2021 IL App (2d) 200463WC-U
No. 2-20-0463WC
Order filed April 7, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

Workers' Compensation Commission Division

PSSI, INC.,	)	Appeal from the Circuit Court
	)	of Lake County, Illinois
Appellant,	)	
	)	
v.	)	No. 19-MR-836
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*,	)	Honorable
	)	Joseph V. Salvi,
(Amado Ulloa, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 Held: (1) The Commission's finding that that the claimant sustained an accident arising out of his employment was not against the manifest weight of the evidence; (2) the Commission's finding that the claimant proved a causal connection between his work accident and his lower back condition was not against the manifest weight of the evidence; and (3) the Commission's award of TTD benefits, medical expenses, and prospective medical care related to the claimant's lower back condition was not against the manifest weight of the evidence.

¶ 2 The claimant, Amado Ulloa, filed claims for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)) against the respondent, PSSI, Inc. (employer), for injuries he allegedly sustained in two separate accidents while working for the employer. The

claims were consolidated for trial before an arbitrator. After conducting a hearing, the arbitrator found that the claimant had sustained two accidents arising out of and in the course of his employment: one in September 2012, and another on June 21, 2013. The arbitrator found that all the current conditions of ill-being alleged by the claimant were causally related to the "accident," but did not explicitly specify which accident. The arbitrator awarded the claimant medical expenses, temporary total disability (TTD) benefits from June 21, 2013, through June 9, 2017, (the date of the hearing), and prospective medical care consisting of a L4-S1 lumbar fusion.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission), which modified the arbitrator's decision and affirmed the decision as modified, with one Commissioner dissenting. Specifically, the Commission found that the claimant had failed to prove he sustained accidental injuries arising out of and in the course of his employment with the employer in September 2012. However, the Commission affirmed the arbitrator's finding that the claimant had sustained a work-related accident on June 21, 2013.

¶ 4 The Commission affirmed the arbitrator's finding that claimant's lower back injuries (herniated lumbar discs and radiculopathy) were causally related to his work accident, and clarified that the "accident" to which these injuries were related was the June 21, 2013 accident. However, the Commission found that the claimant had failed to prove that his other alleged conditions of ill-being (including alleged conditions of his cervical spine, thoracic spine, shoulders, scapular area and chest) were causally related to his June 21, 2013 accident.

¶ 5 Accordingly, the Commission modified the arbitrator's award of medical expenses to include only expenses for treatments relating to the claimant's lumbar spine, herniated lumbar discs and radiculopathy between June 21, 2013 and the June 9, 2017, hearing date. The Commission also vacated the arbitrator's award of certain medical expenses for treatments of the

claimant's lumbar spine and radiculopathy that the Commission found to be excessive, unnecessary, and not reasonably required to treat the claimant's lumbar spine condition. The Commission affirmed the arbitrator's award of TTD benefits through the date of arbitration but found that such benefits should commence on June 22, 2013 instead of June 21, 2013. The Commission also affirmed the award of prospective medical care consisting of lumbar fusion surgery.

¶ 6 Commissioner Simpson concurred in part and dissented in part. She concurred in the Commission's finding that claimant did not prove that the alleged conditions of ill-being in areas other than his lumbar spine were causally connected to his accident. She therefore agreed with the Commission's decision to vacate the arbitrator's award of medical expenses associated with any such conditions. Commissioner Simpson also agreed with the Commission's decision to vacate certain other expenses as unnecessary.

¶ 7 However, Commissioner Simpson dissented from the Commission's award of TTD benefits and medical expenses for treatments of the claimant's lumbar spine after October 18, 2013, as well as its award of prospective medical treatment. In support of this conclusion, Commissioner Simpson relied upon the report and deposition testimony of Dr. Ryon Hennessy, the employer's independent medical examiner (IME), who opined that: (1) a lumbar MRI performed on the claimant revealed only minor injuries and no disc herniations; (2) the claimant had reached maximum medical improvement (MMI) from any injuries by October 18, 2013; and (3) the MRI performed on the claimant's lumbar spine did not support the claimant's subjective pain complaints. Commissioner Simpson found Dr. Hennessy's report and testimony to be "extremely persuasive," and she had "serious reservations" regarding the claimant's credibility in

light of Dr. Hennessy's conclusions. Accordingly, she concluded that the claimant was not entitled to any benefits after October 18, 2013.

¶ 8 The employer sought judicial review of the Commission's decision in the circuit court of Lake County. The employer appealed only the Commission's rulings as to the June 21, 2013, accident. It did not appeal the Commission's decision regarding the alleged September 11, 2012, accident. The circuit court affirmed the Commission's decision.

¶ 9 This appeal followed.

¶ 10 FACTS

¶ 11 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on June 9, 2017.

¶ 12 The claimant worked in the employer's factory. His job was to clean machines, specifically freezers, a cheese machine, and a salsa machine. The job involved taking the machines apart and cleaning them. The claimant alleged that he felt pain in his shoulder while pushing a heavy cleaning tank in August 2012. On September 11, 2012, the claimant again was pushing the tank and felt pain in his shoulder and chest. His supervisor took him to Vista Medical Center, where he was diagnosed with pain and spasm in his shoulder and in the left side of his chest wall. The claimant was given pain medications, assigned home exercises and light duty work restrictions, and released. After receiving a cortisone injection 10 days later, the claimant was released to work full duty without restrictions.

¶ 13 The claimant continued working for the employer until June 21, 2013, when he claimed to have sustained another accident at work. The claimant testified that he slipped and fell while

walking across a "frozen floor" near a freezer.[1] His whole back hit the floor. The claimant testified that one of his coworkers, Pedro Grande, saw him fall. As the claimant tried to get up, he fell back onto his knees. Grande helped the claimant up and sat him down next to a machine. The claimant immediately felt pain in his whole back and buttocks. However, he finished working the remaining two to three hours left of his shift.

¶ 14 The claimant initially testified that he was treated at Vista Medical Center (Vista) on the day following his accident (*i.e.*, on June 22, 2013). However, the medical record of that visit reflects that the claimant was examined and treated on June 21, 2013, the day of the accident. A charting note written by Dr. Efren Estrella, who treated the claimant at Vista, recorded the date of accident as June 21, 2013. The charting note stated that "today [the claimant] slipped on [a] wet floor at work and strained his right groin." The note also reflected that the claimant reported experiencing upper back and chest pain as he had in September 2012. The claimant's handwritten history indicated that he fell due to ice, and had pain in his buttocks and "close to the groin." The claimant completed a pain diagram which required him to draw a circle around the part of the body where he felt pain. The claimant circled the buttocks and the groin. The circle that the claimant drew around the buttocks included a portion of the lower back. Dr. Estrella diagnosed "upper back, mid scapular pain spasm - left>right; right groin strain." He prescribed medication and imposed light duty work restrictions.

¶ 15 The claimant then went to New Life Medical Center (New Life), where he was treated by Dr. Aldrin Carrion, a chiropractor. The New Life initial examination report, which is dated June

[1] The claimant stated that he was walking across the frozen floor to retrieve a hose that he needed to use in order to clean a disassembled sauce machine.

21, 2013, states that the claimant "first entered this office on 06-21-2013 for examination and treatment for injuries sustained at work on 06-21-2013." In recording the history of the injury, the New Life medical records note that the claimant slipped and fell on an icy floor while carrying a hose in order to wash a machine. The records further indicate that the claimant reported experiencing pain his right testicle, right leg, "back" and scapular areas immediately following the accident, and that he was experiencing continued pain in his "low back," leg, and right testicle. The claimant rated his back pain at the moment of the accident as "9-10/10," and as 6/10 at the time of his visit with Dr. Carrion. The claimant described his back pain as "constant," and he reported that his back and leg pain increased with walking, standing, bending, lifting, or sitting for periods of time. Dr. Carrion's record listed "[l]ow back pain with leg pain and right testicular pain and numbness" and bilateral scapular area pain as the claimant's chief symptoms. Dr. Carrion diagnosed the claimant with lumbar sprain strain, low back pain, lumbar radiculopathy, and back and scapular muscle spasms. He prescribed physical therapy, took the claimant off work until further notice, and recommended an MRI.

¶ 16 An MRI scan of the claimant's lumbar spine was performed the next day. The MRI revealed a right central disc herniation at L5-S1, as well as a broad-based herniation at L4-5 compromising the spinal canal. Dr. Carrion referred the claimant to Dr. Krishna Chunduri, an anesthesiologist and pain management specialist at New Life, for further treatment.

¶ 17 On June 26, 2013, the claimant presented to Dr. Chunduri complaining of pain in his lower back radiating down both legs. He told Dr. Chunduri that he had suffered two accidents, the first when he was pushing a tank August 17, 2012, and the second when he slipped and fell on June 21, 2013. Dr. Chunduri noted that conservative care had failed to improve the claimant's condition and that "it ha[d] been almost one year since the onset of the [claimant's] initial injury." After

reviewing the MRI and examining the claimant, Dr. Chunduri diagnosed disc herniations at L4-L5 and L5-S1. He later performed epidural steroid injunctions, which had no effect. An EMG was performed, which was positive for mild-moderate right lumbar radiculitis involving the L5 and S1 dermatomes. Dr. Chunduri referred the claimant to Dr. Robert Erickson, a neurosurgeon, for a surgical consultation.

¶ 18 The claimant saw Dr. Erickson on October 4, 2013. Dr. Erickson reviewed the MRI films and concluded that they revealed a diffuse disk herniation at L4-L5 and a smaller right paracentral disk herniation at L5-S1. He diagnosed lumbar disk disease with mechanical back pain and radiculopathy. He recommended lumbar decompression at L4-5, and possibly L5-S1 as well. After conducting further testing, including a lumbar discogram, Dr. Erickson recommended nerve decompression and fusion surgery at L5-S1.

¶ 19 In his February 25, 2014, and April 16, 2014, follow-up notes, Dr. Erickson stated that his "recommendation for surgery is to be regarded as a consequence of the injury occurring on 08/17/2012." However, during his subsequent evidence deposition, when he was asked whether he "had an opinion *** to a reasonable degree of medical and surgical certainty, whether the condition [he] diagnosed is related to one of [the claimant's] two accidents, and, if so, which," Dr. Erikson responded,

> "They may both be contributory. I am not able to comment on the extent of [the claimant's] treatment or disability status or period of time away from work after the first incident in August of 2012. It does seem clear that he was working fairly vigorously at the time of the second accident; that is, he was carrying some hose at least. I don't know how heavy the hose was. I do understand that he fell, and that the fall itself may have been the cause events [*sic*] in the second incident."

During cross-examination, Dr. Erickson agreed that it was "possible" that the claimant's lower back condition and need for surgery was related to something other than his alleged work accident, such as a degenerative condition.

¶ 20 On October 18, 2013, Dr. Ryon Hennessy, an orthopedic surgeon who served as the employer's IME, examined the claimant after reviewing his medical records. Dr. Hennessy noted in his examination report that, when Dr. Estrella saw the claimant on June 21, 2013, he made no mention of any new injury, low back pain, or lumbar radiculopathy. The claimant reported to Dr. Hennessy that he told Dr. Estrella on June 21, 2013, that he was suffering from low back pain and testicular pain at that time. According to Dr. Hennessy's report, the claimant told Dr. Hennessy that he spoke with his attorney after seeing Dr. Estrella and his attorney referred him to Dr. Carrion.

¶ 21 Upon examination, Dr. Hennessy found the claimant to be apprehensive about answering questions and that he declined to clearly answer very simple yes or no questions. Dr. Hennessy opined that the claimant's strength testing was markedly weak despite the fact that the claimant had well-developed musculature, and that the claimant "gave way" during testing despite instructions not to do so. Dr. Hennessy characterized his visit with the claimant as "somewhat of a difficult examination" because the claimant claimed that practically everything hurt but was not specific. The claimant complained of pain in his entire neck, trapezial, scapular, and his entire cervical, thoracic, and lumbar spine posteriorly. He also reported experiencing "stocking-glove" symptoms in both legs.[2]

[2] "Stocking glove" symptoms consist of numbness in the hands or feet in the areas that would be covered by stockings or gloves.

¶ 22 After reviewing the June 22, 2013, MRI of the claimant's lumbar spine, Dr. Hennessy questioned the veracity of all of the claimant's subjective complaints of pain. Specifically, with regard to the lumbar spine and lumbar radiculopathy as it related to the June 21, 2013 accident, Dr. Hennessy opined to a reasonable degree of medical certainty that the MRI of the claimant's lumbar spine did not support the claimant's subjective complaints of persistent low back pain with stocking glove numbness and radiculopathy in the thighs and legs. Although he acknowledged that the claimant had mild degenerative disc disease at L4-L5 and L5-S1 and minimal stenosis at L4-L5, Dr. Hennessy concluded that those conditions would not support the claimant's complaints. Dr. Hennessy opined that: (1) the claimant had sustained no permanent injury to his lumbar spine; (2) no further treatment for the lumbar spine would be necessary as it relates to the June 21, 2013 accident; and (3) the claimant was at MMI for all injuries and could return to work without restrictions.

¶ 23 The claimant returned to Dr. Chunduri on May 22, 2015 for a follow-up examination. At that time, the clamant had not been treated for a year and he was still awaiting the surgery recommended by Dr. Erickson. He reported pain and other symptoms consistent with his prior complaints. Dr. Chunduri ordered another MRI, the results of which were similar to the previous MRI. Dr. Chunduri referred the claimant to a second spine surgeon, Dr. Geoffrey Dixon.

¶ 24 The claimant saw Dr. Dixon on June 19, 2015. Dr. Dixon ordered a new EMG. After reviewing the results of that test and the results of the April 2014 discogram, Dr. Dixon recommended a possible L4-L5 and L5-S1 decompression and/or fusion. He referred the claimant to Dr. Kevin Koutsky, an orthopedic surgeon for a consultation to determine whether decompression or fusion would be a better option.

¶ 25 On December 7, 2015, the claimant saw Dr. Koutsky. Dr. Koutsky diagnosed lumbar radiculopathy and discogenic pain at L4-L5, and bilateral lumbar radiculopathy with discogenic pain at L5-S1. He recommended decompression and fusion at L5-S1.

¶ 26 The employer's utilization review reports declined to certify additional physical therapy, MRI scans, compound medication, a back brace, or L4-L5 and L5-S1 foraminal decompression with facet fusion at L4-L5 and L5-SI.

¶ 27 During the arbitration hearing, the claimant testified that he wanted to undergo the lumbar fusion surgery because his back felt "bad" and he "[could not] do anything." He stated that he had trouble lying down to sleep. Although he was able to do some household chores, he could not lift heavy things, make sudden movements, or bend because it causes him pain. The claimant denied having any problems with his lower back prior to his work-related injuries, and he denied having sustained any injuries to his lower back after his work-related accident.

¶ 28 The employer presented video surveillance evidence that showed the claimant entering a truck labeled "Cleaning by Luna." The claimant testified that "Cleaning by Luna" is a house cleaning service owned by his cousin and her husband. He denied doing any work for the business. He testified that he went along with his cousin when she was working because she would take him out to eat and she would buy him clothes.

¶ 29 During cross-examination, the claimant agreed that he was not taking any pain medication. When asked why he accompanied his cousin on her cleaning jobs, the claimant said he went along because his cousin was scared to be alone at some of the houses she cleaned.

¶ 30 Florenzo Garcia, the claimant's cousin's husband and the co-owner of Cleaning by Luna, testified that the claimant has never worked for or been paid by Cleaning by Luna. Garcia stated that the claimant would occasionally ride along with him and his wife to keep them company and

to get out of the house to avoid boredom and depression. Garcia further testified that he and his wife provided the claimant with food, clothing, and money.

¶ 31 The arbitrator found that the claimant had suffered two accidents arising out of and in the course of his employment: one on September 11, 2012, and another on June 21, 2013. The arbitrator found that the claimant's lumbar disc herniations at L4-S1 and the associated radiculopathy were causally related to "the work accident." In announcing this causation finding, the arbitrator did not explicitly specify whether he was referring to the September 2012 or the June 2013 work accident. However, when explaining the basis of his causation finding, the arbitrator noted that there was no evidence suggesting that the claimant had lumbar symptomology "prior to the June 2013 work accident." The arbitrator also noted that he found the claimant's testimony and the opinions of his treating physicians to be credible, and that he did not find Dr. Hennessy's testimony to be persuasive on the issue of causal connection. In support of the latter finding, the arbitrator noted that Dr. Hennessy had examined the claimant on only one occasion, had based his entire opinion on the claimant's complaints of "stocking-glove" symptomology during that single appointment, and had failed to address the physical examinations of Drs. Carrion, Erickson, Dixon, and Koutsky, none of which discussed "stocking-glove" symptoms. Moreover, the arbitrator noted that, although Dr. Hennessy acknowledged several positive test findings, he asserted that the findings were not consistent with the claimant's symptoms despite the contrary diagnoses of the claimant's treating physicians (Drs. Erickson, Dixon, and Koutsky), all of whom opined that the claimant requires surgical intervention.

¶ 32 The arbitrator awarded the claimant all of the medical expenses that the claimant presented at trial, TTD benefits from June 21, 2013, through June 9, 2017, and prospective medical care consisting of a L4-S1 lumbar fusion.

¶ 33 The employer appealed the arbitrator's decision to the Commission. The Commission modified the arbitrator's decision and affirmed the decision as modified, with one Commissioner dissenting. The Commission reversed the arbitrator's finding of a work-related accident on September 11, 2012, and found that the claimant had failed to prove he sustained accidental injuries arising out of and in the course of his employment with the employer on that date.

¶ 34 However, the Commission affirmed the arbitrator's finding that the claimant had sustained a work-related accident on June 21, 2013. The Commission noted that "multiple treating physicians corroborated" the history of the accident given by the claimant (*i.e.*, that he slipped on a "frozen floor," near a freezer.) Although the Commission acknowledged that the claimant had described "slightly different" injuries to Drs. Estrella and Carrion, it found that their treatment records, along with those of other treating physicians, corroborated the claimant's testimony that he slipped and fell on June 21, 2013, while in the course and scope of his employment.

¶ 35 The Commission found the employer's arguments that the claimant did not prove a work-related accident to be unpersuasive. Contrary to the employer's suggestion, the Commission concluded that claimant was not required to call witnesses to corroborate his testimony in order to prove his case. The Commission further noted that the employer did not call any witnesses to refute the claimant's claim of accident on June 21, 2013.

¶ 36 The Commission also affirmed the arbitrator's finding that claimant's lower back injuries were causally related to his work accident, and clarified that these injuries were causally related to the June 21, 2013 accident, not the alleged September 11, 2012 accident. In so concluding, the Commission found the testimony of the claimant and his treating physicians more credible than that of the employer's IME, Dr. Hennessy. However, the Commission found that the claimant had failed to prove that his other alleged conditions of ill-being (including alleged conditions of his

cervical spine, thoracic spine, shoulders, scapular area and chest) were causally related to his June 21, 2013 accident.

¶ 37 Accordingly, the Commission modified the arbitrator's award of medical expenses to include only expenses for treatments relating to the claimant's lumbar spine, herniated lumbar discs, and radiculopathy between June 21, 2013 and the June 9, 2017, date of arbitration. In addition, the Commission found that much of the treatment provided to the claimant for his lumbar spine and radiculopathy by the doctors at New Life and by the treaters to whom they referred the claimant was "excessive and unnecessary, based on the [employer's] Utilization Review reports in evidence." Specifically, the Commission noted that the claimant was billed over $7,100.00 for prescription medications from Windy City Rx between January 2014 and March 2014, but he later reported at Advocate Condell Medical Center that he had never taken anything for pain. In addition, the Commission found that the treatment and medications that were non-certified in the employer's Utilization Review reports were not reasonable or necessary to treat the claimant's lumbar spine condition. The Commission vacated the arbitrator's award of these expenses.

¶ 38 The Commission affirmed the arbitrator's award of TTD benefits through the date of arbitration but found that such benefits should commence on June 22, 2013 instead of June 21, 2013. In support of this finding, the Commission noted that the claimant was authorized off work between June 21, 2013 and June 9, 2017. The Commission rejected the employer's argument that the claimant was working for his cousin's house-cleaning business during that period. The Commission found that the video surveillance presented by the employer merely showed the claimant accompanying his cousin to her customers' residences and entering the residences. The video did not show the claimant performing any actual cleaning tasks or other work. The Commission further found that the claimant's testimony that he performed no work for his cousin's

business, and that the money and other purchases he received from his cousin were unrelated to any work, was credible and was not contradicted by the employer's video evidence.

¶ 39 The Commission also affirmed the arbitrator's award of prospective medical care consisting of lumbar fusion surgery.

¶ 40 Commissioner Simpson concurred in part and dissented in part. She concurred in the Commission's finding that claimant did not prove that the alleged conditions of ill-being in areas other than his lumbar spine were causally connected to his accident. She therefore agreed with the Commission's decision to vacate the arbitrator's award of medical expenses associated with any such conditions. Commissioner Simpson also agreed with the Commission's decision to vacate certain other expenses relating to treatment of the claimant's lumbar spine as unnecessary.

¶ 41 However, Commissioner Simpson dissented from the Commission's award of TTD benefits and medical expenses for treatments of the claimant's lumbar spine after October 18, 2013, as well as its award of prospective medical treatment. In support of this conclusion, Commissioner Simpson relied upon the report and deposition testimony of Dr. Ryon Hennessy, the employer's IME, who opined that: (1) a lumbar MRI performed on the claimant revealed only minor injuries and no disc herniations; (2) the claimant had reached maximum MMI from any injuries by October 18, 2013, and could return to work without restrictions; and (3) the MRI performed on the claimant's lumbar spine did not support the claimant's subjective pain complaints. Commissioner Simpson also credited Dr. Hennessy's opinion that the claimant exhibited various nonorganic pain responses, such as "stocking glove" symptoms, give-way weakness, and reporting symptoms in excess of, and not explained by, any objective findings.

¶ 42 Commissioner Simpson found Dr. Hennessy's report and testimony to be "extremely persuasive," and she rejected the arbitrator's and Commission's findings to the contrary. She

expressed "serious reservations concerning [the claimant's] credibility based on Dr. Hennessy's findings of his symptom magnification and nonorganic pain behavior, as well as [the claimant's] unfounded allegation of injuries to multiple body parts and overtreatment as found by the majority." Accordingly, Commissioner Simpson would have terminated all benefits as of October 18, 2013, the date of Dr. Hennessy's examination and report.

¶ 43 The employer sought judicial review of the Commission's decision in the circuit court of Lake County. The employer appealed only the Commission's rulings as to the June 21, 2013, accident. It did not appeal the Commission's decision regarding the alleged September 11, 2012, accident.

¶ 44 The circuit court affirmed the Commission's decision in its entirety. The circuit court found that the Commission's finding that the claimant sustained an accident arising out of and in the course of his employment on June 21, 2013, was not against the manifest weight of the evidence. The circuit court rejected the employer's argument that the claimant's claim of a work-related accident was belied by his failure to call his co-worker as a corroborating witness and by the fact that the claimant finished working his shift after the alleged accident. The trial court also rejected the employer's argument that inconsistencies between Dr. Estrella's and Dr. Carrion's medical records as to the mechanics of the claimant's injury undermined the claimant's claim of a work-related accident. The court held that, when these records are viewed in conjunction with the records of the claimant's other treaters, they served to corroborate the claimant's claims of injury.

¶ 45 The circuit court also found that the Commission's causation finding was not against the manifest weight of the evidence. The employer argued that the Commission's causation finding was refuted by the inconsistencies in the medical records, the fact that the claimant sought a second opinion from Dr. Carrion at the urging of his attorney, and the Commission's baseless decision to

credit Dr. Erickson's causation opinion over that of Dr. Hennessy. In rejecting these arguments, the circuit court ruled that: (1) seeking out a second medical opinion, even at the behest of a lawyer, does not necessarily undermine the credibility or accuracy of that second opinion; (2) despite the existence of some discrepancies, the medical records as a whole supported the Commission's conclusion that the claimant's back condition was caused by his fall at work on June 21, 2013; and (3) the employer had pointed to nothing in the record that would undermine the Commission's credibility findings regarding the medical testimony.

¶ 46 As to the Commission's award of TTD benefits, prospective medical care, and certain medical benefits, the circuit court noted that the claimant was authorized off work by his treating physicians from June 21, 2013, through June 9, 2017, ad that there was no evidence in the record suggesting that the claimant worked for or received compensation from his cousin's business during that period. The court therefore found that the Commission's award of TTD benefits, medical expenses, and prospective medical care was not against the manifest weight of the evidence.

¶ 47 This appeal followed.

¶ 48 ANALYSIS

¶ 49 1. Accident

¶ 50 The employer argues that the Commission's finding that the claimant sustained an accident arising out of and in the course of his employment with the employer on June 21, 2013, is against the manifest weight of the evidence.

¶ 51 The claimant has the burden of establishing, by a preponderance of the evidence, that his injury arose out of and in the course of his employment. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980); *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th)

100505WC, ¶ 35. Whether the claimant sustained an injury that arose out of and in the course of his employment is a question of fact. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, determine the weight that their testimony is to be given, and resolve conflicts in the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206 (2003); *O'Dette*, 79 Ill. 2d at 253.

¶ 52 The Commission's credibility determinations and other factual findings will not be disturbed on review unless they are against the manifest weight of the evidence. *Shafer*, 2011 IL App (4th) 100505WC at ¶¶ 35-36. For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be "clearly apparent." *Id.* at ¶ 35; see also *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). The appropriate test is whether the record contains sufficient evidence to support the Commission's decision, not whether this court might have reached the same conclusion. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011).

¶ 53 In this case, there was ample evidence supporting the Commission's finding that the claimant sustained an accident arising out of and in the course of his employment on June 21, 2013. Dr. Estrella's charting note, which was dated June 21, 2013, states that "today [the claimant] slipped on [a] wet floor at work." Dr. Carrion's initial examination report, which is also dated June 21, 2013, states that the claimant "first entered this office on 06-21-2013 for examination and treatment for injuries sustained at work on 06-21-2013." In recording the history of the injury, Dr. Carrion's records note that the claimant slipped and fell on an icy floor while carrying a hose in order to wash a machine. Dr. Chunduri's records also indicate that the claimant reported sustaining an accident at work on June 21, 2013. Moreover, the record indicates that, on June 21, 2013, the

claimant notified his supervisor that he had suffered an accident and that he was taken to Vista that same day by the employer. Dr. Hennessy testified that he reviewed a Form 45 (*i.e.*, the employer's first report of injury) that was dated June 21, 2013, in which the claimant reported slipping on ice and suffering injuries as a result. In addition, the claimant's application for adjustment of claim identifies the date of accident as June 21, 2013.

¶ 54 The employer notes that the claimant testified that his accident occurred the day before he saw Drs. Estrella and Carrion, and that the Commission erred by (1) failing to take this discrepancy with the medical records into account, and (2) finding that the medical records corroborated the claimant's "testimony" that the accident occurred on June 21, 2013. The employer argues that, if the Commission had taken the discrepancy between the claimant's testimony and the medical records into account, it would have found that the claimant lacked credibility and failed to prove an accident occurring on June 21, 2013.

¶ 55 We disagree. Although the Commission mischaracterized the claimant's testimony on this point, that error did not negate the contemporaneous medical records and other evidence establishing an accident date of June 21, 2013. Given the overwhelming contemporaneous evidence that the accident occurred on June 21, 2013, and the fact that the claimant testified at the arbitration hearing nearly four years after the alleged accident, the arbitration could have reasonably found that the claimant had erred in his testimony. That conclusion is bolstered by the fact that, before the claimant testified that he went to Vista on the day following the accident, he testified that he did not remember the date he went to Vista.

¶ 56 The employer admits that "[i]naccurate testimony as to the precise date of a work accident is not uncommon and is regularly attributed to indifference to the calendar or to a simple mistake."

The employer does not provide any plausibly reason why the Commission could not have reached the same conclusion in this case.

¶ 57 The employer further maintains that the fact that the claimant did not report a back injury to Dr. Estrella when he first sought treatment at Vista fatally undermines his claim to have injured his back at work on June 21, 2013. We do not find this argument to be persuasive. As an initial matter, there is at least some evidence that the claimant indicated to Dr. Estrella that he had injured his back. The circle that the claimant drew around the buttocks in the pain diagram included a portion of the lower back. In any event, even assuming *arguendo* that the claimant failed to report a back injury to Dr. Estrella, he did report a back injury to Dr. Carrion on the same day that he saw Dr. Estrella, and he subsequently reported to Dr. Chunduri that he had injured his back at work on June 21, 2013. The claimant's alleged failure to report such an injury to Dr. Estrella does not outweigh this evidence, or the other evidence discussed above, that establishes an accident date of June 21, 2013.

¶ 58 Accordingly, the Commission's finding that the claimant sustained an accident at work on June 21, 2013, is not against the manifest weight of the evidence.

¶ 59 2. Causation

¶ 60 The employer also argues that the Commission's finding that the claimant's lower back condition is causally related to the June 21, 2013, work accident is against the manifest weight of the evidence.

¶ 61 To obtain compensation under the Act, a claimant must prove 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). 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*,

207 Ill. 2d at 205. Whether a causal connection exists between an injury and employment is a question of fact for the Commission to decide. *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence, *i.e.*, when the opposite conclusion is "clearly apparent." *Swartz*, 359 Ill. App. 3d at 1086. The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak*, 329 Ill. App. 3d 828, 833 (2002).

¶ 62 Applying these standards, we cannot say that the Commission's causation finding was against the manifest weight of the evidence. Dr. Chunduri, an anesthesiologist and pain management specialist who treated the claimant, opined that the claimant's low back condition was the result of "the accident." Although Dr. Chunduri did not initially specify which work accident he was referring to, he stated during a follow-up examination that the claimant "ha[d] not gone back to work since the accident." Because the claimant returned to work after the September 11, 2012, work accident (and would have had to return to work in order to suffer a second accident on June 21, 2013), it is clear that Dr. Chunduri was referring to the June 21, 2013, accident when he issued his causation opinion.

¶ 63 In addition, although Dr. Erickson initially opined that the claimant's lower back injuries were caused by the September 2012, work injury, he later testified that both of the claimant's work

accidents "may be contributory" to his lower back condition and that the claimant's fall on June 21, 2013, "may itself have been the cause events [*sic*] in the second incident."

¶ 64 Although Dr. Hennessy reached a different conclusion, it was the Commission's province to assess the credibility of witnesses, to determine what weight to give testimony, and to resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny*, 397 Ill. App. 3d at 675; *Fickas*, 308 Ill. App. 3d at 1041. It was not against the manifest weight of the evidence for the Commission to find the causation opinions of Drs. Chunduri and Erickson more persuasive than those of Dr. Hennessy. The opinions of Drs. Chunduri and Erickson had a foundation in the evidence. The claimant was working full duty with no work restrictions after the September 11, 2012, accident and up to the time of the second accident,[3] and he was unable to perform his job and was held off work altogether after the June 21, 2013, accident. This type of "chain of events" analysis may support a finding of causation. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982) (ruling that causation can be established by a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability). Moreover, Dr. Hennessy based his causation opinion on only one examination of the claimant, whereas Drs. Chunduri and Erickson based their opinions on their long-term treatment of the claimant.

¶ 65 The employer argues that Dr. Erickson's causation opinion during his testimony was "equivocal" and was not sufficient to negate his earlier opinions that the claimant's lower back

[3] In finding that the claimant's June 21, 2013, accident may have caused or contributed to his lower back conditions, Dr. Erickson testified that "it does seem clear that [the claimant] was working fairly vigorously at the time of the second accident."

condition was caused by the September 2012 work accident. The employer further notes that, during cross-examination, Dr. Erickson agreed that it was "possible" that the claimant's lower back condition and need for surgery were related to something other than his alleged work accident, such as a degenerative condition.

¶ 66 Dr. Erickson's testimony that the claimant's lower back condition may have been related to something other than the claimant's June 21, 2013, work accident does not undermine his suggestion that that accident was at least a *contributing* cause of the claimant's lower back condition. In order to establish causation, a claimant need only demonstrate that a work-related accident was *a* causative factor in the resulting condition of ill-being, not the sole or principal causative factor. *Sisbro*, 207 Ill. 2d at 205. Dr. Erickson's opinion arguably meets that standard. But even assuming that Dr. Erickson's opinion was equivocal, Dr. Chunduri's causation opinion and the chain of events evidence were sufficient to support the Commission's causation finding.[4] The fact that Dr. Hennessy opined that the June 21, 2013, accident did not casually contribute to the claimant's lower back condition is of no consequence because, (1) it is the Commission's province to weigh witness testimony and to resolve conflicts in the medical opinion evidence, (2) Dr. Chunduri's causation opinion had a foundation in the evidence, and (3) the Commission's

[4] The fact that the Commission did not expressly base its decision on the chain of events does not mean that we may not affirm the Commission's causation finding, in part, on that basis. "We may affirm the Commission's decision on any basis supported by the record regardless of the Commission's findings or its reasoning." *Dukich v. Illinois Workers' Compensation Comm'n*, 2017 IL App (2d) 160351WC, ¶ 43 n.6; see also *General Motors Corp. v. Industrial Comm'n*, 179 Ill. App. 3d 683, 695 (1989).

decision to credit the opinions of Drs. Chunduri and Erickson over those of Dr. Hennessy was not against the manifest weight of the evidence, for the reasons stated above.

¶ 67 3. TTD Benefits, Medical Expenses, and Prospective Medical Care

¶ 68 The employer also argues that the Commission's award of TTD benefits, medical expenses, and prospective medical care related to the claimant's lower back condition was against the manifest weight of the evidence.

¶ 69 A claimant is temporarily and totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107 (1990). To establish that he is entitled to TTD benefits, it is a claimant's burden to prove not only that he did not work, but also that he was unable to work. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 148 (2010); *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542-43 (2007). Whether a claimant is entitled to TTD benefits and for how long are questions of fact to be determined by the Commission, and a reviewing court will not disturb the Commission's determination of these issues unless they are contrary to the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20; *Shafer*, 2011 IL App (4th) 100505WC, ¶ 45.

¶ 70 Whether medical expenses are reasonable and necessary is also a question of fact for the Commission which we review under the manifest weight of the evidence standard. *Cole v. Byrd*, 167 Ill. 2d 128, 136-37 (1995). Questions regarding a claimant's entitlement to prospective medical care are also questions of fact, and the Commission's determinations on these matters will not be disturbed on appeal unless they are against the manifest weight of the evidence. *Dye v. Ill. Workers' Comp. Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10.

¶ 71 A factual finding is contrary to the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). The test is whether there is sufficient factual evidence in the record to support the Commission's determination, not whether this court, or any other tribunal, might reach an opposite conclusion. *Pietrzak*, 329 Ill. App. 3d at 833). The determination of witness credibility and the weight to be accorded the evidence are matters within the province of the Commission. *Id.*; *Presson v. Industrial Comm'n*, 200 Ill. App. 3d 876, 880 (1985).

¶ 72 Applying these standards, we cannot conclude that the Commission's award of benefits was against the manifest weight of the evidence. As to TTD benefits, the claimant was taken off work on June 21, 2013, and was kept off work by his doctors through the time of arbitration. There was no evidence presented suggesting that the claimant performed any work during that period. The employer contends that the claimant worked for Cleaning by Luna, but the claimant denied ever working for that business, and Garcia, the co-owner of the business, testified that the claimant had never worked for or been paid by Cleaning by Luna. The employer did not present any evidence rebutting this testimony. The video surveillance testimony presented by the employer merely showed the claimant entering clients' residences with his cousin. It did not show the claimant performing any cleaning or other work tasks.

¶ 73 The employer argues that the fact that the claimant gave differing accounts of his reasons for accompanying his cousin to work, both of which differed from Garcia's account, rendered his testimony on this issue "so inconsistent and contradictory that it not be credited by any rational trier of fact." This argument misses the mark. The reasons for the claimant's decision to accompany his cousin to work are immaterial. All that matters is whether he performed any work for the business. Because there is no evidence that he did, the Commission's award of TTD benefits

from June 22, 2013, through the date of arbitration was not against the manifest weight of the evidence.

¶ 74 Nor was the Commission's award of medical expenses and prospective medical care against the manifest weight of the evidence. After carefully considering the causation evidence and other evidence, the Commission found that the claimant was entitled to medical expenses for treatments relating to the claimant's lumbar spine, herniated lumbar discs and radiculopathy incurred between June 21, 2013, and the date of arbitration, except for medical expenses that were not certified by the employer's Utilization Review reports or that the Commission found to be otherwise excessive or unnecessary. The employer argues that, for the reasons articulated in Commissioner Simpson's dissenting opinion, the Commission should have denied any benefits after October 18, 2013, the date of Dr. Hennessy's examination. We disagree. Commissioner Simpson's opinion was based on her finding that Dr. Hennessy's opinions were persuasive (including his opinion that the claimant had reached MMI by October 18, 2013, and that the claimant needed no further treatment for his lower back thereafter). As noted above, however, the Commission appropriately found Dr. Hennessy's opinions not to be persuasive. That finding was reasonable, *inter alia*, because three of the claimant's treating physicians (Drs. Erickson, Koutsky, and Dixon) opined that the claimant needed surgical intervention to repair his lumbar spine condition.

¶ 75 CONCLUSION

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

¶ 77 Affirmed.