2014 IL App (2nd) 130220WC-U
No. 2-13-0220WC
Order filed March 5, 2014

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ROCIO PEREZ,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Kane County.
	)	
	)	
v.	)	No. 12-MR-262
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, (TFN, Inc., d/b/a Wendy's),	)	Honorable
	)	David Akemann,
Appellees.	)	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 Illinois Workers' Compensation Commission abused its discretion in admitting the causation opinions of the employer's independent medical expert, and the Commission's finding that the claimant failed to meet her burden in proving that her conditions of ill-being were causally connected to a workplace accident is against the manifest weight of the evidence.

¶ 1 The claimant, Rocio Perez, worked for the employer, TFN, Inc., as an assistant manager at a Wendy's fast-food restaurant. In a non-work related accident, the claimant injured her left knee while playing soccer with her family. The injuries to her left knee as a result of this accident included a tear along the anterior cruciate ligament (ACL). The parties agree that the ACL tear is not a compensable injury under the Illinois Workers' Compensation Act (the Act), 820 ILCS 305/1 *et seq.* (West 2012). However, approximately one month after the soccer accident, the claimant sustained a slip and fall accident at work that she claims caused additional injuries to her left knee, specifically a lateral meniscal tear, a condition that she claims was not present prior to the work-accident. The claimant filed a claim under the Act seeking benefits as a result of this workplace injury. The employer maintains that the lateral meniscal tear is causally related to the soccer accident, not the workplace accident.

¶ 2 At the arbitration hearing, the claimant objected to the opinion testimony of the employer's medical expert that her lateral meniscal tear was not causally related to the accident as being an opinion that was undisclosed prior to the doctor's deposition. The arbitrator overruled the objection and allowed the testimony. At the conclusion of the hearing, the arbitrator found that the employer's medical expert was credible and that the claimant failed to prove that the conditions of her left knee were related to the workplace accident. Accordingly, the arbitrator denied the claimant any benefits under the Act. The Commission unanimously affirmed and adopted the arbitrator's decision, and the circuit court entered a judgment that confirmed the Commission's decision. The claimant

now appeals from the circuit court's judgment. We reverse and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 As noted above, the central disputed factual issue decided by the Commission centers around whether the claimant proved that the lateral meniscal tear in her left knee was causally related to the work related slip and fall accident. Accordingly, our factual background will focus on the evidence in the record that is relevant to this factual determination.

¶ 5 On May 20, 2007, the claimant, while playing soccer with her family, tripped in a hole in the ground and twisted her left knee as she fell to the ground. She heard a pop at the time of the injury. Prior to this accident she never had problems with her left knee. Her husband took her to the emergency room. X-rays taken by the emergency room staff showed no acute abnormalities. The emergency room doctor gave her pain medication, crutches, fitted her with a knee brace, and told her to follow up with an orthopedic doctor. The claimant continued to work following the accident, and her job duties required her to be on her feet 85% of her workday. She did not wear the knee brace, and she was able to walk and perform her job duties.

¶ 6 On May 30, 2007, the claimant saw Dr. Lawrence T. Kacmar and reported left knee pain as a result of the soccer injury. Dr. Kacmar noted that the left knee was swollen and that the claimant had medial joint line pain. Dr. Kacmar ordered an MRI of the left knee. The MRI was taken on June 2, 2007, and showed a complete tear along the ACL.

The MRI also showed large knee effusion with lateral patellar tilt. The radiologist wrote, "Clinical correlation to exclude posterior horn medial meniscal tear is recommended."

¶ 7 The claimant returned to Dr. Kacmar on June 8, 2007, and reported a 50% improvement. The claimant testified that she was able to walk more, that her swelling was gone, and that she was working her full schedule without the knee brace. In his notes, Dr. Kacmar wrote that the claimant had full extension, limited flexion, and a normal gait, but still had pain along the medial joint line. Based on his examination and the MRI, he diagnosed the claimant as having an ACL tear and believed that the injury would likely resolve through physical therapy. He referred the claimant to an orthopedic doctor, Dr. Giridhar Burra.

¶ 8 Dr. Burra examined the claimant on June 11, 2007. At that time, the claimant was still experiencing knee pain that was worse with any bending, walking, taking a bad step, or set on pivoting. The claimant testified that when she saw Dr. Burra, her knee was better than it was when she saw Dr. Kacmar on June 8, 2007. Dr. Burra noted medial joint line tenderness, tenderness along the medial retinacular attachment on the patellar tendon, and medial patellar facet tenderness. Dr. Burra reviewed the June 2, 2007, MRI and noted the ACL tear as well as evidence of a "peripheral red-white or a red-red zone medial meniscus tear." Dr. Burra believed that the claimant suffered an ACL rupture, a medial meniscus tear, patellofemoral instability, and an osseous contusion of the lateral femoral condyle as a result of the soccer injury. Dr. Burra believed that the claimant needed surgery and should not wait for the condition to worsen. He scheduled the surgery for August 2007. He did

not give her a knee brace or prescribe any restrictions.

¶ 9 On June 19, 2007, the claimant sustained the slip and fall accident at work that is the subject matter of the present appeal. While walking in the area of the restaurant where employees clean dishes, the claimant slipped on the wet floor and fell. When she fell, she heard a pop and felt significant pain in her left knee. She laid on the floor and needed the help of other employees to get back up. Her husband came to the restaurant with her knee brace, and a relief manager came to the restaurant so the claimant could leave. The claimant testified that prior to the workplace accident, she had no swelling in her left knee and had no pain except when she walked a little bit. After the fall, her left knee pain was worse than it ever had been and went from her knee to her ankle.

¶ 10 The claimant returned to Dr. Burra on June 22, 2007, and reported the slip and fall accident at work. X-rays of the claimant's knee showed no changes from the previous visit. After an examination of the knee, Dr. Burra's impression was ACL rupture, medial meniscus tear, and MCL ligament sprain. He gave the claimant a hinged knee brace, prescribed physical therapy, and took her completely off work for three weeks.

¶ 11 The claimant, however, returned to work. The restaurant's owner changed her duties and told her to stay in the office more than on the floor. The claimant testified that she would rest for 30 minute periods between helping her crew out on the floor. She used the hinged knee brace and elevated her left leg when she could.

¶ 12 On June 28, 2007, the claimant sought a second opinion from Dr. David Schafer. The claimant told Dr. Schafer about her soccer injury and the work-related injury. The

claimant reported increased pain which radiated down her leg and more pain laterally since the work-accident. She was taking Naproxen for the pain. Dr. Schafer noted that the claimant had no medial joint line tenderness. He also wrote that there was "no lateral joint line tenderness, but there is pain to palpate up to the hamstrings laterally" and that there was "moderate pain to resisted strength testing." He further wrote as follows: "I do not believe that her recent work-related injury will cause her any further significant problems with the knee than was already pre-existing. She does have pain to the lateral hamstrings which may be new, but it is palpably intact." Dr. Schafer discussed different surgery options, and the claimant indicated that she wanted to proceed with the surgery.

¶ 13 On July 26, 2007, Dr. Schafer performed the surgery on the claimant's left knee. Dr. Schafer's pre-operative diagnosis was left ACL tear, but his post-operative diagnosis was left ACL tear and lateral meniscal tear. In his operative report, he wrote about his initial examination and diagnosis of only the ACL tear as follows:

> "I did not feel it was necessary to repeat the MRI scan to see if there were any new injuries. This would be seen at the time of the arthroscopy and any further treatment could be performed at that time. She did have increased lateral joint pain and a lateral meniscal tear was suspected."

¶ 14 During the surgery, Dr. Schafer performed an ACL reconstruction and repaired the lateral meniscus. He prescribed physical therapy following the surgery. In a report dated August 2, 2007, Dr. Schafer wrote that the lateral meniscal tear "was not seen on the initial MRI scan and is likely due to her fall which was sustained at work." He also authored an

undated "To whom it may concern" letter in which he noted that the claimant was not complaining of lateral pain during her examination with Dr. Burra on June 11, 2007, and that Dr. Burra suspected that she may have had a medial meniscal tear. He wrote that when the claimant came to see him on June 28, 2007, she complained of a new onset of lateral sided pain and that he initially thought the symptoms were more within the lateral hamstring as a result of a hamstring sprain. He wrote, "At the time of surgery on 7/26/2007, she did indeed have a new injury to her lateral meniscus that was not seen on her initial MRI scan that would have accounted for her new lateral symptoms." He concluded the letter as follows:

> "I believe with medical certainty that this lateral meniscal tear represented a new injury that was secondary to her work related accident on 6/19/2007. The lateral meniscal tear seen at the time of the surgery was complex with a portion that I excised and another portion that was repaired. The injury definitely would have showed up on the MRI scan which was performed on 6/2/2007 if present prior to her work injury. Medial and lateral meniscal tears present with different symptoms and are in different portions of the knee. A possible medial meniscal tear would not be confused on MRI scan with a lateral meniscal tear."

¶ 15 The claimant's last visit with Dr. Schafer occurred on December 11, 2007. Dr. Schafer told the claimant that her current lateral symptoms may never completely resolve. She had a significant portion of her meniscus removed, and Dr. Schafer believed that she "will likely have a slow progression of arthritis in the lateral compartment of the knee

secondary to her lateral meniscal injury." He discharged her from his care and recommended that she continue with a home strengthening program.

¶ 16 At the time of the arbitration hearing, the claimant was employed as a warehouse associate with a company that produces adhesives and grout. Her job duties required her to sit at a desk and enter "bills and stuff." She testified that she had not seen a doctor with respect to her left knee since she last saw Dr. Schafer, and she testified about pain she continued to experience when she does certain activities involving her left knee.

¶ 17 At the request of the employer, the claimant was examined by an independent medical expert (IME), Dr. Jay Levin, on August 5, 2009. Dr. Levin authored two reports and testified at the arbitration hearing by way of an evidence deposition. In his report dated August 5, 2009, Dr. Levin wrote that the June 2, 2007, MRI that was taken of the claimant's left knee after the soccer injury showed "changes in both the medial/lateral menisci possibly consistent with a tear." However, he concluded his report as follows:

> "This examinee sustained an injury on May 20, 2007, as outlined above, and a second injury on June 19, 2007. I want to review the records forwarded to me by [the employer's attorney] before I can render any opinions or recommendations regarding Ms. Perez' condition. I will specifically address the questions in [the attorney]'s letter at that time."

¶ 18 On August 19, 2009, Dr. Levin authored a second report in which he detailed the claimant's medical treatments following the two accidents as reflected in her medical records, and he offered opinions based on his examination of the claimant and her medical

records. With respect to the question of whether there was a causal relationship between the work injury and the surgery, Dr. Levin offered the following opinion:

> "There is no relationship between her alleged work injury and her surgery. *** In summary, this examinee sustained an injury while playing soccer on May 20, 2007, and she had clinical findings as well as MRI findings (the study dated June 2, 2007) consistent with an ACL TEAR OF THE LEFT KNEE AND A MEDIAL MENISCAL TEAR. As outlined above, when her treating physician (Dr. Schafer) assessed her on June 28, 2007, after the alleged injury on June 19, 2007, he commented that he did not believe that her recent work-related injuries would cause her any further significant problems with her left knee other than what was already present and pre-existing. My independent review of the records herein is consistent with Dr. Schafer's opinion, and therefore the basis of my answer to this question."

¶ 19 He further stated in the report that it was his "opinion that her surgical intervention performed by Dr. Schafer on July 26, 2007, is related to an injury she sustained while playing soccer on May 20, 2007, and not to any injury of approximately June 19, 2007."

¶ 20 During his evidence deposition, the employer's attorney asked the doctor what, if any, significance there was to Dr. Schafer's finding during surgery that the claimant did not have a medial meniscus tear but had a lateral meniscus tear. The claimant objected to this question on the basis that it was an undisclosed opinion. The arbitrator overruled the objection. Dr. Schafer answered the question as follows:

"The medical record that I reviewed as well as my review of the MRI of the left knee dated June 2, 2007, demonstrated an anterior cruciate ligament tear and some fluid in both of the menisci which could be consistent with a tear. The presence of one or two menisci tears with and include ACL tear occurs all the time because in order to have rotatory instability, you also damage the meniscus. In this case, it was, according to Dr. Schafer's report, the lateral meniscus."

¶ 21 Over the claimant's objection as being an undisclosed opinion, Dr. Levin testified that, in his opinion, the claimant's "initial injury of May 20, 2007, appears to be the cause of her acute ACL tear and coexisted meniscal tear of that date." During cross-examination, the doctor admitted that his written report did not explicitly "give an opinion that the lateral meniscus was injured prior to her fall at Wendy's." Instead, the doctor explained that, on page 5 of his report, he described the ACL/lateral meniscus surgery, and on page 8 of his report, he gave his opinion that the surgery was not related to the workplace accident. He admitted that when he summarized his opinions on causation of the injuries in his report he did not give the specific opinion that the soccer accident caused a lateral meniscal tear.

¶ 22 During redirect examination, Dr. Levin explained, over the claimant's objection, that the MRI film showed fluid in the menisci. He stated that when fluid is present, there is a high clinical correlation to a tearing of the meniscus, "and that's where the same location is where Dr. Schafer found" the tear. He also noted that the radiologist described contusions of the lateral posterior tibial plateau and lateral femoral condyle. Again, over the claimant's objection, the doctor testified that those are structures along the lateral joint

line of the knee and that changes or contusions in those structures are consistent with "rotatory instability on the lateral side of the knee and included in that is the possible triad of development of changes in the lateral meniscus from that occurrence."

¶ 23 Dr. Levin believed that the most definitive evidence that the soccer accident caused the lateral meniscal tear was the MRI findings.

¶ 24 At the conclusion of the arbitration hearing, the arbitrator found that the claimant sustained an accident on June 19, 2007, when she slipped and fell on the wet floor at work. However, the arbitrator also found that the claimant failed to prove that her left knee condition was causally related to the work accident. The arbitrator noted the conflicting opinions of Drs. Schafer and Levin and found as follows:

> "Dr. Levin's opinion here is consistent with the report of the radiologist who read the MRI and noted increased signal involving the posterior horns of both menisci as well as the ACL tear. And Dr. Levin explained his opinion at length during an exhaustive cross-examination, saying the MRI findings indicated meniscal pathology based on the contrast in colors between the substance of the menisci and the surrounding fluid seen on the film. Dr. Levin's opinion is consistent to some extent with that of Dr. Burra who also thought there was meniscal pathology beyond the ACL tear, although in the medial, not lateral, meniscus."

¶ 25 The Commission unanimously affirmed and adopted the arbitrator's decision, and the circuit court entered a judgment confirming the Commission's decision. The claimant

now appeals from the circuit court's judgment.

¶ 26 ANALYSIS

¶ 27 I.

¶ 28 Admission of Dr. Levin's Causation Opinions

¶ 29 The claimant objects to those portions of Dr. Levin's testimony in which he opines that her lateral meniscal tear was not causally related to the workplace accident. She argues that this specific opinion was not set out in any of Dr. Levin's reports prior to his deposition. The claimant concludes, therefore, that his opinions must be excluded under section 12 of the Act. 820 ILCS 305/12 (West 2012). We agree.

¶ 30 "Evidentiary rulings made during the course of a workers' compensation case will not be disturbed on review absent an abuse of discretion." *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 947, 856 N.E.2d 602, 610 (2006). "An abuse of discretion occurs where no reasonable person would adopt the view taken by the lower court tribunal." *Id*. Section 12 of the Act requires the employer to furnish a copy of its medical expert's reports to the claimant no later than 48 hours prior to the arbitration hearing. *Homebrite Ace Hardware v. Industrial Comm'n*, 351 Ill. App. 3d 333, 338, 814 N.E.2d 126, 131 (2004). The purpose of requiring the physician to send a copy of the written report no later than 48 hours before the hearing is to prevent surprise medical testimony. *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 845, 663 N.E.2d 1046, 1050 (1996).

¶ 31 *Ghere* provides an example of where a doctor's opinion testimony was properly excluded because the proponent of the testimony did not comply with section 12's

disclosure requirements. In that case, a worker died of a heart attack while working as a flagman for an asphalt company, and the widow filed a claim for benefits under the Act. At the arbitration hearing, the claimant presented the testimony of a doctor who treated the deceased worker on several occasions but never treated him for heart problems. The arbitrator excluded the doctor's opinion testimony concerning causation because his opinions on these matters were not contained within any of his medical records and the clamant did not otherwise furnish the employer a report with those opinions more than 48 hours before the arbitration hearing. *Ghere*, 278 Ill. App. 3d at 842, 663 N.E.2d at 1048.

¶ 32 On appeal, the *Ghere* court held that the doctor's testimony on the issue of causation was properly excluded under section 12 of the Act. The court noted that the doctor was a treating physician and that the employer had copies of the doctor's medical reports more than 48 hours prior to the arbitration hearing. *Ghere*, 278 Ill. App. 3d at 846, 663 N.E.2d at 1050. However, the claimant sought to have the doctor opine about whether the worker's job activities and work environment could have precipitated his heart attack. *Ghere*, 278 Ill. App. 3d at 846, 663 N.E.2d at 1051. The court held that the doctor's opinion on whether the worker's job duties could have precipitated the heart attack went well beyond what was contained in the medical records because there was no mention in the medical records of the doctor's opinions on that subject. *Id*. The doctor's medical records did not indicate that he ever treated the worker for a heart condition and, therefore, did not put the employer on notice that he had an opinion regarding causal connection. *Id*. Accordingly, the arbitrator correctly sustained the employer's objection to that portion of

the doctor's testimony. *Id.*

¶ 33 In the present case, based on *Ghere*, we believe that the Commission abused its discretion in overruling the claimant's objection to Dr. Levin's testimony as it related to the claimant's lateral meniscal tear.

¶ 34 Dr. Levin's first report dated August 5, 2009, did not include any opinions with respect to whether the claimant's lateral meniscal tear was causally related to the workplace accident. He concluded that report by stating that he wanted to review the claimant's medical records before he could render any opinions with respect to the claimant's condition. In his second report dated August 19, 2009, Dr. Levin describes the claimant's medical treatments in detail as reflected in the medical records of her treating physicians, and he offered an opinion on the issue of causation. Dr. Levin specifically opined in his report that following the claimant's soccer injury, she had injuries consistent with an ACL tear of the left knee and a *medial* meniscal tear. Dr. Levin did not opine in the report that the claimant's *lateral* meniscal tear was causally related to the soccer injury rather than the workplace accident. In his report, Dr. Levin's summary of the claimant's medical records included a reference to Dr. Schafer's "lateral meniscal repair," but his report is devoid of *any* of his own opinions that specifically reference the claimant's lateral meniscal tear.

¶ 35 The Commission, however, allowed Dr. Levin to offer multiple opinions about the claimant's lateral meniscal tear over the claimant's objection during his deposition testimony. Overruling the claimant's objection to this testimony was an abuse of discretion because it was undisclosed medical opinion testimony. Pursuant to section 12

of the Act, these opinions should have been disclosed prior to the evidence deposition, but they were not. The opinions, therefore, constituted surprise testimony which were inadmissible under section 12 standards.

¶ 36 The employer cites *Homebrite Ace Hardware* where the court held that the *Ghere* decision should not be "so strictly interpreted" that "any undisclosed opinion testimony must be deemed as surprise and be barred." *Homebrite Ace Hardware*, 351 Ill. App. 3d at 339, 814 N.E.2d at 131-32. In that case, the claimant sustained an injury to his neck as a result of a workplace injury. At the hearing, over the employer's objection, the arbitrator allowed testimony from one of the claimant's treating physicians that the neck condition was causally related to the work accident. *Id.* at 336, 814 N.E.2d at 129.

¶ 37 On appeal, the employer argued that the doctor's causation testimony should have been excluded under the holding in *Ghere* because the claimant did not tender a report to the employer in advance of the testimony notifying the employer that the doctor would testify about that issue. *Id.* at 338, 814 N.E.2d at 131. The court distinguished *Ghere* by noting that the doctor in its case, unlike *Ghere*, had treated the claimant's neck condition. The court concluded that the doctor's records "contain[ed] details about his treatment of claimant's neck complaints and therefore the records put employer on notice that [the doctor] might testify as to a causal relationship between the neck condition and claimant's work accident." *Id.* at 339, 814 N.E.2d at 132.

¶ 38 *Homebrite Ace Hardware* is not persuasive under the facts of this case. Dr. Levin never treated the claimant's lateral meniscal tear. Therefore, unlike the doctor in

Homebrite Ace Hardware, Dr. Levin never generated records that contained details about his treatment of the claimant's knee complaints. Instead, his opinions with respect to causation were contained only within one report that he authored on August 19, 2009, and that report contains no opinions with respect to the claimant's lateral meniscal tear. *Ghere* establishes that the doctor cannot testify about opinions relating to a condition of ill-being that he never treated and never opined about in pre-hearing disclosures. Under *Ghere*, such undisclosed opinion testimony must be barred as surprise testimony.

¶ 39 Because Dr. Levin does not offer any specific opinions in his report concerning the cause of the claimant's lateral meniscal tear, his opinion testimony during his evidence deposition on the issue of causation was not a natural continuation of the opinions in his report. The Commission, therefore, abused its discretion in overruling the claimant's objections to this testimony.

¶ 40 II.

¶ 41 Causation

¶ 42 Having determined that the Commission abused its discretion in admitting Dr. Levin's causation opinions, we next turn to its finding that the claimant failed to carry her burden on the issue of causation. We believe that the Commission's finding with respect to causation is against the manifest weight of the evidence.

¶ 43 In order to recover benefits under the Act, a claimant has the burden to show by a preponderance of the evidence that she suffered a disabling injury that arose out of and in the course of the claimant's employment. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187,

194, 775 N.E.2d 908, 912 (2002). The existence of a causal connection between a workplace accident and the claimant's condition of ill-being is a question of fact for the Commission to resolve. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. The Commission's findings with respect to factual issues are reviewed under the manifest weight of the evidence standard. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434, 943 N.E.2d 153, 160 (2011). "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009).

¶ 44 "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." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). Resolution of conflicts in medical testimony is also within the province of the Commission. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003). On review, a court "must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Id.*

¶ 45 In the present case, the disputed issue of fact with respect to causation concerns only

the lateral meniscal tear that Dr. Schafer repaired during the July 26, 2007, left knee surgery. The Commission was charged with the task of making a factual determination of whether the claimant proved that the lateral meniscal tear was causally related to the workplace accident. The Commission adopted the decision of the arbitrator who found that the claimant failed to carry her burden.

¶ 46 As noted above, however, the arbitrator's decision was based on a finding that Dr. Levin's opinions were credible, but the Commission should have sustained the claimant's objection to this testimony and excluded it under section 12 standards. After Dr. Levin's opinion testimony is excluded from consideration, the only remaining medical evidence on the issue of causation are the reports of the claimant's treating physician, Dr. Schafer.

¶ 47 Dr. Schafer initially opined that the claimant's workplace accident would "not cause her any further significant problems with the knee than was already pre-existing." He gave this opinion, however, without having ordered another MRI of the claimant's left knee because arthroscopic surgery was scheduled the next month. One month later when he conducted the arthroscopy of the knee, he discovered the lateral meniscal tear and changed his opinion concerning the issue of causation. After seeing and repairing the lateral meniscal tear, he believed that the workplace accident caused the tear, which was a new injury that was not evident in the MRI that was taken following the soccer accident. In his post-operative report and in a "to whom it may concern" letter, he outlined his opinion with respect to causation as it related to the lateral meniscal tear.

¶ 48 Dr. Schafer's opinion with respect to causation is supported by the claimant's

medical records. When the claimant first treated with Dr. Burra following the soccer accident, Dr. Burra diagnosed the claimant with an ACL tear and suspected that she had a *medial* meniscal tear. The claimant did not report any pain on the lateral side of her knee. Following the workplace accident, the claimant reported the onset of new lateral sided pain that was consistent with a new lateral meniscal tear injury caused by the accident. Dr. Schafer is the treating physician who discovered and repaired the lateral meniscal tear, and he believed that it was significant that the lateral meniscal tear was not seen on her initial MRI scan following the soccer accident. He concluded, to a reasonable degree of medical certainty, that the "lateral meniscal tear represented a new injury that was secondary to her work related accident on 6/19/2007." The Commission's finding contrary to Dr. Schafer's opinion is against the manifest weight of the evidence because there is no evidence in the record to discredit Dr. Schafer's opinions and no medical testimony supporting a different conclusion.

¶ 49 We acknowledge that the Commission is not bound to accept the claimant's expert's medical testimony merely because it is the sole medical testimony on the issue of causation. *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1042, 721 N.E.2d 1165, 1169 (1999). However, the Commission cannot *arbitrarily* reject the sole medical testimony on the causation issue either. (Emphasis added.) *Id*. When Dr. Levin's opinions are excluded from the record, a finding in favor of the claimant on the issue of causation is clearly apparent based on the remainder of admissible evidence contained in the record on appeal. Accordingly, we must reverse the Commission's finding on the

issue of causation and remand the claimant's claim to the Commission for a determination of her benefits under the Act as a result of the workplace accident.

¶ 50 CONCLUSION

¶ 51 For the foregoing reasons, we reverse the circuit court's judgment that confirmed the Commission's decision, vacate the Commission's decision, and remand this case to the Commission for further proceedings.

¶ 52 Circuit court's judgment reversed, Commission's decision vacated, and cause remanded.