2017 IL App (3d) 160555WC-U

FILED June 28, 2017

NO. 3-16-0555WC

IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JASON TOMASKA, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Commscope, Appellee).	)))))))))	Appeal from Circuit Court of Will County No. 15MR2809 Honorable John Anderson, Judge Presiding.

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

ORDER

¶ 1 *Held*: The Commission's decision that claimant sustained an intervening accident that broke the chain of causation between his work injury and his current condition of ill-being was against the manifest weight of the evidence.

¶ 2 On July 6, 2012, claimant, Jason Tomaska, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 30/1 to 30 (West 2010)), seeking benefits from the employer, Commscope. Following a hearing, the arbitrator found claimant sustained accidental injuries to his left arm and shoulder arising out of and in the course of his employment on December 10, 2011, but that an intervening, non work-related fall broke

the chain of causation between claimant's work accident and his condition of ill-being after July 29, 2012. The arbitrator denied claimant benefits after that date. On review, the Illinois Workers' Compensation Commission affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Will County confirmed the Commission's decision. Claimant appeals, arguing the Commission's (1) finding that he sustained an intervening accident that broke the chain of causation between his December 2011 work accident and his current condition of ill-being was against the manifest weight of the evidence and (2) denial of his request for penalties and attorney fees was against the manifest weight of the evidence. We reverse and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On February 17, 2015, the arbitration hearing was conducted. Claimant testified on his own behalf and presented the deposition of his treating physician, Dr. Giridhar Burra, an orthopedic surgeon. The employer's evidence consisted of a "Functional Job Demands Form" from claimant's physical therapy provider and five reports from the employer's examining physician, Dr. Prasant Alturi. None of claimant's medical records were otherwise admitted into evidence.

¶ 5 Claimant testified he worked for the employer as a cable fitter. On December 10, 2011, he was injured while performing his job duties. Specifically, claimant testified he "went to push" and "turn" a reel of cable that weighed 300 to 400 pounds and felt his left shoulder "pop." Following his accident, claimant felt soreness in his left shoulder.

¶ 6 Claimant testified he first received medical treatment for his left shoulder and arm two days after his accident, on December 12, 2011. He stated the employer sent him to Med Works Clinic where he was examined and then referred to Dr. James Niemeyer. According to

claimant, Dr. Niemeyer recommended a cortisone injection in his left shoulder, a magnetic resonance imaging (MRI) scan, and physical therapy for claimant's left shoulder. Claimant testified he underwent physical therapy during the first three months of 2012. He denied that either the injection or physical therapy helped his condition. Further, claimant described the symptoms in his left arm and shoulder, stating he experienced pain when lying on his left side and numbness and tingling in his left hand.

¶ 7 On June 5, 2012, claimant began seeing Dr. Burra at Hinsdale Orthopedics, pursuant to a referral from Dr. Niemeyer. Dr. Burra testified he specialized in sports medicine and his primary emphasis was "surgery of the shoulder." During their initial visit, claimant provided a history of his work accident and complained of "stabbing, sharp pain" and "some paresthesias in his hand." Dr. Burra recommended claimant obtain a high-resolution MRI, which was performed on June 12, 2012. Later that month, claimant followed up with Dr. Burra, who diagnosed him with "a SLAP [(Superior Labrum from Anterior to Posterior)] lesion and biceps tendonitis and impingement, as well as an ulnar nerve neuropathy." Dr. Burra recommended surgery for claimant's left shoulder in the form of "[a] SLAP repair, a biceps tendon tenodesis, a subacromial decompression and acromioplasty, and removal of loose bodies." He recommended conservative treatment for claimant's ulnar neuropathy.

¶ 8 During his deposition, Dr. Burra described a biceps tenodesis, stating as follows: "The biceps tendon has two origins from where it starts. The biceps tenodesis refers to one of the two heads or origins of the biceps that are disconnected from its origin on the labrum and partly to the glenoid, and then fix it into the humerus, which is [the] other bone of the shoulder joint." He stated complications from a biceps tenodesis included persistent pain, implant failure, failure of the tenodesis where there is sliding down of the biceps tendon with a deformity, and cramp-

ing.

¶ 9 On July 18, 2012, Dr. Burra performed surgery on claimant's left shoulder. He testified one of his operative findings was "significant fraying of the biceps tendon and evidence suggesting entrapment in the groove." During claimant's surgery, Dr. Burra "reattached the labrum back to the bone. *** [D]isconnected the biceps tendon from the labrum so it does not pull on it, and *** excised a portion of the tendon and put the remnant [*sic*] and reattached to the humerus." After surgery, claimant's left arm was placed in a sling and he underwent physical therapy. Dr. Burra testified he considered claimant's surgery a success, in that he was able to repair the injuries to claimant's labrum and biceps tendon.

¶ 10 Claimant testified that 11 days after his surgery, on July 29, 2012, he tripped over a board on his home's deck and fell. He stated he hit the board with his foot and "put [his left] arm all the way up because [he] was falling to [his] left-hand side." He landed on his left side with his whole left forearm making contact with the surface of the deck. Claimant was unable to break his fall with his right hand. When he fell, his left arm was in his sling.

¶ 11 Claimant testified, as a result of his fall, his left "bicep tendon was completely gone" and he "had a big bubble in it." He stated the bubble remained present at the time of arbitration and showed his left arm and shoulder to the arbitrator. The arbitrator observed that "where the biceps should be [it] seems like there's an indentation."

¶ 12 Claimant saw Dr. Burra on July 30, 2012, the day after his fall at home. Dr. Burra testified claimant's fall "resulted in some slipping of the biceps tendon tenodesis with the appearance of a deformity consistent with a slipped biceps tendon." He stated the positioning of claimant's left arm at the time of his fall "kind of put[] him at risk for an axial load" injury, putting "all of the stress [from the fall] directly on the shoulder." Dr. Burra testified he examined

claimant and noted a "Popeye deformity" and that "[a]ll or a portion of the tenodesis had slipped." He described a "Popeye deformity" as "a rupture or a sliding of the long head of the biceps tendon[,] [when one half of the biceps] muscle slides below so there's a little bulge about the elbow." More specifically, he stated the muscle slid from where it had been attached to the top portion of the humerus during surgery toward the elbow. In other words, "the repaired tendon slid." Dr. Burra noted a Popeye deformity "tend[ed] to be primarily cosmetic." As a result, he wanted claimant to continue with his rehabilitation protocol. Dr. Burra agreed that other than noting claimant's "deformity," he proceeded as if the fall never occurred.

¶ 13 Claimant testified that, as he was undergoing his course of physical therapy, he continued to have numbness in his fingers. Dr. Burra testified claimant had some issues with stiffness and "some capsular contracture." He also experienced ulnar nerve neuropathy symptoms. Dr. Burra recommended an electromyogram (EMG) and a neurological consultation.

¶ 14 On November 9, 2012, claimant underwent an EMG with Dr. Russel Glanz. On November 13, 2012, he followed up with Dr. Burra. Based on claimant's EMG and an examination, Dr. Burra recommended ulnar nerve transposition surgery. Dr. Burra testified, at that time, claimant continued to complain of shoulder pain with overhead activities and "anterior shoulder pain." Further, he recalled that claimant "had continuing recurrent impingement, as well as biceps entrapment pain."

¶ 15 Dr. Burra testified that, at the time he recommended ulnar nerve transposition surgery, claimant was continuing to undergo physical therapy on his left shoulder. However, he characterized the therapy as "intermittent," noting claimant's therapy was interrupted "based on authorizations from [claimant's] workman's [*sic*] compensation carrier." Dr. Burra testified such interruptions could cause secondary impingement, in that "[w]eakness of the rotator cuff and

capsular contracture [could] contribute to a recurrence of the impingement problem." Dr. Burra testified secondary impingement was one of the issues they were "currently dealing with" and that it was an "issue that [he was] concerned about."

¶ 16 On January 23, 2013, claimant was examined by Dr. Prasant Alturi at the employer's request. He provided a history of both his December 2011 work accident and his July 2012 fall at home. Claimant also complained that he had pain in his left shoulder, pain at the medial aspect of his left elbow, numbness and tingling in the ring and small fingers of his left hand, and soreness in the anterior aspect of his left upper arm. Dr. Alturi stated he reviewed various medical records, including Dr. Burra's July 18, 2012, operative note, as well as various "Notes" form Dr. Burra and his physician's assistant, Linday Cashman. In particular, Dr. Alturi stated he reviewed a note from Cashman dated July 30, 2012, the day after claimant's fall at home. Following an examination of claimant, Dr. Alturi had the following impressions:

> "1. Left shoulder derangement, status post arthroscopic labral repair with subacromial decompression and removal of loose bodies.
>
> 2. Failed arthroscopic biceps long head tenodesis.
>
> 3. Left cubital tunnel syndrome."

¶ 17 Dr. Alturi opined claimant's left shoulder condition was "directly related to the work injury he describe[d]" and claimant's cubital tunnel syndrome "may" also be related as "the swelling associated with a labral tear along with the postoperative changes following left shoulder surgery" could contribute to the development of symptoms associated with that condition. Dr. Alturi further found the treatment claimant received for his left shoulder had been reasonable and appropriate. He stated claimant's left shoulder "look[ed] quite good, despite his subjective complaints" and found claimant had "excellent strength and good range of motion." Dr. Alturi

noted claimant's subjective left shoulder complaints were out of proportion with objective findings. He recommended no further treatment for claimant's left shoulder, opining claimant had reached maximum medical improvement as to that injury. Finally, Dr. Alturi was in agreement with Dr. Burra that surgical intervention was appropriate for claimant's left elbow condition.

¶ 18 On May 14, 2013, claimant followed up with Dr. Burra. Dr. Burra testified the visit primarily focused on claimant's ulnar nerve issue. However, he did examine claimant's left shoulder and stated claimant continued to have pain and weakness of the rotator cuff, tenderness of the biceps tendon groove, and positive impingement tests.

¶ 19 On May 22, 2013, Dr. Burra performed ulnar nerve transposition surgery on claimant, following which claimant underwent physical therapy. Dr. Burra testified claimant's "problems resolved as far as the paresthesias and numbness in the fourth and fifth fingers and the ulnar nerve neuropathy [was] concerned." However, he stated claimant's left shoulder pain continued. Dr. Burra recommended conservative treatment for claimant's shoulder. He noted claimant underwent physical therapy and a work conditioning program to address both his shoulder and elbow. In August 2013, Dr. Burra recommended shoulder injections, which were performed in August and October 2013. Claimant testified one injection was in his shoulder and one was in his bicep. He stated the injections relieved his symptoms for only about half an hour.

¶ 20 On November 11, 2013, Dr. Burra recommended additional surgery. Specifically, he recommended "[a]n arthroscopy of [claimant's] left shoulder with a subacromial decompression and acromioplasty and a release of the entrapped biceps tendon." During Dr. Burra's deposition, the following colloquy occurred between Dr. Burra and claimant's counsel:

"Q. The first surgery to the biceps tendon was a tenodesis.

This surgery that you recommended as of November of 2013 was a release of the entrapped biceps tendon.

Can you explain what that procedure involves?

A. The original tenodesis is basically we make a tunnel and we put some sutures in the tendon and then we use an implant to fix the tendon and the sutures into the bone, the humerus bone. As you know, he sustained a fall. He has a deformity, so part or all of the tendon slipped. There are some remnants in there that are causing pain. There is suture material stuck in there. And my intention is to remove and relieve any portion of entrapped tendon to basically address that pain."

¶ 21 On December 6, 2013, Dr. Alturi authored a second report after receiving correspondence from the employer's counsel. He noted that accompanying counsel's letter were "numerous medical records," including Dr. Burra's July 18, 2012, operative report; Dr. Burra's May 22, 2013, operative report; and "notes" from Dr. Burra and Hinsdale Orthopedics. Following his review of the medical records, Dr. Alturi noted claimant's left elbow symptoms resolved following the May 2013, ulnar nerve surgery performed by Dr. Burra. With respect to claimant's left shoulder, Dr. Alturi found claimant's records indicated an inconsistent response to physical therapy. He pointed out that in August 2013, records showed claimant could perform 88.4% of the physical demands of his job as a cable fitter, while records from October 2013 showed his function deteriorated to 71.6%. Dr. Alturi further noted that claimant had a poor response to a cortisone injection to the subacromial space, which he found suggested that claimant's "ongoing symptoms [were] not related to any persistent intraarticular or subacromial pathology involving his left shoulder." Dr. Alturi did not agree with Dr. Burra's recommendation for a left shoulder

arthroscopy. He stated as follows:

> "The clinical notes indicate [claimant's] primary complaints involve the anterior aspect of his left shoulder. This is consistent with some of his complaints when I evaluated [him] in January, [*sic*] 2013. [Claimant] did have a biceps tenodesis which failed. It is possible that [claimant] has some pain associated with a failed biceps tenodesis. That is, he may have a remnant of the biceps tendon which is painful or possibly even scar tissue in the area of the biceps tenodesis which is causing some of his symptoms."

¶ 22 Dr. Alturi recommended a cortisone injection into the area of claimant's biceps tenodesis. He stated if claimant had a temporary resolution of his symptoms from that injection, it would be reasonable to perform a surgical exploration of the biceps tenodesis site. Dr. Alturi opined that, without such improvement from the injection, claimant's pain would not be predictably improved with any type of surgical intervention.

¶ 23 On January 22, 2014, Dr. Alturi reevaluated claimant. He stated he reviewed medical records, which again included Dr. Burra's July 18, 2012, and May 22, 2013, operative notes, as well as clinical notes form Dr. Burra and Hinsdale Orthopedics. After reviewing claimant's medical records and conducting an examination, Dr. Alturi opined as follows:

> "[Claimant's] initial left shoulder labral tear would be considered directly attributable to the [work] injury he reported. The ulnar nerve condition would be considered related to the work injury. Specifically, the initial injury as well as the subsequent surgery may have contributed to his development of ulnar nerve symptoms. The on-going left shoulder pain appears to represent a complication of

> his left shoulder surgery. Therefore the on-going left shoulder condition would be considered work-related."

Dr. Alturi also stated there were "limited objective findings evident" in his physical examination of claimant. He found claimant "clearly" had a "deformity in his left upper arm with distal migration of his biceps muscle." Dr. Alturi stated claimant's reports of pain and tenderness were "subjective in nature" and there were "[n]o objective functional deficits" during his evaluation of claimant.

¶ 24 Dr. Alturi also opined it would be "reasonable" for claimant to "pursue the revision surgical intervention," noting claimant reported a complete resolution of symptoms following an injection into his left anterior shoulder. He found such a resolution of symptoms "suggestive of a persistent mechanical abnormality which likely represents scarring of his biceps long head tendon after the failed biceps long head tenodesis." Finally, although Dr. Alturi stated claimant was "likely to have some discomfort with overhead activities and heavy lifting." He recommended no work restrictions, stating claimant "should be able to safely perform his usual work activities without restrictions."

¶ 25 On March 28, 2014, Dr. Alturi authored a fourth report after receiving correspondence from the employer's counsel. He noted that, within such correspondence, were copies of his own previous reports and "a clinical note dated July 30, 2012[,] from Hinsdale Orthopedics," the day after claimant's fall at home. After reviewing those materials, Dr. Alturi opined as follows:

> "The recurrent left shoulder biceps tendon rupture does appear to be secondary to the fall injury sustained by [claimant] less than two weeks following his left shoulder surgery. [Claimant] had undergone a biceps tenodesis with no de-

> formity in his left arm prior to that incident. He had the immediate formation of a 'popeye deformity' which is indicative of a rupture of the biceps tenodesis. Unfortunately, this patient's ruptured biceps does appear to be symptomatic. Therefore, as indicated in my prior correspondence, surgical treatment could be considered.
>
> However, the need for surgical treatment for [claimant's] left shoulder biceps tendon rupture is not due to the original shoulder injury. Rather, the need for revision surgery is due to the recurrent rupture associated with the fall injury that occurred after the left shoulder surgery."

¶ 26 On June 9, 2014, claimant returned to see Dr. Burra, who, upon examination, found no significant change in claimant's condition. Dr. Burra continued to recommend surgery. Additionally, he recommended physical restrictions for claimant, including no repetitive motion or overhead reaching with the left shoulder and no lifting over 30 pounds. Dr. Burra testified he did not believe claimant could return to his work for the employer and recommended modified-duty work.

¶ 27 Claimant last saw Dr. Burra on July 21, 2014, and reported impingement pain and biceps tendon pain. Dr. Burra testified he continued claimant's physical restrictions. Also, his surgical recommendation remained the same. Claimant testified Dr. Burra never released him to return to work as a cable installer. Additionally, he stated he no longer worked for the employer because the entire department was laid off one week after his accident.

¶ 28 During his deposition, Dr. Burra opined the biceps tendon surgery he recommended for claimant was related to claimant's original work injury. Upon inquiry as to the basis of his opinion, Dr. Burra testified as follows:

> "Counsel, you asked me before as to what are the known complications of these procedures and on both them [*sic*] are a well-recognized continuum of problems, recurrent impingement, it's a combination of weakness of the rotator cuff, it's a combination of a capsular contracture, and all of this is somewhat related to the interruptions in physical therapy. I do believe [claimant] has not done anything to cause this impingement pain.
>
> * * *
>
> Now, as far as the biceps tendon problem goes, it is a pretty known [*sic*] complication where sometimes the tendon slips. And when you have—he still had residual pain in the groove and that for me is a continuum of the original procedure, and by that, it's a continuum of the original work-related injury as a cause of his present symptoms."

¶ 29 In addressing the significance, if any, of claimant's fall shortly after his original surgery, Dr. Burra testified the position claimant was in—his arm in a sling and his elbow bent—"put him a little bit at risk because of the axial load on the arm when he fell forward and his elbow in the flexed position hit the ground." Further, he stated that the fact that claimant's initial surgery involved a tenodesis put claimant "at a risk for slipping," which he asserted was a known complication from the surgery.

¶ 30 On cross-examination, Dr. Burra testified claimant's fall at home undid his earlier surgical repair of claimant's biceps tendon. He testified he did not have any evidence to suggest something happened to the acromioplasty or labral repair, which he also performed. Dr. Burra stated that biceps entrapment pain was a known risk of biceps tenodesis. Further, he agreed that claimant's failed biceps tenodesis was related to claimant's fall at home. However, he testified he

was "not sure" whether claimant's biceps entrapment pain occurred only because of the fall.

¶ 31 Finally, the record shows, on August 8, 2014, Dr. Alturi authored a fifth report regarding claimant. He stated he received "additional records" to review, consisting of Dr. Burra's July 18, 2012, operative note; Dr. Burra's May 22, 2013, operative note; and clinical notes from Dr. Burra from November 11, 2013, October 28, 2013, September 13, 2013, August 12, 2013, and July 30, 2012. Dr. Alturi then opined as follows:

> "[Claimant's] ongoing left shoulder complaints represent a consequence of the fall injury which occurred following his left shoulder surgery from July 18, 2012. According to the materials available for my review, [claimant] had an uncomplicated left shoulder biceps tenodesis on July 18, 2012. However, after tripping and falling at home he developed an immediate deformity of the left biceps. This suggests traumatic failure of the biceps tenodesis related to the fall injury.
>
> I am in agreement with the treating physician that the failed biceps tenodesis and the associated scarring is the likely cause of his anterior shoulder pain. This is attributable to the fall injury and not due to the original work-related shoulder condition."

¶ 32 On March 31, 2015, the arbitrator issued his decision in the matter. He found claimant sustained an accident arising out of and in the course of his employment on December 10, 2011, but that claimant's current condition of ill-being was not causally related to that accident. Specifically, the arbitrator determined claimant's current condition of ill-being in his left arm and shoulder was not related to his December 2011 work accident as claimant's July 2012 fall at home was an independent, intervening accident that broke the chain of causation. The arbitrator noted Dr. Burra acknowledged claimant's fall at home "essentially 'undid' the surgical

repair he performed [11] days earlier *** and which he had subsequently declared a success." Further, the arbitrator found no evidence to suggest claimant's fall at home was the result of his work injury or the medical treatment related to that injury. Based on his causal connection finding, the arbitrator denied claimant benefits under the Act. Additionally, he denied claimant's motion for penalties and attorney fees under sections 16, 19(k), and 19(l) of the Act (820 ILCS 305/16, 19(k), 19(*l*) (West 2010)), finding, based on his causation determination, that the employer's defense of claimant's workers' compensation claim "was neither unreasonable nor vexatious under the circumstances."

¶ 33 On October 30, 2015, the Commission affirmed and adopted the arbitrator's decision. On August 19, 2016, the circuit court of Will County confirmed the Commission's decision.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 A. Intervening Accident

¶ 37 On appeal, claimant first challenges the Commission's finding that his condition of ill-being after his July 2012 fall was not causally related to his December 2011 work injury. He contends his fall at home in July 2012 cannot be considered an intervening accident which broke the chain of causation because it resulted in a failure of a surgery, a biceps tenodesis, that was necessitated by his work injury. Thus, claimant maintains his condition of ill-being after his fall would not have resulted "but for" his December 2011 work-related injury.

¶ 38 Under the Act, an injury is compensable if it arises out of and in the course of the claimant's employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). " 'In the course of employment' " refers to the time, place and circumstances sur-

rounding the injury" while "[t]he 'arising out of' component is primarily concerned with causal connection." *Id*. at 203, 797 N.E.2d at 672. An injury arises out of employment if it "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*. "A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005).

¶ 39 "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." *National Freight Industries v. Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. "For an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition." *Global Products v. Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 411, 911 N.E.2d 1042, 1046 (2009).

¶ 40 However, a nonemployment-related accident which is a contributing cause of the claimant's injury will not constitute an intervening cause sufficient to break the causal relationship between the claimant's employment and his condition of ill-being. *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 742, 640 N.E.2d 1, 3 (1994); see also *Vogel*, 354 Ill. App. 3d at 787, 821 N.E.2d at 813 ("[W]hen the claimant's condition is weakened by a work-related accident, a subsequent accident that aggravates the condition does not break the causal chain."). "So long as a 'but-for' relationship exists between the original event and the subsequent condition, the employer remains liable." *Global Products*, 392 Ill. App. 3d at 412, 911 N.E.2d at 1046.

¶ 41 Finally, "[c]ausation, including the existence of an independent intervening cause, is a question of fact for the Commission, and its finding in that regard will not be reversed on appeal unless it is against the manifest weight of the evidence." *Dunteman v. Workers' Compensation Comm'n*, 2016 IL App (4th) 150543WC, ¶ 39, 52 N.E.3d 718. It is the Commission's responsibility to resolve disputed questions of fact, draw permissible inferences from the evidence, and judge the credibility of witnesses. *National Freight*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. On review, "[t]he 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." *Vogel*, 354 Ill. App. 3d at 786, 821 N.E.2d at 812-13. A factual finding will be found to be contrary to the manifest weight of the evidence if an opposite conclusion is clearly apparent. *National Freight*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473.

¶ 42 Here, we agree with claimant and find the evidence failed to demonstrate that his condition of ill-being after his July 2012 fall was wholly unrelated to his December 2011, work injury. Rather, it shows claimant's condition of ill-being after July 2012 would not have resulted "but for" his original work injury.

¶ 43 It is undisputed that claimant injured his left arm and shoulder at work in December 2011. As noted by the arbitrator and Commission, Dr. Burra diagnosed claimant with a SLAP lesion, biceps tendonitis and impingement, and ulnar nerve neuropathy. Ultimately, he also recommended surgery in the form of a SLAP repair, biceps tendon tenodesis, subacromial decompression and acromioplasty, and removal of loose bodies. Dr. Burra performed those surgeries on claimant on July 18, 2012. There is nothing in the record to suggest the procedures performed by Dr. Burra in July 2012 were unreasonable or unnecessary to treat claimant's work injury.

¶ 44 Only 11 days after surgery, on July 29, 2012, claimant fell on his left side at home after tripping on a board on his deck. At the time of his fall, claimant was continuing to receive medical care for his left upper extremity. In particular, his arm was in a sling and he was undergoing physical therapy. The record reflects both Dr. Burra and Dr. Alturi found claimant's fall at home caused his previous surgery to fail. Dr. Burra testified claimant developed a Popeye deformity and stated as follows: "[S]o part or all of the tendon [that was previously repaired] slipped. There are some remnants in there that are causing pain. There is a suture material stuck in there." He further testified that "tendon slips" were a well known complication of claimant's tenodesis procedure. Additionally, although Dr. Alturi ultimately related claimant's left shoulder complaints to his fall at home, he characterized claimant's condition as being the result of a "traumatic failure of the biceps tenodesis."

¶ 45 The evidence shows claimant's July 2012 fall resulted in a failure of the surgery that was required to relieve the effects of his work-related injury. His fall occurred close in time to his work-related, tenodesis surgery and while he was still recovering from that surgery and receiving medical care. Thus, although claimant's fall at home may have been the direct or primary cause of his subsequent condition, including his left shoulder pain, the record fails to reflect that it was the sole cause. As argued by claimant, there would have been no surgery to fail absent his December 2011 work injury.

¶ 46 We find the cases relied upon by claimant on appeal support his contention. In *Dunteman*, 2016 IL App (4th) 150543WC, ¶¶ 11-15, 52 N.E.3d 718, the claimant sustained a work-related blister, which became infected after the claimant drained it with a needle. The Commission denied benefits, finding the claimant's lancing of the blister was an intervening accident that broke the chain of causation between his development of the blister and his current

condition of ill-being. *Id*. ¶ 33. On review, we reversed the Commission's decision, stating as follows:

> "A review of the record in this case demonstrates that there is clearly a 'but-for' relationship between the claimant's work-related blister and subsequent infection. Quite simply, even if the claimant's lancing of the work-related blister with a sterilized needle was the immediate cause of his infection, as the Commission found, the infection would not have occurred "but for" the existence of the work-related blister. That is because 'but for' the existence of the work-related blister, there would have been no blister to lance. His employment, therefore, remains *a* cause of his current condition of ill-being. The Commission's finding that the claimant's self-treatment was an independent intervening accident that broke the chain of causation between his work-related blister and subsequent infection was, therefore, against the manifest weight of the evidence." (Emphasis in original.) *Id*. ¶ 45.

¶ 47 Similarly, in *Vogel*, 354 Ill. App. 3d at 782, 821 N.E.2d at 809, the claimant sustained work-related injuries to his cervical spine and required fusion surgery. Following surgery, the claimant's doctor characterized his condition as "progressing nicely." *Id*. Approximately three months after his surgery, the claimant was involved in an auto accident and developed pseudoarthrosis, or a " 'lack of a bony fusion.' " *Id*. at 782-84, 821 N.E.2d at 809-10. On review, this court found the claimant's auto accident did not break the chain of causation between his work injury and his current condition of ill-being, stating as follows:

> "Here, [the] claimant's *** auto accident clearly aggravated his condition resulting from his work-related injury. There is no dispute that, when [the] claim-

> ant was involved in the *** auto accident, he had not fully recovered from his surgery. Just before the *** auto accident, [the claimant's doctor] reported that the fusion was progressing nicely but was not complete. [The] [c]laimant had not yet been released to full-duty work. Even if the accident was responsible for the failed fusion, such a condition could not have developed but for the surgery, which everyone agreed was necessary as a result of [the] claimant's work injury." *Id*. at 788, 821 N.E.2d at 814.

¶ 48 As in *Dunteman* and *Vogel*, claimant's current condition of ill-being in his left biceps and shoulder would not have resulted "but for" his original work-related injury. As discussed, claimant was off work and recovering from surgery at the time of his fall, and his fall caused the recent surgical repair of his biceps tendon to fail. We find claimant's fall merely aggravated his work-related condition of ill-being and did not completely sever the relationship between claimant's work-related injury and the conditions of ill-being in his left shoulder and biceps after July 2012.

¶ 49 Additionally, we note Dr. Burra testified that the placement of claimant's left arm in a sling at the time of his fall placed him at a risk of an axial load injury by putting "all of the stress directly on the shoulder." Claimant testified he fell while his arm was in the sling, he fell on his left side, and his entire left forearm made contact with the deck. We note the Commission dismissed Dr. Burra's testimony, stating "such an opinion would seem to go more to the medical implications occasioned by the fall and not the legal question of causation." However, we disagree with the Commission's rationale on this point. The use of a sling by claimant was unquestionably required as a result of his work injury and the surgery he underwent to relieve the effects of that injury. Thus, if claimant's use of a sling contributed to or worsened the injury he

sustained as a result of his fall, then both the sling and, ultimately, claimant's work injury, were causative factors in the resulting condition of ill-being.

¶ 50 For the reasons discussed, we find an opposite conclusion from that reached by the Commission was clearly apparent. The Commission's decision that claimant's July 2012 fall was an intervening accident that broke the chain of causation between his work injury and his condition of ill-being after that date was against the manifest weight of the evidence.

¶ 51 In so holding, we note that, in conjunction with its finding on causation, the Commission did not expressly address the injury and medical treatment to claimant's left elbow, *i.e.*, his ulnar nerve condition. In his brief, claimant suggests that both parties agreed a causal relationship existed between claimant's work accident and that injury. The employer disputes this assertion, arguing the Commission's causation finding included a determination that claimant's left elbow condition after July 2012, was not casually related to his December 2011, work accident.

¶ 52 We agree with the employer that the Commission determined all of the conditions of ill-being in claimant's left upper extremity after his July 2012 fall were unrelated to claimant's work injury. Initially, the arbitrator's decision—which the Commission affirmed and adopted—stated the arbitrator found claimant's "current condition of ill-being as it relates to the failed biceps tenodesis and biceps entrapment pain is not related to the original work injury." However, later, that decision also stated that claimant failed to establish causation "with respect to his left arm/shoulder." This latter language indicates claimant's left elbow injury was included within the Commission's findings. Also, neither the arbitrator nor the Commission awarded any benefits associated with that condition, which further supports the inference that the Commission found claimant's ulnar nerve condition after July 2012, was unrelated to his December 2011, work ac-

cident.

¶ 53 As with claimant's other injuries, the Commission's finding that claimant's July 2012 fall broke the chain of causation between his employment and his left elbow condition was against the manifest weight of the evidence. The record reflects that after his work accident, Dr. Burra diagnosed claimant with ulnar nerve neuropathy, which he elected to treat conservatively. Thus, claimant's ulnar nerve symptoms preexisted his July 2012 fall at home. After claimant's July 2012 fall, his left elbow condition progressed and, eventually, required surgery. Specifically, on May 22, 2013, Dr. Burra performed ulnar nerve transposition surgery on claimant. Notably, even the employer's medical examiner, Dr. Alturi, opined claimant's left elbow condition was causally related to his employment. In his third report—which was his last report to address claimant's left elbow condition—Dr. Alturi opined claimant's "ulnar nerve condition would be considered related to the work injury. Specifically, the initial injury as well as the subsequent surgery may have contributed to his development of ulnar nerve symptoms."

¶ 54 The evidence presented at arbitration relative to claimant's ulnar nerve injury indicates only that it was causally related to claimant's work for the employer. We find nothing in the record to suggest that condition of ill-being was causally related to claimant's July 2012 fall, let alone *solely* causally related to the July 2012 fall. To the extent the Commission found claimant's ulnar nerve condition after July 2012 was not causally related to his work accident, its decision was against the manifest weight of the evidence.

¶ 55 B. Penalties and Attorney Fees

¶ 56 On appeal, claimant also challenges the Commission's denial of his motion for penalties and attorney fees. However, the record reflects the Commission's denial of penalties and fees was based on its causation decision. As a result, we decline to address the merits of

claimant's challenge and direct the Commission to reconsider claimant's motion on remand in light of this court's findings as to causation.

¶ 57 III. CONCLUSION

¶ 58 For the reasons stated, we reverse the circuit court's judgment, confirming the Commission's decision; reverse the Commission's decision; and remand to the Commission for further proceedings consistent with this decision, including a determination of claimant's entitlement to benefits under the Act and reconsideration of claimant's motion for penalties and attorney fees.

¶ 59 Circuit court's judgment reversed; Commission's decision reversed; cause remanded.