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IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

CHERI HAGAMAN,)	Appeal from the Circuit Court
)	of Peoria County
Appellant,)	
)	
v.)	No. 12-MR-138
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i>)	Honorable
)	Michael E. Brandt,
(Methodist Medical Center, Appellee).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* Claimant's argument concerning an alleged *Petrillo* violation is moot, and the Commission's decision that claimant failed to prove her condition of ill being was causally related to her employment is not contrary to the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Cheri Hagaman, appeals an order of the circuit court of Peoria County confirming a decision of the Illinois Workers' Compensation Commission (Commission). On

appeal, she argues that the Commission erred in considering the testimony of claimant's treating physician because he engaged in an *ex parte* communication with counsel for respondent, Methodist Medical Center, in violation of *Petrillo v. Syntex Laboratories, Inc.*, 148 Ill. App. 3d 581 (1986). She also contends that the Commission's decision regarding causation is against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 4

II. BACKGROUND¹

¶ 5 Claimant filed an application for adjustment of claim, seeking benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)). In it, she alleged she suffered a repetitive-trauma injury to both hands and arms, namely, bilateral carpal tunnel syndrome, with a manifestation date of March 1, 2008. At the time of her injury, she had been employed by respondent for approximately 33 years as a document-capture technician, and was also working at Walmart. For respondent, her job duties included typing, handling documents, using a hole punch, handling medical charts, pushing a cart, and medical transcription. She handled files of various sizes (some weighing over 30 pounds).

¶ 6 After noting her symptoms, she reported them to her employer and sought medical care. She first saw her primary-care physician, Dr. Dong, on March 31, 2008. Respondent directed claimant to see Dr. Hauter at the Illinois Work and Resource Center. Claimant also saw Dr. Garst, who recommended surgery, and Dr. Rhode, who concurred with Garst. She was also

¹ We note that claimant's table of contents to the record contained in her appendix references such documents as the "warning to motorists" and a "presentence investigation report." Counsel would be well-advised to take more care in the preparation of the appendix in the future.

examined by Dr. Cohen on respondent's behalf. Garst and Rhode both opined that claimant's condition was causally related to her employment; Cohen and Hauter opined that it was not.

¶ 7 The Commission denied claimant's request for benefits. Respondent represents that the Commission found that Hauter was one of claimant's treating physicians; however, she cites the arbitrator's decision, which the Commission did not expressly adopt. Indeed, the Commission made its own factual findings in this case. In any event, the Commission did consider Hauter's testimony in resolving this case. The Commission initially found that there was "little dispute" that claimant suffered from carpal tunnel syndrome. As to causation, however, the Commission found as follows:

"There is also no dispute that [claimant's] work for [r]espondent involved a wide variety of hand activities. However, neither of the job descriptions entered into evidence nor [claimant's] own testimony provided sufficient details regarding [her] work activities to prove a causal connection to her bilateral carpal tunnel syndrome. [Citations.] The Commission finds that in spite of the written job descriptions entered into evidence by [claimant] and [r]espondent, none of the doctors who saw [claimant] had sufficient evidence regarding her work activities to form a reliable causation opinion. Dr. Hauter appears to have obtained the most specific details regarding the daily duration of [claimant's] typing activities, but after establishing [claimant] typed a maximum of two hours a day, he was silent as to how she used her hands for the remaining six hours. [Citation.] Also significant is the lack of evidence pertaining to the ergonomics of [claimant's] work station."

The Commission therefore found that claimant had failed to show a causal relationship between her job and her bilateral carpal tunnel syndrome. She sought review in the circuit court, which confirmed, and this appeal followed.

¶ 8

III. ANALYSIS

¶ 9 On appeal, claimant raises two issues. She first asserts that Hauter's testimony should have been barred due to a *Petrillo* violation. Next, she argues that the Commission's decision regarding causation is against the manifest weight of the evidence. We disagree. As our resolution of claimant's second issue informs our analysis of her first issue, we will discuss these issues in the opposite order that claimant presented them.

¶ 10

A. Causation

¶ 11 Claimant contends that the Commission's decision on causation is against the manifest weight of the evidence. As part of a successful workers' compensation claim, a claimant must establish that his or her condition of ill-being is causally related to employment. *National Castings Division of Midland-Ross Corp. v. Industrial Comm'n*, 55 Ill. 2d 198, 203 (1973). Before the Commission, the burden of proof is on a claimant to establish all elements of a claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Moreover, it is primarily the role of the Commission, as trier of fact, to weigh evidence and assess the credibility of witnesses. *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill. App. 3d 650, 655 (1999). Further, the Commission is always free to reject the testimony of a witness, even if unrebutted, so long as it has a valid reason for doing so. See *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041-42 (1999). We owe great deference to the Commission on medical matters due to its well-recognized expertise in the area. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (2014). As such, we will only disturb a factual determination of the Commission if it is contrary to the

manifest weight of the evidence, which means that an opposite conclusion must be clearly apparent. *Stapleton v. Industrial Comm'n*, 282 Ill. App. 3d 12, 15-16 (1996).

¶ 12 Claimant first notes that Garst and Rhode both opined that a causal connection existed between claimant's condition of ill-being and her employment with respondent while Hauter and Cohen opined otherwise. She then asserts that Hauter's testimony should be stricken because of the alleged *Petrillo* violation. Moreover, she contends that Cohen's testimony lacked a foundation because his opinion was based on the assumption that claimant was working at an ergonomically correct work station. However, the Commission expressly found that there was a "lack of evidence pertaining to the ergonomics of [claimant's] work station." Claimant then reasons that she should prevail because she presented the testimony of two experts to support her claim while respondent actually presented no credible expert, which leaves her experts un rebutted. We initially point out here that the Commission is not required to accept un rebutted testimony. *Fickas*, 308 Ill. App. 3d at 1041-42.

¶ 13 More fundamentally, claimant's argument misconceives the Commission's ruling. The Commission found that no expert presented a credible opinion in this case: "The Commission finds that in spite of the written job descriptions entered into evidence by [claimant] and [r]espondent, none of the doctors who saw [claimant] had sufficient evidence regarding her work activities to form a reliable causation opinion." Absent credible evidence, the burden of proof, which is on claimant, is dispositive. *Nelson v. County of De Kalb*, 363 Ill. App. 3d 206, 211 (2005). The Commission did not find that Hauter and Cohen were entitled to more weight than Garst and Rhode. Thus, the Commission essentially accepted the argument claimant advances here—it rejected the testimony of Hauter and Cohen. However, it also rejected the opinions of Garst and Rhode and concluded claimant did not carry her burden of proof. Claimant's

argument never comes to terms with the Commission's rejection of her experts testimony based on their lack of knowledge of claimant's work activities. As such, claimant's attacks upon Hauter and Rhode are beside the point, and her argument provides no basis for us to conclude that the Commission's decision is against the manifest weight of the evidence.

¶ 14

B. *Petrillo*

¶ 15 We will now address claimant's argument regarding *Petrillo*, 148 Ill. App. 3d 581. The *Petrillo* court held that "principles of public policy, obligations created by confidential and fiduciary relationships, and the ethical responsibilities of modern-day professionals" limit *ex parte* communications between defense counsel and a plaintiff's treating physician. *Id.* at 610. A violation of this rule may be remedied by barring the testimony of the physician involved in the communication. See *Yates v. El-Deiry*, 160 Ill. App. 3d 198, 201 (1987). Assuming, *arguendo* that claimant has identified a *Petrillo* violation involving communications between Hauter and respondent's counsel, we find no basis to disturb the decision of the Commission, as this issue is moot. This presents a question of law, so review is *de novo*. *In re Alfred H.H.*, 233 Ill. 2d 345, 350 (2009).

¶ 16 An issue is moot where "intervening events preclude a reviewing court from granting *effective* relief." (Emphasis added.) *Holly v. Montes*, 231 Ill. 2d 153, 157 (2008). In this argument, claimant asserts that Hauter's testimony should be stricken. However, the Commission already disregarded Hauter's opinion in resolving this case: "[N]one of the doctors who saw [claimant] had sufficient evidence regarding her work activities to form a reliable causation opinion. Dr. Hauter appears to have obtained the most specific details regarding the daily duration of [claimant's] typing activities, but after establishing [claimant] typed a maximum of two hours a day, he was silent as to how she used her hands for the remaining six

hours.” Moreover, as explained above, the Commission’s decision was based on its conclusion that the testimony of claimant’s experts was entitled to no weight. Remanding to the Commission to strike Hauter’s testimony and reconsider its decision would be a pointless exercise and would certainly not constitute “*effective relief*.” Quite simply, the Commission already disregarded his testimony and nevertheless still found claimant’s experts’ opinions to be insufficient to prove causation. Hence, this issue is moot. See *People v. Savory*, 105 Ill. App. 3d 1023, 1028 (1982) (“[T]he issue of suppression of evidence which could not have contributed to his first conviction would have been considered moot on review in the first appeal.”).

¶ 17

IV. CONCLUSION

¶ 18 In light of the foregoing, the decision of the circuit court of Peoria County confirming the decision of the Commission is affirmed.

¶ 19 Affirmed.