2013 IL App (1st) 123750WC-U

NO. 1-12-3750WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DOROTHY SUTKOWSKI,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
	)	
v.	)	No. 12-L-50809
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, (Walt's Food Center, Inc.),	)	Honorable
	)	Daniel T. Gillespie,
Defendants-Appellees.	)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The Commission did not abuse its discretion in admitting portions of the deposition testimony of the employer's independent medical expert, Dr. Walsh. The Commission's finding that the claimant failed to meet her burden in proving that her conditions of ill-being were causally connected to the workplace accident is not against the manifest weight of the evidence.

¶ 2 The claimant, Dorothy Sutkowski, worked for the employer, Walt's Food Centers,

Inc., for a number of years both in its deli and bakery departments. She filed a claim under the Illinois Workers Compensation Act (the Act), 820 ILCS 305/1 *et seq.* (West 2010), claiming to have suffered a workplace accident that occurred on November 1, 2009, when she slipped on chicken grease at work, falling on her right side, right arm, and right shoulder. The matter proceeded to an expedited hearing pursuant to section 19(b) of the Act, 820 ILCS 305/19(b) (West 2010), and the parties disputed the issue of whether the claimant's conditions of ill-being were causally related to her workplace accident. The arbitrator found that the claimant failed to prove that there was a causal connection between the workplace accident and her complaints of pain in her cervical spine, right shoulder, and right arm. In addition, the arbitrator found that the claimant's carpal tunnel syndrome was not causally related to the accident. On appeal, the Commission unanimously affirmed and adopted the arbitrator's decision. The circuit court subsequently entered a judgment that confirmed the Commission's decision, holding that the Commission's finding on the issue of causation was not against the manifest weight of the evidence. The claimant now appeals from the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 The claimant testified that prior to the workplace accident, she did not have any pain in her cervical spine, right shoulder, or right arm. She claimed that she had only pain in her right hand prior to the accident. After the accident, she claims to have suffered from neck, right shoulder, and right arm pain, and she attributes the workplace accident as the cause for

these conditions of ill-being. The Commission's analysis of the causation issue included consideration of the claimant's medical records before and after the November 1, 2009, workplace accident.

¶ 5 Prior to the workplace accident, in 1999, the claimant was involved in a serious motorcycle accident that resulted in severe head trauma. The claimant's injuries included a fractured jaw that needed to be surgically repaired, and she is unable to undergo magnetic resonance imaging (MRI) scans because of the hardware that remains in place as a result of that surgery.

¶ 6 Records from the claimant's previous primary care physician, Dr. Geoffrey Caplea, were admitted into evidence. On August 27, 2009, Dr. Caplea diagnosed the claimant with cervical radiculopathy. X-rays of the claimant's cervical spine taken in August 2009 revealed degenerative disc disease at C5-6 with some anterior and posterior osteophytes. A CT scan of the claimant's cervical spine in September 2009 revealed mild multi-level degenerative changes. Dr. Caplea also ordered an electromyogram and nerve conduction (EMG/NCV) study of her right arm due to "[r]ight handed numbness and paresthesias for at least 6 months." This EMG/NCV study was performed by Dr. Yilmaz and took place on September 8, 2009. The study revealed carpal tunnel syndrome, but there was no electrodiagnostic evidence of chronic right C5 through C8 radiculopathy.

¶ 7 Dr. Daniel Weber was also one of the claimant's primary treating physicians prior to the work accident. He also treated the claimant after the work accident. Dr. Weber testified

at the arbitration hearing by way of an evidence deposition, and his medical records were admitted into evidence.

¶ 8 On September 21, 2009, Dr. Weber noted that the claimant had been "experiencing numbness in her right hand and also some pain in her upper back" and that she was "not aware of any injury in these locations." He prescribed a course of physical therapy and a carpal tunnel brace. In a patient intake form that the claimant filled out on September 25, 2009, she indicated that she was then suffering from low back pain, elbow/upper arm pain, hand pain, knee pain, joint pain/stiffness, and arthritis. On this same form, she indicated that she was taking Celebrex and Hydrocodone. The claimant filled out a pain diagram that indicated that she had a pins and needles sensation from her cervical spine down the entire right arm and into her right hand. The arbitrator found that these were the same complaints that she alleged that occurred after the November 1, 2009, accident.

¶ 9 The claimant also received treatments at Scheetz Chiropractic prior to the accident. A case history record dated September 25, 2009, states that the claimant informed Dr. Scheetz "that she has had shoulder pain, mid back pain and upper back pain in her past." In addition, Dr. Scheetz wrote: "The [claimant] informed me that she presently has: arthritis, joint pain/stiffness, knee pain, hand pain, wrist pain, elbow/upper arm pain, low back pain and smoking/tobacco use." He also wrote that "when questioned about medications, the [claimant] stated that she is currently taking Celebrex and Hydrocodone/ibuprofen."

¶ 10 Dr. Scheetz diagnosed the claimant with, among other conditions, cervical region

subluxation and muscle spasm. On October 19, 2009, he added an additional diagnosis of displacement of the cervical disc without myelopathy, and on October 21, 2009, he began performing mechanical traction over the claimant's cervical spine for 28 minutes per session. This treatment continued through the date of the accident and remained constant after the date of the accident up to November 25, 2009.

¶ 11 The workplace accident occurred on November 1, 2009, when the claimant slipped on some grease on the floor at work. She testified that she fell on her right side, right arm, and right shoulder. At the arbitration hearing, the employer offered a surveillance video which showed the claimant's fall. The arbitrator reviewed the video and found that "it reveals that the [claimant] did not fall hard but that it is also unclear as to whether or not she fell onto her right side and right shoulder." The arbitrator also noted that the video showed that "[s]ubsequent to the fall, the [claimant] sat up, checked out her right knee, and continued working."

¶ 12 The claimant testified that after the fall, she suffered from lacerations to two of her fingers as well as bruising on her thigh and from her right wrist to her elbow. She said that she had to leave work because her hand, shoulder, and neck were hurting "so bad [she] couldn't stand any longer." She testified, "I was having pain in my shoulder, my neck and in the ball of my neck" and she said that she had never had pain like that in her shoulder or neck previously.

¶ 13 Dr. Scheetz examined the claimant the day after the accident, and the arbitrator noted

that he did not document any bruising or lacerations to the claimant's fingers in his office notes. The claimant testified that when she saw Dr. Scheetz, she complained about her shoulder and her neck. In his notes from November 2009, Dr. Scheetz reported that the claimant complained of intense pain in her right arm, right shoulder, and neck.

¶ 14 Five days after the accident, on November 6, 2009, the claimant saw Dr. Weber. His records indicate that the claimant reported to him that she had slipped on the floor and fallen onto her right side. At that time, she had complaints of pain in her right hand and wrist as well as her right shoulder blade area. The claimant testified that she told Dr. Weber that she had major pain in her shoulder. Dr. Weber ordered x-rays of her hand and wrist, and he did not identify any acute injury from the x-rays.

¶ 15 The claimant had full range of motion in her right shoulder, and the doctor did not detect any focal weakness or tenderness in her upper arm or elbow area. He noted that the claimant's wrist did not have any swelling or deformity and although there was some tenderness, it was not localized to one spot. Dr. Weber did not note bruising to any portion of the claimant's right arm. He diagnosed her with a wrist sprain and muscular pain in her shoulder blade area.

¶ 16 Dr. Weber testified that he did not make any diagnosis or recommendations regarding her cervical spine. He prescribed physical therapy for the wrist sprain and muscular issues in her shoulder. Dr. Weber did not take the claimant off work, but imposed a 10 pound lifting restriction as well as limited use of the employer's deli slicer.

¶ 17 On November 10, 2009, Dr. Weber examined the claimant's right shoulder, and he noted tenderness in the right acromioclavicular (AC) joint with abduction. He gave the claimant an AC joint injection in her right shoulder and recommended continued physical therapy. The claimant filled out a form on November 10, 2009, that indicated that her main complaints were "right hand-upper arm-neck" and that she was injured when she slipped and fell at work.

¶ 18 On December 7, 2009, the claimant reported that her shoulder was better but still had some pain. On December 11, 2009, Dr. Weber noted that the claimant still had pain and tenderness at her acromioclavicular joint. At that time, Dr. Weber wanted to take a closer look at the claimant's rotator cuff. Because the claimant could not undergo an MRI, Dr. Weber recommended an arthroscopic evaluation of her shoulder. He prescribed Norco for pain and Skelaxin as a muscle relaxant.

¶ 19 On April 15, 2010, Dr. Weber performed right shoulder surgery, including arthroscopy and an arthroscopic repair to the claimant's rotator cuff. In addition, he performed right carpal tunnel surgery. He testified that his diagnosis of the claimant changed because he identified the rotator cuff tear intra-operatively and that he had been previously unable to diagnose the tear. He believed that the claimant's symptoms when he first saw her in November 2009 following the accident were not inconsistent with a rotator cuff tear. He testified that her symptoms were not "specific for a rotator cuff tear, but she had pain about the shoulder" and that he had seen cases where "the pain is not well localized initially

following injury." He opined that, based on the claimant's history, his examination, and her clinical course, he believed that the claimant's right shoulder pathology was most likely caused by the workplace slip and fall.

¶ 20 With respect to the claimant's carpal tunnel syndrome, Dr. Weber believed that the claimant's use of a meat slicer at work could have contributed to her symptoms. He also testified, however, that in order to give any opinion based upon a reasonable degree of medical certainty, he would need to know how often she used the meat slicer, how many hours a day she used the slicer, which hand she used with the slicer, and what her other job duties were. He did not know any of these details concerning the claimant's job activities. Therefore, he could not give an opinion on causation between her job and the carpal tunnel syndrome based on a reasonable degree of medical and surgical certainty. He also testified that he was not giving an opinion that the carpal tunnel was related to the fall.

¶ 21 After Dr. Weber gave his initial opinion testimony concerning causation, he reviewed the surveillance video of the claimant's workplace accident and gave a second evidence deposition. According to Dr. Weber, the video showed that when the claimant fell, she landed on her knees and put both arms out to break her fall. After the fall, the claimant pulled up her right pant leg and rubbed her right knee. He did not believe that the video showed that the claimant fell on her right side or right shoulder.

¶ 22 He testified that if the claimant did not have any pain in her right shoulder prior to the fall then "it would seem that could have been the cause of her shoulder injury." He opined

that a fall onto her hands could cause a rotator cuff injury. He also testified that it would be important for him to know whether she experienced pain in her right shoulder prior to the fall and that he was unable to determine based on the video what impact the fall had on the claimant's right hand, arm, or shoulder. He could not say that the claimant did tear her rotator cuff when she fell at work, but he felt that it was plausible.

¶ 23 Following the shoulder surgery, Dr. Weber prescribed a course of physical therapy. In a form dated April 27, 2010, the claimant indicated that her main complaint was "shoulder to middle finger pain" caused when she slipped and fell at work. The claimant's physical therapy records from April 27, 2010, through August 5, 2010, refer to physical therapy treatments for the conditions of the claimant's right shoulder and right wrist. The records do not reflect any treatments for the claimant's cervical spine. The physical therapist noted on May 5, 2010 that the claimant "stated that her shoulder and wrist are doing extremely well today and she is having no more pain." On June 21, 2010, the physical therapist reported that the claimant's shoulder was "feeling significantly better" and that her "main complaint" was "pain into the hand." On July 15, 2010, the physical therapist noted that the claimant stated "that she is feeling quite well with minimal discomfort." By September 2010, Dr. Weber noted that the claimant had full range of active motion in her right shoulder and had good strength in her shoulder. He believed that she had a good result from the shoulder surgery and was doing well.

¶ 24 However, on September 23, 2010, the claimant was treated by Dr. Holly Carobene,

a pain management specialist. Dr. Carobene wrote in her report that the claimant presented "with neck pain that radiates into the right scapular area, shoulder, and right arm to the thumb and associated with numbing, tingling, and weakness in the handgrip." At that time, the claimant reported to Dr. Carobene that she did not have any history of neck or arm pain prior to the November 2009 work accident. Dr. Carobene wrote in her report: "She had no history of neck pain or arm pain prior to a work-related injury on November 12, 2009 [sic]." However, the arbitrator noted that Dr. Weber's records of his treatments shortly after the accident do not include any of these complaints. Dr. Carobene gave the claimant a right C6 selective nerve root block injection and referred her to Dr. Martin Luken to evaluate her cervical spine.

¶ 25 The claimant saw Dr. Luken in November 2010. Dr. Luken noted that the claimant had a history of incapacitating arm pain and pain in her neck and right shoulder that radiated into her right arm with numbness of the right thumb. In his report dated November 29, 2010, Dr. Luken wrote that the claimant reported that her neck, right shoulder, and right arm pain and right arm numbness were precipitated by a work-related injury that took place on November 1, 2009. Dr. Luken found it "of some interest," however, that the claimant had undergone an "EMG and nerve conduction testing of her right arm on September 8, 2009 for what Dr. Engin Yilmaz described as 'right hand numbness and paresthesias for at least six months.' " He believed that the claimant's symptoms and clinical findings were "quite precisely congruent with a right 6th cervical radiculopathy" and that the claimant had

exhausted conservative management options. A second EMG/NCV test was done on December 14, 2010, and it showed right-sided cervical nerve root compression.

¶ 26 On February 3, 2011, Dr. Luken performed a C5-6 anterior cervical discectomy and disc arthroplasty. In a followup visit on March 7, 2011, the claimant reported that her postoperative right cervical radicular pain had all but completely resolved, although she continued to experience relentless back and interscapular pain which required her to take hydrocodone three or four times per day.

¶ 27 In a report dated March 8, 2011, Dr. Luken wrote: "If [the claimant]'s account of her symptomatic course is accurate, it would appear that she suffered some significant aggravation of her cervical spine problem and related symptoms at the time of her work injury she describes as having taken place on November 1st of 2009. However, the fact and the findings of her numerous diagnostic studies in the months immediately before that accident, - and in particular Dr. Yilmaz's very specific description of her symptoms in those months - suggests that any untoward sequella of her work injury was an aggravation of a preexisting condition, and not its original precipitant."

¶ 28 During his evidence deposition, Dr. Luken opined that the November 1, 2009, workplace slip and fall was causally related to the conditions of her cervical spine which required the surgery he performed. He explained that the claimant "had a severe and distinct change in her symptoms coincident with the fall" and, therefore, the fall was causally related "by either precipitating or aggravating the anatomical abnormalities that we eventually dealt

with with our surgical procedure." He believed that the claimant's preexisting condition could have remained asymptomatic but for the November 1, 2009, fall. He noted that the EMG/NCV test done in September 2009 showed the right carpal tunnel syndrome, but also noted that there was no electrodiagnostic evidence of chronic right C5 through C8 radiculopathy. That suggested to the doctor that any component of nerve root compression at that time was mild enough that it did not show up on the electrical testing. The subsequent EMG/NCV test performed on December 14, 2010, however, revealed right-sided cervical nerve root compression.

¶ 29 Dr. Luken agreed that his causation opinion was based upon the accuracy of the history that the claimant gave him and that his opinion concerning causation was based on the claimant having had the complaints she presented with from the time of the accident forward. He agreed that the CT findings in September 2009 were in the same location and were consistent with his degenerative findings at the time of his surgery and that Dr. Weber's treatment of the claimant for right arm pain prior to the accident could be indicative of cervical radiculopathy. He also believed that if the accident had aggravated degenerative conditions in the claimant's cervical spine then she would have had symptoms approximately contemporaneous with the accident and that the claimant's medical records from the time of the accident until he saw her would contain references to the symptoms that she presented to him. He testified that the symptoms he treated were different than parascapular pain.

¶ 30 Dr. Luken testified that his understanding of the claimant's workplace accident is that

"she fell on her shoulder and her arm on the symptomatic right side" which would "seem to be very plausible to account for mechanical stresses to the shoulder and to the neck that might be anticipated to precipitate or exacerbate soft tissue degenerative changes in those areas." He agreed that if she did not have trauma to her right shoulder that could impact his causal opinion.

¶ 31 At the request of the employer, the claimant submitted to an independent medical examination (IME) conducted by Dr. Kevin Walsh on January 14, 2010, a little over two months after the work-related accident. In his IME report, Dr. Walsh wrote that the claimant reported that she fell on her right side when she slipped at work. She reported that she split open her hand and had pain from her shoulder to her neck.

¶ 32 Dr. Walsh testified at the hearing by way of an evidence deposition that was taken on May 24, 2011. He testified that the claimant did not complain of any cervical complaints on January 14, 2010, and did not complain of cervical radiculopathy. Instead, she reported that she developed right shoulder pain and discomfort, beginning on the top of the shoulder and later involving the whole arm, with her symptoms progressively worsening.

¶ 33 Dr. Walsh noted that Dr. Weber's records indicate the claimant was able to move her neck well on November 6, 2009, five days after the injury. He testified that he would expect a decreased range of motion in her neck if the claimant had suffered a traumatic cervical injury. Dr. Walsh also noted that the claimant had a full shoulder range of motion when she was examined by Dr. Weber following the accident. According to Dr. Walsh, if the claimant

had suffered a traumatic rotator cuff tear as a result of the work-related fall, he would expect evidence of decreased range of motion of the shoulder.

¶ 34 Dr. Walsh diagnosed the claimant with mild right carpal tunnel syndrome, right wrist sprain, and a strain of the parascapular muscles. Although the claimant was "subsequently diagnosed with a grade 1 or grade 2 AC separation," he wrote in his report: "It is not at all likely the patient tore her rotator cuff at the time of her initial evaluation. The patient had full range of motion with discomfort in the parascapular region and no significant tenderness to palpation in the upper arm or elbow." Therefore, he believed that the claimant's "medical records do not support acute pain in the AC joint when the patient was seen on November 6, 2009" which indicated that the claimant's AC joint separation was not causally related to the fall. He testified that "normally to separate an AC joint, normally the patient has to be upended and fall on their shoulder. The mechanism of injury for an AC separation is a direct blow to the shoulder from above." He did not believe that a fall on a hand would cause an AC separation. Therefore, he did not believe that Dr. Weber's shoulder surgery was causally related to the workplace accident.

¶ 35 In addition, he opined that the claimant's carpal tunnel syndrome was not causally related to her work activities because there was no evidence that her work activities were "repetitive, forceful and strenuous" over a long period of time. In addition, he testified: "There's no evidence the [claimant] developed acute carpal tunnel syndrome as a result of the slip and fall." He testified that the pre-work accident EMG test showed that her carpal tunnel

syndrome preexisted the accident. He testified: "If the [claimant]'s carpal tunnel syndrome was related to the fall, there would be clear evidence of acute pain and discomfort in the area of the carpal tunnel after the fall with acute findings suggestive of an acute carpal tunnel syndrome."

¶ 36 He concluded that there was no evidence in the claimant's medical records that the claimant "sustained an injury to her neck or her back as a result of the fall described." He opined that if the claimant had "injured her back or neck more likely than not she would have neck and back pain when seen by Dr. Weber on November 6, 2009, and December 11, 2009." He also opined that the claimant's cervical radiculopathy diagnosed by Dr. Carobene was not related to the workplace accident. He did not believe that the claimant's multilevel cervical disc disease was causally related to the accident or that Dr. Luken's surgery was causally related to the accident. He noted that the September 2009 CT scan showed degenerative disc disease at C5/6 and that the degenerative disc disease was in the same area of Dr. Luken's surgery.

¶ 37 He testified: "If the [claimant] suffered an injury to her neck, more likely than not the medical records from Dr. Weber's office would document an injury to the neck and the [claimant] would have been appropriately treated for an acute neck injury. There's no evidence in the medical record to support that." He explained that the first diagnosis of cervical radiculopathy was made in September 2010, over 10 months after the workplace accident. He also noted that Dr. Luken's records from November 29, 2010, indicate that the

claimant reported pain coming from the ball of her neck and right shoulder to her right arm to her right thumb and that the pain was sudden onset that began on November 1, 2009. He noted, however, that the claimant's medical records of her treatments following the accident do not reflect these symptoms, and when he examined her in January 2010, she did not have these symptoms.

¶ 38 Dr. Walsh examined the claimant a second time on December 23, 2010, after her shoulder surgery and physical therapy, and she reported to Dr. Walsh that her symptoms were worse than they were prior to the surgery. Dr. Walsh did not believe that her complaints of pain were anatomical because they did not follow any one nerve root distribution; the pain did not follow anatomical dermatomes. He testified that the claimant's complaints indicated that she had "a lot of subjective complaints of pain without at least objective explanations of those subjective complaints."

¶ 39 Dr. Walsh viewed the video of the fall and opined that she did not fall on her right side. Instead, Dr. Walsh believed that she fell onto her knees and then onto her arms. He did not believe that the fall was a competent cause of the rotator cuff tear or cervical injury. He noted that the video showed that she "got up and returned to work immediately after the fall." He did not believe that the claimant showed any direct or indirect signs of a neck injury following the fall, and he did not believe that the fall would cause any forces to be imparted to her neck. He opined that the major force of the fall went to the claimant's knees.

¶ 40 The claimant testified that her current treatments and complaints at the time of the

arbitration hearing were exclusively related to her cervical spine. She said that she had "lightning bolt pains" through the side of her shoulder from the minute she wakes up in the morning until she goes to bed. In addition, she testified that she has headaches over the right eyebrow and pain "in the ball of [her] neck that goes down into ** the middle of [her] shoulder blades."

¶ 41 At the conclusion of the arbitration hearing, the arbitrator found that the claimant failed to carry her burden of proving a causal connection between her conditions of ill-being and the workplace accident. The arbitrator found that the only evidence linking her conditions of ill-being and her workplace accident was her testimony, but the arbitrator noted several inconsistencies in her testimony. The claimant testified at the arbitration hearing that she never had any complaints with respect to her cervical spine, right shoulder, or right arm prior to the workplace accident. According to the arbitrator, the claimant was "adamant" that the only pain she had prior to November 1, 2009, was right hand pain. In addition, the arbitrator noted that she denied any history of neck or arm pain when she saw Drs. Carobene and Luken.

¶ 42 The arbitrator found, however, that Dr. Caplea's records in August and September 2009, prior to the workplace accident, revealed a diagnosis of cervical radiculopathy on more than one occasion. Subsequent x-rays and a CT scan showed cervical degenerative changes, and Dr. Luken testified that the degenerative changes that were revealed before the accident were consistent with his findings in 2010, ten months after the accident. Dr. Weber's notes

that were dated less than six weeks before the accident noted that the claimant had been experiencing right arm numbness and pain for three to four months.

¶ 43 The arbitrator concluded that the claimant's "medical treatment records clearly reveal that, contrary to her trial testimony, [she] had pain in her neck, right shoulder, and down her right arm prior to November 1, 2009." The arbitrator found that the claimant testified falsely when she denied taking hydrocodone prior to November 1, 2009, and that there was no evidence that the claimant's carpal tunnel syndrome was related to the workplace accident.

¶ 44 The Commission unanimously affirmed and adopted the arbitrator's decision, and the circuit court entered a judgment confirming the Commission's decision. The claimant now appeals from the circuit court's judgment.

¶ 45 ANALYSIS

I.

¶ 46 Admission of Dr. Walsh's Medical Opinion Testimony

¶ 47 The claimant argues that the Commission improperly admitted Dr. Walsh's evidence deposition testimony. Her objections to his testimony concern basically two categories of objections: (1) that portions of his opinions are, or possibly could be, based on undisclosed records, and (2) that during his deposition, he offered new, undisclosed medical opinions in violation of section 12 of the Act.

¶ 48 (a)

¶ 49 Opinions Based on Undisclosed Records

¶ 50 With respect to undisclosed records, the claimant argues that during Dr. Walsh's evidence deposition, she objected to his testimony and opinions that were based on his reliance on unidentified and unauthenticated records from the employer. She maintains that the Commission improperly overruled her objections. We disagree and hold that the Commission properly overruled the claimant's objections and, in any event, the objected to portions of Dr. Walsh's testimony did not factor into the Commission's analysis on any of the issues it decided.

¶ 51 The claimant's arguments based on"unidentified" records stem from Dr. Walsh's second IME report dated January 30, 2011, which he completed after his second IME of the claimant on December 23, 2010. On page two of his January 30, 2011, report he noted as follows:

> "Records were reviewed from [the employer] for the job title of Deli and Bakery Clerk. The work does involve preparing stock and serving deli items to customers throughout the day. Physical Demand Requirement of Job is defined as medium. The work does involve constant lifting of zero to 10 pounds and infrequent lifting of 11 to 50 pounds with no lifting greater than 51 pounds. The work does involve floor-to-waist work infrequently, waist-to-shoulder work constantly, and shoulder-overhead work infrequently. There is infrequent overhead reaching but frequent horizontal reaching, bending, and squatting."

¶ 52 All of the other records mentioned in Dr. Walsh's IME reports are medical records

from the claimant's medical providers.

¶ 53 Dr. Walsh's evidence deposition was taken on May 24, 2011. During his direct examination, he initially described the claimant's medical records that he reviewed during his first IME and the opinions he formed based on those records and his examination.

¶ 54 Later during the deposition, the employer's attorney asked the doctor about his second IME of the claimant that he conducted on December 23, 2010. With respect to the second IME, the employer's attorney asked Dr. Walsh: "As part of that examination, did you also have the opportunity to review additional medical treatment records?" The claimant then offered the following objection: "I'm going to object at this point that on page 2 of his report he refers to records from [the employer] that are not medical records; they are hearsay records that have not been provided to me for my review. I object to reliance upon them by this doctor at this time." The arbitrator overruled the claimant's objection.

¶ 55 At this point, however, the employer's attorney did not ask the doctor about the non-medical records relating to the claimant's job duties furnished by the employer. Instead, the employer's attorney asked Dr. Walsh about additional medical history he obtained from the claimant on December 23, 2010, and Dr. Walsh discussed the additional medical records he reviewed. Therefore, the testimony to which the claimant objected was not related to or based on the "undisclosed" documents referred to in paragraph two of Dr. Walsh's January 30, 2011, report. The objection, therefore, had no relevance to the testimony that was admitted into evidence at the time of the objection.

¶ 56 Later during his direct examination, the employer asked Dr. Walsh: "Based upon your physical examination, review of records, did you arrive at an opinion, based upon a reasonable degree of surgical certainty, whether the surgery performed by Dr. Weber on April 15, 2010, was causally related to the work injury?" The claimant offered the following objection: "I object to the extent that you're asking him to rely on the records reviewed from [the employer]." The arbitrator overruled the claimant's objection, and the doctor testified that for purposes of the questions regarding the shoulder, he was not "relying in any way on the records from [the employer]." Therefore, again, the objection had no relevance to the testimony that was admitted over the objection.

¶ 57 These were the only two objections that the claimant offered with respect to Dr. Walsh's opinions based on "unidentified" records.

¶ 58 Dr. Walsh's IME reports were attached to his evidence deposition, and the deposition and reports were offered into evidence by the employer at the arbitration hearing. The claimant did not object to the admission of Dr. Walsh's January 30, 2011, report into evidence, did not object to the admission of any of his other reports, and did not offer any further objections to the admission of any of Dr. Walsh's testimony based on undisclosed records, other than the objections reflected in the deposition transcript that are quoted above.

¶ 59 In her statement of exceptions and brief filed with the Commission, the claimant argued that the Commission "should sustain all objections to unidentified records which were relied by Dr. Walsh." The Commission affirmed and adopted the arbitrator's decision.

¶ 60 In her brief filed with the circuit court, the claimant expanded on this argument, noting that the "records were not authenticated in any way and were never produced." Even though the objection referred to non-medical records furnished by the employer and referred to page two of Dr. Walsh's January 30, 2011, report, the claimant argued to the circuit court: "We don't know whether the records were witnesses statements, selected medical records, or employment records. We don't know whether they were kept in the ordinary course of business or whether they were assembled from a variety of sources and in contemplation of trial."

¶ 61 The claimant acknowledged in her circuit court brief that Dr. Walsh testified that he did not rely on these documents with respect to his testimony concerning the claimant's shoulder, but speculated that perhaps the doctor relied on the documents in reaching his opinions about the claimant's neck because Dr. Walsh never "exclude[d] the unidentified records as a basis for his opinion" that the claimant's "cervical surgery was unrelated to the accident."

¶ 62 In the present appeal, the claimant expands the argument even further by arguing that the "unidentified and unauthenticated employment records may have affected the opinions of [Dr. Walsh] in unknown ways" and that because the "un-admitted records were not even identified, the deposition should not be considered."

¶ 63 The claimant's argument with respect to "unidentified" documents is not convincing.

¶ 64 Proceedings before the Commission or an arbitrator are governed by the rules of

evidence except to the extent that the rules of evidence conflict with the Act. *Paganelis v. Industrial Comm'n*, 132 Ill. 2d 468, 479, 548 N.E.2d 1033, 1038 (1989). The Commission's evidentiary rulings are reviewed under the abuse of discretion standard. *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1010, 832 N.E.2d 331, 340 (2005). "An abuse of discretion occurs where no reasonable person would adopt the view taken by the lower tribunal." *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 947, 856 N.E.2d 602, 610 (2006).

¶ 65 Paragraph two of Dr. Walsh's January 30, 2011, IME report described the non-medical records he received from the employer in detail. The records consisted of a job description of the claimant's work for the employer that included the physical demands of the claimant's job duties. The Commission did not abuse its discretion in overruling the claimant's objections offered at the evidence deposition based on these records.

¶ 66 An expert may base his opinions on inadmissible records at trial if those records were of a kind reasonably relied upon by experts in the specific field in forming opinions on that subject. *Beecher v. Wholesale Greenhouse, Inc. v. Industrial Commission*, 170 Ill. App. 3d 184, 188, 524 N.E.2d 750, 753 (1988), citing *Wilson v. Clark*, 84 Ill. 2d 186, 417 N.E.2d 1322 (1981). Employer furnished documents that outline the physical demands of a claimant's job are often relied on by medical experts, particularly in diagnosing and offering causation opinions with respect to carpal tunnel syndrome. Therefore, there was no basis for excluding Dr. Walsh's opinions based on the employer-furnished job description documents

¶ 67 The claimant timely received Dr. Walsh's reports. There is nothing in the record that indicates that the claimant requested a copy of the non-medical records furnished to Dr. Walsh by the employer, and the claimant did not ask the doctor any questions about the documents during his deposition testimony. The Commission's ruling, therefore, was not an abuse of discretion.

¶ 68 Furthermore, none of Dr. Walsh's opinions with respect to the slip and fall accident were based on a description of the claimant's job duties. The physical demands of the claimant's job were relevant only to Dr. Walsh's opinions with respect to whether the claimant's carpal tunnel syndrome was causally related to the claimant's repetitive job duties, such as use of a deli slicer. These opinions were included in his IME report. The arbitrator noted, however, that "the carpal tunnel syndrome also has a separate filing with a separate date of accident." The arbitrator addressed the carpal tunnel syndrome in the present case only because "there seems to be some theory that this carpal tunnel syndrome may have been caused or aggravated by [the claimant]'s fall." Accordingly, in the present case, the arbitrator did not address any of Dr. Walsh's opinions of causation that were based on the employer-furnished job description with respect to the claimant's carpal tunnel syndrome.

¶ 69 The claimant admits that Dr. Walsh did not rely on any unidentified documents in forming his opinion with respect to the claimant's shoulder, and she does not offer any suggestion on appeal that she was prejudiced by this ruling with respect to Dr. Walsh's opinions about her shoulder.

¶ 70 The claimant speculates that perhaps the unidentified documents influenced the doctor's opinions with respect to her cervical spine. However, as more fully detailed in our discussion of issue II below, Dr. Walsh explained that his opinion with respect to the claimant's cervical spine was based on his examination of the claimant in January 2010, his review of medical records of the claimant's medical providers, his review of the video recording of the claimant's fall, and his second examination that he conducted in December 2010. Dr. Walsh did not testify that any of his opinions relating to the claimant's cervical spine were based on the employer-furnished job description, and, in fact, the claimant did not offer any objection to Dr. Walsh's cervical spine opinions on that basis. The claimant does not offer any basis for excluding this testimony based on any undisclosed documents.

¶ 71 (b)

¶ 72 Undisclosed Medical Opinions

¶ 73 Section 12 of the Act requires the employer to furnish a copy of its medical expert's reports to the claimant no later than 48 hours prior to the arbitration hearing in order to prevent unfair surprise medical testimony. *Homebrite Ace Hardware v. Industrial Comm'n*, 351 Ill. App. 3d 333, 338, 814 N.E.2d 126, 131 (2004). The claimant argues that portions of Dr. Walsh's testimony violated section 12 of the Act because, at his evidence deposition, he testified about opinions that were not previously disclosed in his reports.

¶ 74 Prior to the evidence deposition, Dr. Walsh submitted a third IME report dated April 5, 2011, in which he wrote that he reviewed additional medical records that were made

available from Dr. Luken's office since his previous IME reports. Dr. Walsh's April 5, 2011, report does not indicate that he reviewed an operative report authored by Dr. Luken that was dated February 3, 2011. The operative report was prepared by Dr. Luken after he performed the surgery on the claimant's cervical spine. Dr. Walsh noted in his report that he reviewed records of Dr. Luken's treatments of the claimant's cervical spine through January 10, 2011. He then opined as follows:

> "If indeed the [claimant] undergoes cervical spine surgery at this time by Dr. Luken more likely than not it is unrelated to the slip and fall at work in November 2009. The [claimant] does not meet the absolute indication for surgery, which would be a progressive neurological deficit. Any surgical intervention by Dr. Luken more likely than not is for a degenerative condition in the [claimant]'s cervical spine not caused, aggravated, or accelerated by the work injury."

¶ 75 At Dr. Walsh's evidence deposition, the employer's attorney handed Dr. Walsh a copy of Dr. Luken's February 3, 2011, operative report. The attorney then asked Dr. Walsh if, after having reviewed Dr. Luken's operative report, he had an opinion concerning whether Dr. Luken's cervical spine surgery was causally related to the November 1, 2009, accident.

¶ 76 The claimant then objected as follows: "I have an objection because this is a new opinion that has not been disclosed previously, since it appears the basis for his opinion is the record that the doctor has just reviewed now." The employer's attorney responded "that the doctor has already testified that the cervical condition is unrelated, has issued three

reports indicating that the cervical condition is unrelated. So the fact that Dr. Walsh is now testifying that the surgery performed to the cervical spine is unrelated is certainly no surprise."

¶ 77 The Commission overruled the claimant's objection, and we believe that the Commission did not abuse its discretion in overruling the objection. Dr. Walsh's IME reports detailed his opinions with respect to the claimant's cervical spine and the basis for his opinions. Dr. Walsh's testimony concerning Dr. Luken's cervical spine surgery was not surprise medical testimony. His testimony concerning whether Dr. Luken's surgery was causally related to the November 1, 2009, slip and fall accident was consistent with and cumulative to his previously disclosed opinions and was based on the same reasoning. The claimant cannot be surprised that Dr. Walsh testified about causation with respect to Dr. Luken's cervical spine surgery. This testimony, therefore, did not violate section 12 of the Act, and the Commission properly overruled the objection.

¶ 78 The second objection occurred later during Dr. Walsh's direct examination when the employer's attorney showed the doctor a medical record from October 2010 that included a description of the claimant's motorcycle accident history. The employer's attorney asked Dr. Walsh whether he had "an opinion whether the trauma described in that note would be sufficient to cause cervical injury?" The claimant objected "to the undisclosed opinion." The Commission overruled the claimant's objection, and Dr. Walsh answered, "certainly a severe head trauma in 1999 in which the patient was struck in the head with rebar could very well

result in injury to the cervical spine."

¶ 79 We agree with the claimant that nothing in Dr. Walsh's reports indicate that, prior to the evidence deposition, he had reviewed any medical records that described the 1999 motorcycle accident. In addition, Dr. Walsh's reports did not include any opinions with respect to whether the 1999 motorcycle accident was causally related to any of the claimant's conditions of ill-being. Nonetheless, the Commission's failure to sustain the claimant's objection to this portion of Dr. Walsh's testimony did not result in reversible error.

¶ 80 Dr. Walsh's opinion that "a severe head trauma in 1999 in which the patient was struck in the head with rebar could very well result in injury to the cervical spine" did not factor into the Commission's finding that the claimant failed to prove causation with respect to any condition of ill-being. In fact, Dr. Walsh's deposition testimony on this point does not link the claimant's condition of ill-being in her cervical spine with the accident, but instead he vaguely opines that severe head trauma could result in some unspecified "injury to the cervical spine." The Commission did not rely on this opinion as a basis for any of its findings. Instead, the Commission's findings with respect to the claimant's cervical spine were sufficiently supported by other evidence, including the properly admitted portions of Dr. Walsh's testimony, which is discussed further in the analysis below. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d at 537, 865 N.E.2d at 351-52 ("After reviewing the record in this case, we conclude that the Commission's finding as to causation was sufficiently supported by other competent evidence so as to render the admission of Dr.

Levin's report harmless).

¶ 81 II.

¶ 82 Causation

¶ 83 The second issue before us in this appeal is whether the Commission's finding that the claimant failed to carry her burden of proving that her conditions of ill-being are causally related to her work-related accident is against the manifest weight of the evidence. We agree with the circuit court that the Commission's findings with respect to causation are not against the manifest weight of the evidence.

¶ 84 In order to prevail in a claim for benefits under the Act, a claimant has to prove by a preponderance of the evidence that she suffered a disabling injury that arose out of and in the course of her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). The "in the course of" component of a workers' compensation claim refers to the time, place, and circumstances of the accident. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57, 541 N.E.2d 665, 667 (1989). The "arising out of" component concerns the causal connection between a work-related injury and the employee's condition of ill-being. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 25, 993 N.E.2d 473.

¶ 85 The existence of a causal connection between a workplace accident and the claimant's condition of ill-being is a question of fact for the Commission to resolve. *Id*. at ¶ 26. The Commission's findings with respect to factual issues are reviewed under the manifest weight

of the evidence standard. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434, 943 N.E.2d 153, 160 (2011). "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).

¶ 86 "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 v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). Resolution of conflicts in medical testimony is also within the province of the Commission. *Sisbro, Inc.*, 207 Ill. 2d at 206, 797 N.E.2d at 673. 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." *Id.*

¶ 87 To establish causation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injury. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592, 834 N.E.2d 583, 592 (2005). 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).

¶ 88 At the arbitration hearing, the claimant presented three categories of conditions of ill-being that she argued were causally related to the work place accident: her carpal tunnel syndrome, conditions of ill-being in her shoulder, and conditions of ill-being in her cervical spine.

¶ 89 (a)

¶ 90 Carpal Tunnel Syndrome

¶ 91 The claimant's counsel announced at oral argument that the claimant was no longer pursuing her claim for carpal tunnel syndrome. Regardless, the finding of the Commission was not against the manifest weight of the evidence. The Commission found that the claimant failed to prove that her carpal tunnel syndrome was causally related to the workplace accident.[1] In making this finding, the Commission noted that "Dr. Weber's records do indicate that [the claimant] presented with hand pain when he first examined her after November 1, 2009. However, Dr. Weber's records, and [the claimant]'s own testimony acknowledged that she had significant hand pain prior to the date of accident." The

[1] As outlined above, the arbitrator noted that the claimant's carpal tunnel syndrome was the subject matter of a separate claim with a separate date of accident. The Commission addressed the claimant's carpal tunnel syndrome only to the extent that the evidence presented at the hearing could support "some theory that this carpal tunnel syndrome may have been caused or aggravated by [the claimant]'s fall."

Commission also noted that the claimant failed to offer any opinion testimony concerning causation with respect to her carpal tunnel syndrome and the November 1, 2009, accident. Specifically, the medical expert who treated the carpal tunnel syndrome, Dr. Weber, testified that he was not offering an opinion that the carpal tunnel syndrome was related to the claimant's fall at work on November 1, 2009.

¶ 92 The claimant's carpal tunnel syndrome was diagnosed prior to the work accident, and there is nothing in the record to prove that the work accident was causally related to the carpal tunnel syndrome or Dr. Weber's carpal tunnel release surgery. Accordingly, the Commission's finding that the carpal tunnel syndrome was not causally related to the work-accident is not against the manifest weight of the evidence.

¶ 93 (b)

¶ 94 Conditions of Ill-Being in the Claimant's Cervical Spine

¶ 95 The Commission noted that, at the time of the arbitration hearing, the claimant's current medical treatment was focused on the conditions of her cervical spine. The Commission, however, found that the claimant failed to "obtain credible causal opinion linking [her] cervical condition to the accident of November 1, 2009."

¶ 96 The Commission noted that the conditions of the claimant's cervical spine "pre-existed the accident." Prior to the accident, the claimant had reported pain in her neck. When the claimant saw Dr. Weber following the work-accident, the claimant did not report to Dr. Weber any symptoms related to her cervical spine as a result of the fall. Instead, she reported

symptoms that were located in her shoulder blade area. Accordingly, Dr. Weber's treatments focused on the claimant's right shoulder, and he did not note any symptoms related to the cervical spine or radiculopathy.

¶ 97 The employer presented the testimony of Dr. Walsh who opined that the conditions of the claimant's cervical spine were not causally related to the November 1, 2009, slip and fall accident. Dr. Walsh reviewed the claimant's medical records, including Dr. Weber's records of his treatment of the claimant following the accident. Dr. Walsh noted that the claimant was able to move her neck well five days after the injury. He opined that she would have decreased range of motion in her neck if she had suffered a traumatic cervical injury. In addition, he noted that Dr. Weber did not diagnose any neck pain or cervical spine conditions following the accident. According to Dr. Walsh's review of the claimant's medical records, a diagnosis of cervical radiculopathy was not made until September 2010, over 10 months after the accident. In addition, when he personally examined the claimant in January 2010, the claimant did not have any objective or subjective symptoms related to her cervical spine.

¶ 98 Dr. Walsh viewed the video that showed the claimant's slip and fall, and he believed that the claimant showed no signs of a neck injury on the video, and he did not believe that the fall would have caused any forces to be imparted to the claimant's neck. He opined that the major force of the fall went to her knees.

¶ 99 Dr. Luken began treating the claimant's cervical spine in November 2010, and he

opined that the workplace accident was causally related to the conditions of her cervical spine. He agreed, however, that his opinion was based on the claimant's account of her "symptomatic course." His causation opinion was based on the belief that the claimant had "a severe and distinct change in her symptoms coincident with the fall." He also agreed that if the accident had aggravated the preexisting degenerative conditions in the claimant's cervical spine, she would have cervical symptoms approximately contemporaneous with the accident, symptoms different than the parascapular pain that Dr. Weber treated. The Commission found that the claimant did not have cervical symptoms contemporaneous with the accident.

¶ 100 The Commission considered conflicting medical evidence and found that the claimant failed to carry her burden with respect to the conditions of her cervical spine. The Commission found it significant that the symptoms that the claimant presented to Dr. Luken were different than the symptoms treated by Dr. Weber shortly following the accident. In addition, in assessing Dr. Luken's opinion, the Commission found it significant that the claimant reported to Dr. Luken that she had the same symptoms since November 1, 2009, but her medical records indicate that "these symptoms were not present in the medical records until nearly a year after the accident."

¶ 101 Dr. Carobene also treated the claimant's cervical spine beginning in September 2010, but she did not offer any opinions with respect to causation.

¶ 102 The interpretation of medical testimony is particularly within the province of the

Commission. *A.O. Smith Corp. v. Industrial Comm'n*, 51 Ill. 2d 533, 536–37, 283 N.E.2d 875, 877 (1972)*; Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566, 394 N.E.2d 1192, 1194 (1979) ("Therefore, a finding of fact by the Commission on this issue, based on any medical testimony or on inferences to be drawn from medical testimony, should be given substantial deference because of the expertise acquired by the Commission in this area."). Furthermore, it is particularly within the province of the Commission to assess and resolve conflicts in medical opinion evidence. *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 887, 864 N.E.2d 266, 271 (2007).

¶ 103 Based on the record before us, we cannot second guess the Commission's causation findings with respect to the claimant's cervical spine. The medical evidence in the record supports the Commission's finding that "the cervical condition and cervical treatment provided by Dr. Holly Carobene and by Dr. Martin Luken is unrelated to the fall of November 1, 2009."

¶ 104 (c)

¶ 105 Conditions of Ill-Being in the Claimant's Right Shoulder

¶ 106 Finally, the Commission found that the claimant failed to prove that the conditions of her right shoulder were causally related to the November 1, 2009, accident. The Commission found that the claimant's complaints to Dr. Weber following the accident were "scapular in nature not truly shoulder pain." The Commission found it significant that Dr. Weber reported that the claimant's shoulder complaints were diffuse and not indicative of the rotator cuff tear

that he later discovered. When Dr. Weber viewed the video of the claimant's slip and fall, he could not opine that the fall caused her rotator cuff tear, but testified that it was plausible.

¶ 107 Dr. Walsh, however, testified that he did not believe that the claimant's rotator cuff tear was caused by the accident. He noted that the claimant had full range of motion in her right shoulder following the accident, and he believed that a person with a rotator cuff tear would have decreased range of motion. In addition, he did not believe that the claimant's fall to the ground would have resulted in a rotator cuff tear because the mechanism for such an injury is usually a direct blow to the shoulder. The force of the claimant's fall, according to Dr. Walsh, went to the claimant's knees.

¶ 108 Considering this conflicting medical evidence, the Commission concluded that the claimant's "right shoulder condition and surgery as well as the treatment provided by Dr. Weber are unrelated to the fall of November 1, 2009." We cannot conclude that the Commission's findings are against the manifest weight of the evidence because there is evidence in the record that supports its findings. We cannot reweigh the evidence and make alternative findings when the record supports the Commission's decision. Accordingly, the Commission's findings with respect to causation are affirmed.

¶ 109 CONCLUSION

¶ 110 For the foregoing reasons, we affirm the Circuit Court's judgment that confirmed the Commission's decision.

¶ 111 Affirmed.