2017 IL App (5th) 160418WC-U
No. 5-16-0418WC
Order filed November 9, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ELNORA GARDNER, as Special Administrator of the Estate of Kenneth Gardner, deceased,	)	Appeal from the Circuit Court of Madison County.
Appellant,	)	
v.	)	No. 16-MR-83
THE ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*,	)	Honorable John B. Barberis, Jr.,
(Buske Lines, Appellee).	)	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 establish that decedent sustained an accident arising out of and in the course of his employment with respondent or that decedent's resulting condition of ill-being was causally related to his employment were not against the manifest weight of the evidence where the decision rested on the credibility of decedent's testimony and the resolution of conflicts in the medical evidence regarding the relationship between decedent's low back condition and his employment.

¶ 2 Claimant, Elnora Gardner, as special administrator of the estate of Kenneth Gardner (decedent), appeals from the judgment of the circuit court of Madison County confirming a decision of the Illinois Workers' Compensation Commission (Commission).[1] The Commission denied benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2008)), finding that claimant failed to prove by a preponderance of the evidence that (1) decedent sustained a work-related injury arising out of and in the course of his employment with respondent, Buske Lines, and (2) decedent's condition of ill-being following the alleged accident was causally related to his employment. On appeal, claimant challenges the Commission's findings with respect to both accident and causal connection. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 10, 2008, decedent filed an application for adjustment of claim alleging that he sustained an injury to his low back on June 10, 2008, while working for respondent. The matter proceeded to an arbitration hearing on March 17, 2015. The issues in dispute were accident, causal connection, medical expenses, temporary total disability, and the nature and extent of the injury. The following evidence was presented at the arbitration hearing.

¶ 5 Decedent was hired by respondent as a truck driver in May 2000. Decedent's duties involved hooking up trailers to a tractor, driving to a designated location, and unhooking the trailer. Decedent did not have any loading or unloading responsibilities with respect to the

[1] Decedent filed the application for adjustment of claim and testified at the arbitration hearing, but passed away after the arbitrator issued his decision. Following decedent's death, his surviving spouse was appointed as the special administrator of his estate for the purpose of prosecuting this action. We refer to decedent's surviving spouse as "claimant."

trailer. Decedent described the process of hitching a trailer to the tractor. He explained that he would back up the tractor to the trailer, exit the tractor, look at the fifth pin to make sure the trailer was not too high, and hook up the trailer. Decedent noted that the trailer's legs support the front end of the trailer when it is not hooked up to a tractor. Accordingly, after decedent hooked up the trailer, he would crank up the legs using a dolly crank. He then made any remaining connections, such as the air hose, service line, and lights.

¶ 6 The accident at issue occurred on June 10, 2008, when decedent was 68 years old. Decedent stated that on that date, he was in Carlisle, Pennsylvania, where he was assigned to transport a load to Greenville, Illinois. Decedent testified that he could not hook up the trailer to the tractor because the trailer was too high. As a result, decedent had to "crank the dolly down to where it would match the fifth wheel" to hook up the trailer. Decedent testified there was 44,800 pounds on the trailer. When he cranked the handle, decedent felt something in his back pop and he thought he had pulled a muscle. He finished cranking the dolly down, hooked up the trailer, connected the other lines, and began the drive to Illinois. At a rest area, decedent laid down for four hours to sleep. When he woke up, he was not able to stand on his right leg. Nevertheless, decedent was able to finish his route. Decedent testified that after delivering the load in Greenville, he took the trailer to the Granite City yard where he spoke with a supervisor named Glenda. Decedent told Glenda that he hurt his back. Glenda completed an accident report and sent decedent to Midwest Occupational Medicine.

¶ 7 Decedent acknowledged having a history of prior problems with his low back. To that end, decedent treated with Dr. Reza Jalal starting on July 30, 2007, about 10 months before the alleged work accident. Dr. Jalal's records reflect that decedent presented with complaints of low back discomfort. The discomfort radiated into the right buttock area and had been present for

three to four days. Decedent reported taking ibuprofen every day with modest relief. An examination of the back was "unrevealing." Dr. Jalal diagnosed low back pain with mild sciatic symptoms, most likely due to degenerative joint disease of the lumbar spine. Decedent was advised to discontinue ibuprofen and take Ultram instead. Dr. Jalal noted that if decedent's symptoms persisted, he would order a radiologic evaluation.

¶ 8 Decedent returned to Dr. Jalal on November 7, 2007, with continued complaints of low back pain. Decedent stated that the pain radiated to the back of his buttock on the left side, occasionally reaching the ankle. Decedent reported having pain in the groin as well. Decedent related that his symptoms began two to three weeks earlier. Dr. Jalal diagnosed degenerative joint disease of the lumbar spine with radicular symptoms. An MRI of the lumbar spine was ordered.

¶ 9 The MRI was performed on November 26, 2007. The radiologist's impression was: (1) multi-level disc disease with moderate lumbar spondylosis and marked lower lumbar facet arthropathy; (2) moderate central stenosis at L4-5; (3) mild central stenosis at L5-S1; (4) multi-level foraminal stenosis with the left L4 nerve root and both L5 nerve roots contacting disc bulges in the foramen (noted to be a possible source for radiculopathy/back pain); and (5) anterior disc protrusion at L5-S1 (also noted to be a possible source for back pain).

¶ 10 On November 28, 2007, decedent saw Dr. Jalal again. At that time, Dr. Jalal wrote that decedent "continues to have significant low back pain with Darvocet helping barely to any extent at this point in time." He also noted that the MRI confirmed "some moderately severe spinal stenosis." Dr. Jalal again diagnosed low back pain. Dr. Jalal instructed decedent to use Lortab for pain relief and to follow up with him in six weeks at which time Dr. Jalal would "consider referring [decedent] to surgery versus a pain clinic if the pain control remains poor."

¶ 11 Decedent testified that he did not return to Dr. Jalal after November 28, 2007, because his back discomfort "went away." He added that despite the problems reported to Dr. Jalal, he never missed work between July 30, 2007, and June 10, 2008, because of issues with his low back. Decedent also noted that respondent requires an annual physical examination to work. Decedent took an examination in April 2008. At that time, he was issued a "fit for duty certificate to drive." In addition, decedent denied having any low back problems in the weeks leading up to June 10, 2008.

¶ 12 Following the June 10, 2008, event, decedent initially treated with Dr. George Dirkers at Midwest Occupational Medicine on June 12, 2008. Dr. Dirkers's progress note of that visit states that decedent reported that he had never had any back problems. Regarding the accident, decedent told Dr. Dirkers that he was cranking the "landing gear" to lower a trailer when he felt a pop in his right lower back. Decedent described pain in the right lower back radiating down the back of both thighs and into both calves. Decedent also reported that all 10 of his toes were numb. Decedent stated that sitting relieved the pain significantly while walking made it worse. After conducting a physical examination, Dr. Dirkers diagnosed low back pain likely due to underlying spinal stenosis. Dr. Dirkers based his diagnosis on decedent's age (68) and the fact that decedent was better with sitting and worse with walking. In Dr. Dirkers's opinion, the event that decedent described would not cause spinal stenosis. Decedent was given a light-duty restriction. At the arbitration hearing, decedent acknowledged that he told Dr. Dirkers that he never had any prior back problems. Decedent explained that he made that statement because he was not having back issues at that time.

¶ 13 Thereafter, decedent treated with chiropractor Kevin Winkle four times between June 12 and June 19, 2008. Winkle ordered X rays, which were performed on June 13, 2008. The

radiologist who read the X rays noted (1) degenerative disc changes at L5-S1 with slight space narrowing, (2) degenerative changes in the epiphyseal joints at L5-S1 with a slight anterior listhesis of one to two millimeters at L5 on S1, and (3) anterior osteophytes at several levels. Winkle advised decedent to get an MRI and consult a neurologist.

¶ 14 On June 20, 2008, decedent underwent a second MRI. The MRI report notes a history of right foot drop. Decedent testified that prior to June 10, 2008, he had not experienced that symptom. The radiologist conducted a segmental analysis of the lumbar spine and found as follows. At the L1-2 and L2-3 levels, no abnormalities were noted. At the L3-4 level, there was mild facet joint arthropathy causing mild narrowing of the central canal and mild narrowing of the neural foramina bilaterally. At the L4-5 level, there was a diffuse disc bulge and moderate facet joint arthropathy resulting in moderate central canal and lateral recess stenosis bilaterally, mild neural foraminal stenosis bilaterally, left greater than right, and prominent left-sided facet joint effusion. At the L5-S1 level, there was moderate facet joint arthropathy and disc bulge causing mild narrowing of the central canal and mild neural foraminal stenosis bilaterally, right greater than left. Based on the result of the MRI, respondent consulted Dr. Sonjay Fonn, a neurosurgeon.

¶ 15 Decedent first presented to Dr. Fonn on June 25, 2008, with complaints of back and right leg pain with foot drop. Regarding the history of injury, decedent reported that while "rolling out dollies" at work on June 10, 2008, he felt his back pop and developed back pain with radiation down his legs, right worse than left, with progressive onset of weakness in the right foot. At the time of the examination, decedent was ambulating with a walker. Dr. Fonn reviewed decedent's June 2008 MRI and noted severe lumbar stenosis secondary to disc herniation as well as facet hypertrophy and ligamentum flavum hypertrophy at the L4-5 and L5-

S1 levels with compression of the exiting nerve root. Dr. Fonn diagnosed right foot drop secondary to severe lumbar stenosis at L4-5 and L5-S1. He recommended surgery at the L4-5 and L5-S1 levels. On July 8, 2008, Dr. Fonn performed surgery on decedent, involving a fusion from L4 through S1. Dr. Fonn's postoperative diagnosis was L4-5 and L5-S1 disc herniations and degenerative disc disease.

¶ 16 Meanwhile, on June 30, 2008, Dr. Dirkers responded to a letter from a workers' compensation claim representative. In the letter, Dr. Dirkers noted that he had an opportunity to review decedent's prior medical records. Based on those records, he found that decedent had misrepresented that he had never had any prior back problems. According to Dr. Dirkers, decedent's prior medical records show he had longstanding symptoms of spinal stenosis and that his doctor instructed him to consult a neurosurgeon prior to June 10, 2008. Dr. Dirkers concluded that decedent was suffering solely from spinal stenosis, that this medical condition was "significant and serious" well before June 10, 2008, and that decedent's duties as a truck driver did not cause any worsening of his condition.

¶ 17 On July 16, 2008, decedent's medical records were reviewed by Dr. Marc Soriano. Dr. Soriano concluded that the event of June 10, 2008, did not aggravate decedent's preexisting medical condition. In this regard, Dr. Soriano noted that by the history decedent provided to his treating physician, he had a long history of right leg pain and low back pain. Dr. Soriano stated that he would not expect lumbar stenosis to improve without treatment since it is a chronic, longstanding problem. He added that by its very nature, such a condition would be expected to worsen regardless of occupation or activity. Moreover, Dr. Soriano disagreed with the surgical recommendation of a fusion because the radiological report did not indicate severe stenosis. As a result, Dr. Soriano opined Dr. Fonn's recommendation for surgery bore no relationship to the

alleged work injury. Dr. Soriano felt it was more likely that decedent would benefit from foraminal and bilateral hemilaminotomies. Dr. Soriano also found that decedent gave inconsistent descriptions regarding how the work injury allegedly occurred and that decedent told one physician that he had no back problems prior to June 10, 2008. Dr. Soriano felt that these discrepancies "give[] this physician the impression that [decedent] is attempting to portray himself in a condition of ill-being that is solely related to work, whereas the facts of the case indicate otherwise."

¶ 18 Decedent followed up with Dr. Fonn postoperatively on three occasions. Decedent testified that the surgery helped and alleviated the right foot drop. On October 15, 2008, Dr. Fonn discharged decedent from his care and released decedent to return to work without any restrictions. Decedent testified, however, that he was unable to return to work because of an unrelated problem with his right knee.

¶ 19 Decedent did not treat with Dr. Fonn after October 15, 2008, until March 11, 2010. On that date, decedent presented with complaints of swelling in his legs and back pain. Decedent denied any additional injury or accident to his low back during the 17-month gap in treatment. Dr. Fonn conducted a physical examination which was normal except for "approximately 4+/5 weakness in his right dorsiflexion." Dr. Fonn recommended a CT myelogram of decedent's lumbar spine to evaluate for neuropathy. That study showed moderate lumbar stenosis at the L3-4 level, which Dr. Fonn noted was above his prior fusion at the L4-5 and L5-S1 levels. Dr. Fonn recommended conservative treatment, specifically a course of epidural steroid injections at the L3-4 level bilaterally. Dr. Fonn administered the first series of epidural steroid injections in April 2010. Decedent reported that the injections gave him "excellent relief" of his symptomatology.

¶ 20 On February 28, 2011, decedent underwent another lumbar MRI. The radiologist compared the MRI with the preoperative MRI taken on November 26, 2007. In interpreting the February 2011 MRI, the radiologist found that, compared with the November 2007 MRI, there was a new anterior and posterior fusion at L4-5 and S1, there was a new mild right degenerative retrolisthesis at L3-4, and there had been mild progression of the facet hypertrophy. Meanwhile, Dr. Fonn administered additional courses of injections as decedent's pain returned. Decedent testified the last course of shots was administered in September or October 2014.

¶ 21 On February 29, 2012, at the request of decedent's attorney, Dr. Dwight Woiteshek examined decedent and reviewed various medical records. Dr. Woiteshek authored a report of his findings and testified by evidence deposition. Dr. Woiteshek testified that he is a board-certified orthopedic surgeon, although he stopped practicing medicine in 2008. Decedent told Dr. Woiteshek that he sustained a work-related injury on June 10, 2008. Specifically, decedent reported that he was "rolling out dollies" at work when he felt a "pop" in his lumbar spine area. The pain began radiating down his legs, right greater than left. The pain intensified over the following week, and decedent developed progressive weakness in his right foot. An MRI scan dated June 20, 2008, showed spinal stenosis with no definite disc protrusions or herniations. Decedent treated with Dr. Fonn, who eventually performed surgery. Decedent improved significantly following surgery. Over time, however, decedent had continued pain in his lumbar spine with radiculopathy. An MRI scan taken in February 2011 showed a new mild right degenerative retrolisthesis at L3-4. Thereafter, decedent received pain management techniques with marginal improvement. At the time of the examination, decedent continued to complain of pain in his lumbar spine with radiation into his legs, right greater than left.

¶ 22 Dr. Woiteshek noted that prior to his injury on June 10, 2008, decedent had a problem with his back. Specifically, decedent reported that he injured his lumbar spine at work in October 2007. An MRI taken in November 2007 showed moderate central stenosis at L4-5 and mild central stenosis at L5-S1. Dr. Woiteshek noted, however, that decedent was "relatively asymptomatic." He also noted that decedent responded to nonsteroidal anti-inflammatory medications and decedent denied missing work because of his condition.

¶ 23 Dr. Woiteshek diagnosed (1) traumatic disc herniation at the L4-5 and L5-S1 levels and (2) subsequent "failed back syndrome." Dr. Woiteshek opined that the June 10, 2008, work injury described by decedent was the "prevailing factor" in the cause of his traumatic disc herniation at the L4-5 and L5-S1 levels and his subsequent "failed back syndrome." The basis for Dr. Woiteshek's opinion was the history obtained from decedent, the physical examination, the medical records reviewed, and his experience as a board-certified orthopedic surgeon. He also attributed the right foot drop to the work injury, remarking that it was noted "literally ten days after this work related injury in June 10, 2008."

¶ 24 On November 20, 2012, decedent was examined by Dr. Kevin Rutz at respondent's request. Dr. Rutz testified that he is a board-certified orthopedic surgeon with a subspecialty in spinal surgery. Dr. Rutz authored a report of his findings and testified by evidence deposition. On the date of Dr. Rutz's examination, decedent complained of pain in his lower back with some radiation into his right lateral calf. Decedent told Dr. Rutz that while at work on June 10, 2008, he was "cranking down a trailer" when he felt a "pop" in his back. Decedent went to sleep in the cab of his truck for approximately four hours. When decedent awoke, he had significant back pain. Decedent finished his work day and reported the injury prior to seeking medical care. Decedent told Dr. Rutz that he had one previous episode of left buttock pain which had resolved.

Dr. Rutz also reviewed decedent's MRIs. Dr. Rutz noted the MRI dated November 26, 2007, showed advanced facet arthropathy from L4 to S1 at both levels consistent with a degenerative spondylolisthesis causing moderate to severe lateral recessed stenosis. The MRI from June 20, 2008, demonstrated the same findings, but a worsening of the stenosis. No disc herniation was observed on the June 20, 2008, MRI. The MRI dated February 28, 2011, showed the fusion from L4 to S1 and mild to moderate central stenosis at L3-4.

¶ 25 Dr. Rutz's diagnosis was twofold: (1) status post L4 to S1 decompression and fusion for stenosis and degenerative spondylolisthesis, not work related; and (2) current low back pain secondary to adjacent level degeneration. Dr. Rutz opined that there was no causal relationship between the alleged work injury of June 10, 2008, and decedent's symptoms. Instead, Dr. Rutz believed that decedent's need for treatment was secondary to his own intrinsic degenerative condition. Dr. Rutz explained that decedent had an advanced degenerative condition with a two-level degenerative spondylolisthesis and severe stenosis. Dr. Rutz believed that decedent would have become symptomatic with the passage of time as his stenosis demonstrated progression between the 2007 and 2008 MRIs. Dr. Rutz stated that these changes were not acute, they were degenerative changes that take time to develop. He also stated that foot drop can be consistent with the progressive nature of degenerative spondylolisthesis. Dr. Rutz did not find the MRIs to show a disc herniation. He acknowledged that Dr. Fonn diagnosed disc herniation, but stated that there was a lack of evidence of disc herniation on the preoperative MRI and there was no mention of a disc herniation in the surgical report. While there was a reference to "bulging" discs, that is part of the nature of a degenerative spondylolisthesis and is not the same as a disc herniation.

¶ 26 Dr. Fonn also testified by evidence deposition. Dr. Fonn testified that he is a neurosurgeon specializing in spine surgery. Dr. Fonn opined that the work injury of June 10, 2008, that decedent described was the causative reason for decedent's condition of ill-being. Dr. Fonn stated that the findings of decedent's November 2007 MRI did not change his opinion on causation. In this regard, Dr. Fonn conceded that decedent had some element of preexisting degenerative changes in his lumbar spine. However, Dr. Fonn opined that the work accident resulted in a "fairly significant aggravation" resulting in the foot drop and the need for surgical intervention.

¶ 27 Dr. Fonn testified that after he released decedent from his care in October 2008, he did not see decedent again until March 11, 2010. At that time, decedent reported swelling in his legs and residual back pain. A myelogram indicated a problem at the L3-4 level, which was one level above where Dr. Fonn had operated. Dr. Fonn recommended conservative treatment. To that end, decedent underwent several courses of epidural injections at the L3-4 level "with reasonable results." Decedent then underwent a third MRI on February 28, 2011. That film showed a new mild right degenerative retrolisthesis at the L3-4 level and some mild progression of the facet hypertrophy. Dr. Fonn opined that the subsequent development of the problem at the L3-4 level and the epidural injections were related to the work accident of June 2008. Dr. Fonn's causation opinion was based on two grounds. First, he stated that decedent could have sustained an additional injury to the L3-4 level at the time of the accident, although it might not have been apparent at that time. Second, he cited adjacent segment disease, which occurs when additional stressors are placed on the levels above and below a fusion.

¶ 28 On cross-examination, Dr. Fonn acknowledged that there are many causes of degenerative disc disease, including aging, obesity, smoking, and genetic factors. Dr. Fonn

acknowledged that decedent's age, obesity, and smoking history could have played a role in his condition. Nevertheless, Dr. Fonn did not believe that decedent's condition was simply due to a natural progression of degenerative disc disease. He explained that the 2011 MRI showed a retrolisthesis or instability of the spine in a level immediately adjacent to his lumbar fusion, which suggests something more than simply routine degenerative disc disease. According to Dr. Fonn, neither the 2007 nor 2008 MRIs showed any evidence of instability at the L3-4 level.

¶ 29 Based on the foregoing evidence, the arbitrator found that decedent failed to meet his burden of proof as to either accident or causal connection. The arbitrator noted that prior to the claimed accident of June 10, 2008, decedent had problems involving his low back over the span of at least five months that caused him to seek treatment. Although decedent testified that his problems disappeared until the alleged accident at issue, the arbitrator did not find such a claim credible given the nature of spinal stenosis and degenerative disc disease. The arbitrator also found significant the fact that when decedent first sought medical care with Dr. Dirkers, he denied a history of prior low back problems. Moreover, the arbitrator found the testimony of Dr. Fonn and Dr. Woiteshek unpersuasive. Specifically, the arbitrator found Dr. Fonn's testimony "evasive," noting that he "could not, or would not, respond to questions during cross-exam." Further, Dr. Woiteshek was a retired general orthopedic surgeon who had not actively practiced medicine since the summer of 2008. The arbitrator was persuaded by the evidence from Dr. Dirkers, Dr. Soriano, and Dr. Rutz. The arbitrator noted that Dr. Dirkers documented that decedent had longstanding spinal stenosis and did not sustain any aggravation of this preexisting condition on June 10, 2008. Dr. Soriano did not believe that decedent sustained an aggravation of a preexisting condition on June 10, 2008. He noted that lumbar stenosis does not improve and by its very nature would be expected to worsen regardless of occupation or activity. Dr. Soriano

also noted inconsistencies in the histories decedent reported to his treatment providers. Dr. Rutz concluded that decedent had severe spinal stenosis in November 2007, which took years to develop. According to Dr. Rutz, decedent's June 2008 MRI did not show any acute findings. Dr. Rutz opined that decedent had a severe degenerative condition which would have become symptomatic sooner or later. Accordingly, the arbitrator denied decedent's claim for benefits in its entirety.

¶ 30 The Commission unanimously affirmed and adopted the decision of the arbitrator. On judicial review, the circuit court of Madison County confirmed the Commission. This appeal ensued.

¶ 31 II. ANALYSIS

¶ 32 On appeal, claimant raises two issues. First, she argues that the Commission's finding that she failed to establish that decedent's low back injury arose out of and in the course of a work-related accident was against the manifest weight of the evidence. Second, she claims that the Commission's finding that she failed to establish a causal connection between decedent's resulting condition of ill-being and his employment with respondent was against the manifest weight of the evidence.

¶ 33 Both accident and causal connection present issues of fact. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 19 (accident); *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 597 (2005) (causation). 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 v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). 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 v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). 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). 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. Having determined the appropriate standard of review, we now turn to claimant's contentions of error.

¶ 34 Claimant first challenges the Commission's finding that she failed to prove that decedent's injury arose out of and in the course of a work-related accident. The purpose of the Act is to protect an employee from any risk or hazard which is peculiar to the nature of the work he or she is employed to do. *Hosteny*, 397 Ill. App. 3d at 674. Hence, to be compensable under the Act, an employee must establish by a preponderance of the evidence both that his or her injury "arose out of" and "in the course of" the employment. *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App. 3d 486, 489 (2004).

¶ 35 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). An injury sustained on an employer's premises, or at a place where the employee might reasonably have been while performing his duties, and while the employee is at work, is 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).

¶ 36 In this case, claimant asserts that the only evidence concerning accident came from decedent and decedent's testimony supports a finding that his injury arose out of and in the course of his employment. Specifically, claimant argues that decedent was "in the course of" his employment at the time of his back injury because he was assigned by respondent's dispatcher to pick up a load in Carlisle, Pennsylvania. Claimant further contends that decedent's back injury "arose out of" his employment because "cranking down the dolly," the activity in which decedent was engaged at the time of the injury, was part of his job duties. Respondent concedes that the only testimony with regard to accident came from decedent. According to respondent, however, the Commission found that decedent was not credible and therefore properly rejected his testimony. We agree with respondent.

¶ 37 It is well established that the Commission, as the trier of fact, is not bound to accept even unrebutted testimony, so long as it has a sound reason for doing so. *Sorenson v. Industrial Comm'n*, 281 Ill. App. 3d 373, 384 (1996); see also *U.S. Steel Corp. v. Industrial Comm'n*, 8 Ill. 2d 407, 413 (1956) (noting that the mere existence of testimony by an interested party does not require its acceptance); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041-42 (1999) (stating that the Commission is not required to accept unrebutted testimony). Here, the Commission, in affirming and adopting the arbitrator's decision, articulated a reason for doubting the veracity of decedent's testimony. In particular, the Commission noted that prior to the alleged accident at issue, decedent had problems involving his low back that caused him to

seek treatment. To that end, on November 28, 2007, several months prior to the claimed work accident, Dr. Jalal diagnosed moderately severe spinal stenosis and noted that decedent might require surgery or pain management if pain control remained poor. However, decedent never followed up with Dr. Jalal or anyone else until after the alleged accident date of June 10, 2008. The Commission found it incredible for decedent to claim that after November 28, 2007, his low back complaints had disappeared until the claimed work injury. The Commission determined that this history was inconsistent with the nature of stenosis and degenerative disc disease. The Commission also found significant the fact that when decedent first sought medical care with Dr. Dirkers, he misrepresented that he did not have a history of prior low back problems. The record supports the Commission's findings. Since the Commission provided cogent reasons for rejecting decedent's testimony, we find unpersuasive claimant's assertion that the Commission was obligated to accept decedent's unrebutted testimony as to accident. Claimant makes no other argument in support of her challenge to the Commission's finding that she failed to prove that decedent's injuries arose out of and in the course of his employment with respondent.[2] Therefore, as to the issue of accident, we conclude that a conclusion opposite that of the

[2] Claimant does briefly complain that the Commission failed to provide any basis for denying accident "as the decision is void of any explanation." We disagree. It is clear from a reading of the arbitrator's decision, which the Commission affirmed and adopted, that the issues of accident and causal connection were intertwined and discussed in tandem. Notably, in the "Conclusions of Law" section of the decision, the arbitrator lists the issues of accident and causation, concludes that decedent failed to meet his burden as to either issue, and then discusses how he reached this conclusion.

Commission is not clearly apparent. Accordingly, we hold that the Commission's finding that claimant failed to prove by a preponderance of the evidence that decedent sustained an accident arising out of and in the course of his employment was not against the manifest weight of the evidence.

¶ 38 Claimant also argues that the Commission's finding that she failed to establish a causal connection between decedent's condition of ill-being and his employment was against the manifest weight of the evidence. Because we affirm the Commission's finding that claimant failed to prove that decedent sustained a work-related accident, we need not address this argument. Causal connection cannot be established without proving that decedent sustained a work-related accident. Nevertheless, even if we were to address claimant's causation argument, we would reject it.

¶ 39 An employee seeking benefits under the Act must establish a causal connection between the employment and the resulting condition of ill-being 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 (2003); *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 the conditions in the workplace and not merely the result of a normal degenerative process of the preexisting condition." *Bernardoni*, 362 Ill. App. 3d at 596-97.

¶ 40 Claimant contends that the medical evidence clearly establishes that the event of June 10, 2008, aggravated or accelerated decedent's preexisting degenerative disc disease. According to claimant, after June 10, 2008, decedent's symptoms "changed for the worse." In support of this contention, claimant asserts that a comparison of the November 2007 and June 2008 MRIs shows that decedent's stenosis changed from moderate to severe. Claimant further asserts that decedent's ability to work changed after June 10, 2008, and he never had right foot drop prior to that date. Additionally, claimant notes that Dr. Fonn and Dr. Woiteshek attributed decedent's worsening condition of ill-being to the work event of June 10, 2008. Respondent counters that given the conflicting medical opinion evidence, the Commission's finding that claimant failed to prove a causal relationship between decedent's condition of ill-being and the alleged work accident of June 10, 2008, was not against the manifest weight of the evidence.

¶ 41 In this case, both Dr. Fonn and Dr. Woiteshek attributed the condition of ill-being of decedent's low back to the alleged work accident of June 10, 2008. For instance, although Dr. Fonn acknowledged that decedent had preexisting degenerative changes in his lumbar spine, he determined that the work accident caused a "fairly significant aggravation" which resulted in foot drop and the need for surgical intervention at the L4-5 and L5-S1 levels. Further, although Dr. Fonn released decedent from his care in October 2008, decedent returned 17 months later with residual back pain. At that time, testing indicated a problem at the L3-4 level, which Dr.

Fonn treated conservatively with epidural injections. Dr. Fonn opined that the subsequent development of the problem at the L3-4 level was also causally related to the work accident of June 2008. Dr. Fonn provided two reasons in support of his opinion. First, he stated that decedent could have sustained an additional injury to the L3-4 level at the time of the accident, although it might not have been apparent at that time. Second, he cited adjacent segment disease, which occurs when additional stressors are placed on the levels above and below a fusion. Likewise, Dr. Woiteshek opined that the June 10, 2008, work injury was the "prevailing factor" in the cause of decedent's back problems at L4-5 and L5-S1, his foot drop, and his subsequent "failed back syndrome." The basis for Dr. Woiteshek's opinion was the history obtained from decedent, his physical examination of decedent, the medical records reviewed, and his experience as a board-certified orthopedic surgeon. Dr. Woiteshek acknowledged that decedent had back problems prior to the work accident, but stated that he was "relatively asymptomatic" prior to June 10, 2008, and was able to work.

¶ 42 In addition to the opinions of Dr. Fonn and Dr. Woiteshek, the Commission was presented testimony from Dr. Dirkers, Dr. Soriano, and Dr. Rutz. Dr. Dirkers opined that decedent suffered from "significant and serious" spinal stenosis prior to June 10, 2008, and the alleged work accident of that date did not cause any worsening of that condition. Similarly, Dr. Soriano opined that decedent's condition of ill-being was not causally related to the alleged work accident of June 10, 2008. Dr. Soriano explained that decedent had a long history of lumbar stenosis resulting in leg and back pain. Dr. Soriano stated that by its very nature, such a condition would be expected to worsen regardless of occupation or activity. Dr. Soriano added that discrepancies in the histories decedent provided to other physicians gave him the impression that decedent was "attempting to portray himself in a condition of ill-being that is solely related

to work, whereas the facts of the case indicate otherwise." Dr. Rutz also opined that there was no causal relationship between the alleged work injury and decedent's symptoms. Dr. Rutz believed that decedent's need for treatment was secondary to his own intrinsic degenerative condition. Dr. Rutz explained that decedent had an advanced degenerative condition with a two-level degenerative spondylolisthesis and severe stenosis L4-5 and L5-S1. Dr. Rutz believed that decedent would have become symptomatic over time as his stenosis demonstrated progression between the 2007 and 2008 MRIs and there were no acute findings. Likewise, Dr. Rutz opined that the diagnosis of the adjacent level disc degeneration (L3-4) was also attributable to decedent's own natural intrinsic degeneration. Dr. Rutz added that although decedent did not have evidence of foot drop prior to June 10, 2008, this symptom is consistent with the progressive nature of degenerative spondylolisthesis.

¶ 43 As the evidence set forth above shows, the Commission was presented with divergent medical opinions regarding the relationship between decedent's condition of ill-being and his employment. Dr. Fonn and Dr. Woiteshek concluded that decendent's preexisting degenerative disc disease was aggravated by the alleged work accident of June 10, 2008, while Dr. Dirkers, Dr. Soriano, and Dr. Rutz concluded that decedent's condition of ill-being was simply due to a natural progression of decedent's preexisting degenerative disc disease. As noted above, the proper weight to accord conflicting medical opinions is within the purview of the Commission, and its conclusions in that regard will not be overturned on appeal unless they are against the manifest weight of the evidence. *Hosteny*, 397 Ill. App. 3d at 667. Ultimately, the Commission weighed the conflicting medical evidence against claimant. The Commission explained that it attributed less weight to the opinion of Dr. Fonn because his testimony was evasive, particularly on cross-examination. The Commission also discounted the opinion of Dr. Woiteshek on the

basis that he is a retired general orthopedic surgeon who had not actively practiced medicine since 2008. In light of the conflicting medical opinions regarding causal connection and given the Commission's role in resolving such conflicts, we cannot say that the Commission's finding that claimant failed to prove that decedent's condition of ill-being was causally related to his employment was against the manifest weight of the evidence.

¶ 44 III. CONCLUSION

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

¶ 46 Affirmed.