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NO. 4-10-0523-WC
IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

NOTICE
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WORKERS' COMPENSATION COMMISSION DIVISION

UNITED GILSONITE LABORATORIES,) Appeal from the
) Circuit Court of
Appellant,) Pike County.
)
v.) No. 10-MR-4
)
) Honorable
ILLINOIS WORKERS' COMPENSATION) Michael Roseberry,
COMMISSION, (James Bergman, Appellee).) Judge, presiding.

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

O R D E R

Held: The Workers' Compensation Commission did not err in admitting expert
medical testimony that was based on a hearsay medical report where the
expert testified that he customarily relied on those types of reports in the
diagnosis and treatment of patients. In addition, the Commission's finding
that the claimant suffered from an occupational disease that was causally
connected to a workplace exposure was not against the manifest weight of the
evidence.

The claimant, James Bergman, worked in the maintenance department at a plant that
manufactures various paints, stains, and concrete patch compounds and is owned by the
employer, United Gilsonite Laboratories. The claimant filed two applications for adjustment
of claim seeking benefits under the Illinois Workers' Occupational Diseases Act (Act) (820
ILCS 310/1 *et seq.* (West 2002)). The claimant maintained that he suffered from lung

conditions, sarcoidosis and titanium dioxide pneumoconiosis, as a result of exposure to certain chemicals, dust, and noxious fumes at work. The arbitrator found for the claimant and awarded him temporary total disability (TTD) benefits, medical benefits, and permanent total disability (PTD) benefits. On review, the Workers' Compensation Commission (the Commission) unanimously affirmed the arbitrator's award. On judicial review, the circuit court of Pike County entered a judgment confirming the Commission's decision. The employer appeals the circuit court's judgment.

STATEMENT OF FACTS

The arbitration hearing was held on March 14, 2008. At the time of the arbitration hearing, the claimant was 44 years old. He testified that in December 1985, he began working for the employer as a maintenance foreman at its manufacturing plant in Jacksonville, Illinois. The maintenance department at the plant consisted of two people, the claimant and another individual named Larry Neff. The employer hired Neff shortly after hiring the claimant in December 1985. When the claimant and Neff started in 1985, the employer's plant was still under construction, and they helped install machinery, lighting, and air lines at the plant. The plant began formal production in 1986, and the employer began manufacturing polyurethane, wood stains, and a masonry coating for waterproofing walls. When it began production, the plant was a new building with a new ventilation system.

As the plant continued to operate, the employer began making additional products including wood fillers, tile grouts, and a product called Fast Plug. The claimant testified that the employer used mineral spirits, some type of resin, cement, and silica sand in the manufacture of the masonry waterproof material. The wood filler products were made with wood flour, liquid resins, water, and silica sands. The tile grouts were made with resins and

several powders, including silica sand and titanium dioxide. The claimant testified that titanium dioxide was a powder used at the plant as a "pigment, whitening agent." Fast Plug is a concrete patching material that the employer began manufacturing at the plant in 1988. In the mid-90's, the plant's production of Fast Plug increased significantly. The claimant testified that Fast Plug was made with gray portland cement, silica sand, lime, and aluminate. The employer also used silica sand and titanium dioxide to make concrete floor paint.

Between 1990 and 1995, the employer produced eight different products containing crystalline silica, and five of the eight products also contained titanium dioxide. The record on appeal includes the material safety data sheet for silica. The material safety data sheet states that inhalation of the material can cause silicosis, a fibrosis condition, or scarring of the lungs, and scleroderma, an immune system disorder manifested by scarring of the lungs.

The claimant's employment duties did not include mixing any of the ingredients, but his job required him to work in all plant locations at various times, including the mixing room, production room, shipping room, and receiving room. He was based out of a maintenance shop within the plant, and where he worked within the plant on any particular day depended on what needed to be done. The maintenance shop contained various tools and desks to prepare daily paperwork. Some days he spent very little time in the maintenance shop, and some days he spent nearly half the day there.

The mixing area is on an upper level of the plant, and a gravity system moves the materials from the mixing area to the production area on a lower floor. In the mixing and production areas, the claimant performed maintenance, repair, and calibration work on the mixing and production machinery. The claimant testified that he performed work in the mixing area, on average, a few hours per day and worked in the production area at least five hours every day. Neff testified that they spent most of their day in the production area. They went to the mixing area to lubricate the mixers once per month, to repair broken belts once

or twice per year, and to conduct a daily walk-through for visual inspections and to determine if any of the mixing employees needed help with anything. Neff estimated that they would "[b]e lucky to spend an hour up there [in the mixing area]."

The process for loading the mixers with the powdered ingredients, such as silica sand and titanium dioxide, involved cutting open a bag of the powdered ingredient and dumping it into a mixing tank. The mixing tanks contained paddles that rotated within the large mixers while the powdered ingredients were added. The employer used two types of silica sand in this mixing process: a sand that had the consistency of the sand found in a child's sandbox, but dryer, and a sand that had the consistency of talcum powder. Loading the silica sand into the mixing tanks created dust in the air. The mixing area is equipped with a vacuum system designed to remove the dust particles from the air. The claimant testified, however, that the system does not remove all of the dust escaping from the mixers. He was present in the mixing area on occasions when the mixers cut open bags of dry silica and poured the silica into the mixers.

The lower-level production floor contained a particular bin used for mixing the employer's "Fast Plug" product. To make the Fast Plug, dry silica sand based product was fed down a piping system to the bin. The same bin was also used to make a wood patch, and the claimant helped clean out the bin when the production changed between the wood patch and Fast Plug. The Fast Plug filling line was approximately 60 feet from the maintenance shop, and the Fast Plug kicked up dust when it dropped into the bin from the filling line. Initially, the bin was covered with a plywood lid that was not airtight. In the late 1990's, the employer replaced the plywood cover with an aluminum top that was sealed with a gasket and was bolted to the powder filling line.

The mixers wore respirators while working in the mixing area, but the claimant was not required to wear a respirator when he worked in the mixing room. The employer

provided the claimant with throw-away paper masks that he would wear when he cleaned out the dust collector or drained and cleaned the bins that held the Fast Plug. However, normally when he traveled around the plant and performed various maintenance tasks on production or mixing machines, he did not wear any masks. Neff testified that they always had "particle masks" available. The claimant's duties included adjusting the production line and operating the production line machines to make sure that they were running properly. The claimant stated that he was not provided any breathing protection when he performed maintenance work on the plant's production line, but the production workers were required to wear paper masks. The claimant presented evidence that the masks that the employer provided him during the first six to eight years of his employment (the series 8500 masks) were insufficient to protect his lungs from silica and titanium dust. The claimant also testified that the masks were kept away from the work areas because they were expensive and easily discarded. At times, he could not retrieve a mask because he had to fix a problem quickly.

The claimant testified that, on an average day, when all of the machines in the mixing area were running, the air looked hazy and foggy because of dust particles from the powders used to make the employer's products. The air was cleaner in the production area, except around the Fast Plug bin which created considerable dust and was near the maintenance shop. Although the air was cleaner in the production area, the claimant described it as "still really dusty." Neff, however, testified that he felt that the production area was "a little dusty," but did not think it was very dusty or was "that bad." The claimant testified that when he cleaned the dust off his maintenance desk in the morning, by the end of the day, it would be covered with new dust so thick he could write his name in it.

The general manager for the plant, George Crolly, testified that when the plant first operated, a lot of dust escaped the plywood top on the Fast Plug bin, but they replaced the

plywood top with the sealed top in the 1990's to reduce the dust. He disagreed with the claimant's testimony that there was a haze in the air in the mixing area. He believed that some dust was created from the mixers throwing the bags containing the powdered ingredients, but that there was no haze. He testified that, in 1993 and 1995, he had air quality studies performed at the plant to test for dust particles and vapors in the air and that the plant passed both studies "with flying colors." On cross-examination, however, Crollly agreed that the production area was dusty and that dust escapes from the mixers in the mixing area.

The evidence at the arbitration hearing included copies of three industrial hygiene reports concerning the air quality of the plant conducted in 1993, 1995, and 2002. The arbitrator found that the 2002 study documented exposure to crystalline silica at the plant as of July 18, 2002 and that the study detected quartz silica in one of the air samples taken from Neff, who had replaced the claimant as the maintenance supervisor at the time of the study. The levels shown in the study were below the permissible exposure limits (PEL) established by the Occupational Safety and Health Administration. The report concluded that the detectable particulates in the samples were below "the applicable hygienic standard" and that "[s]ignificant concentrations of airborne quartz silica approaching the hygienic standards were not identified during [the] survey." The report concluded that the "generation of airborne dusts within the plant is effectively controlled below applicable hygienic standards by the use of local exhaust ventilation and work procedures." The claimant was not working for the employer on July 18, 2002, and the arbitrator concluded that the study did not offer proof concerning the particulates in or quality of the air during the claimant's employment.

The arbitrator found that the 1995 report detailed evidence of one exposure to respirable crystalline silica above the American Conference of Governmental Industrial

Hygienist Threshold Limit Values for silica and that all workers in the study documented exposure to crystalline silica of some concentration. None of the workers in the study were from the maintenance department.

The claimant testified about events that occurred on the first date of his disablement, December 19, 1996. On that day, some employees at the plant complained of headaches and feeling light headed. The employer called a heating and air-conditioning contractor to the plant, and the contractor determined that the interior of the plant contained a high level of carbon monoxide. The employer sent everyone home, except the claimant who stayed at the plant to help the contractor find the problem. On his way home from work at the end of the day, the claimant experienced a burning sensation in his chest and continual coughing. When he got home, the claimant's wife told him that he looked terrible, and she took him to Illini Community Hospital.

The defendant was admitted into the hospital and was treated by his family doctor, Dr. Ansari. The claimant testified that when he went to the hospital, he was suffering from a high fever and could not breathe and that Dr. Ansari believed that the claimant had pneumonia. Dr. Ansari's records indicate that the claimant had complaints of cough and congestion, had not felt well for a few days, and had been progressively getting worse. His admission notes state as follows:

"Patient works in an environment where he handles powders and paints and thinners and so forth and has worked there for approximately 12 years now and has been getting increasingly short of breath. He recalls that when he is splitting logs, etc., that he is unable to do as well as he did before and gets very tired and short of breath. His general health is becoming worse in this way as far as breathing is concerned. But this got progressively worse with the recent bout of congestion, cough and feeling feverish. Patient's over-all situation is fair. He is not taking any

medications."

Dr. Ansari reported that the findings in the claimant's chest x-rays were consistent with pneumonia. His admission notes state that his impression at the time was as follows: "Pneumonia, upper respiratory infection. Rule out borderline COPD. Chemical pneumonitis." The claimant remained admitted at Illini Community Hospital until he was discharged on December 24, 1996. Dr. Ansari's December 24, 1996, notes state that the claimant slowly improved at the hospital and that he prescribed the claimant Biaxin and a Beclovent inhaler. Dr. Ansari wrote his "final findings" in his report dated December 24, 1996, as follows: "bilateral pneumonia. Rule out chemical pneumonitis, due to exposure possibly to chemicals at work?" Dr. Ansari removed the claimant from work and referred him to a specialist in pulmonary diseases, Dr. Eagleton.

Dr. Eagleton testified at the arbitration hearing by way of evidence depositions. When Dr. Ansari referred the claimant to him, he reviewed the claimant's medical records and test results and initially could not determine the cause of the claimant's symptoms. The claimant told Dr. Eagleton that he worked in a paint factory, worked with cement and welding, used to smoke but quit smoking 15 years ago and had an occasional cigar. On examination, Dr. Eagleton noted that the claimant had "rales" in his chest which he described as clacky noises. Tests of the claimant's sputum were negative for tuberculosis organisms and histoplasmosis.

In January 1997, Dr. Eagleton sent the claimant for a biopsy performed by Dr. Hazelrigg at the Memorial Medical Center. Dr. Eagleton testified that the claimant's biopsy showed multiple caseating and non-caseating "granulomas." In describing this biopsy finding, Dr. Eagleton explained that a body's immune system can react to materials that are not normally part of the body with what are called "granulomas," a "type 4 immune response." This response was typical for tuberculosis or fungus infections. He described

granulomas as nodules in the lung, and caseation as a yellow, whitish-yellow material or dead tissue. With respect to the cause of the claimant's granulomas, he testified that the biopsy did not show any acid fast bacilli, which would be tuberculosis type organisms and that he did not see any kind of organism.

In further explaining the claimant's condition, Dr. Eagleton testified that some individuals are more likely to respond with a "granulomatous type inflammation" that is more pronounced than the average person's reaction, similar to someone that has an allergy. Dr. Eagleton testified as follows, "Silica *** has been associated with a reaction to the lung called silicosis, and it is dependent upon dose or the amount that people breathe, the size particle, where it goes in the lung, things of that nature, and also about how different individuals would respond and the degree that they would respond to it." At the time of the biopsy, Dr. Eagleton was unsure whether the claimant's condition was "some exacerbation" of pneumonia secondary to his occupational exposures or whether the claimant had inhaled a significant amount of particulate silica. He stated that the lack of any positive organisms leads him to the conclusion that the claimant's body was reacting to a particulate. He did not find any tuberculosis or fungus and felt it was reasonable to conclude that the claimant was prone to this type of immune response with any exposure of appropriate material. He diagnosed the claimant as having sarcoidosis, which is a granulomatous disease of the lung.

The claimant had told Dr. Eagleton that he thought someone within his family, a brother or a sister, had developed sarcoidosis, and Dr. Eagleton explained that sarcoidosis was a condition that has a genetic predisposition. He concluded that the claimant had the genes that made him prone to develop sarcoidosis and that something environmentally caused the reaction, but there may have been other aggravating factors. Dr. Eagleton testified that if two individuals are exposed to silica dust regularly and only one has the genetic predisposition of sarcoidosis, the one without the genetic predisposition might not

develop sarcoidosis. He opined that people with "sarcoid" would be much more likely to react vigorously to silica and that there was no specific amount of silica exposure required to start the sarcoidosis process.

When Dr. Eagleton gave his deposition on December 3, 2001, he testified that if the claimant "were breathing high particulate silica or other noxious materials to the lung that that could well have contributed to his problem." He testified that if the claimant breathed significant amounts of silica, it would be reasonable to link the inhalation of silica with the type of immune damage in the claimant's lungs. He testified to a reasonable degree of medical certainty that if the claimant was exposed to particulate silica, the inhalation of those particulates could have caused or contributed to the development of the sarcoidosis.

Dr. Eagleton prescribed steroids, Prednisone, inhalers, and some breathing medicine. He also performed lung capacity testing and determined that the claimant suffered from "airway hyperresonsiveness," which caused his airways to twitch like asthma. Dr. Eagleton testified that if the claimant did not have granulomas "and the process that [has] gone on in his lung, his asthma probably would not be as bad in the sense that it may not be as twitchy."

Dr. Eagleton removed the claimant from work in January 1997, but the claimant returned to work on February 14, 1997, without any restrictions. The claimant testified that he had asked to be released back to work because he did not believe he could live on his disability checks; therefore, he returned to work as the maintenance supervisor at the employer's plant.

The claimant testified that when he returned to work, the employer's production of certain products containing silica sand, such as Fast Plug, "picked up tremendously." The employer "revamped" the dust collector to add more intake to help cut down on the dust. The employer also added exhaust fans in the shipping room after the carbon monoxide incident. The claimant, however, still noticed dust in the air after these changes. Neff could

not recall any changes the employer made to the dust collection system at the plant.

After he returned to work, the claimant noticed that he easily became very fatigued at work, but he continued working at the plant until December 13, 2001, his last day of work. The claimant was scheduled off work on December 14 and 15, 2001. On December 15, 2001, the claimant woke up in the middle of the night and could not breathe. He felt as if he were suffocating and there was no air in the house. He got out of bed, walked downstairs to his kitchen, and passed out. When his wife woke him up, he was coughing up blood. An ambulance carried the claimant to Illini Community Hospital, and he was later transferred to the Memorial Medical Center. The claimant was at Memorial Medical Center for about one week, and Dr. Eagleton directed the claimant not to return to work at that time.

By July 2002, Dr. Eagleton told the claimant that he could return to work, but that he had to avoid dust, humidity, and preferably work a sedentary job. The employer, however, told the claimant that they did not have any work with those restrictions. The employer told him that he could return to work when he got a full medical release. Since then, however, the claimant has not been released to work without restrictions. Instead, the claimant's condition has progressively worsened. As of September 2002, the claimant had approximately 25% of his predicted lung capacity.

The record suggests that Dr. Eagleton either retired or left the area for a short period and referred the claimant to one of his associates, Dr. Sood. Dr. Sood testified at the arbitration hearing by way of an evidence deposition. He testified that when he saw the claimant, the claimant was diagnosed with "sarcoidosis, COPD/asthma, and possible silicosis." He believed that sarcoidosis is a granulomatous disease of the lung that had an unknown cause and that it was debatable whether people who develop sarcoidosis were genetically predisposed to develop the condition.

Dr. Sood reviewed the claimant's CAT scan and believed that there was some

discrepancy between the claimant's pathological and radiological picture. He testified that the claimant presented "a very atypical pathological picture for sarcoidosis" because there was a lot of "caseation," which was not classically seen in sarcoidosis. He explained that caseation means necrosis, and it represents a rapid inflammatory response.

He ordered additional full pulmonary function tests and CAT scans of the chest. He testified that there was no pathological evidence of silicosis and that the claimant's symptoms were atypical for sarcoidosis. Instead, Dr. Sood was concerned that the claimant had "granulomatous lung disease from titanium dust pneumoconiosis based upon his occupational history."

Dr. Sood explained that granulomatous lung disease can be seen in sarcoidosis, but that sarcoidosis is a diagnosis of exclusion. A diagnosis of exclusion means that if one rules out other causes, such as metal exposures and does not find any evidence of alternative explanations, then the diagnosis is sarcoidosis. Based on the claimant's occupational history, Dr. Sood felt that the claimant's exposure to titanium dioxide dust caused his granulomatous process. He felt that, pathologically, one could not differentiate between titanium dust pneumoconiosis and sarcoidosis.

Dr. Sood reviewed the 1993, 1995, and 2002 industrial hygiene evaluations and noted that they did not include checks for titanium dioxide. Dr. Sood diagnosed the claimant as having titanium dust pneumoconiosis and sarcoidosis, but he testified that he had not made a definitive diagnosis of titanium dust pneumoconiosis and that he needed further testing and analysis to pinpoint if that was the cause. He believed that titanium dust pneumoconiosis is a very rare condition, and he would like an occupational pulmonary specialist to confirm his diagnosis. He also stated that the exact way that sarcoidosis and titanium dust pneumoconiosis occur is unknown, but it is known that titanium dust pneumoconiosis is idiosyncratic, meaning that the dose and response do not follow a straight line. He did not

believe that the claimant's disease was caused by a single exposure but from repeated levels of exposure that resulted in the granulomatous response. He did not believe that titanium dioxide occurred naturally in sufficient quantities to cause the claimant's reaction, and he felt that the claimant could have a genetic predisposition to develop the condition.

He acknowledged that he had not established conclusively that titanium dioxide was the actual pathogen that was causing the claimant's lung condition because that required expensive testing that was available at only select institutions. It was less significant to him whether there was detectable titanium dust in the claimant's system than whether his body mounts an immune response to titanium salt. He had recommended that an occupational pulmonary pathologist, Dr. Jerrold Abraham, review the slides taken from the claimant's 1997 biopsy, but the claimant's health insurance had refused to authorize the testing. He testified that if such tests were ultimately performed and established the lack of titanium dioxide particles in his lungs, then he would move toward a diagnosis of sarcoidosis.

Dr. Sood believed that, even without the testing, however, he could conclude to a reasonable degree of medical certainty that the claimant was exposed to titanium dust in his workplace for several years before 1996 and that the exposure caused his granulomatous lung condition and his current disability. He did not believe that the claimant had silicosis. He verified the claimant's exposure to titanium dioxide dust through his review of material safety data sheets furnished by the claimant, which was standard practice in occupational pulmonary medicine.

Dr. Sood believed that the claimant displayed a slow progression of disease over the past two years and that his condition would continue to deteriorate. He suggested that the claimant undergo a pre-lung transplant evaluation. According to Dr. Sood, the claimant's respiratory impairment was Class IV, the most severe, and he did not believe that the claimant could return to his previous occupation. He felt that the claimant's sarcoidosis was

advanced and that the severe sarcoidosis decreased his life expectancy.

The employer presented the evidence deposition testimony of Dr. Cugell, a specialist in pulmonary disease. Dr. Cugell examined the claimant's "clinical and diagnostic data, as well as some industrial testing data and surveys" to render an opinion concerning whether the claimant's condition was related to exposure to particles or chemicals at the employer's plant. He reviewed the industrial hygiene surveys conducted in 1993, 1995, and 2002. Dr. Cugell issued an initial report on December 3, 2002, containing his findings and opinions and supplemental reports in October and November 2006, after an examination of the claimant's lung tissue from his 1997 biopsy.

Dr. Cugell testified that the claimant's clinical problem began with shortness of breath and wheezing with activities and that the claimant's condition best fit a diagnosis of sarcoidosis. He testified that sarcoidosis has features resembling tuberculosis, features similar to some fungal infections, and features seen in some types of occupational exposures. Dr. Cugell felt that tuberculosis and fungal infections could be ruled out because "they were unable to identify any infectious organism by appropriate laboratory methods, and the course of the [claimant's] illness does not correspond to what would occur if that was the cause."

Dr. Cugell described silicosis as a lung disease caused by the inhalation of crystalline silica. He stated in his December 2002 report that the "abnormalities that are present on all of [the claimant's] chest X-ray films do not resemble those seen in silicosis." In addition, he testified that the industrial hygiene surveys never found crystalline silica content greater than allowable limits except a minimal increase in one of five people tested in 1995. Dr. Cugell concluded his December 2002 report by noting that the claimant's lung biopsy had not been examined for the presence of silica. He wrote that "[s]lides from that tissue should be re-examined under polarized light to determine if silica particles are present."

Dr. Cugell testified that in 2006, he was provided with biopsy slides from the

claimant's 1997 lung biopsy, and he submitted the biopsy slides to microscopic testing conducted by Dr. Yeldandi. Dr. Yeldandi tested the biopsy slides under normal light and under polarized light to identify the specific contents of the tissue. Dr. Cugell testified that the biopsy tissue looked sarcoid and that the polarized light was used to look for birefringent particles, i.e., silica or titanium particles in the tissue. He testified that they could find "very, very few," which signified to him an "inconsequential degree of exposure." Dr. Yeldandi's pathology reports stated that he found silica and titanium dioxide particles in the claimant's lungs. He described the particles as "occasional." Dr. Cugell wrote in his report dated October 23, 2006, that "[r]are birefringent particles were seen when the tissue was observed with polarized light, indicating the presence of occasional silica, or possibly titanium dioxide." He concluded in his report that the "particles were far fewer than are seen in patients with pulmonary abnormalities attributable to either silica or titanium dioxide, if indeed the latter is ever the cause of any pulmonary disease." Dr. Cugell felt that the microscopic testing excluded silica, titanium, or any other birefringent material as a basis for the claimant's tissue reaction. He testified that if silica had caused silicosis, he would have expected to find a much larger presence of silica in the tissue biopsy. He admitted that he did not attempt to quantify the number of particles identified microscopically.

Dr. Cugell believed that the claimant suffered from sarcoidosis, not silicosis, and that the claimant's sarcoidosis was not related to or aggravated by his work. He believed that silica was eliminated as being associated with the claimant's pulmonary problems by the "appearance of the lungs on serial chest x-ray films, and the tissue findings when you looked at the tissue under so-called polarized light." He believed that there was no connection between the claimant's sarcoidosis and his workplace exposure to chemicals and particles, including titanium dioxide. He did not believe that workplace exposure aggravated or accelerated the claimant's condition. With respect to titanium dioxide, Dr. Cugell testified

that "there are no consistent systematic reports that have proven a connection between lung disease and titanium exposure."

Dr. Cugell agreed that the claimant was permanently and totally disabled because of his lung condition and was unable to work with or without a respirator. On cross-examination, Dr. Cugell agreed that silica in the lungs might lead to increased antigen processing and accelerated antibody protrusion. He agreed that none of the biopsy tissue samples showed any signs of fungus or bacteria and that excluded fungus or bacteria as possible causes of the claimant's sarcoidosis.

As noted above, during his treatment of the claimant, Dr. Sood had recommended that the claimant's 1997 biopsy slides be analyzed by occupational pulmonary pathologist, Dr. Jerrold Abraham, but the claimant's insurance company would not authorize the testing. The record indicates that the claimant filed a third party claim concerning his lung condition, and as part of that litigation, Dr. Abraham did conduct the testing recommended by Dr. Sood. At the arbitration hearing, the employer objected to the admission of Dr. Abraham's report based on hearsay, and the arbitrator sustained the employer's objection. However, Dr. Cugell's testimony and his supplemental November 2006 report offered by the employer included references to Dr. Abraham's hearsay report.

Dr. Cugell testified that, in November 2006, he created a final supplemental report that addressed Dr. Abraham's finding of titanium dioxide in the claimant's biopsy. Dr. Cugell wrote that Dr. Abraham reported "the presence of titanium in [the claimant's] lung tissue - - without comment regarding concentration or the quantity of titanium that is present." Dr. Cugell wrote that it "may well be quite difficult to determine the significance of the specific concentration of titanium in [the claimant's] lung tissue."

Over the employer's objection, Dr. Eagleton's evidence deposition was taken a third time on August 20, 2007. The arbitrator granted the claimant's motion for dedimus

postatum, in part, because six years had elapsed since Dr. Eagleton's previous deposition. Although the arbitrator had sustained the employer's objection concerning the admissibility of Dr. Abraham's report, the arbitrator allowed Dr. Eagleton to testify about his opinions that he formed after reasonably relying on the contents of Dr. Abraham's report. The arbitrator concluded that Dr. Abraham's report was a proper basis for Dr. Eagleton's opinions.

Dr. Eagleton testified at the August 20, 2007, deposition that he had resumed care for the claimant on April 7, 2006. His diagnosis of the claimant in August 2007 was chronic obstructive pulmonary disease (COPD), asthma, emphysema, sarcoidosis, pneumoconiosis, and sleep apnea. He explained that the chronic obstructive pulmonary disease was secondary to the claimant's underlying condition, which was a combination of sarcoidosis and pneumoconiosis, such as silicosis.

Dr. Eagleton testified that although he initially felt that the claimant had only sarcoidosis, Dr. Abraham's testing of the claimant's biopsy indicated that the claimant had large amounts of silica and titanium dust in his lungs. After considering Dr. Abraham's testing, he believed that the claimant also had pneumoconiosis. He testified that pneumoconiosis meant that some damage to the claimant's lungs was related to inhalation of noninfectious particles, particularly silica and titanium.

Dr. Eagleton re-stated his understanding that sarcoidosis was an illness in which a person has an abnormal response to materials and that people are genetically prone to this condition. He believed that the genetic predisposition meant that a person might require less exposure to an antigen or stimulation than someone who did not have sarcoidosis. He agreed that the claimant could have worked with coworkers who did not have a predisposition to sarcoidosis and be exposed to the same level of inhalants of titanium and silica dust, but never develop silicosis or sarcoidosis.

He testified that exposure to silica and titanium does not cause sarcoidosis. Instead,

the exposure triggers the sarcoidosis. He also testified that the presence of silica in the lungs does not establish silicosis, only exposure to silica. He did not know how much silica exposure was required to cause silicosis, but he opined that the exposure level was less for someone with sarcoidosis. Dr. Eagleton testified that pneumoconiosis is a general term that includes silicosis. He believed that the claimant's pneumoconiosis type problems were silicosis, but he did not believe that the claimant had pure silicosis.

Dr. Eagleton noted that the claimant has sarcoid and opined that the silica may have been what "kicked it off." He testified as follows: "I believe he has a combination of sarcoidosis and pneumoconiosis, such as silicosis. The dramatic response suggests he may have an altered immune response, such as sarcoidosis. The occurrence concomitant with his exposure would make pneumoconiosis likely." Dr. Eagleton believed that the dust that the claimant inhaled at work triggered the claimant's sarcoidosis, and that evidence of silica in the claimant's lungs indicated that the claimant had pneumoconiosis caused by the silica.

He testified that when he gave his previous deposition, he did not have the same information concerning the presence of silica in the claimant's lungs. He testified that the claimant's sarcoid predisposition might have caused the activation of pneumoconiosis when he inhaled the silica dust and the titanium dust. He acknowledged that he could not state with 100% certainty that there might not be something besides silica or titanium dioxide dust involved in the claimant's condition. He did not believe that his opinions were speculative because he looked for causes for the claimant's conditions, and there were no findings of tuberculosis or any fungal infections. He also noted that Dr. Sood tried to determine if the condition was tuberculosis or fungus and that Dr. Sood looked for pneumoconiosis which, in turn, lead to Dr. Abraham's report confirming the presence of titanium and silica.

Dr. Eagleton's opinion, to a reasonable degree of medical certainty, was that the claimant's inhalation of silica was a contributing factor to the development of his active

sarcoidosis. He stated that the claimant's exposure to titanium dioxide and silica dust over a 10-year period might have continued to accumulate in his lungs to the point where the claimant's sarcoidosis was triggered and became progressively worse.

Dr. Eagleton determined that the claimant could not return to work in any capacity. He testified that the claimant had severe lung disease, and he did not want the claimant exposed to anything that might make it worse. Dr. Eagleton testified that the claimant had a "fixed severe lung disease that will remain that way and then has some reactivity that will come and go on top of that" and that the claimant's condition was permanent. The claimant's treatment will require continued treatment for asthma and for sarcoid when there is evidence that it is flaring. Dr. Eagleton believed that the claimant will continue to lose lung functioning more rapidly than a normal person would experience because of the severity of his underlying problems. He opined that the claimant's sarcoidosis would reduce his life expectancy and that the claimant was a potential candidate for a lung transplant

At the arbitration hearing, the claimant testified that he was tired all of the time, had headaches most of the time, was out of breath, and could not do much of anything. If he tried to do too much or walk some distance very fast, he felt out of breath. If he walked 100 feet, he felt out of breath and had to take a minute or two to catch his breath. He constantly used oxygen to help him breathe. His breathing problem made it hard for him to sleep at night.

At the time of the arbitration hearing, the claimant's treatment included oxygen, nebulizer treatments, and medications, including Prednisone, Singulair, Allegra, Ultracet, Zolof, and blood pressure medicine. The claimant testified that he cannot do much because breathing is hard for him. He felt very limited in everyday activities, including spending time with his 14-year-old son. The claimant believed that his respiratory problems stemmed from dust inhalation while working at the employer's plant.

On June 13, 2008, the arbitrator filed his decision containing a detailed statement of the facts and medical testimony. The arbitrator found that the claimant "carried his burden of proving occupational exposure to silica and titanium dioxide" and that the claimant's sarcoidosis lung disease and titanium dioxide pneumoconiosis are causally related to his exposure to silica and titanium dioxide through occupational exposure. The arbitrator found as follows:

"The Arbitrator notes that [the claimant] is not required to conclusively establish that his lung condition resulted from said exposure, only that it is more probably true than not that said exposure contributed to that condition. The Arbitrator notes that all medical witnesses support a basic premise, and diagnosis, and agree that the [claimant] suffers from sarcoidosis and that such diseases may result from exposure to crystalline silica. The Arbitrator finds that exposure and causal relationship may be made without opinions based upon Dr. Abraham's pathology study. Dr. Yeldandi's pathology report, prepared at the request of the [employer], establishes the presence of titanium dioxide and silica in the [claimant's] lung tissue. The Arbitrator further relies on the credible opinions of Dr. Ashkay Sood, a pulmonologist with special training in occupational exposures, who causally relates the [claimant's] titanium dust pneumoconiosis and sarcoidosis to said exposure, specifically titanium dioxide. The Arbitrator further notes the medical testimony of Dr. Sood, Dr. Eagleton and Dr. Cugell that [the claimant's] personal predisposition to sarcoidosis lung, and his exposure to silica and titanium dioxide at work, and that [the claimant's] illness may have resulted from his exposures below permissible exposure limits."

The arbitrator found that the claimant was entitled to TTD benefits from December 30, 1996, through February 14, 1997. The arbitrator found that the claimant was

permanently and totally disabled as of December 14, 2001, as a result of his occupational exposure.

The Commission unanimously affirmed and adopted the arbitrator's decision, and the circuit court confirmed the Commission's decision. The employer appeals the judgment of the circuit court confirming the Commission's decision.

ANALYSIS

The first argument that the claimant raises on appeal is that the Commission improperly allowed Dr. Eagleton to testify about Dr. Abraham's inadmissible hearsay report.

"Except when the Act provides otherwise, the Illinois rules of evidence govern proceedings before the Commission or an arbitrator." *National Wrecking Co. v. Industrial Comm'n*, 352 Ill. App. 3d 561, 566, 816 N.E.2d 722, 726 (2004). "Evidentiary rulings made during a workers' compensation proceeding will not be overruled absent an abuse of discretion." *National Wrecking Co.*, 352 Ill. App. 3d at 566, 816 N.E.2d at 726. In the present case, the Commission did not abuse its discretion in admitting that portion of Dr. Eagleton's testimony that was based on Dr. Abraham's report.

In *Wilson v. Clark*, 84 Ill. 2d 186, 192-93, 417 N.E.2d 1322, 1326 (1981), the supreme court held that an expert medical witness could give an opinion based upon hospital records which were inadmissible at trial if the records were of a type reasonably relied upon by experts in the particular field in forming opinions upon the subject. In doing so, the court adopted Rule 703 of the Federal Rules of Evidence (Fed. R. Evid. 703). *Wilson*, 84 Ill. 2d at 193, 417 N.E.2d at 1326. Therefore, in Illinois, where an expert says that he found certain information "of assistance and that similar * * * sources are commonly relied upon in his field, an opinion based upon such may be properly admitted." *Manning v. Mock*, 119 Ill. App. 3d 788, 802, 457 N.E.2d 447, 455 (1983). As the committee note to Rule 703 indicates, "the drafters of Rule 703 explicitly envisioned that a testifying expert would rely

on other doctors' opinions." *Rock v. Pickleman*, 214 Ill. App. 3d 368, 375, 574 N.E.2d 682, 686-87 (1991).

In *Peabody Coal Co. v. Industrial Comm'n*, 355 Ill. App. 3d 879, 884, 823 N.E.2d 1107, 1112 (2005), an employer argued that the Commission erred in considering certain medical testimony because the doctor relied on a "report by his consulting radiologist/B reader in forming his opinion." The employer argued that the radiologist's report was prepared in anticipation of litigation and, therefore, was not trustworthy. *Peabody Coal Co.*, 355 Ill. App. 3d at 884, 823 N.E.2d at 1112. However, because the doctor "testified that the B reader's interpretation was the type of data he customarily relies on in the treatment of his patients," the court held that the Commission did not err in considering the doctor's medical testimony that was based on the radiologist's report. *Peabody Coal Co.*, 355 Ill. App. 3d at 884, 823 N.E.2d at 1113.

In the present case, Dr. Sood treated the claimant's lung conditions, and he recommended that Dr. Abraham review the claimant's 1997 biopsy slides to determine whether the claimant had titanium dioxide particulates in his lungs. Dr. Sood believed that if the tests established the lack of titanium dioxide particulates in the claimant's lungs, he would move toward a diagnosis of sarcoidosis. However, Dr. Sood noted that the claimant's health insurance would not authorize Dr. Abraham's testing. Eventually, however, Dr. Abraham performed this analysis as part of the claimant's third-party claim against the manufacturers of silica and issued a report of his findings.

In a letter dated June 18, 2007, Dr. Eagleton was asked whether Dr. Abraham's report was the type of report that he customarily relied upon in forming an opinion concerning the treatment of a patient. In his response letter dated July 20, 2007, Dr. Eagleton responded as follows, "Yes, I frequently rely upon pathology reports to form an opinion." During his deposition, he testified that Dr. Sood's concern that the claimant's lung condition was

pneumoconiosis lead to Dr. Abraham's testing and his report that showed the presence of titanium and silica in the claimant's lung biopsy. Dr. Eagleton stated, "You have then a report in which they have identified silica and titanium as potential reasons that this individual might be getting a response in his lung." He said that Dr. Abraham's report added additional information that he did not have before.

Accordingly, the record establishes that Dr. Abraham's report provided Dr. Eagleton assistance in diagnosing and treating the claimant's lung condition and that the report was the type of information that he commonly relied upon in treating his patients. The Commission, therefore, did not err in admitting Dr. Eagleton's medical testimony that was based upon Dr. Abraham's report.

The employer argues that the Commission's finding that the claimant sustained an exposure related to his employment that was causally connected to his condition of ill-being was against the manifest weight of the evidence and "contrary to Illinois law." We disagree.

Under the Act, the claimant had the burden of proving that he suffers from an occupational disease and that a causal connection exists between the disease and his employment. *Payne v. Industrial Comm'n*, 61 Ill. 2d 66, 69, 329 N.E.2d 206, 208 (1975). The Act defines the term "occupational disease" as a disease "arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result of the exposure of the employment." 820 ILCS 310/1(d) (West 2008). The question of whether such a causal relationship exists is one of fact for the Commission to decide. *Payne*, 61 Ill. 2d at 69, 329 N.E.2d at 208. In addition, the "determination of the extent of a claimant's disability is a question of fact, and the Commission's decision will not be set aside unless it is against the manifest weight of the evidence." *Freeman United Coal Mining Co. v. Industrial Comm'n*, 263 Ill App. 3d 478, 485, 636 N.E.2d 77, 82 (1994). "When conflicting medical testimony is presented, it is for the Commission to determine which testimony is to

be accepted." *Freeman United Mining Co.*, 263 Ill. App. 3d at 485, 636 N.E.2d at 82. The interpretation of medical testimony is particularly the function of the Commission. *Freeman United Coal Co. v. Industrial Comm'n*, 286 Ill. App. 3d 1098, 1103, 677 N.E.2d 1005, 1008 (1997). "Moreover, where the evidence is conflicting or where different inferences can be drawn, a court will not disregard permissible inferences by the Commission merely because it may have drawn other inferences from the evidence." *Freeman United Coal Co.*, 286 Ill. App. 3d at 1103, 677 N.E.2d at 1008.

"It is the province of the Commission to judge the credibility of witnesses, draw reasonable inferences from the testimony, and determine what weight to give the testimony." *Freeman United Coal Co.*, 286 Ill. App. 3d at 1103, 677 N.E.2d at 1008. A reviewing court cannot overturn the Commission's decision unless the decision was contrary to law or the Commission's factual findings were against the manifest weight of the evidence. *Freeman United Coal Co. v. Workers' Compensation Comm'n*, 386 Ill. App. 3d 779, 783, 901 N.E.2d 906, 910 (2008).

In the present case, the Commission's findings were not against the manifest weight of the evidence. First, the evidence was sufficient for the Commission to find that the claimant was exposed to silica and/or titanium dioxide during the course of his employment. At the arbitration hearing, the evidence established that two types of silica sand were used to manufacture various products at the employer's plant, silica sand that had the consistency of the sand found in a child's sandbox, but dryer, and a silica sand that had the consistency of talcum powder. In addition, the evidence established that the employer used titanium dioxide in powder form to manufacture several products at the plant. The claimant described the mixing area, the mixing bins, and the process by which dry ingredients were dumped into the mixing bins. This process kicked up dust. The claimant described the gravity system that moved materials from the upper floor mixing area to the lower level production area. The

Fast Plug bin was located on the lower level near the maintenance shop and had only a plywood cover for many years. The Fast Plug ingredients, including silica sand, flowed into the bin from the upper level, and dust escaped from the plywood lid as the ingredients poured into the bin. The employer's plant manager, Crolley, agreed on cross-examination that the production area of the plant was dusty and that dust escaped from the mixing bins in the mixing area. The other maintenance employee, Neff, testified that the production area on the lower floor was "a little dusty." As the maintenance supervisor, the claimant was required to work in all areas of the plant, and he often worked without any type of mask to prevent inhalation of dust. Other employees, however, were required to wear masks or respirators. The claimant testified that when he cleaned the maintenance desk off in the morning, by the end of the day, enough dust was on the desk that he could write his name in it.

The employer presented evidence of industrial hygiene air studies, one of which was conducted after the claimant no longer worked within the plant. The air studies confirmed the presence of silica. The 1995 study included one employee at the plant that was exposed to silica levels above the recommended level. In addition, the air studies did not include checks for titanium dioxide. The employer also presented evidence of ventilation systems it used to reduce the dust and improve the air quality inside the plant, including improvements to the ventilation system in the 1990's. The claimant, however, testified that areas of the plant were dusty and hazy despite the ventilation system and after the improvements to the plant's ventilation.

As noted above, the Commission is charged with the task of determining disputed questions of fact and drawing inferences from the evidence, and the reviewing court will not disturb the Commission's findings unless they are against the manifest weight of the evidence. *County of Cook v. Industrial Comm'n*, 68 Ill. 2d 24, 30, 368 N.E.2d 1292, 1295 (1977). On the record before us, the Commission had more than enough evidence to find that

the claimant was exposed to silica sand and titanium dioxide while employed at the employer's plant, beginning in 1986, and continuing through his last day of work at the plant on December 13, 2001. We cannot reverse this factual finding.

In *Crane Co. v. Industrial Comm'n*, 32 Ill. 2d 348, 349, 205 N.E.2d 425, 426 (1965), the claimant was awarded benefits under the Act for silicosis. On appeal, the employer argued that the evidence was insufficient to show exposure to the hazards of silicosis. *Crane*, 32 Ill. 2d at 349, 205 N.E.2d at 426. The court disagreed, however, noting that the evidence showed that the "claimant came in contact with sand in the course of his employment and that there was silica content in the air where he worked." *Crane*, 32 Ill. 2d at 352, 205 N.E.2d at 427. The court stated, "[t]he exact silica content in the air is not clear from the record, and the testimony of expert witnesses is in sharp dispute as to the amount of silica dust and the duration of exposure necessary to create a hazard." *Crane*, 32 Ill. 2d at 352, 205 N.E.2d at 427. Nonetheless, the *Crane* court held that, under these facts, the issue of exposure was a question of fact and that the Commission was justified "in finding exposure to a hazard of silicosis." *Crane*, 32 Ill. 2d at 352, 205 N.E.2d at 427. Likewise, in the present case, the Commission was justified in finding that the claimant was exposed to silica dust and titanium dioxide during the course of his employment.

Second, the Commission's finding that the exposure was causally connected to the claimant's condition of ill-being was not against the manifest weight of the evidence or "contrary to Illinois law."

The Act defines an occupational disease as "a disease arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result of the exposure of the employment." 820 ILCS 310/1(d) (West 2008). The Act further provides as follows:

"A disease shall be deemed to arise out of the employment if there is apparent

to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence." 820 ILCS 310/1(d) (West 2008).

It is within the Commission's province to resolve questions of causal relationship based upon conflicting medical testimony. *County of Cook*, 68 Ill. 2d at 30, 368 N.E.2d at 1295. In the present case, the medical experts agreed that the claimant suffered from conditions of ill-being in his lungs. The employer's medical expert, Dr. Cugell, believed that the claimant suffered from sarcoidosis. The claimant's treating physicians, Dr. Eagleton and Dr. Sood, also diagnosed the claimant as having sarcoidosis. The experts disagreed on the causation of the sarcoidosis.

Dr. Cugell opined that the claimant's exposure to silica or titanium dioxide at work did not cause or aggravate his sarcoidosis. Dr. Cugell explained that he had the claimant's 1997 biopsy slides analyzed under polarized light, and this testing revealed that the biopsy slides contained birefringent particles (i.e., silica or titanium). Dr. Cugell, however, believed that there were "very few" which indicated an "inconsequential degree of exposure." Dr. Eagleton disagreed.

Dr. Eagleton testified that the claimant's lung biopsy showed "granulomas" which was a "type 4 immune response." He explained that this condition arises when the body reacts to materials inside the body that are not normally part of the body. The condition often arises in cases of tuberculosis and fungus infections, and both Dr. Eagleton and Dr. Cugell eliminated those conditions as possible causes for the claimant's granulomas. Dr. Eagleton testified that some people are genetically predisposed to react with a

"granulomatous type inflammation" that is more pronounced than the average person. He opined that people with the genetic predisposition react vigorously to silica and that there was no specific amount of silica exposure required to start the sarcoidosis process in such persons. Dr. Eagleton testified that, to a reasonable degree of medical certainty, if the claimant was exposed to particulate silica, the inhalation of those particulates could have caused or contributed to the development of the type of immune damage the claimant had in his lungs, i.e., sarcoidosis.

Dr. Sood testified that he believed that the claimant's exposure to titanium dioxide caused his granulomas. He diagnosed the claimant as having not only sarcoidosis but also titanium dust pneumoconiosis. He testified that titanium dust pneumoconiosis is not idiosyncratic, that the claimant's disease was caused by repeated levels of exposure, and that the claimant may have a genetic predisposition to develop the condition. He believed that the claimant displayed a slow progression of disease and would continue to deteriorate.

Considering the medical evidence presented at the hearing, the Commission's finding that the claimant's workplace exposure was causally connected to his condition of ill-being was not against the manifest weight of the evidence. The Commission specifically found Dr. Sood, the only occupational pulmonary expert to testify, to be a credible witness. The appellate court's review of the Commission's decision does not involve a determination of which group of medical experts is more worthy of belief, but only involves the determination of whether or not there is proper medical evidence in the record sufficient to support the award. *Crane Co*, 32 Ill. 2d at 352-53, 205 N.E.2d at 427-28. In addition, "[a] finding of a causal relation may be based on a medical expert's opinion that an accident 'could have' or 'might have' caused an injury." *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226 (1983); *Consolidated Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839-40, 639 N.E.2d 886, 892 (1994).

The medical testimony in the record was sufficient to support the Commission's finding that the claimant suffered from an occupational disease. The Commission's finding was not "contrary to Illinois law" and was not against the manifest weight of the evidence. *Caterpillar Tractor Co. v. Industrial Comm'n*, 63 Ill. 2d 153, 159, 345 N.E.2d 471, 474 (1976) (Commission's finding of the existence of an occupational disease was not against the manifest weight of the evidence where the record contained conflicting testimony concerning both the presence of metallic dust and the nature and cause of petitioner's disability).

The final argument the employer raises on appeal is that the Commission's finding that the claimant had two separate dates of disablement was "contrary to Illinois law." The facts presented at the arbitration hearing established that the claimant went to the hospital on December 19, 1996, with complaints of cough and congestion. The claimant was hospitalized and his treating physician's notes state that he slowly improved at the hospital. Dr. Eagleton removed the claimant from work in January 1997, and the claimant returned to work in February 1997 without any restrictions. According to the claimant, when he returned to work at the plant, the production of products containing silica sand "picked up tremendously," and dust remained in the air even after the employer made changes to the plant's dust collection system. The claimant continued working at the employer's plant until December 13, 2001. On December 15, 2001, a day the claimant was scheduled off work, he could not breathe during the middle of the night, passed out, and coughed up blood when he regained consciousness. The claimant has not returned to work since that day. All of the medical experts agreed that the claimant cannot return to work. The claimant filed two claims. The first claim alleged December 19, 1996, as the date of accident/exposure, and the second claim alleged December 13, 2001, as the date of the accident/exposure. The arbitrator found that "[t]he date of disablement for purposes of these consolidated claims is

December 19, 1996 and December 13, 2001, respectively."

The term "disablement" is defined in the Act as "an impairment or partial impairment, *temporary or permanent*, in the function of the body or of any of the members of the body, or the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational diseases by the employer from whom he or she claims compensation, or equal wages in other suitable employment; and 'disability' means the state of being so incapacitated." (emphasis added.) 820 ILCS 310/1(e) (West 2008).

Under the facts presented at the arbitration hearing, the claimant became disabled and incapacitated after each date alleged. The claimant, therefore, had two identifiable dates of disablement, one temporary and one permanent, and the Commission's determination was not against the manifest weight of the evidence. The Commission awarded the claimant temporary total disability benefits for the period "from December 30, 1996, through February 14, 1997, the date he returned to work." The Commission also found that the claimant did not work after December 14, 2001, through the date of hearing and found that the claimant was totally disabled as of December 14, 2001. The Commission's determination that the claimant proved two dates of disablement was not against the manifest weight of the evidence and was consistent with the definition of disablement contained in section 1(e) of the Act.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court confirming the decision of the Commission is affirmed.

Affirmed.