

Order filed January 29, 2024

No. 2-23-0114WC

**NOTICE:** This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

Workers' Compensation Commission Division

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CITY OF AURORA,	)	Appeal from the Circuit Court
	)	of Kane County,
Appellant,	)	
	)	
v.	)	No. 22-MR-177
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, <i>et al.</i>	)	Honorable
	)	Mark A. Pheanis,
(John Gibson, Appellee).	)	Judge, Presiding.

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

**ORDER**

¶ 1 *Held:* We affirm the judgment of the circuit court confirming the decision of the Commission, where the Commission properly applied the law and its findings were not against the manifest weight of the evidence.

¶ 2 Employer, City of Aurora, appeals from an order of the circuit court of Kane County, which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) awarding claimant, John Gibson, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2018)). On appeal, employer argues that the Commission erred by finding that

claimant's work accident aggravated claimant's preexisting condition and by finding that claimant's work accident arose out of his employment. For the following reasons, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 On January 9, 2018, claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for injuries he sustained to his back while working for employer as a police officer on September 5, 2017. Claimant was 47 years old at the time of his injury. The matter proceeded to an arbitration hearing on June 30, 2021. The following factual recitation was taken from the evidence adduced at the arbitration hearing, as well as the decisions of the arbitrator, Commission, and circuit court.

¶ 5

#### A. Claimant's Testimony

¶ 6 Claimant testified that he worked as a police officer at the Aurora Police Department from June 1997 until he retired in 2020. Claimant previously served as a member of the special weapons and tactics (SWAT) team and served on the special response team (SRT). He most recently worked as a patrol officer and handled general calls. Claimant always received satisfactory ratings on the physical assessments employer required him to perform twice each year.

¶ 7 Claimant testified that he sustained a back injury at work on September 5, 2017. On that date, claimant responded to a residence for a domestic violence call. Claimant and a back-up officer were involved in a three-to-five-minute physical altercation with one of the residents. Claimant experienced back pain while attempting to restrain the resident and released his hold of the resident. Claimant continued in his attempts to restrain the resident after the resident lunged towards kitchen drawers. Both claimant and the back-up officer "took [the resident] to the floor" and held the resident down by kneeling on the resident's shoulder until paramedics arrived. A similar history of the incident was documented in an Aurora Police Incident Report, but claimant denied taking the resident to the floor in the report.

¶ 8 Claimant testified that, after the incident, he experienced severe pain in his lower back, which made it difficult to stand or move. Claimant immediately advised his supervisor that he strained his back and needed to go home. Claimant completed a report regarding his injury before he went home. Claimant continued to experience pain while completing the report.

¶ 9 Claimant testified that he received prior medical treatment for his back dating back to 2002. Claimant underwent back surgery, specifically, a discectomy at “L4 L5,” in 2002. The surgery alleviated a pinched nerve in claimant’s back, but he continued to experience muscle spasms in his lower back. Claimant estimated that he experienced muscle spasms “a couple times a year” after the surgery. Claimant described the muscle spasms as a “sharp pain” that caused muscle tightness and soreness. The muscle spasms made it difficult for claimant to move or perform activities. Claimant’s primary doctor prescribed anti-inflammatory medication and muscle relaxers. The muscle spasms resolved within three to five days. Claimant usually worked when he experienced muscle spasms, but he occasionally took off one day of work.

¶ 10 Claimant testified that he experienced a muscle spasm during a softball game in June 2017. He felt immediate pain in his back when he turned to throw the ball. Claimant experienced a burning pain in his “right buttocks cheek” and on the outside of his right calf. He left the game immediately and went home to relax before his scheduled evening shift. Claimant did not seek immediate medical treatment and worked his scheduled shift that evening. He eventually sought medical treatment and was prescribed a steroid pack. He later received osteopathic manipulative therapy, but he received little relief from that treatment. Claimant received steroid injections on August 10, 2017, and August 24, 2017, which alleviated his pain. Claimant estimated that the injections provided 75% relief. Claimant missed one day of work due to the injections.

¶ 11 Claimant testified that his back felt normal before he began work on September 5, 2017. He denied experiencing any recent issues or spasms, aside from the June 2017 softball injury. He

experienced worsening pain following the September 5, 2017, work injury and was unable to work. He was unable to get out of bed for six or seven days. He took medication but did not seek medical treatment in that time. Claimant first sought medical treatment for the September 5, 2017, injury on September 14, 2017, at employer's direction. Claimant was prescribed a steroid pack, which provided no relief. He experienced sciatica in both the right and left side, which he described as burning and stabbing pains in his buttocks and pain or numbness in his feet. The sciatica began four or five days after the work accident.

¶ 12 Claimant testified that he had a magnetic resonance imaging (MRI) scan in November 2017, which revealed a disc herniation at L4-L5. Claimant was referred to Dr. Ramsis F. Ghaly, M.D., who prescribed physical therapy and eventually recommended surgery. Claimant wanted to have surgery but "it was canceled by workers' comp." Claimant was later referred to Dr. Dean G. Karahalios, M.D., who recommended an additional MRI scan, X-rays, and surgery. Claimant underwent the surgery recommended by Dr. Karahalios on June 20, 2018. Following surgery, claimant "no longer had sciatica on either side." He continued to experience nerve pain in his left foot. At employer's request, claimant presented for an independent medical evaluation (IME) with Dr. Wellington Hsu on July 27, 2018. According to claimant, Dr. Hsu's examination lasted 16 minutes.

¶ 13 On cross-examination, claimant agreed that he experienced intermittent back pain after his surgery in 2002. He experienced sciatica in his left side on one prior occasion but claimed "every other time it was the right side." Claimant sought treatment for back pain on multiple occasions over the years, and he recalled that one treatment provider recommended back surgery in 2009. Claimant admitted that he took off work in July and August 2017, but he was unable to recall if he called in sick or "turned in comp time."

¶ 14

#### B. Claimant's Medical Records

¶ 15 Claimant's medical records indicated that claimant sought treatment for back pain with various doctors on multiple occasions from 2003 to 2016. Claimant experienced back pain during a softball game in 2003 and sought treatment with Dr. Roy F. Houlahan on June 16, 2003, Dr. David J. Barnes, DO, on September 15, 2003, and Dr. Thomas A. McNally on November 25, 2003. Claimant advised Dr. Houlahan that he felt a sudden, sharp pain while playing softball. Claimant finished the game but experienced pain for the next two days. Dr. Barnes ordered an MRI, which revealed no abnormalities aside from the surgical changes to claimant's back. Dr. McNally diagnosed claimant with right lower extremity radiculopathy or lower back pain secondary to degenerative disc disease and possible lateral recess stenosis at L4-5 impinging the right L5 nerve root. Dr. McNally prescribed claimant non-steroidal anti-inflammatory medication and indicated that claimant may need additional surgery if pain management failed to alleviate his symptoms.

¶ 16 Claimant sought treatment with Melissa Best, PA-C, on February 4, 2008. Claimant complained of back pain that persisted for two weeks after he fell while playing with his children. Claimant reported "difficulty picking things up at times for fear of causing exacerbating pain with 'catching' to his right lower back." Claimant was diagnosed with a lumbar strain with radiculopathy and prescribed a different medication. Claimant underwent an MRI on February 19, 2008, which revealed mild evidence of epidural fibrosis of the right L4-L5 region.

¶ 17 Claimant presented for "an urgent work-in appointment for back pain" with Dr. Brian D. Oostman, DO, on July 23, 2008. Claimant reported back pain and radiating bilateral leg pain after lifting pool chemicals into the back of his car. Claimant sought additional treatment for back pain on August 19, 2008, and November 12, 2008. Claimant underwent an additional MRI on November 24, 2008, which revealed a disc protrusion at L4-L5 and an annular fissure at L5-S1.

¶ 18 Claimant underwent an MRI on October 8, 2009, which revealed right-sided epidural fibrosis and a minimal disc bulge at L4-L5. The MRI also revealed slight retrolisthesis, but no

annular fissure at L5-S1. Claimant returned to Dr. Oostman with complaints of back pain and right buttock pain on October 12, 2009. Claimant indicated that he exacerbated his back pain when he arose from the MRI table. Claimant advised that he planned to undergo surgery at the recommendation of another doctor. An MRI from November 17, 2009, revealed disc space narrowing at L1-L2, L4-L5, and L5-S1 with endplate spurring and bony remodeling of L1.

¶ 19 Claimant next sought treatment for back pain on February 10, 2011. Claimant reported that he missed three to four days of work due to an exacerbation of his low back pain, which began one week prior while shoveling snow. Claimant experienced an onset of spasms with radicular pain in his right lower extremity. Claimant was diagnosed with a lumbar strain, and he continued with strengthening exercises.

¶ 20 On December 12, 2011, claimant sought treatment for back pain and spasms that began when he bent down to clean the shower. Claimant was directed to continue his prescribed medications and begin physical therapy if his condition did not improve in one week.

¶ 21 A physical therapy note from July 25, 2016, indicated that claimant was performing physical therapy for an unrelated injury and “aggravated” his low back. Claimant discontinued therapy and elected to self-treat at home.

¶ 22 On June 30, 2017, claimant presented to Dr. Houlahan with complaints of back pain and right lower extremity sciatica, which began three weeks earlier. Claimant reported that his back “seized up” while playing softball. Dr. Houlahan diagnosed claimant with acute right-sided low back pain with right-sided sciatica. He directed claimant to avoid lifting and excessive stooping.

¶ 23 On July 5, 2017, claimant had an appointment with Dr. Oostman. Claimant advised that his pain began when he pivoted to throw a ball during a softball game in early June. Claimant complained of progressively worsening symptoms including radiating pain down the buttock into the calf and foot. Dr. Oostman noted that surgery was previously recommended, but a second

opinion surgeon advised claimant against it. Dr. Oostman noted that claimant's intermittent back pain and spasms were manageable in past years until the softball injury in June 2017. Dr. Oostman performed osteopathic manipulation and directed claimant to take prescribed medications.

¶ 24 On July 11, 2017, claimant returned for an appointment with Dr. Houlahan. Claimant complained of ongoing back pain with right-sided sciatica shooting down his ankle and foot. Dr. Houlahan ordered an MRI and recommended epidural injections for claimant's back pain. An MRI from July 21, 2017, revealed a right lateral disc protrusion at L4-L5.

¶ 25 On August 8, 2017, claimant presented for a pain management evaluation with Dr. Reggie M. Augusthy, DO. Dr. Augusthy noted that claimant's back pain and spasms were intermittent following his prior surgery but became persistent and progressive after the June 2017 softball injury. Dr. Augusthy diagnosed claimant with disc aggravation at L4-L5 and administered a lumbar trigger point injection. Dr. Augusthy noted that an additional epidural steroid injection may be necessary. Dr. Augusthy directed claimant to be cautious with any lifting, bending, pushing, or pulling. Dr. Augusthy advised claimant that the injections would help decrease pain but would not solve the underlying problem.

¶ 26 On August 10, 2017, Dr. Augusthy administered a right L5-S1 epidural steroid injection. Dr. Augusthy listed a diagnosis of post-laminectomy syndrome. Dr. Augusthy administered a second steroid injection on August 24, 2017, and directed claimant to follow up in two weeks.

¶ 27 On September 14, 2017, following the September 5, 2017, work accident, claimant was seen by Dr. Adrienne Baksinski, DO, at Northwestern Medicine Occupational Health. Claimant provided a consistent history of the September 5, 2017, work accident. Claimant reported low back pain, which he rated as "nine or ten out of ten[,]" as well as bilateral leg pain and tingling. Claimant also reported numbness in his left foot. Claimant advised of his prior back surgery and June 2017 softball injury. Claimant also advised that he received two injections, which "somewhat" improved

his pain. Claimant indicated that after the September 5, 2017, injury, the pain on his right side worsened and he developed pain on his left side. Dr. Baksinski diagnosed claimant with lumbar spine strain and radiculopathy in the lumbar region. Dr. Baksinski prescribed medication and recommended that claimant remain off work. At a follow-up appointment with Dr. Baksinski on September 26, 2017, claimant reported that his back pain remained “9-10” and he continued to experience pain radiating down both legs. Dr. Baksinski directed claimant to follow up with Dr. Augusthy and to remain off work.

¶ 28 On September 27, 2017, claimant followed up with Dr. Augusthy. Dr. Augusthy noted that the steroid injections improved claimant’s back pain by 50%, but that claimant sustained a back injury while restraining an individual at work. Claimant reported bilateral lumbar spine pain and bilateral leg pain. Dr. Augusthy noted that claimant’s pain increased on the right side but was new on the left side. Dr. Augusthy noted that claimant suffered an acute, additional injury to his low back, which caused his symptoms to progress in both distribution and severity.

¶ 29 Claimant presented for follow-up appointments at Northwestern Medicine Occupational Health on October 3, 2017, and October 17, 2017. Claimant reported no change in his condition or pain levels.

¶ 30 At a follow-up appointment with Dr. Augusthy on October 30, 2017, claimant reported severe pain. Dr. Augusthy diagnosed claimant with acute progression of low back pain with bilateral leg pain. Dr. Augusthy limited claimant to sedentary work and recommended another MRI. Claimant received right L4-L5 and L5-S1 epidural steroid injections on November 2, 2017. A report from an MRI taken on November 7, 2017, indicated that the imaging revealed no significant interval change when compared to the July 21, 2017, MRI.



¶ 31 On November 15, 2017, Dr. Augusthy noted that the MRI was “unchanged.” Dr. Augusthy recommended medication, along with additional injections. Dr. Augusthy recommended surgery if claimant’s condition did not rapidly improve.

¶ 32 On November 27, 2017, claimant sought treatment with Dr. Houlahan, who noted that claimant had a significant history of chronic, persistent low back pain following surgery. Claimant reported that he had been off work since September 5, 2023, when his back pain “significantly flared up” during a struggle with an individual at work.

¶ 33 On December 6, 2017, claimant presented for an initial evaluation with Dr. Ghaly. Claimant advised Dr. Ghaly of the June 2017 softball injury and September 5, 2017, work injury. Claimant indicated that his right-side sciatica started in June, but he experienced worsened right sciatica and additional left sciatica after the September 5, 2017, injury. Dr. Ghaly reviewed the November 7, 2017, MRI, which he interpreted as showing an increase in claimant’s disc herniation at L4-L5, along with root compression in the postoperative changes, when compared to the July 2017 MRI. Dr. Ghaly observed a mild disc bulge at L5-S1, which remained stable when compared to the prior MRIs. Dr. Ghaly noted that claimant suffered “from the right L5 radiculopathy and this accident increased the herniation, so there is a [*sic*] room to consider the surgery seriously.” Dr. Ghaly recommended surgery at L4-L5 on the right side but did not recommend surgery at the L5-S1 level. Dr. Ghaly recommended physical therapy while claimant considered his surgical options. Dr. Ghaly also recommended another MRI and electromyography (EMG) testing.

¶ 34 Claimant had the recommended MRI on December 7, 2017. A radiologist’s report from the December 7, 2017, MRI indicated that claimant suffered from a right disc herniation at L4-L5 that increased in severity when compared to the July 21, 2017, MRI. Claimant also suffered from an annular tear at L4-L5. The MRI also showed an L5-S1 broad based disc protrusion with an

annular tear. An EMG performed on December 11, 2017, indicated findings for radiculopathy on both sides with the right greater than the left.

¶ 35 On December 21, 2017, claimant followed up with Dr. Ghaly. Claimant reported no improvement with physical therapy. Dr. Ghaly noted that the right L4-L5 disc herniation increased in severity when compared to the July 21, 2017, MRI. Dr. Ghaly discussed surgical options with claimant. Claimant expressed interest in surgery, but surgery was not approved by the workers' compensation insurer.

¶ 36 At follow-up appointments on January 3, 2018, and January 5, 2018, Dr. Ghaly noted that claimant suffered a work-related injury on September 5, 2017, which caused a recurrent disc herniation at L4-L5 and severe foraminal stenosis. Dr. Ghaly recommended surgery to alleviate claimant's symptoms.

¶ 37 On March 22, 2018, claimant was seen by Dr. Ghaly. Dr. Ghaly noted claimant's difficulty obtaining treatment due to workers' compensation and insurance disputes. Dr. Ghaly noted that there was no improvement in claimant's condition but no worsening of his condition. Dr. Ghaly noted that claimant was "miserable" due to the pain, and that claimant was unable to drive due to the pain. Dr. Ghaly again discussed surgical options with claimant.

¶ 38 On May 31, 2018, claimant presented for an initial evaluation with Dr. Karahalios. Claimant continued his treatment with Dr. Karahalios and eventually underwent surgery at Dr. Karahalios's recommendation on June 20, 2018. Following surgery, claimant reported significant improvement in his back pain and bilateral leg pain, but he developed pain in his right foot.

¶ 39 C. Dr. Karahalios's Evidence Deposition

¶ 40 Dr. Karahalios, a board-certified neurosurgeon, testified to the following by way of evidence deposition on May 31, 2019. Dr. Karahalios began treating claimant on May 31, 2018. Dr. Karahalios was aware of claimant's 2002 back surgery. Claimant advised that he developed

back pain and bilateral leg pain after an injury at work in September 2017. Claimant reported that his left-side symptoms were less severe and frequent than his right-side symptoms. Dr. Karahalios concluded that claimant suffered from a lower extremity radicular process related to his lumbar degenerative disease. Because claimant had not responded to conservative medical management, Dr. Karahalios concurred in the recommendation that claimant undergo surgical intervention, specifically, a decompressive laminectomy from L4 through L5.

¶ 41 Dr. Karahalios testified that he reviewed the MRI scan taken on November 7, 2017, when he initially evaluated claimant. Dr. Karahalios reviewed the MRI scans from July 21, 2017, and December 7, 2017, prior to the deposition. Dr. Karahalios compared the November 7, 2017, MRI scan to the report from the July 21, 2017, MRI scan. In doing so, Dr. Karahalios observed “significant pathology as previously noted at the L4/5 level where there is a right lateral disc protrusion that appears to have been stable compared to the previous study done on July 21st, 2017.” Dr. Karahalios noted a problem at L5-S1 on the left side, which was not noted in the report from November 7, 2017, or the report from July 2017. Dr. Karahalios agreed with the radiologist’s report from December 7, 2017, which indicated that the findings increased in severity compared to the July 21, 2017, MRI and noted the pathology at the L5-S1 level. An EMG study from December 11, 2017, supported claimant’s complaints of bilateral radicular symptoms.

¶ 42 Based on the information claimant provided and the timeline of MRI scans, Dr. Karahalios opined that claimant’s September 5, 2017, work accident exacerbated his condition to the extent that he required additional treatment, including surgery. Dr. Karahalios agreed that claimant had a preexisting degenerative disc condition prior to his work accident, but Dr. Karahalios opined that the work accident aggravated or exacerbated claimant’s condition. Dr. Karahalios clarified that the surgery he performed on claimant was carried out on both the right and left side of claimant’s spine. Claimant reported improvements in his symptoms following surgery.

¶ 43 On cross-examination, Dr. Karahalios clarified that the earliest medical record he reviewed was from July 21, 2017. Dr. Karahalios denied reviewing the IME reports. When asked if his opinions would change if new information came to his attention, Dr. Karahalios responded, “It depends on what it is.” When asked to describe his understanding of claimant’s work accident, Dr. Karahalios responded, “It’s actually very, very superficial. He said he was tussling with a— someone at work in his capacity as a police officer and injured his back.” Dr. Karahalios explained that “it doesn’t take a lot of energy to injure a disc, a spine.” According to Dr. Karahalios, patients with herniated discs in the lumbar region typically report minimal trauma, if any. Dr. Karahalios agreed that patients with prior spine problems would be more predisposed to injury.

¶ 44 When asked about his understanding as to the nature and extent of claimant’s preexisting back condition, Dr. Karahalios responded, “Just that he had issues in the past, he had previous surgery and, you know, he had symptoms related to that to some degree.” Dr. Karahalios did not know the degree of claimant’s symptoms or the degree to which they affected claimant. Dr. Karahalios agreed that claimant had a persistent low back condition as of November 2003, and that activities of daily living were causing him increased pain. Dr. Karahalios acknowledged that claimant’s treatment providers had recommended surgery prior to the September 5, 2017, work accident, and Dr. Karahalios agreed that surgery may have been medically appropriate in 2009— prior to claimant’s September 5, 2017, work accident. Dr. Karahalios noted, however, that he would not have recommended surgery if claimant’s leg pain had resolved, as documented in a later medical record. Dr. Karahalios agreed that, as of 2011, claimant’s pathology was such that even a minor physical exertion could bring about his symptomology and pain. Dr. Karahalios was unaware that claimant was under active medical treatment for the June 2017 softball injury when he sustained the work accident on September 5, 2017. However, Dr. Karahalios testified that he was aware claimant received injections in August 2017. Dr. Karahalios noted that injections can

provide complete relief, no relief, or some relief to patients. Dr. Karahalios agreed that it was “impossible to say” if claimant would have fully recovered with the injections but for the September 5, 2017, injury. When asked if he agreed that claimant’s pathology reached a point where any minor exertion could cause reinjury, Dr. Karahalios responded, “I don’t like the word ‘any’. I would say that his back is pretty fragile and it would not take much to reinjure his back.”

¶ 45 Counsel for employer then questioned Dr. Karahalios about claimant’s medical records from 2003 to 2016. Dr. Karahalios agreed that the November 24, 2008, MRI revealed a broad-based disc protrusion at L4-L5 and an annular fissure at L5-S1. Dr. Karahalios agreed that the October 6, 2009, MRI revealed slight retrolisthesis at L5-S1 but no annular fissure at L5-S1. Dr. Karahalios admitted that the July 21, 2017, MRI continued to show the same disc protrusion at L4-L5 on the right side with no significant change when compared to the MRI from October 6, 2009. Dr. Karahalios clarified that the radiologist missed a pathology at the L5-S1 level in the report prepared following the November 7, 2017, MRI. Dr. Karahalios agreed that the MRI from June 4, 2018, showed no evidence of any disc herniation, but he claimed it did show an annular tear at L5-S1. Dr. Karahalios agreed that the same pathology was seen on the MRI scans taken before the September 5, 2017, accident.

¶ 46 On redirect, Dr. Karahalios testified that claimant only experienced left-sided symptoms on one occasion prior to the September 5, 2017, work accident, and that he consistently experienced left-sided symptoms after the work accident. Dr. Karahalios agreed that claimant’s left-sided symptoms motivated his surgical recommendation. When asked if any information presented on cross-examination changed his opinions that claimant’s surgery was causally related to the September 5, 2017, work accident, Dr. Karahalios responded as follows:

“I think the work accident, in light of what’s been presented today, much of which I was not aware of before, probably exacerbated a symptomatic degenerative condition that

was already present, made it more symptomatic based on the patient's subjective reporting, and as you mentioned, caused to recur his left lower extremity radicular symptoms that had been quiescent, had been asymptomatic."

¶ 47 D. Dr. Michael Racenstein's Report

¶ 48 A report prepared by Dr. Racenstein, a board-certified diagnostic radiologist, at employer's request was admitted into evidence at the hearing. Dr. Racenstein reviewed claimant's medical records before he completed the report. In comparing the MRIs from July 21, 2017, November 7, 2017, and December 7, 2017, Dr. Racenstein noted evidence of mild desiccation and degenerative disc disease at L4-L5 and L5-S1. Dr. Racenstein noted that a small, central bulging disc appeared at L4-L5 on the MRI from July 21, 2017, and that the same bulging disc appeared slightly larger on the MRI from November 7, 2017. Dr. Racenstein further noted that a small disc bulge at L5-S1 was present on both MRIs and remained stable.

¶ 49 Dr. Racenstein concluded that there was no evidence of significant disease progression from July to November and December 2017. Dr. Racenstein noted that there may have been some progression of the degenerative process since 2008 and 2009, but he noted that such progression was common without any incidental trauma and that it was "unlikely that this normal progression had anything to do with the claimant's alleged injury." Dr. Racenstein noted that the only perceivable difference was a 1mm increase in the bulging disc at L4-L5, but he opined that the increase was "likely inconsequential in nature." According to Dr. Racenstein, "[t]he natural history of degenerated bulging discs is to progress whether there is additional trauma or not." Dr. Racenstein concluded that the small size increase of the bulge was "unlikely to have caused any significant symptoms as there was no canal or foraminal stenosis and no significant neural compression on the imaging studies." Dr. Racenstein further noted that "[t]he small left parasagittal bulging disc at L5-S1 is not only unchanged from July to November and December of

2017, but is stable since 2008 and 2009.” Dr. Racenstein opined that claimant’s left-sided symptomology was not consistent with any pathology shown on the MRIs.

¶ 50 E. Dr. Hsu’s Evidence Deposition

¶ 51 Dr. Hsu, an orthopedic spine surgeon, testified by way of evidence deposition on November 23, 2020. Dr. Hsu performed a medical records review regarding claimant in June 2018. He prepared a written report setting forth his findings and opinions on June 27, 2018. Dr. Hsu noted that claimant had prior medical history for a disc herniation at L4-L5, including spine surgery in 2002. Dr. Hsu noted that claimant sought treatment for back complaints intermittently over the next 16 years and that surgery had been recommended in 2009. Dr. Hsu also reviewed medical records that documented a softball injury in June 2017 and a work injury in September 2017. Dr. Hsu reviewed medical records from Dr. Ghaly, who recommended surgery. The last medical record available for Dr. Hsu’s review was dated March 23, 2018. At the time Dr. Hsu performed the records review, claimant had not undergone surgery.

¶ 52 Dr. Hsu reviewed an MRI from February 19, 2008, which revealed evidence of claimant’s prior surgery, “mild degenerative disc disease, which are arthritis-related changes at L4-5; but, otherwise, he had age-appropriate spondylotic changes.” Dr. Hsu also reviewed lumbar MRIs from October and November 2009, as well as a CT scan from November 2009. According to Dr. Hsu, the CT scan revealed disc calcification, which occurs when the disc becomes arthritic over time.

¶ 53 Dr. Hsu additionally reviewed an MRI from July 21, 2017, which revealed a small right-sided disc bulge at L4-L5 that had slightly increased in size from the 2009 MRI. The July 21, 2017, MRI also revealed increased degenerative disc disease at L4-L5. Dr. Hsu confirmed that the July 21, 2017, MRI was taken approximately six weeks before claimant’s September 5, 2017, work accident.

¶ 54 Dr. Hsu reviewed an MRI from November 7, 2017, which was taken after claimant's September 5, 2017, work accident. Dr. Hsu compared the November 7, 2017, MRI to the July 21, 2017, MRI and found no changes. Dr. Hsu also reviewed an MRI from December 7, 2017, and found no changes from the two prior MRIs. Dr. Hsu noted no signs of acute structural injuries. Dr. Hsu next reviewed a CT scan from January 3, 2018, which revealed increased calcification of the L4-L5 disc and increased spondylotic changes throughout the spine.

¶ 55 Based on his review of claimant's medical records and imaging studies, Dr. Hsu diagnosed claimant with "a lumbar strain that had resolved as well as lumbar spondylosis for which he had been treated with a right-sided L4-5 foraminotomy, laminotomy, and discectomy." Dr. Hsu defined spondylosis as "age-related and genetic-related wear-and-tear changes on a motion segment of the spine." Dr. Hsu opined that the September 5, 2017, work incident caused "a low back injury in the form of a lumbar strain, which is a soft tissue injury to the lumbar region." Dr. Hsu further opined that claimant's lumbar strain from September 5, 2017, "did not lead to any structural changes to the lumbar spine, so it did not aggravate any of his preexisting conditions." Dr. Hsu based his opinion on the fact that the imaging of claimant's back appeared the same before and after the September 5, 2017, accident. Dr. Hsu further opined that the surgery recommended by Dr. Ghaly was not related to the September 5, 2017, work accident. Dr. Hsu clarified his opinion that claimant only sustained a temporary soft tissue back strain from the September 5, 2017.

¶ 56 Dr. Hsu performed an IME on claimant on July 27, 2020. Dr. Hsu also reviewed updated medical records and a June 2018 MRI from Dr. Karahalios, along with Dr. Racenstein's report. Dr. Hsu found no significant changes on the June 2018 MRI. Dr. Hsu's medical opinion remained the same with the addition that claimant underwent surgery with Dr. Karahalios at the L4-L5 level. In addressing claimant's onset of left leg symptoms after the September 5, 2017, work accident,



Dr. Hsu noted that lumbar strains may produce pain in the lower extremities. Dr. Hsu concluded that claimant's left-sided leg pain was a referred pain and not nerve-related radiculopathy.

¶ 57 Dr. Hsu reiterated his opinion that claimant's September 5, 2017, work accident did not aggravate claimant's preexisting condition. Dr. Hsu further opined that claimant's preexisting condition was such that activities of daily living, including bending and twisting, could trigger claimant's low back symptoms. Dr. Hsu opined that the surgery performed by Dr. Karahalios was not causally related to the work accident.

¶ 58 On cross-examination, Dr. Hsu agreed that a low impact or low energy trauma could cause a disc injury. He also agreed that an individual with prior lumbar pathologies was more predisposed to a lumbar injury. Dr. Hsu acknowledged that claimant developed left-sided leg pain after the September 5, 2017, accident. Dr. Hsu agreed that the surgery claimant underwent on June 20, 2018, was reasonable and necessary; however, Dr. Hsu did not believe claimant's need for surgery related to any specific injury, including the September 5, 2017, work injury. Dr. Hsu initially indicated that he spent approximately 15 to 45 minutes examining claimant and reviewing his medical records for each IME but later stated that he may have spent additional hours reviewing medical records.

¶ 59 F. Decisions of the Arbitrator, Commission, and Circuit Court

¶ 60 On June 30, 2021, the arbitrator issued a decision finding that claimant sustained accidental injuries arising out of and in the course of his employment and that his current condition of ill-being was causally related to the accident. With regard to the accident arising out of employment, the arbitrator found that claimant sustained an injury to his back on September 5, 2017, when he restrained an individual at work. The arbitrator noted that "[t]he act of restraining this individual is an act that [claimant] had a duty to perform and was one that he might reasonably be expected to perform incident to his or her assigned duties[,]” making it an “employment risk.” The arbitrator

acknowledged employer's argument that claimant's condition was so deteriorated that any normal daily activity was an overexertion. However, the arbitrator, citing *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 215 (2003), noted the well-established rule that an accident need not be the sole or primary cause—as long as employment was a cause—of a claimant's condition. The arbitrator, citing *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 306 (1982) and *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, then noted that when a claimant is injured performing job duties involving common bodily movements or activities of daily living, such movements or activities are compensable and employment-related "if the common bodily movement resulting in an injury had its origin in some risks connected with, or incidental to, employment so as to create causal connection between the employment and the accidental injury." The arbitrator found that claimant's injury did not occur as a result of a common bodily movement, but from the exertion in restraining an individual who was resisting arrest, which presented a unique work-related risk.

¶ 61 With regard to causation, the arbitrator acknowledged that claimant suffered from a preexisting back condition dating back to 2001. The arbitrator acknowledged that claimant sought intermittent treatment for back pain from 2003 to 2017. The arbitrator further acknowledged that claimant suffered a softball injury in June 2017 and was undergoing treatment for that injury when he sustained the work injury on September 5, 2017. The arbitrator found that claimant's symptoms increased and he developed new symptoms in his left leg following the September 5, 2017, accident. The arbitrator found the medical opinions of Drs. Karahalios, Augusthy, and Ghaly persuasive. Specifically, the arbitrator relied on Dr. Karahalios's opinion that claimant's work accident aggravated his preexisting condition. The arbitrator relied on Dr. Augusthy's medical records, which documented claimant's increased symptoms following the work accident. The arbitrator also relied on Dr. Ghaly's medical records, which indicated that claimant's disc

herniation increased after the work accident and required surgery. Accordingly, the arbitrator awarded claimant benefits under the Act. Employer filed a petition for review of the arbitrator's decision before the Commission.

¶ 62 On June 21, 2022, the Commission, with one commissioner dissenting, issued a decision modifying the arbitrator's decision, in part. Specifically, the Commission corrected a scrivener's error in the arbitrator's decision and assigned no weight to a factor relied on by the arbitrator in awarding certain benefits. The Commission otherwise affirmed and adopted the arbitrator's decision awarding claimant benefits. The dissenting commissioner found that claimant failed to prove a causal connection between his work accident and need for surgery and thus found all other issues moot. In so finding, the dissenting commissioner found the medical opinions of Drs. Hsu and Racenstein more persuasive than those of Drs. Karahalios, Augusthy, and Ghaly. Thus, the dissenting commissioner would have reversed the arbitrator's decision awarding claimant benefits.

¶ 63 Employer sought judicial review of the Commission's decision before the circuit court of Kane County. The court entered an order on March 30, 2023, confirming the Commission's decision. Employer timely appealed.

¶ 64

## II. ANALYSIS

¶ 65 On appeal, employer argues that the Commission erred by finding claimant's September 5, 2017, work accident aggravated claimant's preexisting condition and by finding claimant's September 5, 2017, work accident arose out of his employment. We disagree.

¶ 66 To obtain benefits under the Act, a claimant must establish by a preponderance of the evidence that he sustained an accidental injury "arising out of" and "in the course of" the claimant's employment. 820 ILCS 305/1(d) (West 2018); *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 32; *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). "The 'arising out of' component is primarily concerned with causal connection. To satisfy this

requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.” *Sisbro, Inc.*, 207 Ill. 2d at 203.

¶ 67 Here, the Commission, in affirming and adopting the arbitrator’s decision, found that claimant sustained an injury to his back on September 5, 2017, when he restrained an individual at work. The Commission concluded that “[t]he act of restraining this individual is an act that [claimant] had a duty to perform and was one that he might reasonably be expected to perform incident to his or her assigned duties[,]” making it an “employment risk.” Employer does not appear to dispute this finding. Employer, instead, appears to argue that claimant’s September 5, 2017, work accident was not causally related to claimant’s back condition, which required corrective surgery. Employer, relying on the decision of the dissenting commissioner, argues that the overwhelming evidence demonstrated that claimant sustained a temporary back injury as a result of the September 5, 2017, work accident, and that his need for surgery was the result of his longstanding preexisting back condition, not the September 5, 2017, work accident. Employer also argues that claimant’s injury did not arise out of his employment because his back condition was so far deteriorated that it could have been aggravated by normal activities of daily living. We consider these specific arguments in turn.

¶ 68 A. Causal Connection in Preexisting Condition Cases

¶ 69 In cases involving a preexisting condition, an employee’s recovery depends “on the employee’s ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee’s current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition.” *Id.* at 204-205. “[E]ven though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will

not be denied as long as it can be shown that the employment was also a causative factor.” *Id.* at 205. “Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being.” (Emphasis in original). *Id.* (citing *Rock Road Construction Co. v. Industrial Comm’n*, 37 Ill. 2d 123, 127 (1967)).

¶ 70 “Whether a claimant’s disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the Industrial Commission.” *Sisbro, Inc.*, 207 Ill. 2d at 205. “[A] reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission’s findings are against the manifest weight of the evidence.” *Id.* at 206. “[T]o the extent that the medical testimony might be construed as conflicting, it is well established that resolution of such conflicts falls within the province of the Commission, and its findings will not be reversed unless contrary to the manifest weight of the evidence.” *Caterpillar Tractor Co. v. Industrial Comm’n*, 92 Ill. 2d 30, 37 (1982).

¶ 71 Applying these deferential standards, we cannot say that the Commission’s finding on the issue of causation was against the manifest weight of the evidence. The Commission, in affirming and adopting the arbitrator’s decision, found that the September 5, 2017, work accident aggravated claimant’s back condition. In so finding, the Commission acknowledged that claimant had a significant preexisting back condition dating back to 2001, as documented in claimant’s medical records. The Commission also acknowledged that claimant sought treatment for low back symptoms from 2003 to 2017. The Commission noted that claimant sought treatment for the June 2017 softball injury and continued such treatment until he sustained the work accident on September 5, 2017. However, the Commission found that claimant’s low back symptoms

increased, and that he developed new symptoms in his left leg after the September 5, 2017, work accident.

¶ 72 Claimant's testimony and medical records support these findings. Claimant testified that he was able to work after he experienced back spasms on previous occasions, including the June 2017 softball injury, but that he was unable to work after the September 5, 2017, work accident. He also testified that conservative treatment no longer alleviated his symptoms after September 5, 2017. Claimant's medical records demonstrated that he reported worsening pain and additional symptoms in his left side after the September 5, 2017, work accident. Claimant's medical records also demonstrated that he was directed to remain off work after the September 5, 2017, work accident. This evidence supported the Commission's finding that the September 5, 2017, work accident aggravated claimant's preexisting back condition.

¶ 73 In addition, the Commission's finding that the September 5, 2017, work accident aggravated claimant's condition was supported by the medical opinions of Drs. Karahalios and Ghaly. Dr. Karahalios opined that the September 5, 2017, work accident aggravated claimant's preexisting condition. While Dr. Karahalios did not consider all of claimant's prior treatment records in formulating his opinions, Dr. Karahalios testified that his opinions remained unchanged when he was confronted with such records on cross-examination. Dr. Ghaly also opined that claimant's work accident caused an increase in his disc herniation. We note that Dr. Racenstein also noted the increase in claimant's disc herniation when comparing the imaging of claimant's low back before and after the accident. Accordingly, the Commission's finding that claimant's work accident aggravated his preexisting condition was supported by sufficient evidence.

¶ 74 We acknowledge that employer presented the conflicting medical opinions of Drs. Hsu and Racenstein. Dr. Hsu opined that claimant sustained a temporary injury on September 5, 2017, which resolved shortly thereafter, and that claimant's need for surgery did not relate to the

September 5, 2017, work accident. Both Drs. Hsu and Racenstein opined that there were no significant changes in the MRIs taken of claimant's back before and after the September 5, 2017, work accident. However, the Commission did not find these medical opinions persuasive and, instead, relied on the medical opinions of Drs. Karahalios and Ghaly. Dr. Ghaly noted in his medical records that the increase in claimant's disc herniation caused the need for surgery. Dr. Karahalios opined that he recommended surgery, in part, on claimant's new left-sided symptoms. When faced with conflicting medical testimony and evidence, "it is well established that resolution of such conflicts falls within the province of the Commission, and its findings will not be reversed unless contrary to the manifest weight of the evidence." *Caterpillar Tractor Co.*, 92 Ill.2d at 37. Because claimant presented medical opinions that supported the Commission's finding on the issue of causation, we cannot say that the Commission's finding was against the manifest weight of the evidence.

¶ 75

#### B. The Normal Daily Activity Exception

¶ 76 In *Sisbro*, our supreme court reiterated the general rule that an employee need only prove that some act or phase of his or her employment was a causative factor of the resulting injury but noted that:

“ ‘The sole limitation to the above general rule is that where it is shown 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, compensation will be denied.’ ” 207 Ill. 2d at 208 (quoting *County of Cook v. Industrial Comm'n*, 69 Ill. 2d 10, 18 (1977)).

The employer in *Sisbro* interpreted this limitation to mean that a “normal daily activity exception” existed to the general rule allowing for compensation for work-related injuries that aggravated or accelerated a preexisting condition. *Sisbro*, 207 Ill. 2d at 208. The employer in *Sisbro* argued that,

“even when a work-related accidental injury is shown to be an actual causal factor in bringing about an employee’s disabling condition, recovery should be denied if normal daily activity could have brought on claimant’s disabling condition.” *Id.* at 208-09. However, our supreme court rejected the employer’s interpretation and argument. *Id.* at 209. Our supreme court held that the exception would not defeat a claim if causation otherwise existed. *Id.* at 214-15.

¶ 77 Here, the Commission, in affirming and adopting the arbitrator’s decision, found that causation existed. Although there was evidence demonstrating that claimant’s back condition could be triggered by activities of normal daily living, the evidence demonstrated that claimant’s back condition was aggravated when he attempted to restrain an individual at work on September 5, 2017. The evidence further demonstrated that claimant’s pain worsened and he experienced new symptoms after the September 5, 2017, work accident. Accordingly, the evidence demonstrated that claimant’s low back condition was caused, in part, by his act of restraining an individual at work, not an activity of daily living. Thus, the Commission did not err by finding that claimant sustained an injury that arose out of his employment.

¶ 78 III. CONCLUSION

¶ 79 For the reasons stated, we affirm the judgment of the circuit court confirming the decision of the Commission.

¶ 80 Affirmed.