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2017 IL App (3d) 170113WC-U

Order filed June 11, 2018

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

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GINA CATALANELLO,	)	Appeal from the Circuit Court
	)	of the Thirteenth Judicial Circuit,
Appellant,	)	LaSalle County, Illinois
	)	
v.	)	Appeal No. 3-17-0113WC
	)	Circuit No. 16-MR-108
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, <i>et al.</i> , (Horizon House),	)	Eugene P. Daugherty,
	)	Judge, Presiding.
	)	
Appellees.	)	

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

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**ORDER**

- ¶ 1 *Held:* The Commission's reversal of the arbitrator's award of permanent total disability benefits and certain medical expenses based on a finding of an intervening act that broke the causal connection between a work-related accident and the claimant's current condition of ill-being was against the manifest weight of the evidence.
- ¶ 2 The claimant, Gina Catalanello, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), seeking benefits for

injuries she sustained at work while she was employed by respondent Horizon (employer). The employer stipulated that the claimant had sustained an accidental injury to her lower back which arose out of and in the course of her employment on March 4, 2004, when she was assaulted by one of the residents at the employer's facility. After conducting a hearing, an arbitrator found that the claimant was permanently and totally disabled and that the claimant's current condition of ill-being was causally related to the March 4, 2004, work accident. The arbitrator awarded the claimant temporary total disability (TTD) benefits for 4 and 2/7 weeks, permanent total disability (PTD) benefits for life, and \$96,691.98 in medical expenses (which covered all medical treatments the claimant had received for her back condition from the date of the work accident through the date of the arbitration hearing).

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission reversed the arbitrator's award of PTD benefits, awarded permanent partial disability (PPD) benefits for 50 weeks in the amount of 10 percent of the person-as-a-whole, and reduced the arbitrator's award of medical expenses. The Commission noted that the claimant had sustained additional injuries, including a back injury, when she was beaten by her boyfriend on March 20, 2007. The Commission found that this incident was an "intervening act" which "[broke] the causal connection between [the claimant's] current conditions of ill-being and the March 4, 2004, work accident," thereby terminating the employer's liability to pay compensation after the March 20, 2007, incident. Based upon the back problems the claimant was experiencing after the work accident and prior to the March 2007 incident, the Commission found that the claimant suffered a 10 percent loss of the person-as-a-whole as a result of the work accident. There Commission vacated the arbitrator's award of PTD benefits, awarded PPD benefits in the amount of 10 percent person-as-a-whole, and reduced

the arbitrator's award of medical expenses to \$36,813.28 (the amount of medical expenses she incurred from the time of the work accident through March 19, 2007). The Commission affirmed and adopted the arbitrator's decision in all other respects.

¶ 4 The claimant then sought judicial review of the Commission's decision in the circuit court of LaSalle County. The circuit court confirmed the Commission's ruling.

¶ 5 This appeal followed.

¶ 6 **FACTS**

¶ 7 The employer provides a variety of residential and day services to adults with disabilities, including full 24-hour residential support. The claimant worked for the employer as a direct support professional. Her job responsibilities included taking care of disabled adults and teaching them basic skills.

¶ 8 On March 4, 2004, the claimant was leaning over a bathtub to assist a disabled person when another resident of the employer came up from behind and began punching and kicking the claimant in her lower back area. Immediately after this assault, the claimant experienced severe back pain that prevented her from standing up straight. She was taken to the emergency room (ER) at Illinois Valley Community Hospital. The ER records indicate that the claimant was experiencing pain in her low back and in the right posterior aspect of the iliac crest<sup>1</sup> and buttock areas. She was unable to straighten her back. The claimant was discharged and instructed to return to the hospital's Occupational Health Clinic the following day.

¶ 9 On March 5, 2004, the claimant went to the hospital's Occupational Health Department complaining of significant low back pain as well as numbness in the toes of her right foot. The therapist noted that the claimant's gait was guarded and that she was experiencing tenderness in

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<sup>1</sup> The "iliac crest" is the thick, curved upper border of the ilium, the most prominent bone on the pelvis.

her low back. After treating the claimant's low back pain with ice, heat, and a range of physical exercises, the therapist discharged the claimant to work regular duty as of March 8, 2004.

¶ 10 On March 10, 2004, the claimant returned to the hospital's Occupational Health Department. She reported experiencing pain in her low back area, pelvis, and right leg which rendered her unable to work. Dr. Edward Fesco, the Occupational Health physician, diagnosed an acute lumbo-sacral muscle spasm and ecchymosis, recommended further physical therapy, prescribed medication for the claimant's muscle spasms, and took the claimant off work. When the claimant returned to Dr. Fesco five days later, she was feeling better and was not feeling pain in her thigh or any pain during the evenings. Dr. Fesco's impression was that the claimant's lumbosacral sprain was resolving. He returned the claimant to work with a 15-pound lifting restriction. By March 17, 2004, the claimant had received physical therapy for her low back, and she rated her low back pain at a 5 out of 10. When Dr. Fesco saw the claimant again on March 18, 2004, he found no muscle spasms. At that time, Dr. Fesco released the claimant to work full duty without restrictions and discharged her from care.

¶ 11 When the claimant returned to work, she was unable to perform her regular job duties due to continuing low back pain and stiffness. Accordingly, the employer placed the claimant on light duty work as a van driver. The claimant worked for the employer in this capacity from March 18, 2004, through July 1, 2004. The claimant testified that, during this time period, her back contusion and numbness "went away" for a while, but her low back pain and stiffness remained relatively constant. Accordingly, she sought further treatment from Dr. Constantino Perales, a primary care physician.

¶ 12 The claimant first saw Dr. Perales on July 1, 2004. She told Dr. Perales that she had injured her low back at work the previous March. She complained of continued pain and

cramping in her low back and buttocks, back stiffness, leg pain, and numbness in her feet and toes. Upon examination, Dr. Perales found tenderness in the claimant's low back, a positive straight leg raising test, and a positive deep tendon reflexes test. Dr. Perales diagnosed the claimant with low back pain, prescribed a lumbar support for her to use at work, and ordered a lumbar MRI.

¶ 13 The claimant underwent a lumbar MRI on July 8, 2004. The radiologist interpreted the MRI as showing a small, broad-based disc protrusion with annular tear at L4-5.

¶ 14 On July 22, 2004, the claimant returned to Dr. Perales complaining of continuing back pain and stiffness and leg pain. Dr. Perales reexamined the claimant and reviewed the lumbar MRI results. He found that the claimant had a positive straight leg raising test, a positive deep tendon reflex test, and restrictions in the range of motion of her lumbar spine. Dr. Perales diagnosed a lumbar syndrome with an annular tear at L4-5, degenerative joint disease, and right sciatica. He prescribed pain medications and took the claimant off work.

¶ 15 On August 9, 2004, Dr. Perales returned the claimant to work with restrictions of no lifting more than five pounds and no climbing, bending or stooping.<sup>2</sup> He also ordered additional physical therapy. The claimant began a six-week course of physical therapy on August 17, 2004. The therapists recorded that the claimant was having pain in her low back down to her sacrum and cramping in her calves and thighs.

¶ 16 October 7, 2004, the claimant returned to Dr. Perales complaining of persistent low back pain. Upon examination, Dr. Perales noted muscle spasms in the claimant's lumbar spine and a positive straight leg test. The doctor subsequently prescribed another month of physical therapy and informed the therapist that: (1) the claimant reported injuring her back in March 2004 "when

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<sup>2</sup> The claimant continued working light duty for the employer until she was discharged for cause on November 13, 2006.

she was attacked at work”; (2) thereafter, the claimant started having a cramping pain in her lower back area going down to her buttocks; (3) two prior rounds of physical therapy gave her some temporary improvement, but “ever since she stopped therapy in September she started having some cramping in her lower back area again.”

¶ 17 On December 8, 2004, the claimant was evaluated by Dr. Gregg Davis, her independent medical examiner (IME), who is board certified in family practice. During his evidence deposition, Dr. Davis testified that, when he saw the claimant, she reported that she was still experiencing symptoms that were “identical to those she had experienced about the time of the [March 4, 2004, work] accident.” Specifically, the claimant complained of pain in her right buttocks which radiated into her right low back area, cramping in the posterior thighs of both legs, and numbness in the toes of her right foot. She told Dr. Davis that “[t]he discomfort was then occurring intermittently with variable frequency” and that she could have periods as long as three weeks without symptoms and other periods when she had symptoms several times per week. She reported that, from the time of the March 2004 work accident, until the December 2004 examination, she had never been asymptomatic for more than three weeks at a time.

¶ 18 Dr. Davis opined that the claimant had degenerative disk disease of her lumbar spine, a herniated nucleus pulposus at L4-5 with an associated annular tear, and radiculopathy in her lower right leg. Dr. Davis further opined that these conditions “were or could have been causally related” to the claimant’s March 4, 2004, work accident. Although he could not be certain whether the work accident initiated the claimant’s degenerative disk disease, he opined that, at a minimum, the symptoms that the claimant exhibited were the result of the trauma. Thus, in Dr. Davis’s opinion, the March 4, 2004, accident aggravated the claimant’s degenerative disc condition by rendering it “more symptomatic.” Dr. Davis based his causation opinions on: (1)

the mechanism (or “force”) of the March 2004 injury, which Dr. Davis found was “consistent with” the claimant’s pathophysiology; (2) the MRI findings, which, Dr. Davis found to be consistent with the history of the claimant’s symptoms.

¶ 19 Although Dr. Davis testified that the claimant’s examination was “normal” and revealed no “active radicular process,” he noted that this did not rule out the possibility that the claimant had had radicular symptoms prior to his examination. Dr. Davis concluded that the claimant “probably had had some radicular symptoms” in the past which had “quieted down” by the time of the examination.

¶ 20 Dr. Davis further opined that the claimant had reached MMI at the time of the December 8, 2004, examination. He noted that the type of injury sustained by the claimant “typically [has] periods of being more symptomatic than others,” depending on the person’s level of physical activity (*i.e.*, the symptoms typically increase as the person’s level of physical activity increases). Accordingly, Dr. Davis opined that the claimant “is going to be seeking medical care intermittently for control of [her] symptoms” and she “would benefit from a permanent work restriction to avoid heavy lifting, twisting, and bending.”

¶ 21 The claimant saw Dr. Perales on multiple occasions between December 22, 2004, and June 2, 2005. The medical records of those visits do not reflect that the claimant complained of low back pain or numbness in her legs during that time period. However, when the claimant returned to Dr. Perales on June 7, 2005, she complained low back pain (more to the right side), cramping in both thighs, and numbness in her feet and toes. Dr. Perales referred the claimant to Dr. William Olivero, a neurological specialist.

¶ 22 The claimant began treating with Dr. Olivero on August 3, 2005. The claimant told Dr. Olivero that she had injured her low back at work more than a year ago and was still

experiencing low back pain, spasms in her buttocks, cramping in her legs and occasional numbness in the toes of both feet. Dr. Olivero ordered a repeat lumbar MRI, which was performed on August 12, 2005. The repeat MRI showed no changes from the July 8, 2004, MRI.

¶ 23 When the claimant returned to Dr. Olivero on August 24, 2005, she had a negative leg raise test and was able to walk on her heels and toes without difficulty. Her strength and deep tendon reflexes were normal, and she denied experiencing any paresthesia. Dr. Olivero prescribed valium, epidural steroid injections and additional physical therapy. Dr. Olivero did not “see a surgical remedial problem” at that time. He referred the claimant to Dr. Ronald Kloc, who gave the claimant a series of lumbar epidural injections.

¶ 24 By October 24, 2005, the claimant told Dr. Kloc that she was “definitely better.” Nevertheless, she continued to complain of chronic low back pain and tingling in to both of her legs. When the claimant returned to Dr. Olivero on November 9, 2005, and reported that the epidural steroid injections had only slightly improved her back condition. Dr. Olivero advised her that the next option would either be a fusion surgery or an artificial disc replacement. He referred the claimant to Dr. Dzung Dinh, a board certified neurosurgeon, for a surgical consultation.

¶ 25 The claimant began treating with Dr. Dinh on November 28, 2005. On that date, Dr. Dinh noted in his medical record that he had agreed to examine the claimant per Dr. Olivero’s request “for possible discogenic pain and artificial disc replacement surgery.” The claimant reported experiencing pain mostly in the right sciatic region radiating down the right buttock, posterior thigh, and calf. She told Dr. Dinh that the pain varied in intensity from a 5 out of 10 to a 9 out of 10. Upon examination, Dr. Dinh noted focal tenderness over the right SI joint which increased with hip flexion and external rotation. Dr. Dinh reviewed the August 12, 2005, MRI



and found that it showed “a dark disc and L4-5 with posterior central bulge.” Dr. Dinh was not sure whether the claimant’s pain was discogenic or was coming from the right sacroiliac joint (or a combination of both). He referred the claimant to Dr. Lisa Snyder, a physiatrist, for further evaluation and treatment of her low back and sacroiliac joint. Dr. Dinh noted in his medical record that, if the claimant’s symptoms persisted despite such treatment, “we can consider a discogram at L3-4 and L4-5 as a prelude to TDR.”

¶ 26 The claimant saw Dr. Snyder on December 22, 2005, complaining of low back pain. On examination, Dr. Snyder noted tenderness along the claimant’s lumbosacral paravertebral muscles and a limited range of motion in her lumbar spine. Dr. Snyder recommended additional physical therapy. In a letter to Dr. Dinh date February 23, 2006, Dr. Snyder noted that the claimant had been receiving physical therapy two to three times per week since January 12, 2006, but her complaints had not changed. (The claimant had told her physical therapist that she was experiencing “constant” low back pain that ranged in intensity from 5/10 to 10/10, intermittent leg cramping, and intermittent spasms in her buttocks, all of which she related to the March 4, 2004, work accident.) Dr. Snyder also noted that the claimant’s physical therapist had documented some “inconsistencies” in the claimant’s behavior<sup>3</sup> and that three of four Waddell’s signs had been present “on a few occasions.” Dr. Snyder’s impression was that the claimant had low back pain and degenerative disc disease of the lumbar spine. She recommended discontinuing physical therapy and continuing other conservative treatments pending reevaluation in six months for possible additional injections. When the claimant returned to Dr. Snyder on June 1, 2006, she reported that she had been managing her chronic low back pain by

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<sup>3</sup> The therapist’s records indicate that the claimant was observed on two occasions in the clinic’s parking lot getting into and out of her car without difficulty. On one of those occasions, the claimant was seen “bending and twisting without visible hesitation.” The therapist noted that these behaviors did “not equal” her subjective complaints or her behavior while in the clinic.

using a TENS unit eight to ten hours a day and by taking prescription medication. Dr. Snyder then referred the claimant back to Dr. Dinh.

¶ 27 On March 2, 2007, the claimant went to the ER at Illinois Valley Community Hospital complaining of a “shooting, burning” pain radiating from her back to her left buttock and down to her left leg and knee. The claimant reported a history of chronic low back pain that was being treated by a neurologist. However, she claimant said she recently experienced a burning, shooting pain while walking in her kitchen and she went to the ER because she was unable to tolerate this pain. She was given Toradol and Flexeril for the pain, which gave her significant relief, and was discharged from the ER.

¶ 28 On March 7, 2007, the claimant returned to see Dr. Dinh. The claimant told Dr. Dinh that, she had experienced a sharp shooting pain to her left buttock “approximately two weeks ago.” The pain had “radiated to [her] left groin, medial thigh and foot with tingling and numbness in all [her] toes.” It also radiated down both buttocks to both of the claimant’s hamstrings. Dr. Dinh reviewed the claimant’s most recent MRI (which was taken on January 16, 2007), and concluded that it showed “dark disc at L4-5 and an annular tear,” and a “slight foraminal narrowing at left L4-5 secondary to disc bulging” at that level. Dr. Dinh decided to “proceed with a discogenic pain work up.” He put the claimant on “a trial of water therapy” and ordered a “discogram at L4-5 and L5-S1 followed by a disc block” and a bone scan.

¶ 29 On March 20, 2007, the claimant was treated in the ER at Illinois Valley Community Hospital following an assault by her ex-boyfriend. The claimant’s ex-boyfriend had pulled her out of her car and dragged her to her aunt’s house while beating her repeatedly with his fists. The claimant was punched in the head, right arm, left forearm, and the left side of her upper back. The emergency room medical report noted that the claimant had: (1) bruising in her right

arm, left forearm, and left upper back; (2) a “[l]arge area of swelling” in her left upper back; and (3) a bruised and swollen left eye. The claimant was discharged from the ER with a diagnosis of contusions in her face and right arm, back pain, and alcohol intoxication.

¶ 30 On April 2, 2007, the claimant saw Dr. Perales. Dr. Perales’s medical record of that visit indicates that the claimant was complaining of a “severe headache [and] pain in her neck.” Dr. Perales recorded a history of the claimant’s March 20, 2007, beating, and noted that the claimant’s headache was so intense that she could “barely open her eyes.” Dr. Perales’s medical record does not reflect that the claimant complained of low back pain or any associated radicular symptoms at that time. He diagnosed the claimant with a cerebral concussion and head trauma.

¶ 31 Later that day, the claimant was admitted to St. Francis Medical Center in Peoria due to severe headache, nausea, and vomiting. Imaging studies revealed that the claimant had a large subdural hematoma in the right frontal temporoparietal region. She immediately underwent a right frontal temporoparietal craniotomy (a surgical procedure to evaluate the hematoma). She was discharged from the hospital on April 7, 2007.

¶ 32 Thereafter, the claimant continued to treat with Dr. Perales. On June 14, 2007, she returned to Dr. Perales complaining of paresthesias in the toes of both of her feet. On August 28, 2007, the claimant returned to Dr. Perales to undergo a “mini memory test.” The claimant followed up with Dr. Perales again on September 12, 2007, at which time Dr. Perales diagnosed her with chronic headache, “cervical strain/pain,” and chronic low back pain. When the claimant returned to Dr. Perales on January 8, 2008, she reported that her back “has been hurting a lot worse.” Accordingly, Dr. Perales referred the claimant to Dr. George DePhillips, a neurosurgeon, for a second opinion.

¶ 33 The claimant began treating with Dr. DePhillips on February 9, 2009. She told Dr.

DePhillips that she been experiencing low back pain immediately after the March 4, 2004, work accident and that she had been suffering from persistent low back pain radiating into the right buttock, thigh, and calf with tingling in her right foot “for the past several years.” She reported that the physical therapy she received had aggravated her pain, and that the epidural steroid injections she received gave her only temporary relief. Dr. DePhillips reviewed the claimant’s 2007 MRI scan and opined that it showed degeneration and dehydration at L4-L5 with a tear in the annulus that was “casually related to the work injury.” He discussed surgical treatment options with the claimant, which included artificial disc replacements and a posterior lumbar interbody fusion with pedicle screw fixation. Dr. DePhillips ordered a follow-up discogram, which revealed concordant pain at L4-L5 with contrast leakage consistent with the disc protrusion.

¶ 34 On April 12, 2010, the claimant returned to Dr. DePhillips complaining of the same symptoms she had reported a year earlier as well as spasms in her legs. She reported that the cramping in her legs had worsened over the past nine months. A follow-up MRI of the claimant’s lumbar spine was performed on April 2, 2010. Dr. DePhillips interpreted that MRI scan as revealing disc bulging, disc protrusion, and grade 4 degeneration at L4-L5, with mild bilateral foraminal narrowing, left greater than right. Dr. DePhillips opined that the claimant’s March 4, 2004, work accident had most likely aggravated her preexisting degenerative disc disease and “more likely than not caused the annular disruption” visible on the MRI scans. He concluded that the claimant remained “unemployable and totally disabled.” He recommended surgery as a “reasonable” treatment option.

¶ 35 During his subsequent evidence deposition, Dr. DePhillips was presented with medical records describing various physical traumas the claimant had sustained after the March 4, 2004,

work accident, including the March 20, 2007, beating by her former boyfriend. During cross-examination, Dr. DePhillips admitted that he was unaware of these incidents at the time he rendered his causation opinion. Dr. DePhillips also conceded that when someone is beaten and dragged (as the claimant was on March 20, 2007) “those are \* \* \* significant events that could have a jarring impact on an individual’s lumbar spine,” and they are the “types of events that [he] would want to evaluate more closely before rendering a causation opinion.” However, when asked whether, in light of this additional evidence, he could still opine that the claimant’s current condition of ill-being was caused, exacerbated, or accelerated by the March 4, 2004, work accident, Dr. DePhillips responded,

”Yes. I believe that my opinions can remain unchanged. Those incidents that you reported would have occurred after the [work] injury in March of 2004. And if they are significant in terms of her lower back condition, it would be exacerbation as we have already established through the records that she had already had symptoms related to her L4-L5 disk or her lower back. She was already symptomatic in terms of low back pain, bilateral leg pain, and discogenic pain. That condition might or could have been aggravated by the subsequent traumatic events, but the initial onset of her condition still is causally related to the work injury.”

¶ 36 Immediately thereafter, the employer’s counsel informed Dr. DePhillips that the claimant was released from care on March 18, 2004, within two weeks of the work accident, because she was found to have improved with full use of her back and extremities, was reporting no pain or other symptoms at that time, and was able to work. Dr. DePhillips did not amend his causation opinion in light of these facts. Regarding the claimant’s initial improvement after the March

2004 work accident, Dr. DePhillips testified:

“What seems to be occurring is that [the claimant] ha[d] muscle and ligamentous injury from the \* \* \* [work] incident which improved through physical therapy and passage of time. And it can take several weeks for a disk injury to present. An annular tear becomes inflamed. The inflammation then irritates the nerve root. So it’s not uncommon to have patients suffer an injury, have pain which is myofascial in origin, muscle and ligamentous. That pain improves and then they subsequently develop discogenic pain \* \* \* within four to \* \* \* [e]ight weeks of the injury [.] \* \* \* In other words, there’s the initial trauma, which in part is muscle sprain, strain, ligamentous strain. That improves through physical therapy and time and medications. Then the symptoms of discogenic pain should appear within a reasonable time frame.”

However, Dr. DePhillips agreed as a general matter that his causation opinions were based on an “incomplete factual background” regarding the claimant’s history between the March 2004 work accident and Dr. DePhillips’ first examination of the claimant in February 2009. Dr. DePhillips acknowledged that he did not know what the claimant did “on a daily basis for those five years that \* \* \* might or could change my opinions regarding causation.”

¶ 37 During cross-examination, Dr. DePhillips opined that the claimant’s annular tear was caused by the March 4, 2004, work accident. He testified that a person with an annular tear would initially start to experience low back pain which progressively worsens, followed by radiculitis in the legs, spasms in the paraspinal muscles, numbness, and tingling.

¶ 38 On re-direct examination, Dr. DePhillips opined that the claimant’s July 2004 and August 2005 MRI scans both showed an annular tear, as did the 2007 and 2010 MRI scans. He noted

that the 2004 and 2005 MRI scans “preexisted any \* \* \* trauma” other than the work accident. He further testified that there was “no indication” that any of the traumatic events that the claimant experienced after the March 2004 work accident affected the claimant’s lower back or exacerbated her lower back condition.

¶ 39 During his evidence deposition, Dr. Perales opined that the claimant had an ongoing back problem that “appear[ed] to be progressing” and she continued to be disabled. Dr. Perales “did not see [the claimant] returning to any kind of gainful activity.” He opined that the medication and other treatments he had prescribed for the claimant’s low back condition were causally related to the March 4, 2004, work accident. Dr. Perales also testified about the March 20, 2007, assault on the claimant and how it affected her medical condition. He stated that this assault (and the ensuing “dramatic” bleeding in the claimant’s brain) was the “main reason” for the claimant’s subsequent memory loss and neck symptoms. However, Dr. Perales testified that the March 20, 2007, incident did not change the claimant’s symptomatology with regard to her lower back. He noted that her low back symptoms remained the same and did not spike “even initially” after the March 2007 incident. Dr. Perales further testified that, when the claimant came to see him on April 2, 2007, she made no complaints regarding her low back and did not mention that her low back pain had been exacerbated or worsened by the March 20, 2007, assault. Moreover, Dr. Perales stated that the radiologist’s findings following the April 2, 2010, MRI of the claimant’s lumbar spine were “not appreciably changed” when compared to the January 2007 MRI. Dr. Perales testified that, on July 13, 2010, he and the claimant “discussed the option of surgery” to treat the claimant’s low back condition.

¶ 40 In an August 21, 2009, letter addressed “to whom it may concern,” Dr. Perales indicated that the March 20, 2007 assault caused the claimant “multiple injuries, including: subdural

hemorrhaging of the brain, chronic pain syndrome, loss of balance, memory loss, and chronic headaches.” Dr. Perales explained that the claimant “suffered from severe anxiety disorder” since the March 20, 2007, assault, and experienced memory loss and loss of balance since undergoing a right frontal temporoparietal craniotomy for evacuation of a hematoma on April 7, 2007. Dr. Perales noted that he was treating the claimant’s chronic pain with two narcotic medications (Roxycodone and Oxycontin), and he was treating her anxiety disorder with Xanax. Dr. Perales opined that the claimant was “totally disabled” at that time.

¶ 41 Dr. Steven Delheimer, a neurosurgeon who served as the employer’s IME, evaluated the claimant on three separate occasions. At the time of his initial evaluation on August 24, 2004, Dr. Delheimer opined that the claimant’s neurologic examination was normal and that she did not have a herniated disc. Dr. Delheimer interpreted that July 8, 2004, MRI as showing mild degenerative disc disease at L4-L5 with dehydration and bulging of the disc, but no nerve root compression. He did not see any annular tears.<sup>4</sup> After interviewing and examining the claimant and reviewing her medical records, Dr. Delheimer opined that the claimant had degenerative disc disease of her lumbar spine that was temporarily aggravated by the March 4, 2004, work accident. Dr. Delheimer based this opinion on the “back and leg pain that occurred at the time of the [work accident].” Dr. Delheimer noted that the claimant’s pain and “significantly improved since then” and that her radicular symptoms had resolved. He released the claimant to return to work light duty with no lifting greater than 20 pounds and no excessive flexion or extension for two weeks. He opined that the claimant was approaching MMI from the March 4, 2004, incident, that she would not need any further diagnostic tests or treatment relating to that

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<sup>4</sup> During his subsequent evidence deposition, Dr. Delheimer testified that, even if the July 8, 2004, MRI scan had revealed an annular tear, that would not be a significant finding because “nobody’s proven that annular tears are other than degenerative in nature, and nobody’s proven that annular tears actually cause pain.”



incident, and that she should be able to work full, unrestricted duty after two weeks.

¶ 42 After the employer's insurance adjuster informed Dr. Delheimer that the claimant had a gap in treatment from March 18, 2004, to July 1, 2004, Dr. Delheimer issued a supplemental report on September 9, 2004, in which he opined that: (1) the temporary aggravation caused by the March 4, 2004, work accident resolved toward the end of March 2004<sup>5</sup>; and (2) "the recent treatment rendered by Dr. Perales" was "on the basis of [the claimant's] presumed underlying degenerative disc disease and not as a result of the work incident of March 4, 2004."

¶ 43 Dr. Delheimer reexamined the claimant on January 23, 2007. The claimant reported having continuing low back pain, worse on the right side than the left, cramping in her inner thighs, and tingling and numbness in her back which occurred approximately once or twice per week. She rated her low back pain as an 8 out of 10. Dr. Delheimer opined that the claimant had a normal neurologic examination and a normal MRI. He further opined that the claimant's treatment up to that point had been based her subjective complaints and not upon any objective findings. Accordingly, Dr. Delheimer concluded that any further treatment (including surgery) would not benefit the claimant.

¶ 44 Dr. Delheimer re-examined the claimant for a final time on November 4, 2009. His opinions as to causation and treatment remained essentially the same. Specifically, Dr. Delheimer opined that: (1) the claimant's current complaints were "entirely subjective in nature and [were] not supported by any objective findings on her neurologic exam or her 2007 MRI"; (2) any subsequent treatment after May 19, 2009 (the date of Dr. Delheimer's deposition), would be related to the claimant's underlying degenerative disc disease; (3) the recent recommendations for a discogram and spinal fusion surgery were not related to the March 2004 work injury; and

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<sup>5</sup> During his evidence deposition, Dr. Delheimer opined that the claimant had reached MMI from the March 4, 2004, work incident on March 18, 2004.

(4) there were “no objective findings to prohibit the claimant’s return to work.”

¶ 45 Dr. Delheimer was never provided with any medical records regarding the March 20, 2007, assault, and he never opined that the claimant’s lumbar problems worsened after that incident. Although Dr. Delheimer reviewed Dr. Perales’s medical records, he did not opine that Dr. Perales’s records indicated that the claimant’s back condition worsened after March 20, 2007.

¶ 46 The claimant continued to treat with Dr. Perales through the time of the July 2013 arbitration hearing. Throughout that time, she continued to complain of low back pain, numbness in her toes, vision problems, memory loss, and fibromyalgia.

¶ 47 During the arbitration hearing, the claimant testified that she still experienced low back pain that severely limited her everyday activities. She did not believe that she could return to work as a training assistant for disabled adults. The claimant testified that she had not yet decided whether to proceed with back surgery, but she “would like to have surgery as an option in the future.”

¶ 48 The arbitrator found that the claimant was totally and permanently disabled and that the claimant's current condition of ill-being was causally related to the work injury she sustained on March 4, 2004. The arbitrator concluded that “[n]o facts or comorbidities,” including the March 20, 2007, domestic violence incident, “b[roke] the chain of causation” between the March 4, 2004, work accident and the claimant’s current disabling condition. The arbitrator based these findings on the totality of the medical opinion evidence, including the opinions of Drs. Perales and DePhillips,<sup>6</sup> and the various diagnostic testing performed on the claimant. As to the latter,

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<sup>6</sup> The arbitrator noted that Dr. DePhillips opined that the claimant was totally disabled on April 12, 2010, and Dr. Perales opined that the claimant was totally disabled during his February 2011 deposition. The arbitrator found that the causation opinions of Drs. DePhillips and Perales were supported by “the Peoria

the arbitrator noted that: (1) the first lumbar MRI on July 8, 2004, showed a broad-based L4-5 disc protrusion with an annular tear; (2) a repeat lumbar MRI on August 12, 2005, showed no change in the condition of L4-5 disc; (3) another lumbar MRI performed on January 16, 2007, showed a dark disc and an annular tear; (4) a post-discogram CT performed on August 2, 2007, demonstrated a grade IV tear pattern at L4-5 level; and (5) on March 11, 2010, a repeat discogram provoked pain at L4-5 with contrast leakage consistent with a disc protrusion. The arbitrator also noted that the conservative treatments the claimant obtained for her lower back pain and other symptoms following the March 4, 2004, work accident provided only temporary relief.

¶ 49 The arbitrator awarded the claimant PTD benefits in the amount of \$382.40 per week for life, commencing on April 12, 2010, TTD benefits in the amount of \$229.52 per week from March 5, 2004 through March 10, 2004 and July 22, 2004 through August 6, 2004, and \$96,691.98 in medical expenses (which covered all medical treatments the claimant had received for her back condition from the date of the work accident through the date of the arbitration hearing).

¶ 50 The employer appealed the arbitrator's decision to the Commission. The Commission reversed the arbitrator's award of PTD benefits, awarded PPD benefits for 50 weeks in the amount of 10 percent of the person-as-a-whole, and reduced the arbitrator's award of medical expenses. The Commission noted that the claimant had sustained additional injuries, including a back injury, when was beaten by her boyfriend on March 20, 2007. The Commission found that this incident was an "intervening act" which "[broke] the causal connection between [the claimant's] current conditions of ill-being and the March 4, 2004, work accident," thereby

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doctors."

terminating the employer's liability to pay compensation after the March 20, 2007, incident. In support of this finding, the Commission noted that, although the claimant was still suffering from back pain and sciatica prior to the March 20, 2007, attack, she did not require surgical intervention for her lumbar condition until after that attack. Moreover, the Commission found that Dr. Perales' medical records showed that the claimant's lumbar problems worsened after the March 20, 2007, attack. It further noted that, in his August 21, 2009, letter, Dr. Perales attributed the claimant's "ongoing issues" and her total disability to that attack rather than to the March 4, 2004, work incident. Based upon the back problems the claimant was experiencing after the work accident and prior to the March 2007 incident, the Commission found that the claimant suffered a 10 percent loss of the person-as-a-whole as a result of the work accident. The Commission therefore vacated the arbitrator's award of PTD benefits, awarded PPD benefits in the amount of 10 percent person-as-a-whole, and reduced the arbitrator's award of medical expenses to \$36,813.28 (the amount of medical expenses she incurred from the time of the work accident through March 19, 2007). The Commission affirmed and adopted the arbitrator's decision in all other respects.

¶ 51 The claimant then sought judicial review of the Commission's decision in the circuit court of LaSalle County. The circuit court confirmed the Commission's ruling.

¶ 52 This appeal followed.

¶ 53 ANALYSIS

¶ 54 On appeal, the claimant argues that the "circuit court manifestly erred in affirming and adopting the Commission's findings" that: (1) the claimant was not permanently and totally disabled as a result of the March 4, 2004, work accident; and (2) medical expenses for back treatments provided to the claimant after March 19, 2007, were not causally related to the work

accident. In making this argument, the claimant erroneously asks us to review the circuit court's judgment. When a party appeals to the appellate court following the entry of a judgment of the circuit court in a workers' compensation proceeding, "it is the decision of the Commission, not the judgment of the circuit court, which is under consideration." *Farris v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130767WC, ¶ 72; see also *Travelers Insurance v. Precision Cabinets, Inc.*, 2012 IL App (2d) 110258WC, ¶ 33 ("In a workers' compensation proceeding, the Commission, an administrative agency, is the ultimate decision-maker" and the appellate court "reviews the decision of the Commission, not the decision of the circuit court."). Accordingly, the question presented in this appeal is whether the Commission erred in vacating the arbitrator's award of PTD benefits and in reducing the arbitrator's award of medical expenses. The Commission based both of those rulings on its finding that the March 20, 2007, incident (when the claimant was attacked and beaten by her boyfriend) constituted an "intervening act" that broke the causal connection between the claimant's current condition of ill-being and the March 4, 2004, work accident, thereby terminating the employer's liability to pay compensation after the March 20, 2007, incident.

¶ 55 To obtain compensation under the Act, an injured employee must prove by a preponderance of the evidence a causal connection between a work-related injury and the employee's condition of ill-being. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786 (2005). The claimant's work-related accident must be a causative factor in his condition of ill-being, but it need not be the sole or primary cause. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d at 193, 205 (2003). Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related

injury and an ensuing disability or injury. *Id.*; see also *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 742 (1994).

¶ 56 Whether a causal connection exists between the employee's condition of ill-being and a particular work-related accident is a question of fact for the Commission. *Vogel*, 354 Ill. App. 3d at 786; see also *Bell & Gossett Co. v. Industrial Comm'n*, 53 Ill. 2d 144, 148 (1972) (whether accident constitutes independent, intervening cause is a question of fact for the Commission); *Global Products v. Illinois Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 411 (2009); *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434 (2011). In determining causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406–07 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999); *Mendota Township High School v. Industrial Comm'n*, 243 Ill. App. 3d 834, 836 (1993). A reviewing court may not substitute its judgment for that of the Commission on these issues merely because other inferences may be drawn from the evidence. *Berry*, 99 Ill. 2d at 407. The Commission's findings will not be overturned unless they are against the manifest weight of the evidence (*Tower Automotive*, 407 Ill. App. 3d at 434), *i. e.*, unless the record discloses that an opposite conclusion is “clearly apparent” (*Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721, 729–30 (2000)).

¶ 57 In this case, the Commission's finding that the March 20, 2007, incident was an intervening act that broke the causal connection between the claimant's current condition of ill-being and the March 4, 2004, work accident was against the manifest weight of the evidence. No

medical expert rendered an opinion to that effect. Dr. Delheimer, the employer's IME physician, was never provided with any medical records regarding the March 20, 2007, assault, and he never opined that the claimant's lumbar problems worsened after that incident. Although Dr. Delheimer reviewed Dr. Perales's medical records before preparing his report, he did not opine that Dr. Perales's records indicated that the claimant's back condition worsened after March 20, 2007.

¶ 58 Moreover, the claimant's medical records, the opinions of other doctors, and other evidence of record contradict the Commission's finding that the March 20, 2007, incident caused some new and independent injury to the claimant's lower back. MRI scans of the claimant's lumbar spine taken after the March 20, 2007, incident looked substantially the same as the MRI scan taken shortly after the March 2004 work accident. All of these MRI scans showed an annular tear at L4-L5, which Dr. DePhillips opined was most likely caused by the March 4, 2004, work accident. Dr. DePhillips opined that an annular tear like the one the claimant had sustained would cause a person to experience low back pain that continually worsened over time. Although Dr. DePhillips was unaware of the March 20, 2007, assault when he rendered his initial causation opinion (and he acknowledged that the types of injuries the claimant suffered during that assault were "significant events that could have a jarring impact on an individual's lumbar spine"), he stated that his causation opinions could "remain unchanged" notwithstanding the March 20, 2007, incident because: (1) the claimant experienced ongoing symptoms relating to her lower back injury prior to the March 20, 2007, incident; (2) the 2004 and 2005 MRI scans, which revealed an annular tear at L4-L5 that caused her lower back symptoms, preexisted any trauma other than the March 2004 work accident; and (3) there was "no indication" that the March 20, 2007, assault affected the claimant's lower back or exacerbated her lower back

condition.

¶ 59 Dr. DePhillips' opinions on this issue are supported by the claimant's medical records and by the opinions of Dr. Perales, the claimant's treating physician. The March 20, 2007, ER records reflect that the claimant sustained injuries to her head, eye, arms, and *upper* back on that date, but they do not reference any injuries to the claimant's *lower* back. When the claimant visited Dr. Perales shortly after the March 20, 2007, incident, she complained of headaches and other problems but did not complain of lower back problems or seek any treatment for her back. Dr. Perales's records did not reference the claimant's low back pain or radicular symptoms again until several months later. Moreover, during his February 2011 evidence deposition, Dr. Perales testified that: (1) that the March 20, 2007, incident did not change the claimant's symptomatology with regard to her lower back. To the contrary, her low back symptoms remained the same and did not spike "even initially" after the March 2007 incident; (2) when the claimant saw Dr. Perales on April 2, 2007, she made no complaints regarding her low back and did not mention that her low back pain had been exacerbated or worsened by the March 20, 2007. Dr. Perales opined that the radiologist's findings following the April 2, 2010, MRI of the claimant's lumbar spine were "not appreciably changed" when compared to the January 2007 MRI. He also opined that the claimant had ongoing back problems that appeared to be both progressing and permanently disabling, and that all of the medication and other treatments he had prescribed for the claimant's low back condition were causally related to the March 4, 2004, work accident.

¶ 60 In support of its finding that the March 20, 2007, attack was an intervening cause, the Commission noted that the claimant did not require surgical intervention for her lumbar condition until after that attack, and that Dr. Perales' medical records showed that the claimant's



lumbar problems worsened after the March 20, 2007, attack. However, the records indicate that some of the claimant's treating doctors had considered back surgery as a treatment option for the claimant (and had advised the claimant of that fact) long before the March 20, 2007, incident. On November 9, 2005, after the claimant told Dr. Olivero that the epidural steroid injections he prescribed had only slightly improved her back condition, Dr. Olivero advised her that the next option would either be a fusion surgery or an artificial disc replacement. He referred the claimant to Dr. Dzung Dinh, a neurosurgeon, for a surgical consultation. Later that month, Dr. Dinh noted in his medical record that, if the claimant's symptoms persisted despite further treatment by Dr. Snyder, "we can consider a discogram at L3-4 and L4-5 as a prelude to TDR." (Emphasis added.) Moreover, Dr. DePhillips opined that an annular tear like the one the claimant had sustained would cause a person to experience low back pain that continually worsened over time, and he linked the claimant's total disability and need for back surgery in April of 2010 to the March 2004, work accident, which caused the annular tear that required surgical repair.

¶ 61 Further, as noted above, the medical records do not support the Commission's finding that the claimant's lower back condition worsened as a result of the March 20, 2007, assault. The medical records (like the opinions of Drs. Perales and DePhillips) indicate that the claimant had a progressive lower back condition related to an annular tear at L4-L5 that gradually worsened over time of its own accord (*i.e.*, without any contribution by the March 20, 2007, incident). Approximately two weeks prior to the March 20, 2007, incident, the claimant went to the emergency room complaining of "shooting" and "burning" pain radiating from her back to her left buttock, leg, and knee. She described this pain as intolerable, and she reported a history of chronic low back pain that was being treated by a neurologist. Five days later, she sought

treatment from Dr. Dinh for a “sharp, shooting” radicular pain which Dr. Dinh associated with her preexisting annular tear at L4-L5. Thus, the medical records reveal that the claimant’s lower back symptoms had progressed to an intolerable state before the March 20, 2007, incident.

Although the claimant’s lower back condition continued to progress gradually after the March 20, 2007, incident, there is no evidence of any rapid or dramatic worsening of this condition shortly after that incident. Indeed, as noted above, Dr. Perales testified that no such worsening occurred at that time.<sup>7</sup> The gradual worsening that occurred after the March 20, 2007, incident was not materially different from the gradual worsening that had occurred before that incident.

¶ 62 The overwhelming weight of the evidence establishes that the March 2004 work accident caused or aggravated a lower back condition which continued to progress until it became totally disabling. There is no evidence suggesting that the March 20, 2007, assault caused a new lower back injury or independently aggravated the claimant’s preexisting, work-related low back condition. But even assuming *arguendo* that it did aggravate her prior condition, that fact would not support the Commission’s ruling in this case. “A nonemployment-related factor which is a contributing cause with the compensable injury in an ensuing injury or disability does not constitute an intervening cause sufficient to break the causal connection between the employment and claimant’s condition of ill-being.” *Mendota Township High School*, 243 Ill. App. 3d at 837; see also *International Harvester Co. v. Industrial Comm’n*, 46 Ill. 2d 238, 247 (1970). The manifest weight of the evidence in this case establishes that the March 2004 work accident was at least a contributing cause of the claimant’s current, totally disabling condition.

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<sup>7</sup> The Commission also relied upon the fact that, in his August 21, 2009, letter, Dr. Perales attributed the claimant’s “ongoing issues” and her total disability to the March 20, 2007, attack rather than to the March 4, 2004, work incident. However, the August 21, 2009, letter does not suggest that the March 20, 2007, incident was the cause of the claimant’s current lower back condition. During his subsequent sworn deposition testimony, Dr. Perales rejected any such conclusion.

¶ 63 The employer argues that *International Harvester, Mendota Township High School*, and *Vogel* are inapposite because here, unlike in those cases, the claimant had reached MMI prior to the March 20, 2007, incident. Thus, the employer asserts, any lower back symptoms or treatment occurring after that incident cannot be characterized as a mere aggravation of a previous, unresolved or ongoing medical condition. The employer bases this argument on the opinions of Drs. Delheimer and two other treating doctors, each of whom opined that the claimant had reached MMI from the March 2004 work accident (or had released the claimant from care without restrictions) within weeks or months of the accident.<sup>8</sup> The employer also notes that the claimant was able to work without restrictions for long periods of time and that there was gaps in the claimant's treatment for her back condition.

¶ 64 We do not find these arguments persuasive. The Commission awarded the claimant medical expenses for all the medical treatments she received for her lower back condition from the time of the work accident through March 19, 2007. Thus, the Commission implicitly rejected any medical opinion suggesting that the claimant had suffered only a temporary aggravation of a preexisting back condition that had completely resolved within weeks or months after the March 2004 accident. The Commission clearly found that the claimant suffered a work-related back condition that required ongoing, progressive treatment as it worsened for several years, and that the claimant was still being treated for that ongoing condition as of March 19, 2007 (and was entitled to compensation for such treatments). The Commission's decision was based entirely upon its finding of an independent, intervening incident occurring on March 20, 2007, not upon

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<sup>8</sup> Dr. Fresco released the claimant to work without restrictions on March 18, 2004. Dr. Delheimer opined that the claimant had suffered a temporary aggravation of a preexisting back condition during the March 4, 2004, work accident, which resolved on March 18, 2004, at which time the claimant reached MMI. Dr. Davis opined that the claimant had reached MMI from the March 2004 work accident as of December 8, 2004.

any medical opinions suggesting that the claimant had reached MMI shortly after the accident. As noted above, there is no evidence supporting the Commission's finding of an intervening accident on March 20, 2007. Moreover, the claimant was still receiving compensable treatments for his work-related condition immediately prior to the alleged intervening incident. Thus, contrary to the employer's argument, the rule announced in *International Harvester, Mendota Township High School*, and *Vogel* applies in this case. To the extent that the March 20, 2007, incident aggravated the claimant's lower back condition in any way, that would not constitute an intervening act sufficient to break the causal connection between the March 2004 work accident and the claimant's current condition of ill-being. *International Harvester Co.*, 46 Ill. 2d at 247; *Mendota Township High School*, 243 Ill. App. 3d at 837.

¶ 65 As to the gaps in the claimant's treatment, her initial ability to work without restrictions, and her initial improvement after the accident, Dr. DePhillips testified that discogenic pain and other symptoms of an annular tear worsen over time and may not appear at all until eight weeks after the traumatic disc injury. He also opined that a person who sustains such an injury might feel better shortly after the injury as the muscular or ligamentous component of the injury improves, and the person might begin to experience discogenic pain several weeks later.

¶ 66 The evidence in this case establishes that the claimant was totally and permanently disabled, that the March 4, 2004, work accident was a contributing cause of that disability, and that all of the medical treatments that the claimant received for her lower back condition and associated symptoms from the time of the work accident through the time of arbitration were compensable under the Act. The Commission's findings to the contrary are against the manifest weight of the evidence.

¶ 67

## CONCLUSION

¶ 68 For the foregoing reasons, we reverse the judgment of the circuit court of LaSalle County, reverse the decision of the Commission, and reinstate the decision of the arbitrator.

¶ 69 Judgment of the circuit court of LaSalle County reversed; decision of the Commission reversed; arbitrator's decision reinstated.