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2015 IL App (1st) 133954WC-U

Order filed: July 10, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JACOB HALTOM,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 1-13-3954WC
	)	Circuit No. 13-L-50588
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (The Center for Sleep Medicine, Appellee).	)	Honorable Eileen O'Neil Burke, Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The Commission did not violate its statutory duty under section 19(e) of the Act to review "all questions of law or fact" raised within the transcript by failing to explicit reference the claimant's argument that testimony regarding the monetary value of his settlement with a prior employer was inadmissible; and (2) the Commission's finding that the claimant failed to prove that his current condition of ill-being was causally related to a work-related accident was not against the manifest weight of the evidence.

¶ 2 The claimant, Jacob Haltom, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)), seeking benefits for a back injury he allegedly sustained while he was working for the Center for Sleep Medicine (employer). After conducting a hearing, an arbitrator found that: (1) the claimant had suffered a "temporary aggravation" of a pre-existing condition in his lower back which had "retuned to baseline" by May 10, 2007, 23 days after his work accident; and (2) the claimant had failed to prove that his "current condition of ill-being with regard to his back" was causally related to his employment with the employer. Accordingly, the arbitrator awarded the claimant 23 days' temporary total disability (TTD) benefits but denied the additional benefits sought by the claimant, including maintenance benefits, vocational rehabilitation, and medical expenses incurred after May 10, 2007.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). A majority of the Commissioners affirmed and adopted the arbitrator's decision. Commissioner DeVriendt dissented. The claimant sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling. This appeal followed.

¶ 4 **FACTS**

¶ 5 The claimant worked for the employer as a sleep technologist. The parties stipulated that the claimant suffered a work-related accident on April 17, 2007. On that date, the employer's lead technician instructed the claimant to assist a wheelchair-bound patient into a bed. The patient weighed approximately 300 pounds. Shortly after lifting the patient up and helping her into the bed, the claimant noticed a pain in his lower back and "thigh region." He reported the injury to his supervisor, Jen Culp, who advised him to seek medical treatment at Physician's Prompt Care Centers, the clinic used by the employer.

¶ 6 On April 19, 2007, the claimant reported to the company clinic complaining of pain in his lower and middle back, weakness in both legs, and numbness and tingling in his left leg. He reported that he began experiencing these symptoms at work after lifting a patient from a wheelchair onto a bed. An examination revealed decreased strength in the claimant's left lower extremity and mild tightness and diffuse tenderness to palpation at the paraspinals (the muscles next to the spine). The examining physician diagnosed lower back pain with radicular symptoms, recommended a lumbar MRI and physical therapy, and ordered the claimant off work.

¶ 7 The claimant underwent a lumbar MRI on April 20, 2007. A report of the MRI results was authored by Dr. Matthew Eisenstein. According Dr. Eisenstein's report, the April 20, 2007, MRI revealed: (1) a disc bulge with protrusion into the neural foramin at L3-L4; (2) "postsurgical changes" and mild spondylotic (*i.e.*, degenerative) changes at L4-S1 (the site of a prior back surgery that was performed on the claimant in 2003); and (3) minimal neural foraminal stenosis (*i.e.*, the narrowing of the openings where the spinal nerve roots are located). However, Dr. Eisenstein noted that the MRI showed "[n]o focal disc herniation or significant stenosis."

¶ 8 Later that day, the claimant underwent an initial physical therapy evaluation. The therapist noted that the claimant had moderately to severely decreased trunk mobility, pain in his lower back radiating into his left leg and foot, numbness and tingling ion the left foot, increased pain with resistance in his lower extremities, increased pain in any prolonged position, moderate muscle guarding, and difficulty sleeping. Upon the therapist's recommendation, the company physician prescribed pain medication. The claimant began a course of physical therapy.

¶ 9 On April 25, 2007, the claimant was released to light duty work with restrictions of no sitting for more than 30 minutes and no lifting, squatting, or stooping. Jen Culp advised the

claimant that the employer could not accommodate these restrictions, so the claimant remained off work. On May 4, 2007, the company doctor continued the claimant's work restrictions and recommended that the claimant consult with Dr. George Miz, an orthopedic surgeon who had performed a fusion surgery on the defendant's lumbar spine in 2003 to treat a prior back injury.

¶ 10 The claimant's final physical therapy report, dated May 10, 2007, indicates that the claimant was progressing slowly with continued complaints of low back pain (rated 6 out of 10) and occasional paresthesias in both lower extremities. The therapist noted that the claimant's symptoms persisted and that the claimant "may not be able to perform his strenuous occupation, which he is very anxious to return to."

¶ 11 Later that day, the claimant saw Dr. Miz. Dr. Miz's May 10, 2007, treatment record notes that the claimant was doing "reasonably well" since his last visit but was now having back pain with paresthesias in both legs after lifting a 300-pound patient at work. The doctor noted that the claimant's symptoms had improved with physical therapy but had not completely resolved. Dr. Miz's examination revealed mild paravertebral tenderness, limited range of motion, and back pain upon straight leg raises. The doctor noted that the claimant's "recent lumbar MRI scan" showed that "levels cephalad (*i.e.*, above) L4" were "entirely normal." He diagnosed lumbar strain with radiculitis and prescribed pain medication. He released the claimant to work "as of next week" with restrictions of no heavy lifting and no repetitive bending or stooping.

¶ 12 The claimant contacted Culp and advised her of the work restrictions imposed by Dr. Miz. Thereafter, he returned to work and continued to work for the employer for the next two years without interruption.

¶ 13 In May 2009, Shilo Velez, the employer's Clinical Director, sent the claimant an e-mail instructing him to return to Dr. Miz and have the doctor "specifically note what job functions [the claimant was] not able to provide." Cheryl Michalow, the employer's Administrative

Director, subsequently e-mailed the claimant a copy of his job description and ordered the claimant to provide an "updated doctor's note detailing any [work] restrictions or limitations for you" within four weeks.

¶ 14 Pursuant to the employer's demand, the claimant saw Dr. Miz on July 2, 2009. At that time, the claimant did not mention that he was suffering from any radicular pain or note any such pain on the pain diagram provided by Dr. Miz, as he had done two years earlier. Dr. Miz's notes from the claimant's July 2, 2009, visit indicate that the claimant was "clinically unchanged with continued mechanical low back pain that limits his activities." Dr. Miz noted that an FCE performed on the claimant in February 2004 (after his July 2003 lumbar fusion surgery) "showed [the claimant] capable of sedentary to light work with an approximate 15 pound lifting restriction." The doctor indicated that he would "limit the claimant to no repetitive bending, stooping, crawling or squatting" and that "[t]hese restrictions should be permanent."

¶ 15 The claimant provided Dr. Miz's work restrictions to the employer. Several days later, Michalow called the claimant and told him that, based upon the restrictions imposed by Dr. Miz, she had concluded that the claimant was incapable of performing his job. Michalow later sent the claimant a letter terminating his employment. The letter stated: "we have no alternative but to terminate your employment" because "the report you submitted from [Dr. Miz] dated 07-02-09 describes permanent restrictions that prevent you from performing your job with or without reasonable accommodations."

¶ 16 Thereafter, the claimant filed an application for adjustment of claim with the Commission. The employer paid the claimant past due compensation and began paying him weekly maintenance benefits. On September 29, 2009, the claimant began vocational rehabilitation with Thomas Grzesik. Grzesik concluded that the claimant met the criteria for vocational rehabilitation and prepared a vocational rehabilitation plan. Pursuant to Grzesik's

plan, the claimant began a supervised job search for accommodated positions within his work restrictions.

¶ 17 Grzesik asked the claimant to return to Dr. Miz to determine whether there had been any change in the claimant's work restrictions. On February 25, 2010, Dr. Miz examined the claimant and determined that he was "clinically unchanged." In his notes of that visit, Dr. Miz opined that the claimant should "still *** be restricted to the light level of work as outlined in his FCE with an approximate 15 pound lifting restriction with no repetitive bending, stooping, crawling or squatting." Dr. Miz also noted that the claimant was "applying for new positions as a sleep technician which, by his description at least, would fit within these restrictions."

¶ 18 The claimant's supervised job search continued until July 26, 2012, at which time the employer contacted Grzesik's firm and told Grzesik to close the claimant's file. Thereafter, the claimant continued searching for work independently in the same manner as he did when working with Grzesik.

¶ 19 The claimant's claim was tried before an arbitrator on September 20, 2012. Prior to the arbitration hearing, the employer issued a subpoena to the CSX Transportation, the claimant's former employer, requesting the claimant's employment records. The claimant filed a motion to quash the subpoena arguing that the subpoena was tantamount to discovery, which is impermissible in workers' compensation cases. The claimant's motion to quash was argued before the arbitrator on July 25, 2012. That same day, the arbitrator denied the motion, but no record was made of the proceedings on the claimant's motion or of the arbitrator's ruling on the motion.

¶ 20 During the arbitration hearing, the claimant testified that he left his position at CSX after he sustained a back injury in March 2001. He treated with Dr. Miz, who performed surgery on the claimant's lower back in July 2003. On February 2, 2004, the claimant underwent a

functional capacity evaluation (FCE) which indicated that the claimant was capable of sedentary-light to light work duties at that time. The claimant stated that Dr. Miz prescribed a work hardening program after the FCE was performed, but the claimant was unable to proceed with that work hardening program because it was not approved by the insurance carrier. Accordingly, the claimant joined Bally's Fitness and worked with a personal trainer in an effort to rehabilitate himself independently through a training program that was similar to the work hardening program prescribed by Dr. Miz. The claimant worked with a personal trainer at Bally's for approximately two years (beginning around May 2004) to get his "core body back to strength."

¶ 21 Because the work restrictions that Dr. Miz prescribed for the claimant prevented the claimant from returning to work as a conductor, the claimant began seeking alternative employment. The claimant testified that the employer hired him as a sleep technologist on April 6, 2006. In order to qualify for this position, the claimant attended a year-long training program and received his certification from the Medical Career Institute.

¶ 22 The claimant testified that he did not treat with Dr. Miz between 2004 and 2006 and that Dr. Miz's previous work restrictions were not modified in any way during that time period. When the claimant was hired by the employer in April 2006, the work restrictions imposed by Dr. Miz in 2004 pursuant to the FCE were still in effect. However, the claimant did not disclose these work restrictions to the employer. The claimant stated that, when he applied for the position in 2006, the employer did not ask him about any prior medical or physical problems. The claimant testified that he did eventually have conversations with certain supervisors and coworkers about his prior back surgery. However, the claimant testified that these conversations did not occur because he was unable or unwilling to perform any of his assigned work duties. Moreover, the claimant stated that, from the time he returned to work after his April 2007 injury until he was terminated in July 2009, he did not recall ever refusing to perform any work duties

that the employer directed him to perform.

¶ 23 During the arbitration hearing, the claimant introduced into evidence a written description of his job duties that he received in 2009. According to that job description, the claimant' job duties "frequently" required him to stand, climb, or balance, and "occasionally" required him to "walk, sit, stoop, kneel, crouch, or crawl." The job description also provided that "[t]he employee must regularly lift and/or move up to ten (10) pounds, frequently lift and/or move up to twenty-five (25) pounds, and occasionally lift and/or move up to fifty (50) pounds." The claimant testified that his job required him to "twist, turn, stoop, [and] kneel to put electrodes in various places on the patients," "pull *** sanitizer equipment," and "move furniture" for patients as needed.

¶ 24 The claimant testified that he currently experienced pain "every now and then" and took over-the-counter medicine to treat his pain. Dr. Miz never prescribed pain medication after he released the claimant for work in May 2007.

¶ 25 The arbitrator questioned the claimant regarding the monetary value of his settlement with CSX for the 2001 injury. The claimant objected to this line of questioning on relevance grounds. The arbitrator overruled the claimant's objection.

¶ 26 The employer introduced Dr. Miz's records relating to the nature of the previous lower back injury the claimant suffered in March 2001 while working for CSX and the treatment the claimant received for that injury. Dr. Miz's records indicated that MRIs were performed on the claimant's lumbar spine in May and October of 2001. Those MRIs revealed a central disc protrusion at L5-S1 but "no significant bulge or herniation" at L3-L4 or elsewhere in the claimant's lumbar spinal column. The October 2001 MRI also revealed "mild disc space narrowing and changes of degenerative disc disease at L5-S1."

¶ 27 Dr. Miz's records indicated that, in July 2003, Dr. Miz performed a surgical fusion of the

claimant's lumbar spine at L4-L5 and L5-S1. After postoperative therapy, Dr. Miz ordered an FCE, which was performed on February 2, 2004. The FCE placed the claimant at the "Sedentary-Light" to "Light" physical demand level. Specifically, the FCE indicated that the claimant was capable of performing: "Sedentary-Light" activities in the "7 [inches] off the floor to knuckle" range (*i.e.*, "[l]ifting 15 lbs. maximum occasionally and up to 10 lbs. or less frequently"); "Light" activities in the "knuckle to overhead" range (*i.e.*, "[l]ifting 20 lbs. maximum with frequent lifting and/or carrying objects weighing up to 10 lbs."); and "Light-Medium" activities in the "knuckle to shoulder" range (*i.e.*, "[l]ifting maximum of 35 lbs. occasionally with frequent lifting and/or carrying of objects weighing 20 lbs. or less"). According to the FCE, the claimant's main limitations were prolonged sitting or standing as well as "[k]neeling and squatting." The FCE recommended that the claimant undergo a work-hardening program for four to six weeks.

¶ 28 Dr. Miz's May 25, 2004, medical record indicates that, on that date, Dr. Miz released the claimant to "return to work in the sedentary to sedentary/light capacities as outlined by the [FCE]." At that time, Dr. Miz opined that the claimant "probably ha[d] some potential for further improvement" but noted that this was "unknown without proceeding with the work hardening program" which had been denied by the insurance carrier.

¶ 29 The arbitrator found that the claimant had failed to establish that his current condition of ill-being was causally related to the April 17, 2007, work accident. The arbitrator noted that neither party had presented any medical opinion testimony on causation and neither party had obtained a section 12 examination. The arbitrator observed that, after the April 17, 2007, work accident, the claimant treated with Physicians' Prompt Care on only one occasion and then treated with Dr. Miz on only one occasion. He underwent physical therapy for "less than a month" and was discharged from physical therapy "ostensibly on his own volition." The

arbitrator noted that, on May 10, 2007, Dr. Miz reviewed the April 20, 2007, MRI and noted "no significant findings," diagnosed lumbar strain with radiculitis, and released the claimant for work, after which the claimant "worked for 2 years with *** no medical care." Based on this evidence, the arbitrator concluded that the claimant's lumbar strain "appear[ed] to have resolved on or about May 10, 2007."[1]

¶ 30 The arbitrator further found that: (1) after the claimant's 2003 back surgery, "[h]e received permanent sedentary-light to light restrictions in 2004 per an FCE"; (2) these restrictions were "not modified when [the claimant was] hired by [the employer] in 2006"; (3) the work restrictions that Dr. Miz imposed on May 10, 2007 (approximately three weeks after the work accident at issue in this case) were "clearly included in the previous restrictions per the FCE"; (4) Dr. Miz "repeatedly referred to [the 2004] FCE in issuing his restrictions after the work accident in this case"; (5) the work restrictions that Dr. Miz prescribed on February 25, 2010, including the restriction of "no repetitive bending, stooping, crawling or squatting," were "clearly included in the previous restrictions per the FCE"; (6) "repetitive bending, stooping, crawling and squatting [were] not part of the [claimant's] job duties with [the employer]"; (7) the permanent restrictions which were in place in 2004 were "virtually unchanged after the work accident on April 17, 2007"; and (8) "even if one were to view this fact differently, any perceived change in the permanent restrictions are far too remote in time and place from the accident on April 17, 2007."

[1] The arbitrator cited other facts in the record in support of this conclusion. For example, the arbitrator noted that, when the claimant returned to Dr. Miz as directed by the employer in 2009, he "did not illustrate any radicular pain in the pain diagram, as he had done two years [earlier]." Moreover, the arbitrator observed that, after the claimant was terminated in July 2009, "nearly another year elapsed with no medical treatment."

¶ 31 Summarizing its finding of no causation, the arbitrator noted:

> "[The claimant's] accident in the case at bar was a lumbar strain with radiculopathy for which he had less than one month of conservative treatment and returned to work. The Arbitrator finds that that accident of April 17, 2007 did not cause [the claimant's] current condition of ill-being. Rather, he experienced a temporary aggravation of his pre-existing underlying condition. The [claimant's] treatment pattern corresponds to one who has suffered a back strain. The radiculopathy, a new symptom, was transient and had ended April 2, 2009. The Arbitrator notes that [the claimant's] medical treatment did not permanently intensify as a result of the accident on April 17, 2007. His subsequent treatment history did not include injections, prolonged physical therapy, additional pain management or medications. ***
>
> The credible evidence supports a finding that [the claimant] sustained a temporary exacerbation of his pre-existing condition which had returned to baseline on or about May 10, 2007. As a result of the limited treatment, the two-year treatment gap and similarity in permanent restrictions between 2004 and 2007, [the claimant] has failed to prove by a preponderance of the credible evidence that his current condition of ill-being with regard to his back is related to his employment with [the employer]."[2]

[2] The arbitrator also noted that, although the claimant was aware of his physical limitations and pre-existing back problems when he started working for the employer, he "chose not to disclose this to his employer." Nevertheless, the claimant "testified that he had to lift up to 50 pounds as

¶ 32 The claimant appealed the arbitrator's decision to the Commission. A majority of the Commission affirmed and adopted the Commission. Commissioner DeVriendt dissented. Commissioner DeVriendt concluded that the facts showed that, "other than the gap in treatment, the [claimant's] complaints [were] consistent and related on the date of accident." In addition, Commissioner's DeVriendt found the employer's conduct to be "unacceptable." Specifically, he concluded that "[i]t is obvious [the employer] wanted [the claimant's] restrictions removed but was unsuccessful. They then terminated him from a position he had been performing successfully for the prior two years following his unrelated back surgery."

¶ 33 Commissioner DeVriendt took issue with the arbitrator's reasoning. He noted that the arbitrator denied causal connection based on the 2004 FCE and its finding that the work restrictions noted in that FCE were "the same as imposed by Dr. Miz in 2007." Commissioner DeVriendt found that this was "not really true" because the claimant "had improved his condition after the 2004 accident by an extensive self-directed work hardening program." (He noted that "the employer" had not approved a work hardening program even though it had been recommended.)[3] Commissioner DeVriendt concluded that "[t]wo years of working out 5 days a week with a personal trainer improved [the claimant's] physical capability and, therefore, the 2004 FCE did "not correctly reflect [the claimant's] 2006 capabilities." Commissioner DeVriendt found that Dr. Miz imposed "further restrictions" in 2007, including permanent

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a sleep technologist, and told the same to Mr. Grzesik." Thus, the arbitrator found that the claimant had "knowingly exceeded his prior permanent work restrictions of his own volition, an act that may be considered to be an injurious practice under the Act."

[3] Presumably, Commissioner meant that CSX, not the employer in this case, failed to approve the prescribed work hardening program in 2004 because the claimant worked for CSX at that time and did not work for the employer until approximately two years later.

restrictions of "no repetitive bending, stooping, crawling, or squatting," "because the new accident had negated [the claimant's] progress." According to Commissioner DeVriendt, these new restrictions "indicate[d] a worsened condition of ill being."

¶ 34 Commissioner DeVriendt opined that "the facts of a case must be viewed in their entirety, not in a vacuum." He concluded that the 2004 FCE and the two-year gap in medical treatment relied upon by the arbitrator "[did] not outweigh the other case facts (enumerated above) and more recent medical findings." He concluded that "[t]he conduct of the [claimant] has been exemplary" and that the employer was "merely trying to terminate benefits."

¶ 35 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling. This appeal followed.

¶ 36 **ANALYSIS**

¶ 37 1. Whether the Commission Violated its Duty Under Section 19(e) of the Act

¶ 38 The claimant argues that, by failing to specifically address an evidentiary argument raised by the claimant, the Commission failed to fulfill its duty under section 19(e) of the Act to "review *** all questions of law or fact which appear from the statement of facts or transcript of evidence." 820 ILCS 305/19(e) (West 2012). We do not find this argument persuasive.

¶ 39 Prior to the arbitration hearing, the employer issued a subpoena to the CSX, the claimant's former employer, requesting the claimant's employment records. The claimant filed a motion to quash the subpoena arguing that the subpoena was tantamount to discovery, which is impermissible in workers' compensation cases. The claimant's motion to quash was argued before the arbitrator on July 25, 2012. That same day, the arbitrator denied the motion, but no record was made of the proceedings on the claimant's motion or the arbitrator's ruling on the issue. During the arbitration hearing, the employer sought to question the claimant regarding the employment records obtained in response to the subpoena. The claimant's attorney objected, but

the arbitrator overruled the objection and allowed the employer to question the claimant regarding the monetary value of his settlement with CSX for the 2001 injury. However, when the employer offered those CSX documents into evidence, the arbitrator rejected the proposed exhibits as "immaterial," "irrelevant," and "potentially prejudicial" to the claimant. Nevertheless, the arbitrator asked the claimant some questions regarding the details of the annuity he received in his settlement with CSX.

¶ 40 In its statement of exceptions to the arbitrator's ruling, the claimant argued that the arbitrator erred in allowing testimony regarding the claimant's settlement with CSX. The claimant argued that such testimony was irrelevant because the 2001 injury did "not come under the umbrella" of the Act and therefore the employer was not entitled to any credit for loss of the same body part. Thus, the claimant argued, the employer's exploration of the monetary terms of the settlement was solely intended to prejudice the arbitrator against the claimant and in fact did so, as evidenced by the arbitrator's questioning the claimant regarding the details of the CSX settlement annuity. Accordingly, the claimant asked the Commission to strike all testimony relating to settlement value of the claimant's case against CSX. However, the Commission did not specifically address this issue in its decision. On appeal, the claimant argues that, "by refusing to address a properly raised issue on review, the Commission violated its statutory duty under [section] 19(e)."

¶ 41 We disagree. Section 19(e) provides that the Commission "may adopt, in whole or in part, the decision of the arbitrator as the decision of the Commission." 820 ILCS 350/19(e) (West 2012). The Commission need not cite all of the underlying evidence in its decision or state its findings in any particular language. *Swift & Co. v. Industrial Comm'n*, 150 Ill. App. 3d 216, 221 (1984). Moreover, the Commission, not the arbitrator, is the ultimate finder of fact (*Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 63 (2006)), and "[w]hen the Commission makes a

determination, it is presumed that it considered only proper and competent evidence (*County of Cook v. Industrial Comm'n*, 177 Ill. App. 3d 264, 273–74 (1988)).

¶ 42 Given this presumption, there is nothing in the record to establish that the Commission was improperly influenced by any allegedly irrelevant evidence presented during the arbitration hearing or by any alleged bias of the arbitrator. Even when evidence is erroneously admitted during an arbitration hearing, such error does not require reversal when there has been no prejudice or the evidence does not materially affect the outcome. *Presson v. Industrial Comm'n*, 200 Ill. App. 3d 876, 879-80 (1990). Absent any indication to the contrary, we must presume that the Commission relied only upon competent and relevant evidence in making its decision. *County of Cook*, 177 Ill. App. 3d at 273–74. The claimant points to nothing in the record suggesting that the Commission relied upon any evidence relating to the claimant's settlement with CSX. Thus, even assuming that the *arbitrator* improperly relied upon such evidence (which is far from clear), there is no suggestion that such evidence materially affected the *Commission's* decision. Thus, any such error by the arbitrator does not require reversal, regardless of the Commission's failure to specifically address the issue in its decision.

¶ 43 In arguing that the Commission violated its duty under section 19(e) to review "all questions of law or fact," the claimant principally relies upon *National Biscuit, Inc. v. Industrial Comm'n*, 129 Ill. App. 3d 118 (1984). However, that case is distinguishable. In *National Biscuit*, the Commission did not adopt the arbitrator's findings. Instead, it stated that it would rely on the arbitrator's resolution of the conflicting evidence despite the fact that the Commission might have resolved the dispute differently. We reversed the Commission's decision and ordered it to conduct an independent review of the evidence. *Id.* Here, by contrast, the Commission conducted an independent review of the evidence and adopted the arbitrator's decision as its own, as it was entitled to do under section 19(e). Thus, our holding in *National Biscuit* is inapposite,

and the claimant's reliance on that case is misplaced. See *Swift and Co.*, 150 Ill. App. 3d at 221.

¶ 44 2. Causation

¶ 45 The claimant argues that the Commission's finding that he failed to establish that his current condition of ill-being is causally related to his April 17, 2007, work accident is against the manifest weight of the evidence. We do not find this argument persuasive.

¶ 46 To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Thus, even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. *Sisbro*, 207 Ill. 2d at 205; *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). A claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983); see also *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981); Swartz, 359 Ill.App.3d at 108.

¶ 47 The issue of causation, including whether an accident aggravated or accelerated a preexisting condition, is a factual question to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 206. In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397

Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). A reviewing court may not substitute its judgment for that of the Commission on these issues merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence, *i.e.*, only when the opposite conclusion is "clearly apparent." *Swartz*, 359 Ill. App. 3d at 1086. The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). When the evidence is sufficient to support the Commission's causation finding, we will affirm. *Id.*

¶ 48 Applying these standards, we cannot say that the Commission's finding that the claimant failed to establish a causal connection between his April 17, 2007, work accident and his current condition of ill-being is against the manifest weight of the evidence. The Commission based its finding of no causation in large part on its conclusions that: (1) the work restrictions that Dr. Miz imposed on May 10, 2007 and on February 25, 2010 (after the work accident at issue in this case), were "included in the previous restrictions" that Dr. Miz imposed in 2004 pursuant to the February 2, 2004, FCE"; and (2) the permanent restrictions which were in place in 2004 were "virtually unchanged after the work accident on April 17, 2007."

¶ 49 The claimant challenges these conclusions on several grounds. First, the claimant argues that the 2004 FCE "did not accurately represent the claimant's physical capabilities" in the year prior to his April 2007 work accident because it "does not reflect the physical improvement [the claimant] achieved as a result of his extensive self-directed work hardening program." The claimant notes that, when Dr. Miz released the claimant for work in 2004 pursuant to the FCE, he noted that work hardening had been recommended but not approved and that the claimant "probably ha[d] some potential for improvement." Thereafter, the claimant worked with a

personal trainer at Bally's Fitness for approximately two years in an effort to rehabilitate himself independently through a training program that was similar to the work hardening program prescribed by Dr. Miz. The claimant maintains that "the result of this intensive rehab effort is that by [April] 2006, when [the claimant] was hired by [the employer], he was *** physically capable of performing all the necessary job requirements without incident or problem." In other words, the claimant contends that he "continued to recover and improve following the 2004 FCE so much so that he was able to perform the Medium PDL demands of his job *** without difficulty."

¶ 50 We disagree. During the arbitration hearing, the claimant testified that the work restrictions that Dr. Miz imposed in 2004 pursuant to the 2004 FCE were not modified in any way before the employer hired the claimant in April 2006 and were still in effect at that time. The claimant performed his job duties for approximately a year without disclosing those restrictions to the employer. Although the Commission could have reasonably inferred from these facts that the claimant's physical condition had vastly improved by the time he began working for the employer in April 2006, it was not required to draw that inference. It could just as reasonably have inferred that the claimant simply worked in excess of his work restrictions at that time. After his alleged two-year "rehab effort," the claimant never obtained another FCE and never asked Dr. Miz to reexamine him and remove or alter his existing work restrictions. Thus, there is no medical testimony corroborating the claimant's assertion that Dr. Miz's 2004 work restrictions did not accurately reflect the claimant's physical condition in 2006 and immediately prior to the April 17, 2007, work accident. Accordingly, the Commission was entitled to reject that assertion.

¶ 51 The claimant also argues that, contrary to the Commission's finding, the restrictions imposed by the 2004 FCE were not identical to the restrictions imposed by Dr. Miz after the

April 17, 2007, accident. Specifically, the claimant notes that, after the accident, Dr. Miz imposed additional permanent restrictions of "no repetitive bending, stooping, crawling, or squatting." The claimant maintains that these restrictions were not contained in the 2004 FCE and that they reflect a "worsened condition of ill-being."

¶ 52 We are not persuaded. The 2004 FCE report noted that the claimant had a "decreased tolerance for low level positions such as kneeling and squatting," and one of the goals the FCE report listed for the claimant's work hardening program was to "[i]ncrease[] tolerance for *** working at low levels." The FCE report also noted that the claimant "fel[t] he would have moderate difficulty bending." Thus, the 2004 FCE report was not inconsistent with Dr. Miz's 2007 restrictions of "no repetitive bending or stooping" or with his 2009 restrictions of "no repetitive bending, stooping, crawling, or squatting." Moreover, Dr. Miz's July 2009 and February 2010 medical records suggest that he released the claimant to work pursuant to the restrictions contained in the 2004 FCE, which Dr. Miz apparently interpreted to include restrictions on bending, stopping, crawling, and squatting. Thus, Dr. Miz did not appear to believe that he was imposing new restrictions after the claimant's work accident.[4]

¶ 53 The claimant also contends that there is "objective diagnostic evidence of a new pathology" after the April, 2007, work accident. Specifically, the claimant maintains that, while

[4] We note that, even assuming *arguendo* that Dr. Miz added new work restrictions after the claimant's accident, these new restrictions might not have required any new work accommodations by the employer. According to the job description introduced into evidence by the claimant, the claimant's job duties required him to "stoop, kneel, crouch, or crawl" only "occasionally." Accordingly, Dr. Miz's 2009 and 2010 restrictions of no "repetitive" bending, stooping, crawling, or squatting would not necessarily impact the claimant's ability to perform his job duties.

both of the 2001 MRIs showed that the claimant's L3-L4 disc space was normal with no herniation or bulge, the post-accident MRI revealed a disc bulge with protrusion into the neural foramen at L3-L4.

¶ 54 We do not find this argument persuasive. Although the post-accident MRI report is the first MRI report to specifically reference a disc bulge at L3-L4, the claimant has presented no evidence suggesting that this bulge could have caused the claimant's lower back symptoms or that it was otherwise clinically significant. In fact, the medical records support the opposite conclusion. Dr. Eisenstein, the radiologist who authored the post-accident MRI report, noted a bulge at L3-L4 but chose not to discuss it when listing his "impressions" of the MRI. In the "Impressions" section, Dr. Eisenstein merely noted "minimal neural foraminal stenosis" at L3-L4, and he stated the claimant had "[n]o focal disc herniation or significant stenosis." (This is arguably consistent with the October 2001 MRI, which noted no "significant" bulge or herniation at L3-L4, and with the May 2001 MRI which noted that all disc levels aside from L5-S1 were "normal with no herniation.") Similarly, when Dr. Miz reviewed the post-accident MRI, he opined that the levels above L4 were "entirely normal." The claimant did not present any medical opinion testimony suggesting that the bulge at L3-L4 caused or contributed to his symptoms or that the bulge was caused or aggravated by the April 17, 2007, work accident. Thus, it is not clear whether the post-accident MRI revealed any new pathology at L3-L4 and, if it did, the evidence supports a reasonable inference that any such new pathology was not the cause of the claimant's condition of ill-being.

¶ 55 The claimant also argues that he proved causation through a "chain of events" analysis. We disagree. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International*

Harvester v. Industrial Comm'n, 93 Ill. 2d 59, 63-64 (1982); see also *Shafer*, 2011 IL App (4th) 100505WC, ¶ 39. A "chain of events" analysis may be used to establish that a work accident aggravated a claimant's preexisting condition. *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 854 (1996). The claimant argues that, prior to his April 17, 2007, work accident, he was able to perform his job without limitations and did not miss work due to any back injury. After the accident, however, the employer "determined that [the claimant] was no longer physically capable of returning to work." The problem with the claimant's argument is that, aside from a three-week period immediately after the accident, he was under the same work restrictions before and after the April 17, 2007, work accident, and his ability to perform his job duties apparently remained the same. Moreover, aside from a three-week period ending on May 10, 2007, the claimant sought no medical treatment from the time of the accident until the employer ordered him to be return to Dr. Miz in July 2009. Thus, the evidence in this case does not support the claimant's argument that the April 17, 2007, accident caused or aggravated his current condition of ill-being under a "chain of events" analysis. To the contrary, it supports the Commission's finding that the claimant sustained a temporary aggravation of his pre-existing condition which had "returned to baseline on or about May 10, 2007."

¶ 56 The claimant notes that the employer presented no medical opinion or other evidence supporting the conclusion that the claimant is in the same condition now that he was after the 2001 injury and that his condition of ill-being was "attributable solely" to his preexisting injury. By this, the claimant seems to suggest that it is the employer's burden to produce evidence that the claimant's current condition of ill-being is due to his preexisting condition. The claimant is mistaken. In a workers' compensation case, it is the claimant's burden to prove all the elements of his case, including a causal relation between his condition of ill-being and a work-related accident. See, *e.g.*, *Land and Lakes Co.*, 359 Ill. App. 3d 582. Thus, in cases involving a

preexisting condition, the claimant bears the burden of proving that his preexisting condition has been aggravated or accelerated by a work-related injury. *Sisbro*, 207 Ill. 2d at 204. The claimant failed to carry that burden here. The cases upon which the claimant relies to establish the employer's burden of production do not address workers' compensation claims under the Act and are inapposite and distinguishable.

¶ 57 In sum, the claimant failed to satisfy his burden of proving by a preponderance of the evidence that his current condition of ill-being is causally related to his April 17, 2007, work accident. The limited and brief medical treatment sought by the claimant after the April 17, 2007, work accident and the similarity of the work restrictions imposed before and after the accident support a reasonable inference that the claimant suffered only a temporary strain that had resolved and returned the claimant to his baseline preexisting condition by May 10, 2007. Although the record may support other inferences, an opposite conclusion is not "clearly apparent." Accordingly, the Commission's decision is not against the manifest weight of the evidence.

¶ 58 Because we hold that the Commission's finding of no causation was not against the manifest weight of the evidence, we do not need to address the claimant's remaining arguments regarding his entitlement to maintenance benefits and medical expenses.

¶ 59 **CONCLUSION**

¶ 60 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, which confirmed the Commission's decision.

¶ 61 Affirmed.