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NOTICE  
Decision filed 12/16/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 IL App (3d) 100336WC

NO. 3-10-0336WC

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
WORKERS' COMPENSATION COMMISSION DIVISION

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ACE HARDWARE

Appellant,

v.

THE ILLINOIS WORKERS' COMPENSATION  
COMMISSION *et al.* (Quentin Buffington, Appellees).

) Appeal from the  
) Circuit Court of  
) LaSalle County.  
)  
) No. 09-MR-138  
)  
) Honorable  
) James A. Lanuti,  
) Judge, presiding.

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JUSTICE STEWART delivered the judgment of the court.  
Presiding Justice McCullough and Justices Hoffman, Hudson, and  
Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's determination that the claimant's condition of ill-being was causally related to an injury to his right shoulder that arose out of and in the course of his employment was not against the manifest weight of the evidence. The Commission's award of temporary disability benefits and medical expenses was not against the manifest weight of the evidence.

¶ 2 The claimant, Quentin Buffington, filed an application for adjustment of claim against his employer, Ace Hardware, seeking workers' compensation benefits for injuries to his right shoulder caused by an alleged work related accident. The claim proceeded to an expedited arbitration hearing on December 21, 2007, and May 1, 2008, under section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/19(b) (West 2006)). The arbitrator found that the claimant sustained an injury that arose out of and in the course of his employment with the employer and that his condition of ill-being was causally related to the injury. The employer was ordered to pay medical bills in the amount of \$5,518. The claimant was awarded temporary total disability from January 10, 2006, through May 3, 2006. The employer appealed to the Illinois Workers' Compensation Commission (Commission), which reworded four sentences of the arbitrator's decision and otherwise affirmed and adopted his decision. The Commission remanded the case to the arbitrator for a determination of any further benefits pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). The employer filed a petition for review in the circuit court of LaSalle County. The circuit court confirmed the Commission's decision, and the employer appealed.

¶ 3

## BACKGROUND

¶ 4 The claimant testified that he began working for the employer in July 2005. As part of the employment process, he had to undergo a physical examination. At that time, he informed the doctor conducting the physical that he had a prior right shoulder injury with surgery, but that he "had not had any problems." He was hired as a full case order filler. The claimant stated that his job entailed reviewing orders on the computer, driving around the warehouse to locate the items requested, and packing the requested items in crates for delivery to the designated store. The items weighed anywhere from a few ounces to 80 or 90 pounds.

¶ 5 The claimant testified that on September 21, 2005, he was crouched down pulling a 50-60 pound box of bird seed from a lower shelf when he felt a pinch in his right shoulder. He finished loading the box and kept working. During the course of the day, the pain became more severe, his arm went numb, and he felt tingling in the arm. At that point he reported the incident to his supervisor. An accident report was completed, and the claimant was taken to the Occupational Health Department at Illinois Valley Community Hospital where he was examined by a nurse practitioner and x-rays were taken. He told the nurse practitioner how the accident happened and informed her of his prior medical treatment and surgery on his shoulder. He was given pain medication and sent home on "light duty."

¶ 6 The claimant testified that he returned to the Occupational Health Department one week after the accident because his condition had not changed. He was told to follow-up with his regular doctor.

¶ 7 Dr. Preston Wolin testified by evidence deposition that he is a board certified orthopedic surgeon. Dr. Wolin stated that he examined the claimant on October 7, 2005, for a shoulder injury that occurred when he was lifting a 50 to 60 pound box and felt a pulling sensation in his right shoulder. He stated that the

claimant had a positive O'Brien test, indicating a superior glenoid labrum tear. Dr. Wolin ordered an MRI arthrogram to make a definitive diagnosis. He opined that the claimant's injury was causally related to the work injury he sustained on September 21, 2005.

¶ 8 The claimant had an MRI arthrogram on October 18, 2005, and, in his report, Dr. Peter Berger wrote that his findings were "consistent with a SLAP Type III superior labral tear." Dr. Wolin testified that on October 18, 2005, he examined the claimant and the results of his MRI and concluded that he had a superior glenoid labrum tear. He explained that a glenoid labrum tear is also called a superior labral tear and a SLAP tear. He stated that the MRI indicated that the claimant had a type III SLAP tear which was significant because that type of injury requires trauma. Dr. Wolin testified that he repeated the O'Brien test and the claimant tested positive again. Dr. Wolin recommended surgery. Dr. Wolin described the surgery as an arthroscopic procedure where anchors are placed into the bone and the labrum is sewn back into place. He stated that a type III labral tear can extend into the substance of the bicep tendon and if the substance of the bicep tendon is compromised, that injury would need to be repaired through an open incision. Any determination of whether the biceps tendon needs repair would have to be made at the time of surgery. He opined that this type of surgery is necessary to treat and cure the claimant's condition of ill-being. Dr. Wolin stated that the claimant needed to undergo surgery to reach a state of maximum medical improvement from his September 21, 2005, work injury. The claimant stated that he wishes to have the surgery.

¶ 9 The claimant testified that, before he began working for the employer, he injured his right shoulder in 1997 while working as a volunteer fireman. Dr.

Wolin treated the claimant for that injury. After conservative treatment failed, the claimant had surgery in March 1998. The claimant testified that he returned to full duty work in August 1998. He received a workers' compensation settlement in April of 2005 in the amount of 29 percent loss of use of his right arm as a result of his shoulder injury in 1997.

¶ 10 Dr. Wolin examined the claimant on November 10, 1997, and diagnosed him with anterior instability related to his injury sustained while working as a firefighter. He stated that he performed an arthroscopy with thermal capsule shift surgery on the claimant's shoulder in 1998. The procedure involved tightening the capsule of the joint by heating it to decrease the size of the capsule and to restore stability to the shoulder. Dr. Wolin testified that at the time of the surgery he viewed the labrum and it was intact. Although Dr. Wolin's operative notes from the 1998 surgery indicated that a slight tear of the labrum was debrided during the surgery, he was not asked during his testimony to explain that notation. He stated that after completing post-operative physical therapy, the claimant reached maximum medical improvement and did not require any work restrictions.

¶ 11 The claimant testified that in March of 2000, he returned to Dr. Wolin because he was experiencing numbness and tingling in his hand. Dr. Wolin examined the claimant on March 20, 2000. X-rays were taken, and the x-ray report showed a normal glenohumeral acromioclavicular joint. Dr. Wolin recommended that the claimant have an EMG. The claimant underwent an EMG on April 24, 2000, and it was normal. The claimant testified he was told to continue the exercises he had been taught at physical therapy.

¶ 12 The claimant testified that he returned to see Dr. Wolin in March 2004 for numbness and tingling. Dr. Wolin testified that he examined the claimant on

March 2, 2004, for an "increase in pain, a feeling of giving way, paresthesia or numbness and tingling into the fingers of the right hand." He diagnosed the claimant with recurrent instability of the right arm and a neuropraxia of the right arm. He recommended an EMG and nerve conduction velocity study. The claimant testified he did not have the tests. Dr. Wolin opined that the claimant's right shoulder problem that existed on March 2, 2004, was a result of his work injury in August 1997. The claimant stated it was again stressed that he needed to continue doing the physical therapy exercises.

¶ 13 The claimant testified that he did not see any chiropractor, physician, or anyone in the healing arts for problems with his right upper extremity from March 2004 until his appointment with Dr. Wolin on October 7, 2005. The claimant testified that between March 2004, when he last saw Dr. Wolin for his 1997 injury, and when he was hired by the employer, he worked for a machine shop. His job duties there involved running a computer numerical control machine. Physically, he had to load the parts into the machine and take the finished parts out. The parts ranged in weight from 20 to 25 pounds. He did not sustain any injuries to his right shoulder at that job. He testified that he has not seen Dr. Wolin or anyone else for treatment of his right shoulder condition since October 18, 2005. The claimant stated that, at the time of the hearing, the pain in his shoulder had not diminished.

¶ 14 At the request of the employer, the claimant was examined by Dr. James Cohen. Dr. Cohen testified by evidence deposition that he is a board certified orthopedic surgeon. He stated he performed an independent medical evaluation of the claimant on November 8, 2005. Based on the claimant's body language and comments, Dr. Cohen determined that he had localized pain to the anterior

subacromial region just beneath the acromial clavicular. The claimant provided Dr. Cohen with a history of previous right shoulder injury which was treated in 1998 with an arthroscopy with capsule shrinkage procedure with a radio frequency probe. Dr. Cohen performed O'Brien testing on the claimant and the test was negative bilaterally. He stated that he does not put much weight on the results of the O'Brien test because it is "one of many pieces of the puzzle. It's not an absolute." He reviewed the MRI arthrogram from October 18, 2005, and "thought there was some possible abnormalities of the superior labrum, and I was not certain, though, that there was a tear, but that could have represented a tear." He diagnosed the claimant with symptoms consistent with right shoulder impingement. In his report, on the date of the examination, he indicated that he related the claimant's symptoms to the accident on September 21, 2005. He clarified that he did not have all the claimant's medical records and felt that it would be helpful to have all of his records regarding his previous shoulder injury.

¶ 15 Dr. Cohen testified that he subsequently received the records he wanted and formulated a report dated December 6, 2005. He noted that Dr. Wolin's operative note recorded a slight labrum tear at the time of the 1998 surgery, "but it did not state the area that the labrum was torn." He stated that in reviewing the claimant's medical records, he determined that the claimant's shoulder injury from 1997 had not resolved and that the claimant had a chronic shoulder condition. He opined that the claimant's condition of ill-being pre-existed the September 21, 2005, accident.

¶ 16 Dr. Cohen admitted that while Dr. Wolin and the radiologist interpreted the MRI as consistent with a type III SLAP tear, his interpretation was different. He stated that he felt that the claimant's symptoms were primarily consistent with

impingement syndrome but he had not determined with certainty that the claimant did not have a type III SLAP tear. He stated that the history the claimant gave about the 2005 accident could have been a sufficient cause for a labrum tear or a shoulder impingement type syndrome. Dr. Cohen recommended conservative treatment, but stated that if the claimant did not improve, he would recommend arthroscopy. He clarified that he recommended "a simple cortisone shot, and if that doesn't help, my recommendations for treatment are not any different than Dr. Wolin's recommendations for treatment."

¶ 17 The arbitrator found that the claimant sustained injuries that arose out of and in the course of his employment. He further found that the claimant's condition of ill-being was causally related to his September 21, 2005, work accident. The arbitrator ordered the employer to pay \$5,518 in medical bills. The claimant was awarded temporary total disability from January 10, 2006, through May 3, 2006. The Commission reworded four sentences in the arbitrator's decision and otherwise affirmed and adopted his decision. The Commission remanded the case to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). The circuit court confirmed the Commission's decision. The employer filed a timely notice of appeal.

¶ 18

#### ANALYSIS

¶ 19 The employer argues that the Commission's finding that the claimant's condition of ill-being was causally related to injuries he sustained in the September 21, 2005, accident is against the manifest weight of the evidence. "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose

out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). "The question of whether an injury arises out of employment is generally a question of fact for the Commission and we will not disturb its determination unless it is against the manifest weight of the evidence." *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 164, 731 N.E.2d 795, 808 (2000). Whether a causal connection exists is a question of fact for the Commission. *Piasa Motor Fuels v. Industrial Comm'n*, 368 Ill. App. 3d 1197, 1202, 858 N.E.2d 946, 951 (2006). In workers' compensation cases, the Commission is the ultimate decision maker. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). "The Commission must weigh the evidence presented at the arbitration hearing and determine where the preponderance of that evidence lies." *Roberson*, 225 Ill. 2d at 173, 866 N.E.2d at 199. A finding of fact is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 164, 731 N.E.2d at 808. The test for whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence is not whether the reviewing court might reach the same conclusion, but whether there is sufficient evidence in the record to support the Commission's decision. *Ameritech Services, Inc. v. The Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 203, 904 N.E.2d 1122, 1133 (2009).

¶ 20 The employer argues that the claimant's right shoulder condition was not causally related to his work accident on September 21, 2005. It asserts that the claimant injured his shoulder in 1997 while working as a volunteer firefighter, and that the condition never resolved, but became a chronic condition.

¶ 21 Employers take their employees as they find them. *Sisbro, Inc.*, 207 Ill. 2d at 205, 797 N.E.2d at 672. An employee will not be denied recovery for an accidental injury even though he has a preexisting condition as long as it can be shown that the employment was a causative factor in his condition of ill-being. *Sisbro, Inc.*, 207 Ill. 2d at 205, 797 N.E.2d at 672-73. "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Sisbro, Inc.*, 207 Ill. 2d at 205, 797 N.E.2d at 673.

¶ 22 The claimant admitted having shoulder surgery in March 1998. Dr. Wolin treated the claimant for his right shoulder injury in 1998. He diagnosed the claimant with traumatic instability of his right shoulder as a result of the injury. He performed an arthroscopy with thermal capsule shift surgery to restore stability. He testified that he viewed the claimant's labrum during the surgery and it was intact. He stated that after the surgery and physical therapy, the claimant reached maximum medical improvement and had no work restrictions. The claimant testified that he returned to full duty work in August 1998.

¶ 23 The claimant testified that he saw Dr. Wolin in March 2000 and March 2004, for numbness and tingling in his hand. Dr. Wolin testified that he examined the claimant in March 2004, and diagnosed him with recurrent instability of the right arm and a neuropraxia of the right arm. The claimant stated that after March 2004 when he saw Dr Wolin but before he was hired by the employer he worked in a machine shop lifting parts weighing 20 to 25 pounds. During this time he also worked as a volunteer firefighter and EMT. The claimant underwent a physical as a preliminary step to employment with the employer. He informed the physician conducting the physical that he had a prior right shoulder injury with surgery. He

told the physician that he did not have any problems with his shoulder. He had not sought treatment for problems related to his shoulder since March 2004. He began working for the employer in July 2005 where he lifted items ranging in weight up to 80 or 90 pounds. His shoulder did not prohibit him from performing his job duties. He did not return to Dr. Wolin until after his September 21, 2005, accident, and he did not seek any other type of treatment for his shoulder.

¶ 24 Dr. Wolin testified that he examined the claimant on October 7, 2005. The claimant's O'Brien test was positive indicating a possible glenoid labrum tear. He ordered an MRI arthrogram to make a definitive diagnosis. Dr. Berger interpreted the MRI and wrote that his findings were "consistent with a SLAP Type III superior labral tear." Dr. Wolin examined the claimant again on October 18, 2005, and reviewed the results of the MRI. He concluded that the claimant had a superior glenoid labrum tear. He testified that it was significant that the claimant had a type III SLAP tear because it required trauma to occur. Dr. Wolin recommended surgery. He opined that the claimant's injury was causally related to the work injury he sustained on September 21, 2005.

¶ 25 Dr. Cohen testified that he felt the claimant suffered from a chronic shoulder condition that had not resolved from his 1997 injury. He opined that the claimant's symptoms were more consistent with impingement syndrome, but admitted that he had not determined with certainty that the claimant did not have a type III SLAP tear. Dr. Cohen stated that he recommended conservative treatment of the claimant's shoulder, but if that was unsuccessful, he recommended arthroscopy.

¶ 26 "It is the function of the Commission to resolve disputed questions of fact, including those of causal connection, to decide which of the conflicting medical

views is to be accepted, and to judge the credibility of the witnesses and draw permissible inferences from the evidence." *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill. App. 3d 915, 920, 828 N.E.2d 283, 289 (2005). The Commission's decision is not to be discarded by a reviewing court merely because different inferences could be drawn from the same evidence. *Id.* "The assessment of credibility is a function of the Commission, not the reviewing court." *Twice Over Clean, Inc. v. Industrial Comm'n*, 214 Ill. 2d 403, 415, 827 N.E.2d 409, 415 (2005). It is for the Commission to determine which medical opinion is to be accepted, and it may attach greater weight to the treating physician's opinion. *Piasa Motor Fuels*, 368 Ill. App. 3d at 1206, 858 N.E.2d at 954.

¶ 27 In the instant case, the Commission found the claimant to be credible. It weighed the conflicting medical opinions and chose to accept the opinion of the claimant's treating physician, Dr. Wolin. There was medical evidence that the claimant sustained an injury that created a tear in his glenoid labrum that had not been there prior to the September 21, 2005, accident. The claimant's testimony, Dr. Wolin's testimony, and the medical records provided sufficient evidence to support the Commission's conclusion that his current condition of ill-being is causally related to his work accident on September 21, 2005. Thus, the decision of the Commission is not against the manifest weight of the evidence.

¶ 28 The employer next argues that the Commission's award of temporary disability benefits and medical expenses is against the manifest weight of the evidence. The employer bases this second argument on its first argument, that the claimant's condition of ill-being was not causally related to his September 21, 2005, work accident. Because the evidence supports the Commission's

determination that the claimant's condition of ill-being was causally related to his work accident, we need not address this argument.

¶ 29 Although the Commission decision contains no explicit order for prospective medical treatment, the claimant argues, in his brief, that because the Commission adopted the opinions of Dr. Wolin, it implicitly ordered the surgery he recommended. The employer urges that if this court affirms the decision of the Commission as to accident and causal relationship, it should find that the Commission did not award prospective medical benefits.

¶ 30 The Commission ordered the employer to pay \$5,518 for outstanding medical bills. It further ordered the case to be remanded to the arbitrator for further proceedings consistent with its decision pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399, N.E.2d 1322 (1980). With the exception of rewording four sentences, the Commission affirmed and adopted the arbitrator's decision. Prospective medical expenses were not ordered.

¶ 31 Under the provisions of section 8(a) of the Act, an employer is required to pay for all necessary medical, surgical, and hospital services that are reasonably required to cure or relieve the effects of an accidental injury sustained by an employee and arising out of and in the course of his employment. 820 ILCS 305/8(a) (West 2006). "An employer's liability under this section of the Act is continuous so long as the medical services are required to relieve the injured employee from the effects of the injury." *Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill. App. 3d 758, 764, 753 N.E.2d 1132, 1137-38 (2001). While prospective medical expenses were not ordered, the claimant is not foreclosed from seeking medical, surgical, and hospital expenses that are reasonably required to relieve his work-related condition of ill-being.

¶ 32

## CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of LaSalle County confirming the decision of the Commission is affirmed and this cause is remanded to the Commission pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399, N.E.2d 1322 (1980).

¶ 34 Affirmed and remanded.