

Workers' Compensation
Commission Division
Filed: February 27, 2012

NO. 1-11-0539WC

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IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MODERN DROP FORGE,)	Appeal from
Appellant,)	Circuit Court of
v.)	Cook County
THE WORKERS' COMPENSATION)	No. 10L50809
COMMISSION <i>et al.</i> (Bessie Carnes, Appellee).)	
)	Honorable
)	Sanjay T. Tailor,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Claimant's workers' compensation claim was timely filed pursuant to sections 6(d) and 8(j) of the Workers' Compensation Act (820 ILCS 305/6(d), 8(j) (West 2000)).

¶ 2 Claimant, Bessie Carnes, sought benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2000)) from employer, Modern Drop Forge, for an alleged right shoulder injury she sustained at work on May 22, 1996. Following a hearing, the arbitrator found claimant suffered injuries that arose out of and in the course of her employment on that

date and awarded her (1) 2-5/7 weeks' temporary total disability benefits from April 22, through May 10, 1998, and (2) 58.75 weeks' permanent partial disability benefits for the permanent loss of use of claimant's dominant right arm to the extent of 25%. On review, the Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. The circuit court of Cook County confirmed the Commission. Employer appeals, arguing claimant's workers' compensation claim is barred by the Act's limitations period (820 ILCS 305/6(d), 8(j) (West 2000)). We affirm.

¶ 3 In this case, the underlying proceedings involved two separate claims for benefits by claimant against employer for alleged work-related injuries occurring on May 22, 1996, to claimant's right shoulder (99WC53777) and on May 19, 2003, to claimant's right leg (04WC492). Prior to arbitration, the claims were consolidated. This appeal concerns only claimant's action for benefits for her May 22, 1996, right shoulder injury and employer's contention that her claim is barred by the Act's limitations period.

¶ 4 On October 7, 1999, claimant filed an application for adjustment of claim alleging she injured her right shoulder at work on September 24, 1998, while "raking steel forgings across [a] table." On August 28, 2002, she filed an amended application alleging an accident date of "on or about" May 22, 1996. Claimant's amended application also alleged that the "[l]ast payment of benefits pursuant to [s]ection 8(j) of the *** Act [(820 ILCS 305/8(j) (West 2000))]" [was] received subsequent to April 1, 1998." She continued to claim a right shoulder injury as the result of "raking steel forgings across [a] table."

¶ 5 At arbitration, employer sought to dismiss claimant's action as being untimely. It

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argued the Act required claimant to file her claim within three years after her alleged accident date of May 22, 1996, but claimant's initial application for adjustment of claim was not filed until October 7, 1999. On July 28, 2009, the arbitrator issued a decision, finding claimant's original application for benefits was timely because it was filed within two years after the date of the last payment of benefits under a group, non-occupational disability plan as provided for in section 8(j) of the Act (820 ILCS 305/8(j) (West 2000)). As stated, the arbitrator also found claimant sustained accidental injuries that arose out of and in the course of her employment on May 22, 1996, and awarded benefits.

¶ 6 On April 21, 2010, the Commission corrected a typographical error in the arbitrator's decision but otherwise affirmed and adopted that decision. On January 18, 2011, the circuit court confirmed the Commission.

¶ 7 This appeal followed.

¶ 8 On appeal, employer argues claimant's workers' compensation claim for injuries to her right shoulder was untimely. It maintains her claim is barred by the limitations period in section 6(d) of the Act and the tolling period provided for in section 8(j), when a claimant receives group, non-occupational disability benefits, is inapplicable.

¶ 9 Under the Act, a claimant's application for compensation must be filed within three years after the date of accident when "no compensation has been paid" or, where compensation has been paid, within two years after the date of the last payment of compensation. 820 ILCS 305/6(d) (West 2000). An application is barred if not filed by the later of the two specified time periods. 820 ILCS 305/6(d) (West 2000). Additionally, section 8(j) of the Act (820 ILCS

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305/8(j) (West 2000)) provides for a credit toward an employer's obligations under the Act when the injured employee received benefits under any group plan covering non-occupational disabilities to which employer contributed. That section also provides that "[i]n such event, the period of time for giving notice of accidental injury and filing application for adjustment of claim does not commence to run until the termination of such payments." 820 ILCS 305/8(j) (West 2000).

¶ 10 Here, the evidence shows claimant's original October 1999 application for adjustment of claim was timely as it was filed less than 18 months after payment of claimant's medical expenses under employer's group, non-occupational disability plan. Claimant alleged she last received compensation in the form of group, non-occupational disability benefits after April 1998. At arbitration, she testified, she underwent surgery on her right shoulder on April 22, 1998, and was off work until May 10, 1998. She also received physical therapy. Claimant asserted medical bills associated with her surgery and physical therapy were paid under employer's group plan. Employer's attorney acknowledged that employer paid the premiums for that group plan. Claimant also testified that she did not prepay her surgery expenses. Instead, she received a bill after surgery and that bill was paid through employer's group plan. The parties request for hearing shows employer agreed claimant was disabled from April 22, through May 10, 1998, and that it paid "in full" group, non-occupational disability benefits for which a credit may be allowed under section 8(j).

¶ 11 Pursuant to section 8(j), the relevant limitations period did not begin to run until the termination of group, non-occupational disability payments. As the evidence showed, the

earliest those payments could have been made was April 1998. Although claimant did not establish the precise date upon which the payments terminated, they necessarily had to terminate after April 1998. Claimant's original application for benefits was filed less than 18 months later in October 1999. Whether payment last occurred in April 1998 or thereafter, claimant's October 1999 application for adjustment of claim was timely under the limitations period set forth in section 6(d).

¶ 12 Employer argues claimant "offered no evidence or testimony that [she] in fact received group non-occupational disability benefits of any kind." Further, it contends the apparent stipulation in the request for hearing that benefits were paid "in full" was "nothing more than an indication that a potential credit existed." We disagree. Claimant clearly offered her own testimony on the subject, stating her medical bills from April 1998 and after were paid through employer's group plan after her surgery. No evidence was presented to refute her testimony. Further, employer's stipulation in the request for hearing that such benefits were paid "in full" does indicate more than that a potential credit existed. Employer's agreement indicates compensation under the group plan was paid to claimant and is supportive of her testimony.

¶ 13 Employer also contends claimant's August 2002 amended application for adjustment of claim was time barred. It notes the amended application set forth a new accident date and maintains it was prejudiced because the new date occurred six years prior to the filing of the amended application. Employer complains that claimant provided no explanation for the change. It argues the two different dates should be treated as separate and distinct claims for separate injuries.

¶ 14 "Applications for Adjustment of Claim may be amended prior to a hearing on the merits ***." 50 Ill. Adm. Code 7020.20(e) (2011). Although the Code of Civil Procedure (Code) generally does not apply to workers' compensation proceedings, "where the Act or Commission rules do not regulate a topic, civil provisions have been applied to workers' compensation actions." *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 154, 731 N.E.2d 795, 800 (2000). This court has previously held that because neither the Act nor the Commission's rules address under what precise circumstances an application for adjustment of claim may be amended, the relation back doctrine embodied in section 2-616(b) of the Code (735 ILCS 5/2-616(b) (West 2000)) may be applied. *Illinois Institute of Technology*, 314 Ill. App. 3d at 155, 731 N.E.2d at 801. That section states as follows:

"The cause of action, cross claim or defense set up in any amended pleading shall not be barred by lapse of time under any statute or contract prescribing or limiting the time within which an action may be brought or right asserted, if the time prescribed or limited had not expired when the original pleading was filed, and if it shall appear from the original and amended pleadings that the cause of action asserted, or the defense or cross claim interposed in the amended pleading grew out of the same transaction or occurrence set up in the original pleading, even though the original pleading was defective in that it failed to allege the performance of some act

or the existence of some fact or some other matter which is a necessary condition precedent to the right of recovery or defense asserted, if the condition precedent has in fact been performed, and for the purpose of preserving the cause of action, cross claim or defense set up in the amended pleading, and for that purpose only, an amendment to any pleading shall be held to relate back to the date of the filing of the original pleading so amended." 735 ILCS 5/2-616(b) (2000).

¶ 15 Here, claimant's amended application relates back to her timely filed original application and is not barred by the Act's limitations period. Per section 7020.20(e) of the Illinois Administrative Code (50 Ill. Adm. Code 7020.20(e) (2011)) claimant could amend her application any time prior to the hearing on the merits. Also, claimant's amended application clearly concerned the same work-related accident. In both applications claimant alleged injuries to her right shoulder that occurred while she "was raking steel forgings across [a] table." Claimant denied that she was involved in any other accident that resulted in injuries to her right shoulder.

¶ 16 There is no evidence in the record that claimant sustained two distinct injuries and employer has failed to establish prejudice by claimant's filing of the amended application and her alteration of the date of accident. Claimant's amended application asserted May 22, 1996, was the date of her accident and employer stipulated to notice of that accident in the request for hearing. Also, claimant offered unchallenged testimony that she initially sought medical

treatment for her May 1996 injury at employer's nursing facility.

¶ 17 Here, claimant's workers' compensation claim, seeking benefits for injuries to her right shoulder on May 22, 1996, was timely filed. Additionally, the arbitrator and Commission committed no error in allowing claimant to amend her original application and employer suffered no prejudice.

¶ 18 For the reasons stated, we affirm the circuit court's judgment.

¶ 19 Affirmed.