2022 IL App (5th) 210129WC-U
No. 5-21-0129WC
Order filed January 24, 2022

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

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MICHAEL MURRAY,	)	Appeal from the
	)	Circuit Court of
Appellee,	)	Williamson County
	)	No. 20MR168
v.	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	Honorable
(Williamson County Sheriff's Department, Appellant).	)	John W. Sanders,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman and Hudson concurred in the judgment.
Justice Barberis dissented.

ORDER

¶ 1 *Held*: By finding that the employee failed to carry his burden of proving he fell down a flight of stairs and suffered accidental injuries which arose out of and in the course of his employment, the Illinois Workers' Compensation Commission (Commission) did not make a finding that was against the manifest weight of the evidence.

¶ 2 Claimant, Michael Murray, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2018)), seeking benefits for

a low back injury he sustained while working for the employer, Williamson County Sheriff's Department (Employer). Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2018)), the arbitrator found that claimant sustained a compensable injury and awarded him temporary total disability (TTD) benefits, along with medical expenses and prospective medical treatment.

¶ 3 The employer sought review of the arbitrator's decision before the Commission. The Commission, with one commissioner dissenting, reversed the arbitrator's decision and vacated the award of benefits, finding that claimant failed to prove he sustained an accident at work.

¶ 4 Claimant sought judicial review of the Commission's decision in the circuit court of Williamson County. The court reversed the Commission's decision, finding it to be against the manifest weight of the evidence, and affirmed the arbitrator's decision. We conclude the court intended to reinstate the arbitrator's decision. The employer now appeals. We believe the evidence does not clearly require a conclusion opposite to that which the Commission reached. We therefore reverse the circuit court's judgment and reinstate the Commission's decision.

¶ 5 I. BACKGROUND

¶ 6 On June 20, 2019, claimant filed an application for adjustment of claim alleging that he sustained multiple injuries to his body (back, shoulders, hips, neck, right leg, body as a whole) when he fell down a flight of stairs while working for the employer on May 30, 2019. The matter proceeded to an arbitration hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2018)) on August 26, 2019, at which time claimant stipulated, during his cross-examination, that he was only seeking benefits for his alleged low back injury. While the disputed issues at the hearing included accident, causal connection, TTD benefits, medical expenses and prospective medical care, the main issue before the arbitrator was whether claimant's

alleged May 30, 2019, accident actually occurred. The employer urged claimant's alleged accident was fabricated by claimant due at least in part to disciplinary action taken against him earlier that day.

¶ 7 Claimant testified that he was employed by Employer as a dispatcher at the time of the hearing and had been so employed for "roughly a year and a half." He worked in the dispatch office located on the third floor of the building and had the option of taking either the stairs or the elevator to his workstation. He claimed he sustained injuries at work on May 30, 2019, when he fell down the stairs while retrieving a lunch bag he had forgotten in his vehicle. No one witnessed the alleged accident, and claimant was the only witness who testified that the accident actually occurred.

¶ 8 Prior to May 30, 2019, multiple and repeated issues had arisen with regard to claimant's job performance, yet he had only been a dispatcher for approximately 18 months. The employer documented the issues in claimant's disciplinary records, which were admitted into evidence at the hearing. Claimant testified that he received "coaching" after several instances where he made improper dispatches and that he was suspended following an incident where he "lost track" of an officer. He recalled receiving notice of his suspension but was unable to recall the exact date he received the notice. Claimant identified a disciplinary record, titled "Notice of Intent to Discipline" (notice), dated May 28, 2019, that he signed on May 30, 2019, indicating his acceptance of a two-day suspension without pay set to occur on "June 5th and 6th of 2019." Robert Owsley, claimant's direct supervisor, also signed the notice. On cross-examination, claimant clarified that he signed the notice prior to working his scheduled evening shift (from 3 p.m. to 11 p.m.) on May 30, 2019.

¶ 9 Claimant testified that he exchanged text messages with Owsley after signing the

notice on May 30, 2019. During this exchange, claimant advised that he was taking two days off work and requested additional training upon his return. Owsley responded with assurance that claimant would receive additional training following his two-day suspension.

¶ 10 Scott McCabe, the chief deputy for Employer, testified that claimant signed the notice of suspension during a meeting held prior to his assigned shift on May 30, 2019. McCabe, Owsley, and claimant were all present during the meeting. McCabe testified that claimant considered resigning during the meeting but agreed to "sleep on his decision" after McCabe and Owsley stated they did not want claimant to resign. McCabe understood claimant contacted Owsley later that day to advise that he wanted to keep his job and receive extra training to improve his job performance.

¶ 11 Claimant testified that the accident occurred during his assigned shift on May 30, 2019. Specifically, the accident occurred when he left the dispatch office on the third floor to retrieve his lunch bag from his vehicle on the ground level. Claimant explained that he initially attempted to take the elevator but decided to take the stairs when the elevator light did not come on after he hit the button. On cross-examination, claimant clarified that he did not wait very long for the elevator because the light did not come on and he did not hear the elevator moving.

¶ 12 McCabe testified that the elevator worked but the elevator light had not worked for quite some time, and employees were well aware of the issue. When asked if it was unusual that claimant did not wait for the elevator, McCabe responded, "Based on other knowledge that I have it brings suspicions."

¶ 13 Claimant testified that, while descending on the stairwell, he slipped "due to visibility," twisted his ankle, and fell backwards down the stairs. Claimant identified the incident report he filled out on June 1, 2019, in which he alleged that the stairwell had poor lighting and

described falling backwards down a flight of stairs after missing a step and twisting his ankle. On cross-examination, claimant clarified that he fell down the last landing of the stairwell and then called his coworker, Cassie Gossett. He was unable to recall the specifics of their conversation but did recall requesting that Gossett call an ambulance.

¶ 14 Kimberly Murray (Kimberly), claimant's wife, testified that she observed and photographed the lighting conditions in the stairwell on August 2, 2019. At the top of the stairwell, she observed a single light fixture with one working light bulb. At the bottom of the stairwell, the only light came from the opening of a door held open by a milk crate. Kimberly identified the photographs she had taken of both the top and bottom of the stairwell, which were admitted into evidence.

¶ 15 Claimant also identified the photographs taken by Kimberly, including a photograph depicting the bottom landing of the stairwell. Although the photograph depicted a milk crate "jammed" into a door at the bottom of the stairwell, claimant testified the milk crate was not present at the time of his fall. Claimant otherwise agreed that the photographs accurately depicted the stairwell at the time of his fall.

¶ 16 Cassie Gossett, claimant's coworker, testified that she was also employed by the employer as a dispatcher. She was familiar with the stairwell where claimant fell, although she only occasionally used the stairs. She identified some of the photographs of the stairwell and agreed some of the lights were out. However, she testified the stairwell lighting was a "normal" amount of lighting. Gossett explained that there were other lights that allowed one to see while walking down the stairwell, including light that entered through the door propped open with the milk crate. Gossett was unsure if the door was propped open on May 30, 2019, because she had used the elevator that day. On cross-examination, Gossett testified that most employees, including

claimant, usually take the elevator. Although she acknowledged the elevator did not always work, Gossett believed the elevators were working the day of claimant's alleged fall.

¶ 17 Kevin Thomas and Perry Hickey, both custodians employed by the Williamson County Public Building Commission, identified the photographs of the stairwell and testified regarding the lighting conditions in the stairwell. Thomas testified that the stairwell had lights but that the lights did not always work. Thomas did not know if the lights were working on May 30, 2019, and he agreed that the stairwell was not well lit when the lights were out. Hickey agreed that the door in the stairwell was not a public entrance, and that the stairwell would appear darker if the milk crate was not propping the door open. Thomas assumed the elevator was working on the day in question, because he had not been notified the elevator was not. Hickey testified that the elevators were working on May 30, 2019.

¶ 18 Chief Deputy McCabe testified that the door at the bottom of the stairwell was propped open primarily due to fire regulations but also to allow more light into the stairwell. When McCabe was asked if he had any general suspicions about whether claimant's accident actually occurred, claimant's attorney objected on the grounds that the question called for speculation. After the arbitrator sustained the objection, McCabe was asked if he had any reasons to doubt claimant's credibility and claimant's attorney objected on the same grounds. The arbitrator allowed McCabe to "answer yes or no" based on his own personal knowledge.

¶ 19 When McCabe was, again, asked if he had any reason to doubt the credibility of claimant with regard to the accident, he responded, "Yes." McCabe admitted that claimant had never been disciplined for conduct involving dishonesty, stealing, absenteeism, or improper behavior. However, on two consecutive days claimant had claimed the Law Enforcement Agencies Data System (LEADS) was not accessible, when it was functional as others were utilizing it. When

McCabe was asked if any of the discipline of claimant involved lying, McCabe answered that the LEADS-related incident did "potentially" involve lying.

¶ 20 Claimant testified that his fall down the stairs on May 30, 2019, resulted in multiple injuries to his body, although he was only seeking benefits for a low back injury, specifically, a torn disc. He denied having any prior back injuries and denied receiving medical treatment for his back prior to May 30, 2019. He also denied that he would throw himself down a flight of stairs over two days of pay.

¶ 21 Claimant's medical records generally revealed that, at the time of the accident, he was 57 years old, weighed 284 pounds, and had a prior knee surgery. Claimant's medical records also documented the treatment he received following the May 30, 2019, incident as follows.

¶ 22 Although claimant requested Gossett call an ambulance for him, and he was transported by such ambulance to the hospital, claimant did not introduce any ambulance records. Likewise, though the ambulance transported claimant to the emergency room at SIH Herrin, claimant did not introduce these records either. Instead, the employer offered the emergency room records. The emergency department records from May 30, 2019, show claimant complained of right shoulder and back pain after falling down 10 to 12 stairs. The records further note, twice, in full capital letters and bold-face type that there was "No obvious trauma noted." The records describe normal range of motion, and no deformity. There is a notation of multiple contusions, without reference to where or whether the medical personnel actually observed them. The facility performed several computerized tomography scans, which showed essentially normal results.

¶ 23 Claimant next presented to Dr. Richard K. Buchman on June 3, 2019, complaining of worsening back pain after falling down "15 stairs" on May 30, 2019. Dr. Buchman noted back tenderness but no "visible bruising or abnormality" and "no edema or deformity." The records

from this visit are the first ones chronologically claimant submitted, but the records did not include the second page.

¶ 24 Claimant presented to Nurse Practitioner Deborah Sullivan the following day, June 4, 2019, complaining of back pain and left, instead of right, shoulder pain. Claimant reported that he was attempting to retrieve his lunch when he fell down 12 to 15 steps after missing the first step. Sullivan's physical examination of claimant's low back revealed tenderness but was otherwise unremarkable. The facility performed X-rays of claimant's left shoulder, which the radiologist interpreted as a "[n]ormal." Sullivan noted that a diagnosis remained unclear pending additional testing and imposed temporary work restrictions.

¶ 25 Claimant was next seen by Dr. Matthew Gornet, an orthopedic surgeon, on June 6, 2019. Claimant provided a relatively consistent history of the May 30, 2019, incident and complained primarily of pain in his cervical and lumbar spine. Dr. Gornet noted that claimant's symptoms were consistent with a disc injury and opined that claimant was temporarily and totally disabled. Dr. Gornet also opined that claimant's symptoms were related to the May 30, 2019, events as described by claimant. Dr. Gornet noted such injuries "tend to resolve with time" and directed claimant to undergo physical therapy.

¶ 26 At a follow-up appointment with Dr. Gornet on July 18, 2019, claimant reported no improvement with physical therapy. At Dr. Gornet's recommendation, claimant had Magnetic Resonance Imaging (MRI) scans taken of his cervical and lumbar spine (low back). The MRI of claimant's lumbar spine revealed an annular tear and protrusion at L5-S1 and foraminal annular tears at L4-L5 and L3-L4. The MRI of claimant's cervical spine revealed annular tears at C3-C4, C4-C5, and C6-C7, as well as a disc bulge at C5-C6. With regard to claimant's lumbar spine, Dr. Gornet confirmed his opinion that claimant had a disc injury. Dr. Gornet also recommended an

epidural steroid injection at L5-S1 and medial branch blocks, along with facet rhizotomies, at L4-L5 and L5-S1. Dr. Gornet also "asked" claimant to "begin losing weight" due to his "fairly substantial abdomen" which "will need to decrease prior to treatment." Claimant presented to Dr. Helen Blake, who administered the epidural steroid injection at L5-S1 on July 20, 2019.

¶ 27 On October 21, 2019, the arbitrator issued a written decision on all disputed issues. The arbitrator found that claimant sustained an accidental injury arising out of and in the course of his employment on May 30, 2019, and that claimant's current low back condition was causally related to the work accident. The arbitrator did not find it suspicious that claimant decided to take the stairs to retrieve his lunch and rejected the employer's assertion that claimant fabricated the accident due to the disciplinary action taken against him on the same date. Thus, the arbitrator awarded claimant medical expenses, prospective medical treatment, and 12 4/7 weeks of TTD benefits (from May 31, 2019, to August 26, 2019). The employer sought review of the arbitrator's decision before the Commission.

¶ 28 On July 31, 2020, the Commission, with one commissioner dissenting, issued a written decision reversing the arbitrator's decision on the issue of accident and vacating all awards. In doing so, the Commission first made several modifications to the arbitrator's findings of fact. The Commission noted that claimant was seen by Sullivan on June 4, 2019, not May 30, 2019, as indicated in the arbitrator's decision and that claimant first learned of the two-day suspension on May 30, 2019, not May 28, 2019, as found by the arbitrator. The Commission also noted that the arbitrator's decision did not reference Dr. Buchman's notation that claimant had no visible bruising or abnormality during an office visit on June 3, 2019.

¶ 29 Before delving into the Commission's decision, we note that much of the decision relates to claimant's credibility. In short, the Commission found the totality of the evidence

indicated claimant and his version of events was simply not credible.

¶ 30 The Commission found that, although claimant was in the stairwell and an ambulance was called in response to an alleged incident on May 30, 2019, claimant "failed to prove that he sustained any accident at all." In support, the Commission noted that claimant's medical records did not support his claimed mechanism of injury—that he fell down 10 to 15 steps on May 30, 2019. The Commission concluded that claimant's failure to introduce the May 30, 2019, ambulance record into evidence led to "the permissible inference" that it contained information detrimental to claimant's claim. The Commission later noted that claimant's failure to include the second page of Dr. Buchman's June 3, 2019, treatment record, which was the first medical record claimant submitted into evidence, led to the same inference.

¶ 31 The Commission found that the May 30, 2019, emergency room treatment record—which was introduced by the employer, not claimant—indicated that claimant had no obvious trauma. The Commission acknowledged that the same treatment record listed an impression of "multiple contusions" but concluded that "[t]he impression of 'multiple contusions' seems inconsistent with the finding of 'no obvious trauma.' " The Commission noted that the treatment record neither named the location of the contusions nor specified whether the impression was based on the provider's observations or claimant's subjective complaints. The Commission further noted that claimant's "only apparent exam findings were 'tenderness to palpitation,' for which there was no documented objective basis."

¶ 32 The Commission observed that Dr. Buchman's June 3, 2019, treatment record indicated claimant had "no visible bruising or abnormality." The Commission found "it extremely unlikely that [claimant] could fall backwards down a flight of 10 to 15 steps without having any visible signs of trauma documented in any of the medical records."

¶ 33 Moreover, the Commission found that, without contemporaneous objective medical evidence of trauma, the MRI ordered by Dr. Gornet of claimant's low back over a month after the accident did not support his claim he fell backwards down 10 to 15 stairs.

¶ 34 The Commission observed claimant's stipulation he was only seeking compensation for his low back did not make him more credible. Instead, the agreement was "an attempt to deflect attention away from the lack of objective findings to any other body part" after the backwards fall down multiple steps.

¶ 35 The Commission also noted inconsistencies in claimant's description of the May 30, 2019, accident. Specifically, the Commission observed that claimant's initial description of the accident at the emergency room "could indicate" that he slid down the stairs feet first on his back while holding his head up, while the subsequent medical records, along with claimant's testimony, include "some variation of [claimant] falling 'backwards down the stairs.' " In addition, the Commission noted that no ankle injury was documented in claimant's medical records so as to support the June 1, 2019, report he made to the employer, in which he described twisting his ankle due to poor visibility, missing a step, and falling backward down the stairwell. Consequently, the Commission did not find his claimed mechanism of injury credible.

¶ 36 The Commission disagreed with the arbitrator's determination that claimant's decision to take the stairs was not suspicious under the circumstances, finding it "likely" that claimant had never taken those stairs before the date of the accident. The Commission found it "highly coincidental that [claimant], who weighed 284 pounds, was 57-year[s] old, and had previous knee surgeries would choose to walk down two flights of stairs in an allegedly dark stairwell for the very first time on the day that he was informed of his suspension." In addressing claimant's testimony that he would not put himself through the pain of throwing himself down a

flight of stairs over two days of pay, the Commission noted that the accident was not witnessed. The Commission further noted that claimant could have merely claimed he fell down the stairs due to the pending suspension or the possibility of losing his job following the suspension.

¶ 37 On April 23, 2021, the circuit court reversed the Commission's decision and reinstated the arbitrator's decision, concluding that the Commission's finding on the issue of accident was based on improper speculation and against the manifest weight of the evidence. The employer now appeals.

¶ 38 II. ANALYSIS

¶ 39 On appeal, the employer first contends that this court should set aside the circuit court's order reversing the Commission's decision and reinstate the Commission's decision. In support, the employer argues that the Commission's finding that claimant failed to prove he sustained an accident was not against the manifest weight of the evidence. We agree.

¶ 40 To be compensable under the Act, an employee's injury must both arise out of and in the course of his or her employment. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006) (citing 820 ILCS 305/2 (West 2000)). "Both elements must be present at the time of the employee's injury in order to justify compensation, and it is the employee's burden to establish these elements by a preponderance of the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). "Whether a work-related accident occurred, and whether it caused a worker's condition of ill-being are questions of fact for the Commission." *Pryor v. Industrial Comm'n*, 201 Ill. App. 3d 1, 5 (1990).

¶ 41 We review the Commission's findings on factual issues under the manifest-weight-of-the-evidence standard. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434 (2011). "For a finding of fact to be against the manifest weight

of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315 (2009). The appropriate test is whether the record on appeal contains sufficient evidence to support the Commission's determination, not whether this court would have reached the same conclusion. *R&D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866 (2010). "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny*, 397 Ill. App. 3d at 674. While a reviewing court is "not easily moved to set aside a Commission decision on a factual question, we will not hesitate to do so where the clearly evident, plain, and indisputable weight of the evidence compels an apparent, opposite conclusion." *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993). "[T]he Commission's decision must be supported by the record and not based on mere speculation or conjecture." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 215 (2003).

¶ 42 In the present case, the Commission found that claimant failed to prove he sustained an accident on May 30, 2019. Specifically, the Commission found that, although claimant may have been in the stairwell on the alleged date and an ambulance was called in response to an alleged accident, he failed to prove he sustained any accident at all on the alleged date. Because no one witnessed claimant's alleged accident on May 30, 2019, and claimant was the only witness who testified that the accident occurred, the Commission's finding was based upon its determination that claimant's testimony and "claimed mechanism of injury" lacked credibility. See *Caterpillar Tractor Co. v. Industrial Comm'n*, 83 Ill. 2d 213, 218 (1980) (explaining although an employee's testimony about an alleged accident, standing alone, may be sufficient to justify an award of benefits under the Act, it is not enough where consideration of all facts and circumstances

demonstrates that the manifest weight of the evidence is against it). After carefully reviewing the record, we conclude that the manifest weight of the evidence supports the Commission's decision regarding the alleged May 30, 2019, accident.

¶ 43 Claimant testified that the accident occurred while he was retrieving his lunch box during his assigned shift on May 30, 2019. Specifically, claimant testified that he slipped "due to visibility," twisted his ankle, and fell backwards down the stairs. Claimant also testified that he immediately notified Gossett of his fall and requested that she call an ambulance. Claimant also notified the employer of the alleged accident and filled out an incident report the following day on June 1, 2019. Consistent with his testimony, claimant alleged in the incident report that the stairwell had poor lighting and that he twisted his ankle, "missing a step and fell backwards down [the] flight of stairs." According to claimant's medical records, some introduced by the employer, he sought immediate medical treatment after the alleged accident and follow-up treatment in the months following the alleged accident. Claimant provided a generally consistent history of the alleged accident to each medical provider, as documented in his medical records. We recognize the medical records also showed that an MRI of claimant's low back approximately a month and a half after the accident revealed an annular tear and disc injury. Claimant testified he had no prior injuries to his back, and the medical records do not reveal if he did or not or whether he had received medical treatment for his back prior to May 30, 2019.

¶ 44 However, the Commission determined that claimant's medical records did not support his claim, based on several factors. The Commission found that claimant's failure to submit the May 30, 2019, ambulance record and the second page of Dr. Buchman's June 3, 2019, treatment record into evidence led to "the permissible inference" that those records contained information detrimental to his claim. Such determination is within the Commission's purview and

is reasonable given the evidence.

¶ 45 Similarly, the Commission questioned claimant's claim of twisting his ankle on the stairs, given that no ankle injury was documented in his initial medical records.

¶ 46 As well, the Commission found it was "extremely unlikely" claimant could have fallen backwards down a flight of stairs without any visible signs of trauma documented in his medical records. The Commission observed claimant's initial treatment record from May 30, 2019, indicated claimant had no obvious trauma and found the noted impression of "multiple contusions" was vague and inconsistent with the notation of no obvious trauma. The Commission also relied on Dr. Buchman's medical record from June 3, 2019, which indicated claimant had no visible bruising.

¶ 47 As to Dr. Gornet's opinion that claimant's symptoms were consistent with a disc injury and that claimant's symptoms were causally related to the alleged May 30, 2019, accident, such opinion was based on claimant's description of the alleged fall. As for the MRI findings, the Commission disregarded them, finding that the MRI findings "a month and a half later" did not support claimant's claim without contemporaneous medical evidence of trauma. We recognize the MRI confirmed Dr. Gornet's opinion that claimant sustained a disc injury, but the Commission determined the alleged mechanics of the injury proffered by claimant were not credible. Thus, Dr. Gornet's opinion that claimant's symptoms and disc injury were causally related to the alleged accident was not credible either. As such, the Commission's decision to disregard the MRI findings was supported by the evidence. Such weighing of the evidence and credibility determinations are the province of the Commission. As well, the Commission could have reasonably inferred claimant injured his lower back after May 30, 2019, or for that matter prior to that date, but in either case prior to the MRI, hence leading to the objective evidence of some injury on the MRI.

¶ 48 Therefore, based on our careful review of the record, we find claimant's medical records, including the subsequent MRI findings, do not support his claim. We conclude that the Commission's determination that the medical records did not support his claim is supported by the manifest weight of the evidence.

¶ 49 The Commission determined that claimant lacked credibility in part as well due to the circumstances of the alleged May 30, 2019, accident. Specifically, the Commission found it "highly coincidental" that claimant, who weighed 284 pounds, was 57 years old, and had a prior knee surgery, "would choose to walk down two flights of stairs in an allegedly dark stairwell for the very first time on the day that he was informed of his suspension." There was evidence showing that claimant and others usually took the elevator, and we find claimant's age, weight, and prior knee surgery could reasonably suggest that he was either unable or unwilling to take the stairs. Thus, we conclude that the Commission's finding that claimant had never taken the stairs before the alleged accident was also supported by the evidence.

¶ 50 Further, claimant's alleged accident occurred on the same date he was subjected to a disciplinary action. The Commission inferred claimant fabricated the accident because of his two-day suspension without pay. This too is a reasonable conclusion based on the totality of the other evidence. The Commission noted that claimant may have been motivated by the possibility of resigning or losing his job in the future. Although not explicitly referenced in the Commission's decision, we note McCabe testified that he had "suspicions" based on "other knowledge" and that he did not find claimant's alleged accident credible based on his personal knowledge of claimant. McCabe agreed on cross-examination that claimant had never been disciplined for conduct involving dishonesty, theft, absenteeism, or similar improper behavior. However, when asked if any of claimant's discipline involved lying, McCabe testified the incident involving claimant's

assertion the LEADS system was not accessible could have involved lying. Thus, we conclude that the Commission's findings regarding the circumstances of claimant's alleged accident were supported by the evidence.

¶ 51 In light of the foregoing, we find that the manifest weight of the evidence supports the Commission's decision that no accident occurred on May 30, 2019, and that the evidence does not clearly compel a finding otherwise. Therefore, we hold that the Commission's finding that claimant failed to prove he sustained an accident was not against the manifest weight of the evidence.

¶ 52 III. CONCLUSION

¶ 53 The Commission's decision is not against the manifest weight of the evidence. Therefore, we reverse the circuit court's judgment and reinstate the Commission's decision.

¶ 54 Reversed and Commission decision reinstated.

¶ 55 JUSTICE BARBERIS, dissenting:

¶ 56 I respectfully dissent from the majority's decision, as I would affirm the portion of the circuit court's order that set aside the Commission's decision denying claimant benefits under the Act. Unlike the majority, I am unable to conclude that the Commission's decision, as written, was supported by sufficient evidence of record. Specifically, the Commission determination that claimant failed to prove "he sustained any accident at all" on May 30, 2019. While I am mindful of the deference owed to the Commission on issues of fact and credibility, I find it clear, as did the circuit court and dissenting commissioner, that the Commission's decision was based, in part, on speculation rather than the evidence presented at the hearing.

¶ 57 As an initial matter, I find it necessary to address the evidence claimant presented to show an accident occurred on May 30, 2019. It is well settled that "[t]he 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." *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 35. "A claimant's testimony, standing alone, may support an award where all of the facts and circumstances do not preponderate in favor of the opposite conclusion." *Shafer*, 2011 IL App (4th) 100505WC, ¶ 35 (citing *Seiber v. Industrial Comm'n*, 82 Ill. 2d 87 (1980)).

¶ 58 Here, there were no witnesses to claimant's alleged accident. He testified that he sustained an injury to his low back when he fell down the stairs at work on May 30, 2019. It was undisputed that claimant immediately notified his coworker of the alleged accident and was transported by ambulance to the emergency room. Claimant's treatment providers at the emergency room documented multiple contusions but no obvious trauma in his medical records. Claimant sought additional medical treatment, including treatment for back pain, in the months following his alleged accident. Claimant's medical records showed that he provided a consistent history of having sustained an injury when he fell down the stairs at work on May 30, 2019. Claimant's medical records also included the following: Dr. Buchman's notation of back pain and tenderness on June 3, 2019; Nurse Sullivan's notation of back pain and tenderness on June 4, 2019; Dr. Gornet's notation of back pain consistent with a disc injury on June 6, 2019; and Dr. Gornet's diagnosis of a disc injury confirmed by MRI on July 18, 2019. Dr. Gornet further opined that claimant's low back symptoms were related to the May 30, 2019, accident. Claimant testified that he had no prior back issues or injuries, and there was no evidence showing that claimant injured his back in a separate accident unrelated to his work. Based on claimant's testimony and the consistent history provided in the medical records, I would find there was sufficient evidence to support a finding that claimant proved, by a preponderance of the evidence, that he sustained an accident on May 30, 2019. See *Parys v. Illinois Workers' Compensation Comm'n*, 2021 IL App

(1st) 210601WC-U (holding that the Commission's determination that the claimant failed to prove an unwitnessed work-related accident occurred was against the manifest weight of the evidence despite several inconsistencies in the claimant's testimony, where the claimant testified that she injured her back while picking up boxes at work and the medical records documented a consistent history of the injury).

¶ 59 The Commission, unlike the arbitrator and dissenting commissioner, did not find claimant's "claimed mechanism of injury" credible. I acknowledge that, "[i]n resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). I also acknowledge that, here, claimant's alleged injury occurred on the same day he was subjected to disciplinary action at work—a fact rightfully considered by the Commission in rendering its decision. I also agree that the Commission could have reasonably concluded that there were no "visible signs of trauma" documented in claimant's medical records.

¶ 60 However, there were several notable flaws in the Commission's decision that, in my view, require reversal. For instance, the Commission found it "likely that [claimant] had never taken those stairs before." The Commission, relying on this finding, believed it was "highly coincidental" that claimant, "who weighed 284 pounds, was 57-year old [*sic*], and had previous knee surgeries would choose to walk down two flights of stairs in an allegedly dark stairwell for the very first time on the day that he was informed of his suspension." While there was evidence to support a finding that employees usually took the elevator but occasionally took the stairs, there was simply no evidence to support the Commission's finding that claimant had never taken the stairs prior to the alleged May 30, 2019, accident. In fact, the Commission noted that claimant

"was never asked if he had *ever* taken the stairs before." (Emphasis in original.) Thus, the Commission's finding in this regard was based entirely on speculation rather than the evidence.

¶ 61 The Commission also discounted claimant's testimony that he would not throw himself down a flight of stairs and put himself through pain over two days of pay, noting that his testimony "presumes that he actually did throw himself down the stairs and has any actual pain." Based on speculation regarding the circumstances of claimant's alleged accident, the Commission found "it likely that this was about much more than two days of lost pay" and that claimant "very likely felt, justifiably, that his job was in jeopardy." The Commission then poses the following question: "Would [claimant] fabricate a claim if he thought he would ultimately be fired?" I find this question puzzling given that there was no evidence showing that claimant felt his job was in jeopardy. In fact, the evidence showed that claimant briefly considered resigning during the disciplinary meeting on May 30, 2019, but his superiors encouraged him to keep his job and obtain additional training, which he agreed to do. Respondent points to McCabe's testimony that he doubted the credibility of claimant's alleged accident; however, the Commission does not reference McCabe's testimony in its analysis. Moreover, although I do not question McCabe's belief regarding the alleged accident, I would note that McCabe based his belief on "other knowledge" he had relating to claimant. Had McCabe elaborated on this point during his testimony, I may have been inclined to agree with the majority in this case. However, based on the evidence that was presented at the hearing, I would conclude that the inferences drawn by the Commission in the final paragraph of its analysis were unsupported by sufficient evidence and, thus, unreasonable.

¶ 62 Next, I take issue with the Commission's analysis pertaining to the medical records. I, like the dissenting commissioner, would conclude that the Commission was incorrect to draw a

negative inference from the two missing medical records. In support, the Commission merely relied on claimant's attorney's failure to submit the records without addressing claimant's attorney's assertion that the medical records were not available at the time of the hearing. In my view, this was improper. In addition, it is my view that the Commission erred in discounting the MRI showing a disc injury, given the unrebutted evidence showing that claimant had no prior back injuries. The Commission, likely adopting the persuasive argument presented by respondent, apparently found that claimant could not have fallen down the stairs without visible bruising or skin abrasions documented in the medical records. In my view, without a supporting medical opinion, it was unreasonable for the Commission to infer that claimant could not sustain a disc injury during a fall down stairs without visible signs of trauma. I also find it unreasonable for the Commission to question whether claimant had any "actual" pain or injury, given that claimant testified he had pain and multiple treatment providers found it necessary to prescribe him pain medication following the alleged accident. Thus, in my view, the Commission's finding that the medical records did not support claimant's alleged accident was flawed and against the manifest weight of the evidence.

¶ 63 For these reasons, I would affirm the portion of the circuit court's order setting aside the Commission's decision, vacate the portion of the court's decision reinstating the arbitrator's decision and remand the matter back to the Commission for further determination on issues left unresolved. Specifically, I would direct the Commission to consider the issues of whether claimant's alleged accident arose out of his employment and whether his current condition is causally related to his alleged accident.