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2018 IL App (2d) 170630WC-U

FILED: July 3, 2018

NO. 2-17-0630WC

IN THE APPELLATE COURT

OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JOHN B. SANFILIPPO & SONS, INC.,)	Appeal from the
)	Circuit Court of
Appellant,)	Kane County
)	No. 16MR1413
v.)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Alicia Garcia-Zavedra,)	David R. Akemann,
Appellee).)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Barberis
concur in the judgment.

ORDER

¶ 1 *Held:* The Commission's finding that claimant's repetitive-trauma injury manifested itself on October 9, 2013, was not against the manifest weight of the evidence.

¶ 2 On November 20, 2014, claimant, Alicia Garcia-Zavedra, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2014)), seeking benefits from the employer, John B. Sanfilippo & Sons, Inc. Following a hearing, the arbitrator determined (1) claimant's injuries arose out of and in the course of her employment and were causally connected to her job duties; (2) claimant was entitled to prospective medical expenses for arthroscopic surgery; (3) claimant was denied prospective

medical care for knee surgery; and (4) claimant was entitled to temporary total disability (TTD) benefits from February 8, 2014, through September 9, 2015.

¶ 3 On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Kane County confirmed the Commission's decision. The employer appeals.

¶ 4 I. BACKGROUND

¶ 5 The following recitation of facts is taken from the evidence presented at the arbitration hearing in September 2015. Claimant testified that she worked as a janitor at the employer's facility located in Elgin, Illinois. Each day, she worked from 6 a.m. until 4:30 p.m. cleaning the factory, store, and shipping area. Claimant testified that her job duties included mopping, reaching "above [her] head" to scrub mirrors, cleaning toilets, disposing of garbage bags that weighed approximately 40 pounds, scrubbing walls, cleaning office doors and windows by stretching her arms upward and standing on her "tippy toes," and cleaning vents by climbing onto a table and "stretch[ing] [her] arms all the way up ***." In addition, she cleaned the walls in the entryway of the factory with a broom and brush by reaching "above [her] head." She also cleaned two large rubber rugs that each weighed 30 pounds. In the afternoon, claimant used a spatula to clean grease off "very tall" machines located within the factory. She did not clean the machines on a daily basis; however, she estimated that she spent about two to four hours scrubbing the machines in a typical afternoon. She further testified that she cleaned a total of 8 offices and 15 bathrooms on a daily basis.

¶ 6 Claimant stated that, on October 9, 2013, she noticed her right arm "hurt a lot." That same day, she sought medical treatment from a primary care physician, Dr. Victor H. Colin. His medical records reflect the following history:

“She [works] in housekeeping and states that reach[ing] above over her head and squatting down cause her to have pain especially at the end of the day. She reports pain in the back of her legs radiating down behind the knees and down her calfs. She states that [she has] upper and lower back pain as well as her shoulders and arms.”

Claimant testified that she provided Jose Dellatore in Human Resources with a note from Dr. Colin regarding work restrictions.

¶ 7 Claimant testified that, in mid-October, her job duties changed to assembling boxes. She stated that she would stand on her “tippy toes” to “grab” boxes stacked on a table and she would assemble the boxes by hand. After performing this task, she noticed that her right arm would hurt.

¶ 8 At arbitration, the employer presented the testimony of Phillip Schiavone, claimant’s supervisor. He stated that, before claimant began her new duties assembling boxes, claimant worked as a “level 1” janitor. He testified that the job duties of level 1 janitors included cleaning bathrooms, washing sinks, mopping, and cleaning windows and walls. He stated that, when the janitors clean the walls, “[m]ostly they’re cleaning from four feet down” and “[a]nything above head level is generally cleaned once a month.” He further testified that claimant brought in a note from her doctor on October 23, 2013, but he could not recall if she reported an injury to her right shoulder. He explained that claimant’s job duties changed in mid-October “[b]ecause she was having a hip problem and knee problem.”

¶ 9 On November 20, 2013, claimant saw Dr. Colin. His medical records note that claimant again complained of “right arm/leg pain.” Dr. Colin further noted that claimant had been working in a light duty capacity.

¶ 10 On November 22, 2013, claimant was seen at Physicians Immediate Care for the first time. Medical records indicate that claimant complained of pain in her “right arm from shoulder to wrist” and that she had “throbbing pain.” The medical records further reflect that “[claimant] has had pain previously, but [it] was aggravated after repetitive movements—building boxes at work yesterday.” The medical records note the following history:

“The patient presents with a chief complaint of constant (but worse at times) pain of the right upper extremity since Thu. Nov 21, 2013. *** The patient reports it was the result of an injury, which was work related, which had a gradual onset. The patient had no similar problems in the past. *** Patient denies that any non-work related event or illness possibly contributed to or is related to development of symptoms. The patient reports that the pain/pressure radiates to the right hand and right fingers. Patient notes pain in her right shoulder for years, she recently had her duties changed to lighter lifting and was packing boxes yesterday after which she noticed [a] significant increase in pain and weakness of her right shoulder. *** The patient also reports muscle pain, numbness, swelling, and weakness [of] abnormal symptoms related to the complaint.”

X-rays were taken that same day, which showed no fractures or dislocations; however, there was “joint space abnormality” and “joint space narrowing noted” of “mild AC.” The medical records from Physicians Immediate Care also note that the cause of injury was a “work related condition.” The treating physician diagnosed claimant with a rotator cuff strain.

¶ 11 On December 11, 2013, claimant saw Dr. Colin because of continued pain in her right shoulder. Upon examination, Dr. Colin noted decreased range of motion in her right arm and edema over the mid-upper bicep and triceps. He diagnosed claimant with “osteoarthritis” and

“arthralgias.”

¶ 12 On January 3, 2014, claimant underwent a magnetic resonance imaging (MRI) scan of her right shoulder. The MRI showed infraspinatus tendinopathy, supraspinatus tendinopathy, and a moderate partial undersurface tear.

¶ 13 On January 8, 2014, claimant was seen at Physicians Immediate Care where the treating physician noted complaints of increased shoulder pain. The physician gave claimant a steroid injection in her right shoulder to treat her pain. On January 15, 2014, claimant returned to Physicians Immediate Care. The medical records note that claimant reported a 50% improvement after the steroid injection but she continued to have burning in her elbow.

¶ 14 On February 7, 2014, claimant was seen by Dr. Roberto E. Levi, an orthopedic surgeon. His medical records reflect, in part, the following history:

“The pain on [*sic*] the right shoulder and right elbow started in October of 2013. The patient did report this to her work. She works cleaning desks, cleaning tables, cleaning walls[,] and working at or above the shoulder level she had pain and had weakness and she developed severe pain on [*sic*] the right elbow.”

Dr. Levi’s impression was that claimant had at least a partial rotator cuff tear of the right shoulder, lateral epicondylitis in the right elbow, and osteoarthritis in her right knee. With respect to her right shoulder, Dr. Levi observed that claimant “work[ed] for four years doing the same work of cleaning with the right arm” and opined “[i]t is what produced the symptoms.” Claimant testified that she did not work for the employer following her appointment with Dr. Levi on February 7, 2014.

¶ 15 Medical records from ATI Physical Therapy indicate that claimant began physical therapy on February 13, 2014, and continued it through June 2014. In addition, Dr. Levi

administered steroid injections on April 11, 2014, and July 7, 2014.

¶ 16 On March 17, 2014, Dr. Aaron Bare performed an independent medical examination (IME) at the employer's request. Dr. Bare's IME report reflects that he reviewed claimant's medical records and conducted an examination of claimant. In his IME report, Dr. Bare stated as follows:

“[Claimant] reported pain after cleaning walls ***. She had no traumatic injuries. After she did this, she was assembling boxes and[,] because of continued pain in her shoulder[,] she sought out human resources and was seen by a physician *** the following day, 11/22/2013.

* * *

She *** reported pain while she was cleaning walls as well as assembling boxes. This did not cause or create a rotator cuff tear. Rotator cuff tears are usually an attritional phenomenon in this age group and therefore she aggravated a pre-existing problem. I agree with conservative care and agree with physical therapy.”

Dr. Bare diagnosed claimant with a partial thickness rotator cuff tear. He believed claimant would not require surgery. He recommended steroid injections and light duty restrictions. Dr. Bare opined that, “[d]ue to the fact that she denies any previous problems, treatments, or injuries to h[er] shoulder, causation likely exists linking her current condition today to her work aggravation.”

¶ 17 On April 16, 2014, Dr. Levi performed a right shoulder arthrogram and CT scan, which revealed a slight irregularity of the distal supraspinatus tendon. According to Dr. Levi's medical records, the AC joint “demonstrated some mild inferior hypertrophic spurring” and slight narrowing with some impingement. Due to her ongoing pain, Dr. Levi recommended right

shoulder arthroscopic surgery. Claimant continued to see Dr. Levi for pain management treatment to her right shoulder while she awaited approval for her surgery.

¶ 18 On March 16, 2015, the employer sent a letter to Dr. Bare summarizing the additional treatment that claimant underwent following Dr. Bare's IME, including the injections and the subsequent CT and MRI arthrogram. The employer's letter also contained new information regarding claimant's job duties:

“On November 21, 2013[,] when the alleged shoulder pain began the claimant was *not* engaged in cleaning activities, but was actually assembling small cardboard boxes weighing about 6-7 oz. each on a line at waist level. She had been performing this task exclusively since October 23, 2013. Prior to her work assembling boxes the claimant was engaged in cleaning, however, the vast majority of the work was done at or below waist level and only on occasion would she need to have her arms near shoulder level. Once a week for approximately 2 ½ hours she would clean walls, windows and mirrors, but used a 51” broomstick with attachment to reach the top of the surfaces. Use of the broomstick allowed her to complete the cleaning without extending her arms over her shoulder, as the tops of the mirrors she was cleaning were approximately six feet from the floor.” (Emphasis in original.)

¶ 19 On April 17, 2015, in response to the employer's letter, Dr. Bare provided an addendum to his IME report. Dr. Bare opined that he did not believe claimant suffered a work-related injury. He noted that “[t]his is due to, as *** mentioned in [the employer's] letter, the fact that the individual worked 2-1/2 hours a week primarily cleaning walls and mirrors. She had no heavy reaching or lifting duties.” He diagnosed claimant with a partial thickness rotator cuff tear

that was “likely a degenerative phenomenon and not related to any type of work injury.” He noted that “[s]urgical intervention may be required ***.”

¶ 20 Dr. Bare’s deposition, taken on May 13, 2015, was presented at arbitration. Dr. Bare testified that “[i]t [was his] opinion that [claimant’s] partial-thickness rotator cuff was not related to her work duties, but [is] more of an attritional age-related phenomenon.” He noted that, if claimant’s report of “no previous problems *** was accurate, it’s possible that her current condition could be related to what she did at work, although [he] th[ought] with a high degree of medical certainty that’s extremely unlikely.” Dr. Bare admitted that assembling boxes and washing windows could aggravate a preexisting condition. However, he stated that “any type of activity can cause an aggravation.” He opined that “[claimant] could pick up a piece of paper and tweak her shoulder ***.”

¶ 21 Claimant submitted Dr. Anthony Cummins’ deposition at arbitration. Dr. Cummins testified that he was an orthopedic surgeon. He stated that he performed an IME and reviewed claimant’s medical records at the request of her attorney. According to Dr. Cummins, claimant provided a history of ongoing right shoulder pain that developed in November 2013 “after cleaning walls and assembling boxes.” He stated that, in his medical opinion, “those activities at work caused the shoulder pain she’s experiencing.” He noted that claimant’s right shoulder had tenderness around the sub-acromial space. He diagnosed claimant with a partial rotator cuff tear. Dr. Cummins stated that claimant’s temporary relief following the right shoulder injections confirmed his diagnosis. He agreed with Dr. Levi that claimant had exhausted non-operative measures and she should undergo surgery.

¶ 22 Claimant testified that, at the time of the arbitration hearing, she intended to undergo the arthroscopic surgery because of her continued pain.

¶ 23 The arbitrator determined that claimant’s injuries arose out of and in the course of her employment and were causally related to her job duties. Claimant was awarded prospective medical expenses for arthroscopic surgery and TTD benefits from February 8, 2014, through September 9, 2015.

¶ 24 On review, the Commission affirmed and adopted the arbitrator’s decision. The circuit court subsequently confirmed the Commission’s decision.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 On appeal, the employer argues claimant “failed to prove that her alleged right shoulder condition manifested on October 9, 2013,” and thus that the Commission’s decision was against the manifest weight of the evidence.

¶ 28 “To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that [s]he has suffered a disabling injury which arose out of and in the course of h[er] employment.” *Sisbro Inc. v. Industrial Comm’n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). An injury “arises out of” employment when “the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.” *Id.*

¶ 29 Whether an employee has suffered a work-related accident is a question of fact for the Commission to determine, and its decision will not be overturned on appeal unless it is against the manifest weight of the evidence. *Kertis v. Illinois Workers’ Compensation Comm’n*, 2013 IL App (2d) 120252WC, ¶ 13, 991 N.E.2d 868. “In order for a finding to be contrary to the manifest weight of the evidence, an opposite conclusion clearly must be apparent.” *Teska v. Industrial Comm’n*, 266 Ill. App. 3d 740, 741–42, 640 N.E.2d 1, 3 (1994). It is solely within the

Commission's province to judge the credibility of witnesses and weigh conflicting medical testimony. *ABF Freight System v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19, 45 N.E.3d 757.

¶ 30 Compensable injuries under the Act may arise from a single identifiable event or be caused gradually by repetitive trauma. *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773, 780 (2005). An employee who suffers a repetitive-trauma injury may apply for benefits under the Act, but must meet the same standard of proof as a claimant who alleges a single, definable accident. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). “[T]he date of the injury in a repetitive-trauma compensation case is the date when the injury manifests itself—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.” (Internal quotation marks omitted.) *Id.* at 67. An employee alleging repetitive trauma “must still show that the injury is work related and not the result of a normal degenerative aging process.” *Edward Hines Precision Components*, 356 Ill. App. 3d at 194.

¶ 31 Here, as stated, the employer argues that claimant failed to prove that her alleged right shoulder condition manifested on October 9, 2013. We disagree.

¶ 32 The Commission noted that claimant saw Dr. Colin on October 9, 2013. On that date, claimant complained of pain in her shoulders. According to the Commission, claimant attributed her pain to “lifting over her head doing her housekeeping duties at work.” The Commission also noted claimant’s testimony regarding the onset of her shoulder pain “during the performance of her housekeeping duties *** before she was transferred to the box assembly job.” (Emphasis added.) In addition, the Commission acknowledged that the medical records

from Physicians Immediate Care provided conflicting information regarding the manifestation date; however, the Commission explained that those medical records also state that claimant's shoulder pain *began previously* and was "aggravated" when she started lifting boxes at work. The employer points to claimant's testimony at arbitration where she agreed, on cross-examination, that her "right shoulder injury occurred November 21, 2013." It further points out that claimant asserted in her application for adjustment of claim that the date of accident was November 21, 2013. However, we note claimant was otherwise consistent in stating her right shoulder injury occurred as a result of her cleaning duties, which ended in mid-October. We further note she later amended the date of accident in her application for adjustment of claim to October 9, 2013.

¶ 33 Additionally, as noted, the parties agree that claimant's job changed from janitorial duties to box assembly in October after claimant sought medical attention for her shoulder pain in October 2013. Indeed, as stated, the medical records of Dr. Colin note that claimant was in fact examined on October 9, 2013, she complained of shoulder pain, Dr. Colin provided claimant with a note regarding work restrictions in October 2013, and claimant submitted that note to Human Resources *before* her job duties changed. Dr. Colin's medical records support claimant's testimony that she started to have pain in her right shoulder before her job duties changed to assembling boxes. Even the IME report by the employer's examining physician, Dr. Bare, states that claimant first experienced right shoulder pain after she was "cleaning walls" for the employer, and she had "continued pain" that worsened after she began assembling boxes. Dr. Levi's medical records also support claimant's contention that her shoulder pain manifested itself in October 2013. Dr. Levi's medical records note that claimant reported that her shoulder pain began in October 2013 after "cleaning with her arms at or above

shoulder level.” Dr. Levi’s medical records further state that “[claimant] was working for four years doing the same work of cleaning with the right arm” and “[i]t is what produced the symptoms.” Though there is some conflicting evidence regarding the manifestation date, based on the above, the Commission could have reasonably concluded that claimant suffered a work-related injury that manifested itself on October 9, 2013.

¶ 34 As stated, weighing conflicting medical testimony and judging the credibility of witnesses are within the province of the Commission. *ABF Freight System*, 2015 IL App (1st) 141306WC, ¶ 19. We cannot say the Commission’s finding—that October 9, 2013, was the manifestation date of claimant’s work injury—was against the manifest weight of the evidence.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the circuit court’s judgment, which confirmed the Commission’s decision, and remand the matter for further proceedings pursuant to *Thomas v. Industrial Comm’n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 37 Affirmed and remanded.