2018 IL App (2nd) 170264WC-U

NO. 2-17-0264WC

ORDER FILED January 4, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

SHERYL FAUST,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Kane County.
	)	
v.	)	No. 16-MR-703
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*,	)	David R. Akemann,
(Cadence Health, Appellee).	)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The Illinois Workers' Compensation Commission's finding that the claimant failed to prove that she sustained an injury to her low back that arose out of and in the course of her employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Sheryl Faust, appeals the decision of the circuit court of Kane County that confirmed the unanimous decision of the Illinois Workers' Compensation Commission (Commission), which denied the claimant benefits based on its finding that she had not sustained an injury to her low back arising out of and in the course of her

employment with the employer, Cadence Health. On November 15, 2012, the claimant filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)), wherein she alleged that on July 1, 2011, while in the course and scope of her employment with the employer, she suffered a bone and soft tissue injury to her low back. An arbitration hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)) was conducted on May 20, 2015, in which the claimant was granted leave to amend the application to reflect an accident date of September 1, 2011, after explaining that the claimant's claim was one for repetitive trauma.

¶ 3 On October 20, 2015, the arbitrator issued her decision, in which she found the claimant failed to establish that she sustained a compensable work-related injury. Accordingly, the arbitrator denied all compensation and benefits that the claimant requested. The claimant sought review of the arbitrator's decision before the Commission. On June 8, 2016, the Commission issued a unanimous decision in which it affirmed the decision of the arbitrator, but modified the arbitrator's decision to include additional analysis. The claimant filed a timely petition for judicial review in the circuit court of Kane County. On March 21, 2017, the circuit court confirmed the Commission's decision. The claimant filed this timely appeal, over which we properly have jurisdiction.

¶ 4 BACKGROUND

¶ 5 The claimant testified that, during the time period at issue, she worked for the employer as an "Epic Credentialed Trainer." Epic was a new electronic medical record system that was being implemented by the employer. The first phase of her job was to

become proficient and gain credential as a proficient user of the program. For this part of the job, she sat in front of a computer and learned the system "via lectures, application, studying at home. It was pretty much a 24/7 process to learn all of this in a very, very short period of time." She testified she sat in a chair eight to twelve hours a day, five days a week on site and also on the weekends at home. This phase of the job lasted from July 2011 until the end of August 2011. During this time, she began experiencing the following:

> "Because I was sitting so much I was in increasing pain. Lumbar pain was intense going down my legs. Cervical pain that I had never experienced before was the new pain that I had as a result of the sitting. But I also had lumbar pain from being in one position for an extended period of time."

¶ 6 The claimant acknowledged that she had experienced low back pain in the past, explaining:

> "I had an impingement of L5-S1 due to biking two years before and it was diagnosed at Fox Valley Orthopedic and treated with a spinal injection, well treated, and as long as I was moving and doing the normal things I did in my job prior to Epic I was just fine."

The claimant explained that prior to becoming an Epic trainer, her job involved "a typical administrative up/down, sitting, moving around job."

¶ 7 According to the claimant's testimony, she began training physicians beginning the last week of August 2011. During this phase of the job, she conducted four to six hour classes starting at seven in the morning and ending at eight or nine at night. She was scheduled for a variety of these classes, six days per week, for a maximum of three classes in a day, which would be 12 hours. During these trainings, she would either be standing at a podium lecturing, or walking among the physicians in a computer lab setting, "bending like a fulcrum" to help assist them with any questions or problems they had. The claimant testified that she assumed this fulcrum-like position for an average of 60% of the time she conducted these trainings. She took no breaks and there were no chairs allowed for the trainers to sit at all. The claimant testified that she trained physicians in this manner for eight weeks.

¶ 8 The claimant testified that while she was conducting the trainings described above, she was in agony. She could not feel her legs because she was never sitting and always standing. For this reason, she had numbness and radiating pain down her legs. When she was the secondary trainer walking among the physicians she had "searing pain in [her] lumbar region to the point that [she] was reduced to tears." She sought treatment initially with Dr. Hanna at Central DuPage hospital, which was owned by the employer. She then began treating with her primary care physician, Dr. Cladis, until he referred her to Dr. Popp and Fox Valley Orthopedics. Dr. Popp was one of the physicians that she trained on the Epic software.

¶ 9 The claimant testified that Dr. Popp performed various treatments on her, and eventually recommended a fusion. The employer paid for none of her treatments and did

not pay her any benefits. During the entire course of her treatment, she was under various work restrictions. First, Dr. Cladis restricted her to no more than four hours per day of standing, or one class per day. Then, Dr. Cladis restricted her to no more than five hours a day, with no more than 30 minutes of standing, and no lifting, bending, or twisting. Initially, the employer accommodated these restrictions, but in January 2013, the employer terminated her employment, advising that they were no longer able to accommodate her restrictions.

¶ 10 The claimant testified that at the time of the hearing, she had been taking Norco for over two years to manage her back pain. Her then current restrictions, imposed by Dr. Chris Siodlarz, a pain specialist, were no standing for more than two hours, with no bending, twisting, or heavy lifting. Three weeks prior to the arbitration hearing, she underwent a two-level spinal fusion at L3-L4 and L4-L5, performed by Dr. Ronjon Paul, a physician not affiliated with the employer. The claimant testified that she was in a lot of pain, but that the pain felt "more surgically related" so she was hopeful that it was going to help with her problem. She further testified that she was "on a lot of narcotics right now."

¶ 11 With regard to her treatment with Dr. Paul and the surgery, the claimant testified that her surgery was the same one that was previously recommended by Dr. Popp. She underwent this treatment and put the billing through to her group insurance instead of waiting for her workers' compensation claim to be resolved because she was in agony and she was told by Dr. Popp that she risked permanent nerve damage to her right leg if she waited.

¶ 12 On cross-examination, the claimant was asked to give an estimate as to how often she was assigned twelve-hour shifts. In response, the claimant testified that she would have to look at her training schedule records. When asked how often she was secondary trainer such that she spent about 60% of her time bending, she again stated that she would have to refer to her records. The claimant was then cross-examined regarding her initial application for adjustment of claim, which indicated an accident date of July 1, 2011, which is when she was just beginning her Epic training. In response, she indicated it was actually the middle of June when she began training. Finally, the claimant admitted that she underwent an independent medical exam (IME) with Dr. Levin and answered his questions truthfully. On re-direct, the claimant testified that she reviewed Dr. Levin's IME report and found that some of what he wrote about what she told him about her complaints or job duties was "quite inaccurate." The claimant testified she identified September 1, 2011, as her date of accident because that is when she started the standing portion of her duties as an Epic trainer for the employer.

¶ 13 Alida Wagner testified, on behalf of the employer, that she is a manager of professional development for the employer. In September 2011 she was principal trainer for the Epic team, a position in which she started in July 2010. She testified that the claimant began her training to be certified in the Epic program in late June or early July 2011. In July and August 2011, she was learning the training materials and how the Epic system worked so as to be able to effectively teach the physicians. This involved mostly sitting, but also "some up and down work as they were also helping to get some materials prepared." Ms. Wagner testified the claimant told her that she had previous back pain,

and then once they started the training of the physicians she complained that the standing and teaching was causing some back pain. Ms. Wagner testified this portion of the work started in early September.

¶ 14 Ms. Wagner testified that when the claimant trained the physicians, she was one of two trainers, and would sometimes stand at the podium and teach, and sometimes walk around the room and make sure that the physicians were following along or "maybe do a little one-on-one with somebody who was falling behind." According to Ms. Wagner, the only physical demand of the job at the podium was standing. At the start of the training, chairs were not available for the trainer at the podium to use, but they did order them "so that was an option too." The job walking around the room "was a stand-up or sit-down type of job depending on what was happening in the class." According to Ms. Wagner, this part of the job would give the claimant the option of sitting and just watching to make sure somebody didn't need help, walking in between the rows to make sure physicians were following along, or sitting next to a physician who needed a little more one-on-one support. She testified that the job involved a typical eight-hour work day, Monday through Friday, 8:00 a.m. to 4:30 p.m., with a break for lunch.

¶ 15 Ms. Wagner testified that there were three classes scheduled per day for the most part, and the trainers would either do two classes back to back for an eight-hour day or work a split-shift where they did the first class of the day, had the afternoon off, and came back in the evening to teach the third class of the day. To her knowledge, the claimant was never scheduled to work for 12 hours straight. There was always a half hour

break between back-to-back classes. This portion of the program lasted until October 2011.

¶ 16 On cross-examination, Ms. Wagner testified that they brought chairs into the trainings at the behest of the claimant. Ms. Wagner testified that she observed the claimant in trainings on a couple of occasions, but could not say how many times she was assigned to the podium versus walking around assisting the physicians or how many hours on average per day she was assigned to either position. She also had no personal knowledge of how much time the claimant spent bending while assisting the physicians.

¶ 17 The evidence deposition of Dr. Craig Popp was admitted into evidence on behalf of the claimant. Dr. Popp testified he is a board certified orthopedic surgeon who has been in private practice for 16 years and specializes in spine surgery. He knows the claimant professionally from the Epic training program at the employer's hospital. During that time, he became familiar with the type of activities she was performing in that program, characterizing it as "a change from her previous more sedentary type job." He first saw the claimant as a patient on November 19, 2013, at which time she presented with low back pain. He was continuing to treat her at the time of his deposition.

¶ 18 Dr. Popp testified his working diagnosis was that the claimant had facette syndrome and spondylolisthesis involving the lumbar spine, as well as a herniated disc at the L5-S1 level. To make this diagnosis, he considered her MRIs. Her treatment up to that point was primarily with the pain management doctor that worked with Dr. Popp in his practice, Dr. Siodlarz. To that end, the claimant had undergone facette injections, and epidural steroid injections. His next treatment recommendations were going to be some

additional injections, including selected nerve root blocks, especially at the level of the S1 nerve. The next treatment recommendation would be to do a decompression at L4-L5 and then a fusion at L4-L5 with a discectomy at L5-S1. However, he was concerned that the L3-L4 level "may wear out relatively soon" due to degeneration, and may necessitate another operation in the future. In other words, Dr. Popp explained the fusion at the lower level could accelerate the degeneration at the higher level.

¶ 19 With regard to work-related etiology, Dr. Popp explained that "this stuff existed prior to her changing of positions." However, Dr. Popp opined that the type of position the claimant had teaching required a significant amount of bending forward "sort of in an awkward position," overlooking people. Dr. Popp explained that because spondylolisthesis is a condition where one bone in the spine shifts in front of the other one, bending forward "into that position" causes an increased stress or an increased "shear force" across those two vertebral bodies. In addition, according to Dr. Popp, bending forward puts load onto the discs at the levels of the claimant's pre-existing spondylolisthesis.

¶ 20 Dr. Popp was asked to assume that the claimant was placed into the Epic training position effective the last week of August 2011 where she was forced to do 8 to 12 hours a day over a two month period, 50% of her time teaching up on her feet and the other 50% bending over at the waist to help on the computer. He was further provided information that the claimant reported to her general practitioner on September 1, 2011, that she had low back pain, numbness and tingling into both legs, and complained about the training she was doing at that time. Based on this information, Dr. Popp was asked to

give an opinion to a reasonable degree of orthopedic certainty as to whether these job tasks are causally related "in some respect" to her current condition. In response, Dr. Popp opined that the activities of bending forward for large amounts of time was related to the onset of pain that she was describing. Dr. Popp further opined that, based on the severity of the pain the claimant was describing, the treatment he recommended was medically necessary.

¶ 21 On cross-examination, Dr. Popp testified that his notes were out of order and his treatment of the claimant actually began on April 4, 2013. The claimant did not disclose to him any information regarding a motor vehicle accident in May 2006. However, she did disclose that she had left buttocks pain in 2010 and Dr. Siodlarz treated her with injections at that time. He had never reviewed DEXA bone scans and was not aware that the claimant had full-blown osteoporosis. He had not reviewed an MRI from June 30, 2010, and testified it would be significant to him if that MRI showed degenerative disc disease and degenerative changes of the facette joints. He was aware that a Dr. Morowski had diagnosed her with an L5 through S1 disc protrusion. He did not know that the claimant had previously been diagnosed with a nonspecific connective tissue disorder. He was not aware that Dr. Mark Hanna had diagnosed the claimant in August 2011 with left sciatica and lumbar joint arthritis, although he was "not surprised." He had no information that Dr. Cladis referred the claimant to a rheumatologist on November 22, 2011, and that she had been diagnosed with osteoarthritis, also known as degenerative joint disease. Dr. Popp did clarify that he was not opining that the claimant suffered an acute traumatic injury from her work activities, but rather a repetitive injury wherein

repetitive bending forward aggravated and accelerated her pre-existing condition. Finally, Dr. Popp testified that he remained of this opinion despite the foregoing omissions in terms of the claimant's history.

¶ 22 The evidence deposition of Dr. Jay Levin was admitted into evidence on behalf of the employer. Dr. Levin is a board certified orthopedic surgeon who has worked in the practice group, Adult and Pediatric Orthopedics, S.C., since 1986. Dr. Levin testified that treating conditions of the spine comprises approximately 50% of his practice. At the request of the employer, Dr. Levin conducted an IME of the claimant on September 25, 2013, and a record review resulting in a report dated January 24, 2014. He also authored a supplemental report dated March 2, 2015. He testified the conclusions he reached in these reports are to a reasonable degree of medical and surgical certainty.

¶ 23 Our review of Dr. Levin's record review report, made concurrently with an independent review of all of the claimant's medical records that were admitted into evidence, reveals that Dr. Levin's record review is both a thorough and accurate depiction of those medical records. Those records reveal that in May 2006, the claimant was involved in an automobile accident in which she injured her right hip and sustained chest contusions. In September 2009, a DEXA bone scan of the claimant revealed osteopenia of the lumbar spine and bilateral femoral necks. On June 11, 2010, the claimant was seen at her primary care facility complaining of left gluteal pain which she had for three weeks starting after biking several miles for two days in a row. A couple of weeks later, the claimant presented at Delnor Hospital with continued pain in her left

buttocks, repeating the history of the prior bicycle trip. The discharge diagnosis for that visit is sciatica and left buttock/low back pain.

¶ 24 On June 30, 2010, the claimant underwent an MRI of the lumbar spine at Delnor Hospital. The history section of the MRI report indicates left buttocks pain. The MRI report indicates degenerative disk disease and degenerative changes of the facet joints. Specifically, there were degenerative disk changes at L1-L2 through L5-S1, most significant at L3-L4, L4-L5, and L5-S1. There was also a right-sided L5-S1 herniated nucleous puposus abutting and displacing the right S1 nerve root. The L4-L5 level also showed bilateral facet arthritis with some foraminal stenosis bilaterally.

¶ 25 There is also evidence in the medical records from Delnor Hospital that the claimant underwent spinal injections in the lumbar region on January 20, 2011, as well as on February 3, 2011. On March 18, 2011, the claimant presented at her primary care facility for, *inter alia*, back pain. On July 13, 2011, the claimant underwent a nerve root block/paraspinous injection with fluoroscopy. The history from the claimant's visit of that date states that the claimant's chief complaint was low back pain that radiates down to the left leg into the buttocks area that has been increasing in severity. Diagnostic impression from that visit included low back pain, left sciatica, lumbar disc displacement at L4-L5 and L5-S1, and facet joint arthritis. Dr Mark Hanna "continued" her Norco prescription, discussed epidural steroid injections for her sciatica symptoms and disc displacement, and radiofrequency ablation for her degenerative joint disease. He also referred her for physical therapy. She underwent these procedures the same day.

¶ 26 On August 17, 2011, the claimant was seen at Delnor Hospital by Dr. Hanna. Her chief complaint was "low back pain and neck pain (new)." According to the record, she told Dr. Hanna that she had been having low back pain radiating to the left leg, neck pain, and tightness into the neck since she had been working on a computer and sitting in a desk. The note states, "[s]he is worse with sitting and better with standing." The diagnosis was "1. Myofascial pain cervically and to the levator scapular with neck pain (new to examiner). 2. Low back pain with left sciatica. 3. History of lumbar disc displacement. 4. Lumbar facet arthritis." Dr. Hanna recommended additional pain medication and a muscle relaxant, as well as an epidural steroid injection.

¶ 27 On September 1, 2011, which is the date of the manifestation of the claimant's repetitive trauma injury according to the claimant's amended application for adjustment of claim, the claimant presented to her primary care physician, Dr. Cladis. Under "History of Present Illness" for that date, the notes from that visit state that the claimant described recurring back pain. The claimant complained that since she received a pain shot one week prior, she had been experiencing numbness and tingling in both legs. There is a note that the claimant "[s]tands to train up to 10 hours/day," and that the "[p]ain is definitely worse when up on her feet for prolonged periods." Dr. Cladis' "Assessment" was intervertebral disc degeneration and worsening sciatica. Dr. Cladis restricted the claimant to no standing more than four hours per day with no repetitive bending, lifting, or twisting.

¶ 28 The claimant presented to Delnor Hospital's physical therapy department on September 15, 2011, for an initial evaluation as referred by Dr. Cladis. This record states

that the claimant's symptoms initially began in June 2010, following an automobile accident, but have worsened within the last two months.[1] The record then states that, "[l]ast evening at work during an Epic presentation, [claimant] tripped over exposed cords and lurched forward which exacerbated her symptoms. Under "Home Environment," the note states that the claimant is very active and likes to bike. With regard to work activities, the note states:

> "[Claimant] is a credentialed [E]pic trainer and currently is training physicians ***. [Claimant] is working in a stressful environment with tight deadlines. [Claimant] was performing prolonged sitting during training and is now doing a significant amount of standing during the training sessions. [Claimant] is unable to tolerate back[-]to[-]back training sessions due to increased symptoms."

¶ 29 On September 29, 2011, the claimant returned to Dr. Cladis for a follow-up appointment. In the "History of Present Illness" section of that record, it states "[l]ower back pain starting suddenly. Radicular pain, posterior aspect of lower extremities." Dr. Cladis' assessment of the claimant, as well as his recommendations, remained the same. The claimant underwent physical therapy from September through October 2011. According to records in evidence, the claimant was not seen again for low back pain until October 2012.

[1] We note that this history is at odds with all other medical records in evidence, which indicate that the claimant was involved in an automobile accident in 2006, and sustained an injury while on a long-distance bike ride in June 2010.

¶ 30 An October 4, 2012, record from Dr. Cladis notes that the patient stated that the low back pain "has become more chronic due to physical demands of her job." More specifically, the claimant's stated history as reflected in this note from Dr. Cladis reads:

> "She says her pain is constant. Low back pain aggravated, has been on 12 hour days and severe low back spasms/right hip pain since January 2012 with work requirement of constant standing/walking through [one of the employer's hospitals] during go live process. The pain resolves somewhat more after sedentary job and less standing. Now more severe pain since May 2012 with more standing and walking, then a break and pain lessened, but had right hip pain and saw ortho[pedist]. Now persistent with low back/right hip when on feet for more than two hours."

¶ 31 Dr. Cladis' assessment was bursitis of the right hip, lumbago, intervertebral disk degeneration, herniated intervertebral disk, and sciatica. The claimant continued to treat with Dr. Cladis for these complaints, noting some improvement in her symptoms when off work, until she had a repeat MRI of her lumbar spine on April 7, 2013. The MRI showed advanced degenerative facet joint changes with areas of synovial cyst formation posterior to the thecal sac at L4 level, likely related to the advanced degenerative facet joint changes at the L4-L5 level with degenerative changes also noted at L3-L4.

¶ 32 In his records review, Dr. Levin indicated that he reviewed the MRI films themselves, which he stated revealed degenerative disk changes throughout the lumbar spine, most significant at L3-L4, L4-L5, and L5-S1. Dr. Levin observed that the L5-S1 level shows bilateral facet arthritis, degenerative disk changes, and a right-sided L5-S1

disk protrusion/herniation which was, according to Dr. Levin, somewhat improved in comparison to the MRI dated June 30, 2010. According to Dr. Levin, this abuts the right S1 nerve root without definite displacement. The L4-L5 level indicated to Dr. Levin the presence of bilateral facet arthritis and degenerative disk changes and annular bulging. The L3-L4 level, according to Dr. Levin, shows bilateral facet arthritis and degenerative annular bulging with foraminal stenosis on a bony basis. Dr. Levin found that the L2-L3 level was essentially normal on this MRI, while the L2-L1 level shows a left-sided disk protrusion consistent with the previous June 30, 2010, MRI. Dr. Levin noted no acute changes between the June 30, 2010, and April 7, 2013, MRIs.

¶ 33 Based on his clinical assessment of the claimant on September 25, 2013, as well as his review of the above-referenced records and imaging studies, Dr. Levin concluded the claimant had chronic low back complaints beginning in 2010 and pre-dating the alleged date of manifestation listed on the claimant's original and amended notice of claim. Dr. Levin opined that the claimant's pain complaints from sitting and standing were consistent with the underlying degenerative disk disease. Dr. Levin characterized these pain complaints as being based on activities of daily living rather than an injury. Dr. Levin concluded that there was "no causal connection between an acute aggravation or exacerbation of [the claimant's] complaints referable to the lumbar spine from any industrial occurrence of August 2011/September 14, 2011." Dr. Levin's report then reiterated that rather than suffering a work-related injury, the claimant "developed symptoms consistent with the natural history of [her degenerative disk disease] and would develop those symptoms with activities of daily living."

¶ 34 Dr. Levin issued his March 2, 2015, report in response to a request by the employer to review additional medical records from Dr. Popp and Dr. Siodlarz. In that report, Dr. Levin again presented the opinion that the claimant's pain complaints, beginning in August 2011, "were consistent with the underlying diagnosis of multilevel degenerative disk changes including L3-L4, L4-L5, and L5-S1, chronic right L5-S1 disk herniation[,] and a left-sided L1-L2 disk bulge," which, according to Dr. Levin, "pre[-]dated an acute occurrence of August/September 2011." He also opined that, "there was no acute exacerbation, aggravation[,] or complaints referable to the lumbar spine from an industrial occurrence of August/September 2011."

¶ 35 With regard to the question of whether the claimant's back condition was aggravated by everyday work activities of an Epic trainer, Dr. Levin submitted information from the American Medical Association (AMA) and contained within its "Guides to the Evaluation of Disease and Causation," which Dr. Levin indicated is an authoritative text on this topic. Within this report, research is outlined which suggests that physical loading specific to occupation and sport plays a relatively minor role in disc degeneration. Dr. Levin indicated in his supplemental report that genetics determines disc degeneration, not physical loading, and that previous interpretation of the effects of heavy physical loading on changes in the disk have been challenged and remains inconclusive. Based on this, Dr. Levin concluded that the claimant's "current condition of ill-being is not related to work as an Epic trainer for the [employer.]" According to Dr. Levin, the claimant's "current condition of ill-being is a progression of a pre-existing condition. The activities of daily living can give symptoms secondary to that underlying condition."

¶ 36 On October 20, 2015, the arbitrator issued her decision, in which she found the claimant failed to establish that she sustained a compensable work injury and denied all the compensation and benefits the claimant requested. The arbitrator began by thoroughly recounting the testimony from the arbitration, as well as the medical evidence and records, both before and after the claimant's alleged injury manifestation date. The arbitrator noted that the amendment of this date was an effective change in the allegation regarding the mechanism of the claimant's injury from prolonged periods of sitting to prolonged periods of standing and bending over. The arbitrator concluded that this changed called into question when the claimant's symptoms actually started and what may have caused them. The arbitrator also noted that the claimant was "not entirely forthcoming with information regarding her pre-existing back condition," characterizing it as an "impingement" at one level, whereas there was multi-level degenerative disk disease documented as early as 2010. The arbitrator noted that the medical records establish that the claimant has been consistently treating for lumbar back pain since June 2010, and had used "an entire three month supply of Norco between May 2, 2011, and September 1, 2011," indicating her chronic back pain had not resolved prior to beginning work as an Epic trainer for the employer. Finally, the arbitrator noted that the claimant testified sitting caused her back pain in July and August 2011, but that standing caused pain in September 2011, and sitting relieved the pain. The arbitrator characterized these activities as "activities of daily life" and not "work activities."

¶ 37 The claimant sought review of the arbitrator's decision with the Commission. On June 18, 2016, the Commission issued a unanimous decision in which it affirmed the

decision of the arbitrator, but modified the arbitrator's decision to include additional analysis. The Commission found that, in addition to the analysis performed by the arbitrator, there was a need to address whether the claimant's alleged excessive standing and bending "superimposed on [the claimant's] acknowledged pre[]existing degenerative condition[,] was sufficient to prove that her work duties were 'a' cause of her current condition of ill-being." To this end, the Commission pointed out that the claimant, on cross-examination, was unable to specifically show how often she performed the 12 hour shifts she claimed she spent standing and bending, instead referring to the training schedule that she claimed was in the records. No such records were ever produced. In contrast, the Commission pointed out, Ms. Wagner testified that she was unaware of the claimant ever working a 12 hour shift, but rather worked two back-to-back four hour sessions with a minimum half hour break in between. The Commission continued by referencing Dr. Popp's causation opinion, which was contingent on the claimant's attorney's hypothetical that the claimant worked 8 to 12 hour shifts in which she was on her feet 50% of the time and bending over 50% of the time. Based on these observations of the evidence, the Commission found Dr. Levin's opinion more credible than that of Dr. Popp.

¶ 38 The Commission concluded by stating that the alleged mechanisms of the claimant's injury--sitting, standing, and bending--are activities of daily living that are performed equally by workers and non-workers alike and that are performed in all aspects of daily living. As such, the Commission found that the question was whether the claimant was required to perform these activities "in an excessive manner" such that the

claimant was subjected to a greater risk of injury than a member of the general public. Because the Commission found the claimant's quantitative evidence in this regard to be lacking, the Commission concluded the claimant's claim was not compensable.

¶ 39 The claimant filed a timely petition for judicial review in the circuit court of Kane County. On March 21, 2017, the circuit court confirmed the Commission's decision. The claimant filed this timely appeal, over which we properly have jurisdiction.

¶ 40 ANALYSIS

¶ 41 We find the sole issue on appeal is whether the Commission erred in finding the claimant did not sustain an accidental injury to her low back arising out of and in the course of her employment. Generally, the determination of whether an injury is causally related to employment is a question of fact for the Commission and its determination will not be disturbed unless it is against the manifest weight of the evidence. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶9. "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). On review, the "court is not to discard the findings of the Commission merely because different inferences could be drawn from the same evidence." *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill. App. 3d 915, 920 (2005). "The appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion." *Metropolitan Water Reclamation District of Greater*

Chicago v. Illinois Workers' Compensation Comm'n, 407 Ill. App. 3d 1010, 1013 (2011). "For the Commission's decision to be against the manifest weight of the evidence, the record must disclose an opposite conclusion clearly was the proper result." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). We will affirm the Commission's decision if there is any legal basis in the record which would sustain that decision, regardless of whether the particular reasons or findings contained in the decision are sound. *Comfort Masters v. Workers' Compensation Comm'n*, 382 Ill. App. 3d 1043, 1045-46 (2008). With our standard of review in mind, we continue with a statement of the legal standards applicable to the claimant's claim for benefits arising from an alleged work-related repetitive trauma to her low back.

¶ 42 To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Thus, even if the claimant had a preexisting degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that her employment was also a causative factor. *Id.* at 205. A claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating her preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983).

¶ 43 An employee who alleges injury based on repetitive trauma must "show [] that the injury is work related and not the result of a normal degenerative aging process." *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530 (1987). "Cases involving aggravation of a preexisting condition primarily concern medical questions and not legal questions, [citation]" and "[t]his is especially true in repetitive trauma cases." *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 478 (1987). Thus, repetitive trauma claims involving the alleged aggravation of a preexisting condition, like the claim asserted here, cannot succeed unless the claimant presents medical testimony suggesting that: (1) she had a preexisting condition that was aggravated by her repetitive work activities; and (2) her current condition of ill-being was caused, at least in part, by this work-related repetitive trauma and not simply the result of a normal, degenerative aging process.

¶ 44 Applying these principles to the case at bar, we cannot say that the Commission's conclusion that the claimant failed to establish causation is against the manifest weight of the evidence. After examining and interviewing the claimant and reviewing all of the medical records including the MRI films from 2010 and 2013, Dr. Levin opined that the claimant's lower back problems were unrelated to her job and her work activities did not aggravate or accelerate her preexisting degenerative disk disease and bilateral facet arthritis. Dr. Levin noted that the medical records established that the claimant had these conditions and associated pain symptomology long before, and also soon before, she began work as an Epic trainer for the employer. Even if we assume that the claimant is credible in her complaints of pain in the performance of her job duties, Dr. Levin's

opinion is that the claimant would also experience pain due to this preexisting condition while performing non-work-related daily activities. In other words, there is a distinction between a work-related activity triggering pain due to a preexisting condition, and a work-related activity aggravating or accelerating a preexisting pathological condition. The fact that the claimant felt pain when performing her work activities because her preexisting degenerative disk disease and bilateral facet arthritis had already progressed to a certain level would not establish that the work activities themselves somehow contributed to the progression of the disk disease or arthritis itself or even made it more painful than it would have otherwise been.

¶ 45 We find the Commission was fully within its province when it determined that Dr. Levin's opinion is more credible than that of Dr. Popp. Dr. Popp's causation opinion was based upon a hypothetical, presented by the claimant's counsel, which required Dr. Popp to assume facts about the claimant's work activities and medical history that were not borne out by the claimant's testimony or other evidence in the record. Dr. Popp clearly did not have the benefit of all of the claimant's prior medical history in rendering his opinions. In fact, Dr. Popp gave his opinion based upon counsel's assertion that she presented to her primary care doctor on September 1, 2011, complaining of low back pain. While this is true, the records show that the claimant presented with low back pain earlier in 2011, including visits in January, February, March, July, and August 2011. Dr. Popp was also unaware of the claimant's 2010 MRI, which essentially mirrored the pathology of the MRI of 2013. The claimant clearly minimized her history of low back problems in her testimony, which compromised her credibility with the Commission.

¶ 46 Moreover, although Dr. Popp observed the claimant in her job duties, it was on one to two isolated occasions. Dr. Popp was asked to assume that the claimant stood on her feet for four to six hours a day and stood bending over at the waist helping physicians on the computer for another four to six hours a day. In fact, the claimant testified that she would need to refer to records to determine how often she did these activities, and those records are not in evidence. From counsel's hypothetical, Dr. Popp opined that the claimant's repetitive job duties were related to the claimant's "onset of pain," thereby aggravating or accelerating the claimant's preexisting condition. This opinion is contrary to that of Dr. Levin, who compared MRIs showing no change in the pathology of the claimant's condition after the claimant's alleged injury manifestation date, and who conducted an extensive review of the claimant's medical history, which clearly showed that the claimant's condition was symptomatic well before she became an Epic trainer for the employer.

¶ 47 Finally, we note that Dr. Popp's opinion was that the claimant's repetitive bending is the mechanism that aggravated her preexisting disk disease. However, the claimant's alleged manifestation is September 1, 2011. The claimant testified that she didn't begin the training portion of the program until the end of August 2011, while Mrs. Wagner testified these duties did not begin until early September. The short period of time between the commencement of the duties requiring the claimant to bend forward for large amounts of time and the alleged manifestation of the work-related repetitive injury is further reason to find that a conclusion opposite that reached by the Commission is not

clearly apparent. The Commission's decision to give Dr. Levin's opinion greater weight, and accordingly find no causation, is not against the manifest weight of the evidence.

¶ 48 We recognize that the Commission included some language in its decision that would indicate that it partially based its decision on a determination that the alleged mechanism of injury, standing, bending, and sitting, were activities of daily living, implying preclusion of the claimant's claim based on the neutral risk doctrine. However, because we find that the Commission's decision regarding a lack of causation is not against the manifest weight of the evidence, we decline to address issues involving the applicability of the neutral risk doctrine to the facts of this case.

¶ 49 CONCLUSION

¶ 50 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County confirming the Commission's decision.