UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0361

September Term, 2016

FRANCINE LANE

v.

SMITHFIELD PACKING CO. et al.

Leahy,
Reed,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: May 17, 2017

Appellant, Francine Lane, was awarded compensation by the Workers' Compensation Commission based on an occupational disease, carpal tunnel syndrome. The Commission found that the first date of disablement was May 14, 2012, and that that disability was the result of the occupational disease.

The appellees, Smithfield Packing Co. and Safety National Casualty Corp., employer and insurer (hereinafter, collectively, Smithfield), sought judicial review in the Circuit Court for Prince George's County. There, a jury found that Lane sustained "an occupational disease of [bilateral] carpal tunnel syndrome arising out of and in the course of her employment with a date of disablement of May 14, 2012." The court, however, granted Smithfield's motion notwithstanding the verdict. Judgment was entered accordingly, from which this appeal was noted.

I. "Did the trial court err as a matter of law when it granted the motion for judgment notwithstanding the verdict because Dr. Haque's testimony that the vacation relief job caused traumatic carpal tunnel was legally sufficient to give the case to the jury?"

II. "Alternatively, even if Dr. Haque's testimony was legally insufficient, did the trial court err as a matter of law when it reversed the Workers' Compensation Commission's order because Dr. Haque's causal opinion was not required for a verdict when the employer/insurer had the burden of proof?"

Facts

Appellant began her employment with the packing company in 1998. Her job was putting labels on hams. She changed to a packer position in 2008. Working at a "[f]ront conveyor belt, back conveyor belt," she put three shanks and three butts into a box and pushed the box on the conveyor belt. She would box "close to" 400 to 500 hams an hour.

The plant, however, went into a layoff and remaining jobs were assigned based on seniority. Lane was offered a vacation relief job doing shank removal, starting on or about May 12, 2012. She stood on a stand about fifteen feet above the floor and sorted shanks weighing about thirty pounds and butts weighing about fifteen pounds by pushing them from a conveyor belt into slots. The area of the shank removal job was colder[1] than that of the packer job and the shank removal work was more demanding because the hams were bigger. After two days of working the shank removal job, Lane's hands were hurting so badly that she told her supervisor. When he told her he had no replacement for her, she worked that day, May 14. She came back to work the next day, but her hands were so swollen that the employer took her immediately to a medical clinic.

Appellant was age fifty-one in 2012. She had been having problems with her hands years before, probably beginning in 2007 or earlier, but she would go to work, do her job, come home, take an aspirin or Tylenol, go to bed, and go back to work the next day. She never missed work, even when her hands were hurting, and she never went to a doctor about it.

The Medical Opinion Evidence

Smithfield's medical expert, Dr. Peter Innis, was of the opinion that appellant's carpal tunnel syndrome was idiopathic, meaning that there was "no one particular cause," but he "felt that it was not work related." He itemized the risk factors present in Lane's

[1]Lane wore a coat and two pairs of gloves.

case that included her age, gender, body mass index greater than 30, diabetes controlled by medication, and a history of gout.

Appellant's medical expert, Dr. Mustafa Azimul Haque, agreed as to the risk factors. It was true, he said, that "women are four or five times more likely to get carpal tunnel syndrome than men." Diabetes increases the risk "in the ballpark" of about two or three times. He acknowledged that "[i]t's very common" to see women in their fifties who have carpal tunnel syndrome.

Dr. Haque opined that the vacation relief job aggravated a pre-existing condition but never opined that the pre-existing condition was work related. The gist of his evidence on causation is set forth below.

> "Q. So based on your review of the records and your examination of Ms. Lane and your knowledge as a hand and upper extremity surgeon, what is your opinion as to the cause of Ms. Lane's bilateral carpal tunnel syndrome?
>
> "A. I think she had it acutely aggravated by this incident where she was working for eight to ten hours a day in the cold and lifting these heavy hams and moving them. I think she might have even gotten some element – from the description of this and the description of the swelling and the erythema of the hands, she might have had a little element of frostbite that led to swelling of the hands and this acute exacerbation or worsening of her carpal tunnel syndrome.
>
> "Q. Okay.
>
> "A. I reviewed her old stuff. I know that she has some underlying risk factors and had had some occasional pain, but she never needed help for that prior to this event, and that's the main thing that tips me over to saying that this aggravated it.
>
> "Q. Okay. All right. And is that your opinion to a reasonable degree of medical certainty?

"A. It is.

"Q. Okay. And when you say 'this event' –

"A. Meaning this period when she was doing the vacation relief and had a significant increase in her workload, from my understanding of it.

"Q. Okay. All right. And – okay. And so the vacation relief job caused what?

"A. Caused increased swelling and pain in the hand I think, which led to her carpal tunnel syndrome to flare up and became problematic."

And further:

"Q. So can you state to a reasonable degree of medical certainty that Ms. Lane's carpal tunnel syndrome wouldn't have developed had it not been for this vacation relief work?

"A. No, I can't say that it wouldn't have developed, but I don't think it would have come on acutely like that. I think she has had some problems with some carpal tunnel syndrome, but I think it really became aggravated by this one event.

"Q. It is my understanding of your opinion that I guess this vacation relief work didn't cause her carpal tunnel syndrome. It aggravated and made it symptomatic?

"A. Correct, yeah."

Discussion

I

It is clear that the circuit court accepted the argument advanced throughout by Smithfield, namely that, under the evidence most favorable to appellant, this case is controlled by *Blake v. Bethlehem Steel Co.*, 225 Md. 196, 170 A.2d 204 (1961).

Blake suffered from chronic bronchitis, pulmonary fibrosis, and emphysema for more than fifteen years before going to work for Bethlehem Steel Company. None of these conditions is a disease in itself. *Id.* at 198, 170 A.2d at 205. After six years of working around blast furnaces, he claimed workers' compensation for "aggravation of a bronchial susceptibility." *Id.* The Court said that the occupational disease statute "was not intended to cover nonoccupational health hazards." *Id.* at 199, 170 A.2d at 206. It further reasoned as follows:

> "In the instant case, since chronic bronchitis and its sequelae were not shown to be characteristic of the industry, the claim is that disability from a cause not itself compensable, was 'aggravated * * * or contributed to by an occupational disease * * *.' The appellant argues that an ordinary disease may become occupational where it is aggravated by the occupational environment. We think, however, that such a construction would virtually read out of the statute the requirement that in order to support a claim under the language quoted, there must be a finding that, in part at least, the disability is due to an occupational disease, and the claim can be allowed only for that part. If the statute is to be broadened in the manner contended for, it should be done by the legislature and not by the courts."

Id. at 200, 170 A.2d at 206.

Appellant's argument, however, is not based on aggravation of a pre-existing, non-work related condition. She contends that the three-day stint in the vacation relief job caused the occupational disease. She submits that "Dr. Haque testified that a person can develop traumatic carpal tunnel syndrome within a few days and that Ms. Lane's traumatic carpal tunnel syndrome, as evidenced by the onset of swelling and increased pain from the vacation relief job, was causally related to her employment." Appellant's Brief at 11.

In support of that argument, we are referred to a response of Dr. Haque on cross-examination:

> "Q. You can't develop carpal tunnel syndrome in one day or three days, right?
>
> "A. Sure you can if you have trauma or you have an injury or something that causes acute swelling.
>
> "Q. Okay. But you can't develop carpal tunnel syndrome from, like, repetitive lifting in one or three days, right?
>
> "A. Yeah, you would not typically get that, but I mean, again, if something were to cause acute swelling of the wrist, you could."

This passage is not sufficient to generate a jury question. Dr. Haque clearly is speaking hypothetically, in the realm of what, in his opinion, is possible. But even though he acknowledges that his possible scenario is atypical, he does not opine that appellant's case falls within the class of three-day onsets of disability. Pertinent here, on the other hand, is that when opining on the cause of the disability, he testified that the three-day vacation relief stint *aggravated* the pre-existing carpal tunnel syndrome. There is no causation evidence that supports other than a *Blake* analysis.

II

In judicial review of orders of the Commission, the conduct of proceedings is addressed by Maryland Code (1991, 2016 Repl. Vol.), § 9-745 of the Labor and Employment Article (LE). LE § 9-745(b)(1) provides that "[i]n each court proceeding under this title … the decision of the Commission is presumed to be prima facie correct." Lane alternatively contends that, even if Dr. Haque's testimony was legally insufficient,

LE § 9-745(b)(1) placed the burden of proof on Smithfield. She further submits that "the jury could have declined to accept [Dr. Innis's] testimony." She contends that, as a result, Smithfield "could not have met their burden of proof and the jury could have returned the same verdict for Francine Lane notwithstanding Dr. Haque's testimony." Appellant's Brief at 13.

The first problem with appellant's position is that it is focused on the wrong level of review proceedings. We (and the circuit court) reviewed the Commission's decision and the issue is whether there was sufficient evidence before the Commission.

The more substantial problem is that appellant seeks to treat the Commission's decision as if it were evidence in and of itself. *Moore v. Clarke*, 171 Md. 39, 187 A. 887 (1936), resolved the interplay between the presumptive correctness of the Commission's decision and judicial review where the issue raised by the employer is the sufficiency of the claimant's evidence before the Commission. The Court said:

> "The provision that the decision of the Commission shall be '*prima facie* correct' and that the burden of proof is upon the party attacking the same does not mean, therefore, that if no facts are established before the Commission sufficient to support its decision, that there is any burden of factual proof on the person attacking it, for the decision of the Commission cannot itself be accepted as the equivalent of facts which do not exist, and, in all cases, whether there is evidence legally sufficient to support the decision of the Commission, is necessarily a matter of law to be decided by the court as any other question of law would be."

Id. at 45, 187 A. at 890. *See also Baltimore County v. Kelly*, 391 Md. 64, 76-77, 891 A.2d 1103, 1110 (2006); *Smith v. Howard County*, 177 Md. App. 327, 338-39, 935 A.2d 450, 456-57 (2007), *cert. denied*, 403 Md. 614 (2008).

For all the foregoing reasons, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED.

COSTS TO BE PAID BY THE APPELLANT.