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

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WALGREENS,	)	Appeal from the Circuit Court
	)	of Jefferson County.
Appellant,	)	
	)	
v.	)	No. 09—MR—20
	)	
WORKERS' COMPENSATION COMMISSION	)	Honorable
<i>et al.</i> (Bonnie Miller, Appellee).	)	David K. Overstreet,
	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Holdridge and Stewart concurred in the judgment.  
Presiding Justice McCullough dissented separately.  
Justice Hoffman dissented separately.

**ORDER**

*Held:* The trial court properly concluded that the Workers' Compensation Commission's decision regarding causation was contrary to the manifest weight of the evidence where claimant's testimony was substantially corroborated and largely uncontradicted and unrebutted.

Claimant, Bonnie Miller, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)) seeking benefits from respondent, Walgreens. The arbitrator found claimant was entitled to benefits under the Act. Two

members of the Workers' Compensation Commission (Commission), however, disagreed, finding that claimant had not proved she suffered a work-related accident. One commissioner dissented, noting that claimant's testimony was largely un rebutted and that she provided a consistent history of accident to all medical providers. The circuit court of Jefferson County held that the majority decision of the Commission was contrary to the manifest weight of the evidence. Having carefully reviewed the record, we agree with the arbitrator, dissenting commissioner, and trial judge. Accordingly, we affirm the decision of the trial court.

The sole issue presented in this appeal is whether the decision of the majority of the Commission that claimant did not sustain an injury related to her employment is contrary to the manifest weight of the evidence. A decision is contrary to the manifest weight of the evidence if an opposite conclusion is clearly apparent. *Durand v Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). The focus is upon whether there is sufficient evidence to support the Commission's decision. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). It is for the Commission, in the first instance, to weigh evidence, assess the credibility of witnesses, and resolve conflicts in the record, and "we will not disturb the Commission's findings as to these issues, even though we might have decided differently on the same facts, unless such findings are against the manifest weight of the evidence." *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill. App. 3d 650, 655 (1999). Though we are reluctant to set aside the decision of the Commission on a factual matter, we must do so when the decision is against the manifest weight of the evidence. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993). Indeed, it is our duty to do so. *Boom Town Saloon, Inc. v. City of Chicago*, 384 Ill. App. 3d 27, 32 (2008). Given the nature of this appeal, it is necessary to set forth the evidence in detail.

Claimant testified on her own behalf at the arbitration hearing. Pertinent here, she testified that she began working for respondent in October 1999. The facility at which she worked was a distribution center. She never missed a significant period of work due to injury before 2007. Claimant was employed as a “split case picker.” This entailed picking product from six different levels and placing them in a tote to be shipped to individual stores. The products she picked did not weigh much; however, the job required much bending, lifting, and reaching, including over the head. When a tote was full, she placed it on a conveyor. Totes would weigh from 5 to 30 pounds, depending on what was in them. Also, as she emptied cases of product, she would throw the empty cases onto a conveyor belt over her head. She usually worked in a new building, but occasionally, she was required to work in an older building. When working in the old building, she was required to lift heavier product. Additionally, the old building, unlike the new one, did not have a step in front of the cases of product from which she picked, so working there required more reaching. Claimant explained that since she was short, working in the old building was difficult for her.

On February 9, 2007, claimant testified, she sustained a work-related injury. She was working in the old building. At the time, she was working full-time hours or more per week. Claimant stated that she had been working a lot and suddenly was unable to use her arm. Claimant went to her supervisor and informed him that she had injured herself. They filled out a report. Her supervisor told claimant that he would try to get her in to see the plant therapist, and she subsequently did so. Claimant explained that, as she was not a doctor and it was her shoulder and arm that hurt, she believed that her injury was to this area. Her arm “was going numb.” As it turned out, claimant also had a problem with her neck, which manifested in her arm.

Claimant acknowledged that she had had an earlier surgery to her neck. In the early 1990s,

she underwent a one-level fusion. She recovered and worked full time ever since. Aside from certain “day-to-day symptoms,” which claimant attributed to getting older, claimant experienced no significant problem with her neck after recovering from the earlier surgery until 2007.

During cross-examination, claimant stated that she only worked in the old building about one day per month. Claimant stated that it was possible she reported her injury to her supervisor on February 8, 2007, rather than February 9, 2007. She explained that at the time her supervisor was “Gilbert Paralis (phonetic).” He asked her how she hurt herself. They were in the old building at the time. Claimant walked over to her work station and showed him. At the time, claimant told her supervisor that she was experiencing pain in her left shoulder, and she did not mention neck pain.

Respondent then called Luci Brooks. Brooks is employed by respondent as a “[h]uman resources generalist.” Part of her duties include handling workers’ compensation claims, employee performance and discipline, and employee relations issues. She sometimes maintained attendance records. Brooks did not recall ever having to speak with claimant regarding attendance issues. Brooks agreed that claimant was “fairly consistent as far as her attendance at work.” Brooks testified that claimant was planning to retire in 2007.

According to Brooks, respondent’s policy regarding sick time, vacation days, and personal time is that an employee earns all of it for a year as soon as the employee works one day during that calendar year. Claimant was entitled to 6 sick days, 4 personal days, and 3 weeks of vacation time-- 25 days total. In 2007, she used all of the days to which she was entitled by March 2.

Brooks spoke with claimant about her workers’ compensation claim on numerous occasions. Brooks stated that claimant reported being injured on either February 8, 2007, or February 9, 2007. Respondent’s attorney asked Brooks if claimant missed “any time from work following her reporting

of that injury?” Brooks replied: “Yes. That would have been the period of time that she missed several days, whether — I believe it was vacation and personal days in February.” Brooks testified regarding the time claimant took off from work in 2007, which was extensive.

During cross-examination, Brooks testified that claimant had not, as of the time of the hearing, retired from respondent’s employment. Brooks acknowledged that claimant could use her vacation, sick days, and personal days in any manner claimant saw fit. No other witnesses testified during the hearing; however, the parties also submitted considerable documentary evidence.

Claimant submitted the records of Dr. Dean Huffstutler, her primary physician. She saw Huffstutler on February 15, 2007. The main reason for the visit was “‘acute asthmatic bronchitis’ ”; however, the doctor also addressed claimant’s “increasing aches and pains.” Huffstutler noted that claimant had previously complained of pain in her legs and hips. Since she started taking vitamin D, she experienced pain in her upper arms, shoulders, and the thoracic region of her back. Huffstutler wrote that this pain “may be related to the vitamin D, less likely the viral syndrome less likely the Levaquin.” Later, he added: “She is going to hold the vitamin D for now. If it is simply related to the vitamin d [*sic*] then it should resolved [*sic*] quickly.” The report from February 15 does not mention claimant’s employment as a cause of her condition.

Huffstutler’s note from March 7, 2007, begins, “She apparently had a Work Comp. injury 1-9-07 and she reported it today I believe” (a handwritten note dated March 7 states that claimant said the injury occurred on February 9, 2007). It continues:

“She was doing what she normally does but she was on the end of the line doing more lifting than she normally would and felt some increasing pain in the left shoulder. It is not an unusual activity but it is what she does every day and it is a lot of wear and tear on the

shoulders.”

It further notes that respondent was “going to setup [*sic*] some therapy but it was not very effective.” Huffstutler ordered an x ray, instructed her to take pain medications, and believed that her condition would improve with time.

Huffstutler ordered an MRI of claimant’s shoulder, which was performed on March 15, 2007. It revealed a “suggestion of tenosynovitis,” “some impingement of the acromioclavicular joint areas with fluid at the subacromial bursa,” “some joint effusion,” and thinning of the supraspinatus tendon and tendonopathy, but no definite tear. When Huffstutler saw claimant on March 19, 2007, claimant’s condition had not improved. He referred claimant to Dr. Joon Ahn. On May 18, 2007, Huffstutler noted no improvement.

Ahn first saw claimant on April 6, 2007. His records reflect that claimant was injured at work on February 7, 2007. Ahn diagnosed “left shoulder rotator cuff tendinopathy” and prescribed a cortisone injection and physical therapy. He placed claimant on light duty.

Claimant sought a second opinion from Dr. George Paletta, who evaluated claimant on June 6, 2007, and August 24, 2007. A letter he authored dated September 17, 2007, states that during these evaluations, it was his “impression at that time that she had a significant cervical component to her complaints of shoulder pain.” Paletta’s records from June 6 indicate that claimant’s injury occurred at work on February 7 and that she reported the incident to her supervisor on February 9. Paletta ordered an MRI, which showed “some suggestion of impingement syndrome with some fluid in the subacromial space.” Paletta noted “radicular symptoms.” He referred claimant to Dr. Brett Taylor, an adult spine specialist.

In a report reviewing the results of the MRI of claimant’s cervical spine, Taylor wrote that

“a portion of [claimant’s] pathology is related to her cervical spine.” This report also states: “We do feel that her condition is a work related event. We feel like her work exposure has aggravated her condition and this has significantly affected her outcome.” In a report documenting an office visit on August 28, 2007, Taylor states that “her present condition in my opinion is aggravated by her work related exposure.”

Dr. Richard Lehman examined claimant on respondent’s behalf on June 14, 2007. He documented his examination in a letter to respondent’s claim management company. He opined that claimant would benefit from an arthroscopy. He also wrote: “Her diagnosis is impingement syndrome, polymyalgia rheumatica. It is my opinion, at this time, that her work event or work history have [*sic*] not really contributed to her problem.” He further states, “I do not believe her work activities have contributed to her left shoulder problem or her need for an arthroscopy.”

Respondent also had Dr. Michael Chabot examine claimant on October 22, 2007. Chabot reviewed claimant’s medical records and conducted a physical examination. Chabot’s report notes that claimant stated that she suffered an injury at work on February 9, 2007. Chabot opined that claimant’s complaints “are associated with her age and progression of degeneration.” Chabot believed that this progression would have occurred with ordinary day-to-day activities. He noted claimant had a significant history of “pre-existing neck and joint pain.” Notably, Chabot rendered two additional opinions:

“It is my impression that it is this chronic condition, her age, and degeneration involving the cervical spine and left shoulder that are the primary reasons for her persisting complaints. It is my opinion that the patient’s work duties are not the prevailing reason for her present symptoms.”

The arbitrator found that claimant suffered a work-related injury on February 9, 2007. She was performing her normal duties in the old building at the time. An accident report was filled out that day. Claimant then took two weeks' vacation to rest her shoulder. Huffstutler, Ahn, and Paletta all treated claimant with respect to her left shoulder. Paletta noted a potential cervical component and referred claimant Taylor, who is a spinal surgeon. The arbitrator noted that claimant had undergone a previous surgery to her neck in 1993; however, that condition had resolved and claimant had no complaints related to her neck from July 2001 until the date of the accident at issue in this case. Taylor opined claimant's condition was work related. Lehman evaluated claimant but did not address the fact that claimant had no problems with her shoulder prior to the accident after she recovered from her earlier surgery. Similarly, Chabot ignored the fact that claimant was experiencing no problems with her neck for an extended period before the accident or that claimant "did not appear to have lost time from work due to her neck condition from at least July 2001 to the date of the accident." The arbitrator credited the opinions of Taylor, Ahn, and Paletta, finding them to be "most reasonable under the facts of this case." Accordingly, the arbitrator concluded claimant's accident aggravated her preexisting neck condition, which had been asymptomatic. The arbitrator reiterated that his decision was based on the records and opinions of Taylor, Ahn, and Paletta, as well as the fact that claimant was asymptomatic for over five years prior to the date of the accident. He then awarded claimant 40 and 6/7 weeks temporary total disability and ordered respondent to pay for a cervical fusion. He also found that claimant had not yet reached maximum medical improvement and denied claimant's request for penalties.

Two members of the Commission disagreed with the arbitrator and reversed his decision. These commissioners noted that although claimant saw Huffstutler on February 15, 2007, his records

from that date do not state that her injury was work related. They noted Huffstutler's belief that claimant's pain might be related to her taking vitamin D. They then noted Huffstutler's records from March 7, which stated that claimant reported suffering an injury on January 9. These commissioners observed that claimant only worked in the old building once per month and that she was on vacation from February 15 to March 5. They then concluded that claimant did not suffer an at-work injury on February 7, explaining their decision by citing the fact that she did not tell Huffstutler that her injury was work related on February 15 and that she reported the accident when she returned from her vacation on March 5. Further, the commissioners stated that they found Huffstutler's records more reliable than claimant's testimony.

The dissenting commissioner noted that claimant was in fact working in the old building at the time of her accident and that this facility lacked a step to assist claimant in picking product, requiring more difficult reaching. He noted that although claimant did not specifically mention the cause of her condition to Huffstutler on February 15, she "did complain of pain in her upper arms, upper thoracic area and shoulder." Further, she did specifically report her accident to Huffstutler the next time she saw him. He also noted that aside from the February 15 visit to Huffstutler (where the cause of her condition was not addressed), claimant "provided a consistent history of accident to all medical providers." Finally, he observed that claimant's testimony regarding reporting the accident to her supervisor and being directed to physical therapy was un rebutted.

The trial court observed that the facts in this case are essentially undisputed. Claimant's testimony regarding how the injury occurred and that she reported it to her supervisor was un rebutted. Further, claimant's medical records outlined her care and treatment. They also contained the medical opinions linking her injury to her employment. Accordingly, the trial court

determined that the majority decision of the Commission was contrary to the manifest weight of the evidence. It therefore reversed its decision and reinstated the decision of the arbitrator. This appeal followed. Having reviewed the record and the parties' submissions on appeal, we agree with the trial court.

The sole issue on appeal is whether claimant sustained an injury arising out of and in the course of her employment. See *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 887 (2007). In this case, claimant testified as to how her injury occurred at work, and, as the trial court observed, this testimony was unrebutted. Further, as the dissenting commissioner correctly observed, she gave a consistent history of her injury to her medical providers. The sole exception occurred on her visit to Huffstutler on February 15, 2007. The records from this date contain nothing regarding the cause of claimant's condition. Since they contain no information regarding how claimant's injury occurred, they do not contradict her testimony regarding her injury; they simply do not corroborate it, unlike the balance of the medical records. As such, her testimony remains unrebutted. Indeed, the records from February 15 do document claimant's condition, which provides some corroboration that the injury occurred prior to that date.

Moreover, claimant submitted the opinion of Dr. Taylor that claimant's condition was the result of her employment aggravating an earlier injury, and this testimony is essentially unrebutted as well. Though respondent submitted the opinions of two doctors who examined claimant on its behalf, neither truly contradicts Taylor's opinion. Notably, Dr. Chabot opined that the "primary reason" for claimant's condition was her "chronic condition, her age, and degeneration involving the cervical spine and left shoulder." As for claimant's work, he concluded that it was not the "prevailing reason" for her condition. It is axiomatic that employment need not be the sole cause

or even a primary cause of an injury for it to be compensable, so long as it is a cause of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Thus, that Chabot ruled out employment as the "primary reason" for claimant's condition sheds no light on our inquiry. Moreover, his opinion is somewhat corroborative of Taylor's in that Chabot concluded claimant's "chronic condition" (by which he was referring to what he termed claimant's "significant history of pre-existing neck and joint pain, which predated the injury") was a cause of her present state of ill being and Taylor opined employment aggravated her earlier injury (the "chronic condition" to which Chabot was referring).

Lehman, on the other hand, did testify that work did "not really contribute to her problem." However, upon reviewing Lehman's report, it is apparent that by "her problem," he was referring to claimant's shoulder rather than her cervical spine. The history section of his report does not mention claimant's back or neck at all. In his physical examination, Lehman noted "pain with rotational stress to her shoulder," "pain with full forward flexion," and "pain with overhead type stress to her shoulder." He noted a positive Jobe test and a positive Neer test. These tests are used to detect problems with a patient's shoulder. See Jo Gibson, *Jobe Relocation Test*, <http://www.shoulderdoc.co.uk/article.asp?article=753> (last visited on May 4, 2011); Jo Gibson, *Neer Impingement Sign*, <http://www.shoulderdoc.co.uk/article.asp?article=747> (last visited on May 4, 2011). The entire examination section of Lehman's report documents an examination of claimant's shoulder, again with no mention of claimant's back or neck. He diagnosed impingement syndrome, which affects the shoulders (see *Arthritis and Impingement Syndrome*, <http://www.webmd.com/osteoarthritis/guide/impingement-syndrome> (last visited on May 4, 2011)), and polymyalgia rheumatica, which is a muscle disorder (see *Stedman's Medical Dictionary* 1422

(27th ed. 2000)). Lehman makes no mention of claimant's cervical spine, and taking his impressions as a whole, it is clear that Lehman's examination was limited to claimant's shoulder. Taylor, on the other hand, opined that "a portion of [claimant's] pathology is related to her cervical spine." Thus, Lehman's opinion does not contradict Taylor's opinion.

Before concluding, we will address a number of findings made by the two commissioners who were in the majority. The Commission noted Huffstutler's belief contained in the records from claimant's February 15 visit that her problem could be attributable to her taking vitamin D. Those records also state that if the problem is related to vitamin D, it would resolve quickly. It is undisputed that claimant's condition had not resolved by the time of the hearing. That Huffstutler speculated regarding some possibility that did not turn out to be the case says nothing about the proper outcome of this appeal. The majority's observation that claimant only worked in the old building about once per month is similarly irrelevant. Had claimant alleged a repetitive trauma injury (see *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040-41 (2000)), the frequency with which claimant performed the more demanding work might have been pertinent. Here, however, claimant simply alleged and testified that she sustained an acute injury while working at the old building. Thus, the Commission's observation regarding the frequency that she worked there was not on point.

Further, based only on the facts that claimant did not identify the cause of her condition when she first saw Huffstutler on February 15 and that she took a vacation following that visit until March 5, when she returned to work, the majority concluded that claimant did not sustain an injury on February 7, 2007 (claimant's application for adjustment of clam actually alleges February 9) and that she did not give notice to respondent until March 5. Apparently, the majority concluded that

claimant injured herself while on vacation—there is no other purpose apparent to us for the majority to note claimant’s vacation. However, the very records from February 15 upon which the majority relies to discount claimant reporting her injury prior to March 5 document that the condition existed by this time, even though they do not mention its cause. Regardless of whether claimant spent February 15 to March 5 on vacation or working, her condition existed prior to February 15. The majority goes on to state that it finds Huffstutler’s records more credible than claimant’s testimony. However, as we read them, they largely corroborate claimant’s testimony. As previously noted, that they do not mention a cause of claimant’s condition on February 15 simply means that the records from that date do not corroborate claimant’s testimony. They also do not contradict claimant’s testimony, as they do not document any other cause (beyond Huffstutler’s clear speculation about potential other causes like vitamin D).

Huffstutler’s records from March 7 do state, “She apparently had a Work Comp. injury 1-9-07 and she reported it today *I believe*.” (Emphasis added.) While this statement contradicts claimant’s testimony that she reported the accident on February 9, we note that Huffstutler qualified it with “I believe,” indicating his lack of certainty. Further, he also wrote that respondent was “going to setup [*sic*] some therapy but it was not very effective.” Notably, the report refers to physical therapy in the past tense, indicating claimant’s injury had not just occurred. Also, a handwritten note dated March 7, 2007, indicates that claimant told Huffstutler that she had been injured at work on February 9, 2007. Huffstutler’s records from February 15 corroborate that claimant’s condition arose well before March 7, indeed, before February 15. We also note that Brooks’ testimony indicated claimant was injured prior to taking a vacation. When asked whether claimant missed work *after* she reported her injury, Brooks stated: “Yes. That would have been the period of time that she

missed several days, whether — I believe it was vacation and personal days in February.” To come to the conclusion that it did, the majority had to take one qualified statement by Huffstutler regarding when he *believed* claimant reported her injury and elevate it above the balance of his records, which the majority otherwise found credible, all the while ignoring other pertinent testimony.

The Commission's decision is rife with inconsistencies and irrelevant observations. The decisions of the arbitrator and the dissenting Commission do not suffer from such defects. Accordingly, we agree with the trial court that the decision of majority of the Commission is contrary to the manifest weight of the evidence. As the trial court observed, claimant’s testimony regarding how her injury occurred was unrebutted, corroborated by medical records, and supported by Taylor’s opinion testimony as to causation.

In light of the foregoing, we affirm the decision of the trial court and, as claimant has not yet reached maximum medical improvement, remand for further proceedings in accordance with *Thomas v. Industrial Comm’n*, 78 Ill. 2d 327 (1980).

Affirmed and remanded.

PRESIDING JUSTICE McCULLOUGH, dissenting:

I join in Justice Hoffman's dissent. As noted by the arbitrator, claimant had undergone neck surgery in 1993 and had considered retirement prior to the date of the instant accident. The arbitrator found ongoing problems of back pain from 2001 to at least 2005.

The Commission found Dr. Huffstutler’s records "to be more reliable and credible than Petitioner's testimony."

It is worthwhile to note the Commission's findings that:

"The Commission finds that Petitioner did not sustain an injury to her left

shoulder on February 7, 2007. Petitioner did not give a history of an accident to her own physician on February 15, 2007 and was on vacation from that date through March 5, 2007. When Petitioner returned to work following her vacation is when she first gave notice to her supervisor of the alleged February 9, 2007 accident. That is when the Respondent had her see the plant therapist."

As indicated in Justice Hoffman's dissent, we are not the fact-finder and the issue is not whether we would have found injury, but the question is whether the Commission's decision is against the manifest weight of the evidence.

Although the Commission decision refers only to Dr. Huffstutler, as pointed out by Justice Hoffman, the opinions of Drs. Lehman and Chabot also provide strong support for the Commission's decision.

JUSTICE HOFFMAN, dissenting:

Whether an employee's condition of ill-being was caused by an accident arising out of and in the course of her employment is a question of fact to be resolved by the Commission, and its resolution of the matter will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984). For a finding of fact made by the Commission to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. The appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*,

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91 Ill. 2d 445, 450, 440 N.E.2d 90 (1982). In this case, I believe that there is.

The claimant testified that her arm went numb while she was working on February 9, 2007. However, the records of her primary care physician, Dr. Huffstutler, relating to a visit on February 15, 2007, make no mention of an employment-related injury on February 7, 2007. Admittedly, Dr. Huffstutler's note of March 7, 2007, and the records of the claimant's subsequent treating physicians, Drs. Ahn, Paletta, and Taylor, support her assertion of having sustained a work-related injury. In contrast, however, Dr. Lehman opined that the claimant's work activities had not contributed to her shoulder problems or her need for surgery, and Dr. Chabot opined that the claimant's complaints are associated with her age and progressive degeneration. The majority discounts Dr. Lehman's opinions because it interprets his records as referring to the claimant's shoulder rather than her spine, and it discounts Dr. Chabot's opinions because he couched them in terms of the "primary reason" and the "prevailing reason" for the claimant's condition. Nevertheless, I believe it was the function of the Commission to judge the credibility of the witnesses and resolve the conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980).

Although I might not agree with the Commission's credibility determinations, I find no basis to conclude that an opposite conclusion is clearly apparent. Consequently, I would reverse the judgment of the circuit court and reinstate the Commission's decision.