2021 IL App (3d) 200170WC-U
No. 3-20-0170WC
Order filed January 25, 2021

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

GREATER PEORIA MASS TRANSIT DISTRICT, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Debora Livingston f/k/a Debora Bloom, Appellee).	)	Appeal from the Circuit Court of Tazewell County No. 19MR48 Honorable Stephen A. Kouri, Judge Presiding.

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

ORDER

¶ 1 *Held*: (1) The Commission's establishment of the manifestation date was against the manifest weight of the evidence when, although claimant continued working until the date of her surgery, her repetitive-trauma injury manifested itself several months prior.

(2) The Commission's decision to award claimant benefits under the Workers' Compensation Act for her repetitive-trauma work-related accident was not against the manifest weight of the evidence. Claimant sufficiently proved her injuries arose

out of and in the course of her employment and her current condition of ill-being was causally related to her injury.

¶ 2 The Workers' Compensation Commission (Commission) found that claimant, Debora Livingston f/k/a Debora Bloom, suffered a work-related repetitive trauma injury with a manifestation date of July 14, 2015, while working for respondent, Greater Peoria Mass Transit District. The Commission awarded benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)). Respondent sought judicial review of the Commission's decision before the circuit court of Tazewell County. The court confirmed the Commission's decision in full. Respondent appeals, claiming (1) the Commission erred in designating July 14, 2015, as the manifestation date, (2) claimant failed to provide timely notice of her alleged work-related injury to respondent, and (3) claimant failed to prove a causal relationship between a work-related injury and her current condition of ill-being. Based on our review of the record, we conclude the manifestation date was April 27, 2015, not July 14, 2015, but otherwise affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 18, 2015, claimant filed an application for adjustment of claim under the Act against respondent, seeking benefits for arm and hand injuries which she allegedly sustained while driving a city bus for respondent. On December 15, 2016, the arbitrator heard the following evidence.

¶ 5 Claimant, age 59, began working as a full-time bus driver for respondent in June 2012. Between 2013 and the end of 2015, she worked 50 hours per week, sometimes driving for 13 hours straight with no scheduled breaks. Claimant described her typical workday. Her regular daily duties included pressing various knobs, levers, and buttons on her seat, the air brake, the door, and the wheelchair ramp. She drove with both hands on the steering wheel, keeping a firm grip at all times. Claimant offered photographs of her sitting in the driver's seat with her hands on

the steering wheel and testified that was her normal daily position as she drove the bus.

¶ 6 Claimant testified that in 2008, before working for respondent, she noticed tingling in her hands and fingers. Her doctor ordered an electromyography (EMG) test which revealed bilateral moderately severe carpal tunnel syndrome. This October 2008 EMG report was entered into evidence. According to the report, claimant had complained of weakness, achiness, and numbness in both hands. Although surgery was recommended, claimant said the symptoms were tolerable so she declined treatment.

¶ 7 After some time of driving the bus for respondent, claimant testified her symptoms "got worse and worse," sometimes disturbing her sleep at night. Beginning in 2012, she began noticing more symptoms, such as cramping in her hands. She said she would have to take her hands off the steering wheel and shake them for relief. In November 2014, while she was visiting her general practitioner, Dr. Leslie Johnson, on an unrelated matter, she mentioned the problems with her hands. He referred her to a specialist, Dr. John Mahoney. Claimant told Dr. Mahoney the gripping of the steering wheel aggravated her symptoms.

¶ 8 Counsel asked claimant why, at that point, did she not make a workers' compensation claim. She said: "Honestly I didn't think about work comp because I knew my job felt like it made it worse, but I just never really considered that it was work comp because I knew that I had been diagnosed before I started working there." She testified she could not afford to take time off for surgery.

¶ 9 The following exchange occurred:

> "Q. Let's talk about [April 27, 2015], what if anything was going on unusual at that time?
>
> A. Well, I was working, I was working a lot of hours.

I was noticing it was very difficult to—I had to stop, my hands at night I would wake up and my hands would be completely numb.

When I was driving my hands just gripping the steering wheel they would just cramp up. It was getting increasingly more difficult to do my day's job."

¶ 10 However, after discussing her pain with a coworker in April 2015, claimant realized she could file a workers' compensation claim. She testified the coworker informed her that if her job made "it worse," she "might want to check into it." On April 27, 2015, claimant spoke with her union president, Ron Cox, the dispatcher, Candy Brown, and her supervisor, Mr. Green about her injury. Cox told her "what [she] needed to do to try to get the ball rolling, to see if it was work[ers'] comp[ensation]."

¶ 11 Once Dr. Mahoney discovered she may have a workers' compensation claim, he declined further treatment. Upon her attorney's recommendation, claimant sought treatment on June 15, 2015, from Dr. Michael Neumeister, an orthopedic surgeon. Dr. Neumeister performed claimant's right carpal and cubital tunnel release surgery on July 14, 2015, and left carpal and cubital tunnel release surgery on August 25, 2015. Claimant was off work from July 14, 2015, until December 6, 2015. She testified the surgeries did not greatly improve her symptoms, although they did alleviate her waking up with numb hands during the night. After her return to work, she continued to experience an increase in her symptoms when gripping the steering wheel. She generally had difficulty gripping anything and had trouble doing household chores.

¶ 12 Claimant introduced the evidence deposition of Dr. Neumeister taken on April 25, 2016. Dr. Neumeister testified he first saw claimant on June 17, 2015, when she complained of numbness and tingling in both hands, though she said the right hand was worse. He reviewed both a 2008 and a 2014 EMG. He diagnosed her with bilateral carpal and cubital tunnel syndromes and

because claimant had tried splints and anti-inflammatories, he performed release surgeries in July and August 2015. He saw her after both surgeries on September 28, 2015, when she reported continued cramping and numbness. He advised she remain off work. By November 2015, claimant was doing better with some weakness in both hands. He allowed her to return to work in December 2015 with a good prognosis.

¶ 13 In Dr. Neumeister's opinion, long periods of forceful gripping could cause carpal tunnel syndrome. He believed claimant's work as a bus driver aggravated, exacerbated, or accelerated her preexisting condition. The doctor explained that pinpointing causation of carpal or cubital tunnel syndromes was difficult because there are so many different causes. He said the more relevant question when talking about job-related inquiry was whether the job duties *aggravated* the symptoms. He explained that the consistent worsening of symptoms potentially caused progression of the nerve compression. He also explained that surgery determinations are primarily based on a patient's reported symptoms and physical examination, rather than on EMG results. He agreed that reasonable orthopedists could disagree on causation "in cases such as this."

¶ 14 Respondent presented the August 29, 2016, evidence deposition of Dr. Mark Cohen, who performed an independent medical examination (IME) on claimant on March 7, 2016. Dr. Cohen, an orthopedic surgeon specializing in hand and upper-extremity surgery, testified he had reviewed claimant's history and medical records before the physical examination. In his opinion, there was no relationship between claimant's carpal tunnel syndrome and/or the requirement for surgery and her current occupational activities. He opined that, because claimant had been diagnosed with moderate to severe carpal tunnel syndrome in 2008, her work in 2012 "cannot be determined to be the cause of her carpal tunnel syndrome; and, furthermore, the types of occupational activities that cause carpal tunnel syndrome are not those in which she participated

in since 2012."

¶ 15 Dr. Cohen reviewed the photographs of claimant in the driver's seat of a bus. Counsel asked the doctor if holding a steering wheel in such a manner would cause the onset of cubital tunnel syndrome. He said the position of her arms as shown "would not be significant, so the answer would be no." He was asked to comment on the validity of claimant's theory that her symptoms became worse in 2014 because of the work she did between 2012 and 2014. Dr. Cohen said, "trying to assign the worsening symptoms from a problem that was moderate to severe six years prior [did] not make much sense to [him]." He believed it made more sense that the worsening of her symptoms was due to the natural progression of the pathology. In Dr. Cohen's opinion, "the bus driving activity did not change the natural history of carpal tunnel syndrome." He did not dispute the need for surgery. He explained that claimant certainly could have experienced symptoms while driving but, for that matter, she could have experienced symptoms while sleeping or gardening as well. He testified he did "not believe that the driving is what led to her surgery." He did not dispute that claimant could have temporarily had symptoms during her driving, but, in his opinion, her driving did not increase her symptoms on a "global basis." He said: "[T]he bus[-]driving activity did not change the natural history of carpal tunnel syndrome." He said his opinion was based on the description of claimant's activities that were provided to him. However, he admitted that, hypothetically, a person who had been diagnosed with carpal tunnel syndrome in 2008 and who started a job using a jackhammer as a full-time job in 2012 could experience an increase in symptoms. But, he said, in "this particular case, and again [his] opinion is that the activities that have been provided to [him] and explained to [him] by [claimant] do not meet those criteria."

¶ 16 On November 16, 2017, the arbitrator issued a decision, in which he found claimant

had sustained a work-related injury with a manifestation date of July 14, 2015, not April 27, 2015, as alleged by claimant. The arbitrator found July 14, 2015, the day of claimant's first surgery, was the "date of collapse"—the day claimant could no longer work without intervention for her repetitive injuries. The arbitrator also found claimant had given timely notice of the injury on April 27, 2015. The arbitrator awarded temporary total disability (TTD) benefits, permanent partial disability (PPD) benefits, and medical expenses.

¶ 17 On January 18, 2019, the Commission affirmed and adopted the arbitrator's decision in full, over one commissioner's dissent. The dissent found the increase in claimant's symptoms were due to the natural progression of the condition and that claimant's job duties were not repetitive and did not cause or aggravate the condition.

¶ 18 On March 19, 2020, the Tazewell County circuit court confirmed the Commission's decision.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 A. Manifestation Date

¶ 22 Respondent claims the Commission's finding that claimant proved a work-related repetitive trauma injury with a manifestation date of July 14, 2015, was against the weight of the evidence. Respondent argues the manifestation date should have been December 2, 2014, the date when claimant expressed her desire to Dr. Mahoney to undergo surgical intervention. With a manifestation date of December 2, 2014, respondent argues, claimant's notice on April 27, 2015, was untimely.

¶ 23 To obtain benefits under the Act, a claimant must prove by a preponderance of the evidence that she was injured in an accident which arose out of and in the course of her

employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). We will not reverse the Commission's decision unless its decision is contrary to law or its factual findings are against the manifest weight of the evidence. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). "Fact determinations are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the agency." *Id.*

¶ 24 Section 6(d) of the Act provides that an injured employee must file a workers' compensation claim "within 3 years after the date of the accident." 820 ILCS 305/6(d) (West 2014). When an accident is sudden, the accident date is easy to determine; it is of course, the date of the injury. *Durand*, 224 Ill. 2d at 64. When an accident is not sudden, it is more difficult to determine the date of the injury. *Id.* To prove a compensable injury, an employee who suffers a repetitive-trauma injury must meet the same standard of proof as an employee who suffers a sudden injury. *Id.* A repetitive-trauma claimant must provide proof that the injury and its causal link to her employment became plainly apparent to a reasonable person on a specific date. *Id.* at 65; see also *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987) (holding the accident date in a repetitive-trauma case is the date on which the injury manifests itself). The determination of the manifestation date is a question of fact to be resolved by the Commission. *Durand*, 224 Ill. 2d at 65.

¶ 25 Applying these standards, we conclude the Commission's finding of a repetitive-trauma injury with a manifestation date of July 14, 2015, was against the manifest weight of the evidence. Although claimant was diagnosed with her condition in 2008, she testified her symptoms gradually intensified after she began working for respondent in 2012. It was not until April 2015 that respondent realized her condition was indeed related to her employment. In its decision, the arbitrator specifically found claimant "alleged an accident date of [April 27, 2015,]

the date she learned her current condition could be related to her employment despite having been diagnosed in 2008." However, because claimant continued to work until her surgery, the arbitrator and the Commission assigned July 14, 2015, as the manifestation date or the "date of collapse."

¶ 26 Although the "date of collapse" is a method of determining the manifestation date in a repetitive-trauma case, it is not the only method. See *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607, 612 (1988) (the last date of work is not always the date of accident in a repetitive-trauma case). See also *Castaneda v. Industrial Comm'n*, 231 Ill. App. 3d 734, 738 (1992) (finding an employee's last day of exposure to a repetitive trauma is not *per se* the date of accident).

¶ 27 Respondent argues claimant's date of injury was in either November or December 2014. Respondent relies on claimant's testimony that she had told Dr. Mahoney on November 19, 2014, that gripping the steering wheel of the bus aggravated her symptoms. Or, alternatively, respondent claims, the date of injury was December 2, 2014, when, according to Dr. Mahoney's office notes, claimant told Dr. Mahoney that she believed driving the bus caused her symptoms to worsen and that she wanted to have surgery within the next few months. We disagree that either of those dates were proven to be the manifestation date.

¶ 28 "[T]he date on which the employee notices a repetitive-trauma injury is not necessarily the manifestation date." *Durand*, 224 Ill. 2d at 68. For purposes of determining the manifestation date, the dispositive question is when the injury and its causal link to work became plainly apparent to a reasonable person. *Id.* It may become plainly apparent to a reasonable person well after the claimant experiences symptoms and even after his condition has been diagnosed. See *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 47-48 (1989).

¶ 29 In *Three "D"*, the reviewing court found that the claimant first learned that his

condition was work-related sometime between July 10 and the first of August 1984. *Id.* at 48. The court found that, although the claimant continued working until August 10, a reasonable person would have been on notice that his condition was both work-related and medically disabling on July 10, 1984. *Id.* The court found the manifestation date was July 10, 1984. *Id.* In so finding, the court stated:

> "An employee who continues to work on a regular basis despite his own progressive ill-being should not be punished merely for trying to perform his duties without complaint. On the other hand, it is not this State's policy to encourage disabled workers to silently push themselves to the point of medical collapse before giving the employer notice of an injury. Although our finding that the injury in this case 'manifested itself' on July 10, rather than August 10, does not affect the Commission's ruling in petitioner's favor, we emphasize that the peculiar facts of each case must be closely analyzed in repetitive-trauma cases to be fair to the faithful employee and his employer as well as to the employer's compensation insurance carrier." *Id.* at 49.

¶ 30 Here, claimant was diagnosed with moderate to severe carpal tunnel syndrome in 2008. Claimant testified her symptoms were tolerable or manageable between 2008 and 2012. Once she began driving a bus for respondent in 2012, her symptoms began to gradually increase in severity. In late 2014, her symptoms were bad enough that she mentioned them to her general practitioner at an appointment on an unrelated matter. He referred her to Dr. Mahoney, who recommended surgery after reviewing the November 2014 EMG results. Dr. Mahoney diagnosed claimant with bilateral carpal and right cubital tunnel syndromes. At that time, although claimant suspected her work was aggravating her symptoms, she was unwilling to have the surgery

immediately because she could not afford to take time off work. That is, she continued to perform her daily work. According to Dr. Mahoney's office notes, claimant said she "would like to have surgery at some point in the next few months, perhaps early summer. She will contact [them] to schedule at that time." Claimant reached a point on or around April 27, 2015, when it became clearly apparent that her work was indeed causing her symptoms to become more severe. She was working long hours and noticed her hands would be "completely numb" during the night. Gripping the steering wheel caused her hands to cramp. She said it "was getting increasingly more difficult to do my day's job." Her symptoms were severe enough that she spoke of them to a coworker and, after that conversation, to the union president and her supervisors.

¶ 31 "[F]airness and flexibility are the common themes" in the repetitive-trauma cases. *Durand*, 224 Ill. 2d at 71. Indeed, our supreme court noted the Commission should weigh many factors in deciding when a repetitive-trauma injury manifests itself. *Id.* Although claimant did not miss work due to her condition until July 14, 2015, she became keenly aware on April 27, 2015, that her work as a bus driver was greatly aggravating her condition. Thus, we conclude April 27, 2015, was the more appropriate manifestation date—the date which both the injury and its causal link to her work became plainly apparent to a reasonable person. *Id.* at 65. On that date, she spoke with Cox and notified her superiors. Three weeks later, on May 18, 2015, she filed her application for benefits, well before the date she stopped working to undergo surgery on July 14, 2015. Based on this record, we believe the date of July 14, 2015, chosen by the Commission as the manifestation date, was against the manifest weight of the evidence.

¶ 32 B. Notice

¶ 33 There is no dispute that claimant provided notice to respondent on April 27, 2015. Respondent's argument is that claimant failed to prove by a preponderance of the evidence that

she notified her employer of the alleged work-related accident within 45 days of the accident, as required by the Act. This argument was premised on its earlier argument that the manifestation date should have been designated as a date in November or December 2014. However, with a manifestation date of April 27, 2015, claimant's notice to respondent of the repetitive injury on April 27, 2015, was indeed timely pursuant to section 6(c) of the Act. 820 ILCS 305/6(c) (West 2014) (notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident).

¶ 34 C. Causation

¶ 35 Respondent argues the Commission's decision that claimant's condition was causally related to her work was against the manifest weight of the evidence when the claimant had been diagnosed with the condition four years before she began work. We disagree.

¶ 36 To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her 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. Even if the claimant had a preexisting degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that her employment was also a causative factor. *Id.* A claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating or accelerating her preexisting condition. *Id.* at 204-05.

¶ 37 An employee who alleges injury based on repetitive trauma must "show[ ] that the injury is work related and not the result of a normal degenerative aging process." *Peoria County Belwood Nursing Home*, 115 Ill. 2d at 530. In repetitive-trauma cases, the claimant "generally

relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 477 (1987).

¶ 38 Whether an accident aggravated or accelerated a preexisting condition is a factual question to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 205-06. Where the claimant alleges accidental injuries caused by a repetitive trauma, it is for the Commission to determine whether a claimant's disability is attributable solely to a degenerative condition or to an aggravation of a preexisting condition due to a repetitive trauma. *Cassens Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 331 (1994). 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 v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). A reviewing court may not substitute its judgment for that of the Commission on these issues merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). As earlier stated, we will overturn the Commission's finding only when it is against the manifest weight of the evidence, *i.e.*, only when the opposite conclusion is "clearly apparent." *Durand*, 224 Ill. 2d at 64. 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 v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). When the evidence is sufficient to support the Commission's causation finding, we must affirm. *Id.*

¶ 39 Here, Dr. Neumeister opined that there was a causal connection between the claimant's increase in symptoms, *i.e.*, the current condition of her ill-being, and her employment. Dr. Cohen, on the other hand, opined there was no causal connection between claimant's current

condition of ill-being and her employment and that, instead, her current condition of ill-being was a natural or degenerative progression of the pathology.

¶ 40 In finding causation in this case, the Commission relied on Dr. Neumeister's opinion, finding it more persuasive than that of Dr. Cohen's. The Commission found Dr. Neumeister's opinion that claimant's bilateral carpal tunnel and cubital tunnel syndromes were aggravated by her work with respondent were consistent with claimant's testimony about the details of her workday and her subjective complaints of increasing symptomology. Although Dr. Cohen disagreed with this assessment, he admitted on cross-examination that it was possible to aggravate or accelerate an already symptomatic condition, beyond what would be considered normal degeneration.

¶ 41 As previously noted, to establish causation in a repetitive-trauma case, a claimant must present medical testimony establishing a causal connection between the work performed and claimant's disability (*Nunn*, 157 Ill. App. 3d at 477), and must show that the injury is work related and "not the result of a normal degenerative aging process." *Peoria County Belwood Nursing Home*, 115 Ill. 2d at 530. Because claimant's medical records reveal that she suffered from carpal and cubital tunnel syndromes, and because Dr. Neumeister opined that the increase in the severity of claimant's symptoms were likely caused by claimant's work duties, the Commission believed claimant's testimony that her symptoms gradually became worse as she continued to drive the bus for respondent year after year.

¶ 42 Based on the record before us, we are unable to conclude that the Commission's reliance upon Dr. Neumeister's causation opinions and its conclusion that claimant sufficiently proved that her current condition of ill-being was causally related to her employment were against the manifest weight of the evidence, as an opposite conclusion is not clearly apparent. Claimant is

entitled to recover if she can show that her employment played *any* causal role in the aggravation of her carpal and cubital tunnel syndromes, even if it merely aggravated or accelerated those medical conditions after they were initially caused by natural degenerative processes. Dr. Neumeister's opinion arguably makes that showing.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we reverse the portion of the circuit court's judgment which confirmed the Commission's determination of the manifestation date of claimant's repetitive trauma injury as July 15, 2015. We find that determination to be against the manifest weight of the evidence. Claimant established a manifestation date of April 27, 2015, and therefore, we remand this cause to the Commission for the recalculation of benefits. We otherwise affirm the circuit court's judgment, which confirmed the Commission's decision.

¶ 45 Affirmed in part and reversed in part.

¶ 46 Cause remanded.