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NOS. 4-15-0731WC, 4-15-0732WC, 4-15-0792WC & 4-15-0794WC cons.

Order filed September 27, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

NO. 4-15-0731WC

LISA CRITCHFIELD,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Jersey County.
	)	
v.	)	No. 14-MR-64
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Joshua A. Meyer,
(Jersey Community Hospital, Appellee).	)	Judge, presiding.

NO. 4-15-0732WC

JERSEY COMMUNITY HOSPITAL,	)	Appeal from the
	)	Circuit Court of
Appellee,	)	Jersey County.
	)	
v.	)	No. 14-MR-65
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Joshua A. Meyer,
(Lisa Critchfield, Appellant).	)	Judge, presiding.

NO. 4-15-0792WC

LISA CRITCHFIELD,	)	Appeal from the
	)	Circuit Court of
Appellee,	)	Jersey County.
	)	
v.	)	No. 14-MR-64
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Joshua A. Meyer,
(Jersey Community Hospital, Appellant).	)	Judge, presiding.

NO. 4-15-0794WC

JERSEY COMMUNITY HOSPITAL,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Jersey County.
	)	
v.	)	No. 14-MR-65
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Joshua A. Meyer,
(Lisa Critchfield, 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 circuit court's order confirming the Commission's decision on remand was affirmed, holding that the Commission's finding in its original decision that April 4, 2006, was the manifestation date of the claimant's repetitive-trauma injury was against the manifest weight of the evidence and the Commission's finding in its decision on remand that the claimant failed to prove that her current conditions of ill-being were causally related to her employment was not against the manifest weight of the evidence.

¶ 2 On August 20, 2010, the claimant, Lisa Critchfield, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), against the employer, Jersey Community Hospital, seeking benefits for a repetitive-trauma injury with a manifestation date of January 4, 2010. After a hearing, the arbitrator found that the manifestation date was April 4, 2006, rather than January 4, 2010, as alleged and, therefore, denied her claim as time-barred under the statute of limitations and for lack of timely notice. The claimant sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision.

¶ 3 The claimant sought judicial review of the Commission's decision in the circuit court of Jersey County, which reversed the Commission's decision as against the manifest weight of the evidence and remanded the matter to the Commission for a determination on the merits. The employer appealed to this court, but the appeal was dismissed for lack of appellate jurisdiction over a nonfinal order.

¶ 4 On remand, the Commission denied the claimant's workers' compensation claim. The Commission found that the claimant failed to prove that her current conditions of ill-being were causally related to her employment.

¶ 5 The claimant sought judicial review of the Commission's decision in the circuit court in case No. 14-MR-64. The employer also sought judicial review in case No. 14-MR-65 to preserve its right to appeal the court's original order. The cases were consolidated, and the court confirmed the Commission's decision on remand.

¶ 6 Both the claimant and the employer filed timely notices of appeal in both case No. 14-MR-64 and case No. 14-MR-65. The four appeals were consolidated.

¶ 7 BACKGROUND

¶ 8 On August 20, 2010, the claimant filed an application for adjustment of claim under the Act against the employer, seeking benefits for a repetitive-trauma injury to her right shoulder, with a manifestation date of January 4, 2010. The following recitation of facts is taken from the evidence presented at the October 24, 2011, arbitration hearing.

¶ 9 The claimant is a medical sonographer and has performed diagnostic ultrasounds since 1992. She has worked for the employer since 2000. She works eight hours per day, four days per week, performing ultrasounds and echocardiograms.

¶ 10 On April 4, 2006, the claimant saw Dr. Michael McNear for right shoulder pain. She denied any prior right shoulder injuries and reported that she performed ultrasounds at work, that her right shoulder pain had increased over the past couple of years, and that it seemed worse since "changing procedures" at work. Dr. McNear noted that the claimant also engaged in weight training. He diagnosed right shoulder tendonitis and advised the claimant to rest her shoulder, which included no weight lifting with her shoulder and trying to use her left hand while operating the ultrasound machine. He prescribed prednisone and recommended a right shoulder X-ray. The right shoulder X-ray performed on April 7, 2006, showed no evidence of bone or joint disease.

¶ 11 The claimant testified that she is right hand dominant and that she learned to perform ultrasounds and echocardiograms using her right hand. She stated that it was

impossible to alternate use of her right hand with her left hand during the scanning procedures, except for brief periods when she could not reach an area with her right hand.

¶ 12 The claimant testified that she did not seek further medical treatment for her right shoulder for almost four years. On January 4, 2010, she noticed that her right shoulder had been getting worse and had gotten to the point where she knew she needed to do something. On January 5, 2010, she told her supervisor that she was having right shoulder pain while performing ultrasounds and echocardiograms. She also reported that she was having elbow pain that burned as well as tingling in her fourth and fifth fingers.

¶ 13 The claimant testified that performing ultrasounds makes her shoulder burn and that performing echocardiograms, especially on heavier patients, makes her shoulder hurt even worse. She stated that, during echocardiograms, which usually take about 20 minutes, she sits behind the patient with the patient facing away from her, reaches around the patient with her right hand, and pushes up on the patient's ribs. She has to push harder on heavier patients to get a good image because there is more tissue to go through.

¶ 14 The claimant testified that she had reviewed the employer's job video, which shows her performing an echocardiogram. In January 2010, she was averaging three or four echocardiograms per day, and she was also performing ultrasounds for obstetrics and gynecology, vascular, and general abdomen, performing 8 to 10 studies in a typical shift. She had a 30-minute lunch break during her eight-hour shift. She used to sit while performing ultrasounds, but it is now easier on her shoulder to stand. The procedures that make her shoulder hurt the worst are echocardiograms, sonograms on full term obstetric patients, and transvaginal ultrasounds. She testified that performing ultrasounds on full

term obstetric patients is difficult on the shoulder, but echocardiograms are the most awkward because she has to reach across the patient's belly at shoulder height and hold her arm up for an extended period of time. She stated that performing transvaginal ultrasounds also requires her arm to be at shoulder height for an extended period of time. Noting that the patient shown in the video weighed only 90 pounds, she testified that she was doing less reaching or pressure during the procedure shown on the video than she would have been doing for heavier patients.

¶ 15 On April 6, 2010, the claimant saw Dr. Craig Beyer, an orthopedic surgeon, reporting right shoulder pain and numbness and tingling in the ulnar nerve distribution. She stated that she was an avid runner and that she had received no treatment for her "on-again, off-again" shoulder symptoms for several years. Dr. Beyer diagnosed rotator cuff tendonitis and symptoms of cubital tunnel syndrome, recommended conservative treatment, and gave her a right shoulder injection.

¶ 16 On May 24, 2010, Dr. Beyer recommended an MRI scan of the claimant's shoulder and an EMG study, noting that she had been symptomatic for six years. On June 28, 2010, he reviewed the results of the MRI scan and EMG study with her. He noted that the EMG study performed on June 17, 2010, was unremarkable for any ulnar nerve compromise, and he felt that her elbow complaints were a minor issue. He observed that the MRI scan performed on June 7, 2010, showed rotator cuff tendonitis with impingement but no evidence of partial or full thickness tear. He gave her the option of undergoing surgery.

¶ 17 On September 13, 2010, the claimant sought a second opinion from Dr. George Paletta, an orthopedic surgeon. Dr. Paletta testified by way of evidence deposition. The claimant gave a history of right shoulder pain with numbness and tingling into the fourth and fifth fingers of her right hand with gradual onset of symptoms over the course of a couple of years and no history of injury or trauma. She stated that she particularly noticed her symptoms when she started performing a lot of echocardiograms. She told Dr. Paletta that, to perform the echocardiograms, she has to reach around and push up on the patient, which involves repetitive cross-body reaching and corresponds with an increase in her shoulder pain.

¶ 18 Dr. Paletta repeated right shoulder X-rays, which he found to be normal with no signs of arthritis. He reviewed the June MRI films of the right shoulder, which he testified showed inflammatory changes or irritation in the AC joint. He stated that there was some evidence of impingement by the acromion upon the rotator cuff without evidence of a rotator cuff tear. He thought that the main issue was the AC joint irritation.

¶ 19 Dr. Paletta also reviewed the EMG studies, which he testified were basically normal at the elbow. Although the claimant had mild bilateral carpal tunnel, she did not have carpal tunnel symptoms so that did not explain the numbness and tingling.

¶ 20 Dr. Paletta diagnosed chronic AC joint pain with secondary impingement in the right shoulder and recommended an AC joint injection under X-ray guidance as well as an oral cortisone Dose Pak followed by traditional non-steroidal anti-inflammatories. He testified that if the treatment did not relieve the claimant's symptoms after six weeks he would evaluate whether she would benefit from surgery.

¶ 21 As to the elbows, Dr. Paletta diagnosed a Type I hyper mobile ulnar nerve bilaterally, a pre-existing condition related to the claimant's anatomy, which is prone to irritation, particularly with repetitive flexion and extension activities. He noted that rest will help the symptoms but that the irritation typically recurs once the activities are resumed. He testified that patients with this condition usually need surgery. Because the claimant did not yet have any damage to the ulnar nerve, he opined that there was no urgency in performing the surgery. He indicated that she was capable of continuing to work full-duty for the employer.

¶ 22 Dr. Paletta opined that the claimant's repetitive job duties, particularly cross-body reaching that provokes the AC joint, are a causative factor in her shoulder complaints and necessitate the recommended treatment. As to the right elbow, he opined that, although she has the underlying hyper mobile nerve, which predisposes her to ulnar neuritis, the repetitive flexion-extension activities she does with her job are causative or exacerbating factors for her ulnar neuritis.

¶ 23 On cross-examination, Dr. Paletta acknowledged that he did not know of the claimant's running and weight lifting activities. He also agreed that one can "certainly see AC joint irritation in recreational athletes."

¶ 24 On December 20, 2010, at the employer's request, the claimant underwent an independent medical examination by Dr. James Emanuel, an orthopedic surgeon, who testified by evidence deposition. The claimant reported that she was an ultrasonographer and echocardiogram specialist, right hand dominant, and had first noticed shoulder pain three or four years earlier with no specific traumatic event. She reported noticing

discomfort in her shoulder as well as numbness and tingling in the ulnar nerve distribution while performing ultrasounds and echocardiograms. She indicated that she worked four days per week, eight hours per day, and that she performed seven or eight ultrasounds per day, each of which took 20 to 30 minutes. Her current complaints included constant pain and burning on the top and front portion of her right shoulder, which was worse with increased activities, such as cleaning house, running, and exercising. She indicated that she was an avid runner, trained for half marathons, and had shoulder pain and tingling and numbness in her right arm while running. She stated that she had also lifted weights until her shoulder pain prevented her from doing so.

¶ 25 Dr. Emanuel testified that he reviewed the medical records of Dr. Beyer and Dr. Paletta. He also reviewed the MRI films of the claimant's right shoulder and noted significant arthritic changes at the AC joint with fluid in the joint, hypertrophy of the joint with evidence of impingement. He also found evidence of subacromial bursitis but thought the rotator cuff and glenoid labrum looked normal. He also reviewed the results of the June 17, 2010, EMG test and found that they suggested bilateral carpal tunnel syndrome with no evidence of ulnar nerve entrapment.

¶ 26 Dr. Emanuel also reviewed the job duties video. He noted that the job duties shown on the video demonstrated very little shoulder or elbow work involving repetitive elbow flexion or extension that could cause or aggravate the claimant's shoulder or elbow condition. He opined that most of the movement was performed by the hand and wrist. Although the claimant's arm position in her job duties may cause symptoms, he did not believe her job duties made her condition worse. He noted that reaching during

echocardiograms could cause or aggravate pain in the AC joint but did not cause the arthritis in that joint.

¶ 27 As to the claimant's right shoulder, Dr. Emanuel diagnosed arthritis in the AC joint and subacromial bursitis with impingement on the rotator cuff. He opined that her job activities did not cause or aggravate her shoulder condition. Noting that she had reported that she engaged in long distance running and lifting weights and that her shoulder had bothered her while she was running, he testified that her outside activities probably caused or aggravated her condition. For her right shoulder, he recommended surgery, but he opined that the surgery was not related to an injury resulting from her work duties.

¶ 28 As to the claimant's right elbow, Dr. Emanuel diagnosed ulnar neuritis. He opined that this condition was not related to her work activities but was, instead, probably caused by the back and forth flexion and extension of her elbows while running. He recommended conservative treatment, but if conservative treatment failed, he recommended surgery. However, he opined that the surgery was not related to an injury resulting from her work duties.

¶ 29 The claimant acknowledged that she had always exercised and lifted weights and that if she exercised with weights it caused shoulder pain. She also testified that she had not missed any time from work as a result of her shoulder condition.

¶ 30 On November 10, 2011, the arbitrator filed her decision, finding that the manifestation date of the claimant's repetitive-trauma injury was April 4, 2006, when she noticed pain while performing ultrasounds in the course of her employment and first sought medical treatment, rather than January 4, 2010, as alleged. The arbitrator,

therefore, denied her claim as time-barred under the statute of limitations and for lack of timely notice.

¶ 31 The claimant sought review of the arbitrator's decision before the Commission. On December 4, 2012, the Commission filed its decision, affirming and adopting the arbitrator's decision.

¶ 32 The claimant filed a timely petition for judicial review of the Commission's decision in the circuit court. On August 16, 2013, the court reversed the Commission's decision as against the manifest weight of the evidence and remanded the matter to the Commission for a determination on the merits. The employer appealed to this court, but the appeal was dismissed for lack of appellate jurisdiction over a nonfinal order.

¶ 33 On October 24, 2014, the Commission entered its decision on remand, denying the claimant's claim. The Commission adopted Dr. Emanuel's opinions and found that the claimant failed to prove that her current conditions of ill-being were causally related to her employment. The Commission gave little weight to Dr. Paletta's opinions because he did not know of the claimant's running and weight lifting activities and acknowledged that it is not uncommon to see AC joint irritation in recreational athletes.

¶ 34 The claimant filed a timely petition for judicial review in the circuit court in case No. 14-MR-64. The employer also filed a timely petition for judicial review in case No. 14-MR-65 to preserve its right to appeal the court's original order. The cases were consolidated. On September 4, 2015, the court confirmed the Commission's decision on remand.

¶ 35 Both the claimant and the employer filed timely notices of appeal in both case No. 14-MR-64 and case No. 14-MR-65. The four appeals were consolidated.

¶ 36 ANALYSIS

¶ 37 The Commission issued two separate decisions in this case. We must review the Commission's original decision before addressing the decision on remand. See *F & B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 531, 758 N.E.2d 18, 22 (2001) ("When the original Commission decision is reversed because it is against the manifest weight of the evidence, this court initially considers the propriety of the original Commission decision before reviewing the Commission decision entered following remand."). We, therefore, begin by addressing the Commission's original decision.

¶ 38 On judicial review, the Commission will not be reversed unless its decision is contrary to law or its factual findings are against the manifest weight of the evidence. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). A reviewing court will not reweigh the evidence or reject reasonable inferences drawn from the evidence by the Commission simply because other reasonable inferences could have been drawn. *Id.* Factual findings are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Id.*

¶ 39 Section 6(d) of the Act provides that an injured employee must file a workers' compensation claim "within 3 years after the date of the accident." 820 ILCS 305/6(d) (West 2014). Section 6(c) of the Act provides that "[n]otice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident." 820 ILCS 305/6(c) (West 2014).

¶ 40 When an accident is sudden, the accident date is easy to determine; it is, of course, the date of the injury. *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. When an accident is not sudden, however, the accident date is more difficult to determine. *Id.*

¶ 41 In *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 527, 505 N.E.2d 1026, 1027 (1987), the claimant filed a workers' compensation claim on August 24, 1979, alleging that she had developed carpal tunnel syndrome as a result of her employment. Although she initially alleged that her injury occurred on October 5, 1976, the arbitrator amended her application to reflect an injury date of October 4, 1976, a date when she experienced symptoms at work. *Id.* at 528, 505 N.E.2d at 1027. On October 5, 1976, she saw a neurologist for pain, numbness, and tingling. *Id.* She continued working until August 23, 1977, when she underwent surgery for carpal tunnel syndrome. *Id.* The arbitrator awarded her benefits, finding that she had sustained an accidental injury as a result of repeated trauma to her wrist while operating large washing machines for the employer. *Id.* at 527, 505 N.E.2d at 1027. The Commission affirmed the award; the circuit court confirmed the Commission's decision on judicial review; and this court affirmed the circuit court's decision. *Id.*

¶ 42 The issue before the supreme court in *Peoria County* was whether an injury sustained as a result of work-related repetitive trauma is compensable under the Act without a finding that the injury occurred as a result of one specific incident traceable to a definite time, place, and cause. *Id.* The court found the purpose behind the Act best served by allowing compensation where an injury has been caused by the performance of

the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction. *Id.* at 529, 505 N.E.2d at 1028. The court explained:

> "Requiring complete collapse in a case like the instant one would not be beneficial to the employee or the employer because it might force employees needing the protection of the Act to push their bodies to a precise moment of collapse. Simply because an employee's work-related injury is gradual, rather than sudden and completely disabling, should not preclude protection and benefits. The Act was intended to compensate workers who have been injured as a result of their employment. To deny an employee benefits for a work-related injury that is not the result of a sudden mishap or completely disabling penalizes an employee who faithfully performs job duties despite bodily discomfort and damage." *Id.* at 529-30, 505 N.E.2d at 1028.

¶ 43 In *Peoria County*, the court held that the accident date in a repetitive-trauma case is the date on which the injury "manifests itself," *i.e.*, "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 531, 505 N.E.2d at 1029. Noting that the claimant worked on October 4, 1976, and experienced the symptoms of her injury, and that she sought medical treatment the next day and was told that her injury was job-related, the court found that October 4, 1976, was the last day she worked "before the fact of her injury and its causal connection to her employment became apparent to her." *Id.* The court, therefore, found that she filed her claim within three years of the date of her injury and affirmed this court's judgment. *Id.*

¶ 44 In the present case, the Commission found in its original decision that the manifestation date of the claimant's repetitive-trauma injury was April 4, 2006, rather than January 4, 2010, as alleged, and, therefore, denied her claim as time-barred by the statute of limitations and for lack of timely notice. On judicial review, the circuit court reversed the Commission's decision as against the manifest weight of the evidence and remanded the matter to the Commission for a determination on the merits.

¶ 45 The employer argues that the Commission's original decision was not contrary to law or against the manifest weight of the evidence. The employer's position, and the Commission's original decision, are based on the incorrect proposition of law that a repetitive-trauma injury has manifested itself, and an employee must, therefore, give notice to her employer, once she experiences symptoms and may attribute those symptoms to her employment. Illinois courts have repeatedly rejected this proposition. A review of several carpal tunnel syndrome cases decided after *Peoria County* is helpful.

¶ 46 In *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607, 608, 531 N.E.2d 174, 175 (1988), the claimant began experiencing numbness, tingling, and burning in his hands and elbows in 1981. The company doctor examined him and, based on an EMG test, told him that he suffered from carpel tunnel syndrome, but he refused surgery, opting for more conservative treatment. *Id.* In August 1982, further testing showed that his condition was deteriorating, but he still refused surgery. *Id.* On May 6, 1983, further testing again confirmed his deteriorating condition, and he finally agreed to surgery, which was performed on his right hand on May 12, 1983, and his left hand on August 3, 1983. *Id.* He filed his workers' compensation claim on April 5, 1984, alleging

an accident date of May 12, 1983, the date he had surgery. *Id.* at 608-09, 531 N.E.2d at 175. He later amended his accident date to May 11, 1983, on the theory that this was the last day he was exposed to repetitive trauma. *Id.* at 609, 531 N.E.2d at 175.

¶ 47 The arbitrator awarded the claimant benefits, and the Commission affirmed the arbitrator's decision, but the circuit court reversed the Commission's decision, finding that the claimant failed to prove that May 11, 1983, was the accident date. *Id.* This court reversed the circuit court's decision. *Id.* at 612, 531 N.E.2d at 177. Although the claimant acknowledged that he knew of his injuries and their relationship to his employment before May 11, 1983 (*id.* at 609, 531 N.E.2d at 175), we refused to read *Peoria County* that narrowly, stating:

> "To always require an employee suffering from a repetitive-trauma injury to fix, as the date of accident, the date [he] became aware of the physical condition, presumably through medical consultation, and its clear relationship to the employment is unrealistic and unwarranted.
>
> By their very nature, repetitive-trauma injuries may take years to develop to a point of severity precluding the employee from performing in the workplace. An employee who discovers the onset of symptoms and their relationship to the employment, but continues to work faithfully for a number of years without significant medical complications or lost working time, may well be prejudiced if the actual breakdown of the physical structure occurs beyond the period of limitation set by statute. [Citation.] Similarly, an employee is also clearly prejudiced in the giving of notice to the employer [citation] if he is required to

inform the employer within 45 days of a definite diagnosis of the repetitive-traumatic condition and its connection to his job since it cannot be presumed the initial condition will necessarily degenerate to a point at which it impairs [his] ability to perform the duties to which he is assigned. Requiring notice of only a *potential* disability is a useless act since it is not until the employee actually becomes disabled that the employer is adversely affected in the absence of notice of the accident. ***

We are not unmindful the date of accident is a significant one for fixing the legal relationships between the parties. *** The date of disablement, be it for reason of medical treatments such as surgery, or actual collapse of the physical structure, is but one aspect of the proof the parties may bring to bear on the issue of manifestation of the injury. Where, as here, the relationship between the injury to the employment is acknowledged by [employer] as well as the fact claimant continued to perform his duties until the day prior to the surgery required to correct the condition, the Commission could reasonably determine the last day claimant worked was the date of accident. In short, we hold the term 'fact of the injury' as used by the supreme court in *Peoria [County]* [citation] is not synonymous with 'fact of discovery.'

*** Nothing we say here should be interpreted as establishing an inflexible rule. Just as we reject [the employer's] contention the date of discovery of the condition and its relation to the employment necessarily fixes the date of accident, we reject any interpretation of this opinion which would permit the employee to

always establish the date of accident in a repetitive-trauma case by reference to the last date of work." (Emphasis in original.) *Id.* at 610-12, 531 N.E.2d at 176-77.

¶ 48 In *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 44, 556 N.E.2d 261, 262 (1989), the claimant began working for the employer on August 7, 1983. He used buffers to scrub, wax, and buff floors. *Id.* at 45, 556 N.E.2d at 262. After five months, he noticed swelling in his hands and shooting pain in his right arm and hand. *Id.* He saw his family doctor, who prescribed pain medication. *Id.* At that time, he was also being treated for a diabetic condition. *Id.* Over the next few months, he experienced more severe pain and then numbness and tingling in his fingers and hands and was referred to a neurologist. *Id.*, 556 N.E.2d at 262-63. On June 27, 1984, the neurologist performed an EMG test and sent a report to the family doctor that the claimant had carpal tunnel syndrome. *Id.*, 556 N.E.2d at 263. The family doctor discussed the neurologist's report with the claimant and referred him to an orthopedic surgeon. *Id.* The orthopedic surgeon examined him on July 10, 1984, and scheduled him for surgery in August 1984. *Id.* at 45-46, 556 N.E.2d at 263. The claimant then told his supervisor that he had work-related carpal tunnel syndrome. *Id.* at 46, 556 N.E.2d at 263. He continued working until August 10, 1984. *Id.*

¶ 49 The arbitrator denied the claimant's claim, finding that he failed to offer any evidence about when an accidental injury occurred. *Id.* The arbitrator found that if there was a work-related injury, it probably occurred in January 1984, when the claimant first noticed pain and swelling, not on August 10, 1984, when he left work. *Id.*

¶ 50 The Commission reversed the arbitrator's findings. *Id.* at 46-47, 556 N.E.2d at 263. Relying on *Peoria County*, the Commission awarded benefits, finding that the claimant's injury was work-related and that it manifested itself on August 10, 1984, when he left work. *Id.* at 47, 556 N.E.2d at 263-64. On judicial review, the circuit court confirmed the Commission's decision. *Id.*, 556 N.E.2d at 264.

¶ 51 In *Three "D"*, this court initially reversed the circuit court's decision but affirmed on rehearing. *Id.* We noted that the evidence demonstrated that the claimant's family doctor discussed the neurologist's report with him but did not demonstrate that the doctor told him that his condition was work-related. *Id.* at 47-48, 556 N.E.2d at 264. We found that he first learned that his condition was work-related sometime between July 10 and the first of August 1984. *Id.* at 48, 556 N.E.2d at 265. We found that, although he continued working until August 10, a reasonable person would have been on notice that his condition was both work-related and medically disabling on July 10. *Id.* After discussing *Oscar Mayer*, we stated:

> "An employee who continues to work on a regular basis despite his own progressive ill-being should not be punished merely for trying to perform his duties without complaint. On the other hand, it is not this State's policy to encourage disabled workers to silently push themselves to the point of medical collapse before giving the employer notice of an injury. Although our finding that the injury in this case 'manifested itself' on July 10, rather than August 10, does not affect the Commission's ruling in [the claimant's] favor, we emphasize that the peculiar facts of each case must be closely analyzed in repetitive-trauma cases to

be fair to the faithful employee and his employer as well as to the employer's compensation insurance carrier." *Id.* at 49, 556 N.E.2d at 265.

¶ 52 Finally, in *Durand*, 224 Ill. 2d at 56, 862 N.E.2d at 920, the claimant was hired as a clerical worker by the employer in 1990 and became a policy administrator in 1993. On January 29, 1998, she told her supervisor that she had noticed pain in her hands several months earlier, in September or October 1997, and that she believed the pain was work-related. *Id.* She continued working, and the pain increased. *Id.*

¶ 53 On August 15, 2000, the claimant saw a doctor, who concluded that her hand and wrist pain were "probably carpal tunnel" and referred her to a neurologist. *Id.* at 56-57, 862 N.E.2d at 920. On September 8, 2000, she saw the neurologist, who performed an EMG test, which confirmed carpel tunnel syndrome, and concluded that her condition was work-related. *Id.* at 57, 862 N.E.2d at 920. She filed her workers' compensation claim on January 12, 2001, listing her accident date as September 8, 2000, the date the neurologist conclusively diagnosed carpal tunnel syndrome. *Id.* at 58, 862 N.E.2d at 921.

¶ 54 The arbitrator awarded the claimant benefits, finding that her claim was timely because, although she had experienced symptoms of carpal tunnel syndrome much earlier, she was first officially diagnosed with carpal tunnel syndrome on September 8, 2000. *Id.* at 60-61, 862 N.E.2d at 922.

¶ 55 The Commission reversed the arbitrator's decision, finding that the claimant's workers' compensation claim was filed outside the three-year limitations period because the manifestation date was September or October 1997, when she experienced pain in her hands and wrists and believed the pain was work-related. *Id.* at 61, 862 N.E.2d at 922.

¶ 56 On judicial review, the circuit court confirmed the Commission's decision, and a majority of this court affirmed the circuit court's decision. *Id.* at 62-63, 862 N.E.2d at 923.

¶ 57 On appeal to the supreme court, the claimant argued that the Commission's finding that the manifestation date was September or October 1997 was against the manifest weight of the evidence. *Id.* at 65, 862 N.E.2d at 925. She argued that September 8, 2000, when she was conclusively diagnosed with carpal tunnel syndrome, was the manifestation date and, therefore, her January 12, 2001, claim was timely. *Id.*

¶ 58 After reviewing *Peoria County*, *Oscar Mayer*, and *Three "D"*, the court stated:

> "[The employer] argues, and we agree, that fairness and flexibility are the common themes in these cases. Indeed, the rule in *Peoria County* is broad enough to accommodate unique scenarios presented in different cases, and the Commission should weigh many factors in deciding when a repetitive-trauma injury manifests itself. But despite [the employer's] repeated invocations of flexibility, it asks us to limit the inquiry in this case to only one fact: the unspecified date in September or October 1997 on which [the claimant] first noticed her hand and wrist pain, opined it could be carpal tunnel syndrome, and guessed it may bear some relation to her work, but declined to mention it to her supervisor for at least three months.
>
> As the appellate court correctly noted in *Oscar Mayer*, 'To always require an employee suffering from a repetitive-trauma injury to fix, as the date of accident, the date the employee became aware of the physical condition, presumably

through medical consultation, and its clear relationship to the employment is unrealistic and unwarranted.' [Citation.] The inquiry is not so narrow. ***

*** [C]ourts considering various factors have typically set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. *** However, because repetitive-trauma injuries are progressive, the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work." *Id.* at 71-72, 862 N.E.2d at 928-29.

¶ 59 In *Durand,* the court noted that if the claimant had filed a claim in 1997, she would have had difficulty proving her injury. *Id.* at 74, 862 N.E.2d at 930. At that time, her description and understanding of her hand and wrist pain was sketchy and equivocal, and her pain was not so constant or severe that it warranted medical treatment or reassignment to different work. *Id.* Her pain did not necessitate medical treatment until 2000. *Id.* The court found that a reasonable person would not have known of this injury and its relationship to her employment before that time and that it was against the manifest weight of the evidence to find otherwise. *Id.* The court found the claim timely, stating: "We decline to penalize an employee who diligently worked through progressive pain until it affected her ability to work and required medical treatment." *Id.*

¶ 60 Against this legal background, the question before us in the present case is simply whether the manifestation date chosen by the Commission in its original decision was against the manifest weight of the evidence. We believe that it was.

¶ 61 Although the claimant sought medical treatment for right shoulder pain on April 4, 2006, it was, as the circuit court noted, a "singular office visit to a general practitioner" at which time she only had an x-ray and was only given a single course of steroids to treat the tendonitis in her shoulder and required no further medical treatment for her shoulder until almost four years later. Moreover, there was no evidence that her shoulder condition in April 2006 significantly affected her ability to perform her job. At that point, her shoulder condition was merely a *potential* disability. Accordingly, the Commission's determination in its original decision that April 4, 2006, was the manifestation date of the claimant's repetitive-trauma injury was against the manifest weight of the evidence. The evidence demonstrates that, as the claimant alleged, January 4, 2010, was the manifestation date of her repetitive-trauma injury. At that time, her condition had deteriorated to the point at which it was significantly affecting her ability to perform the duties of her employment, and she knew she needed to do something about it. She notified her supervisor of her shoulder and elbow pain the next day. Like our supreme court in *Durand*, we decline to penalize an employee for diligently working through progressive pain until it affected her ability to perform her job and required medical treatment. See *Durand*, 224 Ill. 2d at 74, 862 N.E.2d at 930.

¶ 62 The claimant's application for adjustment of claim filed on August 20, 2010, was, therefore, timely filed pursuant to section 6(d) of the Act, and her January 5, 2010, notice

to her employer was timely pursuant to section 6(c) of the Act. The circuit court, therefore, properly reversed the Commission's original decision and remanded the matter to the Commission for a determination on the merits.

¶ 63 We turn now to the Commission's decision on remand. The claimant argues that the Commission's finding that she failed to prove that her current conditions of ill-being were causally related to her employment was against the manifest weight of the evidence.

¶ 64 To establish causation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her ensuing injury. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 54, 11 N.E.3d 453. Whether there is a causal connection between a claimant's condition of ill-being and her employment is a question of fact for the Commission, and its determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Id.*, ¶ 53, 11 N.E.3d 453. For a factual finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Id.*

¶ 65 Here, Dr. Paletta opined that there was a causal connection between the claimant's current conditions of ill-being and her employment. Dr. Emanuel, on the other hand, opined that there was no causal connection between the claimant's current conditions of ill-being and her employment and that, instead, her current conditions of ill-being were probably caused by her activities outside of work, namely her long distance running and weight lifting.

¶ 66 It is the function of the Commission to judge the credibility of the witnesses, determine the weight to be given their testimony, and resolve conflicting medical

evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 223-24 (1980). The Commission exercised its proper function and simply found the opinions of Dr. Emanuel on the issue of causation more persuasive than those of Dr. Paletta. The Commission, therefore, adopted Dr. Emanuel's opinions and found that the claimant failed to prove that her current conditions of ill-being are causally related to her employment. The Commission gave little weight to Dr. Paletta's opinions because he did not know of the claimant's running and weight lifting activities and acknowledged that it is not uncommon to see AC joint irritation in recreational athletes. Based upon the record before us, we are unable to conclude that the Commission's reliance upon Dr. Emanuel's causation opinions and its conclusion that the claimant failed to prove that her current conditions of ill-being are causally related to her employment were against the manifest weight of the evidence, as an opposite conclusion is not clearly apparent.

¶ 67 CONCLUSION

¶ 68 For the foregoing reasons, we affirm the judgment of the circuit court of Jersey County, which confirmed the Commission's decision on remand.

¶ 69 Affirmed.