

NOTICE

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NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (1st) 102239WC-U

NO. 1-10-2239WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

WESTERN UTILITY CONTRACTORS, INC.,

Appellant,

v.

ILLINOIS WORKERS' COMPENSATION COMMISSION, (Patricia Dragovan, Widow of Thomas Dragovan, Appellee).

) Appeal from the
) Circuit Court of
) Cook County.
)
) No. 09-L-51368
)
) Honorable
) Sanjay Tailor,
) Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Hoffman and Holdridge concurred in the judgment.
Presiding Justice McCullough dissented, joined by Justice Hudson.

ORDER

Held: Appellate Court has jurisdiction over appeal from circuit court's judgment that remanded the matter to the Workers' Compensation Commission for further proceedings where proceedings before the Commission after remand will not involve resolution of questions of law or fact but would involve uncontroverted incidental matters and a simple mathematical calculation. The Commission's finding that the employee's cardiac event was not causally connected to the employee's job duties was against the manifest weight of the evidence.

¶ 1 On June 12, 2006, Thomas Dragovan (the employee) suffered a cardiac event and

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died while performing his duties as a laborer for the employer, Western Utility Contractors, Inc. His widow, Patricia Dragovan (the claimant), filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking burial expenses and survivor benefits for herself and her two children. The arbitrator found in favor of the claimant and awarded her \$802.67 per week in survivor benefits and \$8,000 for burial expenses. On review, the Illinois Workers' Compensation Commission (the Commission) reversed the arbitrator's decision and denied the claimant compensation. The Commission found that the claimant failed to meet her burden of proving that her husband's death was causally related to his work activities. The circuit court, however, reversed the Commission, finding that the Commission's decision was against the manifest weight of the evidence. The circuit court entered a judgment that remanded the matter to the Commission to enter an appropriate benefit award in favor of the claimant. The employer appeals the circuit court's judgment.

¶ 2

STATEMENT OF FACTS

¶ 3 A foreman for the employer, David Cohs, testified that the employer was engaged in the business of installing utilities (cables, pipes, manholes, vaults) in the ground for various companies, including telephone and cable companies. The employee worked under Cohs' supervision from 2004 until the date of his death. Cohs testified that the employee was a laborer who performed any "hand work" and "labor intense" work that had to be done at various job sites. The employee worked with shovels, and his work activities were similar every day. He was 45 years old when he died.

¶ 4 On June 12, 2006, the employee dropped his wife off at the airport at approximately 6:30 a.m. before going to work. At work, Cohs, the employee, and another laborer named

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Tom Nagel were assigned the task of installing a "vault" at two different job sites. Cohs explained that the vaults served as a splice point for fiber optic cables buried in the ground. The vaults weighed approximately 150 pounds. The employee wore a T-shirt, a safety vest, a hard hat, and a pair of gloves, and Cohs described the day as hot, between 80 and 85 degrees.

¶ 5 The employee and Nagel began the day at 7:00 a.m., loading the two vaults, by hand, into a one-ton dump truck. Cohs followed in a separate truck. They drove to the first work site, and the employee and Nagel unloaded the first vault from the truck by hand and set it on the ground. The men then went to the second work site that was approximately one mile away from the first job site. At the second job site, the employee and Nagel unloaded the second vault by hand, set it on the ground, and then returned to the first job site to install the first vault.

¶ 6 Cohs explained that the first task when installing a vault is to dig up, by hand, any utilities that are in the area to expose the cables. At the first job site, the employee and Nagel used shovels to dig up a telephone cable. They dug down about 36 inches to expose the telephone line, which took approximately 15 minutes. Cohs testified that they all were sweating while they worked. After they exposed the telephone line, Cohs used a backhoe to dig a larger hole or trench for the vault. The larger hole measured 6-1/2 to 7 feet long by 4-1/2 feet wide. The employee and Nagel watched Cohs dig to make sure he did not hit anything, including the telephone line, with the backhoe. He could get within 18 inches of the telephone line with the backhoe. The backhoe digging lasted approximately one hour. Once Cohs dug the large hole, the employee and Nagel climbed down into the hole and used their shovels to dig around the phone line and prepare the hole for gravel. This hand digging

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process lasted approximately 20 minutes at the first job site.

¶ 7 Cohs then used a machine to dump six inches of gravel into the hole, and the employee and Nagel used their shovels to spread the gravel around for five to 10 minutes. Once the hole was prepared with the gravel, the employee and Nagel manually lifted the vault, set it down into the hole, and used gravel to level the vault by pushing some underneath it. This process took approximately 10 minutes. Cohs then used the backhoe to back fill the hole. The employee and Nagel shoveled additional loose gravel and dirt into the hole. They finished at the first job site at approximately 10:45 a.m. or 10:50 a.m., and then drove to the second job site.

¶ 8 At the second work site, there were "inner ducts" (1-1/2 inch PVC pipes) sticking out of the ground. Cohs used the backhoe to dig a hole around the inner ducts while Nagel left to dump the dirt that they had loaded into the dump truck from the first vault installation. Cohs could excavate the trench with the backhoe to within 18 inches of the inner ducts. When Cohs finished with the backhoe, the employee climbed into the hole and began using his shovel to uncover the dirt from the inner ducts. The employee was in the hole digging around the inner ducts for approximately 10 minutes before they took a 15 minute break for lunch at approximately 11:00 a.m. During their break, they sat in a truck, ate sandwiches, and talked. Cohs did not notice anything unusual about the employee during the break.

¶ 9 After lunch, Cohs took a few more buckets of dirt out of the hole with the backhoe, and the employee then went back into the hole to finish uncovering the inner ducts with his shovel. Cohs testified that he watched the employee dig for approximately five minutes. At 11:20 or 11:25, he turned around and walked toward his truck to get a tape measure and to check measurements on the plans for the job. Cohs walked 80 feet to his truck, looked

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at the plans, grabbed the tape measure, and came back around the back of his truck approximately five minutes later. Cohs saw the employee out of the hole and about 10 feet away from the hole. The employee looked like he was about to throw up. The employee stumbled and fell against a tree. Cohs testified that the employee's hands "went down" and that he "went right on his face." Before seeing the employee collapse, Cohs had not noticed any shortness of breath or anything else unusual about the employee. The employee had not complained of shortness of breath or of chest pains, and the day's work duties were the kind of work they did every day.

¶ 10 Paramedics arrived very shortly after Cohs called 9-1-1. They arrived at approximately 11:43 a.m. and transported the employee to a hospital. He died in the emergency room at 12:42 p.m.

¶ 11 The claimant testified that the employee seemed to be in good health, had never complained of shortness of breath or high blood pressure and, to her knowledge, did not take any medications. She described him as being "fine" when she last saw him that day when he dropped her off at the airport.

¶ 12 An autopsy of the employee's body revealed that his heart was "globoid," or round in shape. The four chambers of the heart were dilated, particularly the ventricles. The heart was enlarged and weighed 808 grams. Testimony in the record indicates that a normal heart weighs approximately 300 grams. The employee's left anterior descending coronary artery had an organized (old) occlusive thrombus (blood clot). The medical examiner, Dr. Adrienne Segovia, described the thrombus as almost completely occlusive, leaving only a pinpoint lumen opening. Dr. Segovia found that the left ventricle was thickened, and she discovered "coronary atherosclerosis or narrowing of the coronary arteries involving the

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circumflex and right." Dr. Segovia testified that "there was some white/tan discoloration of the lining of the endocardium of the left ventricle, *** the main pumping chamber of the heart, which can result from flow problems associated with the blood in the heart ventricle." She also discovered incidental findings involving the employee's lung, liver, stomach lining, spleen, and thyroid. Dr. Segovia's significant findings included the employee's enlarged heart, dilated ventricles, 75% narrowing of the coronary arteries, and an almost complete occlusion of the left anterior descending coronary artery.

¶ 13 Dr. Segovia determined that the employee's cause of death was "a dilated cardiomyopathy," i.e., the heart was enlarged and all four chambers were dilated. She explained that an enlarged heart is electrically unstable which leads to poor impulse conduction of the electrical impulses of the heart. She believed that the employee died of an abnormal heart rhythm based on the size and dilation of his heart. Dr. Segovia testified that dilated cardiomyopathy can be genetic or caused by long-standing hypertension. It is also seen in alcoholics and obese individuals.

¶ 14 When asked about the kinds of physical or mental activities that could precipitate the onset of an abnormal heart rhythm, Dr. Segovia testified that, with the employee's kind of heart, almost any activity that increases the heart rate could cause the heart to go into an abnormal rhythm. Dr. Segovia also stated that the employee's narrowing of his coronary arteries prevented the heart from receiving as much blood as it should, so it was more sensitive and more likely to go into an abnormal heart rhythm. Dr. Segovia stated that, given the condition of the employee's heart, a hot day combined with strenuous physical labor could have contributed to the employee's death. She believed that, to a reasonable degree of medical certainty, the employee's work activities could have triggered the employee's

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abnormal heart rhythm, and therefore there was a causal connection between his work activities and the cause of his death.

¶ 15 The employer presented the testimony of Dr. Richard Carroll by way of an evidence deposition. Dr. Carroll testified that he was board certified in internal medicine and in cardiovascular diseases. He conducted a review of the employee's medical records and reports at the request of the employer.

¶ 16 Dr. Carroll testified that the employee had two "anatomic difficulties" with respect to his heart: an enlarged heart and a blood clot in a coronary artery. Concerning the employee's enlarged heart, Dr. Carroll testified that many conditions can result in an enlarged heart. Dr. Carroll believed that the employee's enlarged heart was either alcohol related or was an "idiopathic dilated cardiomyopathy where there's no real identified circumstance leading to it." He testified that an enlarged heart is predisposed to irregular heart rhythms. The "architecture" of an enlarged heart changes, and when the architecture of the heart is abnormal, one is predisposed to arrhythmia (irregular heart rhythms).

¶ 17 With respect to the blood clot, Dr. Carroll noted that the employee's "proximal portion of the left anterior descending coronary artery was almost completely occluded." He explained that the heart needed its own blood supply and that there were three main coronary arteries that furnished blood to the heart, the left anterior descending, the circumflex, and the right coronary artery. The left anterior descending coronary artery comes down the main portion of the heart and feeds the largest volume of heart muscle. Dr. Carroll noted that the autopsy revealed a blood clot that obstructed the blood flow in that artery. The limited blood flow in the coronary artery also predisposed the employee's heart to irregular heart rhythms.

¶ 18 Dr. Carroll testified that the thrombus blocking the anterior descending coronary

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artery was a light tan thrombus. He explained that because the blood clot was organized and light tan in color, he did not believe that the thrombus occurred at the time the employee was performing his job duties on the day he died. He believed that the thrombus was older, at least several days or weeks before the time of his death. The blood clot was not the result of a plaque rupture on June 12, 2006.

¶ 19 The thrombus was big enough to totally occlude the artery other than a little pinpoint area where some blood could get through. Because some blood could get through, the heart muscle downstream from the blood clot probably was not dead heart muscle. However, Dr. Carroll testified that because the heart muscle was enlarged and getting very little blood, the heart was in "an absolute setup for a cardiac arrhythmia which is most likely what happened in his case." In Dr. Carroll's opinion, the employee died "as a result of a cardiac arrhythmia which was a function of the dilated cardiomyopathy and that pinpoint narrowing in the left anterior descending coronary artery." Dr. Carroll testified: "In this case a dilated cardiomyopathy with a very small opening left in a coronary artery - - those events often result in spontaneous cardiac events; events that occur just because. So you don't necessarily need a precipitant event. They can occur in and of themselves - - particularly in the kind of setup that [the employee] had." Dr. Carroll believed, to a reasonable degree of medical certainty, that the employee's physical activities were "not a necessary component of [his] cardiac arrhythmia." He did not believe that the employee's physical job activities were "a causative or contributing factor."

¶ 20 Dr. Carroll testified that physical exertion can cause a plaque rupture in an acute coronary syndrome where an acute thrombus impedes blood flow. The employee, however, did not suffer from an acute thrombus but an old one. With respect to Dr. Segovia's opinion

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that cause of death was "dilated cardiomyopathy," Dr. Carroll clarified that the employee died of "an irregular heart rhythm that was a result of his dilated cardiomyopathy."

¶ 21 Dr. Carroll disagreed with Dr. Segovia's opinion that hot weather and strenuous physical labor could have contributed to the employee's death. Dr. Carroll stated, "From my understanding of the information provided to me, the activity that [the employee] was performing was not strenuous physical activity." He agreed that physical activity could be a contributing factor to triggering a cardiac event in someone with the employee's heart condition, but he questioned whether the employee experienced physical exertion sufficient to be a contributing factor. In addition, Dr. Carroll did not believe that physical exertion was absolutely critical for the sudden cardiac event that the employee experienced. Dr. Carroll stated that the event could have happened spontaneously while the employee watched television, but that "physical exertion can also trigger it." He testified as follows:

"So the question is is it the exerting yourself, the not exerting yourself or the underlying abnormality that is the real initiative of the cardiac arrhythmia.

And in my opinion as a cardiologist, if a dilated cardiomyopathy can precipitate a cardiac arrhythmia without physical exertion and one develops a cardiac arrhythmia while doing physical exertion, how would you separate out the two?

The way I would separate out the two is if these events happen spontaneously and *** also happen during physical exertion, the question is was it the spontaneity or the physical exertion that *** caused it to occur.

Since it can occur spontaneously without physical exertion, that would say to me that physical exertion is not a necessary component."

¶ 22 Dr. Carroll did not believe that the job activities that the employee performed earlier

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in the day at the first job site could be considered a precipitant factor in the employee's arrhythmia because "if that activity was precipitating an event, it would have occurred right at that time." Dr. Carroll's understanding of the employee's activities near the time he died was approximately eight to 10 minutes of digging between 10:30 a.m. and 11:25 a.m. After he ate lunch, he got back into the hole and was clearing dirt around a cable in the hole when he stepped out of the trench and had the event. He testified that a sustained increased blood pressure/heart rate from extreme physical exertion could "precipitate an event like that," but his understanding was that the employee was "just cleaning dirt away from cable lines so they can identify cable lines prior to the rest of the activity ***." Dr. Carroll believed, therefore, that the employee was not engaged in heavy physical exertion. He believed that the employee's history of smoking 1.5 packs of cigarettes per day and drinking 60 beers per week contributed to his cardiac condition. At the arbitration hearing, the employer presented the employee's past medical records that indicated that the employee reported that he had smoked one-and-a-half packs of cigarettes per day for a 37.5 pack year history of smoking and drank 60 beers per week.

¶ 23 In his report dated August 26, 2007, Dr. Carroll wrote as follows:

"In my opinion, as a board-certified practicing cardiologist, I see no relationship between [the employee's] work activities on June 12, 2006 and his death. According to the information provided to me, even though he was performing physical activity that day, the intensity and duration of his activity *** would not in and of itself seem significant enough to precipitate a cardiac event, such as an acute plaque rupture leading to an acute coronary syndrome.

* * *

Was the remaining luminal opening, described by the coroner as pinpoint, severe enough that physical activity could have, in this setting, precipitated the type of cardiac arrhythmia [the employee] exhibited? Given such an extensive narrowing, I would be of the opinion that any physical activity, or even lack of activity, could have resulted in a cardiac arrhythmia. In other words, physical activity would not be necessary in order for a patient like [the employee] to develop a cardiac arrhythmia. The degree of coronary occlusion [the employee] possessed and/or the degree of cardiac dysfunction, i.e. his enlarged heart, were sufficient enough conditions to explain his unfortunate death at such a young age, separate and distinct from any work activities he performed that day."

¶ 24 The employer also presented reports that showed local climatological data for the City of Chicago in June 2006. The reports indicate that the high temperature for June 12, 2006 in Chicago was approximately 69 degrees and that the average temperature for that day was 60 degrees.

¶ 25 At the arbitration hearing, the parties stipulated to the amount of the employee's average weekly wage and the amount he earned during the year preceding the injury. The issue the employer disputed was whether the employee's death was causally connected to his work duties. On May 5, 2008, the arbitrator filed his decision finding in favor of the claimant.

¶ 26 The arbitrator noted that Dr. Carroll did not believe that the degree of physical activity performed by the employee was sufficient to trigger his cardiac event. The arbitrator, however, found that the facts relied on by Dr. Carroll were inaccurate, i.e., that the employee's activities only involved "clearing dirt" for 8-10 minutes. The arbitrator

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described the employee's activities as follows:

"[The employee] was lifting and positioning a 150+ pound vault for approximately 10 minutes at approximately 10:10 and thereafter; then shoveling gravel and dirt for approximately 20-30 minutes until about 10:45; as well as digging - - not just "clearing dirt" - - for what appears to be at least 20 minutes during the period from approximately 10:50 to 11:00 and again from approximately 11:20 until the time of the cardiac event[.]"

The arbitrator concluded that Cohs' testimony describing the employee's work duties on the day the employee died proved that "the facts relied upon by Dr. Carroll in reaching his decision that there was no causal connection were incorrect, rendering Dr. Carroll's causation opinion unreliable."

¶ 27 The arbitrator found that both Dr. Segovia and Dr. Carroll generally agreed that physical exertion could "trigger" or contribute to a cardiac event like the one that led to the employee's death. He also found that, based on the testimony of Cohs, the employee's job duties on June 12, 2006, including those performed between 10:00 a.m. and 11:40 a.m., involved strenuous physical exertion. Accordingly, the arbitrator concluded that the employee sustained an accidental injury arising out of and in the course of his employment on June 12, 2006 and that his death on June 12, 2006 was causally connected to this accident. The arbitrator ordered the employer to pay the claimant \$802.67 per week for death benefits and ordered the employer to pay the claimant \$8,000 for burial expenses.

¶ 28 On appeal, the Commission reversed the arbitrator's decision, finding that the claimant failed to meet her burden of proving that the employee's death was causally related to his work activities. The Commission, therefore, denied the claimant compensation.

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¶ 29 In its decision and opinion on review, the Commission found Dr. Carroll's opinions to be more persuasive than Dr. Segovia's opinions. The Commission described Dr. Carroll's testimony as follows: "Dr. Carroll opined that [the employee's] heart was diseased *** to the point that no precipitant event was needed for him to suffer a fatal cardiac arrhythmia. *** He further indicated that in [the employee's] case, a dilated cardiomyopathy with a very small opening left in the coronary artery often results in spontaneous cardiac events." The Commission also noted that both medical experts testified that the employee's "heart was in such a diseased state that no physical activity was necessary for arrhythmia to occur."

¶ 30 The Commission found that the arbitrator erred in finding that Dr. Carroll's opinions were inaccurate while Dr. Segovia's opinions were based on fact. The Commission believed that Dr. Carroll's testimony about the employee's work activities "was accurately based on the events of that day." The Commission discounted Dr. Segovia's opinion that the employee's work duties could have triggered the cardiac event because she "noted that she was going to assume that it was a hot day and that there was strenuous physical labor involved." Those facts, the Commission stated, were not in evidence. The Commission found that the day was not hot because the temperature hovered in the 50's and 60's. The Commission found that the employee was not "digging in a trench with a shovel," but "was digging and cleaning off loose dirt prior to his collapse." The Commission concluded that "[w]hile there is medical testimony that physical activity could precipitate a fatal arrhythmia in someone with [the employee's] heart abnormalities, we find that the record does not support that it was more probable than not that the decedent's work duties actually did so."

¶ 31 The claimant appealed the Commission's decision to the circuit court. On review, the circuit court held that the Commission's finding that the employee's cardiac arrhythmia and

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subsequent death did not arise out of his employment is against the manifest weight of the evidence. The circuit court reversed the Commission and remanded the matter to the Commission to enter an appropriate benefit award in favor of the claimant.

¶ 32 In reversing the Commission, the circuit court found that "Dr. Carroll's opinion does not withstand scrutiny." The circuit court took issue with Dr. Carroll's opinion as follows:

"First, he changed his opinion on the critical issue in this case – whether physical activity may cause cardiac arrhythmia in a person with [the employee's] medical condition. In his evidence deposition, Dr. Carroll stated that only strenuous physical activity may trigger cardiac arrhythmia, but earlier, in his written report, he stated that any physical activity could have triggered [the employee's] cardiac arrhythmia. Second, Dr. Carroll offered an inconclusive basis for his opinion that [the employee's] employment was not the cause of death. Third, and in any event, the only reasonable inference to be drawn from the evidence in the record is that [the employee] was engaged in heavy manual labor when he suffered his cardiac arrhythmia."

¶ 33 The circuit court, therefore, concluded that "the Commission should have accepted Dr. Segovia's opinion over Dr. Carroll's and affirmed the Arbitrator's decision." The circuit court remanded the matter to the Commission to enter an appropriate benefit award for the claimant. The employer appeals the judgment of the circuit court reversing the Commission's decision.

¶ 34

ANALYSIS

¶ 35

Appellate Jurisdiction

¶ 36 Although the parties do not raise the issue of this court's jurisdiction over this appeal,

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we are required to do so *sua sponte*. *Williams v. Industrial Comm'n*, 336 Ill. App. 3d 513, 515, 784 N.E.2d 396, 398 (2003). The appellate court's jurisdiction is limited to reviewing final judgments, subject to statutory or supreme court rule exceptions. *Williams*, 336 Ill. App. 3d at 515, 784 N.E.2d at 398-99. Generally, when the circuit court reverses a decision of an administrative agency and remands the case to the agency for further proceedings involving disputed questions of law or fact, the order is not final for appeal purposes. *Williams*, 336 Ill. App. 3d at 516, 784 N.E.2d at 399. "If, however, the agency on remand has only to act in accordance with the directions of the court and conduct proceedings on uncontroverted incidental matters or merely make a mathematical calculation, then the order is final for purposes of appeal." *Williams*, 336 Ill. App. 3d at 516, 784 N.E.2d at 399.

¶ 37 In *A.O. Smith Corp. v. Industrial Comm'n*, 109 Ill. 2d 52, 53, 485 N.E.2d 335, 336 (1985), a surviving spouse sought workers' compensation benefits after the death of her husband caused by injuries he sustained during the course of his employment. The Commission awarded the spouse only funeral expenses, but the circuit court reversed and remanded the matter to the Commission for further proceedings. *A.O. Smith Corp.*, 109 Ill. 2d at 54, 485 N.E.2d at 336. On appeal, the supreme court addressed the issue of whether the circuit court's order was a final and appealable order. *A.O. Smith Corp.*, 109 Ill. 2d at 54, 485 N.E.2d at 336. In electing to retain its jurisdiction over the appeal, the court noted that "[t]he parties have stipulated to the facts, including the amount of the decedent's earnings and the weekly benefits payable if the statute at the time of the death is applicable." *A.O. Smith Corp.*, 109 Ill. 2d at 54, 485 N.E.2d at 336. The court stated that "[t]he calculation of the amount of the award upon affirmance is a simple mathematical process, and under the circumstances we elect not to dismiss the appeal." *A.O. Smith Corp.*, 109 Ill.

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2d at 54-55, 485 N.E.2d at 336.

¶ 38 In the present case, the parties stipulated that the deceased employee earned \$62,608 for the year preceding his death and that his average weekly wage was \$1,204. In addition, the employer did not contest the amount of the claimant's burial expenses (\$8,625.67). The disputed issue at the arbitration hearing was whether the employee's death was causally related to his work duties. The arbitrator found in favor of the claimant and awarded her \$802.67 per week for death benefits pursuant to section 7(a) of the Act (820 ILCS 305/7(a) (West 2008) and \$8,000 for burial expenses, the maximum amount allowed pursuant to section 7(f) of the Act (820 ILCS 305/7(f) (West 2008)). The Commission reversed the arbitrator's decision, finding that the claimant failed to carry her burden of proving a causal connection between the employee's death and his job activities. The circuit court reversed the Commission and remanded the matter to the Commission to enter an appropriate benefit award in favor of the plaintiff.

¶ 39 On remand from the circuit court, the Commission's task would be to ascertain the proper award amount for death benefits and burial expenses. Since the parties stipulated to the deceased employee's average weekly wage, the determination of the death benefits award involves a simple mathematical calculation (820 ILCS 305/7(a), 8(b)(2) (West 2008)). In addition, the employer does not dispute that the claimant incurred burial expenses in excess of the maximum allowable (\$8,000) under section 7(f) of the Act (820 ILCS 305/7(f) (West 2008)). The proceedings before the Commission after remand, therefore, will not involve resolution of questions of law or fact but would involve uncontroverted incidental matters and a simple mathematical calculation. Under such circumstances, the circuit court's judgment that reversed the Commission and remanded the case for the Commission to "enter

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an appropriate benefit award" was a final and appealable judgment. Accordingly, we have jurisdiction over this appeal.

¶ 40 Causal Connection Between Employee's Death and Job Duties

¶ 41 Turning to the merits of the appeal, we are asked to review the Commission's finding that the claimant failed to carry her burden of proving that the employee's death was causally connected to his job activities.

¶ 42 Under the Act, a compensable injury is one that both "arises out of" and is "in the course of" a claimant's employment. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). "An injury is said to 'arise out of' one's employment when there is a causal connection between the employment and the injury; that is, the origin or cause of the injury must be some risk connected with the claimant's employment." *Hosteny*, 397 Ill. App. 3d at 676, 928 N.E.2d at 483. "[E]ven though 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." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-73 (2003). It is not necessary to prove that the 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, 185 N.E.2d 877, 884 (1962).

¶ 43 "[W]hether an injury arose out of and in the course of one's employment is generally a question of fact." *Hosteny*, 397 Ill. App. 3d at 674, 928 N.E.2d at 482. We will not reverse findings of fact unless they are against the manifest weight of the evidence. *R & D Theil v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 868, 923 N.E.2d

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870, 878 (2010). "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009). On review, a court "must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Sisbro*, 207 Ill. 2d at 206, 797 N.E.2d at 673. However, despite the high hurdle that the manifest weight of the evidence standard presents, it does not relieve us of our obligation to impartially examine the evidence and to reverse an order that is unsupported by the facts. *Boom Town Saloon, Inc. v. The City of Chicago*, 384 Ill. App. 3d 27, 32, 892 N.E.2d 1112, 1117 (2008). In the present case, we agree with the circuit court's thorough and well-reasoned judgment in which the court found that the Commission's decision was against the manifest weight of the evidence.

¶44 The relevant evidence at the arbitration hearing consisted primarily of testimony from Cohs, who described the employee's work activities on the day he died; Dr. Segovia, who conducted the autopsy of the employee; and Dr. Carroll, who conducted a documents review at the request of the employer. The medical experts agreed that, on the day the employee died, he suffered from an enlarged, globoid heart and from a significant blood clot in the left anterior descending coronary artery, which furnishes the blood supply to a large portion of the heart. Dr. Carroll believed that the employee's enlarged heart was either related to his alcohol consumption or was an "idiopathic dilated cardiomyopathy," meaning that there was "no real identified circumstance leading to it." Both experts agreed that the blood clot was "old" and had occurred days or weeks before the employee's death. Neither expert opined

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that the blood clot was an acute condition that arose due to the employee's work duties on the day he died or that the employee's heart became enlarged because of work-related duties.

¶ 45 The experts, however, agreed that the employee's two preexisting cardiac conditions made the employee's heart susceptible to abnormal heart rhythms (cardiac arrhythmia) and that physical exertion can precipitate a cardiac arrhythmia for a person with the employee's cardiac conditions. The experts also agreed that the employee died while performing his work duties due to cardiac arrhythmia. The factual issue the Commission was left to decide was whether the claimant proved that the employee's work duties caused or contributed to the sudden onset of the cardiac arrhythmia that resulted in the employee's death.

¶ 46 The evidence contained two differing medical opinions on this disputed issue of fact. Dr. Segovia testified that with the employee's cardiac conditions, almost any activity that increases the heart rate could cause the heart to go into an abnormal rhythm. She believed that, to a reasonable degree of medical certainty, the employee's work activities could have triggered his abnormal heart rhythm. The Commission, however, found the testimony of Dr. Carroll more reliable than the opinion of Dr. Segovia. While normally the assessment of medical testimony is within the province of the Commission, under the facts of this case, we agree with the circuit court that the opinion of Dr. Carroll "does not withstand scrutiny."

¶ 47 The circuit court's judgment highlighted three substantial deficiencies in Dr. Carroll's testimony which make reliance on his opinion contrary to the manifest weight of the evidence: (1) he changed his opinion on the crucial issue in this case, (2) the basis for his opinion on causation was inconclusive, and (3) most importantly, his opinion was based on an incorrect assumption that the employee was not engaged in heavy manual labor when he suffered his cardiac arrhythmia.

¶ 48 First, as noted above, the critical issue in this case is whether the employee's physical activities were causally connected to the cardiac arrhythmia that resulted in the employee's death. Dr. Carroll's opinion wavered and was inconsistent on this crucial issue. Dr. Carroll testified that in a patient with the employee's conditions, cardiac arrhythmia may be triggered either spontaneously or by physical exertion. He opined that the employee's cardiac arrhythmia was not caused by physical exertion because he understood that the employee was not engaged in strenuous physical activity when it occurred. He testified, "From my understanding of the information provided me, the activity [the employee] was performing was not strenuous physical activity." Dr. Carroll opined in his testimony that the "degree" of the employee's physical activity was not sufficient to trigger the cardiac arrhythmia. When asked what degree of physical exertion would be necessary to trigger a cardiac event in an individual with the employee's conditions, Dr. Carroll stated that "from an arrhythmia perspective it would be a sustained increase in heart rate/blood pressure over several minutes." With respect to the employee's physical activities, he testified as follows: "So from my understanding, he wasn't doing heavy physical exertion digging ditches. He was clearing dirt in an 18-inch hole to try and identify where some cables were and, to me, that didn't seem to be extreme physical exertion."

¶ 49 As noted by the circuit court, Dr. Carroll's opinion that only strenuous physical activity could have triggered the employee's cardiac arrhythmia is contradicted by his own report and by other portions of his testimony. As noted above, in his August 26, 2007 report, Dr. Carroll wrote as follows, "I would be of the opinion that any physical activity, or even lack of activity, could have resulted in a cardiac arrhythmia." (emphasis in original.) Also, at one point in his testimony, he stated, "so if no activity is necessary to precipitate an

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event, a little bit of activity would be sufficient to precipitate an event - - "

¶ 50 Because the central issue in this case is whether the employee's job activities caused or contributed to his cardiac arrhythmia, we find Dr. Carroll's inconsistent and conflicting opinion testimony to be critically flawed. As the circuit court pointed out, the Commission "accepted Dr. Carroll's opinion over Dr. Segovia's without acknowledging that Dr. Carroll changed his opinion on the central issue in this case."

¶ 51 Second, we agree with the circuit court that Dr. Carroll's opinion was not only inconsistent, but that his explanation of his opinion was inconclusive at best. Dr. Carroll testified that "a dilated cardiomyopathy can precipitate a cardiac arrhythmia without anything happening whatsoever." He opined that it could happen sitting around and doing nothing or while exerting oneself. He stated: "Since it can occur spontaneously without physical exertion, that would say to me that physical exertion is not a necessary component."

¶ 52 Dr. Carroll's explanation of his opinion is simply another way of saying that cardiac arrhythmia may occur spontaneously. Whether physical exertion is a "necessary component" is not the issue. This testimony does not address the crucial issue of whether the employee's work related activities were a cause of his death. The supreme court has held that "even though 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." *Sisbro*, 207 Ill. 2d at 205, 797 N.E.2d at 672-73. "[A] pre-existing heart condition does not preclude an award under [the Act]." *Ludwig v. Industrial Comm'n*, 192 Ill. App. 3d 729, 736, 549 N.E.2d 1, 5 (1990). "It is only necessary to show that the stress of the employee's work was *one* causative factor, and need not exclude every other possible contributing factor." (emphasis in original.) *Ludwig*, 192

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Ill. App. 3d at 736, 549 N.E.2d at 5.

¶ 53 As noted above, Dr. Carroll opined that *any* physical activity could have triggered the employee's cardiac arrhythmia, and Dr. Segovia testified that almost any activity that increases the heart rate could have caused the employee's heart to go into an abnormal rhythm. The undisputed evidence at the arbitration hearing established that the employee was engaged in manual labor, moving dirt with a shovel, at the time he suffered the cardiac arrhythmia.

¶ 54 Third, Dr. Carroll incorrectly understood that the employee was not engaged in heavy physical labor before his death. The Commission relied on Dr. Carroll's opinion, in part, because the Commission concluded that "the record does not reflect that the decedent was digging in a trench with a shovel, as Cohs testified that the decedent was digging and cleaning off loose dirt prior to his collapse." We agree with the circuit court that "the Commission's finding that Dr. Carroll correctly understood that [the employee] was not engaged in heavy physical labor before his death is against the manifest weight of the evidence."

¶ 55 The testimony at the arbitration hearing established the procedure for installing the vaults. The vaults served as a splice point for the telephone cables, and the backhoe excavated the trench for the vault only to within 18 inches of the inner ducts or phone lines. The remaining earth was excavated by hand by the employee from inside the trench. The assertion that the employee was merely shuffling loose dirt around in the trench is not supported by the testimony. The trench for the vault had to be dug to a depth of 30 to 36 inches. Dr. Carroll incorrectly concluded that the employee "was clearing dirt in a 18-inch hole to try to identify where some cables were."

¶ 56 In addition, the other laborer, Nagle, had left the job site with the dump truck when the second trench was excavated, and the employer did not present evidence that Cohs ever entered into the trench to help the employee dig. Accordingly, the evidence established that the employee alone did all of the hand excavating in the trench for the second vault. The employer maintains that the weather was not hot, but was in the mid-60's according to weather data records. However, the undisputed evidence established that the employee's job duties were strenuous enough to cause him to sweat while he worked, regardless of the temperature. The cooler temperature, therefore, only further supports the conclusion that the employee exerted strenuous physical effort immediately prior to his cardiac arrhythmia.

¶ 57 The evidence leads to only one rational conclusion, i.e., that the employee was engaged in heavy manual labor in the second trench at the time of the cardiac arrhythmia. The Commission's contrary conclusion is against the manifest weight of the evidence. Furthermore, the evidence established that the employee's heavy manual labor that he performed immediately before the cardiac arrhythmia was at least for the "several minutes" that Dr. Carroll testified would be necessary to cause cardiac arrhythmia. According to Cohs, just before the employee collapsed, the employee was digging in the trench for approximately 10 to 20 minutes. Cohs watched the employee dig in the trench for five minutes before he left to get a tape measure and look at plans at his truck. He testified that he was gone for five minutes, but in other testimony, he stated that he left to get the tape measure as early 11:20 a.m. and returned as late as 11:40 a.m. The testimony further established that it took the employee and Nagel twenty minutes to hand excavate the first trench together. As noted by the circuit court, "[r]egardless of the amount of time [the employee] was digging in the trench, [he] was engaged in heavy physical labor for several

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minutes."

¶ 58 We conclude that Dr. Carroll had an incorrect understanding of the physical labor that the employee was engaged in when he suffered his cardiac arrhythmia. No reasonable inference can be drawn except that the employee was engaged in heavy physical labor at the time of the onset of the cardiac arrhythmia. Accordingly, even if only several minutes of sustained physical exertion are necessary to trigger the employee's cardiac arrhythmia, the record establishes that the employee was engaged in just that type of activity. We agree with the circuit court that "Dr. Carroll's changed opinion, inconclusive explanation for excluding physical labor as a causative factor, and misunderstanding of the facts make it clearly apparent the Commission should have accepted Dr. Segovia's opinion over Dr. Carroll's and affirmed the [a]rbitrator's decision."

¶ 59 Both experts in the present case gave testimony that physical activity could have triggered the employee's cardiac event, and the evidence established that the employee was involved in strenuous physical labor at the time of the onset of the cardiac event. The evidence, therefore, "clearly indicates" that the employee's cardiac arrhythmia was caused in part by exertion while performing job related duties. *County of Tazewell*, 193 Ill. App. 3d at 313, 549 N.E.2d at 808. "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." *General Electric Co. v. Industrial Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982).

¶ 60 "While we are not easily moved to set aside a Commission's decision on a factual question, we will not hesitate to do so where the clearly evident, plain, and indisputable weight of the evidence compels an apparent, opposite conclusion." *Montgomery Elevator*

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Co. v. Industrial Comm'n, 244 Ill. App. 3d 563, 567, 613 N.E.2d 822, 825 (1993). Under the facts of the present case, we are compelled to set aside the Commission's decision.

¶ 61 CONCLUSION

¶ 62 For the foregoing reasons, the judgment of the circuit court reversing the decision of the Commission is affirmed and this cause is remanded to the Commission for further proceedings.

¶ 63 Affirmed and remanded.

¶ 64 PRESIDING JUSTICE McCULLOUGH, dissenting.

¶ 65 I disagree with the majority. We cannot ignore one of the primary rules, giving credence to Commission decisions. Commissioners Lamborn, Rink and Sherman rendered a unanimous decision.

¶ 66 The Commission found that the claimant failed to meet her burden of proving that decedent's work activity was causally related to his death. The Commission found "that Dr. Carroll's opinions were more persuasive than Dr. Segovia's. Dr. Carroll opined that the decedent's heart was diseased (enlarged heart, narrow coronary artery) to the point that no precipitant event was needed for him to suffer a fatal cardiac arrhythmia. Dr. Carroll opined that the decedent died as a result of 'cardiac arrhythmia which was a function of the dilated cardiomyopathy and that pinpoint narrowing in the left anterior descending coronary artery.' He further indicated that in the decedent's case, a dilated cardiomyopathy with a very small opening left in the coronary artery often results in spontaneous cardiac events."

The Commission further found that:

"Both Dr. Carroll and Dr. Segovia agreed that the decedent had a globoid-shaped heart with a long standing occlusion of the descending coronary artery that left only a pinhole-sized opening, a condition that greatly increased the likelihood that the decedent would experience cardiac arrhythmias, thus increasing the risk of sudden death. Importantly, both physicians stated that the decedent's heart was in such a diseased state that no physical activity was necessary for arrhythmia to occur.

We find that the Arbitrator erred in finding that Dr. Carroll's opinions were inaccurate and that Dr. Segovia's opinions were based in fact. In reviewing Mr. Cohs's testimony, we find that it is clear that Dr. Carroll's testimony of the decedent's work activities immediately prior to the cardiac event was accurately based on the events of that day."

¶ 67 A review of the majority decision shows that the decision simply ignores the standard of review of the Commission's decision.

¶ 68 It is important to state the Commission's finding:

"That the Arbitrator's reliance on Dr. Segovia's opinions is misplaced. Contrary to Petitioner's assertion, Dr. Segovia's opinions are based on a hypothetical that essentially asked her to assume that the decedent took a 15 minute break at 11:00 a.m., resumed activity of digging in a trench with a shovel for about 15-20 minutes in 85 degree heat, suffered an onset of symptoms, and then was seen climbing out of the trench. In opining that the specific work activities described could have triggered the decedent's deadly arrhythmia, Dr. Segovia specifically noted that she was going to assume that

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it was a hot day and that there was strenuous physical labor involved. We find that the facts on which Dr. Segovia relied were not facts in evidence. We find that it was not a hot day as she presumed because the temperature hovered in the 50's and 60's. Moreover, the record does not reflect that the decedent was digging in a trench with a shovel, as Mr. Cohs testified that the decedent was digging and cleaning off loose dirt prior to his collapse."

¶ 69 The circuit court's order should be reversed. The Industrial Commission decision should be reinstated.

¶ 70 Justice Hudson joins in the dissent.