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NOTICE
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2012 IL App (4th) 110724WC-U

No. 4-11-0724WC

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

AMANDA LEAR, Appellant,)	Appeal from the
)	Circuit Court of
)	Adams County.
)	
)	
v.)	No. 10-MR-159
)	
)	
ILLINOIS WORKERS' COMPENSATION COMMISSION, <i>et al.</i> , (Steak 'N Shake, Inc., Appellee).)	Honorable
)	Thomas J. Ortbal,
)	Judge, presiding.

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

employer on August 30, 2004, when she slipped and fell on a wet floor while carrying glass ketchup bottles. She sustained lacerations to her index, middle, and ring fingers on her left hand. At the time of the accident, she was a 21-year-old single mother.

¶ 5 Prior to the accident, the claimant had been diagnosed with depression and had been treated for anxiety. Nearly a year after the work accident, the claimant started experiencing panic attacks. In describing the panic attacks, the claimant testified that, at first, she experiences shortness of breath, then her hands get tingly and go numb, and she becomes dizzy and lightheaded as if she is going to pass out. The claimant maintained that the panic attacks were causally connected to her work accident, and to prove the causal connection, she presented the deposition testimony of Dr. Frank Froman.

¶ 6 Dr. Froman testified that he first saw the claimant on July 8, 2009, when he performed a psychological examination at the request of her attorney. Dr. Froman's examination included a review of the claimant's medical records, a face-to-face clinical interview, and the administration of the MMPI II psychological test.

¶ 7 The claimant told Dr. Froman about her background and the accident. She told him that she tried to return to work at Steak 'n Shake after the accident, but the employer asked her to perform tasks that she could not perform with her left hand in a bandage, including work the cash register. She felt she had no choice but to leave. According to Dr. Froman, after the claimant left Steak 'n Shake, she worked at a place

called Village Inn for only four months.

¶ 8 The claimant reported to Dr. Froman that she was having problems with anxiety and depression and that the anxiety had reached the level of panic. Her panic was treated with medications, but she reported that the medications did not benefit her much, and she was still experiencing panic attacks. Dr. Froman testified that the panic attacks led to a secondary condition called agoraphobia. The doctor described agoraphobia as "a process of feeling that you don't want to wind up being where you might get a panic attack so you start restricting the places you can go to and visit and work at." He testified, " So the combination of panic disorder with agoraphobia is usually a combined syndrome which occurs co-morbidly and frequently when somebody starts having panic attacks."

¶ 9 He described the MMPI II psychological test as a standard test that provides information about a person's character, personality, perceptions, mental health, and mental health issues. He described the results of the claimant's MMPI II test as follows:

"Basically it says she has a great deal of psychological distress, she has a mixed pattern of psychological problems, major problems with anxiety and depression, insecure, and somatic problems, somatic simply meaning physical problems, has a need to achieve, falls short of her expectations, she feels inferior, has little self confidence and does not feel capable of solving her problems."

¶ 10 He testified that the claimant is a worrier and interprets even neutral events as problematic. He believed that the claimant has "a clear case of panic disorder with agoraphobia," which meant that she was prone to have panic anxiety attacks fairly frequently and avoided places where she might get feelings of panic. He also diagnosed the claimant as being "clearly depressed" from not being able to do things that she once did.

¶ 11 Dr. Froman believed, to a reasonable degree of medical certainty, that there is a strong connection between the claimant's psychological conditions and her work accident at Steak 'N Shake. He testified that the accident "lead to a great deal of undoing." He noted that during the treatment for the physical injuries, the claimant had a "vasovagal response" which meant she was anxious and frightened. According to Dr. Froman, the treatments for the hand injury "set in motion the series of events that would have led to catastrophicizing [sic] on her part and made her panicky." He testified that it was a cascade of events that occurred, "like a sled going downhill and accelerating faster and faster." "She fell into the classic pattern of fear, over-interpretation, catastrophic thoughts, panic, and then later agoraphobia, and then later after that depression." Dr. Froman further explained that the claimant had a low IQ and had a low level of insight.

¶ 12 Dr. Froman did not believe that the claimant was capable of performing any gainful employment since November 16, 2005, and did not think she could until her

psychological condition is adequately treated. He believed that without adequate treatment, the claimant's condition would not get better and might get worse.

¶ 13 In his report dated July 31, 2009, the doctor wrote as follows:

"She indicated that her hands have never fully recovered from their injury, and she still sees the scars which 'bother me.' In psychological terms, we have an individual who appears to have an anxious, somewhat inadequate, and depressive history, who experienced a relatively severe injury, something that she was unprepared for and could not have anticipated. The injury led to 'undoing,' a psychological process not unlike taking a thread from a sweater and pulling it, only to 'pull the sweater apart.' This undoing uncovered much more severe psychopathology - - resulting in the development of panic anxiety attacks, which had not occurred prior to this episode. Thus the injury was a precipitant.

* * *

[H]ad it not been for the injury, she would likely still be at Steak 'n Shake – being able to function as she did previously, taking care of both home and work, and continuing with her routine obligations. It is not likely that she would have experienced panic anxiety attacks. The injury was, in my opinion, a direct cause of the precipitation of her psychological problems."

¶ 14 Dr. Froman concluded in his July 31, 2009, report as follows: "While it is impossible to state with absolute certainty that there is a causal link between an event

and its sequelae in [the respondent]'s case, I believe that there is a significant likelihood between the onset of her avoidant panic-oriented behavior and the episode of physical injury that took place while she was working at Steak 'n Shake." On cross-examination, he testified that the claimant's medical records included a report from a psychiatric evaluation performed in 2003 in which she was diagnosed as suffering from depression and that she might also be suffering from a generalized anxiety disorder.

¶ 15 The record on appeal includes the claimant's medical records from Transitions of Western Illinois. The claimant's records show that in October 2003, prior to the work accident, the claimant was being treated for depression and that she believed that her medications were not working. Notes dated October 28, 2003, describe the claimant's condition as follows: "Thinks of bad thoughts. Constantly worried something bad is going to happen. Constantly stressed out. Never satisfied with self. Sits around cries a lot. Been going on for 2 yrs but getting worse. Feels closed in when around people. Bad fear of dying. Feel nobody gives her credit. Stress from son's father." The notes further state that the claimant did not "want to sit around and cry all the time. Feel more confident w/self." At that time, the claimant's symptoms included: feeling sad, depressed or hopeless most of the day; poor appetite; trouble falling asleep; little interest or pleasure in doing things; feeling bad about herself; diminished ability to stay on task, think, concentrate; recurrent thoughts about death; and nervousness,

anxiety, worry.

¶ 16 A report from Dr. Scott J. Wright dated November 13, 2003, states that the claimant "began to have depressive and anxious symptoms about the time that she first got pregnant." The report continues:

"She says she cries a lot, everyday, all the time. She feels overwhelmed. She says her symptoms began around the time that she got pregnant. Moods are more bad days than good days over the last few weeks. The quality of her moods is more anxious than sad, and more sad than irritable. Sleep is a major problem. She has frequent awakening throughout the night. She says that she has various different nightmares. She only subsequently gets four to five hours of sleep per night even though the baby sleeps all night. She says she needs her sleep. If she doesn't get sleep, she feels tired the next day."

¶ 17 In November 2003, Dr. Wright diagnosed the claimant as having a depressive disorder and a possible generalized anxiety disorder with major depressive disorder. Progress notes dated July 22, 2004, from Transitions of Western Illinois indicate that the claimant was still being treated for her depressive disorder a little over a month prior to the workplace accident. Dr. Valentina Vrtikapa's psychiatric evaluation notes dated January 5, 2006, indicate that the claimant "says that she has had a history of anxiety and depression for as long as she can remember." Dr. Vrtikapa also wrote: "[The claimant] was seen at Transitions of Western Illinois in the past in 2003 and,

at that time, she was on Lexapro and Wellbutrin. She said that neither medication was working well." Dr. Vrtikapa also noted that the claimant took Effexor for some period of time, and the medication did not help her.

¶ 18 At the arbitration hearing, the claimant admitted that before her work-related accident, she had been diagnosed and treated for depression and that her depression dated back to junior high school. However, she said that she never had any panic attacks prior to working at Steak 'n Shake. She testified that she first started experiencing the symptoms of panic attacks sometime between June and August 2005. In May 2005, the claimant gave birth to her second child, a daughter. The birth was premature and had complications, and the child almost died. In addition, in the months after the birth of her daughter, her eight or nine year relationship with her boyfriend, who was the father of her children, ended. She admitted that the birth of her daughter was difficult because she was five and a half weeks early, but she claimed that breaking up with her boyfriend was a relief.

¶ 19 She testified that she tried to work as a waitress in November 2005 at the Village Inn, but she had problems being around people and taking orders, and she experienced symptoms of panic attacks. Her employment as a waitress was terminated due to her inability to work.

¶ 20 At the arbitration hearing, the employer offered the deposition testimony and report of Dr. Stillings. The claimant objected to the admission of Dr. Stillings'

testimony and report, arguing that the doctor did not provide any of his test results prior to the deposition in violation of section 12 of the Act. The arbitrator admitted Dr. Stillings' opinions and testimony over the claimant's objection.

¶ 21 During his deposition, Dr. Stillings testified that he conducted an independent medical examination (IME) of the claimant in October 2009. In evaluating the claimant, Dr. Stillings administered MMPI-2, MCMI-III, and SIMS psychological tests. In addition, he interviewed the claimant and reviewed her medical records. After conducting his IME, Dr. Stillings concluded that the workplace accident "bears no substantial causal relationship to [the claimant]'s current psychiatric state."

¶ 22 After considering the evidence presented at the arbitration hearing, the arbitrator found that the claimant sustained injuries to her left hand as a result of the workplace injury. For the injuries to the claimant's left hand, the arbitrator awarded amounts for temporary total disability benefits, permanent disability benefits, penalties, attorney fees, and other expenses. None of these awards are disputed in the present appeal.

¶ 23 The arbitrator also found that the claimant failed to prove that her mental conditions are causally related to the work accident. The claimant takes issue with this finding in the present appeal.

¶ 24 In finding that the claimant failed to carry her burden of proof on the issue of causation, the arbitrator noted that it gave Dr. Froman's opinions little weight. Dr.

Froman opined that the claimant's work injury was a direct cause of the development of her panic attacks. However, the arbitrator noted that the doctor "did not adequately explain away the Transitions of Western Illinois records that indicated that the claimant was complaining of being constantly anxious and stressed *** 10 months before the date of the accident."

¶ 25 In addition, the arbitrator found that Dr. Froman did not provide a reasonable explanation concerning a report dated October 26, 2005, that notes a history of anxiety attacks that were related to and that began around the time of the difficult birth of the claimant's daughter. Also, Dr. Froman did not explain "why there was any delay in onset of the anxiety/panic disorder/agoraphobia from the date of the accident, 8/30/04 through May or June 2005."

¶ 26 Even though the arbitrator admitted Dr. Stillings' testimony and opinions over the claimant's objection, he found that Dr. Stilling's "testimony lacks credibility and his demeanor in his deposition was uncooperative and belligerent." The arbitrator gave his testimony "no weight."

¶ 27 The claimant appealed the arbitrator's decision to the Commission. The Commission unanimously affirmed and adopted the arbitrator's decision, and the claimant appealed to the circuit court. The circuit court entered a judgment confirming the Commission's decision. With respect to the admission of Dr. Stilling's testimony, the circuit court held that the employer did not violate section 12. In

addition, the court held that even if the testimony was erroneously admitted, the admission was harmless because it was given no weight at the hearing. Finally, the circuit court held that the Commission's finding that the claimant failed to prove causation with respect to her psychological conditions was not against the manifest weight of the evidence.

¶ 28 The claimant now appeals the circuit court's judgment that confirmed the Commission's decision.

¶ 29 ANALYSIS

¶ 30 The claimant first argues that the Commission's finding that she failed to prove causation between her work injury and her diagnosed mental condition of panic disorder with agoraphobia is against the manifest weight of the evidence.

¶ 31 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). The claimant had the burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her employment. 820 ILCS 305/2 (West 2008). "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).

¶ 32 "[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. Similarly, "[w]hether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the *** Commission." *Sisbro*, 207 Ill. 2d at 205, 797 N.E.2d at 673. "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny*, 397 Ill. App. 3d at 674, 928 N.E.2d at 482. Resolution of conflicts in medical testimony is also within the province of the Commission. *Sisbro*, 207 Ill. 2d at 206, 797 N.E.2d at 673.

¶ 33 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. "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). The appropriate test is not whether this court might have reached the same conclusion, but whether the record contains sufficient evidence to support the Commission's determination. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010).

¶ 34 In the present case, the Commission's findings with respect to causation of the claimant's psychological conditions of ill-being were not against the manifest weight of the evidence. The Commission found that the employer's expert, Dr. Stilling, was not credible, and it gave no weight to his testimony. The claimant, therefore, argues that the only remaining expert testimony on the issue of causation was that of her expert, Dr. Froman, who found a causal connection between her psychological condition and the work accident. Therefore, the claimant argues, the Commission's finding of a lack of causation has to be against the manifest weight of the evidence. We disagree.

¶ 35 In *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 1169 (1999), the Commission struck the causal-connection portion of the employer's medical expert's testimony, leaving only the claimant's experts' medical opinions on the issue of causation. Nonetheless, the court held that the Commission's finding that the claimant failed to carry his burden of proof on the issue of causation was not

against the manifest weight of the evidence. *Fickas*, 308 Ill. App. 3d at 1042, 721 N.E.2d at 1169. The court rejected the claimant's argument that the Commission was required to accept the claimant's medical testimony since it was the sole medical testimony on the causation issue. *Id.* Instead, the court held that the Commission in its discretion is not bound by unrebutted medical testimony. *Id.* While the sole medical opinion may not be arbitrarily rejected, it is not binding on the Commission merely because it is the sole medical opinion. *Id.*

¶ 36 In the present case, the Commission was within its discretion when it rejected Dr. Froman's opinion on the issue of causation. The claimant's testimony and medical records indicate that she began experiencing panic attacks sometime between May and August 2005, nearly a year after the work accident. Around the time the claimant started experiencing panic attacks, or shortly before, the claimant experienced the difficult birth of her daughter. In addition, around this same time, the claimant's relationship with her longtime boyfriend ended.

¶ 37 The Commission concluded that Dr. Froman's testimony failed to adequately account for the delay from the date of the work accident in August 2004 to the onset of the panic attacks in May, June, July, or August 2005. The failure to account for this delay was particularly troubling to the Commission because of the other stress factors that coincided closely with the beginning of the claimant's panic attacks. The interpretation of medical testimony is particularly the function of the Commission.

Freeman United Coal Mining Co. v. Industrial Comm'n, 286 Ill. App. 3d 1098, 1103, 677 N.E.2d 1005, 1008 (1997).

¶ 38 In addition, as noted by the circuit court, "the absence of any reference to the work accident in her subsequent medical and mental health treatment until her Section 12 examination by Dr. Froman is telling." The claimant had the burden of proving causation, and Dr. Froman's testimony was not so compelling that it bound the Commission to find in the claimant's favor. The Commission was within its discretion to reject Dr. Froman's opinion on the issue of causation.

¶ 39 The next issue the claimant raises is that the Commission erred in admitting the deposition testimony of Dr. Stillings because the employer failed to comply with section 12 of the Act (820 ILCS 305/12 (West 2008)). "In order to warrant reversing the decision of a lower tribunal, the appellant must show that he or she was prejudiced by the trial court's decision." *Lenny Szarek, Inc. v. Workers' Compensation Comm'n*, 396 Ill. App. 3d 597, 607, 919 N.E.2d 43, 52 (2009). Because the Commission discredited Dr. Stillings' testimony and gave it "no weight," its admission of his testimony was not prejudicial to the claimant. The error, if any, is harmless at best because there is no reasonable probability that a different result would have followed had the testimony been excluded. *Lenny Szarek, Inc.*, 396 Ill. App. 3d at 608, 919 N.E.2d at 53. Accordingly, we need not decide the claimant's contention on appeal that the testimony should have been excluded under section 12 standards. *Quality*

Granite Construction Co. v. Hurst-Rosche Engineers, Inc., 261 Ill. App. 3d 21, 28, 632 N.E.2d 1139, 1143 (1994) ("We need not decide for purposes of this appeal whether the letter was cloaked with a qualified privilege. Assuming for purposes of our discussion that it was, any error in the refusal to instruct on the privilege was harmless").

¶ 40

CONCLUSION

¶ 41

For the foregoing reasons, we affirm the judgment of the circuit court that confirmed the Commission's decision on review.

¶ 42

Affirmed.