2016 IL App (5th) 140535WC-U

NOS. 5-14-0535WC, 5-15-0053WC & 5-15-0054WC (cons.)

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

NO. 5-14-0535WC

FREEBURG COMMUNITY SCHOOL DISTRICT #70,	)	Appeal from the Circuit Court of St. Clair County.
Appellant,	)	
v.	)	No. 13-MR-421
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (James D. Thoma, Appellee).	)	Honorable Stephen P. McGlynn, Judge, presiding.

NO. 5-15-0053WC

JAMES D. THOMA,	)	Appeal from the Circuit Court of
Appellant,	)	St. Clair County.
v.	)	No. 13-MR-366
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Freeburg Community School District #70, Appellee).	)	Honorable Stephen P. McGlynn, Judge, presiding.

NO. 5-15-0054WC

JAMES D. THOMA, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Freeburg Community School District #70, Appellee).	))))))))	Appeal from the Circuit Court of St. Clair County. No. 13-MR-367 Honorable Stephen P. McGlynn, 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 that he sustained accidental injuries arising out of and in the course of his employment on July 10, 2006, was not against the manifest weight of the evidence where his coworkers did not remember him hurting his back on that day, there was no documentation that he reported the accident despite his claim that he did, and he had a history of back trouble as far back as 1991. The Commission's determination that the claimant failed to prove that he sustained a repetitive trauma injury arising out of and in the course of his employment was not against the manifest weight of the evidence because he alleged his back injury was the result of two specific injuries. The Commission's determination that the claimant sustained an accidental injury on May 7, 2010, and that such injury caused his current condition of ill-being was not against the manifest weight of the evidence where the claimant testified about the accident, a coworker corroborated his testimony, the claimant was picked up from his place of employment by ambulance and taken to the hospital for treatment, and there was medical testimony that the accident aggravated his condition.

¶ 2 This case involves three different claims for workers' compensation benefits brought by the claimant, James D. Thoma, against his employer, Freeburg Community School District #70. In the first claim (5-15-0053WC), the claimant alleged that he injured his mid-back on July 10, 2006, while assembling playground equipment. In the second claim (5-15-0054WC), he alleged a repetitive trauma injury to his mid-back with a manifestation date of November 7, 2008. In the third claim (5-14-0535WC), he alleged that on May 7, 2010, he injured his back while lifting a bucket.

¶ 3 The three claims were consolidated and proceeded to an expedited arbitration hearing under section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/19(b) (West 2006)). The arbitrator found that the claimant failed to prove he sustained accidental injuries arising out of and in the course of his employment on July 10, 2006, or repetitive trauma manifesting itself on November 7, 2008. However, the arbitrator found that on May 7, 2010, the claimant sustained an accident that arose out of and in the course of his employment with the employer and that his current condition of ill-being was causally related to the accident. The arbitrator awarded the claimant temporary total disability benefits of $481.67 from May 8 through May 16, 2010, and from August 5, 2010, through October 20, 2011. She further awarded him maintenance benefits of $418.67 per week from October 21 through December 8, 2011. She found that he reached maximum medical improvement on October 20, 2011, with permanent restrictions that the employer would not accommodate. She ordered the employer to pay medical expenses for the injuries sustained on May 7, 2010, and gave the employer credit

for expenses previously paid. She also ordered the employer to provide the claimant with vocational assistance.

¶ 4 The employer and the claimant sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (the Commission). The Commission corrected clerical errors but otherwise affirmed and adopted the arbitrator's decision.

¶ 5 The employer and the claimant filed timely petitions for review in the circuit court of St. Clair County. On September 29, 2014, the circuit court confirmed the Commission's decision regarding the May 7, 2010, accident. On January 21, 2015, the circuit court confirmed the Commission's decision in the other two claims. Both parties appeal. For the reasons that follow, we affirm and remand to the Commission for further proceedings.

¶ 6 BACKGROUND

¶ 7 The following factual recitation is taken from the evidence presented at the arbitration hearing on December 8, 2011.

¶ 8 The claimant testified that he worked as a custodian for the employer for 19½ years before his termination on June 27, 2011. His work duties included vacuuming, cleaning, dumping the trash, mopping, waxing the floors, mowing grass, and shoveling snow. During the summer, he had to move everything out of the classrooms, including file cabinets weighing 100 to 200 pounds each, and thoroughly clean the rooms. For nine months of each school year, he had to pull down the cafeteria tables so students could eat, and, when they finished, he cleaned the tables, folded them up, and rolled them back into

a closet. Each day, he moved 4 tables for breakfast and 10 for lunch. He estimated that each table weighed 100 pounds.

¶ 9 The claimant admitted to suffering from back problems over the years. He testified that he had physical therapy for his back around 1998 or 1999. Medical records dating back to 2001 were admitted into evidence. On March 16, 2001, Dr. Anwar Khan examined the claimant for complaints of back pain on and off for the prior four years. An October 15, 2001, MRI scan of the claimant's thoracic spine showed a herniated nucleus pulposus at T11-T12. In November 2001, the claimant underwent physical therapy for a thoracic/dorsal herniated disc. On December 13, 2001, Dr. Christopher Heffner examined the claimant for mid-thoracic back pain that had been present for a few years and that had not responded to physical therapy, anti-inflammatory medicines, or steroid injections by trigger point. Dr. Heffner reviewed the MRI scan and opined that the T11-T12 disk bulge was not likely causing his pain because of its size and location in relation to his pain. On January 22, 2002, Dr. Heffner examined the claimant and recommended the use of a TENS unit on a permanent basis. On April 3, 2003, the claimant had a chest X-ray for pain between his shoulder blades lasting two weeks with a history of lifting heavy objects at work and playing lots of sports. The X-ray revealed no significant degenerative spondylosis changes. The claimant testified that he saw chiropractors and underwent physical therapy in 2003. He stated that from February 1 through April 28, 2006, he underwent physical therapy for his back because lifting the cafeteria tables aggravated his back symptoms. He continued to work full duty during this time.

¶ 10 The claimant testified that on July 10, 2006, he and two coworkers, Jeff Lanter and Tim Havel, were assembling playground equipment. While assembling a swing set, he picked up a cross board weighing approximately 100 pounds, his back locked up, and he could not move for a few seconds. He told his coworkers that his back locked up and that he needed to lie down for a bit. He went into the teachers' lounge and lay on the floor. His coworker, PJ Gale, saw him and asked what was wrong. He had tears in his eyes from pain as he told her about his back. He finished the work day sitting down and taking it easy. He did not go back out to work on the playground equipment.

¶ 11 PJ Gale testified that she worked for the employer as a janitor. She stated that in July 2006, she was in the teachers' lounge when the claimant walked in bent over and said, "Oh, my God, I think I broke my back." She asked him how he hurt himself and he told her that it was assembling playground equipment. She stated that he lay down on the floor and started to cry.

¶ 12 Jeffrey Lanter testified that he had worked as a custodian for the employer since 2001. He did not remember the claimant injuring his back installing playground equipment. However, he did remember that at some point while they were assembling playground equipment, the claimant mentioned that his back hurt.

¶ 13 Timothy Havel testified that he worked as a custodian for the employer. He had known the claimant for a long time, and they socialized after work. He did not remember the claimant hurting his back while installing playground equipment. He first heard the claimant make that allegation sometime in 2009.

¶ 14 The claimant testified that one or two days after July 10, 2006, he reported the accident to Dr. Hawkins, the former school district superintendent. Dr. Hawkins told him to inform nurse Robin Skaer. He testified that Skaer does not work in the summer so he told her around the first week in August. He stated that, after he explained that he hurt his back working on the playground equipment, she told him that there were no accident reports and that he "had a bad back for years."

¶ 15 Robin Skaer testified that she was retired from working as a school nurse for the employer. She stated that she worked with the claimant when he started working for the employer and that she considered them friends as well as coworkers. Skaer testified that in 2006, she was in charge of workers' compensation cases. She stated that, pursuant to the employee handbook, work injuries were to be reported immediately to the administration or the nurse. She stated that if Dr. Hawkins received a report of an injury, he would contact her to do the paperwork. She testified that the claimant never came to her in 2006 to report that he had injured his back installing playground equipment and that Dr. Hawkins never told her that the claimant had reported a July 2006 work injury to him. She denied telling the claimant that she did not have any claim forms, stating, "That would be absurd, I have a copy machine two doors from me and I always had forms." She stated that she first learned the claimant was claiming a work injury in 2009. She looked through her files and did not find any reports of any back injuries.

¶ 16 Mark Janssen, the assistant superintendent for the employer, testified that he had known the claimant for about 20 years. He stated that he first received notice of the claimant's alleged July 2006 accident in the summer of 2009 when he received an

application for adjustment of claim. The notice surprised him, and he investigated. He talked to the interim superintendent, the other assistant superintendent, and Skaer. He asked Skaer to look into the claim and to check her files for any documentation from the claimant stating that he had injured his back in 2006. After Skaer reported that she did not find anything, he called the insurance agent. He stated that, after investigating, he made a recommendation to the interim superintendent to deny the claim because there was no documentation. He testified that "[i]f this was truly a work accident [he] firmly believe[d] something would have been said to someone, paperwork would have been filed, appropriate channels would have been followed and we didn't have that."

¶ 17 The claimant stated that between the July 2006 accident and reporting it to Skaer, he contacted his primary care physician, Dr. Christopher Schenewerk.

¶ 18 On August 8, 2006, the claimant had an MRI scan of his thoracic spine, which revealed a right posterior disc hernia at T10-T11 with moderate right lateral recess stenosis and a mass effect on the right anterior cord.

¶ 19 On August 28, 2006, Dr. Suada Spirtovic of the Memorial Hospital Pain Clinic examined the claimant for complaints of low mid-thoracic back pain. In the history of present illness portion of his report, Dr. Spirtovic wrote that the claimant had chronic low back pain and mid-thoracic area pain that started one year prior. He had undergone physical therapy with minimal improvement. Dr. Spirtovic diagnosed the claimant with disc herniation at T10-T11 with myofascial pain syndrome of intercostal muscles at T10 and T11 area. He recommended thoracic epidural steroid injections at T10-T11 and

trigger point injections and prescribed medication. The claimant had the injections on August 31, September 14, and October 11, 2006.

¶ 20 The claimant testified that while receiving the injections, he was restricted to lifting no more than 20 pounds. The employer allowed him to work with the restrictions. He stated that he did not file a workers' compensation claim at that time because he did not know about workers' compensation. His medical bills were paid through his employer-provided health insurance.

¶ 21 The claimant testified that starting in 2006 Dr. Schenewerk recommended he see Dr. Nicholas Poulos. From November 2006 until February 2008, he continued working full duty. He noted that heavy lifting caused pressure into his chest and pressure and pain between his shoulder blades. He stated that he did not see Dr. Poulos until February 2008 because he was on medication for depression, and he believed the medication would help the pain.

¶ 22 Dr. Poulos examined the claimant on February 7, 2008, for a neurological consultation for chronic intermittent thoracic spinal pain. Dr. Poulos wrote in a February 8, 2008, letter to Dr. Schenewerk that the claimant "has had pain for many years but it seems to have worsened in July 2006 when he was moving some playground equipment." The claimant reported that since then he had experienced pain in the thoracolumbar junction in the midline, as well as interscapular pain and, at times, it radiated bilaterally into his chest at the T5 or T6 level. Physical therapy and trigger point injections did not help. Dr. Poulos reviewed the claimant's August 8, 2006, MRI scan and wrote that the claimant had a small disc herniation at the T10-T11 level that appeared to be in a right

paracentral location with minimal cord compression. Dr. Poulos recommended symptomatic treatment including intramuscular injections, medication, and physical therapy. He did not believe the claimant's T10-T11 disc herniation was symptomatic. The claimant testified that he did not participate in physical therapy and instead returned to Dr. Schenewerk, who referred him to Dr. William Sprich for a second opinion.

¶ 23 On November 5, 2008, the claimant had an MRI scan of the thoracic spine. Dr. Brian McElaney wrote in his report that the previously identified small right paracentral disc herniation appeared stable but was actually at the T11-T12 level, not the T10-T11 level as previously reported. He noted a new small left paracentral herniated nucleus pulposus at T8-T9 extending into the neural foramen and a tiny right paracentral herniated nucleus pulposus at the T4-T5 level.

¶ 24 In a November 7, 2008, letter to Dr. Schenewerk, Dr. Sprich noted that the claimant was referred for complaints of possible thoracic disc disease. The claimant reported that he did a fair amount of heavy work that seemed to aggravate his discomfort. Dr. Sprich compared a 2008 MRI scan to a 2006 study and found that the fairly significant thoracic herniation at T11-T12 had not changed in appearance. He noted a smaller paracentral herniation of nuchal material at T8-T9 and some small changes at T4-T5 and maybe at T5-T6. He recommended a cervical MRI scan and, depending on the results, a provocative discography. He did not think the T11-T12 herniation accounted for the claimant's interscapular pain.

¶ 25 The claimant testified that he alleged November 7, 2008, as his second accident date because after his appointment with Dr. Sprich he realized that his 2006 accident and

all the heavy lifting his job required could be a cause of his back condition. He stated that Skaer frequently came through the lunchroom and that he constantly told her that lifting the tables bothered his back. Between November 2008 and March 2009, he continued his regular job duties.

¶ 26 Dr. Sprich examined the claimant on February 11, 2009. He reviewed the claimant's cervical MRI scan and found it completely normal. He opined that the claimant had a fairly significant herniation of nuchal material at T11-T12 but felt that based on the placement of his pain it could not be attributed to the herniation. He noted that the claimant had a newer problem at T8-T9 with some paracentral protrusion of nuchal materials, which was not present on his previous study. The claimant reported having the pain for about five years. Dr. Sprich planned to try a two-level discography at T8-T9 and T11-T12 to see if he could reproduce the claimant's pain.

¶ 27 On March 10, 2009, Dr. Richard Gahn performed a provocative thoracic discography at T8-T9 and T11-T12. He noted that there was a positive provocative thoracic discography at T11-T12 and a negative provocative thoracic discography at T8-T9. On the same day, the claimant had a CT scan of his thoracic spine. Dr. T.M. Vollmar wrote in his report that the claimant had a left protrusion at T8-T9 and a small right paracentral extrusion at T11-T12. On March 18, 2009, Dr. Sprich consulted with the claimant about his diagnostic discography. He opined that the discography showed the claimant had complete disruption with concordant pain at T11-T12 with negative discography at T8-T9, which correlated with his symptoms. He recommended surgery.

¶ 28 Dr. Sprich examined the claimant again on May 19, 2009, and recommended a transthoracic instrumentation and fusion of the T11-T12 disc space. The claimant testified that he decided to have the surgery because Dr. Sprich told him that he could return to work in two to three months and that he would be 80% better. He stated that about one week before his surgery Janssen asked if he was going to put the bills through under his health insurance or file a workers' compensation claim. Janssen denied the conversation. The claimant testified that after Janssen's question, he looked into workers' compensation, and, on July 2, 2009, he filed a claim.

¶ 29 On May 21, 2009, Dr. Sprich performed a transthoracic discectomy and instrumentation at T11-T12. On the same day, his partner, Dr. John Sadoff, performed a left thoracotomy with rib resections and exposure of the thoracic spine on the claimant.

¶ 30 In a Belleville Memorial Hospital nursing note dated May 22, 2009, the nurse wrote that the claimant stated that he was unable to remember a particular point when he hurt his back, that he had problems with his back for the past seven to eight years, and that he did a great deal of lifting in his job.

¶ 31 On October 26, 2009, Dr. Sprich authorized the claimant to return to light duty work on November 2, 2009, including occasionally lifting no more than 15 pounds and no repetitive pushing, pulling, or bending.

¶ 32 On January 27, 2010, neurologist Dr. Panduranga Kini wrote a letter to Dr. Sprich about his consultation with the claimant. The claimant told Dr. Kini that his job involved lifting lunchroom tables and that, in July 2006, his back had given out and since then he had experienced back pain. Dr. Kini wrote that the claimant had widespread chest pain,

both front and back, and that his neurological examination was normal. He noted that the claimant had a history of treatment for depression and recommended that the claimant ask his doctor to increase his depression medication because he felt that it might help both his depression and his pain. He prescribed some medication and scheduled the claimant for a follow-up visit.

¶ 33 The claimant testified that on May 7, 2010, when he turned to dump out a bucket of chemicals, a pain shot up into his shoulder blades, chest, and lower back. He fell to the ground and "blacked out a little bit." Two coworkers, Gale and Greg Becker, came and called an ambulance. He went to the emergency room and was off work for about one week.

¶ 34 Gale Becker testified that, in May 2010, she was in the boiler room when she heard a bucket fall, and the claimant called her to come help him. She ran to him and found him lying on the floor. She called for help, and an ambulance came and took him to the hospital.

¶ 35 Skaer testified that she was unaware of the May 2010 accident until two weeks after it occurred when she heard that an ambulance had come to the school to pick up the claimant. She asked the claimant if he was okay. She stated that he told her that he leaned over, picked up a bucket, and had a shooting pain in his back. She stated that he did not make an accident claim with her. At that time, Janssen was responsible for accident reports, so if an employee reported an accident to her, she directed him to Janssen. Janssen testified that the May 2010 accident occurred on a Friday, and he learned about it from the superintendent on the following Monday morning.

¶ 36 On May 11, 2010, the claimant had a radiological study of his thoracic spine. Dr. George Cassidy wrote in his report that there was no change compared to the claimant's prior study.

¶ 37 Dr. Kini examined the claimant on May 26, 2010, for continued complaints of pain. Because no medications had helped him, Dr. Kini continued his prescriptions and discharged him back to Dr. Schenewerk's care.

¶ 38 Dr. Sprich referred the claimant to Dr. William Thom for pain management. On June 10, 2010, Dr. Thom examined the claimant and wrote in his patient notes that the claimant presented with diffuse mid-back pain and bilateral hand and foot numbness and tingling four years after sustaining an accident while assembling playground equipment. The claimant told Dr. Thom about his prior work accidents and that after the May 2010 accident there was a change in his symptoms. He was much more fatigued, he experienced more pain in his chest and between his shoulder blades into his neck, and the pain wore him out physically and mentally. Dr. Thom noted that the T12-L1 discectomy and lateral fusion did not significantly impact his symptoms. Dr. Thom diagnosed the claimant with postlaminectomy syndrome of the lumbar region, thoracic or lumbosacral neuritis or radiculitis unspecified, spinal stenosis of the lumbar region, degeneration of lumbosacral intervertebral disc, displacement of the lumbar intervertebral disc without myelopathy, lumbosacral spondylosis without myelopathy, and lumbago. He ordered nerve conduction studies, an MRI scan, serologies, and a nuclear medicine bone scan.

¶ 39 On August 2, 2010, Dr. Thom examined the claimant and reviewed the test results. The MRI scan of the cervical spine showed mild degenerative disk changes. The MRI

scan of the thoracic spine and limited view of the lower spine showed multi-level disc bulging with impression on the thecal sac, worse at T4-T5, T8-T9, T11-T12, and L2-L3 levels. There was no evidence of neuropathy or radiculopathy on NCV/EMG of the lower extremities. The bone scan of the thoracic spine showed no evidence of increased uptake. Serologies were negative. Dr. Thom diagnosed the claimant with thoracic radiculopathy, low back pain, and myalgia.

¶ 40 Dr. Thom administered bilateral thoracic transforaminal epidural steroid injections on August 11, September 7, and October 8, 2010. The claimant testified that during this time, Dr. Thom allowed him to continue working light duty, but he last worked on August 4, 2010. He testified that he did not benefit from the injections.

¶ 41 The claimant testified that on August 28, 2010, his back pain gradually worsened until he was in severe pain. He was taken by ambulance to Barnes Hospital in St. Louis. The emergency room notes indicate that he complained of increasing thoracic back pain throughout the week, and he denied any trauma. He told Dr. Jason Wagner that he had back surgery in May 2009 and that he reinjured his back in May 2010. Dr. Wagner diagnosed him with back pain, gave him medication, and discharged him.

¶ 42 The claimant testified that Dr. Schenewerk referred him to neurosurgeon Dr. Paul Santiago, who examined him on October 12, 2010. In his consult note, Dr. Santiago wrote that the claimant reported he was in his usual state of health until July 2006 when he had injured his back putting up playground equipment at work and that he had suffered severe back pain since that time. He had a T11-T12 fusion in 2009, but his pain remained unchanged. He reported that his pain had worsened in May 2010 after he had

picked up a bucket at work. He had tried physical therapy five times, injection therapy, a TENS unit, psychological counseling, and chiropractic care without relief. Dr. Santiago's impression was that the claimant had degenerative disc disease at the thoracic and lumbar levels, posttraumatic muscular sprain/strain, and thoracic and lumbar spondylosis. Because the claimant reported being told of a significant number of disc bulges throughout his thoracic spine, Dr. Santiago wanted to see some of the claimant's other imaging studies. He recommended chronic pain management.

¶ 43 On November 1, 2010, Dr. Matthew Gornet performed an independent medical evaluation of the claimant arranged by the claimant's attorney. The claimant testified that Dr. Schenewerk referred him to Dr. Gornet. Dr. Gornet testified by evidence deposition. He stated that he is an orthopedic surgeon whose practice is devoted to spine surgery. The claimant provided him with a history that he injured his back in July 2006, while assembling playground equipment, that he had a spinal fusion at T11-T12, and that on May 7, 2010, he suffered another work injury and experienced increased mid-back pain into his shoulder blades and radiating anteriorly.

¶ 44 Dr. Gornet testified that he reviewed multiple films on the claimant. In his August 8, 2006, MRI scan, he had an obvious disc herniation in his thoracic spine consistent with his complaints of pain in the medical records. His subsequent CT discogram also showed disc pathology at the same level. Dr. Gornet reviewed the November 5, 2008, MRI scan and found that since the 2006 scan the lower disc herniation appeared to be slightly bigger. He also developed a lesion three levels above the original lesion, which Dr. Gornet stated was a change or progression. Dr. Gornet diagnosed the claimant with

continued thoracic pain. He testified that, at a minimum, the July 2006 event aggravated a preexisting condition, which made the claimant significantly symptomatic to the point that he required treatment.

¶ 45 Dr. Gornet testified that the claimant's May 2010 accident aggravated his condition but did not create any new pathology. Dr. Gornet told the claimant that his only real treatment at that point would be steroid injections. Dr. Gornet testified that he did not generally recommend thoracic spinal surgery because the outcome is not as predictable as for lumbar or cervical spine surgeries. Dr. Gornet opined that, at this point, the claimant would have permanent continued pain. He referred the claimant to Dr. Kaylea Boutwell at Pain and Rehabilitation Specialists of St. Louis for injections.

¶ 46 On his intake form for the Pain and Rehabilitation Specialists of St. Louis dated November 5, 2010, the claimant wrote that he was injured lifting playground equipment and lifting a bucket of chemicals. Dr. Boutwell administered a T8-T9 epidural steroid injection to the claimant for discogenic thoracic pain. On November 19, 2010, she administered a T11-T12 epidural steroid injection at the level of the fusion for thoracic back pain. On November 29, 2010, she administered a T10-T11 epidural steroid injection for discogenic thoracic back pain. The claimant testified that the injections did not provide any benefits.

¶ 47 Dr. Gornet treated the claimant from November 29, 2010, until October 20, 2011. In November 2010, Dr. Gornet placed the claimant on permanent restrictions and recommended he go to college or vocational rehabilitation because he could never return to heavy manual labor. In his October 20, 2011, patient notes, Dr. Gornet wrote that the

claimant had tried to look for jobs. He opined that the claimant was at maximum medical improvement. He averred that the claimant was permanently totally disabled with the ability to work short-term for one to two hours at a time but that he must lie down in the interim to relieve his pain.

¶ 48 The claimant testified that he contacted Janssen to offer to return to work with restrictions but that Janssen did not allow him to return. He testified that he would still return to work for the employer if it would allow him to do so.

¶ 49 On January 4, 2011, Dr. Daniel Kitchens performed an independent medical evaluation of the claimant at the employer's request. The claimant reported that in 1999 or 2000, he had the onset of mid-back pain, which he described as constant aching-type discomfort that would radiate up his spine to the base of his neck. He told Dr. Kitchens that he was experiencing that discomfort when, in July 2006, his back locked up while he was putting up a swing set. He reported that he could not move and that he had to lie down on the floor. He reported that the next day he had typical-type pain in the mid-thoracic region and up into his shoulder that radiated around his anterior chest. He reported that he informed the school nurse and continued to work. He had a T11-T12 fusion in May 2009 but told Dr. Kitchens that it did not help and that he continued to have daily pain. On May 7, 2010, he picked up a cleaning bucket and had the onset of pain into his back and chest. He went to the emergency room and was given pain medication. He reported that his job included heavy lifting, including lifting lunch tables, trash, and filing cabinets; shoveling snow; assembling playground equipment; mowing grass; and maintenance work.

¶ 50 Dr. Kitchens reviewed extensive medical records, test results, and scans, including records from Drs. Khan, Schenewerk, Heffner, Spirtovic, Poulos, Sadoff, Sprich, Kini, Thom, and Gornet. Dr. Kitchens assessed the claimant with a long history of back pain. He noted that a review of the claimant's medical records confirmed his story that he had thoracic-type pain since 1999. Dr. Kitchens opined within a reasonable degree of medical certainty that the claimant did not sustain an injury to his thoracic spine as a result of the July 2006 work incident. He averred that the claimant had reached maximum medical improvement from the July 10, 2006, incident by the following day when his back returned to his baseline subjective complaints of pain. He averred that the claimant had subjective complaints of pain that were not associated with an underlying objective abnormality. He opined that within a reasonable degree of medical certainty that the claimant's current subjective complaints were not causally related to the work incidents of July 2006 or May 2010. He wrote that, in his opinion, within a reasonable degree of medical certainty, the claimant did not sustain an aggravation of his underlying subjective complaints of pain with either of the work incidents. He opined that within a reasonable degree of medical certainty, the claimant did not require additional medical treatment and that he could work full duty without restrictions. The claimant testified that Dr. Kitchens only spent about 10 minutes with him.

¶ 51 The claimant testified that he had not worked since August 2010. He began looking for jobs in April or May 2011. He did not begin his job search earlier because he believed he would return to work for the employer. In March or April 2011, he realized he needed to look for another job when he had been released to return to light duty work

and the employer would not accommodate the restrictions. He requested that the employer provide vocational assistance.

¶ 52 The claimant testified that on a daily basis he has rotating pain around his chest and in between his shoulder blades. He tires easily and has to lie down and apply ice or heat to relax. Mentally, the pain had caused his depression to worsen.

¶ 53 The claimant testified that after November 2006, when he returned to full duty work, he told Janssen numerous times that he was having pain in his back doing his job activities. Janssen disputed that when the claimant returned to full duty work in 2006, he reported lifting at work caused him back pain. Janssen stated that since he began working for the employer in 2005, he and the claimant had played recreational sports after work. He testified that, before July 2006, the claimant complained of back pain "quite a bit during these basketball pick-up games." On a few occasions, he mentioned that his back hurt, and he would have to sit out or get someone to play for him for a few minutes. Janssen acknowledged that the claimant made casual comments that the overall lifting activities of his job aggravated his back.

¶ 54 Skaer testified that the claimant was a high school athlete and that he played basketball and football with other adults during non-work hours. She stated that he frequently complained to her about backaches. She testified that he would say "I played football and we got a little rough" or "[o]h, man I took a tumble" and complain that his back hurt. She stated that some of these comments would have been prior to 2006.

¶ 55 Lanter and Havel testified that the claimant played recreational sports in his free time. During the time Lanter worked with the claimant, the claimant occasionally

complained of back problems. Havel testified that he did not know the exact years, but over the years and before 2006, he had heard the claimant complain about a "tight back" or that his back had been bothering him. To his knowledge, the claimant had never attributed his back complaints to any work injury. He testified that, after lifting cafeteria tables or moving file cabinets, the claimant occasionally mentioned that his back was tired or hurting.

¶ 56 The arbitrator found that the claimant failed to prove that he sustained an accidental injury to his thoracic spine arising out of and in the course of his employment on July 10, 2006. The arbitrator stated that "[t]his conclusion is based upon a number of factors, including [claimant's] demeanor while testifying, the contradictory information provided to the various medical personnel when he went for medical treatment, changing from one doctor to another when he does not like the recommendations of the doctor, the testimony of the two individuals that he said were moving the equipment with him and their inability to recall [claimant] stopping their movements for a few minutes due to his back locking up, then leaving them to finish the playground equipment without him for the rest of the day." The arbitrator also noted that the claimant did not seek medical treatment until August 2006, nearly one month after the injury supposedly occurred. She found that the claimant's credibility was challenged by his testimony that he went to Skaer in August 2006 to report the injury and she told him that she did not have accident forms. Skaer denied that he reported the 2006 injury to her and denied telling him that she did not have accident forms.

¶ 57 The arbitrator found that the claimant's claims rested on his credibility. She found that he failed to prove accidental injuries arising out of and in the course of his employment on November 7, 2008. She found that the claim was based on a repetitive trauma theory and his explanation for his condition was that he had hurt his back at work on July 10, 2006. She noted that he was not taken off work after this alleged injury; nor was he given any restrictions or limitations on what he could do.

¶ 58 The arbitrator found that the claimant did sustain an accident on May 7, 2010, 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. The arbitrator awarded the claimant temporary total disability benefits of $481.67 for 12 2/7 weeks from May 8 through May 16, 2010, and from August 5, 2010, through October 20, 2011. She also awarded him maintenance benefits of $418.67 per week for 7 1/7 weeks from October 21 through December 8, 2011. She found that he reached maximum medical improvement on October 20, 2011, with permanent restrictions that the employer would not accommodate. She ordered the employer to pay medical expenses for all treatment related to the accidental injuries the claimant sustained on May 7, 2010, and the employer was to be given credit for expenses previously paid. She also ordered the employer to provide the claimant with vocational assistance.

¶ 59 The employer and the claimant sought review of the arbitrator's decision before the Commission. The Commission corrected clerical errors but otherwise affirmed and adopted the arbitrator's decision.

¶ 60 The employer sought judicial review of the Commission's decision relating to the May 7, 2010, accident in the circuit court of St. Clair County. On September 29, 2014, the circuit court confirmed the Commission's decision. The claimant sought judicial review of the Commission's decision relating to the July 10, 2006, and November 7, 2008, accidents in the circuit court of St. Clair County. On January 21, 2015, the circuit court entered two orders, one for each accident, confirming the Commission's decision. The claimant and the employer appeal.

¶ 61 ANALYSIS

¶ 62 The three cases were consolidated before the arbitrator and the Commission, but the circuit court decided the cases separately and issued separate decisions. The parties filed three separate appeals, which were previously consolidated for record and oral argument. Because the appeals involve similar issues and rely largely upon the same evidence, consolidation is appropriate. *Ad-Ex, Inc. v. City of Chicago*, 247 Ill. App. 3d 97, 103, 617 N.E.2d 333, 337 (1993). We, therefore, *sua sponte* consolidate the appeals for decision.

¶ 63 The claimant argues that the Commission's determination that he failed to prove that he sustained accidental injuries on July 10, 2006, arising out of and in the course of his employment is against the manifest weight of the evidence. The claimant has the burden of proving, by a preponderance of the evidence, that his injury arose out of and in the course of his employment. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 35, 976 N.E.2d 1. The determination of whether an injury arose out of and in the course of a claimant's employment is a question of fact for the

Commission to resolve, and its finding will not be set aside on review unless it is against the manifest weight of the evidence. *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 24, 990 N.E.2d 284. A finding of fact is contrary to the manifest weight of the evidence when an opposite conclusion is clearly apparent. *Id*.

¶ 64 An employee's injury is compensable under the Act only if it arises out of and in the course of his employment. *Id*. ¶ 25, 990 N.E.2d 284. "In the course of" the employment refers to the time, place, and circumstances under which the employee is injured. *Id*. "Arising out of" the employment refers to the cause of the employee's injury. *Id*. ¶ 26, 990 N.E.2d 284. "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*, 2011 IL App (4th) 100505WC, ¶ 38, 976 N.E.2d 1. The test of whether the Commission's decision was against the manifest weight of the evidence is whether there is sufficient evidence to support the Commission's finding, not whether another tribunal might reach an opposite conclusion. *Id*.

¶ 65 The Commission found that the claimant lacked credibility. The claimant testified that he hurt his back on July 10, 2006, while assembling playground equipment; that he went inside and lay down in the teachers' lounge where Gale saw him; that, within a few days, he reported the accident to Hawkins, who told him to report it to Skaer; and that he reported it to Skaer when she returned to work in August.

¶ 66 Gale did corroborate the claimant's description of the accident. She testified that he came in to the teacher's lounge, lay down on the floor crying, and stated that he hurt his back assembling playground equipment. However, Havel and Lanter worked with the claimant assembling the playground equipment, and neither one of them remembered the accident on July 10, 2006.

¶ 67 The Commission found the claimant's credibility was challenged by his testimony that he had reported his accident to Skaer and she had told him she had no accident forms. Skaer testified that the claimant never came to her in 2006 to report that he had injured his back installing playground equipment and that Hawkins never told her that the claimant had reported a July 2006 work injury to him. She denied telling him that she had no claim forms and stated that because there is a copy machine near her office, she always had forms. She further testified that she did not learn that the claimant alleged he had hurt his back in 2006 assembling playground equipment until 2009. She said she looked through her files and did not find any reports of any back injuries. Additionally, Janssen testified that he had first received notice of the claimant's alleged July 2006 work accident in 2009. He investigated and found no documentation of the accident.

¶ 68 The Commission also questioned the claimant's credibility that he injured his back on July 10, 2006, because he did not seek medical treatment until August, nearly one month after the injury allegedly occurred.

¶ 69 The claimant admitted to a history of thoracic back pain. He testified that from February 1, 2006, through April 28, 2006, he had physical therapy for his back because lifting the cafeteria tables had aggravated his back pain. Dr. Schenewerk's patient notes

list a call from the claimant on April 24, 2006, stating that physical therapy had provided no relief. On April 25, 2006, Dr. Schenewerk's nurse noted that she had phoned about precertifying the claimant for an MRI scan. An MRI scan of the thoracic spine was scheduled for April 29, 2006. On May 15, 2006, the claimant phoned Dr. Schenewerk's office to report that he had missed his MRI appointment and that he would reschedule. Dr. Schenewerk's patient progress records show that the claimant called on July 26, 2006, to reschedule his MRI scan. No mention is made of the claimant injuring his back on July 10, 2006, or of an accident while assembling playground equipment. The claimant had an MRI scan on August 8, 2006. On August 24, 2006, the claimant called Dr. Schenewerk's office, and his nurse noted that the claimant planned to go to pain management on August 28, 2006, that the employer was worried about him lifting, and that he "lifted playground equipment and hurt his back some." On August 28, 2006, Dr. Spirtovic examined the claimant. In the patient history, Dr. Spirtovic wrote that the claimant reported chronic low back pain and mid-thoracic area pain that started one year earlier. Dr. Spirtovic did not mention an accident assembling playground equipment or an event in July 2006 as contributing to the claimant's condition. The next medical record showing that the claimant reported to his medical provider that he hurt his back on July 2006 when assembling playground equipment was Dr. Poulos' February 7, 2008, patient note.

¶ 70 It is the province of the Commission to judge witness credibility, to determine the weight to give their testimony, and to resolve conflicts in the evidence. *Shafer*, 2011 IL App (4th) 100505WC, ¶ 35, 976 N.E.2d 1. The Commission found that the claimant

lacked credibility regarding the alleged July 10, 2006, accident. There is sufficient evidence in the record to support this finding. Lanter and Havel, who worked with the claimant assembling playground equipment, did not remember him hurting his back on July 10, 2006, and leaving them for the rest of the day to finish on their own. The claimant testified that he reported the accident, but Skaer and Janssen denied that the claimant reported an accident to them, and they could not find any documentation of an accident.

¶ 71 The claimant suffered back trouble as far back as 1991. He was being treated for thoracic back pain in April 2006 and complained to Dr. Schenewerk that the physical therapy did not provide relief. Dr. Schenewerk scheduled an MRI scan. The claimant did not go to the scheduled MRI scan, and it was eventually rescheduled to August 8, 2006. No mention of the claimant hurting his back on July 10, 2006, appears in the medical records until the claimant called Dr. Schenewerk on August 24, 2006, and mentioned that he hurt his back "some" assembling playground equipment. The claimant saw Dr. Spirtovic on August 28, 2006, and did not report that he injured his back assembling playground equipment. The next time that the claimant linked his back pain to his work activities on July 10, 2006, was February 7, 2008, when he told Dr. Poulos. The Commission's finding that the claimant did not sustain an accident on July 10, 2006, is not against the manifest weight of the evidence.

¶ 72 The claimant also argues that the Commission's finding that he failed to prove that he sustained an accidental injury arising out of and in the course of his employment on November 7, 2008, is against the manifest weight of the evidence. He asserts that his

work as a custodian for the employer caused a repetitive trauma that manifested itself on November 7, 2008, when Dr. Sprich examined him and linked his discomfort to his work.

¶ 73 The Commission found that the claimant failed to prove that he sustained an accidental injury arising out of and in the course of his employment on November 7, 2008. It found that the repetitive trauma theory did not apply to the claimant's situation because he alleged specific injuries to his back, and repetitive trauma was implemented to cover situations where the claimant never had a specific injury, but suffered from a work-related injury. The Commission found that the claimant's explanation for his pain was that he hurt his back at work on July 10, 2006.

¶ 74 "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). A repetitive trauma injury is an injury caused by the performance of the claimant's job that develops gradually over a period of time without requiring complete dysfunction. *PPG Industries v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130698WC, ¶ 19, 22 N.E.3d 48. It is not an injury that occurs as a result of one specific incident traceable to a definite time, place, and cause. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 527, 505 N.E.2d 1026, 1027 (1987).

¶ 75 In the instant case, the claimant had back problems dating back to 1998 or 1999. In Dr. Sprich's November 7, 2008, letter to Dr. Schenewerk, he wrote that the claimant "does a fair amount of heavy work in his job description and because of that that seems to

aggravate his discomfort as well." While the claimant can marshal evidence to support his position, there is also evidence to support the Commission's decision such that we cannot say that an opposite conclusion is clearly apparent. A review of the record shows that the Commission's decision is not contrary to the manifest weight of the evidence.

¶ 76 A claimant who suffers a repetitive trauma injury must meet the same standard of proof as a claimant who suffers a sudden injury. *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 it by the Commission, simply because other reasonable inferences could have been drawn." *Id*. The Commission found that the claimant did not prove he sustained a repetitive trauma injury because he alleged that his back injury was the result of two specific injuries.

¶ 77 The claimant testified that from November 2006 until February 2008, he continued working full duty. In a letter from Dr. Poulos to Dr. Schenewerk regarding his February 7, 2008, examination of the claimant, Dr. Poulos wrote that the claimant reported pain for many years that worsened in July 2006, when he was moving playground equipment. On January 27, 2010, the claimant told Dr. Kini that his back gave out in July 2006 and that he had experienced pain since that time. On October 12, 2010, the claimant told Dr. Santiago that he had suffered back pain since July 2006 when he injured his back putting up playground equipment. On November 5, 2010, the claimant wrote on Dr. Boutwell's intake form that he injured his back lifting playground equipment and lifting a bucket. In his independent medical evaluation, the claimant told Dr. Kitchens that he injured his back in 2006 when it locked up while putting up a swing set and that he had another

injury on May 7, 2010, when he picked up a bucket. Although the claimant testified that in 2008 he learned that his back issues might be related to his job duties, he continued telling medical professionals that his back issues were caused while assembling playground equipment on July 10, 2006, and by lifting a bucket on May 7, 2010. There is sufficient evidence in the record to support the Commission's finding that the claimant failed to prove he sustained a repetitive trauma injury because he alleged that his back condition was the result of accidents on July 10, 2006, and May 7, 2010.

¶ 78 The employer argues that the Commission's finding that the claimant sustained an accidental injury on May 7, 2010, and that such injury caused his current condition of ill-being was against the manifest weight of the evidence. The Commission found that the claimant established that on May 7, 2010, he hurt his back while lifting a bucket, that the pain was so severe he was taken by ambulance to the hospital, that he was taken off work for one week, and that his physician placed work restrictions on him.

¶ 79 A claimant's injury is compensable under the Act only if it arises out of and in the course of employment. 820 ILCS 305/1 (West 2010). An injury occurs in the course of employment when it is sustained while the claimant is at work or while performing reasonable activities in conjunction with his employment. *Springfield Urban League*, 2013 IL App (4th) 120219WC, ¶ 25, 990 N.E.2d 284. An injury arises out of one's employment if, at the time of the occurrence, the claimant was performing acts that he might be reasonably expected to perform incident to his assigned work duties. *Id*. ¶ 26, 990 N.E.2d 284. "An accidental 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." (Emphasis in

original.) *Shafer*, 2011 IL App (4th) 100505WC, ¶ 38, 976 N.E.2d 1. This court will overturn a Commission's finding on causation only when it is against the manifest weight of the evidence. *Id*. The test of whether the factual finding is against the manifest weight of the evidence is whether there is sufficient evidence to support the Commission's finding, not whether this court or any other court might reach an opposite conclusion. *Id*.

¶ 80 In the instant case, the claimant testified that on May 7, 2010, he turned to dump out a bucket, and pain shot up into his shoulder blades, chest, and lower back. He fell to the ground and "blacked out a little bit." He stated that two coworkers called an ambulance, and he was taken to the hospital. Gale Becker testified that, in May 2010, she was in the boiler room when she heard a bucket fall and the claimant call to her for help. She corroborated the claimant's testimony that she called for help and that an ambulance came and took him to the hospital. Skaer testified that, although she was not aware of the accident at the time it occurred, she learned of it about two weeks later. She checked on him, and he told her that he had picked up a bucket and had a shooting pain in his back. Janssen testified that the accident occurred on a Friday and that he learned about it the following Monday. There was sufficient evidence in the record to support the Commission's finding that the claimant sustained a work accident on May 7, 2010.

¶ 81 On June 10, 2010, Dr. Thom treated the claimant for pain management. He wrote in his office notes that the claimant stated that, after the May 2010 accident, his symptoms changed, he was more fatigued, he experienced more pain, and the pain wore him out physically and mentally.

¶ 82 During Dr. Gornet's November 1, 2010, independent medical evaluation, the claimant told Dr. Gornet that he had injured his back in July 2006 while assembling playground equipment, that he had a spinal fusion in May 2009, and that, on May 7, 2010, he had suffered another work injury. After reviewing multiple films on the claimant, Dr. Gornet found that the claimant's May 2010 accident aggravated his condition but did not create any new pathology. Dr. Gornet continued treating the claimant and, on October 20, 2011, opined that the claimant was permanently and totally disabled with the ability to work only one to two hours at a time.

¶ 83 After his January 4, 2011, independent medical evaluation, Dr. Kitchens gave an opinion that conflicted with the opinion of Dr. Gornet. The claimant told Dr. Kitchens that he had injured himself picking up a bucket on May 7, 2010. Dr. Kitchens averred that the claimant did not sustain an aggravation of his underlying subjective complaints of pain with either the July 2006 or the May 2010 accidents.

¶ 84 It is the province of the Commission to resolve conflicts in evidence, particularly medical opinion evidence. *Navistar International Transportation Corp. v. Industrial Comm'n*, 331 Ill. App. 3d 405, 415, 771 N.E.2d 35, 45 (2002). The Commission weighed the conflicting medical opinion evidence and resolved the conflict in favor of Dr. Gornet's opinion that the May 2010 accident aggravated the claimant's condition. There is sufficient evidence in the record to support the Commission's determination that the claimant sustained an accidental injury on May 7, 2010, 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.

¶ 85 The employer argues that because the Commission's finding that the claimant sustained an accidental injury on May 7, 2010, and that such injury caused the claimant's current condition of ill-being was against the manifest weight of the evidence, its decision awarding medical expenses, its award of temporary total disability benefits, its award of maintenance benefits, and its decision ordering the employer to provide the claimant with vocational rehabilitation were also against the manifest weight of the evidence. Because the Commission's decision finding that the claimant sustained an accidental injury on May 7, 2010, and that such injury caused the claimant's current condition of ill-being was not against the manifest weight of the evidence, the employer's remaining arguments are without merit.

¶ 86 CONCLUSION

¶ 87 For the foregoing reasons, we affirm the judgments of the circuit court of St. Clair County, which confirmed the decisions of the Commission, and remand these cases to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 88 Affirmed and remanded.