Feature Article
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Manifestation Dates: The Moving Target of Repetitive Trauma Cases

The Illinois Appellate Court Fifth District, Workers’ Compensation Commission Division, recently issued a Rule 23 unpublished decision in a workers’ compensation case which raised a significant number of questions. *Heyl, Royster, Voelker & Allen v. Ill. Workers’ Comp. Comm’n*, 2016 IL App (5th) 140480WC-U. The case involved claimed repetitive trauma injuries. The court examined whether the alleged “manifestation date” of the repetitive trauma claim was appropriate, and consequently, whether the claimant provided timely notice of the alleged work-related injury to the employer. In *Heyl, Royster*, the appellate court held that the claimant’s last day of work was an appropriate manifestation date for her repetitive trauma claim despite the claimant not having sought medical treatment at that time.

In order to fully appreciate the appellate court’s holding, it is necessary to examine the history of the rulings from the Illinois Appellate Court and Illinois Supreme Court on the issues of manifestation dates in repetitive trauma claims filed with the Illinois Workers’ Compensation Commission. The supreme court first allowed repetitive trauma cases in 1987. *Peoria Cnty. Belwood Nursing Home v. Indus. Comm’n*, 115 Ill. 2d 524 (1987). In *Peoria County Belwood*, the claimant alleged her injury occurred October 5, 1976, and the Workers’ Compensation Commission Arbitrator amended the claimant’s application to reflect the date of injury as October 4, 1976, which was when the claimant testified she experienced symptoms at work. The October 5, 1976 date was when the claimant consulted a physician regarding her symptoms.

The claimant’s employer argued that because there was no specific “accident,” the claim was barred by the three year statute of limitation. In its decision, the court explained the purpose of the Workers’ Compensation Act. The Act was intended to provide financial protection for injured workers regardless of a showing of negligence or contributory negligence while precluding the employee from common law tort remedies. To that end, Illinois courts have consistently held that the Act should be liberally construed to accomplish its purpose and objects.

The supreme court further stated that requiring the complete collapse of a physical structure in a case like *Peoria County Belwood* would not be beneficial to the employee or the employer because it might force employees needing the protection of the Act to push their bodies to a precise moment of collapse. The Act provides protection and benefits for an employee’s work-related injuries even when they are gradual. It is not limited to sudden and completely disabling injuries.

In deciding that repetitive trauma cases were compensable under the Workers’ Compensation Act, the supreme court defined “accidental injury” by referring to a rule propounded by Professor Larson in his treatise on Workers’ Compensation. 1B A. LARSON, WORKMEN’S COMPENSATION LAW § 39.50 (1985). Professor Larson defined the date of injury in a repetitive trauma compensation case as the date on which the injury “manifests itself.” “Manifests itself” means 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.

The supreme court concluded that the claimant in *Peoria County Belwood* experienced symptoms October 4, 1976, and sought medical treatment the following day. October 4, 1976 was the last day the claimant worked before the fact of
her injury and its causal connection to her employment became apparent to her, and it was the appropriate manifestation date.

Based upon the court’s definition of manifestation date, it seems as though the date when the claimant saw her doctor and first learned of the causal relationship between her injury and her employment would have been the manifestation date. However, the supreme court’s holding suggests the last day of work before a claimant learns of a connection between her condition and her employment should be utilized as the manifestation date in a repetitive trauma case.

In 1988, the year following the Peoria County Belwood decision, the Industrial Commission Division of the appellate court held the “fact of injury” was not synonymous with “fact of discovery.” Oscar Mayer & Co. v. Indus. Comm’n, 176 Ill. App. 3d 607 (4th Dist. 1988). The court in Oscar Mayer explained it was not constrained to require a claimant to fix the date of accident as the date the claimant became aware of the physical condition, presumably through medical consultation, and its clear relationship to the employment. Such a requirement would be unrealistic and unwarranted. The court further explained it could not prejudice a worker who faithfully works until there is an actual breakdown of a physical structure.

In Oscar Mayer, the appellate court held the claimant’s last day of work before undergoing surgery for the work-related condition was an appropriate manifestation date. It declined to hold that the manifestation date was when the claimant knew of his injuries and the relationship to his employment. More than 45 days elapsed between the time the claimant knew his injuries were causally connected to his employment and the time he provided notice of his condition to his employer. His claim would therefore have been barred by the Workers’ Compensation Act.

The appellate court considered two important issues in determining the appropriate manifestation date. First, the court commented it was mindful that the date of accident is significant for fixing the legal relationships between the parties. This includes whether there is an employer/employee relationship, whether the employee provided timely notice of the alleged date of accident, and whether the Application for Adjustment of Claim was filed within the statute of limitations period.

Second, the court made it clear that nothing in its decision should be interpreted as establishing an inflexible rule. It rejected any interpretation which would permit an employee to always establish the date of accident in a repetitive trauma case by reference to the last date of work. The court then concluded the claimant’s appropriate manifestation date was the last day he worked before undergoing surgery. Essentially, the Oscar Mayer case tried to establish a fairness standard to protect claimants.

In 1989, the Industrial Commission Division of the Illinois Appellate Court Fourth District both increased the burden of proof on claimants in repetitive trauma cases and then made it easier for claimants to establish repetitive trauma cases. See Three “D” Disc. Store v. Indus. Comm’n, 198 Ill. App. 3d 43 (4th Dist. 1989). In Three “D” Discount Store, the appellate court held an employee must prove a precise identifiable date when the repetitive trauma injury manifested itself, and then awarded benefits based upon a manifestation date which was not alleged by the claimant. The claimant alleged an accident date of August 10, 1984, which was his last day of work. The claimant testified he noticed swelling and pain in both hands as well as numbness in some of his fingers as of his last day of work.

The Workers’ Compensation Commission found in favor of the claimant and awarded benefits based upon the alleged manifestation date of August 10, 1984. However, the appellate court modified the commission’s decision. A physician testified that on July 10, 1984, it was clear the claimant’s condition necessitated surgery. In light of that testimony, the court held the manifestation date was July 10, 1984. The record made no mention regarding whether the doctor established a relationship between the claimant’s condition and his job duties. The appellate court determined that a reasonable person would have been on notice that his condition was both work-related and medically disabling on July 10, 1984. The court
determined that timely notice was provided based upon a manifestation date of July 10, 1984, and it affirmed the award for benefits.

Clearly, there is a disconnect in the standard set forth by the appellate court in *Three “D” Discount Store* and the ruling of the appellate court in the same case. The court first stated a claimant must prove a precise identifiable manifestation date, but then it awarded benefits despite finding the claimant alleged an inappropriate manifestation date. It is also clear the court was not “mindful” of the impact the manifestation date has. The appellate court’s decision in *Three “D” Discount Store* was issued in early 1989. The accident date was more than four years earlier. Hypothetically, if the employer changed insurance carriers effective August 1, 1984, then the carrier responsible for workers’ compensation claims on July 10, 1984 would not have had any notice of the potential claim until the appellate court’s decision more than four years later. Additionally, if the employee is required to prove a precise identifiable date when the injury manifested itself, it stands to reason that benefits would have been denied if the appellate court determined the appropriate manifestation date was a month earlier than the one alleged by the claimant.

The appellate court further expanded the scope of manifestation dates in 1999 in the case of *A.C. & S. v. Indus. Comm’n*, 304 Ill. App. 3d 875 (1st Dist. 1999). The appellate court affirmed the commission’s award for benefits despite the fact that the manifestation date was 12 days after the claimant’s employment was terminated. The appellate court commented they would not impose an arbitrary limit on an otherwise compensable repetitive trauma case by requiring the manifestation date to fall within the period of employment.

In *A.C. & S.*, the claimant testified he began experiencing symptoms in his hands while working for the employer, but he never told anyone in management about his problems, and he did not receive any medical treatment while working for the employer. The claimant was laid off for reasons unrelated to any type of medical condition. The claimant’s first medical treatment was one week after he was laid off. Twelve days after the claimant was laid off, his doctor advised him he was suffering from carpal tunnel syndrome and his work duties for the employer contributed to his condition. In rendering its decision, the appellate court referred to the modern rule which allows compensation even when an injury occurs at a time and place remote from the employment if its cause is something that occurs entirely within the time and place limits of employment. *Larson’s Workers’ Compensation Law* § 29.22 (1998).

The appellate court commented that the manifestation date is significant in fixing the legal relationships between the parties, but it further stated the supreme court never intended to give employers an additional shield by requiring the injury to be traced to employment during the period of employment. The appellate court did not comment on whether the employer would be covered by its workers’ compensation insurance policy for an accident date which fell outside the claimant’s period of employment.

In 2007, the appellate court issued a decision which was consistent with *Peoria County Belwood* and held the appropriate manifestation date was when the claimant knew of her injuries and the relationship to her employment. However, the Supreme Court of Illinois reversed the denial of benefits and held a claimant’s manifestation date required a medical opinion. *Durand v. Indus. Comm’n*, 224 Ill. 2d 53 (2007). In *Durand*, the claimant alleged a manifestation date of September 8, 2000 which was the date on which an EMG study conclusively established a carpal tunnel syndrome diagnosis. An Application for Adjustment of Claim was filed January 12, 2001. The employer argued the appropriate manifestation date was in September or October 1997, when the claimant reported to her supervisor that she was suffering from problems with her hands and she believed her condition was related to her job duties.

The appellate court held there was no requirement that a claimant’s injury must have been diagnosed by a physician or that a physician opine an injury is causally related to the employment. However, the supreme court declined to penalize
the claimant who diligently worked through progressive pain until it affected her ability to work and required medical treatment. In rendering its decision, the supreme court noted that courts considering various factors have typically set the manifestation date on either the date when medical treatment was required or the date when an employee can no longer perform required work duties.

The supreme court further noted that if the claimant would have filed a claim in 1997, she would have had difficulty proving her injury. Her symptoms were only intermittent at that time, and they did not require medical treatment. In Durand, the supreme court held the appropriate manifestation date was when the petitioner’s carpal tunnel syndrome was confirmed with a diagnostic study. As such, the filing of the Application for Adjustment of Claim was not outside the statute of limitations period.

Two supreme court justices dissented from the majority’s decision. Justice Garman wrote the appellate court’s decision should have been upheld in that there was sufficient evidence in the record to support the Workers’ Compensation Commission’s decision finding the appropriate manifestation date was when the claimant was aware she had a condition and was aware it was related to her job duties. Justice Garman’s dissent concluded the manifestation date selected by the commission and affirmed by the appellate court was entirely consistent with the standard set forth by the supreme court in the Peoria County Belwood case. Justice Garman further noted the majority’s decision established a de facto rule that regardless of a claimant’s actual and reasonable awareness of an injury’s manifestation, corroborative medical treatment is necessary before it can be said that a reasonable person would plainly recognize the injury and its causal relationship to his or her employment. Justice Garman also commented that despite the majority’s emphasis on “fairness and flexibility” it made a medical diagnosis of a repetitive trauma injury the determinative factor in the inquiry of an appropriate manifestation date.

Moving forward to 2012, the appellate court again seemed to reach to award benefits to a claimant alleging repetitive trauma injuries. See City Colleges of Chi. v. Ill. Workers’ Comp. Comm’n, 2012 IL App (1st) 112560WC-U. In City Colleges of Chicago, the appellate court affirmed the decision of the commission which adopted the arbitrator’s sua sponte determination of the claimant’s repetitive trauma injury manifestation date. The facts of the case demonstrated that the claimant’s first treatment for right-handed carpal tunnel syndrome occurred on September 3, 2002. On that date, the treating doctor stated the condition was most likely related to work. A second doctor evaluated the claimant November 22, 2002. He diagnosed carpal tunnel syndrome and recommended surgery. A third doctor evaluated the claimant on March 19, 2003, when the claimant complained of left-handed symptoms for the first time. An EMG study was performed on April 5, 2003, and the second doctor reviewed the EMG on May 15, 2003. The second doctor drafted a letter dated May 20, 2003, indicating the claimant’s condition was work-related.

The claimant alleged an accident date of February 14, 2003, but the Arbitrator and the commission found there was no evidence to support that date as an appropriate manifestation date. The arbitrator sua sponte determined the appropriate manifestation date was May 20, 2003.

The employer argued the commission’s award for benefits was against the manifest weight of the evidence because of its adoption of the arbitrator’s sua sponte finding as to the manifestation date. The appellate court stated the employer’s argument was without merit. The court further commented that previous decisions considered various factors when determining appropriate manifestation dates including dates on which (1) a claimant first sought medical treatment; (2) a claimant was first informed by a doctor that the medical condition was work-related; (3) a claimant was first unable to work as a result of the work-related condition; (4) a claimant’s symptoms became more acute at work; and (5) a claimant first noticed the symptoms of the condition.
None of the factors set forth by the appellate court correspond with the manifestation date chosen by the arbitrator. However, the appellate court concluded there was sufficient evidence in the record to support the commission’s decision, but it did not set forth an explanation as to how the chosen manifestation date meets the criteria set forth by previous decisions from the appellate court or the supreme court. The appellate court stated that even if the arbitrator incorrectly identified the manifestation date, the error was of no consequence because the employer abandoned its previous assertion that the claimant’s request for benefits was barred by the statute of limitations.

In 2016, the appellate court again affirmed a commission decision awarding benefits to a claimant despite an apparent deviation between the chosen manifestation date and the standards previously set forth by the courts. City of Peoria v. Ill. Workers’ Comp. Comm’n, 2016 IL App (3d) 150132WC-U. In City of Peoria, the employer argued the appropriate manifestation date was at an unspecified time as early as 2007 when the claimant’s testimony and medical documentation established that the claimant exhibited symptoms of cubital tunnel syndrome and made statements to healthcare providers that his work activities triggered his symptoms. The undisputed date of notice given to the employer was December 10, 2009, which was long after the 45 day notice deadline expired. The employer argued the claim was thereby barred. The appellate court reiterated the claimant must allege and prove a single definable accident date from which notice must be given.

The claimant alleged an accident date of October 30, 2009, which was the date the claimant first treated with Dr. Garst. The claimant previously treated with his primary care physician at the beginning of October. When the claimant saw Dr. Garst, he was given a diagnosis, and Dr. Garst rendered an opinion that there was a causal relationship between the claimant’s work duties and his condition.

The appellate court reiterated manifestation dates are subject to a flexible standard that ensures a fair result for both the faithful employee and the employer’s insurance carrier. The court further stated previous decisions typically considered various factors which set the manifestation date as either the date on which the employee required medical treatment or the date on which the employee could no longer perform work activities. However, the appellate court then affirmed the award for benefits based upon a manifestation date of October 30, 2009, which was the claimant’s second visit to a doctor. It was not until a third visit with Dr. Garst that the claimant was given restrictions preventing him from performing his regular work activities.

Once again, the appellate court adopted a later manifestation date thereby allowing the claimant to obtain benefits. The court declined to utilize the standard set forth in Durand which required a medical diagnosis of the claimant’s condition and knowledge of a relationship between the condition and the claimant’s employment. Based upon the standard set forth in Durand, the manifestation date should have been in 2007 which would have resulted in a denial of benefits due to the claimant failing to provide timely notice of a work-related condition to the employer.

This brings us back to the Heyl, Royster case. The claimant was a secretary for a law firm. She testified that some time in January 2009, she had pain in both of her hands and wrists. She suspected she was suffering from carpal tunnel syndrome, but she was not a physician, so she could not diagnosis it. The claimant’s last date of employment was March 9, 2009. The claimant was terminated for reasons unrelated to any medical condition.

On April 2, 2009, the claimant signed an Application for Adjustment of Claim alleging a manifestation date of March 9, 2009, which was her last day of employment. Notice was provided to the employer of the alleged work accident on April 10, 2009. The arbitrator made an award for benefits. The Workers’ Compensation Commission reversed the arbitrator’s award and held the claimant failed to provide timely notice of her injuries. The commission noted the claimant’s testimony that she had a pretty good feeling her symptoms were due to carpal tunnel, but she was not willing to take time
off work to have treatment performed. The commission concluded the claimant knew of her injuries and its causal link to her work as early as January 2009. Consequently, the notice provided to the employer April 10, 2009 was not timely.

The circuit court reversed the commission’s ruling noting the courts have previously held the manifestation date is appropriate on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. The court reasoned that because the claimant was able to work without limitation up to the time she was laid off, and she did not require medical attention until afterwards, the commission erred as a matter of law in holding the claimant did not provide timely notice.

On remand, the commission reversed itself on the issue of notice, and the matter proceeded to the appellate court on both the original commission’s decision and the decision on remand.

The appellate court’s decision focused on the initial decision of the commission. The employer argued the commission’s decision finding the claimant did not provide timely notice to the employer was not against the manifest weight of the evidence. The employer further argued the circuit court essentially conducted a de novo review.

The appellate court ultimately determined the commission’s original finding that timely notice was not provided to the employer was both against the manifest weight of the evidence and erroneous as a matter of law. The court reasoned the claimant had not reached either the date on which she required medical treatment or the date on which she could no longer perform her work activities prior to her termination date of March 9, 2009. The court further held the commission’s original finding that the claimant was obligated to give notice to the employer in January 2009 of her “potential” disability was against the manifest weight of the evidence. The appellate court cited to the Durand case in support of its holding.

What is especially odd about this case is that the accepted manifestation date of March 9, 2009 was nothing more than the last day the claimant worked for the employer. At that time, she had not received any medical treatment as would be necessary pursuant to the holding in Durand. Notice was provided to the employer of a work-related condition April 10, 2009, but the claimant did not receive any medical treatment until almost a month later. The appellate court did not explain how notice of a repetitive trauma injury could be given before the condition manifested itself by way of a medical diagnosis and causal connection opinion.

The purpose of this article was not to criticize each decision involving manifestation dates in repetitive trauma claims. That being said, many of the cases cited above appear to have adopted manifestation dates which are inconsistent with the courts’ stated standards and some of the decisions completely do away with the burden of proof requirements by awarding benefits based on accident dates which were never alleged by the claimants.

Notwithstanding the inconsistencies in the decisions, the appellate court and the supreme court have consistently emphasized the flexibility and fairness requirements of these types of cases. The one consistent factor in each of the cases cited above was there was a causal relationship between the claimants’ medical conditions and the work activities performed by the claimants. The obvious conclusion to be drawn is that the courts will use the “fairness and flexibility” argument to award benefits to a claimant who is suffering from a condition which is causally related to work activities. On the surface, this method may appear to be righteous, but it makes it difficult for employers to properly defend claims when the courts either change the standards or circumvent the standards claimed to be necessary for a claimant to prove up a repetitive trauma case.

Additionally, the courts have stated they are mindful of the impact manifestation dates have on legal relationships. However, in the cases where the courts award benefits based upon a manifestation date which was not alleged by the claimant, the courts are not giving any consideration to the impact the changed manifestation dates have on legal
relationships. This could create issues with insurance coverage, average weekly wage, and even the employer/employee relationship.

When defending employers in workers’ compensation claims arising from alleged repetitive trauma injuries, it is necessary to consider the decisions from the appellate court and from the supreme court to determine the nature of the evidence which will need to be presented to achieve a successful result. It is clear that to deny a repetitive trauma case based on an inappropriate manifestation date, the employer must also present a strong causal connection defense establishing there is no relationship between a claimant’s condition and the claimant’s job duties.

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