No. 4--09–0901WC

Order filed March 2, 2011.

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CALHOUN SKILLED CARE,	)	Appeal from the Circuit Court
	)	of Greene County, Illinois
Appellant,	)	
	)	
v.	)	No. 07--MR--27
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al.* (Rosa Gibson, Appellee.)	)	James W. Day,
	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McCullough and Justice Hudson concurred in the judgment.
Justice Hoffman concurred in part and dissented in part, joined by Justice Stewart.

ORDER

Held: The Commission's finding that the claimant proved a causal connection between her current condition of ill-being and her work-related activities was against the manifest weight of the evidence.

The claimant, Rosa Gibson, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2004)), seeking benefits for low-back injuries she allegedly received while working for Calhoun Skilled Care (Calhoun). Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2004)),

an arbitrator found that the claimant failed to prove that she sustained injuries arising out of and in the course of her employment with Calhoun. Specifically, the arbitrator found that the claimant failed to prove that her injury was the result of any increased risk associated with her employment or that she was exposed to a risk of injury to a greater extent than a member of the general public. As a consequence, the arbitrator declined to award the claimant any benefits under the Act.

The claimant filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). In a decision with one commissioner dissenting, the Commission found that the claimant sustained accidental injuries on October 9, 2004, arising out of and in the course of her employment with Calhoun. The Commission awarded the claimant 45 5/7 weeks of temporary total disability (TTD) benefits, ordered Calhoun to pay $11,169.58 for medical expenses incurred by the claimant, and ordered Calhoun to authorize prospective medical treatment for the claimant. The Commission remanded the matter to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

Thereafter, Calhoun filed a petition for judicial review of the Commission's decision in the circuit court of Greene County. The circuit court confirmed the Commission's decision, and this appeal followed.

FACTS

Calhoun operates a residential care facility in Hardin, Illinois. The claimant was employed by Calhoun as a licensed practical nurse and had been so employed for approximately 10 years prior to the events giving rise to this action. In addition to traditional nursing duties, the

claimant helped to lift and transfer patients to and from bed, to and from a wheelchair, and to and from the toilet.

After having completed dispensing medications, the claimant went to Calhoun's dining room at approximately 5:30 p.m. on October 9, 2004, to assist with feeding the residents. The claimant testified that she assisted a wheelchair-bound resident who wanted to leave the dining room. According to the claimant, she pulled the patient's wheelchair away from the dining table and then pushed the wheelchair forward so that the patient could maneuver out of the door. After she finished pushing the resident, the claimant let go of the handles of the wheelchair and turned to her left to return to the dining table to assist other residents. She stated that she then experienced what felt like a jolt of electricity from her head down to her toes. She testified that she felt numb, stooped down, and called for her supervisor, Karen Droege. The claimant was lowered to the floor, after which other employees assisted her into a wheelchair and brought her to a lounge where she reclined on a sofa. Her husband was called, and he took her to the clinic at Boyd Hospital in Carrollton, Illinois.

The records of Boyd Hospital reflect that when the claimant was seen on October 9, 2004, she complained of discomfort in her neck and shoulder for two days and reported that she had experienced tingling and numbness in her left arm and leg, neck, and face. The examining physician diagnosed a musculoskeletal strain of the left shoulder and prescribed medication. The report also states that the claimant had a history of an osteoarthritic neck. However, the claimant testified that she had never been diagnosed with, or treated for, an osteoarthritic neck and did not know the source of that notation in the hospital record.

The claimant returned to work on October 11, 2004, and worked her shift. According to the claimant, she worked slowly and was assisted by certified nurse assistants.

The claimant testified that she did not report to work on October 12, 2004, because she "felt really bad." On that same day, she went to the Dugger Chiropractic Clinic complaining of neck and mid-back pain. The notes of that visit state that the claimant was pushing a patient in a wheelchair at work when she became weak and nauseated, her blood pressure went up, and she experienced numbness on the left side of her face, torso, and legs. According to the notes, the claimant's symptoms began on the prior Saturday, October 9, 2004, at about 4:45 p.m. Dr. Blake Dugger referred the claimant to the Jersey Community Hospital for an x-ray of her cervical spine. The radiologist's report of those x-rays states that the vertebral alignment of the claimant's cervical spine appeared normal, the prevertebral soft tissue and intervertebral joint spaces appeared free of abnormality, the bony foramina did not appear significantly narrowed; and no fracture or subluxation was seen. In summary, the report states that there was no radiographic evidence of disease of the spinal cord. The records of the Dugger Chiropractic Clinic reflect that the claimant was also treated on October 15, 2004.

On October 16, 2004, the claimant went to the emergency room of the Jersey Community Hospital complaining of pain in her neck, left arm and shoulder, along with numbness in her face and legs. She reported having experienced an "electric shock" on the entire left side of her body as she turned to walk on the prior Saturday, October 9, 2004, at 5:00 p.m. The claimant was examined and sent to the radiology department for a CT scan of her head. The radiologist's report of the scan states that no evidence of an abnormality of the brain parenchyma was detected. Following the CT scan, the emergency room physician diagnosed a cervical strain and

prescribed medication and a soft collar. The claimant was discharged and advised to follow up with her primary care doctor.

The claimant sought medical care from her family physician, Dr. David Harmon, on October 18, 2004. The doctor's record of that visit contains a history of the claimant feeling an "explosion" in her neck while pushing a patient on October 9, 2004. Dr. Harmon diagnosed a cervical strain. He instructed the claimant to continue wearing a soft collar and prescribed medication. The claimant testified that Dr. Harmon authorized her to remain off of work on that date, but there is no corroborating notation in the doctor's records.

After seeing Dr. Harmon on October 18, 2004, the claimant completed an "Employee Report of Injury" form for Calhoun. In that report, the claimant wrote that, on October 9, 2004, she pushed a resident in a wheelchair, turned to her left, and felt an "instant rushing pin prick sensation" all over her body. She stated that she was suffering from pain on the left side of her neck and shoulder.

The claimant returned to see Dr. Harmon on October 26, 2004. The doctor's record of that visit notes muscle spasms in the claimant's upper left trapezius. Dr. Harmon diagnosed a resolving cervical strain, prescribed physical therapy and medication, and authorized the claimant to remain off work with a possible return-to-work date of November 8, 2004.

The claimant began physical therapy at Jersey Community Hospital on November 1, 2004. The clinical evaluation form completed when she began physical therapy states that the claimant pushed a wheelchair while working on October 9, 2004, and that, when she turned her head to the left, she felt an "electric shock" down her spine through her neck, back, and face. The form also states that the claimant did not have a past medical history for this problem and

that she was in overall good health. The therapist's initial diagnosis was an acute strain of the cervical spine.

On November 12, 2004, Dr. Harmon authorized the claimant to remain off work until November 23, 2004, due to an acute neck strain. The claimant completed the prescribed physical therapy, having attended all recommended sessions. On November 23, 2004, Dr. Harmon released the claimant to return to work on November 29, 2004, restricted, however, to no pushing or pulling of over 50 pounds and a reduced work schedule of four hours per day through December 5, 2004.

The claimant returned to work on November 11, 2004, and was assigned to a sit-down job doing clerical work, four hours per day, three days per week. On December 3, 2004, Dr. Harmon authorized the claimant to continue working four hours per day and ordered additional physical therapy.

The claimant next saw Dr. Harmon on December 7, 2004. At that time she reported numbness in her face and lips. Dr. Harmon prescribed medication and ordered an MRI of the claimant's cervical spine. The radiologist's report of that scan, which was done on December 14, 2004, notes endplate and uncovertebral joint spurring posteriorly and posterolaterally at C5-C6 with mild right foraminal narrowing at C5-C6, and mild diffuse disc bulging at C5-C6. No other disc herniation, significant disc bulging, or significant cervical spine abnormality was seen.

At the request of Calhoun, the claimant was examined by Dr. Russell Cantrell on December 21, 2004. In his report of that visit, Dr. Cantrell set forth the history related to him by the claimant, the medical records which he reviewed, and the scope of his examination. The report states that the claimant related having provided patient-care assistance to the nursing aides

while working on October 4, 5, and 6, 2004, and that on October 7 and 8, 2004, she noted some soreness in her neck. On October 9, 2004, she pushed a resident in a wheelchair in Calhoun's dining room and afterwards turned to the left to exit the dining room when she felt a sharp pain originating in her neck and shooting down to her feet. The claimant also experienced tingling in the fingers of her left hand. As of the date of the examination, however, the claimant reported that all of the symptoms in her hand and feet had resolved and that her only remaining complaint was the pain in her neck.

Dr. Cantrell's review of the claimant's medical records revealed no radiographic evidence of cervical spine disease. And although the doctor found that it was possible that the claimant experienced some transient myelopathic symptoms, he found no evidence of ongoing cervical myelopathy. Dr. Cantrell did find significant, however, a notation in Dr. Harmon's records that the claimant had reported a history of osteoarthritis in her neck. The claimant denied ever having reported such a condition to any physician and denied any history of pain in her neck prior to October 2004.

Dr. Cantrell concluded that the claimant's subjective complaints were most consistent with osteoarthritis in her cervical spine, and he opined that her complaints are not causally related to a specific work activity or to her occupational activities in general. Although his report states that the claimant's current physical therapy was appropriate, Dr. Cantrell, nevertheless, found that the claimant had reached maximum medical improvement (MMI), and he did not feel it necessary to restrict her activities. He was also of a belief that the claimant had not sustained any permanent disability as a result of her reported work incident.

Dr. Harmon next saw the claimant on December 23, 2004. The doctor's notes of that visit state that the claimant reported feeling a "little" better, but still experiencing pain when moving her neck. Dr. Harmon diagnosed a slowly improving cervical strain, recommended continued physical therapy, and authorized the claimant to continue working four-hour work days through December 31, 2004, when she could attempt working eight-hour days.

Although still performing light-duty tasks, the claimant resumed working eight-hour shifts on January 1, 2005. Rebecca Watters, Calhoun's director of nursing services, testified that the claimant could have worked five eight-hour shifts per week after January 1, 2005, but that she only wanted to work three eight-hour shifts per week.

Based upon Dr. Cantrell's report, Calhoun's insurance carrier terminated the claimant's workers' compensation benefits on January 14, 2005, and informed her of that action by letter.

The claimant returned to see Dr. Harmon on February 1, 2005, complaining of increased neck pain which was preventing her from functioning at work. Dr. Harmon again diagnosed a neck strain and referred her to Dr. Edward Trudeau, the director of physiatry services at Memorial Medical Center, for electrical studies.

Dr. Trudeau examined the claimant on March 22, 2005. In his report of that visit, Dr. Trudeau outlined the history given by the claimant, her complaints, the records he reviewed, and the extent of his physical examination. Dr. Trudeau performed a nerve conduction study and EMG of the claimant's upper extremities. According to the doctor's report, the nerve conduction study of the left upper extremity was normal when compared to the right; however, the EMG of the left upper extremity revealed irritably and positive waves in the left C6 innervated muscles and in the left cervical paraspinal region. Dr. Trudeau wrote that the results were consistent with

C6 radiculopathy. He recommended a cervical myelogram, cervical discogram, a bone scan of the claimant's back and left upper extremity, evaluation by neurological and vascular specialists, continued physical therapy, medication, and continued treatment by Dr. Harmon.

The claimant saw Dr. Harmon on March 23, 2005, at which time she again complained of neck pain. Dr. Harman diagnosed chronic cervical strain and elevated blood pressure, and he prescribed medication.

Watters testified that the facility administrator, Barb Ledder, notified her on March 25, 2005, that several residents informed her that the claimant was in pain. She stated that she and Ledder met with the claimant, and she told the claimant to "go home [and] take care of herself." The claimant testified that she was working at the desk when she was called into the office where both Watters and Ledder were present. According to the claimant, Watters told her to go home and take care of herself and get well. The claimant stated that she was not told when to come back, so she assumed that she no longer had a job. She also stated that Watters told her that they no longer had a place for light-duty work. Watters denied ever telling the claimant that she could not return to work or that she was fired. Watters did admit, however, that the claimant appeared in daily pain from the time that she returned to work in January 2005 until she left on March 25, 2005. After March 25, 2005, the claimant never returned to work. According to Watters, as of March 26, 2005, the claimant could have returned to work anytime on an eight-hour per day schedule. She testified that she spoke to the claimant on two occasions, and the claimant told her that she was in pain and could not return to work.

On a referral from Dr. Harmon, the claimant was examined by Dr. Margaret MacGregor, a neurosurgeon, on May 23, 2005. The claimant gave a history of having experienced neck and

left shoulder stiffness while working on October 4, 5, and 6, 2004, and having felt an "electric shock" from her head to her toes while pushing a patient on October 9, 2004. She complained of pain and stiffness in her neck, stiffness in her left shoulder, and intermittent numbness in her left arm and hand. In her report of that visit, Dr. MacGregor outlined the extent of her physical examination or the claimant and her review of the claimant's medical records. According to the report, the claimant exhibited stiffness in her joints and restriction of joint motion. The presence of arthritis was noted. Dr. MacGregor also noted that, during the course of the examination, the claimant put forth "[q]uestionable full effort in left upper extremities." Dr. MacGregor recorded her agreement with the radiologists' assessments of the claimant's December 14, 2004, MRI and her EMG of March 22, 2005; namely: endplate and uncovertebral joint spurring posteriorly and posterolaterally at C5-C6 with mild right narrowing and mild disc bulge and left C6 radiculopathy.

Dr. MacGregor ordered x-rays of the claimant's cervical spine which were taken at Jersey Community Hospital on May 26, 2005. The radiologist's report of those x-rays states that no gross fractures were detected, no abnormal movement was seen in the flexion or extension views, and no radiographic abnormalities were seen in the claimant's cervical spine. A mild curvature of the cervical spine was noted to the left.

The claimant returned to see Dr. MacGregor on August 4, 2005, complaining of pain in her neck and left triceps, along with numbness in her left arm and face. In her report of that visit, the doctor noted that the claimant's claims of pain were "out of proportion to exam and film findings." Nevertheless, Dr. MacGregor recommended that the claimant undergo cervical epidural steroid injections.

The claimant had two epidural steroid injections which were administered by Dr. Ferdinand Salvacion at the Memorial Medical Center's pain clinic on August 24, 2005, and September 7, 2005. Dr. Salvacion's records reflect that the claimant complained of pain in her neck, radiating to her left shoulder, left arm and hand, left clavicle, and head. She described her pain as constant aching, burning, throbbing, and tingling which increased when she used her arms. On a scale of 0 to 10, with 0 representing no pain and 10 representing the worst level of pain, the claimant reported that her average pain level was 6 to 7. Dr. Salvacion's diagnosis was cervical radiculopathy, degenerative disc disease, and cervical stenosis.

When the claimant returned to see Dr. MacGregor on September 22, 2005, she reported no relief from the epidural injections and continuing pain and numbness. Dr. MacGregor recommended a cervical myelogram with a CT scan. The tests were never performed, however, as consent from Calhoun was never obtained.

On October 6, 2005, Dr. MacGregor ordered a functional capacity evaluation (FCE) of the claimant which was conducted at Memorial Industrial Rehabilitation Center on November 14 and 15, 2005. The report of that evaluation contains a history consistent with the one which the claimant gave to Dr. MacGregor and states that the claimant complained of pain in her neck, left arm and left hand and occasional numbness and tingling in her left upper extremity. The report also states that the claimant lacked physiological and physical signs to support her complaints of pain, gave submaximal effort, demonstrated numerous inconsistencies throughout testing, and failed seven of seven validity criteria on grip testing. During two days of testing, the claimant was only willing to complete 5 of 16 tasks. Becky Beyers, the physical therapist who authored the report, wrote that:

> "It is difficult to measure all aspects of [the claimant's] *** true abilities due to submaximal and inconsistent performance during testing. Therefore it is difficult to determine appropriate occupational and lifting recommendations secondary to [the claimant] terminating most functional activities due to subjective complaints."

The claimant testified that she had difficulty performing the physical tests during the FCE because she was "in a lot of pain."

Watters testified that she spoke to the claimant by phone on December 15, 2005. She stated that she inquired as to whether the claimant would be able to come back to work. According to Watters, the claimant stated that she was still in a lot of pain, that she had obtained a lawyer, and she didn't know if she would ever be able to return to work. Watters testified that she advised the claimant that she had accumulated 150 hours of vacation time which she would lose if not taken by December 31, 2005. She told the claimant that if she resigned, she would be paid for the accrued vacation time. According to Watters, the claimant then said: "okay, I'll resign." The claimant corroborated Watters testimony as to this conversation.

The claimant saw Dr. Harmon on December 19, 2005. The doctor's notes of that visit state that the claimant complained of neck pain. Dr. Harmon authored a note on that date which states that the claimant continued to have severe neck pain in her cervical region with tingling and numbness in her left arm, consistent with C6 foraminal impingement. He also wrote that she is unable to work and will likely not be able to return to work without corrective surgery.

At the arbitration hearing, the claimant testified that she is not aware of any trauma to her cervical spine that might have occurred outside of her employment. She stated that prior to the

events of October 2004, she was required to take an annual employment physical and there were never any reported problems with her neck or back.

Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2004)), an arbitrator found that the claimant failed to prove that she sustained injuries arising out of and in the course of her employment with Calhoun. Specifically, the arbitrator found that the claimant failed to prove that her injury was the result of any increased risk associated with her employment or that she was exposed to a risk of injury to a greater extent than a member of the general public. As a consequence, the arbitrator declined to award the claimant any benefits under the Act. In addition, the arbitrator found that the claimant's testimony was "not persuasive."

The claimant filed a petition for review of the arbitrator's decision before the Commission. In a decision with one commissioner dissenting, the Commission found that the claimant sustained accidental injuries on October 9, 2004, arising out of and in the course of her employment with Calhoun. The Commission awarded the claimant 45 5/7 weeks of temporary total disability (TTD) benefits for the periods of October 10, 2004, through November 28, 2004, and March 25, 2005, through December 30, 2005; ordered Calhoun to pay $11,169.58 for medical expenses incurred by the claimant; and ordered Calhoun to authorize the myelogram and CT scan ordered by Dr. MacGregor. The Commission remanded the matter back to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

Thereafter, Calhoun filed a petition for judicial review of the Commission's decision in the circuit court of Greene County. The circuit court confirmed the Commission's decision, and this appeal followed.

ANALYSIS

At issue is whether the claimant suffered injuries "arising out of" her employment and whether her current condition of ill-being is causally related to any such work-related injuries. An employee's injury is compensable under the Act only if it arises out of and in the course of her employment. 820 ILCS 305/2 (West 2002). For an injury to arise out of one's employment, it must have an origin in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). A risk is incidental to the employment where it "belongs to or is connected with what an employee has to do in fulfilling his duties." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). More is required than the fact of an occurrence at the claimant's place of work. *Greater Peoria Mass Transit District v. Industrial Comm'n*, 81 Ill. 2d 38, 43 (1980). If a claimant's injury is the result of a risk to which she would have been equally exposed apart from her employment, or a risk personal to the employee, it is not compensable. *Caterpillar Tractor Co.*, 129 Ill. 2d at 59.

Whether an injury arose out of a claimant's employment is generally a question of fact to be resolved by the Commission. *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1203 (2000). However, a reviewing court must set aside the Commission's decision when it is against the manifest weight of the evidence. *Darling v. Industrial Comm'n*, 176 Ill. App 3d 186, 192 (1988). Moreover, when the undisputed facts are susceptible of a single inference, the issue becomes one of law to be resolved by the reviewing court *de novo*. *Caterpillar Tractor Co.*, 129 Ill. 2d at 60.

In this case, the claimant cannot establish that her injuries arose out of her employment. To the extent that the she claims injuries resulting from a single incident that occurred on October 9, 2004, her claim fails as a matter of law. The facts relevant to this issue are not in dispute. The claimant testified that, while she was in the nursing home's dining room on October 9, 2004, she pushed a resident in a wheelchair, let go of the handles of the wheelchair, and then turned to her left. It was only at that point—*after* she had finished pushing the resident and while she turned to her left—that she felt a jolt of electricity from her head down to her toes and had to seek medical treatment. In other words, the claimant suffered an injury while turning and walking, not while performing a task specific to her employment.

As the employer notes, turning and walking are actions that all people perform on a regular basis both at home and at work. Thus, any injury caused by this single incident of turning and walking on October 9, 2004, did not result from a risk connected with or incidental to the claimant's employment and is therefore not compensable as a matter of law. See *Branch v. Industrial Comm'n*, 95 Ill. 2d 268, 270-72 (1983) (claimant failed to prove he sustained an accidental injury arising out of and in the course of his employment where he alleged that he suffered a sharp pain when he was in the process of removing his coat at work, "an act that he would have performed no matter where he might be when he came in from the outside or upon returning home at the end of the day," and failed to show that the cause of his injury was "connected to his employment"); *Hopkins v. Industrial Comm'n*, 196 Ill. App. 3d 347, 351-52 (1990) (injury did not arise out of claimant's employment where claimant "simply turned in his chair and suffered injury").

The Commission found, however, that the claimant was injured not merely as the result of a single incident of turning and walking on October 9, 2009, but rather as a result of repetitive work activities that rendered her susceptible to suffer a neck injury while working. Specifically, the Commission noted that, in the week before the October 9, 2004, incident, the claimant experienced stiffness and soreness in her neck after lifting and transferring patients. From this, the Commission concluded that the claimant had developed a "preexisting condition" that, combined with the physical requirements of her job, made her "susceptible to sustaining a cervical strain" after pushing a resident in a wheelchair. In short, the Commission appeared to base liability on a theory of repetitive trauma.

The employer argues that the Commission's "repetitive trauma" theory is against the manifest weight of the evidence because was no medical evidence showing that the claimant's current condition of ill-being is causally related to any repetitive work activities. We agree.

An employee who alleges injury based on repetitive trauma must "show[] that the injury is work related and not the result of a normal degenerative aging process." *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530 (1987); *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194 (2005). In repetitive trauma cases, the claimant "generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Nunn v. Illinois Industrial Comm'n*, 157 Ill. App. 3d 470, 477 (1987); see also *Johnson v. Industrial Comm'n*, 89 Ill. 2d 438, 442-43 (1982) (reversing Commission's award of benefits where claimant failed to present any expert medical evidence supporting claim that her injuries were caused by repetitive work activities). Although medical testimony as to causation is not required in every workers'

compensation case, where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, "expert testimony is necessary to show that claimant's work activities caused the condition complained of." *Nunn*, 157 Ill. App. 3d at 478; see also *Johnson*, 89 Ill. 2d at 442-43. "Cases involving aggravation of a preexisting condition primarily concern medical questions and not legal questions, [citation]" and "[t]his is especially true in repetitive trauma cases." *Nunn*, 157 Ill. App. 3d at 478. Thus, repetitive trauma claims involving the alleged aggravation of a preexisting condition, like the claim asserted here, cannot succeed unless the claimant presents medical evidence suggesting that (1) the claimant had a preexisting condition that was or could have been aggravated by her repetitive work activities, and (2) her current condition of ill-being was or could have been caused (at least in part) by this work-related trauma and is not simply the result of a normal, degenerative aging process.

In this case, there was *no* medical evidence to support a repetitive trauma theory. There was not one physician's report or opinion in the record suggesting that the claimant's injury was caused in whole or in part by her lifting and transferring patients. Nor was there any medical testimony suggesting that the claimant's injuries *could have* been caused by repetitive lifting and transferring of patients. Moreover, there was no medical evidence that the claimant had a preexisting condition that was aggravated by her work-related activities. There was, however, ample evidence in the record suggesting that the claimant's injuries could have been caused by "a normal degenerative aging process." For example, Dr. Salvacion diagnosed the claimant as having degenerative disc disease. Moreover, a notation in one of Dr. Harmon's medical records stated that the claimant had reported a history of osteoarthritis in her neck, and Dr. Cantrell concluded that the claimant's subjective complaints were most consistent with osteoarthritis in

her cervical spine. Dr. Cantrell also opined that the claimant's symptoms were not causally related to a specific work activity or to her occupational activities in general.

Under these circumstances, the claimant was required to present expert medical evidence to support her claim of repetitive trauma. *Nunn*, 157 Ill. App. 3d at 478; *Johnson*, 89 Ill. 2d at 442-43. Her failure to present any such evidence precludes her from recovering benefits. See *Nunn*, 157 Ill. App. 3d at 478 (upholding Commission's denial of benefits where there was "no direct expert testimony" showing that claimant's repetitive "racking" activities at work caused her back injuries, particularly where x-ray and surgical reports referred to claimant's degenerative disc disease and where "[e]xpert testimony might have established whether or not this mean[t] the condition of claimant's back *** developed over a period of several years, before she began her racking duties"); *Johnson*, 89 Ill. 2d at 442-43 (reversing Commission's decision in claimant's favor where "[i]n none of the numerous medical reports in evidence was an opinion expressed that [claimant's] condition was caused, or could have been caused" by claimant's repetitive work activities).

To support its finding of a repetitive trauma, the Commission relied upon Dr. Harmon's "opinion" that the claimant's condition was causally related to her work injury. This reliance is misplaced for several reasons. First, the only document in the record that arguably contains a causation opinion by Dr. Harmon is a handwritten notation on a letter dated May 4, 2005, that was sent to Dr. Harmon by the claimant's attorney. The letter posed a number of questions to the doctor relating to the claimant, including the following:

> "Based upon a reasonable degree of medical certainty, do you have an opinion, as to whether her current condition is related to the injury she received at work on or about October 9, 2004?"

A handwritten notation appears next to the question which says: "I believe her condition is related to her injury on 10/9/04." However, there is no evidence establishing the author of the notation. The letter was received in evidence without objection as part of a group exhibit purporting to be copies of Dr. Harmon's records. There is no further mention of any causation opinion by Dr. Harmon or the May 4, 2005, letter in the record. Thus, there is no competent evidence establishing that Dr. Harmon ever actually rendered a causation opinion.

Even assuming that the handwritten notation is an authentic expert opinion written by Dr. Harmon, it does not support the Commission's causation finding. At most, the handwritten notation merely suggests that Dr. Harmon believed that the claimant's current condition was related to the specific injury that she suffered on October 9, 2004. It does not express an opinion that her neck injury was caused by lifting or transferring patients prior to October 9, 2004, or by any type of repetitive trauma. As the arbitrator correctly noted, a finding of causal connection in a repetitive trauma case may not be premised upon a causation opinion that is based upon a specific trauma theory. Morever, contrary to the Commission's assertion, Dr. Harmon's one-sentence "opinion" does not support the Commission's conclusion that the claimant had a "preexisting condition" that was aggravated by the claimant's work activities and that made the claimant susceptible to suffer a cervical strain.[1] Thus, the Commission's assertion that Dr.

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[1] As the employer notes, this assertion is inconsistent with Dr. Harmon's final diagnosis of the claimant. Although Dr. Harmon initially diagnosed the claimant as having a cervical

Harmon's "opinion" supports its causation finding finds no support in the record, and its decision is against the manifest weight of the evidence. See *Village of Oreana v. The Industrial Comm'n*, 289 Ill. App. 3d 845, 850 (1997) (holding that Commission's causation finding was against the manifest weight of the evidence where the Commission mischaracterized the testimony of claimant's treating physician and "credited [him] with rendering a diagnosis he actually did not make" (aggravation of a preexisting condition)").

The claimant argues that her testimony that she experienced neck pain and stiffness while lifting and transferring patients, together with certain medical records which corroborate that claim, establishes that her injuries were causally connected to her employment. Our supreme court has expressly rejected this argument and has made clear that expert medical testimony on causation is required in a repetitive trauma case. See *Johnson*, 89 Ill. 2d at 442-43 (rejecting repetitive trauma claim based on doctor's report that claimant "had been experiencing pain and numbness in the hands for about four weeks prior to" her work injury where there was no medical opinion that her condition was caused or could have been caused by her repetitive work activity). The records cited by the claimant merely record the medical history provided by the claimant, including her claim that she experienced pain while lifting and transferring patients during the first week of October 2004. The claimant does not and cannot claim that any of these records contain an expert opinion suggesting that her injuries were caused or could have been caused by her lifting and transferring of patients.

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strain, he later switched his diagnosis to radiculopathy (a compressed nerve in the neck). There was no medical evidence in the record suggesting a causal connection between the claimant's lifting patients and her radiculopathy.

Finally, the claimant argues that she was not required to present expert medical testimony because our appellate court has held that causation may be established in a workers' compensation case by evidence of a "chain of events" including the claimant's ability to perform her work duties before the date of the accident and her inability to perform the same duties following that date. See *Darling*, 176 Ill. App. 3d at 193. Here, the claimant testified that there were no reported problems with her neck or back at the time of her last physical examination in 2003, and the evidence suggested that the claimant was able to perform her job duties before, but not after, the October 9, 2004, injury. We do not believe that this evidence is sufficient to establish a causal connection between the claimant's repetitive lifting and transferring of patients in early October 2004 and her current injuries.

As noted above, expert medical testimony is required to establish causation in a repetitive trauma case particularly where, as here, there is evidence in the record suggesting that the claimant's current condition could have been caused by a normal degenerative aging process. Thus, when our appellate court has considered "chain of events" evidence in the context of a repetitive trauma claim, it has usually based its causation finding primarily on medical opinion testimony, not on the "chain of events" evidence alone. See *Darling*, 176 Ill. App. 3d at 188-91, 193 (finding causation in repetitive trauma cases based on extensive medical testimony including an "explicit" and "completely uncontradicted" medical opinion, and confirming that "medical testimony is very important in repetitive trauma cases"); see also *Navistar*, 315 Ill. App. 3d at 1204-05; *Cook v. Industrial Comm'n*, 176 Ill. App. 3d 545, 548-49 (1988). *Palos Electric Co. v. Industrial Comm'n,* 314 Ill. App. 3d 920 (2000), stands as a rare exception to this rule, but that case is distinguishable because there was no evidence in *Palos* suggesting that the claimant's

injuries could have been caused by a normal degenerative condition. Where, as here, there is expert medical testimony suggesting that the injuries were caused by a normal aging or degenerative process, the claimant cannot refute this testimony and establish that her injuries were caused by a work-related repetitive trauma unless she presents expert medical evidence regarding causation. In such cases, "chain of events" evidence may supplement—but may not supplant—expert medical opinion testimony.

CONCLUSION

Accordingly, the record does not support a reasonable inference that the claimant's injuries arose out of a single work-related accident or that her current condition of ill-being is the result of any repetitive, work-related activities. The Commission's decision is therefore against the manifest weight of the evidence. Because we hold that the claimant failed to prove that she was entitled to any benefits under the Act, we need not address the employer's remaining arguments regarding TTD benefits.

Circuit court reversed; Commission decision vacated.

JUSTICE HOFFMAN, concurring in part and dissenting in part.

I am in complete agreement with the facts of this case as related by the majority. In point of fact, I could not have set forth those facts more throughly myself. I also agree with the majority's conclusion that there is no competent evidence contained in the record establishing that Dr. Harmon ever actually rendered a causation opinion. That concession notwithstanding, I am of the opinion that sufficient evidence is present in the record to support the Commission's finding that the

claimant's injuries arose out of and in the course of her employment with Calhoun, and it is for this reason that I respectfully dissent.

An employee's injury is compensable under the Act only if it arises out of and in the course of her employment. 820 ILCS 305/2 (West 2002). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 546 N.E.2d 603 (1989). In this case, there is no dispute concerning the issue of whether the claimant's injury arose in the course of her employment with Calhoun. The issue is whether her injury arose out of her employment.

"Arising out of the employment" refers to the origin or cause of the claimant's injury. As the Supreme Court held in *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58, 541 N.E.2d 665 (1989):

> "For an injury to 'arise out of' the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. [Citations.] Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. [Citation.] A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. [Citations.]"

In addition, an injury arises out of the employment if the claimant was exposed to a risk of harm beyond that to which the general public is exposed. *Brady v. L. Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921 (1991). More is required than the fact of an occurrence at the claimant's place of work. *Greater Peoria Mass Transit District v. Industrial Comm'n*, 81 Ill. 2d 38, 43, 405 N.E.2d 796 (1980). If a claimant's injury is the result of a risk to which she would have been equally exposed apart from her employment, or a risk personal to the employee, it is not compensable. *Caterpillar Tractor Co.*, 129 Ill. 2d at 59.

Whether an injury arose out of a claimant's employment is generally a question of fact to be resolved by the Commission, and its conclusion will not be disturbed on review unless it is against the manifest weight of the evidence. It is only when the undisputed facts are susceptible of a single inference that the issue becomes one of law to be resolved by the reviewing court *de novo*. *Caterpillar Tractor Co.*, 129 Ill. 2d at 60.

In its decision, the Commission found that the claimant sustained accidental injuries on October 9, 2004, which arose out of her employment. In addition to the hand-written notation that appears on the letter addressed to Dr. Harmon, which I too reject as support for a finding of causation, the Commission also found that the claimant developed a pre-existing condition from lifting and transferring patients at work which made her susceptible to sustaining a cervical strain after pushing a wheelchair-bound patient in the dining room on October 9, 2004. This latter conclusion finds support in both the claimant's testimony and her medical records.

The claimant informed her medical providers and Calhoun's examining physician that, in the week prior to the events of October 9, 2004, she had provided patient-care assistance to the nursing

aides consisting of lifting and transferring residents and that she noted soreness in her neck. The claimant testified that, prior to October 2004, she never had any neck or back problems and that she was unaware of any injury to her spine occurring outside of her employment. She specifically denied ever suffering from, or telling anyone that she ever suffered from, osteoarthritis.

Although Dr. Cantrell opined that the claimant's complaints are not causally related to her work activities, the claimant submitted evidence of good health prior to the work-related events of October 2004 and of a change immediately following her having pushed a patient in a wheel chair on October 9, 2004, which continued on thereafter through the date of the arbitration hearing. I believe that such a chain of events, if believed, can establish a causal connection between the claimant's employment and her condition of ill-being. See *Spector Freight Systems Inc. v. Industrial Comm'n*, 93 Ill. 2d 507, 513, 445 N.E.2d 280 (1983); *Darling v. Industrial Comm'n*, 176 Ill. App. 3d 186, 193, 530 N.E.2d 1135 (1988).

It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). In discounting Dr. Cantrell's causation opinion, the Commission noted that he relied upon an alleged entry in Dr. Harmon's records referencing the claimant's prior history of osteoarthritis. However, the claimant denied ever suffering from osteoarthritis, and no reference to any such condition appears in the records of Dr. Harmon which were admitted in evidence.

I believe that the evidence in the record is sufficient to support the conclusion that the origin of the claimant's condition of ill-being lies in the strain to her neck, back, and shoulder which she experienced while working in the first week of October 2004, and which climaxed in the symptoms

she experienced after pushing a patient in a wheel chair on October 9, 2004. Based upon the foregoing analysis, I conclude that the Commission's determination that the claimant's condition of ill-being arose out of her employment and is causally related thereto is neither contrary to law or against the manifest weight of the evidence. And, for same reasons, I also reject Calhoun's argument that, in the absence of a competent medical opinion, the Commission's finding of a causal connection between the claimant's condition of ill-being and her employment is against the manifest weight of the evidence. Lastly, I note that the act of lifting and transferring residents clearly exposed the claimant to a risk of injury beyond that to which the general public is exposed, and, therefore, Calhoun's contention that the claimant's injury was merely personal in nature is without merit.

Next, Calhoun argues that the period from October 26, 2004, and November 28, 2004, is the only period for which the plaintiff is entitled to TTD benefits. It contends that the Commission's award of TTD for the periods of October 10, 2004, through October 25, 2004, and March 25, 2005, through December 30, 2005, is against the manifest weight of the evidence as none of the claimant's treating physicians had taken her off of work during those periods and work was available within her eight-hour per day restriction.

A claimant is temporarily and totally disabled from the time an injury incapacitates her from work until such time as she is as far recovered or restored as the permanent character of her injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118, 561 N.E.2d 623 (1990). Once an injured claimant has reached maximum medical improvement (MMI), she is no longer eligible for TTD benefits. *Archer Daniels Midland*, 138 Ill. 2d at 118; *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072, 820 N.E.2d 570 (2004). To be entitled to TTD

benefits, it is a claimant's burden to prove not only that she did not work, but also that she was unable to work. *Health & Hospitals Governing Commission of Cook County v. Industrial Comm'n*, 72 Ill. 2d 263, 274, 381 N.E.2d 295 (1978). The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20.

I will first address the Commission's TTD award for the period from October 10 through October 25, 2004. In its decision, the Commission found that Dr. Harmon took the claimant off of work for the period from October 10th through November 28, 2004. That statement is inaccurate. The record reflects that the claimant first saw Dr. Harmon on October 18, 2004. She testified that on that date Dr. Harmon took her off of work although there is no corroborating notation in Dr. Harmon's records. However, Dr. Harmon's records of October 18, 2004, reflect that he instructed the claimant to continue wearing the soft neck collar which had been prescribed by the emergency-room physician at Jersey Community Hospital on October 16, 2004. I believe that the claimant's testimony, coupled with the fact what she was wearing a medically prescribed neck brace, is sufficient to support not only the inference that she did not work for the period from October 16 through October 25, 2004, but also the inference that she was unable to work during that period. See *J.S. Masonry, Inc. v. Industrial Comm'n*, 369 Ill. App. 3d 591, 599-600, 861 N.E.2d 202 (2006).

I reach the same conclusion regarding the 4-day period from October 12, 2004, through October 15, 2004. The claimant testified that she did not go to work on October 12, 2004, because

she was feeling "really, really bad." She stated that she was miserable and hurting. She received treatment at the Dugger Chiropractic Clinic from October 12 through October 15, 2004. Although none of the claimant's medical records state that she was taken off of work during the period from October 12 through October 15, 2004, I believe that the claimant's description of her symptoms and the fact that she sought chiropractic treatment during that period are sufficient to support both an inference that she was unable to work during that period and the Commission's award of TTD benefits for those four days.

I reach a different conclusion, however, for October 10 and 11, 2004. The claimant did not work on October 10, 2004. However, there is no testimony or evidence in the record as to why she did not work. The medical records admitted in evidence, authored by a medical professional, do not contain any restrictions on her ability to work on October 10, 2004, , and the claimant never testified as to her symptoms on that date. Further, the claimant testified that she went to work on October 11, 2004. Based on the fact that the claimant worked on October 11, 2004, and the complete absence of any evidence as to whether the claimant was capable of working on October 10, 2004, the Commission's award of TTD benefits for October 10 and 11, 2004, is against the manifest weight of the evidence.

Calhoun concedes that the claimant was temporarily and totally disabled for the period from October 26, 2004, through November 28, 2004. Consequently, I turn my attention to the award of TTD benefits for the period from March 25, 2005, through December 30, 2005. Dr. Harmon authorized the claimant to resume working eight-hour shifts as of January 1, 2005. After that date, the claimant could have worked five, eight-hour shifts, but elected to work only three, eight-hour

shifts per week. The claimant saw Dr. Harmon on February 1, 2005, and March 23, 2005, each time complaining of neck pain. However, Dr. Harmon did not restrict her from working on either date. She saw Dr. Trudeau on March 22, 2005, complaining of neck pain. Following an EMG, he diagnosed C6 radiculopathy, but did not restrict the claimant from working.

On March 25, 2005, Watters told the claimant to go home and take care of herself after she exhibited signs of pain. The claimant testified that she thought she had been fired, but admitted that Watters never said she was fired. She based her assumption on the fact that Watters told her that they no longer had light-duty work available. Although Watters denied telling the claimant that she could no longer perform light-duty tasks, the Commission specifically found that "the circumstances indicated an unwillingness to accommodate" the claimant's continuing light-duty restrictions. The claimant admitted, however, that, on at least one occasion, Watters called and asked whether she was going to be able to come back to work. Watters testified that the claimant could have returned to work on an eight-hour per day schedule at any time after March 25, 2005.

The claimant went home on March 25, 2005, and never returned to work at Calhoun. The first time that she sought medical care after March 25th was on May 23, 2005, when she saw Dr. MacGregor on a referral from Dr. Harmon. On that date, Dr. MacGregor noted that during the course of the examination, the claimant put forth "[q]uestionable full effort in left upper extremities." Following a subsequent visit on August 4, 2005, Dr. McGregor noted that the claimant's claims of pain were "out of proportion to exam and film findings." Dr. MacGreggor saw the claimant three times during the period from May 23, 2005, through September 22, 2005, but never restricted her ability to work.

Following the cervical epidural injections administered by Dr. Salvacion on August 24, 2005, and September 7, 2005, the claimant was given "General Discharge Instructions" which contained activity restrictions. The August 24th instructions state: "Do *not* drive until tomorrow[;] Do *not* operate machinery or power tools until tomorrow [; and] Do *not* make important decisions or sign legal documents until tomorrow[.]" (Emphasis in original.) The September 7th instructions state: " Do not drive until tomorrow[.]" (Emphasis in original.) On neither day was the claimant given any restrictions by Dr. Salvacion prohibiting her from working.

In her report of the claimant's FCE in November of 2005, the physical therapist wrote that the claimant lacked physiological and physical signs to support her complaints of pain, gave submaximal effort, demonstrated numerous inconsistencies throughout the testing, and failed seven of seven validity criteria on grip testing. The claimant testified that she had difficulty performing the tests during the FCE because she was "in a lot of pain."

When the claimant saw Dr. Harmon on December 19, 2005, he took her off of work and wrote that she would not be able to return to work without corrective surgery. At the arbitration hearing, the claimant testified that she suffered continuous pain, especially when she used her arms. She said that the pain was so great that she "can't take it."

In its decision, the Commission found that the "circumstances indicated an unwillingness [on the part of Calhoun] to accommodate the *** [claimant's] light duty restrictions." In coming to that conclusion, the Commission obviously found the claimant's version of her March 25, 2005, conversation with Watters to be more creditable than Watters' contradictory testimony. It was the Commission's function to judge the credibility of the witnesses and resolve their conflicting

testimony. *O'Dette*, 79 Ill. 2d at 253. I am unable to conclude that its resolution of this issue is against the manifest weight of the evidence.

The Commission also found that the claimant was still treating for her cervical condition and radiculopathy and that she had not reached MMI. Whether a claimant's condition had stabilized, that is to say whether she had reached MMI, was a question of fact to be resolved by the Commission and its determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Nascote Industries*, 353 Ill. App. 3d at 1072. Based upon the claimant's consistent and continuing complaints of pain, her continuing medical care, and the fact that Dr. Harmon treated the claimant as late as December 19, 2005, and opined that she would not be able to return to work without corrective surgery, there is more than sufficient evidence to support the Commission's determination that she had not reached MMI.

Calhoun is correct in its assertion that from March 25, 2005, through December 19, 2005, none of the claimant's treating physicians issued an "off work" note or recommended that she not work. However, the absence of any authorization to remain off of work issued by a health care professional is not dispositive of the issue of whether a claimant is entitled to TTD benefits. *J.S. Masonry, Inc.*, 369 Ill. App. 3d at 599-600. So long as the claimant has not reached MMI and can establish that she did not work and was unable to work, she is eligible to receive TTD benefits by reason of an injury arising out of and in the course of her employment. *Archer Daniels Midland*, 138 Ill. 2d at 118; *Health & Hospitals Governing Commission of Cook County*, 72 Ill. 2d at 274. As noted earlier, the period of time during which a claimant is temporarily and totally disabled and is entitled to TTD benefits is a question of fact to be determined by the Commission, and its resolution

of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20.

Having already concluded that the Commission's determination that the claimant had not reached MMI is not against the manifest weight of the evidence, and having noted the uncontroverted fact that she did not work from March 25, 2005, through the date of the arbitration hearing on December 30, 2005, the only remaining issue of my analysis is whether the claimant met her burden of establishing that she could not work during that period. Calhoun correctly points out that: no health care professional took the claimant off of work for the period from March 25, 2005, through December 18, 2005; Dr. MacGregor, one of the claimant's own treating physicians, concluded that the claimant's claims of pain were "out of proportion to exam and film findings;" and the physical therapist who conducted the claimant's FCE wrote in her report that the claimant lacked physiological and physical signs to support her complaints of pain, gave submaximal effort, demonstrated numerous inconsistencies throughout the testing, and failed seven of seven validity criteria on grip testing. It is also true, however, that the claimant consistently complained of pain during this period, received medical treatment for the condition, and described her pain as being so great that she could not take it. It was the Commission's function to assess the claimant's credibility and determine the weight to be given to the evidence of record. *O'Dette*, 79 Ill. 2d at 253. In awarding the claimant TTD benefits for the period from March 25, 2005, through December 30, 2005, the Commission implicitly found that the claimant's testimony as to her level of continuing pain to be credible and that the pain which she experienced prevented her from working. As an opposite conclusion is not clearly apparent, I cannot say that the Commission's resolution of the issue

is against the manifest weight of the evidence. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992). Whether I might have reached the same conclusion if I were the trier of fact is not the test of whether the Commission's determination is against the manifest weight of the evidence. The appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90 (1982). Based upon the record, I believe that there is.

Finally, Calhoun argues that the Commission's award of medical expenses for treatment rendered to the claimant after December 21, 2004, the date when Dr. Cantrell found her to have reached MMI, is against the manifest weight of the evidence. Having already concluded that the Commission's determination that the claimant had not reached MMI as of the date of the arbitration hearing and that its finding of causation are not against the manifest weight of the evidence, I also reject its argument relating to medical expenses for the same reasons.

Based upon the foregoing analysis, I would: reverse that portion of the circuit court's order confirming the Commission's award of TTD benefits for October 10 and 11, 2004, and affirm the circuit court's order in all other respects; vacate the Commission's award of TTD benefits for October 10 and 11, 2004, and remand the matter to the Commission for further proceedings.