2017 IL App (1st) 161964WC-U

FILED: June 30, 2017

NO. 1-16-1964WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DOUGLAS YARGER, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (Perftech, Appellee).	))))))))	Appeal from Circuit Court of Cook County No. 15L50837 Honorable Kay M. Hanlon, Judge Presiding.

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

ORDER

¶ 1 *Held*: The Commission's finding that claimant failed to establish a work-related injury arising out of and in the course of his employment was not against the manifest weight of the evidence.

¶ 2 On June 23, 2014, claimant, Douglas Yarger, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2012)), seeking benefits from the employer, Perftech. Following a hearing, the arbitrator found claimant failed to prove he suffered an accident arising out of and in the course of his employment and denied him benefits under the Act. On review, the Illinois Workers' Compensation Commission

(Commission) affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Cook County confirmed the Commission. Claimant appeals, arguing the Commission erred in finding he failed to prove that he suffered an accident arising out of and in the course of employment and denying him benefits under the Act. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 10, 2014, the arbitration hearing was conducted. Claimant testified, beginning in March 2011, he worked for the employer as a "slitter operator." His job duties included loading, unloading, and operating the employer's machines; handling material from racks to the machines; and laying out the finished product.

¶ 5 Claimant stated he primarily operated the employer's "Bemis" machine, which it used to slit or perforate a plastic-like material. He described the manner in which he performed his job duties, stating he first used a forklift to obtain a roll of material from a rack and then removed shrink wrap from around the roll with a knife. Claimant described the rolls of material used on the Bemis machine as being 5 feet long, approximately 30 inches in diameter, and weighing approximately 1,100 pounds. Using the forklift, he would place the roll of material onto a "roll cart." Claimant stated he would then manually push the cart back and forth, maneuvering it behind the machine and lining it up with "arms" on the back of the machine. He testified the machine had a metal shaft that was approximately 7 feet long and weighed 35 pounds. He manually lifted the shaft and placed it through the hollow center of the material roll. Claimant stated the arms on the machine had to be lifted up to lock the roll into place and he would "pull the collar out from one end" to grab hold of the shaft. Once the roll was on the machine, he would "web it up" through a series of rollers on the machine. Claimant asserted the process of placing rolls of the material onto the machine required heavy lifting, as well as

repetitive pushing, pulling, and bending.

¶ 6 Claimant testified his job duties also required him to operate a second, smaller machine, sometimes simultaneously with the Bemis machine. Similar to the Bemis machine, he lined up the rolls of material with the machine and lifted and placed the shaft through the roll. Claimant testified the material rolls tended to be smaller and did not require using a forklift to place them on a cart. Instead, he stated he usually stacked a full pallet of rolls next to the smaller machine and would then "dump" or "roll" a material roll onto the cart. Claimant estimated the rolls of material for the smaller machine were 30 inches long, approximately 20 inches in diameter, and weighed between 200 and 500 pounds. He also estimated that the shaft on the smaller machine weighed 30 to 40 pounds. Claimant believed that, in an average work day, he changed the rolls on the Bemis machine 16 times and changed the rolls on the smaller machine approximately 32 times.

¶ 7 Claimant testified, while performing his job duties on September 24, 2012, he "experienced sharp pain in [his] lower back," which "shot down [his] right leg." He asserted the pain was from the repetitive lifting, bending, and twisting he did when working with the large rolls of material and webbing the material through the machine. Claimant asserted that after experiencing pain, he continued working. At the end of his shift, he went to the employer's locker room to change out of his work uniform, which consisted of pants and a shirt with the employer's logo. Claimant testified that "[w]hen [he] sat down," he "had another sharp pain in [his] lower back that went down [his] right leg." He stated he "could barely stand up straight again to change [his] clothes."

¶ 8 Claimant testified he went home but noticed the pain was not going away. He took Ibuprofen and tried not to move. However, his symptoms worsened and, the following

morning, he could barely stand. Claimant testified he called his work supervisor, Jim Williams, to report what happened. He stated he told Williams that he "had hurt [his] back on the job and then [he] hurt it again in the locker room." According to claimant, Williams told him to go to Dreyer Clinic (Dreyer).

¶ 9 Medical records show, on September 25, 2012, claimant was seen at Dreyer by Dr. Jon Christofersen. He complained of low back pain and Dr. Christofersen recorded the following accident history: "[Claimant] states that yesterday at the end of work, he was changing out of his uniform and began to feel pain in the low back." He noted claimant reported "no significant injury event." Dr. Christofersen diagnosed claimant with a lumbosacral strain and recommended modified-duty work restrictions. He also prescribed medication and recommended "home exercises." Records from Dreyer contain a "Patient Preliminary Information" form with the following handwritten description of claimant's accident: "I was changing out of my uniform and pulled something, it was tough to put my shoes on. It was sore the rest of the day. When I woke up the following morning I could barely stand up on my own."

¶ 10 On September 28, 2012, claimant followed up at Dreyer and reported that he was a lot better than he had been initially but was "still having a fair amount of trouble." Dr. Christofersen recommended he continue with medication and home exercise. He also continued claimant's modified-duty work restrictions. On October 2, 2012, Dr. Christofersen recommended physical therapy, which claimant began on October 12, 2012. At the time of his initial physical therapy visit, claimant complained of low back pain that was mostly on his right side. Medical records indicate he reported that "he pulled the muscle while at work reaching forward and down."

¶ 11 On November 6, 2012, claimant returned to Dreyer and reported feeling worse.

He stated he was having pain in his right leg, numbness in his anterior shin, and shooting pain in his back. Dr. Christofersen diagnosed him with a lumbosacral strain with radicular symptoms. He also recommended medication, continued physical therapy, modified-duty work, and a magnetic resonance imaging (MRI) scan to rule out disc disease. On November 12, 2012, claimant's MRI was performed, finding a "3.5 mm disc herniation at L4-L5 with associated canal narrowing and bilateral foraminal stenosis" and a "3 mm posterocentral disc herniation at L1-L2."

¶ 12 On November 20, 2012, claimant returned to Dreyer and reported that he felt about the same. Dr. Christofersen noted claimant's MRI showed evidence of a disc herniation at L4-L5 and a posterior central disk herniation at L1-L2. He recommended claimant continue with his medication and home exercises. Dr. Christofersen also continued claimant's modified-duty work restrictions and recommended a consultation with a spine surgeon. Finally, Dr. Christofersen stated as follows: "As I mentioned on [claimant's] first visit, he did not have [*sic*] report of any significant injury event at work. This was described as starting when he was changing out of his uniform at work. He did not describe a fall or lifting event associated with it. I really could not ascribe his findings on the MRI to the event of changing clothes."

¶ 13 On November 30, 2012, claimant saw Dr. Christofersen and reported continued pain. He stated he had been off work as no light-duty work was available. Dr. Christofersen recommended medication and modified-duty work restrictions.

¶ 14 On December 10, 2012, claimant saw Dr. Michael Rabin, a neurosurgeon. Dr. Rabin noted an accident history of claimant "changing his clothes and *** experiencing pain in his low back radiating down his right leg with numbness." He stated claimant had unsuccessfully undergone physical therapy and was off work. Dr. Rabin recorded the following impression:

"[Claimant] by MRI scan has probably congenital stenosis with superimposed disk bulges which may have created a situation where the stenosis is now symptomatic. He also has a disk herniation on the right at L4-5." Dr. Rabin recommended epidural steroid injections.

¶ 15 On January 14, 2013, claimant saw Dr. Edward Goldberg at the employer's request. Dr. Goldberg authored a report concerning his examination of claimant. He noted claimant reported, on September 24, 2012, he was changing his clothes at work and "when changing pants" he developed pain in his low back. Dr. Goldberg found claimant had a right-sided disc herniation with congenital lumbar stenosis at L4-L5, which caused his right leg radicular pain. He stated it appeared claimant "injured his lumbar spine while changing his clothes" on September 24, 2012. Dr. Goldberg noted claimant had no prior problems. Further he agreed with Dr. Rabin's recommendation for lumbar epidural injections. Dr. Goldberg opined that if the injections did not work, claimant would be a candidate for a microdiscectomy at L4-L5. He stated claimant could return to work with a 10-pound lifting restriction.

¶ 16 Ultimately, claimant underwent two epidural steroid injections, one on February 14, 2013, and the second on March 5, 2013. Claimant testified, following the injections, he did not notice any improvement in his lower back or right leg.

¶ 17 On April 29, 2013, claimant returned to see Dr. Rabin. Dr. Rabin's records reflect claimant reported experiencing "a great deal of improvement" with the epidural steroid injections but that he continued to experience pain. Dr. Rabin recommended a microdiscectomy. On May 3, 2013, Dr. Rabin recommended a repeat MRI scan, which claimant underwent on June 5, 2013. The impression from the MRI report was that claimant had "[m]ultilevel spondylitic changes and disc protrusions" with findings "most prominent at L4-L5 greater on the right side where there [was] a spinal stenosis due to disc bulge acting constant with paracentral disc protrusions and

facet disease and ligament flavum thickening."

¶ 18 On June 24, 2013, Dr. Rabin noted claimant continued to have low back pain that radiated down to his right leg. After reviewing claimant's June 2013 MRI, he opined claimant's condition had worsened. Dr. Rabin stated he discussed surgery with claimant and agreed claimant would undergo decompression surgery at L3-S1 "with a right possible microdiskectomy at L4-5." On June 17, 2013, claimant returned to Dr. Rabin, who noted "Worker's [*sic*] Compensation ha[d] approved [a] microdiskectomy at L4-5" but otherwise "refused" his surgical recommendations. On August 13, 2013, Dr. Rabin performed the authorized surgery on claimant.

¶ 19 At arbitration, claimant testified he started to feel better after his surgery. He continued to follow up with Dr. Rabin and, from November 19, 2013, through January 29, 2014, he underwent a course of physical therapy. Claimant's physical therapy records include an "Initial Evaluation," which states he provided a history of "his back popp[ing] after he was changing out of his uniform in the locker room after work." At arbitration, claimant testified his condition began to worsen while undergoing physical therapy. He stated he reinjured his back while lifting weights during physical therapy and felt pain in his lower back and down his right leg.

¶ 20 On January 30, 2014, he underwent an MRI of his lumbar spine with and without contrast. The impression from the MRI report states findings were "suspicious for a recurrent/residual disc protrusion with associate deformity of the thecal sac and right lateral recess stenosis."

¶ 21 Dr. Rabin's medical records show, on February 3, 2014, claimant followed up with him and complained of shooting thigh pain when lifting weights in physical therapy. Dr. Rabin noted claimant had a repeat MRI, which the radiologist read as showing "a possible disc

recurrence." Dr. Rabin stated he discussed with the claimant the possibility of a repeat operation. On February 5, 2014, Dr. Rabin stated he reviewed claimant's MRI and felt it "likely represents post operative fluid rather then [*sic*] recurrent disc." He stated he offered to "reexplore" claimant "versus repeating the [MRI] scan in [three] months." On March 3, 2014, Dr. Rabin noted claimant continued to complain of leg pain. He stated he "again offered surgery to reexplore" but claimant wanted to wait. Dr. Rabin recommended claimant follow up in two months with a repeat MRI.

¶ 22 On March 21, 2014, claimant returned to see Dr. Goldberg at the employer's request. After reviewing claimant's medical records and performing a physical examination, Dr. Goldberg diagnosed claimant with a recurrent or retained disc herniation to the right at L4-L5. He opined claimant's condition of ill-being was "due to the accident of September 24, 2012." Dr. Goldberg recommended two epidural injections and, if those did not work, a "repeat diskectomy at L4-L5." Further he opined claimant could return to work in a sedentary position.

¶ 23 On May 12, 2014, claimant returned to Dr. Rabin, who noted claimant was having low back pain with numbness in his toes. Dr. Rabin recommended a repeat MRI, which was performed on May 15, 2014. The impression on the MRI report was "no significant change since previous examination." On June 4, 2014, Dr. Rabin determined that, based on the repeat MRI, claimant likely had a recurrent disc herniation. He noted claimant wished to proceed with surgery and opined it "reasonable to do a re-exploration and microdiskectomy."

¶ 24 On July 7, 2014, Dr. Rabin authored a report addressing whether claimant's condition was causally related to his employment. He stated as follows:

> "When [claimant] presented in December 2012, he stated that he had been changing his clothing after work, and he pulled something in his back at that time.

> Since the clothing change occurred after work, it would seem that the injury occurred from his work, that would be the link that I would provide you based on the history he presented with.
>
> As far as whether his work as a machinist can contribute to his injury, certainly, the stress and strain of working could contribute and exacerbate his condition. The repetitive lifting and handling of the material would contribute to his back injury and was likely the source of it."

¶ 25 On August 8, 2014, Dr. Rabin authored a second report. He noted claimant "described the injury as occurring at work when he was changing his clothes." In answering the question of whether claimant's job duties—as set forth in a job description provided to Dr. Rabin by claimant—were connected with claimant's condition of ill-being, Dr. Rabin responded that claimant "injured himself while changing his clothes."

¶ 26 Finally, Dr. Rabin's records reflect claimant returned to his office on October 13, 2014, to fill out paperwork. He noted they reviewed claimant's history and he stated as follows: "[Claimant] is a machinist and stands all day. He began having pain while working at his machine and then when he was changing his clothes in the locker room he had sharp pain and likely completed the disc herniation. I have recommended reexploration and microdiscectomy. Await approval."

¶ 27 Claimant submitted Dr. Rabin's deposition, taken November 19, 2014, at arbitration. Dr. Rabin testified claimant provided a history of being injured on September 24, 2012, while "changing his clothes while he was at work." He stated claimant "twisted" and started having pain that radiated down his right leg. Claimant did not provide a history of accident that involved the performance of his job duties. Dr. Rabin further testified claimant

provided him with a description of his job duties. In that job description, claimant reported that he performed "repetitive work on a daily basis." Based upon claimant's job description, Dr. Rabin opined claimant's condition of ill-being was causally related to his work for the employer. He testified the repetitive lifting and bending activities claimant described "were competent causes or aggravations of [claimant's] back condition." Dr. Rabin stated repetitive job duties could cause spinal stenosis "[l]ong term over years" but could cause a disc herniation "at any time."

¶ 28 The job description prepared by claimant was submitted as an exhibit at Dr. Rabin's deposition. It consists of a two-paged, type written document in which claimant set forth the various steps he performed when operating three different machines, including the employer's Bemis machine. Claimant's description of his work activities was similar to the description he provided when testifying at arbitration. Additionally, claimant summarized his job duties as follows:

> "On the average day I am required to handle a minimum of [two] rolls weighing atleast [*sic*] 800 [pounds] each per hour. The rolls must be handled twice each for 3,200 [pounds] per hour. Over the course of [seven] hours I'm required to handle and maneuver approx[imately] 22,400 [pounds] of material per shift. My duties require constant and repetitive lifting and handling of material per shift. Each time I handle this material I feel constant pain and pulling in my lower back."

¶ 29 At arbitration, claimant further testified that Dr. Rabin continued to prescribe medication for him. He asserted that, without the medication, he could not move or sleep and was in pain while sitting or standing. Additionally, claimant asserted that he reported an onset of

back pain while working to his treating doctors. He maintained that if the medical record did not document his report, they were incorrect.

¶ 30 At arbitration, the employer presented the testimony of Chris Jilka, the employer's plant manager, whose job duties included scheduling and managing employees. Jilka stated he was familiar with the operation of the employer's machines. He was also familiar with claimant and claimant's workers' compensation claim. Jilka testified he had heard claimant was injured while changing his clothes in the employer's locker room. He was not aware of any report by claimant that he was injured while performing his job duties until approximately one week prior to the arbitration hearing.

¶ 31 Jilka described the employer's employee uniform as a polo-type shirt and "regular slacks." Further, he testified on September 24, 2012, claimant was working on the employer's Bemis machine. Jilka acknowledged that the Bemis machine required working with large rolls of material that weighed from 800 to 1,100 pounds. He stated employees maneuvered the rolls with forklifts and push carts. Jilka testified it took about 50 minutes for one roll of material to "process" through the machine. During those 50 minutes, the machine operator could help another employee, "slit some rolls" on another machine, wait for the machine to finish, or sweep. Jilka estimated the shaft on the Bemis machine weighed 60 to 65 pounds and was handled by an employee only when he or she was putting a roll on the machine or taking one off. He did not believe operating the Bemis machine required constant and repetitive lifting, bending, kneeling, or twisting.

¶ 32 Jilka testified he operated the Bemis machine himself during "sample runs" or when an employee was absent. He stated physical requirements for operating the machine included that the employee be able to lift 75 pounds.

¶ 33 The employer also presented the testimony of Daniel Carlson, the employer's first shift supervisor and claimant's supervisor on September 24, 2012. Although claimant did not report a work injury directly to him, Carlson understood that claimant reported that he "[s]trained his back changing his clothes in the locker room." Carlson was not aware of any report by claimant that he injured his back while performing his job duties. Carlson also described claimant's work uniform as a polo-type shirt and pants. He stated there was nothing unusual about either the shirt or pants.

¶ 34 Further, Carlson identified an incident report he prepared regarding claimant's accident. The employer submitted the report, entitled "Supervisors 1st Report of Accident" and dated September 28, 2012, into evidence. The report identified the employer's men's locker room as the location of claimant's accident and described the accident as follows: "[Claimant] was changing from his uniform to street clothes when he pulled a muscle in his back." The report bears both Carlson's and claimant's signatures. During his testimony, claimant acknowledged that the report contained his signature but testified he did not recall ever seeing the report or reviewing it.

¶ 35 Carlson further testified he was familiar with claimant's job duties on the employer's Bemis machine. He agreed claimant's work on that machine required him to handle five rolls of material per shift and that each roll weighed 1,000 pounds. Carlson testified employees maneuvered the rolls by using a forklift and a cart. He estimated that it took 50 minutes to process each roll on the machine. While the rolls were processing, the employee operating the machine would sweep in the area or empty trash cans. Carlson testified the shaft on the Bemis machine weighed approximately 40 pounds and was only lifted once or twice per roll. He also stated he had personally pushed a cart that was carrying a roll. He denied that such

action required any forcible pushing or lifting. Carlson also denied that claimant's work on the Bemis machine required constant bending, kneeling, or twisting.

¶ 36 On February 4, 2015, the arbitrator issued her decision, denying claimant benefits under the Act. In reaching her decision, the arbitrator found the medical evidence corroborated only claimant's testimony that he felt pain in his low back while changing his clothing at the end of his work day and not that he experienced any pain while performing his job duties. She also rejected Dr. Rabin's causation opinion, stating as follows: "While Dr. Rabin testified that, after receiving information about [claimant's] job duties in *** 2014, he believed that those types of activities would be competent to cause or aggravate [claimant's] back condition[,] his opinion is not persuasive in consideration of the record as a whole."

¶ 37 On November 20, 2015, the Commission affirmed and adopted the arbitrator's decision that claimant failed to establish an accident arising out of and in the course of his employment. On June 23, 2016, the circuit court confirmed the Commission's decision.

¶ 38 This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 On appeal, claimant argues the Commission erred in finding his back injury did not arise out of and in the course of his employment. He maintains he suffered a repetitive-trauma injury to his lower back that arose out of and in the course of his employment. Alternatively, claimant contends he was entitled to compensation under the personal comfort doctrine.

¶ 41 A. Standard of Review

¶ 42 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which 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 the claimant established an injury arising out of and in the course of his employment has long been held to be a question of fact for the Commission, which "will not be disturbed unless it is against the manifest weight of the evidence." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 312, 901 N.E.2d 1066, 1079 (2009). "As the trier of fact, the Commission is primarily responsible for resolving conflicts in the evidence, assessing the credibility of witness, assigning weight to evidence, and drawing reasonable inferences from the record." *ABF Freight System v. Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19, 45 N.E.3d 757. On review, the Commission's finding is against the manifest weight of the evidence only when "the opposite conclusion is clearly apparent." *City of Springfield*, 388 Ill. App. 3d at 312-13, 901 N.E.2d at 1079. "[T]he appropriate test is whether there is sufficient evidence in the record to support the Commission's determination." *Dig Right In Landscaping v. Workers' Compensation Comm'n*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739.

¶ 43 Initially, claimant argues this case presents a question of law and is, therefore, subject to a *de novo* standard of review. He maintains "that when undisputed facts are susceptible to a single reasonable inference the issue presented to the court on review becomes a question of law." *William G. Ceas & Co. v. Industrial Comm'n*, 261 Ill. App. 3d 630, 634, 633 N.E.2d 994, 997 (1994); see also *Johnson v. Workers' Compensation Comm'n*, 2011 IL App (2d) 100418WC, ¶ 17, 956 N.E.2d 543 (stating this court will "apply a *de novo* standard of review when the facts essential to our analysis are undisputed and susceptible to but a single inference, and our review only involves an application of the law to those undisputed facts"). Here, however, we find the facts necessary to our resolution of this appeal—and the inferences to be drawn therefrom—are

very much in dispute, in particular, as they relate to the mechanism of claimant's injury. Thus, we decline to apply a *de novo* standard as claimant suggests. Instead, we apply the well-settled, manifest-weight-of-the-evidence standard—applicable when reviewing the Commission's factual determinations.

¶ 44 B. Repetitive Trauma

¶ 45 As stated, claimant first argues he sustained a repetitive-trauma injury to his lower back that "arose out of the repetitive pushing, pulling, bending and heavy lifting" duties he performed for the employer when "transferring plastic rolls weighing between 500 to 1,100 pounds." Claimant asserts the evidence supports a finding that he experienced a sharp pain in his lower back "while performing his labor intensive job duties" and that his injury then "manifested itself" and "became debilitating" while he was changing his work uniform. Further, he relies on Dr. Rabin's opinion that his low back condition was causally related to his employment.

¶ 46 Compensable injuries under the act may arise from a single identifiable event or be caused gradually by repetitive trauma. *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773, 780 (2005). "An employee who alleges injury from repetitive trauma must still meet the same standard of proof as other claimants alleging accidental injury" and "show that the injury is work related and not the result of a normal degenerative aging process." *Id*. "[T]he date of the injury in a repetitive-trauma compensation case is the date when the injury manifests itself—'the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person.' " *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 67, 862 N.E.2d 918, 926 (2006) (quoting *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531, 505 N.E.2d 1026, 1029 (1987)). Additionally, repetitive-trauma

cases typically require medical opinion evidence to establish a causal connection between the claimant's injury and his employment. *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 477 (1987).

¶ 47 Here, the Commission rejected claimant's argument that his lower back condition of ill-being was causally related to his alleged repetitive work duties. In so holding, it found claimant was not credible and that Dr. Rabin's opinions were unpersuasive "in consideration of the record as a whole." We find the evidence presented was sufficient to support the Commission's decision and it was not against the manifest weight of the evidence.

¶ 48 As determined by the Commission, the evidence presented simply does not corroborate claimant's testimony that he experienced pain while performing his job duties on September 24, 2012. Rather, it shows he repeatedly and consistently provided only a history of experiencing pain at the end of his shift while in the process of changing out of his uniform in the employer's locker room. The arbitrator and the Commission accurately summarized the evidence presented, stating as follows:

> "[Claimant] consistently reported only [the clothes-changing incident as the] mechanism of injury to every treating medical provider and [the employer's] independent medical examiner for slightly over two years. Notably the medical records during this two-year period reflect [claimant's] own handwritten reports as well as the histories noted by various medical providers that [claimant] reported that his pain began during the clothes-changing incident. The record is devoid of any general, much less specific, reference to an onset of pain or other symptoms during the work day as asserted by [claimant] for the first time at trial."

Thus, to the extent claimant attempts to establish either a single identifiable accident or a repetitive-trauma injury which occurred while he was performing his job duties on September 24, 2012, his claim must be rejected.

¶ 49 Additionally, we note, in the job description claimant prepared and submitted to Dr. Rabin, he reported that he would "feel constant pain and pulling in [his] lower back" while handling material at work. However, this statement is similarly uncorroborated. Nothing in the record supports a finding that, prior to preparing the job description for Dr. Rabin's review in 2014, claimant ever reported that his work for the employer caused him to experience symptoms in his lower back.

¶ 50 Further, we cannot say the Commission erred in finding that Dr. Rabin's causal connection opinion was unpersuasive. We note Dr. Rabin offered conflicting opinions regarding the cause of claimant's injury even after being provided claimant's job description. Specifically, although during his November 2014 deposition Dr. Rabin opined claimant's back condition was casually related to claimant's "repetitive work," in his August 2014 report, he attributed claimant's back injury to solely the clothes-changing incident. Additionally, Dr. Rabin did not elaborate on his causal connection opinion during his deposition and it is not clear what particular work activities he found contributed to claimant's condition of ill-being. Finally, we note the record contains conflicting evidence as to the nature of claimant's job duties. In particular, the employer presented two witnesses, Jilka and Carlson, who testified that contrary to claimant's description, claimant's job duties did not require constant and repetitive lifting, bending, kneeling, or twisting.

¶ 51 In this case, the Commission determined claimant's back injury was solely connected to his reported clothes-changing incident and not his alleged repetitive job duties.

Given the evidence presented, we cannot say an opposite conclusion from that reached by the Commission was clearly apparent.

¶ 52 C. Personal Comfort Doctrine

¶ 53 As discussed, claimant alternatively argues that, if the Commission was correct in finding he failed to establish a repetitive-trauma injury, he is nevertheless entitled to compensation under the Act based upon the personal comfort doctrine.

¶ 54 Initially, the employer suggests claimant forfeited any assertion of compensability based on the personal comfort doctrine because it was not a theory he raised with the Commission. Generally, a claimant forfeits an argument by failing to raise it before the Commission or the circuit court. *Esquinca v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 150706WC, ¶ 63, 51 N.E.3d 5. In this instance, although claimant may not have explicitly referenced the "personal comfort doctrine" before the Commission, he did set forth case authority discussing the doctrine in his statement of exceptions to the arbitrator's decision. See *Chicago Extruded Metals v. Industrial Comm'n*, 77 Ill. 2d 81, 395 N.E.2d 569 (1979). Under these circumstances, we decline to find the argument forfeited and address its merits. See *Labuz v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 113007WC, ¶ 39, 981 N.E.2d 14 (finding claimant avoided forfeiting a computational theory for his average weekly wage calculation on appellate review by presenting the theory to the Commission); *Hicks v. Industrial Comm'n*, 251 Ill. App. 3d 320, 324, 621 N.E.2d 293, 295 (1993) (holding that the employer's assertion that the claimant's claim was time-barred under the Workers' Occupational Diseases Act was properly before this court where, although the issue was not asserted before the arbitrator, it was raised before the Commission); *Monterey Coal Co. v. Industrial Comm'n*, 241 Ill. App. 3d 386, 390, 609 N.E.2d 339, 342 (1992) (finding an argument was preserved for

appellate review where the record demonstrated that the argument was before the Commission).

¶ 55 The personal comfort doctrine provides that " '[e]mployees who, within the time and space limits of their employment, engage in acts which minister to personal comfort do not thereby leave the course of employment, unless the *** method chosen is so unusual and unreasonable that the conduct cannot be considered an incident of the employment.' " *Circuit City Stores, Inc. v. Illinois Workers' Compensation Comm'n (Dwyer)*, 391 Ill. App. 3d 913, 920, 909 N.E.2d 983, 990 (2009) (quoting 2 A. Larson & L. Larson, Workers' Compensation Law § 21, at 21- (2008)). However, "application of the personal comfort doctrine 'would only establish that [the] claimant is considered to be in the course of his employment' and thus would not obviate an 'arising out of' analysis." *Dwyer*, 391 Ill. App. 3d at 921, 909 N.E.2d at 990 (quoting *Karastamatis v. Industrial Comm'n*, 306 Ill. App. 3d 206, 211, 713 N.E.2d 161, 165 (1999)). Here, even assuming the personal comfort doctrine applies such that claimant's injuries can be said to have occurred in the course of his employment, we find the evidence presented remains insufficient to establish that his accidental injury arose out of his employment.

¶ 56 An injury arises out of a claimant's employment where it "had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro*, 207 Ill. 2d at 203, 797 N.E.2d at 672. There are three types of risks to which an employee may be exposed: "(1) risks distinctly associated with employment; (2) risks personal to the employee, such as idiopathic falls, and (3) neutral risks that have no particular employment or personal characteristics." *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105, 853 N.E.2d 799, 803 (2006). "Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the

general public." *Metropolitan Water Reclamation District of Greater Chicago v. Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1014, 944 N.E.2d 800, 804 (2011). "Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public." *Id*.

¶ 57 Initially, we note claimant's accident description while testifying at arbitration was not wholly consistent with the histories contained within his medical records. Specifically, medical records indicate that claimant generally reported experiencing pain while changing his clothes in the employer's locker room. However, at arbitration, claimant testified he went to the employer's locker room to change out of his work uniform and, "[w]hen [he] sat down," he felt "sharp pain in [his] lower back that went down [his] right leg." Thus, claimant's arbitration testimony indicates his back injury was caused by the act of sitting rather than some bodily movement he performed while changing his clothes.

¶ 58 Nevertheless, no matter whether claimant was injured when sitting down or when changing his clothes, his injury was not the result of a risk distinctly associated with his employment. Stated another way, neither the act of sitting down nor the act of changing clothes was unique to claimant's work as a machine operator. Rather, such actions are ones common to the general public and, we find, most appropriately categorized in this case as neutral risks.

¶ 59 Because claimant was injured as the result of a neutral risk, he had to show he was exposed to the risk to a greater degree than the general public to be entitled to compensation under the Act. Claimant does not argue that either the employer's locker room or its uniform increased his risk of injury. Instead, he asserts he was exposed to a greater risk than the general public because he was changing while exhausted after a strenuous day of work, which required

him to exert constant energy. However, we find the record contains insufficient evidence to support his claim. In particular, no evidence was presented at arbitration regarding claimant's condition at the end of his work day on the day of his accident. Moreover, conflicting evidence was presented regarding the nature of his work for the employer, specifically the physical requirements of claimant's job duties. Further, to the extent claimant relies on his own testimony regarding the constant and repetitive nature of his work, we note the Commission's decision indicates it found claimant was not credible. For the reasons already expressed, that finding was not against the manifest weight of the evidence.

¶ 60 In this case, even if the personal comfort doctrine applies, claimant has failed to establish that his back injury arose out of his employment. Thus, the Commission's finding that claimant failed to prove his entitlement to compensation under the Act was not against the manifest weight of the evidence.

¶ 61 III. CONCLUSION

¶ 62 For the reasons stated, we affirm the circuit court's judgment.

¶ 63 Affirmed.