NOTICE

Decision filed 05/09/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120065WC-U

NO. 5-12-0065WC

IN THE APPELLATE COURT

OF ILLINOIS

FIFTH DISTRICT

Illinois Workers' Compensation Commission Division

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).

RICHARD HOUSE,	)	Appeal from
Appellant,	)	Circuit Court of
v.	)	Williamson County.
THE ILLINOIS WORKERS' COMPENSATION	)	No. 11-MR-86
COMMISSION *et al.* (Extra Help, Inc., Appellee).	)	
	)	Honorable
	)	Brad K. Bleyer,
	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's finding that claimant failed to prove his severe, chronic carpal tunnel syndrome was causally related to his employment was not against the manifest weight of the evidence.

¶ 2 On February 5, 2010, claimant, Richard House, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2008)), seeking benefits from the employer, Extra Help, Inc., for bilateral carpel tunnel syndrome caused by a repetitive motion injury that manifested on January 12, 2010.

¶ 3 Following a hearing, an arbitrator found claimant failed to prove his injuries arose out of and in the course of his employment with the employer and denied claimant benefits. Claimant

filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On review, the Commission modified and corrected the arbitrator's decision, finding claimant provided timely notice of his injury to the employer, and otherwise affirmed and adopted the decision denying claimant benefits. Thereafter, claimant filed a petition seeking judicial review in the circuit court of Williamson County and the court confirmed the Commission's decision.

¶ 4 Claimant appeals, arguing the Commission's finding that claimant failed to prove his injuries arose out of and in the course of his employment with the employer is against the manifest weight of the evidence. We affirm.

¶ 5 I. BACKGROUND

¶ 6 The following factual recitation is taken from the evidence presented at the arbitration hearing on June 15, 2010. The 52-year-old claimant testified he began work for the employer on September 21, 2009. Claimant was assigned temporary work as a material handler in an automobile parts factory (Aisin Manufacturing Illinois, LLC). Claimant attached clamps to various automobile parts. According to claimant, the clamps were similar to clamps affixed to jumper cables. Claimant testified he attached approximately 1,200 clamps per hand during the course of a single shift.

¶ 7 Claimant sought treatment on November 30, 2009, with Dr. Matin Nekzad, a family practitioner. Claimant was a new patient and had multiple complaints including waking in the night with numbness and tingling in the first three fingers of both hands. Claimant reported the pain worsened with his employment. Dr. Nekzad referred claimant to neurologist Dr. Fakhre Alam, for a nerve conduction study. On December 11, 2009, Dr. Alam diagnosed claimant with

severe bilateral carpal tunnel syndrome and mild bilateral ulnar neuropathy at the elbows. On January 12, 2010, Dr. Nekzad referred claimant to Dr. Richard Morgan of the Southern Illinois Orthopedic Center.

¶ 8 On February 2, 2010, claimant completed an accident report stating he suffered "a hand injury from repetitive clamping of parts on a daily basis." Claimant advised he would be unable to work beginning February 3, 2010.

¶ 9 Claimant sought treatment with Dr. Morgan on February 4, 2010. Dr. Morgan is board certified in orthopaedic surgery. Claimant reported hand pain beginning a few months ago when he began work for the employer as a material handler. Claimant advised Dr. Morgan he "had become unemployed from his job since he is unable to work due to his hand problems." Dr. Morgan recommended claimant undergo bilateral carpel tunnel decompression.

¶ 10 Dr. Nekzad removed claimant from work on February 10, 2010. Claimant underwent surgery on March 24, 2010, and on April 7, 2010. At the employer's request, claimant underwent an independent medical examination on May 11, 2010, with Dr. David Brown of the Orthopedic Center of St. Louis. Dr. Brown is a board-certified surgeon who specializes in the hand and upper extremity. Claimant reported hand pain beginning in early December 2009, after he had worked as a material handler for a little over two months. In his report, Dr. Brown stated:

> "These changes seen on the nerve conduction studies are findings consistent with severe, chronic carpal tunnel syndrome that has been present for a long time. These are not the changes that we would see on a nerve conduction study that would occur over just an eight to ten week period of time of work. I do not believe Mr. House's eight or

> ten week period of time of work would cause the type of changes that were seen on his nerve conduction studies that were done in December. Furthermore, I do not believe the short period of exposure to those work activities would cause the type of change that was seen at the time of surgery, which was noted in the operative report of significant thinning of the carpal tunnel. It is possible that Mr. House's work activities may have caused a temporary increase in symptoms but I do not believe the work activities would have caused a permanent change in the pathophysiology of his condition, the severe type of changes seen on the electrodiagnostic testing done in December of 2009 or what was noted intraoperatively on 3-24-10."

¶ 11 Dr. Brown further noted claimant had a significant risk factor for carpal tunnel syndrome. Dr. Brown explained claimant's increased body mass index would put him at significant risk for carpal tunnel syndrome. According to Dr. Brown, "[i]t has been well established in the hand surgical literature that the incidence of carpal tunnel syndrome is significantly increased in patients with an increased body mass index." Dr. Brown referenced a study published in the Journal of Hand Surgery where it was shown that the incidence of carpal tunnel syndrome is four times that in patients with an increased body mass index compared to those patients who do not have an increased body mass index.

¶ 12 Dr. Morgan released claimant to work on May 24, 2010, without restrictions.

¶ 13 Following the hearing, the arbitrator found claimant did not give timely notice of the accident to the employer. Further, he found claimant failed to prove his injuries arose out of

and in the course of his employment with the employer and denied claimant benefits. In support of this finding, the arbitrator stated:

> "Mr. House has not proven that his current condition of ill-being is causally connected to his employment with Extra Help, Inc. The medical reports of Mr. House's treating physician, Dr. Nekzad, and his orthopedic surgeon, Dr. Morgan, are silent on the issue of medical causation. The only medical causation evidence admitted at trial was Dr. Brown's report which indicated that Mr. House's carpal tunnel was not caused by his employment at Extra Help. Mr. House did not admit any evidence to contradict Dr. Brown's opinion. I find the opinion of Dr. Brown credible."

¶ 14 Claimant filed a petition for review of the arbitrator's decision before the Commission. On review, the Commission (1) found claimant provided timely notice of his injury to the employer, (2) deleted a sentence and inserted a new sentence to reflect claimant sought treatment with Dr. Nekzad in November 2009, and (3) corrected a typographical error. The Commission otherwise affirmed and adopted the decision denying claimant benefits. Thereafter, claimant filed a petition seeking judicial review in the circuit court of Williamson County. On January 13, 2012, the court confirmed the Commission's decision. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Claimant appeals, arguing the Commission's finding that he failed to prove his severe, chronic carpal tunnel syndrome arose out of and in the course of his employment with the employer is against the manifest weight of the evidence. Claimant contends he established a

causal connection between his employment and his carpal tunnel syndrome by a particular chain of events, notwithstanding a complete lack of medical testimony establishing causation. Specifically, claimant argues he proved a chain of events demonstrating a previous condition of good health, an accident, and a subsequent injury resulting in disability evincing sufficient circumstantial evidence to prove a causal nexus between the accident and his injury. See *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908, 911 (1982).

¶ 17 "Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on appeal unless it is against the manifest weight of the evidence." *TTC Illinois, Inc./Tom Via Trucking v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 344, 356, 918 N.E.2d 570, 580 (2009). "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent." *TTC Illinois*, 396 Ill. App. 3d at 356, 918 N.E.2d at 580. "In resolving questions of fact, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence." *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 whether the record contains sufficient evidence to support the Commission's decision, not whether this court might have reached the same conclusion. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 435, 943 N.E.2d 153, 160 (2011).

¶ 18 There is no dispute that claimant suffered severe, chronic carpal tunnel syndrome on December 11, 2009. Claimant is correct that an injury is compensable under the Act if the claimant's employment was a causative factor and it need not be the sole causative factor or even

the principal causative factor. *Sears, Roebuck & Co. v. Industrial Comm'n*, 79 Ill. 2d 59, 66, 402 N.E.2d 231, 235 (1980).

¶ 19 Here, the factual evidence presented at the arbitration hearing was sufficient to support the Commission's determination that claimant's carpal tunnel syndrome was not causally related to his employment. Claimant first sought treatment with Dr. Nekzad on November 30, 2009. Claimant had multiple complaints including waking in the night with numbness and tingling in the first three fingers of both hands. Claimant had worked for employer for approximately 10 weeks. On December 11, 2009, Dr. Alam diagnosed claimant with severe bilateral carpal tunnel syndrome and mild bilateral ulnar neuropathy at the elbows, and on February 2, 2010, claimant completed an accident report stating he suffered "a hand injury from repetitive clamping of parts on a daily basis" and could not work.

¶ 20 Although claimant testified he had never experienced pain in his hands, Dr. Brown stated that the changes seen on the nerve conduction studies were findings consistent with severe, chronic carpal tunnel syndrome that had been present for a long time. Dr. Brown did not believe claimant's "eight or ten week period of time of work would cause the type of changes that were seen on his nerve conduction studies that were done in December"; rather Dr. Brown noted claimant's increased body mass index placed him at a significant risk for carpal tunnel syndrome. The Commission found Dr. Brown's opinion credible.

¶ 21 Claimant admits he did not present any medical testimony establishing causation but suggests the record shows "an overwhelming amount of circumstantial evidence of causation." Specifically, claimant points to his testimony "of not having any symptoms, undergoing repetitive trauma to the hands while working for [the employer], followed by his development of

carpal tunnel syndrome." "When the claimant's version of the accident is uncontradicted and his testimony unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award." *International Harvester*, 93 Ill. 2d at 64, 442 N.E.2d at 911. Here, claimant's testimony was impeached by Dr. Brown's statement that the changes seen on the nerve conduction studies were findings consistent with severe, chronic carpal tunnel syndrome that had been present for a long time, more than the 8 to 10 weeks claimant worked for employer before undergoing the nerve conduction studies.

¶ 22 Claimant asserts additional circumstantial evidence of causation where Dr. Morgan sought payment of claimant's medical bills from the employer, suggesting Dr. Morgan believed claimant's employment caused his carpal tunnel syndrome. Although circumstantial evidence can be sufficient to prove a causal nexus between an accident and the claimant's injury (*University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 913, 851 N.E.2d 72, 79 (2006)), whether a causal connection exists between a claimant's current condition of ill-being and his employment is still a factual issue for the Commission to resolve (see *Tower Automotive*, 407 Ill. App. 3d at 434, 943 N.E.2d at 160). We review the Commission's factual findings under the manifest-weight-of-the-evidence standard. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 21, 960 N.E.2d 587. Applying this standard, we cannot say that the Commission's finding on causation was against the manifest weight of the evidence.

¶ 23 In contrast to his testimony before the arbitrator, claimant next asserts he suffered an aggravation of a preexisting condition while working for employer. At the arbitration hearing, claimant insisted he had never experienced pain in his hands prior to his employment with the

employer. Claimant now argues he suffered an aggravation of a preexisting condition, referencing Dr. Brown's statement that "[i]t is possible that Mr. House's work activities may have caused a temporary increase in symptoms but I do not believe the work activities would have caused a permanent change in the pathophysiology of his condition."

¶ 24 Whether a claimant's condition is attributable to a preexisting condition or an aggravation of that condition caused by an employment accident is a question of fact for the Commission. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205-06, 797 N.E.2d 665, 673 (2003). There is nothing in Dr. Brown's statement that attributes claimant's carpal tunnel syndrome to an aggravation of a preexisting condition caused by a work accident. Dr. Brown's statement suggests only the possibility that claimant may have experienced a temporary increase in his symptoms. Dr. Brown did not believe claimant's work for employer caused a permanent change in claimant's condition.

¶ 25 Finally, we note the cases cited by claimant as similar to the instant case are cases in which this court and the supreme court affirmed the Commission's factual determinations. See *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 242, 461 N.E.2d 954, 957 (1984) (claimant suffered from a condition with an unknown or scientifically uncertain causation but uncontroverted that his symptoms commenced contemporaneously with the accident); *International Harvester*, 93 Ill. 2d at 64, 442 N.E.2d at 911 (although treating physician testified as to two possible causes of injury, chain of events strongly suggested claimant's injury was caused by the work accident); *Westinghouse Elec. Co. v. Industrial Comm'n*, 64 Ill. 2d 244, 251, 356 N.E.2d 28, 31 (1976) (inability to work as plumber began immediately after accident); *Union Starch & Refining Co. v. Industrial Comm'n*, 37 Ill. 2d 139, 145, 224 N.E.2d 856, 859 (1967)

(claimant had a good health record and a record of heavy manual labor followed by an accident and a herniated disc without an intervening injury); *Caterpillar Tractor Co. v. Industrial Comm'n*, 215 Ill. App. 3d 229, 241, 574 N.E.2d 1198, 1206 (1991) (claimant presented treating physician's medical notes and letter written by treating physician stating claimant's overhead work aggravated his preexisting condition).

¶ 26 As stated above, 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. *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081. Based upon the record before us, the Commission's finding that claimant failed to prove his severe, chronic carpal tunnel syndrome was causally related to his employment, was not against the manifest weight of the evidence.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision.