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2017 IL App (1st) 161436WC-U

Order filed: May 19, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

LEON TORRES,)	Appeal from the Circuit Court
)	of Cook County, Illinois
)	
Appellee,)	
)	
v.)	Appeal No. 1-16-1436WC
)	Circuit No. 15-L-50696
)	
ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION, <i>et al.</i> , (City of Chicago,)	Alexander P. White,
Appellants).)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's finding that the claimant failed to prove that his right shoulder condition was causally related to a work-related accident was not against the manifest weight of the evidence.

¶ 2 The claimant, Leon Torres, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)), seeking benefits for various injuries he allegedly sustained when he fell from a tree while working for respondent

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City of Chicago (employer). After conducting a hearing, an arbitrator found that the claimant had sustained accidental injuries arising out of and in the course of his employment with the employer and that the claimant's current condition of ill-being in his cervical spine was causally related to the work accident. The arbitrator also found that the claimant had proven that he sustained work-related injuries to his back and lower extremities. The arbitrator awarded the claimant temporary total disability (TTD) benefits for a 52-week period and medical expenses for these injuries. However, the arbitrator found that the claimant had not proven that the current condition of ill-being in his right shoulder was causally related to a work-related accident. Accordingly, the arbitrator denied benefits relating to that condition.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision.

Commissioner Tyrrell dissented. After reviewing the claimant's testimony, the medical records for the days and weeks immediately following the claimant's work accident, and the opinions of the medical experts, Commissioner Tyrrell concluded that the claimant had proven a causal relationship between his work accident and his right shoulder condition.

¶ 4 The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County. The circuit court reversed the Commission's decision. Like Commissioner Tyrrell, the circuit court found that the medical records, the claimant's testimony, and the opinions of all but one of the medical experts established that the claimant's right shoulder condition was causally related to his work accident. The circuit court found the Commission's contrary conclusion to be against the manifest weight of the evidence. The circuit court remanded the matter to the Commission "with *** instructions to adopt Commissioner Tyrrell's dissent."

¶ 5 This appeal followed.

¶ 6 **FACTS**

¶ 7 At the time of his accident, the claimant worked for the employer as a watchman.¹ His duties included monitoring security cameras, walking and driving through the employer's facilities, and responding to calls from other watchmen in the field.

¶ 8 On April 4, 2012, the claimant was driving and doing various security jobs when he was notified that there was an unresponsive individual in a parked car that was running and parked in a secured City lot near the Cook County Jail. The lot was secured by a gate and surrounded by a chain-link fence that was topped with barbed wire. The only way the claimant could get to the person was to pull the van he was driving up to the fence and climb over the fence. The claimant climbed the fence and onto a tree which was hanging over the fence. Shortly thereafter, the claimant lost his footing and fell out of the tree onto the ground below, a distance of approximately 18 feet. The claimant later testified that there was no handrail on the fence and that he could not grab onto the fence to prevent his fall due to the barbed wire. Shortly after the incident, the claimant signed an accident report describing his fall and stating that he had injured his ankle, knee, back, and elbow.

¶ 9 The following day, the claimant sought treatment for his injuries at MercyWorks in Chicago. He completed a patient intake form in which he described the work accident and indicated that he had injured his "right ankle, knee, back, [and] elbow." He also reported

¹ He had previously worked for the employer as an electrician/lineman but had stopped working in that position due to a prior work-related injury for which he was awarded wage differential benefits. At the time of his accident, the claimant was working under light duty work restrictions of no bending, lifting, kneeling, or climbing.

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experiencing a "tingly sensation" and numbness from his left arm to his "small finger." Upon examining the claimant, Dr. Homer Diadula noted that there was tenderness in the lower cervical spine and a "slight tenderness in the right paracervical area, right sternocleidomastoid and right trapezius."² X-rays performed on the claimant's cervical spine revealed moderated intervertebral disk space narrowing at C5/C6 and C6-C7 with associated osteophyte formation (greater anterior than posterior). X-rays performed on the claimant's lumbar spine revealed a "mild anterior wedge deformity" at L1 of "unknown chronicity," moderate narrowing of the disk space at L5-S1, and disk osteophytes at multiple levels. X-rays performed on the claimant's right knee were negative for joint effusion or acute displaced fracture. No x-rays were taken of the claimant's right shoulder. Dr. Amir Sepahdari, another treating physician at MercyWorks, assessed: (1) soft tissue swelling and small anterior joint effusion of the right ankle with no evidence of an acute fracture or dislocation; (2) a minimal wedge deformity of L1 of uncertain chronicity; and (3) multilevel degenerative disk disease in the lumbar spine. The claimant was diagnosed with sprains of the right ankle and right knee and contusions on the right ankle, right knee, neck, thoracic spine and both elbows. He was released to work with restrictions of no lifting more than 25 pounds, no pushing or pulling more than 45 pounds, no kneeling, and no crawling.

² The paracervical area is the neck area, particularly the back of the neck. The sternocleidomastoid is a thick muscle located on each side of the neck which serves to turn and nod the head. The right trapezius is a wide, flat, superficial muscle that covers most of the right side of the upper back and the right side of the back of the neck. It extends longitudinally from the occipital bone to the lower thoracic vertebrae and laterally to the spine of the scapula (shoulder blade). Its functions are to move, rotate, and stabilize the right shoulder blade, to support the arm, and to extend the head at the neck.

¶ 10 The claimant returned to MercyWorks on April 9, 2012. At that time, he reported experiencing pain in his cervical spine, middle back, low back, right knee, right ankle, and right elbow. He indicated that the pain in his left elbow was gone except for some tingling. His diagnosis remained unchanged from his previous visit. The claimant was referred for physical therapy.

¶ 11 On April 12, 2012, the claimant went to Physical Therapy and Rehab Specialists in Hinsdale for an initial evaluation. The physical therapist's records of that date indicate that the claimant "reported experiencing most of his pain in the cervicothoracic area along the left cervicothoracic paraspinals, into the left parascapular area, and especially into the left upper trapezius." The claimant was also experiencing some referred pain down into his left upper extremity along with tingling depending on his level of activity. The therapist noted that the range of motion in the claimant's shoulders was "within normal limits in bilateral shoulders." Although the claimant appeared to have "good scapular positions," the therapist noted that he was "extremely tender around the medial border of the scapulae, into the rhomboids, and levator scapulae muscle." The therapist applied moist heat to the cervicothoracic area for 10 minutes followed by "deep soft tissue mobilization into the left upper trapezius, rhomboids, and cervicothoracic paraspinals. The therapist recommended a home exercise program for the claimant which included cervical active range of motion exercises followed by "upper trapezius stretching of the left side."

¶ 12 On April 24, 2012, the claimant returned for another physical therapy session. In evaluating the claimant's shoulders, the therapist noted that, although the claimant "appear[ed] to have good scapular positions," he was "extremely tender around the medial border of the

scapulae, into the rhomboids, and levator scapulae muscle [,] left side greater than right."³ The therapist noted that the claimant was tender to palpation in the "left upper trapezius, bilateral paraspinals at [the] C5-C6 area, and the left paraspinals of the upper thoracic vertebrae into the rhomboids and levator scapulae on the left side."

¶ 13 The claimant returned to MercyWorks for follow-up treatments on April 26, 2012, and May 16, 2012. Although he continued to experience some symptoms of his prior injuries, he did not complain of any right shoulder symptoms during those follow-up visits.

¶ 14 On May 21, 2012, the claimant again returned to MercyWorks. Dr. Diadula's medical record of that visit reflects that the claimant reported that his back went into spasms while working and he "couldn't move his shoulders." He also complained of neck pain, spasms in his left shoulder, and "tenderness" in his right knee and in his cervical, thoracic, and lumbar spine. In an "addendum" to his May 21, 2012, medical record, Dr. Diadula noted:

"[The claimant] came in today telling me about his shoulders particularly his right shoulder. Both shoulders went into spasm while working yesterday. I told him to get an injury report in relation to his shoulders. I was informed later that he fell at home [*sic*] causing the right shoulder injury and that he was not authorized to see me since the fall at home was not work-related. When the [claimant] called me this afternoon I made it clear to him that he would be off duty due to a non work related condition. Otherwise, he should go back to work under MMI status with restrictions. *** He voiced his understanding of my statements."

³ Similar notations were made by the therapist during the claimant's subsequent therapy sessions on May 15, 2012, and July 25, 2012.

A follow-up work status report indicates that the claimant was unable to work at the time.

¶ 15 On May 25, 2012, the claimant returned to Dr. Diadula complaining of neck pain and spasms in his left shoulder and lower back, among other symptoms. Dr. Diadula's records of that visit contain no reference to any complaints of pain or any other symptoms in the claimant's right shoulder. Dr. Diadula released the claimant to work within his previous restrictions.

¶ 16 When the claimant returned to MercyWorks again on June 12, 2012, he complained of a stabbing pain in his left shoulder as well as continuing symptoms in back, cervical spine, and knee. Dr. Diadula's records of that visit contain no reference to right shoulder complaints. Dr. Diadula referred the claimant to Dr. Mark Lorenz, an orthopedic surgeon, for evaluation and treatment of his cervical spine condition.

¶ 17 The claimant saw Dr. Lorenz on June 18, 2012.⁴ Dr. Lorenz's medical record of that visit indicates that the claimant gave a history of falling at work while climbing a fence and "sustaining an ankle injury," neck pain and bilateral arm pain, "low back pain," and "cervical pain *** radiat[ing] to the left scapular." Dr. Lorenz noted that the claimant also complained of numbness and tingling pain in "the ulnar distribution, left greater than right." Upon examination, the claimant had pain on extension of the neck, and his reflexes were "1/4 at the biceps[,] triceps[,] and brachioradialis." After reviewing x-rays and an MRI previously taken of the claimant's cervical spine, Dr. Lorenz diagnosed "C5-6 spondylosis with stenosis, C6-7 left-sided disc herniation[.]" and "low back pain." He recommended an epidural steroid injection and

⁴ Dr. Lorenz had previously treated the claimant for neck and back symptoms related to his prior work-related injury, which was the subject of another workers' compensation claim. Dr. Lorenz's records indicate that he last saw the claimant in June 2009, at which time he was "known to have a C5-6 and C6-7 disc herniation."

physical therapy. Dr. Lorenz opined that the claimant's diagnosed conditions were causally related to his April 4, 2012, work accident. Specifically, Dr. Lorenz opined that "[i]t's of medical and surgical certainty that the [claimant's] objective and subjective findings are consistent with neck pain and back pain emanating out of an injury where he fell 04/04/2012 while working for the City of Chicago" *** [s]ustaining , minimally a cervical and lumbar strain" *** [and] [a]ggravating cervical spondylosis and a cervical disc herniation."

¶ 18 On June 25, 2012, the claimant returned to Dr. Diadula at Mercy Works. The claimant was still experiencing neck pain, a stabbing sensation in his left shoulder, and tingling in the fifth digit in his left hand. He also reported continuing pain in his cervical spine, mid back, and low back. His diagnosis was unchanged. MercyWorks issued a work status report indicating that the claimant could return to work within the confines of his prior injury. On July 18, 2012, the claimant underwent a cervical epidural steroid injection.

¶ 19 On August 3, 2012, the claimant saw Dr. Neeraj Jain, a pain care specialist. The claimant told Dr. Jain that he developed low back and neck pain due to the fall at work. Dr. Jain examined the claimant and reviewed a May 22, 2012, MRI of the claimant's cervical spine. Dr. Jain noted that the claimant complained of significant neck pain and numbness and tingling over both upper extremities in the ulnar nerve distribution. He recommended that the claimant proceed with bilateral C5-C6 and C6-C7 facet injections.

¶ 20 The claimant returned to Dr. Lorenz on August 6, 2012. He reported that the injection did not alleviate his symptoms. He was experiencing more pressure in the neck and numbness down his arms. Dr. Lorenz diagnosed C5-C6 spondylosis with stenosis, C6-C7 left-sided disc herniation, and increasing bilateral arm radiculitis. Dr. Lorenz kept the claimant off of work and ordered a repeat MRI scan of the claimant's cervical spine, which was performed on August 13,

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2012. The MRI showed a disc osteophyte complex at C5-C6 without resulting canal stenosis.

There was mild bony neuroforaminal narrowing but no focal disc protrusion. The MRI revealed similar findings at C3-C4 and C4-C5.

¶ 21 On September 14, 2012, the claimant was examined by Dr. Howard An, the employer's section 12 medical examiner. The claimant provided a history of climbing onto a van near a fence by a tree to get into a yard when he lost his footing and hit the ground and injured his neck. Dr. An examined the claimant and reviewed his medical records, including the May 2012 MRI of the claimant's cervical spine. Dr. An did not find any evidence of spinal cord compression at any level. He opined that the MRI findings correlated with cervical spondylosis, neck pain, and some left sided C7 and right sided C6 radicular pain. He also noted that the claimant had low-back pain without significant radiculopathy, which was a preexisting condition. Dr. An opined that the April 4, 2012, work accident aggravated the claimant's low back condition beyond its normal progression and rendered the condition symptomatic. He concluded that this condition should improve with conservative treatment, including anti-inflammatory medications. He further opined that the claimant should reach maximum medical improvement within four weeks and he should be able to go back to his regular duty work without restrictions at that time. Dr. An did not recommend any further injections because the claimant did not have any improvement with the first injection. Dr. An noted that, if the claimant's condition became progressively worse with conservative care, the claimant should be reevaluated for possible cervical spine surgery.

¶ 22 On October 17, 2012, the claimant returned to Dr. Lorenz. He complained of neck pain and numbness and tingling in both arms. Dr. Lorenz's October 17, 2012, medical record indicates that the claimant also complained of pain in his right shoulder, which the claimant said was "due to grabbing what sounds like a handrail or something to keep from falling." Dr. Lorenz

noted that the claimant was experiencing right shoulder pain "with abduction and elevation." He reviewed the cervical MRI scan and noted it showed a central disk herniation at C3-4 and spondylosis with a disk herniation at C5-6 and C6-7. He diagnosed the claimant with C3-4, C5-6 and C6-7 disk herniation and right shoulder pain. He kept the claimant off work and referred him for a cervical discogram. Dr. Lorenz also referred the claimant for an MRI arthrogram of his right shoulder and for a follow-up evaluation with Dr. Steven Chudik, an orthopedic surgeon.

¶ 23 The claimant underwent an MRI arthrogram of the right shoulder on November 7, 2012. The scan was interpreted as showing a moderate to high grade partial thickness articular surface tear involving the posterior tendon fibers of the supraspinatus and the anterior tendon fibers of the infraspinatus, a SLAP⁵ tear and mid posterior labral tear, and a widened acromioclavicular joint space without edema.

¶ 24 On January 11, 2013, Dr. An performed a second independent medical examination at the defendant's request. The claimant reported that he had no significant improvement of his symptoms. He was experiencing right shoulder pain due to rotator cuff⁶ problems, for which he was being treated. Dr. An concluded that the claimant had a cervical disc problem causing neck and bilateral radicular symptoms. He opined that the claimant's condition had plateaued and that the claimant could return to work under the restrictions Dr. An had previously noted (*i.e.*, no lifting more than 15 pounds and limited bending and twisting). In Dr. An's opinion, the claimant

⁵ "SLAP" is an acronym for "superior labral tear from anterior to posterior." A SLAP tear occurs when there is damage to the superior (uppermost) area of the labrum (the cartilage attached to the rim of the shoulder socket that helps keep the ball of the joint in place).

⁶ The rotator cuff is a group of tendons and muscles that support the shoulder joint and allow for complete movement while keeping the ball of the arm bone in the shoulder socket.

was not currently capable of returning to work full duty as a watchman. However, with shoulder treatment and continuing improvement, the claimant could return to work full duty in the future. Alternatively, Dr. An suggested that the claimant could have a functional capacity evaluation (FCE) to determine permanent restrictions and work capacity. In addition, Dr. An noted that, if the claimant's neck and arm symptoms worsened, he might consider a discectomy and fusion at C5-C6 and C6-C7. However, Dr. An reiterated his opinion that a discography was not indicated at the present time.

¶ 25 On March 25, 2013, the claimant returned to Dr. Lorenz. Dr. Lorenz reiterated his recommendation of a cervical discogram and referred the claimant for a FCE.

¶ 26 An FCE was performed on April 24, 2013. The FCE report placed the claimant at the light to medium physical demand level. The claimant's current watchman position was classified at the light physical demand level. Accordingly, the FCE report concluded that the claimant appeared to be physical capable of meeting the demands of his current position.

¶ 27 The claimant saw Dr. Chudik on June 26, 2013. The claimant provided Dr. Chudik with a history of his injury that differed somewhat from the history he had presented to his other treaters shortly after the accident. Specifically, the claimant told Dr. Chudik that he was injured while holding onto a high branch with his right hand and lowering himself down a tree. He told Dr. Chudik that, when he got down from the tree and landed on a concrete block, he had immediate pain in his neck, back, right shoulder, both elbows and hands, right knee, and right ankle. Dr. Chudik noted that the claimant had sustained a "significant injury" to his right shoulder (a shoulder separation) in the 1990s that was surgically repaired. The claimant reported that he had no pain or "troubles" with his right shoulder after he recovered from his prior shoulder surgery until the April 2012 work-related accident. He told Dr. Chudik that he was now

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experiencing "constant" pain in the right shoulder which was aggravated by moving, working, reaching, lifting, carrying, sleeping, or performing overhead activities. After examining the claimant and reviewing the November 7, 2012, MRI arthrogram, Dr. Chudik found that the claimant had a traumatic rotator-cuff tear. He recommended that the claimant undergo an arthroscopic procedure to repair the tear.

¶ 28 Dr. An issued an addendum report on June 4, 2013. In his addendum report, Dr. An indicated that the claimant had undergone an FCE on April 24, 2013, and he noted the FCE report's findings that the claimant could work at the light physical demand level. Dr. An further noted that the claimant's work as a watchman for the employer was at the light physical demand level. Based on the FCE results and his previous physical examination, Dr. An opined that the claimant could return to work as a watchman without restrictions.

¶ 29 After Dr. An issued his addendum report, the employer advised the claimant that Dr. An had released him to return to work as a watchman. The employer told the claimant to return to work around June 5, 2013, and it stopped paying the claimant TTD benefits after June 28, 2013. The claimant told the employer that he was being kept off of work by Dr. Chudik and that Dr. Chudik was contemplating shoulder surgery.

¶ 30 On August 16, 2013, Dr. Chudik performed surgery on the claimant's right shoulder to repair his right labral tear, right rotator cuff tear, and impingement. The surgery was not authorized by the employer. Following surgery, Dr. Chudik recommended physical therapy, which was also not authorized by the employer. The claimant has remained off of work since June 2013 pursuant to Dr. Chudik's orders.

¶ 31 At the employer's request, Dr. Preston Wolin, an orthopedic surgeon, performed a records review and issued a written causation opinion on September 3, 2013. Dr. Wolin did not examine

the claimant. Based on his review of the claimant's medical records, Dr. Wolin opined that there is "no evidence of a causal connection" between the condition of the claimant's right shoulder and the claimant's April 4, 2012, work accident. In support of this opinion, Dr. Wolin noted that "there is no contemporaneous record of either an injury or symptoms referable to the right shoulder," and "the first mention of a right shoulder injury is by Dr. Chudik greater than one year later." Dr. Wolin also noted that the "[t]he described findings on MRI may well be postoperative," but that, "[e]ven if that were not the case," his causation opinion would "remain the same." Given the FCE report, Dr. Wolin believed that the claimant could return to work as a watchman.

¶ 32 On November 6, 2013, Dr. Chudik issued a written causation report in response to Dr. Wolin's causation opinion. Based on his examination and treatment of the claimant and his review of the claimant's medical records, Dr. Chudik opined to a reasonable degree of medical certainty that the claimant's current right shoulder condition (including the SLAP tear and the rotator cuff tear) "was the direct result of the injury and fall on 4/4/12." Dr. Chudik disagreed with Dr. Wolin's causation opinions. Specifically, Dr. Chudik took issue with Dr. Wolin's assertion that the "first mention of a right shoulder injury" in the claimant's medical records was to Dr. Chudik more than a year after the April 4, 2012, accident. Dr. Chudik noted that, to the contrary: (1) the claimant "claims to have reported shoulder pain to his initial treating physicians who he feels were more focused on his other injuries"; (2) the April 5, 2012, medical record indicates that the claimant had "tenderness to palpation near his shoulder region, specifically in the 'right trapezial' and 'right perithoracic' areas; (3) the initial treatment records do not show that the claimant's doctors ordered a "specific shoulder exam" that could have diagnosed a rotator cuff tear or a SLAP tear.

¶ 33 Dr. Chudik opined that the claimant's early complaints of right shoulder pain were "overshadowed by his multiple distracting injuries and therefore not completely identified or evaluated by his initial treating physicians." Dr. Chudik noted that it is a "common occurrence to initially miss an injury in this setting, especially shoulder injuries in the presence of more significant neck and radiating symptoms down the upper extremities as experienced by [the claimant]." Dr. Chudik opined that "[t]here was no delay in presentation [of right shoulder symptoms]; but rather, a delay in diagnosis because of distracting injuries, most specifically, [the claimant's] cervical injuries that produced significant radicular symptoms which continued to mask and obscure his shoulder symptoms and pathology." Dr. Chudik noted that it is a "very regular occurrence" for a shoulder expert to see patients with cervical radicular symptoms that present as shoulder pain and also patients with known cervical radiculopathy to be treated for years before they are referred to a shoulder specialist to treat an undiagnosed shoulder problem. Dr. Chudik stated that "[b]oth cervical radiculopathy and shoulder injuries can produce symptoms and pain in similar locations that can be difficult to discern and sometimes only diagnosed by exclusion after one of the injuries has been more definitively treated with an incomplete response." Dr. Chudik opined that the claimant's shoulder injuries "were consistent with trauma like the fall he described on 4/4/12 and the more severe and overlapping cervical radicular symptoms led to a mere delay in diagnosis and treatment."

¶ 34 During the arbitration hearing, the claimant testified that, when he sought treatment at MercyWorks shortly after the April 4, 2012, work accident, he told the treating physician that his neck, back, and shoulder were hurting. Moreover, on May 21, 2012, he told his treaters at MercyWorks that his shoulders were bothering him and that they were spasming the day before while he was working. The claimant testified that the doctor told him that he was somehow

informed that the claimant fell at home and that his right shoulder injury was not work related. The claimant denied that he fell at home. The claimant further stated that, when he began treating with Dr. Lorenz in June 2012, he complained of pain in the shoulder. When he returned to Dr. Lorenz on October 17, 2012, he recalled giving a further history of having right shoulder pain from the work accident. The claimant testified that Dr. Lorenz recommended the right shoulder MRI after the claimant had continued complaints of right shoulder pain. The claimant noted that, at the time of the hearing, he was being treated for his shoulder and neck conditions and he was always in pain.

¶ 35 The arbitrator found that the claimant had sustained accidental injuries arising out of and in the course of her employment with the employer on April 4, 2012, and that the claimant's current condition of ill-being in his cervical spine was causally related to the work accident. The arbitrator also found that the claimant had proven that he sustained work-related injuries to his back and lower extremities. The arbitrator awarded the claimant temporary total disability (TTD) benefits for a 52-week period and medical expenses for these injuries.

¶ 36 However, the arbitrator found that the claimant had not proven that the current condition of ill-being in his right shoulder was causally related to a work-related accident. Although the arbitrator acknowledged that the claimant's testimony supported a finding of causal connection, she found that "[a] preponderance of the credible evidence demonstrate[d] that [the claimant] did not have an injury to the right shoulder caused by the accident." In support of this finding, the arbitrator stated that: (1) the accident report signed by the claimant the day after the accident "mentions injuries to numerous body parts but fails to mention a right shoulder injury"; (2) when the claimant went to MercyWorks the day after the accident, "[he] complained of injuries to several body parts but not the right shoulder"; (3) the claimant did not complain of right shoulder

injury when he began physical therapy on April 12, 2012 and he "continued the therapy without making any complaints of shoulder pain"; (4) in May and June of 2012, the claimant continued to be treated in both physical therapy and with Mercy Works but he did not report any complaints of right shoulder pain; (5) when the claimant began treating with Dr. Lorenz (a neck and back specialist) in June 2012, the claimant complained of radiating pain from the neck into the arms but did not report any right shoulder complaints; (6) the claimant completed a pain drawing for Dr. Lorenz that showed he was having symptoms in the left upper back area, not the right; (7) when the claimant followed up with Dr. Lorenz in August 2012, he again failed to mention right shoulder symptoms; (8) when the claimant treated with Dr. Jain that same month, he told Dr. Jain that he hurt his neck and low back in a work accident; (9) in September 2012, the claimant told Dr. An that he hurt his neck when he fell and did not complain of any symptoms in his right shoulder.

¶ 37 The arbitrator acknowledged that, on May 21, 2012, the claimant told his treater at MecyWorks that both of his shoulders were hurting after work. However, the arbitrator did not find that this reference established that the claimant injured his right shoulder on April 4, 2012, because there was "no mention of the pain beginning on April 4" and the reference was to "both shoulders, not just the right shoulder." Moreover, the arbitrator noted that there was "a history of a fall at home."

¶ 38 The arbitrator noted that, although the claimant began complaining about pain in the *left* shoulder on May 25, 2012, he did not make a specific complaint of *right* shoulder pain until more than six months after the accident. On October 17, 2012, the claimant reported that he had right shoulder symptoms and Dr. Lorenz suspected he might have right shoulder pathology. A subsequent MRI revealed a torn rotator cuff and other injuries to the right shoulder. The

arbitrator noted that the claimant was examined by numerous physicians and therapists in the preceding six months and "[n]ot one of the records contains findings consistent with the right shoulder pathology he had after October 17, 2012."

¶ 39 The arbitrator also observed that the claimant "supplied inconsistent histories of his injury to support a connection between the fall and right shoulder condition." In the accident report and in his initial statements to his treaters at MercyWorks and his physical therapist, the claimant consistently said that he lost his footing and fell or that he fell from the tree branch. However, in October 2012, he told Dr. Lorenz that he had to grab a handrail to prevent his fall. (The arbitrator noted that, during the hearing, the claimant testified that there was no handrail on the fence.) In June 2013, the claimant told Dr. Chudik that he injured his shoulder when he was "lowering himself from the tree." He did not mention a fall. Due to the "inconsistencies" in these later histories, the arbitrator found that the initial histories provided by the claimant in the days and weeks after the accident were more reliable. None of those earlier histories mention an injury to the right shoulder.

¶ 40 "Based upon the over six month gap between the accident and the first mention of right shoulder pathology and the inconsistent histories provided after right shoulder pain developed," the arbitrator declined to infer a causal connection between the right shoulder injury and the accident. The arbitrator acknowledged the claimant's testimony that Dr. Lorenz believed that his shoulder issue was somehow masked by the symptoms and treatment for the cervical spine. However, the arbitrator noted that the claimant "did not offer any opinions from the treating physicians supporting" this testimony, and found that there was no mention of this opinion in Dr. Lorenz's or Dr. Chudik's records.⁷

⁷ The arbitrator also asserted that the claimant had offered "no response to Dr. Wolin's finding

¶ 41 The claimant appealed the arbitrator's decision to the Commission, which affirmed and adopted the arbitrator's decision. Commissioner Tyrrell dissented. After reviewing the claimant's testimony, the medical records for the days and weeks immediately following the claimant's work accident, and the opinions of the medical experts, Commissioner Tyrrell concluded that the claimant had proven a causal relationship between his work accident and his right shoulder condition. Commissioner Tyrrell noted that that the claimant's testimony supported a finding of causal connection. The claimant testified that he reported shoulder pain to MercyWorks the day after his accident. He specifically recalled discussing his right shoulder pain with the treating doctor there because he has a noticeable scar from a previous surgery in 1998 due to a separate work accident. Moreover, the claimant "denied having any shoulder complaints prior to his new accident and subsequent to his previous surgery."

¶ 42 In addition, Commissioner Tyrrell noted that the medical records contained evidence that the claimant complained of right shoulder pain shortly after the work accident. Specifically, he noted that the MercyWorks treatment record for April 5, 2012, the day after the claimant's work accident, indicates that the claimant had "slight tenderness in the right paracervical area *** and right trapezius." Moreover, when the physical therapist performed a scapular evaluation on April 12, 2012 (8 days after the accident), she noted that the claimant was "extremely tender around the medial border of the scapulae, into the rhomboids, and levator scapulae muscle," areas that

that the lack of contemporaneous treatment or complaints to the shoulder demonstrated a lack of causal connection." That appears to be incorrect. Ten days before the arbitration hearing, Dr. Chudzik issued a causation report rebutting Dr. Wolin's causation opinions. Dr. Chudzik's causation report is in the record on appeal, and neither party argues that it was not presented to the arbitrator. Commissioner Tyrrell alluded to Dr. Chudzik's causation opinion in his dissent.

are composed of or located near the shoulder. Twelve days later, the physical therapist noted that the claimant was "extremely tender around the medial border of the scapulae, into the rhomboids, and levator scapulae muscle left side greater than right." Similar notations were made by the physical therapist on May 15th and July 25th, 2012. Moreover, MercyWorks' May 21, 2012, treatment record noted that it the claimant "couldn't move his shoulders."

¶ 43 Although Commissioner Tyrrell acknowledged that the claimant "self-reported" pain in the neck and back when he first treated with Dr. Lorenz, the Commissioner found it "plausible that the [the claimant] did not realize that his pain was actually emanating from his shoulder area." After the claimant complained of right shoulder pain on October 17, 2012, Dr. Lorenz ordered an MRI arthrogram to determine the source of the claimant's pain. The MRI revealed significant shoulder pathology. The claimant was subsequently referred to Dr. Chudik for ongoing treatment of his right shoulder condition after treatment with Dr. Lorenz for his neck and arm pain did not alleviate his symptoms.

¶ 44 Commissioner Tyrrell also noted that Dr. Chudik opined with a reasonable degree of medical certainty that the claimant's right shoulder condition was causally related to his work accident. He acknowledged Dr. Wolin's contrary opinion, but noted that Dr. Wolin did not examine the claimant. He also found it significant that "Dr. Wolin's one page report erroneously noted that the [the claimant] first complained of symptoms in his right shoulder more than one year after the work accident when he first saw Dr. Chudik." Commissioner Tyrrell stated that, "[i]n reality, [the claimant] complained of symptoms in his right shoulder the day after his accident." Accordingly, Commissioner Tyrrell would have found a causal connection between the claimant's April 4, 2012, work accident and his right shoulder condition and would have awarded the claimant the related TTD and medical expenses, including the shoulder surgery

performed by Dr. Chudik.

¶ 45 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County. The circuit court reversed the Commission's decision. Like Commissioner Tyrrell, the circuit court found that the medical records, the claimant's testimony, and the opinions of all but one of the medical experts established that the claimant's right shoulder condition was causally related to his work accident. After reviewing the medical records that Commissioner Tyrrell discussed in his dissent, the circuit court found that "[t]he record makes clear [that the claimant] had right shoulder complaints immediately following the April 4, 2012, accident." The court found the Commission's contrary conclusion to be "wholly against the manifest weight of the evidence." The court noted that, contrary to the Commission's finding, the early medical records are "filled with noted injuries to the right shoulder."

¶ 46 Although the circuit court acknowledged that the claimant reported only neck and back pain to Dr. Lorenz, it noted Dr. Chudzik's opinion that the claimant "did not realize his pain was actually emanating from his shoulder area and it might have been overshadowed by multiple distracting injuries." The circuit court found it significant that the only medical expert to testify that the claimant's right shoulder pathology was not causally connected to his April 4, 2012, work accident was Dr. Wolin, "whose one page report erroneously noted [that the claimant] first complained of symptoms in his right shoulder *more than one year* after the work accident." The court found that Dr. Wolin's opinion was based on "incorrect facts," as the claimant complained about right shoulder symptoms "the day after the accident." The court noted that the other medical opinions rendered on the issue found a causal connection between the right shoulder injury and the April 4, 2012, work accident. Accordingly, the circuit court reversed the Commission and remanded the matter to the Commission "with *** instructions to adopt

Commissioner Tyrrell's dissent."

¶ 47 This appeal followed.

¶ 48 ANALYSIS

¶ 49 The employer argues that the Commission's finding that the claimant's right shoulder condition is not causally related to his employment was not against the manifest weight of the evidence, and that the circuit court therefore erred in reversing the Commission's finding and awarding benefits for the claimant's shoulder condition. To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Thus, even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. *Sisbro*, 207 Ill. 2d at 205; *Swartz v. Illinois Industrial Comm'n*, 359 Ill.App.3d 1083, 1086 (2005).

¶ 50 Causation is a factual question to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 206. In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly conflicts in the medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). A reviewing court may not substitute its judgment for that of the Commission on these issues merely because other inferences from the evidence may be drawn.

Berry v. Industrial Comm'n, 99 Ill. 2d 401, 407 (1984). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence, *i.e.*, only when the opposite conclusion is "clearly apparent." *Swartz*, 359 Ill. App. 3d at 1086. The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). When the evidence is sufficient to support the Commission's causation finding, we will affirm. *Id.* However, we will not hesitate to overturn a factual determination made by the Commission when the clearly evident, plain, and undisputable weight of the evidence compels an opposite conclusion. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10.

¶ 51 Applying these deferential standards, we cannot say that the Commission's finding of no causal connection is against the manifest weight of the evidence. Although there is some evidence supporting a contrary inference, there is ample evidence suggesting that the claimant's current right shoulder condition was not causally connected to his April 4, 2012, work accident. Shortly after the work accident, the claimant signed an accident report stating that he had injured his "ankle, knee, back, and elbow." The following day, the claimant completed a patient intake form at MercyWorks in which he described the work accident and indicated that he had injured his "right ankle, knee, back, [and] elbow." Neither the accident report nor the patient intake form referenced an injury to the right shoulder. The claimant's initial treaters at MercyWorks x-rayed the claimant's cervical spine, lumbar spine, and right knee. They did not x-ray his right shoulder. The MercyWorks doctors diagnosed the claimant with sprains of the right ankle and right knee and contusions on the right ankle, right knee, neck, thoracic spine and both elbows. The doctors diagnosed no condition relating to the right shoulder. They did not even note a contusion in that

area.

¶ 52 Moreover, when the claimant reported for physical therapy on April 12, 2012, he reported experiencing most of his pain in the cervicothoracic area *along the left cervicothoracic paraspinals, into the left parascapular area, and especially into the left upper trapezius.*

Although the therapist noted that the claimant was "extremely tender" around the medial border of both shoulder blades and into the rhomboids and levator scapulae muscle," the treatment focused on the claimant's left side, not his right shoulder. For example, the therapist applied "deep soft tissue mobilization" into the *left* upper trapezius, rhomboids, and cervicothoracic paraspinals, and she recommended a home exercise program for the claimant which included upper trapezius stretching *of the left side.*⁸ Further, the therapist noted that the range of motion in both of the claimant's shoulders was within the normal limits. Thus, the focus of the physical therapy was clearly on the claimant's cervical injury and his *left* cervicothoracic paraspinal and associated area. The physical therapist's records do not provide strong support for a work-related injury to the right shoulder, at least not one of the severity and intensity that the claimant later developed (*i.e.*, a SLAP tear and a rotator cuff tear causing constant right shoulder pain during activities of everyday living).

¶ 53 Moreover, although the claimant told Dr. Diadula on May 21, 2012, that he could not move his shoulders and that his back and both shoulders had gone into spasms the night before, Dr. Diadula's medical records reflect that the doctor had been informed that the claimant had injured his right shoulder at home. The claimant continued to treat with various doctors from

⁸ In her April 24, 2012, note, the therapist noted that, while the claimant was still "extremely tender around the medial border of the scapulae, into the rhomboids, and levator scapulae muscle," he was experiencing these symptoms on the "left side greater than [the] right."

late April 2012 through September 2012. Although he complained of (and was treated for) several conditions during that time, including ongoing neck pain, back pain, and "stabbing pain" in his *left* shoulder, he never complained of any symptoms in his right shoulder during period. Nor did he link any alleged right shoulder injury to his April 4, 2012, work injury. To the contrary, during his first visit to Dr. Lorenz on June 18, 2012, the claimant gave a history of falling at work while climbing a fence and "sustaining an ankle injury," neck pain and bilateral arm pain," "low back pain," and "cervical pain *** radiat[ing] to the left scapular." Similarly, during his first visit to Dr. Jain, he reported that he developed low back and neck pain due to the fall at work, and he told Dr. An that he had hurt his neck during the work accident.

¶ 54 The first reference in the medical records to the claimant's reporting a right shoulder problem and linking such a problem to an accident occurs on October 17, 2012. On that date, the claimant told Dr. Lorenz that he was experiencing pain in his right shoulder, which Dr. Lorenz's record noted was "due to grabbing what sounds like a handrail or something to keep from falling." Dr. Lorenz stated that the claimant was experiencing right shoulder pain "with abduction and elevation." These particular symptoms were not recorded by any of the claimant's prior treaters during the six months following the April 4, 2012, accident. Moreover, the alleged mechanics of the right shoulder injury ("grabbing a handrail to keep from falling") are inconsistent with the undisputed mechanics of the April 4, 2012, accident. During the arbitration hearing, the claimant testified that there was no handrail on the fence he climbed at the time of the April 2012 accident, and he was unable to grab onto the fence to prevent himself from falling out of the tree because the fence was topped with barbed wire. Thus, both the presence of new shoulder symptoms and the alleged mechanics of injury suggest that the right shoulder condition the claimant reported on October 17, 2012 (which was later diagnosed as a SLAP tear and a

labral tear) was not causally connected to the April 4, 2012, work accident.

¶ 55 We acknowledge that there is some evidence in the record to support a causal connection between the claimant's current right shoulder condition and the April 2012 work accident. As the circuit court and Commissioner Tyrrell noted, the claimant testified that he experienced shoulder symptoms immediately after the accident and told his treaters at MercyWorks and his other treaters (including Dr. Lorenz) about these symptoms. The claimant also testified that he had no right shoulder problems from the time he recovered from his prior shoulder surgery in 1998 until the date of the April 2012 work accident. Moreover, the MercyWorks treatment record for April 5, 2012, the day after the claimant's work accident, indicates that the claimant had "slight tenderness in the right paracervical area *** and right trapezius." And, as noted, the physical therapist's April 2012 records note that the claimant was "extremely tender around the medial border of the scapulae, into the rhomboids, and levator scapulae muscle," areas that are composed of or located near the shoulder. (Similar notations were made by the physical therapist in May and July of 2012.) Moreover, as noted, the claimant reported on May 21, 2012, that he "couldn't move his shoulders." In addition, Dr. Chudik testified that the claimant's right shoulder pain could have been "masked" or "overshadowed" by more significant cervical symptoms, leading to a delay in diagnosis and treatment of his right shoulder condition. Finally, Dr. Wolin's contrary causation opinion and the Commission's finding of no causation were both based, at least in part, on the erroneous assumption that the medical records contained *no* evidence of right shoulder-related symptoms in the days, weeks, and months immediately following the April 2012 work accident.

¶ 56 Despite this evidence, we cannot conclude that the Commission's finding of no causation is against the manifest weight of the evidence. The Commission was not required to credit Dr.

Chudik's causation opinion, even if his opinion were not rebutted by another credible expert opinion. *Fickas*, 308 Ill. App. 3d at 1041-42. Moreover, although there is some evidence that the claimant experienced *some* right shoulder symptoms shortly after the April 2012 accident, the medical records as a whole strongly suggest that he did not begin to experience the serious right shoulder symptoms he currently experiences (*i.e.*, constant pain in the shoulder that increases with activities of daily living and pain during abduction and elevation of the arm, as opposed to mere tenderness in the surrounding areas) until approximately six months after the April 2012 accident. Moreover, there is evidence in the medical records suggesting that: (1) the right shoulder symptoms the claimant reported in May 2012 were caused by a fall at home, not by a work-related accident; and (2) when the claimant first reported his new and increased shoulder symptoms to Dr. Lorenz in October 2012, he said that they were caused when he "grabbed onto a handrail" to keep himself from falling. That account of injury is inconsistent with the claimant's own account of the April 2012 accident.

¶ 57 Accordingly, while there is evidence supporting a contrary finding, we cannot say that the Commission's finding of no causal connection between the claimant's current right shoulder condition and the April 4, 2012, work accident is against the manifest weight of the evidence. The opposite conclusion is not "clearly apparent." It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly conflicts in the medical opinion evidence. *Hosteny*, 397 Ill. App. 3d at 675; *Fickas*, 308 Ill. App. 3d at 1041. When there is sufficient evidence in the record to support the Commission's finding, as here, we will not reweigh the evidence or substitute our judgment for that of the Commission merely because other reasonable inferences may be drawn from the evidence. *Berry*, 99 Ill. 2d at 407.

¶ 58

CONCLUSION

¶ 59 For the reasons discussed above, we reverse the judgment of the circuit court of Cook County, reinstate the Commission's decision, and remand this matter to the Commission for further proceedings consistent with our decision.

¶ 60 Circuit court's judgment reversed; Commission's decision reinstated; cause remanded to the Commission.