

STATE OF ILLINOIS       )  
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COUNTY OF COLES       )

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Florence Tate,

Petitioner,

vs.

NO: 09 WC 29838

**11IWCC0644**

Graham Packaging,

Respondent.

**DECISION AND OPINION ON REVIEW**

Petitioner appeals Arbitrator White's decision, filed on November 17, 2010, finding that Petitioner failed to prove a manifestation or accident date of March 27, 2009, and failed to provide timely notice of the accident. Based on these threshold findings, the Arbitrator denied compensation. The issues on review are accident, causal connection, notice, medical expenses, temporary total disability benefits, and permanent partial disability benefits. The Commission, after having considered the entire record, hereby reverses the Arbitrator's decision and finds that Petitioner sustained repetitive trauma injuries with a manifestation date of March 27, 2009, and that her repetitive trauma injuries are causally related to her condition. The Commission further finds that Petitioner is entitled to medical expenses in the sum of \$21,485.60 subject to the medical fee schedule, 14-2/7 weeks of temporary total disability benefits representing a period from March 28, 2009, through July 5, 2009, and a total of 170.55 weeks of permanent partial disability benefits representing a 20% loss of use of Petitioner's right hand, 20% loss of use of Petitioner's left hand, 15% loss of use of Petitioner's right arm, and 20% loss of use of Petitioner's left arm.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Petitioner, a 69 year old factory employee, testified that as of March 2009 she had been employed with Respondent for approximately 17 years. Her job title in March 2009 was "lead job, lead clerk."

Petitioner testified that she was a production worker in March 2009, and that as a production worker, she packed bottles. She explained the job of packing bottles as follows: "You're packing bottles into boxes, taping them up -- gripping them, putting them in a stack, strapping them."

Petitioner testified that she has reviewed the videotape that Respondent submitted as an exhibit. Petitioner stated that the video does not accurately represent her work activities in March 2009, and explained as follows: "For one thing, you didn't just do one line. You may do two lines, and on breaks it was nothing to do three lines, and you -- I mean, if it was a tray packer, you done two lines. You may do a tray pack and a drop box. You'd be taping it and making trays, pulling them off, palletizing them." Petitioner also explained that she worked at a faster pace than the pace shown in the video.

Petitioner testified that she had been off work for an unrelated back problem since November 2008, and returned to work on March 25, 2009. She worked through March 27, 2009. Petitioner stated that during the few days she worked in March 2009, she was doing production work and noticed as follows: "I just don't have the strength in my hands. I mean, my hands -- and I dropped things. I don't have feeling in my hands like I did then. Until I started back to work, I didn't -- I mean, I knew at home I wasn't, but the doctor released me and I wanted to go back to work."

Petitioner testified that she had noticed the problems in her hands for several years prior to the several days she worked in March 2009. She stated that the problems she had with her hands arose at home and at work and that, over the years, her condition worsened.

Petitioner stated that she stopped working on March 27, 2009, because she was going to undergo surgery. Petitioner had surgery on her right upper extremity on March 31, 2009, and on her left upper extremity on April 28, 2009. Petitioner was off work from March 28, 2009, to July 6, 2009.

During the several days that Petitioner worked in March 2009, Petitioner testified that she spoke with supervisors about the problems she was experiencing. Petitioner identified Sandy Bergin as one of the supervisors with whom she spoke. When Petitioner was asked if she spoke with Sandy while she was working during the several days in March 2009, Petitioner replied as follows: "I'm trying to think if she was there then. She got cut back, and I'm not sure that she was there. It was ahead of this that I told them about my hands."

Concerning Petitioner's current condition in her left upper extremity, she testified that her symptoms in her left hand are worse: her index finger locks up and pops, and she experiences numbness and tingling in her left hand and arm. She also has decreased sensation in her left

hand. When she performs "hold work," which means "rework[ing] bad bottles," her symptoms in her left upper extremity worsen. Petitioner stated that the strength in her left arm is decreased.

Concerning her right upper extremity, Petitioner testified that her right hand "is not as bad," as her left hand but it bothers her at night and while driving. Petitioner stated that her right hand goes numb and goes to sleep, and that she is able to drive comfortably for about 30 minutes before her hand goes to sleep.

On cross examination, Petitioner testified that she did not speak with Sandy in March 2009. Petitioner stated that Sandy was her supervisor "at one time" but she did not think that Sandy was there in March 2009.

Petitioner testified also on cross examination that she worked 12-hours shifts, and then changed over to working 8-hour shifts in early 2008. While working her shifts, sometimes Petitioner would be required to stand in one position and do the same actions during the entire shift. Petitioner explained that the bottles that came off the assembly lines were different sizes, and she worked on different lines. In addition to gathering bottles, Petitioner testified that she had to make boxes, pull straps, and put bags in boxes.

On cross examination, Petitioner testified that she suffers from other conditions including osteoarthritis in her shoulder and hip. Petitioner is not alleging that her shoulder condition is due to an injury at work.

On redirect examination, Petitioner restated that on March 28, 2009, she informed someone at the plant that her cubital tunnel and carpal tunnel syndromes were work related. Petitioner testified that she had several supervisors in March 2009 and cannot recall with whom she spoke.

Respondent presented Chris Hackman, Respondent's business unit safety coordinator, as a witness. Chris testified that he has worked with Respondent for 35 years and as the safety coordinator since January 1, 2006. Chris stated that he is familiar with the work duties of a production worker, which are to monitor the quality and packaging, pack plastic bottles, attend to tray packers, make straps, build the final units, and fill out paperwork. The bottles that come off the production lines are empty and weigh a couple of ounces.

Chris explained that the production workers rotate production lines and could work multiple production lines simultaneously. In other cases, there could be more than one production worker on a single line. Chris further explained that a production worker could work on three lines simultaneously because the work is automated, and the production worker's duties with the bottles include sealing cartons, checking the quality, and making units without any packing duties. The production workers assigned to work multiple lines simultaneously would be assigned to the less physically demanding lines.

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Chris testified that he believes that Sandy was released from employment with Respondent in 2008, but was not positive when she was released. Chris admitted that he does not know who Petitioner's supervisor was in the few days that she worked in March 2009. When he was asked whether Petitioner had a supervisor during the three days she worked in March 2009, Chris stated as follows: "Well, because it was on the day shift that she returned, there would have been a supervisor, but there may not have been a full-time supervisor. Because of cutbacks at the plant, there would have been a person deputized to be the supervisor, potentially."

Chris stated that he reviewed the job video which depicted the typical duties of a production worker, reflecting the different type of packing duties such as stack packing, tray packing, and bulk packing. Chris also stated that the video is a fair and accurate depiction of the job duties that Petitioner performed as a production worker on March 27, 2009.

The Commission hereby reverses the Arbitrator's decision and finds that Petitioner sustained repetitive trauma injuries manifesting on March 27, 2009, and that she provided timely notice of the accident. The Arbitrator found that Petitioner "failed to prove that there is any significance to the date of March 27, 2009" and "failed to prove a date of manifestation on March 27, 2009." We disagree with the Arbitrator. It is well established that the last day that a claimant works prior to undergoing surgery is an appropriate manifestation date. See Oscar Mayer & Co. v. Industrial Comm'n, 176 Ill.App.3d 607, 612, 531 N.E.2d 174, 177 (1988) (affirming the Commission's decision finding that the claimant's accident manifested itself on the date the claimant last worked prior to undergoing surgery to correct the condition for which compensation was sought). Petitioner testified that, after she took a medical leave for an unrelated back condition, she returned to work for three days from March 25, 2009, through March 27, 2009. Petitioner also testified that she stopped working on March 27, 2009, because she was going to undergo surgery for her upper extremities. The Commission finds that March 27, 2009, is an appropriate manifestation date.

The Arbitrator also concluded that Petitioner failed to prove that she provided timely notice of the accident. In so concluding, the Arbitrator found as follows: "[Petitioner] was vague about to whom she reported. She ultimately conceded that she did not recall whether she had notified her employer during the three days she worked in March 2009." The Commission disagrees and finds that Petitioner testified credibly that she provided notice during the three days that she worked in March 2009.

While we believe that Petitioner's testimony was vague and perhaps even a little confusing, we find it inaccurate to state that she "ultimately conceded" that she did not recall whether she notified a supervisor. Petitioner initially stated that one of the supervisors that she spoke with during those three days in March 2009 was Sandy. Immediately afterward, Petitioner stated that she was not sure if Sandy was working in March 2009 because of cutbacks. On cross examination, Petitioner clarified further that she did not speak with Sandy in March 2009, and that Sandy had been her supervisor at one time but she did not think that Sandy was her

supervisor in March 2009. On redirect examination, Petitioner testified with certainty that she told a supervisor during the few days she worked in March 2009 that her hands and arms were bothering her.

We note that Chris was not able to recall who Petitioner's supervisor was in March 2009. Chris testified that there may not have been a full time supervisor because of cutbacks during the days she returned in March 2009. Chris also testified that it could have been a person who was an acting supervisor or a production manager filling in as supervisor. Respondent was aware that Petitioner was alleging an initial accident date of March 28, 2009, (later amended to March 27, 2008, at arbitration) as indicated in the Application for Adjustment of Claim. Respondent could have brought in Petitioner's supervisor to rebut Petitioner's testimony concerning notice.

The Commission also finds that Petitioner has established that her repetitive trauma conditions are causally related to the work duties that she performed for Respondent. In so finding, we rely primarily on Petitioner's testimony and the job video. The job video shows the employees engaged in a significant amount of hand and arm movement in performing the packing duties on different production lines. We note that the employees' arms and hands were moving at a near constant pace. In the video, employees were shown grabbing large boxes, taping the bottom of the boxes, placing a plastic liner inside of boxes, and packing empty bottles into the boxes. When the boxes were full, they were taped again to secure the box. Petitioner testified that she was working even at a faster pace than what was demonstrated in the job video. Moreover, Petitioner testified that she worked more than one production line at a time. Dr. Coe issued a Section 12 report dated March 23, 2010, opining that Petitioner's repetitive strain injuries to her upper extremities were a factor in the development of bilateral carpal tunnel syndrome. The Commission concludes that Petitioner proved by a preponderance of the evidence that her repetitive strain injuries caused or contributed to the development of her carpal tunnel syndrome and cubital tunnel syndrome.

Concerning Petitioner's right shoulder condition, we find that Petitioner failed to prove that her right shoulder condition is causally related to her employment with Respondent. Petitioner testified that she was not alleging that her shoulder condition was related to work. Moreover, the medical records reflect that Petitioner injured her right shoulder as a result of a fall on ice. Dr. Rudert's records from Bonutti Orthopedic Clinic dated March 4, 2009, reveal that Petitioner's biggest complaint at that time was her right shoulder, and that in January, she fell and landed on her shoulder. Dr. Rudert also indicated on March 4, 2009, that she had a previous MRI for her shoulder in January 2008, which he reviewed and found that she had a rotator cuff tear. The handwritten nursing notes dated March 4, 2009, also reflect that Petitioner provided a history of having fallen on ice onto her shoulder two months ago.

The Commission further finds that Petitioner is entitled to medical expenses in the sum of \$21,485.60, 14-2/7 weeks of temporary total disability benefits, and a total of 170.55 weeks of permanent partial disability benefits.

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Petitioner claims that she is entitled to medical expenses in the sum of \$22,491.90, of which \$123.70 was Petitioner's out-of-pocket expenses. We find that she is entitled to a total amount of \$21,485.60 in medical expenses subject to the fee schedule, which represents \$8,249.90 incurred at St. Anthony's Memorial Hospital, \$123.70 for her out-of-pocket expenses, and \$13,112.00 incurred at Bonutti Orthopedic Clinic.

Petitioner is entitled to the sum of \$8,249.90 for medical expenses incurred with St. Anthony's Memorial Hospital on March 25, 2009, March 31, 2009, and April 28, 2009, because those expenses are related to Petitioner's surgeries for her carpal tunnel releases and cubital tunnel releases. Petitioner is also entitled to the sum of \$123.70 for her out-of-pocket payments she made to Bonutti Orthopedic Clinic and St. Anthony's Memorial Hospital.

While Petitioner claims that she is entitled to the sum of \$14,202.00 for medical treatment she had with Bonutti Orthopedic Clinic, the Commission finds that she is entitled to \$13,112.00 for service dates of March 31, 2009, and April 28, 2009, which were expenses incurred related to her surgeries. We deny the medical bills that were incurred for treatment of Petitioner's right shoulder, which includes the service dates of March 31, 2009, May 8, 2009, July 20, 2009, and March 2, 2010. We also deny the medical bills that were incurred for treatment of Petitioner's hip, which includes the hip x-ray on July 20, 2009, and the office visits on July 23, 2009, and July 30, 2009.

Concerning temporary total disability benefits, we find that Petitioner is entitled to 14-2/7 weeks of temporary total disability benefits representing a period from March 28, 2009, through July 5, 2009. Petitioner testified that she was off work beginning on March 28, 2009, through July 5, 2009.

The Commission also finds that Petitioner is entitled to 41 weeks of permanent partial disability benefits representing a 20% loss of use to the right hand; 41 weeks of permanent partial disability benefits representing a 20% loss of use to the left hand; 37.95 weeks of permanent partial disability benefits representing a 15% loss of use to the right arm; and 50.6 weeks of permanent partial disability benefits representing a 20% loss of use to the left arm.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision, filed on November 17, 2010, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$441.23 per week for a period of 14-2/7 weeks, that having been the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$397.10 per week for a total period of 170.55 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused a 20% loss of use of Petitioner's right hand, 20%

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loss of use of Petitioner's left hand, 15% loss of use of Petitioner's right arm, and 20% loss of use of Petitioner's left arm.

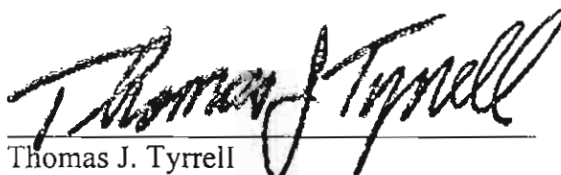
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$21,485.60 for medical expenses under §8(a) of the Act.

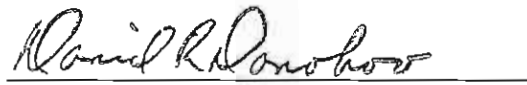
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The probable cost of the record to be filed as return to Summons is the sum of \$35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

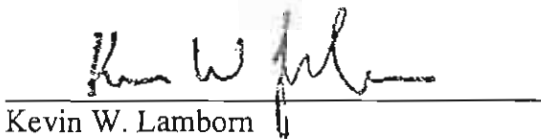
DATED: JUN 30 2011  
TLT: lc  
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Thomas J. Tyrrell

  
Daniel R. Donohoo

DISSENT

I respectfully dissent from the decision of the majority. Arbitrator White's decision was thorough, well reasoned, and grounded in the evidence. I would affirm and adopt it in its entirety.

  
Kevin W. Lamborn