2017 IL App (2d) 160310WC-U
No. 2-16-0310WC
Order filed February 15, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MARY BEAL,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 15-MR-593
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION and	)	
ROCKFORD MASS TRANSIT,	)	Honorable
	)	Edward J. Prochaska,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

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

ORDER

¶ 1 *Held*: The Commission's findings that claimant failed to sustain her burden of establishing that (1) her injuries arose out of and in the course of her employment with respondent and (2) the condition of ill-being of her lumbar spine was causally related to her employment were not against the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Mary Beal, sought benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2006)) for injuries she allegedly sustained to her back and legs while working as a bus driver for respondent, Rockford Mass Transit. Following a hearing, the arbitrator determined that claimant sustained compensable injuries and that her current condition of ill-being was causally related to her industrial accident. The arbitrator awarded claimant 48-5/7 weeks of temporary total disability (TTD) benefits (820 ILCS 305/8(b) (West 2006)), 105-4/7 weeks of maintenance benefits (820 ILCS 305/8(a) (West 2006)), $22,308.85 in medical expenses (820 ILCS 305/8(a) (West 2006)), and 100 weeks of permanent partial disability (PPD) benefits (820 ILCS 305/8(d)(2) (West 2006)). The Illinois Workers' Compensation Commission (Commission) reversed the decision of the arbitrator on the issues of accident and causal connection, finding that (1) claimant's testimony was not credible and (2) the opinions of the doctors who found causation were based on incorrect information provided by claimant. On judicial review, the circuit court of Winnebago County confirmed the decision of the Commission. Claimant now appeals, arguing that the Commission's findings with respect to accident and causal connection are against the manifest weight of the evidence. For the reasons set forth below, we affirm.

¶ 4 II. BACKGROUND

¶ 5 On or about March 18, 2008, claimant filed an application for adjustment of claim, alleging injuries to her back and legs while working for respondent. The claim proceeded to an arbitration hearing on August 12, 2014. The issues in dispute included accident, notice, causal connection, medical expenses, period of TTD, maintenance, and the nature and extent of claimant's disability. The following evidence was presented at the hearing.

¶ 6 Claimant began working for respondent as a bus driver in 1992. Claimant's position required her to drive a city bus over a predetermined route, picking up and dropping off passengers. Claimant worked five days a week, twelve to sixteen hours per day. Claimant was given a route on a daily basis, and her bus would be waiting for her when she arrived at work. According to claimant, she was mainly assigned to drive 95 and 99 series buses, which were older and lacked support for her lower back. Claimant testified that these buses would regularly bounce and shake. Moreover, approximately once or twice a month, the bellows which lift the bus would break down, causing increased bouncing. Prior to each shift, claimant would complete a pre-trip card, which included a section to indicate a problem with seats on the bus. Claimant testified that she would tick the box on the pre-trip card if there was a problem with the seats. Claimant testified that the newer buses, which had air seats, were comfortable and provided support for her back, but that she only drove those vehicles twice a month.

¶ 7 Claimant testified that she began to experience lower back pain and left-sided hip pain in November or December 2007. Although claimant had completed incident reports in the past, nothing was done to address the seat problem, so she did not fill one out at that time. Instead, claimant reported her symptoms to dispatch. She also approached the risk manager, Terrell Jackson, and told him that driving the older buses, which lacked lumbar support, was aggravating her back. Jackson suggested that claimant "start writing it up." Claimant did so, but despite her complaints, nothing was fixed, and she continued to be assigned older buses. As a result, claimant "slacked" reporting any issue with the seats. Moreover, although claimant had filed union grievances against respondent in the past, she did not file one with respect to the bus seats.

¶ 8 Claimant acknowledged that she had experienced prior back pain as a result of injuries in 2003 and 2004. In 2003, claimant was involved in an accident with a deer and experienced low-back pain radiating down her left leg. In 2004, claimant had another injury and experienced low-back and left-hip pain. Claimant testified that she treated with physical therapy following those injuries and eventually returned to work without restrictions. Claimant continued to work full duty without significant low back pain through the end of 2007. Claimant noted that she would experience occasional mild pain, but that it significantly increased around November or December 2007.

¶ 9 Claimant presented to Dr. Pedro DeGuzman on November 30, 2007, for a Department of Transportation (DOT) physical. At that time, Dr. DeGuzman noted that claimant had a "normal exam" with good range of motion of her upper and lower extremities and no problems with her spine. Claimant next saw Dr. DeGuzman on December 21, 2007. Claimant reported that her sinuses were clogged and that she wanted a pap test and a flu shot. Claimant again consulted Dr. DeGuzman on February 15, 2008, complaining of left-hip and low-back pain with radiculopathy. At that time, Dr. Guzman noted that claimant had prior injuries, but that her left-hip pain had changed. Claimant was prescribed medication and an MRI. The MRI was taken on February 23, 2008, and revealed multilevel degenerative type changes with left-sided disc protrusion/herniations at L2-3 and L3-4.

¶ 10 Claimant was seen by Dr. Andrew Chenelle on March 7, 2008. Dr. Chenelle noted that claimant had undergone physical therapy with improvement after her 2003 injury. He also noted that claimant had more physical therapy in 2005 and was diagnosed with frequent falling problems. Claimant complained of low-back and left-hip pain over the last two years, which had gotten worse since January 2008. Claimant related that her hip pain was made worse by sitting

and walking. Claimant attributed her symptoms to 2003, when her bus hit a deer and she immediately began experiencing low-back and left-hip pain. Dr. Chenelle performed a physical examination and reviewed claimant's February 23, 2008, MRI. Dr. Chenelle opined that claimant's symptoms related to the L2-3 and L3-4 disc herniations. He took claimant off work, and, after concluding that conservative measures had failed, recommended surgery. On April 17, 2008, Dr. DeGuzman conducted a pre-surgical examination and concurred with Dr. Chenelle's recommendation.

¶ 11 Claimant underwent a laminectomy/discectomy and foraminotomy on the left at L2-3 and L3-4 on May 2, 2008, by Dr. Chenelle. Claimant was referred for physical therapy on May 15, 2008, and the records of that treatment noted that claimant's condition improved with therapy. Claimant continued in therapy through October 24, 2008. At that time, she expressed a desire to return to work gradually. On November 14, 2008, Dr. Chenelle indicated that claimant required a functional capacity evaluation (FCE) to release her to return to work.

¶ 12 On January 12, 2009, claimant returned to Dr. Chenelle's office. At that time, Dr. Chenelle noted that the FCE had been denied. Nevertheless, he authorized claimant to return to work for four hours per day and then slowly increase. Dr. Chenelle also wrote the following regarding the cause of claimant's injuries:

> "[I]t has been brought to my attention today by [claimant] that this is a workman's compensation issue. Initial history taken 3/07/2008 related the entire incident to 2003 that when driving a transit agency bus, she struck a deer and immediately started with low back and left hip pain. We had taken care of her at that time, had imaging that did not require surgery at the time, had managed her conservatively, and she has returned to work. However, repeat imaging shows that there is a chronic degenerative condition in

her back which she and I attribute to chronic bouncing in old non supportive bus seats. I certainly feel reasonable to expect and would be willing to testify that her low back condition and need for subsequent surgery was both the result of the initial incident in 2003 and exacerbation of this condition in her role as a bus driver in Rockford and chronic bouncing on unpadded bus seats with degenerative arthritis and significant radiculopathy developing."

¶ 13 On February 13, 2009, claimant was seen by Dr. Moses Tomacruz, Dr. DeGuzman's partner, for a DOT physical. At that time, Dr. Tomacruz opined that claimant could return to work. On February 16, 2009, claimant was seen at Physician's Immediate Care for a commercial-driver fitness determination after attempting to return to work. Dr. Craig Michelsen reviewed a job description for a "Fixed Route Bus Operator" and offered the opinion that claimant could not safely fulfill the function of the job as described. The issue was a requirement in the job description that a fixed route bus operator be able to push, pull, and/or maneuver between 200 and 600 pounds. On March 26, 2009, Dr. DeGuzman authored a letter opining that claimant had completely recovered from her low back surgery and was physically capable of returning to work.

¶ 14 Claimant was not allowed to return to work due to the conflicting medical opinions. As a result, she filed a grievance with the union. After reviewing the facts and the doctors' opinions, the union arbitrator entered an award on September 10, 2010. The union arbitrator ordered a third physician to examine claimant relative to her return-to-work status. If claimant were found able to return to work, she would be reinstated. If not, her position would be terminated. In response to the ruling, claimant was seen by Dr. Ryon Hennessy on December 20, 2010. Dr. Hennessy was provided with a job description for a fixed route bus operator and reviewed

claimant's medical records. Claimant described feeling approximately 95% better and felt that she could return to her regular position. She indicated that she had never been required to move a 600-pound passenger. Dr. Hennessy did not feel capable of rendering an opinion without an FCE.

¶ 15 The FCE was performed on February 8, 2011, at Midwest Physical Therapy. The report indicated that claimant demonstrated the ability to work at the medium physical-demand level with the ability to lift 35 pounds from floor to waist on an occasional basis. After reviewing the report, Dr. Hennessy authored an addendum on February 23, 2011. Dr. Hennessy noted that claimant demonstrated the ability to manipulate a person weighing approximately 325 pounds. Therefore, he opined, she was not capable of full-duty work without restriction.

¶ 16 Claimant was seen by Dr. Theodore Fisher, a board-certified orthopedic spine surgeon for an Independent Medical Examination on January 5, 2012. See 820 ILCS 305/12 (West 2006). Claimant told Dr. Fisher that she experienced the onset of low-back pain in 2003 after her bus hit a deer. Claimant reported that she treated conservatively for her symptoms and returned to work. In 2007, however, claimant began experiencing increased pain which she attributed to bouncing in the bus she drove. She then experienced a significant increase in symptoms in February 2008. Dr. Fisher reviewed medical records, including those from 2003 and 2004. At the time of the examination, claimant's chief complaint was low-back pain and left lower extremity radiculopathy. Dr. Fisher opined that claimant had pre-existing degenerative changes in the lumbar spine. Dr. Fisher further opined that claimant became symptomatic following her 2003 accident and that her condition was exacerbated from repetitive bouncing in the bus seat while working. Dr. Fisher recommended additional conservative care along with permanent work restrictions as outlined by the FCE. Dr. Fisher opined that claimant had reached maximum

medical improvement. Dr. Fisher noted that his causation opinion was based on claimant's medical records and the history claimant provided. He also noted that prior to January 12, 2009, Dr. Chenelle's records do not reference a broken seat or bouncing in the seat as a cause of the onset of claimant's symptoms.

¶ 17 Claimant continued treatment with Dr. DeGuzman, receiving physical therapy and medication relative to her ongoing back pain. At the arbitration hearing, claimant testified that she continued to take oxycodone prescribed by Dr. DeGuzman for her lower back. Claimant stated that she has difficulty standing or sitting for long periods of time and that she requires pain medication for any significant walking. She recounted that while she initially felt better after her surgical procedure, her condition has deteriorated.

¶ 18 Respondent called Michael Amams to testify. Amams has worked for respondent for approximately 27 years and was a safety supervisor for respondent in 2006 and 2007. He was one of claimant's supervisors in 2007. Amams could not recall if claimant had complained about the bus seats or if issues with the bellows had been reported. He testified that it is possible that claimant could have reported these issues to one of her other supervisors. Amams further noted that the assignment of buses was "random" and that the same driver would not get the same bus every shift.

¶ 19 Respondent next called Daniel Engelkes to testify. Since 1987, Engelkes has worked for respondent in various positions, including risk manager, maintenance manager, fleet supervisor, and mechanic. He testified that in 2007, respondent had buses in the 95, 99, 2000, and 2007 series. Around May 2007, respondent started taking the 95 series buses out of circulation. However, those buses were not completely phased out until June 2008. Engelkes testified that the 99 series buses had seats with air pillows and bellows that could be inflated or deflated by the

driver. He explained that the bellows control bouncing. Engelkes testified that the seats also move up and down as well as forward and backward and that the back of the seats tilt. Engelkes testified that the 2000 and 2007 series buses had the same sort of adjustable bellows. Engelkes stated that the principal ways he would be notified of a problem with a seat would be by a "driver's defect card," a pre-trip card, or a preventative maintenance inspection. Engelkes explained that a pre-trip card is a form every driver completes prior to taking a bus out of the garage to indicate that he or she has inspected the vehicle and to note any problems or complaints. Engelkes stated that if a broken seat was reported, it would be repaired before it was placed back in service. Engelkes reviewed all the pre-trip cards from 2007, but could not recall any from claimant which indicated that her bus had a broken seat. Engelkes noted that if an employee repeatedly had issues with respect to the bus seats, it could be taken to the safety committee. Engelkes also confirmed Amam's testimony that the assignment of buses is random.

¶ 20 Respondent also called Dennis Hendricks, respondent's operations manager, to testify. Hendricks has worked for respondent since 1987. Under his current title, Hendricks oversees the routes and drivers. Hendricks noted that Jackson had been a risk manager for respondent until October 2007. Before Jackson left his position, he was "in and out" due to illness. During that time, Hendricks performed some of Jackson's duties. Hendricks was not aware of any complaints or grievances from claimant regarding broken bus seats.

¶ 21 Respondent introduced into evidence several grievances and complaints filed by claimant alleging workplace harassment and discrimination.

¶ 22 At respondent's request, claimant was seen by Dr. Stephen Weiss for an independent medical examination on April 25, 2008. Dr. Weiss authored a report of his findings and testified by deposition. Dr. Weiss noted a history of back pain traveling to claimant's left foot beginning

in 2003 after claimant had the accident with the deer. Claimant reported that her pain became worse after a second accident in 2004, when she fell from a van she was driving. Claimant eventually returned to full duty work with respondent. Claimant reported that her pain gradually worsened, and, in February 2008, she consulted a spine surgeon. Claimant did not relate the deterioration of her condition to any traumatic event. Moreover, claimant did not relate her increased symptoms to a broken bus seat or any job-related activity. Dr. Weiss diagnosed multilevel degenerative disc disease and symptom magnification. He opined that claimant's job activities did not cause claimant's condition of ill-being. In this regard, Dr. Weiss acknowledged that work activities can cause an individual to progress beyond normal lumbar degenerative disc disease. However, he explained that such activities must be frequent and repetitive, *i.e.*, at least once every 5 to 10 minutes, for at least three hours a day and must involve lifting of at least 70 pounds to aggravate degenerative disc disease in one's lumbar spine. Dr. Weiss noted that claimant's work activities did not meet these thresholds and that he could not think of anything else in claimant's job that would contribute to her condition of ill-being. He further opined that the vibratory forces on the lower back could not aggravate degenerative disc disease. Dr. Weiss noted, for instance, that claimant never reported that her bus went into a giant pothole which jarred her significantly and increased her symptoms. At his deposition, Dr. Weiss stated that he had driven a bus to learn what a bus driver encounters. Dr. Weiss felt that claimant could return to work full time for respondent. However, he stated that she should not lift more than 35 pounds repetitively or 55 pounds occasionally and that she should avoid lifting frequently from below the mid-thigh level.

¶ 23 Based on the foregoing evidence, the arbitrator initially determined that claimant sustained injuries involving her lower back and left hip which arose out of and in the course of

her employment with respondent. In support of this finding, the arbitrator noted that claimant predominantly drove older buses with little or no lumbar support 5 days a week for 12 to 16 hours a day, thereby subjecting her to significant vibration and bouncing while in the performance of her duties. The arbitrator acknowledged that claimant had pre-existing episodes of pain involving the lower back, but concluded that claimant sustained an increase in symptoms which led to the need for treatment on February 15, 2008. The arbitrator also determined that claimant's current condition of ill-being is causally related to her employment. In support of this finding, the arbitrator relied on the records of the treating physicians, including the January 12, 2009, report from Dr. Chenelle and the opinion of Dr. Fisher. The arbitrator also cited claimant's treatment records, which, he found, "reflect a significant change from an ability to perform her work without restriction, to the need for surgery and limitations." In light of these findings, the arbitrator awarded claimant 48-5/7 weeks of TTD benefits (820 ILCS 305/8(b) (West 2006)), 105-4/7 weeks of maintenance benefits (820 ILCS 305/8(a) (West 2006)), $22,308.85 in medical expenses (820 ILCS 305/8(a) (West 2006)), and 100 weeks of PPD benefits, the latter representing a 20% loss of the person as a whole (820 ILCS 305/8(d)(2) (West 2006)).

¶ 24 On appeal, the Commission reversed the decision of the arbitrator. With respect to the issue of accident, the Commission found respondent's witnesses more credible than claimant. The Commission explained as follows:

> "[T]he Commission finds more credible the testimony that the assignment of buses was random and that [claimant] was almost certainly not assigned old buses on a continuing or consistent basis presumably based on some sort of motivation for retaliation. [Claimant's] credibility was undermined by the fact that she apparently did not write up

> the buses for bad seats in the pre-trip reports and Respondent's witnesses indicated they would have received multiple reports of bad seats from other drivers who drove the same buses [claimant] drove. In addition, it is apparent that [claimant] was in no way squeamish about filing grievances, but she filed no grievance about the bus seats. Her testimony that she verbally reported to supervisors that the seats were defective and that there should be better rotation of the bus assignments is simply not corroborated by the record."

The Commission also found that claimant's credibility was damaged by her failure to attribute her symptoms to the bus seats until her visit with Dr. Chenelle on January 12, 2009, 11 months after she sought treatment for her symptoms.

¶ 25 With respect to the issue of causation, the Commission discounted the opinions of Dr. Chenelle and Dr. Fisher because their testimony was based on incorrect information given to them by claimant. Instead, the Commission found more persuasive the testimony of Dr. Weiss, in part because he had actually driven a bus operated by respondent, thereby giving him a better understanding of the stresses the lumbar spine would experience driving a bus.

¶ 26 Thereafter, claimant sought judicial review. The circuit court of Winnebago County confirmed the decision of the Commission. This appeal by claimant followed.

¶ 27 III. ANALYSIS

¶ 28 On appeal, claimant argues that she satisfied her burden of establishing that (1) she suffered a work-related repetitive trauma and (2) the repetitive trauma was a causal factor in the resulting condition of ill-being in her lumbar spine. Thus, she asserts, the Commission's findings to the contrary are against the manifest weight of the evidence. We disagree. We begin

our analysis by addressing the Commission's finding that claimant failed to establish a compensable accident.

¶ 29 A. Accident

¶ 30 An employee's injury is compensable under the Act only if it "arises out of" and "in the course of" the employment. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006); *O'Fallon School District No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413, 416 (2000). A claimant bears the burden of proving by a preponderance of the evidence both of these elements. *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 477 (2011); *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006). The phrase "in the course of" refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Injuries sustained on an employer's premises or at a place where the employee might reasonably have been while performing his or her duties, and while the employee is at work, are generally deemed to have been received "in the course of" one's employment. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013-14 (2011). For an injury to "arise out of" one's employment, its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989).

¶ 31 The issue whether an employee's injury arose out of and in the course of his or her employment is a factual inquiry. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 19. With respect to factual matters, it is within the province of the Commission to judge the credibility of the witnesses, resolve conflicts in the evidence, assign

weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). A reviewing court may not substitute its judgment for that of the Commission merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We will not overturn the Commission's determination on a factual matter unless it is against the manifest weight of the evidence. *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120411WC, ¶ 15. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC, ¶ 21.

¶ 32 In the present case, the Commission determined that claimant did not establish by a preponderance of the evidence that she sustained a compensable accident by being subjected to the consistent use of unsupported, non-cushioned bus seats. In this regard, the Commission did not find claimant's testimony to be credible, particularly her testimony about being assigned older buses with bad seats on a consistent basis. Instead, the Commission found credible the testimony of respondent's witnesses who indicated that claimant was not assigned to older buses on a consistent basis as the assignment of buses was completely random. The Commission stated that claimant's credibility was undermined by her failure to file a pre-trip card indicating that the seats were not in good condition or a grievance regarding the allegedly poor condition of the bus seats. Additionally, the Commission remarked that claimant's credibility was "probably most damaged" by the fact that she did not attribute her symptoms to the bus seats until her visit with Dr. Chenelle on January 12, 2009. The Commission's findings are supported by the record.

¶ 33 Significantly, we note that claimant's application for adjustment of claim makes no mention of broken bus seats. On the line to indicate how the accident occurred, claimant merely

wrote that she was "[i]njured while working." Moreover, the medical records were inconsistent with a bus seat injury. Claimant testified that she began to experience increasing low-back and left-hip pain in November or December 2007. However, Dr. DeGuzman performed a DOT physical on November 30, 2007. At that time, he indicated that claimant had good range of motion of her upper and lower extremities and that she had no problems with her spine. Similarly, when claimant saw Dr. DeGuzman on December 21, 2007, she did not indicate any problems with her back. Moreover, when claimant reported low-back and left-hip complaints to Dr. DeGuzman on February 15, 2008, she did not attribute her symptoms to any problems with broken bus seats. Likewise, when Dr. Chenelle examined claimant in March 2008, she did not attribute her symptoms to a broken bus seat, but rather to the incident in 2003 when her bus hit a deer. In addition, claimant did not relate her symptoms to a broken bus seat or any job-related activity when she saw Dr. Weiss in April 2008. Indeed, as the Commission noted, claimant did not attribute her symptoms to the bus seats until her visit with Dr. Chenelle on January 12, 2009, or about 11 months after she first sought treatment for the alleged injuries.

¶ 34 Furthermore, claimant did not file a grievance or accident report detailing the allegedly poor condition of the bus seats and she admitted that she "slacked" when it came to reporting problems with the bus seats on her pre-trip cards. Moreover, while claimant testified that she told Jackson in November or December 2007 that driving of old buses without lumbar support was aggravating her back, one of respondent's witnesses testified that Jackson left respondent's employment in October 2007. Finally, we note that the record shows that although claimant made many complaints in writing to respondent regarding other incidents at work, no written complaints regarding the condition of the driver's bus seats were introduced at the arbitration

hearing. Based on this evidence, the Commission could reasonably conclude that the evidence was inconsistent with an injury caused by the allegedly poor condition of the bus seats.

¶ 35 Despite the foregoing evidence, claimant notes that the arbitrator heard live testimony from each witness and determined that the record supported a finding that she sustained an accident arising out of and in the course of her employment with respondent. Therefore, claimant asserts, the arbitrator "clearly found [her] testimony credible." As we note above, however, our task is to review the record and determine whether there is sufficient factual evidence therein to support the *Commission's* decision, not the arbitrator's. See *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173 (2007) (noting that in workers' compensation cases, the Commission is the "ultimate decisionmaker"); *National Biscuit, Inc. v. Industrial Comm'n*, 129 Ill. App. 3d 118, 120 (1984) (noting that the Commission has original jurisdiction to review evidence taken before the arbitrator and is therefore not bound by the findings of the arbitrator). Hence, the fact that the arbitrator found claimant credible is not dispositive.

¶ 36 Claimant also insists that the Commission's credibility finding was without support. In this regard, claimant insists that the Commission's finding that she did not attribute her symptoms to broken bus seats until her visit with Dr. Chenelle in January 2009 is incorrect. Claimant points out that she filed her application for adjustment of claim with the Commission on March 18, 2008, shortly after the onset of her symptoms. As noted above, however, claimant's application for adjustment of claim makes no specific mention of broken bus seats. Claimant also notes that when she saw Dr. Chenelle in March 2008, she reported increasing pain since January 2008. However, as with the application for adjustment of claim, Dr. Chenelle's office note of March 7, 2008, does not reference a history of repeated exposure to a broken bus seat. Rather, Dr. Chenelle wrote that claimant related her symptoms to 2003, when her bus hit a

deer. This was confirmed by Dr. Chenelle's office note of January 12, 2009, in which he wrote that the "[i]nitial history taken 3/07/2008 related the entire incident to 2003 that when driving a transit agency bus, [claimant] struck a deer and immediately started with low back and left hip pain." Given this evidence, we cannot say that the Commission's finding that claimant did not attribute her symptoms to broken bus seats until her visit with Dr. Chenelle in January 2009 is incorrect.

¶ 37 In summary, this case involved resolving conflicts between claimant's testimony, the testimony of respondent's witnesses, and the documents submitted at the arbitration hearing. As noted previously, resolving conflicts in the evidence is a matter for the trier of fact. *Hosteny*, 397 Ill. App. 3d at 674. In this case, the Commission credited the evidence presented by respondent over claimant's testimony. Given the record before us, we cannot say that an opposite conclusion is clearly apparent. As a result, the Commission's finding that claimant failed to establish that she sustained a compensable accident is not against the manifest weight of the evidence.

¶ 38 B. Causal Connection

¶ 39 Claimant also argues that the Commission's finding that she failed to establish a causal connection between her current condition of ill-being and her employment was against the manifest weight of the evidence. Although we need not address this issue given our finding on accident, we opt to do so anyway as the evidence of record supports the Commission's conclusion.

¶ 40 An employee seeking benefits under the Act must establish a causal connection between the employment and the injury for which he or she seeks benefits. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860 (2005). In cases involving a preexisting condition, recovery will depend on the

employee's ability to establish that a work-related accidental injury aggravated or accelerated the preexisting condition such that the employee's current condition of ill-being can be said to be causally connected to the work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 204-05 (1993); *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 949 (2011). The work-related injury need not be the sole causative factor or even the principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc.*, 207 Ill. 2d at 205; *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434 (2011). "Thus, even though an employee has a preexisting condition that may make him or her more vulnerable to injury, recovery will not be denied where the employee can show that a work-related condition aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to be causally related to conditions in the workplace and not merely the result of a normal degenerative process of the preexisting condition." *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 596-97 (2005).

¶ 41 Causation presents an issue of fact. *Bernardoni*, 362 Ill. App. 3d at 597. In resolving factual matters, it is the function of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny*, 397 Ill. App. 3d at 674. This is especially true with respect to medical issues, where we owe heightened deference to the Commission due to the expertise it has long been recognized to possess in the medical arena. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). A reviewing court may not substitute its judgment for that of the Commission on factual matters merely because other inferences from the evidence may be reasonably drawn. *Berry*, 99 Ill. 2d at 407. We review the Commission's factual determinations under the manifest-

weight-of-the-evidence standard. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). Thus, as noted above, we will overturn the Commission's causation finding only if it is against the manifest weight of the evidence, *i.e.*, an opposite conclusion is clearly apparent. *Freeman United Coal Mining Co.*, 2013 IL App (5th) 120564WC, ¶ 21.

¶ 42 After reviewing the record, we cannot say that the Commission's finding on causal connection is against the manifest weight of the evidence. In this regard, we find that the Commission could have reasonably concluded that claimant failed to establish a causal connection between the current condition of her lumbar spine and the risks incident to her employment as a bus driver. Claimant had preexisting back problems at the time of her alleged injuries in this case. As discussed in relation to the Commission's finding on accident, although claimant testified that she began to experience an increase in lower-back and left-sided hip pain in November or December 2007, she did not attribute these symptoms to a problem with her bus seat until January 2009, almost a year after she first sought treatment for her back and hip pain.

¶ 43 Moreover, the Commission was presented with conflicting medical opinions regarding the relationship, if any, between claimant's symptoms and her employment. Dr. Chenelle opined that claimant's low back condition and her subsequent need for surgery was the result of claimant's initial accident in 2003 (when she hit a deer) and an exacerbation of her condition as a result of chronic bouncing in old, non-supportive bus seats while driving for respondent. Similarly, Dr. Fisher opined that claimant had preexisting degenerative changes in the lumbar spine which became symptomatic following her accident in 2003 and were then exacerbated from repetitive bouncing in her bus seat while working. In contrast, Dr. Weiss concluded that claimant's job activities did not cause claimant's condition of ill-being. Dr. Weiss acknowledged that work activities can cause an individual to progress beyond normal lumbar

degenerative disc disease. However, he opined that such activities must be frequent and repetitive—*i.e.*, at least once every 5 to 10 minutes for at least 3 hours per day—and involve at least 70 pounds. Dr. Weiss noted that claimant's work activities did not meet these thresholds, and he could not think of anything else in claimant's job that would contribute to her condition of ill-being. Additionally, Dr. Weiss had driven a bus to learn what a bus driver encounters. He opined that vibratory forces on the lower back could not aggravate degenerative disc disease.

¶ 44 The Commission did not find the causation opinions of Dr. Chenelle and Dr. Fisher to be persuasive because they were based on the assumption that claimant was consistently assigned to buses with unsupportive seats. The Commission noted that this assumption was not warranted given the testimony from respondent's witnesses that the bus assignments were completely random. The Commission found that Dr. Weiss had a better understanding of the stresses to the lumbar spine of a bus driver given that he actually drove a bus. Thus, the Commission found Dr. Weiss's opinion more persuasive than those of Dr. Chenelle or Dr. Fisher. Given the conflicting medical opinions and in light of the Commission's role as trier of fact, we cannot say that a conclusion opposite that of the Commission is clearly apparent.

¶ 45 Claimant portrays Dr. Weiss's opinion as "absurd." In this regard, claimant disputes Dr. Weiss's testimony that "only repeated lifting of a minimum of 70 pounds could aggravate degenerative disc disease in one's lumbar spine." However, claimant reads Dr. Weiss's testimony out of context. Dr. Weiss stated that frequent and repetitive work activities can cause an individual to progress beyond normal lumbar degenerative disc disease. Although, Dr. Weiss provided repetitive lifting more than 70 pounds as an example of one such work activity, he acknowledged that other work activities can also exacerbate degenerative disc disease. In this regard, Dr. Weiss remarked that claimant's work activities did not meet the lifting threshold he

cited *and* that he could not think of anything else in claimant's job that would contribute to her condition of ill-being. He further opined that vibratory forces on the lower back from driving a bus would not aggravate degenerative disc disease. Thus, contrary to claimant's contention, Dr. Weiss did not believe that *only* repetitive lifting of 70 pounds or more could aggravate degenerative disc disease. Claimant also notes that Dr. Weiss never indicated what make or model of bus he operated. Such matters, however, go to the weight to which Dr. Weiss's opinion is entitled. See *Hemminger v. Lemay*, 2014 IL App (3d) 120392, ¶ 30. It is the function of the Commission to assign the weight to be accorded the evidence (*Hosteny*, 397 Ill. App. 3d at 674) and we do not find this alleged deficiency so significant as to warrant the conclusion that the Commission was required to reject Dr. Weiss's testimony. As a result, the Commission's finding that claimant failed to establish that the current condition of ill-being of her lumbar spine is causally related to her employment as a bus driver is not against the manifest weight of the evidence.

¶ 46 IV. CONCLUSION

¶ 47 For the reasons set forth above, we affirm the judgment of the circuit court of Winnebago County, which confirmed the decision of the Commission.

¶ 48 Affirmed.