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July 18, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160440WC-U
No. 4-16-0440WC
Order filed July 18, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MARY H. SHANKLIN,	)	Appeal from the Circuit Court
	)	of Sangamon County
Appellant,	)	
	)	
v.	)	No. 15-MR-1074
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*	)	Honorable
	)	Chris Perrin,
(City of Springfield, 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 decision that claimant failed to prove her carpal tunnel syndrome was caused by her employment was contrary to the manifest weight of the evidence where: (1) Commission's majority, adopting the decision of the arbitrator, applied heightened standard of proof to repetitive trauma claim, (2) employer's expert left the realm of expert testimony and instead based opinion on facts that could be assessed by a layperson, and (3) Commission's rejection of claimant's expert was based upon a simple mistake of fact expert articulated during deposition which he quickly acknowledged when given an opportunity to review his records.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Mary H. Shanklin, appeals an order of the circuit court of Sangamon County confirming an order of the Illinois Workers' Compensation Commission (Commission) denying her claim for benefits pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2012)). Claimant contends that the Commission erred in finding that she failed to prove her carpal tunnel syndrome was related to her employment with respondent, the City of Springfield. We agree, reverse, and remand.

¶ 4 II. BACKGROUND

¶ 5 The following evidence was presented at the arbitration hearing. Robert Painter first testified that he worked for respondent for 23 years. He was a foreman, and he worked with claimant for eight or nine years, beginning around 2003. Claimant's job involved shoveling blacktop, moving file cabinets and furniture, digging ditches, pouring concrete, and other activities. He considered claimant a good employee. She was engaged in "heavy physical labor" 90 percent of the time. He was aware that claimant was having problems with her hands. At work, claimant wore a hard hat, gloves, boots, and safety glasses.

¶ 6 Robert Williams next testified that he worked for respondent and with claimant. They were still working together at the time of the hearing, and he had been so employed for about 15 months. He also worked with claimant when employed by a previous employer. Though claimant is now a foreman, she continues to engage in heavy physical labor, including shoveling, running a jackhammer, and moving furniture. He added, "We've done a lot of jackhammering." Heavy physical labor constitutes 90 percent of their work. On cross-examination, Williams explained that their job duties change daily, as do the tools they use; however, the work is always physical and requires the use of their hands.

¶ 7 Claimant then testified that she had been employed by respondent since 2003. She became a foreman in 2012. After the promotion, her job remained physical in nature. When she first started working for respondent, her job involved a lot of shoveling, both asphalt and snow. She would also "do the concrete" and "attend to the carpenters." She performed these duties eight hours per day. Sometime around 2009, asphalt work diminished and she was assigned to do building work, which consisted of moving furniture, moving offices, and roofing work. Other work included placing rebar and pouring cement into meter holes and running a jackhammer. She testified that she performed heavy physical labor 90 percent of the time.

¶ 8 Claimant began experiencing problems with her hands and wrists in 2009. She saw Dr. Michael D. Watson at this time. Her symptoms worsened between 2009 and 2012, when she had bilateral carpal-tunnel-release surgery. Claimant underwent an examination by Dr. Koo, on respondent's behalf. Koo "made a big thing about [her] fingernails." Claimant explained that she keeps her fingernails in nice shape by getting them done "because on weekends [she wants] to look like a lady." She wears gloves during the week to protect them. Claimant also went to a dermatologist, Dr. Kumar, and got "a cream that's got some kind of acid in it to burn off your calluses." The cream does not make her hands softer, but it does keep calluses from building up. Her fingernails are acrylic, and if they break, she gets them fixed. She acknowledged breaking them frequently.

¶ 9 Outside of work, claimant has suffered no trauma to her hands or wrists. Her hands are better following the surgery, but they swell sometimes and she takes ibuprofen for pain. Claimant acknowledged that she was diagnosed with diabetes "years ago." She stated that she was "sometimes" able to keep it under control.

¶ 10 On cross-examination, claimant agreed that in 2012, she had been diagnosed with diabetic sensory neuropathy in her feet and was prescribed Gabapentin for it. She has had diabetes for about 10 years and has taken several medications for it, including insulin. Her glucose has been as high as 347. Claimant further agreed that on any given work day, she uses several different tools and performs several different tasks. Furthermore, her tasks change from day to day. On redirect-examination, she testified that though she had been prescribed medication for neurological problems in her feet, she has never been prescribed any such medications for her hands, wrists, or arms. Claimant reviewed a formal job description attached to Koo's deposition that stated that her job required her to use her hands to grasp material about 85 percent of the time. Claimant confirmed that this was accurate.

¶ 11 Dr. Watson testified via evidence deposition. He is board certified in orthopedic surgery. He first saw claimant in 2009. In July of that year, claimant injured herself in a lifting incident. Watson ordered physical therapy. When claimant's pain did not resolve, he ordered a nerve conduction study, which revealed a C-5 cervical radiculopathy and left carpal tunnel syndrome. He did not see claimant again until October 16, 2012, when claimant presented with symptoms of bilateral carpal tunnel syndrome. Claimant reported that she was in constant pain. She stated she was shoveling asphalt four to five days per week at the time. She reported using shovels, rakes, a crowbar, and sometimes a hammer to apply shingles. He noted that using such tools requires "power gripping." A nerve conduction study did indeed reveal bilateral carpal tunnel syndrome, which Watson diagnosed. Watson opined that claimant's work caused or aggravated her bilateral carpal tunnel syndrome. Watson subsequently performed bilateral carpal tunnel release surgery. On May 16, 2013, claimant was released to return to work. When asked

whether from 2009 "through 2012, [claimant] didn't suffer from diabetes and wasn't pregnant as far as [he] could tell," Watson replied, "No."

¶ 12 On cross-examination, Watson agreed that many things could cause bilateral carpal tunnel syndrome. Various diseases can lead to it, and it is more common among middle-aged women. It occurs more commonly in people with diabetes, and obesity also is a risk factor. While Watson stated he would not characterize claimant as obese, he agreed that, according to her body-mass index (BMI), she was obese. Though he testified on direct that claimant did not have diabetes between 2009 and 2012, he conceded that this statement was erroneous after defense counsel gave him the opportunity to check his records. He admitted that claimant's intake form stated that she used to shovel asphalt and not that she had recently been doing so in 2009. Watson did not know when she stopped. Watson testified that engaging in varied activities lessens the risk for carpal tunnel syndrome. When Watson examined claimant in 2012 and 2013, her hands were callused and strong. He noted that despite the condition of her hands, claimant had "well manicured fingernails," which he found unusual.

¶ 13 Watson testified that his opinions were based in part upon the oral history provided to him by claimant. If that history was incomplete or incorrect, his opinion could change. Carpal tunnel syndrome can be idiopathic. The more risk factors a person has, the more likely idiopathic carpal tunnel syndrome could develop. Watson opined that, in his practice, repetitive hand work was the leading cause of carpal tunnel syndrome, but diabetes "probably [would be] in second place."

¶ 14 On redirect-examination, Watson stated that BMI charts are misleading in claimant's case because she is so muscular. He noted that "under those criteria someone like [NFL running back] Adrian Peterson would be an obese man, and he's not." He reiterated that claimant is "not

obese." Finally, Watson explained that the fact that claimant had various risk factors for carpal tunnel, including diabetes, did not change his opinion that claimant's work was causally related to her bilateral carpal tunnel syndrome.

¶ 15 Dr. Michele Koo also testified via evidence deposition. Koo testified that she is a board-certified plastic surgeon licensed in the states of Missouri and California. Seventy percent of her practice is "elective, aesthetic" and thirty percent is "peripheral neuropathy, soft tissue, upper extremity disorders." Her practice includes treating "carpal tunnel and trigger finger disorders." She examined claimant on respondent's behalf. She authored a report documenting the examination. She reviewed claimant's medical records and conducted a physical examination. Koo noted that claimant "has long acrylic nails that were at least 1.5 centimeters to two centimeters over the tip of her fingers." Koo asked claimant how she was able to work with such nails, and claimant stated that she had been in construction for 27 years and had such nails even when performing labor work. Claimant described her job duties to Koo. Claimant told Koo that she "lifts or grabs eight hours per day."

¶ 16 Koo testified that claimant's diabetes, high cholesterol, and obesity "correlate with her" complaints. Koo characterized claimant's diabetes as severe. She added that "diabetes can cause peripheral neuropathies." Koo again addressed claimant's fingernails. She observed that claimant had "very long acrylic nails." Furthermore, claimant's "hands had no calluses and they felt soft and they were not firm, callused, or hardened." Koo had examined patients who worked as manual laborers in the past, and she had never seen such a person have hands like claimant's hands. They "seemed like hands that didn't work labor." Moreover, Koo did not believe claimant could have worn gloves over her nails.

¶ 17 Koo believed claimant did have bilateral carpal tunnel syndrome. However, as to causation, Koo first noted claimant's diabetes, high cholesterol, and obesity. She then questioned whether claimant could have actually been performing hard physical labor given the condition of her hands and her long fingernails. Koo conceded not having "a good grasp of how much actual hard repeated grasping [claimant] performed." She acknowledged that "[w]orking with trowels, jackhammers, and smoothing out tar and cement could certainly be repetitive activities that could cause bilateral carpal tunnel syndrome." However, such activities would have to be performed "on a daily basis for at least four hours per day for two-plus years." Koo stated that she did not "have an accurate assessment of exactly how much hand-intensive labor [claimant] did the last two years prior to her symptoms developing." Koo opined that diabetes and obesity alone could cause bilateral carpal tunnel syndrome and trigger digit problems. Koo concluded:

> "As of right now, unless I am shown a detailed job description showing she performs repeated hard grasping in the two years prior to her development of her carpal tunnel syndrome, I'm attributing her bilateral carpal tunnel syndrome and trigger digits to her diabetes and obesity."

Koo opined that bilateral carpal tunnel release surgery was a reasonable course of treatment as well as either trigger digit releases or injections.

¶ 18 Respondent provided a job description for claimant's position. After reviewing it, Koo authored an addendum to her report. Koo "tried to correlate [claimant's] work activities with the subsequent development of a bilateral carpal tunnel syndrome." However, she "just kept thinking about her very long acrylic nails." Koo observed that in the job description, there were activities, such as flagging, that would constitute light duty for claimant's hands. Koo continued,

"In my opinion, it's completely impossible to truly grasp and use your hands in a labor fashion with meaningful impact to your hand with these types of acrylic nails." She further did not believe it possible to wear gloves over such nails. Koo then opined that obesity and diabetes "in comparison to the type of work she performs [for respondent] would be the main cause *** of her bilateral carpal tunnel syndrome and trigger digits." She reiterated that she found "no association" between claimant's employment and condition of ill-being.

¶ 19 On cross-examination, Koo stated that while claimant related working with jackhammers, crowbars, shovels, rakes, and other tools, she did not state how long she used them. When asked if she requested such information from claimant, Koo replied, "I gave her ample opportunity to tell me in detail exactly what she does" and claimant did not go into detail regarding the amount of time spent in various activities. Koo remarked that she "can only go by what a patient tells [her]." Koo stated that she did not believe the job description—which was provided by respondent—accurately reflected what claimant actually did. She opined that if, in fact, the formal job description was accurate, her opinion would change "as to whether [claimant's] job responsibilities contributed to her carpal tunnel." However, shortly thereafter, she testified that "in my true medical opinion, no matter what job she performed she's probably one that would have developed a bilateral carpal tunnel syndrome anyway, honestly, and then perhaps go on to trigger digits." Koo testified that carpal tunnel syndrome could have multiple causes and that vibration is an aggravating factor.

¶ 20 On redirect-examination, Koo testified that there was no way claimant could do "forceful labor and have her soft hands." She further testified that engaging in a variety of activities lessens one's risk for carpal tunnel syndrome. The job description for claimant's position listed "many varied types of work."

¶ 21 The arbitrator found that "[a]lthough [claimant] listed the various duties she performed[,] she did not provide the frequency, duration, and manner of performing each duty, other than stating she performed heavy labor 90% of the time." She also noted that claimant's duties varied both during the day and from day to day. The arbitrator further noted claimant's severe diabetes and obesity. Claimant's coworkers who testified did not provide detail regarding the frequency and duration of the various activities they engaged in. Without citation to authority, the arbitrator stated, "In order for [claimant] to prove a repetitive trauma injury[,] it is imperative that [she] place into evidence specific and detailed information concerning her work activities, including the frequency, duration, manner of performing, etc." The arbitrator then found that claimant had not met this standard. After stating that neither Koo nor Watson had a "detailed and accurate understanding of [claimant's] work activities," the arbitrator found Koo more credible. In addition to Watson's lack of information about claimant's work activities, the arbitrator also found it significant that Watson purportedly believed claimant did not have diabetes from 2009 to 2012 (though Watson did acknowledge that his testimony on direct to this effect was erroneous after he was given a chance to review his records).

¶ 22 The Commission, with one commissioner dissenting, affirmed and adopted the arbitrator's decision. The majority simply adopted the arbitrator's decision without expanding further upon its reasoning. The dissenting commissioner noted that claimant, Painter, and Williams all testified to the physical nature of claimant's job. This included testimony that claimant was engaged in heavy physical activity 90 percent of the time. He noted that Williams testified that all tasks involved using one's hands and that claimant estimated that between 85 percent and 90 percent of the time, she was grasping with her hands. He observed that though Watson was not given a detailed job description, he was aware that claimant spent most days

using shovels, rakes, crowbars, hammers, and [engaging in] 'a large variety of different sorts of construction tasks that involve power gripping.' " The dissenting commissioner found this an adequate basis for Watson to "form a valid causation opinion." He further noted that Koo "minimized [claimant's] physical labor and hand activities by picking out those aspects of her job description that were minimal (like flagging and directing others) because she just couldn't believe that [claimant] was able to do heavy manual labor with long fingernails and soft hands." Koo did, however, admit that the sort of work described in claimant's job description could cause carpal tunnel syndrome. While acknowledging that claimant's diabetes was likely a causal factor, the dissenting commissioner believed that claimant's "strenuous hand-intensive work activities were also a contributing factor." The circuit court confirmed the decision of the majority, and this appeal followed.

¶ 23 III. ANALYSIS

¶ 24 At issue in this case is whether claimant's carpal tunnel syndrome was caused by the repetitive trauma she experienced in her employment with respondent. A claimant seeking to recover for a repetitive-trauma injury is held to the *same standard of proof* as any other claimant under the Act. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). That is, the claimant must "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." *Id.* at 65. This date is known as the "manifestation date." *Id.* As the same standards apply to repetitive-trauma injuries, employment need only be *a* cause of a claimant's injury—it does not have to be the sole or primary cause. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003).

¶ 25 Furthermore, whether an employee has suffered a work-related accident is a question of fact. *Pryor v. Industrial Comm'n*, 201 Ill. App. 3d 1, 5 (1990). We review questions of fact

using the manifest weight standard of review. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995). As such, we will reverse only if an opposite conclusion to the Commission's is clearly apparent. *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741-42 (1994). Evaluating the credibility of witnesses, resolving conflicts in testimony, assigning weight to evidence, and drawing inferences from the record are matters primarily for the Commission in the first instance. *Id*. at 741. Though we owe considerable deference to the Commission regarding issues of fact, it is nevertheless our duty to reverse one of its decisions if the evidence clearly compels an opposite conclusion. *Kochilas v. Industrial Comm'n*, 274 Ill. App. 3d 1088, 1092 (1995).

¶ 26 Such is the case here. The Commission's decision is flawed. Most basically, the Commission (adopting the decision of the arbitrator) required claimant to meet a heightened standard of proof to succeed on her claim. Notably, the arbitrator stated, "In order for [claimant] to prove a repetitive trauma injury[,] it is imperative that [she] place into evidence *specific and detailed information* concerning her work activities, including the frequency, duration, manner of performing, etc."[1] (Emphasis added.) The Commission adopted this reasoning without comment. Respondent reiterates this in its brief, but neither respondent, the arbitrator, or the

[1] We note, parenthetically, that this language is reminiscent of the heightened standard a civil plaintiff must satisfy when pleading common-law fraud. See, *e.g.*, *Aasonn, LLC v. Delaney*, 2011 IL App (2d) 101125, ¶ 28 (quoting *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 496-97 (1996) (A complaint for common-law fraud "must allege, with specificity and particularity, facts from which fraud is the necessary or probable inference, including what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made.")). Undoubtedly, the Commission was asking claimant to provide evidence beyond what would be required in an acute-trauma case.

Commission cite authority in support of this statement. To the contrary, the proposition that a claimant asserting a repetitive-trauma claim is held to the same standard as an ordinary claimant has been stated virtually countless times in Illinois case law. See, *e.g.*, *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006); *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209 (1993) ("An employee seeking benefits for gradual injury due to repetitive trauma must meet the same standard of proof as a petitioner alleging a single, definable accident."). Thus, as a threshold matter, we hold that the Commission erred in requiring claimant to meet a heightened standard of proof.

¶ 27 We further find the opinion of respondent's expert, Dr. Koo, dubious for a number of reasons. Koo—the board-certified plastic surgeon—grounded her opinion as much on lay fact finding as her medical expertise. Koo's opinion was based largely on the fact that claimant had long fingernails and Koo therefore rejected the descriptions of claimant's work provided by claimant, two of claimant's coworkers, and respondent in the form of a job description it provided. In essence, Koo did not testify that the sort of work claimant and others testified she was engaged in did not cause her condition (in fact, she agreed that it would); rather, Koo testified that given claimant's fingernails, she could not have engaged in heavy physical labor. We fail to see how Koo's opinion required any sort of "scientific, technical, or other specialized knowledge." Ill. R. Evid. 702 (eff. January 1, 2011). While not inadmissible *per se*, as lay opinions may be admissible in certain circumstances (see Ill. R. Evid. 701 (eff. January 1, 2011)), it certainly does not amount to an expert, medical opinion regarding causation. This, of course, leaves unrebutted—as medical testimony—Watson's *expert* opinion that claimant's work caused or aggravated her bilateral carpal tunnel syndrome.

¶ 28 We also find Koo's opinion problematic given the cursory nature of Koo's examination of claimant. Koo was conducting what has come to be known as an independent medical *examination* (see, *e.g.*, *King v. Industrial Comm'n*, 301 Ill. App. 3d 958, 961 (1998). Koo essentially based her causation opinion on claimant's failure to tell Koo details about claimant's job. Koo admitted not having "a good grasp of how much actual hard repeated grasping [claimant] performed." When asked on cross-examination whether she asked claimant about her job activities, Koo stated only that she gave claimant an opportunity to provide such detail. However, as an expert, Koo was the person in a position to know what information was relevant, and she could have easily asked claimant directly about whatever information Koo felt she needed to render a well-grounded opinion. It simply was not reasonable for Koo—the expert—to expect claimant to know what sort of information Koo needed with no prompting from Koo. In short, Koo was supposed to be conducting the examination and her failure to make a reasonable attempt to obtain the information she needed to render an opinion severely undermined any opinion she subsequently rendered.

¶ 29 We further note that Koo stated, "As of right now, unless I am shown a detailed job description showing she performs repeated hard grasping in the two years prior to her development of her carpal tunnel syndrome, I'm attributing her bilateral carpal tunnel syndrome and trigger digits to her diabetes and obesity." Koo was shown such a job description (which Koo acknowledged described activities sufficient to cause carpal tunnel syndrome), generated by respondent, for claimant's position. Koo refused to believe it, citing claimant's fingernails. Thus, had claimant provided more detail despite Koo's failure to request it, there is no reason to believe Koo would have accepted claimant's description of her job duties when Koo disregarded the job description provided by respondent.

¶ 30 We also question the Commission's evaluation of Watson's opinion. Adopting the reasoning of the arbitrator, the Commission found that "Watson was of the opinion that from 2009 to 2012 [claimant] did not suffer from diabetes." The Commission based this critique on a statement Watson made to that effect during direct examination; however, the Commission ignores the fact that when given an opportunity to consult his medical records, he corrected himself. Those medical records do, in fact, show a history of diabetes. A history taken on October 16, 2012, states claimant has diabetes. Thus, it is doubtful that Watson was unaware claimant had diabetes when he was treating her.

¶ 31 In sum, we find that the manifest weight of the evidence clearly supports the findings of the dissenting commissioner. Both Koo and Watson agreed that the type of activities claimant's job duties entailed could cause carpal tunnel syndrome, and Watson opined to an actual causal connection. That claimant engaged in such activities was confirmed by claimant's testimony, the testimony of two coworkers, and a job description generated by respondent (if claimant had not been performing her job, it would be unlikely that respondent would have retained her for nearly ten years and promoted her as well). The only evidence to the contrary is Koo's speculation regarding claimant's fingernails, for which claimant provided an explanation. Under these circumstances, we have little difficulty concluding that an opposite conclusion to the Commission's is clearly apparent.

¶ 32 IV. CONCLUSION

¶ 33 In light of the foregoing, the order of the circuit court of Sangamon County confirming the decision of the Commission is reversed. This cause is remanded to the Commission for further proceedings to determine what benefits claimant is entitled to and any other proceedings, if any, which may be appropriate.

¶ 34 Reversed and remanded.