2013 IL App (5th) 120013WC-U

NO. 5-12-0013WC

IN THE APPELLATE COURT

OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

FAY BLAKEY, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (Memorial Hospital, Appellee).	))))))))	Appeal from the Circuit Court of St. Clair County. No. 10-MR-311 Honorable Stephen P. McGlynn, Judge, Presiding.

JUSTICE HARRIS delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

Held: The Commission's decision that claimant failed to prove repetitive-trauma injuries that arose out of and in the course of her employment was not against the manifest weight of the evidence.

¶ 1 On June 27, 2008, claimant, Fay Blakey, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2006)), alleging work-related, repetitive-trauma injuries and seeking benefits from the employer, Memorial Hospital. Following a hearing, the arbitrator denied claimant benefits, finding she did not sustain injuries that arose out of and in the course of her employment. The Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. On judicial review,

the circuit court of St. Clair County confirmed the Commission. Claimant appeals, arguing the Commission's decision that her condition of ill-being was not causally connected to her employment was against the manifest weight of the evidence. We affirm.

¶ 2 I. BACKGROUND

¶ 3 In 1996, claimant began working for the employer as a certified respiratory therapist and her employment continued through the date of arbitration. She sought benefits under the Act alleging repetitive-trauma injuries that arose out of and in the course of her employment on September 15, 2007, and resulted in bilateral carpal tunnel syndrome.

¶ 4 At arbitration, claimant testified she initially worked five, 8-hour shifts for the employer per week. In approximately 2005, she voluntarily began working three, 12-hour shifts per week. Claimant testified her job duties involved performing nebulizer treatments, incentive spirometry tests, percussion therapy, walking oximetries testing, and arterial blood gases on patients. She also assisted patients with using inhalers. Claimant testified she performed 30 to 40 nebulizer treatments in an 8-hour shift and approximately 55 during each 12-hour shift, performed 15 incentive spirometry tests in an 8-hour shift, performed 15 percussion therapies during an 8-hour shift, assisted patients with inhalers approximately 5 times during every 8-hour shift, and performed walking oximetries testing approximately 3 to 4 times a week. In performing her job duties, claimant utilized a cart that she pushed from room to room. She estimated the cart weighed 60 to 70 pounds. Additionally, she testified she changed oxygen tanks once or twice a week but that activity was predominantly the responsibility of the employer's oxygen technicians.

¶ 5 Claimant described a nebulizer as a cup, mask, or pipe that holds medication. She stated she would put together a nebulizer setup with her hands. When she began working for the

employer, a patient's nebulizer setup had to be changed every day. In approximately 2000 or 2001, nebulizer setups were changed every two or three days. Nebulizer treatments also involved a flowmeter which claimant had to forcibly plug into a wall outlet. She turned the equipment on using a twisting motion. Claimant connected extension tubing from the flowmeter to the patient's nebulizer. The nebulizer was put on the patient and covered his or her nose and mouth. Claimant was then required to pour medication into the nebulizer. She twisted lids off medication jars and used a syringe to suck up the medicine. Claimant also made handwritten or typewritten notes regarding the patient's condition. Following each treatment, claimant turned off her equipment using a twisting motion and had to "pop it back out of the wall." Claimant testified nebulizer treatments took approximately 10 to 13 minutes. She agreed that about 8 to 10 minutes of each treatment involved observing and monitoring the patient. However, she testified she was also writing and recording information.

¶ 6 Incentive spirometry tests involved putting together a device from which a patient would take deep breaths. Claimant described the device as "a little plastic tube type thing with a hose on it." She stated she was required to twist the hose on the device. Claimant described percussion therapy as using her hands to clap on the sides of a patient's ribs to help move fluid to the main airway so the patient could cough it up. Percussion therapy lasted approximately five minutes on each side.

¶ 7 When assisting a patient with an inhaler, claimant put the inhaler together by hand but no twisting was required. Walking oximetries testing involved walking with a patient and using an oximeter to test his or her oxygen level. Claimant stated oximeters weighed 5 to 10 pounds and she held it in her hand while the patient walked. Following the testing, claimant wrote out a

report by hand. Finally, claimant described performing arterial blood gases as taking a syringe, drawing blood from an artery in a patient's wrist, and running the blood through a machine. That particular job duty lasted about five minutes and required her to type and record patient information.

¶ 8 On cross-examination, claimant agreed that, initially, she predominantly performed nebulizer treatments while working for the employer. However, in July 2007, her job duties changed and she began performing pulmonary function tests. She stated each pulmonary function test lasts approximately one hour and during the course of a shift she would see about five patients. In performing those tests, claimant initially met with a patient and typed patient information into a computer. For the remainder of the testing period, claimant verbally coached the patient through various tests. She stated she was still required to give each patient a nebulizer treatment. Claimant only used a twisting motion to turn on the flowmeter which she did approximately five times per day.

¶ 9 In approximately 2002, claimant began experiencing tingling in her hands. Her condition worsened when she tried to hold on to something and after a few minutes she would be unable to feel her hands. Using pressure to plug her equipment into the wall outlet also worsened her symptoms. She did not seek medical treatment until 2007.

¶ 10 On September 21, 2007, claimant saw Dr. Charisse Barta. She reported having difficulty with numbness in her hands for the last few years. Claimant described stinging and numbness in her hands all the time but stated it worsened when she used her hands for gripping or driving, or when she was sleeping. Dr. Barta noted claimant had to change hands while working due to numbness. Dr. Barta suspected carpal tunnel syndrome and recommended nerve conduction

studies of both upper extremities. On September 24, 2007, the recommended testing was performed and revealed results "consistent with a clinical diagnosis of moderately severe carpal tunnel syndrome worse on the left than the right."

¶ 11 On November 15, 2007, claimant saw Dr. Christopher Heffner, a neurological surgeon, pursuant to a referral from Dr. Barta. Claimant reported experiencing progressive pain and numbness in her hands for several years. Dr. Heffner noted she was a respiratory therapist, performing 30 to 40 breathing treatments per day, and had "gotten to the point where she cannot tighten and loosen the oxygen tanks easily and has a large amount of pain throughout the day trying to work." Dr. Heffner's impression was bilateral carpal tunnel syndrome that was worse on the left. He recommended bilateral carpal tunnel release surgery which claimant underwent on January 2 and 16, 2008. Claimant testified her condition improved following surgery and, at the time of arbitration, she felt "perfect."

¶ 12 At arbitration, claimant presented Dr. Heffner's deposition. Regarding causal connection, Dr. Heffner opined "there may be a relationship" between claimant's work activity and her carpal tunnel syndrome, stating claimant described repetitive activities of performing 30 to 40 breathing treatments per day and loosening and tightening oxygen tanks. He stated "that activity performed multiple times on a daily basis could contribute to carpal tunnel syndrome." Dr. Heffner testified carpal tunnel syndrome could develop from the normal daily activities of life or from using a computer keyboard or mouse. He stated the condition could also develop spontaneously without requiring a specific cause or from multiple causes.

¶ 13 Dr. Heffner testified he was familiar "to some extent" with the work of a respiratory therapist. He acknowledged it was "probably correct" that a therapist was not performing any

active hand motion during 10 to 13 minutes of a breathing treatment and that the therapist spent the majority of the treatment monitoring the patient. Dr. Heffner stated that turning an oxygen tank or control on and off would be the actual portion of the treatment that would cause or contribute to carpal tunnel syndrome. He stated there might also be repetitive motion involved in placing medication into the equipment but he was unsure.

¶ 14 On cross-examination, Dr. Heffner was questioned as to how he could give a causal connection opinion if he was unsure of information related to claimant's job duties. He responded as follows:

> "The only reason that I said that was her statement to me of performing 30 to 40 treatments a day that involve opening and shutting the valves on oxygen tanks as well as oxygen switches on the wall *** and that she has noticed specifically that those activities are very painful for her hands and difficult to do."

In response to a hypothetical question about claimant's work for the employer, he further stated as follows:

> "Well, I think the main function that she described to me as part of her job that I would feel contributes to carpal tunnel syndrome would be the turning on and off of the oxygen tanks. And if that is only a very rare component of her job then I would have a harder time connecting her job activity to the carpal tunnel."

Also on cross-examination, he restated that a causal connection to employment would be unlikely "if turning on and off an oxygen tank, which does require some effort at the wrist, [was] not a significant component of [claimant's] job."

¶ 15 At arbitration, the employer presented the testimony of Michael Urban, its director of

respiratory and sleep services and one of claimant's supervisors. Urban testified he was asked by the employer's human resources department to fill out a physical demand form for the position of respiratory therapist. Urban stated he had never filled out such forms before and did the best he could. He reported to his contact in the human resources department, an individual named Robin, that he was not "feeling comfortable" about the form. Specifically, Urban testified he was uncomfortable with the portion of the form that dealt with "repetitive motion actions" and "was really confused about what a real repetition was and what counted." The employer submitted the form Urban filled out, showing he reported that claimant's job required five to six hours of repetitive use of both hands, five to six hours of simple grasping in both hands, and one to two hours of firm grasping in both hands.

¶ 16 At the recommendation of human resources, Urban filled out a second form. He believed he was asked to fill out a second form because he "didn't feel good about [his] first answers" and because Robin thought he had not done a very good job with the first form. Regarding the definition of repetitive, Urban stated he "was led to believe that repetitive means boom, boom, boom, pounding, pounding, pounding." He testified as follows:

> "I needed a better understanding of what repetitive meant and so I was led to – I believe and I still believe from that meeting that it's got to be, you know, what is repetitive, once an hour, twice an hour or significant repetitiveness."

Urban stated he was comfortable with his answers on the second form. Urban's second form was also submitted at arbitration, showing he reported claimant performed zero hours of repetitive use of her hands or simple or firm grasping.

¶ 17 Urban testified claimant worked as a respiratory therapist. He described her job duties as

taking care of patients on breathing machines and providing medicated and non-medicated therapy treatments to patients. Urban stated nebulizer treatments involved plugging a tube into a cup and demonstrated the process using equipment he brought with him. He agreed it took "two twists to put the cup on" and stated it took less than 15 second to put the nebulizer equipment together. Urban recalled that, in 2007, they replaced a patient's nebulizer equipment every third day so a therapist would not necessarily have to reassemble the equipment for every treatment. He also noted that the therapist would have to turn on the flowmeter. Urban agreed that, in 2007, respiratory therapists performed manual percussion therapy on patients. He stated the therapist would cup their hands and use a little pressure. A treatment would last five to seven minutes with some breaks.

¶ 18 The employer also presented the deposition of Dr. David Brown, a board certified hand surgeon. On January 29, 2008, Dr. Brown saw claimant who reported she was a respiratory therapist and estimated that she performed 30 to 40 breathing treatments per day. Dr. Brown testified claimant described pushing and pulling a flowmeter out of a wall, twisting bottles open, pouring medication in the nebulizer cup, closing the cup, turning on the flowmeter, pushing a cart, entering information into a computer, performing chest percussion therapy, drawing blood, checking arterial blood gases, and doing pulmonary function tests. Regarding causal connection, Dr. Brown stated the occupation of respiratory therapist is generally not one he considered to be linked with repetitive motion disorders or carpal tunnel syndrome. He did not consider that job as being one which would put someone at an increased risk for a repetitive motion type of disorder. Dr. Brown stated as follows:

"[I]n general, my experience and my understanding of this job, this is not a hand-

intensive, repetitive type of job where you're doing repetitive motions for sustained periods of time. Activities vary. They are different throughout the day. There is significant rest intervals between the activities."

Dr. Brown could not recall ever treating a respiratory therapist for carpal tunnel syndrome in his 11 years of practice.

¶ 19 Dr. Brown testified, however, that he initially received a job description from claimant's supervisor that indicated claimant had a repetitive job. He noted the description indicated repetitive use of both of claimant's hands for five to six hours per day, grasping for five to six hours per day, and firm grasping for one to two hours per day. He stated he was surprised by that information but, based on that description, opined it was possible that claimant's work for the employer may have contributed to her carpal tunnel syndrome. Later, Dr. Brown received a second description regarding the physical demands of claimant's job, showing zero hours of repetitive hand use, simple grasping, or firm grasping. Based upon that description, which showed no repetitive motion, Dr. Brown opined claimant's work would not be a contributing factor to her carpal tunnel syndrome.

¶ 20 On cross-examination, Dr. Brown testified he found claimant had two non-occupational risk factors for the development of carpal tunnel syndrome: (1) that she was a woman and (2) she was in her 40s. He stated that claimant's description of her job duties was in line with his experience in working with respiratory therapists. Dr. Brown did not believe claimant described a repetitive-motion type of job and testified her description of her job duties was not inconsistent with the second job description he received. Further, he testified his interpretation of repetitive was "doing the same activity time and time again in a short interval of time with minimal or no

rest periods." Dr. Brown stated that definition was not consistent with what claimant described to him regarding her job duties.

¶ 21 On April 3, 2009, the arbitrator's decision was filed. She determined claimant did not sustain injuries that arose out of and in the course of her employment and failed to prove her condition of ill-being was causally related to her work duties. She noted Dr. Heffner's causal connection opinion was based upon his belief that claimant was frequently required to turn oxygen tanks off and on and he agreed that, if such activities were not a significant component of her job, it would be unlikely that her job was a contributing factor to her carpal tunnel syndrome. The arbitrator found it "undisputed that changing oxygen tanks and turning oxygen tanks off and on is not a significant component of [claimant's] job duties." She further found that evidence showed it only took claimant a quarter turn to turn the flowmeter on or off.

¶ 22 On June 2, 2010, the Commission affirmed and adopted the arbitrator's decision without further comment. On December 6, 2011, the circuit court of St. Clair County confirmed the Commission's decision.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, claimant argues the Commission's causal connection finding was against the manifest weight of the evidence. She argues her testimony and that of Dr. Heffner established that her work for the employer as a respiratory therapist between 1996 and 2007 was at least a causative factor of her bilateral carpal tunnel syndrome.

¶ 26 "Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight

of the evidence." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009). "In resolving questions of fact, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence." *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081. "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081. On review, the Commission's decision will not be set aside where the record contains sufficient factual evidence to support its determination. *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081.

¶ 27 "A claimant bears the burden of proof to establish the elements of his right to compensation." *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1202, 734 N.E.2d 900, 904 (2000). " 'In cases relying on the repetitive-trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability.' " *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081 (quoting *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209, 614 N.E.2d 177, 180 (1993)). Here, the medical evidence supported the Commission's decision and its denial of benefits was not against the manifest weight of the evidence.

¶ 28 The record shows Dr. Heffner opined claimant's work for the employer could have been a causative factor of her condition of ill-being. His opinion was based upon a description of claimant's job duties that involved performing 30 to 40 breathing treatments a day and loosening and tightening oxygen tanks. Dr. Heffner clarified that "the main function that [claimant] described" which he felt contributed to her carpal tunnel syndrome was "the turning on and off of

the oxygen tanks." However, he acknowledged that, if that activity was a rare component of her job, he "would have a harder time connecting her job activity to the carpal tunnel." As the arbitrator pointed out, the evidence presented failed to show the turning on and off of oxygen tanks was a significant part of claimant's job duties.

¶ 29 On appeal, claimant argues that "what Dr. Heffner calls 'turning off and on the oxygen tank' [was] in reality what [claimant] describes as 'popping the nebulizer into and out of the wall.' " However, even assuming her argument is correct, the record casts doubt upon Dr. Heffner's credibility by showing his lack of familiarity with the job duties of a respiratory therapist in general and claimant's job duties in particular. Neither Dr. Heffner's records nor his testimony set forth a detailed description of claimant's work activities. In referring to her job duties, he stated only that she performed 30 to 40 breathing treatments a day and loosened and tightened oxygen tanks. During his deposition, Dr. Heffner admitted he was only familiar with a respiratory therapist's job duties "to some extent." Additionally, in her brief on appeal, even claimant acknowledges Dr. Heffner "was not very familiar with the specific aspects of [claimant's] job as a respiratory therapist." Dr. Heffner's lack of knowledge regarding claimant's job duties calls into question his causation opinion which linked claimant's injury to her employment.

¶ 30 Unlike Dr. Heffner, Dr. Brown provided a detailed statement of claimant's job duties during his deposition. Significantly, Dr. Brown's description of claimant's duties was similar to, and consistent with, the detailed description claimant provided at arbitration. Dr. Brown testified claimant's description of her job duties was in line with his own experience in working with respiratory therapists. He did not believe claimant described a job involving repetitive motion and which could be linked with the development of carpal tunnel syndrome. He defined

repetitive as "doing the same activity time and time again in a short interval of time with minimal or no rest periods" and did not find claimant's job to be "a hand-intensive, repetitive type of job where you're doing repetitive motions for sustained periods of time." Dr. Brown noted a respiratory therapist's activities varied throughout the day and there were significant rest intervals between activities.

¶ 31 On appeal, claimant points out that Dr. Brown relied upon the physical demand forms completed by Urban, claimant's supervisor, and notes those forms contained drastically different information regarding claimant's job duties. Although the record shows Dr. Brown considered that information and rendered different opinions based upon each form, it also shows he was surprised by the information in Urban's first form, showing significant repetitive use of claimant's hands, and found it inconsistent with his understanding of claimant's job requirements. The record further supports the finding that, ultimately, Dr. Brown relied upon the description of job activities claimant provided when rendering his opinions and finding her job did not involve repetitive motion activities.

¶ 32 Here, the medical opinion evidence supports the Commission's decision. Its determination that claimant failed to meet her burden of establishing a right to benefits under the Act was not against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

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

¶ 35 Affirmed.