

2012 IL App (1st) 111894WC-U
No. 1-11-1894WC
Order Filed: December 28, 2012

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

CAROLYN LUKESH,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 10-L-51551
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION and ABF FREIGHT,)	Honorable
)	Elmer James Tolmaire, III,
Defendants-Appellees.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* Commission's denial of benefits on the basis that claimant failed to prove by a preponderance of the evidence that decedent's death arose out of and in the course of his employment with respondent is not against the manifest weight of the evidence given conflicting medical testimony regarding whether decedent's cancer originated in the lungs and claimant's failure to adequately establish a link between lung cancer and exposure to diesel exhaust and fumes.

¶ 2 Claimant, Carolyn Lukesh, appeals the judgment of circuit court of Cook County confirming a decision of the Illinois Workers' Compensation Commission (Commission). The Commission concluded that claimant failed to establish that her late husband, Steven William Joseph Lukesh (decedent), sustained an occupational disease arising out of and in the course of his employment with respondent, ABF Freight. As such, the Commission denied claimant's request for benefits pursuant to the Workers' Occupational Diseases Act (Act) (820 ILCS 310/1 *et seq.* (West 2002)). For the reasons set forth below, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing held on April 8 and May 12, 2009, as well as the record on appeal. Decedent worked for respondent between 1981 and the spring of 2002. During this time, decedent held various positions, including dockworker and "yard spotter." It is undisputed that decedent's work for respondent involved fueling diesel trucks on a regular basis. It is also undisputed that decedent had a history of smoking for approximately 35 years.

¶ 5 Around the time decedent last worked for respondent, he began treatment for cancer principally under the care of his primary-care physician, Dr. Nenita Irabagon, and an oncologist, Dr. Gary Steinecker. Dr. Irabagon diagnosed "[m]etastatic poorly differentiated carcinoma, unknown primary." Dr. Steinecker's impression was "[a]denocarcinoma of uncertain etiology," although Dr. Steinecker also stated that the origin of the disease "most likely would seem to be lung cancer despite a negative chest x-ray and CAT scan of the lung." Decedent was also examined by Dr. James Rydel, who diagnosed adenocarcinoma of the head and neck. Dr. Rydel indicated that "[i]t is

debatable as to whether he has a primary lung malignancy given his history of smoking.” Decedent passed away on August 15, 2002, at the age of 53. Decedent’s death certificate listed the “immediate” cause of death as pneumonia caused by severe debilitation as a consequence of a massive brain infarct. The death certificate also listed “metastatic tumor, unknown primary” and “malnutrition” as “significant conditions contributing to death but not resulting in the underlying cause.” An autopsy was not performed on decedent.

¶ 6 On May 12, 2004, claimant, decedent’s widow, filed an application for adjustment of claim alleging that decedent’s death was the result of “exposure to fumes and carcinogens [*sic*]” while working for respondent. At the arbitration hearing, claimant testified that prior to October 2001, decedent attended work everyday, typically working 40 hours a week, although he occasionally worked overtime. Claimant further testified that decedent wore a uniform at work and, when he came home at night, his clothes were often greasy and oily. Claimant explained that “you could always smell the fuel oil because that’s what he did; and when he came in the house, you could smell it, you know, what he was doing.”

¶ 7 According to claimant, prior to October 2001, decedent was in good health and weighed between 160 and 165 pounds. Soon thereafter, decedent started losing weight and began noticing lumps on various parts of his body. Claimant testified that decedent started taking time off from work in May or June 2002 and did not return after that. By the time of his death, decedent weighed less than 115 pounds. Claimant acknowledged that decedent smoked one to two cigarettes an hour.

¶ 8 David Twombly worked with decedent between March 1984 and May 2002. Twombly testified that both he and decedent were classified as “dockmen/spotters” and saw each other almost

every day. Twombly explained that a spotter would break apart trailers and place them in their proper locations. Twombly stated that if there was no work available as a spotter, he and decedent would load or unload trailers at the dock.

¶ 9 Twombly testified that he and decedent initially worked at respondent's terminal in Forest View and subsequently at its terminal in Sauk Village. Twombly stated that the Forest View facility consisted of a truck dock with 87 doors. Twombly testified that, generally, those doors were open unless the terminal was closed, it was raining, or it was wintertime. Twombly indicated that the Forest View facility did not have any ventilation, other than from the opening and closing of the doors.

¶ 10 Twombly testified that as part of their duties, he and decedent also fueled the trucks every day. He explained this task as follows:

“When the units required fuel, [decedent] or myself or another spotter would—if it was coming off the road, this particular scenario would be if a unit came off the road—we would drop the two trailers, take the tractor, drive it around the terminal to the shop area where we have to get out, push the door. The overhead door would open. We'd get back in the truck pull it into the fueling bay, close the door.

Then we would, on each side of the truck that had the fuel tanks, we would fuel—take the fuel nozzle which hung from the ceiling on each side of the truck, take the cap off the fuel tank, put the nozzle into the tank; and if we were doing it together, [decedent] would be on one side. I would be on the other, or if we were doing it alone, we would only do one tank at a time.

Basically, you're standing there holding the nozzle so it didn't come out while all the vapors would be coming in your face. You could see it on your skin, on your face. You could wipe it off your face; and then we would check the oil, check the antifreeze, make sure all the fluids were up and running."

Twombly estimated that about two hours of an eight-hour day was devoted to dealing with motor fuel. According to Twombly, employees were not provided any kind of protection, such as a mask, while engaged in tasks related to fueling.

¶ 11 Twombly further testified that in the nineties, he and decedent both bid for positions at respondent's Sauk Village terminal. Twombly stated that in Sauk Village, decedent's work predominantly involved fueling vehicles. Twombly described the Sauk Village facility as a large garage with six overhead doors on one side and six overhead doors on the other side. He stated that there was also an additional bay without overhead doors where the trucks were fueled. Twombly testified that fueling at the Sauk Village terminal is done in the same matter as it was done at the Forest View facility. He added, however, that while a busy day at the Forest View terminal involved fueling 20 tractors, the business level at the Sauk Village facility involved fueling between 25 tractors on a slow day and 90 tractors on a busy day. Twombly stated that at the Sauk Village site, "you're always smelling diesel exhaust no matter where you're at on the property. No matter where you go, you can't escape it."

¶ 12 Twombly also testified that a "California Proposition No. 65 Warning" is posted on the inside of some of the equipment used to move trailers around respondent's facility. Twombly stated that the notice is in the form of an adhesive which comes with the equipment when it is purchased.

Twombly related that this warning provides that engine exhaust and certain fluids are “known to the State of California to cause cancer and birth defects or other reproductive harm.”

¶ 13 Charles Hess, claimant’s brother, testified that he has worked at respondent’s Sauk Village terminal since 1991 and that he worked with decedent between 1995 and 2001. Hess also testified that between 1995 and the time of decedent’s death, decedent’s job was to fuel trucks. Hess stated that the job of fueling has not changed since he started working for respondent. He explained that “[y]ou still got to stand there and hold the nozzle and breath the fumes as they come up.”

¶ 14 George Viste, senior operations manager at respondent’s Sauk Village terminal, testified that the yard of the Sauk Village site where decedent worked was open aired. Viste testified that decedent last worked at the facility in May 2002, at which time decedent reported an injury to one of his shoulders. Viste acknowledged that he was aware that decedent had cancer on the date of his 2002 shoulder injury because the doctor told him that decedent “is not long for this world because x-rays picked up this cancer situation.” However, he stated that he was not aware of any allegation that decedent had a work-related illness until the claim at issue was filed in 2004. Viste also testified that since 1995, when he began working as senior operations manager, the Sauk Village terminal has been sanctioned or reprimanded by a governmental entity for unsafe work conditions on only one occasion, when a sewage pipe broke in 2005 or 2006.

¶ 15 Each party presented a medical opinion in this case via evidence deposition. On claimant’s behalf, Dr. Ernest Chiodo testified that he is a physician, an industrial hygienist, a biomedical engineer, and an attorney. Dr. Chiodo is board certified in three medical specialties: (1) internal medicine; (2) occupational medicine; and (3) public health and general preventative medicine. Dr.

Chiodo stated that oncology, which concerns the diagnosis and treatment of cancer, is a “subspecialty” of internal medicine. Dr. Chiodo added that while he does not hold a subspecialty in oncology, he has “understanding and expertise in that discipline.” Dr. Chiodo explained that as part of his board certifications in occupational medicine and public health and general preventative medicine, he obtained a master’s degree in public health, which involved in-depth training in epidemiology, biostatistics, and issues involving industrial hygiene. Dr. Chiodo indicated that he is also a certified industrial hygienist. He stated that industrial hygiene is the engineering and public health discipline that is involved in assessing and controlling work in environmental hazards.

¶ 16 Dr. Chiodo explained that it was his understanding that decedent’s work activities involved fueling trucks at a loading dock. Dr. Chiodo understood that decedent worked long term, for approximately 25 years, during which he was exposed to diesel fumes on a regular basis as well as possible exposure to other solvents and asbestos. He also noted that claimant had a 35 pack-year history of smoking. Dr. Chiodo expressed his opinion concerning whether exposure to diesel fumes causes an increased risk of cancers as follows:

“First and foremost, we know that diesel fumes cause an increased risk of cancers. We know this based upon epidemiological studies where individuals that are exposed to occupational and to diesel fumes [*sic*] are compared to other control groups that are not exposed to diesel fumes.

And there is an increased incidence of cancers in those groups that are exposed to diesel fumes, and this is—this is a phenomenon that has occurred long enough that it’s become recognized that there’s a causal connection concerning diesel fume exposures and

cancer.

So we know that diesel fumes cause an increased risk of cancer based upon epidemiological studies.

* * *

If one is exposed to diesel fumes on a regular basis, there is an increased risk of cancer in such individuals with such—with occupational exposures, and that increased risk rises whether or not their work activity is indoors or outdoors.

Obviously, if one is indoors, from an industrial hygiene standpoint, one would expect an even greater exposure to diesel fumes than outdoors.

But, again, the increased risk reflected in the epidemiological literature is not limited to workers exposed to diesel fumes indoors. It also includes workers exposed to diesel fumes in outdoor work activities.”

Dr. Chiodo ultimately opined that one of the causes, if not the sole cause, of decedent’s cancer and therefore his death, was his employment.

¶ 17 On cross-examination, Dr. Chiodo testified that he does not devote any practice time to treating cancer. In addition, Dr. Chiodo testified that he did not examine decedent while he was alive or after his death, that he had no personal knowledge of decedent and his job activities, and that he did not personally inspect the facility where decedent worked. He stated, however, that it is well known within the occupational environmental medicine community of physicians in active practice that there is an increased risk of cancer for those who are exposed to diesel fumes on an ongoing occupational basis. Dr. Chiodo noted that while decedent had two risks, cigarette smoking and

exposure to diesel fumes, he believed that decedent's employment was a cause of his cancer. Dr. Chiodo acknowledged that the only study he cited in a written report he prepared in conjunction with his testimony was one conducted by a Dr. Steenland. Dr. Chiodo explained that Dr. Steenland's article was not the basis of his opinion. Rather, it was simply a citation that corroborates his opinions. Dr. Chiodo testified that he did not include all possible citations concerning the increased risk of cancer for those exposed to diesel fumes as there is a large body of literature. Dr. Chiodo also acknowledged on cross-examination that while it was "[v]ery likely" that decedent's "primary" was lung cancer, it is not known for sure.

¶ 18 Respondent submitted the evidence deposition of Dr. John Showel. Dr. Showel is board certified in internal medicine, hematology, and oncology. Dr. Showel estimated that since he became licensed to practice in Illinois in 1965, he has treated more than 100 patients with lung cancer. Dr. Showel testified that based on his review of claimant's medical records as well as a report authored by Dr. Chiodo, he generated a written report dated April 18, 2008. In that report, Dr. Showel stated that approximately 10% of his practice is dedicated to clinical research, which includes cancer research. Dr. Showel stated that during the course of his research, he has had the opportunity to read articles generated or written by medical doctors or research scientists which pertain to the development of lung cancer. Dr. Showel estimated that he has read more than 100 articles over the course of his career and has attended about half a dozen seminars or lectures put on by medical doctors or research scientists which pertain to the development of lung cancer.

¶ 19 Dr. Showel estimated that about 75% of lung cancer cases arise as a result of tobacco use. He stated that individuals with 30-pack year histories or more of smoking are at a high risk of

developing lung cancer. He explained that tobacco smoke contains carcinogenic compounds and that the inhalation of these carcinogenic compounds has been linked to the development of lung cancer. Dr. Showel admitted, however, that he did not know what the carcinogenic compounds are in tobacco smoke. He stated that other risk factors in the development of lung cancer include air pollution, inhalation of second-hand smoke, inhalation of asbestos fibers, and familial predisposition. Dr. Showel was not aware of any testing done at respondent's facilities during decedent's tenure of employment which revealed elevated levels of ozone, carbon dioxide, or carbon monoxide or the existence of asbestos in his work area.

¶ 20 Dr. Showel testified that he also referred to Dr. Steenland's article in his report but testified that he read only the abstract and not the complete article. Dr. Showel thought that Dr. Steenland's article was "not conclusive." Moreover, Dr. Showel related that he is not aware of any studies that quantify a direct link between exposure to diesel fumes and the onset of lung cancer.

¶ 21 On cross-examination, Dr. Showel testified that he is not board certified in preventative medicine, occupational medicine, environmental medicine, or epidemiology and that he has not worked in public health. Dr. Showel testified that other than cigarette smoke and asbestos, he is not aware of anything else that has been established as a risk factor for lung cancer. Dr. Showel stated that he had "never seen it established " that exposure to diesel fuel is a risk factor for lung cancer. Dr. Showel also indicated that he has not seen or read any studies about diesel fuel and the development of lung cancer. He acknowledged, however, that he has not done any research to determine if there were such studies. Dr. Showel testified that he did not know if smoking was the sole cause of decedent's cancer.

¶ 22 On redirect examination, Dr. Showel testified that it is unclear whether claimant even had lung cancer. He explained that claimant had “a lot of cancer” and that the primary source of decedent’s cancer was never established. Nevertheless, Dr. Showel testified that claimant “probably” had lung cancer. Dr. Showel stated that assuming it was lung cancer, cigarette smoking “might have had a causal relation to it.” On recross-examination, Dr. Showel admitted that this would not exclude other potential combining causes for decedent’s cancer.

¶ 23 Based on the foregoing evidence, the arbitrator adopted the opinion of Dr. Showel over that of Dr. Chiodo and concluded that claimant failed to prove by a preponderance of the evidence that a compensable accident or exposure occurred that arose out of and in the course of decedent’s employment with respondent. In so concluding, the arbitrator pointed out that Dr. Chiodo is not a board-certified oncologist, he never examined or treated decedent, he did not visit or test any facility where decedent worked for respondent, he never observed decedent in the performance of his duties, and he listed no epidemiological study in support of his opinion with regard to causation. In contrast, Dr. Showel, a board-certified oncologist, testified that he was unaware of any scientific study which quantifies a direct link between exposure to diesel fumes and the onset of lung cancer. The arbitrator further noted that while decedent’s medical records repeatedly refer to claimant’s history of smoking, they never mention his employment as a factor in the development of his cancer or subsequent death, and decedent’s death certificate did not list cancer as the immediate cause of death.

¶ 24 The Commission affirmed the arbitrator’s finding that claimant failed to prove that decedent sustained an occupational disease arising out of and in the course of his employment with

respondent. In doing so, the Commission stated that while claimant sustained her burden of establishing that decedent was exposed to diesel fumes and exhaust to a greater degree than the general public, it was unable to determine whether decedent had lung cancer. The Commission noted that decedent's medical records consistently indicated that his cancer was of "unknown origin" or "unknown primary." Further, the causes of death listed on decedent's death certificate were pneumonia, severe debilitation, and massive brain infarct. The Commission acknowledged Dr. Showel's testimony that decedent likely had lung cancer, but pointed out that Dr. Showel also admitted that there was no definitive evidence of lung cancer. Further, the Commission, while finding Dr. Chiodo "well qualified" to render an opinion on whether diesel fumes and diesel exhaust cause cancer, concluded that his opinion was not supported by any properly admitted evidence. In particular, the Commission noted that Dr. Chiodo cited only the article written by Dr. Steenland in support of his causation theory. Dr. Chiodo did not believe that he needed to offer more than one article in support of his opinion because it was "widely accepted." The Commission pointed out, however, that Dr. Steenland's article was not admitted into evidence. Further, while Dr. Steenland's article and other studies were attached to the brief claimant submitted to the Commission, the Commission found that it could not consider this evidence under section 19(e) of the Workers' Compensation Act (820 ILCS 305/19(e) (West 2002) (stating that in all cases in which the hearing before the arbitrator is held after December 18, 1989, no additional evidence shall be introduced by the parties before the Commission on review of the decision of the arbitrator)). Left with only Dr. Chiodo's opinion without any evidence in support thereto, the Commission concluded that Dr. Chiodo's assertion that it is a widely accepted fact that diesel fumes cause cancer, without further

evidence, did not satisfy claimant's burden of proof.¹ On judicial review, the circuit court of Cook County confirmed the decision of the Commission. This appeal followed.

¶ 25

II. ANALYSIS

¶ 26 The sole issue in this appeal is whether the Commission's finding that claimant failed to prove by a preponderance of the evidence that decedent's death arose out of and in the course of his employment with respondent is against the manifest weight of the evidence.

¶ 27 The Act allows recovery for both occupational diseases arising out of and in the course of one's employment and employment-aggravated occupational diseases. 820 ILCS 305/1(d) (West 2002); *Fitts v. Industrial Comm'n*, 172 Ill. 2d 303, 309 (1996). "A disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease." 820 ILCS 305/1(d) (West 2002); see also *Anderson v. Industrial Comm'n*, 321 Ill. App. 3d 463, 467 (2001) (noting that to recover compensation under the Act, an employee must prove both that he or she suffered from an occupational disease and that a causal connection exists between the disease and the employee's job). The disease does not have to be foreseen or expected, but after its contraction it must appear to have had its origin or aggravation in a risk

¹The Commission stated that it was not making a specific finding that occupational exposure to diesel fumes and exhaust is not causally connected to the development of lung cancer, only that petitioner presented insufficient evidence that decedent sustained an occupational disease and that there was insufficient submission of evidence in support of the expert testimony given.

connected with the employment and to have flowed from that source as a rational consequence. 820 ILCS 310/1(d) (West 2002). Nevertheless, an occupational activity need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 317 Ill. App. 3d 497, 504 (2000). The claimant has the burden of proving by a preponderance of the evidence all of the elements of his or her claim. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 867 (2010).

¶ 28 Whether an employee suffers from an occupational disease and whether there is a causal connection between the disease and the employment is a question of fact for the Commission to resolve. See *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 597 (2005); *Anderson*, 321 Ill. App. 3d at 467. In deciding questions of fact, it is the function of the Commission to judge the credibility of the witnesses, determine the weight to be given their testimony, and resolve conflicting medical evidence. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 435 (2011). A reviewing court will not overturn the decision of the Commission on a factual matter unless it is against the manifest weight of the evidence. *Anderson*, 321 Ill. App. 3d at 467. A finding is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011). In this regard, we are mindful that the relevant inquiry is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Bernardoni*, 362 Ill. App. 3d at 597.

¶ 29 On appeal, claimant insists that no rational trier of fact could agree with the Commission's

conclusion. Claimant argues that the evidence clearly shows that decedent developed metastatic lung cancer caused by his exposure to diesel fumes and exhaust while in respondent's employ.

¶ 30 As noted above, the Commission determined that claimant adequately established that decedent was exposed to diesel fumes and diesel exhaust to a greater degree than the general public, but concluded that claimant failed to prove that decedent sustained an occupational disease arising out of and in the course of his employment with respondent. In reaching the latter conclusion, the Commission relied on the fact that there was uncertainty as to whether decedent actually had lung cancer. There is sufficient evidence to support this finding. In particular, the Commission had before it contradictory medical testimony regarding whether the origin of decedent's disease was of the lungs. By the time of his diagnosis, decedent's cancer had spread throughout his body. The medical records of Dr. Irabagon and Dr. Steinecker, claimant's principal treating physicians, consistently state that decedent's cancer was of "unknown primary" or "uncertain etiology." While Dr. Steinecker suspected that the origin of the disease "most likely would seem to be lung cancer," he noted that a chest X ray and a CAT scan of the lung were both negative. Similarly, Dr. Rydel concluded that it was "debatable" whether decedent had a primary lung malignancy. Dr. Showel stated that claimant "probably" had lung cancer, but noted that the primary source of decedent's disease was not conclusively established. Dr. Chiodo, claimant's expert medical witness, also opined that decedent developed lung cancer as a result of his employment which had metastasized and resulted in death. However, even he admitted that the origin of decedent's cancer had not been determined. Given the foregoing testimony, we cannot say that the Commission's finding that claimant failed to prove by a preponderance of the evidence that claimant had metastatic cancer of

the lungs is against the manifest weight of the evidence.

¶ 31 The Commission further determined that even if it had been established that decedent contracted metastatic lung cancer as a result of his exposure to diesel fumes and exhaust while in respondent's employ, claimant failed to adequately establish a causal relationship between that condition and decedent's death. The Commission found that while Dr. Chiodo was "well qualified" to render an opinion on the issue of whether the exposure to diesel fumes and exhaust was a causal factor in the development of decedent's cancer, his opinion was not supported by any evidence. Significantly, the Commission pointed out that while Dr. Chiodo cited an article by Dr. Steenland in support of his theory, the article was not placed in evidence before the arbitrator. Dr. Chiodo then indicated that no additional supporting evidence was necessary for his expert opinion because this theory was widely accepted. The Commission concluded, however, that without further evidence, Dr. Chiodo's assertion that it is a widely accepted fact that diesel fumes cause cancer did not satisfy claimant's burden of proof on causation. Given the Commission's finding, and in light of Dr. Showel's opinion that Dr. Steenland's article was "not conclusive" and that he was unaware of any studies that quantify a direct link between exposure to diesel fumes and the onset of lung cancer, as well as the lack of any reference in decedent's medical records that claimant's employment was a factor in the development of his cancer, we cannot say that the Commission's decision that claimant failed to sustain her burden of proof on causation is against the manifest weight of the evidence.

¶ 32 Claimant nevertheless insists that three additional pieces of evidence require reversal of the Commission's decision. First, claimant cites the "California Proposition No. 65 Warning" placed on equipment used at respondent's facility. The Commission, however, rejected claimant's reliance

on the California warning. The Commission pointed out that posting the warning was the result of a vote by the lay public and there is no indication regarding the sources upon which the State of California relied to generate the warning. We find that the Commission was justified in rejecting claimant's reliance on the California warning on these bases. Second, claimant asserts that there is a "high incidence" of cancer in other individuals who worked for respondent. In support, claimant notes that at the arbitration hearing, Twombly testified regarding a list he prepared of current and former employees of respondent who allegedly suffer or died from cancer. Viste confirmed that he was aware that some of these individuals had cancer. Nevertheless, we do not find this evidence persuasive as no evidence was presented regarding the type of cancer these individuals allegedly had, whether they held a position similar to decedent, or whether they were exposed to other risk factors. Finally, claimant cites to other studies and the Steenland article to bolster Dr. Chiodo's opinion on causation. We decline to consider these articles as they were not properly admitted below. See 820 ILCS 305/19(e) (West 2002).

¶ 33

III. CONCLUSION

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

¶ 35 Affirmed.