2021 IL App (5th) 190163WC-U

No. 5-19-0163WC

Order filed January 11, 2021

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

WALQUIST FARM PARTNERSHIP,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Union County.
	)	
v.	)	No. 18-MR-103
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	Honorable
	)	Charles C. Cavaness,
(Owen Marshall, Appellee).	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: The Illinois Workers' Compensation Commission erred in concluding that claimant could not establish causal connection based on the chain of events due to his preexisting condition.

¶ 2 Claimant, Owen Marshall, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2014)), seeking benefits for injuries he sustained while working for respondent, Walquist Farm Partnership (Walquist), on March 5, 2014. Following an arbitration hearing held pursuant to section 19(b) of the Act (*id.* § 19(b)), the arbitrator issued a written decision denying claimant benefits under the Act, finding that claimant proved he sustained a work-related accident on March 5, 2014, but failed to prove his current condition of ill-being in his low back was causally related to the work accident. On review, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision. On judicial review, the circuit court of Union County reversed the Commission's decision regarding causation, finding it was against the manifest weight of the evidence, and remanded the case to the Commission for further proceedings.

¶ 3 On remand, in compliance with the circuit court's order, the Commission issued a written decision and opinion, finding that claimant's current condition of ill-being in his low back was causally related to the March 5, 2014, work accident. The Commission also awarded claimant temporary total disability (TTD) benefits, medical expenses and prospective treatment. The court entered a judgment confirming the Commission's decision on remand, and Walquist now appeals the court's judgment.

¶ 4 I. Background

¶ 5 The following factual recitation is taken from the evidence adduced at the section 19(b) arbitration hearing held on August 7, 2015, which included the following: the

testimonies of claimant, Aric Walquist and Eric Unverfehrt; various medical records and bills; and the evidence deposition of Dr. Sonjay Fonn, the sole medical expert.

¶ 6 A. Claimant's Testimony

¶ 7 Claimant, who was 50 years old at the time of the arbitration hearing, testified that he was employed by Walquist as a farm hand for approximately five years, including March of 2014. Claimant's job duties as a farm hand included "a little bit of everything." His ordinary duties included milking cows, feeding cows, cleaning stalls, working on fencing, operating equipment and performing general repair to buildings. Claimant did not usually assist with supply deliveries to the farm.

¶ 8 Claimant next testified regarding events and details leading up to and surrounding the March 5, 2014, work accident. When claimant arrived at work on March 5, 2014, he was physically able to perform his usual morning job duties, which included carrying five-gallon buckets of corn to feed the cows. After feeding the cows, claimant reported to the farm office where Aric aided him with insurance issues. While Aric was on the phone, a 55-gallon drum of iodine, which weighed approximately 450 pounds, was delivered to the farm. Due to the weight of the drum, the vendor's delivery driver requested claimant's assistance in unloading the drum from the truck. After viewing the drum, which had not been placed on a pallet, claimant initially advised that he could not assist in unloading the drum. Claimant returned to the office to request Aric's assistance, but Aric was still on the phone. Claimant did not want to disrupt the phone call, which had lasted over an hour, so he went back outside to assist the delivery driver with the drum. In doing so, claimant first

helped the delivery driver take the tailgate off the truck and place it on the ground. Next, they pulled the drum towards the tailgate area and slid the drum off the truck to the ground. Claimant explained that they both tried to hold onto the drum, which was "very heavy," but it jerked as they slid it off the truck. According to claimant, he "jerked [his] back out of whack" during the process. Aric came outside shortly thereafter. Claimant helped put the tailgate back on the truck and then returned to his job duties while Aric "took over" in assisting the delivery driver, whose truck had gotten stuck in the driveway.

¶ 9 Claimant testified that he began experiencing pain when he returned to his usual job duties after unloading the drum on March 5, 2014. Claimant specifically recalled that he was working with the cows when he began experiencing pain in his buttocks area, which radiated down the back of his left leg and into his foot. He had experienced similar pain "[y]ears ago" and admitted that he underwent back surgery in 2004. Although he experienced frequent "on and off back pain" while working on the farm, he denied seeking treatment for his intermittent back pain following the 2004 surgery.

¶ 10 On cross-examination, claimant testified that he only worked half of the day on March 5, 2014, due to the pain. While claimant did not inform Aric that he was leaving early due to an injury on March 5, 2014, claimant informed Aric's son, Andy Walquist, that he was experiencing "problems" and Andy agreed to milk the cows for claimant that afternoon. While claimant admitted that he had "alcohol problems" and had considered rehab, claimant denied telling Andy that he was going back into treatment because he was "battling demons and fighting alcohol problems." Claimant explained that he did not

mention his injury at that time because he had three prior work injuries on the farm, and he "really didn't want to lose [his] job over something [he] didn't know was going to be as serious as it was." Contrary to his previous testimony, claimant admitted that he sought treatment for back complaints when he sustained the first work injury during his first or second year with Walquist, which occurred after the 2004 surgery. Claimant missed a few days of work and took medication for his back before he was released from the first injury. Claimant denied receiving further treatment or taking medication for his back between his release from the first work injury and March 5, 2014. On redirect, claimant clarified that, in the year or two before his March 5, 2014, accident, he occasionally took Aleve for his back pain but did not take prescribed pain medication unless he had to, as such medication does not "agree with" him. Regarding his prior work injuries, claimant clarified that he never missed more than three days of work and only asked Walquist to pay his medical bills.

¶ 11 Claimant testified that he notified Aric of his back injury the following day, which was March 6, 2014. During their conversation, claimant specified that his injury occurred when he unloaded the drum. Although he initially planned on returning to work, he has not returned. On cross-examination, claimant clarified several details regarding his conversation with Aric, including that he notified Aric of his back injury over the phone. Claimant specifically advised that he slipped while unloading the drum and "wrenched [his] back" rendering him unable to work. When claimant advised Aric that "they" had

scheduled scans during the conversation, Aric stated that "it was between [claimant] and the insurance company now."

¶ 12 Claimant testified that he first sought treatment for his back injury "a day or two" after the March 5, 2014, accident. He was initially seen by a physician assistant, Amanda Endrizzi, who ordered a magnetic resonance imaging (MRI) scan, as well as a computerized axial tomography (CAT) scan. During the initial visit, claimant informed Endrizzi of the March 5, 2014, accident, advising that it was work-related and that he "would have to report it as workmen's comp." Endrizzi did not reference the accident in her notes from the initial office visit but, at claimant's request, later corrected the omission by issuing a supplemental note verifying that claimant had advised her of the work accident during the initial visit. On cross-examination, claimant testified that, during his initial visit with Endrizzi, he reported complaints of back pain, as well as numbness in his feet for the preceding three months. According to claimant, Endrizzi did not provide him with an off-work slip because he had expressed a desire to return to work.

¶ 13 Claimant testified that he was subsequently referred to a neurosurgeon, Dr. Fonn, for further treatment. Claimant informed Dr. Fonn of the March 5, 2014, accident involving the drum, and Dr. Fonn ran additional tests before administering injections to claimant's back. While the injections helped, claimant later underwent low-back surgery at St. Francis Hospital at Dr. Fonn's recommendation. According to claimant, the recommended surgery "helped the left side" and helped his pain but he still experiences problems. At his most

recent appointment, Dr. Fonn recommended additional injections and advised claimant to remain off work.

¶ 14 B. Aric's Testimony

¶ 15 Aric, a Walquist partner, testified to the following on behalf of Walquist. Claimant worked for Aric, a dairy and grain farmer, at Walquist for approximately five years. Claimant had constant issues with his back throughout his five years of employment with Walquist. In light of these issues, it was mutually agreed that claimant would avoid heavy lifting. Aric recalled that he was in the farm office signing claimant up for insurance when the drum of iodine was delivered to the farm on March 5, 2014. Aric remained in the office for a period of time before going outside. When Aric came outside, the vendor's delivery driver, Eric Unverfehrt, was present and the drum had been moved into Walquist's supply room. Aric denied seeing claimant move the drum, as he had been in the office. Claimant did not mention injuring his back at that time but subsequently notified Aric of his back injury over the phone the following day.

¶ 16 On cross-examination, Aric agreed that a tractor was not used to move the drum and that, to the best of his knowledge, only claimant and Unverfehrt were present when the drum was unloaded. Aric confirmed that he had no first-hand knowledge of how the drum was unloaded from the truck. Because claimant regularly made complaints regarding his back and ordinarily returned to work the next day, Aric did not submit the accident report form to his insurer until April 14, 2014. On redirect, Aric testified that, prior to claimant's call on March 6, 2014, claimant's sister had called Aric pleading for him not to fire

claimant. Aric informed her that claimant no longer had a job. At the time of his conversation with claimant's sister, Aric was unaware of claimant's plans to file a workers' compensation claim. According to Aric, claimant no longer had a job because he had missed several days of work prior to the March 5, 2014, accident.

¶ 17 C. Unverfehrt's Testimony

¶ 18 Unverfehrt, the final witness, testified to the following on behalf of Walquist. Unverfehrt worked for his family's business, Unverfehrt Farm Supply, as both a service and sales associate for the last year and a half. As a service worker, he delivered various supplies, equipment and chemicals, such as iodine, to customers, including Walquist. On March 5, 2014, Unverfehrt delivered a 55-gallon drum of iodine, along with other supplies, to Walquist in his Chevy 1500 pickup truck. Unverfehrt was by himself for the delivery and claimed that he unloaded the 55-gallon drum and supplies by hand, without assistance. Although Unverfehrt attempted to ask Aric for a skid loader before unloading the drum, Aric was busy so Unverfehrt unloaded the drum by himself without issue. According to Unverfehrt, claimant stood next to the pickup truck but did not at any point assist with the tailgate or help him unload the drum. Specifically, Unverfehrt recalled that he removed the tailgate and placed a rubber mat down to avoid puncturing the drum. Next, he tilted the drum up and slid it down until it hit the mat—the same process he had used to unload drums in the past. Although Unverfehrt admitted that he could not lift the drum by himself, he explained that he could typically maneuver the drum if he tipped it over and rolled it on one side.

¶ 19 D. Medical Records

¶ 20 The medical records, which dated back to June 7, 2011, demonstrated the following. On June 7, 2011, claimant presented for his first appointment at the Rural Health Vienna Medical Clinic (Vienna Medical Clinic). He was seen by Dr. Andrew R. Riffey, who noted that claimant had a past medical history of hypertension and anxiety. Dr. Riffey also noted that claimant previously had back surgery in the L3-L4 area in 2004. No complaints of back pain were noted during this visit.

¶ 21 On October 27, 2011, claimant presented to Massac Memorial Hospital Emergency Room with complaints of pain. A radiologist took x-rays of claimant's lumbar spine and noted the following impressions: moderate degenerative disc disease at L2-L4; moderate to moderately severe degenerative disc disease at L4-S1 and "[a]nterior osteophytosis diffusely throughout the lower thoracic upper lumbar spine."

¶ 22 On March 28, 2012, claimant presented for an appointment with a physician assistant, Janet White, at the Vienna Medical Clinic. His chief complaints were hypertension, anxiety and arthritis. White noted that claimant had "some arthritis of his back" and was experiencing "some aching in the lower back." White also noted that claimant had a prior back surgery and that, as a farm hand, claimant regularly performed twisting and climbing. Claimant was prescribed naproxen and advised not to take over-the-counter ibuprofen.

¶ 23 On July 25, 2012, claimant returned for a follow-up appointment with White at the Vienna Medical Clinic. He requested narcotic pain medication "for some chronic back

pain," as the previously prescribed naproxen had failed to alleviate his pain. White declined to prescribe narcotic pain medication due to claimant's work with heavy equipment on the farm, but she encouraged claimant to take Advil as needed for his pain.

¶ 24 Claimant presented for follow-up appointments with White regarding his hypertension at the Vienna Medical Clinic on April 17, 2013, May 15, 2013, June 5, 2013, and September 4, 2013. No back complaints were noted during these visits.

¶ 25 On December 4, 2013, claimant presented for a "routine visit" at the Rural Health Anna Medical Clinic where he was seen by a different physician assistant, Endrizzi. Endrizzi prescribed a refill of claimant's hypertension medications and directed him to follow up with her in six months. No back complaints were noted during this visit.

¶ 26 On March 7, 2014, claimant presented for an "acute visit" at the Vienna Medical Clinic where he was seen by Endrizzi. Endrizzi dictated the note summarizing claimant's March 7, 2014, office visit. The note reads, in pertinent part, as follows:

> "He states that for about 3 months, his feet have been numb. It started in his right foot with his right 3 toes and now it has progressed to both feet. He is having trouble walking. He said that his feet is [*sic*] getting worse. He said he is having a little bit of back pain. He did have back surgery in 2004 at Saint Vincent's in Birmingham. [The] [l]ast imaging *** was in 2011 and it showed moderate degenerative disk disease at L2 through L4, moderate to moderately severe degenerative disk disease L4 to S1."

Endrizzi also noted that claimant had battled with alcoholism "for some time," but he claimed he had been sober recently and was suffering from withdrawal symptoms. Endrizzi prescribed claimant medication to aid with alcohol withdrawal and advised claimant to follow up with her the following week. Endrizzi also ordered an MRI of claimant's lumbar spine "to see if his back could be causing the numbness in his feet." Endrizzi made no notation regarding a work accident during this visit.

¶ 27 On March 18, 2014, claimant reported to Cedar Court Imaging for an MRI of his lumbar spine. The reviewing physician noted the following impressions: moderate to severe neural foraminal narrowing at L5-S1 bilaterally; moderate narrowing at L4/L5 bilaterally; no significant spinal canal narrowing; disc desiccation throughout the lumbar spine with disc height loss greatest at L5-S1, which was moderate to severe; and subtle grade 1 retrolisthesis of L4 on L5 and L5 on S1.

¶ 28 On March 21, 2014, claimant presented for a follow-up appointment with Endrizzi at Vienna Medical Clinic. Endrizzi noted that the MRI showed "neuroforaminal narrowing, moderate to severe, at L5-S1 bilaterally and disk height loss greatest at L5-S1, moderate to severe[,] and a grade 1 retrolisthesis of L4 on L5 and L5 on S1." Claimant reported that his right foot felt "pretty much dead" due to numbness, he had intermittent feeling in his left foot, and he had left-sided back pain that radiated down his left leg. Endrizzi referred claimant to a neurosurgeon for further treatment regarding his back pain. Endrizzi attempted to set up a consultation with a neurosurgeon from Paducah, Kentucky "as soon as possible" but subsequently referred claimant to Dr. Fonn. Endrizzi made no notation

regarding a work accident during this visit.

¶ 29 On April 16, 2014, claimant presented for an initial consultation with Dr. Fonn at Midwest Neurosurgeons, LLC. Claimant completed a patient medical history form, which indicated that his back problems began on March 5, 2014, when he "helped lift" a 55-gallon drum of iodine at work. Claimant confirmed that he had similar problems in the past and that he had prior disabling injuries. Claimant reported that he had also seen Dr. Thomas Wilson for this condition. Claimant noted that he was only able to stand for short durations due to constant sharp, shooting pain, rated 10/10, in his lower back and numbness in his feet. Claimant claimed that the injury was related to his employment with Walquist as a farm hand. When asked to explain how the injury happened, claimant wrote "unloading a 55[-]gallon drum of iodine" and "farm related work due to lifting." He also claimed that he was unable to work and was under work restrictions from a doctor.

¶ 30 According to Dr. Fonn's office notes from the April 16, 2014, visit, claimant provided the following history regarding his back pain. Claimant had experienced relief of similar left-sided symptoms following a microdiscectomy surgery at the L3-L4 level in September 2004. Dr. Fonn noted that, on March 5, 2014, "while working around livestock, [claimant] was rolling a 55[-]gallon drum and bent over and twisted while lifting it and felt a popping sensation in his back and developed severe back pain." While claimant's back pain was initially more severe, his leg pain was currently more severe. Claimant reported difficulty walking and described pain radiating into his right calf and all five toes with the "right a little worse than the left." Claimant also reported that "[h]e had physical therapy

but no injections or medications." Dr. Fonn conducted a physical examination of claimant and noted decreased sensation in the L5 distribution bilateral to light touch and pin prick, as well as "extensor halluces longus weakness, right greater than left." Dr. Fonn also reviewed imaging of claimant's back and noted the following:

> "An MRI of the lumbar spine dated 3/18/14 shows L3/4 level microdiscectomy on the left with grade 1 spondylolisthesis at L4 on L5 and L5 on S1 with severe bilateral foraminal narrowing at L5/S1 level. There is moderate bilateral narrowing at the L4/5 level. I have obtained 6 views of the lumbar spine in the office today showing severe degenerative changes at the L5/S1 level and to some extent the L4/5 level with moderate-to-severe foraminal narrowing seen due to degenerative changes."

¶ 31 Based on his examination of claimant and review of the imaging of claimant's lumbar spine, Dr. Fonn diagnosed claimant with "lumbar radiculopathy and spondylolisthesis at the L4/5 and L5/S1 levels." Dr. Fonn recommended a course of three lumbar epidural steroid injections at L5-S1 bilaterally but noted that claimant's condition could require surgical correction, probably a fusion at L4-L5 and L5-S1, depending on the results of a computed tomography (CT) myelogram and discogram of his lumbar spine. Dr. Fonn also prescribed claimant pain medication and directed him to remain off work for one month.

¶ 32 On May 21, 2014, claimant presented for a routine visit with Endrizzi at Vienna Medical Clinic. Claimant reported that he had seen Dr. Fonn and was currently waiting to get injections, which had been delayed due to "complications with the Work Comp"

refusing to pay. Endrizzi was hopeful that claimant would still be able to get the injections, as he had recently moved into subsidized housing where he would receive insurance. Claimant also reported that he was taking pain medication prescribed by Dr. Fonn, which had provided little relief. Endrizzi prescribed claimant Flexeril for his "chronic back pain" and noted that he would return for an appointment in six months. While Endrizzi referenced "Work Comp" in her notes from this visit, she made no specific reference the March 5, 2014, work accident.

¶ 33 On June 11, 2014, claimant presented for a follow-up visit with Dr. Fonn. Dr. Fonn renewed his recommendation for lumbar epidural steroid injections and refilled claimant's pain medications. Claimant received the prescribed injections on July 30, 2014, August 6, 2014, and August 13, 2014.

¶ 34 On August 20, 2014, claimant presented for a postprocedure visit with Dr. Fonn. Claimant reported minimal relief in his symptoms following the injections and indicated a desire to proceed with surgical intervention. After discussing the surgical procedure with claimant, Dr. Fonn scheduled a posterior lumbar interbody fusion (PLIF) "at the L5/S1 level pending results of the CT Myelogram and discogram of the lumbar spine from L2-S1."

¶ 35 In September 2014, claimant underwent the myelogram and discogram procedures at Midwest Neurosurgeons, LLC. Following the myelogram procedure, the reviewing radiologist noted a "Tarlov cyst second sacral segment" and "[r]etrolisthesis L5 on S1 with broad-based disc bulge change." Following the discogram procedure, the reviewing

physician noted concordant pain at L5/S1. Dr. Fonn reviewed the testing results with claimant at a follow-up appointment and scheduled claimant for a PLIF surgery at the L5-S1 level.

¶ 36 On October 31, 2014, Dr. Fonn performed the PLIF surgery on claimant at St. Francis Medical Center. The diagnoses, both preoperative and postoperative, of "L5-S1 degenerative disc disease and disc herniations" were listed on the operation report. The operation report also indicates that the broad-based disc herniations were completely removed during the surgery.

¶ 37 On December 3, 2014, claimant presented for a postoperative visit with a physician assistant, Lauren Himpelmann, at Midwest Neurosurgeons, LLC. Claimant indicated that he was progressing well but had strained his back getting into a truck on November 30, 2014. Imaging of claimant's lumbar spine revealed a fluid pocket, which needed to be drained, but good placement of the hardware and spacers with no migration, subluxation or fracture of the instrumentation. Claimant was "advanced to driving and a 20[-]pound weight limit with no excessive bending or stooping of the surgical site." Claimant's pain medications were also refilled at this visit.

¶ 38 On January 5, 2015, claimant returned for a follow-up visit with Himpelmann at Midwest Neurosurgeons, LLC. Claimant reported falling out of bed a week and a half earlier, which resulted in an increase of pain down his legs. No change was noted following a physical examination. Himpelmann ordered "6 views of the lumbar spine x-ray along

with a CT of the lumbar spine." Himpelmann noted that the instrumentation appeared in place with "good fusion" starting and refilled his pain medications.

¶ 39 On January 21, 2015, Endrizzi prepared a note clarifying that, although not mentioned in her typed notes, claimant had advised her of a work accident during the March 7, 2014, office visit. Specifically, claimant advised Endrizzi that he had been injured while working on the farm and would be filing a workers' compensation claim.

¶ 40 On February 11, 2015, claimant presented for a 14-week postoperative visit with Dr. Fonn. Claimant indicated that he was doing well and had experienced "good resolution of pre-operative symptoms." Dr. Fonn noted that the CT and dynamic views of the surgical site showed "good fusion occurring with good placement of the instrumentation, with no migration, subluxation or fracture of instrumentation." Claimant was advised to begin physical therapy, aquatic therapy and trigger point injections. Dr. Fonn also refilled claimant's pain medications.

¶ 41 On May 14, 2015, following two follow-up visits where he reported significant improvement from the injections, claimant presented for an appointment with a nurse practitioner, Sheila Armbruster, at Midwest Neurosurgeons, LLC. Claimant reported ongoing numbness and tingling in his right foot, left foot numbness when walking and a burning, flashing pain in his left hip and thigh. Claimant voiced a desire to return to work but stated that he was "retraining for a different field." Claimant's pain medications were also refilled at this visit.

¶ 42 On June 22, 2015, claimant presented for a follow-up appointment with Himpelmann at Midwest Neurosurgeons, LLC. At that time, claimant reported that he had received injections and was receiving physical therapy. Claimant's pain medications were again refilled at this visit.

¶ 43 E. Dr. Fonn's Evidence Deposition

¶ 44 Dr. Fonn testified to the following details via evidence deposition on July 8, 2015. At that time, Dr. Fonn was a neurosurgeon who specialized in spine surgery and he had been in practice for the last eight years. He focused primarily on disorders of the spine but also treated cranial and peripheral nerve disorders. Specific to claimant's case, Dr. Fonn, on referral, examined claimant for complaints of back pain on April 16, 2014. According to Dr. Fonn, claimant reported feeling a popping sensation in his back when he bent over and twisted while rolling and lifting a 55-gallon drum on March 5, 2014, which resulted in severe pain. Claimant provided a history of numbness and tingling in his toes and difficulty walking. Dr. Fonn explained that he frequently treated patients who performed farm labor. Based on his medical experience, "it would seem very unlikely" that one person would be able to unload a 55-gallon drum of iodine, weighing 450 pounds, out of the back of a pickup truck.

¶ 45 Claimant's physical examination revealed weakness in the muscle distribution, extensor halluces longus, right side greater than left side, and a decrease sensation in the L5 distribution. Dr. Fonn's review of the March 18, 2014, MRI scan revealed a prior surgery claimant had at the L3-4 level on the left and severe bilateral foraminal narrowing

at the L5-S1 level with a grade 1 spondylolisthesis at the L5-S1 level. Dr. Fonn's review of x-rays taken in his office revealed severe degenerative changes at the L5-S1 level. Based on his examination and review of the March 18, 2014, MRI scans, Dr. Fonn diagnosed claimant with lumbar radiculopathy and spine spondylolisthesis at L4-L5 and L5-S1. Dr. Fonn initially recommended conservative treatment, which consisted of pain medications, muscle relaxers and epidural steroid injections while claimant remained off work. Dr. Fonn noted the goal of injections was to decrease inflammation in the nerve that could be caused by stenosis or compression. Dr. Fonn observed that the injections calmed some of claimant's inflammation and confirmed a problem of lumbar radiculopathy at L5-S1. He recommended possible surgical correction, pending results of a myelogram and discogram. The subsequent CT myelogram confirmed a disc osteophyte complex, primarily at L5-S1, which caused stenosis.

¶ 46 On October 31, 2014, Dr. Fonn performed an L5-S1 posterior lumbar interbody fusion and stabilization with instrumentation. The goal of the surgery was twofold—address the problem disc at the L5-S1 level, which was causing claimant's back pain, and decompress the disc herniations at L5-S1 level, which were causing claimant's leg pain. Dr. Fonn also restabilized claimant's back with instrumentation during the surgery. Claimant progressed well following surgery and, despite reporting increased pain after falling out of bed, imaging of the instrumentation appeared normal with no acute findings. Claimant remained off work to heal following surgery and had not yet been released to perform full-duty work. Dr. Fonn offered his opinion that, within a reasonable degree of

medical certainty, the March 5, 2014, accident was a cause of claimant's pathology and symptoms that required corrective surgery and postoperative care at L5-S1.

¶ 47 On cross-examination, Dr. Fonn acknowledged that his typed report from the April 16, 2014, visit did not specifically note that claimant had a two-month history of antalgic gait, prior to the initial exam on April 16, 2014. Dr. Fonn explained, however, that his typed report referenced difficulty walking, which is essentially an antalgic gait. While the two-month period was not referenced in the typed report, Dr. Fonn noted that the yellow sheets contained in claimant's physical file, or chart, include the handwritten notation of Dr. Fonn's assistant referencing claimant's report of antalgic gait in the preceding two months. Dr. Fonn confirmed that his file included some prior records from claimant's surgery and subsequent treatment in 2004. Dr. Fonn admitted that the physical file did not include medical records from claimant's treatment at the Vienna or Anna Medical Clinics from March 5, 2014, to April 16, 2014, and that such records should have been placed in the file; however, he had no way to confirm what documents were present in the file at the time of the April 16, 2014, visit. Dr. Fonn believed that he reviewed the March 18, 2014, MRI scan and the report prepared by the reviewing radiologist regarding the MRI. Dr. Fonn acknowledged that he had reviewed another treating physician's notes documenting claimant's MRI scan, taken prior to the 2004 surgery, which revealed "asymmetry disc protrusion as L5-S1 on the left." Dr. Fonn acknowledged that he had performed a decompression and stabilization with instrumentation on the same area of the spine, L5-S1, on October 31, 2014. Dr. Fonn agreed that, other than the information claimant had

provided, he had no information or records regarding claimant's treatment, including physical examinations, between the 2004 surgery and his injury in 2014.

¶ 48 On cross-examination, Dr. Fonn also testified that a physician assistant occasionally examined claimant, but he reviewed each visit with the physician assistant and signed off on the notes. While the last documented visit claimant had with Dr. Fonn personally was on February 11, 2015, Dr. Fonn claimed that he may have informally seen claimant in the office. He confirmed that claimant had fallen out of bed a week and a half before the January 5, 2015, office visit and experienced increased pain radiating into both legs after the fall. Although the office notes make no specific reference to a physical examination of claimant on December 3, 2014, and January 5, 2015, Dr. Fonn confirmed that claimant was physically examined during each of these visits and his physical condition remained unchanged. He explained that a written notation of "resolution of pain" or "unchanged from prior visits" denoted the essential findings after an exam had been performed. Dr. Fonn also confirmed that, although not specifically referenced in his office notes, claimant had been placed on work restrictions and the restrictions remained unchanged. Dr. Fonn commonly recommended postoperative trigger point injections prior to fusion surgery because patients commonly have muscle spasms after surgery.

¶ 49 Dr. Fonn denied that his opinion regarding causation was based solely upon the history provided by claimant, stating that his opinion was based on multiple factors. Dr. Fonn agreed, however, that he had relied solely on claimant's description of the injury. Dr. Fonn's opinion regarding causation could change if the history of the injury claimant

provided was inaccurate or incomplete but it would depend on the type of information that was inaccurate or incomplete.

¶ 50 On redirect examination, Dr. Fonn confirmed that he relied on the history provided by a patient after evaluating whether the patient's account of the accident was "plausible." For instance, if a patient reported lifting something beyond what a person could reasonably lift, it would "raise a red flag ***." He also clarified that it was usual and customary for patients to have postoperative care through a physician assistant. Dr. Fonn reiterated that he remained ultimately responsible for claimant's care, and that the procedure he performed, and his experience, were the basis for claimant's current restrictions. Lastly, Dr. Fonn affirmed that his causation opinion regarding claimant's work accident remained unchanged following opposing counsel's cross-examination.

¶ 51 F. Arbitrator's Decision

¶ 52 On October 2, 2015, the arbitrator issued a written decision, finding that claimant proved he sustained an accident arising out of and in the course of his employment with Walquist on March 5, 2014. The arbitrator based her determination on claimant's testimony that he injured his back while assisting the delivery driver unload the drum of iodine, as well as the histories included in the medical records, which were consistent with claimant's testimony. The arbitrator specifically noted that the medical records from Dr. Fonn's office indicated that claimant had mentioned the March 5, 2014, accident involving the drum of iodine to Dr. Fonn prior to signing his application of adjustment of claim. The arbitrator noted, however, that Endrizzi's supplemental note from January 2015, which generally

referenced work at the farm, did not corroborate claimant's testimony regarding the details of the March 5, 2014, accident involving the drum of iodine.

¶ 53 Despite finding that claimant sustained a work accident on March 5, 2014, the arbitrator determined he failed to prove that his condition of ill-being in his low back, or his need for surgery, were causally related to the work accident. In support, the arbitrator reasoned that claimant's preexisting back problems and three-month history of foot numbness prior to the accident precluded a chain of events analysis to prove a causal connection. While acknowledging that claimant presented the opinion and testimony of Dr. Fonn to show causal connection, the arbitrator noted that Dr. Fonn "readily admitted" his opinion might change if claimant provided an inaccurate or incomplete history and "acknowledged he had never seen or reviewed the Rural Health Clinic records."

¶ 54 The arbitrator next found that claimant suffered a back injury and underwent surgery in 2004. The arbitrator acknowledged that claimant received no significant treatment for his low back between his surgery in 2004 and his March 5, 2014, accident but noted that he did present for occasional office visit with complaints of back pain associated with his lifting duties as a farm hand. The arbitrator also noted that, on March 7, 2014, claimant reported numbness in his feet for three months prior to the accident and that an "MRI was ordered in light of [claimant's] degenerative back condition (as noted in 2011) in an effort to see if that had any causal relationship to his feet complaints." The arbitrator again noted that claimant "did not mention" the March 5, 2014, work accident "nor did PAC Endrizzi address it in her 2015 statement." In addition, the arbitrator, again, reiterated that "Dr. Fonn

was unaware of [claimant's] prior treatment at Rural Health Clinic and did not consider that history in rendering his opinion." The arbitrator further noted that claimant provided Dr. Fonn with two sources of back pain—the March 5, 2014, accident and his overall farm duties—but "Dr. Fonn did not address this in his deposition whatsoever."

¶ 55 Next, the arbitrator noted that claimant mentioned receiving treatment from Dr. Wilson but provided no records or testimony from Dr. Wilson regarding this treatment. Finally, the arbitrator noted additional concern over claimant's testimony "that he initially told the delivery guy he didn't think he could help him." According to the arbitrator, this testimony led to the reasonable inference that claimant "didn't believe he could help him because of ongoing back issues which both he and [Aric] acknowledged." For these reasons, the arbitrator concluded that claimant failed to meet his burden of proof on the issue of causal connection. In light of this determination, the arbitrator denied claimant's request for payment of medical bills, prospective medical care and TTD benefits.

¶ 56 G. Commission's Original Decision

¶ 57 The parties filed cross-petitions for review of the arbitrator's decision before the Commission. On July 13, 2016, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision.

¶ 58 On August 5, 2016, claimant sought judicial review of the Commission's decision in the circuit court of Union County. On April 4, 2017, the court confirmed the Commission's decision regarding accident but reversed the Commission's decision regarding causation, finding it was against the manifest weight of the evidence. The court

remanded the matter back to the Commission for further determination regarding medical expenses, prospective medical care and TTD. On April 20, 2017, a duplicate order was filed with a corresponding docket entry that stated: "Order Filed. Copy given to Atty Foley and mailed to Atty Kim Parks-MP." Walquist attempted to appeal the April 20, 2017, decision to this court on May 19, 2017, but the matter was dismissed for want of appellate jurisdiction because the April 4, 2017, and April 20, 2017, orders reversed the Commission's decision and, therefore, were not final and appealable. See *Marshall v. Workers' Compensation Comm'n*, No. 5-17-0190WC (Nov. 30, 2017) (unpublished order).

¶ 59 H. Commission's Decision on Remand

¶ 60 On December 13, 2018, the Commission issued its decision and opinion on remand. In compliance with the circuit court's decision, the Commission found that claimant's condition of ill-being in his low back was causally related to the March 5, 2014, work-related accident. The Commission awarded claimant TTD benefits of $446 per week from March 6, 2014, through August 7, 2015. The Commission also awarded claimant medical expenses in the amount of $369,848.51 and prospective treatment by way of postoperative care following claimant's October 31, 2014, lumbar spine surgery. The Commission remanded the case to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 61 On December 27, 2018, Walquist sought judicial review of the Commission's decision. On April 9, 2019, the circuit court of Union County confirmed the Commission's decision on remand. On April 24, 2019, Walquist filed a timely notice of appeal.

¶ 62 II. Analysis

¶ 63 On appeal, Walquist contends that the Commission's original decision that claimant failed to prove his current condition of ill-being in his low back was causally related to the March 5, 2014, work accident was not against the manifest weight of the evidence. Accordingly, Walquist asserts that the circuit court erred in overturning the Commission's original decision. Where, as here, the court reverses the Commission's original decision and the Commission issues a new decision on remand, this court must consider whether the Commission's original decision was proper before reviewing the Commission decision entered following remand. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 785-86 (2005); *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 531 (2001).

¶ 64 To obtain compensation under the Act, a claimant must prove by a preponderance of the evidence that "some act or phase of his employment was a causative factor in his ensuing injuries." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A claimant, however, is not required to prove that his employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Republic Steel Corp. v. Industrial Comm'n*, 26 Ill. 2d 32, 45 (1962). An employer takes its employees as it finds them. *Schroeder v. Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC, ¶ 28 (citing *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007)). "A claimant with a preexisting condition may recover where employment aggravates or

accelerates that condition." *Id.* (citing *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982)).

¶ 65 Whether a claimant has established the requisite causal connection between his current injuries and an industrial accident is a question of fact for the Commission to determine and that determination will not be overturned on appeal unless it is against the manifest weight of the evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980); *R&D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866 (2010). In resolving factual matters, it is the function of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). A finding is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id.* at 675. Although we are reluctant to conclude that a factual determination of the Commission is against the manifest weight of the evidence, we will not hesitate to do so when the clearly evident, plain, and undisputable weight of the evidence compels an opposite conclusion. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10.

¶ 66 Here, the Commission, in affirming and adopting the arbitrator's decision, determined that claimant proved he sustained an accidental injury arising out of and in the course of his employment on March 5, 2014, but failed to prove his current condition of ill-being in his low back was causally related to the work accident. Regarding the issue of causal connection, the Commission first found that claimant's preexisting back problems

and three-month history of foot numbness prior to the accident precluded a chain of events analysis to prove a causal connection. We disagree.

¶ 67 "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982). In *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853-54 (1996), this court considered the applicability of this principle to a case involving a preexisting condition and reasoned as follows:

> "The employer also contends that the facts of the present case do not support the Commission's 'chain of events' analysis because [the claimant] had a preexisting condition. The employer cites no authority for the proposition that a 'chain of events' analysis cannot be used to demonstrate the aggravation of a preexisting injury, nor do we see any logical reason why it should not. *The rationale justifying the use of the 'chain of events' analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury*." (Emphasis added.)

In such cases, "if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration." *Schroeder*, 2017 IL App (4th) 160192WC, ¶ 26. "The salient factor is not the precise previous condition; it is the resulting

deterioration from whatever the previous condition had been." *Id.*

¶ 68 In light of the foregoing, we hold that the Commission erred in concluding that claimant's preexisting back condition and foot numbness precluded a chain of events analysis in this case. Thus, we vacate the circuit court's decision, vacate the Commission's decision regarding causation and remand the matter to the Commission to determine whether the March 5, 2014, work accident that arose out of and in the course of claimant's employment—a determination based on claimant's testimony and the medical records of Dr. Fonn—aggravated claimant's preexisting back condition.

¶ 69 III. Conclusion

¶ 70 For the foregoing reasons, we vacate the judgment of the circuit court of Union County confirming the Commission's decision on remand; vacate the Commission's decision on remand; vacate the judgment of the circuit court of Union County that reversed the Commission's original decision; vacate the Commission's original decision; and remand for further proceedings in accordance with this order.

¶ 71 Circuit court judgment vacated; Commission decision vacated; cause remanded to Commission with directions.