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Carla Bender
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Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MICHELLE BROOKS, a/k/a MICHELLE WILLIAMS, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.* (Regional Elite Airline Services, LLC, Appellee).	)	Appeal from the Circuit Court of Champaign County No. 17MR585 Honorable Thomas J. Difanis, Judge Presiding.

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

ORDER

¶ 1 *Held*: By finding that claimant's (1) current condition of ill-being was not causally related to her work-related accident and (2) unrelated fall severed the chain of causation, the Illinois Workers' Compensation Commission made findings that were against the manifest weight of the evidence.

¶ 2 The Illinois Workers' Compensation Commission (Commission) found that claimant, Michelle Brooks, had sustained work-related injuries to her shoulder, neck, and back, and accordingly, the Commission ordered the employer, Regional Elite Airline Services, LLC (Elite), to pay benefits to her pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) through March 27, 2013. The Commission denied further benefits, finding

that claimant's current conditions of ill-being were not causally related to her work-related accident. Claimant sought judicial review in the Sangamon County circuit court because she disagreed with the Commission's findings. The court affirmed the Commission's decision. Claimant appeals. We reverse the judgment because we find the Commission's decision was against the manifest weight of the evidence.

¶ 3 I. BACKGROUND

¶ 4 On April 4, 2011, claimant filed an application for adjustment of claim pursuant to the Act. She sought benefits from the employer, Elite, claiming she suffered injuries primary *and* secondary to her injury on May 12, 2010, in a work-related accident. She claims, after her necessary and resulting shoulder surgery, the doctor placed her right arm in a sling for healing. This immobility of her right arm caused nerve damage to her right ulnar nerve.

¶ 5 On April 13, 2016, the arbitration hearing was conducted. Claimant testified that sometime after her divorce in February 2009, she changed her name from Michelle Brooks to Michelle Williams. Both names are used in the record. She stated she had been employed at Willard Airport in Champaign by Elite since March 2010 as a customer-service agent and ground-service worker. Her duties as a ground-service worker included moving baggage, weighing up to 70 pounds, several times before it was loaded onto the airplane. She described her job duties as very physical and "heavy duty."

¶ 6 On May 12, 2010, she was working with a CRJ200 airplane, helping a coworker guide the jet bridge toward the airplane. As she was doing so, the 600-pound door of the airplane came down and "blasted" claimant in the back. The door struck her upper back, neck, head, shoulders, and elbow. The impact forced her to her knees. Rescue personnel responded and took claimant by ambulance to Carle Foundation Hospital (Carle) emergency room. A computed

tomography (CT) scan of her neck and head were normal. She was diagnosed with a head contusion and cervical strain. She was released with pain medication and light-duty restrictions and was advised to follow up with an occupational medicine specialist, Dr. Thomas Sutter.

¶ 7 Dr. Sutter's medical records were presented at the arbitration hearing. According to his record dated May 14, 2010, he evaluated claimant for complaints of head and neck pain. He recommended ThermaCare and ibuprofen. He advised her to avoid overhead work or twisting her neck. She returned for evaluation on June 21, 2010, at which time she complained of continued head and neck pain. He recommended "a short course of physical therapy," the use of a transcutaneous electrical nerve stimulation (TENS) unit, and rest. Claimant did not return to Dr. Sutter until February 18, 2011, when she reported continued pain in her back and neck. According to Dr. Sutter's notes, claimant reported no numbness or weakness in her hands.

¶ 8 On March 17, 2011, claimant underwent a magnetic resonance imaging scan (MRI) of her neck, which indicated some mild degenerative changes but otherwise indicated normal findings. However, by April 2011, she reported worsening neck and back pain. Dr. Sutter suggested she obtain a second opinion and released her from his care without noting restrictions.

¶ 9 On May 17, 2011, claimant consulted with Dr. David Fletcher, another occupational medicine specialist, for "extreme pain in her neck, mid-back, and scapular areas." Dr. Fletcher noted that claimant's "past medical history [was] significant for back strain/pain, digestive disorder, rotator cuff injury, tennis/golfers elbow, [and] carpal tunnel wrist/hand." He recommended physical therapy, a TENS unit, and an MRI arthrogram of the right shoulder, which was performed on July 18, 2011. This study revealed an "intermediate grade intrasubstance partial tear of the supraspinatus tendon" (the rotator cuff), as well as arthritis and bursitis.

¶ 10 Dr. Fletcher referred claimant to Dr. Lawrence Li, an orthopedic surgeon at Orthopedic & Sports Medicine Center for evaluation and treatment for the tear. Her first visit was on July 21, 2011. According to Dr. Li's notes, claimant complained of shoulder pain but she did "not have any numbness or tingling going down her arm." He noted her prior left shoulder arthroscopy, her "right TFC repair," and her "right ulnar nerve transposition." (In 2006, claimant suffered an injury to her right elbow that was surgically treated. According to claimant, six months after her surgery, the pain in her elbow had fully resolved. She returned to work without restrictions.)

¶ 11 On July 1, 2011, Elite sent claimant to Dr. Richard Kube II, an orthopedic surgeon for an independent medical examination (IME). After his review of claimant's medical records and his physical examination of her, Dr. Kube diagnosed claimant with a "crush-type injury to her neck and back and shoulder." In his opinion, claimant's shoulder and back injury was causally related to her work accident.

¶ 12 On November 4, 2011, Dr. Li performed surgery to repair the tear in claimant's right rotator cuff. On December 22, 2011, during a follow-up visit, Dr. Li made the following note based upon his physical exam: "Positive tinels elbow and decreased sensation ulnar nerve distribution." After reviewing the most recent nerve test (from December 2011), he noted "changes in ulnar innervated muscles but NCV does not show enough decrease across elbow to diagnose cubital tunnel syndrome." Cubital tunnel syndrome, he explained, is "compression of the ulnar nerve at the elbow." Dr. Li diagnosed claimant with "right early cubital tunnel syndrome and ulnar neuritis." In his deposition, Dr. Li explained that claimant's complaint of numbness and tingling in her right hand could have been related to her history of an ulnar-nerve transposition, which was aggravated from her arm being in a sling after the most recent surgery.

In Dr. Li's opinion, based upon a reasonable degree of medical and scientific certainty, claimant's recent complaints of tingling and numbness could have been caused by the manipulation and positioning of the ulnar nerve during and after surgery. The irritation of the nerve, coupled with the swelling from the surgery, which most likely moved down the arm from the shoulder to the wrist, and the immobilization of the arm in a sling, "would definitely aggravate" the nerve.

¶ 13 On January 5, 2012, Dr. Li noted that claimant still had "numbness and tingling in ulnar nerve distribution." Referring to claimant's 2006 right cubital tunnel release and anterior transposition of the nerve, Dr. Li stated claimant's "symptoms now the same as before surgery after this work injury aggravation." The doctor stated Dr. Fletcher had performed Semmes-Weinstein testing that "showed loss of sensation in ulnar nerve distribution." Dr. Li's diagnosis changed to right cubital tunnel syndrome. He suggested claimant undergo another right cubital tunnel release and anterior transposition of ulnar nerve in order to decompress the ulnar nerve.

¶ 14 In light of Dr. Li's surgical recommendation, Elite requested claimant participate in an IME with Dr. Thomas Kiesler. The IME occurred on April 9, 2012. Dr. Kiesler, an orthopedic surgeon, diagnosed claimant with right ulnar nerve neuritis, which he described as the inflammation and irritability of the nerve without compression of the nerve. Cubital tunnel syndrome meant the nerve was malfunctioning because of compression. In his opinion, claimant's ulnar nerve neuritis was not "directly related to the accident." He stated the basis for his opinion was "just from a timeline standpoint." Claimant's injury occurred in 2010, yet she had only experienced symptoms in the ulnar nerve for approximately one year. Dr. Kiesler admitted he had not examined claimant's shoulder so he was unable to determine whether certain movements of her shoulder caused any ulnar nerve compression. He was asked to evaluate

claimant's elbow only.

¶ 15 Dr. Kiesler was asked whether it was possible that the position of claimant's arm during or after her shoulder surgery could have "put some stress into the elbow." The doctor stated he could not "make any opinion about that because [he did not] know the position of the arm." He acknowledged that "after some surgeries people wake up and they have ulnar nerve problems." Overall, in Dr. Kiesler's opinion, claimant's symptoms of ulnar nerve neuritis are a recurrence of her previous cubital tunnel syndrome and related ulnar nerve surgery. He would defer to Dr. Li for opinions regarding the placement of claimant's arm and resulting nerve damage. In Dr. Kiesler's opinion, claimant suffered from a legitimate medical problem in her ulnar nerve.

¶ 16 In the meantime, claimant was again examined by Dr. Kube on February 24, 2012. In his opinion, claimant would benefit from continued treatment with Dr. Li for her right shoulder. However, with regard to her neck injury, Dr. Kube opined that claimant had reached maximum medical improvement (MMI). According to Dr. Kube, claimant's elbow complaint had nothing to do with her shoulder or neck injuries. However, he thought it "was possible" that the manipulation of her arm during her shoulder surgery could have aggravated her elbow problem, but he stated he did not "have enough information to be able to answer."

¶ 17 On June 1, 2012, Dr. Li performed a second shoulder surgery on claimant to clean scar tissue from the surgical site. At a June 13, 2012, follow up, Dr. Li noted that claimant was doing well after the second surgery. However, on July 10, 2012, he noted that claimant still had numbness and tingling in the right ulnar nerve. Claimant's right elbow had full range of motion with a "positive tinel's test at cubital tunnel." Dr. Li released claimant with regard to her right shoulder without permanent restrictions, deferring to Dr. Fletcher with regard to the imposition

of restrictions, if any.

¶ 18 The July 2012 visit was the last time Dr. Li saw claimant until October 2015 when she reported shoulder pain and continued tingling and numbness in her right hand. Her pain had gotten worse during the six months prior. In Dr. Li's opinion, claimant required permanent restrictions related to her right shoulder. He examined claimant on November 24, 2015. He testified he had no information at the time of that examination that claimant suffered any new injury between 2012 and 2015.

¶ 19 At an August 7, 2012, visit, Dr. Fletcher indicated claimant was at MMI for her right shoulder and that her right ulnar nerve issue was the subject of litigation.

¶ 20 On September 4, 2012, claimant saw Dr. Fletcher for a follow-up appointment for her "bilateral shoulder, spine, and neck pain." He noted she was post right shoulder arthroscopy from November 4, 2011, and a second right shoulder scope on June 1, 2012, both performed by Dr. Li. Dr. Fletcher referred to claimant as a "therapeutic challenge." Claimant complained of back and shoulder pain as well as "pain and numbness that radiates down her right arm." Dr. Fletcher noted that he and Dr. Li recommended claimant undergo a right orbital tunnel release and anterior transposition of the ulnar nerve but authorization for the surgery was pending. Otherwise, in Dr. Fletcher's opinion, claimant had reached MMI. He noted she had not responded to extensive therapy for her cervical pain and headaches.

¶ 21 On September 14, 2012, claimant underwent a cervical spine MRI as ordered by Dr. Fletcher. The results indicated mild multilevel cervical spondylosis and mild bilateral foraminal narrowing at C4-C5 and C5-C6.

¶ 22 Dr. Fletcher referred claimant to Dr. Barry Riskin, a neurologist at Christie Clinic, who first met claimant on September 20, 2012. Upon performing a physical musculoskeletal

examination, he noted spasm and tenderness over the upper back extending to shoulders. He noted a "decreased range of motion in all directions." Dr. Riskin said the one symptom he could not fully account for was claimant's sensation of shooting pain down into her lower back and legs when she experienced "extremes of head and neck pain." He prescribed a pain medication and advised her that she needed to work on reconditioning her sensitized pain state.

¶ 23 On October 10, 2012, November 14, 2012, and December 11, 2012, Dr. Steven Thatcher, a pain specialist, performed cervical translaminar epidural steroid injections. According to Dr. Thatcher's notes, the injections had been "very effective" in relieving claimant's headaches and neck pain.

¶ 24 On November 29, 2012, claimant saw Dr. Fletcher, who stated that, in his opinion, claimant remained temporarily totally disabled. He ordered her to wear an elbow pad and return for reevaluation a month later.

¶ 25 A medical record contained within Dr. Riskin's records indicated that claimant underwent a nerve conduction velocity test (NCV) on December 21, 2011. (This is the same nerve test Dr. Li reviewed when he found the possibility of the early onset of cubital tunnel syndrome, though it was not enough for a diagnosis.) Dr. Riskin's notes from this medical record indicated that the NCV testing was "essentially normal" with no "evidence for entrapment or other neuropathy at or around the right elbow." He noted the "slowing of the median nerve from the fourth finger to wrist [was] seen bilaterally, it [was] mild and not of certain clinical significance." He found some instability of the right ulnar nerve but not enough to "endorse right ulnar neuropathy."

¶ 26 In 2013 and 2014, claimant sought treatment from Carle Physician Group, of which her primary care physician, Dr. Jessica Madden, was a member, for ailments related to

sinus infections, earaches, nasal congestion, and the like. However, claimant did complain on each visit of head, back, and neck pain as well as numbness in her fourth and fifth digits of her right hand.

¶ 27 On March 8, 2014, claimant appeared at the Carle emergency room after she fell on the ice and hit the right side of her face on the bumper of a car. CT scans of her head and spine showed no acute abnormalities. After a period of observation in the emergency room, the doctor found claimant was "neurologically intact" and released her.

¶ 28 On April 17, 2014, Dr. Patrick Sweeney, an orthopedic surgeon, examined claimant at the request of her attorney. His examination was based on claimant's complaints of "significant tenderness" on the right side of her cervical spine from the back of her neck through her shoulder. During his exam, he noted that claimant had diminished sensation along "the ulnar aspect of her right hand." In Dr. Sweeney's opinion, claimant's upper back problems were related to her work accident. However, claimant had not told Dr. Sweeney about her March 8, 2014, fall on the ice.

¶ 29 On October 22, 2014, Dr. Timothy VanFleet, an orthopedic surgeon, conducted an IME of claimant. After his review of some medical records and examination of claimant, Dr. VanFleet diagnosed claimant with chronic cervicalgia and cervical spondylosis. He stated that at the time of his evaluation, he did not feel the diagnosis was related to the work injury in 2010 because (1) there were no objective findings, only subjective complaints of neck pain; (2) the four-year lapse of time between the evaluation and the accident; and (3) an intervening injury (her March 2014 fall on the ice) that "could have been just as responsible for the neck pain, in fact, likely more responsible for the neck pain than the injury that [he] was seeing her for." He suggested facet injections and occipital nerve blocks. Dr. VanFleet noted the year and a half

lapse in claimant's treatment as a basis for his opinion. He said he attributed this lapse to her reaching MMI and the indication that her pain was not getting worse. He said he did not have any opinion related to claimant's "cubital tunnel, right arm-elbow situation."

¶ 30 In Dr. VanFleet's opinion, claimant's condition from her May 2010 work-related accident, which was at MMI, was exacerbated and aggravated when she fell in 2014. In other words, any treatment sought after claimant fell and hit her head in March 2014 was a result of that latter accident.

¶ 31 On October 28, 2015, claimant returned to Dr. Li for evaluation. He ordered an updated MRI and an electromyography/nerve conduction velocity test (EMG/NCV). According to Dr. Li's notes dated November 24, 2015, the EMG/NCV revealed right cubital tunnel syndrome, which claimant developed post operatively after the June 1, 2012, second rotator cuff surgery. Dr. Li noted claimant's "numbness and tingling in her ulnar nerve distribution has never gone away. It was always there and has gotten worse." In Dr. Li's opinion, claimant needed a "right cubital tunnel release and anterior transposition of ulnar nerve." Noting that this was "a disputed case," he would "await litigation to resolve."

¶ 32 On November 17, 2015, Dr. Edward Trudeau, a physiatrist, examined claimant after having previously examined her on June 26, 2012, at Dr. Li's request and found that she "has continued to have similar symptomatology in the upper extremities ever since the original injury and notes that she is substantially similar to and increased in discomfort since the last time we saw her approximately three years ago." He reviewed the MRI of claimant's shoulder conducted on October 30, 2015. Of note to Dr. Trudeau was the nerve study showing ulnar neuropathy at the right elbow "very similar to the previous study of [June 20, 2012]." Dr. Trudeau found "operative intervention per Dr. Li for exploration of, decompression of, and

neurolysis of the ulnar nerve at the right elbow may prove worthy of consideration—very much a judgment call."

¶ 33 After considering the evidence, the arbitrator found claimant had proved that the accidental injury she sustained arose out of and in the course of employment. This was uncontested. However the arbitrator concluded as follows: (1) claimant's current neck and right arm conditions are not causally related to her May 10, 2010, work-related accident; (2) claimant's intervening injury in March 2014 severed the chain of causation according to Drs. Sweeney and VanFleet; (3) Dr. Li's opinion that claimant's recurrent cubital tunnel syndrome is causally related to her work accident was not credible; (4) Elite is not responsible for claimant's unpaid medical bills after March 27, 2013 (claimant's last visit with Dr. Fletcher); and (5) claimant is not entitled to temporary total disability (TTD), maintenance, or penalties.

¶ 34 On review, in a corrected decision (after adding two insurance companies as party respondents), on July 11, 2017, the Commission affirmed and adopted the arbitrator's decision in full. In addition, the Commission remanded the matter for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980), if necessary. On June 14, 2018, the circuit court of Champaign County confirmed the Commission, concluding it was not against the manifest weight of the evidence.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 In this appeal, claimant argues the Commission erred by (1) finding she failed to prove that her current condition of ill-being, *i.e.*, her cubital tunnel syndrome or ulnar nerve neuritis, was caused by her work-related accident on May 12, 2010; (2) determining that she suffered an injury in March 2014 that broke the chain of causation relating to the injuries to her

neck and back; (3) finding she had reached MMI with regard to her shoulder injury; and (4) denying her benefits, costs, and penalties.

¶ 38 A. Causal Connection

¶ 39 Claimant agrees that her current condition in her elbow or ulnar nerve was not a *direct* result of her May 2010 work accident. Rather, she claims she sufficiently proved that her ulnar-nerve issue arose *after* her rotator cuff surgery—a reasonable and necessary consequence of the work accident. In other words, she claims that *but for* undergoing the necessary shoulder surgeries, she would not currently be suffering from her ulnar-nerve problem.

¶ 40 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). "The 'arising out of' component is primarily concerned with causal connection" and is satisfied if the claimant shows "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.* "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." (Emphasis in original.) *Id.* at 205.

¶ 41 The Commission had before it medical testimony regarding the cause and origin of claimant's right elbow problem. (We refer to claimant's diagnoses of cubital tunnel syndrome and/or ulnar nerve neuritis interchangeably or collectively as her "elbow problem" for ease of reference.) The issue of causation with regard to her elbow problem rests with the expert testimony and medical records, making this issue one that relies on the manifest-weight-of-the-evidence standard. In *Dexheimer v. Industrial Comm'n*, 202 Ill. App. 3d 437, 442-43 (1990), the

court stated:

> "It is the province of the Commission to weigh and resolve conflicts in testimony, including medical testimony, and to choose among conflicting inferences therefrom. [Citations.] It is only when the decision of the Commission is without substantial foundation in the evidence or its finding is manifestly against the weight of the evidence that the findings of the Commission should be set aside."

(See also *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980).) A reviewing court cannot reject or disregard permissible inferences drawn by the Commission because different or conflicting inferences may also be drawn from the same facts, nor can it substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence. *Martin v. Industrial Comm'n*, 227 Ill. App. 3d 217, 219 (1992). For a factual finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007). "The test is not whether this or any other tribunal might reach an opposite conclusion but whether there is sufficient factual evidence in the record to support the Commission's determination." *Navistar International Transportation Corp. v. Industrial Comm'n*, 331 Ill. App. 3d 405, 415 (2002). "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006).

¶ 42 The Commission made no specific findings of fact but fully adopted the arbitrator's decision. Thus, we will refer to the arbitrator's findings of fact for the purpose of our analysis.

¶ 43 1. *Elbow Problem*

¶ 44 In making the decision that claimant's current condition of ill-being (her elbow problem) was not causally related to her work accident, the arbitrator determined that Dr. Li's opinion was "not credible." Upon this court's review of the record, to the contrary, we find the manifest weight of the evidence on the issue of causation *supports* Dr. Li's opinion.

¶ 45 The arbitrator questioned Dr. Li's testimony that claimant's elbow problem began only after her first shoulder surgery in November 2011. The arbitrator's decision stated as follows:

> "Dr. Li testified that [claimant]'s problems with her cubital tunnel only began after her first surgery [(presumably referring to the November 2011 surgery)]. However, [claimant] reported ongoing problems with her right elbow following her first surgery in 2006. Also, the EMG/NCV testing conducted in December of 2011, most contemporaneously with the time [claimant] was in a sling, was normal. It was not until June of 2012 that [claimant's] EMG/NCV testing showed a right ulnar neuropathy. Furthermore, Dr. Li testified that [claimant]'s findings on EMG/NCV could have been consistent with a residual from her surgery in 2006. Also, Dr. Sweeney opined that [claimant's] cubital tunnel was unrelated to her work accident."

¶ 46 The evidence in the record does not support the arbitrator's above conclusions. Although it is true claimant had a prior cubital tunnel release in 2006 after she fell over an air cart hose, the record demonstrates that this prior surgery had little to no affect on the current onset of her elbow problem following her November 2011 and June 2012 shoulder surgeries. First, claimant specifically testified that her prior elbow problem completely resolved and did not

affect her ability to work. She resumed full duty with no restrictions in 2008. Contrary to the implication in the arbitrator's "conclusions of law," claimant was not suffering from "ongoing problems with her right elbow following her first surgery in 2006."

¶ 47 Second, the EMG/NCV testing performed on December 21, 2011, approximately six weeks after claimant's first rotator cuff surgery, showed the beginning of claimant's elbow problem. Dr. Li's medical records included a "visit summary" dated December 22, 2011, when he met with claimant "for a follow up to go over EMG results." His physical examination of claimant revealed "positive tinels elbow and decreased sensation ulnar nerve distribution." His review of the test results showed "changes in ulnar innervated muscles but NCV does not show enough decrease across elbow to diagnose cubital tunnel syndrome." Dr. Li's diagnosis was "right *early* cubital tunnel syndrome and ulnar neuritis." (Emphasis added.) When questioned about the EMG/NCV results during his deposition, Dr. Li stated: "It says that—shows some instability. Needle EMG review of some instability in the muscles of the right hand innervated by the ulnar nerve but not sufficient to endorse right ulnar neuropathy." Although he referred to the results as "normal," he clearly indicated the test showed "some instability" but the instability was not enough to support a diagnosis of an abnormality.

¶ 48 Dr. Li's testimony of his findings was further supported by Dr. Riskin's records. Dr. Riskin indicated in an office note that he reviewed the December 21, 2011, NCV test results, which he found were "essentially normal" with "no evidence for entrapment or other neuropathy at or around the right elbow." However, he interpreted the results as showing some instability of the right ulnar nerve but not enough to "endorse right ulnar neuropathy."

¶ 49 There is no evidence in the record prior to this EMG/NCV testing of December 2011 to suggest that claimant suffered from any ulnar nerve issues between the time she returned

to work after her 2006 surgery until her November 2011 rotator-cuff surgery. For example, Dr. Kube conducted an IME on July 1, 2011. In his deposition, he specifically testified claimant reported no numbness or tingling in her right arm. The EMG results clearly showed (as interpreted by Dr. Li and corroborated by Dr. Riskin) the onset of what was soon to become right ulnar neuropathy. Thus, the arbitrator's statement that "the EMG/NCV testing conducted in December of 2011, most contemporaneously with the time [claimant] was in a sling, was normal" was certainly not the case nor supported by the record.

¶ 50 The arbitrator also found it "was not until June of 2012 that [claimant]'s EMG/NCV testing showed right ulnar neuropathy." This was likely so because the June 2012 nerve test was presumably the first test performed since the nerve test conducted in December 2011. In that earlier test, Drs. Li and Riskin noticed some changes to the nerve but the changes were not enough to support anything other than a "normal" diagnosis. Thus, the arbitrator was correct, it was not until June 2012 when claimant was *diagnosed* with right ulnar neuropathy. However, the formal diagnosis did not, by any means, suggest claimant had not demonstrated symptoms of ulnar neuropathy before June 2012. In fact, Dr. Fletcher examined claimant on November 9, 2011, five days following her first shoulder surgery. He noted an "abnormal neurological exam. Positive tinel's right elbow." On November 30, 2011, Dr. Fletcher noted claimant demonstrated "recurrent right ulnar neuropathy." He suggested electrical studies be performed as claimant was "facing the need for a right ulnar nerve revision."

¶ 51 Third, none of the doctors who stated opinions about the onset of claimant's elbow problems disagreed with Dr. Li's suggestion that the positioning of claimant's arm during and after her rotator-cuff surgery aggravated her ulnar nerve causing her elbow problems. For example, Dr. Kiesler, an orthopedic surgeon, performed an IME on April 9, 2012, concentrating

on claimant's elbow. He diagnosed claimant with right ulnar nerve neuritis, which he said was not "*directly* related to the accident." (Emphasis added.) When asked whether it was possible that claimant's elbow problem could have been the result of positioning or placement of claimant's arm during her surgery, Dr. Kiesler stated he had no "opinion about that because [he did not] know the position of the arm." He would defer that question to Dr. Li. He acknowledged claimant suffered from a legitimate medical problem in her ulnar nerve. He also acknowledged that "after some surgeries people wake up and they have ulnar nerve problems." Also, Dr. Kube thought it "was possible" that positioning of claimant's arm during surgery could have aggravated her elbow problem though he did not "have enough information to be able to answer."

¶ 52 The arbitrator concluded "Dr. Sweeney opined that [claimant's] cubital tunnel was unrelated to her work accident." Indeed that was Dr. Sweeney's opinion. Specifically he stated: "It is not my opinion that her ulnar neuropathy is causally related to her work related injury." Claimant does not dispute this opinion. She agrees that her May 2010 work accident did not directly cause her elbow problem. However, Dr. Sweeney did not address the possibility that her ulnar nerve neuropathy was a direct cause *from her shoulder surgery*. Therefore, his opinion was not relevant to the actual question before the arbitrator or the Commission.

¶ 53 Given the above, we conclude the Commission's decision, which accepted and adopted the arbitrator's findings of fact and conclusions of law that claimant's elbow problem was not causally related to her work accident was against the manifest weight of the evidence. The record adequately and clearly demonstrates that claimant's elbow problem was the result of her reasonable and necessary shoulder surgery. Her May 2010 work-related accident caused an injury to her shoulder. The manifest weight of the evidence, taking the combined opinions and

supporting medical documentation as set forth above, demonstrates that the required surgery to repair claimant's shoulder "was *a* causative factor in the resulting condition of ill-being." (Emphasis in original.) *Sisbro*, 207 Ill. 2d at 205.

¶ 54 2. *Neck Pain*

¶ 55 In making the decision that claimant's current condition of ill-being (her neck pain) was not causally related to her work accident, the arbitrator determined that claimant's fall on the ice in March 2014 was an "intervening injury that severed the chain of causation between her condition and work accident." Upon this court's review of the record, we find the manifest weight of the evidence on the issue of causation supports claimant's position.

¶ 56 The arbitrator found that claimant did not seek treatment for her head and neck pain after March 2013. Claimant testified she did not seek treatment for her pain because such treatment was denied by the insurance company. However, the record demonstrates that her symptoms continued. From April 2013 until March 2014, claimant sought treatment from her primary care physician Dr. Madden. Although claimant went to Dr. Madden for various health issues such as nasal congestion, sinus infection, and the like, each time she complained of "chronic headache, neck/back pain[.] *** Experience pain, pressure and swelling sensation about the occiput. Pain radiates down spine and laterally across the shoulder blades. *** She reports some numbness in the 4th and 5th digits of the Rt hand d/t ulnar neuropathy, otherwise no radicular symptoms." These complaints, as an example, were noted specifically from an office note dated April 3, 2013.

¶ 57 On March 8, 2014, claimant presented to the emergency room after having reportedly fallen on the ice and hitting her face on the bumper of a car. Her chief complaint was head pain. She denied any "visual changes, numbness, tingling, immobility, lacerations,

abrasions, other joint or muscular complaints." Scans and exams were unremarkable. Within hours, she advised that her headache had completely resolved prior to her release. She *did* advise the emergency room doctor that she had suffered from back pain and chronic headaches since May 2010. The emergency room doctor stated in his report that "the workup, physical exam and observation period do not indicate a serious cause to the symptoms."

¶ 58 The arbitrator's classification of this accident as "significant" is unsupported from the emergency room records. Also, the arbitrator's conclusion that claimant "did not report a history of ongoing headaches, neck pain or right shoulder pain related to her work accident" is repudiated, as stated above, by the emergency room records.

¶ 59 The fact that claimant did not reveal to Dr. Sweeney, who she saw on April 17, 2014, only one month after her fall, that she had fallen on the ice could be classified as negligible but not critical to the issues before us. Dr. Sweeney opined that claimant's back, neck, and shoulder injuries were caused by her May 2010 work-related accident. When asked whether knowledge of claimant's March 2014 fall would change his opinion, he stated that only if "it could be demonstrated that she had a complete recovery, then that may. Otherwise, [he] would have to say she could certainly have suffered an exacerbation at the time, but it was an exacerbation of a pre-existing injury." The arbitrator's conclusion that Dr. Sweeney "testified that [claimant's] ongoing neck problems could solely be related to her intervening injury in March 2014" is an inaccurate summary of his testimony based upon the totality of medical reports in the record demonstrating claimant had not experienced "a complete recovery."

¶ 60 Further, reliance on Dr. VanFleet's testimony was misplaced. He stated claimant had no complaints about her neck, head, or shoulders after December 2012 until March 2014. As stated above, the record does not support that opinion. He characterizes claimant's March 2014

fall as "substantial" but denied reviewing the related emergency room record. In sum, Dr. VanFleet did not appear to have a complete and accurate picture of the totality of claimant's medical records, and therefore, cherry picking from his professional stated opinion likely resulted in an inaccurate overview of the pertinent circumstances. See *Wilson v. Bell Fuels, Inc.*, 214 Ill. App. 3d 868, 875-76 (1991) ("An expert's opinion is only as valid as the basis and reasons for the opinion. [Citation.] When there is no factual support for an expert's conclusions, their conclusions alone do not create a question of fact.").

¶ 61 B. Penalties and Fees

¶ 62 Claimant argues the Commission's decision to deny penalties and attorney fees was against the manifest weight of the evidence. She argues Elite and its insurance carriers denied benefits not because of their good-faith reliance on disputed medical records but as a "proven pattern" of misconduct. We disagree.

¶ 63 First, during the arbitration hearing, claimant agreed on the record to waive the pursuit of the imposition of penalties for unpaid benefits incurred prior to March 10, 2013. Claimant's attorney stated: "And in return for [the insurance carrier's agreement to certain pay benefits and penalties], we have waived any seeking of penalties prior to March 10, 2013, and we appreciate the fact that the respondent has recognized that this was owed." The rule of acquiescence or invited error prohibits a party from requesting to proceed in one manner and then arguing on appeal that the requested action was error. *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶ 33. Thus, we conclude claimant has forfeited any objection related to the Commission's denial of her claim that the insurance carrier's "failing to obey" the Act was a "proven pattern" entitling her to an award of penalties and fees, if any, prior to March 10, 2013.

¶ 64 Next, we address claimant's complaint that the Commission's decision to deny claimant fees and penalties after March 10, 2013, for medical payments associated with her elbow problem was against the manifest weight of the evidence. We again disagree.

¶ 65 Section 19 of the Act addresses the consequences for delayed or refused benefits. See 820 ILCS 305/19 (West 2016). Specifically, subsection (k) allows the award of penalties if "there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation." 820 ILCS 305/19(k) (West 2016). Subsection (l) allows the award of penalties if the employer or the insurance carrier "without good and just cause fail[s], neglect[s], refuse[s], or unreasonably delay[s] the payment of benefits ***." 820 ILCS 305/19(l) (West 2016). Section 16 allows the Commission to assess attorney fees and costs if it deems appropriate under the standards set forth in the Act. 820 ILCS 305/16 (West 2016).

¶ 66 In this case, the Commission found no causal connection between claimant's current condition of ill-being (her elbow problem) and her work-related injury and therefore denied prospective medical payments. Elite did not pay because it was not ordered to pay. As a result, claimant cannot establish that Elite did not have a legitimate justification for nonpayment or that it "systematically and in bad faith resisted" her right to benefits. For these reasons, we deny claimant's request for penalties and fees for nonpayment to date.

¶ 67 C. Summary

¶ 68 Based upon our review of the record, we conclude the Commission's decision, which accepted and adopted the arbitrator's findings of fact and conclusions of law, that claimant's March 2014 fall was an intervening injury that severed the chain of causation was against the manifest weight of the evidence. The record adequately and clearly demonstrates that claimant's head, back, neck, and shoulder pain had not completely resolved prior to her fall.

According to the medical records, claimant's symptoms were reportedly the same prior to and subsequent to the fall.

¶ 69 Further, we conclude the Commission's decision that claimant's current condition of ill-being (her elbow problem) was not causally related to her May 2010 work-related accident was against the manifest weight of the evidence. The record adequately and clearly demonstrates that claimant's elbow problem began after her rotator cuff surgery in November 2011. Her treating physicians, Drs. Li and Riskin, opined that her surgery and the placement of her arm in a sling after surgery most likely to a reasonable degree of medical certainty caused the condition. No other physician directly refuted their opinions.

¶ 70 III. CONCLUSION

¶ 71 For the reasons stated, we reverse the judgment of the circuit court of Champaign County confirming the Commission's decision and we reverse the Commission's decision. We remand this case to the Commission for further consideration consistent with this court's opinion herein.

¶ 72 Reversed and remanded.