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February 8, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2015AP209

Felipe Sanchez Sanchez v. Labor and Industry Review Commission
(L.C. #2014CV4820)

Before Higginbotham, Sherman, and Blanchard, JJ.

Felipe Sanchez, pro se, appeals an order affirming a decision of the Labor and Industry Review Commission denying him compensation for a finger injury and subsequent Methicillin-resistant Staphylococcus aureus (MRSA) infection. The Commission found that Sanchez failed to establish that a work-related injury caused the infection. Sanchez argues that various facts recited in the Commission's decision are not supported by the record, particularly the time frames relied upon by the independent medical examiner, Dr. James Foster. Upon our review of

the record and the parties' briefs, we conclude that the judgment should be summarily affirmed. *See* WIS. STAT. RULE 809.21 (2013-14).¹

The Commission decision recites the uncontested background. Sanchez first felt an injury to his finger on November 14, 2011. He testified that he experienced “a little pinching” in his hand or finger while he was using a pneumatic drill with a wire brush attachment. The next day, he went to his employer’s first aid room because his hand was swelling, and Sanchez said he thought he had an irritation. Around 3:00 a.m. on November 16, Sanchez went to the hospital emergency room because his hand had swollen dramatically. The medical reports indicate that he denied a work-related injury at that time. Sanchez was eventually hospitalized for the MRSA infection.

The Commission denied Sanchez’s request for workers compensation based on the opinion of Dr. Foster that the MRSA infection likely did not result from a work-related injury. Foster identified three steps necessary for a MRSA infection: (1) “Exposure to the pathogen in sufficient quantity or inoculum to overcome the host defenses and cause infection”; (2) An entry wound, that is, a cut or break in the skin, which can be small and not easily noticed; and (3) an incubation period, typically a matter of several days, but it can be more or less. Foster indicated that the early signs of infection can be detected somewhere between two and four days after exposure. Foster opined that it was not likely that a wire strand or bristle infected Sanchez because the strands would not come into contact with human hands and would not be present on the molds Sanchez was cleaning because they were heated to 350 degrees. Foster noted that the

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

medical record showed no apparent injury or cut, and Sanchez did not find any wire after checking the glove when he felt the pinching sensation. Foster also did not believe the wire could penetrate the cloth glove easily, and opined that the “hard pinch” that Sanchez felt at work could have indicated that his hand had already at that time started to become inflamed. Foster added that, even if a wire broke off from the brush and penetrated the glove, it was unlikely that it would cause an infection, given how small the injury was and the number of MRSA organisms that it could have introduced. Finally, noting that Sanchez’s report of “redness” two or three hours after the “pinch,” and a pimple-like structure the next day, Foster concluded that the infection appeared too soon after the “pinch” to have been caused by the “pinch.”

Much of Sanchez’s brief on appeal repeats his claims regarding the nature of the injury and when he first reported it as a work-related injury. Much of his testimony was contradicted by medical reports. He attributes the discrepancies to a language barrier. Sanchez also contradicts his employer’s environmental health and safety specialist regarding the timing of his first claim of a work-related injury. The Commission, not the court, determines the credibility of witnesses. The court’s duty is to search the record to find credible evidence that supports the Commission’s findings. *Mireles v. LIRC*, 2000 WI 96, ¶36, 237 Wis. 2d 69, 613 N.W.2d 875. The courts are prohibited from substituting their judgment for that of the Commission as to the weight or credibility of the evidence on any finding of fact. WIS. STAT. § 102.23(6).

Sanchez particularly faults Foster’s calculations regarding the incubation time for the infection. However, Foster’s analysis was based in part on Sanchez’s own statement that he saw redness and felt a hot sensation on the skin of his hand during his work break on November 14, 2011, and the next day developed a small bump resembling a pimple on his hand. By 3:00 a.m. on November 16, his hand had already swollen dramatically with a “full-blown infection.”

Based on these factors, Foster's analysis constitutes his expert medical opinion, and not mere speculation, that the "pinch" sensation Sanchez felt on November 14 was a sign that the infection was already present and was not a new wound.

The claimant has the burden of proving beyond legitimate doubt all facts essential to the recovery of compensation. *Leist v. LIRC*, 183 Wis. 2d 450, 457, 515 N.W.2d 268 (1994). Based on its findings regarding the credibility of the witnesses and the weight to be accorded the evidence, the Commission found that there was a legitimate doubt that Sanchez's infection resulted from a work-related injury. Because this court must affirm the Commission's findings when they are supported by credible and substantial evidence, *see* WIS. STAT. § 102.23(6), and here there is credible and substantial evidence in the record on which reasonable persons could rely in reaching the same findings, we must affirm the Commission's decision.

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals