

NOTICE

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NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (2nd) 111223WC-U

No. 2-11-1223WC

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

PLAINFIELD SCHOOL DISTRICT #202,

Appellant,

v.

ILLINOIS WORKERS' COMPENSATION

COMMISSION, *et al.*, (Maria Trevino,

Appellee).

) Appeal from the

) Circuit Court of

) DuPage County.

)

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) No. 11-MR-636

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) Honorable

) Terence M. Sheen,

) Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.

Justices Hoffman, Hudson, Holdridge, and Turner concurred in the judgment.

**ORDER**

*Held:* The Commission's finding in favor of the claimant on the issue of causation is not against the manifest weight of the evidence.

¶ 1 The claimant, Maria Trevino, was employed as a custodian for the employer, Plainfield School District #202, from May 15, 2006, to November 9, 2006. The claimant filed a claim under the Illinois Workers' Compensation Act (the Act), 820 ILCS 305/1 to 30 (West 2010), alleging that her work duties aggravated her preexisting carpal tunnel syndrome in her arms, hands, and wrists. At the arbitration hearing, the parties disputed the issue of causation. The Commission found in favor of the claimant and awarded her benefits under the Act, and the circuit court confirmed the Commission's decision. The employer appeals the circuit court's judgment that confirmed the Commission's decision, arguing that the Commission's finding with respect to causation is against the manifest weight of the evidence.

¶ 2 **BACKGROUND**

¶ 3 The claimant is a right-handed cleaning service worker. Her job duties included cleaning classrooms, wiping blackboards, cleaning desks, taking out garbage, cleaning washrooms, vacuuming carpets, cleaning lunchroom tables, mopping floors, and removing scuff marks from floors. The claimant worked five days per week and six hours each workday. Within four months after beginning work for the employer, the claimant started noticing that her hands were becoming numb and were frequently in pain. The claimant testified that she did not have any problems with either hand prior to working for the

employer.

¶ 4 The claimant saw Dr. Karla Holtzman in October 2006, and she believed that the claimant might be suffering from carpal tunnel syndrome. Dr. Holtzman took the claimant off work in November 2006. Dr. Holtzman prescribed over-the-counter wrist braces and physical therapy. She also referred the claimant to a carpal tunnel specialist, Dr. Welch. A physical therapist conducted an initial evaluation of the claimant on November 21, 2006, and concluded that her findings were consistent with carpal tunnel syndrome. The therapist recommended occupational therapy two to three times per week.

¶ 5 The claimant was first treated by Dr. Welch on August 28, 2007. The August 28, 2007, office notes state that the claimant was complaining of bilateral tingling as well as numbness in the right thumb, index finger, and middle finger that was worse at nighttime. She had been using over-the-counter wrist braces which had helped for a period of time but no longer seemed to provide relief. The claimant had been experiencing the symptoms for seven months, and the right hand was worse than the left. On examination, the claimant had positive Phalen, Tinel, and compression tests bilaterally that were more noticeable on the right than the left. Dr. Welch ordered "an EMG to rule out carpal tunnel syndrome along with cubital tunnel syndrome at Guyon's canal."

¶ 6 The EMG was conducted on August 31, 2007, by Dr. Hassan Moghadam. On September 5, 2007, Dr. Moghadam prepared a report of the claimant's EMG test results. Dr. Moghadam wrote in the report that his impression was as follows:

"Nerve conduction studies reveal the sensory and motor distal latencies of the median nerves are normal. However, the distal latency of the palmar branch of the right median nerve is prolonged suggestive of a mild carpal tunnel syndrome. This was further confirmed when compared with the opposite side, which is normal. The remainder of the nerve conduction studies and EMG of both upper extremities are normal. There is no evidence of ulnar nerve entrapment at the Guyon's canal."

¶ 7 The report also noted that the claimant was complaining of "numbness and tingling sensation of the fingers on the right side and occasionally on the left side." At this time, Dr. Welch believed that the claimant's symptoms were greater than what was expected by the nerve conduction studies. Therefore, he believed "that it is likely secondary irritation of the median nerve from tendinitis." He prescribed therapy.

¶ 8 The claimant's "Occupational Therapy Evaluation" report dated September 18, 2007, indicates that the claimant was still complaining of pain, numbness, and tingling in both hands and that her pain increased when she did more work with her hands. The therapist wrote that the claimant reported that "her pain is aggravated by using her hands or working with them. Cleaning tables is particularly painful." The claimant described "having difficulty cleaning tables, vacuuming, lifting a pot or a gallon of milk." She had difficulty holding a bucket to mop or wash windows and had to take frequent breaks when performing tasks with her hands. The claimant also reported that she alternated her job tasks to control her pain. The claimant wore wrist supports at night, and she frequently woke up with

numbness in her index through middle fingers, "greater on the right than left."

¶ 9 The therapist provided the claimant with a "thorough home exercise program."

¶ 10 In his October 17, 2007, notes, Dr. Welch wrote that the claimant's splints and home exercises had helped lessen some of the tingling and numbness. However, she experienced pain "in the dorsal wrist," and when she vacuumed for more than two hours, the pain was elevated. She experienced moderate difficulty doing "household chores such as washing walls and floors."

¶ 11 Dr. Welch gave the claimant a steroid injection into the right carpal tunnel on December 21, 2007, which initially provided the claimant with some relief. However, when her symptoms returned in February 2008, he recommended a carpal tunnel release since the claimant had at least temporary improvement with the injection. He performed a carpal tunnel release surgery on the claimant's right wrist in February 2008, and he recommended that the claimant remain off of work for six months.

¶ 12 After the surgery, the claimant continued with therapy and complained of decreased grip strength and persistent tenderness. In April 2008, the claimant complained of triggering in her right thumb that had increased by May 2008. At that time, "she was also noted to have a mass on the ulnar aspect of the thumb." On June 3, 2008, the claimant showed improvement with her right carpal tunnel release. Dr. Welch discussed excision of the mass on her thumb, but she wanted to try more therapy. On June 24, 2008, the claimant reported that her symptoms were worse and that the tingling had returned in both hands. She

continued with therapy.

¶ 13 The claimant submitted to an independent medical examination (IME) conducted by Dr. Michael Vender. On June 16, 2008, Dr. Vender issued his IME report. Dr. Vender wrote that the claimant's symptoms of pain, numbness, and tingling can be indicative of carpal tunnel syndrome and that the claimant's August 2007 electrodiagnostic study was indicative of mild right carpal tunnel syndrome, but that there is no evidence of left carpal tunnel syndrome. He believed that "[f]rom the carpal tunnel release, [the claimant was] now at maximum medical improvement." Based on his examination, his opinion was that the claimant's status was "post right carpal tunnel release and that she had right thumb flexor stenosing tenosynovitis." With respect to the issue of causation of the claimant's carpal tunnel syndrome, Dr. Vender wrote as follows:

"[The claimant] is presently performing work activities doing corporate cleaning, that is, cleaning offices. Her prior work activities were that of a custodian for a school district. In looking for a contribution of work activities to the development of carpal tunnel syndrome, one would look for forceful and exertional activities performed on a regular and persistent basis through the workday. [The claimant] described various activities that would be performed at work. There were intermittent exertional activities such as lifting or carrying. Other activities were of a much more routine nature with regards to the hands. As there is significant job variability, this would not be considered a repetitive job, especially as this relates to

forceful use. These would not be considered the types of job activities considered contributory to carpal tunnel syndrome."

¶ 14 Dr. Vender testified at the arbitration hearing by way of an evidence deposition taken on October 3, 2008. In explaining his opinion concerning causation, he testified that "you're looking for the combination of persistence or repetitiveness along with the forcefulness. If you have intermittent forcefulness, that doesn't necessarily fit into your characterization. If you have repetitiveness but no force, that doesn't fit into the characterization."

¶ 15 Dr. Vender did not believe that the claimant's right thumb flexor stenosing tenosynovitis was causally related to the claimant's work because it appeared that the condition developed "well after her employment." He also felt that the claimant's carpal tunnel syndrome would not "come from her work." Therefore, he believed that the claimant's carpal tunnel release surgery was not related to her work activities.

¶ 16 Dr. Welch reported in his August 19, 2008, notes that the claimant was doing much better and that she was no longer tender on direct palpation. The claimant reported some tenderness with heavy grasping, such as when she used a mop, but that also continued to improve.

¶ 17 On January 6, 2009, Dr. Welch provided the claimant's attorney a written "narrative and information" on the claimant, as well as his opinion concerning whether the claimant's carpal tunnel syndrome was causally related to her job duties, including vacuuming, mopping, sweeping, using a tennis ball on a stick to remove scuff marks, wiping 18 white

boards with a rag, and using a squeegee on 30 desks in 18 classrooms. Dr. Welch wrote:

"It is my opinion that her occupations are varied and not of sufficient force to have a causal relationship with her carpal tunnel syndrome. The most common cause of carpal tunnel syndrome is idiopathic, meaning no underlying cause. In addition, women are more prone than men due to the decreased size of their carpal tunnel.

Is my opinion that the symptoms can be aggravated by her activities. However, carpal tunnel itself it is not materially worsened, merely made more symptomatic during such activities as described above."

¶ 18 At the conclusion of the evidence, the arbitrator found in favor of the claimant on the issue of causation and found that her carpal tunnel syndrome was causally related to her workplace duties. The arbitrator awarded the claimant temporary partial disability (TPD) benefits in the amount of \$230.17 per week for 30.42 weeks and permanent partial disability (PPD) benefits in the amount of \$207.36 per week for 51.25 weeks. In addition, the arbitrator awarded \$15,228.46 for reasonable and necessary medical services.

¶ 19 With respect to causation, the arbitrator noted that Dr. Vender "opined no causal relationship, but did not testify either way as to whether the job activities of [the claimant] could have aggravated a preexisting carpal tunnel syndrome which had been asymptomatic for many years prior to her job with this [employer]." Dr. Welch, however, opined that although he did not believe that the claimant's job caused her carpal tunnel syndrome, her job duties aggravated her symptoms. The arbitrator, therefore, found that the claimant's carpal



tunnel syndrome was not caused by, but was aggravated by her work activities for the employer and that there was a causal connection between her job and her need for surgery.

¶ 20 The employer appealed the arbitrator's decision to the Commission. The Commission unanimously adopted and affirmed the arbitrator's decision. The employer then appealed to the circuit court. The circuit court entered a judgment that confirmed the Commission's decision, holding that the Commission's decision on the issue of causation is not against the manifest weight of the evidence. The employer appeals the circuit court's judgment.

¶ 21 DISCUSSION

¶ 22 A workers' compensation claimant has the burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her employment. 820 ILCS 305/2 (West 2010). Whether an injury arises out of a claimant's employment is a question of fact to be resolved by the Commission, and its decision in this regard will not be disturbed unless it is against the manifest weight of the evidence. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 164, 731 N.E.2d 795, 808 (2000). "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009). The appropriate test is not whether this court might have reached the same conclusion, but whether the record contains sufficient evidence to support the Commission's determination. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d

858, 866, 923 N.E.2d 870, 877 (2010). "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). Resolution of conflicts in medical testimony is also within the province of the Commission. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003).

¶ 23 Applying these standards in the present case, we cannot conclude that the Commission's findings with respect to causation of the claimant's carpal tunnel syndrome are against the manifest weight of the evidence.

¶ 24 For example, in *Sisbro*, the employee twisted his ankle as he stepped out of a delivery truck and into a pothole while making a delivery. *Id.* at 197-98, 797 N.E.2d at 668. The Commission awarded the employee workers' compensation benefits, finding that there was a causal relationship between the work accident and the acute onset of a degenerative condition in his foot. On appeal, the supreme court affirmed the Commission's decision. *Id.* at 215, 797 N.E.2d at 678.

¶ 25 In its analysis, the supreme court stated: "It has long been recognized that, in preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the

work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Sisbro*, 207 Ill. 2d at 204-05, 797 N.E.2d at 672. The court emphasized that employers take their employees as they find them and that when an employee's physical structure gives way under the stress of his or her job duties, the Act considers the injury to have arisen out of and in the course of employment even when the employee's physical structure is diseased prior to the injury. *Id.* at 205, 797 N.E.2d at 672.

¶ 26 "Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the \*\*\* Commission." *Id.* at 205, 797 N.E.2d at 673. In *Sisbro*, the employer contended, based on its expert's testimony, that the employee's condition was "the result of the normal degenerative process of his preexisting diabetic condition and the associated neuropathy." *Id.* at 206, 797 N.E.2d at 673. The employee's expert, however, testified that the claimant's degenerative condition was triggered when he twisted his ankle. *Id.* The Commission found that the opinions of the employee's medical expert were more credible, and the supreme court held that "[t]he record clearly supports this determination." *Id.* The court noted that the employee was asymptomatic prior to the accident and that it was within the Commission's province to judge the credibility of the conflicting medical opinions. *Id.* at 207-08, 797 N.E.2d at 674. "*Sisbro* established the standard for reviewing the Commission's findings where a preexisting condition may be a cause of the disability." *Twice Over Clean, Inc. v. Industrial Comm'n*,

214 Ill. 2d 403, 411-12, 827 N.E.2d 409, 413 (2005).

¶ 27 In *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 943 N.E.2d 153 (2011), the court affirmed the Commission's award of benefits where the employee's treating physician testified that the employee's work duties could have aggravated or accelerated his preexisting conditions of cervical radiculopathy and carpal tunnel syndrome. In that case, the employee testified that his duties required him to constantly move his head from side to side while operating a forklift. *Id.* at 435, 943 N.E.2d at 160-61. Approximately six months after the employee began working for the employer, he began experiencing tingling in his hands which radiated up his arms and his elbows. *Id.* at 429, 943 N.E.2d at 156. He was subsequently diagnosed with cervical radiculopathy and carpal tunnel syndrome. *Id.* at 435, 943 N.E.2d at 161. Based on the testimony of the employee's treating physician, the Commission found that the claimant's work activities aggravated and accelerated his preexisting cervical stenosis, necessitating surgical intervention. *Id.*

¶ 28 The court affirmed the Commission's award, noting that "it was the function of the Commission to judge the credibility of the witnesses, determine the weight to be given their testimony, and resolve conflicting medical evidence." *Id.* The court affirmed the commission's finding on causation because an opposite conclusion was not clearly apparent. *Id.* at 436, 943 N.E.2d at 161.

¶ 29 Likewise, in the present case, the record supports the Commission's finding with

respect to causation. The record establishes that the claimant began working for the employer in May 2006, and her job duties included cleaning classrooms, wiping blackboards, cleaning desks, taking out garbage, cleaning washrooms, vacuuming carpets, cleaning lunchroom tables, mopping floors, and removing scuff marks from floors with a tennis ball attached to a stick. She worked five days per week and six hours each workday. The claimant had not experienced any problems with her right hand prior to working for the employer, but within four months after beginning work for the employer, she began experiencing numbness and pain in her hands, particularly her dominant right hand. She was subsequently diagnosed with carpal tunnel syndrome in her right hand and required surgery.

¶ 30 The claimant's medical records include a report from her treating physician, Dr. Welch, who opined that, while the claimant's job duties were varied and not of sufficient force to cause her carpal tunnel syndrome, the job activities could have aggravated her symptoms and made her condition more symptomatic. The employer's expert, Dr. Vender, also testified he did not believe that the claimant's job duties caused her carpal tunnel syndrome. However, he did not offer any opinion concerning whether the job duties could have aggravated her condition.

¶ 31 The arbitrator noted the parties' expert opinions and noted that Dr. Vender "opined no causal relationship, but did not testify either way as to whether the job duties of [the claimant] could have aggravated a preexisting carpal tunnel syndrome which had been asymptomatic for many years prior to her job with this [employer]." The arbitrator relied on

Dr. Welch's opinion and found that the claimant's carpal tunnel syndrome was aggravated by her work activities for the respondent. The Commission unanimously adopted the arbitrator's decision, and the circuit court confirmed the Commission's decision.

¶ 32 Reviewing the record in the present case, we cannot find that the Commission's decision was against the manifest weight of the evidence; an opposite conclusion is not clearly apparent. Accordingly, we affirm the circuit court's judgment that confirmed the Commission's decision.

¶ 33 The employer argues that the Commission and the circuit court used the wrong standard in evaluating causation. The employer agrees that a preexisting condition does not preclude workers' compensation benefits if the condition is aggravated or accelerated by the employment. However, the employer argues that, in the present case, the Commission's award is not based on evidence that the claimant's preexisting condition was aggravated by work duties, only that the work duties caused "the production of symptoms." We disagree with the employer's analysis for the reasons noted above. The production of symptoms was a fact in the record that the Commission used to make its factual determination of causation. In both *Sisbro* and *Tower Automotive*, the courts considered that the employees were asymptomatic prior to working for the employer. *Sisbro*, 207 Ill. 2d at 207-08, 797 N.E.2d at 674; *Tower Automotive*, 407 Ill. App. 3d at 435, 943 N.E.2d at 870-71. Other cases have also noted the onset of symptoms in evaluating causation with respect to preexisting conditions. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170,

175, 741 N.E.2d 1144, 1148 (2000) ("Claimant was asymptomatic before these accidents and symptomatic afterward. The Commission could reasonably find that the accidents aggravated claimant's prior right knee condition. This finding was not against the manifest weight of the evidence."); *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 861, 826 N.E.2d 493, 502 (2005) (medical expert testified "that it was after the work injury that the claimant's [preexisting] condition was exacerbated; namely, he experienced pain while walking and his ability to work was limited.").

¶ 34 The Commission in the present case applied the correct standard in making factual findings on the issue of causation, and for the reasons noted above, its finding of causation was not against the manifest weight of the evidence.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, we affirm the judgment of the circuit court that confirmed the Commission's decision.

¶ 37 Affirmed.