FILED
June 25, 2021
Carla Bender
4th District Appellate
Court, IL

2021 IL App (4th) 200604WC-U
No. 4-20-0604WC

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MIDWEST POWER SOURCE, INC.,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Macoupin County.
	)	
	)	
v.	)	No. 2020-MR-26
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*	)	Honorable
	)	April Troemper,
(Roy McGuire, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's decision is affirmed where the Commission's findings relating to accident, causal connection and permanent partial disability are amply supported by the evidence and not against the manifest weight of the evidence.

¶ 2 This case initially involved two claims for workers' compensation benefits brought by claimant, Roy McGuire, against his employer, Midwest Power Source (Midwest), pursuant to the Illinois Workers' Compensation Commission Act (Act) (820 ILCS 305/1 *et seq*. (West 2014)), for neck injuries arising from two separate work accidents. In the first claim (17-WC-02719), claimant

alleged that he sustained "permanent and serious" neck injuries while using a sledgehammer to remove a piston from a pack while working for Midwest on January 17, 2017. In the second claim (17-WC-20693), claimant alleged that he sustained "permanent and serious" neck injuries while sliding 100-pound engine parts off of a skid into a dumpster while working for Midwest on May 1, 2017.

¶ 3 Both claims were consolidated for hearing, pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2016)), before the arbitrator on May 23, 2018. The disputed issues common to both claims were accident, notice, causation, medical, temporary total disability (TTD), nature/extent and penalties/fees.

¶ 4 On November 14, 2018, the arbitrator issued a decision with respect to both claims. The arbitrator found that claimant sustained a cervical spine injury that arose out of and in the course of his employment on January 17, 2017, and a second work-related accident on May 1, 2017, when he acutely aggravated and exacerbated his prior cervical spine injury. Concerning both accidents, the arbitrator found that Midwest had received timely notice and that claimant's condition of ill-being in his cervical spine was causally connected to the work accidents. The arbitrator awarded claimant benefits for medical services rendered following both accidents, TTD benefits of $360 per week from May 2, 2017, through August 23, 2017, and permanent partial disability (PPD) benefits that represented 10% loss of the use of the person as a whole from the January 17, 2017, accident and 15% loss of the person as a whole from the May 1, 2017, accident. The arbitrator denied claimant's request for penalties and fees.

¶ 5 Midwest subsequently filed a petition for review with the Commission. On March 4, 2020, the Commission issued a separate decision for each claim. Regarding the claimant's first claim, the Commission, based on a finding that claimant had failed to prove he sustained an accident on

January 17, 2017, unanimously reversed the arbitrator's decision and denied claimant benefits. Regarding the second claim, the Commission unanimously modified the decision of the arbitrator relating to claimant's alleged May 1, 2017, accident and provided a detailed explanation as to its decision. The Commission modified the arbitrator's award by increasing the PPD benefits to a 25% loss of the person as a whole, rather than a 15% loss, for the May 1, 2017, accident.

¶ 6 On January 9, 2020, Midwest filed a petition for review in the circuit court of Macoupin County, limiting its petition to the Commission's decision on claimant's second claim. Claimant did not file for review. On November 4, 2020, the court confirmed the Commission's decision. Employer filed the instant appeal.

¶ 7 I. Background

¶ 8 The following factual recitation is taken from the 200-page transcript of the consolidated arbitration hearing held on May 23, 2018, the numerous exhibits admitted at that hearing, the common law record and the arbitrator's and the Commission's decisions. Although this appeal is limited to the Commission's award of benefits for claimant's injuries from the alleged May 1, 2017, accident, the testimonies and medical evidence as to both claims, as well as claimant's unrelated carpal tunnel syndrome, are significantly intertwined. We have, therefore, recited the underlying facts preceding the May 1, 2017, accident, that are necessary for a complete and accurate understanding of the case on appeal.

¶ 9 Carla McGuire, claimant's wife of nine years, testified to the following on claimant's behalf. Claimant previously worked as a laborer for Carla's sister, Paula Lewis, at Triple D Parts, where he dismantled engines and parts. Paula sold Triple D Parts to Jason Tarasenko, who continued to operate the business but changed the name to Midwest Power Source. Following the change of ownership, claimant's employment continued, along with Carla's nephew, Dale Lewis,

Carla's nieces, Amber Brandmeier and Courtney Throne, and Courtney's ex-husband, Randy Throne.

¶ 10 After testifying to the events following the January 17, 2017, accident, Carla testified regarding the May 1, 2017, accident, as follows:

> "On May 1st what I—what my husband had told me is that he was outside. He was unloading these parts and stuff, and when he unloaded this heavy part[,] he pushed it into the dumpster and that [is] when his body, he said it just gave out. He just was in a lot of pain."

Carla further testified that claimant came home from work early that day and called Jason later that afternoon. She was present and could hear the conversation over speakerphone in which claimant informed Jason of the May 1, 2017, injury. Jason advised that he would not stand for claimant making a workers' compensation claim, stating "I [Jason] got to do what I got to do, and you are going to do what you got to do."

¶ 11 Claimant, called to testify on his own behalf, testified to the following. He was 63 years old at the time of the arbitration hearing. He had an eighth-grade education and had worked manual jobs since leaving school. Claimant could not read or write very well. Claimant was the sole wage earner because Carla had serious medical conditions. Claimant was employed as a laborer for Midwest, a company that rebuilds locomotive engines and sells spare parts, for approximately four years. As a laborer, he was responsible for cleaning parts and tearing down, rebuilding and loading engines. His duties included removing pistons from cylinder liners, commonly called "packs," and sometimes using a sledgehammer to loosen pistons before removing them.

¶ 12 Claimant testified to the following events surrounding the January 17, 2017, accident. He was attempting to remove a piston from a pack, which usually involved placing the pack on its

side and striking the piston with a sledgehammer in a golf-swing-like motion. However, on that day, he was unable to move the piston by placing the pack on its side, so he placed the pack on an end. Using an overhead swing, he struck the top of the piston with the sledgehammer. The sledgehammer came to a dead stop, and claimant immediately felt "wobbly" and tingling in his neck all the way down to his toes and could no longer hold the sledgehammer.

¶ 13 Claimant testified that the foreman, referred to as "Zach," was nearby when the accident occurred and found the incident funny, despite claimant advising that his body was "blown out." Randy also witnessed the incident, and claimant, at Randy's direction, advised Amber of the injuries either that same day or the following day. When claimant informed Amber that he was unable to hold a sledgehammer and needed to see a doctor, Amber told him that Jason would not allow him to see a doctor. Despite his injuries, claimant continued to work so Carla's medicines would be covered under his health insurance.

¶ 14 On January 27, 2017, claimant visited his primary care physician, Dr. Rajneesh Jain, who performed an examination and administered testing. Neurologic testing revealed hypoesthesia in the bilateral median nerve distributions. Based upon these symptoms, Dr. Jain diagnosed claimant with bilateral carpal tunnel syndrome. He referred claimant to a surgeon for the evaluation of the carpal tunnel syndrome. Dr. Jain's notes do not reflect that claimant reported sustaining a work injury on January 17, 2017, or complaints of numbness from his neck to his toes.

¶ 15 On February 10, 2017, claimant was evaluated by Dr. Craig McKee, a plastic surgeon. Dr. McKee diagnosed claimant with fairly severe bilateral carpal tunnel syndrome but did not believe claimant was suffering from ulnar neuropathy. Dr. McKee later performed bilateral carpal tunnel releases on March 14, 2017.

¶ 16 On April 25, 2017, claimant had a follow-up visit with Dr. McKee, where he complained

of tingling in his fingers and stiffness in his hands. At claimant's request, Dr. McKee released him to full-duty work and discharged him without restrictions. Claimant worked Wednesday, April 26, 2017, through Friday, April 28, 2017, but he noticed that his body was not functioning properly. He lacked energy to stand up from a kneeling position, had a tingling sensation throughout his whole body, and the feeling he had a rubber-band around his abdomen.

¶ 17 Claimant next testified to the following events surrounding the May 1, 2017, accident. On May 1, 2017, he used a forklift to move a skid, loaded with 100-pound engine heads, over a three-foot high dumpster. He then manually pulled on each head until it slid into the dumpster. After he finished emptying the skid, he was "hurting" and his whole body started tingling "from the neck down." Claimant's symptoms were of the same intensity as when he first injured himself using the sledgehammer on January 17, 2017. Immediately after the accident, he informed Dale and Randy of his injury. Randy asked claimant to finish tearing down heads, but claimant informed Randy that he was unable to do so. Dale referred claimant to speak with Amber. Amber provided claimant with contact information for Jason and the workers' compensation insurance carrier. Claimant was instructed to contact Jason first. Contrary to Amber's instruction, claimant called the workers' compensation insurance carrier first. After claimant was unable to reach anyone at the insurance carrier, he called Jason. According to claimant, Carla heard on speakerphone that Jason would not stand for claimant making a claim, stating "I [Jason] got to do what I got to do, and you are going to do what you got to do."

¶ 18 Lastly, claimant testified that he could not hold a spoon to feed himself and his whole body was shaky after the accident. However, the symptoms went away after claimant underwent surgery on June 1, 2017. Following that surgery, claimant testified that his "whole body was normal again." At the time of the arbitration hearing, claimant was unable to move his head as far back as he could

before the surgery. Claimant no longer worked for Midwest because Midwest had replaced him. Claimant's current employment was filling vending and soda machines.

¶ 19 On May 5, 2017, claimant, accompanied by Carla, was evaluated by Dr. Jain's nurse practitioner, Mara Knoche (Nurse Knoche). Nurse Knoche noted that claimant reported a history of low back pain with numbness and tingling in his legs. Claimant complained of primary discomfort in the lower lumbar spine with symptoms radiating to the thighs. He also described the symptoms as a constant sensation of pins and needles. Nurse Knoche further noted that claimant presented for an acute episode, but the current episode of pain started five months earlier. Claimant did not recall any precipitating event or injury. Although Nurse Knoche noted that the acute episode occurred at home, the aggravating factors contributing to claimant's back pain were possibly the result of "job related repetitive lifting with back strain." Claimant's examination revealed hypoesthesia in the bilateral L4 distribution, and x-rays of the low back revealed a mild anterolisthesis of L5 on SI that was likely secondary to pars defects. Claimant was diagnosed with low back pain.

¶ 20 On May 9, 2017, Nurse Knoche evaluated claimant. Claimant complained of primary discomfort in the lower lumbar spine with symptoms radiating into the thighs. Nurse Knoche noted that claimant attributed the mechanism of injury to work related repetitive lifting. Nurse Knoche also noted that claimant complained of ongoing, widespread neck pain with sensations of pins and needles radiating into his arms, which had not been previously documented. On examination, Nurse Knoche observed that claimant displayed positive neurological signs, such as ataxia, hand numbness and weakness in extremities. Nurse Knoche further observed that claimant's speech pattern appeared pressured, and his gait was impaired when he appeared to shuffle in a slow and

unsteady manner. Claimant was referred to the emergency room at St. John's Hospital in Springfield, Illinois.

¶ 21 The records from St. John's Hospital indicated that claimant presented to the emergency room on May 9, 2017, with "stroke symptoms." According to the records, claimant provided a history of diffuse paresthesias and generalized malaise with sudden onset in January followed by constant symptoms. Claimant's examination revealed a full range of motion with stability, muscle strength, and normal tone of his upper and lower extremities. A computerized tomography (CT) scan of the head did not reveal any abnormalities. Claimant subsequently underwent a magnetic resonance imaging (MRI) of the cervical spine on May 11, 2017, which revealed severe cervical spondylosis with myelomalacia at C4-C5 and C5-C6.

¶ 22 On May 12, 2017, claimant presented to Dr. Jain. Dr. Jain noted that claimant was referred to the emergency room due to concerns of cervical myelopathy with spastic quadriparesis. Claimant, however, was evaluated for a stroke and then discharged. Dr. Jain referred claimant to Dr. Scott Purvines, a board-certified neurosurgeon, for a consultation.

¶ 23 On May 19, 2017, claimant presented to Dr. Purvines and provided a detailed history consistent with the January 17, 2017, accident. Claimant did not mention the alleged May 1, 2017, accident. Claimant reported that numbness in his extremities had persisted since the January 17, 2017, accident. Dr. Purvines noted a spastic gait and diffuse weakness in the upper and lower extremities. After reviewing the May 11, 2017, MRI, Dr. Purvines noted that claimant had large central and right-sided herniated discs at C4-C5 and C5-C6 that were severely compressing his spinal cord. Dr. Purvines, unaware of claimant's alleged May 1, 2017, accident, commented that the pathology likely occurred at the time of the work accident in January 2017.

¶ 24 On June 1, 2017, claimant underwent surgery consisting of a discectomy, foraminotomy and fusion at the C4-C5 and C5-C6 levels. Dr. Purvines' post-operative note indicated that claimant was doing quite well with substantially reduced or eliminated pain in his upper extremities and neck. Claimant's examination revealed normal strength and sensation in the bilateral upper extremities but decreased cervical range of motion. Dr. Purvines recommended a course of physical therapy. Dr. Purvines later allowed claimant to return to work in a full-duty capacity on August 24, 2017.

¶ 25 Amber, who was married to Zach (claimant's foreman in January 2017), testified to the following concerning the process of reporting a work accident. As an office worker for Midwest, she was solely responsible for preparing the paperwork for injury claims. She explained that an injured worker was required to first inform the supervisor and then contact Amber to complete the workers' compensation claim paperwork. Amber testified that claimant did not speak to her about the January 2017 work accident. Instead, the first time she spoke with claimant about any type of injury was on March 6, 2017, when claimant requested short-term disability forms for carpal tunnel syndrome. After claimant had carpal tunnel surgery, he returned to work on April 26, 2017, indicating to Amber that he was a new man and gesturing that his hands had been cured.

¶ 26 Claimant then reported to her office on May 1, 2017, at Dale's instruction, complaining of leg and shoulder problems, stating that the workplace was crippling him and he could not hold his "grandbabies." She documented the conversation in a letter, signed by both parties, and then she read the letter to claimant. The letter stated that claimant wanted to file a workers' compensation claim due to leg and shoulder problems and his inability "to hold onto anything." Claimant did not tell her about an accident occurring that day. Amber completed an accident report for submission to the workers' compensation insurance carrier and provided claimant with a copy.

¶ 27 Dale, the locomotive engine shop manager for Midwest, also testified to the following. His job was to ensure production in the shop. Amber was responsible for filling out paperwork to pay bills, payroll and documenting injuries, so if anyone was injured on the job, he "automatically" sent them to see Amber. Dale worked with claimant for several years and was unaware of claimant suffering from health problems prior to January 2017. He was also unaware of claimant sustaining injuries while using a sledgehammer in January 2017. He testified that it would be improper to stand a liner on end and strike it on top with a sledgehammer because it would be ineffective in removing the piston and would cause irreparable damage to the liner.

¶ 28 Dale next testified to the following concerning claimant's May 1, 2017, accident. Claimant had been at work for a couple of hours when he came to Dale's office to tell him that he could no longer perform his job duties. Dale instructed claimant to report his difficulties to Amber. Claimant did not inform Dale that an accident had occurred that day. Dale acknowledged that a skid containing heavy parts is picked up using a forklift and then carried to a recycling bin. Once the skid is in the proper position over the bin, each part is manually grabbed so that it will slide into the bin.

¶ 29 Randy, a mechanic for Midwest who performed similar duties as claimant, next testified to the following. Randy was unaware that claimant had sustained injuries in a work accident in January 2017. Randy corroborated claimant's testimony that liners were sometimes placed on end and struck with a sledgehammer to remove stuck pistons, and Amber's testimony that claimant had expressed that he was a new man after his carpal tunnel surgery.

¶ 30 Randy then testified to the following concerning claimant's May 1, 2017, work accident. When claimant came to work on May 1, 2017, he appeared normal with no complaints. Randy did not tell claimant to unload parts into a dumpster. On cross-examination, Randy acknowledged that

it was normal practice at Midwest to use a forklift to lift a skid containing parts so that the parts could be emptied into a dumpster. He also confirmed that sometimes parts are manually dragged from a skid into a dumpster. Randy was aware that claimant was sent home with pay because claimant said he was hurt. Randy denied that claimant had mentioned a work accident had occurred that day.

¶ 31 On September 12, 2017, Dr. Purvines testified to the following via evidence deposition. He first evaluated claimant on May 19, 2017. Claimant provided a history of hammering pistons out of an engine with a sledgehammer on January 15, 2017, and having an abrupt onset of weakness and numbness in his extremities. Claimant also informed Dr. Purvines that, despite undergoing carpal tunnel surgery, he continued to suffer from pain in his arms and legs that caused him difficulty walking and pain in his neck.

¶ 32 Dr. Purvines interpreted the May 11, 2017, MRI as showing large disc herniations at C4-C5 and C5-C6, which were severely compressing the spinal cord. Dr. Purvines later performed a cervical discectomy and fusion on claimant's neck to relieve pressure off of the spinal cord. Dr. Purvines opined that claimant's job activities in January 2017 either caused or aggravated claimant's cervical condition. During Dr. Purvines' testimony, claimant's counsel related to Dr. Purvines the alleged facts from the May 1, 2017, accident. Dr. Purvines clarified that claimant probably had the condition after the January 17, 2017, accident but then resumed activities, such as moving heavy machine parts in May 2017, which could have aggravated the neck condition. Dr. Purvines next acknowledged that he allowed claimant to return to work in a full-duty capacity as of August 24, 2017, even though he was aware that claimant would be performing his regular job duties using a sledgehammer to pound on pistons.

¶ 33 On October 24, 2017, at Midwest's request, claimant presented to Dr. Robert Bemardi, a board-certified neurosurgeon, for a section 12 evaluation. Dr. Bemardi prepared a 12-page evaluation report and further testified via evidence deposition on behalf of Midwest on December 1, 2017. In preparing the report and rendering his opinions, Dr. Bemardi reviewed claimant's documented history, the medical records, diagnostic studies, and his findings following claimant's examination.

¶ 34 Dr. Bemardi testified that he was confident claimant's disc herniation, identified on the MRI study, was not present in January 2017, as Dr. Purvines had opined. He explained that the disc herniation was huge, and there were signal changes on the MRI that suggested it was an acute injury. He further opined that a disc herniation that large would cause rapidly evolving symptoms, rather than evolving symptoms over four or five months. Dr. Bemardi further testified, if there had been severe cord compression for several months, claimant would not have made as remarkable a recovery following surgery. Dr. Bemardi also agreed with Dr. Purvines' opinion that claimant did not need any formal restrictions on his activities. Additionally, Dr. Bemardi could not conclude that claimant sustained an injury to his neck in mid-January 2017. Dr. Bemardi believed that the disc herniation at C4-C5 could not have been present for four months prior to May 9, 2017, and that the spasticity with claimant's gait would not have gone unnoticed for several months.

¶ 35 Dr. Bemardi further testified concerning Dr. Purvines' opinion. Although Dr. Bemardi explained that it was possible claimant was suffering from pathology in January 2017, and the condition progressively worsened, he testified that it was an unlikely scenario. He explained that pressure on the spinal cord can cause hand symptoms; however, the symptoms would be constant, involve all ten fingers on both hands, and would not be dependent upon wrist posture. Lastly, Dr.

Bemardi could not conclude that claimant suffered from a work accident based on the acute disc herniations revealed on the MRI study from May 11, 2017.

¶ 36 On November 14, 2018, the arbitrator issued a decision with respect to both claims. The arbitrator found that claimant had sustained a cervical spine injury that arose out of and in the course of his employment for Midwest on January 17, 2017, and had also sustained a second accident on May 1, 2017, that acutely aggravated and exacerbated claimant's cervical spine injury. Concerning both accidents, the arbitrator found that Midwest had received timely notice and that claimant's condition of ill-being in his cervical spine was causally connected to his employment. The arbitrator awarded claimant benefits for medical services rendered following both accidents, TTD benefits of $360 per week from commencing May 2, 2017, through August 23, 2017, and PPD benefits representing 10% loss of the use of the person as a whole from the January 17, 2017, accident and 15% loss of the person as a whole from the May 1, 2017, accident. The arbitrator denied claimant's request for penalties and fees.

¶ 37 Midwest subsequently filed a petition for review with the Commission. On March 4, 2020, the Commission issued a separate decision for each claim. Regarding the claimant's first claim, the Commission, based on a finding that claimant had failed to prove he sustained an accident on January 17, 2017, unanimously reversed the arbitrator's decision and denied claimant benefits. Regarding the second claim, the Commission unanimously modified the decision of the arbitrator relating to claimant's alleged May 1, 2017, accident and provided a detailed explanation as to its decision. The Commission modified the arbitrator's award by increasing the PPD benefits to a 25% loss of the person as a whole, rather than a 15% loss, for the May 1, 2017, accident.

¶ 38 In rendering its decision, the Commission noted that Amber and Dale corroborated claimant's testimony that he had informed Dale of the alleged accident on May 1, 2017, and that

Dale sent him to see Amber. The Commission further noted that Amber testified to filling out an accident report at that time, but Midwest did not place the accident report into evidence at the arbitration hearing. The Commission, therefore, inferred that the accident report would support claimant's claim of a specific injury occurring on May 1, 2017.

¶ 39 The Commission also found Randy's testimony supportive of claimant's claim of a specific accident. Randy testified that claimant, when he reported to work prior to the alleged accident, appeared in good health. The Commission also found that Randy had also instructed claimant to perform a particular job that day. Later, when Randy returned to the job site, he observed that claimant had left the area. The Commission concluded that claimant had performed the job, as requested by Randy, and then reported his injuries to Dale.

¶ 40 The Commission then outlined the evidence it viewed as inconsistent with a specific injury occurring on May 1, 2017. The Commission noted that none of the contemporaneous medical records reflect a specific injury occurring on May 1, 2017. The Commission observed that Nurse Knoche noted that claimant presented with low back pain with numbness in his legs on May 5, 2017, and provided a history of symptoms occurring five months prior to the accident. The Commission stressed, however, that Nurse Knoche's also noted that the aggravating factors contributing to claimant's low back pain may be job related repetitive lifting with back strain. In addition, the Commission observed that Nurse Knoche's separate office-visit note from May 9, 2017, stated, "[t]he event[,] which precipitated this pain[,] was job-related repetitive lifting. This occurred at work." The Commission also observed that the office-visit note mentioned ongoing neck pain that radiated to the arms, which had not been previously mentioned to the provider.

¶ 41 The Commission further found the emergency room records from St. John's Hospital on May 9, 2017, inconsistent with a specific injury. The Commission observed that the medical

records indicated that claimant was having significant neurological symptoms before the alleged injury date and developed slurred speech and weakness in his arms three to four weeks prior to presenting to the emergency room.

¶ 42 The Commission next viewed Dr. Purvines' deposition testimony and records. The Commission noted that Dr. Purvines' May 19, 2017, office-visit note did not mention the May 1, 2017, accident, referencing only the alleged January 17, 2017, accident, which the Commission had determined the claimant failed to prove. However, the Commission also viewed Dr. Bemardi's deposition testimony and found it more persuasive than Dr. Purvines' testimony and records as to a specific injury. The Commission found Dr. Bemardi's opinion consistent with an injury date of May 1, 2017.

¶ 43 In determining claimant's permanent partial disability, the Commission reviewed the five factors in section 8.1b(b) of the Act (820 ILCS 305/8.1b(b) (West 2016)), and it gave weight to only two of the five factors—claimant's occupation and evidence of disability. Regarding claimant's occupation, the Commission noted that claimant was unable to return to his previous employment because Midwest had hired another laborer. Thus, the Commission concluded that claimant was unable to test whether his post-surgical neck condition could withstand the stress of repetitive pounding on pistons with a sledgehammer, as his previous employment for Midwest required. The Commission also expressed that claimant's new job duties were "a lot easier on his neck." The Commission gave this factor significant weight.

¶ 44 Lastly, the Commission noted the agreement in the medical opinions of Drs. Purvines and Bemardi that claimant could return to work without restrictions. The Commission noted that claimant was released to full-duty employment following a successful surgery that had resolved his symptoms. Claimant testified that his "whole body was normal again." However, because

claimant's range of motion in his neck had been reduced, the Commission gave this factor some weight.

¶ 45 On January 9, 2020, Midwest filed a petition for review in the circuit court of Macoupin County, limiting its petition to the Commission's decision related to claimant's alleged May 1, 2017, accident. Claimant did not file for review. On November 4, 2020, the court confirmed the Commission's decision. Midwest filed the instant appeal.

¶ 46 II. Analysis

¶ 47 On appeal, Midwest raises three issues concerning the Commission's decision to award claimant benefits related to the alleged May 1, 2017, accident. Midwest asserts that the Commission's decision is against the manifest weight of the evidence where the Commission found (1) claimant sustained a work-related accident on May 1, 2017; (2) claimant's condition of ill-being was causally related to his work accident on May 1, 2017; and (3) claimant was entitled to an award of PPD benefits, representing 25% loss of a person as a whole. We will address these issues in turn.

¶ 48 The purpose of the Act is to protect an employee from any risk or hazard which is peculiar to the nature of the work he or she is employed to do. *Hosteny v. Illinois Workers' Comp. Comm'n*, 397 Ill. App. 3d 665, 674 (2009). "To obtain compensation under the Act, a claimant bears the burden of showing by a preponderance of the evidence that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The "in the course of" component refers to the time, place, and circumstances of the accident. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57 (1989). The "arising out of" component pertains to the origin and cause of the injury. *Circuit City Stores, Inc. v. Illinois Workers' Comp. Comm'n*, 391 Ill. App. 3d 913, 920 (2009). "The determination of whether an

injury arose out of and in the course of a claimant's employment is a question of fact for the Commission to resolve, and its finding in that regard will not be set aside on review unless it is against the manifest weight of the evidence." *Springfield Urban League v. Illinois Workers' Comp. Comm'n*, 2013 IL App (4th) 120219WC, ¶ 24. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Freeman United Coal Mining Co. v. Illinois Workers' Comp. Comm'n*, 2013 IL App (5th) 120564WC, ¶ 21

¶ 49 The Commission is the ultimate decision maker and is not bound by any decision made by the arbitrator. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 63 (2006) (citing *Cushing v. Industrial Comm'n*, 50 Ill. 2d 179, 181-82 (1971)). The Commission must weigh the evidence that was presented at the arbitration hearing and determine where the preponderance of that evidence lies. *Durand*, 224 Ill. 2d at 64. The appropriate test is whether there is sufficient evidence in the record to support the Commission's determination, 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). With these principles in mind, we turn to the issues raised.

¶ 50 A. Accident

¶ 51 Midwest first argues that the Commission's finding that claimant sustained a compensable accident on May 1, 2017, was contrary to the manifest weight of the evidence. In support, Midwest asserts that the evidence "clearly and unequivocally" establishes that there is no basis for the Commission to conclude that claimant sustained injuries as a result of the claimed May 1, 2017, accident. Midwest, therefore, requests that this court reverse the Commission's award of benefits. We disagree.

¶ 52 In the present case, the Commission affirmed and adopted the arbitrator's finding of accident, and the Commission further explained its reasoning. The Commission detailed the

evidence, both in support of and against a finding of accident. Based on the totality of the evidence, the Commission resolved the issue in favor of claimant. We cannot say that an opposite conclusion in this case is clearly apparent.

¶ 53 As evidence in support of its finding, the Commission found claimant's testimony credible regarding a specific injury occurring on May 1, 2017, and the events that immediately followed. Claimant testified that, after unloading the skid, he was "hurting" and his whole body started tingling "from the neck down." In addition, Carla testified that claimant came home early from work on May 1, 2017, and told her about the accident. Carla's testimony corroborates claimant's description of the May 1, 2017, accident.

¶ 54 Claimant further testified that he immediately informed Randy and Dale of his injury. Dale then referred him to speak with Amber, who provided him with the telephone numbers for the workers' compensation insurance carrier and Jason. Claimant testified that he could not hold a spoon to feed himself, and his whole body was shaky after the accident. In addition, claimant and Carla each testified about the May 1, 2017, telephone call to Jason. Each testified that Jason had said on speakerphone that he would not stand for claimant making a workers' compensation claim. Additionally, as further corroboration, each specifically recalled Jason saying something to the effect of: "You [claimant] do what you have got to do and—no, I [Jason] am going to do what I have got to do, you need to do what you have got to do."

¶ 55 The Commission also viewed the testimonies of Amber, Randy and Dale as lending some support to claimant's testimony. Amber testified that she documented the conversation that she had with claimant on May 1, 2017. Amber, consistent with claimant's testimony, recalled that Dale had sent claimant to see her to file a workers' compensation claim. Amber testified that claimant complained only of leg and shoulder injuries. However, claimant later explained that he was

unaware that his problems were the result of a neck injury until he was informed of the May 11, 2017, MRI results, which the Commission found credible. Moreover, although Amber testified that she completed an accident report for submission to the workers' compensation insurance carrier, the report was not introduced at the arbitration hearing. For that reason, the Commission inferred that the report would support claimant's testimony concerning the May 1, 2017, accident.

¶ 56 As further corroboration of claimant's testimony, Randy testified that claimant appeared normal with no complaints when he arrived at work on May 1, 2017. Later that same day, however, claimant informed Dale that he could not perform his duties, and Dale confirmed that he had instructed claimant to report his problems to Amber.

¶ 57 The Commission gave further detail of its analysis. The Commission highlighted the conflicting evidence concerning a specific injury occurring on May 1, 2017. The Commission considered Nurse Knoche's notes from May 5, 2017, reflecting that claimant presented for an acute episode, but that the current episode of pain started five months earlier and claimant did not recall any precipitating event or injury. However, the Commission also observed that Nurse Knoche's notes reflected that the aggravating factors contributing to claimant's back pain may be due to "job related repetitive lifting with back strain." In addition, on May 9, 2017, Nurse Knoche corrected the history in her subsequent note to reflect that the precipitating event was job-related repetitive lifting. Next, although the Commission stressed that the medical records did not reflect a specific accident occurring on May 1, 2017, the Commission found Dr. Bernadi's opinion credible that claimant's herniation, revealed on the May 11, 2017, MRI study, was so massive and causing such a profound narrowing of the spinal cord that it evolved over hours or days, rather than weeks or months. Thus, the Commission found that claimant's injuries were consistent with an onset date of May 1, 2017.

¶ 58 After considering the totality of the evidence, the Commission concluded that it was more likely than not that claimant had sustained a cervical injury on May 1, 2017. The Commission expressed that, although claimant's cervical condition may have been gradually worsening, the inciting event that caused claimant's massive herniation was pushing heavy motor parts into a dumpster on May 1, 2017. Accordingly, the Commission's finding of a May 1, 2017, accident is amply supported by the record and not against the manifest weight of the evidence.

¶ 59 B. Causation

¶ 60 Midwest next argues that the Commission's finding that claimant's condition of ill-being in his neck was causally related to his employment is against the manifest weight of the evidence. In support, Midwest asserts that the medical records contained varied histories as to the mechanism of injury and, thus, did not show a specific work-related accident. We disagree.

¶ 61 To obtain compensation under the Act, a claimant must prove by a preponderance of the evidence that "some act or phase of his *** employment was a causative factor in his *** ensuing injuries." *Land & Lakes Co. v. Industrial Comm'n,* 359 Ill. App. 3d 582, 592 (2005). Whether a causal relationship exists between a claimant's employment and his or her condition of ill-being is a question of fact. *Bolingbrook Police Department v. Illinois Workers' Comp. Comm'n*, 2015 IL App (3d) 130869WC, ¶ 52. Whether a claimant has established the requisite causal connection between his current injuries and an industrial accident is a question of fact for the Commission to determine, and that determination will not be overturned on appeal unless it is against the manifest weight of the evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980); *R&D Thiel v. Illinois Workers' Comp. Comm'n,* 398 Ill. App. 3d 858, 866 (2010).

¶ 62 In resolving factual matters, it is the function of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence and

draw reasonable inferences therefrom. *Hosteny*, 397 Ill. App. 3d at 674. This is especially true with respect to medical issues, where we owe heightened deference to the Commission due to the expertise it has long been recognized to possess in the medical arena. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979).

¶ 63 In finding causation in this case, the Commission first addressed the discrepancies in the medical records following the May 1, 2017, accident. The Commission found that the inconsistent histories were understandable in light of claimant's "intellectual challenges and lack of sophistication in his oration." Thus, the Commission rejected Dr. Bemardi's opinion that claimant's condition of ill-being was not work related because of the varied medical histories. Again, we note that the Commission found claimant's testimony credible as it related to the mechanism of injury. As explained above, the Commission reviewed the conflicting evidence and provided ample reasoning for resolving the evidence in claimant's favor. Thus, we will not substitute our judgment or reweigh the evidence because a different inference could be drawn from that evidence.

¶ 64 Next, the Commission resolved the conflicting medical opinions in claimant's favor. While discounting Dr. Bemardi's causation opinion, the Commission accepted Dr. Bemardi's opinion as to the acute nature and duration of claimant's cervical injuries. Specifically, the Commission found Dr. Bemardi's opinion, as compared to Dr. Purvines' opinion, more persuasive and consistent with claimant's testimony concerning the work-related accident on May 1, 2017, and the medical evidence. Dr. Purvines opined that claimant's injuries resulted from the January 17, 2017, accident, and that claimant's condition worsened over time. In contrast, Dr. Bemardi opined that claimant's injuries were acute and had occurred after January 2017. Dr. Bemardi explained that claimant's disc herniation was massive, and the MRI suggested it was acute, which the Commission found

compelling. The Commission also noted that claimant underwent emergency cervical fusion surgery on June 1, 2017, and the evidence is undisputed that claimant's condition of ill-being significantly improved following surgery. Dr. Bemardi admitted that claimant's remarkable recovery tended to show an acute neck injury.

¶ 65 Based on the record before us, we conclude that the Commission reasonably relied on Dr. Bemardi's opinion as to the acute nature and duration of claimant's current condition of ill-being. Claimant's credible testimony combined with the medical evidence and Dr. Bemardi's expert opinion are sufficient to support the conclusions reached by the Commission in making its causation determination. Accordingly, we find that the Commission's decision that claimant sufficiently proved that his current condition of ill-being was causally related to his employment is not against the manifest weight of the evidence.

¶ 66 C. PPD Award

¶ 67 For its final argument on appeal, Midwest argues that the Commission's decision to award claimant PPD benefits representing a 25% loss of a person as a whole was improper and otherwise excessive. Midwest asserts that the Commission ignored the testimonies of Drs. Purvines and Bemardi, and the Commission's analysis was "speculative and ha[d] no bearing on [claimant's] disability." We disagree.

¶ 68 "It is well-settled that because of the Commission's expertise in the area of worker's [*sic*] compensation, its findings on the question of the nature and extent of permanent disability should be given substantial deference." *Mobil Oil Corp. v. Industrial Comm'n*, 309 Ill. App. 3d 616, 624, (2000). Accordingly, the nature and extent of a claimant's permanent disability is a question of fact to be resolved by the Commission, and its finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Baumgardner v. Illinois Workers' Comp. Comm'n,*

409 Ill. App. 3d 274, 278-79, (2011).

¶ 69 Under section 8.1b(b) of the Act, in determining PPD from injuries occurring after September 1, 2011, the Commission was required to consider the following factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b(b) (West 2016). The Commission was also prohibited from relying on any single enumerated factor as "the sole determinant of disability." *Id*. Findings of the Commission " 'regarding the nature and extent of a disability will not be set aside unless they are contrary to the manifest weight of the evidence.' " *County of Cook v. Industrial Comm'n*, 78 Ill. 2d 320, 324 (1979).

¶ 70 Contrary to Midwest's assertion, the record establishes that the Commission considered the testimonies of Drs. Purvines and Bemardi in resolving the extent of claimant's permanent disability. We are also not persuaded that the Commission's award is excessive where the Commission provided a detailed analysis of the 8.1b(b) factors.

¶ 71 Here, in modifying the arbitrator's award, the Commission gave weight to two of the five factors listed in section 8.1b(b) of the Act—claimant's occupation and evidence of disability—and discounted the others. Regarding claimant's occupation, the Commission noted that claimant was unable to return to his previous employment because Midwest had hired another laborer. Given claimant's inability to test whether his post-surgical neck condition could withstand the stress of his previous employment, the Commission addressed claimant's new employment. The Commission expressed that filling vending machines was "a lot easier on [claimant's] neck." The Commission gave this factor significant weight, and its factual findings are amply supported by the record.

¶ 72 Next, the Commission considered the evidence of disability following claimant's surgery. Contrary to Midwest's assertion, the Commission specifically considered the expert medical opinions of Drs. Purvines and Bemardi. Both Drs. Purvines and Bemardi testified that claimant could return to work without restrictions. The Commission noted that claimant was released to full-duty employment following a successful surgery that had resolved his symptoms. Claimant testified that his "whole body was normal again." Despite the favorable medical evidence, the Commission gave this factor some weight because claimant's range of motion in his neck was limited. In light of the foregoing, we reject Midwest's assertions that the Commission ignored the medical opinions of Drs. Purvines and Bemardi and that the Commission's award of PPD was improper or excessive.

¶ 73 Accordingly, the Commission's decision awarding claimant PPD representing 25% loss of a person as a whole is amply support by the evidence. Because a conclusion opposite to that reached by the Commission is not clearly apparent, we decline to conclude that the Commission's findings are against the manifest weight of the evidence.

¶ 74 III. Conclusion

¶ 75 For the reasons stated, we affirm the judgment of the circuit court, which confirmed the Commission's decision.

¶ 76 Affirmed.