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It's All in the Details: Proving Accident and Causation in a Repetitive Trauma Case

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In a recent Rule 23 decision the Fifth District Appellate Court considered the issues of accident, causation, and the manifest weight standard of review in the context of a repetitive trauma claim. *Holland Trucking v. Illinois Workers Compensation Commission,* 2023 IL App (5th) 220404WC-U involved a truck driver claiming injuries to the person as a whole as a result of driving and repetitive activities while performing dock work. The Arbitrator denied benefits, finding that claimant failed to sustain his burden of proving either an accident arising out of and in the course of his employment or a causal connection between his condition of ill-being and his employment. The Commission reversed the Arbitrator, awarded temporary total disability, medical expenses, and prospective medical treatment consisting of surgery, and remanded the matter for further proceedings. The circuit court confirmed the decision of the Commission. On review before the appellate court, the employer contended that the Commission's findings on accident and causal relationship were against the manifest weight of the evidence.

Background

Claimant was employed by Respondent for 21 years as a truck driver. His duties included driving and dock work. He drove eight to ten hours and performed dock work two to three hours each workday. Claimant testified in detail as to his daily work activities. Those included pre-trip inspection of the vehicle which involved an examination of the truck's lug nuts, tires, lights, etc. Claimant testified that this routine stressed his lower back, as he was constantly bending and reaching. Following inspection, claimant began his route. Claimant testified that constant turning and bending to check mirrors and vibration from the seat stressed his lower back. Upon arriving at his final destination with an empty trailer, he assisted other drivers working the dock.

Claimant testified that the dock work included loading and unloading trailers, restacking and rewrapping fallen freight, pulling up dock plates, and performing "drop and hooks" which involved "dollying the trailers up and down". He testified that he would bend hundreds of times each day performing dock work and that he was constantly turning and twisting, getting on and off of a forklift, entering trailers, and loading and unloading freight.

Claimant testified that some trucks had air ride seats which caused the driver to bounce up and down. He testified that bad seats caused the driver to "bottom out" and hit the frame of the truck when traversing rough roads. He estimated that he bottomed out two to three times per month and that when it occurred, he experienced low back pain, leg numbness, and tingling in his feet.

Claimant testified that he began experiencing numbness in his legs and tingling in his feet in April 2017. He denied previous back injuries or similar symptoms prior to his employment with Holland. He underwent chiropractic treatment with Dr. McCaskill. Surgery was eventually recommended by Dr. Sasso.

On cross-examination, claimant agreed that the truck inspection reports he completed between January 3, 2016 and May 12, 2017 did not reflect any complaints involving problems with truck suspension or defects resulting in seats "bottoming out". Claimant said that over the 21 years he worked for Respondent he reported problems with truck suspension and seats "bottoming out". He could not remember when or how often he made these complaints. He testified that he could have reported a defect or safety concern to his union regarding a truck or seat, but did not do so.

Samuel Hogue, Jr. testified that he is a Field Equipment Process Manager with Holland. He manages the people who handle maintenance for the equipment used by Holland. Hogue testified regarding the protocol used to address equipment issues identified by drivers in their pre or post trip reports. He testified that if there is a problem with a vehicle's seat or suspension the driver should note this on the inspection report, as it would be considered a safety issue. He said that if a seat issue was reported, the seat would be inspected to make sure that there were no air leaks, that the base was not rusted out, and that the cushion was in good shape. He testified that he was familiar with the suspension system in Respondent's trucks.

On cross-examination, Hogue testified that he had never been to the Danville terminal where Petitioner worked and had never seen any of the trucks there. He admitted that older truck seats would expose the driver to vibration and road movement as well as constant moving and bouncing. He said that if a truck did not have a comfortable air ride system, claimant could have written it up and repair would follow.

Dr. McCaskill testified by evidence deposition. He has been a chiropractor for 50 years and specializes in musculoskeletal disorders. Dr. McCaskill testified that a MRI revealed pathology at multiple lumbar levels. He opined that claimant's symptoms were consistent with the MRI. Dr. McCaskill testified that claimant's condition was due to a convergence of multiple factors which included a congenital process predisposing him to disc bulges, degenerative changes, and work activities. He testified that truck drivers have a 50 percent greater incidence of low back pain. He said that any lifting and bending would create further insults to the low back and that cumulative stress to the spine would likely lead to chronic back pain. He testified that claimant's job aggravated his low back condition.

Dr. McCaskill agreed on cross-

examination that claimant did not report any specific accident or event and that claimant suffered from spinal stenosis and degenerative disc disease. He agreed that stenosis is generally congenital and individuals develop degenerative disc disease as they age. He agreed that obesity could contribute to claimant's condition. Dr. McCaskill testified that he would defer to the opinion of a spine surgeon with regard to prospective treatment and would consider deferring to a spine surgeon on the issue of causation.

Dr. Sasso, a board certified orthopedic spine surgeon, testified by evidence deposition. He said that in his 27 years as a surgeon, he has performed over 12,000 surgeries and has treated long haul delivery drivers with low back conditions. Dr. Sasso testified that at their first encounter on October 9, 2017, claimant reported low-back and bilateral leg pain. Diagnosis was bilateral L5 radiculopathy. On October 15, 2018, Dr. Sasso diagnosed L4-5 degenerative spondylolisthesis and stenosis. He offered several options for treatment including continued non-operative treatment, decompression of the L5 nerves, and participation in a clinical trial for "Limaflex".

Dr. Sasso opined that repetitive work as a truck driver contributed to claimant's need for low back surgery. He based his opinion on the fact that claimant's symptoms were exacerbated with work activities as a truck driver. Dr. Sasso said that he did not believe that driving caused claimant's back problems but that it may have exacerbated the underlying condition.

On cross-examination, Dr. Sasso testified that the combination of claimant's age, smoking history, and degenerative disc disease could have caused his low back symptoms regardless of his occupational activities or specific trauma.

Dr. Timothy Van Fleet, a board certified orthopedic surgeon, testified by deposition. Dr. Van Fleet performed a Section 12 examination at the request of Respondent on September 6, 2017. Dr. Van Fleet diagnosed spinal stenosis and degenerative disc disease. Although he recommended an epidural injection, he was not optimistic that it would provide any relief. He opined that claimant would likely eventually need decompression at L4-5 and L5-S1.

Dr. Van Fleet did not find claimant's condition causally related to his employment as claimant did not describe any particular accident or mechanism that created his injury. Dr. Van Fleet said that an individual with degenerative disc disease and claimant's age can become symptomatic absent trauma. Dr. Van Fleet reviewed a job description provided by Holland and spoke with claimant about his job duties. Dr. Van Fleet agreed that under certain conditions, activities could exacerbate a condition such as claimant's. He explained that although the spinal stenosis could be aggravated by bending and twisting, this does not necessarily mean that the bending and twisting caused the condition.

On cross-examination, Dr. Van Fleet testified that the spine can suffer trauma due to repetitive activity and that an individual with spinal stenosis can suffer an aggravation or exacerbation of that condition. He testified that the progression of underlying stenosis can be accelerated due to trauma. He testified that a long haul truck driver participating in the activities set forth in the job description provided by Holland could experience an exacerbation, acceleration, or aggravation of an underlying condition.

Dr. Van Fleet agreed that he did not know the type of seats claimant sat on while driving, how often claimant drove trucks with a bad suspension system, or how much bouncing claimant experienced while driving a truck.

Dr. Van Fleet testified that claimant's work as a long haul driver could have exacerbated the degenerative disc disease. He was unsure whether it was a contributing factor to the spinal stenosis. He agreed that claimant was credible and did not seem to be exaggerating his symptoms. He did not believe that truck driving was a significant contributing factor to claimant's underlying illness. Dr. Van Fleet described claimant as "heavy set…short… and fat." He said these characteristics were a significant contributing factor to claimant's lumbar condition. Dr. Van Fleet testified that claimant could have become symptomatic regardless of his activity.

Appellate Court Analysis

The appellate court began its analysis by noting that an employee who suffers a repetitive trauma injury must meet the same standard of proof as an employee who sustains an injury from a single identifiable event. The court stated that an employee must prove by a preponderance of the evidence all elements necessary to justify an award, and that this includes establishing an accident "arising out of" and "in the course of" the employment. The court noted that in a repetitive-trauma injury, the employee must identify a date within the limitations period on which the injury manifested itself. A repetitive-trauma injury is said to have manifested itself on the date on which both the fact of the injury and the causal relationship of the injury to the employment would have become plainly apparent to a reasonable person. The court stated that the employee must also prove that the injury had an origin in some risk connected with or incidental to the employment.

The court noted that the employee must establish the existence of a causal relationship between the current condition of ill-being and employment. The court stated that an occupational accident need not be the sole or principal causative factor in the resulting condition of ill-being as long as it is a causative factor. The court noted that an employee need only prove that some act or phase of the employment was a causative factor in the resulting injury.

The court next explained that the occurrence of a work related accident and the evidence of causal relationship are issues of fact for the Commission. The court stated that it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded to the evidence, and draw reasonable inferences from the evidence. The court pointed out that the Commission's findings with regard to the medical issues receive heightened deference because of its expertise in the medical arena.

The court stated that Commission decisions are reviewed under the manifest weight of the evidence standard. The court explained that a decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. It said that the test is whether the evidence is sufficient to support the Commission's

findings and not whether the court or any other tribunal might reach an opposite conclusion. In concluding its summary of the law applicable to the case, the court noted that it could affirm the Commission's decision on any basis supported by the record regardless of the Commission's findings or its reasoning.

The court said that in applying the deferential standard to the issues raised on appeal, it could not conclude that the Commission's findings on accident and causation were against the manifest weight of the evidence. Regarding accident, the court stated that the evidence in the record supported the Commission's findings. The court noted that claimant worked as a truck driver for 21 years and that his job involved driving and dock work of eight to nine hours and two to three hours, respectively, each work day. The court noted claimant's testimony that the pre-trip inspection routine stressed his back, that he constantly turned and twisted to check his surroundings while driving and that he experienced vibration with the seats. It noted that Hogue confirmed claimant's testimony that a driver will bounce even in trucks with air ride systems, and that the trucks can "bottom out" if the air level in the seats is not correct. The court also noted claimant's testimony as to the times he bottomed out per month and the symptoms associated with "bottoming out". The court said that given the evidence in the record, it could not state that the Commission's finding of a repetitive injury was against the manifest weight of the evidence.

The court rejected Holland's argument that the lack of any documentation in the claimant's driver inspection reports indicating a rough ride or defective seat was persuasive evidence that there was no association between claimant's work activities and his back problems. The court said that Holland's argument ignored the fact that the claimant had other job duties which required repetitive bending, reaching, turning, and twisting. It noted that Holland did not address these other activities. The court found it significant that although claimant worked for Respondent for 21 years, the inspection reports offered into evidence did not begin until January 3, 2016 and that there were several large gaps in the dates of the inspection reports that were admitted. It also noted that some of the inspection reports submitted were completed by other drivers. Consequently, the court agreed with the Commission that the inspection reports were not conclusive proof that claimant never reported seat or suspension problems, but rather only demonstrated that claimant did not make a complaint regarding seat or suspension problems on the days corresponding with the inspection reports that were in evidence. The court noted that the Commission considered the inspection reports and was at liberty to determine the weight to be given to them.

The court next discussed the basis for concluding that the Commission's finding of causal connection was not against the manifest weight of the evidence. The court pointed out that the Commission was presented with conflicting medical opinions as to whether claimant's low back condition was causally related to his occupation. The court referenced Dr. McCaskill's opinions that the cumulative activity of driving with associated prolonged sitting and dock work involving bending, lifting, and twisting would likely lead to chronic back pain. The court noted Dr. Sasso's opinion that claimant's work as a truck driver did not cause the back problems but rather exacerbated an underlying condition and his explanation that his causation opinion was based on the fact that claimant's symptoms worsened when he was engaged in his duties as a truck driver.

The court pointed out that the Commission did consider Dr. Van Fleet's opinion that claimant's low back condition was not causally related to his employment but was related to congenital canal stenosis and degenerative changes that occurred in the spine over the course of many years. The court stated that given the conflicting medical evidence, it was within the Commission's province to find the opinions of Drs. McCaskill and Sasso were entitled to more weight than those of Dr. Van Fleet. The court noted that Drs. McCaskill and Sasso saw claimant on multiple occasions, that Dr. McCaskill had knowledge of claimant's job duties, and that Dr. Sasso had experience treating long haul delivery drivers who developed low back problems. The court stated that the Commission could properly discount Dr. Van Fleet's opinion because he saw claimant on only one occasion, admitted that claimant's duties could have exacerbated his pre-existing degenerative disc disease, and acknowledged that repetitive trauma can aggravate spinal stenosis. The court said that due to all of these factors, it could not say that an opposite conclusion was clearly apparent or that the Commission's determination was against the manifest weight of the evidence.

The court concluded its opinion by commenting that Holland was essentially asking the court to reweigh the evidence, particularly with regard to the Commission's determination that the opinions of Drs. McCaskill and Sasso were entitled to more weight than the opinions of Dr. Van Fleet. The court reiterated that it is the Commission's function, as the trier of fact, to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded to the evidence, and draw reasonable inferences from the evidence. The court noted that where there is sufficient evidence in the record to support the Commission's findings, it would not reweigh the evidence or substitute its judgment for that of the Commission merely because other reasonable inferences could be drawn from the evidence.

Conclusion

Although the opinion was filed under Supreme Court Rule 23(b) and is therefore not precedent except in the limited circumstances allowed under Rule 23(e)(1), it is a good example of the detailed evidence that must be submitted by the parties in cases involving repetitive trauma, particularly where the claimant and employer have divergent versions of the claimant's job duties, activities, and working conditions. It is clear from the court's opinion that claimant provided a significant amount of detailed testimony regarding the particulars of his work activities. Although Holland's witness testified in detail as to the protocol for addressing equipment and safety issues identified by the drivers, Holland apparently offered little, if any, evidence to rebut claimant's testimony regarding his work on the dock. Moreover, Holland's witness had

never been to the terminal where claimant worked and had never seen any of the trucks at that terminal. His testimony likely would have been more persuasive if paired with evidence that claimant's testimony regarding his dock activity was inaccurate or exaggerated. This evidence could have come from the testimony of a management employee familiar with dock work activity and video showing driver's activity while working on the dock. The case also illustrates the importance of supplying the treating and examining physicians with accurate and detailed information regarding the claimant's work activities, since if one of the causation opinions is based on inaccurate or incomplete information regarding the claimant's work activities, the Commission will likely discount the weight given to that opinion.■