

2017 IL App (5th) 160216WC-U
No. 5-16-0216WC
Order filed June 13, 2017

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

REBECCA TOON,)	Appeal from the Circuit Court
)	of St. Clair County.
Appellee,)	
)	
v.)	No. 14-MR-202
)	
THE ILLINOIS WORKERS')	
COMPENSATION COMMISSION, <i>et al.</i> ,)	
)	Honorable
(Power Maintenance & Constructors,)	Robert P. LeChien,
Appellant).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's conclusion that claimant failed to establish that decedent sustained an accident arising out of and in the course of his employment with respondent was not against the manifest weight of the evidence where the decision rested on the resolution of conflicting evidence regarding the mechanism of decedent's fatal injuries, the weight to be accorded the evidence, and an assessment of the credibility of the parties' witnesses.

¶ 2 Claimant, Rebecca Toon, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), alleging that her husband, Michael Toon (decedent), suffered fatal injuries while working as a heavy-equipment operator for respondent, Power Maintenance and Constructors. Claimant theorized that decedent developed cellulitis of the abdominal wall and a systematic infection from skin abscesses which formed as a result of his lower abdomen repeatedly rubbing against the steering wheel of a machine he operated. Following a hearing, the arbitrator determined that claimant established that decedent's injuries were compensable under the Act. A majority of the Illinois Workers' Compensation Commission (Commission) reversed, finding that claimant failed to prove that decedent's injuries arose out of and in the course of his employment with respondent. On judicial review, the circuit court of St. Clair County set aside the decision of the Commission. Respondent now appeals, raising two issues. First, respondent contends that the Commission's finding that claimant failed to establish that decedent's injuries arose out of and in the course of his employment with respondent was not against the manifest weight of the evidence. Second, respondent argues that the circuit court "erred in ruling on photographic and video exhibits introduced into evidence." For the reasons set forth below, we reverse the judgment of the circuit court and reinstate the decision of the Commission.

¶ 3

I. BACKGROUND

¶ 4 Decedent worked for respondent as a "lull" operator from June 2009 through January 2010. A lull is a large forklift-type vehicle. The lull operator sits in an enclosed cab. The lull operated by decedent had an adjustable seat that slid backwards and forwards. The lull also had a steering wheel with an "assist knob" to facilitate turning the vehicle. At the time of the events in question, decedent was assigned to a job site at the Baldwin Power Station. Decedent's duties

required him to deliver materials from the storage area to the erection area at the job site. Decedent passed away on February 11, 2010. The death certificate lists the immediate cause of death as cellulitis of the abdominal wall. The death certificate also lists emphysema, coronary artery disease, diabetes, and acute renal failure as significant conditions contributing to decedent's death. On March 18, 2010, claimant, as decedent's surviving spouse, filed an application for adjustment of claim seeking benefits under the Act. In her application, claimant alleged that decedent's work as a lull operator caused the cellulitis and a systematic infection that eventually resulted in his death. The matter proceeded to a hearing before an arbitrator on January 30, 2013, at which the following evidence was presented.

¶ 5 Claimant testified that decedent was about 6'2" tall and weighed 240 to 245 pounds, but "most of it was the belly." She noted that decedent's stomach hung over the top of his skin, resulting in contact between his belly and the lower part of his abdomen. Claimant testified that decedent typically worked a 10-hour shift. His work clothing consisted of jeans and a sweatshirt or a t-shirt. He generally did not wear a belt or a jacket at work. When decedent returned home from work, he would take a shower and put on a pair of elastic-waisted basketball shorts. Decedent generally did not wear a shirt at home. After eating dinner, decedent would sit in a recliner and watch television until bedtime. Claimant noted that decedent was a smoker and had a number of significant health issues involving his heart and lungs.

¶ 6 Claimant testified that one evening, decedent came home from work and told her that he was sick. Decedent spent that night in his recliner. At about 4:30 a.m., claimant heard decedent screaming. Decedent was shaking and reported that he was cold, so claimant got him a blanket and turned up the heat. Decedent also stated that he was "sick to his stomach." Claimant contacted decedent's brother, Gary. When Gary arrived, he pulled down decedent's shorts.

Claimant noticed two dime-sized sores. One sore was below and to the right of the navel and the other sore was below and to the left of the naval. Claimant testified that the sores were red but they were not “open.” At that time, decedent declined to seek medical treatment. After Gary left, however, decedent’s condition deteriorated, so claimant called 911. When medical personnel arrived, claimant noticed that another sore had “popped up” in the same general area as the other sores. Claimant described the third sore as “a hole with blood in it.” Decedent was transported to St. Anthony’s Medical Center, where he was admitted to the intensive care unit. Decedent told claimant the sores were caused by the lull’s steering wheel rubbing on his belly.

¶ 7 Connie Sauerwein, decedent’s sister, described decedent as “pear shaped” with a “big round belly.” Sauerwein visited decedent regularly at his home where decedent was typically sitting in his recliner wearing shorts. Sauerwein added that when she would visit decedent, “you would think he was nude because his stomach would come over top [*sic*] of his shorts.”

¶ 8 Meryl Michael Huch testified that he had known decedent for “umpteen years” and considered himself a friend of both decedent and claimant. Huch described decedent as “a little bit shorter than [him]” with a large stomach. He noted that when decedent stood up, his belly would go over the top of the waistband of his pants. Huch testified that he worked at the same job site as decedent beginning in October 2009, and, although they worked at opposite ends of the site, decedent came to see him approximately 15 to 20 times at the facility. Huch had the opportunity to observe decedent sitting in a lull with the cab door open. The following colloquy then occurred between claimant’s attorney and Huch:

“Q. When he opened the door and you talked, what was the position of his belly relative to this steering wheel?

A. If he was looking straight ahead, it was, he was in it.

Q. How do you know?

A. Steering wheel was pushing in, he was that fat.

Q. And when he closed the door, was he able to operate the machine even though his stomach was against the wheel?

A. Yes, he could operate the machine. You can operate the machine with your right hand. You're just steering it with your left.

Q. Okay. And from what you saw, if he had steered, moved the steering wheel back and forth, would it rub against his stomach?

A. Oh, obvious, yes it would."

¶ 9 Huch further testified that he visited decedent in the hospital on two occasions. During the first visit, decedent showed Huch his stomach. Huch described decedent's abdominal sores as "horseshoe shaped or crescent shape, all red, watery looking, stuff oozing out." Decedent told Huch that he believed that his condition was caused by the lull's steering wheel rubbing against his stomach. Huch's second visit occurred a few days before decedent passed away. Decedent was unconscious at that time, but Huch looked under decedent's bed sheet. According to Huch, he saw "nothing but black" across decedent's abdominal area.

¶ 10 John Bush testified that he was employed by Kvaerner Construction and was the safety manager at the job site where decedent worked for respondent. Bush testified that decedent appeared to be overweight and his belly would hang over the waistband of his pants. Bush stated that he was 6'2" tall and that decedent was "a little shorter" than him. Bush noted that because decedent had various health problems, the operations steward would shuttle decedent around the job site during breaks and at the beginning and end of his work shift.

¶ 11 Bush testified that he had observed decedent and the other workers while they were operating the lulls. Bush noted, for instance, that he was able to see the lulls operating from his office and that he routinely checked for seat-belt and other safety violations. In addition, Bush regularly asked the equipment operators if they had any complaints. Bush recalled that he last spoke with decedent on or about January 27, 2010, when decedent's lull had a flat tire. At that time, Bush asked decedent how he was, and decedent responded that he was "feeling pretty good." During their encounter, Bush and decedent "chatted for quite some time," but decedent did not voice any complaints about his stomach.

¶ 12 Bush testified that whenever he observed decedent operate a lull, decedent was in a normal position and there was space between the steering wheel and decedent's body. Further, when Bush would check if decedent was wearing a seat belt, there would be three to four inches between decedent and the steering wheel. Bush also noted that decedent operated his lull similar to any other operator. Decedent maintained the same speed as other operators, there was no hesitation in his turning, and his pickup and delivery were smooth. Bush opined that a lull cannot be operated with the operator's stomach "against" the steering wheel because the vehicle requires multiple turns when navigating in a tight area, and if the operator's stomach is too close, the assist knob would hit the operator's belly.

¶ 13 Bush took a number of photographs that were introduced into evidence at the arbitration hearing. Some of the photos included measurements of the interior of the cab of a lull. Others depicted two employees, Rodney Moss and Gerald Bathon, seated in a lull. Bush testified that Moss was of the same general height as decedent and had a similar-sized stomach. One of the photos depicted Moss seated in the lull with a gap of approximately 6½ inches between Moss's stomach and the steering wheel. Another photo depicted Moss sitting in the lull with the seat

positioned as far forward as possible. In the latter photo, the distance between Moss's stomach and the steering wheel was between $\frac{3}{4}$ and 1 inch. Bush noted, however, that if the seat is positioned all the way forward, it would be difficult for an operator of the size of decedent or Moss to reach the lull's controls. Moreover, Bush never observed decedent in the lull with the seat positioned all the way forward. A video showing Moss operating the lull was also received into evidence.

¶ 14 Claimant's attorney recalled Huch to testify. Huch stated that he knew both Moss and Bathon and that decedent had "a lot bigger stomach."

¶ 15 The records of St. Anthony's Medical Center were also received into evidence. Those records establish that decedent presented to the emergency room on January 29, 2010, with generalized weakness, shortness of breath, and an abnormal heart rhythm. It was noted that decedent's past medical history was significant for chronic obstructive pulmonary disease, diabetes, sleep apnea, high blood pressure, high cholesterol, and osteoarthritis. Upon examination by Dr. Sri Kolli, decedent's primary-care physician, decedent was found to have low blood pressure as well as "fiery redness" and several skin abscesses in the abdominal area. Decedent attributed the skin abscesses to his stomach rubbing against the steering wheel while at work. He stated that he first noticed the abscesses several weeks earlier, but "decided to let them go." Among Dr. Kolli's diagnoses was cellulitis of the abdominal wall. A culture of the abdominal wall was performed, and decedent was transferred to the intensive care unit.

¶ 16 In addition to Dr. Kolli, decedent was examined by four other physicians on the date of his admission to the hospital: Dr. Zygmunt Orzechowski, Dr. William Wright, Dr. Todd Pritz, and Dr. Trevor Slom. Dr. Orzechowski, a pulmonary specialist, recorded decedent's height as 68 inches and his weight as 265 pounds. Dr. Orzechowski described decedent as "very obese"

and noted that he had gained 30 pounds over the last 2 months. Decedent reported a history of sputum that recently changed color from yellow to gray. Dr. Orzechowski noted a diffuse area of erythema on decedent's abdomen with four to five excoriated pustules. Dr. Orzechowski took an occupational history, noting that decedent works a 10-hour day driving heavy equipment and that "[t]he steering wheel rubs on [decedent's] abdomen, causing the pustules." Although Dr. Orzechowski's diagnoses principally concerned decedent's respiratory problems, one of his impressions was "[a]cute cellulitis of the abdomen, possible causing septic shock and precipitating today's event."

¶ 17 Dr. Wright, a cardiologist, noted that decedent's abdomen was "obese with a band of redness across it with several open sores." Dr. Wright also noted that decedent's upper thighs were "somewhat erythematous and warm." Dr. Wright diagnosed cellulitis of the abdomen and the upper portion of the lower extremities. Dr. Pritz noted a "nontender, diffuse, intense erythema over the lower half of the abdomen, left side greater than right, with several partially healed dry eschars at the periphery." According to Dr. Pritz's report, decedent did not note the abdominal wall redness until it was pointed out to him in the emergency room. Among the diagnoses made by Dr. Pritz was abdominal wall cellulitis and septic shock "probably secondary to cellulitis."

¶ 18 According to Dr. Slom, decedent reported erythema of his lower abdominal wall "for the last few days," although claimant reported that decedent had had several pustules over his anterior abdominal wall "over the last few weeks." Upon examination, Dr. Slom noted a band of erythema extending over the entire lower third of the abdominal wall. The area was warm and somewhat tender to the touch with several "dry and what appears to be old pustules periumbilically and on his anterior abdominal wall." Dr. Slom also noted erythema over both of

decedent's knees and a pustule above his left kneecap. Among Dr. Slom's diagnoses was anterior abdominal wall cellulitis, secondary to several skin abscesses.

¶ 19 Decedent's condition initially improved upon hospitalization. However, on or about February 3, 2010, decedent went into respiratory and cardiac arrest. After being resuscitated, decedent was placed on a ventilator. Decedent later developed necrosis of the previously cellulitic area on his abdomen. On February 10, 2010, decedent was examined by Dr. Thomas Olivier for treatment of the necrosis. At that time, decedent remained on a ventilator and was minimally responsive. Upon examination, Dr. Olivier noted a protuberant belly with probable ascites and an area of ischemia in the left lower quadrant of the abdomen. Dr. Olivier also noted ischemia involving eight of decedent's toes. Dr. Olivier's impression was (1) skin necrosis of the left lower quadrant of the abdomen and (2) ischemia and pending necrosis of the toes. The etiology of decedent's skin necrosis was "not immediately evident" to Dr. Olivier. He opined that it "could be infectious, inflammatory or potentially autoimmune in nature." He further remarked that he "cannot evaluate whether the process has been spreading or simply represents evolution of ischemic injury, possibly at the time of his [cardiac] arrest." Dr. Olivier also remarked that it was "unclear" whether decedent's abdominal cellulitis "may have arisen in an area where he frequently received insulin injections."

¶ 20 Decedent was also seen by Dr. Gary Myers for a neurological consult on February 10, 2010. Dr. Myers noted that decedent had "gangrene of the toes, secondary to some medications." Following an examination, Dr. Myers determined that decedent had brainstem function only. Decedent passed away on February 11, 2010, after being removed from life support.

¶ 21 Dr. Kolli was deposed on January 18, 2011, and her deposition testimony was received into evidence at the arbitration hearing. Dr. Kolli, a board-certified internist, testified that decedent first came to see her in August 2007 to establish care for multiple medical problems. At that time, decedent had a heart condition, emphysema, high blood pressure, high cholesterol, arthritis, gastroesophageal reflux, allergies, and anxiety. Decedent was subsequently diagnosed with diabetes and esophagitis. Prior to decedent's hospitalization on January 29, 2010, Dr. Kolli had last seen him on September 24, 2009. At that visit, decedent weighed 268 pounds and had been steadily gaining weight for the preceding several months.

¶ 22 When Dr. Kolli examined decedent on January 29, 2010, she observed several skin abscesses on the lower abdominal wall, below the belly button. She described the area as being "fiery red" and "crescentic" in shape. The abscesses were not present when Dr. Kolli examined decedent in September 2009. Decedent told Dr. Kolli that he started breaking down into abscesses from his stomach wall rubbing against the steering wheel while he works. Dr. Kolli made a tentative diagnosis of sepsis. An infectious disease specialist was consulted, cultures were taken, and decedent was administered antibiotics. Dr. Kolli testified, however, that the cultures proved inconclusive for any type of bacterial or fungal infection so she was unable to confirm or refute her tentative diagnosis of sepsis. Dr. Kolli opined that the cause of decedent's death was cellulitis of the abdominal wall and indicated this as being the cause of death on decedent's death certificate. Dr. Kolli testified that decedent's diabetes would have predisposed him to having cellulitis. In regards to the issue of causality, Dr. Kolli testified, in response to a hypothetical question, that decedent's work activities, which included his lower abdominal wall being rubbed by the steering wheel of the lull, could have caused or aggravated the cellulitis which resulted in decedent's death.

¶ 23 On cross-examination, Dr. Kolli acknowledged that she did not perform any measurements on decedent to determine how he fit in the cab of the lull. She proffered, however, that she had reviewed the photographs of the lull, she was familiar with the size and shape of decedent's body, and she was "reasonabl[y] certain[]" that his lower abdominal area would have come into contact with the steering wheel. Dr. Kolli was presented with a photograph of the interior of the lull and asked about the distance between the steering wheel and the back of the seat. She responded, "I would imagine it's definitely less than six inches." She admitted, however, that this was speculation on her part. Dr. Kolli also noted that the amount of infection and its location in the abdomen were very unusual and that it was unusual that it was limited to that specific area of the anatomy.

¶ 24 During cross-examination, respondent's attorney asked Dr. Kolli where decedent's abdomen would have come into contact with the steering wheel. Dr. Kolli responded that the contact would have occurred at "the lower part of [decedent's] abdomen." In follow up, respondent's attorney asked, "are you saying to me that his abdomen would have been resting on the steering wheel?" Dr. Kolli answered, "Yes, the lower part." Dr. Kolli opined that it would take several hours of contact over two to three weeks for the abscesses to start and "maybe longer for [them] to worsen." Dr. Kolli agreed that "poor hygiene" on the part of decedent, which respondent's counsel referred to as decedent's failure to seek medical care earlier, could have caused the cellulitis condition to spread. She also conceded that the pressure from a belt after decedent gained a lot of weight could have been a source of the cellulitis. Dr. Kolli also stated that decedent's death was natural, not accidental, and that all of decedent's preexisting conditions, including diabetes, contributed to his death.

¶ 25 Dr. Stephen Schrantz, a board-certified physician in internal medicine, infectious diseases, and pediatrics, was retained by respondent to offer an opinion regarding decedent's case. Dr. Schrantz reviewed decedent's medical records, the deposition of Dr. Kolli, and employee-interview summaries. Dr. Schrantz offered the following opinion regarding the cause of decedent's injury:

“Per the medical record, the patient had reported that his abdominal wounds were due the [*sic*] steering wheel of the Lull he operated rubbing against his abdomen. Others had related this to a potential ongoing pressure ulcer. However, the pressure would have never been sustained long enough to lead to this injury through that mechanism. Rather, it seems more likely that the rubbing of the steering wheel would chafe his abdomen repeatedly in order to cause the cellulitis from which he suffered. This is a plausible theory from a mechanism of injury viewpoint, but it is suspect regarding the amount of repeated injury that would have to be ignored in order to lead to this condition. I cannot comment specifically on how a steering wheel could cause this injury in this specific situation as I do not have knowledge of how a Lull could be operated with such abdominal impedance to moving the steering wheel. Any other chronic chafing would lead to a similar injury. His belt and or pant that are fitting tightly may also alternatively explain the injury observed. Without direct observation of the injury as it occurs or objective evidence of the steering wheel causing injury, it is impossible for me to say that the steering wheel was the cause of the chafing that led to the cellulitis (skin infection) of the abdomen based on the scant evidence provided in the medical record.

However, what is clearly present in the medical record is evidence that [decedent] had severe unstable, poorly controlled chronic conditions of diabetes, congestive heart

failure and chronic obstructive pulmonary disease. Review of primary care record and hospital records shows an increase in weight of possibly 30 pounds in the preceding 2 months. Weight gain of this magnitude speaks to rapidly worsening congestive heart failure with retention of fluid. His ECGs showed several runs of ventricular tachycardia indicating a heightened risk of unstable cardiac rhythms that led the cardiology consultant to want to place an AICD [automatic implantable cardioverter-defibrillator] soon. In short, [decedent's] demise rested more firmly with the exacerbation of his chronic conditions than the suspected cellulitis of his abdomen.”

¶ 26 Based on the foregoing evidence, the arbitrator concluded that decedent sustained a repetitive-trauma injury arising out of and in the course of his employment for respondent that manifested itself on January 28, 2010. The arbitrator further concluded that as a result of the repetitive-trauma injury, decedent passed away on February 11, 2010. In support of his findings, the arbitrator noted that decedent was extremely obese with a very large lower abdominal area. Further, the hospital records consistently noted that the lull's steering wheel rubbed against decedent's stomach. Additionally, the arbitrator found the testimony of Huch more credible than the testimony of Bush with respect to decedent's physique and the fact that the steering wheel of the lull rubbed against decedent's lower abdominal area. In this regard, the arbitrator emphasized Huch's testimony that decedent's lower abdominal area was considerably larger than those of the two employees referenced by Bush. The arbitrator found the testimony of Dr. Kolli to be credible in regard to the issue of causality. The arbitrator pointed out that respondent's medical expert, Dr. Schrantz, was in agreement that the stated mechanism of injury was “plausible.”

¶ 27 A majority of the Commission reversed the decision of the arbitrator. The Commission concluded that claimant failed to prove that decedent sustained accidental injuries arising out of and in the course of his employment with respondent. The Commission noted that there was no objective evidence regarding decedent's girth, such as photographs or medical records indicating his measurements, and that evidence regarding the size of decedent's stomach was limited to witness testimony. The Commission also addressed the conflicting testimony of Huch and Bush. The Commission determined that the video and photographs support a finding that Bush was more credible on the issue of whether decedent's belly pushed against the steering wheel when he operated the lull. The Commission also noted that both Huch and Bush testified that decedent was able to operate the lull without any problems. The Commission found it "highly improbable" that decedent would have been able to perform his job if the steering wheel, the assist knob, or decedent's hand was continually in contact with and rubbing his stomach. The Commission found that Dr. Kolli's opinion that the lower part of decedent's abdomen rubbed against the steering wheel was based on an inaccurate perception of the distance between the lull's seat and the steering wheel. In addition, the Commission did not find credible decedent's statements that the steering wheel caused his abdominal abscesses. The Commission noted that prior to his hospitalization, there was no evidence that decedent ever mentioned to anyone that the lull's steering wheel was causing him any problems. The Commission also emphasized that the medical records established that decedent had cellulitis and pustules on other areas of his body. The Commission found this inconsistent with Dr. Kolli's opinion that his abdominal cellulitis was caused by the steering wheel at work. The Commission also cited inconsistencies regarding the timing of the onset of decedent's abdominal condition. Ultimately, the

Commission concluded that it was “more likely than not that the location of the abdominal sores and the crescent-like presentation are consistent with Decedent’s pants line.”

¶ 28 On judicial review, the circuit court of St. Clair County set aside the decision of the Commission, thereby reinstating the decision of the arbitrator. This appeal by respondent ensued.

¶ 29 II. ANALYSIS

¶ 30 A. Evidentiary Issue

¶ 31 On appeal, we first address respondent’s claim that the circuit court made an erroneous evidentiary ruling. At the arbitration hearing, Bush’s photographs of the lull were introduced into evidence. As noted above, some of those photos included measurements of the interior of the lull’s cab while others depicted two employees seated in the lull. A video showing one of the employees operating the lull was also received into evidence. In its decision, the Commission determined that the video and photographs support a finding that Bush was more credible than Huch on the issue whether decedent’s belly pushed against the steering wheel when he operated the lull. On judicial review, the circuit court found that the Commission used the photographic exhibits as a demonstrative aid to understand Bush’s testimony regarding how decedent fit in the lull and operated the equipment. The court noted, however, that it was Moss, not decedent, who was photographed for the exhibits. Therefore, the court reasoned, the exhibits did not corroborate Bush’s testimony about how *decedent* fit in the cab of the lull. As a result, the court found the photographic evidence of no value in deciding that Bush’s testimony is more credible than Huch’s as it pertained to the way in which decedent fit in the lull. The court added that the Commission’s reliance on the photographic evidence as a reason to reject Huch’s testimony in favor of Bush’s testimony was “unwarranted as a matter of law” and “against the manifest

weight of the evidence.”

¶ 32 According to respondent, the circuit court improperly concluded that the Commission’s decision “must be set aside as a matter of law” because the Commission considered photographs and a video recording as demonstrative aids in understanding or corroborating Bush’s testimony. We find respondent’s emphasis on the circuit court’s evidentiary finding misplaced. In this regard, we remind respondent that when a party appeals to the appellate court following entry of a judgment by the circuit court in a workers’ compensation proceeding, it is the decision of the Commission, not the judgment of the circuit court, which is subject to review. *Theis v. Illinois Workers’ Compensation Comm’n*, 2017 IL App (1st) 161237WC, ¶ 16.

¶ 33 B. Accident

¶ 34 Respondent’s principal contention on appeal concerns whether claimant met her burden of establishing that decedent sustained an accident arising out of and in the course of his employment. Respondent contends that the Commission properly determined that claimant failed to meet her burden on this issue, and, accordingly, the circuit court erred in setting aside the Commission’s decision. Claimant disagrees, arguing that the circuit court’s “thorough and meticulous analysis” establishes that the Commission’s decision was contrary to the manifest weight of the evidence.

¶ 35 An employee’s injury is compensable under the Act only if it “arises out of” and “in the course of” the employment. *University of Illinois v. Industrial Comm’n*, 365 Ill. App. 3d 906, 910 (2006); *O’Fallon School District No. 90 v. Industrial Comm’n*, 313 Ill. App. 3d 413, 416 (2000). A claimant bears the burden of proving by a preponderance of the evidence both of these elements. *Baldwin v. Illinois Workers’ Compensation Comm’n*, 409 Ill. App. 3d 472, 477

(2011); *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006). The phrase “in the course of” refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Injuries sustained on an employer’s premises, or at a place where the employee might reasonably have been while performing his or her duties, and while the employee is at work, are generally deemed to have been received “in the course of” one’s employment. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers’ Compensation Comm’n*, 407 Ill. App. 3d 1010, 1013-14 (2011). For an injury to “arise out of” one’s employment, its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co. v. Industrial Comm’n*, 129 Ill. 2d 52, 58 (1989). A claimant need prove only that some act or phase of his or her employment was a causative factor in the ensuing injury. *Vogel v. Industrial Comm’n*, 354 Ill. App. 3d 780, 786 (2005). Stated differently, a work-related injury need not be the sole or principal cause in the resulting condition of ill-being as long as it was a causative factor. *Sisbro, Inc. v. Industrial Comm’n*, 207 Ill. 2d 193, 205 (2003).

¶ 36 Typically, the question of whether an employee’s injury arose out of and in the course of his or her employment is one of fact. *Brais v. Illinois Workers’ Compensation Comm’n*, 2014 IL App (3d) 120820WC, ¶ 19. With respect to factual matters, it is within the province of the Commission to judge the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny v. Illinois Workers’ Compensation Comm’n*, 397 Ill. App. 3d 665, 674 (2009). This is especially true with respect to medical issues, where we owe heightened deference to the Commission due to the expertise it possesses in the medical arena. *Long v. Industrial Comm’n*, 76 Ill. 2d 561, 566

(1979). We cannot reject or disregard permissible inferences drawn by the Commission simply because different or conflicting inferences may also reasonably be drawn from the same facts, nor can we substitute our judgment for that of the Commission on such matters unless its findings are contrary to the manifest weight of the evidence. *Zion-Benton Township High School District 126 v. Industrial Comm'n*, 242 Ill. App. 3d 109, 113 (1993). A decision is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 949 (2011).¹

¶ 37 In the present case, claimant theorized that decedent developed his fatal injuries from skin abscesses which formed as a result of his lower abdomen repeatedly rubbing against the steering wheel of a machine he operated. The Commission rejected claimant's theory and

¹In her brief, claimant, citing to *S&H Floor Covering, Inc. v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 267-68 (2007), and *Cook v. Industrial Comm'n*, 176 Ill. App. 3d 545, 551-52 (1988), suggests that we abandon the standard of review outlined above in favor of a stricter standard when the Commission's credibility findings are contrary to those of the arbitrator. We have previously rejected this proposition as a misstatement of the appropriate standard of review. See *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675-76 (2009) (and cases cited therein). Claimant also suggests that the circuit court's "reasoning and analysis should be given its natural weight." However, as claimant concedes, we review the Commission's decision, not the judgment of the circuit court. *Theis*, 2017 IL App (1st) 161237WC, ¶ 16. As such, claimant's emphasis on the circuit court's reasoning is misplaced.

concluded that claimant failed to establish that decedent sustained accidental injuries arising out of and in the course of his employment with respondent. As we discuss below, the Commission's finding was not against the manifest weight of the evidence given the conflicting evidence regarding the mechanism of injury and the Commission's roles in assigning weight to the evidence and judging the credibility of the witnesses.

¶ 38 The record establishes that the Commission was presented with conflicting evidence regarding the mechanism of injury. In support of her theory of the mechanism of injury, claimant relies on decedent's statements, the testimony of Huch, and the testimony of Dr. Kolli. Decedent, of course, attributed his injury to the lull's steering wheel rubbing against his stomach. Huch, a coworker of decedent and a long-time friend of both claimant and decedent, testified that he occasionally saw decedent operating the lull. Huch recounted that it was difficult for decedent to enter and exit the lull because of his build. According to Huch, when decedent was in the lull facing forward, the steering wheel "push[ed]" into decedent's belly. Nevertheless, Huch testified that decedent could operate the lull, explaining that "[y]ou can operate the machine with your right hand. You're just steering it with your left." Huch added that it was "obvious" that if decedent had been steering, the wheel would have rubbed against his stomach.

¶ 39 In the hospital, decedent reported to Dr. Kolli that he started breaking down into abscesses from his stomach wall rubbing against the steering wheel of the lull. Dr. Kolli opined that the steering wheel rubbing against decedent's lower abdominal wall could have caused or aggravated the cellulitis which resulted in decedent's death. Dr. Kolli never personally observed decedent seated in the cab of the lull, and she did not perform any measurements on decedent to determine how he fit in the cab. Nevertheless, Dr. Kolli testified that she was reasonably certain

that decedent's stomach came into contact with the steering wheel based on her examination of photographs of the lull and her familiarity with the size and shape of decedent's body.

¶ 40 In contrast, respondent presented the testimony of Bush, an employee of Kvaerner Construction and the safety manager at the job site where decedent worked for respondent. Bush testified that a lull cannot be operated with the operator's stomach "against" the steering wheel because the vehicle requires multiple turns when navigating a tight area and if the operator's stomach is too close to the steering wheel, the operator's abdomen would impede the steering wheel from turning. Bush further testified that he observed decedent and other workers while they were operating the lulls. Bush recalled that when he observed decedent operate a lull, decedent was in a normal position and there was space between the steering wheel and decedent's body. As safety manager, Bush would occasionally check if decedent was wearing a seat belt while he was operating the lull. According to Bush, on those occasions, there would be three to four inches between decedent's stomach and the steering wheel. Bush also testified that decedent operated his lull in a manner similar to any other operator. Decedent maintained the same speed as other operators, he did not hesitate when turning the vehicle, and his pickup and delivery were smooth.

¶ 41 Bush took a number of photographs of the interior of the cab of a lull and of two of decedent's coworkers seated in a lull. Although Huch indicated that decedent had a larger stomach than Moss (one of the coworkers), Bush testified that Moss was of the same general height as decedent and had a similar sized stomach. One of Bush's photographs reveals a gap of approximately 6½ inches between Moss's stomach and the lull's steering wheel. Another photograph depicted Moss sitting in the lull with the seat positioned as far forward as possible.

In the latter photograph, the distance between Moss's stomach and the steering wheel was between $\frac{3}{4}$ to 1 inch. Bush noted, however, that if the seat is positioned all the way forward, it would be difficult for an operator of decedent's size to reach the lull's controls. Moreover, Bush stated that he never observed decedent operating the lull with the seat positioned completely forward.

¶ 42 As the foregoing establishes, the Commission was presented with conflicting evidence regarding whether decedent's stomach came into contact with the steering wheel while he was operating the lull. The Commission did not find credible decedent's statements regarding the cause of his sores. Among other things, the Commission cited the lack of any complaints of pain regarding his abdominal area prior to the day of his hospitalization despite evidence that he had the condition for at least several weeks. The Commission also categorized as speculative Dr. Kolli's opinion that decedent's stomach came into contact with the lull. The Commission noted, for instance, that Dr. Kolli did not personally observe decedent in the cab of the lull and she did not perform any measurements on decedent to determine how he would fit in the vehicle. Rather, Dr. Kolli based her opinion on photographs of the lull that she had reviewed and her familiarity with the size and shape of decedent's body. The Commission found that the photograph Dr. Kolli referenced in her testimony was taken from an angle which "minimizes the visual appearance of the distance between the back of the seat and the steering wheel." The Commission stated that when other photographic evidence is considered, "it is clear that there is a much greater distance between the steering wheel and the back of the chair than Dr. Kolli speculated." The Commission also found that there was no evidence that Dr. Kolli was aware that the seat of the lull was adjustable or that she viewed photographs of anyone sitting in the lull so as to compare his or her body type to that of decedent. Although claimant insists that Dr.

Kolli's opinion is not speculative, it is significant that Dr. Kolli never actually observed decedent seated in the lull or observed the lull in person. Accordingly, the Commission's finding that Dr. Kolli's opinion was speculative was a reasonable inference based on the record before it. See *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 24 (noting that if the basis of an expert's opinion is grounded on guess or surmise, it is too speculative to be reliable).

¶ 43 The other two witnesses, Huch and Bush, personally observed decedent operate the lull. Huch and Bush, however, disagreed as to whether decedent's stomach came into contact with the steering wheel during his operation of the lull. Huch observed decedent seated in the lull facing forward with the cab door open. According to Huch, decedent's stomach "push[ed]" into the steering wheel. Huch also stated that it was "obvious" that if decedent was moving the steering wheel, it would rub against his stomach. In contrast, Bush testified that when he observed decedent operate a lull, decedent was in a normal position with space between the steering wheel and decedent's body. Further, Bush testified that decedent operated the lull in a manner similar to that of any other driver. He maintained the same speed as other operators, there was no hesitation in his turning, and his pickup and delivery were smooth. Bush also testified regarding photographic evidence he took of the lull and decedent's coworkers operating the equipment. The Commission accepted the testimony of Bush over that of Huch. The Commission cited the photographic evidence and the testimony from both Huch and Bush that decedent was able to operate the lull without any problems. The Commission remarked that it is "highly improbable that Decedent would have been able to perform his job if the steering wheel, or the knob, or his hand was continually in contact with and rubbing his stomach." This was a reasonable inference from the evidence presented. In particular, the Commission could have concluded that

decedent's operation of the lull would not have been as smooth as described had his abdomen routinely interfered with the steering wheel. We also point out that it is unclear from Huch's testimony whether he actually observed decedent's stomach come into contact with the steering wheel while decedent operated the lull. To be sure, Huch indicated that decedent's stomach "push[ed]" into the lull's steering wheel when decedent was seated in the lull facing forward with the cab door open. However, when asked if the steering wheel would rub against decedent's stomach, he stated that it was "obvious" that it would. Yet, Huch's statement does not establish that he saw decedent's stomach interfere with the steering wheel during the actual operation of the equipment.

¶ 44 Additionally, the medical evidence regarding the mechanism of injury was conflicting. As noted above, Dr. Kolli opined that decedent's work activities, including his lower abdominal wall being rubbed by the steering wheel of the lull, could have caused or aggravated the cellulitis which resulted in decedent's death. Dr. Kolli estimated that it would take contact over two to three weeks for the abscesses to start and "maybe longer for [them] to worsen." Dr. Schrantz conceded that cellulitis caused by repeated rubbing of the steering wheel against decedent's abdomen was a "plausible theory from a mechanism of injury viewpoint." He stated, however, that such a theory is "suspect regarding the amount of repeated injury that would have to be ignored in order to lead to this condition," and he wondered how a lull could be operated "with such abdominal impedance to moving the steering wheel." Dr. Schrantz added that any chronic chafing, such as a tight-fitting belt or pants could explain decedent's injury. In fact, Dr. Kolli acknowledged that one source of the cellulitis could have been something such as pressure from a belt after decedent recently gained a lot of weight. Thus, the two doctors allowed that both chafing from the steering wheel and pressure from tight-fitting clothing could have caused

decedent's injuries.

¶ 45 Ultimately, the Commission concluded that it was more likely than not that decedent's sores were caused by his clothing rubbing against his abdomen. In support of its conclusion, the Commission noted that decedent's sores were visible only after his shorts were pulled down. The Commission reasoned that this indicated that the sores were underneath or below the pant line and not where they would be if decedent's protruding abdomen had repetitively been in contact with the lull's steering wheel. The Commission also found significant that decedent's medical records indicated that he had cellulitis on his thighs and a pustule above one knee, yet there was no evidence that the lull's steering wheel rubbed against these parts of his body. After reviewing the record, we cannot say that a conclusion opposite that of the Commission is clearly apparent. Quite simply, the Commission was presented with conflicting evidence regarding the mechanism of injury. The Commission weighed the evidence, assessed the credibility of the witnesses, and resolved this conflict in respondent's favor, as was its province as the fact finder. Therefore, the Commission's decision was not against the manifest weight of the evidence.

¶ 46 Claimant vigorously disputes the Commission's finding. According to claimant, various categories of evidence compel the conclusion that the lull's steering wheel rubbing against decedent's abdomen caused decedent's injury. Claimant first argues that the Commission's attempts to discredit decedent's statements regarding whether the steering wheel rubbed against decedent's abdominal wall were "unsupported speculative inferences." In fact, claimant's arguments in response are speculative. For instance, claimant suggests that decedent may not have said anything regarding his abdominal condition because it would have threatened his job or he might have been embarrassed about it. Claimant also criticizes the Commission for finding

inconsistencies regarding the timing of the onset of his abdominal condition. However, the Commission's finding was a reasonable inference from the evidence of record. For instance, Dr. Slom's examination report reflects that decedent and claimant reported different onset times of decedent's symptoms.

¶ 47 Claimant also cites the shape of the wound as compelling evidence that the steering wheel caused decedent's injuries. Both Dr. Kolli and Huch described the wound as crescent like. According to claimant this description matches the curvature of the lull's steering wheel. However, the Commission concluded that it was "more likely than not that the location of the abdominal sores and the crescent-like presentation are consistent with Decedent's pants line." Claimant contends that this conclusion is "pure speculation." If so, the same can be said about claimant's contention that the mark matches the curvature of the lull's steering wheel. We note, for instance, that while Dr. Kolli did testify that the wound was "almost like a crescentic area," she never testified that it matched the curvature of the lull's steering wheel. Claimant does not explain how the Commission's conclusion that the shape of the wound is consistent with decedent's pants line constitutes a less probable inference than her conclusion that the shape of the wound is consistent with the curvature of a steering wheel. Indeed, both Dr. Kolli and Dr. Schrantz acknowledged that the wound could have been caused by chafing or pressure from tight-fitting clothing. Thus, the Commission's conclusion regarding the shape of the wound was based on a reasonable inference from the evidence presented.

¶ 48 Claimant also states that the Commission's statement that there is no objective evidence regarding decedent's girth is "patently wrong." We disagree. In its decision, the Commission stated that "there is no objective evidence regarding Decedent's girth, such as photographs or

medical records indicating his measurements.” According to claimant, the Commission’s finding “inexplicably ignores the fact that his girth was multiply [*sic*] proved by direct observation, and proved circumstantially to a high degree of reliability by strong evidence of his weight, height, and body build.” Again, however, the Commission was presented with conflicting evidence regarding decedent's size. For instance, decedent’s height was stated to be between 5’8” and 6’2” and his weight between 240 pounds and 285 pounds. Moreover, the Commission was presented with conflicting evidence regarding the size of decedent’s abdomen and whether it made contact with the steering wheel when he was sitting in the lull. Ultimately, the Commission concluded that it was more likely than not that decedent’s injuries were caused by a mechanism other than his stomach coming into contact with the lull’s steering wheel. There is credible evidence in support of this conclusion, including the testimony of Bush, who stated that decedent’s stomach did not come into contact with the steering wheel while operating the lull and the statements of Dr. Kolli and Dr. Schrantz that the injury could have been caused by chafing or pressure from tight-fitting clothing.

¶ 49 Claimant also contends that Bush’s testimony is biased because of his “close identification” with respondent. Of course, the same can be said of Huch’s testimony given his long-time friendship with decedent and claimant. Claimant also contends that Bush’s testimony was based on “incomplete observations.” Claimant asserts, for instance, that while Bush testified that the steering wheel cannot be turned with the operator’s stomach “against” the wheel, he rendered no opinion as to whether the lull could be operated if the steering wheel merely “rubbed” against the skin of the operator’s stomach. According to claimant, a rubbing action was the movement described by both decedent and Huch. We do not attribute much significance to this alleged discrepancy as the parties appear to have used various terms to describe the

contact between decedent's abdomen and the lull's steering wheel. For example, when claimant's attorney asked Huch regarding the position of decedent's belly relative to the steering wheel of the lull, Huch responded that the steering wheel was "pushing in" decedent's belly. Claimant's attorney then asked whether decedent could operate the lull "even though his stomach was *against* the wheel." (Emphasis added.) Huch responded in the affirmative. Claimant's attorney later asked whether the steering wheel would "rub against" decedent's stomach when decedent was operating the lull. Similarly, although Dr. Kolli opined that the cellulitis could have been caused by the lull's steering wheel rubbing against decedent's abdominal wall, she later stated that it was her impression that the lower part of decedent's abdomen would have been "resting" on the steering wheel.

¶ 50 Claimant also posits that the photographic evidence, which the Commission cited in support of its credibility finding, proves nothing by itself. Claimant notes that the photographic evidence depicted other employees in the cab of the lull, not decedent. Moreover, although Moss, one of the employees, was described as the same general height and physical size as decedent, this was not true. Again, however, there was conflicting evidence on the similarity between the physical build of Moss and decedent. This was a conflict for the Commission to decide.

¶ 51 Claimant also points to what she categorizes as "other unsupported conclusions" made by the Commission. Most of these alleged unsupported conclusions, however, are reasonable inferences based on the evidence presented. For instance, Dr. Kolli testified that, aside from decedent's abdomen, there were no other areas where decedent's skin was abnormal. The Commission found this inconsistent with the records of Dr. Wright and Dr. Slom. Claimant

argues that the Commission's finding constitutes a "false assertion" as "[t]here was no medical testimony whatsoever to suggest that the findings of any of the doctors were inconsistent." We disagree. The January 29, 2010, examination report of Dr. Kolli notes "fiery redness" and several skin abscesses in the abdominal area. The examination report of Dr. Wright, dated the same day, noted that decedent's abdomen was "obese with a band of redness across it with several open sores." Dr. Wright also noted that decedent's upper thighs were "somewhat erythematous and warm." Based on these findings, Dr. Wright diagnosed cellulitis of the abdomen and upper portion of the lower extremities. Dr. Slom also examined decedent on January 29, 2010. In his examination report, Dr. Slom noted a band of erythema extending over the entire lower third of the abdominal wall. Dr. Slom also noted erythema over both of decedent's knees and a pustule above decedent's left kneecap. Based on this evidence, the Commission could reasonably conclude that Dr. Kolli's conclusion that there were no other areas where decedent's skin was abnormal was inconsistent with the records of Dr. Wright and Dr. Slom. Claimant insists that any other skin abnormalities developed later in decedent's hospitalization. However, both Dr. Wright and Dr. Slom examined decedent on the day of his admission. Claimant also asserts that whatever Dr. Wright and Dr. Slom may have noticed in their examinations was never shown to have any medical significance with respect to the issue in the case. However, the significance, if any, of the findings of Dr. Wright and Dr. Slom was an issue for the Commission to resolve based on its review of the evidence presented.

¶ 52 Claimant also insists that there is no evidence in the record to support a finding that decedent's injury could be explained by tight-fitting clothing. We disagree. Dr. Schrantz opined that chronic chafing from a tight-fitting belt or pants could explain decedent's injury. Claimant contends that Dr. Schrantz's opinion was "merely idle speculation" because he goes on to say

that without direct observation of the injury as it occurs or objective evidence, it would be impossible for him to say that the steering wheel was the cause of the chafing, and, presumably, the same for tight-fitting clothing. However, even Dr. Kolli conceded that pressure from a belt after decedent gained a lot of weight could have been a source of the cellulitis. The Commission was therefore presented with evidence from which it could reasonably conclude that tight-fitting clothing could have caused decedent's injury.

¶ 53 In short, the Commission drew reasonable inferences and conclusions with regard to the evidence presented, including how decedent was positioned in the lull, how decedent operated the lull, how and when the sores on decedent's body appeared, and whether the location of the sores was consistent with contact with the steering wheel or with some other source of friction. It is within the province of the Commission to draw such inferences, and unless claimant can point to evidence that supports a finding that the opposite conclusion is clearly apparent, the Commission's decision must stand. While some of claimant's inferences from the evidence are plausible, we cannot disregard permissible inferences drawn by the Commission simply because different or conflicting inferences might also reasonably be drawn from the same facts. Accordingly, we are compelled to reverse the judgment of the circuit court and reinstate the decision of the Commission.

¶ 54

III. CONCLUSION

¶ 55 For the foregoing reasons, we reverse the judgment of the circuit court of St. Clair County, which set aside the decision of the Commission, and reinstate the decision of the Commission.

¶ 56 Circuit court judgment reversed; decision of the Commission reinstated.