MISSOURI COURT OF APPEALS
WESTERN DISTRICT

KAREN RITCHIE

RESPONDENT,

v.

SILGAN CONTAINERS MANUFACTURING CORP. AND TRAVELERS CASUALTY INS. OF AMERICA

APPELLANTS.

DOCKET NUMBER WD84123

DATE: May 25, 2021

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, Edward R. Ardini, Jr., Judge and W. Douglas Thomson, Judge

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Attorneys:

Mav Hooman Mirfasihi, Kansas City, MO, for respondent.

Samantha N. Benjamin-House, Kansas City, MO, for appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

KAREN RITCHIE, RESPONDENT,
v.
SILGAN CONTAINERS MANUFACTURING CORP. AND TRAVELERS CASUALTY INS. OF AMERICA, APPELLANTS.

WD84123 Labor and Industrial Relations Commission

Before Division Three Judges: Gary D. Witt, Presiding Judge, Edward R. Ardini, Jr., Judge, and W. Douglas Thomson, Judge

Silgan Containers Manufacturing Corporation ("Silgan") and its insurer, Travelers Casualty Insurance of America ("collectively "Appellants"), appeal the final award ("Award") of the Labor and Industrial Relations Commission ("Commission") finding Karen Ritchie ("Ritchie") sustained a compensable work-related injury, finding her to be permanently and totally disabled and awarding her statutory damages for disfigurement of her elbow. Ritchie was further awarded uncompensated past medical expenses and eligible for future medical expenses.

Ritchie was employed by Silgan from 2009 through July 17, 2017, as a Fork Lift Operator and later as an Inspector. As a Fork Lift Operator, Ritchie worked twelve-hour shifts and operated the fork lift approximately nine hours each shift. In operating the fork lift, Ritchie used her left hand to continuously turn the steering wheel more than 1,000 times in each direction during her shift. Ritchie began to experience pain in her left elbow, while she was employed by Silgan.

On May 10, 2014, Ritchie was working in her garden at home and fell and sustained a fractured left wrist. Ritchie was treated by Dr. Daniel Smith ("Dr. Smith"), who placed her wrist in a cast. The pain in Ritchie's left elbow later became intolerable and Dr. Smith recommended Ritchie undergo an MRI and EMG. Dr. Smith gave Ritchie an injection and recommended Ritchie wear a tennis elbow strap noting that Ritchie was working many hours, contributing to Ritchie's pain. On October 30, 2015, Smith diagnosed Ritchie with cubital tunnel syndrome and noted that Ritchie was attempting to change positions at Silgan and that "this may help her out as far as decreasing some of the stress on the elbow." Ritchie applied for a change of position to Inspector, which was granted.

Dr. Smith performed two surgeries to treat Ritchie's injuries on February 25, 2016, and March 31, 2016 but Ritchie continued to suffer from left elbow pain. Ritchie provided written notice of her work-related injury to Silgan. Silgan sent Ritchie to a local hospital, who referred her back to Dr. Smith.

On December 23, 2016, Ritchie began receiving treatment from Dr. Jeffrey Bradley ("Dr. Bradley"), who performed a third surgery on her arm. Ritchie's condition did not improve. Dr. Bradley recommended the following work restrictions: (1) no lifting more than one pound; (2) no pushing, pulling, or gripping; and (3) no use of vibratory equipment. Because Silgan did not have a position that could accommodate those restriction, Silgan terminated Ritchie. Dr. Bradley opined that Ritchie's injury was not related to her work with Silgan.

Ritchie was evaluated by Dr. Ernest Neighbor ("Dr. Neighbor") who opined that Ritchie's use of her left hand in operating the forklift was the prevailing factor causing Ritchie to suffer from complex regional pain syndrome, lateral epicondylitis, and cubital tunnel syndrome. Dr. Neighbor adopted the work restrictions provided by Dr. Bradley but added that Ritchie required the ability to change postures in order to support her arm and the ability to nap during the day due to pain medicine and lack of sleep at night due to pain.

Ritchie was also evaluated by Dr. James Zarr ("Dr. Zarr") who agreed with Dr. Bradley's restriction and opined that Ritchie sustained 25% permanent partial disability to her left elbow. Dr. Zarr's amended report stated his opinion that Ritchie's work was not the prevailing factor in causing Ritchie's elbow pain.

Ritchie was also evaluated by vocational experts Michael Dreiling ("Dreiling") and Terry Cordray ("Cordray"). Dreiling opined that Ritchie was not able to compete in the open labor market, but Cordray opined that Ritchie could compete in the open labor market and was a good candidate for vocational rehabilitation.

An Administrative Law Judge ("ALJ") conducted a hearing on her claim and entered his final award concluding that: (1) Ritchie sustained an occupational injury which rendered her permanently totally disabled finding Ritchie was unable to compete in the open labor market; (2) Ritchie provided timely notice of her injury to Silgan; (3) Ritchie's claim for compensation was not barred by the statute of limitations. The ALJ awarded Ritchie permanent total disability benefits of $861.04 each week from July 17, 2017, continuing for the remainder of Ritchie's life; uncompensated medical expenses; future medical treatment; and damages relating to the disfigurement to the right elbow. On review the Commission affirmed the ALJ's findings of facts and conclusions of law. The Commission amended the ALJ's award finding that Ritchie's weekly payments for permanent total disability benefits should have been effective on May 2, 2018.

AFFIRMED.

Division Three holds:

(1) The Award's finding that Ritchie sustained an occupational disease based on repetitive motion is supported by competent and substantial evidence. Dr. Neighbor opined that within a reasonable degree of medical certainty that Ritchie sustained an injury to her elbow, which was caused by Ritchie's repetitive motions in operating the fork lift in the course of employment. Although, other medical professionals provided testimony that Ritchie's injury was

not caused by her operation of the forklift, we defer to the Commission's findings of fact, including credibility determinations.

(2) The Commission did not err in finding that Ritchie's claim was not barred for lack of timely notice because Ritchie provided written notice of her injury on July 12, 2016, which preceded Dr. Neighbor's diagnosis of Ritchie's occupational disease on December 8, 2017. Dr. Smith's statements the he believed Ritchie's operation of the fork lift exacerbated her gardening injury did not trigger Ritchie's duty to provide written notice to Silgan.

(3) The Award's finding that Ritchie is permanently and totally disabled is supported by competent and substantial evidence in that Dreiling opined Ritchie could not compete in the open labor market.

(4) The finding that Ritchie is entitled to future medical treatment is supported by competent and substantial evidence in that three physicians opined that Ritchie will require future medical treatment on her arm, and Dr. Neighbor opined that the damage to the ulnar nerve necessitates future medical treatment and flows from Ritchie's work.

(5) The Award's finding that Appellants are liable for Ritchie's past medical expenses is supported by competent and substantial evidence in that all three surgeries were necessitated by Ritchie's work-related injury.

(6) The Award's finding that Appellants are liable for uncompensated medical expenses is supported by competent and substantial evidence in that Ritchie produced medical statements demonstrating she owed medical providers $24,456.66 and Appellants did not meet their burden to prove that a portion of that debt had been written off. Appellants were not entitled to a credit for possible future reductions or write-offs.

Opinion by: Gary D. Witt, Judge May 25, 2021

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