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2014 IL App (5th) 130145WC-U

FILED: April 24, 2014

NO. 5-13-0145WC

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

SOUTHERN ILLINOIS MEDICAL SERVICES,)	Appeal from the
)	Circuit Court of
Appellant,)	Williamson County.
)	
v.)	No. 12-MR-152
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Physician's Surgery Center and)	Brad K. Bleyer,
Amber Shirley, Appellees).)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.

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

ORDER

¶ 1 *Held:* (1) The Commission's finding that January 6, 2009, was the manifestation date of claimant's repetitive-trauma injuries was not against the manifest weight of the evidence and (2) the Commission's finding that claimant proved she sustained a left shoulder injury arising out of and in the course of her employment was not against the manifest weight of the evidence.

¶ 2 On November 16, 2010, claimant, Amber Shirley, filed an application for adjustment of claim (No. 10-WC-044379) pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1

through 30 (West 2008)), seeking benefits from her employer, Physician's Surgery Center (PSC), for repetitive-trauma injuries suffered to her right and left arms, elbows, and hands on May 21, 2009. On February 28, 2011, claimant filed an application for adjustment of claim (No. 11-WC-007357) pursuant to the Act, seeking benefits from her employer, Southern Illinois Medical Services (SIMS), for repetitive-trauma injuries suffered to her right and left arms, elbows, and hands on January 6, 2009.

¶ 3 Following a consolidated hearing, the arbitrator found claimant proved she sustained repetitive-trauma injuries arising out of and in the course of her employment with PSC (No. 10-WC-044379), manifesting on May 21, 2009. The arbitrator awarded claimant benefits, including temporary total disability (TTD) benefits and medical expenses. The arbitrator denied all remaining claims. PSC sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On June 25, 2012, the Commission issued an order modifying the arbitrator's decision, finding claimant proved she sustained repetitive-trauma injuries arising out of and in the course of her employment with SIMS (No. 11-WC-007357), manifesting on January 6, 2009, and not May 21, 2009. Accordingly, the Commission awarded claimant benefits in case No. 11-WC-007357, and not in case No. 10-WC-044379. The Commission otherwise affirmed the arbitrator's decision. Thereafter, SIMS filed a petition seeking judicial review in the circuit court of Williamson County and the circuit court confirmed the Commission's decision.

¶ 4 SIMS appeals, arguing the Commission erred in determining the manifestation date of claimant's injuries was January 6, 2009. Claimant appeals, arguing the Commission should have found the manifestation date was May 21, 2009, the accident date she alleged on her application for adjustment of claim filed on November 16, 2010 (No. 10-WC-044379). SIMS also

challenges the Commission's causation finding and award of medical expenses with respect to claimant's left shoulder injury. For the reasons which follow, we affirm.

¶ 5

I. BACKGROUND

¶ 6 As an initial matter, claimant filed eight applications for adjustment of claim pursuant to the Act, seeking benefits from two employers, SIMS and PSC. Claimant alleged multiple accident dates including the two dates at issue here, January 6, 2009 (No. 11-WC-007357), and May 21, 2009 (No. 10-WC-044379). Claimant withdrew four of the applications before the start of the arbitration hearing on March 10, 2011. The two applications alleging accident dates of April 10, 2009 (10-WC-034622), and April 17, 2009 (10-WC-034623), were dismissed by the arbitrator following the arbitration hearing and are not at issue on appeal.

¶ 7 The following factual recitation is taken from the evidence presented at the arbitration hearing on March 10, 2011.

¶ 8 The 31-year-old claimant testified she began work as a certified nursing assistant for SIMS in December 2004. In approximately June 2007, claimant began work as an endoscopy technician, continuing in her employment with SIMS. As an endoscopy technician, claimant assisted a physician with esophagogastro-duodenoscopies (EGDs) and colonoscopies. Claimant assisted in 8 to 10 procedures each work day, with each procedure lasting 45 minutes to 90 minutes. Claimant reported using much of her upper body strength throughout each procedure to properly position the scope. During each procedure, claimant repositioned patients weighing up to 300 hundred pounds 5 to 10 times, placing force and strain on claimant's upper body. Following each procedure, claimant cleaned the scope by pushing fluid through the scope. Claimant reported "a lot of resistance and a lot of pressure trying to push [the fluid] through" each scope.

¶ 9 Claimant testified she began experiencing cramping in her arms and pain in her left shoulder while working as an endoscopy technician. Claimant believed she experienced left shoulder pain because she reached over patients with her left arm placing pressure on the patients' abdomens, and holding that position for up to 45 minutes. Some patients were very large and claimant strained to reach over the patient. Claimant is 5 feet 3 inches tall, and weighs 130 pounds.

¶ 10 Claimant's pain did not resolve and in November 2008, and in December 2008, claimant discussed her symptoms with her manager, Susan Hankins. Claimant reported shoulder pain and difficulty grabbing the scopes. Claimant completed an incident report with the human resources department but the report was lost. Claimant believed the incident report was a part of the workers' compensation process. Claimant advised Hankins again on January 6, 2009, she continued to experience arm pain and left shoulder pain. Claimant detailed the problems she was having running the scopes. Claimant testified by January 6, 2009, she could not do certain things anymore and acknowledged her need for medical treatment. Claimant advised Hankins she believed her problems were associated with her work.

¶ 11 Claimant remained in her employment with SIMS through the end of business on Friday, March 20, 2009. Claimant returned to work on Monday, March 23, 2009, as an employee of PSC.

¶ 12 On April 10, 2009, claimant sought treatment with Bianca Bottiaux, a physician's assistant. Claimant complained of shoulder and hand pain radiating to the elbow and aggravated by lifting. Bottiaux referred claimant for a bilateral upper extremity nerve conduction study and orthopedic consultation.

¶ 13 Claimant underwent a nerve conduction study on April 17, 2009. Claimant complained

of pain involving her elbows and tingling involving her fourth and fifth fingers of both hands for one year. The nerve conduction study revealed mild bilateral ulnar neuropathy at the elbow.

¶ 14 On May 21, 2009, claimant was evaluated by Dr. Treg Brown, a board certified orthopedic surgeon. Claimant complained of bilateral elbow pain with numbness and tingling, and left shoulder pain. Dr. Brown recorded the following history:

"The patient states this started about a year ago. She was working at the Physicians Surgery Center. She was transferred to start caring for patients in the GI clinic. This requires quite a bit of lifting, pushing, pulling, and rolling patients, as well as constant use of the arms. She states she noticed an insidious onset of a left shoulder pain mainly with pushing and pulling activities. She also noticed that she was hav[ing] some numbness and tingling affecting the fourth and fifth fingers of both arms. She fought this for about a year. She continued to do her normal activities but states overall, it became quite miserable."

¶ 15 Dr. Brown recorded an impression of bilateral cubital tunnel syndrome, left shoulder pain suspected, anterior instability, and impingement syndrome. He believed it likely "these injuries and pain syndromes are related to her work duty." Dr. Brown recommended claimant undergo a course of physical therapy "with the diagnosis of impingement syndrome and anterior instability for the left shoulder." Further, he recommended claimant see an occupational therapist for bilateral ulnar nerve or bilateral cubital tunnel syndromes. He explained if claimant failed to improve with physical therapy, she would need an MR arthrogram to evaluate the labrum and internal structures of the shoulder. Dr. Brown placed claimant on light-duty status with a 10-pound lifting restriction and no repetitive pushing, pulling, or overhead activities. He advised claimant should return in six weeks for follow-up.

¶ 16 Claimant returned to Dr. Brown on July 2, 2009. Claimant had not experienced significant improvement with physical therapy but reported improvement when her office closed for two weeks and she was not pushing or pulling patients. Dr. Brown recommended continued rehabilitation of the left shoulder but stated if her symptoms regarding cubital tunnel syndrome did not improve "over the next few weeks", claimant should begin considering ulnar nerve transpositions. Claimant was not receptive to the thought of surgery but Dr. Brown expressed concern claimant may have permanent nerve damage if she did not address the problem. Dr. Brown continued with conservative treatment.

¶ 17 Claimant returned to Dr. Brown on October 20, 2009, reporting she had been diligent performing home exercises without improvement in her shoulder pain and continued to experience persistent symptoms in her elbows. Dr. Brown recommended ulnar nerve transposition, beginning with the left elbow, and an MR arthrogram of the left shoulder "to better evaluate her for a possible biceps tendon injury versus SLAP [(Superior Labrum from Anterior to Posterior)] lesion."

¶ 18 Claimant returned to Dr. Brown on April 21, 2010, reporting she was unable to move forward with his recommendations because her employer changed its workers' compensation insurance carrier and her file had been lost. Claimant worked to "re-initiate" her workers' compensation claim. Dr. Brown recorded a history of bilateral cubital tunnel syndrome and a left shoulder suspected SLAP. He noted claimant would proceed with an MR arthrogram of the left shoulder.

¶ 19 On May 6, 2010, claimant returned to Dr. Brown who reviewed the MR arthrogram. The MR arthrogram showed increased base and axillary recess and possible inferior glenohumeral ligament injury. Dr. Brown noted no labral pathology but mild tendonitis of the rotator cuff. Dr.

Brown recommended claimant return to a home exercise program for four to six months and claimant agreed to pursue therapy.

¶ 20 Claimant did not improve and, on November 29, 2010, she underwent an open ulnar nerve transposition of the left elbow and a diagnostic arthroscopy with rotator interval closure of the left shoulder. On January 24, 2011, claimant underwent a right ulnar nerve transposition.

¶ 21 Claimant returned to Dr. Brown on February 8, 2011. Claimant reported she "was very happy with her progress at this point." Her numbness and tingling symptoms were gone and her range of motion was nearly restored. Dr. Brown recommended claimant continue physical therapy for the left shoulder, working toward a home exercise program, and begin physical therapy for the elbow. Dr. Brown returned claimant to light-duty work.

¶ 22 Upon examination by Dr. Brown on March 9, 2011, claimant experienced full range of motion with flexion, extension, pronation, and supination; good strength against resistance; and good radial antecubital pulses. Accordingly, Dr. Brown released claimant to full-duty work and found she was at maximum medical improvement.

¶ 23 Susan Hankins testified at the arbitration hearing she is the director of nursing for PSC, and was formerly the director of nursing for SIMS. Claimant advised Hankins in approximately October 2008, she was experiencing shoulder and arm pain associated with her work. Claimant completed a work incident report in December 2008. Claimant submitted the report to the human resources manager but the report could not be found.

¶ 24 On January 6, 2009, claimant again complained to Hankins of arm and shoulder pain associated with her work. Hankins characterized claimant as a nice, honest person and a hard worker. Hankins testified claimant's injury was one she had seen before with other employees in the same position claimant held. She described claimant's work as hand and arm intensive.

¶ 25 SIMS requested claimant be examined by Dr. Mitchell Rotman, a board certified orthopedic surgeon, on July 26, 2010. Dr. Rotman opined claimant had no injury to her left shoulder and required no further treatment with regard to her left shoulder. Dr. Rotman believed claimant suffered only an "irritability of her left cubital tunnel[,] more so than the right," noting claimant's nerve studies showed at best borderline findings for cubital tunnel. Dr. Rotman could not see a relationship between claimant's work activities and her bilateral cubital tunnel condition.

¶ 26 Following the hearing, the arbitrator found claimant sustained repetitive-trauma injuries to her elbows and left shoulder while working for PSC. The arbitrator found claimant's injuries manifested on May 21, 2009, the date Dr. Brown provided claimant a definitive diagnosis and advised claimant her condition was work-related. The arbitrator awarded claimant benefits in case No. 10-WC-044379, including TTD benefits and medical expenses. The arbitrator denied all remaining claims.

¶ 27 PSC sought review of the arbitrator's decision before the Commission, arguing the manifestation date was not May 21, 2009, but January 6, 2009, while claimant worked for SIMS. In response, claimant argued the arbitrator's decision should be affirmed in its entirety; and SIMS argued the arbitrator correctly found the manifestation date was May 21, 2009, but erred in finding claimant suffered a left shoulder injury.

¶ 28 In an order entered June 25, 2012, the Commission modified the arbitrator's decision, finding claimant proved she sustained repetitive-trauma injuries arising out of and in the course of her employment with SIMS, manifesting on January 6, 2009, and not May 21, 2009. The Commission relied on the testimony of claimant and Hankins, finding "the alleged condition and work-relatedness was plainly apparent to [claimant] on January 6, 2009." Accordingly, the

Commission awarded claimant benefits in case No. 11-WC-007357, and not in case No. 10-WC-044379. The Commission otherwise affirmed the arbitrator's decision.

¶ 29 Thereafter, SIMS filed a petition seeking judicial review in the circuit court of Williamson County and the circuit court confirmed the Commission's decision. This appeal followed.

¶ 30

II. ANALYSIS

¶ 31 SIMS argues the Commission erred in determining the manifestation date of claimant's injuries was January 6, 2009. Claimant argues the Commission should have found the manifestation date was May 21, 2009, the accident date she alleged on her application for adjustment of claim filed on November 16, 2010 (No. 10-WC-044379).

¶ 32 A reviewing court will set aside the Commission's decision only if its decision is contrary to law or its fact determinations are against the manifest weight of the evidence. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. The Commission's decision is not against the manifest weight of the evidence when there is sufficient evidence in the record to support the Commission's determination. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010).

¶ 33 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*, 224 Ill. 2d at 64, 862 N.E.2d at 924. The employee must identify a manifestation date which is 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. *Durand*, 224 Ill. 2d at 65, 862 N.E.2d at 924. "The test of when an injury manifests itself is an objective one, determined from the facts and circumstances of each case." *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 47, 556 N.E.2d 261, 264 (1989). Determining the manifestation date is a fact determination for the Commission. *Durand*, 224 Ill. 2d at 65, 862 N.E.2d at 925. Fact determinations are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924.

¶ 34 In deciding the manifestation date of a repetitive-trauma injury, courts consider various factors, including the dates on which (1) the claimant first sought medical attention for the condition, (2) the claimant was first informed by a physician that the condition is work-related, (3) the claimant was first unable to work as a result of the condition, (4) the symptoms became more acute at work, and (5) the claimant first noticed the symptoms of the condition. See *Durand*, 224 Ill. 2d at 68-70, 862 N.E.2d at 926-27 (citing *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531, 505 N.E.2d 1026, 1029 (1987); *Three "D" Discount Store*, 198 Ill. App. 3d at 47-48, 556 N.E.2d at 266-65; and *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607, 611-12, 531 N.E.2d 174, 176-77 (1988)). "[F]airness and flexibility are the common themes in these cases." *Durand*, 224 Ill. 2d at 71, 862 N.E.2d at 928. "[T]he Commission should weigh many factors in deciding when a repetitive-trauma injury manifests itself," accommodating the many unique scenarios presented in different cases. *Durand*, 224 Ill. 2d at 71, 862 N.E.2d at 928.

¶ 35 SIMS argues claimant's repetitive-trauma injury did not manifest itself until April 10, 2009 (the date claimant sought medical treatment with Bottiaux), or May 21, 2009 (the date claimant "received an official diagnosis" and medical opinion regarding causation), or November

29, 2010 (the date claimant underwent surgery and could not perform her work duties). SIMS concedes a formal diagnosis is not required. See *Durand*, 224 Ill. 2d at 72, 862 N.E.2d at 929 ("The manifestation date is not the date on which the injury and its causal link to work became plainly apparent to a reasonable physician, but the date on which it became plainly apparent to a reasonable employee.").

¶ 36 In the instant case, the Commission examined the evidence and determined the manifestation date of claimant's repetitive-trauma injury was January 6, 2009. Claimant alleged an accident date of January 6, 2009, on her application for adjustment of claim filed on February 28, 2011 (No. 11-WC-007357). Claimant testified she began work as an endoscopy technician (for SIMS) in approximately June 2007. While working as an endoscopy technician, claimant began experiencing cramping in her arms and pain in her left shoulder that did not resolve. Claimant discussed her symptoms with Hankins in November 2008, and December 2008. Claimant reported shoulder pain and difficulty grabbing the scopes. Claimant thought her symptoms could be related to her work and completed an incident report with the human resources department. Claimant advised Hankins again on January 6, 2009, she continued to experience arm pain and left shoulder pain. Claimant detailed the problems she was having running the scopes. Claimant testified by January 6, 2009, she could not do certain things anymore and acknowledged her need for medical treatment. Claimant advised Hankins she believed her problems were associated with her work.

¶ 37 On April 10, 2009, claimant sought treatment with Bottiaux complaining of shoulder and hand pain radiating to the elbow and aggravated by lifting. On April 17, 2009, claimant underwent a nerve conduction study, complaining of pain involving her elbows and tingling involving her fourth and fifth fingers of both hands, for one year. On May 21, 2009, claimant

sought treatment with Dr. Brown. Claimant complained of bilateral elbow pain with numbness and tingling, and left shoulder pain, beginning one year earlier when claimant was transferred to a position requiring "quite a bit of lifting, pushing, pulling, and rolling patients, as well as constant use of the arms." Claimant advised Dr. Brown she fought her pain for approximately one year, continuing with her normal activities, but becoming quite miserable. Dr. Brown recorded an impression of bilateral cubital tunnel syndrome, left shoulder pain suspected, anterior instability, and impingement syndrome. He believed it likely "these injuries and pain syndromes are related to her work duty." Immediately following her consultation with Dr. Brown, claimant spoke with a supervisor and completed workers' compensation "paperwork".

¶ 38 Based on this evidence, the Commission could have reasonably concluded claimant suffered from a progressive, work-related condition which became worse over time and which began to have a greater impact on her work performance by January 6, 2009, when claimant determined she required medical treatment. There is sufficient evidence in the record to support the Commission's finding that the manifestation date of claimant's injuries was January 6, 2009; therefore, the Commission's decision is not against the manifest weight of the evidence.

¶ 39 Next, SIMS challenges the Commission's causation finding and award of medical expenses with respect to claimant's left shoulder injury. PSC purports to adopt SIMS's argument in this regard, but also requests this court "enter an order affirming the Commission's decision in its entirety."

¶ 40 The employee has the burden of establishing a causal relationship between her injury and employment. *Levkovtitz v. Industrial Comm'n*, 256 Ill. App. 3d 1075, 1082, 628 N.E.2d 824, 828 (1993). A gradual injury stemming from repeated trauma is compensable under the Act as long as the employee establishes that the injury is work-related and not the result of a normal

degenerative process. *Zion–Benton Township High School District 126 v. Industrial Comm'n*, 242 Ill. App. 3d 109, 113, 609 N.E.2d 974, 978 (1993). The employee need only prove some act or phase of employment was a causative factor of the resulting injury. *Three "D" Discount Store*, 198 Ill. App. 3d at 49, 556 N.E.2d at 265. Issues of causation present questions of fact. *Global Products v. Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 411, 911 N.E.2d 1042, 1046 (2009). It is the function of the Commission to resolve disputed questions of fact, including those related to causal connection, to draw permissible inferences from the evidence, and to decide which of the conflicting medical views to adopt. *Levkovitz*, 256 Ill. App. 3d at 1082, 628 N.E.2d at 828. We review the Commission's finding on causation under the manifest-weight-of-the-evidence standard of review. *Global Products*, 392 Ill. App. 3d at 411, 911 N.E.2d at 1046. As noted above, a decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924.

¶ 41 In this case, there was conflicting evidence regarding whether claimant's cubital tunnel syndrome and left shoulder injury were related to her employment. Dr. Brown opined claimant's "injuries and pain syndromes are related to her work duty." Dr. Rotman reached the opposite conclusion. Ultimately, the Commission, in adopting the causation finding of the arbitrator, concluded claimant's bilateral cubital-tunnel syndrome and left shoulder injury were causally connected to her work as an endoscopy technician. The Commission found the opinion of Dr. Brown more persuasive than the opinion of Dr. Rotman. We cannot say the Commission's finding in this regard is against the manifest weight of the evidence.

¶ 42 SIMS concedes, contrary to Dr. Rotman's opinion, claimant's cubital tunnel syndrome was related to her employment. SIMS points to Hankins's testimony that claimant's work was hand and arm intensive and, therefore, this court should affirm the Commission's finding

regarding claimant's cubital tunnel syndrome. Nevertheless, SIMS discounts any link between claimant's left shoulder injury and her employment because (1) there was no "definitive diagnosis", (2) Dr. Rotman opined claimant did not have a shoulder injury, and (3) the operative note documenting claimant's diagnostic arthroscopy characterized claimant's left shoulder as normal.

¶ 43 Here, claimant testified she began experiencing pain in her left shoulder while reaching over patients with her left arm and placing pressure on the patients' abdomens and holding that position for up to 45 minutes. Some patients were very large and claimant strained to reach over the patient. Claimant reported her left shoulder pain to Hankins on multiple occasions and completed a work incident report to initiate the workers' compensation process. According to Hankins, claimant's work was hand and arm intensive and others working as an endoscopy technician suffered similar injuries. On April 10, 2009, claimant treated with Bottiaux complaining of shoulder pain. On May 21, 2009, claimant treated with Dr. Brown complaining of left shoulder pain. Dr. Brown recorded an impression of bilateral cubital tunnel syndrome, left shoulder pain suspected, anterior instability, and impingement syndrome. He believed it likely "these injuries and pain syndromes are related to her work duty." Dr. Brown recommended claimant undergo a course of physical therapy "with the diagnosis of impingement syndrome and anterior instability for the left shoulder."

¶ 44 On May 6, 2010, Dr. Brown reviewed claimant's MR arthrogram noting an increased base and axillary recess and possible inferior glenohumeral ligament injury. He diagnosed anterior instability of the left shoulder with mild tendonitis of the rotator cuff. Claimant did not improve and, on November 29, 2010, underwent a diagnostic arthroscopy with rotator interval closure on her left shoulder. In sum, there is sufficient evidence in the record to support the

Commission's causation finding and award of medical expenses with respect to claimant's left shoulder injury. We cannot say a conclusion opposite the one reached by the Commission is clearly apparent. Accordingly, we affirm the Commission's finding that claimant's left shoulder injury is causally related to her employment as an endoscopy technician.

¶ 45

III. CONCLUSION

¶ 46 Based upon the foregoing analysis, we affirm the judgment of the circuit court, which confirmed the Commission's decision.

¶ 47 Affirmed.