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2024 IL App (1st) 230993WC-U

Order filed March 1, 2024

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT  
WORKERS' COMPENSATION COMMISSION DIVISION

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WALTER KOHUT,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 1-23-0993WC
	)	Circuit No. 22 L 50214
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, <i>et al.</i> , (Bakers Square,	)	James M. McGing,
Appellees.)	)	Judge, Presiding.

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PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Hoffman, Mullen, Cavanagh, and Barberis concurred in the judgment.

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**ORDER**

- ¶ 1 (1) The Commission correctly held that the law of the case doctrine barred the claimant from arguing that his current shoulder condition is causally related to his work accident; (2) the Commission's finding that the claimant failed to prove that the current condition of ill-being in his right shoulder was casually related to his work accident was not against the manifest weight of the evidence; and (3) the Commission's finding that the claimant failed to demonstrate a material increase in his disability since the 2015 arbitration hearing was not against the manifest weight of the evidence.

¶ 2 The claimant, Walter Kohut, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for injuries to his neck, back, right knee, right ankle and right shoulder that he sustained on August 21, 2008, while he was employed by respondent Bakers Square (employer). A hearing on the claimant's petition was held before an arbitrator on June 23, 2015. The employer stipulated that the claimant had sustained an accidental injury arising out of and in the course of his employment, but contested causation and other issues.

¶ 3 The arbitrator found that the claimant had failed to prove that the current conditions of ill-being in his neck, back, right knee and right ankle were causally connected to the work accident. The arbitrator found that the claimant's current condition of ill-being in his right shoulder was "partially" causally related to the work injury. However, the arbitrator found that a labral tear in the claimant's right shoulder had occurred after the work accident and was not causally connected to the work injury. The arbitrator awarded the claimant benefits for his right shoulder injury, including permanent partial disability (PPD) to the extent of 40% loss of use of his right arm.

¶ 4 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission modified the arbitrator's PPD award from 40% loss of use of the right arm to 20.25 % loss of use of the man as a whole, and affirmed and adopted the arbitrator's decision in all other respects. The Commission's decision was affirmed by the circuit court and by our appellate court.

¶ 5 On September 6, 2018, the claimant filed a petition for additional medical treatments for his right shoulder under section 8(a) of the Act (820 ILCS 305(8)(a) (West 2018), and a petition for an increase in his disability under section 19(h) of the Act (820 ILCS 305/19(h) (West 2018).

Two evidentiary hearings were held before the Commission. The claimant testified at the hearings and presented evidence depositions of his treating physician and a vocational expert.

¶ 6 The Commission denied the claimant's petitions. The Commission held that the law of the case doctrine barred the claimant from relitigating the Commission's prior finding that the labral tear in the claimant's right shoulder is not causally related to his work accident. The Commission further found that the claimant had failed to establish a material increase in his disability since the 2015 arbitration hearing.

¶ 7 The claimant appealed the Commission's decision to the circuit court of Cook County, which confirmed the Commission's ruling.

¶ 8 This appeal followed.

¶ 9 **BACKGROUND**

¶ 10 The claimant worked for the employer as a cook. On August 21, 2008, three weeks after he began working for the employer, the claimant slipped and fell while performing his job duties. He sustained injuries during the fall, including an injury to his right shoulder.

¶ 11 On March 24, 2009, Dr. Gregory Primus performed arthroscopic surgery to repair a SLAP tear in the claimant's right shoulder. A suture anchor was inserted into the area of the tear. Dr. Primus noted that the claimant had fraying along the superior labrum with partial detachment of the biceps anchors and mild irritation of the rotator cuff. He diagnosed right shoulder impingement and superior labral lesion. On May 26, 2009, Dr. Primus released the claimant to sedentary work with ten-pound restrictions and a planned fully-duty release in three months.

¶ 12 On July 1, 2009, the employer offered the claimant a job within his work restrictions. The claimant did not accept the offer.

¶ 13 On August 26, 2009, the claimant saw Dr. Joseph Thometz, an orthopedic surgeon. The claimant reporting experiencing neck pain with posterior radiating pain into his head, diffuse right shoulder pain radiating into his neck, and intermittent numbness, tingling and weakness in his right hand. Dr. Thometz opined that the claimant was not capable of regular work. Dr. Thometz ordered a right shoulder MR arthrogram, which showed mild fraying along the anterior distal bursal surface of the supraspinatus, and subscapularis tendinosis, but no labral tears.

¶ 14 Dr. Guido Marra, an orthopedic surgeon who served as the employer's independent medical examiner, examined the claimant on January 26, 2010. Dr. Marra found that the claimant had a profound loss of motion in his shoulder. However, Dr. Marra opined that the latest MRI did not show any tearing of the rotator cuff or labrum. He further opined that the claimant could return to work with lifting restrictions of five pounds.

¶ 15 Another MR arthrogram was performed on December 5, 2013. The radiologist interpreted the MRI as showing contrast material extending from the insertion of the biceps anchor posteriorly through the superior labrum to the 2 o'clock position compatible with a large SLAP tear of the glenoid labrum.

¶ 16 After reviewing the December 5, 2013, MR arthrogram, Dr. Thometz opined that it showed abnormalities in the superior labrum suggestive of a superior labral tear.

¶ 17 Dr. Marra also reviewed the December 5, 2013, MR arthrogram. On April 16, 2014, Dr. Marra opined that the scan did not show evidence of a SLAP tear or a recurrent rotator cuff tear, and it revealed no structural lesions that could account for the claimant's complaints. Dr. Marra noted that the December 5, 2013, MR arthrogram showed a lesion extending through the superior labrum to the 2 o'clock position. He explained that SLAP lesions are diagnosed from the 11 o'clock to the 1 o'clock region of the labrum, not at the two o'clock region, because the latter is

outside the region where the biceps tendon inserts into the shoulder.

¶ 18 Dr. Marra further noted that the radiologist had concluded that the SLAP tear shown in the December 5, 2013, MR arthrogram was not located in the posterior superior quadrant of the labrum, which was the site of the March 2009 SLAP repair and placement of the suture anchor. Rather, the radiologist found that the current labral tear was in the *anterior* superior quadrant. Dr. Marra opined that the anterior superior quadrant was outside the area where SLAP tears occur. He opined that SLAP tears are properly diagnosed in the posterior superior quadrant. For that reason, and because current labral tear was not located in the area of the anchor suture replacement, Dr. Marra opined that the labral tear shown in the December 5, 2013, MR arthrogram was a new tear that was not causally connected to the claimant's work injury.

¶ 19 The arbitrator credited Dr. Marra's opinion over Dr. Thometz's opinion. The arbitrator found that Dr. Thometz's opinions were not consistent with the March 24, 2009, surgical report and the December 5, 2013, MR arthrogram.

¶ 20 The arbitrator found that the claimant's condition of ill-being in his right shoulder was "partially" causally related to the work injury. However, the arbitrator found that a labral tear in the claimant's right shoulder had occurred after the work accident and was not causally connected to the work injury. The arbitrator further found that the claimant had failed to prove that the current conditions of ill-being in his neck, back, right knee and right ankle were causally connected to the work accident.

¶ 21 The arbitrator awarded the claimant temporary total disability (TTD) benefits for a period of 45 weeks and PPD to the extent of 40% loss of use of his right arm. The arbitrator further awarded the claimant medical expenses for treatment of his cervical and lumbar spine through December 31, 2008, and for treatment of his right shoulder through April 16, 2014 (the

date Dr. Marra opined that the labral tear was not causally related to the claimant's work injury).

The arbitrator declined to award prospective medical care relating to those injuries.

¶ 22 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission modified the arbitrator's PPD award from 40% loss of use of the right arm to 20.25 % loss of use of the man as a whole. The Commission affirmed and adopted the arbitrator's decision in all other respects.

¶ 23 The claimant appealed the Commission's decision to the circuit court of Cook County, which confirmed the Commission's ruling.

¶ 24 The claimant appealed the circuit court's opinion to our appellate court. We affirmed the Commission's decision.

¶ 25 While his appeal was pending, the claimant filed a petition for additional medical treatments for his right shoulder under section 8(a) of the Act and a petition for an increase in his disability under section 19(h) of the Act. Evidentiary hearings on the claimant's petitions were held before the Commission on October 10, 2019, and June 16, 2021.

¶ 26 During the October 10, 2019, hearing, the claimant wore a sling on his right arm and braces on his back and knees. He testified that, since the June 23, 2015, arbitration hearing, he continued to treat with Dr. Thometz and continued to seek approval for the surgery to his right shoulder that had been recommended by Dr. Thometz prior to the June 23, 2015, hearing. The claimant stated that he had also seen physicians in relation to his application for social security disability insurance benefits, and he was declared disabled by the Social Security Administration on June 5, 2019.

¶ 27 The claimant testified that the range of motion of his right shoulder had been getting progressively worse. He claimed to have no strength in his right hand, arm, and shoulder, which

affected his neck and impacted his work-related activities. He described in detail the difficulties he had in dressing himself.

¶ 28 At the second evidentiary hearing on June 16, 2021, the claimant testified that his work-related injuries had continued to worsen since the October 10, 2019, hearing. He stated that his pain had increased and that his range of motion had decreased in his neck, back, right shoulder, and right knee. He was not receiving medical treatment at the time due to Covid-19 and the lack of authorization from the employer.

¶ 29 The claimant filed *dedimus potestatem* motions to take the evidence depositions of Dr. Thometz and of Timothy Bobrowski, a certified vocational rehabilitation counselor. Over the employer's objection, the Commission granted the claimant's motions. The depositions were taken and were entered into evidence during the June 16, 2021 hearing.

¶ 30 Dr. Thometz testified by evidence deposition that his diagnosis on April 10, 2019, was "torn labrum of the right shoulder." He stated that the claimant "had spasms, difficulty sleeping, numbness and tingling related to his right shoulder labral tear with continued pain." Dr. Thometz testified that the claimant had "continued pain regarding his right shoulder torn labrum" and severe limitation of use and severe restriction of range of motion in right shoulder. The claimant also had swelling, weakness, and sustained impairment of his hands.

¶ 31 Dr. Thometz opined that the claimant's current condition of ill-being was related to the claimant's August 2008, work injury, and "would not be present if [the claimant] did not have his [work] injury." Dr. Thometz further opined that the claimant was not able to work even in a sedentary capacity due to his right shoulder pain and his need to use a sling on his right arm.

¶ 32 On cross-examination, Dr. Thometz testified that the claimant had received x-rays on one occasion but no other diagnostic testing in the preceding five years. Dr. Thometz agreed that he

had diagnosed the claimant with the labral tear in 2014 and recommended surgery to repair the tear at that time. It was still his position that the claimant needed surgery for that labral tear. He also recommended that the claimant obtain an updated MR arthrogram on his right shoulder.

¶ 33 Timothy Bobrowski also testified via evidence deposition. Bobrowski stated that he had previously testified as an impartial vocational expert at the claimant's social security disability hearing, but had never testified in a workers' compensation case in Illinois. He did not know the standard for a finding of permanent total disability in an Illinois workers' compensation Commission proceeding.

¶ 34 During the social security disability hearing, the administrative law judge asked Bobrowski to consider the claimant's age, work experience, and "residual functional capacity" in determining whether the claimant would be able to find work. In determining the claimant's "residual functional capacity," Bobrowski was asked to consider not only the claimant's right shoulder, but also his right ankle and right knee pain. After considering those factors, Bobrowski determined that the claimant was not able to find work. Bobrowski testified that it was the "residual functional capacity" factor that tipped the scales in terms of the claimant not being able to find work.

¶ 35 The Commission denied the claimant's section 8(a) and 19(h) petitions. The Commission noted that it, in the initial arbitration proceeding (which took place in June 2015), it had accepted Dr. Marra's conclusion that the new labral tear in the claimant's right shoulder was not related to the claimant's work injury because it was not in the area where the anchor was placed during the March 24, 2009, surgery. The Commission further noted that, in the current proceedings, "Dr. Thometz testified that it is this same labral tear that the Commission already found to be unrelated to the work injury that is causing [the claimant's] ongoing symptoms and



need for an MR arthrogram and/or surgery.” The Commission held that its prior finding that the labral tear diagnosed by Dr. Thometz was not causally related to the claimant’s August 21, 2008, work injury was the law of the case. It therefore held that the claimant was “barred from revisiting this determination and seeking additional medical care for this tear under section 8(a).”

¶ 36 The Commission further found that the claimant had not met his burden of proving a material increase in his disability as required by section 19(h). It noted that Dr. Thometz had testified that the claimant’s ongoing complaints of pain and restricted range of motion are attributable to the labral tear, which the Commission had already found to be unrelated to the claimant’s work injury. The Commission further found that: (1) Dr. Thometz’s medical records did not document a material change in the range of motion of the claimant’s shoulder; (2) the new evidence presented at the hearings on the claimant’s section 8(a) and 19(h) petitions did not show a material decrease in the claimant’s functioning as related to his right shoulder.

¶ 37 In addition, the Commission found that Dr. Bobrowski’s testimony did not establish that it is the condition of the claimant’s right shoulder alone that is keeping him from gainful employment. The Commission noted that “[t]he restrictions used by Mr. Bobrowski and SSDI were related to multiple body parts, not just the shoulder.”

¶ 38 The claimant appealed the Commission’s decision to the circuit court of Cook County, which confirmed the Commission’s ruling. The circuit court concluded that the Commission’s decision in the initial arbitration proceeding settled the issue of causation with respect to the current labral tear in the claimant’s right shoulder when it found that tear to be unrelated to the claimant’s work accident. The circuit court held that “the Commission’s determination that [the claimant’s] current condition of ill-being is connected to the non-compensable labral tear is not against the manifest weight of the evidence.”

¶ 39 The circuit court also upheld the Commission’s finding that the claimant had failed to demonstrate a material change in his disability since the initial arbitration hearing. The circuit court noted that Dr. Thometz attributed the claimant’s ongoing complaints to the labral tear, an injury the Commission had previously found to be unrelated to the work accident.

¶ 40 Moreover, the circuit court ruled that the claimant’s argument that a change in his employability constituted a “material change” under section 19(h) is not a position recognized under Illinois law. It cited decisions of our appellate court holding that the term “disability” as used in section 19(h) refers to physical and mental disabilities, not economic disabilities, and that a change in economic circumstances is not a proper basis for modification of an award pursuant to section 19(h).

¶ 41 Accordingly, the circuit held that the Commission’s finding that the claimant had failed to establish a “material change” for purposes of section 19(h) was not against the manifest weight of the evidence.

¶ 42 This appeal followed.

¶ 43 ANALYSIS

¶ 44 The claimant argues that the Commission erred in denying his petition for additional benefits under sections 19(h) and 8(a) of the Act. The purpose of a proceeding under section 19(h) is to determine whether a claimant's disability has “recurred, increased, diminished or ended” since the time of the Commission's original decision. 820 ILCS 305/19(h) (West 2008). Under section 8(a), an employer is required to “provide and pay \*\*\* for all the necessary first aid, medical and surgical services, and all necessary medical, surgical, and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury.” 820 ILCS 305/8(a) (West 2008).

¶ 45 For a claimant to be entitled to additional compensation under sections 19(h) and 8(a), he has the burden of establishing, by a preponderance of the evidence, some causal relationship between his employment and the condition of ill-being for which he seeks additional benefits. See *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989). The question of whether medical treatment is causally related to a compensable injury is one of fact to be determined by the Commission, and its finding on the issue will not be reversed on review unless it is contrary to the manifest weight of the evidence. *Zarley v. Industrial Commission*, 84 Ill. 2d 380, 389–90 (1981); *Mansfield v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120909WC, ¶ 28. The Commission's determinations as to whether to award expenses under section 8(a) and whether the claimant's disability has recurred, increased, diminished, or ended for purposes of section 19(h) also present factual inquiries to be resolved by the Commission. *Howard v. Industrial Comm'n*, 89 Ill. 2d 428, 430 (1982).

¶ 46 In resolving such questions of fact, it is the function of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded to the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). We will not overturn a factual determination by the Commission unless it is against the manifest weight of the evidence. *Id.* A factual finding is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the agency. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn. *Id.*

¶ 47 The claimant argues that the Commission erred as a matter of law by misapplying the

doctrine of law of the case. Under the law of the case doctrine, a court's unreversed decision on an issue that has been litigated and decided settles the question for all subsequent stages of the action. *Miller v. Lockport Realty Group, Inc.*, 377 Ill. App. 3d 369, 374 (2007). The principles underlying the doctrine apply to matters resolved in proceedings before the Commission. *Weyer v. Workers' Compensation Comm'n*, 387 Ill. App. 3d 297, 307 (2008); *Irizarry v. Industrial Comm'n*, 337 Ill. App. 3d 598, 606–07 (2003); *Help At Home v. Illinois Workers' Compensation Comm'n*, 405 Ill. App. 3d 1150, 1151 (4th Dist. 2010). Where an award of benefits based on a finding of a causal connection between the claimant's work accident and the claimed injuries is not challenged as set forth in the Act, it becomes final and conclusive and cannot be challenged in a permanency hearing. *Irizarry*, 337 Ill. App. 3d at 605-06; see also *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 255 (2008) (section 19(h) does “not permit the Commission to generally reconsider the evidentiary basis or factual finding underlying an award that has become final”). Once the first causation finding becomes a final judgment, it becomes the law of the case and is not subject to further review. *Ming Auto Body*, 387 Ill. App. 3d at 252.

¶ 48 The Commission noted that it had already determined in the original 2015 arbitration proceeding that the labral tear in the claimant's right shoulder shown in the in the December 5, 2013, MR arthrogram was a new injury that was not causally related to the claimant's work accident. The Commission ruled that this finding was law of the case, and that the claimant was therefore “barred from revisiting this determination and seeking additional medical care for this tear under section 8(a).” Because Dr. Thometz testified that the claimant's current condition was the result of the same labral tear, and sought the same treatments for that tear that he had sought during the initial arbitration, the Commission found the claimant's claims for additional benefits

under sections 8(a) and 19(h) to be barred by the law of the case doctrine.

¶ 49 The claimant maintains that the Commission erred by applying the law of the case doctrine to bar him from seeking additional benefits for the worsening of his right shoulder condition after the original arbitration. The claimant notes that, even after it had found the second labral tear to be unrelated to his work accident, the Commission awarded him *permanent* disability benefits due to the disabling condition of his right shoulder. In so doing, the Commission necessarily found that the permanent condition of ill-being in the claimant's right shoulder at the time of the original arbitration was casually connected to his work injury. The claimant contends that it is *that* causation finding that is law of the case, and it bars the employer from denying its liability for any increases in the claimant's disability caused by his shoulder.

¶ 50 The claimant argues that it does not matter that the Commission found his current right shoulder condition only "partially" related to his work accident because injuries are compensable under the Act even if the work accident is merely a contributing cause, and not the sole cause, of the current condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193 (2003). Thus, the claimant maintains, he is entitled to seek benefits for the worsening of his work-related shoulder condition under sections 8(a) and 19(h) unless some intervening cause broke the chain of causation between the work accident and the condition of ill-being in his shoulder, which is not the case here.

¶ 51 We disagree. Section 8(a) requires an employer to pay for all medical treatments that are "reasonably required to cure or relieve from the effects of" the work-related injury. 820 ILCS 305/8(a) (West 2008). During the original arbitration proceeding, the Commission found that the labral tear diagnosed by Dr. Thometz in 2014 was unrelated to the work-related injury.

Accordingly, any treatment necessary to cure or relieve from the effects of that labral tear would

not be recoverable.

¶ 52 During the proceeding on the claimant's section 8(a) and 19(h) petitions, Dr. Thometz repeatedly testified that the claimant's current condition of ill-being in his right shoulder was caused by the labral tear. Although he stated in conclusory fashion that the claimant's current condition "would not be present if he did not have his [work] injury," he provided no foundation for this opinion in his testimony. To the contrary, he repeatedly attributed the claimant's current disabilities, symptoms, and need for treatment *solely* to the labral tear. He identified nothing else causing or contributing to the claimant's current shoulder condition and need for treatment. He did not testify that any disabilities or symptoms resulting from the 2008 work injury somehow exacerbated the labral tear or otherwise contributed to its disabling effects.

¶ 53 Thus, nothing in Dr. Thometz's testimony or in the other evidence presented supported his conclusion that the claimant's current condition was connected to his work accident.

"Expert opinions must be supported by facts and are only as valid as the facts underlying them."

*Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 24; see also

*Sunny Hill of Will County v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d)

130028WC, ¶ 36. "An expert opinion is only as valid as the reasons for the opinion." *Gross*,

2011 IL App (4th) 100615WC, ¶ 24. The proponent of expert testimony must lay a foundation

sufficient to establish the reliability of the bases for the expert's opinion. *Id.*; see also *Sunny Hill*

*of Will County*, 2014 IL App (3d) 130028WC, ¶ 36. Dr. Thometz's conclusory assertion that the

claimant's current shoulder problems would not exist but for the work accident is without

foundation and the Commission was entitled to reject it.

¶ 54 It was the claimant's burden to demonstrate that his current condition of ill-being was causally related to his work accident. He failed to carry that burden. The only causation

evidence he presented linked his current condition solely to the labral tear that the Commission had already found to be unconnected to his work accident. Moreover, Dr. Thometz offered the same opinions regarding the causal impact of the labral tear that the Commission had rejected during the original arbitration proceeding, and he sought the same treatment for the labral tear that the Commission had already denied. The Commission correctly found that the claimant was barred from relitigating the causal connection between the labral tear and his work accident because that issue was law of the case. Accordingly, the Commission's finding that the claimant was not entitled to further benefits under section 8(a) was not against the manifest weight of the evidence.

¶ 55 The claimant also argues that the Commission's finding that he failed to establish a material change in his condition that would entitle him to additional benefits under section 19(h) was against the manifest weight of the evidence.

¶ 56 The purpose of a proceeding under section 19(h) of the Act is to determine whether a claimant's disability has "recurred, increased, diminished or ended" since the time of the Commission's original decision. 820 ILCS 305/19(h) (West 2008); *Howard*, 89 Ill. 2d at 429. To warrant a modification in benefits, the change in the claimant's disability must be "material." *Id.* The evidence presented in the initial proceeding must be considered to determine whether the claimant has sustained a "material change" in his condition since the time of the initial award. *Id.* at 429-30.

¶ 57 Whether a claimant's disability has recurred, increased, diminished or ended for purposes of section 19(h), and whether any such change is "material," are issues of fact to be resolved by the Commission. *Howard*, 89 Ill. 2d at 430. We will not overturn a factual determination by the Commission unless it is against the manifest weight of the evidence. A factual finding is against

the manifest weight of the evidence only when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the agency. *Durand*, 224 Ill. 2d at 64. A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn. *Id.*

¶ 58 In this case, the Commission properly found that the claimant failed to demonstrate that his right shoulder condition had changed materially since the original arbitration proceeding. Dr. Thometz attributed the claimant’s right shoulder symptoms and the disabling condition of the shoulder to the labral tear, which the Commission had previously found was not causally connected to his work accident. For that reason alone, the changes in the claimant’s disability described by Dr. Thometz do not constitute “material” changes to his work-related disability.

¶ 59 Moreover, even assuming *arguendo* that changes in the claimant’s shoulder condition caused by the labral tear could be compensable, the claimant has failed to show that the changes described by Dr. Thometz were “material” pursuant to section 19(h). There is little evidence of *any* change in the claimant’s shoulder condition, much less a material change. Although the claimant saw Dr. Thometz for further treatment several times after the initial arbitration, Dr. Thometz’s medical records repeatedly indicate that the claimant’s right shoulder was unchanged from one visit to the next. Although some of Dr. Thometz’s treatment records reflect that the external range of motion in the shoulder had decreased over time, the claimant does not show why that change is “material” for purposes of section 19(h).

¶ 60 The claimant asserts that Dr. Thometz testified that the “Musculoskeletal Defects Report” (MDR) he prepared in April 2019 was “material.” However, Dr. Thometz merely testified that, when he was asked to answer the question posed in the MDR about the claimant’s disabilities, he considered that to be a “*material event in the claimant’s treatment.*” (Emphasis added.) He did



not testify that the disabilities reported in the MDR represented a *material change in the claimant's condition* since the initial arbitration. Neither Dr. Thometz nor the claimant attempted to explain whether or how the condition of the claimant's right shoulder as described in the MDR is different from what it was at the time of the initial arbitration proceeding. Indeed, neither the claimant nor Dr. Thometz described the claimant's prior disabilities and compared them to his current disabilities.

¶ 61 The claimant further argues that Dr. Thometz's and Bobrowski's opinions that the claimant is currently incapable of performing his prior job or any sedentary work establish a material change in his condition since the initial arbitration. We disagree. Dr. Thometz's opinion that the claimant could not work was based largely upon the fact that the claimant had to wear a sling on his right arm. However, the claimant was already wearing a sling at the time of the initial arbitration. Thus, the sling did not constitute a material change in the claimant's disability.

¶ 62 Further, Bobrowski's opinions were entitled to little or no weight. Bobrowski rendered his opinions regarding the claimant's disability and employability in a proceeding for social security disability insurance benefits before the Social Security Administration. Determinations of disability and employability in such proceedings are not governed by the standards applied in the Act. Bobrowski admitted that he had never testified in a workers' compensation case in Illinois. He did not know the standard for a finding of permanent total disability in an Illinois Workers' Compensation Commission proceeding. Moreover, Bobrowski's opinion that the claimant was unable to find work was based upon the conditions of the claimant's right ankle and right knee in addition to his right shoulder. Accordingly, Bobrowski did not opine that the claimant was totally disabled and unable to find work due to his right shoulder condition alone.

¶ 63 The Commission's finding that the claimant failed to establish a material change in his condition since the time of the initial arbitration, and its denial of additional benefits under section 19(h), was not against the manifest weight of the evidence.

¶ 64 CONCLUSION

¶ 65 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, which confirmed the Commission's decision.

¶ 66 Affirmed.