano v. Illinois Workers' Compensation Comm'n*, 2018 IL App (1st) 172712WC, ¶ 70; *Beverage v. Illinois Workers' Compensation Comm'n*, 2019 IL App (2d) 108890WC, ¶ 34; *Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117 (2000); *Orkin Exterminating Co. v. Industrial Comm'n*, 172 Ill. App. 3d 753, 758 (1988). Thus, this standard is clearly not "unassailable."

¶ 33 Claimant also argues that the manifest-weight standard appears nowhere in the Act (see 820 ILCS 305/19(f) (West 2014)) and is instead a creation of the courts. However, this standard has long been applied by Illinois courts. See, *e.g.*, *Hudson v. Industrial Comm'n*, 387 Ill. 228, 239 (1944). During this time, section 19 of the Act was amended numerous times. See 820 ILCS 305/19(f) (West 2014). The legislature is presumed to be aware of judicial construction of statutory language and, if it does not alter that construction when it subsequently amends the statute, the legislature is presumed to acquiesce in the construction. *Barrall v. Board of Trustees*

of John A. Logan Community College, 2019 IL App (5th) 180284, ¶ 32. Thus, it would seem apparent that the legislature agrees with the application of the manifest-weight standard as the appropriate standard of review.

¶ 34 Claimant further asserts that we should not defer to the Commission's findings on medical matters. She argues, "The [Commission] processes bodily injury claims, work the Illinois judicial branch has done for two centuries and the common law courts 600 years before that." While it is true that courts have long addressed injury claims, the Commission administers a complex statutory scheme and addresses a particular class of injuries, including determining whether injuries are related to employment. In any event, as with the last issue, this deference has long been sanctioned by our supreme court (*Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979), so we are without authority to disregard it (*Mekertichian*, 346 Ill. App. 3d at 836).

¶ 35 In short, the standards that apply to the review of cases such as this are well established, and we decline claimant's invitation to change them.

¶ 36 A. NOTICE

¶ 37 We now turn to claimant's argument regarding notice. Claimant first argues that the Commission should not have reached this issue once it found that she had failed to prove an accident occurred. Claimant cites nothing in support of this contention. As we explain above, such piecemeal resolution of issues undermines the goal of judicial efficiency and likely results in multiple appeals and remands as the Commission and courts address the issue serially.

¶ 38 The question remains, however, as to whether the Commission's finding that claimant did not provide the statutorily required notice to respondent is contrary to the manifest weight of the evidence. The Act requires that a claimant give notice to his or her employer "as soon as practicable, but not later than 45 days after the accident." See 820 ILCS 305/6(c) (West 2014)).

A claimant must not only apprise the employer of the existence of an injury, he or she must also notify the employer of its relationship to employment. *White v. Industrial Comm'n*, 374 Ill. App. 3d 907, 911 (2007). The purpose of the notice requirement is to allow the employer to investigate the accident. *Id.* at 910-11. Like any claimant, one alleging a repetitive-trauma injury must give the statutorily required notice. *Id.* at 910. In a repetitive-trauma case, the date the injury is deemed to have occurred is the date it manifests itself. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987). An injury manifests itself when both the fact of the injury and its relationship to employment would have become clear to a reasonable person. *Id.* A claim is barred if no notice is given; conversely, if defective notice is given, a claim will be barred only if the employer has been unduly prejudiced. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 67. Whether timely notice was given is a question of fact reviewed using the manifest-weight standard. *Id.* Accordingly, we will reverse only if an opposite conclusion is clearly apparent. *Id.* ¶ 39.

¶ 39 Claimant first addresses notice regarding her right elbow. Claimant points to her testimony that she provided notice to Murphy that her work activities were causing an injury to her elbow. Murphy denied this. Claimant argues that Murphy's "recollection of events is hardly persuasive." Claimant points to an inconsistency between the testimony of Murphy and Ladewig, where Murphy recalled learning of claimant's workers' compensation claim in a meeting that Ladewig was purportedly at while Ladewig did not recall the meeting. Such inconsistencies are for the Commission to weigh, just like the inconsistency between the testimony of Murphy and claimant. That is, if the Commission had to reject Murphy's testimony because of its conflict with that of Ladewig, then it must also reject claimant's testimony because it was inconsistent with that of Murphy. This would be fatal to claimant's case, as claimant bore the burden of proving notice.

Brown Shoe Co. v. Industrial Comm'n, 374 Ill. 500, 503 (1940). Claimant points out that some treatment notes of her doctors contain references to claimant's difficulties with filings; this does nothing to establish that respondent was informed of this fact. The fact that Murphy recalled claimant wearing a brace but did not recall claimant telling her why provides, at best, minimal impeachment of Murphy. In short, none of these purported deficiencies identified by claimant are so compelling as to provide us with a basis to conclude that an opposite conclusion to the Commission's is clearly apparent here.

¶ 40 Regarding her right shoulder, claimant points to her testimony that she told Murphy that she was injured as a result of her work activities. However, Murphy testified to the contrary. This merely created a conflict in the record for the Commission to resolve. Resolving such conflicts is primarily a matter for the Commission. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 35. The Commission expressly noted this conflict in its decision (adopting the arbitrator's decision) and resolved it in respondent's favor. Claimant gives us no persuasive reason to conclude that an opposite conclusion to the Commission's is clearly apparent.

¶ 41 Claimant again points to Murphy's testimony that a meeting occurred where Ladewig was present where they learned of claimant's workers' compensation claims, while Ladewig did not recall the meeting. As explained above, we do not find this inconsistency any more compelling than the inconsistency between the testimony of Murphy and claimant. Claimant finds it inexplicable that "[e]ven though [she] had no idea [claimant's] injuries were work related," Murphy would travel "to [claimant's] office after [claimant's] surgery to ask [claimant] whether her shoulder was a work injury." On the contrary, if Murphy knew claimant's injuries were work related, she would not have had to travel to claimant's office to inquire whether they were. Hence, Murphy's trip supports her testimony that she did not know the nature of claimant's injuries.

Moreover, a supervisor would want to know about an employee's fitness for duty regardless of the cause of the injury. Finally, claimant's assertion that "Murphy's efforts to protect the company are beyond pale" rings hollow in light of the fact that Murphy is no longer employed by respondent. In any event, though claimant has identified a few inconsistencies in Murphy's testimony, none are so great that we could conclude that an opposite conclusion to the Commission's is clearly apparent regarding claimant giving notice of an injury to her right shoulder.

¶ 42 Regarding the other injuries claimed by claimant, she specifically addressed only her left arm. Claimant argues that since this injury is derivative of her right arm injuries and since she established that she gave notice of her right arm injuries, she "satisfie[d] her notice obligation for the compensatory injury to her left arm." As we have already determined that the Commission's decision that claimant failed to give notice of her right arm injuries is not contrary to the manifest weight of the evidence, this argument is not persuasive.

¶ 43 To conclude, claimant has failed to establish that the Commission's decision regarding notice is contrary to the manifest weight of the evidence.

¶ 44 B. ACCIDENT AND CAUSATION

¶ 45 Given our resolution of the notice issue, the remaining issues are moot, and we need not address them further.

¶ 46 IV. CONCLUSION

¶ 47 In light of the foregoing, the judgment of the circuit court of Cook County confirming the decision of the Commission is affirmed.

¶ 48 Affirmed.