No. 3–10–0092WC

Order filed January 19, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

SCOTT HODGES,	)	Appeal from the Circuit Court
	)	of Will County, Illinois
Appellant,	)	
	)	
v.	)	No. 09--MR–561
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al.* (Argonne National	)	Barbara Petrungaro,
Laboratory, Appellee.)	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.

Presiding Justice McCullough and Justices Hoffman, Hudson, and Stewart concur in the judgment.

ORDER

Held: The Commission's finding that the claimant failed to prove a causal connection between his current condition of ill-being and a work-related incident was not against the manifest weight of the evidence.

The claimant, Scott Hodges, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq*. (West 2008)), seeking benefits for injuries he allegedly sustained when he was exposed to phenol and other unknown chemicals while working for Argonne National Laboratory (Argonne). The matter proceeded to an

arbitration hearing where the arbitrator found that the claimant had failed to show that a causal connection existed between the exposure and his state of ill-being. Accordingly, the arbitrator denied the claimant's request for temporary total disability (TTD) benefits and medical benefits.

The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission, which affirmed and adopted the arbitrator's decision.

The claimant filed a petition for judicial review of the Commission's decision in the circuit court of Will County. The circuit court confirmed the Commission's decision. This appeal followed.

BACKGROUND

The claimant is a 42-year-old man who worked for Argonne as a construction field representative. His duties included coordinating jobs with various contractors who worked at Argonne's laboratories.

On January 2, 2007, the claimant was working in building 202 of Argonne's facilities when he received a phone call from another contractor regarding a broken thermometer in another room in the building. The claimant was not present when the incident occurred. When he arrived on the scene, the claimant inspected the cracked thermometer and advised the contractor to tape it up so that the liquid contained in the thermometer did not leak. Although the claimant did not wear gloves during his inspection, he did not touch or otherwise handle the thermometer. The claimant supervised the contractor while he taped up the broken thermometer and put it in a bucket. The claimant spent approximately 45-65 minutes in the vicinity of the broken thermometer.

Due to complaints of a lingering odor which some of the employees and contractors described as "noticeably pungent" and "smelling like chemical fumes," the fire department was called to the scene. The fire department evacuated the building, and all employees were evaluated by paramedics. When the claimant returned to the scene, he complained of a headache and felt lightheaded and "a little woozy." The paramedics examined him and told him that his heart rate had increased. However, the claimant refused medical treatment or transport to the hospital. The claimant spent time with some of the exposed individuals in their work trailers outside of the building. He was allowed to go home at 5:30 p.m. He testified that his headache continued at that time and that he also felt nauseous, fatigued, and had a tightening in his chest.

Some of the employees and contractors present at the scene complained of lightheadedness, headaches, and "funny tastes." At least one employee/contractor was transported to the hospital that afternoon, and some paramedics went to Argonne's Medical department for treatment. Two paramedics and one nurse complained of lightheadedness and headaches and were treated for these symptoms.

Argonne conducted an internal investigation of the incident and performed toxicology tests on all affected employees. On the date of the incident, an industrial hygiene technician was sent to the scene with equipment to measure organic vapors in the air. This testing detected the presence of phenol at 15 parts per billion, which is considered a "background" or "trace" level of phenol. OSHA guidelines provide that phenol is safe at levels of up to 5 parts per million. The laboratory analysis showed no significant levels of phenol or other organic vapors. There was no evidence of liquid or other foreign matter on the floor except for a single brown stain located near the thermometer mounting. The thermometer itself was found to contain only trace amounts

of phenol, cresol, and mercury. The hygiene technician's report also noted that phenol and cresol evaporate slowly and have "remarkably low odor thesholds." As a result, these chemicals produce "an odor that lingers for a considerable period of time even though air concentrations are very low."

Air sampling was continued over the next several days with a low level of odor noted. None of the subsequent samplings detected recordable levels of phenol, cresols, or related compounds. The industrial hygiene technician also analyzed the clothing worn by four contractors and one Argonne employee at the time of the exposure. The laboratory analysis detected no detectable levels of phenol or cresols on the clothing.

Three days after the incident, on January 5, 2007, Argonne took urine and blood samples from all exposed employees. After analyzing these samples, Argonne's medical department issued a report concluding that no exposed employee had a phenol level above 20 mg/L, which the study concluded was within the "safe" and "acceptable" range.[1] The claimant's phenol level was only 12 mg/L, which was only slightly above the normal (or "unexposed") level of 10 mg/l. The report noted, however, that because the half life of phenol in the body ranges between 1 and 4.5 hours, any phenol from the January 2, 2007, incident would have been cleared from the bodies of the exposed employees by the time it was collected three days later.

The claimant testified that he suffered from headaches, nausea, and fatigue in the days following the January 2, 2007, work incident. When he returned to work on January 5, 2007, he reported to Argonne's medical department for blood and urine tests and was treated by Dr.

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[1] The employee with the highest recorded phenol level regularly used lip balm, which commonly contains phenol.

Stalker, an Argonne physician. At that time, the claimant complained of sore lungs, a scratchy throat, and headaches. Dr. Stalker pronounced him capable of returning to work.

On January 8, 2007, the claimant saw Dr. Calimag, his personal physician. The claimant complained of lightheadedness, fatigue, weakness, and continued headaches. Dr. Calimag prescribed antibiotics, recommended a chest x-ray and referred the claimant to a toxicologist. The claimant returned to Dr. Stalker on January 11, 2007 with complaints of increased coughing. He did not complain of nausea or headaches at this time. Dr. Stalker suspected that the claimant had bronchitis and advised him to continue taking the antiobiotics prescribed by Dr. Calimag.

The claimant returned to Dr. Calimag on January 29, 2007. His headaches had worsened, and he was suffering from diarrhea, memory loss, and hand tremors. Dr. Calimag placed the claimant off work and again referred him to a toxicologist. Argonne began paying the claimant his full salary pursuant to its sick leave policy on February 1, 2007. Argonne continued these payments for six months, the maximum amount of time authorized by the policy.

On February 16, 2007, the claimant saw Dr. Jerrold Leikin, a toxicologist who has authored a handbook on poisoning and toxicology and other scholarly works on occupational exposure to toxins. Dr. Leikin diagnosed the claimant as suffering from mild toxic encephalopathy and phenol-related exposure. He recommended that the claimant remain off work and prescribed an MRI and blood tests. He also referred the claimant to a neurologist and a neuropsychologist for further evaluation and testing.

On April 25, 2007, the claimant was examined by Dr. Pandya, a neurologist. As part of his diagnostic work-up, Dr. Pandya prescribed an EEG and a spinal tap. The EEG was normal,

and the claimant elected to forego the spinal tap. Dr. Pandya concurred with Dr. Leikin's diagnosis of mild toxic encephalopathy.

On June 25, 2007, Dr. Calimag diagnosed the claimant with mild toxic encephalopathy and phenol-related exposure and recommended that he remain off work. Argonne began paying TTD benefits to the claimant on August 1, 2007, the day after the six-month period for paid sick leave had expired.

On October 25, 2007, Dr. Baukus, a clinical psychologist, examined the claimant at the request of the Social Security Administration. Dr. Baukus diagnosed the claimant with memory problems and recommended further neuropsychological testing.

On December 11, 2007, the claimant was examined by Dr. Shirley Conibear at Argonne's request. Dr. Conibear is board certified in occupational medicine and concentrates her practice in that area. Dr. Conibear testified that epidemiology and toxicology are the two basic disciplines in occupational medicine. Dr. Conibear interviewed and examined the claimant, reviewed the medical records of Dr. Calimag and all other doctors who examined the claimant after the January 2, 2007, incident, and reviewed the report of the incident prepared by Argonne's industrial hygienist..

Dr. Conibear concluded that the claimant's January 2, 2007, exposure to phenol and other chemicals could not have caused his current symptoms. She provided three reasons for this conclusion. First, Dr. Conibear noted that actual measurements taken on January 2, 2007, indicated that the concentration of chemicals in the air in the laboratory on that date was "too low and too brief to cause any health effects." She stated that the measured levels of phenol were "300 times lower than the current ACGIH Threshold Limit Value for an eight hour exposure"

and that "[h]uman exposure in controlled laboratory experiments to levels more than 300 times higher for eight times longer than occurred on January 2, 2007 reported no symptoms and no findings of phenol intoxication." In her subsequent deposition, which was admitted as evidence during the arbitration, Dr. Conibear noted that the level of phenol to which Argonne's employees were exposed was similar to that found in commonly-available throat lozenges. She also stated that a strong odor of phenol does not equate to a serious exposure because the nose is "very, very sensitive," even more sensitive than measuring equipment.

Second, Dr. Conibear noted that acute phenol exposure does not cause chronic signs and symptoms or a progression of new symptoms. She stated that the literature indicates that persons who suffered acute poisoning from phenol "recovered completely" and that toxic encephalopathy does not progress after exposure ceases. Thus, because the claimant's symptoms "waxed and waned over time" for an extended period and he has shown symptoms of acute encephalopathy months after the exposure, Dr. Conibear concluded that the claimant's symptoms could not have been caused by exposure to phenol.

Third, Dr. Conibear noted that the gastrointestinal symptoms reported by the claimant, including nausea, vomiting, and diarrhea, can be caused by exposure to phenol only where the phenol has a "direct corrosive action *** on the lining of the GI tract." Accordingly, she concluded that "these symptoms would not be expected with inhalation and skin exposure as occurred here." She also questioned the veracity of some of the claimant's complaints, citing inconsistencies in the claimant's account of his alcohol consumption and evidence that the claimant might have given inconsistent effort on a memory test and feigned an unusual speech cadence during his interview with Dr. Conibear.

Dr. Conibear concluded that the claimant's encephalopathy and other symptoms were probably caused by "contemporaneous alcohol consumption and withdrawal." In support of this conclusion, she noted that the claimant smelled of alcohol during her examination and during Dr. Stalker's examination of the claimant on January 5, 2007, that the claimant told his other health care providers that he regularly drank a considerable amount of alcohol, and that the claimant's MCV laboratory test was frequently elevated, which is a sign of habitual alcohol use. She also noted that the claimant had been charged with several DUIs prior to February 2, 2007. Shortly after Dr. Conibear issued her report, Argonne stopped paying TTD benefits to the claimant.

Dr. Mercury, a neuropsychologist, examined the claimant and administered a series of neuropsychological tests from December 2007 through March 2008. Dr. Mercury concluded that the claimant was having difficulties with memory, problem solving, processing speed, and attention. He also noted that the claimant was suffering from sleep apnea and gastrointestinal problems. He diagnosed the claimant as suffering from mild anxiety depressive disorder.

The claimant told Dr. Mercury that he smoked two packs of cigarettes per day and drank 3 to 6 beers per day. He also said that he needed to "drink ten beers" to dull his pain and admitted that he had gotten into trouble for drinking and driving in the past. However, Dr. Mercury concluded that it was "unclear" whether the claimant's alcohol consumption might have played a role in producing his neurological symptoms. He noted that some of the claimant's symptoms had improved during the three-month testing period, and that such improvement would not be expected if the claimant's symptoms were caused by his alcohol abuse (assuming that his alcohol consumption remained the same throughout the testing period). Although Dr. Mercury did not conclude that any of the claimant's symptoms were directly caused by the

January 2, 2007, exposure to phenol at work, he noted that "it would appear that, at the very least, the exposure may have amplified" his preexisting sleep apnea and GI problems. Dr. Mercury recommended an evaluation of the claimant's alcohol consumption to determine if he required treatment.

The claimant applied for medical benefits pursuant to the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). The EEOICPA allows employees and contractors who became ill after being exposed to toxic materials while working at certain Department of Energy facilities to apply to the U. S. Department of Labor (DOL) for government benefits. After reviewing his application, a DOL claims examiner wrote the claimant and informed him that he needed to support his claim for benefits with a doctor's diagnosis. The claimant contacted Dr. Leikin and told him about the letter he had received. In response, Dr. Leikin discussed the claimant's case with the DOL claims examiner and wrote the examiner a one-paragraph letter containing the following causation opinion:

> "While the exact chemical etiology of [the claimant't] encephalopathy is not known, I do believe that the phenol/related substances of his January, 2007 exposure are substantially likely to have caused, contributed or aggravated the development of his encephalopathy. In addition to the references I sent previously, I base this opinion on the temporal relationship of exposure, co-workers' complaint similarity, neuropsychological evaluation and other indices."

Dr. Leikin's opinion did not address any of the conclusions reached in Argonne's internal investigation regarding the levels of phenol and/or other chemicals present at the time of the incident.

On June 19, 2008, the claimant received a letter from the DOL claims examiner advising him that the Cleveland district office of the DOL had issued a recommended decision to award medical benefits under the EEOICPA. The examiner's letter enclosed a copy of the decision and noted that "this is only a RECOMMENDED decision; this is not a Final decision." (Emphasis in original). In the recommended decision, the district office concluded that the claimant "was exposed to a toxic substance (phenol) during the course of his employment at a DOL facility and that it is 'at least as likely as not' that these toxic exposures aggravated, contributed to or caused his chronic headaches and toxic encephalopathy." The District Office based this conclusion on the "sum of the medical and factual evidence," including: (1) a telephone conversation with the claimant; (2) Argonne's internal records of the incident; (3) Dr. Calimag's diagnosis of chronic headaches and toxic encephalopathy; and (4) Dr. Leikin's medical opinion, which the district office found to be of "significant probative value."

During the arbitration hearing, the claimant testified that he was still experiencing all of the symptoms that he had experienced after the January 2, 2007, incident, including fatigue, nausea, memory problems, vomiting, tremors, and diarrhea. He testified that he never had these symptoms prior to the January 2, 2007, exposure. He admitted that he drank "at least three or four beers per day" and that he drank as much as 10-12 beers per day in the past. He stated that drinking beer helped to alleviate his nausea. He also testified that he has smoked cigarettes for

27 to 28 years, that he smoked about a pack per day at the time of trial and up to two packs per day in the past.

The arbitrator found that the claimant had failed to establish a causal connection between the January 2, 2007, exposure and his current symptoms. Relying on the measurements reported in Argonne's "Industrial Hygiene Report" and on Dr. Conibear's report and deposition testimony, the arbitrator found that the claimant was exposed to a "trace" amount of phenol at a level that was far below the level that OSHA has established as safe. The arbitrator credited Dr. Conibear's testimony that even if the entire 1 milliliter of fluid in the thermometer had been phenol (and it was not) and someone actually consumed all of it, this would be approximately the same amount of phenol found in Chloroseptic throat lozenges and other commonly used materials. Thus, the arbitrator concluded that "the evidence clearly shows that the amount of phenol in the room was insufficient to be the cause of the Petitioner's medical condition."

Moreover, the arbitrator concluded that "the time and manner in which [the claimant] sought medical treatment provide further evidence that [he] is [n]ot suffering from the effects of phenol exposure." Citing Dr. Conibear's testimony, the arbitrator noted that a person exposed to phenol in a significant quantity would feel its effects and show symptoms "immediately." As the arbitrator noted, however, the claimant declined medical treatment immediately after the incident and did not seek treatment until days later in response to prompting by Argonne. At that time, the phenol level in his blood was within normal limits. The arbitrator concluded that the claimant's complaints several days after the exposure were "not consistent with the medical effects of phenol exposure."

Further, the arbitrator found that "[t]he manifest weight of the objective medical evidence indicates that the [claimant] is actually suffering from the effects of years of alcohol and tobacco abuse." In support of this conclusion, the arbitrator cited: (1) the claimant's testimony that he drank 10 to 12 beers a day for many years and that he currently drinks 3 to 4 beers per day; and (2) Dr. Conibear's testimony that such excessive alcohol consumption would explain the petitioner's symptoms.[2]

The arbitrator rejected Dr. Leikin's opinion that the claimant's encephalopathy and headaches were likely caused by a work-related exposure to phenol or some other chemical. The arbitrator noted that Dr. Leikin's "Poisoning and Toxicology Handbook" establishes that, in order to determine a chemical's effect on a person, it is essential to "evaluate the amount [of the chemical] to which an individual is exposed." Although Dr. Conibear followed this methodology in her analysis, the arbitrator found "no evidence on the record that Dr. Leikin ever evaluated the amount of the exposure and made a determination as to the etiology of the Petitioner's condition based upon an evaluation of the actual phenol exposure." Thus, the arbitrator rejected Dr. Leikin's opinion and credited Dr. Conibear's conclusion that the dosage to

[2] The arbitrator also cited additional evidence of the claimant's excessive drinking, including the medical records of Drs. Leikin, Stalker, Mercury, and Conibear which reference the petitioner's alcohol consumption and excessive smoking, other medical records which note the claimant smelled of alcohol during medical appointments, and Will County circuit court records presented by Argonne which showed that the claimant had been found guilty of driving under the influence of alcohol several times and that his driver's license is currently suspended as a result of these convictions.

which the claimant was exposed would not cause any long lasting or even temporary health effects. The arbitrator therefore denied all benefits.

The claimant appealed the arbitrator's ruling to the Commission, which affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Will County, which affirmed. This appeal followed.

ANALYSIS

1. Collateral Estoppel

The claimant argues that the recommended decision of the Department of Labor (DOL) to award the claimant benefits under the EEOICPA collaterally estops Argonne from contesting causation in this case. In the recommended decision, a district office of the DOL concluded that the claimant was exposed to phenol on January 2, 2007, and that it was "at least as likely as not" that this exposure was "a significant factor in causing, contributing to, or aggravating [the claimant's] chronic headaches and toxic encephalopathy." The claimant argues that this factual finding precludes Argonne from arguing before the Commission that the claimant's current condition of ill-being is not causally connected to the phenol exposure. We disagree.

As a threshold matter, the claimant failed to raise the issue of collateral estoppel before the Commission. Accordingly, the issue is waived. See *Anders v. Industrial Comm'n*, 332 Ill. App. 3d 501, 509 (2002) (argument not made before the Commission is waived on appeal); see also *Waste Management of Illinois, Inc. v. Pollution Control Board,* 187 Ill. App. 3d 79, 83-84 (1989) (party waived collateral estoppel issue by failing to raise it before the county board during administrative proceedings).

Even if the claimant had preserved the argument, however, it would be inappropriate to apply collateral estoppel in this case. Collateral estoppel is an equitable doctrine that precludes a party from relitigating an issue decided in a prior proceeding. *Herzog v. Lexington Township*, 167 Ill. 2d 288, 295 (1995). An administrative agency decision has collateral estoppel effect only "where the agency's determination is made in proceedings that are adjudicatory, judicial, or quasi-judicial in nature." *McCulla v. Industrial Comm'n*, 232 Ill. App. 3d 517, 520 (1992); see also *Illinois Health Maintenance Organization Guaranty Ass'n v. Department of Insurance*, 372 Ill. App. 3d 24, 35 (2007). The requirements for application of collateral estoppel are: (1) that "the issue decided in the prior adjudication is identical with the one presented in the suit in question;" (2) that "there was a final judgment on the merits in the prior adjudication;"and (3) that "the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication." *Gumma v. White*, 216 Ill. 2d 23, 38 (2005). In addition, the party against whom estoppel is asserted must have had "a full and fair opportunity to litigate the issue in the prior adjudication." *Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.,* 159 Ill. 2d 137, 152 (1994); *Anderson v. Financial Matters, Inc.*, 285 Ill. App. 3d 123, 130 (1996).[3]

[3] Although the issue is not raised by the parties, the question of whether collateral estoppel applies in this case might be governed by federal law because the DOL rendered its decision according to federal legal standards. See, *e.g.*, *Mohn v. International Vermiculite Co.*, 147 Ill. App. 3d 717, 720 (1986) (holding that the collateral estoppel effect of a judgment is determined by the law of the jurisdiction in which the decision was rendered). This is not entirely clear, however, because our appellate court has been inconsistent on this issue. (Compare *Mohn* with *Ko v. Eljer Industries, Inc.*, 287 Ill. App. 3d 35, 40 (1997) (applying

Several of these essential requirements are absent here. First, the DOL applied a more liberal standard in determining causation than the Commission is required to apply in workers' compensation proceedings brought under the Act. The EEOICPA authorizes the DOL to award benefits if the claimant shows that it is "*at least as likely as not*" that exposure to a toxic substance at a Department of Energy (DOE) facility was a significant factor in aggravating, contributing to, or causing the claimant's illness and that such exposure was related to the claimant's employment at a DOE facility. 42 U.S.C. §7385s-4(c)(1). By contrast, the Act allows the Commission to award benefits only if the claimant shows by a *preponderance of the evidence* that he suffered a disabling injury arising out of and in the course of his or her employment.

Illinois law in determining collateral estoppel effect of a federal district court decision).) Regardless, the legal standards governing the application of collateral estoppel under federal law are substantively identical. Under federal law, collateral estoppel applies when: (1) the issue sought to be precluded is the same as that involved in a prior action; (2) the issue was actually litigated; (3) the determination of the issue was essential to the final judgment; and (4) the party against whom estoppel is invoked was represented in the prior action. Moreover, collateral estoppel does not preclude litigation of an issue under federal law unless both the facts and "the legal standard used to assess them" are "the same in both proceedings," *Vines v. University of Louisiana at Monroe*, 398 F.3d 700, 709 (5th Cir. 2005), and unless the party against whom collateral estoppel is asserted had "a full and fair opportunity to litigate the claim or issue decided" in the prior proceeding. *Haring v. Prosise*, 462 U.S. 306, 313 (1983). Thus, the analysis provided below applies whether federal or Illinois law governs the issue.

Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 203 (2003). "A preponderance of the evidence is evidence that renders a fact *more likely than not*." (Emphasis added.) *People v. Brown*, 229 Ill. 2d 374, 385 (2008), quoting *People v. Urdiales*, 225 Ill. 2d 354, 430 (2007); see also *Lindsey v. Board of Education of City of Chicago*, 354 Ill. App. 3d 971, 986 (2004). This standard is more rigorous than the "at least as likely as not" standard applied by the DOL. Accordingly, the causation issue in the DOL proceeding was not "identical" to the causation issue litigated before the Commission. *Mohn*, 147 Ill. App. 3d at 721 ("When different standards are applied to the same facts in reaching a legal conclusion, the issues are not identical for purposes of collateral estoppel.") see also *Godare v. Sterling Steel Casting Co.* 103 Ill. App. 3d 46, 51 (1981).

Moreover, even assuming *arguendo* that the DOL proceedings were "adjudicative" or "quasi-judicial," Argonne did not have a "full and fair opportunity" to litigate the causation issue in the DOL proceedings. Argonne did not offer evidence or otherwise participate in those proceedings, and the DOL decided the causation issue without the benefit of Dr. Conibear's opinions on the issue. In addition, as noted above, the causation standard applied in the DOL proceeding is different from the standard that applies in workers' compensation proceedings. Thus, even if Argonne had participated in the DOL proceeding, it would not have had an opportunity to litigate the precise causation issue presented here. See *Mohn*, 147 Ill. App. 3d at 721 (where a different legal standard is applied in determining a factual issue in a prior proceeding, the parties "do not have a full opportunity to litigate the issue involved").

Further, by its plain terms, the DOL decision upon which the claimant relies is only a "recommended decision" issued by one district office of the DOL, not a "final decision." It is

unclear from the record whether this recommended decision was ever affirmed by the DOL's Final Adjudication Branch. Moreover, even if it did eventually become a final decision of the DOL, the EEOICPA provides for administrative and judicial review of such decisions. 42 U.S.C. §7385s-6. The record does not disclose whether the decision of the DOL or any aspect of it was appealed. For these additional reasons, it would be inappropriate to accord preclusive effect to the DOL's recommended decision. See *Terry v. Watts Copy Systems, Inc.*, 329 Ill. App. 3d 382, 391 (2002) (decision of Illinois Human Right's Commission did not collaterally estop subsequent litigation of same issue where Commission's decision was not final); *Ballweg v. City of Springfield*, 114 Ill. 2d 107 (1986) (a judgment is not final for collateral estoppel purposes until "the potential for appellate review [has] been exhausted".)

2. Causal Connection Between the Claimant's Exposure to Phenol and His Current Condition of Ill-Being

The claimant argues that the Commission's conclusion that he failed to establish a causal connection between the January 2, 2007, exposure and his present condition is against the manifest weight of the evidence and/or erroneous as a matter of law. We disagree.

To obtain compensation under the Act, a claimant must show by a preponderance of the evidence that he has suffered a disabling injury arising out of and in the course of his or her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The "arising out of" component addresses the causal connection between a work-related injury and the claimant's condition of ill-being. *Sisbro*, 207 Ill. 2d at 203. A claimant need prove only that some act or phase of his or her employment was a causative factor in his or her ensuing injury. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592. (2005). An accidental injury need

not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro*, 207 Ill. 2d at 205. Thus, a claimant may establish a causal connection if he can show that a work-related injury played a role in aggravating a preexisting condition. *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981).

Whether a causal connection exists is a question of fact for the Commission. *Land and Lakes Co.*, 359 Ill. App. 3d at 592. In resolving disputed issues of fact, including issues related to causal connection, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). We will overturn the Commission's causation decision only when it is against the manifest weight of the evidence. The test 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. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). For the Commission's decision to be against the manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result. *Gallianetti v. Industrial Comm'n,* 315 Ill. App. 3d 721, 729-30 (2000). This occurs "only when the court determines that no rational trier of fact could have agreed with the Commission's decision." *Fickas*, 308 Ill. App. 3d at 1041.

Applying these standards, we cannot conclude that the Commission's decision was against the manifest weight of the evidence. The Commission affirmed and adopted the decision of the arbitrator. In concluding that the claimant had failed to establish a causal connection

between the January 2, 2007, exposure and his current condition, the arbitrator relied upon Dr. Conibear's testimony and Argonne's "Industrial Hygiene Report", which detailed the results of Argonne's investigation of the January 2, 2007, incident. This evidence established that, although the claimant was exposed to trace amounts of phenol and other chemicals, no chemical was present in sufficient dosage to produce *any* temporary or permanent symptoms. Testing conducted by Argonne on the day of the incident detected the presence of phenol at 15 parts per *billion*. OSHA guidelines provide that phenol is safe at levels of up to 5 parts per *million*. The broken thermometer itself was found to contain only trace amounts of phenol and mercury. Dr. Conibear testified that, even if all of the fluid in the thermometer had been phenol and someone actually consumed all of it, this would be approximately the same amount of phenol found in a throat lozenge. She cited laboratory experiments during which persons were exposed to phenol levels more than *300 times higher* than those to which the claimant was exposed—for *eight times longer* than the claimant's exposure—without reporting any symptoms.

Moreover, Dr. Conibear concluded that the nature, timing, and progression of the claimant's symptoms were inconsistent with phenol exposure. She testified that the claimant's gastrointestinal symptoms could not have been caused by inhalation and skin exposure to phenol, as occurred in this case. She also stated that any symptoms caused by acute exposure to phenol would dissipate, not progress, after the exposure ceased. Thus, because some of the claimant's symptoms waxed and waned for months after the exposure, Dr. Conibear concluded that the claimant's symptoms could not have been caused by exposure to phenol.

The claimant did not present any evidence to rebut the conclusions of the "Industrial Hygiene Report" regarding the amount of phenol to which he was exposed, nor did he present

any medical opinion testimony stating that his symptoms could have been caused by exposure to phenol in that amount. The only medical testimony on causation that the claimant presented was Dr. Leikin's one-paragraph letter to the DOL claims examiner and a few statements contained in some of the medical records of Drs. Calimag, Pandya, and Mercury suggesting that the claimant's symptoms might have been related to phenol exposure. However, none of these doctors addressed the level of phenol to which the claimant was actually exposed or offered a causation opinion based upon that information. Only Dr. Conibear addressed this issue. She offered the only causation opinion that was expressly based upon the actual level of phenol exposure that occurred in this case. Accordingly, the Commission was entitled to credit her testimony over that of Dr. Leikin and the other doctors.

The claimant argues that the Commission should not have relied upon Dr. Conibear's testimony because Dr. Conibear "disregarded" the fact that the claimant's symptoms arose only after the exposure. The claimant cites *National Castings Division of Midland-Ross Corp. v. Industrial Comm'n*, 55 Ill. 2d 198, 203 (1973), for the proposition that "when a doctor fails to consider such evidence, and the Commission relies on her opinion, that reliance is against the manifest weight of the evidence." In essence, the claimant argues that evidence that a condition of ill-being manifests itself shortly after a work-related accident establishes that the condition is causally related to the accident notwithstanding medical opinion testimony to the contrary. We disagree.

It is true that "a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability *may be sufficient* circumstantial evidence to prove a causal nexus between the accident and the employee's injury." (Emphasis

added.) *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982). However, such testimony is not always dispositive, particularly where there is persuasive medical opinion testimony or other evidence suggesting that the claimant's injury is not related to the accident. See, *e.g.*, *Sorenson v. Industrial Comm'n*, 281 Ill. App. 3d 373, 382 (1996) (affirming Commission's finding that work-related accident did not cause or aggravate claimant's bone spur based upon medical testimony despite undisputed evidence that claimant's back symptoms began after the accident); *Williams v. Industrial Comm'n*, 216 Ill. App. 3d 536, 539 (1991) (affirming Commission's finding that claimant's injury was unrelated to the alleged accident notwithstanding claimant's testimony that he had no symptoms before the accident where other evidence suggested that the accident would not have caused the injury).[4]

In this case, Dr. Conibear provided persuasive and well-supported medical opinion testimony. She cited scientific experiments which showed that the claimant's current symptoms could not have been caused by the actual phenol exposure that occurred on January 2, 2007, and she concluded that the claimant's toxic encephalopathy and other symptoms were probably caused by his long-term abuse of alcohol. None of the other doctors explained how the claimant's current medical condition could have been caused or aggravated by his exposure to the extremely modest levels of phenol that were present during the January 2, 2007, incident, nor

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[4] Contrary to the claimant's assertion, *Castings* does not hold or imply that the Commission may not credit a doctor's opinion that there is no causal connection between the claimant's injury and a work-related accident where the claimant's symptoms arose after the accident. In finding causation, the *Castings* court relied upon extensive medical testimony and not merely the "chain of events" evidence alone. *Castings*, 55 Ill. 2d at 203.

did they refute Dr. Conibear's claim that the claimant's headaches and encephalopathy could be the result of his drinking. Moreover, the medical records of several doctors and the claimant's own testimony confirm that the claimant has abused alcohol for many years. Under these circumstances, the Commission's decision to credit Dr. Conibear's conclusions was not against the manifest weight of the evidence.

The claimant's alternative argument that the facts relevant to the causation issue are undisputed and that the issue can therefore be decided in his favor as a matter of law is puzzling. Dr. Leikin's causation opinion contradicts the opinions and testimony of Dr. Conibear. Thus, the relevant facts are not undisputed. Moreover, as noted above, the fact that the claimant's symptoms began only after the accident does not establish a causal relationship between the accident and the claimant's condition of ill-being as a matter of law. *Sorenson*, 281 Ill. App. 3d at 382.

The claimant also argues that even if his alcohol abuse caused him to develop toxic encephalopathy, that condition was dormant (*i.e.,* nonsymptomatic) until shortly after the January 2, 2007, exposure. Thus, the claimant argues that the exposure aggravated or accelerated a preexisting condition and was therefore causally related to his current state of ill-being. See *Azzarelli Construction Co.*, 84 Ill. 2d at 266; *Busaytis v. Industrial Comm'n*, 178 Ill. App. 3d 943, 949 (1989). However, the claimant presented no medical evidence suggesting that phenol exposure can aggravate alcohol-related encephalopathy or that any such aggravation occurred in this case. Moreover, Dr. Conibear's testimony and the "Industrial Hygiene Report" suggest that the actual level of exposure in this case was insufficient to cause *any* deleterious health effects. This distinguishes the claimant's case from *Castings*, where medical testimony suggested that the

claimant's work-related injury could have accelerated a preexisting condition. 55 Ill. 2d at 203-04.

Finally, the claimant argues that Dr. Conibear's testimony was not credible because she was a biased witness. In support of this argument, the claimant notes that Dr. Conibear worked for Argonne in the 1980s, which Argonne does not deny. He also suggests that Argonne's letter to Dr. Conibear retaining her services as an independent medical examiner encouraged her to conclude that there was no causal connection by stating that Argonne felt that "there was no significant exposure, if any, in this case." "[C]redibility determinations and the weight to be given the opinions of medical experts are particularly the domain of the Commission." *Freeman United Coal Mining Co. v. Industrial Comm'n*, 286 Ill. App. 3d 1098, 1104 (1997). The mere fact that Dr. Conibear worked for Argonne 20 to 30 years ago does not make her incapable of rendering an independent, unbiased medical opinion in this case. In addition, Dr. Conibear supported her opinions with citations to medical literature. Accordingly, the Commission's decision to credit Dr. Conibear's opinion was not against the manifest weight of the evidence.

CONCLUSION

The claimant failed to prove that his current condition of ill-being is causally related to his exposure to phenol and other chemicals at Argonne. We therefore affirm the judgment of the circuit court of Will County, which confirmed the Commission's decision. Because we hold that the claimant failed to prove that he was entitled to any benefits under the Act, we need not address his remaining arguments regarding TTD benefits and other medical benefits.

Affirmed.