

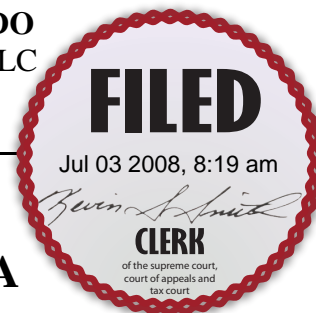
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**IN THE
COURT OF APPEALS OF INDIANA**

SUSAN STEINSDOERFER,)

Appellant-Plaintiff,)

vs.)

No. 93A02-0802-EX-118)

MASTER GUARD,)

Appellee-Defendant.)

APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD
Cause No. C-165294

July 3, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Susan Steinsdoerfer appeals the decision of the Full Worker's Compensation Board (the "Board") affirming the decision of a hearing member, who concluded that Steinsdoerfer was not eligible for worker's compensation benefits. On appeal, Steinsdoerfer raises two issues, which we consolidate and restate as whether the Board properly affirmed the hearing member's conclusion that Steinsdoerfer failed to establish she sustained an injury arising out of and in the course of her employment with Master Guard. Concluding that some of the hearing member's findings are not supported by competent evidence, but that the remaining findings support the hearing member's conclusion, we affirm.

Facts and Procedural History

Steinsdoerfer was employed by Master Guard as a first-shift packager of running tubes, having worked previously in Master Guard's bumper assembly department. On December 23, 2002, while packaging the thirty- to forty-pound running tubes, Steinsdoerfer "felt [lower] back pain but . . . didn't think it was anything to worry about." Joint Exhibit 11, at 12. Master Guard was closed from December 24 to 26, 2002, and Steinsdoerfer's lower back pain worsened during that time to the point that she went to the emergency room on December 25th. The medical records from Steinsdoerfer's visit state that she "denie[d] any known inj[ury]" and that she was prescribed pain medication. Joint Exhibit 7, at 23. Steinsdoerfer's denial was consistent with her subsequent deposition testimony, where she confirmed the December 2002 injury was the first time she had experienced lower back pain

during nearly seven years of employment with Master Guard.¹ Steinsdoerfer returned to work as scheduled on December 27, 2002, but the pain in her lower back worsened to the point that by January 13, 2003, she could no longer work. On the following day, January 14, 2003, Steinsdoerfer went to her primary care physician, Dr. Rafael Diokno, reporting that she had experienced lower back pain “since the middle of December and there’s no history of injury.” Joint Exhibit 6, at 6. Dr. Diokno referred Steinsdoerfer to Dr. Raj Rajeswaren for an MRI, which indicated a herniated disc between the L5 and S1 vertebrae.² Dr. Rajeswaren prescribed a lumbar epidural injection, which was performed by Dr. Steven Thatcher on January 23, 2003. During a follow-up evaluation on January 27, 2003, Dr. Rajeswaren concluded that the injection had improved Steinsdoerfer’s condition “and that she may return to work as intended.” Joint Exhibit 5, at 2.

Steinsdoerfer returned to work in early February 2003 and worked for another week until her lower back pain again forced her to stop. On February 18, 2003, Steinsdoerfer sought treatment from Dr. Emilio Nardone. Dr. Nardone’s notes state that Steinsdoerfer has “a right sacroiliac joint dysfunction with a pelvic tilt,”³ joint exhibit 8, at 8, and, in a letter to an unnamed addressee dated February 21, 2003, opined that “it is very likely that her condition is due to the very physically demanding job she has been doing,” *id.* at 15. Dr.

¹ Steinsdoerfer did, however, file worker’s compensation claims in 1996, 1999, and 2000, for a pulled chest muscle, a ruptured disc in her neck, and carpal tunnel syndrome, respectively. Steinsdoerfer also filed a worker’s compensation claim with a former employer around 1975 related to a ruptured disc in her neck that involved a different disc than the 1999 claim.

² The vertebral column consists of three regions, cervical (C), lumbar (L), and sacral (S). The L5 vertebrae is located at the lowest part of the lumbar region, and the S1 vertebrae is located at the highest part of the sacral region. See Dorland’s Illustrated Medical Dictionary 891, 1477 (28th ed. 1994).

³ The sacroiliac joint is the joint between the sacrum, a triangular bone below the lumbar vertebrae at

Nardone prescribed sacroiliac epidural injections, which were performed on April 4 and 23, 2003, but neither of these injections had much effect, as Dr. Nardone's follow-up notes on April 28, 2003, indicate that Steinsdoerfer's lower back pain persisted. Dr. Nardone also prescribed a bone density test, which was conducted on May 23, 2003, and indicated "evidence of osteoporosis." Joint Ex. 5, at 14. A subsequent bone density test on August 5, 2004, found evidence "of osteoporosis with high risk for fracture" and "[n]o significant change compared to the previous examination." Joint Exhibit 1, at 160.

On April 3, 2003, Steinsdoerfer filed an application for adjustment of claim with the Board, alleging that "[as] a result of repetitive heavy lifting over the years, I have suffered injuries to my Sacro-Iliac joint and low back. All injuries arose out of and in the course of my employment with the defendant." Appellant's Appendix at 26. On March 1, 2007, the parties filed a joint motion stipulating, among other things, that Steinsdoerfer's medical records and deposition testimony were admissible to determine whether her injury arose out of and in the course of her employment with Master Guard. On April 18, 2007, the hearing member entered an order that contained the following relevant findings:

5. The onset of the symptoms was on December 25, 2002, at the Plaintiff's home, as the Plaintiff had reported to the physicians.

...

7. The condition which gave rise to the filing of the Application was diagnosed as osteoporosis and right sacral iliac joint dysfunction and later as herniated disc at the S1 level.

8. The medical condition of the Plaintiff's lower back is as a result of the many and normal vicissitudes of her life and her aging process.

9. There was no injury by accident arising out of and in the course of the employment on January 13, 2003.

10. There was no injury by accident arising out of and in the course of the

the base of the spine, and the ilium, the wing-shaped part of the pelvis. See Dorland's, supra, at 819, 1479.

employment as a result of repetitive heavy lifting over the years.

11. The onset of symptoms resulting in the claim did not occur in the course of the employment.

Id. at 23. Based on these findings, the hearing member concluded that Steinsdoerfer's "condition is not as a result of or caused by an injury out of and in the course of the employment with the Defendant" and therefore denied Steinsdoerfer benefits. Id. On January 15, 2008, the Board affirmed the hearing member's decision. Steinsdoerfer now appeals.

Discussion and Decision

I. Standard of Review

In reviewing the denial of a claim for worker's compensation benefits, we are bound by the Board's findings of fact and may not disturb such findings unless the evidence is undisputed and leads undeniably to a contrary conclusion. Ind. Code § 22-3-4-8(b); Metro. Sch. Dist. of Lawrence Twp. v. Carter, 803 N.E.2d 695, 697 (Ind. Ct. App. 2004). We employ a two-step process; first, we review the findings to determine if there is any competent evidence of probative value to support them. Carter, 803 N.E.2d at 697. Second, if we determine sufficient evidence supports the findings, we then determine whether those findings support the judgment. Id. In conducting this review, we consider only the evidence favorable to the Board's decision and the reasonable inferences drawn from that evidence. Id.

II. Nature of Steinsdoerfer's Injury⁴

Indiana's Worker's Compensation Act permits employees to recover worker's compensation benefits for an injury "arising out of and in the course of the employment." Ind. Code § 22-3-2-2(a). This court has interpreted this portion of the Act as containing two requirements, namely, that the injury must 1) occur "in the course of employment" and 2) "arise out of" the employment relationship. See Manous v. Manousogianakis, 824 N.E.2d 756, 763 (Ind. Ct. App. 2005). The former requirement is established "when it takes place within the period of employment, at a place where the employee may reasonably be, and while the employee is fulfilling the duties of employment or while engaged in doing something incidental thereto." Milledge v. Oaks, 784 N.E.2d 926, 929 (Ind. 2003). The latter requirement is established "when a causal nexus exists between the injury sustained and the duties or services performed by the injured employee." Id. Whether an injury arises out of and in the course of employment is a question of fact that the employee bears the burden of proving. Ind. Code § 22-3-2-2(a); Manous, 824 N.E.2d at 763.

We note initially that the hearing member's finding that Steinsdoerfer's injury did not arise out of the employment relationship because it was caused by osteoporosis is not supported by competent evidence. As a general rule, "when the cause of the injury is not one which is apparent to a lay person and multiple factors may have contributed to causation, expert evidence on the subject is required." Muncie Ind. Transit Auth. v. Smith, 743 N.E.2d

⁴ We note that Steinsdoerfer's medical records and adjustment of claim indicate that she sustained two injuries, namely, a herniated disc between the L5 and S1 vertebrae and a right sacroiliac joint dysfunction. However, because the parties do not analyze these injuries separately for purposes of determining whether they arose out of and in the course of Steinsdoerfer's employment, we will treat them as a single injury for the sake of clarity.

1214, 1217 (Ind. Ct. App. 2001). Here, the hearing member's findings indicate he took the view that Steinsdoerfer's injury was caused by osteoporosis. The evidence relied on by the hearing member to support osteoporosis as a cause of Steinsdoerfer's injury consists merely of the results of two bone density tests conducted in May 2003 and August 2004 and a statement in Dr. Diokno's progress notes that his "[a]ssessment" of Steinsdoerfer's condition is "[o]steoporosis [and] right sacroiliac joint dysfunction." Joint Ex. 6, at 7. Neither this evidence nor anything else in the record indicates that osteoporosis caused Steinsdoerfer's injuries. Because we think this type of causal link is one that can be established only through expert evidence, it follows that the hearing member's conclusion that Steinsdoerfer's injury was caused by osteoporosis is not supported by competent evidence.

Although we conclude competent evidence does not support the hearing member's finding that osteoporosis caused Steinsdoerfer's injury, it does not necessarily follow that the hearing member's conclusion that her injury did not arise out of and in the course of her employment was clearly erroneous. In this respect, the hearing member also apparently found that regardless of whether osteoporosis caused Steinsdoerfer's injury, she had not carried her burden of proof. See Appellant's App. at 23 (hearing member's finding that "[t]here was no injury by accident arising out of and in the course of the employment as a result of repetitive heavy lifting over the years"). We reiterate that expert evidence is generally required to prove the cause of the injury. Smith, 743 N.E.2d at 1217. Steinsdoerfer argues that two points in the record support a conclusion that her injury was caused by work-related activities, namely, a March 2005 report from Dr. Irving Haber and the February 2003 letter from Dr. Nardone mentioned above. The sole reference in Dr. Haber's report to the

cause of Steinsdoerfer's injury is his opinion that "her many years of service for her employer, heavy lifting and twisting motion, most likely was a contributing factor to her condition." Joint Exhibit 4, at 13. However, stating that something is "most likely a contributing factor" to an injury is far from saying it caused the injury, and we fail to see how the hearing member's rejection of this evidence constitutes error. Cf. Lovely v. Cooper Indus. Prods., Inc., 429 N.E.2d 274, 275, 279 (Ind. Ct. App. 1981) (concluding hearing member properly concluded claimant's injury did not arise out of and in the course of the employment where medical evidence consisted of the testimony of one physician, who testified that the injury "had to do with the heavy lifting," but conceded on cross-examination that "it was equally likely that either the heavy lifting of the osteoarthritis and degenerative disc disease contributed to [the claimant's] condition").

The letter is less equivocal; it states Dr. Nardone's opinion that "it is very likely that [Steinsdoerfer's] condition is due to the very physically demanding job she has been doing." Joint Ex. 8, at 15. Our supreme court has stated consistently that in worker's compensation cases, "the factfinder is free to accept or reject expert opinion testimony." Hill v. Worldmark Corp./Mid America Extrusions Corp., 651 N.E.2d 785, 787 (Ind. 1995); Rork v. Szabo Foods, 439 N.E.2d 1338, 1343 (Ind. 1982). Although we do not interpret this proposition as granting the factfinder unlimited discretion, we have also stated that "an expert's opinion may be so lacking in probative value as to be insufficient to prove the existence of a causal relationship." Outlaw v. Erbrich Prods. Co., Inc., 777 N.E.2d 14, 29 (Ind. Ct. App. 2002), trans. denied. In finding that "[t]here was no injury by accident arising out of and in the course of the employment as a result of repetitive heavy lifting over the years," appellant's

app. at 23, the hearing member necessarily rejected Dr. Nardone's opinion, and absent clarification as to how Dr. Nardone arrived at this conclusion, we cannot say that Steinsdoerfer has overcome the high burden of establishing that the evidence leads undeniably to a conclusion that work-related activities such as repetitive heavy lifting caused her injury. See Carter, 803 N.E.2d at 697; see also Hill, 651 N.E.2d at 787 ("Unless the evidence is 'undisputed and leads inescapably' to a result contrary to the Board's finding, it will be affirmed." (quoting Rensing v. Ind. State Univ. Bd. of Trustees, 444 N.E.2d 1170, 1172 (Ind. 1983))). Because this finding supports a conclusion that Steinsdoerfer's injury did not arise out of and in the course of her employment, it follows that the hearing member's decision to deny Steinsdoerfer worker's compensation benefits, as well as the Board's affirmation of that decision, were proper.

Conclusion

Although competent evidence did not support some of the hearing member's findings, the Board nevertheless properly affirmed the hearing member's conclusion that Steinsdoerfer failed to establish she sustained an injury arising out of and in the course of her employment with Master Guard.

Affirmed.

BAKER, C.J., and RILEY, J., concur.