2016 IL App (1st) 151185WC-U

NO. 1-15-1185WC

Order filed: July 15, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MICHAEL DUCKETT,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County.
	)	
v.	)	No. 14-L-050326
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.* (Sauk Trail Taxi, Appellee).	)	Honorable Carl A. Walker, Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman and Harris concurred in the judgment.

Justice Hudson dissented.

ORDER

¶ 1 *Held*: The Commission's finding that the claimant failed to prove that the conditions of ill-being in his low-back are causally related to a workplace accident is against the manifest weight of the evidence; the indisputable chain of events conclusively establish that the work-related accident, at a minimum, aggravated conditions of ill-being in the claimant's back.

¶ 2 The claimant, Michael Duckett, worked as a taxi cab driver for the employer, Sauk Trail Taxi, and was involved in a motor vehicle accident. The claimant filed a claim

pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), maintaining that he injured his back in the accident. The employer disputed the claimant's compensation claim on several grounds, including that the conditions of ill-being in the claimant's back are not causally related to the accident. The arbitrator agreed with the employer on the issue of causation, finding that the claimant failed to prove that the conditions of ill-being in his back are causally related to the accident. Accordingly, the arbitrator denied the claim in its entirety. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. The circuit court entered a judgment confirming the Commission's decision, and the claimant now appeals the circuit court's judgment. For the following reasons, we reverse the Commission and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 At the arbitration hearing, the employer defended against the claim by arguing that the claimant worked as an independent contractor, rather than an employee. The Commission, however, found that an employer-employee relationship existed between the parties, and the employer does not dispute that finding on appeal. The only issue contested on appeal is causation. Therefore, our background discussion will focus on those facts relevant to the issue of causation.

¶ 5 The claimant was involved in two vehicle accidents approximately nine weeks apart. The present case concerns the claimant's request for benefits for the injuries caused or aggravated by the second accident. The first accident occurred in August 2011,

when the claimant collided with a truck that had broken down on the side of a road. The claimant testified about this first, non-compensable accident as follows:

"Q. Before this accident of October 19th of 2011, had you ever injured your back before?

A. No.

Q. Did you ever have a car accident before?

A. Yes.

Q. Okay. And when was that?

A. That was two months before this one ***.

Q. Did you treat with Dr. McGarry for that?

A. Yes.

Q. And how long did you see him?

A. Just a couple of weeks. I don't know exactly, but it was a couple of weeks.

Q. And did you recover fully from that?

A. Oh, yeah, uh-huh. I got stitches in my forehead. That was it.

Q. So the treatment wasn't to your back, it was to your forehead?

A. Yes."

¶ 6 The second vehicle accident occurred on October 19, 2011, when the claimant was rear-ended by another vehicle. The accident occurred when the claimant's cab was broken down on the side of the road, and he was waiting for assistance. He testified that the accident occurred around noon and that immediately following the accident he "felt

all right." Later that evening, however, he experienced severe back pain. He testified that he had never injured his back prior to this accident.

¶ 7 The record includes reports of X-rays of the cervical and lumbar spine taken on October 21, 2011, two days after the second accident. With respect to the cervical spine X-ray, the radiologist preparing the report wrote that the claimant's clinical history was "[m]otor vehicle accident 2 months ago with upper back pain." In the report, the radiologist noted mild degenerative changes in the mid to lower cervical spine. With respect to the lumbar spine X-ray, the radiologist wrote that the claimant's clinical history was "[h]istory of [motor vehicle accident] with low back pain." The radiologist's impression was "[m]ild levoscoliosis of the lumbar spine with facet arthritic changes at L4-S1 levels."

¶ 8 On October 24, 2011, the claimant treated with Dr. James McGarry, who had been treating him for the first accident. He told the doctor about the second motor vehicle accident and stated that he was out of pain medication and was in a lot of pain in the lumbosacral area. He also reported "left rib discomfort along the costal margin" and "discomfort in the hip joint." At that time, he told Dr. McGarry that his neck was "okay." The doctor's physical examination revealed "inflammatory nodules along the lumbosacral area of the sacral iliac junction" and "great discomfort" from "straight leg raises." The doctor's assessment of the claimant's condition was "[l]ow back pain second event of low back pain, possibly underlying pathology, possibly not." He told the claimant to "continue with hydrocodone or Flexeril" and prescribed Ultram, diclofenac, Myoflex cream, and wet heat.

¶ 9 The claimant treated with Dr. William Payne on November 1, 2011. The claimant testified that he was referred to Dr. Payne by Dr. McGarry. Dr. Payne reported in his notes that the claimant complained of "low back pain for almost a month." According to Dr. Payne's office notes, the claimant also told the doctor "that he was okay and was feeling pretty good after the first accident and when the second accident occurred."

¶ 10 The records admitted at the hearing include a letter authored by Dr. Payne on June 19, 2012, in which he described his course of treatments of the claimant's conditions of ill-being. With respect to this initial examination in November 2011, Dr. Payne wrote that the claimant presented with "a complaint of low back pain." The doctor described the claimant's motor vehicle accidents as follows:

> "The first one was in August 2011 when he ran into a truck, and in October 2011 when a car ran into him. He essentially was okay and was feeling fair after the first accident when his second accident occurred."

¶ 11 At the November 1, 2011, office visit with Dr. Payne, the claimant complained of "left pain in his buttock and down his leg, numbness and tingling from his leg." In addition, he had "weakness in standing" which was worse "when standing for extended periods of time." He reported pain with sneezing, coughing, and walking. Dr. Payne noted that the claimant's pain scale was a nine. His physical examination revealed tenderness in the right ribs, and "some lumbosacral tenderness with wincing to palpation."

¶ 12 Dr. Payne ordered "an MRI of the lumbar spine and limited CT scan at L5 only to rule out pars defect." He also ordered a cervical spine MRI and physical therapy for the

cervical and lumbar spine and left leg weakness. According to the claimant, Dr. Payne told him that he could not work.

¶ 13 A CT scan of the claimant's lumbar spine was taken on November 10, 2011. The lumbar spine CT scan report includes a clinical history of "[l]ow back pain with left lower extremity radiculopathy status post motor vehicle accident 10/19/2011. Evaluate for pars fracture." The radiologist impression was "[n]o evidence of acute fracture or subluxation. Otherwise unremarkable limited CT scan of the lower lumbar spine."

¶ 14 On the same day, an MRI was taken of the claimant's cervical spine. The radiologist noted the following clinical history in his report, "[n]eck pain and stiffness status post motor vehicle accident 10/19/2011." The interpreting radiologist's impression included degenerative changes in the cervical spine, most notably at the C5-C6 level with a moderate disc osteophyte complex and left neuroforaminal narrowing.

¶ 15 On November 14, 2011, the claimant underwent an MRI scan of his lumbar spine. The report for the MRI of the lumbar spine includes a clinical history of "[l]ow back pain with left radiculopathy, history of recent motor vehicle accident." The radiologist's impression was "[m]ild left paracentral disc protrusion at L5-S1 with no significant central canal stenosis or neural foraminal narrowing appreciated."

¶ 16 The claimant returned to Dr. Payne on November 29, 2011, with complaints of severe back pain and lower back pain that was "on and off." In his report, Dr. Payne noted that the MRI scans of the claimant's cervical and lumbar spines showed L5-S1 disc bulge and herniation and C5-C6 disc herniation. The doctor's diagnosis was L5-S1 disc

bulge and L5-S1 spondylolisthesis. Dr. Payne ordered an epidural injection and physical therapy.

¶ 17 On December 6, 2011, Dr. Payne restricted the claimant from the following activities at work: climbing, working above ground level, working around high-speed or moving machinery, operating mobile equipment, lifting/pushing/pulling over 10 pounds, repetitive bending at the waist, kneeling, crawling, squatting, and driving work vehicles.

¶ 18 On February 7, 2012, the claimant reported to Dr. Payne that his low back pain had worsened and now traveled down both legs. He rated his pain level at 8 out of 10. Dr. Payne diagnosed the claimant with cervicalgia and ordered an epidural steroid injection at C5-C6, physical therapy, and medications. He also ordered a lumbar spine MRI in flexion and extension. In his report, he noted that "[t]his is a work-related issue." A February 10, 2012, lumbar spine MRI revealed stable degenerative disc disease of the lumbar spine as compared to the November 14, 2011, lumbar spine MRI.

¶ 19 The claimant saw Dr. Payne on March 6, 2012, and reported continued low back pain that had been causing him left leg pain. On the day of the examination, the claimant reported severe pain in the left buttock area. Dr. Payne diagnosed the claimant with herniated discs at C5-C6 and L5-S1. He ordered an epidural steroid injection for the cervical spine and prescribed Mobic.

¶ 20 On April 17, 2012, the claimant saw Dr. Payne and reported pain in his lower left side of his neck that sometimes traveled down his left arm. He complained of back pain at a level of 7 out of 10, which traveled down his right hip and leg. He had some numbness and tingling with pain. Dr. Payne's diagnosis remained the same, and he

refilled the claimant's prescriptions, ordered physical therapy and pain management, and noted that the claimant was going to see Dr. Roland. At the arbitration hearing, the claimant testified that he continued to suffer from pain in his neck and lower back.

¶ 21 As noted above, on June 19, 2012, Dr. Payne authored a report in which he provided a narrative of his services. The original letter included a paragraph in which he offered the opinion that the October 2011 auto accident aggravated, accelerated, or exacerbated the claimant's back condition and may require surgery costing up to $150,000. For reasons unexplained in the record, the claimant's attorney struck this paragraph from the letter before offering the letter into evidence.

¶ 22 At the completion of the arbitration hearing, the arbitrator ruled against the claimant on the issue of whether his conditions of ill-being were causally related to the October 19, 2011, vehicle accident. The arbitrator found that the claimant failed to submit sufficient evidence to prove causation. The arbitrator found that the claimant's "testimony at trial on this issue was not credible, is contradicted by the medical records, and the sequence of events as reported by [the claimant] is inconsistent with other record evidence." Specifically, the arbitrator stated as follows:

> "[The claimant] testified that he had not injured his back before his claimed injury on October 19, 2011. However, the very first medical record submitted into evidence reflects that [the claimant] underwent a cervical spine MRI on October 21, 2011 at which time [the claimant] reported a '[m]otor vehicle accident two months ago with upper back pain.' This latter-referenced accident corresponds with [the claimant's] report at trial of an August of 2011 accident which [the

> claimant] testified only required a few stitches and from which he fully recovered before his October 19, 2011 accident. Thereafter, on November 1, 2011, [the claimant] reported continued low back pain over the previous month after both motor vehicle accidents. These contemporaneous medical records contradict [the claimant's] testimony at trial about the claimed sequence of events and that he was completely asymptomatic with regard to his back at the time of the second accident on October 19, 2011 after the purportedly minor accident two months prior which required only a few stitches."

¶ 23 In her decision, the arbitrator noted that the only causal connection opinion presented at the hearing was from the claimant's treating physician, Dr. Payne. In his report dated February 7, 2012, Dr. Payne discussed the claimant's back pain and noted that "[t]his is a work-related issue."

¶ 24 The arbitrator noted that the claimant failed to submit any of the medical records from the August 2011 accident to substantiate his testimony that his back was asymptomatic prior to his October 19, 2011, accident. The arbitrator concluded that the claimant failed "to prove the compensability of his claim by a preponderance of credible evidence" and denied "all requested compensation and benefits."

¶ 25 The claimant sought review of the arbitrator's decision before the Commission. The Commission unanimously affirmed and adopted the arbitrator's decision. On review before the circuit court, the court held that there is sufficient evidence in the record to support the Commission's finding of no causal connection. Accordingly, the court held that the Commission's decision was not against the manifest weight of the evidence and

entered a judgment confirming the decision. The claimant now appeals the circuit court's judgment.

¶ 26 ANALYSIS

¶ 27 The issue before us is whether the Commission's finding with respect to causation is against the manifest weight of the evidence.

¶ 28 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). Whether an employee's condition of ill-being is causally connected to a work-related accident is a question of fact. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. "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." *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 38, 976 N.E.2d 1.

¶ 29 On review, the Commission's decision will not be disturbed unless it is against the manifest weight of the evidence. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 538, 865 N.E.2d 342, 353 (2007). "For the Commission's decision to be against the manifest weight of the evidence, the opposite conclusion must be clearly apparent." *Id*. at 539, 865 N.E.2d at 353. Although we are reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when the clearly evident,

plain, and indisputable weight of the evidence compels an opposite conclusion. *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 119, 881 N.E.2d 523, 529 (2007). In the present case, the Commission's finding that the clamant failed to prove causation is against the manifest weight of the evidence. It is clearly apparent from the record that the claimant's condition of ill-being is causally connected to the October 19, 2011, work-related vehicle accident.

¶ 30 The indisputable evidence establishes that the claimant suffers from conditions of ill-being in his back following a rear-end vehicle collision and that the collision arose out of and in the course of his employment. In denying benefits, the Commission focused on the October 21, 2011, report of the cervical spine X-ray taken two days after the accident. The report included a medical history of a motor vehicle accident two months prior "with upper back pain." The Commission concluded that this report was consistent with the claimant having suffered conditions of ill-being in his upper back prior to the work-related accident. In addition, the Commission focused on Dr. Payne's office notes made two weeks after the second accident, on November 1, 2011, in which he wrote that the claimant reported "low back pain for almost a month."

¶ 31 Based on this evidence, the Commission found that the claimant was not credible when he testified that he did not have any back pain prior to the October 19, 2011, accident since both of these records indicate back pain prior to that date. However, the claimant's burden of proof did not require him to prove that his back was completely asymptomatic prior to the work-accident. An injured employee is not required to prove that his employment was the sole causative factor or even that it was the principal

causative factor, but only that it was a causative factor. *Republic Steel Corp. v. Industrial Comm'n*, 26 Ill. 2d 32, 45, 185 N.E.2d 877, 884 (1962).

¶ 32 Accordingly, whether the claimant's testimony established that he had no back pain prior to the workplace accident is not crucial in analyzing causation. The crucial issue is whether the compensable accident was "a" causative factor. The indisputable evidence presented at the hearing reveals a chain of events that leads to the inescapable conclusion that the accident, at a minimum, aggravated conditions in the claimant's back. Therefore, the work-accident was "a" causative factor. This conclusion is clearly apparent from the record, and the Commission's contrary finding is against the manifest weight of the evidence.

¶ 33 "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, 442 N.E.2d 908, 911 (1982).

¶ 34 For example, in *Darling v. Industrial Comm'n*, 176 Ill. App. 3d 186, 530 N.E.2d 1135 (1988), the employee sought benefits for repetitive accidental injury to his arm as a result of his work duties. The Commission, however, found that the employee failed to prove that he sustained accidental injuries arising out of and in the course of his employment. *Id*. at 187, 530 N.E.2d at 1136. The court reversed the Commission, noting that a "causal connection between work duties and a condition may be established by a chain of events including petitioner's ability to perform the duties before the date of the

accident, and inability to perform the same duties following that date." *Id.* at 193, 530 N.E.2d at 1140. In reversing the Commission's finding on causation, the court stated: "Here, a causal connection is shown from the events which reveal a prior state of good health; a good work record; a definite accident date; a resulting disability; and petitioner's inability to work, or even use his left arm or hand at all, after that date." *Id.*

¶ 35 In the present case, the claimant did not present his medical records for treatments prior to the work-related vehicle accident.[1] Therefore, the record does not indisputably establish that he was in perfect health prior to the accident, particularly when the Commission found that he was not credible in testifying that he had no back pain prior to the accident. As the Commission pointed out in its decision, the claimant's medical records after the accident suggested that he had some issues with his back prior to the

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[1] At the review hearing before the circuit court, the claimant submitted the medical records of the treatments he received following the first vehicle accident and asks us to consider them on appeal. However, we cannot consider these records in reviewing the Commission's decision. See *Gunthrop-Warren Printing Co. v. Industrial Comm'n*, 74 Ill. 2d 252, 255, 384 N.E.2d 1318, 1319 (1979) ("the circuit court considers a case only on the record made before the *** Commission and has no authority to consider evidence not presented therein."); *Chambers v. Industrial Comm'n*, 139 Ill. App. 3d 550, 552, 487 N.E.2d 1142, 1144 (1985) (items outside the record made before the Commission are not properly before this court).

work-related accident, and these records contradicted his testimony that he had no issues with his back prior to the accident.

¶ 36 However, the indisputable evidence also established that, prior to the work-related accident, the claimant's treating physicians had not taken him off work due to any medical conditions, including back conditions. The claimant's testimony was that he felt "all right" the day of the accident. Regardless of the Commission's assessment of his credibility, the evidence conclusively established that he was able to perform, and did perform, the duties of a cab driver before the work-related accident; he was driving the employer's cab the day of the accident. During the hearing, when asked whether he worked anymore that day after the accident, he testified that he did not and that the cab in which he sat "was totaled" by the rear-end collision.

¶ 37 Following the work-related accident, the claimant saw Dr. McGarry on October 24, 2011, and then saw Dr. Payne on November 1, 2011. During the hearing, the claimant testified as follows:

"Q. Did you work during that week between seeing Dr. McGarry and Dr. Payne?

A. No, I did not.

Q. Did Dr. McGarry instruct you to stay off of work?

A. No, Dr. Payne did, but I was – I couldn't work. I mean, I couldn't drive. My back was messed up. I couldn't move. I couldn't drive. So I mean obviously I was off work until I s[aw] Dr. Payne, and then Dr. Payne told me that I couldn't work.

Q. Okay. And did Dr. Payne then in November run a full series of tests on you including CAT scans and MRIs?

A. Yes.

Q. And he released you to work but with great limitations?

A. Yeah.

Q. You weren't able to drive?

A. No.

Q. Since November, have you been back to Dr. Payne and then again in February?

A. Yes.

Q. And then again in March and April?

A. Yes.

Q. And have you been relieved of your symptoms in any way?

A. No."

¶ 38 The employer did not dispute the claimant's testimony that the cab in which he sat while waiting for a tow truck "was totaled" in the rear-end accident; nor did the employer dispute the claimant's testimony concerning his inability to work following the accident. Therefore, for purposes of this appeal, those are indisputable facts. The claimant's medical records confirm his testimony that, following a series of CT scans and MRIs, Dr. Payne, on December 6, 2011, restricted him from the following activities at work: climbing, working above ground level, working around high-speed or moving machinery, operating mobile equipment, lifting/pushing/pulling over 10 pounds, repetitive bending at the waist, kneeling, crawling, squatting, and driving work vehicles. The indisputable evidence establishes that these work restrictions were issued *after* the work-related accident.

¶ 39 Therefore, the indisputable chain of events includes: (1) a work-related, rear-end vehicle accident that resulted in a "totaled" cab; (2) the claimant's physical inability to work as a cab driver due to back pain following the accident; and (3) restrictions issued by the claimant's treating physician after the accident that prohibited him from performing the job duties of a cab driver. There is only one conclusion that can be drawn from this chain of events; the work-related accident, at a minimum, accelerated or contributed to the conditions of ill-being in the claimant's back to the point he could no longer perform his job duties. His credibility with respect to whether he had back problems prior to the accident has no bearing on this conclusion or the chain of events leading to the conclusion. The Commission's finding otherwise is against the manifest weight of the evidence and must be reversed under the manifest weight of the evidence standard.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, we reverse the judgment of the circuit court that confirmed the Commission's decision, reverse the Commission's decision, and remand for further proceedings before the Commission for a determination of the claimant's benefits under the Act.

¶ 42 Judgment reversed; Commission's decision reversed; cause remanded.

¶ 43 JUSTICE HUDSON, dissenting:

¶ 44 Given the deference owed to the Commission regarding factual and medical matters (*Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009)), I conclude that the Commission's finding that claimant failed to prove that the condition of ill-being in his low back is causally related to a workplace accident is not against the manifest weight of the evidence. Accordingly, I respectfully dissent.

¶ 45 Claimant alleged that he suffered injuries to his back and it was his burden to prove that the conditions of ill-being were causally related to the second motor-vehicle accident as opposed to the first motor-vehicle accident or some other cause. *Smith v. Industrial Comm'n*, 98 Ill. 2d 20, 23 (1983). Here, claimant offered only his own testimony that he did not injure his back prior to the second motor-vehicle accident on October 19, 2011. While the testimony of one witness may be sufficient to justify an award of benefits (see *Pheoll Manufacturing Co. v. Industrial Comm'n*, 54 Ill. 2d 119, 122 (1973)), such testimony, standing alone, will be deemed insufficient where a consideration of all the facts and circumstances shows the manifest weight of the evidence is against such an award (*Caterpillar Tractor Co. v. Industrial Comm'n*, 83 Ill. 2d 213, 218 (1980)). In this case, the Commission determined that claimant did not offer sufficient medical records to distinguish between the injuries he allegedly sustained in the different accidents. The record supports the Commission's finding.

¶ 46 Significantly, portions of claimant's medical records contradicted his testimony that he did not suffer any condition of ill-being in his back prior to the second motor-

vehicle accident. The Commission found these contradictions were significant in assessing claimant's credibility. The medical evidence contradicting claimant's testimony that he had not suffered any back problems prior to the October 19, 2011, accident included the October 21, 2011, cervical spine X-ray report. The report included a medical history of a motor-vehicle accident two months prior "with upper back pain." In addition, when claimant saw Dr. Payne on November 1, 2011, two weeks after the second accident, claimant reported "low back pain for almost a month." Based on this evidence, the Commission did not believe claimant's testimony that he did not have any back pain prior to the October 19, 2011, accident. The only other evidence in the record that could support a finding in claimant's favor with respect to causation was Dr. Payne's one sentence statement in his February 7, 2012, report that claimant's low back problem was a "work-related issue." However, nothing in the record establishes the basis for Dr. Payne's statement.

¶ 47 In light of this evidence, I agree with the Commission's assessment of claimant's credibility and its finding that claimant failed to carry his burden. The medical records admitted at the arbitration hearing appear to be inconsistent with claimant's testimony that he did not suffer any back issues prior to the second motor-vehicle accident. Having discredited claimant's testimony, the Commission did not have any other evidence to consider on the issue of causation other than Dr. Payne's unexplained statement in his February 7, 2012, report. As such, I would hold that the Commission's finding that claimant failed to carry his burden with this evidence is not against the manifest weight of the evidence.

¶ 48 I acknowledge that the second motor-vehicle accident involved a collision in which claimant's taxi, stranded on the side of the road, was rear-ended. Given the nature of a rear-end collision, it would not take much of an inference to find that the second automobile accident, at a minimum, could have aggravated or accelerated any pre-existing conditions of ill-being in claimant's back. However, claimant did not present any testimony, records, or opinions to establish that the second accident aggravated or accelerated any prior back condition. Instead, claimant's testimony was that he did not suffer from any back conditions until the second motor-vehicle accident. In addition, prior to offering Dr. Payne's June 19, 2012, letter into evidence, claimant struck Dr. Payne's opinion that the second motor-vehicle accident aggravated, accelerated, or exacerbated his back condition. Under these facts, there was no evidence or opinions admitted into evidence from which the Commission could find that the second accident constituted *a* contributing cause to the condition of ill-being of claimant's back. See *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003) (noting that 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).

¶ 49 In a late attempt to differentiate between the injuries he received in the two accidents, claimant, at the hearing before the circuit court, attached the medical records of the treatments he received following the first motor-vehicle accident. These new medical records indicate that the injuries caused by the first motor-vehicle accident included lacerations to claimant's forehead by a whiplash-type injury to his neck when he hit his head on his rear-view mirror, as well as injuries to his right elbow and right knee. These

new medical records also included a report from Dr. McGarry dated September 20, 2011, in which claimant reported neck pain and tightness, but denied any numbness, tingling, or weakness in his legs. According to the report, claimant told Dr. McGarry that he would like to see an orthopedic physician for his neck pain and tightness, and Dr. McGarry referred claimant to Dr. Payne. Dr. McGarry's diagnosis was "muscle spasm."

¶ 50 The medical records of the treatment claimant received following the first motor-vehicle collision suggest that claimant did not receive any treatments for any low back condition following the first accident. In the present appeal, claimant argues that these records show that the treatments following the first accident focused on his cervical spine in contrast to the treatments following the second accident, which focused on his low back. Claimant also argues that, contrary to the Commission's finding, his testimony was not inconsistent when considered in light of these medical records. As the majority notes, however, because these records were not presented to the Commission, they cannot be considered in reviewing the Commission's finding on the issue of causation. *Supra* ¶ 35 n.1. As an excuse for not offering these records at the arbitration hearing, claimant maintains that respondent did not dispute the issue of causation at the arbitration hearing or on review before the Commission. Yet, the parties' request for hearing expressly stated that the issue of causation was in dispute. Nothing in the record indicates that respondent waived this disputed issue or otherwise took any position that justified claimant's failure to offer all medical records relevant to carrying his burden on the issue of causation.

¶ 51 In reaching a contrary conclusion, the majority relies on a "chain of events" theory. *Supra* ¶¶ 33-39. Specifically, the majority finds that a causal connection is shown from events which reveal: (1) a work-related, rear-end vehicle accident that resulted in a "totaled" cab; (2) claimant's physical inability to work as a cab driver due to back pain following the accident; and (3) restrictions issued by claimant's treating physician after the accident that prohibited him from performing the job duties of a cab driver. *Supra* ¶ 39. The majority acknowledges the Commission's finding that claimant was not credible, but finds that claimant's credibility with respect to whether he had back problems prior to the accident has no bearing on its conclusion or the chain of events leading to the conclusion. *Supra* ¶ 39. In my view, however, the Commission could have reasonably concluded that claimant's lack of credibility with respect to whether he had prior back problems tainted claimant's testimony as a whole, and, as noted above, a court of review should not substitute its judgment for that of the trier of fact on questions involving the credibility of witnesses. *Hosteny*, 397 Ill. App. 3d at 674; see also *Lefebvre v. Industrial Comm'n*, 276 Ill. App. 3d 791, 798 (1995).

¶ 52 In short, the Commission's decision must be supported by the record and not based on mere speculation or conjecture. *Sisbro, Inc.*, 207 Ill. 2d at 215. In this case, based on the evidence presented, the Commission was unable to determine whether claimant's conditions of ill-being were causally related to the second motor-vehicle accident (the workplace accident), the first motor-vehicle accident, or some other cause. In light of the deferential standard of review, I would affirm the judgment of the circuit court of Cook County, which confirmed the decision of the Commission.