2022 IL App (1st) 210713WC-U

Workers' Compensation
Commission Division
Order Filed: September 23, 2022

No. 1-21-0713WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

GARY MALECKI,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	No. 19 L 050613
	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*,	)	Honorable
	)	Daniel Duffy,
(Waste Management, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* Finding that the decision of the Illinois Workers' Compensation Commission (Commission) which denied the claimant benefits under the Illinois Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2014)) is against the manifest weight of the evidence, we: reversed the judgment of the circuit court which confirmed the Commission's decision; reversed the Commission's decision; and remanded the matter back to the Commission with directions.

¶ 2 The claimant, Gary Malecki, filed the instant appeal from an order of the Circuit Court of Cook County, confirming a decision of the Illinois Workers' Compensation Commission (Commission) which denied him benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)) for repetitive trauma injuries that he alleged that he sustained while working for Waste Management (Waste) and which manifested on July 6, 2016. For the reasons which follow, we: reversed the judgment of the circuit court which confirmed the Commission's decision; reversed the Commission's decision; and remanded the matter to the Commission with directions.

¶ 3 The following recitation of the facts necessary to a disposition of this appeal is taken from the evidence adduced at the arbitration hearing held on October 26, 2017.

¶ 4 The claimant testified that he was employed by Waste as a commercial garbage truck driver and had been so employed for approximately 30 years. His daily duties as a commercial driver consisted of collecting garbage along a 75- to 125-stop route during a 10 to 12-hour workday. His duties required that he hop in and out of his truck over 100 times each day and push and pull various size containers of garbage ranging in weight from 100 to 200 pounds each. He was also required to lift boxes weighing as much as 200 pounds between 5 and 30 times each day. The claimant's description of his job duties was corroborated by his direct supervisor, Paula Zito-Baysinger.

¶ 5 Prior to July 6, 2016, the claimant experienced pain in his lower back radiating down to his right thigh for which he sought treatment from Dr. Neeraj Jain. During the period from January 22, 2008, through April 23, 2016, Dr. Jain ordered and administered 13 injections, 2 nerve blocks, and 4 radiofrequency ablations to relieve the claimant's low back and right thigh pain. Between

January 19, 2008, and November 19, 2015, the claimant underwent 3 MRI scans of the lumbar spine. The January 19, 2008, MRI revealed degenerative disc and facet arthrotrocopy at L4-L5 and L5-S1; small disc protrusions bilaterally at L5-S1, causing narrowing at the neural foramina; moderate narrowing of the right L4-L5 neural foramen; mild narrowing of the left L4-L5 neural foramen; and mild to moderate narrowing of the bilateral L5-S1 neural foramina. An MRI scan of the claimant's lumbar spine taken on February 4, 2010, revealed degenerative changes, spinal stenosis at L4-L5, and multilevel neural foraminal stenosis. A November 11, 2015, MRI scan revealed a grade 1 anterolisithesis at L4-L5, spondylosis changes at L4-L5, mild arterolisthesis, severe spinal and bilateral recess stenosis at L4-L5, and multilevel neural foraminal stenosis. In addition to the care rendered by Dr. Jain, the claimant received chiropractic adjustments from September 30, 2014, through June 23, 2016. None of the claimant's pre-July 6, 2016, medical records reference right foot pain, tingling, or loss of use.

¶ 6 The claimant testified that, when he was midway through his route on July 6, 2016, after dumping two yard containers filled with cardboard, he started to feel his right foot get heavy while walking to his truck. He stated that, as he went further along on his route, he was unable to move his right foot to push the gas and brake pedals on his truck. The claimant completed his work shift and went home where he continued to have difficulty moving his right foot.

¶ 7 According to the claimant, he was off of work on July 7, 2016, and that he called work and was told to come in and fill out an incident report. The claimant testified that he completed an incident report that day with Rich Sarac. Sarac, who, in July 2016, was Waste's district manager at its Stickney facility, testified that he did not fill out any incident report with the claimant. He also testified that the claimant never reported that he suffered a work accident or that he had been

injured.

¶ 8 On July 12, 2016, the claimant was seen by Dr. Nasreen Hamidanti, his primary care physician. The doctor's notes of that visit state that the claimant presented with upper and lower leg pain "that started 3 weeks ago." The claimant reported that the pain radiates to his toes. On examination, Dr. Hamidanti found the claimant tender to palpation at the paralumbar region and upper/outer buttocks. Dr. Hamidanti also noted that the claimant was walking with a limp and had decreased sensation on the lateral leg and dorsum of the right foot and right thigh. The claimant was referred back to Dr. Jain.

¶ 9 On July 14, 2016, the claimant had a diagnostic lumbar discography for recalcitrant back and lower extremity pain. The claimant returned to see Dr. Jain on July 21, 2016, and was referred to Dr. Ashraf Darwish for consultation.

¶ 10 Zito-Baysinger testified that Waste's payroll records reflect that the claimant worked on July 6, 7, and 8, 2016. She stated that she had no recollection of the claimant reporting the need for medical treatment resulting from a work-related accident on any of those 3 days. According to Zito-Baysinger, as the claimant's route manager, she should have been the first person to whom the claimant should have reported a work-related injury. Zito-Baysinger testified that the claimant was on vacation from July 10 through 17, 2016. She stated that she received a voicemail message from the claimant on July 19, 2016, stating that he had personal matters to attend to and would not be at work that day. However, later that day she received a text message from the claimant stating: "I will not be in the rest of the week my right foot is numb can't drive have doctor appointment tomorrow afternoon." On July 22, 2016, Zito-Baysinger sent an e-mail to Sarac referencing the claimant's July 19, 2016, text message and stating: "I did not her anything again about Gary [the

claimant] until the morning of Friday 7/22/16 when Rich Sarcac stated he had heard from Gary [the claimant] who had informed he would not be in to work again for some time due to a medical condition."

¶ 11 John Schwab, Jr., testified that, in July 2016, he was Waste's district operations manager at the Cicero facility where the claimant worked. He testified that he received an Employee Report of Injury form from the claimant on July 25, 2016. The report references an injury to the claimant on July 6, 2016. According to that report, the claimant's "[r]ight leg and foot started to tingle and foot went numb," describing the type of injury as a "[p]inching feeling and shooting pain in the lower back, right leg, and foot." According to that report, the claimant reported his injury to Sarac two weeks after his injury. The report is signed by the claimant and dated July 6, 2016. Schwab testified that he did not believe that the claimant completed the report on July 6, 2016. Schwab signed the report on July 25, 2016. On that same day, Schwab filed a "Workers Compensation – First Report of Injury or Illness" form, noting that the part of the claimant's body that was affected was his right foot and stating that on July 25, 2016, "The EE felt right foot numbness and tingling."

¶ 12 Amy Gallagher, an adjuster with Gallagher Basset Services, testified that she handled workers' compensation claims filed by employees of Waste. She stated that she was assigned to handle the claimant's claim for workers' compensation benefits associated with an injury on July 6, 2016. Gallagher testified that she spoke with the claimant on August 3, 2016, and he told her that, as he was walking to his truck, he felt numbness and tingling down into his right foot. According to Gallagher, from the description that the claimant gave her, he was not performing any work activities at that time.

¶ 13 On August 5, 2016, the claimant was seen by Dr. Darwish. On that date, the claimant

completed a "Patient Assessment" form in which he recorded that his symptoms occurred on July 6, 2016, and that it was a work-related injury. In his notes of that visit, Dr. Darwish recorded that the claimant reported that he had experienced back pain for about two years and had been treated but with minimal relief. The claimant also reported that, on July 6, 2016, he was walking to his truck and all of a sudden had numbness in his right leg, rendering him unable to drive. On examination, Dr. Darwish noted a positive right straight leg test and made an initial diagnosis of spondylolisthesis. Dr. Darwish recorded that the claimant had been working as a garbage truck driver; a job that required repetitive lifting and pushing of heavy objects which can cause multiple back injuries and which contributed to the claimant's current condition. Dr. Darwish's notes of that visit contain the opinion that the claimant "sustained a recent exacerbation of the low back and right lower extremity radiculopathy on 7/6/2016. This occurred while working." At that visit, Dr. Darwish ordered that the claimant undergo an MRI scan.

¶ 14 The claimant returned to see Dr. Darwish on August 25, 2016, after he had the recommended MRI scan. Dr. Darwish reviewed the MRI films, noting a grade two spondylolisthesis. The doctor's notes of that visit reflect that he diagnosed the claimant with right foot drop and recommended a transforaminal lumbar fusion of L4-L5 and L5-S1. On August 31, 2016, Dr. Darwish performed the recommended surgery.

¶ 15 When deposed, Dr. Darwish stated that, in his opinion to a reasonable degree of medical and surgical certainty, the claimant's job duties have some causal connection to the condition for which he was treated. He testified that he was aware that the claimant was experiencing pain and sensory deficits into his right thigh for a long time, but it was not until July 6, 2016, that he had a motor deficit classified as drop foot. Dr. Darwish also opined, to a reasonable degree of medical

and surgical certainty, that the cumulative effects of the claimant's job duties aggravated his longstanding back condition on July 6, 2016, resulting in drop foot.

¶ 16 The claimant continued to treat with Dr. Darwish postoperatively. He was referred for a course of physical therapy at ATI Physical Therapy where he had an initial evaluation on December 6, 2016. According to ATI's records, the claimant reported that on "July 15th or 16th 2016 *** [his] legs went numb after lifting items into truck; he opened door and felt numbness in legs."

¶ 17 The claimant was evaluated on January 19, 2017, by Dr. Alexander Ghanayem at the request of Waste. According to Dr. Ghanayem, the claimant appears to have developed symptoms related to stenosis and spondylolisthesis while at work which is distinct from being related to his work. Dr. Ghanayem noted that, when the claimant developed his symptoms, he was simply walking back to his truck. And, although he was in agreement with the nature of the medical care which the claimant received, he did not believe that it was related to a work injury in July 2016. Dr. Ghanayem found the origins of the claimant's back problem to be at least six years old and a progressive issue "that finally caught up with him while he happened to be at work." According to Dr. Ghanayem, he reviewed the claimant's MRIs from 2010, 2015, and 2016. He found the claimant's August 2016 MRI to be identical to the one taken in November 2015. Dr. Ghanayem offered no opinion as to whether the claimant's job duties contributed to his condition.

¶ 18 On August 24, 2017, Dr. Darwish released the claimant from care, finding that he had reached maximum medical improvement. Dr. Darwish imposed permanent restrictions on the claimant of no lifting of over 20 pounds and no repetitive bending or twisting. He opined that the claimant would not be able to return to his previous position as a garbage truck driver.

¶ 19 The claimant admitted that, prior to July 6, 2016, his back was sore and that he would feel pain in his lower back, radiating down to his right thigh. However, he testified that, prior to July 6, 2016, he never experienced pain in his right foot, loss of sensation in his right foot, or loss of motor function in his right foot. According to the claimant, prior to July 6, 2016, he was able to perform his regular duties as a commercial garbage truck driver.

¶ 20 Following an arbitration hearing held on October 26, 2017, pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2016)), the arbitrator issued a written decision on September 10, 2018, finding that the claimant failed to prove: (1) that he sustained an accidental injury which arose out of and in the course of his employment with Waste; (2) that he gave Waste notice of his injury; or (3) that his current condition of ill-being is causally related to a work accident. The arbitrator specifically found that the claimant was not credible.

¶ 21 On the issue of accident or manifestation of a repetitive trauma, the arbitrator supported his finding that the claimant failed in his proofs by reference to the following facts: (1) the claimant was unable to provide any specific testimony relating to the actual route or activities he was engaged in on July 6, 2016, when he noticed an increase in symptoms; (2) the claimant testified that he did not work on July 7, 2016, and reported his injury on that date, whereas Waste's records show that the claimant worked on July 7, 2016, and that the claimant did not report "any medical condition" until July 19, 2016; and (3) the claimant did not demonstrate any increased risk of harm to which he was exposed which contributed to his symptoms while walking to his truck. The arbitrator also found that the manifestation date of any repetitive trauma cannot be identified.

¶ 22 On the issue of notice, the arbitrator found that the claimant was not credible as to "his reporting of the alleged manifestation." He noted that the claimant testified that he reported his

condition to Sarac on July 7, 2016; whereas, Sarac denied that he received any report of injury on that date and Zito-Baysinger testified that the claimant never reported any injury to her on either July 7 or 8, 2016. The arbitrator also noted that Schwab testified that he received a report of injury on July 25, 2016, that was signed by the claimant, bearing a date of July 6, 2016.

¶ 23 On the question of causal connection between the claimant's employment and his condition of ill-being, the arbitrator held that the evidence did not support a finding of accident, and as a consequence, the claimant's condition of ill-being is not causally related to his employment. The arbitrator also supported his finding of no causal connection with Dr. Ghanayem's opinion.

¶ 24 Based on findings on the issues of accident, causation, and notice, the arbitrator denied the claimant benefits pursuant to the Act.

¶ 25 The claimant filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On September 18, 2019, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision.

¶ 26 The claimant sought a judicial review of the Commission's decision in the circuit court of Cook County. On May 21, 2021, the circuit court confirmed the Commission's decision, and this appeal followed.

¶ 27 The claimant argues that the Commission's findings on accident, causal connection, and notice are against the manifest weight of the evidence. He asserts that his unrebutted description of his job duties and his work activities on July 6, 2016, coupled with the opinions of Dr. Darwish establish that he suffered repetitive trauma which manifested on July 6, 2016. In support of the Commission's decision, Waste argues that the claimant failed to make a connection between his work activities and his condition of ill-being. Rather, he established only that the event which

caused the claimant to seek medical treatment occurred while he was walking. Addressing Dr. Darwish's causation opinions, Waste contends that Dr. Darwish never testified as to the element of the claimant's job that caused his condition.

¶ 28 Compensable injuries under the Act may arise from a single identifiable event or be caused gradually by repetitive trauma. *Edward Hines Precision Components v. Industrial Comm'n,* 356 Ill. App. 3d 186, 194 (2005). In this case, the claimant sought recovery on the basis of repetitive trauma as evidenced by his application for adjustment of claim which specifically states that his claim was for "REPETITIVE TRAUMA IN THE COURSE OF EMPLOYMENT" and which identified July 6, 2016, as the date of manifestation.

¶ 29 In a repetitive-trauma case, the claimant must prove by a preponderance of the evidence all elements necessary to justify an award under the Act. *Quality Wood Products v. Industrial Comm'n,* 97 Ill. 2d 417, 423 (1983). Where a repetitive-trauma injury is involved, the claimant must allege and prove a single definable accident date giving rise to his claim in order to establish that his injuries arose out of and in the course of his employment. *Durand v. Industrial Comm'n,* 224 Ill. 2d 53, 67 (2006); *White v. Illinois Workers' Compensation Comm'n,* 374 Ill. App. 3d 907, 910 (2007). The date of the accident is the date when the injury manifest itself. *White,* 374 Ill. App. 3d at 910. The manifestation date is the date on which both the fact of the injury and its causal relationship to the claimant's employment would have become plainly apparent to a reasonable person. *Peoria County Bellwood Nursing Home v. Industrial Comm'n,* 115 Ill. 2d 524, 531 (1987).

¶ 30 On the issues of accident and causation, the claimant asserts that his claim was one of repetitive trauma caused by the physical requirements of his job as a commercial garbage truck driver and resulting in a condition of drop foot which required surgery. He contends that his

unrebutted testimony established that his job duties consisted of collecting garbage along a 75- to 125-stop route during a 10- to 12-hour workday which required him to hop in and out of his truck over 100 times each day and push and pull various size containers of garbage ranging in weight from 100 to 200 pounds each. He was also required to lift boxes weighing as much as 200 pounds between five and 30 times each day. He notes that his description of his job duties was corroborated by his direct supervisor, Zito-Baysinger. The claimant did not dispute the fact that he had a long history of pain in his lower back radiating down to his right thigh for which he sought treatment during the period from January 22, 2008, through April 23, 2016. Relying on the opinion of his treating physician, Dr. Darwish, the claimant argues that he established that his job duties can cause multiple back injuries and that those duties contributed to the condition for which he was treated. Further, Dr. Darwish's notes of the claimant's visit on August 5, 2016, contains the doctor's opinion that the claimant "sustained a recent exacerbation of the low back and right lower extremity radiculopathy on 7/6/2016. This occurred while working."

¶ 31 In his decision, which the Commission affirmed and adopted, the arbitrator found that the claimant was unable to provide any specific testimony relating to the actual route or activities he was engaged in on July 6, 2016, when he noticed an increase in symptoms. Contrary to this finding, the record reflects that the claimant testified to his daily duties as a garbage truck driver and specifically stated that, on July 6, 2016, when midway through his route and after dumping two yard containers filled with cardboard, he started to feel his right foot get heavy as he walked to his truck. He stated that, as he went further along on his route, he was unable to move his right foot to push the gas and brake pedals on his truck. Based upon the claimant's testimony, we conclude that the arbitrator's finding that the claimant failed to provide any specific testimony relating to the

actual route or activities he was engaged in on July 6, 2016, when he noticed an increase in symptoms is not only against the manifest weight of the evidence, is contrary to the only evidence in the record on these issues.

¶ 32 In support of his finding that the claimant failed to prove that he sustained an accidental injury which arouse out of and in the course of his employment with Waste, the arbitrator also relied upon the fact that the claimant testified that he did not work on July 7, 2016, and reported his injury on that date; whereas, Waste's records show that the claimant worked on July 7, 2016, and did not report "any medical condition" until July 19, 2016. Although we acknowledge the discrepancy, we find no relevance to the issue of accident whether the claimant worked on July 7, 2016, or the fact that he did not report a medical condition until July 19, 2016.

¶ 33 The arbitrator also relied upon the fact that the claimant did not demonstrate any increased risk of harm to which he was exposed which contributed to his symptoms while walking to his truck. The finding is based upon the incorrect assumption that walking was a claimed contributing cause of the claimant's symptoms. The claimant never asserted that his symptoms were caused or contributed to by walking to his truck. Rather, he testified that he started to feel his right foot get heavy while walking to his truck after dumping two yard containers filled with cardboard. As noted earlier, Dr. Darwish recorded in his notes that the claimant had been working as a garbage truck driver; a job that required repetitive lifting and pushing of heavy objects which can cause multiple back injuries and which contributed to the claimant's current condition. When deposed, Dr. Darwish testified that, to a reasonable degree of medical and surgical certainty, the claimant's job duties have some causal connection to the condition for which he was treated. And although he was aware that the claimant was experiencing pain and sensory deficits into his right thigh for a

long time, Dr. Darwish found that it was not until July 6, 2016, that the claimant had a motor deficit classified as drop foot. Dr. Darwish also opined, to a reasonable degree of medical and surgical certainty, that the cumulative effects of the claimant's job duties aggravated his longstanding back condition on July 6, 2016, resulting in drop foot.

¶ 34 Waste calls our attention to the opinion of Dr. Ghanayem that, when the claimant developed his symptoms, he was simply walking back to his truck and that he did not believe that the medical treatment which the claimant received was related to a work injury in July 2016. As the claimant correctly notes, however, Dr. Ghanayem offered no opinion as to whether the claimant's job duties contributed to his condition.

¶ 35 Finally, the arbitrator found that the claimant's credibility was "challenged significantly by the inconsistencies in his testimony and the evidence that was presented by *** [Waste]." However, the only testimony of the claimant that was inconsistent with Waste's evidence related to the date and to whom he gave notice of his injuries and whether he worked on July 7 and 8 of 2016. The "inconsistencies" are relevant to the issue of notice, not accident.

¶ 36 A claimant need only show that some act or phase of his employment was a causative factor in the resulting injury. *O'Fallon School District No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413, 417 (2000). Repetitive trauma cases typically require medical opinion evidence to establish a causal connection between the claimant's injury and his employment. *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 477 (1987). In this case, the claimant provided that evidence in the form of Dr. Darwish's opinion that the claimant's job duties on July 6, 2016, aggravated his longstanding back condition, resulting in drop foot. Although Dr. Ghanayem believed the origins of the claimant's back problem to be at least six years old and a progressive issue "that finally caught up

with him while he happened to be at work," he offered no opinion as to whether the claimant's work duties on July 6, 2016, aggravated his longstanding back condition. Although the arbitrator found that the claimant lacked credibility, he never found that the claimant did not develop right foot symptoms on July 6, 2016, which resulted in foot drop.

¶ 37 To obtain compensation under the Act, the claimant must establish by a preponderance of the evidence that he suffered a disabling injury that arose out of and in the course of his employment. *Land & Lakes Co. v. Industrial Comm'n,* 359 Ill. App. 3d 582, 591–92 (2005). Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n,* 101 Ill. 2d 236, 244 (1984). For the Commission's resolution of a fact question to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Tolbert v. Illinois Workers' Compensation Comm'n,* 2014 IL App (4th) 130523WC, ¶ 39. The foregoing analysis leads us to conclude that the arbitrator's finding, which the Commission adopted, that the claimant failed to prove that he sustained an accidental injury which arouse out of and in the course of his employment with Waste, is against the manifest weight of the evidence, as an opposite conclusion to that reached by the Commission is clearly apparent.

¶ 38 In his decision which the Commission adopted, the arbitrator also found that, as the evidence did not support a finding of accident, the claimant's condition of ill-being is not related to his work activities. Having rejected the Commission's finding on the issue of accident, we also reject its reliance on that finding as it relates to the issue of causation. However, the Commission's finding that the claimant failed to prove that his current condition of ill-being is causally related to

his employment is also supported by the Commission's reliance upon Dr. Ghanayem's causation opinion and the fact that the claimant had low-back problems for at least six years prior to July 6, 2016. The Commission again found that the claimant failed to state what he was doing before his symptoms developed or whether he was working his route. As noted earlier, the record belies the later finding. The claimant testified that, when he was midway through his route on July 6, 2016, and after dumping two yard containers filled with cardboard, he started to feel his right foot get heavy while walking to his truck. He stated that, as he went further along on his route, he was unable to move his right foot to push the gas and brake pedals on his truck.

¶ 39 We also find that Dr. Ghanayem's causation opinion is insufficient to support a finding that the claimant failed to prove that his condition of right foot drop is causally related to his employment. Dr. Ghanayem's opinion that the claimant's condition was progressive in nature and not work related appears to be based on the proposition that the claimant's symptoms developed when "[h]e was simply walking back to his truck." The claimant readily admits that he suffered from, and was treated for, back pain for many years before July 6, 2016. His pre-July 6, 2016, medical records establish that he suffered from anterolisithesis at L4-L5, spondylosis changes at L4-L5, mild arterolisthesis, severe spinal and bilateral lateral recess stenosis at L4-L5, and multilevel neural foraminal stenosis. Waste's brief references pre-July 6, 2016, medical records which show that the claimant had discussions with his healthcare providers concerning his back pain and its relation to his duties as a garbage truck driver. As the claimant notes, however, there are no medical records showing that he was treated for motor deficits in his right foot before July 6, 2016. It was not until August 25, 2016, that the claimant was diagnosed as suffering from right foot drop, the condition for which Dr. Darwish recommended surgery. On August 31, 2016, the

claimant underwent a transforaminal lumbar fusion of L4-L5 and L5-S1 which was performed by Dr. Darwish, and Dr. Ghanayem agreed with the nature of the claimant's medical care. When deposed, Dr. Darwish testified that it was not until July 6, 2016, that the claimant had a motor deficit classified as foot drop, and he opined, to a reasonable degree of medical and surgical certainty, that the cumulative effects of the claimant's job duties aggravated his longstanding back condition on July 6, 2016, resulting in drop foot. Although Dr. Ghanayem found the origins of the claimant's back problem to be at least 6 years old and progressive in nature, he never offered an opinion as to whether the claimant's job duties on July 6, 2016, contributed to his condition of right foot drop. He opined only that the claimant's right foot symptoms developed when "[h]e was simply walking back to his truck." The claimant never contended that the act of walking back to his truck caused or contributed to his condition of foot drop, nor did he deny that his low back condition was long standing and progressive. He did claim, however, that his work activities on July 6, 2016, exacerbated his condition resulting in right foot drop. Dr. Darwish's causation opined supports that claim, and Dr. Ghanayem never addressed the issue of exacerbation.

¶ 40 For these reasons, we conclude that the Commission's finding that the claimant failed to prove a causal connection between his condition of ill-being and his employment by Waste as a garbage truck driver is against the manifest weight of the evidence.

¶ 41 On the issue of notice, we find that the Commission's determination that the claimant did not provide Waste with timely notice is also against the manifest weight of the evidence. Accepting as we must the Commission's finding that the claimant was not credible when he testified that he did not work on July 7, 2016, and that he reported his injury to Sarac on that day, the fact remains that Schwab, Waste's district operations manager at the Cicero facility in July 2016, testified that,

on July 25, 2016, the claimant gave him an Employee Report of Injury form, referencing a July 6, 2016, injury to the claimant and describing a pinching feeling and shooting pain in the claimant's lower back, right leg, and foot. We note also that Amy Gallagher, an adjuster with Gallagher Basset Services, testified that she was assigned to handle the claimant's claim for workers' compensation benefits associated with an injury on July 6, 2016, and that she spoke to the claimant about his claim on August 3, 2016.

¶ 42 Section 305/6(c) of the Act provides that "[n]otice of the accident shall be given to the employer as soon as practical, but not later than 45 days after the accident." 820 ILCS 305/6(c) (West 2014). The question of when, or if, a claimant gave notice of a workplace accident to the employer is one of fact to be resolved by the Commission, and its determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 95 (1994).

¶ 43 In this case, there is no disputing the fact that the claimant gave notice if his July 6, 2016, injury at the very latest on July 25, 2016, when he gave the completed Employee Report of Injury form to Schwab; a date well within the 45-day period provided in section 305/6(c) of the Act.

¶ 44 Finally, we note that in its brief Waste appears to have made an argument that the claimant's action is time barred. Although it does not appear that Waste defended this action on that basis, we will, nevertheless, address the issue.

¶ 45 Section 6(d) of the Act provides that an injured employee must file a workers' compensation claim "within 3 years after the date of the accident." 820 ILCS 305/6(d) (West 2014). An employee suffering from a repetitive-trauma injury must point to 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. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 65 (2006).

¶ 46 Waste argues that the claimant was on notice that his back condition was work related when he discussed his condition and his work duties with his health care providers in 2008, 2010, 2011, and 2013. It contends that the causal connection between the claimant's work duties and his condition of low back pain was plainly apparent to a reasonable person at that time. Waste concludes, therefore, that the claimant was "on notice that his backpain was actually manifesting since 2008 which would bar him from recovery under section 6(d) of the Act."

¶ 47 The claimant argues that this case involves the aggravation of preexisting work-related conditions of spondylolisthesis and foraminal stenosis, resulting in drop foot on July 6, 2016. He notes that there is no evidence that he experienced any motor deficits in his right foot prior to July 6, 2016, and he testified that, prior to developing drop foot, he was always able to perform his work duties with the pain in his back and right thigh. The claimant contends that the development of drop foot rendered him unable to work and fixed the manifestation date. We agree with the claimant.

¶ 48 "[B]ecause 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.* at 72. As the claimant correctly argues, this is not a simple case of work-related back pain as Waste suggests. It is a case involving back conditions which are arguably the result of repetitive lifting and moving of heavy objects while working that progressed to a right foot motor deficit which required surgery and which Dr. Darwish testified prevents the claimant from returning to his previous position of commercial garbage truck driver. As the

claimant argues, there is no evidence that he experienced any motor deficits in his right foot prior to July 6, 2016. We believe, therefore, that July 6, 2016, is an appropriate manifestation date. The claimant filed his application for adjustment of claim in this case on October 7, 2016, well within the three-year limitation period set forth in section 6(d) of the Act.

¶ 49 We are reluctant to overturn factual finding of the Commission, but we will not hesitate to do so when, as in this case, the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion. *Dye v. Illinois Workers' Compensation Comm'n,* 2012 IL App (3d) 110907WC, ¶ 10. Having concluded that the Commission's findings that claimant failed to prove that he sustained an accidental injury which arouse out of and in the course of his employment with Waste, that he gave Waste notice of his injury, or that his current condition of ill-being is causally related to a work accident are against the manifest weight of the evidence, we reverse the judgment of the circuit court which confirmed the Commission's decision and reverse the Commission's decision. Based upon its findings as to accident, causation, and notice, the Commission denied the claimant benefits under the Act and, as a consequence, failed to address the contested issues of temporary total disability (TTD), maintenance, and recoverable medical expenses. We, therefore, remand this matter to the Commission with directions to enter a decision: finding that the claimant established that he sustained repetitive trauma injuries which manifested on July 6, 2016, that his current condition of ill-being is causally related to his employment with Waste as a commercial garbage truck driver, and that he gave Waste timely notice of his work-related injuries; and address the issues of the claimant's entitlement to TTD benefits, maintenance benefits, permanent disability benefits, and an award for reasonable and necessary medical expenses.

¶ 50 For the reasons stated: the judgment of the circuit court which confirmed the Commission's decision be reversed; the Commission's decision be reversed; and the matter remanded to the Commission with directions to enter a decision: finding that the claimant established that he sustained repetitive trauma injuries which manifested on July 6, 2016, that his current condition of ill-being is causally related to his employment with Waste as a garbage truck driver, and that he gave Waste timely notice of his work-related injuries; and address the issues of the claimant's entitlement to TTD benefits, maintenance benefits, permanent disability benefits, and an award for reasonable and necessary medical expenses.

¶ 51 Circuit Court reversed,
Commission reversed and cause remanded with directions.