2018 IL App (5th) 170476WC-U

No. 5-17-0476WC

Order filed: October 12, 2018

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DOLLAR GENERAL CORPORATION,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	St. Clair County.
	)	
v.	)	No. 16-MR-332
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMISSION *et al.*	)	Honorable
	)	Stephen P. McGlynn,
(Wayne Wilson, Appellee).	)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The Commission's decision was not against the manifest weight of the evidence where the claimant's injuries arose out of and in the course of employment and the claimant's condition of ill-being was causally related to the workplace accident that aggravated his preexisting condition.

¶ 2 The respondent, Dollar General Corporation (Dollar General), appeals a decision of the circuit court of St. Clair County confirming a decision of the Illinois Workers' Compensation Commission (Commission) awarding the claimant, Wayne Wilson, damages for an injury sustained on August 21, 2014, to his low back.

¶ 3 I. Background

¶ 4 On September 25, 2014, the claimant filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)) seeking benefits for injuries he sustained to his low back on August 21, 2014. The matter proceeded to an expedited arbitration hearing under section 19(b) of the Act (820 ILCS 305/19(b) (West 2012)), at the claimant's request. The following factual recitation was taken from the evidence adduced at the June 10, 2015, and July 22, 2015, arbitration hearings and the record on appeal.

¶ 5 On April 24, 2000, the claimant was unable to get out of bed due to severe pain in his low back and legs. The claimant immediately presented to his primary care physician, Dr. Teera Pittayathikhun, who referred him to Dr. K. Daniel Riew, an orthopedic surgeon. Dr. Riew treated the claimant with anti-inflammatories, narcotics, and two epidural steroid injections.

¶ 6 Shortly thereafter, an MRI of the claimant's lumbar spine demonstrated a prominent disc herniation at L5-Sl, mild central disc protrusion at L4-L5, and disc desiccation at L4-L5 and L5-Sl. Dr. Riew recommended a microlumbar discectomy surgery. Dr. Riew believed the surgery would decrease the claimant's leg pain but would be ineffective in treating his low back pain. Moreover, Dr. Riew stated that it was

unlikely that the claimant would be able to return to his previous employment following surgery.

¶ 7 After the claimant underwent lumbar discectomy surgery in 2000, he reported decreased pain in his left leg but still experienced radiating pain in his right leg down to his calf. Following a subsequent MRI, Dr. Riew was unable to determine the etiology of the right leg symptoms. As such, Dr. Riew recommended an ultrasound scan to rule out deep vein thrombosis.

¶ 8 In August 2000, the claimant underwent a second surgery, which consisted of an evacuation of pseudomeningocele, a second hemilaminotomy at L5-Sl, and an excision of a recurrent disc. On January 2, 2001, during a follow-up visit, the claimant stated that he had experienced left leg pain for roughly two weeks. Based on the claimant's history of altered sensation in his hands, Dr. Riew suspected a herniated disc at LS-S1 with cervical cord compromise. A third MRI showed some mild stenosis at L4-L5 and minimal stenosis at L3-L4 but no scar or recurrent disc herniation. Dr. Riew referred the claimant to Dr. John Metzler, an orthopedic surgeon, for evaluation.

¶ 9 On February 26, 2001, an EMG/NCS, performed by Dr. Metzler, revealed evidence of a "left chronic/old left L5 radiculopathy" and bilateral L5 radicular symptoms. Dr. Metzler recommended bilateral L5 injections.

¶ 10 On March 8, 2001, the claimant presented to Dr. Riew and reported continued bilateral leg pain. Dr. Riew believed the claimant might have permanent nerve damage based on his prolonged symptoms, two previous surgeries, and the "osteophyte v.

osteochondroma" that had been pressing on his nerves for some time. Dr. Riew referred the claimant to Dr. Josh Dowling, a neurosurgeon, for a second opinion.

¶ 11 On March 29, 2001, the claimant presented to Dr. Dowling for an examination. The claimant reported mild but chronic low back and left lower extremity pain due to a work-related fall approximately 10 years earlier when he fell off of a ladder. The claimant reported that he was initially told that he broke his tailbone and had a lumbar strain. At that time, the claimant underwent four weeks of physical therapy and was unable to return to work. Several months later, however, the claimant was able to work a number of physically intensive jobs. The claimant informed Dr. Dowling that he woke up with severe left lower extremity pain in April 2000. Dr. Dowling suggested spinal cord stimulation, pending a psychological evaluation, because he believed the claimant was suffering from failed back surgery.

¶ 12 In October 2001, after the claimant was involved in a motor vehicle accident, he presented to Sparta Community Hospital with facial abrasions and complaints of right-sided neck pain. A cervical spine MRI on April 4, 2002, revealed a mild midline disc protrusion at C5-C6 and a mild left posterolateral disc protrusion at C7-T1.

¶ 13 In April 2007, the claimant reported a history of insomnia and chronic pain in his low back and neck to Dr. Edward Wolff. The claimant revealed that his pain originated form a fall at work but continued after a motor vehicle accident in 2001. The claimant was on social security disability (SSD) at this time. Shortly thereafter, Dr. Wolff noted that the claimant had slight left paralumbar tenderness in his low back, and he displayed a slightly antalgic gait favoring his left lower extremity. A fourth MRI revealed a mild

annular disc bulge of the lumbar spine without disc desiccation at T11-T12 and conus medullaris at T12. Dr. Wolff indicated that the MRI showed postoperative changes from his previous surgeries and a prominent disc bulge at L4-L5 with bilateral neuroforaminal narrowing due to facet hypertrophy and disc bulging. The claimant was referred to Dr. Christopher Heffner, a board-certified neurosurgeon.

¶ 14 On August 9, 2007, the claimant presented to Dr. Heffner. According to the claimant, he was "disabled," and his primary complaint was "[s]evere pain in back down both legs, numbness and tingling in feet and legs, pain in neck and down right arm ***." The claimant reported that his chronic low back pain began in 1999. Dr. Heffner indicated that the claimant's overall situation had not changed dramatically. In particular, Dr. Heffner noted that the claimant's primary complaint was low back pain with some left lower extremity pain along his lateral thigh and calf, however, the claimant did not have weakness or sensory loss. Dr. Heffner diagnosed the claimant with post laminectomy syndrome, back pain, and degenerative disc disease. Dr. Heffner advised the claimant to continue pain management on an as-needed basis.

¶ 15 In October 2007, Dr. Wolff noted that the claimant was receiving SSD benefits for his chronic neck and back pain. According to Dr. Wolff, even sedentary work would be uncomfortable for the claimant. At the claimant's request, Dr. Wolff signed educational loan forgiveness forms based on the claimant's inability to earn a living in any capacity. Dr. Wolff continued to monitor the claimant through February 2010, at which time, the claimant started work to "enhance his sense of self worth."

¶ 16 On April 12, 2010, the claimant presented to Dr. Wolff. The records demonstrated that the claimant had complaints of neck pain and bilateral arm stiffness and pain, but he did not report low back or lower extremity complaints. Shortly thereafter, an MRI revealed osteoarthritis of the cervical spine and an abnormal T2 weighted signal in the central portion of the spinal cord at the C7-T1 level.

¶ 17 In June 2010, the claimant returned to Dr. Heffner for chronic intermittent neck pain and right arm tingling and numbness. The claimant was diagnosed with cervical spondylosis, cervical disc bulging, neck pain, and posterior headaches.

¶ 18 On March 2, 2011, the claimant underwent a cervical spinal fusion. Following surgery, the claimant presented to Dr. Wolff on November 29, 2011, where he reported an exacerbation of low back pain that radiated into his right buttock, posterolateral thigh, and down his right ankle, as well as slight paresthesia and numbness in the right leg. The medical records indicated that the claimant was positive for straight leg raising, that he displayed intact strength in his right foot dorsi-flexors, tenderness in the right buttock and favored his right lower extremity when he walked. Dr. Wolff noted that most of the claimant's chronic pain was due to degenerative disc and joint disease in the low back, which manifested due to left lower extremity radiculopathy. Although Dr. Wolff continued to monitor the claimant's medications, he did not see the claimant until December 7, 2012.

¶ 19 On December 7, 2012, the claimant presented to Dr. Wolff for a routine follow-up visit. The claimant stated that he was managing a Dollar General Store and doing well,

although he complained of some right knee pain that occurred with prolonged standing and walking. The claimant did not request a medication refill.

¶ 20 On August 6, 2014, the claimant presented to Dr. Wolff for a routine follow-up visit where he reported that his chronic neck and back pain was at "baseline" and he "felt well." The claimant was functioning on his current medication and had been promoted to store manager at Dollar General.

¶ 21 On September 1, 2014, the claimant presented to Sparta Community Hospital complaining of severe chronic back pain in his right and left lower lumbar spine, right and left S1 joint, as well as sharp, radiating pain in his sacrum, right hip and thigh. The claimant reported that the onset occurred on August 21, 2014, when "he was turning (pushing water container at work)." The medical records indicated that the claimant had limited range of motion in his back and complained of back pain extending down both of his legs. The claimant was diagnosed with lumbar radiculopathy and sciatica. An x-ray of the claimant's lumbar spine demonstrated moderately severe degenerative disc disease at the lower three lumbar disc levels, prominent bilateral facet joint arthritis at L4-5 and L4-S1 levels, and slight lumbar dextroscoliosis. The claimant was advised to take medication for pain and muscle spasms, limit his lifting, and refrain from strenuous activity.

¶ 22 On September 3, 2014, the claimant presented to Dr. Wolff following his hospital visit and for "workmen's comp." The claimant reported that in late August 2014 he "wrenched his low back lifting at work." As a result, the claimant missed work due to right low back pain that radiated down his right leg. The claimant also claimed that he suffered from other medical conditions, specifically, anxiety, chronic lower back pain,

degenerative disc disease ("low back, neck, fall at work and MVA, left lower extremity radiculopathy"), degenerative joint disease, depression, impaired glucose tolerance, and insomnia. Dr. Wolff believed the claimant had a lumbar strain with sciatica pain. Dr. Wolff recommended the claimant refrain from work for one week, alternate heat and cold wraps, engage in gentle stretching, and take pain medication.

¶ 23 On September 8, 2014, the claimant informed Dr. Wolff that he had radiating pain down his right lower extremity and right low back. According to Dr. Wolff's notes, "Per pt, his WC personnel tried to tell him he did not need the prednisone for this condition and would not cover it; he purchased it and took it but w/o much benefit." Dr. Wolff diagnosed the claimant with chronic low back pain and prescribed hydrocodone and gabapentin. The claimant was advised to walk as tolerated and remain off of work.

¶ 24 On September 11, 2014, the claimant called Dr. Wolff's office to report that his condition had not improved, the medication made him drowsy, and his pain had not subsided. Dr. Wolff ordered an MRI "for debilitating right lower extremity radiculopathy after low back strain." Workers' compensation insurance denied coverage for this MRI.

¶ 25 On September 25, 2014, the claimant filed an application for adjustment of claim for his injuries sustained on August 21, 2014, to his "back, neck, spine and body as a whole" while working at Dollar General. The claimant's written explanation of the injury was incomplete where he stated that he was "moving a container containing bottled water when he[.]"

¶ 26 On September 29, 2014, the claimant presented to Dr. Matthew Gornet following the claimant's attorney's referral. Dr. Gornet noted that the claimant had not worked

since September 2, 2014, and "present[ed] with a chief complaint of low back pain to the right side, right groin, right leg pain down his right leg into his posterior calf," which began on August 21, 2014, when he was moving a large rolling cart, called a Rolltainer. The Rolltainer contained at least 70 cases of 24-pack waters. The claimant "felt pain and it was reported that day."

¶ 27 On physical examination, Dr. Gornet noted that the claimant had decreased sensation to L5 dermatome on the right. After Dr. Gornet reviewed the claimant's prior images, he noted early degenerative scoliosis with facet changes at L3-L4, L4-L5, and L5-S; a loss of disc height at L4-L5 and L5-Sl; a large central left-sided herniation at LS-S1; and a disc herniation central at L4-L5, with mild protrusion at L3-L4. The claimant denied having any problems after surgery with Dr. Riew, except in 2007, when he treated with Dr. Heffner for neck pain.

¶ 28 Dr. Gornet also stated: "[o]f other note, he has worked at Dollar General doing essentially the same job as a manager for over five years full duty with no restrictions." As such, Dr. Gornet believed that the claimant's "current symptoms in their magnitude and severity, particularly the severe right leg pain and weakness, is causally connected to his recent work related injury." In part, Dr. Gornet's opinion was based on the claimant's right-sided radicular symptoms when the claimant did not have significant right-sided symptoms before the August 21, 2014 accident. Dr. Gornet ordered an "emergent" MRI, and the claimant was required to remain off of work.

¶ 29 On September 30, 2014, an MRI of the claimant's lumbar spine demonstrated a broad-based disc protrusion and facet arthropathy, which resulted in moderate lateral

spinal canal stenosis and bilateral moderate to severe foraminal encroachment at L3-L4 and L4-L5; bilateral moderate foramina encroachment due to lateral disc bulge and facet arthropathy at LS-S1; and partial laminectomy and micro discectomy with postsurgical changes at LS-S1. The claimant also had evidence of degeneration, foraminal and lateral recess stenosis on the right at L4-L5, as well as foraminal stenosis at LS-Sl. Dr. Gornet recommended a transforaminal steroid injection near the claimant's facet cyst at L3-L4 on the right due to the claimant's ongoing right-sided pain. Dr. Gornet reiterated that the claimant's condition of ill-being was attributed to the August 21, 2014, work accident.

¶ 30 On February 11, 2015, the claimant underwent an independent medical examination with Dr. Frank Petkovich, a board-certified orthopedic surgeon, at Dollar General's request. Following physical examination, Dr. Petkovich opined that the claimant's degenerative lumbar, thoracic, and cervical disc diseases were present prior to, not aggravated or accelerated by, the August 21, 2014, accident. Dr. Petkovich also stated that the September 30, 2014, MRI did not reveal any acute findings.

¶ 31 The claimant's wife, Renee Wilson (Renee), testified to the following. Renee and the claimant had been married since December 30, 1999. Although the claimant had experienced problems with his back and neck during the entirety of their marriage, his pain was most severe after the August 2014 accident. Following surgery in 2000, the claimant took hydrocodone and was unable to work due to pain, although his back condition appeared to improve over time.

¶ 32 The claimant received SSD benefits from 2002 to 2009 for chronic and unremitting back pain from an injury that occurred when the claimant walked out of his

home, coughed, and fell off of a stair. In 2009, the claimant sought Medicare approval to become unqualified for SSD in order to obtain part-time employment with Dollar General. The claimant appeared "much happier" once SSD benefits ended, and he started working for Dollar General in 2009. Specifically, the claimant's inability to work put great emotional and financial hardship on the family. Renee much preferred "the old Wayne" before the accident.

¶ 33 The claimant testified to the following. At the time of the arbitration hearing, the claimant was 49 years old and had suffered from back problems since 1999, but no specific incident precipitated this low back pain. The claimant claimed that "at that time I don't know what happened. I just woke up and [the pain] was there." Due to the claimant's inability to sit, stand, or walk for more than 10 minutes without pain in 1999, he could not return to work as a laborer because he was unable to move heavy appliances on and off the assembly line.

¶ 34 On April 24, 2000, the claimant presented to Dr. Pittayathikhun who ordered imaging and then referred him to Dr. Riew. After Dr. Riew performed two surgeries on the claimant, the claimant was unable to return to his previous employment. Thus, the claimant received short-term disability but was then awarded SSD benefits from 2002 through 2009. While on SSD, the claimant stayed at home, took care of his dogs, performed exercises to strengthen his back, and lost approximately 75 pounds. The claimant was unhappy during this time because he was not working.

¶ 35 In 2009, the claimant started a part-time position with Dollar General as a sales associate but was then promoted to full-time lead associate within six months. The

physical requirements as lead associate required lifting up to 50 pounds, standing for hours, cleaning, and stocking merchandise. The claimant's SSD benefits ceased following employment, although the claimant was thrilled to be back to work. In 2012, the claimant was promoted to store manager, which made the claimant "fe[el] useful again and part of my community. I loved my store, I loved working."

¶ 36 The claimant explained that on August 21, 2014, he was moving a "caged wheeled rolltainer," containing about 50 cases of bottled water, at Dollar General when he felt a pop in his back. The claimant did not immediately inform Dollar General, but sent an email later that day to his supervisor, Michelle Schubert (Schubert). The claimant's email explained that he felt a pop in his back while working but that he did not think it was serious. The next day, the claimant woke up with back pain radiating into his right leg and pain in his groin. Prior to this accident, the claimant primarily experienced pain radiating into his left leg. The claimant informed Schubert that he needed medical attention, and she advised him to call a hotline nurse through Dollar General. The hotline nurse directed him to go to Sparta Community Hospital for medical treatment. The claimant's last day of work was August 29, 2014.

¶ 37 Following the August 21, 2014, accident, the claimant constantly experienced some degree of pain. In fact, the pain radiating into his right leg had not subsided since his injury. The claimant believed he was able to return because he had learned to cope with the pain, properly manage it with medication, and received treatment from Dr. Pittayathikhun. Despite the "ebbs and flows" associated with his condition, the claimant

was always able to perform his job duties at Dollar General. The claimant was unable to pursue further treatment by Dr. Gornet because Dollar General had refused to pay for it.

¶ 38 Stacy Schott (Schott), the claimant's coworker, testified to the following. Schott started working for Dollar General in 2006. She testified that she never saw the claimant display signs of pain or complain about back problems or other physical ailments at work prior to the August 21, 2014, accident. Following the August 21, 2014, accident, however, the claimant was in severe pain because he bent over when he walked. The claimant informed Schott that he injured himself at work when he attempted to prevent a Rolltainer from falling.

¶ 39 On cross-examination, Schott's written statement, dated September 12, 2014, was entered into evidence and stated the following. Schott did not witness the accident and could not remember if the claimant told her that he hurt his back on August 21, 2014. Schott admitted that she was friends with the claimant and Renee, and that she voluntarily appeared at both hearings to provide supportive testimony.

¶ 40 Dollar General then called Schubert, a district manager of 20 Dollar General stores and the claimant's direct supervisor, to testify. Schubert testified that she had a good working relationship with the claimant and that he was a great manager. The claimant reported his injury to her via email eight days after the injury on August 29, 2014. At that time, the claimant informed Schubert that he was going to the emergency room to seek medical attention. When Schubert viewed in-store video surveillance of the receiving room, she did not see the Rolltainer move on the claimant's date of injury. Schubert was unaware that the claimant had informed the hotline nurse about his injury.

¶ 41 On cross-examination, Schubert could not testify to the claimant's condition following the accident because she had not seen him since before the accident. Schubert acknowledged that the in-store video surveillance did not show the entire receiving room and that it was likely there was more than one Rolltainer of bottled water in the receiving room. In fact, the claimant's injury could have occurred in an area she was unable to see in the video footage. Schubert had not verified whether the claimant had spoken to Dollar General's hotline nurse. She admitted, however, that if the claimant had spoken with the nurse, he had followed the proper reporting policy.

¶ 42 On September 23, 2015, the arbitrator issued a decision finding that the claimant had sustained an injury arising out of and in the course of his employment with Dollar General. The arbitrator also found that the claimant's condition of ill-being was causally related to the August 21, 2014, accident. As such, the arbitrator awarded the claimant temporary total disability (TTD) benefits from September 2, 2014, through May 5, 2015, for prospective medical treatment and past medical services pursuant to sections 8(a) and 8.2 of the Act (820 ILCS 305/8(a), 8.2 (West 2012)). The arbitrator's decision contained two errors. First, the decision indicated that the claimant would receive TTD benefits for 35 1/7 weeks and 37 weeks and, second, an incorrect amount for the claimant's medical bills.

¶ 43 On October 2, 2015, Dollar General filed a motion to recall the arbitrator's decision pursuant to section 19(f) of the Act (820 ILCS 350/19(f) (West 2012)) seeking correction of the above-mentioned errors. On November 3, 2015, the arbitrator issued a corrected decision regarding the claimant's medical bills, but failed to address the

inconsistent calculation of TTD benefits. On November 17, 2015, Dollar General filed a petition for review to the Commission.

¶ 44 On October 21, 2016, the Commission corrected the TTD weeks to 35 1/7 weeks, and then unanimously affirmed and adopted the arbitrator's November 3, 2015, corrected decision. On November 21, 2016, Dollar General sought judicial review in the circuit court of St. Clair County claiming that the Commission's decision was against the manifest weight of the evidence. On November 6, 2017, the court confirmed the decision of the Commission. Dollar General filed a timely notice of appeal.

¶ 45 II. Analysis

¶ 46 Dollar General argues on appeal that the Commission's decision was against the manifest weight of the evidence where the Commission determined that the claimant's injury arose out of and in the course of his employment. Dollar General also argues that the Commission's decision was against the manifest weight of the evidence where the Commission determined that the claimant's condition of ill-being was causally related to the August 21, 2014, accident where (1) the claimant had preexisting low back problems that had worsened due to degenerative disc disease, and (2) his preexisting condition was so deteriorated that his condition of ill-being could have been caused by a "normal daily activity."

¶ 47 The purpose of the Act is to protect employees against risks and hazards that are peculiar to the nature of the work they are employed to do. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling

injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). "Both elements must be present at the time of the claimant's injury in order to justify compensation." *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 25. Generally, the determination of whether an injury arose out of and in the course of one's employment is a question of fact for the Commission and its determination will not be disturbed unless it is against the manifest weight of the evidence. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 19.

¶ 48 In deciding questions of fact, it is the function of the Commission to judge the credibility of the witnesses, determine the weight to be given their testimony, and resolve conflicting medical evidence. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 435 (2011). The relevant inquiry is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other might reach an opposite conclusion. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). We will overturn the Commission's determination on a question of fact only if it is against the manifest weight of the evidence. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315 (2009). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC, ¶ 21.

¶ 49 A. Injury Arose Out of and In the Course of Employment

¶ 50 First, Dollar General argues that the claimant failed to prove by a preponderance of the evidence that he sustained a workplace injury on August 21, 2014. Dollar General primarily contends that the Commission placed undue weight on the claimant's unsupported credibility and inconsistent testimony in reaching its decision. We disagree.

¶ 51 In unanimously affirming and adopting the arbitrator's decision, the Commission relied on the strength of the claimant's credibility and supporting evidence. In particular, the Commission found the claimant was "a very credible witness" who provided "truthful and genuine" testimony, especially where the claimant was motivated to achieve gainful employment to cease SSD benefits. More specifically, the claimant was determined to improve his own sense of self-worth and become a more productive member of the community. Next, the record reflects that the claimant's testimony was particularly compelling regarding his personal accomplishments. The claimant testified that he felt "useful again and part of my community" after he received his promotion as manager. We also note that the claimant's testimony was corroborated by his wife, Renee, who testified that the claimant was "much happier" while working.

¶ 52 Next, Dollar General had multiple failed attempts to challenge the claimant's evidence concerning the August 21, 2014, accident. First, the claimant testified that he sent an email to Schubert on August 21, 2014, and then called Dollar General's hotline nurse to report his injury. Schubert testified, however, that the claimant sent her an email eight days after the injury. The Commission determined that this eight-day delay was not so excessive to suggest that the accident did not occur on August 21, 2014. Moreover,

even though Schubert speculated that the claimant's hotline call would have been documented, Dollar General failed to produce such documents to disprove the claimant's testimony. As such, the Commission's decision was not against the manifest weight of the evidence.

¶ 53 Lastly, sufficient credible evidence supported the Commission's finding. In particular, Schott, the claimant's coworker, observed the claimant bent over and in severe pain at work after the August 21, 2014, accident. Even though Dollar General introduced Schott's later written statement, the Commission resolved the inconsistency in favor of the claimant.

¶ 54 Moreover, the Commission determined that Schubert's testimony was sufficiently diminished where she testified that she had reviewed the video footage in the receiving room at Dollar General but did not observe the claimant's accident. Specifically, Dollar General failed to produce the video at the hearing and testimony demonstrated that the video footage did not show the entire receiving room. Thus, it was undisputed that the accident could have happened off camera. In light of this, the Commission's determination that Schubert's testimony was insufficient to contradict the claimant's credible testimony was not manifestly unreasonable.

¶ 55 Accordingly, sufficient credible evidence supported the Commission's decision that the claimant had proven an injury to his low back that arose out of and in the course of his employment with Dollar General. Based on the foregoing, we cannot say that the Commission's decision to affirm and adopt the arbitrator's finding was against the manifest weight of the evidence.

¶ 56 B. The Claimant's Condition of Ill-Being

¶ 57 Dollar General argues next that the Commission's decision was against the manifest weight of the evidence where it found the claimant's condition of ill-being causally related to the August 21, 2014, accident. Dollar General specifically contends that the record establishes that the claimant had preexisting low back problems and his condition of ill-being was caused by normal degenerative changes. We disagree.

¶ 58 It is the claimant's burden to establish that his current condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc.*, 207 Ill. 2d at 203. "Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission ***." *R&D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 867 (2010). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *R&D Thiel*, 398 Ill. App. 3d at 868. The relevant inquiry is whether the evidence is sufficient to support the Commission's finding, not whether this court might reach an opposite conclusion. *Land & Lakes Co.*, 359 Ill. App. 3d at 592. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992).

¶ 59 In resolving the disputed causation, the Commission considered the changes in the claimant's medical condition following the August 21, 2014, accident. Specifically, 15 days prior to the accident, Dr. Pittayathikhun documented that the claimant "felt well" and that his pain was noted to be at baseline. Although Drs. Gornet and Petkovich

disagreed to the extent of the claimant's injury, the Commission determined Dr. Gornet's testimony to be more persuasive. Dr. Gornet believed that the claimant's current symptoms, particularly the severe right leg pain and weakness, were causally connected to his work-related injury because "he ha[d] worked at Dollar General doing essentially the same job as a manager for over five years full duty with no restrictions" prior to the August 21, 2014, accident. As such, Dr. Gornet concluded that the claimant's condition of ill-being was causally connected to the August 21, 2014, accident.

¶ 60 Unlike Dr. Gornet, Dr. Petkovich opined that the claimant had sprained his back on August 21, 2014, and the sprain did not aggravate or accelerate his preexisting low back condition but was due to degenerative disc disease. The Commission rejected Dr. Petkovich's opinion for multiple reasons. First, to accept this opinion, the claimant's credible and corroborated testimony would have to be discounted. In particular, the claimant's medical records showed a history of lumbar sprains, although the claimant had returned to baseline functioning before the August 2014 accident. In contrast, the claimant's medical records after the August 21, 2014, accident demonstrated that his condition never returned to baseline.

¶ 61 Second, Dr. Petkovich's opinion lacked detail and proper identification regarding the medical records he used in forming his opinion. Specifically, the Commission disagreed with Dr. Petkovich's characterization of the medical records where the claimant had last complained of minimal right lower extremity in November 2011, which was more than two years before the August 21, 2014, accident. Moreover, contrary to Dr. Petkovich's opinion, Dr. Gornet's opinion was based on the claimant's complaint of

right-sided radicular symptoms when the claimant did not have significant right-sided symptoms before the August 21, 2014, accident.

¶ 62 Therefore, as discussed above, the Commission was presented with conflicting evidence and medical opinions on causation. In resolving questions of fact, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence. *City of Springfield*, 388 Ill. App. 3d at 315 (citing *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980)). Here, the Commission thoroughly addressed the conflicting medical opinions in light of the testimony and medical records adduced at the hearing. The record supports this decision. Accordingly, the Commission's decision that the claimant's condition of ill-being was causally connected to the August 21, 2014, accident, rather than degenerative disc disease, was not against the manifest weight of the evidence.

¶ 63 C. Normal Daily Activity Exception

¶ 64 Lastly, Dollar General argues that the Commission's decision was against the manifest weight of the evidence where the claimant's preexisting condition was so deteriorated that the condition of ill-being could have been caused by a "normal daily activity." See *County of Cook v. Industrial Comm'n*, 68 Ill. 2d 24 (1977); *Cook County v. Industrial Comm'n*, 69 Ill. 2d 10 (1977); see also *Greater Peoria Mass Transit District v. Industrial Comm'n*, 81 Ill. 2d 38, 41-42 (1980); and *Hansel & Gretel Day Care Center v. Industrial Comm'n*, 215 Ill. App. 3d 284, 293 (1991). In support, Dollar General asserts that "there was no testimony at the hearing that the petitioner exerted any extraordinary force or excessive force more than he had been doing for the last several years." Thus,

Dollar General urges this court to find the Commission's determination against the manifest weight of the evidence. We disagree.

¶ 65 It is well-settled that causation presents a question of fact subject to review using the manifest-weight standard. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786 (2005). "When an employee with a preexisting condition is injured in the course of his employment, serious questions are raised about the genesis of the injury and the resulting disability." *Sisbro, Inc.*, 207 Ill. 2d at 215. In that event, the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition, or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc.*, 207 Ill. 2d at 215.

¶ 66 To be compensable under the Act, the employee, however, "need only prove that some act or phase of the employment was a causative factor of the resulting injury." *Cook County*, 69 Ill. 2d at 17 (citing *Wirth v. Industrial Comm'n*, 57 Ill. 2d 475, 481 (1971)). Compensation will be denied if one of two factors can be shown, specifically, that the "employee's health has so deteriorated that any normal daily activity is an overexertion, or where it is shown that the activity engaged in presented risks no greater than those to which the general public is exposed." *Cook County*, 69 Ill. 2d at 18; see also *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086-87 (2005). As such, "[i]f there is an adequate basis for finding that an occupational activity aggravated or accelerated a preexisting condition, and, thereby, caused the disability, the Commission's award of compensation must be confirmed." *Sisbro, Inc.*, 207 Ill. 2d at 215. Whether the above factors are present is a question of fact for the Commission. *Cook County*, 69 Ill. 2d at 18.

¶ 67 Here, the record demonstrates that the Commission considered the above-mentioned factors. The evidence, which Dollar General was unable to contradict with video footage and Schubert's testimony, demonstrated that the claimant injured himself when he attempted to prevent a Rolltainer, containing 50 cases of 24 bottled waters, from falling. It was also the claimant's medical records, and the credible testimony of Dr. Gornet, that demonstrated the claimant's condition was not attributable to the degenerative disc disease, especially since the claimant had "worked at Dollar General doing essentially the same job as a manager for over five years full duty with no restrictions" before the August 21, 2014, accident. Therefore, contrary to Dollar General's assertion that the claimant's preexisting condition was so deteriorated that the condition of ill-being could have been caused by a "normal daily activity," the medical evidence prior to and after the accident, coupled with the credible testimonies of the claimant, Renee, and Schott, sufficiently demonstrated that the claimant's current condition of ill-being was caused by August 21, 2014, workplace accident which aggravated his preexisting condition.

¶ 68 Accordingly, the Commission's decision was not against the manifest weight of the evidence where the claimant's injuries arose out of and in the course of employment and his condition of ill-being was causally related to the August 21, 2014, accident that aggravated his preexisting condition.

¶ 69 III. Conclusion

¶ 70 We affirm the circuit court's judgment confirming the decision of the Commission, which affirmed and adopted the arbitrator's decision, and remand to the

Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 71 Affirmed and remanded.