2013 IL App (5th) 120130WC-U

Order filed July 12, 2013

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

GRAHAM PACKAGING, INC.,	)	Appeal from the Circuit Court
	)	of the Fourth Judicial Circuit,
Appellant,	)	Fayette County, Illinois.
	)	
v.	)	Appeal No. 5-12-0130WC
	)	Circuit No. 11-MR-32
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (Florence Tate, Appellee).	)	Honorable
	)	Allan F. Lolie,
	)	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's finding that the claimant proved that she suffered a work-related repetitive trauma injury with a manifestation date of March 27, 2009, was not against the manifest weight of the evidence; (2) the Commission's finding that the claimant provided timely notice of her alleged work accident was not against the manifest weight of the evidence; and (3) the Commission's finding that the claimant proved a causal relationship between a work-related injury and her current condition of ill-being was not against the manifest weight of the evidence.

¶ 2 The claimant, Florence Tate, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)) seeking benefits for arm and hand injuries which she allegedly sustained while working for the respondent, Graham Packaging, Inc. (employer). After conducting a hearing, Arbitrator Ruth White found that the claimant had failed to prove that she sustained a repetitive trauma injury that manifested itself on March 27, 2009. The arbitrator also found that the claimant failed to give the employer timely notice that she was alleging a March 27, 2009, work injury.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission), which reversed the arbitrator's decision. By a 2 to 1 vote, the Commission found that: (1) the claimant sustained repetitive trauma injuries with a manifestation date of March 27, 2009; (2) she provided timely notice of the accident; and (3) her repetitive trauma injuries were causally related to her current condition of ill-being. The Commission awarded temporary total disability (TTD) benefits, permanent partial disability (PPD) benefits, and medical expenses. Commissioner Lamborn dissented, stating that he would have affirmed and adopted the arbitrator's decision in its entirety.

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

¶ 5 FACTS

¶ 6 The employer owns and operates a factory in Vandalia, Illinois, that manufactures plastic bottles. The claimant worked for the employer as a production worker. Her job duties involved overseeing from one to three production lines at a time. While overseeing one of the less automated lines, the claimant had to physically remove empty bottles of various sizes from

the end of the line and place them into cardboard boxes, which then had to be taped. The claimant also made and folded the boxes, taped up the boxes when they were full, strapped the boxes, and then gripped the boxes and put them in stacks.

¶ 7 The claimant alleges that she sustained a repetitive trauma injury to her hands and elbows which manifested itself on March 27, 2009. At that time, the claimant was 69 years old and had worked for the employer for approximately 17 years. The claimant testified that she began noticing problems with her hands and arms—including numbness, tingling, and loss of grip strength—prior to the spring of 2009. She claimed that when she noticed this condition getting worse over time, she notified her supervisor of how much trouble she was having with her hands and elbows and was told to use pain patches. According to the claimant, she did not fill out an accident report at that time because she did not realize that these problems constituted an "accident."

¶ 8 In November 2008, the claimant went on medical leave for a non-work-related spinal condition. While she was on leave and receiving treatment for her back condition, she advised her treating physicians that she was also having pain in her hands and elbows. Specifically, on March 4, 2009, the claimant saw Dr. Karl Rudert of the Bonutti Clinic, complaining of both back pain and pain in her upper extremities. Dr. Rudert noted that the claimant worked a "very physical job" and suffered from, among other things, pain in her hands and elbows. He examined the claimant and noted a positive Tinel's sign in the claimant's right cubital tunnel.[1] The left

[1]A "Tinel's sign" is a tingling sensation in a limb that is felt when percussion is made over the site of a divided nerve. It indicates a partial lesion or the beginning degeneration of the nerve. The cubital tunnel is a channel which allows the ulnar nerve (commonly known as the "funny bone") to travel over the elbow. Chronic compression of this nerve is known as cubital tunnel syndrome.

cubital tunnel tested negative. Testing of the carpal tunnel and Guyon's canal were negative.[2] The claimant exhibited mild atrophy of the palms of her hands, but she had good opposition and grip strength. Dr. Rudert diagnosed the claimant with a variety of medical conditions, including mild cubital tunnel syndrome of the right upper extremity.[3] He recommended an EMG of the upper extremities.

¶ 9 An EMG/NCV test was performed on March 10, 2009. The test revealed evidence of moderately severe bilateral carpal tunnel neuropathy affecting sensory and motor components, and moderately severe bilateral cubital tunnel neuropathy affecting sensory and motor components, somewhat more advanced in the right arm.

¶ 10 On March 13, 2009, the claimant saw Dr. Frank Lee at the Bonutti Clinic. Dr. Lee noted that the claimant had been having problems with her upper extremities "[f]or the past 2 years." However, the claimant's medical records prior to March 2009 do not corroborate that statement.[4]

---

[2]The carpal tunnel is the passageway on the palm side of the wrist that connects the distal forearm to the middle compartment of the palm. Guyon's canal is the passageway between the forearm and the hand through which the ulnar nerve passes.

[3]Dr. Rudert also diagnosed the claimant with recurrent injuries to her left shoulder, degenerative osteoarthritis of the cervical spine, degenerative disc disease of the umbrosacal spine with spinal stenosis, osteoporosis, hypertension, high cholesterol, and depression.

[4]The first reference to upper extremity symptoms in the claimant's medical records is in Dr. Rudert's March 4, 2009, record. On August 25, 2007, the claimant saw Dr. Mark Stern, complaining of back and shoulder pain. At that time, she denied having any pain in her small finger joints, wrists, or elbows. Dr. Stern noted that the claimant had a history of breast cancer which was resected in 1982 and a 25-year history of smoking. Although he diagnosed the claimant with several medical conditions (including osteoarthritis, osteoporosis, and hypertension), Dr. Stern did not diagnose the claimant with any wrist or elbow conditions. During follow-up visits to Dr. Stern in January, August, and November of 2008, the claimant made no complaints about her hands, wrists, or elbows. Although Dr. Stern's January 2008 records note hypertrophic changes in some of the joints in the claimant's wrists and fingers, an examination of the claimant's wrists and elbows at that time was negative. On February 23,

Dr. Lee noted the EMG results and diagnosed the claimant with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. The claimant told Dr. Lee that she was having difficulty performing various activities such as reading the paper, holding a steering wheel, and gripping things. She noted that she had been dropping things. Dr. Lee recommended surgical releases of the carpal and cubital tunnels, the right before the left.

¶ 11 On March 16, 2009, Dr. Petty gave the claimant an epidural injection in her lower back to relieve symptoms relating to her spinal stenosis. Thereafter, Dr. Petty authorized the claimant to return to work on March 25, 2009, pursuant to her request.

¶ 12 The claimant resumed her duties as a production worker on March 25, 2009. As she performed her job duties, she noticed that the problems with her hands became worse. Specifically, she experienced increased numbness and tingling in her hands and a loss of strength and grip. She worked for three days (through March 27, 2009) and then left work again to have surgery on her upper extremities.

¶ 13 On March 31, 2009, Dr. Lee performed surgery on the claimant's right hand and elbow. The surgery included both an open right carpal tunnel release and a right cubital tunnel release. On April 28, 2009, Dr. Lee operated on the claimant's left hand and elbow, performing a left open carpal tunnel release and a left cubital tunnel release. The claimant was released for full duty work on July 6, 2009. She returned to work the following day.

2009, the claimant saw Dr. Robert Petty seeking treatment for low back and bilateral hip pain. The claimant told Dr. Petty that she had suffered from back and hip pain for several years, but she made no reference to her hands, wrists, or elbows. However, in a medical form the claimant filled out for Dr. Rudert on March 4, 2009, she identified neck pain, back pain, and "arm pain" as her chief complaints and stated that her "problem" has been present for "Approx 2 yrs."

¶ 14 On February 24, 2010, the claimant was examined by Dr. Michelle Koo, the employer's Section 12 medical examiner. The claimant told Dr. Koo that she had been experiencing numbness, tingling, and weakness in her hands for the previous five to six years. Dr. Koo interviewed and examined the claimant and reviewed the claimant's medical records, including Dr. Stern's and Dr. Petty's records and the records from the Bonutti Clinic. She also reviewed a video prepared by the employer which showed a worker purportedly performing the job duties of a production worker. Dr. Koo noted that the worker depicted in the video "cupped" and "scooped" 3 to 4 "very light" plastic bottles with both hands every 10 to 15 seconds, but the video depicted "no grasping" and no "fine dexterity manipulation."

¶ 15 After concluding her examination and her review of the video and the medical records, Dr. Koo opined that the claimant's carpal and cubital tunnel syndromes were not in any way related to her work activities. In support of this opinion, Dr. Koo noted the existence of other factors that likely caused or contributed to those conditions. Specifically, Dr. Koo observed that the claimant had arthritis in the small joints of her hands which "would lead to inflammation of her hands and could very much put her at risk for median neuropathy at her carpal tunnels." Dr. Koo also noted that the claimant's advanced age "would also be a prevailing factor for the cause of her peripheral neuropathies in addition to the fact that she has had chemotherapy [for breast cancer] at a very young age, which could certainly affect her peripheral nerves at age 69." Dr. Koo also opined that the claimant's smoking history was "a very significant factor in causing and contributing to the development of" the claimant's bilateral cubital tunnel syndrome and bilateral carpal tunnel syndrome.

¶ 16 Moreover, based on her review of the video and the claimant's description of her work activities, Dr. Koo concluded that the claimant was merely required to "scoop" up light empty bottles and was not required to perform any repeated grasping or any actions that would "continually or constantly work[] her hands in an open and close[d] fashion." For this additional reason, Dr. Koo concluded that the claimant's carpal and cubital tunnel syndromes had no association to her work activities. She opined that the claimant could return to work with no restrictions and that any further treatment for her carpal and cubital tunnel syndromes would not be related to her work for the employer.

¶ 17 At the claimant's counsel's request, the claimant was examined by Dr. Jeffrey Coe on March 24, 2010. Dr. Coe interviewed the claimant and reviewed the medical records relating to the diagnosis and treatment of the claimant's carpal and cubital tunnel syndromes, including the results of the EMG/NCV test, Dr. Rudert's records, and Dr. Lee's records. Dr. Coe's report does not indicate that he reviewed any medical records created prior to the initial diagnosis of the claimant's upper extremity problems in March 2009.

¶ 18 The claimant told Dr. Coe that she worked 40 hours per week with two 15-minute breaks and one 30-minute break each day. She stated that she lifted bottles and trays in packing, that the work was "fast paced," and that her hand movements during the course of her shift were "continuous." The claimant told Dr. Coe that she began to develop pain, numbness, and tingling in the fingers of both hands as she worked and that she sought treatment for this condition from Dr. Rudert in March 2009. Although she said her condition improved after surgery, she told Dr. Coe that she again began to notice some tingling and numbness in both hands and some hypersenstivity in her elbows when she resumed her full work activities in July 2009. The

claimant informed Dr. Coe that she had prior injuries to her shoulder, wrist, and low back, and she admitted to smoking approximately one-half pack of cigarettes per day.

¶ 19 Dr. Coe opined that the claimant had suffered repetitive strain injuries while working for the employer and that these injuries were causally related to her development of bilateral carpal and cubital tunnel syndromes. He concluded that the claimant's repetitive trauma injuries caused permanent partial disability to both of her upper extremities and that she was in need of further medical treatment.

¶ 20 During the arbitration hearing, the claimant's attorney asked her on direct examination whether she told any of her supervisors about the problems she was experiencing with her hands when she returned to work from March 25 through March 27, 2009. The claimant initially responded that she told Sandy Bergin, one of her supervisors. Shortly thereafter, however, the claimant stated that she was not sure whether Bergin was at work during those three days in March 2009, and she noted that "[i]t was ahead of this" that she told Bergin about her hands. She claimed that, when she told Bergin about her hands, Bergin told her to use pain patches. On cross-examination, the claimant stated that she "did not think" that she told her employer in March 2009 that she believed her arm pain was work related. She also admitted that she did not discuss the matter with Bergin in March 2009 because she thought Bergin had been dismissed by then. The employer's counsel then asked the claimant, "[i]t wasn't until July 28, 2009, that you told your employer that your carpal and cubital tunnel syndrome was work related[,] correct?" The claimant responded, "yes."

¶ 21 However, the claimant gave conflicting testimony on this issue during redirect examination. The following colloquy took place between the claimant and her counsel:

"Q: [Claimant's counsel]: We need to know who you told at work in management that you were having problems with your hands and arms in March of 2009.

A: [The claimant]: I don't even recall.

Q: [Claimant's counsel]: Did you talk to somebody there, one of your supervisors?

A: [The claimant]: Not that I recall.

Q: [Claimant's counsel]: Okay. Anything that might help you refresh your recollection? Any notes that you have?

A: [The claimant]: I mean, people knew that I was having problems with my hands, but I don't know that I've strictly--

Q: [Claimant's counsel]: Did you ever have a casual conversation with any of your supervisors during those three or four days at work that your hands and arms were bugging you while you were doing your job?

A: [The claimant]: Yes, yes.

Q: [Claimant's counsel]: And who was that?

A: [The claimant]: I can't recall. I'm not going to say because I cannot recall.

Q: [Claimant's counsel]: What were the names of the different supervisors that you had during that period of time?

A: [The claimant]: It could have been Dave Dodrey (phonetic). It could have been George Lanceberger, Joan Walter.

Q: [Claimant's counsel]: You're not sure who, but did you talk to one of your supervisors?

A: [The claimant]: Yes, yes."

¶ 22 The claimant testified that she still has numbness and tingling, especially in her left hand and arm, and she experiences increased problems after performing a lot of "hold work," *i.e.*, reworking bad bottles. The sensation in her left hand and her left arm strength have both decreased, and her left index finger "locks up." She drops things, and she notices numbness in her hands when she sleeps and while driving.

¶ 23 Chris Hackman, the employer's PCS Business Unit Safety Coordinator, testified on behalf of the employer. Hackman stated that a production worker could conceivably be responsible for as many as three different production lines.[5] Hackman confirmed that Sandy Bergin had worked for the employer as a shift supervisor at one time, but he was not certain whether she was still working for the employer in March 2009. He thought Bergin left some time in 2008. Hackman did not know who the claimant's direct supervisors were when she returned to work in March 2009. He conceded that there may not have been a full time shift supervisor during that time and that the claimant's supervisor at that time may have been someone "deputized" to be supervisor because of cutbacks in the plant.

¶ 24 Hackman testified that he first became aware that the claimant was claiming a work injury when she returned to work in July 2009, when the first report of injury was prepared. He confirmed that the shift supervisor was the appropriate person to receive a work injury report

[5]Hackman testified that workers assigned to multiple lines simultaneously were assigned to the less physically demanding lines.

from an employee and that it was the supervisor's responsibility to fill out a written accident report and send it to plant management. Hackman agreed that it is possible that there has been a work-related injury in the plant where the employee said that he or she gave notice and the supervisor did not follow through.

¶ 25 The employer introduced into evidence the video purportedly depicting a production worker performing her job duties (the video that was reviewed by Dr. Koo). The claimant testified that she watched the video and that it did not accurately represent her job duties. Specifically, the claimant testified that the video showed a production worker overseeing only one line, whereas the claimant might be working two or even three lines at a time. Moreover, she testified that the video did not accurately depict the pace of the job and that she worked at a much faster speed than what was shown in the video.

¶ 26 Arbitrator White denied the claimant's claim. The arbitrator found that the claimant had failed to prove an injury with a manifestation date of March 27, 2009. The arbitrator noted that the claimant "had been having problems at home in spite of being off work for over three months," and she "failed to prove that there is any significance to the date of March 27, 2009." In sum, the arbitrator concluded that the claimant failed to prove that, on March 27, 2009, "both the fact of an injury and the causal relationship of the injury to the [claimant's] employment would become, and in fact did become, plainly apparent to a reasonable person."

¶ 27 The arbitrator also found that the claimant failed to prove that she gave notice to the employer that she was alleging a work-related injury within 45 days of the alleged injury, as required by the Act. In support of this finding, the arbitrator noted that the claimant was "vague about to whom she reported [the alleged injury]," and that she "ultimately conceded that she did

not recall whether she had notified her employer during the three days she worked in March 2009." The arbitrator concluded that "[t]his is not a question of flawed notice, but rather one of no notice at all during the 45 days following the alleged injury."

¶ 28 The claimant appealed the arbitrator's decision to the Commission. The Commission reversed the arbitrator's decision, over Commissioner Lamborn's dissent. The Commission disagreed with the arbitrator's finding that the claimant failed to prove a manifestation date of March 27, 2009. Citing *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607, 612 (1988), the Commission noted that the last date a claimant works prior to having surgery to correct the injury complained of is an appropriate manifestation date. Because the claimant testified that she stopped working on March 27, 2009, so that she could have surgery on her upper extremities, the Commission found that March 27, 2009, was an appropriate manifestation date.

¶ 29 The Commission also found that the claimant gave timely notice of her injury. The Commission disagreed with the arbitrator's finding that the claimant "ultimately conceded" that she did not recall whether she notified a supervisor. The Commission found that the claimant "testified credibly that she provided notice during the three days that she worked in March 2009." Specifically, the Commission noted that, on redirect examination, the claimant "testified with certainty that she told a supervisor during the few days she worked in March 2009 that her hands and arms were bothering her." The Commission further noted that the employer knew that the claimant was claiming an injury date of March 28, 2009 (later amended to March 27, 2009), and that the employer could have called the claimant's supervisor during the hearing to rebut the claimant's testimony concerning notice.

¶ 30 The Commission also found that the claimant established that the repetitive trauma injuries (*i.e.*, her carpal and cubital tunnel syndromes) were causally related to her work activities. In so finding, the Commission stated that it "reli[ed] primarily on the [claimant's] testimony and the job video," which showed a production worker moving her arms and hands at a "near constant pace" while performing her job duties.[6] The Commission also relied on Dr. Coe's causation opinion. The Commission concluded that the claimant proved by a preponderance of the evidence that her repetitive strain injuries caused or contributed to the development of her carpal tunnel and cubital tunnel syndromes. Accordingly, the Commission awarded TTD benefits, PPD benefits, and medical expenses.

¶ 31 Commissioner Lamborn dissented. He found that Arbitrator White's decision was "thorough, well reasoned, and grounded in the evidence," and he would have adopted the arbitrator's decision in its entirety.

¶ 32 The employer sought judicial review of the Commission's decision in the circuit court of Fayette County, which confirmed the Commission's decision. The circuit court found that the Commission gave reasons for making credibility findings contrary to those made by the arbitrator and that the Commission's findings on manifestation date and notice were not against the manifest weight of the evidence. The court noted that the claimant testified that she notified a supervisor of her pain in March 2009 and that testimony was unrebutted. The court also found that the Commission had properly applied *Oscar Mayer*, 176 Ill. App. 3d 607, when determining the manifestation date. This appeal followed.

---

[6]The Commission noted that the claimant testified that she worked at an even faster pace than what was depicted in the video.

¶ 33 ANALYSIS

¶ 34 1. Manifestation Date

¶ 35 The employer argues that the Commission's finding that the claimant proved a work-related repetitive trauma injury with a manifestation date of March 27, 2009, was against the manifest weight of the evidence. We disagree.

¶ 36 To obtain benefits under the Act, a claimant must prove by a preponderance of the evidence that she was injured in an accident which arose out of and in the course of her employment. *Stapleton v. Industrial Comm'n*, 282 Ill. App. 3d 12, 17 (1996). To prove a compensable accident, an employee who suffers a repetitive trauma injury must meet the same standard of proof as an employee who suffers a sudden injury from a discrete event. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). That means, *inter alia*, an employee suffering from a repetitive trauma injury must point to a specific "manifestation date," *i.e.*, a date within the limitations period on which both the injury and its causal link to the employee's work became plainly apparent to a reasonable person. *Id.* at 65; see also *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987).

¶ 37 The standard for determining the manifestation date in a repetitive trauma case is flexible and fact-specific and is guided by considerations of fairness. *Durand*, 224 Ill. 2d at 69, 71 ("The facts must be closely examined in repetitive-injury cases to ensure a fair result for both the faithful employee and the employer's insurance carrier."); see also *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607, 612 (1988); *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 49 (1989). The date on which the employee notices a repetitive trauma injury is not necessarily the manifestation date. *Oscar Mayer & Co.*, 176 Ill. App. 3d at

611; see also *Durand*, 224 Ill. 2d at 68. Instead, the date on which the employee became unable to work, due to physical collapse or medical treatment, helps determine the manifestation date. *Oscar Mayer & Co.*, 176 Ill. App. 3d at 611; see also *Durand*, 224 Ill. 2d at 68-69. "[C]ourts considering various factors have typically set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities." *Durand*, 224 Ill. 2d at 72. A formal diagnosis is not required. *Id.* However, because repetitive trauma injuries are progressive, the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work. *Id.*; see also *Oscar Mayer & Co.*, 176 Ill. App. 3d at 610.

¶ 38 The determination of the manifestation date is a question of fact to be resolved by the Commission (*Durand*, 224 Ill. 2d at 65), and the Commission's decision will not be set aside on appeal unless it is against the manifest weight of the evidence (*Three "D" Discount Store*, 198 Ill. App. 3d at 47). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Dye v. Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10.

¶ 39 Applying these standards, we cannot say that the Commission's finding of a repetitive trauma injury with a manifestation date of March 27, 2009, was against the manifest weight of the evidence. The claimant testified that she began experiencing symptoms in her hands and elbows at work before she sought medical treatment for the problem in March 2009. She claimed that, when she noticed this condition getting worse over time, she notified her supervisor of how much trouble she was having with her hands and elbows and was told to use pain patches.

Dr. Coe testified that the claimant's work activities contributed to her development of carpal and cubital tunnel syndromes in both upper extremities. Although these conditions were diagnosed while the claimant was on medical leave for another condition, she was medically cleared to return to work. When the claimant returned to work on March 25, 2009, she noticed that the problems with her hands became worse. Specifically, she experienced increased numbness, tingling in her hands, and a loss of grip strength while performing her job duties. She worked for three days and left work on March 27, 2009, to have surgery on her upper extremities. Based on this evidence, the Commission could have reasonably concluded that the claimant suffered from a progressive, work-related condition which became worse over time and which began to have a greater impact on her work performance when she returned to work in late March of 2009. Moreover, it is undisputed that the claimant worked from March 25, 2009, through March 27, 2009, and left work on that date in order to have surgery to correct her carpal and cubital tunnel syndromes. This evidence supports the Commission's determination that the claimant proved a manifestation date of March 27, 2009. See, *e.g.*, *Oscar Mayer & Co.*, 176 Ill. App. 3d at 608-11 (Commission's finding that the claimant's date of injury was his last day of work, and the day before he underwent surgery for his condition, was not against the manifest weight of the evidence); *Durand*, 224 Ill. 2d at 72 (the employee's medical treatment, as well as the severity of the injury and how it affects the employee's performance, are relevant in determining when a reasonable person would have plainly recognized the injury and its relation to work).

¶ 40 The employer argues that "the injury here is not compensable because the symptoms manifested while [the] [c]laimant was not working for the [e]mployer," "[the claimant's carpal and cubital tunnel syndromes were] diagnosed while the claimant was not working for the

[e]mployer, and [the] [c]laimant had the first surgery scheduled two days before the alleged accident took place." We disagree. The "fact of the injury" is not synonymous with the "fact of discovery." *Oscar Mayer*, 176 Ill. App. 3d at 611 (citing *Peoria County Belwood Nursing Home*, 115 Ill. 2d at 531). In other words, "the date on which the employee notices a repetitive-trauma injury is not necessarily the manifestation date." *Durand*, 224 Ill. 2d at 68. As noted, for purposes of determining the manifestation date, the dispositive question is when the injury *and its causal link to the employee's work* became plainly apparent to a reasonable person. *Durand*, 224 Ill. 2d at 68. That might occur well after the claimant experiences symptoms and even after his condition has been diagnosed. See, *e.g.*, *Three "D" Discount Store*, 198 Ill. App. 3d at 47-48 (holding that the claimant's carpal tunnel syndrome had a manifestation date of July 10, 1984, even though the claimant began experiencing symptoms six months earlier and was diagnosed with carpal tunnel syndrome in June 1984, where there was no evidence that the claimant's doctors told him his carpal tunnel syndrome was work related prior to July 10, 1984). Here, although the claimant was diagnosed with carpal tunnel syndrome on March 4, 2009, she was cleared to return to work on March 25, 2009, at which time she noticed that her condition had worsened and was having a greater impact on her job performance. There is no evidence that the claimant's doctors told her that her condition was work related before she returned to work. On March 27, 2009, the claimant worked her last day before having surgery to correct the condition. Under the facts presented, the Commission's finding that the claimant's injury manifested itself

on March 27, 2009, was not against the manifest weight of the evidence. An opposite conclusion is not clearly apparent.[7]

¶ 41 2. Notice

¶ 42 The employer argues that the claimant failed to prove by a preponderance of the evidence that she notified her employer of the alleged work-related accident within 45 days of the accident, as required by the Act. We disagree.

¶ 43 Section 6(c) of the Act provides that "[n]otice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident." 820 ILCS 305/6(c) (West 2008). "Notice of the accident shall give the approximate date and place of the accident, if known, and may be given orally or in writing." *Id.* "No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *Id.* This notice requirement applies to employees who suffer repetitive trauma injuries. *White v. Workers' Compensation Comm'n*, 374 Ill. App. 3d 907, 910 (2007). In

[7]The employer repeatedly suggests that the injuries at issue cannot be work related because the medical records establish that the claimant began experiencing hand and elbow symptoms and was diagnosed with carpal and cubital tunnel syndromes after she had been off of work for approximately four months for an unrelated spinal condition. However, the employer cites no authority in support of this argument. Nor does Dr. Koo's report support it. The claimant worked for the employer as a production worker for approximately 17 years, and she testified that she began experiencing hand and elbow symptoms of increasing severity at work before the spring of 2009, which can only mean before she went on medical leave for her spinal condition. Moreover, Dr. Lee's March 13, 2009, medical record notes that the claimant had been having problems with her upper extremities "[f]or the past 2 years." Similarly, a medical form the claimant filled out for Dr. Rudert on March 4, 2009, identified neck pain, back pain, and "arm pain" as her chief complaints and stated that her "problem" had been present for "Approx 2 yrs." This, coupled with Dr. Coe's causation opinion, supports the conclusion that the claimant's carpal and cubital tunnel syndromes could have been work related even though they were diagnosed while the claimant was off work for an unrelated condition.

a repetitive trauma case, the date from which notice must be given is the date when the injury manifests itself. *Id.*

¶ 44 The legislature has mandated a liberal construction on the issue of notice. *S & H Floor Covering, Inc. v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 265 (2007); *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 96 (1994). The findings of the Commission regarding notice will not be disturbed on review unless they are against the manifest weight of the evidence (*S & H Floor Covering*, 373 Ill. App. 3d at 264), *i.e.*, unless the opposite conclusion is "clearly apparent" (*Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992)).

¶ 45 The Commission's conclusion that the claimant established timely notice was not against the manifest weight of the evidence. Although the claimant's testimony regarding notice was rather vague and, at times, self-contradictory, she testified unequivocally on redirect examination that she told one of her supervisors when she returned to work in late March of 2009 that her hands and arms were bothering her while she was doing her job. The Commission chose to credit that testimony over: (1) the claimant's prior statement during cross-examination that she did not tell her employer that her carpal and cubital tunnel syndromes were work related until July 28, 2009; (2) Hackman's testimony that he first became aware that the claimant was claiming a work injury in July 2009, when the first report of injury was prepared; and (3) the claimant's initial statement on redirect that she could not recall whether she gave notice to her employer in March 2009. The Commission might have reasonably found that the claimant's recollection was refreshed on redirect examination. In any event, it is the Commission's province to judge the credibility of the witnesses, resolve any conflicts in the testimony, and draw

reasonable inferences from the evidence presented. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 207 (2003); *W.B. Olson, Inc. v. Illinois Workers' Compensation Comm'n,* 2012 IL App (1st) 113129WC, ¶ 31. Thus, the Commission was entitled to credit the claimant's final testimony on the issue of notice over the other, conflicting testimony.

¶ 46 The employer argues that, in order to satisfy her burden of proving timely notice, the claimant must "be able to state with a degree of certainty the name of the supervisor who took the [accident] report." However, the employer cites no authority in support of this proposition. Nor have we found any. As noted, the legislature has mandated a liberal construction on the issue of notice. *S & H Floor Covering*, 373 Ill. App. 3d at 265. Here, the claimant testified that she gave notice to one of her supervisors some time between March 25, 2009, and March 27, 2009. The employer did not call any of the employees who supervised the claimant during that time period to rebut the claimant's testimony.[8] Given the liberal construction mandated by the legislature, the claimant's testimony was sufficient to establish timely notice even though she was unable to recall the name of the supervisor with whom she spoke.

¶ 47 In sum, given the conflicting evidence on the issue of notice, the Commission's finding that the claimant proved timely notice was not against the manifest weight of the evidence. The opposite conclusion is not "clearly apparent." Accordingly, we affirm the Commission's decision.

---

[8]The employer argues that it could not have called these supervisors to testify during the arbitration hearing because the claimant initially claimed a manifestation date of March 28, 2009, (a date on which she did not work), and amended her claim to reflect a March 27, 2009, manifestation date on the eve of the hearing. However, the employer does not explain why it did not ask for a continuance after the claimant amended her claim so that it could locate and call the employees who supervised the claimant on March 27, 2009.

¶ 48 3. Causation

¶ 49 The employer also argues that Dr. Koo's opinion was more credible than Dr. Coe's opinion because Dr. Koo possessed and reviewed all information relevant to causation, including all of the relevant medical records documenting the claimant's other preexisting medical conditions, whereas Dr. Coe reviewed only a limited portion of the relevant medical records. In making this argument, the employer essentially challenges the Commission's finding that the claimant proved a causal connection between her work activities and her carpal and cubital tunnel syndromes.

¶ 50 To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her ensuing injuries. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A work-related 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, even if the claimant had a preexisting degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that her employment was also a causative factor. *Sisbro*, 207 Ill. 2d at 205; *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). A claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating or accelerating her preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983); *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981); *Swartz*, 359 Ill. App. 3d at 1086.

¶ 51 An employee who alleges injury based on repetitive trauma must "show[] that the injury is work related and not the result of a normal degenerative aging process." *Peoria County*

Belwood Nursing Home, 115 Ill. 2d at 530; *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194 (2005). In repetitive trauma cases, the claimant "generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 477 (1987); see also *Johnson v. Industrial Comm'n*, 89 Ill. 2d 438, 442-43 (1982).

¶ 52 Whether an accident aggravated or accelerated a preexisting condition is a factual question to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 206. 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. *Cassens Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 331 (1994). In resolving disputed issues of fact, including issues related to causation, 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). A reviewing court may not substitute its judgment for that of the Commission on these issues merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence, *i.e.*, only when the opposite conclusion is "clearly apparent." *Swartz*, 359 Ill. App. 3d at 1086. 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). When the evidence is sufficient to support the Commission's causation finding, we must affirm. *Id.*

¶ 53 In finding causation in this case, the Commission relied, in part, on Dr. Coe's causation opinion. Dr. Coe interviewed the claimant and reviewed the medical records relating to the diagnosis and treatment of the claimant's carpal and cubital tunnel syndromes, including the results of the EMG/NCV test, Dr. Rudert's records, and Dr. Lee's records. However, Dr. Coe's report does not indicate that he reviewed any medical records created prior to the initial diagnosis of the claimant's upper extremity problems in March 2009. Thus, it is not clear from Dr. Coe's report whether Dr. Coe was aware of some of the claimant's preexisting medical conditions which were referenced in those earlier medical records, such as arthritis in the small joints of her hands, and the fact that the claimant had received chemotherapy for breast cancer at a young age. Dr. Koo opined that these conditions might have caused or contributed to her carpal and/or cubital tunnel syndromes.[9] Dr. Coe did not expressly rebut these conclusions. As noted, to establish causation in a repetitive trauma case, a claimant must present medical testimony establishing a causal connection between the work performed and claimant's disability (*Nunn*, 157 Ill. App. 3d at 477; *Johnson*, 89 Ill. 2d at 442-43), and must show that the injury is work related and "not the result of a normal degenerative aging process." *Peoria County Belwood Nursing Home*, 115 Ill. 2d at 530. Because the pre-2009 medical records arguably reveal that the claimant suffered from certain degenerative conditions, and because Dr. Koo's report arguably

[9]Specifically, Dr. Koo opined that the arthritis in the claimant's hands "would lead to inflammation of her hands and could very much put her at risk for median neuropathy at her carpal tunnels." Dr. Koo also opined that receiving chemotherapy at a young age "could certainly affect [the claimant's] peripheral nerves at age 69," thereby causing or contributing to her carpal and/or cubital tunnel syndromes.

suggests that the claimant's carpal and cubital tunnel syndromes were caused by some of those conditions, the claimant's causation argument would be stronger if Dr. Coe had acknowledged all of the claimant's preexisting conditions and rebutted Dr. Koo's opinions.

¶ 54 However, there is sufficient evidence in this case to support the Commission's causation finding. Although Dr. Coe's report does not mention all of the preexisting conditions referenced by Dr. Koo, it does reference the claimant's age and smoking habit, the risk factors to which Dr. Koo appeared to assign the greatest weight. Accordingly, Dr. Coe implicitly rejected Dr. Koo's principal opinions regarding the causal effect of the claimant's preexisting health conditions. Moreover, regardless of the causal role played by her preexisting medical conditions, the claimant is entitled to recover if she can show that her employment played *any* causal role in the development of her carpal and cubital tunnel syndromes, even if it merely aggravated or accelerated those medical conditions after they were initially caused by natural degenerative processes. Dr. Coe's opinion arguably makes that showing, regardless of the role played by the claimant's other medical conditions.

¶ 55 Moreover, Dr. Koo's opinion that the claimant's work played no part in her development of her carpal or cubital tunnel syndromes is based in large part on her opinions regarding the physical nature of the claimant's work activities. Dr. Coe formed very different opinions on that issue. After reviewing the claimant's testimony, the video prepared by the employer, and Dr. Coe's report, the Commission rejected Dr. Koo's description of the claimant's work activities. For all these reasons, we cannot say that the Commission's decision to credit Dr. Coe's causation opinions over those of Dr. Koo was against the manifest weight of the evidence.

¶ 56 CONCLUSION

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

¶ 58 Affirmed; cause remanded.