# Illinois Official Reports

## Appellate Court

***Tazewell County v. Illinois Workers' Compensation Comm'n*, 2025 IL App (4th) 230754WC**

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| Appellate Court Caption | TAZEWELL COUNTY, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (Dora Potts, Appellee). |
| District & No. | Fourth District<br>No. 4-23-0754WC |
| Filed<br>Rehearing denied | January 31, 2025<br>February 24, 2025 |
| Decision Under Review | Appeal from the Circuit Court of Tazewell County, No. 22-MR-86; the Hon. Christopher R. Doscotch, Judge, presiding. |
| Judgment | Affirmed. |
| Counsel on Appeal | Michael S. Bantz, of IFMK Law, Ltd., of Champaign, for appellant.<br><br>Kevin L. Elder, of Goldfine & Bowles, P.C., of Peoria, for appellee. |
| Panel | JUSTICE HOFFMAN delivered the judgment of the court, with opinion.<br>Presiding Justice Holdridge and Justices Cavanagh and Barberis concurred in the opinion.<br>Justice Mullen dissented, with opinion. |

## OPINION

¶ 1 The claimant, Dora Potts, sought benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2018)) for a repetitive trauma injury she allegedly sustained while working as a dental hygienist for the respondent, Tazewell County. Following a hearing, the arbitrator denied the claimant's request for benefits, finding that she failed to prove by a preponderance of the evidence that she sustained a compensable accident. The Illinois Workers' Compensation Commission (Commission) reversed and awarded the claimant temporary total disability (TTD) and permanent partial disability (PPD) benefits. On judicial review, the circuit court of Tazewell County confirmed the decision of the Commission. The respondent now appeals, arguing that the Commission erroneously determined that the claimant established accident and causation. According to the respondent, there was no medical testimony or evidence that the claimant's underlying preexisting condition was aggravated or accelerated by her repetitive work activities. Rather, the evidence established that the claimant merely testified that she experienced pain from the preexisting condition while at work. Respondent asserts that this was, standing alone, insufficient to establish accident or causation. For the following reasons, we affirm the judgment of the circuit court.

¶ 2 I. BACKGROUND

¶ 3 On June 8, 2020, the claimant filed an application for adjustment of claim, seeking benefits from the respondent. In her application, the claimant alleged that she sustained injuries to the person as a whole due to repetitive trauma. The application listed an accident date of June 24, 2019. An arbitration hearing on the claimant's application for adjustment of claim was held on November 18, 2021. The issues in dispute were accident, causation, TTD benefits, medical expenses, and the nature and extent of the injury. The following factual recitation is taken from the evidence adduced at the arbitration hearing.

¶ 4 The claimant worked as a full-time dental hygienist for the respondent's health department. In this position, the claimant's duties included taking X-rays, cleaning patients' teeth, and sealing patients' teeth. The claimant estimated that cleaning and sealing teeth constituted 85% of her work duties.

¶ 5 The claimant testified that the physical demands of the position involved "[a] lot of hunching over" patients. The claimant used her right hand to clean and pick patients' teeth and operate the air and water tools. The claimant used her left hand to manipulate the mirror and stabilize the patient's head. Regarding her method of cleaning and sealing patients' teeth, the claimant explained as follows:

> "The right arm would be up so I can actually get in their mouth and my left arm I would hold up and bring around the top of their head because if you tried to cross over their head they would have their nose right in my armpit so I would have to bring it up and go around the top of their head to make everybody comfortable."

The claimant stated that the method she uses was the one taught to her at school and used by most dental hygienists. The claimant demonstrated the method to the arbitrator. The claimant's attorney described the claimant's positioning as follows:

> "[The claimant] is sitting up close to a chair with the chair pretty much pressed against her chest, the left side of her chest, and her left arm is I would say 90 degrees straight out from her shoulder bent at the elbow and then bent again at the wrist to the inside."

The arbitrator stated that the claimant's elbow appeared to be bent at a 90-degree angle and her wrist was "slightly flexed." The claimant noted that if the patients were heavyset, she would have to extend herself "out and up further to get up and over their actual body weight."

¶ 6 The claimant testified that she worked for the respondent from 2005 until 2019. During that time, she was the only full-time dental hygienist. The claimant estimated that she would typically see 12 to 14 patients each workday, although she could see up to 18 patients on a busy day. Appointments were booked in blocks of 30 to 45 minutes, with no break between patients unless there was a cancellation. The claimant testified that during a 30-minute appointment, her arm would be in an elevated position for about 15 minutes.

¶ 7 The claimant testified that she first noticed problems with her left shoulder in January 2019, when she began experiencing pain while having her arm elevated at work. Initially, the claimant's shoulder felt tired at the end of the day, but the symptoms eventually progressed into "full-blown pain" that affected her sleep. The claimant noted that she typically worked four days a week—Monday through Thursday. She testified that by Sunday, her shoulder would feel "pretty good." However, the pain would return by Tuesday. On April 9, 2019, the claimant e-mailed her supervisor, Angie Phillips, and informed Phillips that her "left shoulder is shot and needs a cortisone shot." The claimant also told Phillips that she "tried to work normal yesterday and [she] paid for it last night."

¶ 8 The claimant presented to Dr. Jill Wirth-Rissman on April 11, 2019, for left shoulder pain with an onset in February 2019. The claimant reported some radiating pain down the lateral side of the arm and pain with lifting, pushing, and pulling. She also reported trouble putting on a shirt. The claimant denied any injury. Examination revealed tenderness in the biceps tendon, abnormal range of motion, and a positive impingement test. Dr. Wirth-Rissman diagnosed acute pain of the left shoulder and left rotator cuff tendinitis. She administered a corticosteroid injection in the subacromial and sub-bursal space of the left shoulder.

¶ 9 The claimant followed up with Dr. Wirth-Rissman on May 13, 2019. At that time, the claimant reported continued pain with certain movements and while sleeping on her back. Dr. Wirth-Rissman administered an injection to the area along the sheath of the left biceps tendon and ordered an MRI of the left shoulder. The claimant underwent the MRI on May 24, 2019. The MRI revealed severe rotator cuff tendinosis, a subtle small full-thickness distal supraspinatus tendon tear with no tendon retraction, a subtle labral tear, mild impingement of the rotator cuff by the undersurface of the acromion process, acromioclavicular joint arthritis without impingement, and mild subacromial subdeltoid bursitis. On June 10, 2019, the claimant underwent a repeat injection to the left shoulder. Dr. Wirth-Rissman eventually referred the claimant to an orthopedic surgeon.

¶ 10 The claimant presented to Dr. Michael Merkley of the Midwest Orthopaedic Center on June 24, 2019, for left shoulder pain. At that time, the claimant completed an intake form in which she stated that the "injury/pain" began in February 2019. The claimant did not write anything in a space on the form to indicate where and how the injury occurred. The claimant wrote on the form that "putting [her] arm up against [her] head" makes the condition better and "laying on [her] side or back [and with her] arm hanging down" makes the condition worse.

The claimant also indicated that there was no workers' compensation dispute and that she did not file or plan to file a lawsuit or workers' compensation claim related to the condition.

¶ 11 The claimant told Dr. Merkley that she experiences pain that awakens her at night. She reported that the corticosteroid injections did not provide long-term relief and that she had been undergoing physical therapy, but it was discontinued due to increased pain. The claimant denied any specific injury. At the left shoulder, Dr. Merkley's examination revealed active forward elevation to 90 degrees before being limited by pain. The claimant had a positive Neer test, a positive Speed's test, and a positive Hawkins sign.[1] There was tenderness at the acromioclavicular joint and pain with crossed arm adduction. The claimant had bicipital pain with active compression test. An X-ray revealed subacromial spurring with a type-2 acromion and lateral angulation of the acromion. Dr. Merkley noted that the MRI revealed rotator cuff tendinosis with a significant partial-thickness supraspinatus tear, as well as subdeltoid bursal fluid and acromioclavicular joint arthrosis. Dr. Merkley diagnosed recalcitrant left shoulder pain, partial-thickness rotator cuff tear, acromioclavicular joint arthrosis, subacromial bursitis, and biceps tenosynovitis. Noting that the claimant had not improved with conservative treatment, Dr. Merkley recommended surgery. Work restrictions of no repetitive use of the left arm and a 10-pound lifting limitation were provided to the claimant. Thereafter, the claimant ceased working directly with patients and did some paperwork and light duty for about a week.

¶ 12 On August 6, 2019, Dr. Merkley performed an arthroscopy with subacromial decompression, a distal clavicle excision of the left shoulder, and an arthroscopic rotator cuff repair. Dr. Merkley's postoperative diagnoses were recalcitrant left shoulder pain, acromioclavicular joint arthrosis, and severe bursal side supraspinatus tendon tear. After surgery, the claimant continued to treat with Dr. Merkley and his staff. During this time, she was prescribed physical therapy, a home exercise program, and stretching. On January 16, 2020, Dr. Merkley completed a temporary disability form, checking a box on the form to indicate that the claimant's left shoulder conditions were not due to injury or sickness arising out of the claimant's employment. The claimant was seen by Brandon Gale, a certified physician's assistant at Dr. Merkley's office, on April 1, 2020. At that time, the claimant reported doing well and indicated that her pain and range of motion were improving. Gale advised the claimant to continue with home exercises and stretching. In addition, the claimant was released to work with no restrictions and was to follow up as needed.

¶ 13 Dr. Merkley authored a narrative report to the claimant's attorney on October 30, 2020. In the report, Dr. Merkley noted that the claimant's duties with her left arm, as explained by the claimant, included repetitive pushing, pulling, reaching, and holding tools. The claimant told Dr. Merkley that these activities "became painful over time at her left shoulder." While Dr. Merkley did not believe that the nature of the claimant's duties caused her rotator cuff tear, he opined that the claimant's repetitive work activities "were a contributory cause of pain at her left shoulder." He explained that repetitive activities at shoulder level or even at waist level "can result in increased pain in patients who have preexisting rotator cuff pathology." Dr. Merkley further opined that—given the repetitive nature of the reaching, pushing, and pulling performed with the claimant's left shoulder—it was "reasonable to assume," based upon the

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[1]A Neer test is used to identify rotator cuff impingement. A Speed's test helps detect biceps pathology and SLAP (superior labrum anterior to posterior) tears or tendinopathy in the shoulder. A Hawkins sign is used to detect shoulder impingement.

claimant's history, that there was a causal relationship between the claimant's work for the respondent and "the pain at her left shoulder." Dr. Merkley stated that the claimant reached maximum medical improvement by April 1, 2020.

¶ 14 The claimant attended an independent medical examination by Dr. Lawrence Li of the Orthopedic & Shoulder Center on January 14, 2021. Dr. Li conducted a physical examination and interview of the claimant. He also reviewed a job description, diagnostic films, and medical notes of the claimant's treatment. The claimant told Dr. Li that she began to develop left shoulder pain early in 2019. The claimant reported that there was no specific incident that caused the pain; rather, it was a slow, gradual development. The claimant told Dr. Li that her work activities aggravated the pain. At the time of Dr. Li's examination, the claimant reported a dull ache in the left shoulder but acknowledged improvement in her shoulder pain compared to before her surgery. Based on the claimant's description of her job duties, Dr. Li noted that the claimant's hands and elbows were always below her shoulder. At times, the claimant had to abduct 60 degrees to get the mirror in the right position, but she never had to abduct her shoulder beyond 90 degrees. Dr. Li diagnosed a rotator cuff tear, impingement syndrome, and acromioclavicular joint arthritis. He opined that the diagnoses were not caused, aggravated, or accelerated by repetitive tasks that the claimant performed at work. Dr. Li disagreed with Dr. Merkley's opinion that repetitive activities without a significant trauma at the waist level would permanently aggravate a shoulder condition. The bases for Dr. Li's disagreement were that impingement of the rotator cuff starts at 70 degrees and the amount of force to position a mirror would be very low because of its light weight. He added that one cannot exert significant force inside an awake patient's mouth, as that would be painful. Dr. Li acknowledged that the claimant's shoulder pain could manifest during her job duties as a result of a rotator cuff tear. However, this would not be a permanent aggravation, acceleration, or causative factor in the development of the tear. Rather, it would be "a very temporary aggravation or manifestation of symptoms."

¶ 15 The claimant testified that she is currently employed as a paralegal and earns less than what she earned as a dental hygienist. The claimant stated that the current condition of her left shoulder is better than before the surgery.

¶ 16 Dr. Yolanda Wright-Lowry testified that she is a dentist. Dr. Wright-Lowry worked for the respondent between 2016 and 2019 and was the claimant's supervisor during that time. Dr. Wright-Lowry testified on the respondent's behalf, pursuant to subpoena. Although Dr. Wright-Lowry had observed the claimant performing a teeth cleaning, she could not remember exactly how the claimant sat or positioned her arms. Nevertheless, Dr. Wright-Lowry opined that the claimant's characterization of how dental hygienists are positioned was "a little inaccurate." Dr. Wright-Lowry stated that she has not seen other dental hygienists holding their arms up as high as the claimant displayed in her demonstration. She stated that a hygienist's elbows should be bent at a 90-degree angle and his or her arms should be below shoulder level. If a patient is larger, the hygienist's hands might have to move out a little bit more than normal. Dr. Wright-Lowry stated that a hygienist would see approximately 14 patients per work shift and each cleaning would take 30 minutes to perform.

¶ 17 Based on the foregoing, the arbitrator concluded that the claimant failed to prove by a preponderance of the evidence that she sustained an accident arising out of and occurring in the course of her employment with the respondent. In support of this conclusion, the arbitrator noted that, although the claimant's application for adjustment of claim and her testimony at

the arbitration hearing alleged a work-related etiology for her left shoulder injury, there was no evidence in the treating medical records to support this claim.

¶ 18 The claimant filed a petition for review of the arbitrator's decision with the Commission. The Commission reversed the decision of the arbitrator and found that the claimant sustained a compensable injury to her left shoulder on June 24, 2019. The Commission explained:

> "The medical testimony in this case supports the conclusion that [the claimant] sustained a repetitive trauma injury arising out of and in the course of her employment. In this case, both Dr. Merkley and Dr. Li agree that [the claimant] had a preexisting rotator cuff tear that was not caused by her work duties. Dr. Merkley, however, stated that [the claimant's] repetitive activities at shoulder level or even at the waist level can result in increased pain in patients who have preexisting rotator cuff pathology. Dr. Merkley further opined that there was a causal relationship between [the claimant's] left shoulder pain and the repetitive nature of her duties. Dr. Li agreed with Dr. Merkley on this point, but disagreed only to the extent that [the claimant's] duties were not a permanent aggravation, acceleration or causative factor in the tear. In short, the claimant's work activities constituted a temporary aggravation or manifestation of symptoms.
>
> The Commission is persuaded by Dr. Merkley's opinion and agrees that [the claimant's] condition was not the natural progression of her preexisting condition. [The claimant] denied any preexisting left shoulder issues, and there were no medical records establishing that [the claimant] was undergoing any medical treatment to her left shoulder prior to April 2019. Further, there is no evidence establishing that [the claimant] was unable to perform her job duties prior to June 24, 2019, the date Dr. Merkley first gave [the claimant] work restrictions. [The claimant] credibly testified that her condition would repeatedly improve while off work only to consistently return when she resumed working a few days later—belying Dr. Li's opinion that [the claimant's] condition was a temporary aggravation. While the tear was preexisting, the evidence establishes that [the claimant's] work duties aggravated her condition, which ultimately necessitated the surgery she eventually received. Therefore, the Commission finds that [the claimant] established that her condition is causally related to her repetitive work duties."

The Commission awarded the claimant 39-1/7 weeks (July 1, 2019, through April 1, 2020) of TTD benefits (see 820 ILCS 305/8(b) (West 2018)) and 62.5 weeks of PPD benefits, representing a 12.5% loss of use of the person as a whole (see *id.* § 8(d)(2)). The Commission also determined that the respondent was entitled to a credit, pursuant to section 8(j) of the Act (*id.* § 8(j)) because the claimant's medical bills had been paid by the respondent's self-insured group health plan.

¶ 19 On judicial review, the circuit court of Tazewell County confirmed the decision of the Commission. This appeal by the respondent ensued.

¶ 20 II. ANALYSIS

¶ 21 On appeal, the respondent challenges the Commission's findings with respect to accident and causation. Because these issues are closely related—and because the parties conflate these concepts in their analyses—we address them together.

¶ 22 As an initial matter, however, we discuss the appropriate standard of review. The respondent argues that we should review the Commission's decision *de novo* because the Commission committed "an error on the application of law to a set of established facts." Specifically, the respondent asserts that the Commission erred by ruling that suffering pain from a preexisting condition while an employee is at work is legally sufficient, by itself, to establish medical causation between that physical condition and the employee's job duties. The claimant responds that disputed issues of fact were resolved by the Commission, so the appropriate standard of review is the manifest weight of the evidence. We agree with the claimant. The principal issues in this appeal—*i.e.*, whether the claimant's injury arose out of and occurred in the course of her employment and whether there is a causal connection between her condition of ill-being and her employment—are factual inquiries, dependent on an assessment of the testimony and evidence presented by the parties. Consequently, we employ the manifest-weight-of-the-evidence standard of review. See *Western Springs Police Department v. Illinois Workers' Compensation Comm'n*, 2023 IL App (1st) 211574WC, ¶ 17 (noting that whether an employee sustained an accident arising out of and occurring in the course of his or her employment is a question of fact subject to the manifest weight standard); *Centeno v. Illinois Workers' Compensation Comm'n*, 2020 IL App (2d) 180815WC, ¶ 63 (noting that causation is a question of fact reviewable under the manifest-weight-of-the-evidence standard).

¶ 23 Turning to the merits, to obtain benefits under the Act, an employee must establish by a preponderance of the evidence all the elements of her claim, including that she sustained an accidental injury "arising out of" and occurring "in the course of" her employment. 820 ILCS 305/2 (West 2018); *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The "arising out of" component is primarily concerned with causal connection. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 36. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or incidental to the employment, so that there is a causal connection between the employment and the accidental injury. *Id.*; *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989); *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366 (1977). The phrase "in the course of" refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000).

¶ 24 Similarly, the employee must establish by a preponderance of the evidence the existence of a causal relationship between her current condition of ill-being and the employment. *ABF Freight System v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc.*, 207 Ill. 2d at 205. Even if the employee had a preexisting condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied if she can show that the employment was also a causative factor. *Id.* An employee may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating or accelerating a preexisting condition. *Id.* at 204-05.

¶ 25 An employee who suffers a repetitive-trauma injury must meet the same standard of proof as an employee who sustains an injury arising from a single identifiable event. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006); see *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 529-30 (1987) (noting that an injury is considered

"accidental" under the Act if it is caused by the performance of a claimant's job, even though it develops gradually as a result of repetitive trauma). An employee who alleges injury based on repetitive trauma must "show[ ] that the injury is work related and not the result of a normal degenerative aging process." *Peoria County Belwood Nursing Home*, 115 Ill. 2d at 530. Although medical testimony as to causation is not necessarily required, "where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that [an employee's] work activities caused the condition complained of." *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 478 (1987). Cases involving the aggravation of a preexisting condition primarily concern medical questions and not legal ones. *Id.* This is especially true in repetitive trauma cases. *Id.* Thus, where there is evidence of a preexisting condition, medical evidence is necessary to establish a causal connection between the alleged repetitive trauma and the employee's resulting condition of ill-being. See *Johnson v. Industrial Comm'n*, 89 Ill. 2d 438, 442-43 (1982).

¶ 26 As noted earlier, both the occurrence of a work-related accident and the existence of a causal relationship are questions of fact. *Western Springs Police Department*, 2023 IL App (1st) 211574WC, ¶ 17 (accident); *Centeno*, 2020 IL App (2d) 180815WC, ¶ 63 (causation). In resolving factual matters, "it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009) (citing *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 847 (1996)). A factual determination of the Commission will be disturbed on review only when it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Bassgar, Inc. v. Illinois Workers' Compensation Comm'n*, 394 Ill. App. 3d 1079, 1085 (2009). The test is whether the evidence is sufficient to support the Commission's findings, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

¶ 27 The issue underlying a resolution of this appeal is whether repetitive work activity that results solely in pain from a preexisting non-work-related condition is compensable under the Act in the absence of a concomitant worsening of the underlying non-work-related condition. The issue is one of first impression in Illinois. Our research has revealed that other jurisdictions are split on the issue.

¶ 28 A number of jurisdictions hold that pain standing alone is insufficient to support a finding of an aggravation or acceleration of a preexisting condition and is, therefore, not a compensable work injury. See *State v. Sandberg*, 931 N.W.2d 488, 496 (N.D. 2019); *Hendrickson v. Department of Labor & Industries*, 409 P.3d 1162, 1170 (Wash. Ct. App. 2018); *Trosper v. Armstrong Wood Products, Inc.*, 273 S.W.3d 598, 607 (Tenn. 2008); *Martin v. CNH America LLC*, 195 P.3d 771, 774-76 (Kan. Ct. App. 2007); *Konvalinka v. Bonneville County*, 95 P.3d 628, 630-31 (Idaho 2004); *In re Lockheed Martin Corp.*, 786 A.2d 872, 874 (N.H. 2001); *Weinmann v. General Motors Corp., Fisher Body Division*, 394 N.W.2d 73, 76-77 (Mich. Ct. App. 1986); *In re Compensation of Hall*, 651 P.2d 186, 187 (Or. Ct. App. 1982); *O'Connor v. Anderson Brothers Plumbing & Heating*, 300 N.W.2d 188, 190 (Neb. 1981); *Hamm v. University of Maine*, 423 A.2d 548 (Me. 1980); *Rivers Construction Co. v. Dubose*, 130 So. 2d 865, 870 (Miss. 1961).

¶ 29 Other states take a more expansive view of whether an increase in pain or other symptoms is sufficient, by itself, to establish an aggravation or acceleration of a preexisting condition. See *Molinar v. Larry Reetz Construction, Ltd.*, 2018-NMCA-011, ¶ 22, 409 P.3d 956; *Gower v. Conrad*, 765 N.E.2d 905, 908 (Ohio Ct. App. 2001); *DeYonge v. NANA/Marriott*, 1 P.3d 90, 96-97 (Alaska 2000); *Mandex, Inc. v. Industrial Comm'n*, 729 P.2d 921, 923-24 (Ariz. Ct. App. 1986).

¶ 30 The respondent argues that pain by itself is not a compensable condition under the Act. Under the circumstances of this case, we disagree.

¶ 31 The aggravation or acceleration of a preexisting condition caused by work-related activity is compensable under the Act. *Sisbro, Inc.*, 207 Ill. 2d at 204-05. We believe that, when a preexisting condition is asymptomatic and then becomes painful as the result of work-related activity, that symptomatic condition is compensable under the Act as an aggravation of the preexisting condition even in the absence of an organic or structural change in the preexisting condition. When a preexisting asymptomatic condition becomes painful for reasons other than an organic or structural change or natural progression, it follows that the preexisting condition was aggravated by something. If the aggravation is work-related, such as repetitive trauma, and solely causes pain, we hold that the pain suffered is, in and of itself, a compensable aggravation of the preexisting condition.

¶ 32 In the instant case, it is undisputed that the claimant suffered from a preexisting left shoulder rotator cuff tear, impingement syndrome, and acromioclavicular joint arthritis that was not caused by her work duties. There is no evidence that the claimant's work activities caused any organic or structural change to her preexisting conditions. The only evidence in the record is that the claimant suffered left shoulder pain as the result of repetitive work activity. Nevertheless, the Commission found that the claimant suffered a repetitive trauma injury arising out of and in the course of her employment with the respondent. Based on our holding that pain alone may be compensable and on the record in this case, we are unable to conclude that the Commission's finding in that regard is against the manifest weight of the evidence.

¶ 33 The evidence introduced at the arbitration hearing in the instant case, including the testimony of the claimant and the histories contained in her medical records, is sufficient to support a finding that she sustained repetitive trauma as a result of her work-related duties as a dental hygienist. The claimant's activities in seeing patients consisted of activity that the respondent might reasonably expect her to perform incident to cleaning and sealing patients' teeth. Further, the repetitive trauma that the claimant suffered occurred within the time and space of her employment. We conclude, therefore, that the evidence in the record satisfied the claimant's burden of proving that her repetitive trauma and resulting left shoulder pain arose out of and in the course of her employment with the respondent. See *id.* at 203-04.

¶ 34 Relying on the opinions of Dr. Merkley, the Commission also found that the claimant established that her condition is causally related to her repetitive work duties. As noted earlier, in his written report, Dr. Merkley opined, within a reasonable degree of medical certainty, that the claimant's "repetitive work activities were a contributory cause of pain at her left shoulder." Although Dr. Li rendered a contrary causation opinion, it was the function of the Commission to resolve the conflict in medical opinions. *ABBF Freight System*, 2015 IL App (1st) 141306WC, ¶ 19. The Commission was persuaded by Dr. Merkley's causation opinion, and we find no basis upon which to conclude that an opposite conclusion is readily apparent. To support recovery under the Act, the claimant's repetitive work activities need not have been

the sole cause or the only cause of the pain in her left shoulder. It is sufficient to support recovery if it was shown that her work duties as dental hygienist were a contributing factor. See *Sisbro*, 207 Ill. 2d at 205. Dr. Markley's causation opinion satisfied that showing. We conclude, therefore, that the Commission's finding that the claimant's condition of left shoulder pain is causally related to her repetitive work duties is not against the manifest weight of the evidence.

¶ 35 Based upon its arguments as to accident and causation, the respondent also argues that the Commission's awards of TTD and PPD benefits to the claimant should be reversed. Having rejected its arguments as to accident and causation, we reject the respondent's argument for the reversal of the benefits awarded for the same reasons.

¶ 36 III. CONCLUSION

¶ 37 For the reasons set forth above, we affirm the judgment of the circuit court of Tazewell County, which confirmed the Commission's decision.

¶ 38 Affirmed.

¶ 39 JUSTICE MULLEN, dissenting:

¶ 40 I respectfully dissent. Under these circumstances, pain alone is not enough, and I would conclude that the Commission's findings are against the manifest weight of the evidence. In *Sisbro*, *Inc.*, the supreme court stated the standard for recovery under the Act where the employee suffers from a preexisting condition, noting

> "[i]t has long been recognized that, in preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury *aggravated or accelerated* the preexisting condition 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." (Emphasis added.) *Sisbro*, *Inc.*, 207 Ill. 2d at 204-05.

The majority acknowledges that the issue of whether claimant's preexisting condition of ill-being was aggravated or accelerated by her repetitive work duties is outside the knowledge of lay persons. *Supra* ¶ 25 (citing *Nunn*, 157 Ill. App. 3d at 477-78). Consequently, medical evidence was necessary to establish a causal connection between claimant's repetitive work duties and, in my view, the aggravation or acceleration of her preexisting condition. See *Johnson*, 89 Ill. 2d at 442-43.

¶ 41 Here, claimant presented no medical evidence that her repetitive work activities aggravated or accelerated her preexisting condition of ill-being. Neither Dr. Merkley nor Dr. Li determined that claimant's repetitive work activities accelerated the degeneration of her left shoulder, increased the size of the rotator cuff tear of claimant's left shoulder, or otherwise aggravated the condition of claimant's left shoulder. Dr. Merkley opined that claimant's repetitive work activities "were a contributory cause of *pain* at her left shoulder." (Emphasis added.) He also stated that it was "reasonable to assume," based upon claimant's history, that there was a causal relationship between claimant's work for respondent and "the *pain* at her left shoulder." (Emphasis added.) Significantly, however, Dr. Merkley never said that claimant's repetitive

work activities *aggravated or accelerated the preexisting condition of ill-being of claimant's left shoulder*.

¶ 42 In the absence of medical evidence supporting a finding of a causal connection between claimant's condition of ill-being and her repetitive work activities, the Commission's findings as to accident and causation rested on mere speculation. This was improper. See *Sisbro, Inc.*, 207 Ill. 2d at 215 (stating that the Commission's decision must be supported by the record and not be based on mere speculation or conjecture).

¶ 43 While an employer takes the employee as it finds him or her (*Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 199 (2002)), there is no recovery where the employee's condition of ill-being is merely the result of a normal degenerative process of a preexisting condition (*Sisbro, Inc.*, 207 Ill. 2d at 204-05). Instead, it is the employee's burden 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. *Id.* Without that evidence, this claim falls short of the line drawn in *Sisbro*. For these reasons, I dissent.