2017 IL App (3d) 160434WC-U
No. 3-16-0434WC
Order filed June 28, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DANIEL OLSON,	)	Appeal from the Circuit Court
	)	of Rock Island County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 15-MR-920
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, *et al.*,	)	Honorable
	)	James G. Conway, Jr.,
(John Deere, Respondent-Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's findings that claimant failed to sustain his burden of proving that his repetitive-trauma injuries arose out of and in the course of his employment or that his condition of ill-being was causally related to his employment were not against the manifest weight of the evidence in light of the conflicting medical opinions on these matters.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Daniel Olson, sought benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2012)) for repetitive-trauma injuries he allegedly sustained to both of his hands while working as a painter for respondent, John Deere. Following a hearing, the arbitrator denied claimant's request for benefits, finding that he failed to sustain his burden of proving an accident arising out of and in the course of his employment or a causal relationship between his condition of ill-being and his employment. With one commissioner dissenting, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator. On judicial review, the circuit court of Rock Island County confirmed the decision of the Commission. Claimant now appeals, arguing that the Commission's findings on accident and causal relationship were against the manifest weight of the evidence. We affirm.

¶ 4 II. BACKGROUND

¶ 5 On September 22, 2013, claimant filed an application for adjustment of claim alleging repetitive-trauma injuries to both of his hands while working for respondent. The application listed an accident date of July 25, 2013. The claim proceeded to an arbitration hearing on September 9, 2014. The issues in dispute were accident, causal relationship, period of temporary total disability, nature and extent of injury, and medical expenses. The following evidence was presented at the arbitration hearing.

¶ 6 Claimant testified that at the time of his injuries, he had been employed by respondent for seven years, the last six of which he worked as a painter. Claimant's duties required him to repair defective paintwork on parts manufactured by respondent. This initially involved sanding down the surface to bare metal. Although claimant primarily used an air-driven palm sander to remove the paint, there were some areas that could only be reached with a hand sander.

Claimant testified that he would apply "quite a bit of pressure" to remove the baked-on paint from the parts. After the paint was removed, claimant would clean the surface with a tack cloth and alcohol. Finally, claimant would prime and paint the parts using a sprayer. Claimant stated that the sizes of the items he painted varied, but a typical job would take him eight hours to complete.

¶ 7 Early in 2013, claimant began to notice tingling and numbness in both of his hands. On March 29, 2013, claimant sought treatment from his primary-care physician, Dr. Bindu Alla, for an injury he sustained to his left thumb while he was on vacation. Dr. Alla documented complaints of left-thumb pain and swelling. Upon examination, Dr. Alla noted swelling of the hands, including the first carpometacarpal joint, and tenderness on palpation of the hands. Claimant then came under the care of Dr. Thomas VonGillern of ORA Orthopedics for his left-thumb injury. On May 3, 2013, Dr. VonGillern performed surgery on claimant's left thumb.

¶ 8 On July 15, 2013, claimant followed up at ORA Orthopedics, where he was examined by physician's assistant Jennifer Scardino. Scardino documented that claimant was doing well with regard to his left-thumb symptoms, but she noted that claimant "does continue to have numbness on the volar aspect of the thumb, distal to the IP joint, on both the radial and the ulnar aspect." Scardino's assessment included possible left carpal tunnel syndrome, so she ordered an EMG/NCV study of the left upper extremity. The study was performed on July 18, 2013, and showed compressive neuropathy of the left median nerve at the wrist.

¶ 9 On July 25, 2013, claimant returned to ORA Orthopedics and was again seen by Scardino. Scardino noted claimant's positive test results. During that appointment, claimant reported that his right hand falls asleep at night and when using a fishing pole. Scardino recommended surgery for claimant's left carpal tunnel syndrome, and she ordered an EMG/NCV

study of the right upper extremity to confirm her impression of right carpal tunnel syndrome. On August 13, 2013, the study of the right upper extremity was performed. It revealed compressive neuropathy of the right median nerve at the wrist. Dr. VonGillern agreed that claimant had bilateral carpal tunnel syndrome and recommended surgery.

¶ 10 On August 14, 2013, claimant reported to respondent's occupational health services clinic and documented that he had been diagnosed with bilateral carpal tunnel syndrome. Two days later, claimant was examined by Dr. William Candler at the same facility. At that time, claimant noted that he worked as a painter and, although he is right-hand dominant, he uses both hands in his work. Claimant reported that he had been experiencing bilateral hand numbness for six to seven months. Specifically, claimant complained of hand numbness at night that wakes him up, but denied numbness at work. He also reported that he had been dropping objects. He stated he was told he had carpal tunnel syndrome when he had surgery on his left thumb in May 2013. Claimant was given a wrist brace and informed that his condition was not considered work related.

¶ 11 Claimant underwent surgery for left carpal tunnel syndrome on November 1, 2013, and was released to return to work with no restrictions effective November 25, 2013. Claimant then underwent surgery for right carpal tunnel syndrome on January 24, 2014, and was released to return to work with no restrictions as of February 17, 2014. Both procedures were performed by Dr. VonGillern. Claimant did return to his regular work for respondent without restrictions. Claimant continued to perform that job with no restrictions as of the date of the arbitration hearing.

¶ 12 In a letter dated February 28, 2014, directed to claimant's attorney, Dr. VonGillern wrote as follows:

> "This letter is in regards to [claimant's] worker's compensation claim for his bilateral carpal tunnel syndrome. [Claimant] works at John Deere doing painting with a constant tight repetitive gripping. He had bilateral upper EMG/NCV done on 8/13/13 showing bilateral carpal tunnel syndrome. I have recommended proceeding with bilateral medial nerve lysis with possible limited flexor tenosynovectomy. Constant tight repetitive gripping can cause carpal tunnel syndrome. With that being said it is within a degree of medical certainty his bilateral carpal tunnel syndrome were [*sic*] caused and/or aggravated by his work activities of tight repetitive gripping."

At a follow-up examination on April 15, 2014, claimant told Scardino that he was no longer experiencing numbness and tingling and that his strength had improved.

¶ 13 On May 19, 2014, at respondent's request, claimant was evaluated by Dr. Christine Deignan, the medical director of respondent's occupational health services clinic. Dr. Deignan reviewed claimant's medical records and occupational history and conducted a physical examination of claimant. Claimant told Dr. Deignan that he was satisfied with the results of his surgeries. He reported that he had no numbness or tingling, had regained full strength, and no longer dropped things as he had in the past.

¶ 14 Dr. Deignan noted that carpal tunnel syndrome is a multi-factorial disease. Common risk factors associated with the disease include age, elevated body-mass index (BMI), and work in occupations with high physical demands that include manual exertion and repetition. Citing an analysis presented by the American Academy of Orthopedic Surgeons, Dr. Deignan stated that the "average strength" of causal association for carpal tunnel syndrome was about three times stronger for biological factors than for occupational factors. Dr. Deignan then stated:

> "In summary, based on recent literature there is no strong evidence to indicate that repetitive work, as typically performed by a painter, can cause carpal tunnel syndrome. In fact, the recent literature suggests that there may be a relation to biophysical factors which include age and increased BMI. Previous studies indicate that the risk of [carpal tunnel syndrome] occurrence increases with age. Age greater than 40 years is significantly associated with increased incidence of [carpal tunnel syndrome]. [Claimant] is 56.
>
> Another important independent risk factor for [carpal tunnel syndrome] has been found to be [BMI]. Studies have consistently shown that there is strong evidence to indicate that increased BMI is associated with increased risk of developing [carpal tunnel syndrome]. In fact, in one study a BMI > 30 was noted to increase the *** odds of developing the disease when compared to another person with normal BMI *** by up to 4.4 times. [Claimant's] BMI is 30.
>
> Therefore, based on the above literature one would conclude that [claimant's] older age and increased BMI has a stronger evidence of contribution to the development of bilateral [carpal tunnel syndrome] than his occupational exposure."

¶ 15 Dr. Deignan also noted that the United States Department of Labor defines repetitive work as performing fundamentally the same activity more than 50% of the day. She stated that an essential part of this definition is not only the frequency of performing the tasks, but that the wrists be in the same position with the same muscles, tendons, and ligaments required for the work. Dr. Deignan found that claimant's activities as a painter fell below the defined criteria for repetitive work. She explained that since claimant uses both hands for his painting job, each hand is used no more than 50% of the day. She also found that claimant's hands were required

to be positioned with different orientations for each surface he had to sand or paint. As a result, Dr. Deignan opined within a reasonable degree of medical certainty that claimant's bilateral carpal tunnel syndrome was not caused by his work activities for respondent. Dr. Deignan also concluded that claimant's level of impairment pursuant to the American Medical Association's Guide to Evaluation of Permanent Impairment, 6th edition, was zero percent.

¶ 16 Claimant testified that he continues to experience occasional numbness, tingling, and weakness in both hands and that he occasionally drops things. Claimant also testified that, other than his thumb injury, he had no prior injuries to his hands and that he has had no subsequent injuries to his hands.

¶ 17 Based on the foregoing evidence, the arbitrator denied claimant's application for workers' compensation benefits. The arbitrator found that claimant failed to meet his burden of proof with regard to accident and causal relationship. Initially, the arbitrator questioned the reliability of Dr. VonGillern's February 28, 2014, letter and the opinions expressed therein, explaining:

> "Dr. VonGillern notes that [claimant] 'had bilateral upper EMG/NCV done on 8/13/13 showing bilateral carpal tunnel syndrome.' [Claimant] was actually diagnosed with left carpal tunnel syndrome after a July 18, 2013, EMG/NCV study and with right carpal tunnel syndrome after an August 13, 2013 EMG/NCV study. Dr. VonGillern also notes 'I have recommended proceeding with bilateral median nerve lysis with possible limited flexor tenosynovectomy.' This would seem to indicate that Dr. VonGillern forgot about the surgeries he performed on November 1, 2013 and January 24, 2014."

The arbitrator also found that Dr. VonGillern did not have an adequate understanding of claimant's actual job activities, since he merely indicated in his letter that claimant worked for

respondent "doing painting with a constant tight repetitive gripping." In contrast, Dr. Deignan noted that claimant's job as a painter required him to use an air sander, a hand sander, and an air sprayer. Dr. Deignan also determined that claimant's work activities fell below the defined criteria for repetitive work. The arbitrator stated that Dr. Deignan's opinions "are at least as reliable and persuasive as those of Dr. VonGillern." Hence, the arbitrator concluded that claimant failed to prove that he sustained an accident arising out of and in the course of his employment with respondent or that his condition of ill-being was causally related to his employment activities.

¶ 18 A majority of the Commission affirmed and adopted the decision of the arbitrator. Commissioner DeVriendt dissented, remarking that it was "unfathomable to imagine that sanding down pieces of metal all day and then painting them could not be a causative factor in the development of carpal tunnel syndrome." Commissioner DeVriendt also rejected the majority's reliance on respondent's medical expert, finding that Dr. Deignan's opinion was "inherently biased" and "disregarded the reasonable opinion of Dr. VonGillern that constant tight repetitive gripping is a causative factor in the development of carpal tunnel syndrome." On judicial review, the circuit court of Rock Island County confirmed the decision of the Commission. This appeal by claimant ensued.

¶ 19 III. ANALYSIS

¶ 20 On appeal, claimant challenges the Commission's finding with respect to accident and causal relationship. Because these issues are closely related and the parties conflate them in their analyses, we address them together. Claimant asserts that the Commission's findings that he failed to prove that he sustained repetitive-trauma injuries arising out of and in the course of his employment or that his condition of ill-being is causally related thereto are against the manifest

weight of the evidence. According to claimant, Dr. Deignan's opinion does not preclude a finding that his work activities at least contributed to the development of his carpal tunnel syndrome and Dr. VonGillern's opinion affirmatively establishes a causal relationship. Claimant requests us to reverse the Commission's findings and award him reasonable and necessary medical expenses, temporary total disability benefits, and permanent partial disability benefits. Respondent counters that in light of the conflicting medical opinions presented, a decision opposite that of the Commission is not clearly apparent.

¶ 21 An employee who suffers a repetitive-trauma injury must meet the same standard of proof as an employee who sustains an injury arising from a single identifiable event. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). The employee must prove by a preponderance of the evidence all elements necessary to justify an award. *Quality Wood Products Corp. v. Industrial Comm'n*, 97 Ill. 2d 417, 423 (1983). This includes establishing an accident "arising out of" and "in the course of" the employment. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). The phrase "in the course of" refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Where a repetitive-trauma injury is involved, a claimant must identify a date within the limitations period on which the injury "manifest[ed] itself." *Durand*, 224 Ill. 2d at 67; *Peoria Belwood County Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987). A repetitive-trauma injury is said to manifest itself on "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 Belwood County Nursing Home*, 115 Ill. 2d at 531. For an injury to "arise out of" one's employment, it must have an origin in some risk connected with or incidental to the employment so that there is a causal connection between the

employment and the injury. *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1203 (2000).

¶ 22 Similarly, the employee must establish the existence of a causal relationship between his condition of ill-being and his employment. *Navistar International Transportation Corp.*, 315 Ill. App. 3d at 1202. An occupational accident need not be the sole or principal causative factor in the resulting condition of ill-being, as long as it was *a* causative factor. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Hence, a claimant need prove only that some act or phase of his employment was a causative factor in the resulting injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005).

¶ 23 Both the occurrence of a work-related accident and the existence of a causal relationship are questions of fact for the Commission. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786 (2005) (causation); *Pryor v. Industrial Comm'n*, 201 Ill. App. 3d 1, 5 (1990) (accident). In resolving factual matters, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). This is especially true with respect to medical issues, where we owe heightened deference to the Commission due to the expertise it possesses in the medical arena. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). We review the Commission's factual determinations under the manifest-weight-of-the-evidence standard. *Orsini*, 117 Ill. 2d at 44. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Bassgar, Inc. v. Illinois Workers' Compensation Comm'n*, 394 Ill. App. 3d 1079, 1085 (2009).

¶ 24 Here, the Commission was presented with conflicting medical opinions regarding whether claimant's repetitive-trauma injuries were the result of his work activities for respondent and whether his condition of ill-being was causally related to his employment. In his letter of February 28, 2014, Dr. VonGillern concluded that claimant's bilateral carpal tunnel syndrome was caused or aggravated by his work for respondent. Dr. VonGillern based his opinion on his understanding that claimant's job as a painter required him to engage in tight, repetitive gripping. In contrast, Dr. Deignan concluded that claimant's bilateral carpal tunnel syndrome was not caused by his work activities. In support of her conclusion, Dr. Deignan relied upon claimant's age, his BMI, and her finding that claimant's work activities did not constitute "repetitive work" as that term is defined by the United States Department of Labor.

¶ 25 The Commission, in affirming and adopting the decision of the arbitrator, determined that claimant failed to sustain his burden of proof regarding accident and causal relationship. The Commission questioned the reliability of Dr. VonGillern's opinion because his February 28, 2014, letter contained some factual inaccuracies. The Commission also indicated that Dr. VonGillern did not have an adequate understanding of claimant's actual work activities. The Commission found that Dr. Deignan, in concluding that claimant's work activities fell below the defined criteria for repetitive work, had a more complete understanding of the nature and scope of claimant's job duties. Based on this analysis, the Commission reasoned that Dr. Deignan's opinion was "at least as reliable and persuasive as" that of Dr. VonGillern and found that claimant failed to carry his burden of establishing an injury arising out of and in the course of his employment with respondent or a causal connection between his condition of ill-being and his work activities for respondent. Given the conflicting medical opinions presented and in light of the Commission's role as fact finder, we cannot say that an opposite conclusion is clearly

apparent. Hence, the Commission's determination is not against the manifest weight of the evidence.

¶ 26 Claimant challenges the Commission's reliance on Dr. Deignan's opinion. Claimant notes that in her report, Dr. Deignan wrote that "based on the *** literature one would conclude that [claimant's] older age and increased BMI has a stronger evidence of contribution to the development of bilateral [carpal tunnel syndrome] than his occupational exposure." According to claimant, this language suggests that "even Dr. Deignan accepts that 'occupational exposure' is at least a factor in [his] development of carpal tunnel syndrome." Read in isolation, Dr. Deignan's remarks perhaps can be interpreted to suggest that claimant's occupational exposure contributed to his repetitive-trauma injuries. However, Dr. Deignan also looked to the United States Department of Labor's definition of repetitive work. She then applied the definition to claimant's job as a painter and determined that claimant's work activities fell below the defined criteria for repetitive work. This finding, coupled with claimant's biological factors (age and elevated BMI) ultimately persuaded Dr. Deignan that claimant's work activities played no role in the development of his condition. Thus, Dr. Deignan clearly rejected any assertion that claimant's work activities contributed to his repetitive-trauma injuries.

¶ 27 Claimant asserts that Dr. Deignan's opinion was entitled to less weight than the opinion of Dr. VonGillern because she was an in-house physician employed by respondent and it is not clear whether she is an orthopedic surgeon. In addition, claimant suggests that Dr. Deignan's report is merely a summary of other doctors' medical opinions. He adds that it was inappropriate for the Commission to "minimize the persuasiveness" of Dr. VonGillern's opinion on the bases that Dr. VonGillern had an inadequate understanding of claimant's job duties and inaccurately described claimant's medical history in his February 28, 2014, letter. Essentially, claimant asks

us to reweigh the evidence. As noted above, however, it is the function of the Commission, as the trier of fact, to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny*, 397 Ill. App. 3d at 674. Where, as here, there is sufficient evidence in the record to support the Commission's findings, we will not reweigh the evidence or substitute our judgment for that of the Commission merely because other reasonable inferences may be drawn from the evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). Thus, we decline claimant's request to reweigh the evidence.

¶ 28 In sum, the Commission's findings that claimant failed to meet his burden of proof with respect to accident and causal relationship were not against the manifest weight of the evidence given the conflicting medical opinions presented by the parties and the Commission's role as fact finder. Having affirmed the Commission's decision, we need not address claimant's requests for temporary total disability benefits, permanent partial disability benefits, and medical expenses.

¶ 29 IV. CONCLUSION

¶ 30 For the reasons set forth above, we affirm the judgment of the circuit court of Rock Island County, which confirmed the decision of the Commission.

¶ 31 Affirmed.