NO. 5-10-0166WC

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



WORKERS' COMPENSATION COMMISSION DIVISION

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| ERIC HOUSTON,<br><br>Appellant,<br><br>v.<br><br>ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Shawnee Community College, Appellee). | ) | Appeal from the Circuit Court of Union County.<br><br>No. 09-MR-77<br><br>Honorable Charles C. Cavaness, Judge, presiding. |

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

**R U L E 2 3 O R D E R**

*Held*: The Commission's decision that the claimant failed to prove that he had sustained an accident that arose out of and in the course of his employment is not against the manifest weight of the evidence.

The claimant, Eric Houston, appeals from a decision of the circuit court of Union County that confirmed a decision of the Illinois Workers' Compensation Commission (Commission) denying benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)). The Commission unanimously affirmed and adopted the arbitrator's denial of the claimant's application pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)). The arbitrator determined that the claimant failed to prove that he had sustained an accident that arose out of and in the course of his employment with Shawnee Community College (the employer). On appeal, the claimant argues that the Commission's decision that he failed to prove that his injury arose out of his employment is

against the manifest weight of the evidence. We affirm.

BACKGROUND

On May 3, 2005, the claimant filed his application for adjustment of claim, alleging that, on March 15, 2005, he injured his lower back while working for the employer and leaning across a table to clean it. At the beginning of the expedited arbitration hearing held on December 9, 2008, and conducted pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2004)), the parties submitted a request-for-hearing form in which they stipulated that the employer had paid all the claimant's medical bills through January 14, 2008, and that accidental injury, causal connection, and "the need for additional medical treatment" were in dispute.

The claimant was born on November 17, 1971, was 33 years old in March 2005, and had been working for the employer for 12 years. He is 6 feet 2 inches tall and weighed from 305 to 310 pounds at all the relevant times. The claimant testified that, in March 2005, he was employed as a custodian, with job duties that included vacuuming, wiping off tables, buffing and mopping floors, cleaning windows, taking out trash, and moving and setting up tables. He estimated that the trash cans weighed 35 to 40 pounds each and that the tables also weighed 35 to 40 pounds each.

He described the incident on March 15, 2005, as follows. He was working in the cafeteria, removing the trash and cleaning the tables. As he cleaned the tables, he moved them back into their assigned positions as necessary. He had finished dumping 7 to 8 trash cans and moving 15 to 20 tables, and as he was wiping off one of the tables, he reached across and felt a "sharp pain" down the lower left side of his back extending down his leg to his toes.

The claimant acknowledged that he had experienced lower back problems before March 2005. He explained that about two to three years earlier, he had hurt his back when

lifting a bag of trash while working for the employer. As a result of that incident, he missed one or two days of work, saw his doctor, and received muscle relaxers. Thereafter, between that incident and the table-cleaning incident in March 2005, he saw his doctor occasionally to obtain additional muscle relaxers, but he did not miss any additional work due to back problems. He acknowledged, however, that in March 2005, before the table-cleaning incident, his treating doctor, Dr. John Greving, had ordered that he lift no more than 15 pounds at work due to his back problems. He denied that he had chronic back problems before March 15, 2005. He testified that his back problems were not the same before and after March 15, 2005, but agreed that in December 2004 he had described his back pain as occurring daily for 30 to 45 minutes at a time, becoming worse with activity, and sometimes including shooting pain down his left leg to his foot. He testified that his symptoms were more severe after March 15, 2005, with sharp pain and tingling in his leg, requiring him to sit down for 45 minutes to an hour.

The claimant testified that, after the table-cleaning incident, he went to the emergency room of the Union County Hospital. The emergency room doctor gave him muscle relaxers and told him to follow up with his family doctor. The emergency room record indicates that the claimant described the injury as occurring at work while reaching across a cafeteria table to clean it, with a sudden onset of sharp, burning back pain radiating to his left leg and a decreased range of motion. The record shows that the claimant had "similar symptoms previously" but that he had no prior back injuries.

The claimant stated that he saw his family doctor at the Carbondale Clinic on March 16, 2005, received more muscle relaxers, and was ordered not to work and to "take it easy." He did not work for about eight days afterwards. He recalled that, at some point, he began receiving physical therapy for his back, and later, Dr. Greving referred him to Dr. Jason Bergandi at Southern Orthopedics. The claimant testified that Dr. Bergandi gave him

medicine, a back brace, and epidural spinal injections. The claimant left work with the employer and began working for the City of Carbondale as a maintenance helper in January 2006. In September 2006, Dr. Bergandi determined that the claimant had reached maximum medical improvement (MMI) and requested him to participate in pain management. The claimant disagreed with Dr. Bergandi's assessment that he was doing well in September 2006 but acknowledged that he was working and saw Dr. Bergandi after that only as needed. During that time, he continued to take muscle relaxers.

Eventually, the claimant sought a second opinion from Dr. Kee B. Park, a board-certified neurological surgeon working at Cape Neurological Surgeons. The claimant saw Dr. Park initially on June 27, 2007. Dr. Park examined him and ordered a magnetic resonance imaging (MRI) test. After the MRI was taken, Dr. Park ordered a discogram, which the claimant did not receive because the employer would not pay for it. The claimant testified that the employer had paid for his back treatment up to that time.

At the December 9, 2008, arbitration hearing, the claimant testified that his back still hurt, that sometimes he had to sit down, that he had good days and bad days, and that he felt that in order to get better, he needed additional treatment. He stated that he had no additional back injuries since March 15, 2005, and had continued to work. In order to relieve the pain, he took breaks, sat down more, laid down more, and exercised "very little," but none of those things helped him.

The claimant submitted his medical records from the Carbondale Clinic for January 7, 1989, through October 19, 2005. Of significance in those records is the December 7, 2004, office note in which Dr. Greving indicated the following:

> "This 33 year old male has had chronic back pain for a number of years. He describes his pain as mainly on the left side in the L4-L5 area. It occurs on a daily basis. He will have it for 30-45 minutes at a time. It is worse with activity. When he strains his

back too much he will sometimes have a shooting pain down either leg to the foot. It only lasts for a few seconds. He has no significant trauma to the back. He is not taking anything for the pain. He does no back exercises."

Dr. Greving's impression of the claimant's condition on December 7, 2004, was lumbar back pain and obesity. His plan was for the claimant to practice back exercises for four to six weeks, exercise aerobically, take Tylenol or ibuprofen as needed, and follow a "well rounded diet" in order to lose weight.

The next Carbondale Clinic record is from March 9, 2005, for an examination of the claimant's toe that he hurt when he caught his foot on a chair at work. In addition to the notes about the toe, Dr. Greving noted that the claimant's low back pain was about the same and that it still occurred about 30 to 45 minutes at a time and was worse with activity. He found no weakness, numbness, or paresthesias and wrote that the claimant had not been doing any back exercises. He continued to encourage the claimant to eat less and exercise more and predicted, "Most likely his symptoms will improve if he becomes more active physically and does some back exercises." On that date, Dr. Greving allowed the claimant to return to work with a restriction against lifting more than 15 pounds.

The Carbondale Clinic record of March 16, 2005, the day after the claimed accident, indicates that the claimant had a "recurrence of his back pain" which Dr. Greving noted had "been going on for 4-5 years." Dr. Greving stated that it "initially began when he was cleaning tables regularly." Dr. Greving found the pain on March 16, 2005, "localized to L4-5" and primarily on the left side. Dr. Greving found as follows:

"Now it is occurring 30-45 minutes per episode on a daily basis, sometimes multiple times per day. It radiates down either leg occasionally to the foot. Primarily it is radiating to the left foot. During his episodes of pain it radiates constantly to the left foot. If he lays down and rests for a moment it will resolve and then recur again when

he stands. He has no numbness of the lower extremities, no weakness. He has had no trauma recently."

Dr. Greving's impression was "probable sciatica." He ordered physical therapy and an X ray, prescribed hydrocodone and Soma, and advised the claimant to use Lodine for pain. The X ray report of March 17, 2005, indicated: "[The claimant's] vertebral body heights and disc spaces are well maintained as is vertebral alignment. No fractures or subluxations are identified. Pedicles appear intact with no osteolytic process seen." The radiologist found that the claimant's lumbosacral spine was within normal limits.

On April 28, 2005, the claimant reported to Dr. Greving that he was still having back pain. Dr. Greving noted two episodes of back pain per week, each lasting a couple of hours, mainly associated with lifting heavy objects at work, localized to the left side at the L4-L5 area with pain radiating to his left foot at times with improvement upon resting 15 to 20 minutes. Dr. Greving believed the claimant had lumbar strain but ordered an MRI to rule out a herniated or bulging disk causing the claimant's radiculopathy. He requested the claimant perform back exercises, follow a low cholesterol diet, and exercise for weight loss. Dr. Greving increased the claimant's weight-lifting restriction from 15 to 25 pounds.

On May 5, 2005, the radiologist who conducted an MRI of the claimant's lumbar spine reported that he found "mild posterior central bulging" at the L4-L5 disc with no herniation and no significant spinal or neural foraminal stenosis. He found a small amount of fluid along the facet joints throughout the lumbar spine but no lumbar vertebral body compression or fracture and no spondylolisthesis.

On May 16, 2005, the claimant told Dr. Greving that his back was "improving." Dr. Greving noted that the claimant still had pain with heavy lifting but that it occurred only two times per week and lasted only about 5 to 20 minutes. The radiating pain lasted only a few seconds before resolving. He had no persistent numbness, no weakness, and no new trauma

to his back. Dr. Greving requested the claimant to continue physical therapy and encouraged him to "exercise aerobically and to lose weight with calorie restriction." The claimant continued to have lower back pain, which he described on October 19, 2005, as occurring three to four days per week for one to two hours per episode.

The claimant also submitted his records from Dr. Bergandi, the orthopedic surgeon to whom Dr. Greving had referred him. In the record of January 16, 2006, Dr. Bergandi noted that the claimant was working part-time, that his lower back pain did not significantly affect his daily activities, and that he had participated in physical therapy for six weeks which had provided him some pain relief. Dr. Bergandi reviewed the claimant's May 5, 2005, MRI and found that it showed a "somewhat broad based" "annular tear at L4-5," with mild degenerative changes. He reported that the MRI did not show any disc herniations, spondylolisthesis, spondylolysis, or facet arthropathy. He recommended that the claimant attend physical therapy for four weeks, begin taking an anti-inflammatory, and wear a corset brace to decrease the load on the disc.

On February 23, 2006, the claimant had completed physical therapy, which he felt gave him "minimal relief." Because he was still having discomfort, Dr. Bergandi recommended epidural steroid injections for pain relief. On April 6, 2006, and June 1, 2006, the claimant underwent lumbar epidural steroid injections at the L4-L5 area, which Dr. Bergandi found provided the claimant with 75% to 80% relief from his discomfort. On June 19, 2006, Dr. Bergandi again recommended physical therapy.

On July 24, 2006, Dr. Bergandi noted that the claimant stated that he was doing "much better," had finished physical therapy, was not taking any anti-inflammatory or other pain medication, was able to work at his job, and had "nearly plateaued on his rehab." He requested that the claimant continue his back exercises at home. At his final examination of the claimant on September 29, 2006, Dr. Bergandi believed that the claimant was doing

"exceptionally well." He found that the claimant was working, had no back or leg pain, was taking no pain or anti-inflammatory medications, and had reached MMI. He requested that the claimant see him only as needed and allowed him to return to work without restrictions.

On February 2, 2007, the claimant returned to Dr. Bergandi, complaining of lower back pain and left lower extremity pain. Dr. Bergandi recommended a Medrol Dosepak and anti-inflammatories and scheduled him for a checkup in six weeks, at which time he would assess the need for a third epidural steroid injection. When the claimant returned on March 21, 2007, Dr. Bergandi reported that the claimant had only a "little bit of back pain" "with the exception of aggressive activity" and that the epidural steroid injections had "done very well." Dr. Bergandi encouraged the claimant to consult a pain management specialist and asked him to return only as needed.

The claimant submitted the records and deposition of Dr. Park, who testified that he first saw the claimant on June 27, 2007. Dr. Park stated that the claimant told him that he hurt his back on March 15, 2005, while cleaning tables at Shawnee Community College. He told Dr. Park that he had experienced a back strain in 2003 but that he "got better." The claimant told Dr. Park that, after the table-cleaning incident, his back pain was "not improving" and had "moved down his left leg." Dr. Park examined the claimant and concluded that he had "irritation of the lower lumbar nerve roots." Dr. Park reviewed the claimant's May 2005 MRI and found a "high intensity zone" at the L4-L5 disc that correlated with a left-side annular tear at L4-L5 causing his discogenic back and left leg pain.

Dr. Park ordered another MRI for the claimant. When Dr. Park reviewed the claimant's August 7, 2007, MRI, he found that it "reconfirmed the presence of a tear at the left side at the L4-5 level." Since the claimant was not improving, he offered him surgery, but he recommended that the claimant undergo an "L2-S1 discogram" before the surgery. That test was not performed because the employer's workers' compensation insurance

company did not approve it. Dr. Park testified that, without the discogram, he still recommended surgery. Dr. Park explained that, since the claimant felt that his symptoms had become intractable, the next step "would be a fusion at this level."

Dr. Park opined that the claimant's condition of ill-being, the left-side annular tear at L4-L5, and his need for surgery were all caused by the March 15, 2005, accident. Dr. Park acknowledged that he based this opinion on the claimant's statement that his lower back pain began on March 15, 2005, that the symptoms got better for a while, but that, despite all the nonsurgical interventions, his symptoms had failed to resolve. Dr. Park acknowledged that he did not review any of the claimant's medical records. He agreed that Dr. Greving's December 7, 2004, examination note, in which he stated that the claimant suffered from chronic back pain mainly on the left side at L4-L5, occurring daily for 30 to 45 minutes per episode and becoming worse with activity, sounded "very much similar to the complaints" the claimant reported to him in June 2007. He testified that the information that the claimant experienced very similar symptoms before and after March 15, 2005, may give him "cause or concern to determine whether or not this incident in March of 2005 actually led to his L4-5 annular tear."

Dr. Park acknowledged that he had not reviewed Dr. Bergandi's records. Nevertheless, he disagreed with Dr. Bergandi's opinion that the claimant had reached MMI by September 29, 2006. Dr. Park was not aware of any accident or injury to the claimant's back since September 29, 2006. He acknowledged that he could not be certain that the left-side annular tear he found in the claimant's May 2005 MRI was not present before that date without comparing it to an earlier MRI. He recommended the claimant have back surgery even without a discogram, but he preferred to have the information from that test before any back surgery because he felt that it was the "best study" available for information about whether an abnormal disc is actually "causing the kind of pain the patient is describing."

The employer submitted the reports and the evidence deposition of Dr. Michael C. Chabot, an orthopedic spine surgeon. Dr. Chabot testified that he examined the claimant at the employer's request on April 11, 2008, and reviewed the medical records of Drs. Greving, Bergandi, and Park. Dr. Chabot stated that the claimant had told him that he strained his back when reaching across a table at work on March 15, 2005. In his physical examination of the claimant, Dr. Chabot found that he moved without difficulty, did not list or limp, did not use a cane or walker, and was "able to remove his shoes and socks in a seated cross-legged position without difficulty." Dr. Chabot's lumbar examination indicated that the claimant had back pain but that most of his test results were within normal limits. He reviewed the claimant's August 7, 2007, MRI and found that it revealed "reasonably good disc hydration to the lumbar spine," evidence of a very small high intensity zone involving the disc space at L4-L5, mild disc bulging at L4-L5, facet degeneration at L4-L5, and no evidence of focal neural compression. He concluded that, for the claimant's age, the MRI was "relatively normal" and that the evidence of degeneration was very common for his age group.

After reviewing the claimant's medical records and examining him, Dr. Chabot offered the opinion that "his history of chronic back pain, morbid obesity, and general deconditioning were probably contributing to his ongoing back complaints." Dr. Chabot suggested that losing weight and performing back-strengthening exercises would have a "greater impact on reducing his chronic complaints than a recommended surgical intervention." Dr. Chabot opined that the claimant could return to his regular work duties as a janitor "performing basic plumbing and maintenance work." From his review of Dr. Greving's medical records, Dr. Chabot concluded that the claimant's symptoms after March 15, 2005, were about the same as before that date and that, consequently, his back problems were not "acute." He acknowledged that Dr. Bergandi found an annular tear at the L4-L5

area of the claimant's lumbar spine and testified that annular tears are often a part of "the natural healing process of the disc." Dr. Chabot noted that, without an MRI taken before the alleged accident, he could not determine when the annular tear occurred.

Dr. Chabot disagreed with Dr. Park's recommendation that the claimant undergo a discogram and spinal fusion surgery. He testified that he "would not recommend a discogram unless this individual had severe debilitating pain that precluded him from remaining gainfully employed, or if he was using narcotic medication on a regular basis," neither of which applied to the claimant. He explained that a discogram is an "invasive procedure" that "involves sticking a needle in the back and trying to reproduce pain." He felt that the risk of infection was not warranted under the circumstances. Dr. Chabot concluded that the claimant was not a candidate for surgery because he was managing his pain "with anti-inflammatory medication twice a day" and that regular exercise and weight loss were more appropriate and less risky recommendations.

When Dr. Chabot examined the claimant on April 11, 2008, he was gainfully employed, working as a maintenance man, and performing work duties that required bending, twisting, and lifting. He noted that the claimant was not using narcotic medications and had no "significant progression in his condition." Dr. Chabot reiterated that the claimant's complaints were very similar before and after the table-cleaning incident and that, overall, his symptoms were more consistent with a chronic condition than any acute injury and that, given that condition, his symptoms could become worse by doing almost any activity, such as "putting your pants on and leaning forward."

The claimant's attorney asked Dr. Chabot if he was suggesting that the claimant was not injured on March 15, 2005, to which Dr. Chabot responded that it was not a "significant injury" and that it was "merely an exacerbation of his long-standing complaints." In his May 9, 2008, report, Dr. Chabot expressed his opinions as follows:

"It is my opinion that there is insufficient documentation that the patient sustained a significant work injury on or about March 15, 2005 that resulted in aggravation or exacerbation of his pre-existing back complaints. The medical records suggest that he has a long-standing history of back pain and Dr. Greving's notes indicate that he had a recurrence of his symptoms.

It is my opinion with a reasonable degree of medical certainty that the patient's complaints are associated with chronic degenerative disease, morbid obesity, and poor general conditioning. It is my opinion that the work activities he was performing, namely wiping tables at a cafeteria, was not a significant factor in aggravating or exacerbating his pre-existing back condition.

It is my opinion that the changes noted on the MRI study are most likely long-standing and most likely pre-dated his alleged injury of March 15, 2005."

On February 3, 2009, the arbitrator entered his decision, finding that the claimant had not proved that his injury arose out of and in the course of his employment. The arbitrator detailed the claimant's medical history, including the records of Dr. Greving and Dr. Bergandi, and the records and testimony of Dr. Park and Dr. Chabot. The arbitrator noted that the medical records of Dr. Greving, the claimant's family physician, for the day after the alleged injury described a "recurrence" of the claimant's ongoing back problems and recorded that the claimant "has had no trauma recently." The arbitrator found that all the claimant's medical records, including those before and after March 15, 2005, "reflect a history of the same symptoms." The arbitrator concluded that Dr. Chabot's opinion was more credible than Dr. Park's opinion because Dr. Park did not review any of the claimant's medical records from any other physician, and Dr. Park acknowledged that the claimant's symptoms were very similar before and after March 15, 2005, which proved that the March 15, 2005, incident was "not significant." The arbitrator further determined that, even if the claimant had

suffered an injury on March 15, 2005, he failed to meet his burden of proof that the medical treatment recommended by Dr. Park was causally related to that accident or that it was medically necessary. Accordingly, the arbitrator denied the claimant's application "pursuant to Section 19(b) and/or Section 8(a)" of the Act (820 ILCS 305/19(b), 8(a) (West 2008)).

The Commission unanimously affirmed and adopted the arbitrator's decision. On review, the circuit court confirmed the Commission's decision that the claimant's injuries did not arise out of his employment, and this appeal followed.

ANALYSIS

The issue we consider is whether the Commission's decision that the claimant's injury did not arise out of his employment is against the manifest weight of the evidence. In workers' compensation proceedings, it is the claimant's burden to establish by a preponderance of the evidence that his injury arose out of and in the course of his employment. *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App. 3d 486, 489, 812 N.E.2d 401, 404 (2004). The claimant must prove that his injury was work-related "and not the result of normal degenerative aging processes." *Gilster Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182, 759 N.E.2d 979, 983 (2001). "The determination of whether an injury arose out of and in the course of a claimant's employment is a question of fact for the Commission to resolve, and its finding in that regard will not be set aside on review unless it is against the manifest weight of the evidence." *Litchfield Healthcare Center*, 349 Ill. App. 3d at 489, 812 N.E.2d at 404. Findings of fact are not contrary to the manifest weight of the evidence unless the opposite conclusion is clearly apparent. *Id.*

The requirement that the injury occur in the course of the claimant's employment "refers to the time, place, and circumstances under which the accident occurred." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57, 541 N.E.2d 665, 667 (1989). The employer in this case does not dispute that the accident occurred in the course of the

claimant's employment but only disputes that the injury arose out of his employment. For an injury to arise out of a claimant's employment, "its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Caterpillar Tractor Co.*, 129 Ill. 2d at 58, 541 N.E.2d at 667. The requirement that the injury arose out of the employment "pertains to the origin or cause of a claimant's injury." *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105, 853 N.E.2d 799, 803 (2006). "The resolution of whether there is a causal connection between the claimant's injuries and the employment is uniquely within the province of the *** Commission." *Domagalski v. Industrial Comm'n*, 97 Ill. 2d 228, 236, 454 N.E.2d 295, 298 (1983).

The claimant argues that in order to prove that his claim was compensable under the Act, he was required to prove only that some act or phase of his employment was a causative factor of his resulting injury, not that it was the sole or principal cause. See *Republic Steel Corp. v. Industrial Comm'n*, 26 Ill. 2d 32, 45, 185 N.E.2d 877, 884 (1962). The claimant points out the evidence that he was cleaning a table when he felt an immediate pain in his lower back and down his leg, that he went to the emergency room within hours of the incident, and that "a lengthy course of treatment" followed. The employer counters with the evidence that the claimant had experienced very similar symptoms and was being treated for those symptoms before the table-cleaning incident. The employer argues that, as a result of those symptoms, Dr. Greving had restricted the claimant from lifting more than 15 pounds on March 9, 2005, less than a week before the table-cleaning incident, but he increased that limit to 25 pounds a little more than a month after the incident.

Our task on review is to determine whether there is sufficient factual evidence in the record to support the Commission's decision, regardless of whether we could reach a different decision based on that evidence. *Gilster Mary Lee Corp.*, 326 Ill. App. 3d at 183,

759 N.E.2d at 983-84. The evidence in support of the Commission's decision includes the claimant's testimony and the medical records showing that he suffered from lower back problems before and after March 15, 2005, with almost exactly the same symptoms and duration of symptoms before and after. Although he noticed a problem on March 15, 2005, when reaching across a table to clean it, there is evidence that he regularly experienced the same problems and symptoms before and after that date. The claimant testified that his symptoms were worse after March 15, 2005, but the medical records do not reflect any problems or disabilities he experienced after that date that were worse or different than before that date.

The claimant did not ask his treating physicians, Drs. Greving and Bergandi, to render an opinion regarding the cause of his problems. Neither were called to testify, and the claimant only introduced their records. Nothing in their records indicates that either of them made any findings about causation but only that they both relied on the claimant's statements that he hurt his back when leaning over a table at work. Both treating physicians recommended that the claimant lose weight and increase his activity level as the best plan to relieve his symptoms. It is significant that the claimant weighed roughly the same in December 2004 as at all times thereafter and that there is nothing in the record to show that he was able to be more active before March 15, 2005, than he was after that date. After March 15, 2005, the diagnostic tests of the claimant's lumbar spine at the L4-L5 level indicated a mild disc bulge but no herniation, no compression, no fractures, and no spondylolisthesis. The most significant finding of the diagnostic testing was an annular tear at L4-L5, which none of the treating or testifying physicians could conclude had occurred as a result of the March 15, 2005, incident. Dr. Bergandi found that the claimant had reached MMI and was doing "exceptionally well" in September 2006.

"The resolution of the credibility of witnesses, including medical testimony, is solely

the province of the Commission." *Gilster Mary Lee Corp.*, 326 Ill. App. 3d at 184, 759 N.E.2d at 984. The Commission determined that the employer's expert witness, Dr. Chabot, was more credible than the claimant's expert witness, Dr. Park. The Commission based its credibility determination on evidence that Dr. Chabot had reviewed most of the claimant's medical history before and after March 15, 2005, but that Dr. Park had relied entirely on the claimant's statements, his physical examination of the claimant, and his review of the May 2005 and August 2007 MRIs of the claimant's lumbar spine. Although Dr. Park offered the opinion that the claimant's condition of ill-being and his need of a discogram and back fusion surgery were caused by his March 15, 2005, work injury, he also acknowledged that the claimant's symptoms were very similar before and after March 15, 2005, and that he could not discern whether the annular tear had occurred before or after that date without an MRI taken before that date. Dr. Park admitted that his opinion about causation of the annular tear might have been affected by knowledge that the claimant's symptoms were the same before and after March 15, 2005.

In his testimony and in his May 9, 2008, report, Dr. Chabot stated his opinion that the work activities the claimant was performing, namely, wiping tables at a cafeteria, were not a "significant factor" in aggravating his preexisting back condition. The claimant argues that this statement is contrary to the Commission's ruling because there is no requirement that a work accident be a *significant* cause of his injury. According to the claimant, Dr. Chabot's statements show that he recognized that the March 15, 2005, incident was *a* causative factor in his condition of ill-being, which is adequate to support a finding of causation entitling him to benefits under the Act. The claimant's argument is not persuasive. Although one might parse Dr. Chabot's statements in such a way as to infer that he was stating that the alleged work accident was among the causes of the claimant's injury, it is more reasonable to infer from a review of his entire testimony and reports that it was his opinion that it was not a

cause of the claimant's injury.

It is not our task to consider if the Commission could have reached another conclusion but only to consider if there is sufficient factual evidence in the record to support the conclusion it actually reached. Here, the decision of the arbitrator, which was adopted by the Commission, relied heavily upon the fact that the claimant experienced the same symptoms before and after the alleged accident. The records of the claimant's family physician on the day after the claimed injury describe a "recurrence" of his prior complaints of back pain and state that he "has had no trauma recently." We find that there is ample evidence to support the Commission's conclusion that the claimant's injury was not work-related but that it was the result of an ongoing degenerative process. See *Gilster Mary Lee Corp.*, 326 Ill. App. 3d at 182, 759 N.E.2d at 983. The Commission's decision that the claimant failed to prove that his injury arose out of his employment is not against the manifest weight of the evidence. Therefore, the decision of the circuit court, confirming the decision of the Commission, should be affirmed.

We are compelled to note, however, an anomaly in the Commission's decision. By affirming and adopting the decision of the arbitrator, who found that the claimant failed to prove that he was injured in an accident arising out of his employment, the Commission effectively determined that the claimant is entitled to no benefits for his claimed injury. Nevertheless, the Commission remanded this case to the arbitrator "for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any." Since the circuit court confirmed the decision of the Commission in its entirety, we are concerned that by affirming the circuit court our judgment would require an unnecessary remand to the arbitrator for further proceedings. If this claim had been found to be compensable, a remand to the arbitrator for further proceedings would be appropriate. Since it was not, that portion of the decision of the Commission remanding

this case to the arbitrator should be vacated.

## CONCLUSION

We affirm the decision of the circuit court confirming the decision of the Commission, except that the portion of the decision of the Commission remanding this case to the arbitrator is vacated.

Affirmed in part; remand to arbitrator vacated.