2014 IL App (1st) 132858WC-U
No. 1-13-2858WC
Order filed December 26, 2014

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

HUI LIU,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County.
	)	
v.	)	No. 13-L-50161
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.* (City of Evanston, Appellee).	)	Honorable Patrick Sherlock, Jr., Judge, presiding.

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

ORDER

¶ 1 *Held*: The Commission did not err in finding that the claimant failed to prove that she sustained an injury arising out of and in the course of her employment where the only physician to offer an opinion on the issue of causal connection did not provide a sufficient basis for his causation opinion.

¶ 2 The claimant, Hui Liu, was employed by the City of Evanston as a book shelver at the library. The claimant filed an application for adjustment of claim pursuant to the

Illinois Workers' Compensation Act (the Act), 820 ILCS 305/1 *et seq*. (West 2006), alleging that she suffered injuries to her neck and back while working. The application listed the date of accident as June 28, 2007. At the February 9, 2012, arbitration hearing, the claimant testified through an interpreter. Following the hearing, the arbitrator issued a written decision. The arbitrator found that the claimant failed to prove that she sustained an injury arising out of and in the course of her employment.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission), which unanimously affirmed and adopted the arbitrator's decision. The claimant filed a timely petition for review in the circuit court of Cook County which confirmed the Commission's decision. The claimant appeals the circuit court's judgment. We affirm.

¶ 4 BACKGROUND

¶ 5 The following evidence was presented at the arbitration hearing. The claimant had worked as a shelver at the library for approximately 14 years. She testified that in the spring of 2007 she began to feel pain. The claimant testified that she worked six hours each day, not including breaks or lunch, or approximately 31 hours per week. As part of her work duties, the claimant testified that she verified and checked in books, placed books on shelves, and cleaned. She took returned books from a bin and checked them in at the computer. According to the claimant, the check in and verification process took approximately one to two hours. After checking the books in, she sorted the books into categories. Prior to shelving the books, she would scan them with a magnetizing device

and place the books onto a cart. The claimant testified that the cart was approximately waist level.

¶ 6 The claimant testified that she is right handed and used her right hand to shelve books. The bookcases had five shelves. The claimant had to place some of the books on the lower shelves near her feet, while she placed other books on the higher shelves. Two of the shelves were above her shoulder level. The claimant explained that in order to shelve books on the higher shelves, she had to raise her arm higher than her shoulder and reach out about one foot in front of her. She sometimes used a stool to shelve the books. The claimant testified that the books varied a great deal in size. The claimant also was required to find books listed on a printout she received each morning from other libraries in the system. When the library was open, at times customers would ask her to help them locate a book. She testified that the remainder of the time was spent putting returned books back onto the library shelves.

¶ 7 The claimant reviewed a video job description offered into evidence by the employer purporting to show her job duties at the library. She agreed that the video depicted the nature of her job, but she claimed that the conditions in the library were different in 2007. The claimant explained that in 2007 the library was undergoing remodeling. At that time, all of the books from downstairs were moved to the second floor which resulted in the books being tightly shelved. According to the claimant, because the books were tightly shelved, she had to exert extra effort to insert the books onto the shelves. She testified that she was constantly reaching high to put the books into

very tight shelving space. She stated that when she pulled books out, she would feel pain in her right arm, head, shoulder, and hand. She testified that it was difficult to raise her arm high and that she felt pain.

¶ 8 On March 12, 2007, the claimant treated with her primary care doctor, Dr. Valli Stewart. Dr. Stewart's medical records were admitted into evidence. The doctor's notes indicate that the claimant presented on March 12, 2007, with right shoulder pain, neck pain, and low back pain. The doctor noted that the claimant swam three times per week and ran for 30 minutes every day. The claimant reported to Dr. Stewart that she felt numbness or tingling of her right hand and that while at work she occasionally dropped books held in her right hand. Dr. Stewart diagnosed the claimant with cervical radiculitis and sciatica. The doctor ordered cervical and spinal x-rays.

¶ 9 The x-ray report of the claimant's cervical spine revealed "reversal of the normal cervical lordosis centered at the C4-5 level," "moderate narrowing of the disc spaces at C4-5 and C5-6 accompanied by hypertrophic spur formation and mild bony eburnation," and "no fracture or dislocation." The x-ray showed "[m]oderate degenerative changes in the midcervical spine."

¶ 10 The claimant next saw Dr. Stewart on June 28, 2007, with complaints of increased pain. Dr. Stewart's progress note from that visit indicates that the claimant presented with complaints of dizziness. The claimant stated that looking up to shelve books, occasionally looking down, and sitting on hard surfaces were aggravating factors. The claimant also reported that she had experienced right arm weakness at times during the past week. The

claimant had gone to physical therapy for cervical radiculitis from March through April of 2007 with some improvement. Dr. Stewart noted that the claimant reported that she "got better" when she was in China for three weeks. Although she no longer had tingling, the claimant was concerned about right arm weakness while driving and working. Dr. Stewart prescribed a Medrol pack and ordered an MRI of the cervical spine without contrast. The MRI report identified "multilevel cervical degenerative disc disease."

¶ 11 Dr. Stewart kept the claimant off of work, speculating that she would be able to resume work on July 30, 2007. In her note, the doctor wrote that the claimant had a herniated disc in her cervical spine that required evaluation by a specialist to determine treatment options.

¶ 12 The claimant again treated with Dr. Stewart on August 3, 2007. Dr. Stewart's progress note of the same date indicates that the claimant had complaints of continuing pain from her cervical disc disease; pain to her head, neck, right arm, and hand. The progress note indicated that the claimant was no longer running due to the cervical disc disease, but that she could occasionally swim, albeit more slowly, three times per week for 30 minutes. Dr. Stewart referred the claimant to Dr. Thomas Hudgins to consider steroid injections. Dr. Stewart wrote in the August 3, 2007, progress note: "[The claimant] and husband ask if she should have pursued workmans [*sic*] comp as this is aggravated by working – advised they can do so but would need to discuss with her employer, could also ask opinion of Dr. Hudgins."

¶ 13 The medical records of Dr. Hudgins were admitted into evidence. The claimant

saw Dr. Hudgins on August 8, 2007. Dr. Hudgins' initial diagnosis was displacement of cervical intervertebral disc without myelopathy. Dr. Hudgins prescribed Medrol pack and physical therapy, and he ordered an x-ray of the claimant's right shoulder. In his report, Dr. Hudgins wrote that the claimant had been complaining of right upper extremity pain in her shoulder area for more than one year. The doctor stated that the claimant's pain was worse with overhead activities. Dr. Hudgins noted that the claimant did not report an event or trauma. Dr. Hudgins also noted that the claimant had been diagnosed with cervical radiculitis in July 2007. Dr. Hudgins opined in his report that the claimant's right upper extremity pain was most consistent with rotator cuff tendinopathy. Dr. Hudgins allowed the claimant to return to work, but restricted her to no lifting greater than 20 pounds, no repetitive bending/twisting, and a change of positions every hour for five minutes until after her follow up appointment. Although the exact date is not clear, the claimant testified that she stopped working at the library at some point in August 2007.

¶ 14 The claimant saw Dr. Hudgins again on September 24, 2007. In his progress note, Dr. Hudgins wrote that the claimant had "right rotator cuff tendinopathy due to repetitive overuse." He ordered an MRI of the claimant's right shoulder, and he restricted the claimant to light duty work for the following four weeks.

¶ 15 The claimant testified that following her last visit to Dr. Hudgins in 2007, she went to Shanghai, China, on two separate occasions. On the first trip, she left in September 2007 and returned in January 2008. She traveled to China again in May or June of 2008 and returned approximately one month later. She testified that she had not worked on

either of her trips to China and that she was not working at the time of the hearing. She testified that while she was in China, she received massage and acupuncture therapy; however, she did not submit into evidence records of those treatments.

¶ 16 On August 26, 2008, the claimant returned to see Dr. Stewart with complaints of persistent neck pain. The claimant reported that she had pain in the back of her neck which was worse later in the day and if she looked down. According to the claimant, she had physical therapy while in China, but she could not find the same kind of therapy in the United States. Dr. Stewart's progress note indicated that the claimant reported that she still swam but was unable to do the breaststroke due to shoulder pain. At the hearing, the claimant denied telling Dr. Stewart at the August 2008 visit that she had been swimming.

¶ 17 On September 2, 2008, Dr. Gunnar Andersson performed an independent medical evaluation of the claimant on behalf of the employer. His report of the same date was admitted into evidence. In his report, the doctor noted that the claimant's husband was present and assisted with translation. Dr. Andersson outlined the claimant's history as reported to him by the claimant and summarized the claimant's medical records which he had reviewed. The doctor noted that the claimant reported that she "swims all the time." Dr. Andersson opined:

> "There is nothing in the [claimant's] job or history that suggests that her symptoms were in any way caused by or aggravated by work. Specifically, the type of work that [the claimant] performed has never found [*sic*] to be a cause of neck, back or shoulder symptoms per se. Thus, without a specific injury, her

symptoms are simply not work related and the repetitive trauma theory has no scientific support."

¶ 18 Dr. Andersson reviewed the MRI report contained in the claimant's medical records but stated that he had not had an opportunity to personally review the claimant's MRI films. In a 2011 addendum to his report, Dr. Andersson stated that he had reviewed the video job description of the claimant's work and took the video into account when he formulated his opinion as stated in his September 2, 2008, report that the claimant's symptoms were unrelated to her work.

¶ 19 Dr. Stewart referred the claimant to Dr. Steven Levin. Dr. Levin's records were admitted into evidence. Dr. Levin saw the claimant on September 28, 2008, for an orthopedic evaluation. In his progress note, Dr. Levin wrote that the claimant reported having had "problems in the past with lifting heavy books." He noted that the claimant "swims quite a bit and over the past year has noted some mild right shoulder pain." At the hearing, the claimant denied telling Dr. Levin that she had been swimming quite a bit over the past year.

¶ 20 Dr. Levin noted that the claimant denied any neck pain, radicular pain, numbness, tingling, or severe pain. He noted that the claimant reported "mainly localized pain with overhead activity, pain at night, and mild limitation of motion." Dr. Levin noted that the September 12, 2008, MRI report revealed a limited exam secondary to motion artifact. The doctor also noted that the MRI showed a moderate grade focal bursal-sided tear of the claimant's supraspinatus tendon and infraspinatus tendon, and a hypertrophic AC joint with

a Type II acromion. Dr. Levin's impression was that the claimant had an impingement, partial rotator cuff tear, and AC joint arthritis. His plan was to treat the claimant conservatively with therapy, iontophoresis, and then reassess in one month. If there was no improvement after one month, they would consider further measures.

¶ 21 On December 18, 2008, the claimant saw Dr. Levin in follow up for her shoulder. Dr. Levin wrote in his progress note that the claimant was going to therapy but still had significant pain, pain with overhead activity, and pain at night. Dr. Levin noted that the MRI showed a "significant partial rotator cuff tear" that in some views looked as if it was a full thickness tear. Since conservative treatment measures had failed, the doctor recommended surgery. The claimant agreed, and the surgery was scheduled.

¶ 22 On January 6, 2009, Dr. Levin performed an arthroscopic subacromial decompression, debridement, and rotator cuff repair on the claimant's right shoulder. In a post-operative letter written to Dr. Stewart, Dr. Levin reported that the claimant had "an extensive rotator cuff tear." Dr. Levin prescribed physical therapy. The claimant was released from Dr. Levin's care on April 22, 2009, and the claimant had not seen him since that date. She testified that the surgery helped her condition.

¶ 23 The claimant has not returned to work for the employer. During the period of time she was off work, she did not receive any type of benefits from the employer.

¶ 24 The claimant testified that over a year after her surgery she went to see Dr. Daniel Newman. Dr. Newman performed an independent medical evaluation at the request of the claimant's attorney. Dr. Newman's report dated June 15, 2010, was entered into evidence.

In his report, Dr. Newman noted that the claimant provided a history of her injury and subsequent treatment. He also reviewed the claimant's medical records from her treating physicians. He noted in the report that the claimant was a shelver at the library and "[t]hat meant that she replaced books that had been taken off the shelves. This required forward reaching as well as overhead reaching." Dr. Newman stated in his report that the claimant's medical records confirmed the history as outlined by the claimant. Dr. Newman stated:

> "In my opinion, the job that [the claimant] had at the time of onset of her symptoms is, at least in part, responsible for her right shoulder pain. Reaching forward and overhead lifting are two common etiologies. In [the claimant's] history, she does state that she is an avid swimmer, and swimming could cause aggravation of the rotator cuff as well. In my opinion, the surgery she received was appropriate and is, at least in part, more likely than not, associated with the work activities."

¶ 25 The claimant testified at the hearing that she felt much better, but she felt "uncomfortable" whenever she lifted anything heavy or reached high. She testified that at the time of the hearing she was not taking any medications for her shoulder. The claimant testified that prior to the spring of 2007, she was a regular swimmer. She would swim three times a week. She also testified that prior to the spring of 2007 she had never had problems with her right arm nor had she received treatment.

¶ 26 Peter Gobin testified on behalf of the employer. Mr. Gobin testified that the

claimant was a part-time shelver who worked between 25 and 35 hours per week. Mr. Gobin was the claimant's supervisor. He had worked at the library for 22 years. Prior to becoming a supervisor, Mr. Gobin was a shelver. He was familiar with the job duties of a shelver as they existed in 2007, and he testified that those duties had not changed in any significant manner from 2007 through the date of hearing. He testified that the job duties of a shelver in 2007 were to check items in, verify, scan, and sort them, and take them to be shelved.

¶ 27 Mr. Gobin viewed the video at the hearing, and he testified that he had participated in making the video. He explained that the first part of the video depicted the books being sorted and placed onto a cart. The books are then scanned as a security measure with a small hand-held device called a magnetizer. The cart is then taken up the elevator to the main library floor to be shelved. The books are placed onto the shelves according to the Dewey Decimal system.

¶ 28 Mr. Gobin testified that based on his experience, a shelver would spend approximately 15 to 20 minutes per day magnetizing books and approximately one half of an hour logging in books at the computer from the bin. He stated that the shelvers are seated as they check in the books at the computer. Mr. Gobin explained that neither of these tasks involved lifting one's arms overhead. Based on his past experience, he believed the video was a fair and accurate portrayal of the job duties of a shelver. Mr. Gobin confirmed the claimant's testimony that in 2007 as part of the renovation, books from the first floor were moved to the second floor.

¶ 29 Following the hearing, the arbitrator issued a written decision. In the decision, the arbitrator pointed out that none of the claimant's treating physicians specifically related the claimant's right shoulder condition to her work as a shelver. The arbitrator found that the only physician who stated that the claimant's right shoulder injury was related to her work as a shelver was Dr. Newman, an independent medical examiner hired by the claimant's attorney. The arbitrator stated:

> "The Arbitrator finds that Dr. Newman does not provide a sufficient basis for his causation opinion.
>
> The Arbitrator asks: Overhead lifting of *any* weight? *Any* frequency of reaching?
>
> There is no evidence in Dr. Newman's report that he was aware of the average weight of an Evanston Library book or the frequency with which [the claimant] reached with her right arm or the frequency with which [the claimant] performed overhead lifting with her right arm. There is no evidence that Dr. Newman reviewed the video job description.
>
> The evidence in the record failed to establish how often, for instance, [the claimant] was required to work overhead."

¶ 30 The arbitrator made an express finding that Dr. Newman did not provide a sufficient basis for his causation opinion and determined that the claimant failed to carry her burden of proof in establishing accident and causal connection.

¶ 31 The claimant appealed the arbitrator's decision to the Commission, which

unanimously affirmed and adopted the arbitrator's decision. The claimant then appealed to the circuit court, which confirmed the Commission's decision. The claimant filed this timely appeal.

¶ 32 ANALYSIS

¶ 33 On appeal, the claimant initially contends that the issue before this court is one of law and, thus, we should review the instant case applying a *de novo* standard. In support of her contention, the claimant posits that the Commission, by improperly requiring her to produce quantitative evidence, went beyond that which is required under the law to prove causation. See *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 194, 775 N.E.2d 908, 912 (2002) ("Whether a claimant must prove certain elements to establish a compensable claim is purely a question of law and it is therefore reviewed *de novo*."). The employer, on the other hand, argues that the Commission's decision should be reviewed under the manifest weight of the evidence standard because the existence of a causal connection is a question of fact for the Commission. See *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009).

¶ 34 We disagree with the claimant that the Commission improperly required her to establish the quantitative component of her work; rather, we find that the Commission determined that Dr. Newman did not provide a sufficient basis for his causation opinion. "The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion." *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 24, 960 N.E.2d 587. "If the basis of an expert's

opinion is grounded in guess or surmise, it is too speculative to be reliable." *Id.* "Expert opinions must be supported by facts and are only as valid as the facts underlying them." *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87 (2003). "A finder of fact is not bound by an expert opinion on an ultimate issue, but may look 'behind' the opinion to examine the underlying facts." *Id.*

¶ 35 The claimant's expert, Dr. Newman, noted in his report that the claimant was a shelver at the library and "[t]hat meant that she replaced books that had been taken off the shelves. This required forward reaching as well as overhead reaching." The Commission noted that there was no evidence in Dr. Newman's report that he was aware of the average weight of the books or the frequency with which the claimant reached with her right arm or the frequency with which she performed overhead lifting with her right arm. The Commission found it significant that there was no evidence that Dr. Newman reviewed the video job description submitted by the employer. Here, the Commission discounted the testimony of the claimant's expert because he did not demonstrate foundational knowledge of the weight of the books or the frequency of shelving. We find no error in the Commission considering the foundation of the expert's opinion. Since we find that the Commission did not improperly require quantitative proof, we review the instant case under the manifest weight of the evidence standard.

¶ 36 "Whether an injury arose out of and in the course of one's employment is a question of fact for the Commission to decide, and its determination will not be disturbed unless it is against the manifest weight of the evidence." *City of Springfield*, 388 Ill. App. 3d at 312,

901 N.E.2d at 1079. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent." *Id.* at 312-13, 901 N.E.2d at 1079. "Whether this court might have reached the same conclusion is not the test of whether the Commission's determination is supported by the manifest weight of the evidence." *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010). "Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination." *Id.*

¶ 37 To obtain compensation, a claimant bears the burden to show that he suffered an injury arising out of and in the course of his employment. *Baggett*, 201 Ill. 2d at 194, 775 N.E.2d at 912. The "in the course of" employment component refers to the time, place and circumstances under which the accident occurred. *City of Springfield*, 388 Ill. App. 3d at 313, 901 N.E.2d at 1079. "An injury is said to 'arise out of' one's employment when there is a causal connection between the employment and the injury; that is, the origin or cause of the injury must be some risk connected with the claimant's employment." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 676, 928 N.E.2d 474, 483 (2009).

¶ 38 "[A]n injury is considered accidental even though it develops gradually over a period of time as a result of repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job." *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040, 723 N.E.2d 846, 849 (2000). "An employee who suffers a repetitive trauma injury still may apply for benefits under the Act, but must meet the same standard

of proof as an employee who suffers a sudden injury." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). "In cases relying on the repetitive-trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209, 614 N.E.2d 177, 180 (1993). "A claimant need only prove that some act or phase of employment was a causative factor of the resulting injury." *Id*.

¶ 39 Our review of the record on appeal reveals that the first time the claimant provided a history of her injuries occurring as a result of "tightly packed" books was at the arbitration hearing. This history does not appear in any of the claimant's medical records.

¶ 40 Additionally, the claimant's job duties varied. Each morning the claimant retrieved books from a printout for other libraries in the system, and at times she helped customers find books. Throughout the course of the day she verified and checked in books while seated at the computer for one to two hours; scanned the books with a magnetizing device; placed them onto a cart which was approximately waist level; performed cleaning tasks; and shelved books. At times the claimant placed the books on the lower shelves near her feet or at her waist level while at other times the claimant was required to place the books on the higher shelves. The claimant testified that she could place the books on the higher shelves with the aid of a stool.

¶ 41 Finally, the claimant's treating physicians did not offer an opinion on the issue of causal connection. Dr. Stewart recorded that when the claimant and her husband inquired

as to whether they should have pursued a workers' compensation claim, she responded that they could do so but that they needed to discuss it with her employer. The doctor then informed the claimant that she also could ask Dr. Hudgins his opinion. Upon examining the claimant, Dr. Hudgins opined that she had "right rotator cuff tendinopathy due to repetitive overuse," but he did not specifically relate the claimant's shoulder condition to her employment. Dr. Levin, who performed the claimant's right shoulder surgery, offered no opinion on causation. As previously noted, the only physician to opine that the claimant's right shoulder pain was at least in part causally connected to her employment was the claimant's expert, Dr. Newman, whom the Commission did not find credible. *Hosteny*, 397 Ill. App. 3d at 674, 928 N.E.2d at 482 ("In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence.")

¶ 42 We find there was sufficient evidence in the record to support the Commission's determination that the claimant failed to prove that she sustained an injury arising out of and in the course of her employment.

¶ 43 CONCLUSION

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

¶ 45 Affirmed.