

NOTICE

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2015 IL App (5th) 140447WC-U

NO. 5-14-0447WC

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

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

ST. ANTHONY'S MEMORIAL HOSPITAL,)	Appeal from the
)	Circuit Court of
Appellant,)	Fayette County.
)	
v.)	No. 14-MR-20
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable J. Marc Kelly,
COMMISSION <i>et al.</i> (Peggy Stolte, Appellee).)	Judge, 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 determination that the claimant's June 14, 2011, back surgery and related medical expenses were causally related to her September 22, 2010, work accident was not against the manifest weight of the evidence where her treating physician opined that her condition of ill-being was causally related to her work accident. The Commission's award of permanent partial disability benefits was not against the manifest weight of the evidence where un rebutted evidence was presented about the negative impact the claimant's injury had on her life.

¶ 2 The claimant, Peggy Stolte, filed an application for adjustment of claim against her employer, St. Anthony's Memorial Hospital, seeking workers' compensation benefits for an injury to her low back arising from an accident on September 22, 2010. The claim proceeded to an arbitration hearing under the Workers' Compensation Act (the Act) (820

ILCS 305/1 *et seq.* (West 2010)). The arbitrator found that the claimant did sustain an accident that arose out of and in the course of her employment and that her condition of ill-being was causally related to the accident. The employer was ordered to pay the claimant permanent partial disability benefits of \$233.39 per week for 125 weeks because the injury sustained caused 25% loss of the person as a whole. The employer appealed to the Illinois Workers' Compensation Commission (the Commission). The Commission affirmed the arbitrator's decision. The employer filed a timely petition for review in the circuit court of Fayette County, which confirmed the Commission's decision. The employer appeals.

¶ 3

BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing on January 11, 2013.

¶ 5 The claimant testified that, in 2003, she had lower back surgery as the result of a work injury, which consisted of an L4 to S1 fusion. The injury caused nerve damage, and she had numbness in her calf and three toes. She testified that, after her 2003 surgery, she was able to return to her job and all of her activities.

¶ 6 The claimant testified that she worked for the employer as a laundry technician. Her job duties consisted of folding and sorting laundry, packing laundry on carts, and delivering laundry. On September 22, 2010, she worked folding bedspreads as they came off a large industrial ironing machine. She then piled the bedspreads in stacks of 25 to 30 and placed the stacks on a cart. As she lifted a stack of bedspreads above her head to place on a cart, the unlocked cart moved, and the bedspreads fell. She tried to catch the

bedspreads before they touched the floor and, in doing so, twisted and fell catching herself on a column. The claimant testified that she experienced a burning pain in the small of her back. Later that evening, her shoulders began to ache. As the week progressed, her symptoms increased, and she developed pain down her back into her hip and right leg.

¶ 7 Following the accident, the claimant sought treatment from a chiropractor, Dr. Kelly Stanfield. Dr. Stanfield first examined the claimant on September 29, 2010, for complaints of right mid back and low back pain radiating to her hip and leg. He diagnosed the claimant with thoracic, lumbar, and cervical segmental dysfunction; paralumbar, parathoracic, and paraspinal musculature spasm; thoracic, lumbosacral, and erector spinae strain; L4 nerve root deficit; trapezius spasm; cervical strain and sprain; ligament laxity; and cervical neuritis/radiculitis. He treated the claimant with manipulation, electrical stimulation, and manual therapy seven times between September 30 and October 11, 2010. His colleague treated the claimant once. The claimant testified that Dr. Stanfield's treatment helped her shoulder and neck pain but did not relieve the pain in her lower back or the pain radiating down her right leg. She stated that by the end of her treatments with Dr. Stanfield, the radiating pain was "pretty pronounced."

¶ 8 Dr. Karl Rudert examined the claimant on October 12, 2010, for low back pain that had worsened over the past two weeks. In the history portion of his patient notes, he wrote that the claimant injured her lower back when she placed 25 to 30 pounds of laundry on a cart that rolled forward causing her to twist and fall to her right. He noted that the claimant had numbness in the medial aspect of her ankle and foot, symptoms she

never experienced after the 2003 surgery. He diagnosed her with new onset of low back pain and gluteus medius tenderness in the right greater trochanteric bursa. He recommended an MRI scan to look at the level above her fusion and a trial of physical therapy. He prescribed a steroid, Dosepak, to decrease the soreness. He noted that her x-rays showed degenerative disc disease at the L3-L4 level above the level of her fusion.

¶ 9 On October 13, 2010, the claimant had an MRI of her lumbar spine. Dr. Omer Aker wrote in the scan report that at L4-L5 and L5-S1 there were postoperative findings indicating a discectomy and posterolateral fusion with no malalignment, no recurrent disc herniation, no stenosis, and mild degenerative changes at L2-L3 disc level with subtle diffuse bulge.

¶ 10 The claimant participated in six sessions of physical therapy prescribed by Dr. Rudert. She testified that by the end of the last physical therapy session her pain had become so bad the therapist recommended that she purchase a TENS machine, which she did. She stated that the physical therapy did not resolve any of her pain.

¶ 11 Dr. Rudert examined the claimant on October 26, 2010, for complaints of low back pain and right leg and thigh pain. In his patient notes, he wrote that the MRI scan evaluation showed mild degenerative changes at L2-L3 and no evidence of spinal stenosis. He diagnosed the claimant with low back pain, radiculopathy, and a right gluteus medius injury. He recommended an epidural steroid injection and referred her to Dr. Matthew Gornet.

¶ 12 Dr. Gornet examined the claimant on December 13, 2010. The claimant was a former patient, and, in December 2003, he had performed an L4 to S1 fusion on her. The

claimant complained of constant back pain, right leg pain, and right leg numbness and weakness. He reviewed her radiograph and MRI scan from October 13, 2010. He noted that there was a possible lateral disc herniation at L3-L4 and a potential far lateral disc herniation at L2-L3, which correlated with her symptoms. He recommended a transforaminal steroid injection at L2-L3 and L3-L4 on the right. In his patient notes, he wrote "I do believe her current symptoms are causally connected to her work-related injury of 9/22/2010."

¶ 13 Dr. Kaylea Boutwell gave the claimant L1-L2 epidural steroid injections and right L2-L3 transforaminal epidural steroid injections. The claimant testified that after each steroid injection she experienced three days of relief, then the results wore off and the pain slowly returned.

¶ 14 Dr. Gornet examined the claimant on March 3, 2011. He noted that she had experienced no significant relief from her steroid injections. In his patient notes, he wrote that the MRI scan "reveals some disc pathology at L2-3 with a central disc protrusion there. This is consistent with a disc injury." He recommended a CT discogram at L3-L4 and L2-L3.

¶ 15 On April 6, 2011, the claimant had a CT scan of her lumbar spine. Dr. Greg Cizek wrote in the scan report that the claimant had a mild partial anterior annular fiber tear at L2-L3 without posterior extravasation, an abnormal L3-L4 disc with at least grade 3 annular disruption and possibly a small complete annular disruption with contrast extending toward the left lateral foramen with bilateral foraminal narrowing and facet arthropathy, and solid interbody fusion at L4-L5 and L5-S1. The same day, Dr. Gornet

performed a discogram with x-ray interpretation L2-L3 and L3-L4 with facet block left L2-L3 and L3-L4. He noted a mildly provocative disc at L3-L4 and a severely provocative disc at L2-L3.

¶ 16 Dr. Gornet examined the claimant on April 25, 2011, for complaints of significant structural back pain at L2-L3 and L3-L4. He recommended surgery. On June 14, 2011, Dr. Gornet performed a laminectomy on the claimant at L2-L3 and L3-L4 at the right with the placement of an X-stop spinous process distractor at L2-L3 and L3-L4.

¶ 17 The claimant followed up with Dr. Gornet throughout 2011. On June 25, 2012, he performed a one-year follow up to her surgery. In his patient notes, he wrote that her primary diagnosis was transitional syndrome L2-L3 and L3-L4 with stenosis. He noted that the claimant continued to do well after her surgery. He gave her permanent restrictions of no lifting greater than 20 pounds, alternating sitting and standing as needed, and no repetitive bending or lifting. He opined that she had reached maximum medical improvement.

¶ 18 The claimant testified that, due to the restrictions imposed by Dr. Gornet, she did not return to her job as a laundry technician. The employer accommodated her restrictions, and she works at a desk job at the same rate of pay. She returned to work full time with light duty in October 2011.

¶ 19 Neurosurgeon Dr. Paul Matz testified by evidence deposition. He stated that, at the employer's request, he performed an independent medical evaluation of the claimant on January 11, 2012. He reviewed her medical records and performed a physical examination. In his independent medical evaluation report, Dr. Matz diagnosed the

claimant with lumbar spondylosis, stenosis, and scoliosis that were degenerative in nature and exacerbated by her prior L4-S1 fusion. He opined that the lumbar spondylosis and stenosis were not related to her work injury and were not aggravated by her injury as they were chronic conditions.

¶ 20 Dr. Matz averred that the claimant's work injury on September 22, 2010, produced a lumbar strain. He stated that the claimant's other conditions preexisted her work-related back strain. He felt that the physical therapy and pain injections the claimant had were reasonable treatment for her work injury. He opined that she needed work hardening for four to eight weeks followed by a functional capacity evaluation to determine her limitations. He testified that the surgery Dr. Gornet performed in 2011 was done for the claimant's stenosis, which was caused by a degenerative process and not a work injury. He opined that the claimant's back surgery with the placement of interspinous process spacers may have helped stabilize some of her very mild deformity, which was chronic in nature and not related to her injury.

¶ 21 Dr. Matz admitted that the claimant did not indicate that she had any back pain or symptoms prior to the accident. He stated that if a patient stretched an extremely tight foramen she could develop a radiculitis after a strain-type injury. However, he saw no reports indicating that the claimant had a tight foramen. Dr. Matz stated that while Dr. Gornet found some collapse at L2-L3 and some hypertrophied ligamentum flavum that Dr. Gornet felt was compressing the right-sided nerve, he felt the MRI scans and CT scans showed no neural compression.

¶ 22 The claimant stated that prior to her September 22, 2010, accident she occasionally felt a "little achy at night in the lower back after [working] eight hours and on a concrete floor." She had no symptoms down her legs. The claimant testified that she had not injured her back since the September 22, 2010, accident.

¶ 23 The claimant testified that she experienced "a lot of relief" since the surgery. Her pain is now manageable. She testified that she still has back pain when she does too much, and, if it is severe enough, it radiates down into her hip. She testified that she takes ibuprofen for her back about once per day in the evening before she goes to bed and uses the TENS unit about twice per week.

¶ 24 The claimant described her limitations resulting from her condition of ill-being. She can no longer stand for long periods of time, she cannot do heavy lifting, she has difficulty running the vacuum and mopping, she can no longer garden, she can no longer sit at her sewing machine to quilt, she cannot lift her grandchildren, and she cannot sleep in the same bed as her husband. She stated that she used to walk one and one-half miles, but now she can only walk one-half mile. She had to remove the carpet in her living room and hallway because it was too difficult for her to vacuum. She testified that she used to camp in a tent every weekend, and now she can only go once per year because she cannot sleep on a cot.

¶ 25 The arbitrator held that the claimant did sustain an accident that arose out of and in the course of her employment and that her condition of ill-being was causally related to the accident. The employer was ordered to pay the claimant permanent partial disability benefits of \$233.29 per week for 125 weeks because the injury sustained caused 25% loss

of the person as a whole. The arbitrator found that the claimant's testimony supported Dr. Gornet's opinion.

¶ 26 The employer sought review of this decision before the Commission. The Commission affirmed and adopted the arbitrator's decision. The employer sought judicial review of the Commission's decision in the circuit court of Fayette County. The circuit court confirmed the Commission's decision. It found that the Commission's determination on causation was not against the manifest weight of the evidence and was supported by the testimony of Dr. Gornet and the claimant. It further found that the Commission's decision as to permanent and partial disability was not against the manifest weight of the evidence. The employer now appeals.

¶ 27 ANALYSIS

¶ 28 The employer argues that the Commission's finding of causal connection between the claimant's June 14, 2011, back surgery and related medical bills and her September 22, 2010, accident, was against the manifest weight of the evidence.

¶ 29 To obtain compensation under the Act, the claimant must show, by a preponderance of the evidence, that she has suffered a disabling injury which arose out of and in the course of her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). To satisfy the arising out of requirement, it must be shown that the injury has its origin in some risk associated with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Id.* at 203, 797 N.E.2d at 672. Even though an employee may have a preexisting condition that may make her more susceptible to injury, recovery for an

accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Id.* at 205, 797 N.E.2d at 672-73. "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." (Emphasis in original.) *Id.* at 205, 797 N.E.2d at 673.

¶ 30 Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of the preexisting condition because of an accident is a factual determination to be decided by the Commission. *Id.* A reviewing court will overturn a Commission's determination of a question of fact only if it is against the manifest weight of the evidence. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009). A finding of fact is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Id.* A Commission's determination will not be set aside on appeal if there is sufficient factual evidence in the record to support it. *Id.*

¶ 31 "It is within the province of the Commission to resolve disputed questions of fact, including those of causal connections, to draw permissible inferences from the evidence, and to judge the credibility of the witnesses." *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. This court will not reject permissible inferences drawn by the Commission simply because different inferences might be drawn from the same facts, nor will this court substitute its judgment for that of the Commission on such matters unless its findings are contrary to the manifest weight of the evidence. *Id.* The Commission determines which

medical opinion to accept regarding causation, and it may attach greater weight to the treating physician's opinion. *Homebrite Ace Hardware v. Industrial Comm'n*, 351 Ill. App. 3d 333, 340, 814 N.E.2d 126, 133 (2004).

¶ 32 The employer argues that the claimant failed to prove a causal connection between her June 2011 surgery and her September 2010 work accident. It argues that while Dr. Gornet stated on December 13, 2010, that the claimant's "current symptoms" were related to her work accident, this opinion does not cover "all subsequent medical conditions and treatment." Dr. Matz opined that the claimant's accident caused a low back strain. The employer asserts that Dr. Matz provided an unrebutted opinion that the claimant's 2011 surgery was related to her stenosis, which was a degenerative process, and was unrelated to her back strain caused by the September 2010 accident. The employer argues that the Commission's determination that there was a causal connection between the claimant's work accident and her surgery was against the manifest weight of the evidence because she failed to provide a medical opinion connecting the two and the only medical evidence on that issue is an affirmative statement from Dr. Matz that the surgery was not causally related to the accident.

¶ 33 In 2003, Dr. Gornet performed the claimant's back surgery. The claimant's prior back surgery may have made her more susceptible to back issues. An employer takes its employees as it finds them, and a claimant need only show that some act of her employment was a causative factor, not the sole or principal cause, of her resulting injury. *O'Fallon School District No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413, 417, 729 N.E.2d 523, 526 (2000). The claimant testified that, following her 2003 surgery, she

returned to work and her activities. She had some numbness in her calf and three toes. She did not seek treatment for low back pain radiating to her hip and leg, she did not miss work, and back pain did not prevent her from performing her job duties. After the accident, she experienced pain in her low back, hip, and right leg. In his December 13, 2010, patient notes, Dr. Gornet wrote that the claimant's "current symptoms are causally connected to her work-related injury of 9/22/2010." As the surgeon who performed the claimant's 2003 back surgery, Dr. Gornet knew the claimant's history when offering this causation opinion.

¶ 34 After her September 22, 2010, accident, the claimant tried conservative treatment including physical therapy and steroid injections, which did not relieve her symptoms. Eventually, Dr. Gornet informed her that her only options would be to try to live with the pain or have surgery. In his patient notes dated April 25, 2011, he wrote that the claimant was "adamant that her pain and symptoms affect all aspects of her life" and wished to proceed with the surgery. Nothing in the record suggests that Dr. Gornet altered his opinion that the claimant's condition of ill-being was causally related to her September 22, 2010, accident. Following the surgery, the claimant's symptoms improved dramatically, and she was able to return to work with restrictions.

¶ 35 It is within the Commission's province to draw permissible inferences from the evidence. *National Freight Industries*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. The Commission could reasonably infer that Dr. Gornet's causation opinion remained the same throughout his course of treatment of the claimant. The Commission accepted his medical opinion regarding causation. There is sufficient evidence in the

record to support the Commission's determination that a causal connection existed between the claimant's condition of ill-being necessitating her June 2011 surgery and her work accident.

¶ 36 The employer argues that the Commission's award of permanent partial disability benefits was against the manifest weight of the evidence. It asserts that the award of 25% of a person as a whole is unreasonably high. The employer contends that the claimant has returned to work in an accommodated capacity and, therefore, her award should be reduced to 15% loss of a person as a whole. The employer offers no case law in support of this argument. Failure to cite legal authority to support a legal argument results in waiver of the argument. *Midfirst Bank v. Abney*, 365 Ill. App. 3d 636, 650, 850 N.E.2d 373, 385 (2006). Waiver aside, we do not find the argument persuasive.

¶ 37 "Generally, a determination of the nature and extent of a claimant's permanent disability is a question of fact to be resolved by the Commission, and its finding in this regard should be given substantial deference and will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Baumgardner v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 274, 278-79, 947 N.E.2d 856, 860 (2011). The employer's sole argument is that the permanent partial disability benefits were too high because the claimant has returned to work for the employer in a light duty capacity with restrictions and experienced no reduction in pay. The claimant testified that, while she experienced significant relief from the surgery and her pain is manageable, she is not pain free and has to take ibuprofen daily and use a TENS unit twice per week. She can no longer stand for long period of time; she cannot do heavy lifting; she cannot pursue her

hobbies such as quilting, gardening, and camping; she has difficulty performing household chores; she cannot lift her grandchildren; and she cannot sleep in her bed with her husband. Dr. Gornet restricted her from lifting more than 20 pounds, she must alternate between sitting and standing as needed, and she cannot perform repetitive bending or lifting. This evidence of the impact the claimant's injury had on her life was un rebutted. There is sufficient evidence in the record to support the Commission's permanent partial disability benefits award.

¶ 38

CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court of Fayette County.

¶ 40 Affirmed.