

2021 IL App (5th) 200064WC-U

No. 5-20-0064WC

Order filed April 1, 2021

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IN THE
 APPELLATE COURT OF ILLINOIS
 FIFTH DISTRICT
 WORKERS' COMPENSATION COMMISSSION DIVISION

WASHINGTON GROUP/ALBERICI, a joint venture,)	Appeal from the
)	Circuit Court of
Appellant,)	Pulaski County.
)	
v.)	Nos. 18-MR-16
)	19-MR-40
THE ILLINOIS WORKERS' COMPENSATION COMMISSION <i>et al.</i>)	Honorable
)	William J. Thurston,
(Anthony Lamoureux, Appellee).)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The Illinois Workers' Compensation Commission's original finding that claimant failed to prove a causal connection between his current condition of ill-being and the work accident was not against the manifest weight of the evidence.

¶ 2 Respondent, Washington Group/Alberici (WGA), a general contractor, appeals from an order of the circuit court of Pulaski County, which confirmed a decision issued by the Illinois Workers' Compensation Commission (Commission) on remand. The Commission awarded claimant, Anthony Lamoureux, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)) after finding, at the direction of the court, that claimant's condition of ill-being in his right hand was causally related to his work accident. For the following reasons, we reverse the court's original order, vacate the Commission's decision on remand, vacate the court's order confirming the Commission's decision on remand and reinstate the Commission's original decision.

¶ 3 I. Background

¶ 4 On May 14, 2014, claimant filed an application for adjustment of claim pursuant to the Act, alleging that he sustained a fracture to his right wrist and ligament damage to his right hand and arm by "[s]queezing c-clamps on a steel guide plate" while employed by WGA as an ironworker on the Olmsted Lock and Dam Construction Project on November 20, 2013. Claimant subsequently filed an amended application, without objection from opposing counsel, alleging that his work accident occurred on November 14, 2013, not November 20, 2013.

¶ 5 On May 11, 2017, the matter proceeded to an arbitration hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2014)). The parties disputed accident, notice, medical causation, temporary total disability (TTD) benefits, medical bills and the nature and extent of claimant's injuries. The following factual recitation is taken from the evidence adduced at the hearing, and the corrected record on appeal, including, *inter alia*, the Commission's November 22, 2019, decision and opinion on remand. Because the issue raised on appeal is limited to causal

connection, we have omitted facts and certain witness deposition testimonies regarding WGA's safety practices and injury reporting procedures at the Olmsted Lock and Dam Construction Project.

¶ 6

A. Prior Medical History

¶ 7 Claimant has a prior medical history and workers' compensation claims that are relevant to this appeal. Claimant's prior wrist injuries and workers' compensation claims are documented in the office records of Dr. Gregory Tobin, a board-certified plastic and reconstructive surgeon at Missouri Plastic & Hand Surgery in Cape Girardeau, Missouri. In particular, these records are dated from July 20, 2010, through November 15, 2011, and reference a covered workers' compensation claim for a January 13, 2009, left hand and wrist injury, as well as a possible, but unverified, workers' compensation claim for a right-hand injury occurring before July 20, 2010. The medical records also reflect that on April 12, 2012, claimant was sent to collections for \$1909.50 in charges for medical treatment pertaining to his right-hand injury.

¶ 8 On September 13, 2013, claimant called Dr. Tobin's office to request surgery, stating that he had gone to the emergency room to have his elbow drained on numerous occasions. Claimant was informed that resolution of his \$1909.50 outstanding bill was needed before the next office visit. Claimant subsequently appeared at Dr. Tobin's office to discuss the balance on October 24, 2013. Claimant was informed that his insurance carrier, Blue Cross Blue Shield, had denied payment because the injury stemmed from a work-related accident. By the same token, however, the workers' compensation insurance carrier had also denied payment because the injury was not related to a work accident. A member of Dr. Tobin's staff advised claimant to contact Blue Cross Blue Shield to explain that the submitted bill was not for medical services associated with a work-

related injury. Claimant was also advised to contact the credit bureau. Claimant's appointment with Dr. Tobin was subsequently cancelled after claimant became angry with a staff member over the unpaid bill.

¶ 9 B. November 14, 2013, Work Accident

¶ 10 Claimant testified to the events surrounding the November 14, 2013, work accident as follows. Claimant, employed by WGA as an ironworker, worked on the Olmsted Lock and Dam Construction Project on November 14, 2013. Claimant, while working with another ironworker, attempted to lock a pair of spring-loaded c-nose vise-grips, known as "wicker bills," to an 80-pound steel angle to hold the angle in place until it was welded to a structure. When claimant squeezed the handle of the wicker bills, he felt a pop in his hand that sounded "like a .22 rifle," followed by an immediate onset of swelling. Because the accident occurred just as claimant was scheduled for his first morning break, he stopped trying to lock the wicker bills and took his break. Claimant experienced increasing pain, but he finished the workday. He then immediately contacted his wife, Weenena Lamoureux, to inform her that he was going to the emergency room at St. Francis Medical Center for an evaluation of his hand.

¶ 11 Shortly thereafter, claimant, accompanied by Weenena, presented to St. Francis Medical Center complaining of severe right-hand pain (10/10) and swelling. Claimant reported that the onset of pain occurred 10 hours earlier. X-rays were conducted and claimant's hand was wrapped and placed in a sling. Claimant was given medications and instructed to follow up with Dr. Tobin the next day, but claimant did not appear for the follow-up appointment because he felt he could not miss work at that time. Claimant, instead, rescheduled the appointment for December 3, 2013. Claimant's last day on the Olmsted Lock and Dam Construction Project was December 2, 2013,

at which time he was laid off. The following day, claimant informed WGA of the November 14, 2013, work accident.

¶ 12

C. Medical Records

¶ 13 The records from St. Francis Medical Center reflect that claimant presented to the medical center on November 14, 2013, at 5:30 p.m. and was evaluated by Dr. Mike Killen. Claimant reported that he had “squeezed vise[-]grips this a[.]m[.] and [had] pain to right hand since.” His chief complaints were “hand injury, hand swelling, hand pain, hand complications and tenderness.” The mechanism of injury was noted as “[claimant] squeezed vise[-]grip and he immediately felt pain in 2nd and 3rd metacarpal.” The history of present illness (HPI) indicated that claimant’s injury occurred at work that morning. At that time, claimant denied any numbness, tingling or pain with finger movement, but swelling was visible across the dorsum of his right hand. Dr. Killian diagnosed “hand pain” with suspected compartment syndrome. X-rays of claimant’s right hand showed mild degenerative changes involving “the radiocarpal joint space and the first carpal-metacarpal joint space” without evidence of an acute fracture or dislocation. Preliminary interpretation of the X-rays by the radiologist, Dr. Mark Pfautsch, showed right “hand negative, no fractures, no dislocations, no foreign bodies, no bony lesions, no degenerative joint disease, no soft tissue swelling.” Dr. Pfautsch also suggested that, “[i]f clinically indicated, follow-up radiographs of the right hand and wrist could be obtained in 10-14 days to assess for delayed changes.”

¶ 14 On December 3, 2013, claimant presented to Dr. Tobin for a follow-up appointment regarding his right-hand injury. Claimant reported that he was working at the Olmstead Dam, and, while applying a vise-grip with “all the power he could muster,” he locked the wrench down and

experienced substantial pain. Claimant reported that he went to St. Francis Medical Center following his injury and received a referral to Dr. Tobin. Although claimant had a scheduled visit with Dr. Tobin on November 15, 2013, Dr. Tobin's records reflect that "[f]or a variety of reasons, [claimant] has not shown up until now."

¶ 15 Dr. Tobin noted that claimant had said "his hand hurts and he doesn't know why." Claimant complained of intermittent, significant swelling in his right hand. On examination, claimant had dorsal swelling but the range of motion of his fingers was intact, both passively and actively, as was distal sensation and circulation. Claimant also reported substantial pain with pressure on the dorsum of his wrist, roughly at the junction of the third and fourth dorsal compartments that increased when making a clenched fist and tenderness along the metacarpophalangeal (MCP) joint of the thumb, particularly on the ulnar side. Dr. Tobin's review of the X-rays revealed a stener lesion avulsion type fracture on the ulnar aspect of the proximal phalanx of claimant's thumb at the MCP joint and a questionable scaphoid fracture. Dr. Tobin suggested a magnetic resonance (MR) arthrography to further investigate claimant's injuries. Claimant was unwilling to schedule a follow-up visit until he had insurance, which would not be in effect until January 1, 2014.

¶ 16 In December 2013, claimant called Dr. Tobin's office on three occasions requesting pain medication refills. On the first occasion, due to being uninsured, claimant requested a new prescription with double the strength in order to cut the pills in half and make them last longer. Claimant was subsequently prescribed additional medication.

¶ 17 On January 7, 2014, claimant returned to Dr. Tobin, reporting ongoing pain when grasping objects and tying rebar. Dr. Tobin observed that claimant had no swelling but had tenderness over

the dorsal wrist at the junction of the third and fourth dorsal compartments. Dr. Tobin also observed that the base of claimant's thumb and the anatomical snuff box were tender. X-rays revealed a questionable signet ring sign and scapholunate widening on the clenched view. Claimant, when asked, denied knowledge of the mechanism of injury. Dr. Tobin wrote, "I think he may have a serious wrist problem here." An MR arthrogram, "to further elucidate this," was ordered.

¶ 18 Later that same day, claimant underwent the MR arthrogram. According to the radiology note, claimant had right wrist pain and had injured himself two months earlier. In addition to noting a broken thumb and a prior right carpal tunnel surgery, the radiologist noted dorsal intercalated segment instability with scapholunate dissociation, full-thickness tear of the scapholunate ligament with subluxed articulation of the scaphoid and trapezoid, extensor carpi ulnaris tendinosis/tenosynovitis and mild ulnar sided superficial soft tissue edema and swelling. The radiologist also noted a six-millimeter corticated dystrophic ossification with an adjacent two-millimeter filling defect on the dorsal side of the wrist, possibly lying loose within the joint, which he opined may be a sequelae of an old fracture and/or a soft tissue/ligamentous injury.

¶ 19 On January 20, 2014, claimant called Dr. Tobin's office to report that he had "bumped" his hand and needed stronger pain medication. Claimant was prescribed medication, and he presented to Dr. Tobin for a follow-up visit the next day. Dr. Tobin advised claimant that his MR arthrogram showed a scapholunate dissociation, and the X-rays showed a stener lesion from a gamekeeper's thumb. Dr. Tobin recommended a scaphotrapezotrapezoid (STT) arthrodesis (fusion) of claimant's wrist. However, claimant was unwilling to undergo the procedure based on his past experience with a similar procedure on his left wrist. Dr. Tobin suggested, alternatively, to repair the ulnar collateral ligament to the MCP joint of the thumb. Dr. Tobin believed that he would need

to reconstruct the ligament using a Palmaris graft, as the injury appeared to be old. Claimant expressed a desire to proceed.

¶ 20 On January 22, 2014, Dr. Tobin approved a “Patient Status Report” form, which stated claimant’s injury was “non-work-related.” Claimant was allowed to return to work on January 21, 2014, with restrictions not to use his right hand to perform work-related tasks.

¶ 21 On February 20, 2014, claimant, again, called Dr. Tobin to request more pain medication, and Dr. Tobin issued him a prescription. Thereafter, the pharmacist called Dr. Tobin to notify him that claimant had multiple prescriptions from several doctors, including Dr. Andrew Walker, who had prescribed him Norco on January 7, 2014, and February 5, 2014. It was also noted that Dr. Walker had previously required claimant to sign a controlled substance agreement. Dr. Tobin rescinded the most recent prescription he had issued.

¶ 22 On March 4, 2014, claimant called Dr. Tobin, stating that he no longer needed the “Patient Status Report” filled out because he was unable to work. Several days later, an employee of Dr. Tobin’s office called claimant to advise him that Stephanie Baker, an individual from the Ironworker’s Benefits Office, had called asking about an “estimated return to work” date.

¶ 23 On March 21, 2014, claimant presented to St. Francis Medical Center requesting to have a cast applied to his right hand due to wrist pain. Claimant stated that Dr. Tobin was supposed to have scheduled claimant’s surgery for a scapholunate ligament disruption and gamekeeper’s thumb, but Dr. Tobin later refused to schedule the surgery for some unknown reason. As a result, claimant sought a referral to another doctor due to severe symptoms he was currently experiencing. Claimant was given a splint and referred to Dr. Richard Tipton, a family practitioner.

¶ 24 On March 24, 2014, claimant presented to Dr. Rickey Lents, an orthopedic surgeon. Claimant completed a “Patient History Form,” indicating that he was right-hand dominant and was having a problem with pain in his right wrist and thumb. He indicated that he had injured his right wrist and hand on November 25, 2013, while squeezing a pair of vise-grips. Claimant indicated that he had not worked in five weeks but denied filing a workers’ compensation claim, stating that it was not a work-related injury. Claimant advised that he had been referred to Dr. Lents by an emergency room physician at St. Francis Medical Center.

¶ 25 According to Dr. Lents’ notes, claimant had reported a prior diagnosis of scapholunate diastasis, as confirmed by an MR arthrogram, and had current complaints of increasing pain and difficulty using his wrist following an injury to his right thumb. After Dr. Lents reviewed claimant’s right-hand X-rays, he diagnosed claimant with scapholunate dissociation of the right wrist with dorsal intercalated segment instability and right gamekeeper’s thumb. Dr. Lents recommended a proximal row carpectomy and a pinning of the gamekeeper’s thumb.

¶ 26 On April 4, 2014, claimant underwent right proximal row carpectomy and right percutaneous pinning of a gamekeeper’s fracture surgery performed by Dr. Lents. Following surgery, claimant complained of pain and was prescribed Norco.

¶ 27 On April 8, 2014, claimant presented to St. Francis Medical Center’s emergency room with increasing pain, where he was given Ativan and prescribed Percocet. Claimant then returned to St. Francis Medical Center the following morning, where he was examined by a physician’s assistant and Dr. J. Kellie Rogers for a possible postsurgery infection. Claimant’s right hand was visibly red and swollen, but claimant had no fever. It was noted that claimant was very confused and unable to give many details regarding the April 4, 2014, surgery. The consultation notes reflect

that claimant “apparently had some sort of fracture last week after getting his hand stuck in some kind of big wrench used for iron working and developed a significant infection.” After Dr. Lents was consulted, claimant was admitted and started antibiotics. A consult with infectious disease and internal medicine was ordered.

¶ 28 On April 10, 2014, claimant underwent a second surgery. Dr. Lents removed the previous surgical pins and applied an external fixator and drains. Claimant was discharged the following day. For the next several weeks, claimant continued to follow up with Dr. Lents, who noted postoperative improvement in claimant’s hand. Claimant’s pain medication was subsequently reduced.

¶ 29 On May 29, 2014, claimant returned to Dr. Lents complaining of pain in his right thumb. Claimant reported that, while playing with his children, he had hyperextended his thumb. According to claimant, prior to hyperextending his thumb, he had been having very little pain, and his wrist was “better than expected” with excellent range of motion. Dr. Lents noted that claimant’s thumb was stable, but tenderness was observed at the carpometacarpal (CMC) joint. Dr. Lents suspected a joint sprain, and additional pain medication was prescribed.

¶ 30 On June 19, 2014, claimant returned to Dr. Lents for a follow-up visit. At that time, claimant complained of continuing tenderness and pain at the CMC joint. Dr. Lents observed that the thumb fracture had healed in good position, and the right wrist X-ray had shown a well-placed proximal row carpectomy. Dr. Lents administered a Depo-Medrol and Lidocaine injection into claimant’s CMC joint, and he instructed claimant to return for a follow-up visit and X-rays in four to five weeks. Claimant did not return.

¶ 31

D. Deposition Testimony of Dr. Lents

¶ 32 Dr. Lents testified to the following in a deposition on February 13, 2017. Dr. Lents, a board-certified orthopedic surgeon, started his medical career in 1987. He began treating claimant's right wrist in March 2014. Dr. Lents was generally aware of claimant's presentation to the emergency room at St. Francis Medical Center and claimant's follow-up treatment with Dr. Tobin. Dr. Lents diagnosed claimant with a gamekeeper's thumb and scaphoid lunate disassociation, which were consistent with claimant's history of squeezing a large vise-grip with force. In response to a question regarding his diagnosis of claimant's condition, Dr. Lents responded:

“[Claimant] had a fracture of the base of his thumb. It's typically either called a stener fracture, s-t-e-n-e-r, or a gamekeeper's fracture. He had a scaphoid lunate disassociation, and he had developed in consequence of his scaphoid lunate disassociation a condition called a scaphoid lunate advanced collapse whereby the wrist sort of collapses on to itself because of the altered—because of the torn ligaments he had in his wrist.”

Dr. Lents described these types of injuries as typically acute. Dr. Lents believed there was an interrelationship between claimant's scaphoid lunate disassociation and the scaphoid lunate advanced collapse. Dr. Lents explained that the “wrist sort of collapses on to itself” because of the torn ligaments in the wrist.

¶ 33 Dr. Lents subsequently performed a proximal row carpectomy and repaired the fracture at the base of claimant's thumb. After the wound later became infected, Dr. Lents performed a second surgery to clean out the infection and then install an external fixator. After claimant was free from infection, claimant experienced normal progress. Claimant presented to Dr. Lents in July 2014 for the last time. During that visit, Dr. Lents observed that claimant had pretty good range of motion, and he advised claimant to return as needed.

¶ 34 During direct examination, Dr. Lents was asked “would the act of—as described in those records, squeezing the vise-grip or a similar type tool with a substantial amount of force, would that be capable of causing the wrist condition that [claimant] presented with?” He responded, “It probably could in him because he’s such a large, strong man.” Dr. Lents later explained that “[i]f you squeeze something hard enough, you can do it, if you’re strong enough.”

¶ 35 On cross-examination, Dr. Lents testified that gamekeeper’s thumb, even though the name implies a chronic condition, is typically caused by hyperextending the thumb backwards. Dr. Lents explained that, typically when a person falls back and catches his thumb, which is the most common mechanism of injury, “the hand side of [the] thumb at the second joint of [the] thumb, either the ligament is going to tear, which is usually what happens, okay, or the bone is going to break.” Dr. Lents further testified that it was unusual for gamekeeper’s thumb to be caused by squeezing something hard because of the force applied to the joint, but he had seen one or two cases “over the years.”

¶ 36 After reviewing the November 14, 2013, emergency room records, Dr. Lents acknowledged that claimant’s complaints involved a different area—“the dorsum of the hand, the wrist and the index and middle finger.” Dr. Lents, however, believed that, because the whole hand will sometimes swell, claimant’s injury was consistent with the emergency room records.

¶ 37 Dr. Lents identified a patient questionnaire that claimant had completed on March 24, 2014, where claimant indicated that his condition was not work-related. Dr. Lents was unaware that claimant had alleged that his right wrist condition was work-related. If he had been made aware, he would have indicated it as being work-related in his treatment notes. Dr. Lents explained that work-related injuries required him to include more specific notes that documented a claimant’s

history, including deposition testimony. Dr. Lents' office assisted claimant with completing a short-term disability application, but, again, claimant did not report his injury as work-related.

¶ 38 E. Deposition Testimony of Clarence Lyons

¶ 39 Clarence Lyons, claimant's former coworker, testified, *inter alia*, to the following in a deposition on August 3, 2016. Lyons was familiar with claimant from working with him out of the same union local on construction projects, including the Olmsted Lock and Dam Construction Project. Claimant called Lyons four to six weeks after the accident and informed Lyons that he thought he had "re-broke" his hand squeezing a pair of wicker bills while working on the Olmsted Lock and Dam Construction Project.

¶ 40 F. Claimant's Additional Testimony

¶ 41 Claimant also testified that he had struggled financially in early 2014 because he had been denied workers' compensation benefits, and he could not work. Claimant had completed a disability application with his union. In the application form, claimant reported that the accident happened while "squeezing a pair of wicker bills while building a deck." Claimant explained that he was told by the union that he could not receive short-term benefits for a work-related injury, so he reported that his injury had happened at home. Claimant denied injuring his hand at home. Claimant also testified that he was granted short-term disability; however, he eventually paid back the funds after informing the union that his injury was actually work-related. Both the disability application and the letter confirming repayment of the disability benefits were admitted into evidence.

¶ 42 Claimant next testified that he worked for KCI Construction after he was laid off by WGA on December 3, 2013. Records from KCI Construction reflect that claimant worked approximately

100 hours from December 19, 2013, through January 22, 2014, in a supervisory role. Claimant also worked for other contractors prior to his right wrist surgery. Following surgery, claimant returned to work for various contractors as an ironworker, although he had recently retired from iron work. Claimant had experienced other health problems, including two ankle surgeries in 2012 and a double-staged, low back surgery during the summer of 2016.

¶ 43 According to claimant, he was naturally right-hand dominant but had been forced to rely primarily on his left hand. He had very little range of motion in his wrist. Claimant further described his range of motion as virtually nonexistent, with the exception of the ability to bend his wrist slightly downward. Although claimant was not in constant pain, he experienced pain when he used his right hand, and he had to carry items with his left hand, due to lost grip strength. Moreover, claimant's loss of functionality in his right wrist made it difficult to work as an ironworker, except in a supervisory position.

¶ 44 On cross-examination, claimant acknowledged that he had completed a patient questionnaire form for Dr. Lents that indicated that his condition was not work-related. However, on redirect, claimant claimed that Dr. Lents knew how he had injured his right wrist. Based on the patient questionnaire form, claimant reported that the injury occurred while he was squeezing vise-grips on November 25, 2013. Lastly, claimant explained that the delay in reporting the accident was due to his financial concerns and fear that he would be laid off.

¶ 45 G. Weenena Lamoureux's Testimony

¶ 46 Weenena was called to testify on behalf of claimant. She testified that she was married to claimant and they had four children. She first became aware of claimant's injury when she met him at St. Francis Medical Center on the evening of November 14, 2013. She also testified that

she had never witnessed claimant hurt his wrist “in any manner” after the November 14, 2013, accident, and he had not informed her of injuring his wrist at any other time. Claimant never worked on their deck or used a pair of wicker bills at their home. According to Weenena, during the course of claimant’s treatment, claimant’s income decreased and, eventually, they lost their home because they could not afford the rent.

¶ 47 Following the section 19(b) hearing, the arbitrator issued a written decision on July 11, 2017, finding that claimant had sustained an accident that arose out of and in the course of his employment with WGA. However, the arbitrator found that claimant had failed to prove that his condition of ill-being in his right wrist and hand was causally related to the work accident. Consequently, the arbitrator denied claimant’s request for benefits. In doing so, the arbitrator relied on medical records from Dr. Tobin that predated the accident. The arbitrator also noted that claimant had failed to testify regarding his prior right hand and wrist injuries, and witness testimony demonstrated that claimant had informed his foreman that he had “re-broke” his hand after the accident. The arbitrator found it significant that the X-rays on the date of accident revealed degenerative changes, and claimant continued working for WGA, instead of presenting to Dr. Tobin on the day after the accident, as scheduled. The arbitrator noted that claimant had waited until he was laid off on December 3, 2013, which was 19 days after the accident, to present to Dr. Tobin. The arbitrator further stated that on December 3, 2013, claimant’s symptoms were different than those he complained of on the date of accident. The arbitrator also considered Dr. Tobin’s prior records that revealed claimant had a history of chronic right wrist pain, a prior right carpal tunnel surgery and a new injury, a broken thumb, as revealed by the subsequent MR arthrogram.

¶ 48 In addition, the arbitrator found Dr. Lents’ causation opinion unpersuasive because it did

not contemplate claimant's prior treatment with Dr. Tobin but was based on the emergency room records. Further, the arbitrator noted that Dr. Lents never testified with a reasonable degree of medical certainty that claimant's right wrist condition was caused by the work accident. Rather, Dr. Lents testified only that the act of squeezing vise-grips "probably could [cause the wrist condition] in [claimant] because he's such a large, strong man." Ultimately, the arbitrator concluded that too much information was lacking to find causation in claimant's favor.

¶ 49 Claimant subsequently filed for review of the arbitrator's decision before the Commission. The Commission later issued a unanimous decision affirming and adopting the arbitrator's decision on February 22, 2018.

¶ 50 On March 13, 2018, claimant sought judicial review of the Commission's decision in the circuit court of Pulaski County. On November 1, 2018, the court reversed the Commission's decision regarding causation, finding it was against the manifest weight of the evidence. The court confirmed the decision in all other aspects and remanded the case to the Commission for further proceedings consistent with the court's order.

¶ 51 On November 22, 2019, the Commission entered its decision and opinion on remand. The Commission first provided a detailed summary of both the arbitrator's decision and the subsequent circuit court decision reversing the Commission's original decision adopting the arbitrator's decision. Next, in compliance with the circuit court's order, the Commission found that claimant's condition of ill-being in his right hand was causally related to the November 14, 2013, work-related accident. The Commission awarded claimant all reasonable and necessary medical expenses related to the November 14, 2013, accident, TTD benefits for a period of four weeks (April 2, 2014, through May 1, 2014), and PPD benefits to the extent of a 7.5% loss of use of his hand and

a 40% loss of use of his thumb pursuant to section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2018)).

¶ 52 On November 12, 2019, WGA sought judicial review of the Commission’s decision. On February 6, 2020, the Pulaski County Circuit Court confirmed the Commission’s decision on remand. WGA filed a timely notice of appeal.

¶ 53 II. Analysis

¶ 54 On appeal, WGA contends that the Commission’s original decision that claimant failed to prove his current condition of ill-being in his right wrist and hand was causally related to the November 14, 2013, work accident is not against the manifest weight of the evidence. WGA argues that the circuit court erred in overturning the Commission’s decision by reweighing the evidence and substituted its opinion for that of the Commission. In response, claimant argues that the Commission’s original decision regarding causal connection was against the manifest weight of the evidence, based on the medical evidence in the record and WGA’s failure to provide a contrary independent expert medical opinion as to causation.

¶ 55 On appeal from a final judgment of the circuit court confirming a decision of the Commission on remand, this court will consider the propriety of the court’s earlier decision. See *F&B Manufacturing Co. v. Industrial Comm’n*, 325 Ill. App. 3d 527, 531 (2001). Therefore, as in the instant matter, where the “Commission decision is reversed because it is against the manifest weight of the evidence, this court initially considers the propriety of the original Commission decision before reviewing the Commission decision entered following remand.” *Id.*

¶ 56 To obtain compensation under the Act, a claimant must prove by a preponderance of the evidence that “some act or phase of his *** employment was a causative factor in his *** ensuing

injuries.” *Land & Lakes Co. v. Industrial Comm’n*, 359 Ill. App. 3d 582, 592 (2005). Whether a 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). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm’n*, 228 Ill. App. 3d 288, 291 (1992). The appropriate test is whether there is sufficient evidence in the record to support the Commission’s determination, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm’n*, 329 Ill. App. 3d 828, 833 (2002). With these principles in mind, we will review the Commission’s original decision that adopted the arbitrator’s findings and conclusions regarding causal connection.

¶ 57 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). This is especially true with respect to medical issues, where we owe heightened deference to the Commission due to the expertise it has long been recognized to possess in the medical arena. *Long v. Industrial Comm’n*, 76 Ill. 2d 561, 566 (1979).

¶ 58 In the present case, the dispute centers on claimant’s current condition of ill-being, which consists of a fracture at the base of his thumb, commonly called a stener fracture or gamekeeper’s thumb, and a scaphoid lunate disassociation resulting in a scaphoid lunate advanced collapse. In its original decision, the Commission adopted the arbitrator’s decision, which included a finding

that claimant had proved accident but failed to sufficiently demonstrate that his current condition of ill-being was causally connected to the accident. After a careful review of the record and with great deference to the Commission, we find sufficient evidence in the record to support the Commission's original decision. We, therefore, agree with WGA that the opposite conclusion is not clearly apparent from the record.

¶ 59 First, we note that the Commission found that claimant had sustained an injury to his right hand while attempting to lock a pair of spring-loaded c-nose vise-grips known as "wicker bills" to an 80-pound steel angle on November 14, 2013. St. Francis Medical Center's records from November 14, 2013, document swelling across the dorsum of claimant's right hand and reported pain in the area of the second and third digits. X-rays also showed only mild degenerative changes *without evidence of an acute fracture or dislocation*. The diagnosis was right-hand pain. Approximately 19 days later, claimant's symptoms had changed, and he was subsequently diagnosed with a fracture to his thumb at the MCP joint. At the subsequent arbitration hearing, claimant failed to present any evidence to explain the documented change in his condition.

¶ 60 The Commission noted that claimant did not report to Dr. Tobin on the day after the accident, as scheduled. Instead, claimant returned to work the following day and continued working for WGA for a period of approximately 18 days after the accident, sometimes working 10 hours or longer in a shift. In fact, the first documented evidence of a stener fracture (or gamekeeper's thumb) did not appear until 19 days after the accident on December 3, 2013, when claimant presented to Dr. Tobin. The record reflects that claimant worked for KCI Construction in a supervisory role after December 3, 2013, while he had a fractured thumb.

¶ 61 Again, without explanation, claimant’s symptoms had changed from the date of the accident, as documented in St. Francis Medical Center’s records, along with his injuries. Mainly, claimant complained of swelling across the dorsum of the right hand but with newly developed symptoms of substantial pain in the dorsum of the right wrist and tenderness at the MCP joint of the thumb. The record demonstrates that Dr. Tobin ordered additional X-rays of claimant’s right hand and wrist, which objectively revealed a stener lesion avulsion type fracture on the ulnar aspect of the proximal phalanx of the thumb at the MCP joint, an injury not documented at St. Francis Medical Center. Even though the Commission found that Dr. Tobin’s records revealed a consistent reporting of the mechanism of injury—claimant squeezing vise-grips while working at the Olmsted Lock and Dam Construction Project—Dr. Tobin, the first medical expert to diagnose claimant’s condition of ill-being, was not deposed or requested to provide his opinion as to whether the claimant’s condition of ill-being was causally related to the November 14, 2013, accident.

¶ 62 In addition, the Commission was not persuaded by Dr. Lents’ deposition testimony. Dr. Lents acknowledged that claimant’s complaints immediately after the accident in question centered on the knuckles of the right hand, rather than the wrist and right thumb area. Consistent with Dr. Tobin’s diagnosis on December 3, 2013, Dr. Lents diagnosed claimant with a fracture of the base of his thumb, “typically either called a stener fracture, *** or a gamekeeper’s fracture.” Further, Dr. Lents diagnosed claimant with a scaphoid lunate disassociation and a related condition called a scaphoid lunate advanced collapse. Dr. Lents performed surgery to repair these conditions on April 4, 2014.

¶ 63 Although Dr. Lents testified that swelling in the dorsal of the hand, or knuckles, as experienced by claimant on the day of the accident, was consistent with his current injuries, the

Commission concluded that Dr. Lents' testimony fell short of establishing a causal connection. The Commission emphasized that Dr. Lents was unaware during treatment that claimant's condition of ill-being was alleged to have been caused in a work-related accident. Dr. Lents also had not reviewed St. Francis Medical Center records nor Dr. Tobin's records until "directly before" his disposition.

¶ 64 Additionally, the Commission observed that Dr. Lents did not testify within a reasonable degree of medical certainty that claimant's condition of ill-being in his wrist and thumb was causally connected to the accident. Instead, Dr. Lents opined that claimant's condition of ill-being "probably could" have been caused by the purported mechanism of injury, given claimant's large size and strength. However, Dr. Lents explained that it was unusual for gamekeeper's thumb to be caused by squeezing something hard and applying force to the joint, although it does happen. Dr. Lents, who began practicing medicine in 1987, described seeing two or three cases over the years. Typically, however, it is caused by hyperextending the thumb during a fall.

¶ 65 Given in large part to claimant's unexplained change in symptoms and injuries since the accident date, the Commission found that claimant had failed to prove a causal connection between his current condition of ill-being and the November 14, 2013, work accident. While we recognize that WGA did not offer an expert opinion contrary to causal connection, it was claimant's burden to prove by a preponderance of the evidence that "some act or phase of his employment was a causative factor in his *** *ensuing* injuries." (Emphasis added.) *Land & Lakes Co.*, 359 Ill. App. 3d at 592. In light of the foregoing, claimant failed to meet this burden.

¶ 66 Under these circumstances, we cannot find that the Commission's decision is contrary to the manifest weight of the evidence. Accordingly, we find there is sufficient evidence in the record

to support the Commission's determination and an opposite conclusion is not clearly apparent. *Pietrzak*, 329 Ill. App. 3d at 833; *Caterpillar, Inc.*, 228 Ill. App. 3d at 291.

¶ 67

III. Conclusion

¶ 68 Based upon the foregoing analysis, we reverse the circuit court's original order, vacate the Commission's decision on remand, vacate the court's order confirming the Commission's decision on remand and reinstate the Commission's original decision.

¶ 69 Reversed in part and vacated in part; Commission's decision on remand vacated and original decision reinstated.

¶ 70 PRESIDING JUSTICE HOLDRIDGE, dissenting:

¶ 71 I dissent. In my view, the Commission's initial finding that the claimant failed to prove that his current wrist and hand condition was causally related to his November 14, 2013, work accident was against the manifest weight of the evidence. The Commission based its finding in large part on several misapprehensions of the applicable law. First, the Commission found Dr. Lents's causation opinion to be unpersuasive, in part, because Dr. Lents merely testified that the claimant's wrist condition "probably could" have been caused by the work accident and he "never testified to a reasonable degree of medical certainty that the condition in the claimant's right wrist was caused by the work accident." However, "[a] causal connection may be based on a medical expert's opinion that an accident 'could have' or 'might have' caused an injury." *Omron Electronics v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 130766WC, ¶ 38; *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839 (1994). Moreover, contrary to the Commission's suggestion, a claimant is not required to prove that the work injury directly caused his current condition of ill-being. *Sperling v. Industrial Comm'n*, 129 Ill. 2d 416,

421 (1989). Rather, he can establish causation merely by showing that the work-related accident was a cause of the injury (*i.e.*, one of several contributing factors that either caused the condition or that aggravated a preexisting condition). *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003).

¶ 72 In addition, the Commission relied extensively on the fact that the claimant might have suffered a broken wrist prior to the November 14, 2013, work accident.¹ That is immaterial. “It is axiomatic that employers take their employees as they find them.” *Id.* “When workers’ physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment.” (Internal quotation marks omitted.) *Id.* Thus, even if an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Id.* As noted above, “[a]ccidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being.” (Emphasis in original.) *Id.* Accordingly, even if there were clear evidence that the claimant had broken his right wrist prior to the November 14, 2013, work accident (which there is not), the re-injury or aggravation of his prior wrist condition during the work injury would suffice to establish causation.

¶ 73 The Commission also erroneously relied on the fact that the claimant continued working for 19 days after his work accident. However, to establish causation, the claimant was not required to establish that his work-related injury immediately rendered him completely unable to work. See

¹The Commission found Mr. Lyons’ testimony that the claimant told him that he “re-broke” his right wrist to be “[o]f great significance.” It also stressed that the findings of the MR arthrogram ordered by Dr. Tobin “discuss[ed] a possible old fracture.”

Moore Electric Co. v. Industrial Comm'n, 83 Ill. 2d 43, 48 (1980) (affirming the Commission's finding of causation where, as here, the claimant's physician's testimony that the claimant's injury "could have been caused by his [work accident]" was undisputed, and "the [employer] introduced no expert testimony designed to show that [the claimant] would have been immediately incapacitated after his fall"). In this case, the employer presented no expert medical testimony to rebut Dr. Lents's causation opinion or to suggest that the claimant's November 14, 2013, work injuries would have been immediately incapacitating. Further, as a policy matter, "[a]n 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." (Internal quotation marks omitted.) *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 70 (2006).

¶ 74 In my view, the Commission's initial finding of no causation is against the manifest weight of the evidence. It is undisputed that the claimant, whom the Commission found to be credible, consistently told his treaters (including Dr. Kellen on the date of the work accident) that the injuries to his right hand occurred during his November 14, 2013, work accident. Although there were differences between the x-ray taken immediately after the accident and the x-ray taken by Dr. Tobin 19 days later, Dr. Lents opined that the claimant's current wrist injury could have been caused by the work accident. The employer presented no expert medical testimony to rebut Dr. Lents's opinion. Nor was there any evidence of any incident occurring after the November 14, 2013, accident that could have caused the claimant's current wrist condition. As noted, the Commission appeared to rely heavily upon the supposition that the claimant had broken his wrist before November 14, 2013. Any such prior injury is irrelevant for the reasons stated above and also because there is no evidence suggesting that any purported prior injury causally contributed

to, much less solely caused, the claimant's current wrist condition. Under these circumstances, it was against the manifest weight of the evidence for the Commission to discredit Dr. Lents's unrebutted causation opinion, which was supported by the record. See, e.g., *Kraft General Foods v. Industrial Comm'n*, 287 Ill. App. 3d 526, 532 (1997) (ruling that, although the Commission is not required to credit a medical opinion merely because no other medical opinion was presented, it may not "arbitrarily reject" a medical opinion).

¶ 75 Given the ample evidence of causation in this case and the paucity of evidence to the contrary, I would find that the Commission's initial decision was against the manifest weight of the evidence. I would therefore affirm the Circuit Court's judgment, which confirmed the Commission's decision on remand.