

for Sloane (Sloan) Valve Company (employer) on February 13, 2004. These injuries were alleged to have occurred when a tray of materials being lifted by her and a coworker broke and landed on the claimant's right arm. Following a hearing, the arbitrator found a causal connection between the February 13, 2004, accident and the claimant's right hand condition and entered a permanent partial total disability (PPD) benefit of 2% loss of use of the right hand. The arbitrator found no causal connection between the industrial accident and the condition of ill-being of the claimant's right shoulder. The claimant filed a timely petition for review with the Illinois Workers' Compensation Commission (Commission) challenging the arbitrator's finding of no causal connection between the industrial accident of February 13, 2004, and her current condition of ill-being of the right shoulder. The Commission unanimously affirmed and adopted the arbitrator's decision.

¶ 3 The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County. Judge Elmer Tolmaire, III entered an order vacating the Commission's decision and remanded the matter to the Commission for additional factual findings in support of the decision. On remand, the Commission issued an order addressing the issues raised by the circuit court, and once again affirmed and adopted the decision of the arbitrator.

¶ 4 The claimant then sought judicial review of the Commission's decision on remand in the circuit court of Cook County. Judge Robert Lopez Cepero, found the Commission's decision to be against the manifest weight of the evidence, reversed the order of the Commission, and remanded the matter to Commission with instructions to find that the claimant's right shoulder condition of ill-being was causally related to the February 13, 2004, industrial accident. The employer sought review of the circuit court's order before this court, which found the employer's appeal to be interlocutory in nature and dismissed the appeal for lack of jurisdiction. On remand, the Commission, based solely on the order of the circuit court, issued a decision finding that the

claimant's right shoulder condition of ill-being was causally related to the February 13, 2004, accident and awarded temporary total disability (TTD) benefits for 46 weeks, medical expenses in the amount of \$51,213.59, and permanent partial disability (PPD) benefits equaling 13% loss of the person-as-a-whole. The employer then sought review of the Commission's decision in the circuit court of Cook County, where Judge Lopez Cepero confirmed the decision of the Commission. The employer then filed a timely appeal with this court.

¶ 5

FACTS

¶ 6 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on May 2, 2006.

¶ 7 The claimant, testifying through an interpreter, testified that she had worked as an assembler for the employer for approximately 10 years. On February 13, 2004, she and a co-worker were carrying a tray of machine parts when the tray broke. The claimant testified that the co-worker let go of the tray, but she continued to hold onto the tray as it fell toward the ground, striking her right hand and arm as it fell. She testified that she felt an immediate "twinge" and pull in the right shoulder as she lowered the tray to the ground with her right hand. She testified to immediate right shoulder pain following the accident. The claimant testified that she reported the accident to her supervisor, Jerry Williams, who gave her some non-prescription analgesics for the pain. On the following Monday, February 16, 2004, the claimant reported to the company nurse, Margaret (Peggy) Gruendler, who told her to follow-up with the company physician. The claimant then returned to work and finished her shift without incident.

¶ 8 Nurse Gruendler testified that the claimant met with her at the start claimant's shift on February 14, 2004, at which time the claimant told Gruendler that while she was working the previous day, a tray had broken while she and a co-worker were carrying it. Gruendler testified that the claimant brought it to her attention because she was concerned that the several trays were

broken and posed a danger and she wanted Gruendler's help in getting the defective trays removed. Gruendler testified that the claimant made no report of any injuries resulting from the alleged accident. However, at the end of her shift, the claimant again sought out Nurse Gruendler, this time to report some swelling in her "pinky" and wrist, which the claimant thought was due to the accident. Gruendler further testified that the claimant did not report any right shoulder pain. Gruendler gave the claimant ice packs for her hand and wrist and suggested the claimant follow up with the company physician. Nurse Gruendler further testified that she was suspicious of the claimant's report of injury to her wrist and hand as she could observe no objective signs of swelling.

¶ 9 Gruendler testified that the claimant reported to her on the following Monday, February 16, 2004, at which time she presented a referral form for physical therapy for her right upper arm and neck area. Gruendler observed that the physical therapy referral form predated the February 13, 2004, accident. Gruendler further testified that even when discussing the physical therapy referral, the claimant made no mention of right shoulder pain in general or as related to the accident occurring the prior week. Gruendler testified that she saw the claimant on February 18, February 20, and again on February 25, 2004, at which times she was unable to observe any evidence of swelling. Gruendler further testified that at each of these appointments, the claimant made no mention of right shoulder pain. She only reported swelling and pain in the right wrist and hand. Gruendler testified that she observed no objective signs of swelling in the hand or wrist.

¶ 10 Gruendler further testified that, after her February 25, 2004, observation of the claimant, she initiated an investigation into the accident and filed a report with the claimant's workers' compensation insurance carrier. In the report, Gruendler noted assorted past complaints of neck and shoulder pain, with unknown etiology. She further reported that the claimant had been

previously diagnosed in childhood with morphea linea, a condition that results in collagen degeneration in the bones and joints. Gruendler also reported that she had tried to recreate the accident with the assistance of the claimant's supervisor and the involved co-worker, but she had been unable to recreate it in the manner described by the claimant.

¶ 11 The record also contains the written report of Dr. Walter J. Miller, the employer's company physician. The report indicates that Dr. Miller examined the claimant on February 16, 2004, and again on February 25, 2004. After the second visit, Dr. Miller wrote:

“[p]atient returns with complaints of *lower* right arm and wrist swelling and pain. She has known morphea scleroderma localized type. This area of claimed skin or arm wrist problem has no evidence of plaque or wrist thickening. It may or may not be related. She did injure her palm of her hand from her working with parts but there is no injury there. Objectively there are no findings except subjective pain. Advise for consult with hand specialist.” (Emphasis added.)

The record of Dr. Miller's examination of the claimant is void of any mention of right shoulder pain.

¶ 12 On March 4, 2004, the claimant sought treatment from Dr. Michelle Alexandre, her primary care physician. Dr. Alexandre's treatment notes from that date have no mention of claimant reporting right shoulder pain, only wrist and hand pain. Dr. Alexandre referred the claimant to Dr. Alfred Akkeron, an orthopedic specialist.

¶ 13 On March 15, 2004, the claimant was examined at the request of the employer by Dr. Michael Vender, a board certified orthopedic surgeon specializing in hand, wrist and arm pathologies. Dr. Vender's report indicated that the claimant reported elbow, forearm, and wrist pain. The claimant gave no report of right shoulder pain. Dr. Vender observed that diagnostic

tests revealed normal wrist, arm, and elbow. Dr. Vender testified that no diagnostic tests relative to the right shoulder were performed since the claimant had reported no right shoulder pain. Dr. Vender subsequently opined that, given the normal results regarding the wrist and arm, and the description of the accident it was unlikely that the February 13, 2004, accident would have caused a rotator cuff tear. He also opined that, if the claimant had injured her right shoulder on February 13, 2004, he would have expected her to report significant right shoulder pain when he examined her approximately one month later.

¶ 14 The date that the claimant first reported right shoulder pain is somewhat unclear. As previously noted, Dr. Alexandre's treatment notes for March 4, 2004, contain no report of right shoulder pain. The record indicates, however, that Dr. Alexandre ordered an MRI of the right shoulder on March 24, 2004, which indicated a partial thickness tear of the right rotator cuff.

¶ 15 On March 26, 2004, the claimant was examined by Dr. Akkeron. His report is the first to record the claimant giving a history of right shoulder pain resulting from the February 13, 2004, accident. Given this report, Dr. Akkeron opined that the claimant's right shoulder pain was due to a small rotator cuff tear caused by the accident as described to him by the claimant. Dr. Akkeron recommended surgical repair and remove the claimant from work as of that date.

¶ 16 On April 8, 2004, the claimant sought treatment from Dr. Gregory Crovetti, who took a history of right shoulder pain following a work-related accident on February 13, 2004. Dr. Crovetti opined that the rotator cuff tear he observed in the MRI would not likely be caused by the claimant's preexisting morphea linea condition, but would more likely be the result of an acute trauma, such as the accident described to him by the claimant. Dr. Crovetti again examined the claimant on July 8, 2004, at which time the claimant reported continuing right shoulder pain. Dr. Crovetti continued in his diagnosis of rotator cuff tear, and recommended the

claimant seek a surgical consult from his partner, Dr. Victor Romano. In the meantime, he prescribed a regimen of physical therapy and injections.

¶ 17 On August 5, 2004, the claimant was examined by Dr. Romano, who noted the claimant's report of right shoulder pain immediately after the occurrence on February 13, 2004. Dr. Romano noted that the physical therapy regime had not resulted in improvement of the claimant's condition. On September 15, 2004, Dr. Romano performed rotator cuff surgery.

¶ 18 Dr. Romano gave an evidence deposition in which he testified that the claimant gave him an initial history of lifting a heavy tray that broke and resulted in the weight of the tray and contents being transferred to her arm, resulting in immediate right shoulder pain. Based upon the claimant's description of the accident and report of immediate shoulder pain, Dr. Romano opined that the accident caused a tear to the claimant's right rotator cuff.

¶ 19 The arbitrator found that the claimant's right shoulder pain and subsequent right rotator cuff surgery was not causally related to the February 2014 industrial accident. In doing so, the arbitrator focused on the credibility of the claimant. Specifically, the arbitrator found the claimant's testimony that she experienced immediate right shoulder pain following the accident to be not credible. Taking note of the discrepancy between the claimant's testimony and Nurse Gruendler's testimony regarding the claimant's initial report of the accident, the arbitrator observed: "according to Nurse Gruendler, the claimant did not at any point make any complaints of shoulder pain. This is in contrast to [c]laimant's testimony at trial [where] the claimant testified she noticed and complained of an immediate onset of severe shoulder pain on the date of the accident." Further commenting on the credibility of witnesses, the arbitrator observed that "Nurse Gruendler's testimony was quite detailed and consistent with her medical records and medical notes. In contrast, the [c]laimant's testimony was quite evasive." The arbitrator further noted that the medical opinion testimony by Dr. Romano that the claimant's rotator cuff injury

was causally connected to the accident was predicated on the immediate onset of pain following the accident. Finding that the claimant's testimony of immediate right shoulder pain and subsequent reports of such pain to Drs. Crovetti and Romano lacked any credibility, the arbitrator determined that the claimant had failed to establish the requisite causal connection. The Commission unanimously affirmed and adopted the arbitrator's decision.

¶ 20 On remand from the circuit court, the Commission addressed several questions regarding the claimant's reports of shoulder pain in the year prior to the February 2004 accident. The Commission addressed the court's concerns, and reiterated that the arbitrator's determination that the claimant's report of immediate right shoulder pain following the accident was not credible "in light of the medical records and testimony introduced at trial."

¶ 21 When the matter was again remanded to the circuit court, the court found that the Commission's determination that the claimant's right shoulder injury was not causally related to the February 2004 accident was against the manifest weight of the evidence. In so doing, the court focused on certain factual findings regarding the appearance of right shoulder pain at a point in time prior to the February 2004 accident. Regarding the crucial factual finding by the Commission that the claimant did not report immediate shoulder pain after the accident, but first reported right shoulder pain approximately one month later, the court essentially ignored the centrality of this factual finding.

¶ 22 ANALYSIS

¶ 23 On appeal, the employer argues that the circuit court erred in overturning the Commission's initial decision finding no causal connection between the claimant's right shoulder condition and the February 2004 accident. We agree.

¶ 24 An appeal from a final judgment of the circuit court regarding a decision of the Commission on remand necessarily implicates the propriety of the circuit court's earlier

decision. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 531 (2001). When, as in the instant matter, the Commission's original decision is reversed as against the manifest weight of the evidence, we consider the propriety of the Commission's original decision in any appeal from a final order regarding the Commission's decision on remand. *Glister Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182 (2001). Moreover, when reviewing the final order of the circuit court following a remand to the Commission, we are authorized to review the entire record and determine the propriety of the circuit court's order reversing the Commission's original decision and remanding the matter for further Commission proceedings. *Pace Bus Co. v. Industrial Comm'n*, 337 Ill. App. 3d 1066, 1069 (2003). Thus, the question before this court is whether the Commission's original decision that the claimant failed to establish a causal connection between her right shoulder condition of ill-being and the February 2004 industrial accident was against the manifest weight of the evidence.

¶ 25 The crux of this matter is the credibility of the claimant. Her proffered medical opinion testimony in support of the proposition that the February 2004 accident was causally connected to her subsequent right shoulder condition of ill-being was based squarely upon her experiencing "immediate" shoulder pain at the time of the injury. Dr. Romano opined that the claimant's right shoulder condition was causally related to the accident based upon the claimant's report that she felt immediate shoulder pain at the time of the accident. The claimant testified at the arbitration hearing that she experienced right shoulder pain immediately following the accident. If the claimant's testimony and the history she gave to Dr. Romano were deemed to be credible, causation would have been clearly established. However, the arbitrator and the Commission found the claimant to be lacking in credibility on the crucial issue. Simply put, the Commission did not believe the claimant when she testified that she felt immediate pain and it did not believe

that she was truthful with Dr. Romano when she gave a history of immediate right shoulder pain following the accident.

¶ 26 It is axiomatic that it is the unique function of the Commission to decide questions of fact, judge the credibility of witnesses, resolve conflicting evidence, and weigh medical opinion testimony. *Inter-City Products Corp. v. Industrial Comm'n*, 326 Ill. Ap. 3d 185, 193-94 (2001). Commission decisions on these issues will not be contradicted on review unless they are against the manifest weight of the evidence. *Id.* For a factual finding by the Commission to be against the manifest weight of the evidence, “an opposite conclusion must be clearly apparent” and the appropriate test is whether there is evidence in the record to support the Commission’s decision. *Id.*, at 194. Ultimately, whether a causal relationship exists is a question of fact for the Commission to decide. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005).

¶ 27 Here, the dispositive question is whether the claimant experienced immediate right shoulder pain following the accident. Dr. Romano’s causation opinion was based on the claimant giving a history of immediate right shoulder pain following the accident. Conversely, Dr. Venture’s opinion that the claimant’s right shoulder condition was not causally related to the February 2004 accident was based upon the lack of a report of immediate pain following the accident. The claimant testified that she did experience immediate right shoulder pain following the accident. The weight of the evidence, however, contradicted her testimony.

¶ 28 As the arbitrator noted, the first medical record documenting a complaint of right shoulder pain following the accident did not appear until Dr. Akkeron’s notation on March 26, 2004, over a month after the accident. The claimant maintains she told Nurse Gruendler that she suffered immediate right shoulder pain. Nurse Gruendler, however, documented several contacts with the claimant in the days following the accident, and on each occasion, the claimant

did not report right shoulder pain. Dr. Miller recorded no history of right shoulder pain following the accident. Likewise, Dr. Vender noted that the claimant did not report right shoulder pain to him when he examined her approximately one month after the accident. Dr. Vender later opined that, if the accident was a cause of the claimant's right shoulder pain, he would have expected the claimant to have reported such pain when he examined her. His opinion that the claimant's condition was not related to the accident was based largely upon the absence of right shoulder pain when he examined her. The claimant's response to the observation that there was no recorded observation of her reporting immediate right shoulder pain following the accident is to challenge the credibility of Nurse Gruendler and the accuracy of medical records. Given the nature of the record, and deferring to the Commission's role in determining credibility, we cannot say that the Commission's finding that the claimant failed to establish a causal connection between the condition of ill-being of her right shoulder and the industrial accident in February 2004 was against the manifest weight of the evidence.

¶ 29

CONCLUSION

¶ 30 Based upon the foregoing analysis we reverse the judgment of the circuit court and reinstate the Commission's original decision of February 11, 2008.

¶ 31 Judgment reversed; Commission decision reinstated.