2012 Ill. App. (2d) 110051WC
No. 02-11-0051WC
Order filed February 17, 2012

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CITY OF DeKALB,	)	Appeal from the Circuit Court
	)	of DeKalb County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-MR-119
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION and DONNA ZENZEN,	)	Honorable
	)	Kurt P. Klein,
Defendants-Appellees.	)	Judge, Presiding.

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

ORDER

Held: The decision of the Commission that claimant's condition of ill being is causally related to her at-work injury is not contrary to the manifest weight of the evidence; the Commission did not shift the burden to respondent to disprove causation; and respondent failed to show that the Commission's awards of permanent partial disability and medical expenses were erroneous.

¶ 1 I. INTRODUCTION

¶ 2 Claimant, Donna Zenzen, filed an application for adjustment of claim pursuant to the

Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2006)) alleging she sustained a repetitive trauma injury to her neck while in the employ of respondent, the City of DeKalb. The arbitrator agreed and awarded temporary total disability (TTD) benefits in the amount of $670.53 for 5 5/7 weeks (820 ILCS 305/8(b) (West 2006)); $603.48 per week for 150 weeks representing physical impairment to the extent of 30% of the whole person (820 ILCS 305/8(d)(2) (West 2006)); and medical expenses of $1,321.16 (820 ILCS 305/8(a) (West 2006)). The Commission affirmed and adopted the decision of the arbitrator after making three minor modifications. The circuit court of DeKalb County confirmed the Commission's decision, and, for the reasons that follow, we affirm.

¶ 3 II. BACKGROUND

¶ 4 At the time of her injury, claimant had been employed by respondent as a telecommunicator in respondent's police department for 23 years. She worked 40 hours per week. Typically, she used one of two workstations—one monitored police calls and the other monitored fire calls. Claimant used a headset rather than a telephone receiver. There were five screens at the fire workstation and six at the police workstation. Three screens were at eye level and measured about four feet across. Claimant testified that she was required to move her head back and forth as well as up and down to monitor them. Certain screens were not used frequently. Claimant estimated that about 80% of her job involved "[e]ntering data and looking at the different screens." Occasionally, she would have to retrieve data from a binder. The heaviest binder weighed 5-1/4 pounds. Claimant's supervisor, Sergeant Lisa Miller, testified that a telecommunicator is required to do "a lot of things at once." The arbitrator visited and observed claimant's workplace.

¶ 5 In 1999, claimant began treating with Dr. Jerry Christensen, a chiropractor. She was experiencing neck and shoulder pain. Claimant completed an intake form, where she stated her

condition was not related to her job. Claimant also saw Dr. Alan Van, an orthopaedic surgeon, regarding her condition prior to the injury at issue in this case. Van noted that claimant had no radicular symptoms in 2006, and an MRI performed in 2005 showed no nerve or cord compression, thought it did show disc degeneration.

¶ 6 Claimant again saw Van beginning on September 24, 2007. Van's records from this date indicate no evidence of any radicular symptoms. However, when claimant saw Van on November 15, 2007, she complained of severe pain radiating down her right arm. He ordered another MRI, and it revealed a disc herniation on the right side at the C6-C7 level. Van attributed claimant's radicular symptoms to the disc herniation. Van testified that the radicular pain claimant was experiencing was a new and distinct condition. Van opined that claimant's condition was causally related to her employment with respondent. Van acknowledged that he had not reviewed claimant's job description or visited her workplace and that he never saw a picture of her work station. He was not aware that claimant used a headset; however, he testified that while a headset might have minimized some of claimant's neck complaints, her work activities were causally related to her job regardless of whether she used one. He was not aware how much lifting was required of claimant.

¶ 7 Claimant was also examined by Dr. Jesse Butler on respondent's behalf. Butler reviewed claimant's medical records, and conducted a physical examination. He also reviewed her job description. He agreed that claimant's MRI showed a large herniation and that claimant could not work until her condition resolved. He opined that claimant's condition was not causally related to her employment, citing the absence of a traumatic incident as well as his opinion that claimant's job activities did not place stress on her neck to a degree greater than that experienced by the general public.

¶ 8 Van performed an anterior cervical discectomy on February 8, 2008. She underwent seven sessions of physical therapy following her surgery. Claimant experienced some relief and returned to her position with respondent on March 20, 2008. She still experiences stiffness and pain in her neck. Occasionally, she goes numb from the base of her neck to her right shoulder. She takes Tylenol for her symptoms and does not require any prescription pain medication. No doctor has placed any lifting restriction upon her; however, she testified that the most she can lift without causing pain in her neck is 30 pounds. While she is still able to garden and perform yard work, she experiences "difficulties" when doing so and just does "the best [she] can." At the time of the hearing, she was assisting a police officer in rehabilitating a house. Additional evidence will be discussed as it pertains to certain discrete issues raised by respondent.

¶ 9 The arbitrator, characterizing this case as "very close," found that claimant had carried her burden of proving she had sustained a repetitive-trauma injury. He noted the change in claimant's condition between her visits to Van in 2006 and 2007. He further noted that in the interim, claimant "was engaged in multiple activities involving turning and twisting her neck and body in the course of her employment as a dispatcher." He found that claimant's injury manifested itself on September 24, 2007. The arbitrator then found that claimant's condition of ill being was causally related to her on-the-job accident. In support, he cited Van's opinion on causation. He noted that Butler identified no other potential cause for claimant's condition. The arbitrator expressly found Van's testimony more persuasive than that of Butler. He further noted that the mere fact that claimant used a headset did not mean that she did not have to engage in "constant motion of her head and neck." Moreover, claimant's supervisor "admitted that the telecommunicator position required such activities." The arbitrator then awarded temporary total disability (TTD) benefits in the amount of $670.53 for 5-5/7

weeks (820 ILCS 305/8(b) (West 2006)); $603.48 per week for 150 weeks representing physical impairment to the extend to 30% of the whole person (820 ILCS 305/8(d)(2) (West 2006)); and medical expenses of $1,321.16 (820 ILCS 305/8(a) (West 2006)). The Commission made three modifications to the arbitrator's decision. It increased the period fo TTD to 5-6/7 weeks; changed the manifestation date from September 24, 2007, to October 4, 2007; and found that claimant had been released to full duty on April 28, 2008, instead of having permanent lifting restrictions. The Commission otherwise affirmed and adopted the arbitrator's decision. The trial court confirmed. Respondent now appeals.

¶ 10 III. ANALYSIS

¶ 11 Before this court, respondent raises four main issues. Respondent characterizes its first argument as contesting the Commission's determination that a work-related accident occurred; however, its argument actually implicates causation. Second, it contends that the Commission erred in finding a causal relationship between claimant's condition of ill being and her employment (in the course of analyzing this issue, we will address respondent's assertion that the Commission improperly shifted the burden of proof to it on the issue of causation). Third, it maintains that the Commission's award of certain medical expenses is contrary to the manifest weight of the evidence. Fourth, it alleges error in the Commission's determination that claimant was permanently and partially disabled to the extent of 30% of the person as a whole.

¶ 12 Except for the subissue regarding the burden of proof on causation, respondent's contentions present questions of fact subject to review using the manifest-weight standard. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 868 (2010). We will not disturb such a decision unless an opposite conclusion is clearly apparent. *Orsini v. Industrial Comm'n*, 117

Ill. 2d 38, 44 (1987). It is primarily the role of the Commission, as trier of fact, to resolve conflicts in the evidence, assign weight to evidence, and evaluate the credibility of witnesses. *Palos Electric Co. v. Industrial Comm'n*, 314 Ill. App. 3d 920, 926 (2000). Where medical evidence is conflicting, the Commission's decision is entitled to substantial deference. *Lock 26 Constructors v. Industrial Comm'n*, 243 Ill. App. 3d 882, 888 (1993). As for respondent's subissue regarding the burden of proof, whether the trial court followed the proper procedure is a question of law subject to *de novo* review. *People v. Corredor*, 339 Ill. App. 3d 804, 806 (2010). With these principles in mind, we now turn to respondent's arguments.[1]

¶ 13 A. Whether Claimant Was Exposed To A Risk Beyond That to Which the Public Is Exposed

¶ 14 Respondent's first argument is captioned "The Decision of the Circuit Court Confirming the Commission's Decision Regarding Accident is Against the Manifest Weight of the Evidence." However, respondent then goes on to argue that claimant was exposed to no risk greater than that to which the general public is exposed. This argument pertains to the "arising out of" element of a workers' compensation claim. See *Orsini*, 117 Ill. 2d at 45 ("For an injury to have arisen out of the employment, the risk of injury must be a risk peculiar to the work or a risk to which the employee is exposed to a greater degree than the general public by reason of his employment."). The "arising out of" element is a measure of causation. See *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989) ("For an injury to 'arise out of' the employment its origin must be in some risk

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[1]We remind respondent's counsel that Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) requires factual assertions made in the argument section of one's brief to be supported by appropriate citation to the record.

connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury."). Hence, respondent's argument actually implicates the causal relationship between the activities claimant performed at work and her injury.

¶ 15 Respondent argues, in essence, that the activities claimant engaged in were activities that the general public engages in every day. Specifically, the Commission (in adopting the arbitrator's decision) found that the fact that claimant had to turn and twist her neck and body led to a repetitive trauma injury. Respondent asserts, "It seems incredulous to even assert that turning your head is a work-related activity which could rise to the level of an accident in the workers compensation arena when people turn their heads every single day in almost every activity of daily life." The mere fact that the activity causing the injury is one in which the public engages is not dispositive in all cases. Even an ordinary activity may lead to an injury that arises out of employment where the employee engages in the activity to a greater degree than the general public. *Karastamatis v. Industrial Comm'n*, 306 Ill. App. 3d 206, 209 (1999) ("Thus, in order for an injury to arise out of one's employment, the risk must be: (1) a risk to which the public is generally not exposed but that is peculiar to the employee's work, or (2) *a risk to which the general public is exposed but the employee is exposed to a greater degree*." (Emphasis added.)).

¶ 16 Accordingly, in *Komatsu Dresser Co. v. Industrial Comm'n*, 235 Ill. App. 3d 779, 788 (1992), this court found an award under the Act appropriate, noting, "The frequency of this activity and the method in which the claimant had to bend and lift without bending his knees increased the claimant's exposure to risk of injury from the bending than that of the general public, and, thus, the fact that bending is a normal activity did not preclude a finding that the claimant's injury arose out of his employment." Similarly, in *Kemp v. Industrial Comm'n*, 264 Ill. App. 3d 1108, 1111 (1994),

we held that a claimant was exposed to a risk to a greater degree than the general public, stating, "This differs both in type and frequency from the type of bending and stooping in which the average member of the general public could be expected to ordinarily engage." In both cases, the frequency that the claimant had to engage in an otherwise ordinary activity was relevant in finding the claimant's injury arose out of employment.

¶ 17 In this case, it is undisputed that claimant's job required her to sit before a number of screens and monitor them. It is true that some screens were rarely used; however, this does not mean that claimant only rarely had to turn her head. It is also true that claimant used a headset, however, as Van opined, this would not preclude a causal connection between employment and claimant's injury. While certain screens could be adjusted to eye level, this would not minimize the frequency with which claimant was required to move her head laterally. Moreover, claimant performed her job 40 hours per week. The Commission could reasonably conclude that sitting before and monitoring a number of screens for 40 hours per week placed stress upon claimant's neck to a greater degree than that to which the general public is exposed in the course of ordinary daily activities. At the very least, we cannot say that an opposite conclusion is clearly apparent. Parenthetically, we note that we recently affirmed an award where the claimant suffered a cervical injury and his job duties "required him to constantly move his head from side to side while operating a forklift." *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 435 (2011).

¶ 18 Respondent points out that claimant admitted that she also had to turn her head in the course of her normal daily activities, such as driving. This is immaterial. It is axiomatic that employment need only be *a* cause, not the sole cause or primary cause of a claimant's condition. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). Thus, that

some of claimant's off-work activities may have contributed to her condition does not render her injury non-compensable.

¶ 19 Respondent contends that claimant submitted no evidence regarding "the number of times she turned her head from side to side during a shift." It cites *Darling v. Industrial Comm'n*, 176 Ill. App. 3d 186, 195 (1988), in support of this argument. It is true that in that case, we stated, "In addition, the quantitative proof improperly demanded by the Commission typically may carry great weight only where the work duty complained of is a common movement made by the general public, *e.g.,* opening the door of a washing machine." *Darling v. Industrial Comm'n*, 176 Ill. App. 3d at 195. Initially, we note the qualified nature of this proposition: "typically *may* carry great weight." (Emphasis added.) In no way can this statement be read as holding that quantitative proof is the *sine qua non* of a repetitive trauma case. Moreover, quantitative evidence was placed before the Commission. Claimant testified that she worked at least 40 hours per week and often was required to work overtime. She also testified that she spent 80% of her shifts "[e]ntering data and looking at the different screens." Thus, while there was no numerical evidence regarding how many times claimant had to engage in her activities at work, there was evidence from which the Commission could infer that it was a substantial amount of times. In turn, the Commission could conclude that she did such things more often than the general public. Keeping in mind our standard of review, we cannot say that an opposite conclusion is clearly apparent.

¶ 20 In sum, the Commission's decision is not contrary to the manifest weight. We therefore reject respondent's first argument. We now turn to its second argument, which also concerns causation.

¶ 21 B. Whether The Commission Erred In Accepting Dr. Van's Opinion On Causation

¶ 22 Respondent next argues that the Commission should have accepted Butler's opinion rather than Van's, since, it argues, Van's lacks an adequate foundation. We reiterate here that resolving conflicts in medical testimony is primarily a matter for the Commission and, indeed, one on which we owe the Commission great deference due to its recognized expertise regarding medical matters. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 565 (1979). It is true that expert opinions are "only as valid as the facts underlying them." *Gross v. Illinois Workers' Compensation Comm'n*, 2011 Il App (4th) 100615WC, ¶ 24, quoting *In re Joseph S.*, 339 Ill. App. 3d 599, 607 (2003). The proponent of the opinion must lay an adequate foundation to establish its reliability. *Gross*, 2011 Il App (4th) 100615WC, ¶ 24, quoting, *Torres v. Midwest Development Co.*, 383 Ill. App. 3d 20, 28 (2008). We cannot conclude that the Commission's decision to credit Van's testimony is contrary to the manifest weight of the evidence. There is simply no persuasive reason for us to substitute our judgment for the Commission's on this issue. *Lefebvre v. Industrial Comm'n*, 276 Ill. App. 3d 791, 798 (1995) ("[I]t is the responsibility of the Commission to judge the credibility of witnesses and we cannot substitute our judgment for that of the Commission merely because different or conflicting inferences may also be drawn from the same facts.").

¶ 23 Respondent acknowledges that when asked about the basis of his opinion that claimant's injury was caused by her employment, Van stated, "The fact that a lot of her work was related to neck rotation, flexion and usage and the mode of that job activity and then follow with the symptom manifestation without any prior trauma relating to that clearly denotes that something happened that related from the job that caused that." Van also stated that an earlier MRI showed "degenerative disc disease and discogenic back pain" and noted that her current symptoms were not related to her earlier condition. In essence, Van compared her current condition to her earlier medical problem and

concluded that a job that involved significant neck rotation and flexion would be a cause of her current condition. We note that there was testimony in the record that claimant's condition involved substantial movements of the type described by Van. As such, there was a basis for the Commission to relate Van's opinion to claimant's employment.

¶ 24 Respondent essentially argues that Van did not know enough about claimant's job. Unpersuasively, respondent asserts that Van only knew claimant worked as a dispatcher and answered the telephone. Respondent points out that Van did not mention that claimant had to turn her head to view various computer screens. However, as noted above, Van was aware that "a lot of [claimant's] work was related to neck rotation [and] flexion." Thus, it is apparent that he was aware claimant had to turn her head frequently; respondent does not explain the significance of him knowing the purpose of her turning her head was to look at various computer screens. It seems to us that knowing that she was rotating her head frequently is more important that knowing why she was doing so. Indeed, whether simply knowing claimant had to turn her head a lot provided an adequate basis for Van's opinion or whether more detail was necessary requires exactly the sort of expertise with medical issues that the Commission is recognized to possess (*Long*, 76 Ill. 2d at 565). As such, we find this attack on Van's credibility unpersuasive; it certainly provides us no basis to say that the Commission was not entitled to accept his opinion. Respondent raises a few similar complaints about Van's lack of knowledge of the details of claimant's job, which, for the reasons just discussed, are not well founded.

¶ 25 Respondent complains that Van based his opinion on causation in part on the fact that claimant's job entailed some lifting. Respondent states that Van had no knowledge as to what claimant had to lift or how often she had to do so. However, Van testified that claimant engaged

in "minor lifting." Claimant and her supervisor testified that she had to occasionally lift binders weighing up to 5.25 pounds. Thus, Van's characterization of claimant's lifting as "minor" appears accurate, even if it is not particularly descriptive. Moreover, the Commission was presented with detailed testimony from claimant and her supervisor describing claimant's lifting, and it was for the Commission to assess the effect of any ambiguity in Van's description of claimant's work activities on his credibility and the weight to which his opinion was entitled. *Cassens Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 332 (1994) ("Although respondent challenges the bases for [Dr.] DeHaan's and [Dr.] Shapiro's opinions of causality, that goes to the weight to be accorded their testimony, which was a question for the Commission to decide.").

¶ 26 Respondent also complains of the Commission's reliance on the fact that radicular symptoms, which had previously been absent, were observed in Fall 2007. Respondent claims that claimant had actually experienced such symptoms at an earlier time. Respondent points to Van's testimony that radicular pain is "typically manifested by pain, tingling and numbness radiating form the neck to the shoulder area." Respondent asserts that claimant's chiropractor's records indicate that claimant "complained of pain in her neck and shoulder area on numerous occasions throughout her treatment with him." Respondent provides no citation to the record regarding the portion of the chiropractor's records it is here relying on; nevertheless, for the purpose of deciding this issue, we will accept respondent's characterization of them. Respondent also points out that a report generated when claimant underwent an MRI in 2005 states: "right greater than left arm numbness." Respondent contends that, accepting Van's definition of radicular pain (something the Commission was not required to do, as it is completely acceptable for a trier of fact to accept one part of a witness's testimony and reject another part of it. *Poliszczuk v. Winkler,* 387 Ill. App. 3d 474, 496-97 (2008)),

the records from claimant's chiropractor and the report of the MRI show that claimant was experiencing radicular symptoms well before the time at which the Commission found claimant's condition had changed. We disagree. While both mention pain or numbness in the shoulder and the chiropractor's records, as characterized by respondent, refer to neck pain, neither mentions radiating pain. Van's definition of "radicular pain" was "pain, tingling and numbness *radiating from* the neck to the shoulder." (Emphasis added.). As such, the pain described in the documents respondent relies upon does not fit within Van's definition.

¶ 27 Respondent next contends that Butler's testimony was more credible than Van's opinion. The Commission found Van's opinion entitled to more weight because he, as claimant's treating physician, had followed claimant's condition for an extended period of time. Butler, on the other hand, had only examined claimant on one occasion. Respondent points out that Butler appeared to have a more detailed understanding of claimant's job duties. While true, this is but one reason to prefer Butler's testimony. The Commission's observation that Van had "followed [claimant] for months" is a valid reason to give more weight to his opinion. Hence, a conflict existed in the record. Resolving such conflicts is a matter for the Commission. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 565 (1979).

¶ 28 In a related argument, respondent contends that the Commission shifted to it the burden of proof on the issue of causation. It is, of course, true that a claimant bears the burden of proving each element of his or her claim. *R & D Thiel v. Industrial Comm'n*, 398 Ill. App. 3d 858, 867 (2010). Respondent points to the following passage in support of this claim:

> "The treating spinal surgeon, Dr. Allen Van, testified that the condition he observed in the [claimant's] neck for which he performed surgery, being a right-sided C6-C7 disc

> herniation, was causally related to the repetitive nature of the job requirements in her position as telecommunicator with the [r]espondent. There is no other cause identified for what the [r]espondent's examining physician, Dr. Butler, admitted was an acute disc herniation in the [claimant's] cervical neck."

We do not see how this passage can reasonably be read as indicating the Commission placed the burden of disproving causation on respondent. The very first thing done by the Commission was to cite evidence presented by claimant in support of her claim. That no other potential cause is apparent is relevant to assessing the strength of claimant's evidence. Moreover, in the next paragraph in which the Commission discusses causation, it expressly states that it accepts Van's opinion rather than rejecting Butler's opinion. Thus, it is clear that it based its decision on the affirmative acceptance of claimant's evidence. In short, respondent's claim regarding the burden of proof is simply not plausible.

¶ 29 We cannot find error in the Commission's decision to credit Van's testimony or in any other aspect of its decision regarding causation. While there was conflicting evidence in the record and issues of credibility and weight abounded, such matters are for the Commission. Its decision on causation is not contrary to the manifest weight of the evidence.

¶ 30 C. Medical Expenses

¶ 31 Respondent next argues that the Commission erroneously awarded certain medical expenses and it is entitled to a credit of $140.64. Respondent points out that a billing statement from Van's practice includes three office visits that predate claimant's injury and three check payments corresponding to the dates on which these visits occurred. The check payments add up to $140.64. Obviously, claimant should not be reimbursed for any treatment she received prior to her injury. The

problem for respondent here is that it makes no attempt to show that claimant was reimbursed for these visits, so we cannot tell if it is entitled to a credit.

¶ 32 Respondent, as the appellant, bears the burden of demonstrating error on appeal. *Lenny Szarek, Inc. v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 597, 606 (2009). Furthermore, a reviewing court is entitled to have the issues presented to it clearly defined. *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 918 (2010). Here, respondent makes no attempt to show that the Commission actually included in its award of medical expenses sums expended by claimant on these earlier visits. In other words, though it shows that these amount should not have been included, it never establishes that they were included in the award. As such, respondent has not shown that the award was error.

¶ 33 D. Permanent Partial Disability

¶ 34 Respondent next argues that claimant should have only been awarded a loss of 20% of the person as a whole instead of the 30% the Commission deemed appropriate. See 820 ILCS 305/8(d)(2) (West 2006). An award under section 8(d)(2) of the Act is appropriate where a claimant's injuries are "serious and permanent and result in a permanent partial disability or impairment." *Archer Daniels Midland Co. v. Industrial Comm'n,* 99 Ill. 2d 275, 280 (1983). In support of its argument, respondent cites *Consolidated Freightways v. Industrial Comm'n*, 237 Ill. App. 3d 549 (1992).

¶ 35 There, this court affirmed an award by the Commission of 20% loss of the person as a whole. *Consolidated Freightways*, 237 Ill. App. 3d at 555-57. We acknowledge that the injuries described in *Consolidated Freightways* appear more serious that those suffered by claimant. We, nevertheless, find no justification in that case to disturb the Commission's decision here. In *Consolidated*

Freightways, we only determined that the award granted was not contrary to the manifest weight of the evidence. The employer appealed the award, but the claimant did not. Where an appellee does not file a cross-appeal, a court of review is powerless to modify the judgment in the appellee's favor. *People ex rel. Hartigan v. Knecth Services, Inc.*, 216 Ill. App. 3d 843, 852-53 (1991); *Cleys v. Village of Palatine*, 89 Ill. App. 3d 630, 635 (1980). Thus, the question of whether the award of 20% was too small and a greater award was appropriate was not before us in *Consolidated Freightways.* Accordingly, *Consolidated Freightways* cannot be read as holding that a greater award would not have been supported by the evidence in that case, only that the Commission's award in that case was not contrary to the manifest weight of the evidence. In other words, *Consolidated Freightways* does not stand for the proposition that an award of 30% loss of the person of a whole is against the manifest weight of the evidence on the facts of either that case or this one.

¶ 36 Respondent cites no authority beyond *Consolidated Freightways* in support of this argument (aside from some general principles of law, such as the standard of review). Having distinguished the sole case upon which respondent's argument rests, we are compelled to reject this argument. We therefore cannot hold that the Commission's finding that claimant was impaired to the extent of 30% of the whole person (see 820 ILCS 305/8(d)(2) (West 2006)) is contrary to the manifest weight of the evidence.

¶ 37 IV. CONCLUSION

¶ 38 In light of the foregoing, the judgment of the circuit court of DeKalb County confirming the decision of the Commission is affirmed.

¶ 39 Affirmed.