2014 IL App (5th) 130285WC-U

FILED: April 24, 2014

NO. 5-13-0285WC

IN THE APPELLATE COURT

OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

FREEBURG COMMUNITY SCHOOL DISTRICT #70, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (James Thoma, Appellee).	)	Appeal from the Circuit Court of St. Clair County. No. 13-MR-8 Honorable Robert B. Haida, 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*: The Commission's finding as to the manifestation date of claimant's repetitive-trauma injuries was not against the manifest weight of the evidence.

¶ 2 On May 2, 2011, claimant, James Thoma, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)), seeking benefits from the employer, Freeburg Community School District #70. He alleged work-related, repetitive-trauma injuries to his hands, elbows, and arms. Following a hearing, the arbitrator determined claimant sustained bilateral carpal tunnel injuries that arose out of and in the course

of his employment on March 28, 2011. She awarded claimant $613.20 in medical expenses and ordered the employer to pay for surgeries recommended by one of claimant's doctors.

¶ 3 On review, 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's decision. The employer appeals, arguing the Commission erred in finding the manifestation date for claimant's repetitive-trauma injuries was March 28, 2011, rather than June 10 or 24, 2010. We affirm and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 At arbitration, claimant testified he worked for the employer, a grade school, as a custodian for 19 to 20 years. He performed maintenance duties that included a lot of heavy lifting, working with hand tools and power tools, plumbing work, and mowing grass and weed eating. Claimant worked 12 months out of the year and 40 hours per week. He testified he last performed work for the employer on August 4, 2010. Claimant stated, in June 2011, he was terminated because the employer could not accommodate his restrictions for a work-related back injury. Claimant testified he did not return to work in any fashion after that date.

¶ 6 Claimant testified he first began to notice problems with his hands and wrists in June 2008. His symptoms included numbness, tingling, weakness, and dropping tools when he worked. Claimant did not seek any treatment for his hands or wrists at that time. In May 2009, he underwent back surgery. Claimant was off work until November 2009, when he returned to work with light-duty work restrictions. He testified his light-duty work for the employer was essentially the same as his normal duties but without the heavy lifting.

¶ 7 On June 10, 2010, claimant began seeing Dr. William Thom for his back injury. At arbitration, the employer presented Dr. Thom's deposition testimony. Dr. Thom testified that, in the course of evaluating claimant, he examined claimant's bilateral elbows and wrists and

diagnosed him with carpal tunnel syndrome. He also recommended nerve conduction studies of claimant's upper extremities to determine whether claimant truly had carpal tunnel or whether his symptoms were "relating to his neck." On June 24, 2010, claimant underwent an EMG nerve conduction study. Dr. Thom interpreted the results of that study and found them consistent with a moderate degree of carpal tunnel syndrome. He discussed possible treatments with claimant, including bracing and injections. However, Dr. Thom testified they did not go forward with treatment at that time, noting claimant was "more concerned about his pain in the thoracic spine and lower extremities."

¶ 8 Dr. Thom testified he and claimant discussed claimant's carpal tunnel diagnoses on two occasions but at no point did they discuss the cause of claimant's condition. Dr. Thom did not believe claimant's carpal tunnel was "foremost in [claimant's] mind at that time" and noted their discussions about that condition were "brief and limited."

¶ 9 Claimant testified he did not really begin seeking treatment for his carpal tunnel syndrome until after he saw Dr. Matthew Gornet, a back surgeon. In January 2011, he informed Dr. Gornet that he had carpal tunnel and Dr. Gornet referred him to Dr. David Brown. On March 28, 2011, claimant began seeing Dr. Brown and provided him with a description of his job duties and the results of his June 2010 nerve conduction study. Following an examination, Dr. Brown opined as follows:

> "Based on [claimant's] job description as a custodian he describes a fairly hand intensive type of job. He had been doing that work since 1991 when he developed symptoms in 2008. Based on that job description I would consider his work activities in part an aggravating and/or contributing factor in the need for treatment for his bilateral carpal tunnel syndrome."

Dr. Brown prescribed claimant medication and recommended wrist splints, which claimant testified did not help. On May 16, 2011, claimant followed up with Dr. Brown, who recommended surgery.

¶ 10 On August 10, 2011, claimant saw Dr. Evan Crandall at the employer's request. Dr. Crandall opined claimant's work for the employer was a causative factor of his carpal tunnel syndrome and determined claimant was a candidate for right and left carpal tunnel releases.

¶ 11 On cross-examination, claimant testified he initially thought the numbness in his upper extremities was related to his back injury. However, in June 2010, Dr. Thom told him he had carpal tunnel and his hand problems were unrelated to his back. The following colloquy occurred between claimant and the employer's counsel:

"Q. So you knew in June of 2010 that your hand problems were not related to your back?

A. Right.

Q. So did you suspect at that time that maybe work had something to do with this?

A. I suspected it could have something to do with it, yes.

Q. And certainly before you saw Dr. Brown you suspected it because you brought this very detailed job description with you to Dr. Brown's office; isn't that correct?

A. Yes.

Q. So you knew before you saw Dr. Brown that–you suspected that your work had something to do with your hands, correct?

A. Yes."

On redirect, claimant further testified as follows:

"Q. [H]ad a doctor ever told you prior to when you saw Dr. Brown on March the 28th of 2011 that your carpal tunnel was related to your work?

A. No.

Q. Okay. And he asked you some questions that you brought a job description with you to Dr. Brown. Why did you do that?

A. Dr. Gornet told me to make a job description so Dr. Brown could see the kind of work activities I had done.

Q. Okay. Counsel asked you some questions at the end of cross that seemed to suggest that you thought this condition was related to your work prior to when you saw Dr. Brown. Is that your testimony?

A. No, I didn't know that it would be work-related, I did not know.

Q. So when is it, [claimant], the first time that you believed there was actually a relationship between your work activities for [the employer] and your carpal tunnel condition?

A. March of 2011."

¶ 12 Claimant clarified that, in June 2010, when Dr. Thom told him he had carpal tunnel, he understood that "it wasn't coming from [his] back." However, he denied that he knew or asked Dr. Thom "what it was coming from."

¶ 13 On January 6, 2012, the arbitrator issued her decision in the matter, finding claimant sustained work-related, bilateral carpal tunnel injuries, which manifested themselves on March 28, 2011. She awarded claimant past medical expenses of $613.20, and ordered the employer to pay for the carpal tunnel surgeries recommended by Dr. Brown. In reaching her decision, the arbitrator determined that, although claimant was made aware of his carpal tunnel syndrome in June 2010, "the first time it became apparent to him the condition was related to his work was

after seeing Dr. Brown on March 28, 2011."

¶ 14 On December 7, 2012, the Commission issued its decision. After considering the employer's "sole issue of date of manifestation," the Commission affirmed and adopted the arbitrator's decision without further comment. It also remanded the matter to the arbitrator pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980), for additional proceedings to determine claimant's entitlement to further compensation, if any. On May 10, 2013, the circuit court of St. Clair County confirmed the Commission's decision.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, the employer argues the Commission's finding that claimant's bilateral carpal tunnel syndrome manifested on March 28, 2011, was contrary to law and against the manifest weight of the evidence. It contends the Commission ignored evidence that claimant suspected his condition was related to his employment in June 2010, when he was originally diagnosed by Dr. Thom and his condition was confirmed through diagnostic testing.

¶ 18 "[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.' " *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 67, 862 N.E.2d 918, 926 (2006) (quoting *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531, 505 N.E.2d 1026, 1029 (1987)). "[T]he Commission should weigh many factors in deciding when a repetitive-trauma injury manifests itself." *Durand*, 224 Ill. 2d at 71, 862 N.E.2d at 928. "[B]ecause repetitive-trauma injuries are progressive, the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the

injury and its relation to work." *Durand*, 224 Ill. 2d at 72, 862 N.E.2d at 929.

¶ 19 "A reviewing court will not reverse the Commission unless its decision is contrary to law [citation] or its fact determinations are against the manifest weight of the evidence." *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. The appropriate manifestation date for a claimant's repetitive-trauma injury is a question of fact 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–that is, when no rational trier of fact could have agreed with the agency." *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. "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.

¶ 20 Here, the record contains sufficient support for the Commission's decision and it is not against the manifest weight of the evidence. Although claimant was aware of the fact of his bilateral carpal tunnel syndrome in June 2010 and had a suspicion it could be work-related, the evidence is sufficient to support the Commission's finding that a causal relationship between his employment and his condition did not become "plainly apparent" until March 28, 2011.

¶ 21 Evidence shows claimant first began noticing carpal tunnel symptoms in 2008, but sought no medical treatment. In June 2010, while undergoing treatment for his back, Dr. Thom diagnosed claimant with bilateral carpal tunnel syndrome. According to Dr. Thom, his carpal tunnel discussions with claimant were "brief and limited" and they did not discuss the cause of claimant's condition. He did not believe claimant's condition was "foremost in [claimant's] mind at that time" and noted claimant was more concerned about his ongoing back condition of ill-being. Claimant underwent diagnostic testing but received no treatment at that time. Further, although claimant performed no work for the employer after August 4, 2010, the record indicates

his inability to work was due to work restrictions related to his back injury and not his bilateral carpal tunnel syndrome. In January 2011, claimant saw Dr. Gornet for his back injury, reported that he had carpal tunnel, and was referred to Dr. Brown. On March 28, 2011, claimant saw Dr. Brown who opined claimant's work for the employer was an aggravating or contributing factor to his bilateral carpal tunnel syndrome. Thereafter, claimant began receiving treatment for his condition.

¶ 22 Given these facts, we cannot say that an opposite conclusion from that of the Commission is clearly apparent. Claimant was diagnosed with bilateral carpal tunnel syndrome while being treated for a back injury that was the focus of his treatment. The record fails to reflect his carpal tunnel syndrome prevented him from performing his job duties or that he received medical care to alleviate his symptoms prior to March 2011, when he began seeing Dr. Brown. The Commission's finding that the manifestation date for claimant's bilateral carpal tunnel syndrome was March 28, 2011, was not against the manifest weight of the evidence.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision and remand the cause for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322.

¶ 25 Affirmed and remanded.