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2019 IL App (1st) 182263WC-U

FILED: August 2, 2019

NO. 1-18-2263WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

LIFETOUCH PORTRAIT STUDIOS,)	Appeal from
)	Circuit Court of
Appellant,)	Cook County
)	No. 18L50053
v.)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> (Patricia Vargas,)	Honorable
Appellee).)	James Michael McGing,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* (1) By finding a causal relationship between petitioner's work-related left hip injury and the condition of ill-being that gradually developed in her right hip, the Illinois Workers' Compensation Commission (Commission) did not make a finding that was against the manifest weight of the evidence.

(2) By finding petitioner to be entitled to temporary and total disability benefits and temporary partial disability benefits, the Commission did not make findings that were against the manifest weight of the evidence.

(3) By finding petitioner to be entitled to reasonable and necessary medical expenses and prospective medical treatment, the Commission did not make findings that were against the manifest weight of the evidence.

¶ 2 The Workers' Compensation Commission (Commission) found that in January

2012, petitioner, Patricia Vargas, sustained a compensable injury to her left hip while working for respondent, Lifetouch Portrait Studios. Respondent did not seek judicial review of that decision by the Commission.

¶ 3 Later, in the same workers' compensation case (case No. 12-WC-38709), petitioner claimed that the left hip injury had been causing her to favor her left leg and that, as a consequence, over the course of about 20 months (January 2012 to September 2013), she developed an overuse or overcompensation injury of her right hip. On this subsequent claim, the Commission likewise found in petitioner's favor, awarding her benefits for the right hip.

¶ 4 This time, respondent sought review in the Cook County circuit court, which confirmed the Commission's decision, finding it not to be against the manifest weight of the evidence.

¶ 5 Respondent appeals.

¶ 6 Like the circuit court, we are unable to say the Commission's decision is against the manifest weight of the evidence. Therefore, we affirm the judgment.

¶ 7 I. BACKGROUND

¶ 8 A. Petitioner's Testimony at the Arbitration Hearing
on Her Right Hip Claim (November 22, 2016)

¶ 9 On November 22, 2016, and January 24, 2017, the arbitrator heard evidence on petitioner's right hip claim. Petitioner, 37 years old at the time, testified on the former of those dates. Her testimony was substantially as follows.

¶ 10 On January 26, 2012, petitioner sustained an accidental injury in her job as a studio manager and photographer for respondent. She specifically denied injuring her right hip in this work-related accident; she injured only her left hip. Nevertheless, after injuring her left hip, she began favoring her left leg, thereby overworking her right hip. She testified that the left hip

injury caused her to “overcompensate” in this manner for a long time.

¶ 11 In the fall of 2013, petitioner began feeling symptoms in her right hip. She never had any problem with that hip before the accident. Now she started becoming “fidgety” when rotating her right hip, and some numbness had set in toward the right buttock.

¶ 12 Judging from the medical records, February 2013 was the earliest that petitioner told her orthopedic surgeon, Benjamin Domb, about pain in her right hip. Petitioner believed she told a physician’s assistant in Domb’s office earlier, in the preceding fall, but the medical records do not substantiate that she did so. In any event, petitioner complained to Domb that her right hip now was hurting, too. Over time, Domb gave her two or three injections into the right hip, and on the eve of her left hip surgery, he advised her to take anti-inflammatories and endeavor to use both hips instead of putting extra weight on the right hip.

¶ 13 Until the left hip surgery, which Domb performed in April 2014, petitioner kept working full-time for respondent as a photographer and studio manager. To meet the physical demands of her job, she could not help favoring her left leg and overrelying on her right leg. Her right hip tolerated the overcompensation for a while. As of June 2013, when the arbitration hearing on her left hip was held, she was not feeling any pain in her right hip. A few months later, though, in the fall of 2013, her right hip began hurting.

¶ 14 The left hip surgery made the right hip problem worse, it seemed to petitioner, because for some time, she was on crutches and could not put any weight at all on her left leg. Although, eventually, physical therapy brought her left leg to 98% improvement, the left flexor muscle never did begin “responding”; consequently, petitioner still tended to rely predominantly on the right leg—and, as a further consequence, her right hip never really got better, except for temporary relief from an injection.

¶ 15 Petitioner did not describe her right hip pain as constant pain of crisis proportions; it was more of an intermittent, everyday achiness that came on whenever she lay on her right side, sat on her right buttock, or sat too long. The achiness disrupted her sleep—as she put it, she no longer enjoyed sleeping. She could not go on long drives anymore. She could not do the cardiovascular activities she had enjoyed years ago, such as Latin dance and Zumba. She had to use a special chair at work, and she had to get up from her chair every so often or watch the computer screen while kneeling on cushions. The day after work was a recovery day, during which she lay on the floor for several hours, waiting for the inflammation in her hips to go down.

¶ 16 Petitioner testified she had a new job. She no longer worked for respondent, who fired her on July 11, 2014, some three months after the left hip surgery, because the restrictions Domb had imposed made it impossible for petitioner to continue working as a photographer. For several months, petitioner was unemployed, and she received no temporary total disability benefits during that period of unemployment.

¶ 17 Then, on February 23, 2015, respondent found a job, her current job, that allowed her to stay within the work restrictions Domb had imposed. It was a sit-down job as a monitor technician at Advocate Christ Hospital. But this new job was only 32 hours a week (not because of Domb's restrictions; that just happened to be the number of hours the new employer offered), and it paid less than the job petitioner used to have with respondent. It was a job, though, that aligned with Domb's restrictions—which remained in effect even though, on May 18, 2015, Domb had found petitioner to be at maximum medical improvement for her left hip.

¶ 18 When asked if Domb placed any restrictions on her right hip when finding her to be at maximum medical improvement for her left hip, petitioner answered, "I don't recall." In any event, petitioner still was under physician-ordered work restrictions, whether for her left hip

or her right hip. From April 30, 2014, to the date of the arbitration hearing, November 22, 2016, Domb had continuously kept her either off work or on restrictions.

¶ 19 Now Domb was recommending surgery on the right hip. More conservative measures for the right hip had failed. Piriformis injections had given only temporary relief, if any relief at all. Physical therapy had helped the left hip postoperatively but not the right hip. On her own initiative, petitioner had even hired a physical trainer to try to get relief for her hips, but she had abandoned that idea. Petitioner testified she would like to have the right hip surgery that Domb had recommended; she hoped it would improve her right hip as much as the previous surgery had improved her left hip.

¶ 20 B. The Evidence Deposition of Dr. Benjamin Domb (July 21, 2015)

¶ 21 1. *Qualifications*

¶ 22 As of the date of his evidence deposition, Dr. Benjamin Domb had been practicing orthopedic surgery for eight years. He is certified in that field and specializes in arthroscopic surgery of the shoulder, hip, and knee, “with a particular academic focus on hip arthroscopy.” About 70% of the surgeries he performs are on the hip. That comes to about 500 hip surgeries a year.

¶ 23 2. *Treatment of Petitioner*

¶ 24 Domb first examined petitioner in March 2013. His diagnosis at that time was “a left hip injury” that was causing “severe left hip pain” and that had “failed to improve with physical therapy and conservative measures.”

¶ 25 On April 1, 2013, at Domb’s request, petitioner underwent magnetic resonance imaging (MRI) of her *left* hip. The MRI revealed “a tear of the anterior superior labrum.” The labrum, Domb explained, was “a ring of cartilage around the edge of the [hip] socket,” and in

petitioner's case, the labrum of the left hip socket "was torn toward the front and the side."

¶ 26 Before performing surgery on petitioner's left hip, Domb saw her two additional times. She came into his office on February 24, 2014, and he noted the following:

"A. She had started having a slow onset of increasing *** right hip pain since October or November of 2013; it was associated with some numbness in the buttock and upper leg, nothing in the toes, no weakness, pain with long periods of sitting, described as throbbing, no decrease in range of motion; subjectively in [*sic*] the figure four position helped with her pain."

At that time, Domb diagnosed "right hip piriformis syndrome due to compensation from the left hip injury," and he "recommended beginning physical therapy and getting a piriformis injection." (The piriformis is a muscle in the buttock.)

¶ 27 By saying that petitioner had been "compensating" for the left hip injury, Domb meant this:

"A. When the hip on one side is injured, the mechanics of walking, sitting, standing may be altered, and one may overcompensate with what is initially at least a good hip, and overload the good hip, and subject it to abnormal mechanics and range of motion such that it becomes injured itself."

That "left hip altered mechanics affect[ed] the right hip" had "been well[-]documented in many, many studies." Domb emphasized that this had "been well[-]documented and well[-]proven" with "ample evidence, both biomechanically and clinically"; "altered mechanics or pain of one hip alter[ed] the mechanics of the other hip" and "put[] the other hip at increased risk for degeneration or injury itself."

¶ 28 Petitioner's next appointment with Domb was on March 27, 2014. At that time,

she “complained of bilateral hip pain,” although, she reported, “the right hip had improved following a piriformis injection.” The “left hip continued to be painful.”

¶ 29 On April 9, 2014, at Domb’s direction, petitioner underwent an MRI arthrogram of the right hip. The MRI revealed “a tear of the [right] labrum, some chondral thinning, and [a] potential pincer[-]type impingement.”

¶ 30 Domb was asked:

“Q. Did you make recommendations then for treatment of the right hip at that time?

A. So[,] we initially recommended treating the right hip with a piriformis injection and physical therapy, and we have, up until this time, not gone further with regard to recommending surgery or other treatment, but her right hip is pending further evaluation.”

The further evaluation, Domb testified, would include a functional capacity evaluation. If, according to that evaluation, petitioner continued having pain in the right hip and if non-surgical measures failed to alleviate the pain, Domb most likely would recommend treating the right labral tear with arthroscopic surgery.

¶ 31 On April 30, 2014, Domb performed arthroscopic surgery to repair the tear of the *left* labrum, and on that occasion, he did another piriformis injection of the right hip.

¶ 32 During the surgery on the left hip, Domb found not only the labral tear shown in the MRI but also a cam lesion. A cam lesion, he explained, was “a part of the femoral head or neck that [was] aspherical.” Domb was asked:

“Q. So does that create issues for someone in their hip?

A. It's theorized that aspherical femoral head may cause impingement by rubbing against the socket or the labrum.

Q. Was that occurring in [petitioner's] case?

A. Safe to say there are a lot of people who have aspherical femoral heads, in fact most people have aspherical femoral heads, so whether it was occurring, or whether it was causing the problem, it's difficult to say."

Domb believed that the surgery on the left hip had been successful and that petitioner had reached maximum medical improvement in her left hip.

¶ 33 It also was beneficial to her hip condition that petitioner had changed jobs.

Whereas she used to work for respondent as a photographer, a job that "required her to be fairly mobile, to carry some heavy equipment, to kneel or squat at times," she now had a "desk job" at "Central Telemetry."

¶ 34 C. Medical Records After Domb's Evidence Deposition

¶ 35 According to a medical record dated September 10, 2015, Domb's impressions were as follows:

"1. Left hip status post hip arthroscopy for labral tear. Improved from the surgery, but still having symptoms of hip flexor tendinitis, aggravated with prolonged sitting as an EKG technician].

2. Right hip pain[,] which started prior to the left hip surgery from overcompensation. Possible intra-articular source of pain such as labral tear. Trochanteric bursitis with possible gluteus medius tendinosis/tear and piriformis syndrome."

Given the failure of conservative treatment of the right hip, including “multiple injections and physical therapy,” Domb decided to obtain a new MRI of the right hip “to rule out gluteus medius pathology versus labral tear.”

¶ 36 Accordingly, an MRI of the right hip was performed on September 22, 2015. It revealed a “[r]ight hip labral tear and high-grade partial thickness tear of the gluteus medius.” Since conservative, less intrusive treatment had provided no lasting benefit, Domb now recommended surgery on the right hip. He added: “Of note, the right hip pain and current condition, which necessitates surgery, were caused by the left hip injury due to compensation for her left hip pain.”

¶ 37 D. The Evidence Deposition of Dr. Kevin F. Walsh (August 30, 2016)

¶ 38 1. *Qualifications*

¶ 39 Kevin F. Walsh is an orthopedic surgeon and has been board certified in that field since 1990. He testified he performed at least 10 to 15 surgeries a week, about 20% of which were surgeries on the hip.

¶ 40 Also, for the past 26 years, Walsh had been doing medical-legal work. Typically, he performed about 10 or fewer independent medical examinations a month, most of them for the defense—a pattern that, as far as he could tell, had remained unchanged for the past five years.

Such medical-legal work took up less than 10% of his time.

¶ 41 2. *Walsh’s Three Independent Medical Examinations of Petitioner and His Opinion That the Right Hip Condition Had Nothing to Do With the Accident*

¶ 42 On September 27, 2012; September 22, 2014; and January 11, 2016, Walsh performed independent medical examinations of petitioner.

¶ 43 In the first examination, on September 27, 2012, petitioner did not mention to Walsh that she was having any problem with her right hip. Walsh examined both hips and found

no abnormality of the right hip. It is true that an arthrogram dated March 28, 2012, showed small hip joint effusions in the right hip and moderate trochanteric bursitis, but those findings were, in Walsh's view, "[n]othing really significant."

¶ 44 The second time Walsh saw petitioner was on September 22, 2014, about four months after the surgery on her left hip. She now told Walsh she had been having problems with her right hip for about a year. She felt pain when sitting on her right buttock. Two piriformis injections into the right hip had given her no relief. She further told Walsh that an MRI had revealed a tear in her right hip and that surgery on her right hip had been recommended. Ever since the left hip surgery, she had been restricted to light duty, and she had not been working.

¶ 45 Walsh would have expected any pain from the left hip surgery to have dissipated by the time of the second independent medical examination. "[A]s symptoms resolve[d] from surgical repair, any overcompensation should resolve."

¶ 46 The third independent medical examination was on January 11, 2016. At that time, petitioner told Walsh that although "her left hip was 95[%] good," her right hip continued to hurt; an MRI had revealed labral and gluteal tears in her right hip; and Domb had recommended surgery to repair the tears, the etiology of which Domb was uncertain.

¶ 47 Walsh now had an MRI of the right hip to review. "It showed fraying of the acetabular labrum with no definite detachment. There was chondral thinning superiorly with a pincer-type impingement." (The acetabulum is the socket of the hip. The labrum is the ring of cartilage on the outer rim of the acetabulum, or hip socket, and helps to hold the ball of the femur in the acetabulum. "Chondral" means of or relating to cartilage.)

¶ 48 Walsh was asked:

“Q. And, Doctor, is that finding from that MRI consistent with an overuse syndrome or overcompensation?”

A. No. I don’t think the labral fraying is a result of overcompensation or overuse syndrome. The chondral thinning is wear[]and[]tear. It’s not a result of overuse from having surgery on her left hip. It’s an arthritic change.

The pincer-type impingement is an anatomical finding. It’s a bone spur present on the lateral aspect of the acetabulum. It’s not caused by overcompensation. It’s an anatomical variant. The pincer-type impingement can cause the labral fraying.”

¶ 49

Walsh summed up:

“It’s my opinion based on a reasonable degree of orthopedic and medical certainty the right hip condition is not in any way causally related to her injury. She certainly didn’t have right hip symptoms following her initial work injury. She didn’t injure her right hip with the work injury described, nor is it likely that she developed acetabular labral fraying, chondral thinning, or pincer-type impingement or even tenderness in the greater trochanter as a result of the injury described or even overcompensation.

All findings on the MRI can be described on the basis of degenerative change, and none of the findings are due to overcompensation. I disagree with the opinion expressed by Dr. Domb that the right hip symptoms were related to overcompensation following the left hip injury.”

¶ 50

On cross-examination, Walsh was asked how a pincer-type impingement caused labral pathology. He answered: “Because of the anatomical variance, the labrum can tear through

repetitive motion, moving the hip ball into abduction, pinching the labrum as the hip is moved into adduction.” He continued:

“In [petitioner’s] case, it’s a result of her anatomical variation. She has a pincer lesion, and we know patients with pincer anatomy are more likely to develop labral pathology through the course of daily activities. It’s a risk factor for premature osteoarthritis and labral pathology.

Q. So[,] the actions of the hip itself in daily use would lead to that labral pathology given the pincer impingement; is that accurate?

A. Correct. It’s the personal condition unrelated to the work injury or, quote, [‘]overcompensation.[’]”

¶ 51 Walsh insisted: “It’s obviously Dr. Domb’s opinion, but there’s nothing in the medical record that supports that that labral fraying was definitely the result of overcompensation. There’s just no evidence. So, therefore, if we’re going to testify based on evidence, it’s not medically possible.”

¶ 52 There was no evidence, either, that petitioner needed any further medical treatment for her right hip—at least, that was Walsh’s opinion on direct examination.

Respondent’s attorney asked him:

“Q. *** Do you have an opinion whether [petitioner] requires further medical treatment for her right hip related to the accident?

A. She does not.

Q. And do you opine that [petitioner] has reached [maximum medical improvement] for her right hip?

A. She has.”

¶ 53 On cross-examination, by contrast, Walsh testified: “I have no problem with Dr. Domb recommending [that petitioner] have a [right-hip] arthroscopy. I just don’t think it’s causally related to the injury.” And again, Walsh testified on cross-examination:

“A. I have no problem with [Domb’s] recommending an arthroscopy of her hip.

Q. That’s the right hip; correct?

A. Correct.”

¶ 54 E. The Commission’s Decision on the Present Claim (the Right Hip Claim) and the Circuit Court’s Confirmation of the Commission’s Decision

¶ 55 On February 8, 2017, the arbitrator issued a decision, in which he found petitioner and her treating physician, Domb, to be credible. On the other hand, the arbitrator found Walsh’s opinions to be “of little value” and “neither persuasive nor credible.”

¶ 56 The arbitrator had several criticisms of Walsh.

¶ 57 First, in a written report dated October 12, 2014, Walsh opined that petitioner’s right hip problems were unrelated to the workplace accident, but he “did not provide the basis for that opinion[,] nor did he address what was causing [p]etitioner’s right hip problems.” Nor, in his report of October 12, 2014, did Walsh “address the April 9, 2014[,] arthrogram of the right hip or the findings made by Dr. Domb thereafter regarding the tear of the labrum, chondral thinning, and impingement.”

¶ 58 Second, in the report he wrote after his January 2016 independent medical examination of petitioner, Domb opined that the right hip surgery Domb had recommended was neither reasonable nor necessary. But afterward, on cross-examination in his deposition of August 30, 2016, Walsh testified he “ ‘had no problem with Dr. Domb recommending an arthroscopy’ of the right hip.”

¶ 59 Third, “Walsh testified that one of the underlying bases of his opinions was that [p]etitioner *first* complained of right hip pain 13 [to] 14 weeks after the April 30, 2014[,] surgery to repair the left hip.” Specifically, in the pages of Walsh’s deposition that the arbitrator cited, Walsh testified as follows:

“A. The first note I had that reflects the symptoms in the right hip is the note by Dr. Domb postoperatively. When he saw the patient, he noted that patient was having increased symptoms in her right hip over the hip flexor and piriformis when he saw her sometime week 13-14 postoperatively.”

Actually, as the arbitrator noted, the medical records gave a different account. According to Domb’s notes, petitioner first complained to him of right hip pain on February 24, 2014, some two months before the left hip surgery, and on that date, she told him her right hip had been hurting since October or November 2013, some six months before the left hip surgery. When confronted with the inaccuracy, Walsh testified it made no difference, one way or the other, in his opinion. Even so, the arbitrator took note of the inaccuracy and regarded it as a debit against Walsh’s credibility.

¶ 60 Fourth, it seemed to the arbitrator that even Walsh, in spite of himself, lent some support to Domb’s opinion, namely, that the right labrum had suffered damage from petitioner’s increased reliance on that hip as a result of her left hip injury. Walsh himself had “state[d] that the pincer lesion described on the MRI scan of the right hip certainly [could] cause labral pathology,” and he had explained “that the labrum [could] tear through repetitive motion, pinching the labrum as the hip [was] moved.” All Domb did was go a step further by opining, basically, that the prolonged period of overcompensation was the selfsame repetitive pinching that Walsh described, raised to the nth power.

¶ 61 Domb’s overcompensation theory made sense to the arbitrator in view of all the evidence. Domb had testified, and the medical records reflected, “that as [p]etitioner [was] compensating for the pain in her left hip, she *** beg[a]n to have a slow onset of increasing right hip pain since October or November 2013.” Domb had explained that “when one side [was] injured, the mechanics of walking, sitting, and standing [might] be altered, and one [might] overcompensate with what [was] initially at least the good hip, and overload the good hip, and subject it to abnormal mechanics and range of motion such that it [became] injured itself.”

¶ 62 In Domb’s opinion, this was what had happened to petitioner’s right hip, and the arbitrator chose to believe Domb over Walsh not only because of the aforementioned omissions or imprecisions that the arbitrator perceived in Walsh’s written and testimonial opinions but also because Domb, unlike Walsh, was a treating physician. The arbitrator cited *International Vermiculite Co. v. Industrial Comm’n*, 77 Ill. 2d 1, 4 (1979), in which the supreme court held: “[I]t is for the Commission to decide which medical view is to be accepted, and it may attach greater weight to the opinion of the treating physician.”

¶ 63 In short, then, the arbitrator found, on the basis of petitioner’s testimony and Domb’s opinions, “that the [p]etitioner’s current condition of ill-being as to her right hip [was] causally related to the injury sustained on January 26, 2012.” Accordingly, the arbitrator awarded petitioner the following: (1) a total of \$47,794.08 for reasonable and necessary medical expenses; (2) temporary total disability benefits of \$536.67 per week for 32 3/7 weeks, commencing on July 11, 2014, and ending on February 22, 2015; (3) temporary partial disability benefits of \$13,655.09, representing 91 2/7 weeks, commencing February 23, 2015, and ending on November 12, 2016; and (4) all reasonable and necessary prospective medical expenses.

¶ 64 On January 11, 2018, the Commission affirmed and adopted the arbitrator’s

decision.

¶ 65 On September 21, 2018, the Cook County circuit court confirmed the Commission's decision.

¶ 66 This appeal followed.

¶ 67 II. ANALYSIS

¶ 68 A. The Conclusiveness of the Commission's Previous Decision, the Decision on the Left Hip Injury

¶ 69 According to petitioner's first claim for worker's compensation benefits, she injured her left hip at work on January 26, 2012, as she was descending a stepladder. She missed the first step of the stepladder, and her left leg slipped on the floor and overextended, causing a labral tear in the left hip.

¶ 70 After hearing evidence on the claimed left hip injury, the arbitrator made the following findings, among others: (1) petitioner suffered an accident that arose out of and in the course of her employment, (2) the diagnosed labral tear in her left hip was causally related to the accident, and (3) respondent should pay for the left hip surgery that petitioner's treating physicians had recommended.

¶ 71 On February 20, 2014, the Commission affirmed and adopted the arbitrator's decision, and respondent never sought judicial review of *that* decision by the Commission. Consequently, by statutory law, the Commission's decision on the left hip is conclusive. See 820 ILCS 305/19(f) (West 2016) ("The decision of the Commission acting within its powers *** shall, in the absence of fraud, be conclusive unless reviewed as in this paragraph hereinafter provided.").

¶ 72 We make this point because although respondent assures us that it "is not contesting [petitioner's] claims and damages pertaining to her left hip," respondent thereafter

makes arguments and remarks that read like an attempted relitigation of the left hip case. For example, respondent remarks that petitioner “attempt[ed] to blame the floor for her [left hip] injury,” and respondent disputes that “using a ladder for inventory was a requirement for her job.” Or, as another example, respondent argues that, in his decision in the left hip case, the arbitrator ignored Walsh’s report and displayed bias toward Walsh. As a matter of law, though, Walsh was wrong about the left hip. See *id.* For it is unassailable that on January 26, 2012, petitioner sustained an injury to her left hip that arose out of and in the course of her employment and that surgery was reasonable and necessary to repair that injury. See *id.*

¶ 73 B. The Arbitrator’s Alleged Bias Against Walsh

¶ 74 In the statement of facts in its opening brief and in its reply brief, respondent argues that the arbitrator was biased against Walsh. (We note it is a violation of Illinois Supreme Court Rule 341(h)(6) (eff. Nov. 1, 2017) to make arguments or comments in the statement of facts.) Respondent believes that, in the arbitrator’s decision, it has found three indicators of bias.

¶ 75 First, in his decision, the arbitrator refers to Walsh as a “well-known IME [(independent medical examination)] physician.”

¶ 76 In the same sentence, however, the arbitrator also refers to Walsh as “a general orthopedic surgeon,” and Walsh himself testified that for the past five years he had been performing 10 or fewer independent medical examinations a month—arguably providing some basis for characterizing Walsh as an “IME physician.” Nowhere in his decision does the arbitrator say there is anything wrong with performing independent medical examinations. As the arbitrator surely was aware, section 12 of the Workers’ Compensation Act (Act) (820 ILCS 305/12 (West 2016)) contemplates such examinations, and there can be no such examinations without physicians willing to perform them. Without being understood as denigrating a physician

for performing independent medical examinations, a trier of fact can fairly and legitimately refer to a physician as “an IME physician” to differentiate him or her from the treating physician, who, as such, might have greater credibility in the eyes of a reasonable trier of fact. See *International Vermiculite*, 77 Ill. 2d at 4 (“[I]t is for the Commission to decide which medical view is to be accepted, and it may attach greater weight to the opinion of the treating physician.”).

¶ 77 Second, respondent argues the arbitrator showed his bias against Walsh by making the following statements, which respondent denounces as “flat out false”:

“It appears from Dr. Walsh’s report dated October 12, 2014[,] that he believes that the [p]etitioner’s right hip symptoms are unrelated to the injury, but did not provide the basis for that opinion nor did he address what was causing the [p]etitioner’s right hip symptoms (Rx 2, p. 6). Furthermore, Dr. Walsh did not address the April 9, 2014[,] MR arthrogram of the right hip or the findings made by Dr. Domb thereafter regarding the tear of the labrum, chondral thinning, and impingement (Rx 2).”

The representations the arbitrator makes in that quoted passage are defensible. Walsh’s report of October 12, 2014 (respondent’s exhibit No. 2) does not appear to make any specific reference to a magnetic resonance arthrogram of April 9, 2014. That Walsh later discussed the arthrogram in his testimony does not change the fact that his report of October 12, 2014, lacks any mention of the arthrogram. Granted, Walsh, in that report, acknowledges the findings that Domb made on the basis of an unspecified “MRI scan of the right hip,” namely, a labral tear and a cam-type impingement (although it appears, from Domb’s testimony, that he found a cam-type impingement in the left hip instead of the right hip). But Walsh merely tosses those findings into the bin of anatomical abnormality without providing a reasoned rebuttal of

Domb's opinion that overuse or overcompensation can exacerbate the wear and tear inflicted by an anatomical abnormality. In that respect, Walsh talks past Domb's opinion instead of squarely addressing it in a reasoned manner.

¶ 78 Third, when, in his decision, the arbitrator notes Walsh's change of position on the need for right hip surgery, respondent criticizes the arbitrator for "forg[etting] that immediately after[ward] Dr. Walsh *** stated[,] " 'I just don't think it's causally related to the injury.' "

¶ 79 But that is a pivot. That Walsh remained steadfast in his opinion on causation does not change the fact that he contradicted himself on the need for right hip surgery. In his written reports and in his testimony on direct examination, Walsh roundly insisted, without qualification, that surgery on petitioner's right hip would be medically unreasonable and unnecessary; but subsequently, on cross-examination, he testified he had no problem with Domb's recommending such surgery. Walsh's unexplained about-face on that important question could, in the mind of a rational, unbiased trier of fact, weaken confidence in Walsh's other opinions, including his opinion on causation.

¶ 80 C. The Manifest Weight of the Evidence

¶ 81 The Commission found that petitioner sustained a right hip injury that arose out of and in the course of her employment by respondent. See *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Respondent argues that for essentially 11 reasons, that finding by the Commission is against the manifest weight of the evidence. See *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1056, 1059-60 (2004).

¶ 82 First, in her testimony in the arbitration hearing, petitioner repeatedly denied that she injured her right hip on January 26, 2012, when she missed the first step of the stepladder.

Likewise, in the injury report, which she filled out immediately after the accident, she wrote only that she had injured her left hip, not her right hip. “That alone should render her claim concerning her right hip moot,” respondent argues.

¶ 83 The analysis is not so simple. “Where the work injury itself causes a subsequent injury, *** the chain of causation is not broken” (*International Harvester Co. v. Industrial Comm’n*, 46 Ill. 2d 238, 245 (1970)), even if the work injury causes the subsequent injury (or disease) by aggravating or accelerating a preexisting condition (*Sisbro*, 207 Ill. 2d at 205; *Par Electric v. Illinois Workers’ Compensation Comm’n*, 2018 IL App (3d) 170656WC, ¶ 56; *Lasley Construction Co. v. Industrial Comm’n*, 274 Ill. App. 3d 890, 893 (1995)).

¶ 84 Thus, even though respondent specifically denied injuring her right hip at work, that denial is not dispositive under the facts of this case. Even though she injured only her left hip when descending the stepladder, nevertheless, if the injury of her left hip in turn caused an injury of her right hip or exacerbated a preexisting condition of her right hip, the injury or exacerbation of her right hip arose out of the course of her employment, just as the injury of her left hip did. See *Sisbro*, 207 Ill. 2d at 204-05; *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860 (2005); *Modern Drop Forge Corp. v. Industrial Comm’n*, 284 Ill. App. 3d 259, 267 (1996); *Amoco Oil Co. v. Industrial Comm’n*, 218 Ill. App. 3d 737, 747 (1991).

¶ 85 After all, petitioner eventually ended up with torn tissue in her right hip, as medical testing objectively verified. An MRI of her right hip on September 22, 2015, revealed a “[r]ight hip labral tear and high-grade partial thickness tear of the gluteus medius.”

¶ 86 When reporting those MRI results, Domb opined, “[T]he right hip pain and current condition, which necessitates surgery, were caused by the left hip injury due to compensation for her left hip pain.” That opinion can be defended by reference to the facts. The

record contains evidence to justify a finding that the left hip injury that petitioner suffered in the workplace caused her to favor her left leg and to put more weight on her right hip and that, over time, the resulting increased day-by-day stress on her right hip caused a fraying of its labrum, which, as Walsh testified, was prone to injury because of the preexisting, congenital pincer-type impingement, or bone spur, on the rim of her right hip socket.

¶ 87 The second reason why, in respondent's view, the Commission's finding of causation is against the manifest weight of the evidence is that, for over two years after the workplace accident, petitioner never complained to Domb of right hip pain; and, in fact, from July 9, 2013, to February 24, 2014, petitioner saw no medical provider at all.

¶ 88 Considering, however, that petitioner had torn tissue in her right hip, as shown by the MRI of September 22, 2015; and considering that wear and tear from overcompensation might have taken years to develop; and further considering that "getting approval to go see" Domb was, petitioner testified, "the main issue" behind the delay from the fall of 2013 to February 2014, a reasonable trier of fact would not have to regard the passage of time as fatal to petitioner's claim. See *National City Bank of Michigan/Illinois v. The Property Tax Appeal Board*, 331 Ill. App. 3d 1038, 1042 (2002) ("[A] finding is against the manifest weight of the evidence when all reasonable and unbiased persons would agree that the opposite conclusion is clearly evident [citation]."). It is not self-evident that wear and tear on the right hip from overcompensation necessarily would have become symptomatic sooner than two years after the left hip injury.

¶ 89 Third, when petitioner first complained to Domb of right hip pain, in February 2014, he did not immediately impose any work restrictions; it was not until he performed left hip surgery on petitioner, in April 2014, that he imposed work restrictions. Respondent writes: "Even

[petitioner] admit[ted] at the second arbitration hearing that Dr. Domb apparently did not take [petitioner's] right hip injury allegations seriously since Dr. Domb only told [petitioner] not to put much strain on her right hip.”

¶ 90 Respondent's argument seems to be that Domb did not take petitioner's right hip allegations seriously and, therefore, the Commission should not have taken those allegations seriously, either. But taking petitioner's right hip allegations less than seriously would have been inconsistent with the objective evidence of damage in her right hip—evidence that justifies surgery, as Walsh ultimately felt obliged to concede.

¶ 91 Fourth, according to Domb's notes for January 15, 2015, petitioner's right hip no longer hurt constantly.

¶ 92 Inconstant pain, however, is not necessarily trivial. Being administered an electric shock every two hours would be an inconstant pain that significantly diminished one's quality of life. Although petitioner never claimed that her right hip gave her constant, unremitting pain, she testified she had “every day discomfort,” she could not “sit too long,” she no longer could go on long drives, and the achiness in her right hip interfered with her sleep.

¶ 93 Fifth, “[petitioner's] MRI on September 22, 2015[,] revealed that her right hip appeared to be in similar shape compared to the April 9, 2014[,] MRI exam[ination].”

¶ 94 That is true, and both MRI examinations showed torn tissue.

¶ 95 Sixth, respondent argues: “Dr. Domb never considered [petitioner's] road trip that led to worsened pain in her hip [citation], [her] Latin dance activities and Zumba [citation], [and her] X-Sport Fitness personal trainer she obtained without the authority of Dr. Domb [citations] ***.”

¶ 96 The question for the Commission was whether any of those activities by petitioner

was an independent intervening cause, breaking the causal connection between the workplace injury and her right hip problem. See *International Harvester*, 46 Ill. 2d at 245. The supreme court has held: “[I]f a nonemployment-related factor is a contributing cause, with the compensable injury, in an ensuing injury or disability, it does not constitute an ‘independent intervening cause’ breaking the causal connection where it is not brought about by claimant’s intentional or negligent misconduct.” *Id.* at 247. The Commission did not have to regard any of those activities as intentional or negligent misconduct by petitioner. See *id.* The long drive that petitioner took was in July 2012, before she had any symptoms in the right hip—and, besides, sometimes people have no choice but to go on long drives. Petitioner testified it was “[m]any years ago” that she was active in Latin dance and Zumba, and on July 17, 2012, she told Domb that “she would like to *return* to performing Latin dance activities as well as participating in Zumba,” not that she presently was doing those activities. (Emphasis added.) Although, as petitioner admitted in her testimony, Domb never recommended that she hire a fitness trainer at X-Sport Fitness, there is no evidence he told her to desist from doing so when he wrote, in his notes for February 24, 2014: “Working with a personal trainer.” If working with a physical trainer were detrimental to petitioner’s hips, Domb surely would have advised her to stop.

¶ 97 Seventh, respondent criticizes Domb for failing to consider “any other factor (such as degeneration or pre-existing conditions) as to why there was no right hip pain for over two years after the alleged incident.”

¶ 98 But “a preexisting condition does not preclude a finding of compensability [citation], nor must a claimant prove some act or phase of his employment was the sole, or even the principal, cause of his injury.” *Steve Foley Cadillac/Hanley Dawson v. Industrial Comm’n*, 283 Ill. App. 3d 607, 611 (1996). “[A]n employer takes its employees as it finds them. [Citation.]

A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition.” *Schroeder v. Illinois Workers’ Compensation Comm’n*, 2017 IL App (4th) 160192WC, ¶ 28. For example, in *Boyd Electric*, the treating physician, whom the Commission found to be credible (*Boyd Electric*, 356 Ill. App. 3d at 861), opined that a work-related groin injury had exacerbated a preexisting degenerative hip disease by causing the employee to favor one leg over the other (*id.* at 854-55). Similarly, in the present case, the Commission found that overcompensation from the left hip injury exacerbated or accelerated the labral tearing in the right hip to which petitioner already was prone because of the preexisting pincer-type impingement in that hip.

¶ 99 Eighth, respondent purports to be perplexed by Domb’s lack of comment on the MR arthrogram of March 28, 2012, which, according to respondent, showed that petitioner’s “right hip was in worse shape than her left hip as of [that date].” According to respondent, the arthrogram revealed that petitioner “had a small right hip joint effusion and *moderate* greater trochanter bursitis of the right hip” and, by contrast, a “small left joint effusion with *mild* greater trochanteric bursitis of the left hip.” (Emphases added.)

¶ 100 It has been conclusively established that the left hip was in bad enough shape to merit surgery. See 820 ILCS 305/19(f) (West 2016). If, according to respondent’s argument, the right hip was in worse shape than the left hip, logic would suggest that the right hip needs surgery, too.

¶ 101 Ninth, Walsh wrote in his report of January 17, 2016: “All of the findings on the patient’s MRI scan can be explained on the basis of degenerative change. None of the findings are due to overcompensation.” Respondent insists that this is the only credible medical opinion on causation in this case.

¶ 102 Thus, on the one hand, respondent raises the possibility that occasional activities, such as dancing, a long drive, or working out with a fitness trainer might have exacerbated petitioner’s right hip problem; and, on the other hand, respondent dismisses, as inherently implausible, the possibility that overcompensation over the course of many months did so.

¶ 103 Setting aside that seeming paradox, one could easily wonder why overcompensation would *not* exacerbate the labral tearing, considering that, according to Walsh’s testimony, the congenital pincer-type impingement would do so by repetitive wear and tear. “[A]n expert’s opinion is only as valid as the reasons that underlie it,” and Walsh really gave no reason for his opinion that the symptoms in petitioner’s right hip were unrelated to overcompensation. *Schultz v. Northeast Illinois Regional Commuter R.R. Corp.*, 201 Ill. 2d 260, 299 (2002). To be sure, as Walsh observed, overuse of the right leg could not have caused the pincer-type impingement itself, which was strictly an anatomical variant; but making that observation was little better than knocking down a straw man. The real question was, did the left hip injury cause overcompensation that, in turn, exacerbated the wear and tear inflicted on the right labrum by a preexisting congenital condition, the pincer-type impingement? Walsh’s conclusory negative answer to that question would not necessarily be satisfying to a reasonable trier of fact.

¶ 104 According to Domb’s testimony, it had “been well[-]documented in many, many studies” that “[t]he left hip altered mechanics affect[ed] the right hip”—in this case, a congenitally compromised right hip. Walsh never specifically disputed that testimony, and given Walsh’s own testimony that a pincer-type impingement put extra wear and tear on the labrum as the ball of the femur moved back and forth in the hip socket, it is unclear why, over time, consistently putting extra weight on the right leg would have been innocuous. Common sense

might suggest that the added weight from overcompensation would have been distributed up the right leg and directly into the right hip socket. It would seem, as a matter of simple physics, that more weight on the right leg necessarily would have meant more stress and more friction on the right labrum, which, according to Walsh's testimony, was perilously pinched between the ball of the femur and the bone spur on the rim of the hip socket.

¶ 105 Given this anatomical picture that Walsh painted, it is unclear why the Commission would have had to make an unequivocal, binary choice between congenital degeneration and overcompensation. See *Sisbro*, 207 Ill. 2d at 205 (“Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being.” (Emphasis in original.)). Instead, the Commission could have reasonably chosen to believe Domb's opinion that “the right hip pain and current condition,” including the torn labrum, “which necessitate[d] surgery, were caused by the left hip injury due to compensation for her left hip pain.” To every reasonable mind, it would not be an implausible theory that favoring the left leg over a period of many months aggravated or accelerated the degenerative process already inherent in the congenital pincer-type impingement in the right hip. See *Schroeder*, 2017 IL App (4th) 160192WC, ¶ 28.

¶ 106 Tenth, respondent observes: “[Petitioner] *never* testified, and there is no evidence to suggest otherwise, that her work involved repetitive movements during the two[-]year gap of time between the date of the incident and [petitioner's] first complaints to her medical providers regarding *right* hip pain.” (Emphases in original.)

¶ 107 The question, though, is not whether a repetitive workplace activity subsequent to the left hip injury caused the ill-being in petitioner's right hip; rather, the question is whether the left hip injury was *a* cause of the ill-being in her right hip. “Every natural consequence that flows

from a work-related injury is compensable under the Act unless the chain of causation is broken by an independent intervening accident.” *Par Electric*, 2018 IL App (3d) 170656WC, ¶ 63. To be a natural consequence of the left hip injury, the tissue damage in the right hip did not have to result from the subsequent performance of a work-related duty. In *International Harvester*, for example, there was no evidence that after sustaining a head injury at work, any of the subsequent experiences the employee had at work caused him to develop, years later, the compensable condition of traumatic neurosis. And in *Sisbro*, to take another example, there was no evidence that after twisting his ankle at work, any subsequent mishap or activity at work caused the employee to develop the compensable condition of Charcot osteoarthropathy.

¶ 108 Eleventh, respondent argues that Domb’s opinions “should not be taken seriously in this case, as the *** Commission found he lacks credibility in his medical opinions pertaining to his patients’ treatment.” Respondent cites cases in which the Commission found Domb’s opinion to be unpersuasive.

¶ 109 Just because the Commission disbelieved Domb in other cases, it does not follow that the Commission had to disbelieve him in this case. The facts in those other cases were not the facts in this case, and given the facts in this case, the Commission was entitled to believe Domb.

¶ 110 In short, there was a difference of expert opinion whether petitioner’s right hip condition had anything to do with the work-related injury to her left hip, and “[t]he Commission’s determination of factual issues, including the resolution of conflicting medical evidence, and the credibility and weight of testimony, will not be disturbed unless against the manifest weight of the evidence.” *McLean Trucking Co. v. Industrial Comm’n*, 96 Ill. 2d 213, 219 (1983). “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 v. Industrial Comm’n*, 224 Ill. 2d 53, 64 (2006). On the question of causation, it would not be impossible for a rational trier of fact to believe the treating physician, Domb, and to disbelieve Walsh. See *International Vermiculite*, 77 Ill. 2d at 3.

¶ 111 D. Temporary Total Disability

¶ 112 Pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2016)), the Commission awarded petitioner \$17,404.21 in temporary total disability benefits for the period of July 11, 2014, to February 22, 2015. Respondent challenges that award because during the period of July 11, 2014, to February 22, 2015, all the work restrictions that Domb imposed on petitioner had to do with her left hip, not her right hip.

¶ 113 Petitioner counters that even if the work restrictions were for the left hip instead of the right hip, it is the law of the case that petitioner sustained a compensable workplace injury to her left hip (see *Irizarry v. Industrial Comm’n*, 337 Ill. App. 3d 598, 606 (2003)) and as long as she was temporarily and totally disabled as a result of the injury to her left hip, she was entitled to temporary total disability benefits (see *Shafer v. Illinois Workers’ Compensation Comm’n*, 2011 IL App (4th) 100505WC, ¶ 45).

¶ 114 Petitioner is correct. The left hip injury and right hip condition were both litigated in the same case, case No. 12-WC-38709. The only argument that respondent makes against the \$17,404.21 in temporary total disability benefits was that “she should not have been entitled to TTD benefits whatsoever as it pertained to her right hip injury.” But even if all the work restrictions were due exclusively to the left hip injury, petitioner nevertheless would have been entitled to temporary total disability benefits if the left hip injury temporarily and totally disabled her during the period of July 11, 2014, to February 22, 2015. Respondent does not argue, as a

ground for reversing the temporary total disability award, that petitioner failed to prove she was temporarily and totally disabled during that period.

¶ 115 E. Temporary Partial Disability

¶ 116 Also, pursuant to section 8(a) of the Act, the Commission awarded petitioner temporary partial disability benefits for the period of February 23, 2015, to November 12, 2016. “When the employee is working light duty on a part-time basis or full-time basis and earns less than he or she would be earning if employed in the full capacity of the job or jobs, then the employee shall be entitled to temporary partial disability benefits.” 820 ILCS 305/8(a) (West 2016).

¶ 117 Respondent challenges the award of temporary partial disability benefits for the same reason it challenges the award of permanent total disability benefits, because “any restrictions that may have existed when [petitioner] started work at the new job February 22, 2015[,] were due to her *left*-hip issues” instead of her right hip issues. (Emphasis in original.) Again, because it is the law of the case that petitioner sustained a left hip injury that arose out of and in the course of her employment, she deserves temporary partial disability benefits if that injury necessitated that she “work[] light duty on a part-time basis or full-time basis” and if, as a consequence, she “earn[ed] less than *** she would be earning if employed in the full capacity of the job or jobs” (820 ILCS 305/8(a) (West 2016)). See *Irizarry*, 337 Ill. App. 3d at 606. Respondent does not dispute the calculation of temporary partial disability benefits.

¶ 118 Consequently, respondent fails to make a persuasive argument that the awards of temporary total disability benefits and temporary partial disability benefits are against the manifest weight of the evidence. See *Interstate Scaffolding, Inc. v. Illinois Workers’ Compensation Comm’n*, 236 Ill. 2d 132, 142 (2010); *Alano v. Industrial Comm’n*, 282 Ill. App.

3d 531, 536 (1996).

¶ 119

F. Medical Expenses

¶ 120

Section 8(a) of the Act (820 ILCS 305/8(a) (West 2016)) provides: “The employer shall provide and pay *** all the necessary first aid, medical[,] and surgical services, and all necessary medical, surgical[,] and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury.” 820 ILCS 305/8(a) (West 2016). “[A] claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of her employment and which are necessary to diagnose, relieve, or cure the effects of the claimant’s injury.” *Absolute Cleaning/SVML v. Illinois Workers’ Compensation Comm’n*, 409 Ill. App. 3d 463, 470 (2011). Specific procedures or treatments that a medical provider has prescribed are considered to have been “incurred” within the meaning of section 8(a) even if they have not yet been performed or paid for. *Bennett Auto Rebuilders v. Industrial Comm’n*, 306 Ill. App. 3d 650, 655 (1999).

¶ 121

The Commission ordered respondent to “pay reasonable and necessary medical services of \$47,794.08” as well as “reasonable and necessary prospective medical services.” For four reasons, respondent challenges this order as having no evidentiary support. See *Zarley v. Industrial Comm’n*, 84 Ill. 2d 380, 389 (1982); *Shafer*, 2011 IL App (4th) 100505WC, ¶ 51. First, petitioner admitted that on January 26, 2012, she did not injure her right hip. Second, she did not complain of right hip symptoms until two years after the accident at work. Third, Domb never placed any restrictions on petitioner because of any problem with her right hip. Fourth, after independent medical examinations of petitioner, Walsh opined that she suffered no right hip injury as a result of the accident on January 26, 2012. This memorandum already has addressed

those four arguments, none of which justify a conclusion that the Commission's findings of reasonable and necessary medical expenses are against the manifest of the evidence. See *Zarley*, 84 Ill. 2d at 389; *Shafer*, 2011 IL App (4th) 100505WC, ¶ 51.

¶ 122

III. CONCLUSION

¶ 123 For the foregoing reasons, we affirm the circuit court's judgment, which confirmed the Commission's decision.

¶ 124 Affirmed.