2014 IL App (4th) 130720WC-U

Order filed October 1, 2014

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CENTRE CROWN MINING, LLC,	)	Appeal from the Circuit Court
	)	of the Seventh Judicial Circuit,
	)	Sangamon County, Illinois
Appellant,	)	
	)	
v.	)	Appeal No. 4-13-0720WC
	)	Circuit No. 13-MR-71
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, *et al.*, (David Hardin,	)	John W. Belz,
Appellee).	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The Commission correctly determined that the claimant's claim for benefits relating to his bilateral carpel tunnel syndrome and cubital tunnel syndrome were not barred by *res judicata* or collateral estoppel; (2) The Commission's findings that the claimant sustained a work-related repetitive trauma and that the claimant's current conditions of ill-being were causally related to that work-related accident were not against the manifest weight of the evidence.

¶ 2 The claimant, David Hardin, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for a injuries to his arms and hands which he allegedly sustained as a result of repetitive work activities while he was working for Centre Crown Mining, LLC (employer). After conducting a hearing, an arbitrator found that the claimant suffered a work-related injury to his arms and hands as a result of repetitive trauma with a manifestation date of April 9, 2009. Specifically, the arbitrator found that the claimant's repetitive work activities repairing mine equipment aggravated his preexisting bilateral carpal tunnel condition and were causally related to his current condition of cubital tunnel syndrome. The arbitrator awarded medical benefits for the treatment of those conditions as well as temporary total disability (TTD) benefits and permanent partial disability (PPD) benefits. The arbitrator also ruled that our appellate court's reversal of the Illinois Workers' Compensation Commission's (Commission) award of benefits for the claimant's bilateral carpel tunnel condition in a prior case did not bar the claimant's current claim under the doctrine of *res judicata*.

¶ 3 The employer appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision.

¶ 4 The employer then sought judicial review of the Commission's decision in the circuit court of Sangamon County, which confirmed the Commission's ruling. This appeal followed.

¶ 5 **FACTS**

¶ 6 The claimant worked as a coal miner for 23 years. Before working for the employer, he worked for the Freeman United Coal Mining Company (Freeman United) for several years as a

roof bolter. In the summer of 2005 (while he was still working for Freeman United), the claimant began experiencing numbness and tingling in the first three fingers of both of his hands and was diagnosed with bilateral carpal tunnel syndrome. He filed a claim for benefits under the Act under a repetitive trauma theory, alleging that his bilateral carpal tunnel syndrome was causally related to his work as a roof bolter with Freeman United. He claimed an injury manifestation date of June 28, 2005. The Commission awarded benefits, including surgery recommended by Dr. Tomasz Borowiecki, the claimant's treating physician. However, our appellate court reversed on the ground that the claimant had failed to give timely notice of his work-related injury to Freeman United. The claimant did not have surgery at the time. He wore hand braces and was able to continue working without restrictions. After transferring to a new position running a scooper for several months, the claimant used his seniority to bid into a repairman position.

¶ 7 The claimant subsequently worked for the employer as a repairman. His job required him to repair all machinery in the mine including continuous miners, roof bolts, man trip personnel carriers, electric motors, and hydraulic hoses.

¶ 8 In March 2009, the claimant began to notice that his whole hand was numb, he developed a shocking sensation that would occur occasionally, and he would drop things. His hand braces no longer helped to relieve his symptoms. Moreover, he noted a loss of strength in his hands and arms which required him to change the way he performed his job. He was also having difficulty sleeping because his wrist splints no longer worked.

¶ 9 On April 9, 2009, the claimant saw Dr. Borowiecki, the orthopedic surgeon who had previously diagnosed him with bilateral carpal tunnel syndrome. Dr. Borowiecki had last seen

the claimant on October 18, 2005. On that date, Dr. Borowiecki had noted that the claimant had signs of bilateral carpal tunnel syndrome and right elbow lateral epicondylitis. ("Lateral epicondylitis," commonly known as "tennis elbow," is an inflammation of the tendons that join the forearm muscles on the outside of the elbow which causes pain and tenderness in the elbow and poor grip strength.) On April 9, 2009, Dr. Borowiecki noted that the surgery he had previously recommended was never approved by workers' compensation and that the claimant's symptoms had worsened. Dr. Borowiecki stated that claimant had changed jobs, got away from roof bolting, and for a while seemed to manage by occasionally using splints. However, Dr. Borowiecki noted that the claimant's hands were getting "so bad" that he was having "clumsiness" and was dropping things periodically. He also indicated that the claimant was now having "pretty constant symptoms."

¶ 10 After examining the claimant on April 9, 2009, Dr. Borowiecki noted signs consistent with both bilateral carpal tunnel syndrome and cubital tunnel syndrome. He observed that sensation was diminished over both the ulnar and median nerve distributions and that this was worsened with provocative testing. Dr. Borowiecki diagnosed bilateral carpal and cubital tunnel syndromes. He recommended that the claimant undergo an electromyography (EMG)[1] followed by carpal tunnel and ulnar nerve releases.

¶ 11 On April 14, 2009, the claimant underwent an EMG. The EMG was performed by Dr. Edward Trudeau at Memorial Medical Center. Dr. Trudeau concluded that the EMG was

[1] The claimant had undergone an EMG when he was first diagnosed with carpel tunnel syndrome in 2005. However, Dr. Borowiecki ordered a repeat EMG in 2009 because the previous EMG study was four years old.

positive for: (1) bilateral median neuropathy at the wrists; and (2) and bilateral cubital tunnel syndrome. The ulnar neuropathy (*i.e.*, the cubital tunnel syndrome) was a new finding.

¶ 12 On August 5, 2009, Dr. Borowiecki performed a right carpal and cubital tunnel ulnar nerve transposition. Dr. Borowiecki performed a left carpal tunnel release and ulnar nerve transposition on October 21, 2009. The claimant used his health insurance for both procedures because workers' compensation would not authorize the surgeries.[2]

¶ 13 During his subsequent evidence deposition, Dr. Borowiecki opined that the claimant's bilateral carpal tunnel syndrome had worsened since February 2006 both clinically and in terms of the claimant's complaints. Dr. Borowiecki also opined that the claimant's work as a repairman could have contributed to his bilateral cubital tunnel syndrome and aggravated his preexisting carpal tunnel syndrome.

¶ 14 After the claimant underwent both of his surgeries, he was examined by Dr. Mitchell Rotman, the employer's independent medical examiner. Dr. Rotman compared the EMG performed in 2005 with the EMG performed by Dr. Trudeau in 2009. During his evidence deposition, Dr. Rotman noted that the EMG performed in 2009 showed worsening of the median nerve latency[3] and admitted that the claimant's carpal tunnel syndrome and symptoms had

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[2] The claimant testified that he reported the injury to his supervisor, Carl Gilpin, on April 9, 2009, and April 10, 2009, and asked to fill out an incident report. He stated that he was subsequently told by his employer and his union representative that an accident form would not be filled out because the claimant was alleging a repetitive trauma.

[3] The median nerve is the only nerve that passes through the carpel tunnel, which is the nerve passageway that connects the forearm to the middle of the palm. Nerve "latency" is the speed at

progressed between 2005 and 2009 according to the EMG. He agreed that there was no finding of ulnar neuropathy on the EMG performed in 2005. Moreover, Dr. Rotman acknowledged that, when the claimant returned to see Dr. Borowiecki on April 9, 2009, the claimant reported worsening symptoms that were not present in 2005.

¶ 15 The claimant told Dr. Rotman that, during his work as a repairman, he spent six hours per day taking apart and fixing large machines with various hand tools, such as one-half to one inch wrenches, impact wrenches, hammers, and sledgehammers which could weigh up to 10 pounds. In addition, Dr. Rotman noted that, prior to 2005, the claimant had worked for 13 years as a roof bolter and operated a machine with levers that required three to five pounds of force. Dr. Rotman testified that heavy repetitive activities can cause a worsening of carpal tunnel symptoms and acknowledged that the type of work performed by the claimant can worsen such symptoms.

¶ 16 Nevertheless, Dr. Rotman opined that the cause of the claimant's condition was idiopathic, or unknown. He stated that, if a job involved a lot of repetitive heavy gripping, then the work activities might *aggravate* carpal tunnel syndrome but not *cause* it. Further, Dr. Rotman opined that the claimant's job activities as a repairman would not cause or aggravate carpal or cubital tunnel syndrome because the job was self-paced and did not involve doing the same thing over and over again, such as assembly line work.

¶ 17 Dr. Rotman testified that carpal tunnel syndrome progresses year to year even if the person suffering from the condition does nothing. He also stated that symptoms of carpal tunnel are related to activity; accordingly, the more a person uses his hands or the more heavily he grips

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which a nerve impulse travels along a nerve.

things, the more symptomatic he might become. However, Dr. Rotman opined that the claimant had no systemic risk factors for carpal tunnel syndrome.

¶ 18 Dr. Rotman testified that carpal tunnel syndrome can be controlled with splinting and other conservative measures. He opined that the surgical procedure that Dr. Borowiecki recommended to treat the claimant's carpal tunnel syndrome in 2005 was elective.

¶ 19 During the arbitration proceeding, the claimant described his job duties and the nature of his work activities as a repairman. He testified that repairmen fix broken machinery in the mine such as personnel carriers, miners, bolter, ram cars, or any other piece of equipment that ceases to function. Sometimes he would have to remove and replace electric motors, hydraulic hoses, and torque converters, all of which are large machines. The claimant worked eight to ten hours a day, six days a week. He estimated that he repaired equipment for seven hours per day. In doing repair work, the claimant would use hand tools including various types of wrenches (which ranged in size from three-eighths of an inch to two inches), air impact tools, electric impact tools, screwdrivers, and hammers (including an eight-inch sledgehammer). While working on machinery, the claimant would use wrenches to loosen and tighten nuts and bolts, some of which were so difficult to break loose that he had to strike them with a hammer or use a cheater bar to gain extra leverage. Sometimes the claimant would use 10 percent of his strength to loosen a bolt while other times he would have to use almost 100 percent of his strength. The claimant also noted that the impact wrenches vibrated and that he sometimes had to hammer on pins which also caused vibration.

¶ 20 The claimant testified that, while his duties would vary day to day, he used all of the tools every day (although he used them to different degrees each day). When working with these tools,

he would have to use his entire body, including his arms, his back, and his legs. During the seven hours per day that he was actually repairing equipment, he would use his hands and his arms constantly. The claimant acknowledged that there were times when he would be simply looking at equipment to diagnose the problem. However, he noted that, in doing so, he would be removing panels and other items in order to make the diagnosis. He stated that, in diagnosing problems with hydraulic hoses, he would have to grip and lift heavy hoses and shake them.

¶ 21 The claimant testified that the work of a repairman is more physically demanding than the work he previously did as a roof bolter in regards to his arms and hands. However, during cross-examination, he admitted that he did not have to do the type of heavy work he formerly did and a roof bolter. For example, as a repairman, he did not have to work with roof bolting materials or perform constant, repetitive pushing of levers.

¶ 22 The claimant stated that, when he was first diagnosed with carpal tunnel syndrome in 2005, he had numbness and pain in the index finger, thumb, and middle finger of each hand, but that he had learned to function with those symptoms, in part by wearing splints on his hands. However, in March and April of 2009, his whole hands started feeling numb for the first time. He also began feeling a shocking sensation when he held his hands in certain positions, he began losing strength in his hands, and he started having trouble picking up small objects. All this made his work a little slower. He changed the way he did his work, lifting with his entire body instead of just his arms and hands. The hand splints no longer alleviated his symptoms or helped him sleep at night. It got to the point where he could only sleep for two hours before he would sit up, shake his hands, and try to sleep sitting up.

¶ 23 Archibald Parker, the owner of the company that currently operates the mine where the

claimant worked, testified on behalf of the employer. The claimant had worked for Parker for years.[4] Parker did not refute the claimant's testimony regarding the type of work he performed as a repairman. However, Parker disagreed that the claimant spent seven hours of his work day working with his hands repairing equipment. Parker estimated that, out of an eight to ten hour shift, the claimant used tools in repair activities for only 20 to 25 percent of the shift, and spent the remainder of the shift diagnosing problems, waiting for other repairmen, looking at prints, doing wiring, eating lunch, or traveling though the mine. He noted that the mine was quite large and it could take 40 to 45 minutes to travel from one location to another. Parker also stated that the claimant's duties as a repairman were less strenuous than his previous work as a roof bolter. However, he acknowledged that machinery breaks down constantly and must be repaired in order to keep the mine functioning. Therefore, Parker admitted that the claimant was expected to make repairs to machinery constantly to keep the mine running.

¶ 24 The arbitrator found that the claimant proved that he sustained an accidental injury to his arms and hands as a result of his repetitive work activities as a repairman with a date of accident of April 9, 2009. Moreover, the arbitrator found that the claimant's bilateral carpal and cubital tunnel syndromes were causally related to the April 9, 2009, work accident. In support of this

[4] At the time of the claimant's injury in 2009, Parker was the superintendant of the employer, which then operated the mine pursuant to an agreement with the mine owner. At the time of arbitration, the employer no longer operated the mine. By that time, the mine was operated by a separate company that was owned by Parker. Parker's company and the employer are separate entities, and Parker's company has not assumed the employer's liabilities. At the time of the claimant's injuries, Parker's company neither owned nor operated the mine.

ruling, the arbitrator adopted the opinions of Dr. Borowiecki, which he found "more credible" than the opinions of other witnesses. The arbitrator noted that, "[u]nder Illinois law an aggravation of symptoms is sufficient to prove causation." He relied upon Dr. Borowiecki's opinions that the claimant's carpal tunnel syndrome "had worsened since his prior diagnosis of same in 2005 and that this worsening was due to the claimant's work as a repairman." The arbitrator noted that the "[claimant's] preexisting condition, as evidenced by his prior treatment in his previous claim against Freeman United ***, was also a contributing factor to [the claimant's] current condition." However, the arbitrator found that the claimant's accidental injury of April 9, 2009, was "also a contributing causative factor to his current bilateral carpal tunnel condition, as [the claimant] has proven a worsening of this condition by subjective complaints to which he testified at arbitration, and which were noted in Dr. Borowiecki's treatment records on April 9, 2009." The arbitrator also found it significant that Dr. Rotman, the employer's expert, "agreed that repetitive activities could have worsened [the claimant's] symptoms" and that "the EMG performed by Dr. Trudeau documented worsening of the condition."

¶ 25 The arbitrator also relied upon Dr. Borowiecki's opinion that the claimant's bilateral cubital tunnel syndrome was related to his work as a repairman. Accordingly, the arbitrator found that the claimant's "current bilateral carpal tunnel condition [was] an aggravation of a pre-existing condition resulting from the accident of April 9, 2009, and the bilateral cubital tunnel syndrome is a new condition also causally related to the accident of April 9, 2009."

¶ 26 Further, the arbitrator rejected the employer's argument that doctrine of *res judicata* barred the claimant's claim for benefits relating to his carpal tunnel syndrome. The arbitrator

ruled that *res judicata* did not apply because the claimant's 2005 claim for benefits relating to his work-related carpal tunnel syndrome was asserted against a different employer (Freeman United). The arbitrator noted that the employer "presented no evidence that Freeman United *** and [the] [e]mployer *** are and were the same legal entity." Moreover, the employer found that "it is clear from the evidence submitted at arbitration that the same set of facts were not asserted in the present case as was presented in the claim against Freeman United ***."

¶ 27 Based on the parties' stipulation, the arbitrator found that the claimant was entitled to TTD benefits from August 5, 2009, through January 3, 2010, as a result of his accidental injury of April 9, 2009. The arbitrator also found that the medical expenses incurred were reasonable and necessary and ordered the employer to pay those expenses. Moreover, the arbitrator found that the injuries the claimant sustained as a result of his April 9, 2009, accident "resulted in 17% loss of use of each hand and arm," and awarded PPD benefits in that amount.

¶ 28 The employer appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision.

¶ 29 The employer then sought judicial review of the Commission's decision in the circuit court of Sangamon County, which confirmed the Commission's ruling. This appeal followed.

¶ 30 **ANALYSIS**

¶ 31 1. *Res Judicata* and Collateral Estoppel

¶ 32 On appeal, the employer argues that the Commission erred in ruling that the claimant's current claim for benefits relating to his carpal tunnel syndrome was not barred under principles of *res judicata*. The employer notes that, in his 2005 claim for benefits, the claimant claimed that his carpal tunnel syndrome was caused by his work as a roof bolter at Freeman United. The

Commission agreed with the claimant and awarded prospective medical care, including the surgical procedures recommended by Dr. Borowiecki (which were the same surgeries Dr. Borowiecki subsequently performed to treat the claimant's carpel tunnel syndrome in 2009). The circuit court affirmed the Commission's decision, and this court reversed on the issue of notice only. Accordingly, the employer maintains that a court of competent jurisdiction has determined that the claimant's carpel tunnel syndrome was caused by his work at Freeman United. Therefore, the employer maintains, the doctrines of *res judicata* and collateral estoppel bar the claimant from asserting that his carpel tunnel syndrome and his need for surgery to correct it were caused by his work for the employer.

¶ 33 We disagree. The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction acts as an absolute bar to a subsequent action between the same parties or their privies involving the same claim, demand, or cause of action. *Arvia v. Madigan*, 209 Ill. 2d 520, 533 (2004); see also *J & R Carrozza Plumbing Co. v. Industrial Comm'n*, 307 Ill. App. 3d 220, 223 (1999). Three requirements must be met for *res judicata* to bar a claim: (1) a final judgment on the merits has been rendered in the prior action by a court of competent jurisdiction; (2) both actions involve the identical cause of action; and (3) the parties or their privies are identical in both actions. *Lelis v. Board of Trustees of Cicero Police Pension Fund*, 2013 IL App (1st) 121985, ¶ 30; see also *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1075–76 (1992). The party seeking to invoke the doctrine of *res judicata* carries the burden of proving it applies. *Taylor v. Police Board of the City of Chicago*, 2011 IL App (1st) 101156, ¶ 20. Whether *res judicata* bars a subsequent claim is a question of law which we

review *de novo*. *Amalgamated Transit Union, Local 241 v. Chicago Transit Authority*, 2014 IL App (1st) 122526, ¶ 13.

¶ 34 In this case, at least two of the requirements for the application of *res judicata* are not met. First, the actions at issue in this case involve different parties. The 2005 workers' compensation action was brought against Freeman United, whereas the instant action was brought against the employer, Centre Crown Mining, LLC. The employer presented no evidence that Freeman United and the employer are (or were) the same legal entity or in privity with each other. For that reason alone, *res judicata* does not apply. See *Hannigan*, 240 Ill. App. 3d 1076.

¶ 35 Moreover, the cause of action asserted in the instant case is different from the cause of action asserted in the prior action. A "cause of action" is "a single group of facts giving the plaintiff a right to seek redress for a wrongful act or omission of the defendant." *Torcasso v. Standard Outdoor Sales, Inc.*, 157 Ill. 2d 484, 490. Accordingly, to determine whether the same cause of action is asserted in a subsequently-filed claim, we must consider the facts which gave rise to the claim for relief. *Lelis*, 2013 IL App (1st) 121985, ¶ 31; see also *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 309–11 (1998). "Only facts and conditions available at the time of prior judgment are considered in *res judicata* analysis." *Lelis*, 2013 IL App (1st) 121985, ¶ 36; see also *Dowrick v. Village of Downers Grove*, 362 Ill. App. 3d 512, 517 (2005). "New material facts occurring after the prior judgment was entered may be taken alone or in conjunction with the prior facts to form the basis of a subsequent action [that is] not precluded by the prior adjudication on the merits." *Lelis*, 2013 IL App (1st) 121985, ¶ 36; see also *Dowrick*, 362 Ill. App. 3d at 517; Restatement (Second) of Judgments § 24, cmt. a at 203 (1982)). For example, an injury found not to be a disability at the time of a Pension Board hearing may

become a disability at a later date as the plaintiff's condition changes, thereby supporting a viable new action for disability benefits. See *Lelis*, 2013 IL App (1st) 121985, ¶ 36; *Dowrick*, 362 Ill. App. 3d at 517. For a previous judgment to be conclusive of a claim under the doctrine of *res judicata*, "it must appear clearly and certainly that the *identical* and *precise* issue was decided in the previous action." (Emphasis added.) *County of Cook v. Illinois Local Labor Relations Board*, 214 Ill. App. 3d 979, 985 (1991).

¶ 36 Applying these standards, we hold that the instant case involves a new and separate cause of action. In the former action, the claimant sought benefits for his carpel tunnel syndrome as it existed at the time of the prior arbitration hearing in 2006. In the instant case, the claimant is seeking benefits for the *aggravation* of that preexisting condition by his subsequent work as a repairman for the employer, which is an entirely separate and distinct injury. The prior injury was caused entirely by the claimant's work as a roof bolter with Freeman United, while the subsequent injury (the aggravation) was caused by the claimant's subsequent work as a repairman for the employer. The two injuries have different manifestation dates (June 28, 2005, and April 9, 2009, respectively) and were alleged to have been caused by entirely different work activities. Moreover, the two injuries involved different symptoms and different clinical findings (as evidenced by medical tests performed and medical opinions rendered years after the resolution of the former action). Further, in the instant action, the claimant also sought benefits for cubital tunnel syndrome, which was an entirely new condition that was not diagnosed until after the former action had concluded.

¶ 37 In sum, the former action has no preclusive effect because it involved a different defendant and was based on different facts and a different cause of action. The Commission did not err in holding that *res judicata* did not apply here.

¶ 38 The employer also suggests that the claimant's current claim for benefits relating to his carpal tunnel syndrome are barred by principles of collateral estoppel. Again, we disagree. "Collateral estoppel prohibits the relitigation of an issue essential to and actually decided in an earlier proceeding by the same parties or their privies." *McCulla v. Industrial Comm'n*, 232 Ill. App. 3d 517, 520 (1992). Administrative agency decisions made in adjudicatory, judicial, or quasi-judicial proceedings may have collateral estoppel effect. *Id.* Collateral estoppel may be asserted when: (1) the issue decided in the prior adjudication is identical to the issue in the current action; (2) the issue was "necessarily determined" in the prior adjudication; (3) the party against whom estoppel is asserted was a party or in privity with a party in the prior action; (4) the party had a full and fair opportunity to contest the issue in the prior adjudication; and (5) the prior adjudication must have resulted in a final judgment on the merits. *Mabie v. Village of Schaumburg*, 364 Ill. App. 3d 756, 758 (2006); *McCulla*, 232 Ill. App. 3d at 520. The applicability of collateral estoppel is a question of law subject to *de novo* review. *Edmonds v. Illinois Workers' Compensation Comm'n*, 2012 IL App (5th) 110118WC, ¶¶ 20-21.

¶ 39 Collateral estoppel does not apply here. First, the issue decided in the prior adjudication is different from the issue decided in the instant action. As noted, the former action involved the cause and extent of the claimant's carpal tunnel condition as it existed during the 2006 arbitration proceeding. The present action, by contrast, involves the cause and extent of the *aggravation* of the claimant's preexisting carpal tunnel syndrome by his subsequent employment as a repairman.

The instant action also involves the cause and extent of the claimant's cubital tunnel syndrome, which was not at issue in the prior action. The claimant had no opportunity to litigate either of these issues in the prior action.

¶ 40 2. Repetitive Trauma

¶ 41 The employer also argues that the Commission's finding that the claimant sustained an accidental injury arising out of and in the course of his employment under a theory of repetitive trauma was against the manifest weight of the evidence. We disagree.

¶ 42 The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the credible evidence that he suffered an accidental injury which arose out of and in the course of employment, and that involves proving a causal connection between the accident and the claimant's condition. *Paganelis v. Industrial Comm'n*, 132 Ill. 2d 468, 480 (1989). An injury is considered "accidental" for purposes of worker's compensation if it is caused by the performance of a claimant's job, even though it develops gradually over a period of time as a result of repetitive trauma. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 529–30 (1987); *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040 (2000). An employee who alleges injury based on repetitive trauma must meet the same standard of proof as other workers' compensation claimants alleging "accidental injury"; there must be a showing that the injury is work-related and not a result of the normal degenerative aging process. *Peoria County Belwood*, 115 Ill. 2d at 530.

¶ 43 An employee may recover for the aggravation or acceleration of a preexisting condition by a work-related repetitive trauma. *Cassens Transport Co., Inc. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 331 (1994). To be recoverable, the claimant's work-related injury need not be the

sole factor that aggravates a preexisting condition, as long as it is a factor that contributes to the disability. *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 267 (1981); *Cassens Transport*, 262 Ill. App. 3d at 331.

¶ 44 The existence of an accidental injury arising out of and in the course of employment is a question of fact for the Commission. *Cassens Transport*, 262 Ill. App. 3d at 331. Thus, where the claimant alleges accidental injuries caused by a repetitive trauma, it is for the Commission to determine whether a claimant's disability is attributable solely to a degenerative condition or to an aggravation of a preexisting condition due to a repetitive trauma. *Id.* It is also the Commission's province to judge the credibility of witnesses, to determine the weight to be given to their testimony, to draw reasonable inferences from the evidence, to resolve conflicts in the evidence (including conflicting medical testimony), to draw reasonable inferences from the evidence, and to choose among conflicting reasonable inferences. *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209 (1993); *Fierke*, 309 Ill. App. 3d at 1039; *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). We may overturn the Commission's factual determinations only when they are against the manifest weight of the evidence (*Williams*, 244 Ill. App. 3d at 210), *i.e.*, only when the opposite conclusion is clearly apparent (*Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007)).

¶ 45 Applying these standards, we cannot say that the Commission's accident and causation findings were against the manifest weight of the evidence. There was ample evidence to support the Commission's findings that the claimant's repetitive job duties as a repairman aggravated his preexisting carpal tunnel syndrome and were causally related to his cubital tunnel syndrome. The claimant testified that, beginning in March 2009, he was having new symptoms that he

never had before. For example, he was having pain and numbness in his entire hands (instead of the first three fingers on each hand), he was experiencing shocking sensations in his hands, and he was dropping things at work. These new symptoms caused him to change the way he worked. The use of hand splints, which had previously alleviated his carpal tunnel symptoms, was no longer effective. Moreover, Dr. Borowiecki opined that the claimant's bilateral carpal tunnel syndrome had worsened since February 2006 and that the claimant's work as a repairman could have contributed to his bilateral cubital tunnel syndrome and aggravated his preexisting carpal tunnel syndrome. Further, Dr. Rotman noted that the EMG performed in 2009 showed that the claimant's median nerve latency had worsened and that the claimant's carpal tunnel syndrome and symptoms had progressed between 2005 and 2009. He also agreed that, unlike the 2009 EMG, the 2005 EMG showed no ulnar neuropathy. This evidence was sufficient to justify the Commission's findings.

¶ 46 The employer notes that Dr. Rotman: (1) opined that the claimant's carpal tunnel syndrome was idiopathic; (2) denied that the work activities of a repairman would cause or aggravate either carpal or cubital tunnel syndrome; and (3) stated that carpal tunnel syndrome generally progresses from year to year regardless of the person's activity level. However, the Commission found Dr. Borowiecki's opinions more credible than those of Dr. Rotman. It is the Commission's province to make credibility determinations and to resolve conflicts in medical opinion evidence, and we cannot say that the Commission's decision to credit Dr. Borowiecki's testimony and the other evidence over Dr. Rotman's testimony was against the manifest weight of the evidence.

¶ 47 The employer also notes that, at one point during his evidence deposition, Dr. Borowiecki

testified that the 2009 EMG was "fairly similar" to the 2005 EMG and showed no worsening of the claimant's carpal tunnel syndrome. However, that statement was contradicted by the employer's own expert, Dr. Rotman, who admitted that the 2009 EMG showed a worsening of the claimant's condition. Moreover, despite Dr. Borowiecki's statements about the 2009 EMG, he opined that the claimant's work activities as a repairman could have worsened his carpal tunnel syndrome and contributed to the development of his cubital tunnel syndrome. The Commission was entitled to credit those opinions.

¶ 48 The employer also argues that the claimant's work activities as a repairman were not sufficiently repetitive to support a finding of a repetitive trauma injury. We disagree. Although the claimant testified that his work tasks varied from day to day, he made clear that he worked with his hands using hand tools every day for approximately seven hours per day. That distinguishes this case from *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204 (1993), a case upon which the employer relies. In *Williams*, the claimant testified that: (1) "there was not a single task he performed regularly or on a daily basis"; (2) "he could perform a specific task one day and then not do it again for months at a time"; and (3) he "did not use any particular tool or any object on a daily basis." Here, by contrast, the claimant testified that he worked with his hands repairing machines "constantly" for several hours every day and he listed several tools that he claimed he used every day.

¶ 49 In sum, although there was some evidence in the record supporting a contrary conclusion, there was sufficient evidence to support the Commission's accident and causation findings in this case, and we cannot say that an opposite conclusion was "clearly apparent."

¶ 50 **CONCLUSION**

¶ 51 For the foregoing reasons, we affirm the judgment of the circuit court of Sangamon County, which confirmed the Commission's decision. We remand the case for further proceedings.

¶ 52 Affirmed; cause remanded.