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2017 IL App (3d) 160238WC-U

Order filed March 14, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

GREAT PLAINS ORTHOPEDICS,	)	Appeal from the Circuit Court of the
	)	Tenth Judicial Circuit,
Plaintiff-Appellant,	)	Peoria County, Illinois
	)	
	)	
v.	)	Appeal No. 3-16-0238WC
	)	Circuit No. 15-MR-378
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*, (Janet Snyder,	)	Honorable
	)	Katherine Gorman Hubler,
Defendants-Appellees).	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's findings that the claimant's injuries arose out of and in the course of her employment; that she gave timely notice of repetitive trauma injuries manifesting on November 10, 2009; that her claim was filed within the appropriate statute of limitations; and that she was entitled to temporary total disability benefits and payment of certain medical expenses were not against the manifest weight of the evidence.

¶ 2 The claimant, Janet Snyder, filed an application for adjustment of claim on July 28, 2010, under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for injuries to her right and left hands and arms allegedly sustained on September 8,

2009, while she was employed as a patient registration employee (registrar) by Great Plains Orthopedics (employer). The claimant acquired different counsel, who filed a second application on May 4, 2012, alleging repetitive trauma injuries to her arms and hands with an accident manifestation date of September 8, 2009. Both cases proceeded to an arbitration hearing on April 23, 2014. At the hearing, the claimant's attorney moved to voluntarily dismiss the first claim. The arbitrator did not dismiss the case, but consolidated both cases for hearing. The purpose of this consolidation was to preserve the attorney fees claim on the first application. Following the hearing, the arbitrator found that the claimant sustained repetitive trauma injuries to both hands and arms arising out of and in the course of her employment. The arbitrator found that the injuries had a manifestation date of November 10, 2009, and that the claimant had given proper notice to the employer. The arbitrator awarded the claimant temporary total disability (TTD) benefits covering two (2) weeks (August 4, 2010, through August 10, 2010, and November 24, 2010, through November 30, 2010) at the rate of $376.01 per week. The arbitrator ordered payment of reasonable and necessary medical expenses in the amount of $6,908, as well as all future reasonable and necessary medical expenses arising from the claimant's compensable injuries.

¶ 3 The employer sought review of the arbitrator's award before the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's award. The employer then sought judicial review of the Commission's decision before the circuit court of Peoria County, which confirmed the decision of the Commission. The employer then filed this timely appeal.

¶ 4 BACKGROUND

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on April 23, 2014.

¶ 6 The claimant testified that she began working for the employer, an orthopedic clinic, on August 1, 2001, as a patient registrar in its Peoria, Illinois clinic. Her job duties consisted of various tasks associated with patient registration, including receiving intake paperwork from patients and handling patient charts. She testified that she handled between 20 to 85 patients per day and each patient's chart weighed between 1 and 8 pounds. She testified that some charts could be as much as 5 inches thick. The claimant testified that it took her on average 15 minutes to process each patient, and the flow of patients checking in was constant, although she acknowledged that she could not recall how many patients she checked in on any specific date, or how many new patients she processed each day. She worked 8 hours per day with only a 30-minute lunch break. The claimant further testified that her job duties included typing between approximately 5 hours per day, as well had using a standard hand operated two-hole punch throughout the day. She estimated that hole-punching took approximately 2 hours per day.

¶ 7 In addition to her patient intake duties, the claimant testified that she would direct and assist patients from the waiting area to an examination room, and carry the patient's file to the examination room. The claimant testified that in order to work with the patient charts she had to "grab" each chart from a shelf approximately 5 feet above the floor and take it to her work station. She described the motions involved in retrieving the chart as "grabbing" the chart from the shelf with one hand while squeezing it and pulling it toward her in a single motion. She testified that she performed this series of motions between 50 and 85 times each day. The claimant described the patient check-in process as involving receiving information from a patient and adding the information to the chart, usually by keyboarding/typing computer entries. The

claimant acknowledged that there were usually two patient registrars working at any given time, but she testified that she routinely handled more than half of the patients.

¶ 8 Janet Smith, chief operating officer for the employer, testified regarding the claimant's job duties. She testified that the claimant's descriptions of her job duties was mostly accurate. She acknowledged that the claimant regularly removed and lifted charts from shelves above the floor. She further acknowledged that the claimant could have made keyboard entries up to 5 hours per day, although she maintained that "keyboarding" was not as constant and repetitive as "typing." Smith also acknowledged that the claimant did more work than the other registrar. Smith's testimony differed from the claimant's regarding the number of patient charts the claimant handled each day and the size of those charts. Smith disputed the claimant's estimate that she handled up to 30 files per day. Smith testified that the clinic averaged 10 new patients per day during 2008 and 2009, thus it would not be possible for the claimant to handle 30 files per day. On cross-examination, Smith acknowledged that the number of new patients per day did not accurately correlate to the total number of patients treated on a given day. She also acknowledged that the employer had over 25,000 active patient files during the relevant time period. Smith also testified on cross-examination that she was notified of the claimant's alleged injuries on or about November 12, 2009.

¶ 9 The claimant testified that she began experiencing numbness and a tingling sensation in her dominant right hand sometime prior to September 8, 2009. She acknowledged that the pain probably started as early as 2006 or 2007, however it progressed very gradually until September 2009. She described the symptoms as more noticeable when grabbing for charts or using the two-hole punch. She testified that due to the numbness and tingling in her right hand she began to use her left hand more while performing her job duties.

¶ 10 On September 8, 2009, the claimant sought treatment from Dr. Jeffery Garst, an orthopedic surgeon and a partner for the employer. The claimant gave Dr. Garst a completed patient intake form, giving a complete hand history and reporting gradual numbness and tingling from the fingers to the elbow on the right hand. She told Dr. Garst that the symptoms began approximately two years prior to the appointment and had gradually progressed over that time. Dr. Garst examined the claimant and diagnosed probable right carpal tunnel syndrome. He referred the claimant to Dr. Yibing Li for nerve studies.

¶ 11 On September 29, 2009, the claimant was examined by Dr. Li. The claimant gave a history to Dr. Li that was consistent with the history she gave to Dr. Garst. Dr. Li performed an EMG/NCV test and reported normal results.

¶ 12 On October 6, 2009, the claimant was again examined by Dr. Garst. His treatment notes recorded the fact that he was aware of the normal results of Dr. Li's testing; however, he continued to diagnose possible right carpal tunnel syndrome. Dr. Garst prescribed a cortisone injection to the right wrist, which was performed at that time. He noted some improvement after the injection.

¶ 13 On November 10, 2009, Dr. Garst provided a diagnosis of right carpal tunnel syndrome. Dr. Garst noted the normal EMG/NCV test results reported by Dr. Li, however he opined that the claimant nonetheless presented significant objective symptoms of right carpal tunnel syndrome. He noted that the cortisone injection had provided some temporary relief, which he observed would have been expected in the presence of carpal tunnel syndrome. Dr. Garst recommended right carpal tunnel release surgery.

¶ 14 On or about November 12, 2009, the claimant had a conversation with Debbie Duckworth, the employer's director of human relations. The claimant testified that she told Duckworth that she had been diagnosed by Dr. Garst with right carpal tunnel syndrome a day or

so prior. The claimant further testified that she told Duckworth that, as a result of Dr Garst's diagnosis, she believed that her condition was related to her employment duties. Duckworth instructed the claimant to seek treatment from Dr. Homer Pena, an occupational medicine specialist at OSF St. Francis Medical Center in Peoria.

¶ 15 On November 13, 2009, the claimant was examined by Dr. Pena. Dr. Pena's treatment notes indicated that a copy of the notes were sent by email to Duckworth, and indicated that the claimant was being examined as a potential workers' compensation claim. According to the treatment notes, the claimant gave Dr. Pena a history of bilateral hand numbness, right greater than left. The claimant reported right wrist and elbow pain present for approximately two to four years, with pain significantly increasing to an intolerable level in the preceding eight months. She told Dr. Pena that she had gone to Dr. Garst suspecting she had arthritis "like her mother." However, after seeing Dr. Garst on November 10, 2009, she just "started realizing that work hurt my hands." The claimant gave Dr. Pena a history of her job duties that she claimed were producing her symptoms, including hand writing and typing in registration, hole punching, stapling, stamping, using her key pad on the computer, and pulling files. Dr. Pena thought the Petitioner gave a poor effort during her examination. Dr. Pena noted the following: "[a]lleged bilateral hand paresthesias, right greater than left, with clinical and EMG/NCV support lacking. The alleged work duties and their intensity would have to be investigated. There is evidence in the literature that most clerical work is not involved in carpal tunnel." Dr. Pena suggested that the claimant undergo an independent medical examination (IME) by Dr. Mitchell Rotman. Dr. Pena also suggested a video be done of the claimant's work duties and their intensity in conjunction with the IME. Further, Dr. Pena suggested a second EMG/NCV be performed by a neurologist other than Dr. Li.

¶ 16 On November 27, 2009, the claimant went to Dr. Pena's office seeking an appointment.

The claimant testified that Duckworth informed her that she was no longer allowed to treat with Dr. Garst. She testified that she told Dr. Pena of this and also told him that Duckworth questioned the need for more nerve studies. Dr. Pena's office notes indicate that the employer had recently contracted with a new administrator to handle its workers' compensation claims. The office notes further indicate that the claimant was seeking Dr. Pena's approval of the treatment originally prescribed by Dr. Garst. Dr. Pena noted that he refused to approve the treatment and any other further care for the claimant until such time as the new workers' compensation administrator approved or until after his previously suggested IME had been done. Dr. Pena also noted that he would not see the claimant again until the administrator "clarified those issues and released her to full duty." The record contains no indication that the claimant was ever seen again by Dr. Pena.

¶ 17 On December 4, 2009, an ergonomic evaluation was performed by Matt DeLost, a therapist employed by the employer. The claimant testified that this evaluation of her work station was arranged by the employer. DeLost's evaluation report was sent to both Dr. Garst and Janet King, who was identified at arbitration as being part of the employer's management group. At the evaluation, the claimant's work station was examined in order to see whether some of her carpal and cubital tunnel symptoms could be reduced. As a result, several changes were made to the claimant's work station: the keyboard was secured so that the claimant could type without resting her elbow on her desk top to keep it from moving; the mouse and pad were repositioned to prevent the claimant from resting her elbow on her desk; and padding was added to the two-hole punch handle to reduce the effect on the claimant when she struck it with her palms as she worked. In his report, DeLost concluded that these changes would help alleviate the claimant's symptoms. The claimant testified that she did notice some improvement after these changes were implemented.

¶ 18 On February 8, 2010, the claimant was examined at the request of the employer by Dr. Rotman. Dr. Rotman examined the claimant and reviewed the medical treatment record, which included Dr. Garst's diagnosis of right carpal tunnel syndrome and Dr. Li's normal EMG/NCV. Ignoring Dr. Garst's diagnosis completely, Dr. Rotman opined that the claimant did not have any objective symptoms of carpal tunnel syndrome or nerve entrapment. He opined that the claimant did not have right carpal tunnel syndrome and further opined that nothing about her work would have caused her symptoms.

¶ 19 On February 17, 2010, the claimant sought treatment for her right hand from Dr. Glenn Sidler, her family physician. The claimant testified that she did so because she was prevented by the employer from further treatment by Dr. Garst. Dr. Sidler initially referred the claimant to Dr. Daryl Miller of OSF Rheumatology, who subsequently referred her to Dr. Xuan Truong, a neurologist, for additional diagnostic testing.

¶ 20 On June 11. 2010, Dr. Truong performed an EMG/NCV on the claimant. He reported moderate right carpal and cubital tunnel syndrome. After noting Dr. Truong's report and diagnosis, Dr. Sidler referred the claimant to Dr. John Mahoney, a board certified orthopedic surgeon, at Midwest Orthopedics in Peoria.

¶ 21 On July 6, 2010, the claimant was examined by Dr. Mahoney. His treatment records indicate that Dr. Mahoney diagnosed right carpal and right cubital tunnel syndrome.

¶ 22 On August 4, 2010, Dr. Mahoney performed right carpal tunnel release surgery on the claimant, followed by a right cubital tunnel release surgical procedure performed on November 24, 2010. Treatment records further establish that Dr. Mahoney ordered the claimant off from work for one week after each procedure. The claimant testified that she did not miss any work as a result of her injuries prior to the surgical procedures.

¶ 23 On December 27, 2010, Dr. Mahoney released the claimant to return to unrestricted work

duties. The claimant testified that upon returning to work, her job duties were somewhat less repetitive or strenuous in nature. In June 2011, the claimant voluntarily left the employer for a higher paying job with a different employer.

¶ 24 On May 14, 2012, the claimant again sought treatment from Dr. Sidler, reporting left hand and forearm numbness and tingling. The claimant testified that Dr. Sidler then referred her to Dr. Blair Rhode, an orthopedic surgeon to address the left hand symptoms.

¶ 25 On May 30, 2012, the claimant was examined by Dr. Rhode. Treatment notes from that date record: "[T]he patient presented as a referral from Dr. Sidler for evaluation of a work-related wrist and elbow injury. [Claimant] states the second injury to the fact that she had right extremity symptomatology she her left extremity increasingly." The claimant gave a further history of developing left arm symptoms while performing her job with the employer. The claimant told Dr. Rhode that her right upper extremity was initially symptomatic but she developed left arm problems as she used her left hand more to compensate for the right arm pain. Dr. Rhode diagnosed left carpal and cubital tunnel, which he attributed to the claimant's job duties with the employer. He subsequently ordered an EMG/NCV test which revealed moderate to severe left carpal tunnel and mild left cubital tunnel. Dr. Rhode administered a cortisone injection in the left carpal and cubital area.

¶ 26 November 14, 2012, after noting no significant relief from the injection therapy, Dr. Rhode recommended surgery to both the left carpal and cubital areas. The claimant testified that the surgery recommended by Dr. Rhode had not been performed as of the date of the hearing due to the employer's refusal to authorize compensation.

¶ 27 On February 4, 2013, the claimant was again examined at the request of the employer by Dr. Rotman. Following this examination, Dr. Rotman opined that the claimant had mild left carpal tunnel syndrome. Dr. Rotman further opined that the claimant's condition was idiopathic

in nature and not causally related to her job duties with the employer.

¶ 28 On October 2, 2013, Dr. Rhode gave an evidence deposition in which he opined, to a reasonable degree of medical certainty, that the claimant's work over the course of her employment with the employer was a causative factor in the development of her bilateral carpal and cubital tunnel syndrome injuries. He noted the mechanics of the claimant's gripping and grabbing of rather large charts, along with her other job duties, which he said were highly repetitive, as causative factors. He further noted that the claimant had only two other risk factors, obesity and gender. He further explained causative impact of the mechanism of injury: "the [claimant] describe[ed] how big these charts are; that she would have to kind of one hand grip with her hand. And, yes, that's a static force that has to be generated to hold all of those records so they don't fall on the floor, [and] to move them about." Dr. Rhode noted that the right arm problems were initially predominant, but referred to Dr. Pena's November 2009 note as an indication that the claimant was having left arm symptoms as well. Dr. Rhode noted that the claimant "grabbed" between 30 and 85 charts per day. Dr. Rhode acknowledged that if the claimant's actual exposure was drastically different than her description to him, his opinions could change. Dr. Rhode further opined that the claimant's left hand symptoms were causally related to the claimant overcompensating for her right hand pain.

¶ 29 During cross-examination, Dr. Rhode was questioned about his relationship with counsel for the claimant. He denied allegations made by employer's counsel that his relationship with claimant's counsel was improper or unethical. He specifically denied that the claimant was "referred" to him by claimant's counsel.

¶ 30 On December 12, 2013, Dr. Rotman gave an evidence deposition in which he opined to a reasonable degree of medical certainty that the claimant's current condition of ill-being was not causally related to her job duties for the employer. He opined that her work activities required

no repetitive heavy gripping, no forceful gripping and no repetitive flexion or extension of the elbows. Dr. Rotman concluded that the claimant's symptoms were of a completely idiopathic nature. Dr. Rotman acknowledged that he was not aware of the frequency with which the claimant pulled charts or the amount of time the claimant used her computer on the job.

¶ 31 The arbitrator found that the claimant sustained bilateral carpal tunnel injuries which arose out of and in the course of her employment with the employer and which manifested itself on November 10, 2009. Regarding the repetitive nature of the claimant's job duties, the arbitrator found little disagreement regarding the claimant's job duties during her nine plus years on the job as a registrar. He credited the claimant's testimony detailing how she grabbed charts and what she did with them as well as her other clerical duties which she performed on a daily basis. The arbitrator further noted that, other than dispute the number of times the claimant handled charts in a given day, the employer's evidence acknowledged that claimant's testimony was accurate insofar as her job duties were concerned. The arbitrator also noted that the employer's own ergonomic evaluator modified aspects of the claimant's job "in hope that her symptoms would improve." In addition, the arbitrator credited the claimant's testimony that she typed approximately five hours per day, and also noted the lack of evidence from the employer to the contrary.

¶ 32 Regarding the competing medical opinion evidence as to a causative link between the claimant's employment and her condition of ill-being, the arbitrator gave greater weight to the opinion of Dr. Rhode. The arbitrator determined that Dr. Rhode had a clear and accurate understanding of what the claimant's job duties, and gave a clear explanation as to how those job duties were a causative factor in the gradual development of her conditions, including the issue of left hand symptoms developing as a result of overcompensation for the claimant's right hand condition. The arbitrator found Dr. Rhode's opinion persuasive with his explanation of the static

force required while the claimant gripped and pulled the charts. The arbitrator noted that there was some controversy as to how many charts the claimant might have pulled on an average day. The arbitrator nonetheless found Dr. Rhode's explanation that the claimant's chart activity, when added to the typing duties, placed significant pressure on the claimant's hands and wrists so as to cause her condition. In contrast, the arbitrator found that Dr. Rotman's opinions regarding causation were not persuasive. The arbitrator noted that Dr. Rotman stated that the claimant's job did not require heavy gripping, yet he acknowledged that he had no idea how often she gripped during the course of a day. The arbitrator also noted that Dr. Rotman was suggested by name as the IME examiner by Dr. Pena, whose independence the arbitrator questioned based upon his comments made during his initial encounter with the claimant.

¶ 33 The arbitrator noted that the claimant gave a different manifestation date (September 8, 2009) on her two applications for adjustment of claim, but determined that November 10, 2009, the date that Dr. Garst diagnosed the claimant with right carpal tunnel syndrome was the first date upon which the claimant knew of her injury and the fact that it might be related to her work duties for the employer. The arbitrator noted that the claimant had experienced gradual right hand and wrist pain beginning years prior to her appointment with Dr. Garst, but further noted that the claimant had attributed her condition to arthritis. The arbitrator then found that the claimant gave the employer timely notice when she reported Dr. Garst's diagnosis to the employer's director of human relations two days later on November 12, 2009.

¶ 34 The arbitrator ordered the employer to pay TTD benefits for each of the weeks following the two surgeries. The employer was also ordered to pay $6,908 in reasonable and necessary medical expenses related to the two surgeries as well as any future expenses arising from the surgery to the left hand and wrist proposed by Dr. Rhode.

¶ 35 The employer sought review of the arbitrator's award from the Commission, which affirmed and adopted the arbitrator's award. The employer then sought review in the circuit court of Peoria County, which confirmed the decision of the Commission. The employer then filed this timely appeal.

¶ 36 ANALYSIS

¶ 37 1. Standard of Review

¶ 38 The employer raises several issues on appeal, all of which involve disputed issues of fact. The Commission's determinations regarding questions of fact will not be overturned on appeal unless they are against the manifest weight of the evidence. *Three 'D' Discount Store, Inc. v. Industrial Comm'n*, 198 Ill. App. 3d 43, 46 (1989). A factual decision is against the manifest weight of the evidence when the opposite conclusion is clearly apparent from the record. *D.J. Masonry Co. v. Industrial Comm'n*, 295 Ill. App. 3d 924, 928 (1998). The test when applying the manifest weight of the evidence standard of review is not whether the reviewing court would have reached the same conclusion as the Commission, but whether there is sufficient evidence in the record to support the Commission's decision. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866 (2010). Moreover, it is well within the exclusive purview of the Commission to judge the credibility of witnesses, to weigh competing opinion evidence and to resolve conflicts arising from the evidence, including competing medical opinion evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980).

¶ 39 2. Injury Manifestation Date

¶ 40 The employer first argues that the Commission's finding that the claimant's bilateral injuries arose out of and in the course of her employment was against the manifest weight of the evidence. In order to recover benefits under the Act, a claimant bears the burden of proving by a preponderance of the evidence that his or her injury "arose out of" and "in the course of" the

employment. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006). For an injury to arise out of one's employment, it must have its origin in some risk connected with or incidental to the employment, so that there is a causal connection between the employment and the injury. *Lakeside Architectural Metals v. Industrial Comm'n*, 267 Ill. App. 3d 1058, 1062 (1994). In order to establish that her injuries arose out of her employment, it is necessary for the claimant to establish a causal connection between her employment and her current condition of ill-being. *Hammel v. Industrial Comm'n*, 253 Ill. App. 3d 900, 902 (1993). The claimant need not establish that her employment was the sole cause, or even the primary cause; it is sufficient that she can establish that her employment was *a* causative factor in her ensuring injuries. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 67 (2006); *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). The phrase "in the course of" refers to time, place, and circumstance under which the accident occurred. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57 (1989).

¶ 41 In a repetitive trauma case, in order to establish that her injuries arose out of and in the course of her employment, the claimant must allege and prove a single definable accident date giving rise to her claim. *White v. Illinois Workers' Compensation Comm'n*, 374 Ill. App. 3d 907, 910 (2007). The date of such an accident is the date when the injury "manifests itself." *Id*. The phrase "manifests itself" signifies "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Peoria County Bellwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987). The test is objective, and each case should be decided from its own facts and circumstances. *Three 'D" Discount Store*, 198 Ill. App. 3d at 46.

¶ 42 On appeal in the instant matter, the employer argues that there is no causal connection between the claimant's employment and her current condition of ill-being; and even if there was,

the proper manifestation date was September 8, 2008 or sooner, not November 10, 2009. Turning to the manifestation date first, the Commission adopted the arbitrator's finding that November 10, 2009, was the date when *both* the fact of injury and the causal relationship to the claimant's employment would have been apparent to a reasonable person. The employer maintains that this finding is against the manifest weight of the evidence where: (1) the record established that the claimant had been suffering hand and wrist pain for years; (2) the claimant worked in an orthopedic clinic which dealt with repetitive trauma cases and had particular knowledge of the relationship between employment activities and repetitive trauma and thus should have known of the causal relationship much earlier than November 10, 2009; and (3) Dr. Rhode, after examining the claimant in May 2012 opined that the claimant's condition manifest of September 8, 2008, not September 8, 2009. We do not find the employer's argument persuasive.

¶ 43 It is well-settled that the date of manifestation of a repetitive trauma injury is subject to a "flexible standard" that "ensures a fair result for both the faithful employee and the employer's insurance carrier." *Three 'D' Discount*, 198 Ill. App. 3d at 49. Our courts typically uphold various factors which set the manifestation date as "either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities." *Durand*, 224 Ill. 2d at 72. Moreover, because repetitive-trauma injuries are gradual and progressive in nature, "the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relationship to work." *Id.*

¶ 44 Here, we cannot say that the Commission erred in finding November 10, 2009, as the manifestation date. The record established: (1) the claimant's condition was gradual and

progressive in nature; (2) it did not adversely affect her work performance; (3) she did not seek medical treatment until September 9, 2009; and (4) when she did seek treatment she suspected that her condition was the result of hereditary arthritis. The employer's suggestion that the claimant was too knowledgeable regarding work-related repetitive trauma injuries to believe that her condition had not manifested at a time prior to November 10, 2009, attacks the credibility of the claimant, an issue within the exclusive purview of the Commission. *Odette*, 79 Ill. 2d at 253. Likewise, the argument that Dr. Rhode's statement in 2012 conclusively established a manifestation date in 2008 rather than 2009 is not persuasive. The record established that November 10, 2009, was the first date upon which the claimant sought medical treatment for her hand/wrist pain, and the first date upon which she received a diagnosis of carpal tunnel syndrome. Given the record, we find that the Commission's determination that the claimant's fact of the claimant's injuries and the causal relationship to her employment manifested on November 10, 2009, was not against the manifest weight of the evidence.

¶ 45 3. Causation

¶ 46 Turning next to the claimant's argument that the Commission erred in finding a causal connection between the claimant's current condition of ill-being and her employment, we note that repetitive trauma claims generally rely upon medical testimony to establish the causal connection between the work performed and the claimant's disability. *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 477 (1987). Here, employer raises two objections to the Commission's determination that the claimant's job duties were *a* causative factor related to her bilateral carpal and cubital tunnel syndrome: (1) the claimant's description of her job duties in her testimony and in the histories given to the medical practitioners was not accurate; and (2) the Commission erroneously gave more weight to the causation opinion of Dr. Rhode than the opinion of Dr. Rotman. We find the employer's arguments unpersuasive. In doing so, we

reiterate that it is the function of the Commission alone to determine the weight to be accorded to evidence, to weigh competing medical opinions, and to draw reasonable inferences from the evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 411 (1984).

¶ 47 Regarding the accuracy of the claimant's description of her job duties, both in her testimony at hearing and in the histories given to the medical treating physicians, the record established that the claimant's descriptions of her job duties was consistent each time. We further note that the employer's witnesses, Janet Smith, acknowledged that the claimant's description of her work duties was mostly accurate. Smith only challenged the claimant's assertion that she handled in excess of 30 files per day. Smith's testimony, however, was undercut by her acknowledgement that she did not know the total number of patients seen at the clinic on a given day, but only the number of new patients. Where there is conflicting testimony concerning a relevant fact, we defer to the Commission to resolve the conflict and its decision will not be overturned unless it is against the manifest weigh of the evidence. *Berry, Id*. Here, we cannot say that the Commission erred in finding the claimant's description of her job duties to be accurate.

¶ 48 Regarding the relative weight to be accorded the medical causation opinion testimony, the employer argues that Dr. Rhode's opinion is completely unworthy of credibility because of an unethical relationship with the claimant's attorney. It further argues that Dr. Rotman's opinion that the claimant's condition was "idiopathic" and had absolutely no causal connection to her employment is the only credible opinion. We find the employer's argument to be meritless.

¶ 49 The Commission weighed the competing opinions and found Dr. Rhode's opinion to be persuasive on the issue of causation. The Commission noted that Dr. Rhode explained in great detail how the claimant's job duties were related to the mechanism of her injuries, how static

force necessary to grab the files increased the risk of injury, and how the claimant reported first right hand and then left hand pain in a manner that would be expected with repetitive trauma injuries. The Commission also noted that Dr. Rhode considered the claimant's "other duties" *i.e.*, typing up to five hours per day as a relevant factor. In contrast, the Commission gave little weight to Dr. Rotman's opinion, noting his belief that the claimant's job duties involved "no repetitive" trauma was contradicted by the evidence, and his acknowledgement that he did not know how frequently the claimant pulled charts or used her computer on a daily basis. We note that Dr. Rotman's opinion that the claimant did not have right hand carpal tunnel syndrome was directly contrary to Dr. Garst's opinion that claimant did. Given the record, we cannot say that the weight accorded to the medical opinion testimony regarding causation was against the manifest weight of the evidence.[1]

¶ 50 4. Notice

[1] During Dr. Rhode's deposition, the employer's attorney vigorously attacked his credibility by implying that there was an ethically improper relationship between Dr. Rhodes and the claimant's counsel, the Strong Law Office. Dr. Rhode's denial of this accusation was equally vigorous. Employer's counsel questioned Dr. Rhode regarding another case before the Commission wherein he testified on behalf of a claimant also represented by the claimant's counsel and the Commission found Dr. Rhode's testimony less credible than the IME physician. Dr. Rhode again denied any improper conduct. On appeal to this court, the employer asks this court to consider the Commission decision (*Sheila Gaede v. Caterpillar, Inc.*, 11 IWCC 734 (2011)) referenced at the deposition and reject the Commission's finding that Dr. Rhode's opinion is credible. We decline to do so for two reasons: (1) decisions of the Commission are *sui generis*, nonprecedential, and should not be cited to this court (*S & H Floor Covering, Inc. v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 266 (2007); and (2) the Commission decision did not establish that Dr. Rhodes was not credible; rather it found that the other physician's opinion was entitled to more weight under the facts of that case.

¶ 51 The employer next maintains that the Commission erred in finding that the claimant gave timely notice of her injuries. The Act generally requires a claimant to give the employer notice of accidental injuries within 45 days of the accident. 820 ILCS 305/6(c) (West 2008). This notice requirement applies to claimant's alleging repetitive trauma injuries. *Three 'D' Discount*, 198 Ill. App. 3d at 49. In repetitive trauma cases, the date of accident for purposes of determining proper notice is the date the injury "manifests itself." *Bellwood*, 115 Ill. 2d at 531. Here, the Commission determined that the date the claimant's injury manifested itself was November 10, 2009, a determination we have found to be supported by the manifest weight of the evidence. The employer acknowledged that it received notice of the claimant's injury on November 12, 2009, when the claimant reported the results of her November 10, 2009, appointment with Dr. Garst to the employer's director of human relations. Based upon this record, the Commission's finding that the claimant gave proper notice of her injuries to the employer was not against the manifest weight of the evidence.

¶ 52 5. Statute of Limitations

¶ 53 The employer next maintains that the Commission erred in finding that the claimant's application for adjustment of claim was filed within three years of the claim arising. 820 ILCS 305/6(d) (West 2008). The employer maintains that the claimant knew she had problems with her wrist and hand in 2006 and 2007, and therefore she was required to bring her claim for those injuries sometime in 2009 or 2010. We find the employer's argument without merit. The employer's assertion that the claimant's repetitive trauma claims arose in 2006 or 2007 completely ignores the Commission's finding that the claimant's accidental injuries manifested on November 10, 2009. If the claim did not arise until November 10, 2009, the statute of limitations could not have started to run before that date. *A.C. & S. v. Industrial Comm'n*, 304 Ill. App. 3d 875, 881 (1995) ("[t]he manifestation date is the date of accident for purposes of the

statute of limitations and notice requirements"). Given that the record here clearly established that the application for adjustment of claim was filed within three years of the manifestation date, the Commission's finding that the claim was filed within the appropriate statute of limitations was not against the manifest weight of the evidence.[2]

¶ 54 6. Medical Expenses and TTD benefits

¶ 55 The employer lastly maintains that the Commission erred in awarding the claimant certain past and future medical expenses and TTD benefits. We find that the Commission's award of benefits was not against the manifest weight of the evidence.

¶ 56 Regarding the Commission's TTD award, it appears that the claimant's only argument is that an award of TTD benefits would be improper where the claimant had failed to establish a causal connection between her injuries and her employment. Since this argument is based solely upon the premise that the Commission's finding on causation was erroneous, a premise which we have rejected, we also reject this contention without the need for further analysis. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011). Moreover, we note that the record established that Dr. Mahoney, the surgeon who performed the two surgeries, took the claimant off from work post-operatively for one week after each procedure. There is nothing in the record to suggest these work restrictions were not reasonably related to the claimant's condition of ill-being causally related to her employment.

[2] The employer further argues that the fact that Commission dismissed the first application without leave to reinstate supports its statute of limitations argument. We find no support for this position in the record. The Commission consolidated the two applications, rather than dismissing the first application, for the sole purpose of preserving the first counsel's attorney fee claim. We find no merit to the employer's argument that this procedural posture somehow prejudiced the claimant with regard to the effective filing date for purposes of complying with section 6(d) of the Act.

¶ 57 With regard to the employer's argument that the Commission erred in awarding medical benefits, the employer argues that the medical expenses awarded to the claimant fell outside the two referrals allowed under section 8(a) of the Act. 820 ILCS 305/8(a) (West 2008); *Bob Red Remodeling v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 130974WC ¶ 47. Specifically, the employer maintains that Dr. Garst was the claimant's first choice; Dr. Mahoney was her second choice, and Dr. Sidler was her third choice, and therefore any referrals from Dr. Sidler were beyond the chain of medical expenses to be paid under section 8(a) of the Act.

¶ 58 An employer's liability to pay for medical services is limited to first aid and emergency treatment plus two additional physicians chosen by the claimant as well as those providers recommended by the claimant's two physicians. The determination as to whether a medical provider is the choice of the claimant or within a chain of referral from a chosen provider is a question of fact for the Commission to determine subject to the manifest weight of the evidence standard of review. *Bassgar, Inc. v. Illinois Workers' Compensation Comm'n*, 394 Ill. App. 3d 1079, 1085 (2009).

¶ 59 In the instant matter, the Commission found that Dr. Sidler was the claimant's second choice of physician and that all of her treatment after she treated with Dr. Sidler on February 17, 2010, came through his direct referral or as referrals from other physicians in Dr. Sidler's chain. Specifically, the Commission held that Dr. Mahoney was within the chain of referral started with Dr. Sidler, despite some testimony to the contrary. We note that there is evidence supporting the finding that the claimant was referred to Dr. Mahoney for treatment. We find, therefore, that the Commission's determination that all medical benefits were properly awarded pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2008)) was not against the manifest weight of the evidence.

¶ 60 CONCLUSION

¶ 61 The judgment of the circuit court which confirmed the decision of Commission is affirmed. The matter is remanded to the Commission for further proceedings.

¶ 62 Affirmed and remanded.