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Carla Bender
4th District Appellate
Court, IL

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No. 4-15-0626WC

Order filed September 27, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JEREMY WAYNE BARROW,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	McLean County.
	)	
v.	)	No. 15-MR-41
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, *et al.* (Logan County	)	Rebecca Simmons Foley,
Paramedic Association, 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 failed to prove he sustained an accident that arose out of and in the course of his employment is against the manifest weight of the evidence where the claimant's job entailed heavy and repetitive lifting, there were no conflicting medical opinions, and a physician opined that the claimant's job duties aggravated his condition of ill-being.

¶ 2 The claimant, Jeremy Wayne Barrow, filed three applications for adjustment of claim against his employer, Logan County Paramedics, seeking benefits under the Illinois Workers' Compensation Act (the Act) (820 ILSC 305/1 *et seq*. (West 2010)). In his first claim, the claimant alleged that he sustained an accidental injury to his right upper extremity arising out of and in the course of his employment on December 10, 2011. In the second and third claims, he alleged repetitive trauma causing a disc injury with manifestation dates of January 9, and February 13, 2012. The claims proceeded to an arbitration hearing and because the claims all involved the same injury with different alleged accident dates, the arbitrator heard the claims together. The arbitrator found that the claimant did sustain an accident that arose out of and in the course of his employment and that his current condition of ill-being was causally related to his employment. The arbitrator awarded medical expenses, temporary partial disability benefits, temporary total disability benefits, and permanent partial benefits because the injuries sustained caused permanent partial disability to the extent of 25% loss of the person as a whole. The employer sought review before the Illinois Workers' Compensation Commission (Commission), which reversed the arbitrator, finding that the claimant failed to prove he sustained accidental injuries that arose out of and in the course of his employment. The claimant filed a timely petition for judicial review in the circuit court of McLean County, which confirmed the Commission's decision. The claimant appeals.

¶ 3 **BACKGROUND**

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing on February 24, 2014.

¶ 5 The claimant testified that he started working as a paramedic in 1999 and has worked for the employer as a paramedic since April 2005. He worked, on average, 96 hours over a two-week period. He worked 24-hour shifts with a break of 48 hours between shifts. He averaged 16 to 18 calls per 24 hour shift. His job duties included responding to 911 calls and going to nursing homes to assist in patient transports. He characterized the lifting involved in his job as heavy to very heavy. He stated that, as a paramedic, he used a 120-pound cot to transport patients, a jump bag weighing approximately 50 pounds, and a Phillips' cardiac monitor weighing just over 20 pounds. The cot is on wheels but must be lifted up and down stairs. He stated that he had to assist the patients onto the cot and that he dealt with overwhelmingly "larger individuals." After transporting the patient to the hospital, he and his partner unload the patient and transfer him or her from the cot to the stretcher in the emergency room. He stated that the nursing home calls were "almost exactly like 911 calls."

¶ 6 The claimant testified that December 10, 2011, was a particularly heavy call day. He estimated that he and his partner took between 20 and 24 calls. He stated that, in the evening, when he tried to lie down in the sleeping quarters at work, he noticed pain in his right shoulder. He described it as a sharp, stabbing pain in the posterior right side of his shoulder. A few days later, he sought treatment from his primary care physician, Dr. Sagins. He did not notify anyone at work about his shoulder at that time.

¶ 7 After examining the claimant on December 16, 2011, Dr. Sagins wrote in his patient notes that the claimant presented for right shoulder pain that he noticed one night when he was having trouble getting comfortable while trying to go to sleep and that it had

been going on for the previous four days. The claimant reported that he was not aware of any trauma or injury. The claimant acknowledged that he did not report any trauma or injury to Dr. Sagins and testified that he told Dr. Sagins that the pain began at work when he was lying down. Dr. Sagins assessed the claimant with pain in the right shoulder.

¶ 8 The claimant testified that, as he continued in his work activities, he noticed that his pain worsened and began radiating down his arm. Dr. Sagins referred him to Dr. Tomasz Borowiecki.

¶ 9 Dr. Borowiecki examined the claimant on December 27, 2011. Dr. Borowiecki wrote in his patient notes that the claimant was referred by Dr. Sagins for an evaluation of his right shoulder and arm pain that started about two weeks prior. Dr. Borowiecki wrote that the claimant "just woke up with it. He has never had any injury to his shoulder that he can recall." Dr Borowiecki reviewed x-rays of the claimant's right shoulder taken that day. He noted that the claimant had a type 2 acromion, but otherwise the x-rays were unremarkable for any acute findings or abnormalities. Dr. Borowiecki diagnosed the claimant with limb pain. Dr. Borowiecki noted that he was unable to elicit any symptoms that could be accountable to the shoulder joint or subacromial space, that the claimant's strength was normal around his shoulder, and that the impingement signs and apprehension signs for instability were negative. He recommended that the claimant see neurologist Dr. Koteswara Narla.

¶ 10 The claimant testified that, after his appointment with Dr. Borowiecki, he reported his pain to his supervisor, Steve Siltman, and explained that he felt the pain was the result of working particularly hard during the December 10, 2011, shift. He told Siltman that

Dr. Borowiecki was not certain about the source of his pain but thought it was a neck injury and that an MRI scan was necessary to determine the pain source. Siltman did not ask the claimant to complete any forms at that time because he did not have a diagnosis.

¶ 11 On January 9, 2012, Dr. Narla examined the claimant. In the patient history Dr. Narla wrote that the claimant complained of right side shoulder area pain radiating down to the upper arm. He reported that it started one month prior and currently radiated down the forearm to the wrist. Dr. Narla noted that Dr. Borowiecki thought that the claimant's pain was coming from his neck rather than any primary shoulder problem. Dr. Narla wrote that, despite the lack of neck pain, the claimant presented with a typical C7 radiculopathy from a C6-C7 disc herniation on the right side. He recommended an MRI scan of the cervical spine.

¶ 12 The claimant had an MRI scan on January 13, 2012. It showed severe right neural foraminal stenosis at C6-C7 secondary to a moderate sized right neural foraminal disc protrusion.

¶ 13 The claimant testified that on February 7, 2012, he went to the emergency room for unbearable pain in his right arm and shoulder. After that date, he was not permitted to continue working. He stated that he took his emergency room discharge instructions indicating he was not to do any heavy lifting to Siltman.

¶ 14 On February 13, 2012, Dr. Narla examined the claimant. Dr. Narla wrote in his patient notes that the claimant had a 3-month history of right upper limb pain and now developed pain going down into the left side as well as neck pain. He noted that the MRI scan showed a C6-C7 foraminal disc protrusion. Dr. Narla recommended the claimant

have nerve conduction studies, which the claimant underwent on the same day. Dr. Narla wrote in his report that the nerve conduction studies of both upper limbs showed acute denervation potential only in the pronator teres. He opined that the claimant's symptomology with pain spreading to the neck area indicated that it was likely from a C6-C7 foraminal disc protrusion and narrowing producing C7 radiculopathy. He referred the claimant to Dr. Brian Russell for a surgical opinion.

¶ 15 On February 15, 2012, Dr. Sagins examined the claimant, who complained of neck pain. Dr. Sagins noted that the claimant had concerns about his inability to work due to weakness in his arm. Dr. Sagins diagnosed him with right shoulder and arm pain secondary to a herniated disc. Dr. Sagins opined that the claimant could not work at that time due to arm weakness and gave him an off work note for the month of February.

¶ 16 Neurosurgeon Dr. Brian Russell testified by evidence deposition that he first examined the claimant on February 16, 2012, on referral from Dr. Narla. In his patient notes, Dr. Russell wrote that the claimant "woke up one morning about 2 ½ months ago with right shoulder pain." He stated that the claimant presented with an MRI scan showing severe right foraminal stenosis due to spurring and a moderate sized disc protrusion at C6-C7. The MRI scan corresponded with his subjective clinical examination of the claimant. He stated that, if stenosis is due to bony changes, it would be something that happened over many years. If it was due to a disc herniation, it could be more acute. He opined that the claimant's herniation was a more recent event. He diagnosed the claimant with C7 radiculopathy and recommended a cervical epidural.

They discussed an anterior cervical discectomy and interbody fusion in the event that the epidural failed to improve his condition.

¶ 17 On February 19, 2012, the claimant prepared a summary of events of his injury. He started by describing that on December 10, 2011, while at work, he woke and noticed his right shoulder was sore. He summarized his medical care. After he met with Dr. Narla about the results of his MRI scan showing a C6-C7 displacement, he contacted Siltman and advised him of the situation. He wrote that originally he thought it was just a sore shoulder and "did not want to expose the company to a workers' compensation claim" for something so minor. As time progressed, the pain worsened to the point where he was unable to tolerate daily activities. He followed up with Dr. Narla and was referred to a neurosurgeon. He was placed on lifting restrictions and was unable to work due to the injury. He ended by stating that Siltman asked him "to create the synopsis of events to give to workman's comp for claim."

¶ 18 The employer's first report of injury dated February 20, 2012, was admitted into evidence. The report prepared by Siltman states that the claimant was injured on December 10, 2011, at 1930 hours at Lincoln Memorial Hospital when lifting/pulling a patient from cot to cot. The claimant testified that he reported to Siltman that his pain started on December 10, 2011, after a busy night, but he denied reporting that a specific accident occurred on December 10, 2011, at 1930 hours at Lincoln Memorial Hospital. He testified that, to his knowledge, the accident report was not prepared prior to February 20, 2012, despite his having spoken to Siltman about his pain prior to this, because he did not have a diagnosis.

¶ 19 On February 22, 2012, the claimant had a cervical epidural steroid injection. On February 26, 2012, he went to the emergency room for an intractable headache following his injection. Because conservative methods failed to ease the headache, he was given a blood patch placement.

¶ 20 On February 29, 2012, Dr. Russell examined the claimant, who complained that the injection increased his pain and caused a headache. In his patient notes, Dr. Russell wrote:

> "Unfortunately [the claimant] has changed his insurance now to Worker's Comp as he has given this some thought over the last couple of months. He originally thought he had pulled his shoulder at work and did not think too much of it, but now as this has gone on it has been advised to him to turn it in as a Workers' Comp claim. He, again, cannot recall any one specific event that may have initiated his symptoms, only that he woke with pain the following day."

¶ 21 Dr. Russell testified that on March 8, 2012, he performed an anterior cervical discectomy and interbody fusion on the claimant. His intraoperative findings were consistent with his preoperative diagnosis. He opined that the herniation combined with the weakness suggested something acute. The claimant testified that initially the surgery was helpful. After a few weeks, however, the pain returned and was just as severe as prior to the surgery.

¶ 22 The claimant had a follow up appointment with Dr. Russell on March 23, 2012. Dr. Russell noted that the claimant was doing well. He restricted the claimant from lifting more than 10 pounds. The claimant returned to light duty work on April 6, 2012.

¶ 23 Dr. Russell examined the claimant again on April 24, 2012. The claimant complained that he still had some pain when turning to the right. Dr. Russell modified the claimant's restrictions to lifting no more than 20 to 25 pounds.

¶ 24 The claimant returned to Dr. Russell for follow up on June 5, 2012, complaining of neck and right arm pain. Dr. Russell wrote in his patient notes that he performed flexion-extension views on the claimant, which failed to show any abnormal motion, but that the claimant stated that over the past week he had more pain in his right upper extremity posterolaterally involving the index and middle finger. Dr. Russell opined that it may be root irritation.

¶ 25 On June 26, 2012, Dr. Russell examined the claimant who complained of some neck and right shoulder and, at times, right forearm discomfort. Dr. Russell recommended an MRI scan, which was performed on July 2, 2012, and showed no definite acute findings, no spinal stenosis, and no definable abnormal enhancement.

¶ 26 On August 1, 2012, the claimant returned to Dr. Russell, complaining of pain between his shoulder blades and down his right arm. The claimant reported "taking vicodin like candy." Dr. Russell noted that the claimant had an MRI scan, which did not show any evidence of a recurring disc or malposition of the fusion. He noted that he was not sure that he could explain the claimant's arm symptoms and recommended an EMG and nerve conduction study.

¶ 27 On August 9, 2012, Dr. David Gelber performed an EMG and nerve conduction study. Dr. Gelber wrote in his report that the EMG and nerve conduction study of the upper extremities was suggestive of mild, chronic right C7 radiculopathy. He noted that

the changes were suggestive of old nerve root injury at that level and were in keeping with the claimant's cervical fusion. There was no evidence of ongoing cervical nerve root irritation, radiculopathy, ulnar neuropathy, or peripheral neuropathy.

¶ 28 On August 29, 2012, Dr. Russell reviewed the results of the EMG and nerve conduction study with the claimant. He opined that the study suggested a chronic C7 root irritation. The claimant testified that Dr. Russell prescribed Gabapentin and that it helped with the neuropathy in his arm; reduced the sharp, stabbing pain in his forearm; and reduced the numbness in his fingertips. Dr. Russell released the claimant to return to work without restrictions the following week. The claimant testified that he had been working without restrictions for the employer since September 12, 2012. He continues to take Gabapentin.

¶ 29 Dr. Russell examined the claimant on October 31, 2012. The claimant complained that his neck still hurt but stated that he took Gabapentin, which helped. Dr. Russell noted that the claimant had returned to work and that he could continue with his present level of activities. The claimant testified that if he does not take his medicine, the pain returns immediately. He also feels a slight weakness on his right side at times. He is able to perform his job, but he has to put in more effort because his right arm is not as strong as before.

¶ 30 Dr. Russell testified that the claimant told him he was an ambulance emergency medical technician (EMT), which involved frequent lifting of patients. He stated that, although he had not seen a job description of the claimant's job duties, he was familiar with the type of lifting a paramedic performs and assumed, from talking to the claimant

and other EMTs or ambulance personnel, that the claimant lifted multiple patients every day. Dr. Russell testified that some patients develop weakening of the annulus just by normal degenerative wear and tear changes, while in other patients it happens because of repetitive trauma. He opined that the claimant's "chronic spurring is obviously from repetitive things over a long time."

¶ 31 Dr. Russell was asked:

> "Assuming that [the claimant] did do that work for seven years and that he worked approximately 60 hours a week with 24 hours on and then 48 hours off, and that a lot of his work involved lifting patients, both at nursing homes and from bed to bed and things of that nature. I'm sure - - you said you're aware of the type of work that he did. Is that the type of - - or, do you have an opinion to a reasonable degree of medical certainty whether that type of work could have caused or contributed to the development of the herniated disc in the cervical level you saw?"

Dr. Russell responded in the affirmative. He stated that "it's reasonable that that type of activity can contribute to the type of problems [the claimant] had, yes."

¶ 32 Dr. Russell testified that the claimant did not give a history of experiencing any kind of trauma and initially thought he pulled a muscle in his shoulder. He opined that he suspected that the claimant's cervical condition was caused by traumatic events, although he did not know of a particular event that could have caused it. He testified that pulling with the arms, particularly with a heavy load, will exacerbate a cervical herniation.

¶ 33 Dr. Russell testified that typically with a cervical herniation there is initially neck pain, but the arm pain can be so severe that it overshadows the neck pain. Dr. Russell testified that there was probably an unidentified episode that caused the extrusion of the disc material through the tear in the annulus and that the claimant's repetitive work activities continued to be a causative factor in the development of that herniation.

¶ 34 Dr. Russell testified that the claimant had spurring in his neck caused by repetitive activities, which had been going on for several years, and that something happened causing him to rupture out a piece of disc, which caused him to start to develop weakness and pain in his arm. Dr. Russell testified that the claimant's work activities and his predisposing genetic factors, body habitus, and normal daily activities all contributed to the weakening of his disc; that there was likely an event where it herniated out; and that work activities were at least a contributing factor to the herniation. He stated that overall there was wear and tear from the claimant's lifting over several years and then something happened to cause him to begin experiencing the shoulder pain.

¶ 35 Orthopedic surgeon Dr. David Fardon testified by evidence deposition that he performed an independent medical evaluation of the claimant at the request of the employer on December 21, 2012. The claimant reported that his primary problem was pain in his neck and right forearm that began in December 2011, after a long, difficult shift at work as an EMT. Dr. Fardon testified that, after examining the claimant and reviewing his medical records, he diagnosed the claimant with arm pain and cervical disc herniation at C6-C7 status post discectomy and fusion. He stated that a cervical nerve impingement may cause pain radiating from the spine into the shoulders. He wrote in his

report that there was no evidence that the claimant was exaggerating any of his complaints or responses to the examination. Dr. Fardon testified that he agreed with the course of care and treatment that the claimant received, including the surgery. He noted in his report that the claimant had excellent medical care.

¶ 36 Dr. Fardon testified that he could not say with any reasonable degree of medical certainty that the claimant's cervical disc herniation was related to his job injury or job duties. He testified that he based this opinion on the fact that the medical records did not support the idea that the claimant's condition occurred because of some specific stress at work or that his job duties caused his condition. He opined that cervical disc herniations can, and often do, occur in the absence of an injury.

¶ 37 Dr. Fardon wrote in his report that the claimant had not reached maximum medical improvement and that he should be evaluated by an orthopedic surgeon to determine whether his residual forearm pain could be related to an abnormality in his forearm rather than his neck. He also felt the claimant's treating neurosurgeon should perform further diagnostic studies to see if they reveal a correctable residual foraminal stenosis at C6-C7 or another correctable lesion in his neck. He opined that the claimant did not need work restrictions. Dr. Fardon testified that the records he reviewed had been destroyed six months after the independent medical evaluation in keeping with the policy of the practice where he worked.

¶ 38 The arbitrator found that the claimant sustained an accident that arose out of and in the course of his employment and that his current condition of ill-being was causally related to the accident. He awarded the claimant temporary total disability benefits of

$567.13 per week from February 2, 2012, to April 2, 2012; temporary partial disability benefits of $385.80 per week from April 2, 2012, through September 6, 2012; and $127,276.41 in medical expenses. He also awarded the claimant permanent partial disability benefits of $510.42 per week for 125 weeks because the injuries sustained caused permanent partial disability to the extent of 25% loss of the person as a whole.

¶ 39 The arbitrator found that the claimant's work activities involved heavy to very heavy repetitive lifting and transferring of patients and emergency medical equipment. He found that the evidence indicated that there was no specific event that caused the claimant's injury. The arbitrator noted that, although the claimant stated that his pain began after a particularly difficult work day on December 10, 2011, he did not indicate a specific event occurring on that day. The arbitrator found that it was clear that on December 10, 2011, the claimant was unaware of the nature of his condition and did not consider it disabling. The arbitrator found that as of January 9, 2012, the claimant had verbally notified his supervisor that he was having right shoulder pain, which he attributed to the work he performed on December 10, 2011. The arbitrator found that the claimant’s condition of ill-being manifested itself on January 9, 2012, as that is the date on which both the fact of the injury and its possible relationship to work would have been apparent to a reasonable person. The arbitrator found that timely notice of the accident was given to the employer. The arbitrator found the opinions of Dr. Russell more persuasive than those of Dr. Fardon.

¶ 40 The employer sought review of the arbitrator's decision before the Commission, and the Commission reversed, finding that the claimant failed to prove he sustained

accidental injuries that arose out of and in the course of his employment on December 10, 2011, January 9, 2012, or February 13, 2012. The Commission found that all the parties were in agreement that the claimant did not provide a history of a specific trauma. It found that, as such, he needed to prove a repetitive trauma that manifested itself on a specific date and that was causally related to work. It held that the claimant provided two initial histories. He claimed that he noticed he had trouble getting comfortable when he was trying to sleep, and he had right shoulder pain for the prior four days. He also reported that he just woke up with shoulder pain. The Commission noted that two months after one of the three alleged manifestation dates, the claimant reported to Dr. Russell that he wanted to have his workers' compensation carrier, rather than his health insurance carrier, provide coverage for the claim. The Commission stated that the best individual to provide a causation opinion in repetitive trauma cases is the doctor and that, although Dr. Russell provided a positive causation opinion, it was elicited only after a hypothetical had been posed by the claimant's attorney. The Commission noted that Dr. Russell testified that there was no way of knowing whether the claimant's job duties or his everyday activities were more of a factor in aggravation of his condition. The Commission denied the claim for compensation finding that based on all of the evidence, including the claimant's testimony and the histories he provided to the doctors, he failed to prove he sustained a repetitive trauma arising out of his work on any of the alleged accident dates.

¶ 41 The claimant sought judicial review of the Commission's decision in the circuit court of McLean County. The circuit court confirmed the Commission's decision. The claimant now appeals. We reverse.

¶ 42 **ANALYSIS**

¶ 43 The claimant argues that the Commission's determination that he did not suffer an accident that arose out of and in the course of his employment was against the manifest weight of the evidence. An employee's injury is compensable under the Act if it arises out of and in the course of his employment. 820 ILCS 305/2 (West 2010). Whether an injury arises out of and in the course of employment is a question of fact for the Commission to decide, and its determination will not be disturbed unless it is against the manifest weight of the evidence. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 312, 901 N.E.2d 1066, 1079 (2009). For a finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill. App. 3d 915, 921, 828 N.E.2d 283, 289 (2005). Although we are reluctant to set aside a 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. *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040, 723 N.E.2d 846, 849 (2000).

¶ 44 An injury arises out of employment when its origin is in some risk connected with or incidental to the employment so as to create a causal connection between the employment and the accidental injury. *City of Springfield*, 388 Ill. App. 3d at 313, 901 N.E.2d at 1079. "An employee who suffers a repetitive-trauma injury still may apply for

benefits under the Act, but 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).

¶ 45 "The Commission often categorizes compensable injuries into two types--those arising from a single identifiable event and those caused by repetitive trauma." *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773, 780 (2005). The phrase "repetitive trauma" was developed to establish a date of accidental injury for purposes of determining when limitations statutes, and notice requirements, begin to run. *Id.* "The categorization of an injury as due to repetitive trauma and the corresponding establishment of an injury date are necessary to fulfill the purpose of the Act to compensate workers who have been injured as a result of their employment." *Id.* The purpose of the Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand*, 224 Ill. 2d at 66, 862 N.E.2d at 925. The date of the injury, or the manifestation date, in a repetitive-trauma case is the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Id.* at 67, 862 N.E.2d at 926. Because repetitive-trauma injuries are progressive, the claimant's medical treatment, as well as the severity of the injury and how it affects his job performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work. *Id.* at 72, 862 N.E.2d at 929. An employee alleging repetitive trauma must still show that

the injury is work related and not the result of a normal degenerative aging process. *Edward Hines Precision Components*, 356 Ill. App. 3d at 194, 825 N.E.2d at 780.

¶ 46 Compensation may be awarded under the Act for a claimant's condition of ill-being even though the conditions of his employment do not constitute the sole, or even the principal, cause of injury, so long as the claimant shows that some act or phase of the employment was a causative factor of the resulting injury. *Fierke*, 309 Ill. App. 3d at 1040, 723 N.E.2d at 849. An injury caused by the performance of the claimant's job is considered accidental if it develops gradually over a period of time as a result of repetitive trauma, even if it doesn't cause complete dysfunction. *Id*. "A nonemployment related factor which is a contributing cause with the compensable injury in an ensuing injury does not break the causal connection between the employment and claimant's condition of ill-being." *Id*. It is irrelevant that other incidents, whether work related or not, may have aggravated the claimant's condition. *Id*.

¶ 47 The claimant argues that the Commission erred in determining that he failed to prove a causal connection between his condition of ill-being and his repetitive-trauma accident. "Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence." *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081. In the instant case, there is no dispute that the claimant suffered from arm pain and a disc herniation at C6-C7. The issues of whether the claimant proved he sustained an accident resulting from repetitive trauma and whether his condition of ill-being is causally related to his work activities hinge on the medical opinions and testimony. The

issues are closely related and we will address them together.

¶ 48 The claimant had worked as a paramedic since 1999 and had worked for the employer since April 2005. He worked, on average, 96 hours over a two-week period and averaged 16 to 18 calls per shift. Every call involved bringing a jump bag weighing approximately 50 pounds and a cardiac monitor weighing about 20 pounds. Patients were transported on a 120-pound cot that had to be carried up and down stairs. The claimant and his partner had to lift the patient to the cot and then transfer the patient to the emergency room stretcher upon arrival at the hospital. The claimant characterized the lifting as heavy to very heavy. Dr. Russell testified that the claimant told him he was a paramedic and did frequent lifting of patients. He further stated that he was familiar with the type of lifting a paramedic performed and, based on information from the claimant and other ambulance personnel, assumed that the claimant lifted multiple patients every day. The claimant's job clearly involved heavy repetitive lifting.

¶ 49 The Commission found that the claimant failed to prove he sustained an accidental injury that arose out of his employment on December 10, 2011, January 9, 2012, or February 13, 2012. It noted that the claimant had to prove that his repetitive trauma injury manifested itself on a specific date that was causally related to work. It found that the claimant provided two histories of injury: first that he had trouble getting comfortable when trying to sleep and had right shoulder pain for the previous four days and second that he just woke up with right shoulder pain. The Commission noted that the claimant did not mention that his injury was a workers' compensation injury until Dr. Russell examined him on February 29, 2012. The Commission found that the histories

the claimant gave his medical providers at the start of his treatment contradicted his testimony. The Commission noted that Siltman recorded a specific history of an accident but that the claimant denied a specific work accident.

¶ 50 The claimant testified that on December 10, 2011, after a heavy call day involving 20 to 24 calls, he noticed right shoulder pain when he tried to sleep at work. He testified that on December 16, 2011, he told Dr. Sagins that he noticed this pain at work when trying to sleep. Dr. Sagins' patient notes state that the claimant noticed his right shoulder pain when trying to get comfortable while trying to go to sleep but do not mention whether it was at work or at home. The history of when he noticed his shoulder pain is the same, but the claimant's testimony included the additional fact that he was trying to sleep on his 24 hour work shift. Dr. Borowiecki's patient notes dated December 27, 2011, state that the claimant "just woke up" with the right shoulder pain. The claimant related his pain to his work when he wrote in the patient history he completed for his December 27, 2011, examination by Dr. Borowiecki, that he had right shoulder pain that was aggravated by the lifting and moving in his job. The claimant testified that after his appointment with Dr. Borowiecki, he reported his pain to Siltman and explained that he felt that it was the result of working particularly hard during his December 10, 2011, shift. In Dr. Russell's patient notes dated February 16, 2012, he wrote that the claimant woke up with right shoulder pain. In his summary of his injury, the claimant wrote that he woke up with right shoulder pain. While there are some slight variations in his histories, each of the histories indicates that the claimant noticed right shoulder pain while sleeping.

¶ 51 On February 19, 2012, at Siltman's request, the claimant completed a summary of events of his injury, in which he wrote "[w]hile on shift the day of Sat 12/10/2011 I woke in the early morning to answer a call and noticed my right shoulder was a little sore." He wrote that at first he thought it was just a sore shoulder and some inflammation and "did not want to expose the company to a workers' compensation claim" for something so minor. As the pain worsened and migrated to his neck, back, and left arm, he sought further medical treatment and learned it was caused from a herniated disc at C6-C7. On February 13, 2012, Dr. Narla referred him to Dr. Russell for consultation about treatment options. Despite this synopsis prepared by the claimant at Siltman's request, the next day Siltman prepared a report stating that the claimant was injured on December 10, 2011, at 1930 hours at Lincoln Memorial Hospital while lifting/pulling a patient from cot to cot. The claimant admitted telling Siltman that his pain started on December 10, 2011, after a particularly busy shift, but he denied reporting a specific accident. There is nothing in the record that corroborates the report prepared by Siltman that the claimant suffered an accident at Lincoln Memorial Hospital.

¶ 52 The Commission focused on a portion of Dr. Russell's February 29, 2012, patient notes where he wrote that "[u]nfortunately [the claimant] has changed his insurance now to a Workers' Comp." The Commission then states that the claimant "specifically stated that he has 'given this some thought over the last couple of months' and 'it has been advised to him to turn it into a workers' compensation claim.' " Dr. Russell wrote:

> "Unfortunately he has changed his insurance now to a Workers' Comp as he has given this some thought over the last couple of months. He originally thought he

had pulled his shoulder at work and did not think too much of it, but now as this has gone on it has been advised to him to turn it in as a Workers' Comp claim."

After this, Dr. Russell wrote in his patient notes that the claimant had a large herniated disc at the C6-C7 level with C7 radiculopathy, that the epidural injection failed to provide any benefit, and that he outlined the claimant's surgical option along with its risks. He ended by stating:

"I explained to him that we either have to have a thumbs up or thumbs down from his insurance Workers' Comp carrier before we can proceed with surgery. Hopefully, we will be able to get that done in the very near future because of the severity of his weakness."

When read in context, Dr. Russell's concern about the claimant making a worker's compensation claim related to the amount of time it would take to receive approval for the surgery. Additionally, Dr. Russell corroborates the claimant's written synopsis of events that originally he thought he had a sore shoulder and some inflammation and did not want to turn in a workers' compensation claim for something so minor, but as it became clear that his problem was more severe, he determined that a workers' compensation claim was appropriate.

¶ 53 The claimant consistently denied a specific accident. He filed three applications of claim listing December 10, 2011, January 9, 2012, and February 13, 2012, as accident dates. He identified December 10, 2011, as the date that he first noticed his shoulder pain after a particularly arduous shift. He originally thought he simply had a sore shoulder with inflammation. Dr. Sagins originally assessed him with right shoulder pain. After it

did not improve, Dr. Sagins referred him to Dr. Borowiecki. Dr. Borowiecki examined him and referred him to Dr. Narla because Dr. Borowiecki could not elicit any symptoms that could be attributable to the shoulder joint or subacromial space. The claimant reported his injury to Siltman and explained that Dr. Borowiecki was not certain about the source of his pain, but thought it might be a neck injury. On January 9, 2012, Dr. Narla examined him and noted that he presented with a typical C7 radiculopathy from a C6-C7 disc herniation. Dr. Narla recommended an MRI scan, which was performed on January 13, 2012, and showed a severe right neural foraminal stenosis at C6-C7 secondary to a moderate sized right neural foraminal disc protrusion. On February 13, 2012, Dr. Narla examined the claimant, reviewed the MRI scan results, and opined that the claimant's symptomology, with pain spreading to the neck area indicated it was likely from a C6-C7 foraminal disc protrusion and narrowing, producing C7 radiculopathy. Dr. Narla referred the claimant to Dr. Russell. In listing December 10, 2011, January 9, 2012, and February 13, 2012, as alternative accident dates, the claimant was listing the date he originally noticed his shoulder pain, the date he received a possible diagnosis, and the date he received a firm diagnosis.

¶ 54 The claimant noticed his pain after a particularly arduous workday on December 10, 2011, but he was unaware of the nature of his condition and did not consider it disabling. He thought his shoulder was just sore and inflamed and he was able to continue working. His symptoms progressed and after Dr. Borowiecki eliminated a shoulder condition as the cause of his complaints, he was referred to Dr. Narla. On January 9, 2012, Dr. Narla diagnosed the claimant with a C7 radiculopathy from a C6-C7

disc herniation. This was when the claimant knew the nature of his injury and its possible relationship to his employment. The manifestation date of a repetitive-trauma injury is not necessarily the date on which the employee notices the injury. *Durand*, 224 Ill. 2d at 68, 862 N.E.2d at 927. Because repetitive-trauma injuries are progressive, courts look at the employee's medical treatment as well as the severity of the injury and how it affects his ability to perform his job in determining the manifestation date. *Id*. at 72, 862 N.E.2d at 929. The claimant's manifestation date, as found by the arbitrator, was January 9, 2012, the date his injury and its causal relationship to his employment would have become plainly apparent to a reasonable person.

¶ 55 The Commission noted that the best individual to provide a causation opinion in a repetitive-trauma case is the claimant's physician. It found that Dr. Russell provided a positive causation opinion only after the claimant's attorney posed a hypothetical question. The Commission then stated that "[w]hile hypotheticals can be used to elicit causation opinions, [it] finds by and large that they are only used when the doctor is provided with less than the necessary information needed in which to independently reach a supportable causation opinion." "The purpose of the hypothetical question is to provide either party with the opportunity to explore the expert's opinion with respect to assumptions of fact that are based in evidence either directly or by circumstantial evidence." *Kane v. Northwest Special Recreation Association*, 155 Ill. App. 3d 624, 629, 508 N.E.2d 257, 260 (1987). As the trier of fact, the Commission may determine the weight to be given a hypothetical. *Hebeler v. Industrial Comm'n*, 207 Ill. App. 3d 391, 396, 565 N.E.2d 1035, 1038 (1991). Just because Dr. Russell provided a positive

causation opinion after the claimant's attorney posed a hypothetical question does not make his response less credible. The issue is not that his opinion was based on a hypothetical, but whether his opinion was credible.

¶ 56 Although Dr. Russell gave a positive causation opinion after being asked a hypothetical question, this was not the only causation opinion he provided. Dr. Russell testified that the claimant reported he was an EMT, that he "did a lot of lifting of patients," and that these work activities might cause or contribute to the development of his herniated disc. Dr. Russell also testified that something acute occurred that caused the claimant to rupture "out a piece of disc" causing arm weakness and pain and that he suspected it was caused by lifting at work. Dr. Russell further testified that the claimant's work activities contributed to his herniation.

¶ 57 The Commission acknowledged that Dr. Russell testified that there was probably an unidentified episode that caused the extrusion of disc material through the tear in the annulus and that the claimant's repetitive work activities continued to be a causative factor in the development of that herniation. However, the Commission also noted that Dr. Russell stated that an acute herniation could occur with lifting, coughing, sneezing, twisting, and bending and that there was no way to know whether the claimant's job duties or everyday living was *more* of a factor in the aggravation of his condition. It does not matter whether the claimant's job duties or his everyday living was *more* of a factor in the aggravation of his condition of ill-being. "To result in compensation under the Act, a claimant's employment need only be a causative factor in his condition of ill-being; it need not be the sole cause or even the primary cause." *Tower Automotive v. Illinois*

Workers' Compensation Comm'n, 407 Ill. App. 3d 427, 434, 943 N.E.2d 153, 160 (2011).

¶ 58 The Commission focused on the fact that the claimant did not describe an event that caused the herniation and only mentioned that he thought it was work related. The Commission found compelling Dr. Fardon's testimony that the medical records did "not support any specific stress at work and [did] not support that any of [the claimant's] job duties caused this condition." Both Dr. Fardon and Dr. Russell agree that the herniation was likely caused by a specific event. Dr. Russell testified that there was probably an unidentified episode that caused the extrusion of disc material through the tear in the annulus. In his independent medical evaluation, Dr. Fardon states that the medical records did not sufficiently support the claimant's recollection "that his symptoms from this disc herniation began from a work injury." He testified that the medical records did not "support the idea that this occurred because of some specific stress at work." The claimant testified and the medical records support that the claimant could not identify a specific accident that caused his condition of ill-being. He asserted that his condition was the result of repetitive trauma.

¶ 59 To establish causation under the Act, the claimant need not 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 in his condition of ill-being. *Tolbert v. Illinois Workers' Compensation Comm'n,* 2014 IL App (4th) 130523WC, ¶ 54, 11 N.E.3d 453. In repetitive trauma cases, the claimant generally relies on medical testimony to establish a casual connection between the work performed and his disability. *City of* Springfield, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081. Dr. Fardon offered no opinion

as to whether the claimant's work duties could be *a* causative factor. He only addressed whether he thought the claimant's work activities caused the claimant's condition of ill-being and he stated that it did not because the claimant and the medical records did not identify a specific event that caused his condition. Dr. Fardon was not asked, nor did he address, whether the claimant's job duties could have aggravated his condition of ill-being.

¶ 60 Dr. Russell testified that the claimant had neck spurring caused by repetitive activities; that something happened to cause him to rupture a piece of disc; and that his work activities, predisposing genetic factors, body habitus, and normal daily activities all contributed to the weakening of the disc. Dr. Russell stated that although he did not know what caused the rupture, the claimant's work activities may have caused, or were at least a contributing factor to, the herniation.

¶ 61 It is the Commission's function to judge the credibility of witnesses and resolve conflicting medical evidence. *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081. There were no conflicting medical opinions. Dr. Fardon provided no medical opinion on whether the claimant's job duties aggravated his condition of ill-being. Dr. Russell opined that the claimant's job duties, at a minimum, aggravated his condition of ill-being. Thus, Dr. Russell provided the sole medical opinion on the issue of aggravation.

¶ 62 The claimant presented credible medical evidence that his work duties were a causative factor in his condition of ill-being. "The fact that a work-related accident may aggravate or accelerate a preexisting condition does not mean that the employee is not

entitled to benefits, so long as the work-related accident was a factor contributing to the disability." *Kishwaukee Community Hospital*, 356 Ill. App. 3d at 922, 828 N.E.2d at 290. The Commission's determination that the claimant's condition of ill-being was not causally related to his work activities was against the manifest weight of the evidence.

¶ 63 The claimant's job required heavy and repetitive lifting. He first noticed pain in his right shoulder on December 10, 2011. He had a particularly arduous day at work where he and his partner went on an unusually high number of calls, and he attributed his pain to his work. He went to Dr. Sagins on December 16, 2011, and was diagnosed with right shoulder pain. His pain worsened and he sought medical treatment. He continued attributing his pain to the lifting at work. Dr. Borowiecki referred him to Dr. Narla to identify the source of his pain. On January 9, 2012, Dr. Narla recommended cervical spine MRI scan because the claimant presented with a typical C7 radiculopathy from a C6-C7 disc herniation on the right side. The claimant continued to work until February 2012. On February 13, 2012, Dr. Narla examined the claimant, reviewed the results of his MRI scan, and diagnosed him with a C6-C7 foraminal disc protrusion. Dr. Russell testified that he suspected that the claimant's work activities caused his herniation and opined that they at least contributed to his condition of ill-being. Dr. Fardon provided no opinion on the issue of aggravation. The claimant met his burden of proving that his work activities were a causative factor in his condition of ill-being. The Commission's findings that the claimant failed to prove he sustained an accident that arose out of and in the course of his employment and that his condition of ill-being was causally related to his work accident are against the manifest weight of the evidence.

¶ 64 **CONCLUSION**

¶ 65 For the foregoing reasons, the judgment of the circuit court of McLean County, which confirmed the decision of the Commission, is reversed, the decision of the Commission is reversed, and the matter is remanded to the Commission for further proceedings consistent with this decision.

¶ 66 Reversed and remanded.