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2015 IL App (3d) 140403WC-U

No. 3-14-0403WC

Order filed December 11, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MANTENO COMMUNITY FIRE PROTECTION DISTRICT,	)	Appeal from the Circuit Court of Kankakee County.
Appellant,	)	
v.	)	No. 13 MR 579
THE ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.* (Robert Hartell, Appellee).	)	Honorable Adrienne W. Albrecht, 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's decision finding no causal connection between the claimant's condition of ill-being and his work accident was against the manifest weight of the evidence where his physician opined that his condition was causally related to his accident, the employer's expert did not directly contradict the treating physician, and the clearly evident,

plain, and indisputable evidence compelled an opposite conclusion.

¶ 2 The claimant, Robert Hartell, filed two applications for adjustment of claim against his employer, Manteno Community Fire Protection District, seeking workers' compensation benefits for an injury to his head and shoulders arising from work accidents on July 21, 2011, and July 24, 2011. The claims were consolidated and proceeded to an expedited arbitration hearing under section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/19(b) (West 2010)). The arbitrator found that the claimant sustained accidents that arose out of and in the course of his employment; that his current condition of ill-being was causally related to the July 24, 2011, accident; that he was temporarily totally disabled from February 17, 2012, to August 16, 2012; that his medical services were reasonable and necessary; and that he was entitled to prospective medical care.

¶ 3 The employer appealed to the Illinois Workers' Compensation Commission (Commission). The Commission modified the arbitrator's decision, finding that the claimant failed to prove a causal connection between his current condition of ill-being and the accident, and vacated the awards of temporary total disability benefits, medical expenses, and prospective medical care. The claimant filed a timely petition for review in the circuit court of Kankakee County, which set aside the Commission's decision and reinstated the arbitrator's decision. The employer appeals.

¶ 4 **BACKGROUND**

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on August 16, 2012. The parties stipulated and agreed that on July 21, and July 24, 2011, the claimant sustained accidental injuries arising out of and in the course of his employment for the employer. The parties further stipulated that the claimant was paid full salary pursuant to the Public Employee Disability Act for the periods he was off work between July 25, 2011, and February 16, 2012.

¶ 6 The claimant testified that he worked as a firefighter/paramedic for the employer. He stated that prior to July 21, 2011, he was in "great physical condition." Prior to July 21, 2011, he experienced what he believed were seasonal sinus headaches. He described the headaches as in the front on both sides, and "kind of behind [his] eyes."

¶ 7 The claimant testified that on July 21, 2011, he was called to a fire. About one hour into the call, he started feeling tired due to the heat and his exertion. As he worked, he developed a frontal headache, he felt weak, his muscles cramped, and he became nauseous. When he returned to the station, he took a shower and laid down. His headache subsided. His lieutenant sent him home and told him to follow up with Dr. J.M. Panuska at the Provena Saint Mary Occupational Clinic. The next day, Dr. Panuska examined the claimant and released him to return to full duty work.

¶ 8 The claimant returned to work on July 24, 2011. He testified that while performing butterfly exercises on a universal machine as part of a mandatory work exercise regimen he felt a snap on the right side of his head behind his ear at the base of his skull. He felt a burning, stabbing, excruciating pain all the way to the right side front portion of his head. He stated that he had never felt this type of pain before; nor had he ever experienced pain in that area. He experienced dizziness and blurred vision in his

right eye. At his co-workers' suggestion, he went to the emergency room at Riverside Medical Center via ambulance.

¶ 9 At the hospital, the claimant had an extensive workup, including a computerized tomography (CT) scan and a magnetic resonance imaging (MRI) scan of his brain. The CT angiogram of his brain revealed a three millimeter aneurysm. The report of the MRI scan listed a history of headaches.

¶ 10 In the emergency department notes from July 24, 2011, the medical provider wrote that the claimant walked on a treadmill and lifted weights when he had a sudden onset of sharp severe right-sided head pain, lightheadedness, and nausea. He reported that it was a new problem and that he had no prior history of similar episodes.

¶ 11 Dr. Shariq Sattar admitted the claimant on July 24, 2011, for overnight observation. Dr. Sattar wrote in his patient notes that the claimant presented in the emergency room with complaints of right-sided headache with a sudden onset of severe sharp pain that radiated to the right neck and shoulder. The claimant also reported feelings of lightheadedness, nausea, and mild blurred vision. The claimant told Dr. Sattar that he had a dull, continuous, mild to moderate headache for the past three days. The claimant reported a similar type of headache in March with lower intensity that went away after a couple of days. The claimant denied a previous history of migraine headaches. Dr. Sattar assessed the claimant with a severe intractable right-sided headache. He referred the claimant to neurologist Dr. Michael Sergeant.

¶ 12 Dr. Sergeant consulted with the claimant on July 24, 2011. In the history section of his consultation report, he wrote that the claimant came in with right parietal pain that started while performing very vigorous exercises. He noted that the claimant had “some

issues with this before. Apparently, he saw one doctor for it, who said he had sinus issue a couple of weeks ago. Then last Friday, while dancing, again a vigorous physical exercise, he experienced very severe right temporal pain and temporoparietal pain." Dr. Sergeant questioned whether it was the result of leakage of the aneurysm because the symptoms occurred with vigorous exercise. He opined that the claimant's headache was more of a paroxysmal hemicranium or cluster headache.

¶ 13 The claimant testified that when he was released the following day, he still had dizziness and some pain at the back right side of his head, but he was able to walk on his own and felt well enough to go home. The claimant testified that once home, he started experiencing anxiety. He felt jittery and still had dizziness and pain on the right side of the back of his head. He returned to work, and the chief determined that he needed to return to the hospital. More tests were performed, and the claimant spent another night in the hospital. He was referred to Dr. Charles Harvey, a neurosurgeon.

¶ 14 On July 25, 2011, Dr. Harvey consulted on the claimant's case. He wrote in his consultation notes that the claimant reported that on July 21, 2011, while responding to a fire, he developed a stabbing right temporal headache, which subsided with rest but did not go away completely. On July 24, 2011, the headache had not completely resolved, but the claimant felt well enough to walk on the treadmill for one hour. While exercising, he developed a severe headache, a few minutes of blurred vision, and nausea. He reported occasional sinus headaches that were not as severe and that always resolved. Dr. Harvey opined that the claimant's headache was not related to his aneurysm.

¶ 15 On August 2, 2011, Dr. Harvey examined the claimant. Dr. Harvey wrote in the patient history that the claimant injured himself while performing a mandatory workout at

his job. He reported the sudden onset of the worst headache of his life in the right temporoparietal area associated with a pop or snap sensation. The claimant testified that he told Dr. Harvey that he had constant pain in the back of his head on the right side and that the pain intensified with movement, which caused pressure, dizziness, and nausea. Dr. Harvey referred him to neurointerventionalist Dr. Demetrius Lopes.

¶ 16 On August 3, 2011, Dr. Lopes examined the claimant. In the history of present illness, Dr. Lopes wrote that, while lifting weights, the claimant heard a popping noise followed by the onset of a severe headache accompanied by nausea, vomiting, and unsteady gait. Dr. Lopes wrote that the claimant had a history of chronic headaches but none as severe as this episode. The claimant complained of neck pain on the right side. Because the claimant complained of right-sided neck pain in conjunction with his headache and nausea, Dr. Lopes recommended imaging of his neck to ascertain whether there was evidence of vascular dissection. He ordered CT scans of the claimant's neck and head, which were performed the same day.

¶ 17 The claimant testified that in early August 2011, Dr. Panuska performed a fitness for duty exam of him. Dr. Panuska authorized him to return to work with restriction to ground level work. The claimant testified that he returned to work, doing house duties and maintenance of the vehicles. When he worked, he experienced increased pain on the back right side of his head, shooting pain toward the front of his head, and dizziness.

¶ 18 On August 16, 2011, Dr. Francis Hobson, an otolaryngologist, examined the claimant to determine if his condition of ill-being was caused by an inner ear problem. The claimant reported hearing or feeling a snap or pop behind his right ear on July 24,

2011. On August 23, 2011, he had a videonystagmography test and Dr. Hobson found no abnormalities and referred him to Dr. Sergeant for further testing.

¶ 19 On August 30, 2011, Dr. Sergeant examined the claimant, diagnosed him with dizziness and giddiness, and prescribed physical therapy. In an October 3, 2011, report from the claimant's physical therapist to Dr. Sergeant, the therapist wrote that the claimant complained of intermittent dizziness and near constant pressure in the right occiput area, and of head pressure that increased with any active contraction and/or shortening of the right occipitals, or any pressure at the right sternocleidomastoid. The therapist noted that the claimant had active trigger points in his cervical musculature that reproduced his complaints.

¶ 20 Dr. Sergeant examined the claimant on October 4, 2011. Dr. Sergeant noted that the claimant was undergoing physical therapy for vertigo and that his pain was worse on the right side. He opined that the claimant's vertigo was probably cervicogenic or vestibular and that it would eventually resolve with therapy.

¶ 21 At the employer's request, on October 5, 2011, Dr. Panuska performed a return to work evaluation of the claimant. Dr. Panuska determined that the claimant should not drive any work vehicles and could only perform ground level work. He recommended an MRI scan of the claimant's cervical spine to determine any anatomical pathology that could be causing his symptomology.

¶ 22 Dr. Panuska examined the claimant on December 6, 2011, for a re-evaluation of neck pain and vertigo. The claimant reported persistent dizziness and a stiff neck. His range of motion in his neck was limited and uncomfortable to extremes. Dr. Panuska

diagnosed the claimant with vertigo and cervical strain. Dr. Panuska ordered physical therapy for the claimant's neck and an MRI scan of his cervical spine.

¶ 23 On December 13, 2011, the claimant had an MRI scan of his cervical spine. Dr. Sergeant examined the claimant on December 16, 2011, for complaints of worsening symptoms and vibrating vision. He diagnosed the claimant with cervical spondylosis. Dr. Sergeant opined that the claimant's MRI scan suggested a mild cervical disc problem. He restricted the claimant from work completely. The claimant remained off work as of the date of the trial.

¶ 24 On December 19, 2011, Dr. Panuska re-evaluated the claimant for vertigo and cervical pain. The claimant complained of dizziness so severe that he could not lean over patients in the back of the ambulance. Dr. Panuska diagnosed him with cervical disk disease and vertigo. He opined that the cervical disk disease was not related to the vertigo and recommended the claimant revisit a neurosurgeon.

¶ 25 On January 3, 2012, Dr. Harvey examined the claimant. The claimant gave a history of dizziness, nausea, and a stabbing, burning pain in his cervical and occipital area. Dr. Harvey diagnosed the claimant with mild cervical spondylosis. He noted that the claimant had persistent vertigo and visual complaints that made him unable to work or drive. He referred the claimant back to Dr. Lopes.

¶ 26 On February 6, 2012, at the employer's request, Dr. Andrew Zelby performed an independent medical evaluation of the claimant. He wrote in his report that the claimant was working out when he felt a pop in the lower right side of the back of his skull and felt a burning pain all over the right side of his head. He developed dizziness on the day of the accident and experienced several days of right-sided neck pain. The claimant's main

complaints were dizziness and right-sided headache. Dr. Zelby diagnosed the claimant with headache, dizziness, and cervical spondylosis. Dr. Zelby noted that the claimant told him that he had no prior episodes of similar symptoms, yet medical records indicate that he reported a previous history of chronic but less severe headaches. Dr. Zelby wrote that the claimant's examination was remarkable "for a completely normal neurologic exam and normal spine exam." Dr. Zelby wrote "[t]he cause for [the claimant's] ongoing complaints is unclear, since they are not related to his small cavernous aneurysm or his cervical spondylosis." Dr. Zelby opined that fumes from the claimant's wife's home nail salon could be the cause of his chronic headaches. He averred that, except for the claimant's subjective complaints, there was no reason that the claimant could not pursue all of his regular duties, including driving, without restriction. Dr. Zelby opined that based on the claimant's objective medical condition, including his normal examination and the findings of his diagnostic studies, he required no additional diagnostic studies or any further treatment as a consequence of his work accident. Dr. Zelby averred that the claimant was at maximum medical improvement.

¶ 27 The claimant testified that Dr. Zelby's examination took approximately 10 minutes and that Dr. Zelby never touched his head. The claimant testified that Dr. Zelby did not question him about his wife's home nail salon. He stated that the fumes from her business had never caused any sort of headache, sudden pain in the back of his head, or dizziness.

¶ 28 Dr. Jordan Topel examined the claimant on February 10, 2012, for dizziness and giddiness. Dr. Topel wrote in his patient notes that the claimant was a firefighter who occasionally had heat triggered headaches. The claimant told Dr. Topel that on July 24,

2011, while doing butterfly exercises at work, he felt a pop at the back right side of his head, followed by an immediate severe pain and burning in the right occipital/nuchal area and behind his right ear, blurred vision, and nausea. The claimant reported that he had continued to experience pain and dizziness since the accident. A CT angiography of his head and neck was performed that day. Dr. Topel wrote that the claimant's neurological examination was minimally abnormal. He opined that the claimant's history was more suggestive of a vertebral dissection rather than an aneurysmal subarachnoid hemorrhage. Because of the claimant's feeling that objects were continually moving side to side, Dr. Topel referred him to Dr. Aimee Szewka for a neuro-opthalmological consultation.

¶ 29 On March 2, 2012, Dr. Szewka examined the claimant. In her patient notes, she wrote that on July 24, 2011, while doing chest butterflies the claimant felt a pop in the back right side of his head. He felt a severe stabbing, burning pain on the right side of his head. The pain was intense and his vision became blurry for a few minutes. He complained that his eyes cross, of double vision, and of darkness around his peripheral vision. In her assessment, she wrote "[t]his is a complicated situation." She felt his oscillopsia had a vestibular cause and recommended he see Dr. Richard Wiet, a neuro-otologist, for further testing. She opined that the claimant's headaches seemed consistent with either an exertional headache or a transformed migraine headache.

¶ 30 On March 18, 2012, Dr. Wiet examined the claimant. In his patient notes, he wrote that on July 24, 2011, the claimant was at work doing butterfly chest exercises when he felt a pop in his head, in the right occipital area. He experienced an immediate burning sensation and agonizing pain on the right side of his head. The claimant complained of side to side movement of objects in his visual fields, dizziness and a

feeling of being off balance, pain when looking to the right, and head pressure. Dr. Wiet noted that the claimant has suffered from migraines throughout his life, which he treated with Excedrin Migraine. The migraines are maxillary and frontal in location and lasted 45 minutes to one hour. Dr. Wiet diagnosed the claimant with migraine associated vertigo and perilymphatic fistula and referred him to otoneurologist Dr. Hain.

¶ 31 Dr. Hain testified by evidence deposition. Dr. Hain, a board certified neurologist with a focus on patients with dizziness or hearing problems, testified that he first examined the claimant on March 26, 2012. The claimant complained of dizziness and balance issues. The claimant told Dr. Hain that his symptoms began while working out with weights at work. While exercising, he felt a popping noise on the right side of the back of his head, and he developed a pain so severe it caused visual blurring. He complained that since the onset of the pain he has suffered from dizziness, balance issues, and headaches. Dr. Hain testified that his review of the claimant's medical records prior to his examination revealed that Dr. Wiet noted a history of migraine and that the claimant had a sensation that his vision was moving from side to side. Dr. Hain opined that the claimant's headaches had the typical features of migraine, namely photophobia, motion intolerance, and visual aura.

¶ 32 Dr. Hain testified that he performed testing on the claimant and determined that he did not have an inner ear problem. Dr. Hain also performed a neurological and ontological examination of the claimant. He testified that when he pressed on the claimant's right occipital nerve, the claimant "almost jumped off the table." On the left side, the claimant had a normal response. Dr. Hain testified that the extreme tenderness is evidence of damage to the occipital nerve. He stated that damage to the occipital nerve

would account for the claimant's severe headaches and dizziness because occipital neuralgia causes pain that can trigger a migraine, which in turn causes dizziness. Dr. Hain diagnosed the claimant with longstanding history of migraines, migraine-associated vertigo, and right side occipital neuralgia, and recommended a right occipital nerve block.

¶ 33 On May 2, 2012, Dr. Lubenow examined the claimant. In his patient notes, he wrote that the claimant was injured on July 24, 2011, while doing a mandatory exercise routine at work. He felt a pop in the back of his neck on the right side and immediately felt burning and a pressure-like sensation. The claimant complained of pressure in the back of his head, bilateral occipital area, which radiated more to the right than the left, as well as dizziness with activity. A physical examination revealed positive trigger point tenderness in the right occipital protuberance. The trigger point elicited "searing pain, which radiates forward to just behind the eye on the right side." Dr. Lubenow diagnosed the claimant with right occipital neuralgia and performed an occipital nerve block. He noted that the claimant was unable to work due to the limitations of his condition.

¶ 34 The May 2, 2012, nerve block caused increased symptoms for two days and no long term relief. On May 16, 2012, Dr. Lubenow performed a second right-sided occipital nerve block, which provided the claimant with significant relief. On June 4, 2012, Dr. Lubenow performed a cryoneurolysis of the claimant's right occipital nerve (freezing of the occipital nerve), which the claimant testified cut his pain in half and decreased his dizziness by 20 percent.

¶ 35 Dr. Hain testified that the claimant has right-sided occipital neuralgia and migraine headaches that are aggravated by the occipital neuralgia. He opined that the condition

occurred when the claimant stretched the occipital nerve while using the weight machine at work. Dr. Hain averred that until the claimant "gets rid of the occipital neuralgia, he'll continue to have dizziness" because Dr. Hain thinks "the dizziness is coming from the migraine, which is being triggered by the occipital neuralgia." Dr. Hain opined that the claimant could not return to work, that he had not reached maximum medical improvement, and that additional treatment would be beneficial.

¶ 36 The arbitrator found that the claimant sustained an accident on July 21, 2011, that arose out of and in the course of his employment but that his current condition of ill-being was not causally related to the accident. The arbitrator further found that on July 24, 2011, the claimant sustained an accident that arose out of and in the course of his employment with the employer and that his condition of ill-being was causally related to his accident. The employer was ordered to pay temporary total disability benefits of $566.67 for 25 6/7 weeks from February 17, through August 16, 2012. The employer was also ordered to pay reasonable and necessary medical bills totaling $67,106.97. The employer was ordered to authorize the treatment prescribed by Dr. Hain and Dr. Lubenow. The arbitrator noted that Dr. Zelby implied that the claimant's complaints of dizziness and pain were genuine and that he was not malingering. He noted that "Dr. Zelby's only opinion on causation [was] that it [was] 'unclear.'" The arbitrator adopted Dr. Hain's opinions and found that his testimony was the most persuasive. In finding temporary total disability, the arbitrator relied on Dr. Hain's opinion that the claimant was not capable of returning to work safely in his current condition. He further noted that Dr. Topel, Dr. Szweka, Dr. Wiet, and Dr. Lubenow all opined that the claimant was temporarily totally disabled. He found that Dr. Zelby's position that the claimant could

return to full duty as a firefighter/EMT was inconsistent with his opinions regarding the claimant's current condition because he found the claimant suffered from dizziness and head pain.

¶ 37 The employer sought review of this decision before the Commission. The Commission modified the arbitrator's decision, finding that the claimant's condition of ill-being was not causally related to his July 24, 2011, accident and vacated the awards for temporary total disability benefits, medical expenses, and prospective medical care. The Commission found that the claimant's testimony was not credible in light of his pre-existing migraine condition and conflicting histories. It found Dr. Zelby's opinion most persuasive. The Commission concluded that the claimant's migraine headache and/or right-sided occipital neuralgia more likely than not pre-dated the July 24, 2011, injury and was neither caused nor aggravated by his injury. It found that the claimant's testimony regarding his prior medical history was less than credible and that he failed to prove any causal connection between the July 24, 2011, incident and his current condition of ill-being. One Commissioner dissented.

¶ 38 The claimant sought judicial review of the Commission's decision in the circuit court of Kankakee County. The circuit court set aside the Commission's decision and reinstated the arbitrator's decision. The court found that Dr. Zelby did not give an opinion as to the cause of the claimant's symptoms, although he found them to be legitimate. It further noted that there was no evidence that Dr. Zelby even considered occipital neuralgia. The court noted that the claimant may have mislabeled his prior headaches as sinus headaches but that he did not deny experiencing headaches prior to the accident. It found that the distinction between the claimant's description of the

headaches as sinus or migraine headaches was meaningless. The court found credible Dr. Hain's testimony that the trauma to the claimant's occipital nerve exacerbated any pre-existing migraine condition he had. The court held that the Commission's decision to discount the claimant's testimony was against the manifest weight of the evidence. The court held that an opposite conclusion from that drawn by the Commission is clearly apparent. The employer appealed.

¶ 39 **ANALYSIS**

¶ 40 The employer argues that the Commission's determination that there was no causal connection between the claimant's condition of ill-being and his July 24, 2011, accident was not against the manifest weight of the evidence. We disagree.

¶ 41 The claimant has the burden of proving, by a preponderance of the evidence, all the elements of his claim. *Dig Right In Landscaping v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739. To be compensable, an injury must arise out of and in the course of a claimant's employment. *Kawa v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120469WC, ¶ 77, 991 N.E.2d 430. An injury arises out of a claimant's employment when there is a causal connection between the employment and the injury. *Id.* Whether a causal relationship exists between a claimant's employment and his injury is a question of fact, and this court will not reverse a finding of fact unless it is against the manifest weight of the evidence. *Id.* A finding of fact is against the manifest weight of the evidence when an opposite conclusion is clearly apparent. *Dig Right In Landscaping*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739. A reviewing court must not reject or disregard permissible inferences drawn by the Commission just 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. *Kawa*, 2013 IL App (1st) 120469WC, ¶ 79, 991 N.E.2d 430. "However, despite the high hurdle that the manifest weight of the evidence standard presents, it does not relieve us of our obligation to impartially examine the evidence and to reverse an order that is unsupported by the facts." *Id*. This court will not hesitate to set aside the Commission's decision on a factual question when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion. *Dig Right In Landscaping*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739. Based on our review of the evidence, we agree with the circuit court that the Commission's decision is against the manifest weight of the evidence.

¶ 42 The employer argues that it is the province of the Commission to evaluate witness credibility. It argues that the Commission based its decision that the claimant failed to prove a causal connection between his workplace activities and his current condition of ill-being on its determination that he lacked credibility. Specifically, the Commission found that his denial of a prior history of migraines was belied by the history he related to multiple medical providers.

¶ 43 The claimant denied having a history of migraine headaches when he gave his medical history to treating physicians but testified that he never denied having a history of headaches. He stated that prior to July 21, 2011, he suffered from what he believed were sinus headaches. In his initial consult with Dr. Harvey, he reported a history of sinus headaches. On August 3, 2011, Dr. Lopes noted that the claimant had a history of chronic headaches but none as severe as the July 24, 2011, headache. He told Dr. Topel that he had a history of headaches. He told Dr. Wiet that he suffered from headaches that

were maxillary and frontal in location and that he treated with Excedrin Migraine. It was not until March 2, 2012, that Dr. Szewka diagnosed him with migraine headaches. He did not fail to provide medical personnel with a history of migraine headaches because he was being untruthful but because he had never been diagnosed with a migraine condition until Dr. Szewka's diagnosis. He did, however, consistently give a history and description of his headaches.

¶ 44 The employer argues that the claimant was not credible because he denied ever having the type of pain he had after the July 24, 2011, accident. The employer asserts that this contradicts Dr. Sergeant's note in his report that the claimant experienced a very severe right temporal and temporoparietal pain while dancing and Dr. Sattar's report that the claimant had a similar incident in March of lower intensity that resolved after a few days. The claimant testified that he never felt a pain in the rear area behind his right ear like he did after the July 24, 2011, accident. This does not contradict his history of headaches that were more frontal in nature. The claimant is in the best position to differentiate between the type of headaches he suffered and to be able to identify the July 24, 2011, headache as different from others he had in the past. While the claimant had numerous headaches throughout his life, there is no evidence that they were so severe that he had to go to the emergency room for treatment, as he did for the July 24, 2011, headache, or that his headaches did not resolve with the use of over-the-counter medication.

¶ 45 The employer argues that the claimant was not credible because he testified that after the accident he felt pain behind his ear at the base of his skull, yet the ambulance record shows that he complained of pain in the right temporoparietal area, and the

clinician history form from July 24, 2011, lists his symptoms as in the temporal area. The claimant testified that, after he felt a snap on the right side of his head at the base of his skull, he experienced a burning, stabbing, excruciating pain that radiated to the right front portion of his head. He stated that since the accident he had headaches at the back, right side of his head, but they radiated to the middle of the right side of his head. Dr. Lubenow wrote that the claimant had a positive trigger point tenderness in the right occipital protuberance that caused searing pain that radiated forward to just behind his right eye. When a patient has a headache with radiating pain to different parts of the head, it may be difficult for him to identify the source of the pain, and he may describe the pain as being located in the area that hurts the most at the time.

¶ 46 The claimant reported to Dr. Szweka that, on the day of the accident, an ice pack to the back of his head helped relieve the pain. On the accident date, the claimant told Dr. Sattar that he had a "right sided headache which was sudden onset, sharp, severe, 10/10 in intensity, radiated to the right neck and shoulder." On July 24, 2011, Dr. Sattar wrote that the claimant presented to the emergency room with complaints of right sided headache with a sudden onset of severe sharp pain that radiated to the right neck and shoulder. The claimant testified that on August 2, 2011, he told Dr. Harvey that he had constant pain in the back of his head on the right side. On August 3, 2011, Dr. Lopes noted that the claimant complained of neck pain on the right side. In an October 3, 2011, report from the claimant's physical therapist to Dr. Sergeant, the therapist wrote that the claimant complained of head pressure that increased with any active contraction and/or shortening of the right occipitals. The therapist noted that the claimant had active trigger points in his cervical musculature. On December 6, 2011, Dr. Panuska noted that the

claimant's range of motion in his neck was limited and uncomfortable to the extremes. Dr. Hain testified that when he touched the claimant's occipital nerve at the base of his skull, the claimant almost jumped off the table. Dr. Lubenow testified that when he touched the claimant's right occipital nerve, the trigger point elicited searing pain. While the claimant did report pain in his temporal area, he also consistently complained of pain at the back of his head or neck.

¶ 47 The employer argues that the claimant gave inconsistent histories about his accident. The Commission found that although the claimant testified that he was in the middle of doing a butterfly exercise on a universal exercise machine when he felt/heard a snap on the right side of the back of his head, his initial medical records fail to support his testimony. The employer noted that the July 24, 2011, ambulance report, emergency department chart, Riverside Medical Center Emergency Room clinician history of present illness report, notes of Dr. Sergeant, and Dr. Harvey's history dated July 25, 2011, do not mention that the claimant reported feeling or hearing a pop or snap on the right side of the back of his head or that he was in the middle of a workout with weights when the symptoms began. The Commission found that the first recorded history of the sensation of a pop or snap on the back of the right side of the claimant's head was on August 2, 2011, when he followed-up with Dr. Harvey.

¶ 48 The claimant did not give an inconsistent history about his accident. Although he did not tell his initial medical providers that he heard or felt a pop or snap, he did tell every provider that he exercised at work and developed the severe head pain on July 24, 2011. He told the ambulance driver that after exercising for approximately half an hour, he had a sharp, throbbing pain that he rated 10 out of 10 on the right side of his head. On

July 25, 2011, Dr. Harvey noted that on July 24, 2011, "pt walked on treadmill * 1 hour " and developed a severe headache. The clinician history of present illness from the emergency room dated July 24, 2011, states that the claimant "felt fine, ran on treadmill, lifted weights, then had sudden onset sharp severe right sided head pain." On the accident date, the claimant told Dr. Sattar that the headache started at work and that "[t]his morning he worked out and ran on the treadmill." On July 24, 2011, Dr. Sergeant wrote that the claimant came in with a headache "that started around noon today while working out in very vigorous exercises." He had head pain that he described as at the top of the pain scale. While he did not specifically state that the pain started while he was lifting weights, he related the onset of the pain to exercise. It is not surprising that he provided fewer details of the onset of his symptoms while he was in excruciating pain than he did one week later when his symptoms were not as severe. In each instance, the claimant related the headache to exercising. His explanation one week later to Dr. Harvey that he heard or felt a snap or pop does not conflict with the history he gave to his initial medical providers, it merely adds to his description of the accident. In fact, the claimant gave a consistent history and described a snap or pop to Dr. Harvey, Dr. Lopes, Dr. Hobson, Dr. Zelby, Dr. Topel, Dr. Szewka, Dr. Wiet, Dr. Hain, and Dr. Lubenow.

¶ 49 The employer argues that the Commission's findings on the respective medical opinions should have been given deference. The Commission found that Dr. Zelby's causal connection opinion was more persuasive than Dr. Hain's opinion because Dr. Hain did not take into consideration the claimant's full medical history. The Commission stated that the claimant "failed to advise [Dr. Hain] that he had a history of migraine headaches throughout his life, and he admitted he only learned of it later on when he

reviewed [the claimant's] prior treating records." However, Dr. Hain specifically stated that he reviewed the medical records when he met the claimant. Thus, Dr. Hain knew of the claimant's history of headaches when he examined him. A careful reading of Dr. Zelby's report reveals that Dr. Zelby did not give a causation opinion contrary to Dr. Hain's opinion. He opined that the claimant's complaints were not related to his aneurysm or his cervical spondylosis and that the mild degenerative changes in his cervical spine were not related to his accident. However, the claimant did not claim that they were. Dr. Zelby speculated that fumes from the claimant's wife's home nail salon could cause chronic headaches. He stated that the cause of the claimant's ongoing complaints was "unclear." Dr. Zelby examined the claimant prior to Dr. Hain diagnosing the claimant with right-sided occipital neuralgia. Dr. Zelby did not re-examine the claimant nor did he review Dr. Hain's medical records. Thus, Dr. Zelby never opined on the diagnosis of right-sided occipital neuralgia. Because Dr. Zelby did not offer a causation opinion contrary to that of Dr. Hain, his opinion could not be considered more persuasive than Dr. Hain's causation opinion nor could it be considered a conflicting opinion.

¶ 50 The employer argues that the circuit court substituted its judgment for that of the Commission. It asserts that Dr. Hain testified that if the claimant had complaints of left-sided head pain those complaints would be inconsistent with his diagnosis of right occipital nerve injury. The employer points out that the claimant complained of left sided pain while at physical therapy on October 3, 2011, and of left sided tenderness to Dr. Lubenow on May 2, 2012. It contends that, pursuant to Dr. Hain's testimony, he should not have made a diagnosis of right occipital neuralgia given these two complaints. While

Dr. Hain did state that left-sided pain would be inconsistent with his diagnosis of right occipital nerve damage, he testified that when he pushed on the claimant's left side "he had very little response, just sort of what normally people do if someone pokes them with your thumb." He stated that if the claimant had left-sided head pain he would not attribute that pain to occipital neuralgia but would look for another cause of the pain.

¶ 51 The employer argues that Dr. Hain admitted there was no absolute data available about the onset of occipital neuralgia being related to trauma. Dr. Hain testified that in his report he quoted from an article that said trauma can cause occipital neuralgia. He further stated that, in his experience, occipital neuralgia is heavily associated with trauma.

¶ 52 The employer argues that although Dr. Hain testified that two factors used to diagnose occipital neuralgia were the presence of hypothesia and Tinel's sign over the occipital nerve, he did not look for hypothesia or perform a Tinel's test. Dr. Hain testified that he does not routinely look for hypothesia or perform a Tinel's test when diagnosing occipital neuralgia. He testified that these tests are not determinative and that a nerve block must be performed to diagnose occipital neuralgia. Instead of looking for hypothesia or performing a Tinel's test, he pushes on the patient's occipital nerve to see his response. He stated that occipital neuralgia is a terribly painful condition; therefore, when he sees a reaction to touching the nerve and there has been a history of trauma, he tries a nerve block to see if it provides temporary relief.

¶ 53 The claimant testified that Dr. Zelby's examination only took ten minutes and that Dr. Zelby never touched any part of his head. Dr. Zelby examined the claimant before Dr. Hain examined him. Dr. Hain diagnosed the claimant with right-sided occipital

neuralgia. It is unrebutted that the claimant had an excellent response to the second nerve block. Dr. Hain testified that a lessening of pain after a nerve block is exactly what he looks for in diagnosing occipital neuralgia. Dr. Lubenow also diagnosed the claimant with right occipital neuralgia. Prior to Dr. Hain's diagnosing the claimant with occipital neuralgia, the other physicians who examined the claimant were unable to provide him with relief or to find a cause for his symptoms. As a result, he was referred from one physician to another in search of a cause for his condition of ill-being. Dr. Szweka wrote that the claimant's case was "a complicated situation." Even Dr. Zelby wrote that the cause of the claimant's ongoing complaints was unclear.

¶ 54 While this court will not easily set aside the Commission's decision on a factual question, it will not hesitate to do so where the clearly evident, plain, and indisputable weight of the evidence compels an apparent, opposite conclusion. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567, 613 N.E.2d 822, 825 (1993). The claimant testified that prior to July 24, 2011, he was in "great physical condition." He admitted to suffering from headaches, but they always resolved quickly. The claimant provided medical examiners with a consistent history of developing a severe headache after feeling a pop or snap at the back of his head while working out. He described it as unlike any headache he had ever experienced. He consistently reported that he had pain at the back of his head or neck. No evidence was presented that the claimant missed work prior to July 24, 2011, due to headaches or causes other than the heat related incident on July 21, 2011. Following the accident, the claimant was able to return to work in a very limited capacity. His symptoms worsened, and he was taken off work completely. After the accident, the claimant suffered from ongoing dizziness that

prevented him from being able to lean over patients, from operating a work vehicle, and from working above ground level. There is no evidence in the record that he suffered from ongoing dizziness prior to the July 24, 2011, accident. Until Dr. Hain diagnosed the claimant with occipital neuralgia, none of his treating physicians were able to relieve his symptoms or identify the source of his condition of ill-being. Dr. Hain opined that the claimant stretched his occipital nerve while working out inducing his occipital neuralgia. The second nerve block performed by Dr. Lubenow gave the claimant significant relief. Dr. Hain testified that relief after a nerve block confirms the diagnosis of occipital neuralgia. The cryoneurolysis of the claimant's right occipital nerve reduced the claimant's pain by one-half and his dizziness by 20 percent. The clearly evident, plain, and indisputable evidence compels an opposite conclusion from that drawn by the Commission. Clearly the claimant suffered an accident at work on July 24, 2011, that caused his right side occipital neuralgia.

¶ 55 **CONCLUSION**

¶ 56 For the foregoing reasons, we affirm the judgment of the circuit court of Kankakee County and remand the case to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399, N.E.2d 1322 (1980).

¶ 57 Affirmed and remanded.