No. 3–10–0111WC

Order filed March 16, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

BAKER & TAYLOR, INC.,	)	Appeal from the Circuit Court
	)	of Kankakee County, Illinois
Appellant,	)	
	)	
v.	)	No. 09--MR–210
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al*. (Lori A. Ostrow,	)	Kendall O. Wenzelman,
Appellee.)	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.

Presiding Justice McCullough and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

Held: The Commission's finding that the claimant failed to prove that her current condition of ill-being is causally related to her May 6, 2004, work accident was not against the manifest weight of the evidence.

The claimant, Lori Ostrow, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq*. (West 2004)) seeking benefits for injuries she allegedly sustained during her employment with Baker & Taylor, Inc. (employer). Following a hearing, an arbitrator found that the claimant had sustained an accidental injury

arising out of and in the course of her employment and that her current condition of ill-being was causally related to the accident. Accordingly, the arbitrator awarded the claimant benefits, including temporary total disability (TTD) benefits, medical expenses, and prospective medical treatment.

The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission unanimously reversed the arbitrator's award and denied benefits, finding that the claimant had failed to prove that the work accident was causally related to her current condition of ill-being. The claimant sought judicial review of the Commission's decision in the circuit court of Kankakee County, which reversed the Commission's decision and reinstated the arbitrator's award. The employer now appeals the circuit court's decision.

ISSUE

The employer raises the following issue on appeal:

Whether the Commission's finding that the claimant's current condition of ill-being is not causally related to her May 6, 2004, work accident was against the manifest weight of the evidence.

BACKGROUND

The claimant worked as an invoice clerk for the employer. She began working for the employer in 1997. The operation of the employer includes storing, binding and distributing books. The claimant's job description included transporting invoices around departments with a cart or cabinet on wheels. The invoices she transported weighed approximately 150 pounds. The claimant testified that she is 5'6" tall and weighs 171 pounds.

The claimant testified that on May 6, 2004, she was working full-time with no restrictions. When she arrived at work that day, she felt good with no pain. Immediately thereafter, the claimant began pushing a cart containing a stack of invoices from a computer room into an office area. The cart had one bad wheel which would not roll or turn. There was construction going on in the immediate area and there were file cabinets stacked along the walls. Because of this, the claimant had to push the cart along a very narrow aisle. The aisle was tiled, and the claimant had to push the cart into an office area which had a carpeted floor. To do this, she had to make a turn with the cart. In order to push the cart up from the tile floor to the carpeted floor, the claimant had to move the cart over a metal strip. The claimant bent over at the waist and started pushing with her right arm and yanking with her left arm. When she did this, she felt a sudden "sharp shooting pain" in her neck and "upper back." She yelled. Immediately thereafter, Susan Thompson, one of the claimant's coworkers, came over to help her. The claimant testified that she immediately noticed shooting pains in her neck and down her back and arms.

Th claimant reported this incident to her supervisor, Carol Belshaw. The employer filed an Illinois Form 45 (Employer's First Report of Injury) which reported that an accident occurred on May 6, 2004, at approximately 6:35 a.m. The accident investigation report written and signed by the claimant reflected that she had injured her neck and back in the accident. By checking the corresponding boxes on the report, the claimant indicated that she injured her "neck," "back" "upper," and "left." She did not check the box corresponding to "lower," nor does her accompanying handwritten narrative mention any lower back pain or strain.

In 1999, approximately six years prior to the accident at issue in this case, the claimant suffered a neck injury while working for the employer which resulted in surgery. Specifically, the claimant suffered cervical disc herniations while lifting boxes, ultimately requiring an anterior cervical discectomy and disc fusion surgery at C5-C6. This surgery was performed on June 27, 1999. On April 18, 2002, the claimant agreed to a settlement agreement with the employer for 40% loss of the person. Under the terms of the settlement, the claimant received lump sums for TTD ($1,044.20) and permanent partial disability (PPD) ($9,854.76) at the time the settlement contracts were approved. The remaining $27,737.26 of the settlement amount was paid to claimant on a weekly basis ($187.96 per week) thereafter.

The claimant continued to have neck and arm pain after the 2002 settlement, and she received ongoing medical treatment for these symptoms throughout 2002, 2003, and 2004. The claimant had been treating with Dr. Michel Malek, a neurosurgeon who specializes in the treatment of spinal injuries. On July 30, 2001, an MRI of the claimant's cervical spine showed degenerative disc changes at C6-7 with moderate spurring posteriorly. Although there was no definite evidence of nerve recompression, cord recompression, or frank disc herniation, Dr. Malek noted in his records that the MRI scan showed evidence of some desiccation next to the fusion site. On December 28, 2001, Dr. Malek noted that a CT/myelogram showed evidence of foraminal narrowing at the C6-7 level. He noted that the claimant's symptoms were consistent with these findings. He recommended an epidural injection.

On March 1, 2002, Dr. Malek's records indicate that the claimant had received an epidural injection and that the injection had "helped her significantly." However, Dr. Malek observed that the claimant still had some pain and noted that if she did not continue to improve

from the epidural injections "we can consider other options including surgery." Dr. Malek's records for April, May, and August 2002 reflect that the claimant continued to have problems with her neck and left arm. On August 9, 2002, Dr. Malek concluded that "[a]t this point we have exhausted conservative management" and he recommended that the claimant obtain a second opinion. After receiving a second opinion, the claimant saw Dr. Malek for a follow-up appointment on September 27, 2002. Dr. Malek's record of that visit reflects that the claimant told him that she "[did] not want to consider surgery due to her work situation." Dr. Malek told the claimant that he could not give her chronic pain medication, and he referred her to a pain clinic.

Pursuant to the referral from Dr. Malek, the claimant saw Dr. James Kelly on October 4, 2002. She complained of pain in her neck, left shoulder, and left arm. Dr. Kelly assessed probable cervical radiculopathy representing a likely C7 radiculopathy on the left side. The doctor recommended trigger point injections and noted that if claimant did not improve, he would schedule cervical epidural steroid injections.

The claimant had a series of epidural injections in late 2002 and early 2003. Dr. Kelly's records indicate that the claimant had "partial and only short-term relief" after the first injection. Although she showed temporary improvement after the subsequent injections, she continued to have pain in her neck, shoulders, and upper extremities, which had worsened by late January 2003. The claimant received another injection on March 14, 2003. Eleven days later, Dr. Kelly's records reflect that the claimant's pain was reduced "about 60%" and that the claimant was taking pain medication on a daily basis, including four Vicodin per day as well as Bextra and Soma. Dr. Kelly also noted that the claimant "understands she will most likely need surgery for a

herniated disc in the cervical area" but that she "could not undergo that [procedure] at this time" for "financial reasons." The claimant told Dr. Kelly that she wanted to continue with epidural steroid injections.

The claimant returned to Dr. Kelly on May 13, 2003, complaining of the recurrence of symptoms that had been relieved with the previous injection. Dr. Kelly prescribed another series of epidural injections, which the claimant received on May 13 and June 24, 2003. On July 11, 2003, Dr. Kelly noted that the claimant appeared to be in less pain and that her cervical radiculopathy was "somewhat improved." However, he noted that the claimant reported that she was only "modestly better at best." Dr. Kelly's records reflect that the claimant did "not wish to entertain surgery" at that time. Dr. Kelly recommended "holding off on any further interventions at this time."

The claimant saw Dr. Kelly again on March 12, 2004. At that time, Dr. Kelly noted that the claimant had obtained "only modest, short term relief" from the epidural injections that she had received. Dr. Kelly observed that the claimant had a "significant limitation to range of motion of her cervical spine, particularly to extension and left lateral rotation, which exacerbated her symptoms." His assessment at that time was that the patient had cervical radiculopathy with symptoms that were "out of control" because she had run out of her pain medication. He noted that the claimant told him that she had "contemplated surgery" but had "decided to hold off on surgery" because her job security was in question. Dr. Kelly recommended refilling her pain medications and scheduled additional epidural injections.

The claimant received an epidural injection on March 17, 2004. Two weeks later, Dr. Kelly noted that her symptoms showed "modest improvement at best" and that she had "quite a

bit of left neck pain that radiates across the shoulder into the arm." She received additional injections on March 31 and April 23, 2004.

The work-related accident at issue occurred on May 6, 2004. Eight days later, the claimant presented at Provena St. Mary's Occupational Health Services. A questionnaire that she completed at that time reflects that she suffered an injury at work on May 6, 2004, while pushing a cart onto a carpet and that she was experiencing various symptoms pertaining to her neck and upper back which she first noticed on the day of the accident. Provena St. Mary's Hospital's admission records indicate that the claimant was injured while twisting her neck and back, pushing a cart, and that she had "steady increase of pain to neck" with the pain being described as a "5/10." An exam was conducted which noted "mild discomfort upon palpation to the C5-7 axial spine with paracervical tightness noted to the R side of neck at the level of C5-7." The claimant was discharged with a diagnosis of "history of cervical disc disease — degenerative — no new injury noted." She was advised to apply ice and avoid cart pushing and return to her regular work.

The claimant testified that her pain increased when she returned to work. Although she acknowledged that she had pain and discomfort in March and April of 2004, she claimed that her neck pain was markedly improved after the epidural injections. She testified that her pain was significantly greater and "totally different" after the May 6, 2004, accident.

Dr. Kelly examined the claimant on May 21, 2004. Dr. Kelly's record of that examination does not reference an accident at work or any recent aggravation of the claimant's injuries. Dr. Kelly's records reflect that the claimant noted "modest relief" from the recent epidural steriod injections. He estimated that the claimant was "perhaps 20-30% better," but that

she still had "quite a bit of pain localized to the left shoulder and neck region." Dr. Kelly did not note that the claimant was suffering from pain in her lower back. He administered trigger point injections and noted that if the claimant did not improve from these injections and additional physical therapy, he recommended surgery. Dr. Kelly's records reflect that he discussed this with the claimant, that the claimant was "agreeable to proceeding as planned." He referred the claimant to Dr. Malek for a surgical opinion.

The claimant saw Dr. Malek on May 26, 2004. Dr. Malek's notes of that visit indicate that the claimant stated that she had injured herself at work "with aggravation of her condition with pain in the neck shooting down the left upper extremity all the way down." Dr. Malek's records do not reference any pain in or injuries to the claimant's back. Dr. Malek ordered a cervical MRI, which was performed on June 5, 2004. The MRI showed a broad asymmetrical diffuse disc bulge at C6-7 which was "similar in overall appearance" to a previous MRI that was taken on July 30, 2001. The new MRI also showed minimal central disc bulging at C3-4 and C4-5.

Dr. Malek referred the claimant to Dr. Syed Naveed for a neurological consult. Dr. Naveed examined the claimant on June 3, 2004. He noted that the claimant had a prior fusion at C5-6 and that the claimant complained of neck pain that had been getting progressively worse and "for at least one month severe." The doctor found that her symptoms were consistent with cervical radiculopathy. He took an EMG examination, which was inconclusive.

On June 11, 2004, Dr. Malek recommended a cervical discogram at C4-5 and C5-6. The discogram was done by Dr. Scott Glaser of the Orland Park Surgical Center on June 15, 2004. The discogram noted that the claimant had a rapid onset of concordant pain at the C3-4 level and

an onset of concordant pain at the C4-5 and C6-7 levels. Dr. Glaser recommended a CT/ myelogram.

On June 16, 2004, claimant requested a medical leave of absence. On June 21, 2004, Dr. Malek "put her on medical leave effective immediately." He also referred her to Dr. DePhillips for a second opinion. Surgery was discussed consisting of an anterior cervical discectomy and fusion. A doctor's note dated June 22, 2004, reflects that the claimant was incapacitated and unable to work. The claimant's employment was terminated on June 25, 2004, due to a reduction in force.

The claimant underwent a myelogram on June 22, 2004. On July 16, 2004, Dr. Malek indicated the CT/myelogram showed evidence of pathology "especially at C6-7." He also noted possible pathology at C4-5 and also at C3-4. The claimant was told to remain off work and was referred to Northwestern Hospital for a second opinion.

On September 1, 2004, the claimant was seen by Dr. Sean Salehi of the Department of Neurological Surgery at Northwestern Medical Faculty Foundation in Chicago. On the same day, Dr. Salehi sent Dr. Malek a letter outlining his conclusions and recommendations. In the letter, Dr. Salehi noted that the claimant had undergone a C5-CG surgical fusion in 1999, that she had a "subsequent recurrence of pain in the neck in 2001," and that she had "maximized conservative measures" since then "without much relief." Dr. Salehi did not mention the May 6, 2004, accident or any recent aggravation of the claimant's injuries. He noted that the claimant stated that most of her pain was in the base of the neck extending into the left arm in what appeared to be the left C7 distribution and that she had also been experiencing some pain extending into the right deltoid region for the past four months. Dr. Salehi did not mention that the claimant was

suffering from back pain. He reviewed the CT/myelogram of the cervical spine and found that it showed "significant for formina stenosis at left C6-C7 and moderate on the right side." He also noted that the claimant had "slight degenerative disc disease at C3-C4 and C4-C5." Dr. Salehi recommended a one level anterior cervical discectomy and fusion at C6-C7.[1]

Dr. Malek recommended surgery and ordered the claimant to stay off work. He performed C6-7 fusion surgery on October 7, 2004.

On January 25, 2005, the claimant underwent an MRI on her lower back. Dr. Malek concluded that the MRI showed desiccation at L4-5 and L5-S1 with disc protrusion at each of these levels. The doctor recommended physical therapy and an epidural injection for the lower back. The epidural injection was performed on February 28, 2005. On March 21, 2005, Dr. Malek noted that the claimant continued to have pain primarily in the back but also down her leg. He ordered a discogram, which confirmed positive findings at L3-4, L4-5 and L5-S1. Dr. Malek referred the claimant for a second opinion.

On May 23, 2005, Dr. Malek noted that the claimant had seen Dr. DePhillips for a second opinion. He concurred with Dr. DePhillips's recommendation that the claimant undergo a fusion at L5-S1. The claimant underwent the recommended back surgery on June 6, 2005.

The claimant continued to have both neck pain and severe lower back pain after the surgery. An MRI taken after the claimant's back surgery showed evidence of L5-S1 postoperative changes in that there was some desiccation above the level of the fusion. After performing another discogram, Dr. Kelly recommended a disc decompression procedure in the

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[1] He did not recommend fusing the segments at C3-C4 and C4-C5 because of the claimant's young age and because it would significantly limit the cervical range of motion.

claimant's lower back, which was performed on May 8, 2006. Although the claimant initially improved after this procedure, her symptoms eventually worsened. After conducting a functional capacity evaluation in November 2006, Dr. Malek concluded that the claimant's "overall level of work falls into the less than sedentary range" and noted that he did not think that she could return to work.

On September 26, 2005, Dr. Malek authored a report stating, "[i]t is my opinion based to a reasonable degree of medical and neurological certainty that [the claimant's] neck condition was aggravated by her injury of May 6th to the point she required intervention." He also stated, "[i]t is my opinion that her low back injury for which she required surgery also aggravated an underlying congenitive condition of her lumbar spine to the point she required surgery."

During his evidence deposition of February 4, 2008, Dr. Malek testified that the opinions he expressed in his September 26, 2005, report were true and correct. He testified that the claimant's injury of May 6, 2004, was causally related to the neck fusion performed on the claimant on October 7, 2004. He stated that "[t]he [claimant] did have underlying degenerative condition and prior surgery, and my opinion isn't that the injury caused her problem, but the injury aggravated a pre-existing condition that was silent and asymptomatic and resulted in the need for treatment, including the surgical procedure." When asked about the medical records showing that he had recommended cervical surgery two years prior to the May 6, 2004, accident, Dr. Malek replied,

> "I think there are two issues that are kind of confused here. *** When I saw [the claimant] and she was complaining of the symptoms, I thought it could be consistent and may be a candidate for surgery. At that point, her symptoms never

> really rose to the level of her requiring surgery. They stabilized and she was *** able to perform her job. Now, when the re-injury happened, it aggravated her condition to the point where now the pain level was such that she could not tolerate it and surgery was recommended ***."

Dr. Malek also testified that the claimant's lower back condition and her need for lower back surgery was causally related to the May 6, 2004, accident. He testified that his initial treatment of the claimant was primarily concentrated on the neck "because that was her main problem, and only after that was taken care of and the pain was improved did we start discussing treatment with her back." When asked whether it was accurate that the claimant's initial complaint addressed only the cervical spine, the doctor replied,

> "[w]ell, she had injury to both the neck and the low back. But to be fair, the neck injury was very acute and *** it took priority. It was much more significant, and the low back condition only came to the forefront when the neck condition stabilized. Now, treatment with medication for both the neck and the low back condition are the same. So the patient was treated conservatively for the neck which is also a treatment for the low back condition."

The doctor went on to say that "when I take [a patient's] history, "I prioritize what I do. *** She had the neck pain. That was the pressing issue at that point. *** It's not that she didn't mention it to me ***."

At the employer's request, Dr. David Zoellick performed an independent medical examination on the claimant on October 17, 2006. After examining the claimant and reviewing her medical records, David Zoellick opined that "the records do not support the [claimant]

having any significant injury at work in May 2004 which would have caused any significant acceleration or exacerbation of [the claimant's] neck condition." Dr. Zoellick stated that the records show that the claimant's neck problems "were ongoing since at least 2000." In support of this conclusion, Dr. Zoellick noted that the claimant had received an epidural injection two weeks prior to the May 6, 2004, accident and that, as recently as March 24, 2003, Dr. Kelly indicated that the claimant would likely need surgery for a herniated disk in the cervical area. Accordingly, Dr. Zoellick concluded that the claimant had a preexisting neck condition and opined that "the treatment [she] received for the neck problem *** [was] not related to any work injury."

Dr. Zoellick reached a similar conclusion regarding the claimant's lower back condition and treatment. He noted that the claimant's medical records did not mention her lower back until January, 2005, almost eight months after the work injury. Dr. Zoellick opined that the claimant's complaints regarding her back were not related to any work injury and that any treatment she received for her back problem was not related to the work accident. In sum, Dr. Zoellick opined that "[the claimant's] current condition of ill-being [was] not related to any alleged work injury of May 6, 2004."

The arbitrator found that the claimant sustained an accidental injury arising out of and in the course of her employment on May 6, 2004, and that the claimant's cervical and lumbar conditions of ill-being were causally related to that accident. In support of these conclusions, the arbitrator noted that the claimant testified that immediately prior to May 6, 2004, she felt good, was working full time with no restrictions, and was able to perform her duties. Although she acknowledged that she had pain and discomfort in March and April of 2004, she testified that

her neck pain was markedly improved after the epidural injections and that her pain was "significantly more and different" after the May 6, 2004, accident. After the accident, the claimant felt like "all that had been done had been undone." The arbitrator found this testimony credible. In addition, the arbitrator found Dr. Malek's testimony persuasive and relied heavily on his testimony. The arbitrator awarded the claimant TTD benefits, medical expenses, and prospective medical treatment as recommended by Dr. Malek.

The Commission unanimously reversed the arbitrator's causation finding. After detailing the history of the claimant's preexisting neck problems and treatment, the Commission reviewed the medical records immediately following the May 6, 2004, accident. The Commission found it significant that when the claimant saw Drs. Kelly and Malek in the weeks following the accident and Dr. Salehi approximately four months later, none of these doctors mentioned the accident in their records.

Moreover, the Commission found Dr. Zoellick's opinions more credible than those of Dr. Malek. The Commission noted that Dr. Malek "did not cite the records of the other physicians involved in this case before or after the accident." In addition, the Commission expressed concern that Dr. Malek concluded that the May 6, 2004, accident caused or aggravated the [claimant's] lumbar problems "even though the [claimant's] lumbar spine complaints were not documented until January of 2005." The Commission found Dr. Zoellick's opinions and reasoning persuasive and concluded that the claimant's lumbar and cervical conditions were not causally related to the May 6, 2004, accident.

The circuit court of Kankakee County reversed the Commission's decision and reinstated the arbitrator's decision. The circuit court held that the Commission's reliance on Dr. Zoellick's

report was "manifestly incorrect" because it found that Dr. Zoellick "did not address the question of whether the accident aggravated the [claimant's] condition or accelerated the processes which lead [*sic*] to the claimant's condition of ill-being." In so holding, the circuit court focused on Dr. Zoellick's statement that the claimant did not have any "significant" work injury that would cause any "significant" acceleration or exacerbation of the claimant's preexisting neck condition. The court noted that a claimant is entitled to benefits if she shows that a work-related accident was a "contributing or causative factor" in the resulting condition, and "there is no requirement that either the work accident or the ensuing aggravation be 'significant.' " In addition, the circuit court noted that the Commission did not overturn the arbitrator's finding that an accident occurred on May 6, 2004. Finally, the circuit court noted that the claimant testified that immediately prior to the May 6, 2004, accident she "felt good" and was "working full time without restrictions," and that after the accident everything "went to the next level." The court noted that the arbitrator found this testimony to be credible. The circuit court concluded that the Commission "erred in finding the opinion of Dr. Zoellick to be more credible than the opinions professed by Dr. Malek and further erred in finding that [the claimant's] lumbar and cervical conditions are not causally related to the accident on May 6, 2004."

This appeal followed.

ANALYSIS

To obtain compensation under the Act, a claimant must show by a preponderance of the evidence that she has suffered a disabling injury arising out of and in the course of her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The "arising out of" component addresses the causal connection between a work-related injury and the claimant's

condition of ill-being. *Sisbro*, 207 Ill. 2d at 203. A claimant need prove only that some act or phase of her employment was a causative factor in her ensuing injury. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592. (2005). An accidental injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro*, 207 Ill. 2d at 205.

Thus, even if an employee has a preexisting condition which may make her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that the employment was also a causative factor. *Sisbro*, 207 Ill. 2d at 205; *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). A claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating her preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983); *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981); *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). In preexisting condition cases, recovery will depend on the employee's ability to show that a work-related injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition. *Sisbro*, 207 Ill. 2d at 204-05.

Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 206. In resolving disputed issues of fact, including issues related to 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. *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). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence. A factual finding is against the manifest weight of the evidence if the opposite conclusion is "clearly apparent." *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086. This occurs "only when the court determines that no rational trier of fact could have agreed with the Commission's decision." *Fickas*, 308 Ill. App. 3d at 1041. The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

Applying these standards, we cannot say that the Commission's conclusion that the claimant failed to prove that her current condition of ill-being is causally related to her May 6, 2004, work accident was against the manifest weight of the evidence. Regarding the claimant's lower back injury, the Commission correctly noted that there is no reference to the claimant's lower back complaints in any of her medical records (or in any other record document) until January 2005, almost eight months after the accident. In the accident investigation report that the claimant wrote shortly after the accident, the claimant indicated that she injured her "neck," "back" "*upper,*" and "left." (Emphasis added.) She did not check the box corresponding to "lower," nor does her accompanying handwritten narrative mention any lower back pain or strain. Eight days after the accident, Provena St. Mary's Hospital discharged the claimant with a diagnosis of "history of *cervical* disc disease — degenerative — *no new injury noted*."

(Emphasis added.) Dr. Kelly's May 21, 2004, record states that the claimant had pain "localized to the left shoulder and neck region" and does not reference any lower back pain or any recent injury to the claimant's lower back. Rather, it merely describes the progression of the claimant's ongoing cervical problems and treatment. Similarly, Dr. Malek's notes of May 26, 2004, do not reference any pain in or injuries to the claimant's back. Nor did Dr. Salehi mention that the claimant was suffering from back pain when he examined her in September 2004.

Moreover, Dr. Zoellick opined that the claimant's complaints regarding her back were not related to any work injury and that any treatments she received for her back problem were not related to the May 6, 2004, work accident. The Commission found this opinion more credible than Dr. Malek's conclusion that the May 6, 2004, accident aggravated a preexisting "congenitive" back injury. As noted above, it is the Commission's task to judge the credibility of witnesses and to resolve conflicts in medical opinion testimony, and we will not overturn the Commission's findings on these factual issues unless they are against the manifest weight of the evidence. *Hosteny*, 397 Ill. App. 3d at 674. As shown above, there is ample evidence to support the Commission's finding on this issue. Even assuming *arguendo* that the claimant had a preexisting lower back condition—which is not apparent from the medical records—the Commission could reasonably have concluded that the eight-month gap between the work accident and the claimant's first mention of lower back pain precluded the possibility that the accident aggravated or accelerated any such condition.[2]

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[2] The claimant testified that she suffered from back pain radiating down to her legs after the May 6, 2004, accident. Moreover, during his evidence deposition, Dr. Malek testified that the claimant complained of lower back pain shortly after the accident but that he did not record

There is also sufficient evidence to support the Commission's finding that the claimant's neck injury was not aggravated by the May 6, 2004, accident. After having cervical spinal fusion surgery in 1999, the claimant had been receiving ongoing medical treatments for neck pain throughout 2002, 2003, and 2004. An MRI of the claimant's cervical spine taken in July 2001 showed degenerative disc changes at C6-7 with moderate spurring posteriorly and with some desiccation next to the fusion site. Although the claimant received some intermittent relief from pain through epidural injections and other treatments, such relief was "partial" and short-lived. In August 2002, Dr. Malek concluded that conservative treatments had been exhausted and he subsequently discussed surgery with the claimant. By early 2003, Dr. Kelly had repeatedly recommended cervical surgery, but the claimant opted not to undergo surgery for financial reasons and because of job concerns. In March 2004, less than two months before the accident, Dr. Kelly noted that the pain relief provided by the epidural injections was "modest and short-

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this in his records because he was focused on treating the claimant's neck pain at that time, which was more severe and a more pressing concern. The Commission obviously chose not to credit this testimony, and we cannot say that this decision was against the manifest weight of the evidence. The fact that the claimant did not mention any lower back pain to any of her other treaters until almost eight months after the accident casts doubt on her testimony and on Dr. Malek's claim that she mentioned lower back pain to him shortly after the accident. Moreover, the Commission could reasonably have found Dr. Malek's explanation for his failure to reference these alleged complaints in his records implausible, particularly in light of the other issues with Dr. Malek's credibility discussed below.

lived," and he described the claimant's pain and radicular symptoms as "out of control" without pain medication.

Eight days after the May 6, 2004, accident, a doctor at Provena St. Mary's Hospital diagnosed the claimant with degenerative disc disease and noted "no new injury." On May 21, 2004, during the claimant's first visit to Dr. Kelly after the accident, Dr. Kelly noted that her symptoms had *improved* since the April 23, 2004, epidural injection. Dr. Kelly's records of that visit do not reference an accident at work or any recent aggravation of the claimant's injuries. Dr. Kelly continued to recommend surgery, as he had done prior to the accident. An MRI taken approximately one month after the May 6, 2004, accident showed a disc bulge at C6-7 which was "similar in overall appearance" to what the July 30, 2001, MRI had revealed. Moreover, when Dr. Salehi examined the claimant in September 2004, he noted that the claimant had undergone a C5-CG surgical fusion in 1999, that she had a "subsequent recurrence of pain in the neck in 2001," and that she had "maximized conservative measures" since then "without much relief." Dr. Salehi did not mention the May 6, 2004, accident or any recent aggravation of the claimant's injuries.

In light of this evidence, the Commission could have reasonably concluded that the claimant's current neck problems are the result of cervical degeneration that had been documented since 2001 and that the May 6, 2004, accident did not aggravate or accelerate her preexisting cervical condition. The medical records show that the claimant had ongoing neck pain and radicular symptoms since 2001 that were worsening prior to the May 6, 2004, accident. Before the accident, her doctors concluded that she had exhausted conservative treatment and surgery was required. Her symptoms presented a similar pattern before and after the accident

(partial, short-term relief from epidural injections followed by an eventual increase in pain), and the medical records immediately after the accident suggest that many of her treating doctors did not consider the accident to be an aggravating factor. For these reasons, Dr. Zoellick concluded that the claimant's current neck pain was not causally related to her work accident. Although the claimant's and Dr. Malek's testimony suggested that the accident aggravated the claimant's preexisting neck problems, we cannot reverse the Commission's decision on this basis given the abundant evidence to the contrary.[3] See, *e.g.*, *Sisbro*, 207 Ill. 2d at 206 ("a reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence").

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[3] In upholding the Commission's decision, we rely in part on medical records showing that the claimant's neck condition was deteriorating and that she required surgery prior to the May 6, 2004, accident. We do not mean to suggest, however, that the claimant was not entitled to recover merely because she would have needed surgery even if the accident had not occurred. That suggestion would be improper. See *Mason & Dixon Lines*, 99 Ill. 2d at 181. The appropriate question is not whether a particular treatment would have ultimately been required due to the claimant's preexisting condition; rather, it is whether the accident "aggravated his condition or accelerated the processes which led to" the treatment. *Mason & Dixon Lines*, 99 Ill. 2d at 181. Here, we merely conclude that medical records contradict the claimant's assertion that the accident aggravated her current neck problems or accelerated the process which led to the surgery.

The claimant argues that the Commission's decision cannot stand because the claimant proved causation with "unrebutted" medical expert testimony. As noted, Dr. Malek opined that the May 6, 2004, work accident aggravated the claimant's preexisting neck condition. The claimant argues that Dr. Zoellick's opinion did not address the issue of aggravation (and therefore did not rebut Dr. Malek's opinion) because Dr. Zoellick concluded only that the May 6, 2004, accident did not cause any *significant* acceleration or exacerbation of the claimant's neck condition and did not opine that the accident played no role in aggravating the claimant's condition. From this premise, the claimant argues that Dr. Malek's opinions were unrebutted and that the Commission was required to accept them. We disagree.

First, contrary to the claimant's argument, Dr. Zoellick's opinion did rebut Dr. Malek's causation opinion. Although Dr. Zoellick's conclusion that there was no "significant" aggravation does not rebut Dr. Malek's opinions, other conclusions in Dr. Zoellick's report directly contradict Dr. Malek's opinions. For example, Dr. Zoellick opined that the claimant had a preexisting cervical condition, that any treatment that she received for her neck problems was "not related to any work injury," and that the claimant's "current condition of ill being is not related to the alleged work injury of May 6, 2004." These conclusions are inconsistent with the claim that the May 6, 2004, accident aggravated, accelerated, or contributed in any way to the claimant's neck problems. Given the medical records and the other evidence discussed above, we cannot say that the Commission's decision to credit Dr. Zoellick's opinions over those of Dr. Malek was against the manifest weight of the evidence. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 37 (1982) ("[T]o the extent that the medical testimony might be construed as conflicting, it is well established that resolution of such conflicts falls within the province of

the Commission, and its findings will not be reversed unless contrary to the manifest weight of the evidence.")

Second, even if Dr. Malek's testimony were unrebutted, the Commission would not have been required to accept it. A medical opinion "is not binding on the Commission simply by virtue of the fact it is the sole medical opinion." *Kraft General Foods v. Industrial Comm'n*, 287 Ill. App. 3d 526, 532 (1997); see also *Fickas*, 308 Ill. App. 3d at 1042 (holding that "the Commission in its discretion is not bound by unrebutted medical testimony"); *Sorenson v. Industrial Comm'n,* 281 Ill. App. 3d 373, 383-84 (1996). This rule makes perfect sense. If the Commission were bound to accept unrebutted medical testimony, it "would be forced to find that the earth is flat if such testimony were presented." *Sorenson*, 281 Ill. App. 3d at 384, quoting *Dean v. Industrial Comm'n,* 143 Ill. App. 3d 339, 346 (Webber, P.J., dissenting). Thus, although an unrebutted medical opinion "may not be arbitrarily rejected," *(Kraft*, 287 Ill. App. 3d at 532) the Commission may reject such an opinion if it is contradicted by other record evidence or otherwise lacks credibility (*Fickas*, 308 Ill. App. 3d at 1042-43; *Sorenson,* 281 Ill. App. 3d at 382, 384).

Here, as discussed above, the medical records contradict Dr. Malek's claim that the May 6, 2004, accident aggravated the claimant's preexisting cervical condition. In addition, portions of Dr. Malek's opinion testimony are simply not credible. For example, Dr. Malek's opinion that the claimant's lower back problems were caused or aggravated by the May 6, 2004, work accident is implausible given that there is no reference to any lower back pain in Dr. Malek's records or in the records of any other treating physician until approximately eight months after the accident. Moreover, Dr. Malek opined that the claimant's neck condition was "silent and

asymptomatic" prior to May 6, 2004. However, Dr. Kelly's medical records and Dr. Malek's own records contain numerous references to claimant's neck pain, which waxed and waned for several years in response to treatment and which had worsened and become "out of control" shortly before the accident. Thus, the Commission was entitled to reject Dr. Malek's testimony regardless of whether it was rebutted. *Sorenson,* 281 Ill. App. 3d at 382 (upholding Commission's rejection of unrebutted medical opinion that the claimant's preexisting condition was aggravated by a work-related injury where "[m]any of the medical records, testing, and diagnoses state[d] or impl[ied] that the claimant suffered from a degenerative condition and [did] not discuss any aggravation"); *Fickas*, 308 Ill. App. 3d at 1042 (upholding Commission's finding that doctor who gave unrebutted medical opinion was not credible where doctor testified that the claimant was "asymptomatic" in his right arm prior to his July 1996 injury even though the doctor had written a letter before the injury indicating that claimant had recently complained of a sore right shoulder and of numbness and tingling in his right hand).

The claimant also argues that the Commission's reliance on Dr. Zoellick's opinion was "contrary to law" because it was based on an erroneous legal standard. Dr. Zoellick opined that the May 6, 2004, accident did not result in "significant" injury or a "significant" aggravation of a preexisting condition. The claimant argues that, by relying on Dr. Zoellick's opinion to overturn the arbitrator's finding of causation, the Commission applied an incorrect legal standard and ignored the well-established principle that the aggravation of a preexisting condition is a compensable event regardless of the extent of the aggravation. We disagree. Although Dr. Zoellick appeared to apply an incorrect causation standard in one portion of his report, he denied causation under the proper legal standards in other portions of his report. For example, he opined

that any treatment that the claimant received for her neck problems was "not related to any work injury," and that the claimant's "current condition of ill being is not related to the alleged work injury of May 6, 2004." It was not improper for the Commission to rely on these opinions, in addition to other record evidence, in reversing the arbitrator's causation finding.

Moreover, even if the Commission erred in relying on Dr. Zoellick's opinions, we would still uphold its decision. "[A] reviewing court can affirm the Commission's decision if there is any legal basis in the record to support its decision, regardless of the Commission's findings or reasoning." *USF Holland, Inc. v. Industrial Comm'n*, 357 Ill. App. 3d 798, 803 (2005); *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 350 (2000); *Beaudette v. Illinois Industrial Comm'n*, 308 Ill. App. 3d 188, 191 (1999); *General Motors Corp. v. Industrial Comm'n*, 179 Ill. App. 3d 683, 685 (1989). Here, the medical records, standing alone, provide sufficient evidence to support the Commission's finding that the claimant's neck condition was not caused or aggravated by her work injury.

Finally, although it is not entirely clear, the circuit court appeared to suggest that the fact that the Commission did not overrule the arbitrator's finding that a work-related accident occurred on May 6, 2004, somehow suggests that the Commission erred in finding no causation. We disagree with that suggestion. A claimant must prove by the preponderance of the evidence *both* that a work-related accident occurred *and* that his current condition of ill-being is causally related to the accident. The former does not entail the latter. Thus, it was perfectly consistent for the Commission to find a work-related accident but no causation. See, *e.g.*, *Sorenson*, 281 Ill. App. 3d at 375.[4]

[4] Because we conclude that the Commission's finding of no causation was not against the

CONCLUSION

The Commission's conclusion that the claimant failed to prove that her current condition of ill-being is causally related to her May 6, 2004, work accident is not against the manifest weight of the evidence. We therefore reverse the judgment of the circuit court of Kankakee County which overturned the Commission's decision and reinstate the Commission's decision.

Circuit court reversed; Commission decision reinstated.

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manifest weight of the evidence and we reverse the circuit court's ruling on that basis, we do not need to address the other arguments raised by the employer. However, we note that we do not agree with the employer that the circuit court misstated the applicable standard of review. Although the circuit court stated that the Commission "erred," it expressly found that the Commission's decision was "against the manifest weight of the evidence." Thus, the circuit court identified and applied the correct standard and did not apply a "clear error" standard.