

2015 IL App (1st) 140950WC-U
No. 1-14-0950WC
Order filed February 27, 2015

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

PITNEY BOWES, INC.,)	Appeal from the
)	Circuit Court of
)	Cook County.
Appellant,)	
)	
v.)	No. 13 L 50728
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	Honorable
)	Margaret A. Brennan and
)	Edward S. Harmening,
(Susan King, Appellee).)	Judges, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's original decision that the claimant failed to prove that she sustained an accident that arose out of and in the course of her employment was not against the manifest weight of the evidence where two physicians found that her condition of ill-being was not caused by her

work activities and none of her treating physicians offered a causation opinion.

¶ 2 The claimant, Susan King, filed an application for adjustment of claim against her employer, Pitney Bowes, Inc., seeking workers' compensation benefits. She alleged that as of a manifestation date of March 9, 2007, repetitive trauma had caused injury to her entire body. The claim proceeded to an expedited arbitration hearing under section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2006)). The arbitrator found that the claimant failed to prove that she sustained an accident that arose out of and in the course of her employment.

¶ 3 The claimant appealed to the Illinois Workers' Compensation Commission (Commission). The Commission affirmed and adopted the arbitrator's decision. One Commissioner dissented.

¶ 4 The claimant filed a timely petition for review in the circuit court of Cook County. The circuit court found that the manifest weight of the evidence demonstrated that the claimant became unable to work after March 9, 2007, as a result of the repetitive strain of her job. It found that the claimant's back pain was causally related to her job duties. The court found that the Commission's decision was against the manifest weight of the evidence, reversed its decision, and remanded the case to the Commission without further instruction.

¶ 5 On remand, in compliance with the decision of the circuit court, the Commission reversed the arbitrator's decision and its original decision. It found that the claimant

sustained an accident arising out of and in the course of her employment that manifested on March 9, 2007, and that her condition of ill-being was causally related to her employment duties with the employer. The Commission ordered the employer to pay medical expenses in the sum of \$40,314.94. It ordered the employer to authorize prospective medical treatment. It further ordered the employer to pay the claimant temporary total disability benefits (TTD) of \$669.96 per week for 194 5/7 weeks.

¶ 6 The employer filed a timely petition for review in the circuit court of Cook County. The circuit court confirmed the Commission's decision, and the employer appealed.

¶ 7 **BACKGROUND**

¶ 8 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on October 28, and December 3, 2010. The claimant testified that at the time of her accident she had worked for the employer for approximately 10 years. She worked in an outsourced department at the on-site copy department at the law firm of McDermott, Will & Emery.

¶ 9 When the claimant first started working for the employer she worked at the on-site copying department at the Bell, Boyd & Lloyd law firm. Her job duties included copying legal documents, delivering the copied materials, maintaining the copiers, and delivering paper. She stated that she delivered six cases of paper on a cart five to six times per day. She worked at that location for two to three years.

¶ 10 The claimant then moved to the law firm of Grippo & Elden where she performed the same type of work. She remained there for three to four years. She stated that the work at Grippo & Elden was faster paced than at the previous firm. She delivered eight to ten carts of paper per day.

¶ 11 The claimant then transferred to McDermott, Will & Emery where she worked as the copy center supervisor in charge of five employees. She testified that McDermott, Will & Emery had an extremely fast work pace. Beyond her copying duties, the claimant was responsible for maintaining and supplying 15 to 20 copiers with paper stock and delivering paper stock to secretarial stations of the law firm spread out over ten floors. She made deliveries of paper twice per day. Each delivery entailed loading a cart with six boxes of paper, pushing and pulling the cart over carpet to the delivery site, unloading the paper, and arranging the stock.

¶ 12 The claimant installed copiers. When a new copier was delivered the claimant pushed the old copier out of the way and then pushed the new copier into its spot. She pushed the copiers from 40 to 100 feet.

¶ 13 Once per week paper was delivered to the copy center on a pallet containing 40 boxes of paper shrink wrapped to the pallet. Each box of paper weighed 50 pounds. The claimant and another female employee used a pallet jack to move the pallet of stock into position to unload. To move the pallet one person pulled on the pallet jack while the other pushed with her full body weight. Once the pallet was in place, the claimant climbed on a table, cut the shrink wrap, picked up the top box, and dropped it to the floor. When all the paper was unloaded from the pallet, the claimant pushed each box across the

floor to store in the correct area of the copy center or loaded the boxes onto a cart for delivery.

¶ 14 The claimant admitted to back pain as early as 2002 or 2003. In 2006, she had pain in her lower back and left side and she lost time from work. She testified that she felt that her back problems were caused by lifting boxes. She received treatment from her primary care physician, Dr. James Barrett. When her pain resolved she returned to work. She testified that prior to March 9, 2007, she suffered from bouts of anxiety and depression, but that they were controlled.

¶ 15 The claimant testified that starting at the end of 2006, and leading into 2007, she noticed pain in her low back and hips and that it was getting worse. By the beginning of March 2007, the pain was radiating down her right leg to her knee and down her left leg to her big toe.

¶ 16 The claimant testified that on Friday, March 9, 2007, she went to work with lower back pain. She had to deliver paper that day. As she delivered the paper her back pain increased. By the end of the day her pain was severe and she had trouble walking. She telephoned her nephew to help her home. She testified that the pain in her lower back was more severe than it had ever been. That Saturday and Sunday she remained in bed resting. She telephoned Dr. Barrett to set up an appointment. She left a message stating that she was experiencing back pain from lifting boxes.

¶ 17 On Monday, March 12, 2007, Dr. Barrett examined the claimant. He took the claimant off work. The claimant testified that since March 9, 2007, she had not returned to work in any capacity. Dr. Barrett treated the claimant for back pain in March and

April 2007. He referred her for physical therapy. On April 11, 2007, Dr. Barrett referred the claimant to Dr. Hilliard Slavick, a neurologist with a sub specialty in pain management.

¶ 18 The claimant had a magnetic resonance imaging (MRI) scan on May 2, 2007. Dr. Gleb Gorelick read the scan and diagnosed the claimant with broad-based posterior disc osteophyte complexes at L5-S1 and, to a lesser degree, at L4-L5. He noted that there was a mild narrowing of the lateral recesses at L5-S1, left greater than right.

¶ 19 Dr. Slavick initially examined the claimant on May 9, 2007. In a letter he wrote to Dr. Barrett, he noted that the claimant had been off work since March 9, 2007, due to back pain, that in early March her pain began in her low back shooting down the left leg to the left ankle, and that three weeks prior she developed right-sided low back pain radiating to the right knee. He noted that she had had episodic low back pain for years and that "as a child she fell on her tailbone and suffered her first bout of back pain." Dr. Slavick reviewed the MRI scan dated May 2, 2007, and diagnosed the claimant with bilateral lumbar radiculopathy with a two-month history of sciatic radiating pain in the lower limbs, left greater than right.

¶ 20 On May 21, 2007, Dr. Slavick performed an EMG/NCV study on the claimant. He found that it was a normal study of the lower limbs and bilateral lumbosacral paraspinal musculature. There was no evidence for a lumbosacral radiculopathy, myopathy, generalized polyneuropathy or entrapment neuropathy.

¶ 21 On May 24, 2007, the claimant telephoned Dr. Barrett's office and spoke with nurse Kate Amlin. In the phone note, Ms. Amblin wrote that the claimant told her that

she was depressed and wanted to speak to a counselor as soon as possible. She also complained of uncontrolled back pain. The claimant was given the name of a therapist and was told to follow up with her neurologist for pain control.

¶ 22 On June 5, 2007, Dr. Slavick wrote a letter to Dr. Barrett. He stated that he examined the claimant and it was his impression that she may have a malalignment of her lumbosacral spine causing her pain and that she had local fibrositis in the right lumbosacral paraspinal muscles. He felt she might respond to local trigger point injections. He suggested that Dr. Barrett refer her to a chiropractor.

¶ 23 The claimant testified that Dr. Slavick referred her to chiropractor Dr. Robert Higginbottom for adjustments. The claimant testified that she treated with Dr. Higginbottom two times per week from June 16, 2007, through August 15, 2007. She stated that the treatments provided relief for about one hour each time.

¶ 24 The claimant testified that Dr. Higginbottom gave her a return to work note in June or July 2007, that stated he expected she would be able to return to work in September 2007. In Dr. Higginbottom's undated "To whom it may Concern" letter he wrote that the claimant was suffering from central vertebral disc herniation, spinal stenosis with joint fixation, lumbar sprain/strain, and subluxation degeneration complex syndrome. He noted that it was a chronic condition that would require multiple treatments and that she would receive chiropractic adjustment with physical therapy three days per week. He wrote that "[s]he is expected to return to work on September 27, 2007, based on her evaluation." She stopped seeing Dr. Higginbottom in August 2007. She testified that she did not give the note to her employer. The claimant stated that at

the time the note was given to her and in September 2007, she was unable to return to work.

¶ 25 On August 7, 2007, the claimant, on referral from the employer, underwent a functional capacity evaluation to determine her ability to return to work. Tekela Scott, the work services specialist who performed the evaluation, wrote in her report that the claimant did not demonstrate the capability to perform the physical demands of her occupation when compared to the job analysis as provided by the employer. She recommended that the claimant participate in four weeks of work hardening focusing on increasing the claimant's performance in standing, crouching, squatting, reaching, as well as her general strength and endurance. Ms. Scott felt that the claimant put forth moderate effort during the evaluation.

¶ 26 Phawana Griffin from the employer's disability management provider requested that Dr. Jesse Butler examine the claimant. Dr. Butler performed an independent medical evaluation of the claimant on September 26, 2007. In his letter to the employer, Dr. Butler wrote that the claimant complained of back pain and told him that there was no specific single injury, but that her job involved a lot of lifting and moving of boxes and paper. He diagnosed the claimant with lumbosacral strain with lumbar disc degeneration. He noted that the claimant's source of lumbosacral strain "appears to be causally related to her activities at work." He wrote that in his opinion, there was a causal association between the onset of her lumbosacral strain and her work activities and that her condition was a work-related injury.

¶ 27 The claimant testified that she was referred to Dr. Richard Egwele by Dr. Higginbottom. Dr. Egwele examined the claimant once on September 19, 2007. On the intake form the claimant wrote that the reason for her visit was that she had been having back problems for over one year. She testified that she did not mark the form as “work related” because her pain developed over time as she performed her work duties and she did not have a single accident at work.

¶ 28 The claimant testified that in mid-September 2007, she learned that Dr. Barrett was no longer part of her medical plan so she had to find a different primary care provider. In September 2007, Dr. Rochelle Hawkins became the claimant's new primary care physician. Dr. Hawkins examined the claimant on September 20, 2007. The claimant testified that Dr. Hawkins referred her to pain management specialist Dr. Jonathan Wyatt.

¶ 29 Dr. Wyatt examined the claimant on October 8, 2007. On the intake form the claimant wrote that she was disabled since March 9, 2007, due to lower back pain. She noted that there was no specific trauma. In the history portion of his patient notes Dr. Wyatt wrote that the claimant was in her usual state of health until March 2007, when she experienced a sudden onset of low back pain that began in the low back bilaterally above the waist radiating to her tailbone, pelvis, groin, and anterolateral thighs bilaterally. The claimant denied any trauma or inciting events for the symptoms. He noted that she had chiropractic care and physical therapy with no relief. He opined that he needed to review her MRI scan of her lumbar spine to see the extent of the bulging of the posterior

osteophyte complex. Based on his review of the scan he would consider a diskogram and or epidural injections.

¶ 30 On November 13, 2007, the employer terminated the claimant's disability benefits. It also denied her workers' compensation benefits.

¶ 31 Dr. Hawkins also referred the claimant to Dr. David Hoffman. Dr. Hoffman examined the claimant on November 8, 2007. He diagnosed her with bilateral trochanteric bursitis of the hips and chronic mild fasciitis. He injected each greater trochanter and suggested that she return to physical therapy.

¶ 32 Dr. Hoffman examined the claimant on December 19, 2007, and January 3, 2008. She complained of a band of pain in the lower back and pain radiating in the left hip, both the medial groin and laterally. He diagnosed her with low back pain with a trigger point at the insertion of the left paraspinous muscle and chronic myofascial-type pain in the back and left hip. He gave her another injection and suggested that the claimant seek treatment from an anesthesiologist who could offer modalities for pain control.

¶ 33 Dr. Timothy Lubenow examined the claimant on January 17, 2008. In his patient notes he wrote that the claimant had a history of low back pain for the prior 8 years which had progressively worsened until it culminated into severe low back pain on March 9, 2007, when she was working for the employer. The claimant told Dr. Lubenow that the pain worsened with her work activities. He assessed her with lumbar radiculopathy, myofascial pain, and depression. He recommended that the claimant undergo a series of lumbar epidural steroid injections, particularly at the L5-S1 intervertebral space.

¶ 34 On January 17, 2008, licensed clinical psychologist Patricia Merriman examined the claimant on referral from Dr. Timothy Lubenow for psychological evaluation for pain management counseling. The claimant reported frequent episodes of tearfulness and sadness, pervasive feelings of helplessness and hopelessness, decreased appetite, low energy level, and disturbed sleep patterns, significant social withdrawal, increased irritability and increased worry. Ms. Merriman recommended pain management and supportive counseling to assist the claimant in the development of more effective pain management strategies, to address her affective distress, and to focus on increasing her activity levels.

¶ 35 On March 19, 2008, Dr. Lubenow wrote a letter stating the claimant had a history of low back pain radiating down her legs. He noted that she had two epidural injections with no significant improvement in her pain. Her MRI scan revealed a broad-based, posterior, disk osteophyte complex at L5-S1 level with mild, lateral recess stenosis at L5-S1 level. He referred the claimant to Dr. Jonathan O'Toole for surgical evaluation. Dr. Lubenow opined that the claimant was incapable of work at that time.

¶ 36 On February 5, and March 3, 2008, Dr. Lubenow gave the claimant caudal epidural steroid injections. On March 24, 2008, Dr. Lubenow gave the claimant a lumbar steroid injection. The claimant testified that the injections provided no long-term relief.

¶ 37 On April 16, 2008, Dr. O'Toole examined the claimant and wrote in his patient notes that the claimant reported having low back pain all her life, however, it worsened in March 2007 while at work. The claimant presented with an MRI scan from March 2007. Dr. O'Toole opined that the scan showed good spine alignment with no spinal stenosis,

and "very, very mild" disc degeneration at L5-S1 level without herniation. He averred that she had no evidence of central or foraminal stenosis at any level of the lumbar spine. Dr. O'Toole wrote that the claimant had undergone an extensive course of treatment which included therapies, pain medications, and injections, and that her back pain remained intractable. He opined that he saw nothing in her MRI scan which indicated that spinal surgery was an option for her pain. He encouraged the claimant to continue her care with Dr. Lubenow and offered her a recommendation to see Dr. Pang with Physical Medicine Rehabilitation.

¶ 38 Dr. Thomas Pang examined the claimant on May 13, 2008, on referral from Dr. Lubenow. In a letter to Dr. Lubenow, Dr. Pang wrote that the claimant had tenderness to the bilateral thoracic paraspinal muscles, the bilateral quadrates lumborum muscles, the hip flexors anteriorly, the bilateral gluteus muscles, and especially the bilateral piriformis muscles. Otherwise he felt that she was neurologically intact without any clinical evidence of spinal stenosis or radiculopathy. He opined that the claimant was "like a wound-up band of rubber that is so tight that she cannot move any aspect of her body." He recommended initiating medical management with medication followed by trigger point injections for focal management and to advance her physical therapies.

¶ 39 The claimant testified that after her appointment with Dr. Pang, her employment was terminated and she lost her medical benefits. The employer continued to deny her workers' compensation or disability benefits. Since then she sought treatment at free medical clinics including Cook County Health System, Oak Forrest Hospital, John H. Stroger Jr. Hospital, Madison Family Health Center, and Aunt Martha's Health Care.

¶ 40 On July 14, 2008, Dr. E. Richard Blonsky performed an independent medical evaluation of the claimant at the employer's request. He wrote in his report that based on the physical examination, the claimant had a normal neurological status, but expressed complaints of discomfort and tenderness on palpation of the lumbar and sacroiliac area trigger points. He averred that they did not rise to the level of myofascial pain syndrome and that there was nothing in her examination that in any way suggested fibromyalgia pain syndrome. Dr. Blonsky wrote that the claimant had not worked since March 9, 2007, and had reported progressively increasing pain and incapacity. He opined that the "cause of her symptoms cannot be her work activities since she has not engaged in them." Dr. Blonsky wrote that the claimant has had no definable diagnosis other than her complaints of low back pain. Her preexisting degenerative changes in the lower lumbar level had not been responsive to chiropractic or physical therapy treatment which he felt was suggestive of symptom exaggeration. He averred that the claimant was able to return to work at least at the light-medium level. He stated that other than maintaining a home exercise and activity program, he would not recommend additional medical treatment.

¶ 41 Dr. Martin Lanoff testified by evidence deposition that he is board certified in physical medicine and rehabilitation and pain medicine. He testified that he examined the claimant at the employer's request. He stated that he found that the claimant gave an inconsistent history and that her subjective complaints were out of proportion to the objective findings. He testified that "[b]ased on the history and the negative imaging findings and negative examinations by the other physicians, in addition to histories given to the other docs before [him], it really didn't follow any clinical index of suspicion for

any particular medical malady." He opined that the claimant was at maximum medical improvement. He felt she had no subjective or objective reason for continued subjective complaints and he did not see any physical malady. He averred that the claimant had psychosocial variables such as anxiety, depression, and possible other secondary gain issues. He testified that he thought the claimant was able to perform full unrestricted work duties.

¶ 42 Dr. Lanoff testified that the claimant told him that she did a lot of heavy lifting at work and that she thought the lifting caused her low back pain. She did not complain of any one particular injury. He stated that while it was possible that her pain could have resulted from her job it was not likely a result of her work activities because she had a history of chronic back pain, chronic recurrent back pain, and no particular injury. He testified that "there are no studies to suggest that there is a direct correlation between activity level in employment and back pain."

¶ 43 Dr. Lanoff stated that he reviewed the claimant's MRI scan and felt that it was normal for her age and size. He did not see any posttraumatic issues and the degenerative changes present were not out of the ordinary for someone in her age group and size.

¶ 44 Dr. Lanoff found that the claimant had five out of five Waddell's findings indicating that her claim of pain during the test made no medical sense. He opined that the claimant's distribution of her symptoms in addition to her weakness in all of the different muscle groups made little if any sense. Additionally, he found that she had superficial nonanatomic tenderness. He found numerous inconsistent findings where the claimant could do something in one position, but could not do the same thing in another

position. He testified that her limbs should display atrophy with the amount of weakness she claimed, but she had no atrophy in any of her limbs. He stated that her pain was nonorganic, meaning it was not a physical problem. Dr. Lanoff suggested that the claimant may have some deep-seated issues and that the psychosocial aspect of her disease needed to be examined.

¶ 45 In his independent medical examination report, Dr. Lanoff wrote that the claimant's MRI scan of May 7, 2007, was a normal film and "a fairly pristine film for a woman in her age group." The claimant told Dr. Lanoff that prior to her injury she had low back pain for a long time off and on and that it would last for three days and then she would have no pain. She told him that she did a lot of heavy lifting at work and felt that it was the reason for her low back pain. He stated that he saw "no work-related injury in any way, shape, or form." Additionally, he stated that while he did not concur with an injury, if she had an injury, it would be soft tissue in nature and should have improved within a maximum of eight weeks. He concluded that almost every physician who examined the claimant gave her various soft tissue diagnoses with no objective pathology, and that every intervention to date had failed. He concluded that the claimant should be released immediately at maximum medical improvement with no disability and no further testing or treatment necessary.

¶ 46 Board certified orthopedic surgeon Dr. Michael Zindrick testified by evidence deposition. He stated that he examined the claimant at her attorney's request on January 23, 2009. The claimant complained of significant back and leg pain. She had been through conservative care including physical therapy, chiropractic care, injections, and

aqua therapy. He discussed the claimant's job duties with her and she told him that she had to lift boxes of paper, deliver paper to floors, push skids with up to 40 boxes of paper on them, and load and unload equipment. She told Dr. Zindrick that throughout her 10 year course of work for the employer she had recurrent episodes of back pain.

¶ 47 Dr. Zindrick reviewed the claimant's MRI scan from May 2, 2007. He testified that he disagreed with Dr. Lanoff's comment that the claimant's MRI scan was "fairly pristine." He testified that the description of the MRI scan was consistent with an abnormal disk that could be pain producing. He testified that the claimant's EMG study of May 21, 2007, was normal because she did not have a significant component of nerve root impingement and an EMG study is designed to look for structural abnormality in nerve function due to impingement. He felt the study was consistent with her complaints.

¶ 48 Dr. Zindrick testified that he took x-rays of the claimant which disclosed evidence of degenerative disk disease, most notably at the L5-S1 and lesser so at the L4-L5 levels. Based on his physical examination of the claimant, he found that she had chronic low back pain, that she had a preexisting underlying degenerative disk disease, and her pain in her degenerative disk disease was aggravated by repetitive lifting at work.

¶ 49 Dr. Zindrick testified that the claimant had chronic pain and that most people with chronic pain have some form of depression. He stated that chronic pain makes a preexisting depression condition worse and chronic pain can of itself cause depression in a previously nondepressed individual. He testified that anyone in the claimant's condition would have emotional distress associated with her condition.

¶ 50 Dr. Zindrick testified that he examined the claimant again on September 4, 2009. He noted that her symptoms had not changed dramatically. He testified that based upon a reasonable degree of medical and surgical certainty, the claimant was not able to return to her employment with the employer during the period of March 12, 2007, until the time of the deposition. He opined that to a reasonable degree of medical and surgical certainty, the claimant had an underlying preexisting degenerative disk disease which was aggravated by a repetitive work-related injury causing chronic back pain. Dr. Zindrick further stated that Dr. Lanoff's opinion that the claimant had absolutely no medical issues whatsoever was inconsistent with the facts.

¶ 51 The claimant testified that she is constantly in pain and is always depressed. Her employment was terminated and since then she has resided at four different addresses at the goodwill of the homeowner.

¶ 52 The claimant testified that she could not pinpoint a day when her back pain began. She stated that it has been an ongoing issue since she had been employed by the employer. She stated that Dr. Butler was the first physician who told her that her condition was work related.

¶ 53 The arbitrator found that the claimant failed to establish that she sustained an accident that arose out of and in the course of her employment. The arbitrator found that the claimant did not suffer from a single accident at work. He found that for the claimant's claim to succeed, she had to establish a repetitive trauma case. He concluded that Dr. Zindrick did not have sufficient knowledge of the claimant's job duties, repetitive activity and stresses regularly experienced to give a meaningful and sufficient opinion to

establish repetitive trauma. He found Dr. Lanoff credible and referenced Dr. Lanoff's commentary that the "present state of generally accepted medical studies show that lifting at work bears no correlation with frequency of back injury." He further relied on Dr. Lanoff's opinion that the claimant did not "really have any physical malady that a heavy or light job would have given her." The arbitrator further found that the claimant failed to establish that March 9, 2007, was the manifestation date of her injury. He found that the claimant had a long history of chronic back pain and repeated episodes of flare up when that pain temporarily increased but then resolved back to her baseline level. He found that March 9, 2007, was just one of those episodes. The arbitrator found that the claimant sought out approximately 15 different treaters in an attempt to find someone to validate her problems and that each of her treaters determined that they could find no definitive diagnosis to explain her complaint. The arbitrator concluded the claimant failed to establish that she suffered an accident on March 9, 2007, that arose out of and in the course of her employment.

¶ 54 The claimant sought review of this decision before the Commission. The Commission affirmed and adopted the arbitrator's decision. One Commissioner dissented.

¶ 55 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County. The circuit court reversed the Commission's decision and remanded it to the Commission. The court found that the Commission failed to properly analyze the claimant's claim under the standard for repetitive injuries. The court found that the manifest weight of the evidence demonstrated that the claimant's back injury was

the direct result of her physically demanding job duties, as evidenced by the opinions of Dr. Butler and Dr. Zindrick.

¶ 56 On remand, in compliance with the circuit court's order, the Commission found that the claimant met her burden of proving that she sustained an accident arising out of and in the course of her employment with the employer that manifested itself on March 9, 2007, and that her condition of ill-being was causally connected to her employment duties. The Commission found that the claimant was entitled to medical expenses in the sum of \$40,314.94, prospective medical treatment, and \$669.96 per week for 194 5/7 weeks of temporary total disability benefits. The Commission remanded the case to the arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disabilities, if any.

¶ 57 The employer sought judicial review of the Commission's decision in the circuit court of Cook County. The court confirmed the Commission's decision. The employer appealed.

¶ 58 **ANALYSIS**

¶ 59 The employer argues that the Commission's original decision finding that the claimant failed to prove that she sustained an accident that arose out of and in the course of her employment was not against the manifest weight of the evidence. Where the trial court reverses the Commission's initial decision and the Commission enters a new decision on remand, this court must first resolve the question of whether the Commission's initial decision was proper. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 785-86, 821 N.E.2d 807, 812 (2005). If the circuit court properly reversed the

Commission's initial decision, then the Commission's factual determinations on remand are accorded deference. *Inter-City Products Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 185, 196, 759 N.E.2d 952, 961 (2001). If the trial court erred in reversing the Commission's initial decision, its order should be reversed, the Commission's subsequent decision after remand vacated, and its original decision reinstated. *Id.*

¶ 60 An employee's injury is compensable under the Act only if it arises out of and in the course of her employment. 820 ILCS 305/2 (West 2006). "The 'arising out of' component addresses the causal connection between a work-related injury and the claimant's condition of ill-being." *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592, 834 N.E.2d 583, 592 (2005). Whether a causal connection exists is a question of fact for the Commission to decide, and a reviewing court will only reverse the Commission's determination if it is against the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Id.* A reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003). It is the Commission's function to decide questions of fact, to judge the credibility of witnesses, and to resolve conflicting medical evidence. *R & D Thiel v. Illinois Workers Compensation Comm'n*, 398 Ill. App. 3d 858, 868, 923 N.E.2d 870, 878 (2010). The appropriate test of whether the Commission's determination is supported by the manifest

weight of the evidence is not whether this court would have reached the same conclusion, but whether there is sufficient evidence in the record to support the Commission's decision. *Id.* at 866, 923 N.E.2d at 877.

¶ 61 "Gradual injury stemming from repeated trauma clearly is compensable under the Workers' Compensation Act as long as the employee proves the injury is work-related and not the result of normal degenerative processes." *Zion-Benton Township High School District 126 v. Industrial Comm'n*, 242 Ill. App. 3d 109, 113, 609 N.E.2d 974, 978 (1993). The employee need not show external violence to the body to prove an accidental injury. *Id.* An employee who suffers a repetitive-trauma injury must meet the same standard of proof as an employee who suffers a sudden injury. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006).

¶ 62 To establish a repetitive-trauma injury, the claimant must show that the injury is work related and not the result of a normal degenerative aging process. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530, 505 N.E.2d 1026, 1028 (1987). A claimant must produce competent evidence of objective conditions or symptoms to show that her job duties caused her present disability. *Nunn v. Industrial Comm'n*, 15r7 Ill. App. 3d 470, 477, 510 N.E.2d 502, 506 (1987). While medical testimony as to causation is not necessarily required, where the question is one within the knowledge of experts only, expert testimony is necessary to show that the claimant's work activities caused the complained of condition. *Id.* at 478, 510 N.E.2d at 506. Cases involving repetitive trauma primarily concern medical questions and the claimant generally relies on medical testimony to establish a causal connection between the work

performed and her disability. *Id.* at 477-78, 510 N.E.2d at 506-07. Where a claimant alleges accidental injuries caused by repetitive trauma, it is for the Commission to determine whether a claimant's disability is attributable solely to a degenerative condition or to an aggravation of a preexisting condition due to a repetitive trauma. *Cassens Transport Co., Inc. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 331, 633 N.E.2d 1344, 1349 (1994).

¶ 63 In reaching its decision that the claimant failed to establish that she suffered an accident on March 9, 2007, that arose out of and in the course of her employment, the Commission found that Dr. Zindrick relied on the claimant's statements as to her job duties and that he had no clear idea of the frequency of the tasks she reported to him or of the frequency of the stresses that she would encounter. The Commission concluded that Dr. Zindrick did not have sufficient knowledge of the claimant's job duties, repetitive activity and stresses regularly experienced to give a meaningful and sufficient opinion to establish repetitive trauma. The Commission found that each of the claimant's treaters determined that they could find no definitive diagnosis to explain her complaints or to justify continued treatment. It found that her symptoms appeared to be non-organic. It relied on Dr. Lanoff's opinion that the claimant did not "really have physical malady that a heavy or light job would have given her."

¶ 64 We cannot say that the Commission's conclusion that the claimant failed to establish that she suffered an accident that arose out of and in the course of her employment was against the manifest weight of the evidence. The claimant was examined by numerous doctors. None of her treating physicians offered a causation

opinion. The only causation opinions were offered by physicians hired to provide an independent medical evaluation and those doctors gave conflicting opinions.

¶ 65 After examining the claimant and reviewing her medical records, Dr. Lanoff opined that the claimant had “no physical pathology whatsoever.” He noted that her MRI scan showed some degenerative changes in the left L5-S1 disk to a very minor extent, type II degenerative endplate change at L5 and S1, and a very small degenerative disk bulge at L5-S1. He opined that it was “[a] normal film and, as a matter of fact, a fairly pristine film for a woman in her age group.” He further averred that the degenerative disk changes were normal findings on an MRI scan that did not correlate to her symptoms. He stated that the claimant’s EMG was negative and her MRI scan of her lumbar spine was negative “not only for no posttraumatic changes, but more importantly there is no neural element compromise whatsoever.” He averred that the claimant’s subjective complaints were out of proportion to the objective findings. He noted that the claimant had five out of five Waddell’s findings on examination. He concluded that the claimant had “absolutely no medical issues whatsoever,” and that “[t]here [was] no cause for her back pain.” He further concluded that he found “no work-related injury in any way, shape, or form.” He opined that while he did not concur that she had an injury, if she did it would have been a soft tissue injury that would have improved within eight weeks maximum and she could have worked light-duty throughout that time. He found that almost every physician the claimant saw gave her various soft tissue diagnoses with no objective pathology and that every intervention to date had failed. He felt she should be released immediately at maximum medical improvement with no disability and no

further testing or treatment necessary. Dr. Lanoff testified that there is no correlation between activity level in employment and long-term back complaints. He testified that because there was no physical pathology for her pain, the psychosocial realm should be examined to determine why the claimant had continued pain behaviors.

¶ 66 Dr. Blonsky performed a comprehensive neurologic and musculoskeletal examination of the claimant and reviewed her medical records. He stated that a review of her MRI scan revealed a slight annular bulge at the L4-L5 and L5-S1 levels. He opined that these findings were associated with degenerative changes at those two levels, but that there was no disk herniation or foraminal narrowing. He averred that based on his examination the claimant had a normal neurological status, but expressed complaint of discomfort and tenderness on palpation of the lumbar and sacroiliac area trigger points. He opined that it did not rise to the level of myofascial pain syndrome and that there was nothing in her examination in any way suggestive of fibromyalgia pain syndrome. He noted that the claimant's physical therapy evaluation on March 19, 2007, showed symmetrical and intact reflexes and sensation, and no indication of any lumbosacral problems. He further noted that on May 9, 2007, Dr. Slavick diagnosed the claimant with bilateral lumbar radiculopathy and sciatica despite the fact that she had normal reflexes and sensation, excellent strength, and negative straight leg raising. The claimant's May 21, 2007, EMG/NVC was entirely normal. Dr. Blonsky opined that because the claimant's MRI scan revealed no signs of nerve root compression or spinal stenosis, and the EMG showed no evidence of nerve root irritation, there was no basis for radiating pain or a sciatica diagnosis. He noted that no examiner had found any objective signs of

neurologic abnormality. During his examination of the claimant, her reflexes had been intact, her sensation was intact, and her strength was excellent. Dr. Blonsky opined that the claimant had no definable diagnosis other than her complaints of low back pain. He found that she had preexisting degenerative changes in the lower lumbar level, but had not been responsive to chiropractic or physical therapy treatments which he felt was suggestive of symptom exaggeration. He felt that her back complaints were unrelated to her work activities. He averred that the claimant was capable of returning to work at least at the light-medium level.

¶ 67 Dr. Butler and Dr. Zindrick provided medical opinions that conflicted with those of Dr. Lanoff and Dr. Blonsky. Dr. Butler examined the claimant on September 26, 2007, and found that neurologically she had normal strength, sensation, and reflexes, good hip range of motion and that her straight leg raising was negative. Her MRI scan showed degenerative disk disease at L5-S1, but the remainder of her lumbar spine was normal. He diagnosed the claimant with lumbosacral strain with lumbar disc degeneration. He opined that the source of her lumbosacral strain appeared to be causally related to her activities at work. Dr. Zindrick testified that the claimant had chronic low back pain and preexisting underlying degenerative disk disease that was aggravated by repetitive lifting at work.

¶ 68 "It is the Commission's province to judge the credibility of witnesses, to draw reasonable inferences from the testimony and to determine what weight the testimony is to be given." *Setzekorn v. Industrial Comm'n*, 353 Ill. App. 3d 1049, 1055, 820 N.E.2d 586, 591 (2004). The Commission is to resolve conflicts in medical evidence. *Id.* The

Commission's determination on a question of fact will not be disturbed unless it is contrary to the manifest weight of the evidence. *Id.* A court of review will not discard reasonable inferences merely because other inferences could be drawn from the evidence. *Id.* "It is not the prerogative of the reviewing court to reweigh the evidence and substitute its judgment for that of the Commission." *Id.* at 1055, 820 N.E.2d at 591-92. "[I]t is for the Commission to decide which of two conflicting opinions should be accepted." *Id.*, 820 N.E.2d at 592.

¶ 69 In the instant case, the Commission accepted the opinions of Dr. Lanoff and Dr. Blonsky. Dr. Lanoff opined that the claimant had no physical malady. Dr. Blonsky found that the claimant had no definable diagnosis other than her complaints of low back pain. Both doctors found that the claimant's condition of ill-being was not caused by her work activities. None of the physicians who treated the claimant offered a causation opinion. There is sufficient evidence in the record to support the Commission's determination that the claimant failed to prove that she sustained an accident that arose out of and in the course of her employment. Thus, the trial court erred in reversing the Commission's initial decision and its order should be reversed, the Commission's subsequent decision after remand should be vacated, the circuit court's order confirming that decision should be vacated, and the Commission's original decision reinstated. Because we find that the Commission's original decision was not against the manifest weight of the evidence, the issue of whether March 9, 2007, was the manifestation date and the employer's other issues are moot.

¶ 70

CONCLUSION

¶ 71 For the foregoing reasons, the judgment of the circuit court of Cook County, reversing the Commission's initial decision, is reversed, the Commission's subsequent decision after remand is vacated, the circuit court's decision confirming that decision is vacated, and the Commission's initial decision is reinstated.

¶ 72 Circuit court judgment entered on November 6, 2012, reversed.
Commission decision after remand entered on July 12, 2013, vacated.
Circuit court judgment entered on February 27, 2014, vacated.
Original commission decision entered on March 22, 2012, reinstated.