2016 IL App (1st) 151371WC-U

Order filed: November 18, 2016

NO. 1-15-1371WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

BRENNAN GAMBREL,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County.
	)	
v.	)	No. 14-L-50678
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Carl Anthony Walker,
(Illinois Tool Works, Inc., Appellee).	)	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 original decision affirming and adopting the arbitrator's decision denying the claimant's claim, finding that he failed to prove he sustained an accidental injury arising out of and in the course of his employment on July 26, 2011, is not against the manifest weight of the evidence.

¶ 2 On November 14, 2011, the claimant, Brennan Gambrel, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), against the employer, Illinois Tool Works, Inc., seeking compensation for an alleged back injury sustained at work on June 26, 2011. After a hearing, the arbitrator

denied his claim, finding that he failed to prove that he sustained an accidental injury arising out of and in the course of his employment on July 26, 2011. The claimant sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision. The claimant filed a timely petition for judicial review in the circuit court of Cook County, which reversed the Commission's decision and remanded the matter to the Commission for further proceedings. On remand, the Commission again affirmed and adopted the arbitrator's decision. The claimant again filed a timely petition for judicial review in the circuit court, which confirmed the Commission's decision on remand. The claimant filed a timely appeal. For the reasons that follow, we vacate the circuit court's order confirming the Commission's decision on remand; vacate the Commission's decision on remand; reverse that portion of the circuit court's order reversing the Commission's original decision as to the 2011 claim and remanding the matter to the Commission for further proceedings; and reinstate the Commission's original decision.

¶ 3 BACKGROUND

¶ 4 The claimant filed two applications for adjustment of claim against the employer. On September 28, 2010, he filed an application for adjustment of claim alleging accidental injuries that occurred on July 13, 2010. On November 14, 2011, he filed an application for adjustment of claim alleging accidental injuries that occurred on July 26, 2011. The following facts are taken from the evidence presented at the consolidated arbitration hearing on May 15, 2012. No issues raised herein arise from the 2010 claim,

but, because both claims involved allegations of a lumbar spine injury, the claimant's entire treatment history is offered for contextual purposes.

¶ 5 As to the 2010 claim, the parties stipulated that the claimant suffered a work accident on July 13, 2010. He injured his left foot when a heavy mold was dropped on it. He was taken by ambulance to the St. James Hospital emergency room. Left foot X-rays showed no evidence of acute fracture but did show an old fracture at the first metatarsal and cuneiform. He was placed in a hard-bottomed shoe and discharged.

¶ 6 Three days later, on July 16, 2010, the claimant saw Dr. Clay Canaday, an orthopedic surgeon. He reported his July 13, 2010, work injury and complained of pain in the great toe and first metatarsal as well as the second toe. The doctor reviewed his X-ray films and found that they showed an old healed fracture of the metatarsal but no other gross abnormalities. Dr. Canaday diagnosed a left forefoot contusion, told him to continue using the hard-bottomed shoe for comfort, opined that he did not need any medication or surgery, and gave him sedentary work restrictions.

¶ 7 The claimant saw Dr. Canaday again three weeks later, on August 6, 2010. He was no longer using his hard-bottomed shoe but complained of sciatica in his right buttock and leg. Dr. Canaday prescribed a Medrol Dosepak.

¶ 8 The claimant saw Dr. Canaday again on September 3, 2010, complaining of increased sciatic pain and advising that his right leg was giving out several times per day. The doctor ordered an MRI scan of the lumbar spine. The MRI scan performed on September 14, 2010, showed "[d]egenerative changes with disc bulging and degenerative facet change at L4-L5 with a synovial cyst along the medial superior aspect of the right

facet resulting in compression of the right posterolateral thecal sac" and "[m]oderate central spinal canal stenosis" at that level.

¶ 9 The claimant saw Dr. Canaday again on September 17, 2010. The doctor noted that the claimant had provided a mechanism of injury that he had used his opposite leg to try and free himself when his left foot was being crushed. Dr. Canaday also noted that, although the claimant had been released to work with sedentary restrictions, he had not returned to work, stating that he was falling frequently and that the employer told him he could not work while on narcotic pain pills. He also told the doctor that he had fallen five days earlier at home, caught himself with his arms on a table, and injured his left shoulder. He said that he had fallen because his right leg gave way. Dr. Canaday took him off work and referred him to a neurologist.

¶ 10 The claimant saw neurologist Dr. Scott Lipson on October 14, 2010. The doctor recorded a history of a July 13, 2010, crush injury to the left foot when a 4500-pound load was lowered onto it and noted that the claimant sustained no back injury at that time. On neurologic examination, the claimant had normal bulk and tone, normal reflexes, and a negative straight leg raise bilaterally with full strength throughout the lower extremities. His gait was normal. Dr. Lipson performed an EMG/NCS, which was normal with no evidence of lumbosacral radiculopathy.

¶ 11 The claimant saw Dr. Canaday again on October 15 and December 10, 2010, complaining of left shoulder pain and low back pain radiating down his leg. The doctor ordered an MRI scan of the left shoulder, recommended epidural steroid injections, and

gave the claimant sedentary work restrictions. The employer was able to accommodate the claimant's light-duty restrictions, and he returned to work on December 20, 2010.

¶ 12 The MRI scan of the left shoulder performed on January 17, 2011, showed rotator cuff tendinopathy. The claimant saw Dr. Canaday again on January 21, 2011. The doctor gave him a corticosteroid injection in his shoulder and prescribed anti-inflammatories and physical therapy. The claimant underwent physical therapy from February 23 through April 6, 2011, which improved his shoulder condition.

¶ 13 On April 29, 2011, at the employer's request, the claimant underwent an independent medical examination by Dr. Ryon Hennessy, an orthopedic surgeon. On physical examination, the claimant had full muscle strength, no tenderness at the lumbar spine, no muscular atrophy, and a negative straight leg raise. He could easily toe walk and heel walk and was able to squat and raise without assistance. The doctor reviewed his diagnostic studies, noting that the EMG/NCS was normal and that the MRI scan of the lumbar spine showed all discs at normal height and hydration with no foraminal stenosis or spondylolisthesis at any level. There was no evidence of compression at the L4 nerve root. Dr. Hennessy opined that the claimant's shoulder injuries and lumbar spine complaints were not causally related to his 2010 work accident. Dr. Hennessy also opined that the claimant was at maximum medical improvement for all injuries and that he could perform full duty work.

¶ 14 The claimant saw Dr. Canaday again on May 11, 2011. He stated that the employer had denied further treatment. He last saw Dr. Canaday on June 10, 2011,

reporting that his left shoulder pain had resolved but that he was still falling. Dr. Canaday recommended that he use his private health insurance for further treatment.

¶ 15 The claimant testified that, following Dr. Canaday's recommendation, he saw his primary care doctor, Dr. Kevin Reitsma with WellGroup Health Partners, on July 5, 2011. Dr. Reitsma referred him to an orthopedic doctor.

¶ 16 The claimant testified that on July 26, 2011, he suffered a new injury involving his lower back, which is the alleged injury at issue here. At that time, he was working in a light-duty capacity as a result of his 2010 work accident. He was removing parts from the assembly line and placing them in totes. He stated that, as he was moving a tote, he "felt a very sharp pain in [his] lower back, shooting into [his] right leg."

¶ 17 The claimant testified that he immediately informed his supervisors, Pascal Fontaine and Jeff Murray, that he had hurt his back while moving a tote, that he was in severe pain, and that he needed to go home. He stated that Pat Allie, the human resources manager, took a recorded statement from him the next day. As of the May 15, 2012, arbitration hearing, he had not returned to work since the July 26, 2011, incident.

¶ 18 The claimant saw Dr. Gaurang Zala, a primary care physician with WellGroup Health Partners on August 12 and August 30, 2011. Noting a history of "chronic lower back pain," Dr. Zala referred the claimant to an orthopedic surgeon.

¶ 19 The claimant saw Dr. William Payne, an orthopedic surgeon with WellGroup Health Partners, on September 13, 2011, complaining of back pain but denying any numbness or tingling. Handwritten notes from that visit indicate the following history:

> "7-13-10 Had 4500 lbs of steel on a wooden pallet set on L foot. Tried to pull out of it - then 1 wk later started having lower back pain & L shoulder treated c Dr. Canaday - had therapy & injections L shoulder. That got better. Lower back treatment was all denied - case was closed. Since then has been on pain meds & short term disability."

Dr. Payne ordered an MRI scan of the lumbar spine and referred the claimant to a rehabilitation medicine specialist.

¶ 20 The claimant saw Dr. Albert DeRubertis, a rehabilitation medicine specialist with WellGroup Health Partners, on September 23, 2011. Handwritten notes from that visit indicate the following history: "Pt states while at work July 2010 steel was dropped on L foot." He complained of loss of feeling in the left great and second toe. He reported low back pain, radiating down his right leg, and stated that his right leg occasionally gave out on him causing him to fall. He denied numbness and tingling but reported pain in his buttocks. Dr. DeRubertis administered an epidural steroid injection on October 5, 2011.

¶ 21 The claimant saw Dr. Payne again on November 8, 2011, complaining of lower back pain and reporting that the injection had helped. Dr. Payne again ordered an MRI scan of the lumbar spine and recommended a second injection. The MRI scan performed on November 14, 2011, showed "[m]ild degenerative changes at L4-L5 causing mild central canal stenosis and mild bilateral neural foraminal narrowing." The synovial cyst at L4-L5 was no longer present. Dr. DeRubertis administered a second injection on December 14, 2011. The claimant saw Dr. Payne again on January 5, 2012, reporting

that the injection had helped. Dr. Payne recommended a third injection, a neurology consultation, an EMG/NCV, and a CT discogram.

¶ 22 The claimant saw Dr. Rajive Adlaka, a pain management specialist, on January 18, 2012. Notes from that visit indicate the following history:

"Work related injury 7-13-10. Pallet fell on L foot."

¶ 23 On January 25, 2012, Dr. Adlaka performed a discogram, which involved three levels: L3-L4, L4-L5, and L5-S1. The claimant had no reproduction of pain at any level. A post-discogram CT scan showed "[m]ultilevel degenerative changes including mild bilateral neural foraminal narrowing and mild central canal stenosis at the L4-L5 level."

¶ 24 A repeat EMG performed on February 2, 2012, showed right sacroiliac (SI) radiculopathy and a mild underlying peripheral neuropathy. When the claimant saw Dr. Payne again on February 9, 2012, Dr. Payne recommended an SI joint injection.

¶ 25 The claimant saw Dr. Adlaka again on March 7, 2012. Dr. Adlaka administered SI joint injections on April 4 and May 2, 2012.

¶ 26 The claimant testified that his back pain began about a week after his 2010 foot injury and that he had not experienced any significant relief since that time. He stated that he was still treating with WellGroup Health Partners; he still had low back pain and numbness in the toes of his left foot; he was still on pain medication; and he was still off work, had not been released to full duty work, and had not been offered light duty work.

¶ 27 On cross-examination, the claimant testified that he believed that when he had seen Dr. Payne for the first time on September 13, 2011, he had mentioned that he had reinjured his back on July 26, 2011. He also stated that when he had seen Dr. DeRubertis

for the first time on September 26, 2011, he had mentioned that he had suffered an injury bending and grabbing a tote on July 26, 2011.

¶ 28 Dr. Canaday testified by way of evidence deposition. The doctor opined that the claimant's sciatica developed due to his altered gait from the left foot injury; that the sciatica was affecting his right leg muscles, which was causing him to fall; that he had injured his left shoulder when he fell and tried to catch himself; and that he could not return to work without any restrictions until his spine, back, and leg pain were resolved. Dr. Canaday reviewed the notes from the claimant's October 14, 2010, neurology consultation with Dr. Lipson. He acknowledged that no objective findings were made on physical examination; that the EMG/NCV Dr. Lipson performed was normal, with no evidence of lumbosacral radiculopathy; and that these results did not explain the claimant's subjective radicular complaints. Despite these results, he opined that the claimant does suffer from lumbar radiculopathy.

¶ 29 Dr. Hennessy also testified by way of evidence deposition. The doctor opined that the claimant's subjective complaints of radiculopathy, right leg weakness, and instability were unsubstantiated. Dr. Hennessy noted that the claimant's EMG/NCV was normal; his MRI scan showed only a mild lateral recess stenosis; his neurologic examination by multiple doctors was always normal; and he had no atrophy to substantiate his subjective complaints that he was having such profound neurologic complaints that he was actually having muscle weakness and falling. The doctor noted that, in 14 years of practice as an orthopedic surgeon, he knew of no patient who had suffered from sciatica as a result of a

gait disturbance caused by a hard-bottomed shoe. He opined that the claimant could perform full duty work.

¶ 30 In a second evidence deposition, Dr. Hennessy gave his interpretation of the November 14, 2011, repeat MRI scan of the lumbar spine. He testified that the synovial cyst at L4-L5, which was shown on the September 2010 films, was no longer identified. He found evidence of mild stenosis but indicated that the disc itself had normal height and hydration. He stated that the degenerative changes present on the films were "very common for an adult male in his 50's." No SI nerve compression was present. He testified that, when compared to the September 2010 films, the repeat MRI scan showed improvement in the claimant's condition because the synovial cyst was no longer present.

¶ 31 Dr. Hennessy reviewed the report from the claimant's January 2012 discogram, which he noted did not cause concordant or discordant pain at any of the levels tested. He testified that a patient with an ongoing radiculopathy should have a concordant pain level. He reviewed the post-discogram CT scan results and stated that the dye within the disc was normal, indicating a lack of extrusion of disc material into the canal, which was consistent with the claimant's MRI scans. He stated that a patient with an ongoing radiculopathy would have some extrusion of dye material at the affected lumbar level.

¶ 32 Dr. Hennessy acknowledged that the claimant's February 2012 EMG showed right SI radiculopathy. However, the doctor noted that this result was inconsistent with the claimant's prior EMG, his MRI films, his discogram, and his post-discogram CT scan.

¶ 33 The arbitrator filed his decisions on August 1, 2012. As to the 2010 claim, which is not at issue here, the arbitrator found that the claimant suffered a compensable work

accident on July 13, 2010, and that his left foot injury was causally related to that accident but that his left shoulder and lumbar spine conditions were not. The arbitrator denied the 2011 claim, which is at issue here, stating:

> "The Arbitrator finds that [the claimant] has not provided sufficient evidence to support an accidental injury that occurred on July 26, 2011. In reaching this conclusion, the Arbitrator places emphasis on the following factual findings. [The claimant] testified *** that he advised all of his physicians that he had suffered a work injury in July of 2011 as the result of lifting totes. [His] testimony is contradicted by his treatment records. [He] has treated with WellGroup Health Partners from July 2011 through the date of hearing. Within this medical group, [he] treated with four separate physicians: Dr. Zala, Dr. Payne, Dr. DeRubertis and Dr. Reitsma. A review of the records submitted show[s] that none of the WellGroup physicians recorded a history of a lifting injury that occurred on July 26, 2011. [His] pain management physician, Dr. Adlaka, has treated [him] from January 2012 through the present and never recorded a history of a lifting injury that occurred on July 26, 2011.
>
> In the absence of any corroborating evidence the Arbitrator finds that [the claimant] has not satisfied his burden of proof."

¶ 34 The claimant sought review of the arbitrator's decisions before the Commission. On April 26, 2013, the Commission affirmed and adopted the arbitrator's decisions.

¶ 35 The claimant filed a timely petition for judicial review in the circuit court. The court entered its order on April 24, 2014. As to the 2010 claim, which is not at issue

here, the court confirmed the Commission's decision. As to the 2011 claim, which is at issue here, the court reversed and remanded the matter to the Commission, stating:

> "While it is true that the medical records do not mention an accident that occurred on July 26, 2011, the statement that there is no corroborating evidence whatsoever is against the manifest weight of the evidence. The Commission completely ignores the fact that [the claimant] informed two supervisors *** of the incident on the day it occurred ***. Further, the day following the accident, a recorded statement was taken by a member of [the employer's] Human Resource Department ***. This is evidence that corroborates [the claimant's] testimony that an injury occurred on July 26, 2011. None of this corroborating evidence was submitted by [the employer].
>
> The failure of a party to produce testimony or evidence within its control creates a presumption that the evidence, if produced, would be adverse o[r] unfavorable. [Citation.] The Commission failed to afford the [claimant] this presumption. Further, even if the Commission did afford [him] this presumption, it failed to explain why this evidence does not corroborate [his] testimony.
>
> For these reasons, the Court remands the matter back to the Commission with specific instructions to address the evidence that does corroborate [the claimant's] testimony."

¶ 36 On August 15, 2014, the Commission issued its decision on remand, again affirming and adopting the arbitrator's decision denying the claimant's claim, finding that

he failed to prove that he sustained an accident arising out of and in the course of his employment on July 26, 2011. The Commission stated:

> "The Commission acknowledges that the presumption that evidence within the control of one party is unfavorable may arise under some circumstances when that party fails to offer the evidence at hearing. However, in this case, the two supervisors and the recorded statement were available to [the claimant], who had the ability to subpoena the supervisors to attend the hearing and to subpoena [the employer] to provide the recorded statement. There is no indication in the record that [the claimant] attempted to obtain the testimony of the two supervisors or the alleged statement. [The employer] did not refuse to present this evidence; it simply chose not to present the testimony of [the claimant's] supervisors or the purported recorded statement as part of its defense.
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> * * *
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> *** Even if there were a presumption that arose from [the employer's] failure to produce the supervisors' testimony or the alleged recorded statement itself, that presumption would have been outweighed by the total absence of any mention of a July 26, 2011 work accident in [the claimant's] contemporaneous medical records and of his attribution of his complaints to his July 13, 2010 work accident. ***
>
> The Circuit Court correctly noted that the Arbitrator completely ignored [the claimant's] testimony that he reported his accident to two supervisors on the date it occurred and provided a recorded statement to [the employer's] human resources

director on the following day when he concluded that there was absolutely no evidence that corroborated [the claimant's] claim of work accident. [The claimant's] testimony is some evidence to corroborate his 2011 claim, but the question for the Commission remains whether [the claimant's] testimony is credible. [The claimant's] testimony, standing alone, is insufficient proof that an accident occurred, especially when considered in conjunction with the absence of any mention of a 2011 accident in his contemporaneous medical records. [The claimant] did not offer the testimony of either supervisor and failed to introduce his alleged recorded statement, although he might have obtained this evidence by subpoena. Contrary to [the claimant's] argument, [the employer] did not have an affirmative duty to introduce all evidence in support of [the claimant's] claim. The Commission finds [the claimant's] testimony not credible.

For the foregoing reasons, and after reconsidering all of the evidence and relevant law, the Commission re-affirms its prior Decision, affirming and adopting the Arbitrator's Decision, finding that [the claimant] failed to prove that he suffered an accident arising out of and in the course of his employment *** on July 26, 2011."

¶ 37 The claimant again filed a timely petition for judicial review in the circuit court. On April 15, 2015, the court entered an order confirming the Commission's decision on remand. The court explicitly found that the Commission had followed its remand order.

¶ 38 The claimant appeals.

¶ 39 ANALYSIS

¶ 40 Where, as here, the circuit court reverses the Commission's original decision and the Commission enters a new decision on remand, our first inquiry on appeal from the circuit court's order confirming the Commission's decision on remand is whether the circuit court erred in reversing the Commission's original decision. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 785-86, 821 N.E.2d 807, 812 (2005). If the circuit court properly reversed the Commission's original decision, then the Commission's factual findings on remand are given deference. *Inter-City Products Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 185, 196, 759 N.E.2d 952, 961 (2001). If the circuit court erred in reversing the Commission's original decision, the circuit court's order should be reversed, the Commission's decision on remand vacated, and its original decision reinstated. *Id.*

¶ 41 To obtain compensation under the Act, a claimant has the burden of proving, by a preponderance of the evidence, that he has suffered a disabling injury that arose out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). Whether a work-related accident occurred is a question of fact for the Commission. *Pryor v. Industrial Comm'n*, 201 Ill. App. 3d 1, 5, 558 N.E.2d 788, 790 (1990). A reviewing court will not overturn a factual finding of the Commission unless it is against the manifest weight of the evidence. *Durbin v. Illinois Workers' Compensation Comm'n*, 2016 IL App (4th) 150088WC, ¶ 42, 56 N.E.3d 605. A factual finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Id.*

¶ 42 In its original decision in the present case, the Commission affirmed and adopted the arbitrator's decision denying the claimant's 2011 claim, finding that he failed to prove

that he sustained an accidental injury arising out of and in the course of his employment on July 26, 2011. We must, therefore, determine whether the Commission's original decision was against the manifest weight of the evidence.

¶ 43 No one witnessed the claimant sustain a workplace accident on July 26, 2011, and the Commission's decision on this issue is based upon its assessment of the credibility of the claimant's testimony. "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). "[A] reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Sisbro*, 207 Ill. 2d at 206, 797 N.E.2d at 673. "[T]he test of whether the Commission's decision was supported by the manifest weight of the evidence is not whether the reviewing court or any other tribunal might reach the opposite conclusion on the same evidence, but whether there was sufficient factual evidence in the record to support the Commission's decision." *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90, 93 (1982).

¶ 44 Here, the Commission did not believe the claimant when he testified that he injured his back at work on July 26, 2011, while lifting totes. In assessing his credibility, the Commission noted that, although he testified that he told his doctors that he had suffered a work injury on July 26, 2011, as the result of lifting totes, his testimony was

contradicted by his treatment records. The Commission noted that, from July 2011 through the date of hearing, he had treated with four different doctors with WellGroup Health Partners as well as his pain management doctor, none of whom had recorded a history of a July 26, 2011, lifting injury. The Commission, therefore, found that there was a lack of corroborating evidence and that he had failed to meet his burden of proof.

¶ 45 Our review of the record reveals additional evidence from which the Commission could have reasonably inferred that the claimant did not sustain a work accident on July 26, 2011. Not only did the claimant not mention a July 26, 2011, work injury to any of his doctors after that date, but he mentioned his 2010 injury instead. Moreover, shortly before the alleged July 26, 2011, lifting injury, the employer had denied benefits for the claimant's lower back condition as it related to his 2010 claim. In addition, the claimant testified that when he injured his back on July 26, 2011, he "felt a very sharp pain in [his] lower back, shooting into [his] right leg," which is the same type of radicular pain he was allegedly experiencing before that day. In light of this evidence, we cannot say that the Commission's finding that the claimant failed to prove that he sustained an accidental injury arising out of and in the course of his employment on July 26, 2011, is against the manifest weight of the evidence.

¶ 46 In so concluding, we acknowledge that there is some evidence in the record supporting the claimant's assertion that he sustained a work accident on July 26, 2011. Specifically, the claimant testified that on July 26, 2011, he was working in a light-duty capacity as a result of his 2010 work accident. He was removing parts from the assembly line and placing them in totes. He stated that, as he was moving a tote, he "felt a very

sharp pain in [his] lower back, shooting into [his] right leg." He testified that he immediately informed his supervisors that he had hurt his back while moving a tote, that he was in severe pain, and that he needed to go home. He stated that the employer's human resources manager took a recorded statement from him the next day. His testimony in this regard is unrebutted.

¶ 47 Ultimately, however, the issue is one of fact for the Commission, and we cannot say that, based upon the record before us, the Commission's original decision affirming and adopting the arbitrator's decision, finding that the claimant failed to prove that he sustained an accidental injury arising out of and in the course of his employment on July 26, 2011, is against the manifest weight of the evidence.

¶ 48 CONCLUSION

¶ 49 For the foregoing reasons, we vacate the circuit court's April 15, 2015, order confirming the Commission's decision on remand; vacate the Commission's August 15, 2014, decision on remand; reverse that portion of the circuit court's April 24, 2014, order reversing the Commission's original decision as to the 2011 claim and remanding the matter to the Commission for further proceedings; and reinstate the Commission's original decision of April 26, 2013.

¶ 50 Circuit court's April 15, 2015, order confirming Commission's decision on remand vacated; Commission's August 15, 2014, decision on remand vacated; circuit court's April 24, 2014, order reversed, in part; and Commission's original April 26, 2013, decision reinstated.