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Carla Bender
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No. 4-17-0807WC
Order filed October 10, 2018

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

HAVANA AMUSEMENTS, d/b/a HAIR STUDIO, SPA & FITNESS Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION and LORI SMITH, Appellees.	)	Appeal from the Circuit Court of Mason County. No. 16-MR-53 Honorable Alan D. Tucker, Judge, Presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's determination that the claimant failed to prove that she sustained repetitive trauma injuries arising out of and in the course of her employment was not against the manifest weight of the evidence.

¶ 2 The respondent, Havana Amusements, doing business as Hair Studio Spa and Fitness (Hair Studio), appeals from an order of the circuit court of Mason County, which reversed a decision of the Illinois Workers' Compensation Commission (Commission) denying the

claimant, Lori Smith, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)), for repetitive trauma injuries to both of her hands and arms. For the reasons that follow, we reverse the judgment of the circuit court.

¶ 3 I. Background

¶ 4 On June 11, 2012, the claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for repetitive trauma injuries to her left hand and left arm that she allegedly sustained on March 15, 2011, while employed by Hair Studio. Soon thereafter, the claimant amended her application for adjustment of claim to allege that she sustained repetitive trauma injuries to both hands and both arms on March 15, 2011. The matter was heard by the arbitrator on March 23, 2015, and May 27, 2015. The following factual recitation is taken from the evidence adduced at the arbitration hearings.

¶ 5 The parties stipulated that, at the time of her alleged March 15, 2011, injuries, the claimant was a 50-year-old, single, parent of two dependent children. The parties also stipulated that her earnings during the year preceding the alleged injuries were $16,420.19 and, thus, calculated to an average weekly wage of $315.77.

¶ 6 The claimant testified that, at the time of the hearing, she was a self-employed cosmetologist at Head to Toe Salon (Head to Toe) and had been so employed since she purchased the salon on December 9, 2011. While the claimant had been unemployed for approximately six months before the acquisition, she had previously worked at Hair Studio, a salon managed by Vanessa Bergman (Ms. Bergman), from April 2005 through June 9, 2011.

¶ 7 At Hair Studio, the claimant worked approximately 32 to 40 hours per week performing the duties of both a cosmetologist and nail technician. The claimant's duties as a cosmetologist required the use of scissors, curling irons, flat irons, combs and brushes, coloring bowls,

electrical clippers and blow dryers. The claimant's duties as a nail technician required the use of small drills, nail files and nail buffers. Her job duties also included shampooing hair and giving deep tissue massages. In addition, she performed general office and computer duties, including booking appointments, answering the telephone and following up with clients. While the claimant primarily used her left hand to perform the majority of her job duties, the claimant explained that essentially all of her job duties at Hair Studio required the use of her hands and elbows.

¶ 8 The claimant submitted into evidence a form titled "Petitioner's Job Description Form." The form, which had been filled out and signed by the claimant on November 30, 2012, contained the claimant's written description of her job duties at Hair Studio. The claimant alleged that she used her hands and fingers repetitively to open and close scissors, to file nails and to give massages. While the claimant stated that the approximate number of daily repetitions she performed varied depending on whether she was "doing hair or nails," she opined that she performed an average of 70,000 repetitions per day if she gave a pedicure every hour or mixed hair and nail clients. Also submitted into evidence was a document titled "Job Duties," which had been prepared and completed by Hair Studio on March 26, 2012. The document provided that the claimant's job required her to use both hands for frequent simple grasping, occasional fine manipulation, as well as pushing and pulling.

¶ 9 The claimant testified that she began experiencing physical problems while performing her job duties in the fall of 2010. In particular, she noticed pain, numbness and tingling in her wrists, hands and fingers. She also experienced occasional pain in her elbows. The claimant's symptoms were aggravated by certain hand movements at work. The claimant started taking

over-the-counter medication to alleviate her symptoms. The claimant sought medical treatment after her symptoms worsened and the medication no longer provided relief.

¶ 10 The claimant testified that she first sought treatment with her family practitioner, Dr. Richard Wagoner (Dr. Wagoner), at Havana Medical Group in March of 2011. At the initial appointment, the claimant informed Dr. Wagoner that the symptoms in her left hand were worse than her right hand and that the symptoms in her right elbow were worse than her left elbow. Following a physical examination, Dr. Wagoner prescribed the claimant Ibuprofen, instructed her to perform exercises, and provided her with a left wrist splint. On cross-examination, the claimant was unable to recall whether she was seen by Dr. Wagoner or his physician's assistant in March of 2011. When asked if she presented to Dr. Wagoner's office for a second appointment on April 26, 2011, the claimant stated that she could not remember. The claimant recounted only that she was prescribed Ibuprofen at the last appointment she had at Dr. Wagoner's office.

¶ 11 The medical records from Dr. Wagoner's office show that the claimant presented to Havana Medical Group on March 15, 2011, where she was seen by Sherri Turner (Turner), Dr. Wagoner's physician's assistant. On that date, the claimant complained of left wrist pain and explained that the pain had gradually increased in the preceding four months. The claimant described the pain as a constant ache from her wrist into her thumb with mild tingling in the distal aspect of several fingers. The claimant denied experiencing numbness. The claimant explained that her left wrist pain was aggravated by certain movement associated with her work as a cosmetologist and nail technician. While the claimant denied a history of similar symptoms, Turner noted that the claimant expressed concern that she may have carpal tunnel syndrome because she had previously undergone right cubital tunnel surgery.

¶ 12 The medical records show that, upon examination of the claimant's left hand and wrist, Turner observed mild tenderness to palpitation over the distal heads of the radius and ulna with no deformities palpable. Turner also noted tenderness over the base of the metacarpal joint of the thumb. In addition, Turner documented that Finkelstein's testing was mildly positive and that the radial pulse was intact, bilateral and symmetric. While Turner opined that the claimant's left wrist pain was likely secondary to de quervain's tenosynovitis, Turner noted that a differential diagnosis would include carpal tunnel syndrome. The records further show that the claimant was given a left wrist splint and instructed to wear the splint when she was inactive. The claimant was also instructed to take 400 mg of etodolac in place of ibuprofen and directed to follow up with Dr. Wagoner at the next available opportunity to discuss cortisone injections if her condition failed to improve.

¶ 13 The medical records show that the claimant presented for a follow-up appointment with Dr. Wagoner on April 26, 2011. On that date, the claimant reported that she was "feeling good" but had experienced some pain in her wrist that worsened after she gave pedicures. Dr. Wagoner noted that the pain she described occurred on both the medial and lateral aspect of her left wrist. Dr. Wagoner also noted that the claimant had a history of elevated blood sugar, depression and hypertension. Upon examination of the claimant's left wrist and hand, Dr. Wagoner observed no pain with palpitation over the lateral and medial aspect and that the claimant had good range of motion, with both abduction and adduction and flexion-extension of the wrist. Dr. Wagoner further documented a positive radial pulse but negative Finkelstein, Tinel and Phalen tests. Although Dr. Wagoner opined that the claimant's left wrist pain was likely an overuse injury, he noted consideration of an entrapment syndrome. Dr. Wagoner directed the claimant to continue with over-the-counter Motrin, which had provided her some relief. Dr. Wagoner also noted that

he would consider further imaging or a nerve conduction study if the claimant's wrist pain persisted.

¶ 14 The claimant testified that she went into work directly after her appointment wearing the prescribed wrist splint. At that time, she advised Ms. Bergman that the problems she had been experiencing with her hands and elbows were work-related but Ms. Bergman did not fill out an incident report. When the claimant expressed concerns about performing her job duties while wearing the splint, Ms. Bergman suggested that the claimant wear the splint at night. Despite experiencing ongoing symptoms, she continued working full-time at Hair Studio until June 9, 2011. On that date, Ms. Bergman confronted the claimant about a rumor of the claimant making plans to purchase a competing salon. Although the claimant informed Ms. Bergman that the rumor was false, Ms. Bergman directed her to pack her things and leave Hair Studio. The claimant remained unemployed from June 9, 2011, through December of 2011. During that time, the claimant drew unemployment benefits. She did not perform any repetitive motions with her hands, aside from regular household chores. The claimant testified that, due to her economic situation, she was unable to seek additional medical care until March of 2012.

¶ 15 On cross-examination, the claimant admitted that she had authored several Facebook posts in the days following her termination. The claimant admitted one Facebook post indicated that she had started working at Head to Toe Fitness Salon, while she stated in another post that she was "now at Totally Fit." The claimant also acknowledged a Facebook post from July 25, 2011, in which she stated that she went to work at 7:00 a.m. at Totally Fit in Havana (Totally Fit) and gave a pedicure. Despite her acknowledgment of these posts, the claimant maintained that she never worked at Totally Fit. Instead, she explained that her friend, Kimberly Larson (Larson), worked at Totally Fit and that Larson had allowed the claimant to give occasional

haircuts and pedicures to family members or acquaintances at the salon. The claimant initially stated that she did not charge for any of the services, though she later admitted that she had accepted donations to assist her in purchasing Totally Fit.

¶ 16 The claimant testified that she acquired Totally Fit on December 9, 2011, and changed the business name to Head to Toe Salon. After acquiring the salon, the claimant's unemployment ended and she began working as a cosmetologist full-time. The claimant also hired Larson to work for her at Head to Toe.

¶ 17 The medical records show that the claimant presented to Dr. Edward Trudeau (Dr. Trudeau) for EMG/NCV testing on March 13, 2012. The testing revealed bilateral median neuropathy at the wrist, moderately severe on either side, with the left greater than the right. The testing also revealed cubital tunnel syndrome at the left elbow that was mild to moderately severe. Dr. Trudeau prepared a report detailing the findings of the EMG/NCV testing and sent the report to Dr. Wagoner. The claimant presented for an appointment with Dr. Wagoner on March 23, 2012. Dr. Wagoner noted that the claimant continued to experience numbness, tingling and weakness in her hands, as well as pain in her left elbow. Dr. Wagoner diagnosed the claimant with worsening bilateral carpal tunnel syndrome and left cubital tunnel syndrome. Dr. Wagoner also referred her to Dr. Blair Rhode (Dr. Rhode), an orthopedic surgeon.

¶ 18 The medical records show that the claimant presented for an appointment with Dr. Rhode on June 13, 2012. The claimant complained of bilateral wrist pain, numbness and reported tingling in several fingers. She also complained of left medial-sided elbow pain with numbness and tingling in two fingers. The claimant reported that she had worked as a cosmetologist for the last seven years and that she had remained symptomatic for the last three years. The claimant further reported that her job duties were equally split between cutting hair and performing

pedicures. After obtaining the claimant's history, performing a physical examination and reviewing the EMG/NCV test results, Dr. Rhode diagnosed the claimant with bilateral carpal tunnel and left cubital tunnel syndrome. Dr. Rhode, noting that the claimant had obtained no relief from oral medication and the wrist splint, administered a carpal tunnel steroid injection in the claimant's left wrist. Dr. Rhode indicated that he would recommend a left carpal and cubital tunnel release if the injection failed to provide the claimant with relief.

¶ 19 On August 29, 2012, the claimant underwent a section 12 examination with Dr. Michael Vender (Dr. Vender) at Hair Studio's request. Following his examination and review of the claimant's history, Dr. Vender prepared a report setting forth his findings and opinions with regard to the claimant's condition. In his report, Dr. Vendor noted that the claimant's job required to her to shampoo, comb, brush, dry, color, perm, curl, cut and style hair. In addition, he noted that the claimant's job required her to perform pedicures, manicures and massages. Dr. Vender opined that these activities were not the type that would affect structures around the elbow, such as the ulnar nerve or lateral epicondylar musculature. Dr. Vender further opined that there was not a pattern of forceful, repetitive work that could be considered to have contributed to possible carpal tunnel syndrome. Instead, Dr. Vendor identified additional risk factors for the claimant's condition, including her age, gender and increased body mass. Dr. Vendor concluded, however, that the treatment the claimant had received prior to his evaluation had been reasonable.

¶ 20 The medical records show that Dr. Rhode performed left carpal and cubital tunnel release surgery on September 18, 2012. Following the surgery, Dr. Rhode placed the claimant off work from September 18, 2012, through November 14, 2012. In a post-operative note, Dr. Rhode indicated that conservative treatment had failed to alleviate the claimant's symptoms and that she was unwilling to live with her symptomatology.

¶ 21 On November 13, 2012, Dr. Vender authored a subsequent section 12 report. After reviewing the additional medical records, including the operative report from the September 18, 2012, surgery, Dr. Vender stated that the additional information did not change the findings and opinions set forth in his August 29, 2012, report.

¶ 22 The medical records show that the claimant presented for an appointment with Dr. Rhode on November 14, 2012. On that date, Dr. Rhode noted that the claimant continued to experience subjective complaints of right-sided carpal tunnel symptomatology. Because the claimant had attempted conservative management and was unwilling to live with her symptomatology, Dr. Rhode noted that the claimant wanted to proceed with surgical intervention. Dr. Rhode performed right open carpal tunnel release surgery on February 26, 2013. Following the surgery, Dr. Rhode placed the claimant off work from February 26, 2013, through April 24, 2013. On April 24, 2013, Dr. Rhode released the claimant to full-duty work, at her request, and placed her at maximum medical improvement (MMI). On April 28, 2013, Dr. Rhode prepared a nature and extent report with regard to the claimant's disability, finding that the claimant had an impairment rating of 0% of the upper extremities and 0% total person impairment.

¶ 23 On March 31, 2014, Dr. Vender authored his third section 12 report after reviewing of all of the claimant's medical records and the description of the claimant's job duties at Hair Studio. Dr. Vender's review of the limited medical records preceding her termination from Hair Studio on June 9, 2011, indicated that there were evaluations of the claimant's left wrist with no documented complaints regarding her right upper extremity. Because the claimant sought no additional treatment until March of 2012, Dr. Vender opined that it was "more likely than not the findings of the EMG/NCV testing arose after she left the employment of [Hair Studio]."

¶ 24 Larson testified that she was a cosmetologist at Totally Fit for approximately three years. The claimant came into Totally Fit a couple times per week following her termination from Hair Studio. The claimant subsequently acquired Totally Fit after obtaining financing and changed the name to Head to Toe Salon. While the claimant was "in and out" of Totally Fit prior to the acquisition and even occasionally answered the phones or provided service to a family member at the salon, Larson explained that the claimant was not employed by Totally Fit and that the claimant only began working at that location after she acquired the business.

¶ 25 Rachelle Hurst (Hurst) testified that she was a stylist at Hair Studio from March 2001 through November 2012. When Hurst worked with the claimant, they would often discuss the issues that the claimant was having with her wrists. Hurst recalled the claimant stating that her left wrist hurt while she was performing massages and that her right wrist hurt on occasion. Although Hurst noticed that the claimant wore splints at work and the claimant had indicated that her job duties bothered her wrists, the claimant never specifically stated that her wrist pain was work-related.

¶ 26 Ms. Bergman testified that she was the manager of Hair Studio throughout the claimant's employment. Ms. Bergman performed administrative duties (*i.e.* booking appointments, managing payroll, and answering telephones) but also worked as a cosmetologist at Hair Studio. Ms. Bergman recalled that the claimant generally worked at Hair Studio from 8:00 a.m. to 3:00 p.m. for four days per week and from 11:00 a.m. to 7:00 p.m. one day per week. According to Ms. Bergman, the claimant usually had one to two hours of down time per day. Ms. Bergman first learned of the claimant's left wrist problems in the fall of 2010. In March 2011, the claimant wore a wrist splint to work and informed Ms. Bergman that she had carpal tunnel. However, the claimant did not inform Ms. Bergman that the carpal tunnel was related to the claimant's work at

Hair Studio. Ms. Bergman first received notice of the claimant's alleged a work-related condition when she received a letter from the claimant's attorney in June 2012. On cross-examination, Ms. Bergman agreed that the claimant accurately described her job duties at Hair Studio and that the claimant's duties required the constant use of her hands. She also acknowledged that she had filled out a form outlining the claimant's job duties in March 2012, and, thus, agreed that she may have received notice earlier than June 2012.

¶ 27 The evidence deposition of Dr. Rhode was introduced at the arbitration hearing. Dr. Rhode testified that he diagnosed the claimant with left carpal tunnel and cubital tunnel syndromes and right carpal tunnel syndrome on June 13, 2012, after obtaining the claimant's history, performing an examination and reviewing the EMG/NCV testing results. He performed the claimant's left carpal and cubital tunnel release surgery on September 18, 2012, but clarified that the operative report from September 18, 2012, mistakenly indicated that the claimant underwent right carpal and cubital tunnel release on that date. After the left carpal and cubital tunnel release, the claimant continued to demonstrate symptoms in her right wrist. Dr. Rhode ultimately performed a right carpal tunnel release on February 26, 2013, and released the claimant at MMI on April 24, 2013.

¶ 28 When questioned with regard to the job duties of a cosmetologist, Dr. Rhode testified that "a cosmetologist's job is highly repetitive. You know, obviously there's a—there's typically a dominance to that, to the job specifically with utilizing scissors." According to Dr. Rhode, the dose-response theory was supported by the claimant experiencing more symptoms on her left, or dominant, side. Dr. Rhode clarified that dose response means the amount of exposure and explained that when a person does an activity and experiences a result, there is "a threshold where you become symptomatic. And, obviously it differs from individual to individual" and

"differs from job to job ***." Dr. Rhode noted that the breakdown of the claimant's repetitive activities, as indicated in the claimant's job description form, was "70,000 repetitions per day, 8 to 10,000 per hour" while cutting hair, performing pedicures, giving massages and working with rollers. Dr. Rhode also noted that, with the exception of electric scissors, the claimant's use of the electric cutters exposed her to repetitive vibrations.

¶ 29 Dr. Rhode acknowledged that other risk factors have been associated with carpal tunnel aside from occupational causes, including diabetes, thyroid dysfunction, and gender. Dr. Rhode felt, however, that the claimant did not have any risk factors associated with carpal tunnel aside from the fact that she was a female. Based on his review of the claimant's history and job description, Dr. Rhode opined that the claimant's job exposure was causative to her bilateral carpal tunnel and left cubital tunnel syndromes. Specifically, Dr. Rhode noted the claimant had to assume "a lot of posture; a lot of repetitive flexion-extension of the elbow" and that she primarily used her left hand, which was more symptomatic, while cutting hair. Dr. Rhode further noted that "[a] lot of hyper flexion can cause the symptoms."

¶ 30 On cross-examination, Dr. Rhode agreed that obesity was also a known risk factor for carpal tunnel syndrome and acknowledged that the claimant was overweight. Dr. Rhode also agreed that the claimant's history of elevated blood sugar could be suggestive of a diabetic condition. Dr. Rhode recognized that the findings on the EMG/NCV testing could have arisen after the claimant was terminated from her employment at Hair Studio but found that conclusion inconsistent with the claimant's described symptoms. While Dr. Rhode agreed that the claimant's job did not involve "power grasping" with her hands, he believed that cutting hair and performing pedicures involved repetitive motions. Dr. Rhode explained that the dexterous fashion of operating scissors while cutting hair requires a static hold of the thenar muscle for an

extended period of time and noted that a significant amount of literature exists "to support haircutting as a causative mechanism for carpal tunnel syndrome." However, Dr. Rhode was unable to cite any specific study showing a relation between the performance of pedicures and carpal tunnel syndrome.

¶ 31 The evidence deposition of Dr. Vender was also introduced at the arbitration hearing. Dr. Vender, a hand surgeon specialist, testified that he prepared several reports setting forth his medical opinions, which were based upon his findings during a physical examination of the claimant, as well as his review of her medical records and job description. While Dr. Vender agreed that the claimant suffered from bilateral carpal tunnel syndrome along with possible ulnar neuropathy and left elbow lateral epicondylitis, he opined that the claimant's condition was unrelated to her job duties at Hair Studio. In support of his opinion, Dr. Vender explained that the claimant's job duties did not place any "special stresses" across her elbows and that the wide assortment of her job duties involved different use patterns of her hands, thus, there was no "persistent repetitiveness, doing the same type of activities, that may lead to any particular condition." While Dr. Vender agreed that the claimant's job duties may have involved elements of intermittent force, he noted there was no indication of any significant persistent forceful use of her hands. Dr. Vender also observed that, while the claimant was employed by Hair Studio, she reported no symptoms on her right side and that her reported symptoms on her left side were more suggestive of de quervain's disease than carpal tunnel syndrome. Dr. Vender observed that the EMG/NCV study was conducted approximately nine months after the claimant's termination, which, in his opinion, broke "the chronology relationship and substantiates that [the claimant] didn't have the symptoms while she was working there and this developed afterwards." In

addition, Dr. Vendor noted that the claimant's age, gender, and increased body mass were major risk factors for developing carpal and cubital tunnel.

¶ 32 When questioned about the number of hours the claimant worked at Hair Studio on cross-examination, Dr. Vender was unable to recall whether the claimant had worked part-time or full-time. In addition, although Dr. Vender testified that he had reviewed the job description forms, he could recount neither the number of hours the claimant spent styling hair nor the number of hours she spent performing pedicures and manicures.

¶ 33 On July 29, 2015, the arbitrator issued a decision awarding the claimant benefits under the Act. The arbitrator found the claimant met her burden in proving that she sustained accidental injuries arising out of and in the course of her employment with Hair Studio on March 15, 2011, and that there was a causal relationship between the claimant's conditions and her job duties at Hair Studio. In so finding, the arbitrator determined that the claimant testified credibly and that Dr. Rhode's opinions were more persuasive than those of Dr. Vender. The arbitrator awarded the claimant temporary total disability (TTD) benefits under section 8(b) of the Act (820 ILCS 305/8(b) (West 2014)) in the amount of $286.00 per week for 16-3/7 weeks, commencing September 18, 2012 through November 14, 2012, and February 26, 2013, through April 24, 2013. The arbitrator also awarded the claimant permanent partial disability (PPD) benefits under section 8(e) of the Act (820 ILCS 305/8(e) (West 2014) in the amount of $286.00 per week for a period of 88 weeks, finding that the claimant's injuries caused the 15% loss of the left hand (30.75 weeks); 12-1/2% loss of the right hand (25.625 weeks); and 12-1/1% loss of the left arm (31.625 weeks). In addition, the arbitrator ordered that Hair Studio pay all reasonable and necessary medical services rendered to the claimant.

¶ 34 On August 11, 2015, Hair Studio sought review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission reversed the arbitrator's decision, finding the claimant (1) failed to present credible evidence that would establish the manifestation date to be March 15, 2011, (2) failed to prove that she sustained an accident that occurred, or manifested, on March 15, 2011, and (3) failed to prove that her bilateral carpal tunnel and left cubital tunnel syndromes were causally related to her job duties at Hair Studio. In so finding, the Commission determined that the claimant lacked credibility because her reports regarding the onset of her symptoms varied and her arbitration testimony was contradicted by other evidence. The Commission also found the claimant's assertion that she performed 70,000 hand repetitions per day while working at Hair Studio "unsupported by evidence or even explanation." The Commission, instead, found the figure exaggerated, given that the claimant had one to two hours of "downtime" during each shift and that many of her various duties, such as shampooing, massaging, combing hair, blow-drying, and using electric clippers, did not entail 10,000 repetitions per hour. The Commission also determined that the medical opinions of Dr. Vender were more persuasive than those of Dr. Rhode. The Commission noted Dr. Vender's opinion that the claimant's work was not forceful or repetitive enough to have caused her conditions was based upon his observation that the claimant's duties varied throughout the day, while Dr. Rhode's causation opinion was based upon the claimant's exaggerated representation that she performed 70,000 hand repetitions per day.

¶ 35 On October 6, 2016, the claimant sought judicial review of the Commission’s decision. On October 4, 2017, the circuit court entered an order reversing the Commission’s decision and reinstating the arbitrator's award. Hair Studio filed a timely notice of appeal.

¶ 36 II. Analysis

¶ 37 On appeal, Hair Studio argues that the Commission's determination that the claimant failed to establish accidental injuries arising out of and in the course of her employment under a theory of repetitive trauma was supported by sufficient evidence. The claimant contends that the circuit court properly reversed the Commission's decision and reinstated the arbitrator's decision because the Commission's credibility determinations and findings—that the claimant failed to prove that (1) she sustained repetitive trauma injuries that occurred, or manifested, on March 11, 2015, and (2) her bilateral carpal tunnel or left cubital tunnel syndromes were causally related to her work at Hair Studio—were against the manifest weight of the evidence.

¶ 38 While we acknowledge, initially, that the arbitrator found in favor of the claimant, we note that the Commission is the ultimate decision maker in workers' compensation cases and is not bound by any decision made by the arbitrator. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 63 (2006) (citing *Cushing v. Industrial Comm'n*, 50 Ill. 2d 179, 181-82 (1971)). The Commission, instead, weighs the evidence that was presented at the arbitration hearing and determines where the preponderance of that evidence lies. *Durand*, 224 Ill. 2d at 64. Consequently, we review the Commission's decision, not the circuit court's or the arbitrator's decisions (*Dodaro v. Illinois Workers' Compensation Comm'n*, 403 Ill. App. 3d 538, 544 (2010)), and we will not reverse the Commission's decision unless it is contrary to the law or its fact determinations are against the manifest weight of the evidence. *Durand*, 224 Ill. 2d at 64.

¶ 39 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that [s]he has suffered a disabling injury which arose out of and in the course of h[er] employment." *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). A claimant seeking benefits under a repetitive trauma theory must meet the same burden of proof as a claimant alleging a single, accidental injury.

Home v. Industrial Comm'n, 115 Ill. 2d 524, 530 (1987). Although a repetitive trauma is not traceable to a specific time, place, or cause, it is still essential that a claimant establish a specific date on which the injury is deemed to have occurred, or manifested. *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 47 (1989). In other words, a claimant alleging a repetitive-trauma injury must "point to a date within the limitations period on which both the injury and its causal link to the employee's work became plainly apparent to a reasonable person." *Durand*, 224 Ill. 2d at 65. In addition, a claimant must establish that his work duties were sufficiently repetitive in nature, occurrence, and force so as to cause a gradual breakdown of the claimant's physical condition. *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 211 (1993). In repetitive trauma cases, a claimant "generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 477 (1987). Whether a claimant has established her entitlement to benefits under a repetitive trauma theory is a question of fact for the Commission to determine, and its decision will not be overturned on appeal unless it is against the manifest weight of the evidence. *Three "D" Discount Store*, 198 Ill. App. 3d at 47.

¶ 40 "Fact determinations are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the agency." *Durand*, 224 Ill. 2d at 64. "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). Resolution of conflicts in medical testimony is also within the province of the Commission. *Sisbro*, 207 Ill. 2d at 206. Reviewing courts will not "discard the findings of the

Commission merely because different inferences could be drawn from the same evidence." *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill. App. 3d 915, 920 (2005). Rather, "[t]he appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion." *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011).

¶ 41 In the present case, the Commission considered the evidence and found that the claimant failed to prove (1) that she sustained repetitive trauma injuries that occurred, or manifested, on March 15, 2011, and (2) that her bilateral carpal tunnel or left cubital tunnel syndromes were causally related to her work at Hair Studio. In applying the deferential standard applicable to our review, we cannot say that the Commission's findings were against the manifest weight of the evidence.

¶ 42 In finding that the claimant failed to prove she sustained repetitive trauma injuries that occurred, or manifested on March 15, 2011, the Commission determined that the claimant lacked credibility and that the medical records were insufficient to show the claimant sustained repetitive trauma injuries on March 15, 2011. In doing so, the Commission noted that the claimant's testimony was inconsistent with other evidence. For example, the claimant's testimony that she began experiencing pain, tingling and numbness in both hands and arms in the fall of 2010 and sought treatment for her symptoms in March of 2011 was contradicted by the medical records from the March 15, 2011, appointment, which showed that the claimant denied experiencing numbness and only complained of left wrist pain with no complaints regarding her right wrist or left elbow. The claimant's testimony that she informed Hair Studio that her condition was work-related after her appointment with Dr. Wagoner was contradicted by Ms.

Bergman's testimony that, although the claimant stated that she had carpal tunnel on March 15, 2011, the claimant did not inform Ms. Bergman that the condition was work-related on that date. The claimant also acknowledged authoring certain Facebook posts that directly contradicted her testimony regarding the circumstances of her termination from Hair Studio and that she had remained unemployed from June 9, 2011, through December of 2011. Given these inconsistencies, we will not question the Commission's credibility determination.

¶ 43 The Commission also determined that the medical records contained conflicting reports with regard to the onset of the claimant's symptoms. Specifically, the Commission noted that Dr. Vender's medical records indicated that the claimant reported experiencing bilateral upper extremity pain since March of 2009 and that Dr. Rhode's medical records indicated that the claimant reported receiving treatment for bilateral wrist and left elbow pain since June 2009. The Commission also noted that the medical records from Dr. Wagoner's office indicated that the claimant had previously undergone right cubital tunnel surgery yet she denied a history of similar symptoms. The Commission observed that, despite these references to previous treatment, the only medical records included in the record documenting the treatment received by the claimant while she was employed by Hair Studio were the records from Dr. Wagoner's office dated March 15, 2011, and April 26, 2011.

¶ 44 As previously noted, the medical records from those dates indicated that the claimant only complained of left wrist pain with no documented complaints regarding her right wrist or left elbow. While those medical records showed the claimant reported an aggravation in her left wrist pain while working, neither Turner nor Dr. Wagoner formally diagnosed the claimant with carpal tunnel syndrome or noted an impression that her left wrist pain was work-related. Although Turner noted carpal tunnel syndrome as a differential diagnosis on March 15, 2011,

she ultimately concluded that the claimant's left wrist pain was likely secondary to de quervain tenosynovitus. Dr. Wagoner's subsequent examination on April 26, 2011, revealed that the claimant had neither pain with palpitation in her left wrist nor a positive Finkelstein test, both of which had been observed by Turner during the March 15, 2011, examination. Accordingly, Dr. Wagoner diagnosed the claimant's left wrist pain as an overuse injury but noted that he would consider entrapment syndrome and further imaging or nerve conduction studies if the claimant continued to have problems with her left wrist. The claimant did not miss any work due to her claimed injuries while she was employed by Hair Studio and sought no further treatment until March 13, 2012.

¶ 45 Given the evidence presented, we cannot say the Commission's finding that the claimant failed to sustain her burden of proving by a preponderance of the evidence that she sustained repetitive trauma injuries to both of her hands and arms on March 15, 2011, was against the manifest weight of the evidence.

¶ 46 In finding that the claimant failed to prove her bilateral carpal tunnel or left cubital tunnel syndromes were causally related to her work at Hair Studio, the Commission determined that the claimant's assertion that she performed 70,000 hand repetitions per day while working at Hair Studio was unsupported by evidence and that Dr. Vender's medical opinion that the claimant's work at Hair Studio was not forceful or repetitive enough to have caused her conditions was more persuasive than Dr. Rhode's conflicting opinion. In doing so, the Commission noted, in addition to its determination at the claimant lacked credibility, that the claimant had one to two hours of "downtime" during each shift and that she performed various job duties throughout the day that did not require 10,000 hand repetitions per hour, such as shampooing, massaging, using electric clippers, blow-drying and combing hair. It was generally established that the claimant's

job duties as a cosmetologist at Hair Studio included cutting, shampooing, blow-drying, combing and styling hair. The claimant's job duties as a nail technician included filing, clipping, and polishing client's fingernails and toenails, as well as massaging client's hands and feet. The claimant's job description form indicated that the number of repetitions the claimant performed varied each day depending on whether the claimant was "doing hair or nails;" however, the claimant approximated that she performed an average of 70,000 hand repetitions per day if she performed a pedicure every hour or mixed hair and nail clients. While Ms. Bergman agreed that the claimant accurately described her job duties at Hair Studio, Ms. Bergman testified that the claimant usually had one to two hours of downtime during each six to seven hour shift. Thus, there was sufficient evidence to support the Commission's determination that the claimant's assertion that she performed 70,000 hand repetitions per day while working at Hair Studio was exaggerated.

¶ 47 The Commission's finding is also supported by Dr. Vender's medical opinion that the claimant's conditions were unrelated to her job duties at Hair Studio. After reviewing the job description sheets filled out by both the claimant and Hair Studio, Dr. Vender, a hand surgeon specialist, concluded that the claimant's job duties at Hair Studio were neither forceful nor repetitive enough to have caused her conditions. Specifically, Dr. Vender observed that the claimant's job duties placed no special stress across her elbows, and that the duties involving the use of her hands varied throughout the day with no persistent repetitiveness. Moreover, Dr. Vender noted that the claimant presented other risk factors for developing her conditions, specifically, her gender, age, weight and history of elevated blood sugar levels. While Dr. Vender acknowledged that the claimant reported left wrist complaints while she was working at Hair Studio, he observed that those complaints were more suggestive of de quervain's

tenosynovitis and that there were no documented complaints regarding her right wrist or left elbow. Based on his review of the medical records and the long gap in the claimant's treatment, Dr. Vender opined that "it was more likely than not" that the findings on the March 13, 2012, EMG/NCV testing arose after she left her employment at Hair Studio.

¶ 48 While the claimant introduced the conflicting medical opinion of Dr. Rhode, the Commission found Dr. Rhode's causation opinion less persuasive than Dr. Vender's opinion. In doing so, the Commission observed that Dr. Rhode had agreed that the findings on the EMG/NCV tests could have arisen after the claimant left her employment at Hair Studio. The Commission also noted that Dr. Rhode's opinion was based on the claimant's exaggerated representation that she performed an average of 70,000 hand repetitions per day while working at Hair Studio. Thus, after considering the conflicting medical opinions, the Commission could have reasonably concluded that Dr. Vender's opinion was more persuasive than that of Dr. Rhode.

¶ 49 Given the evidence presented, we cannot say that the Commission's finding that the claimant failed to sustain her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel or left cubital tunnel syndromes were causally related to her job duties at Hair Studio was against the manifest weight of the evidence.

¶ 50 III. Conclusion

¶ 51 For the foregoing reasons, we reverse the judgment of the circuit court of Mason County, which reversed the Commission's decision.

¶ 52 Reversed.