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Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 160116WC-U

Order filed: December 23, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

McLEAN COUNTY NURSING HOME,	)	Appeal from the Circuit Court
	)	of the Eleventh Judicial Circuit,
	)	McLean County, Illinois
Appellant,	)	
	)	
v.	)	Appeal No. 4-16-0116WC
	)	Circuit No. 15-MR-270
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, *et al.*, (Mbambi Ndumba,	)	Paul G. Lawrence,
Appellees).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: (1) The Commission's finding that the claimant's current cervical condition was causally related to a work-related accident was not against the manifest weight of the evidence; (2) the Commission's decision to award the claimant temporary total disability benefits after March of 2007 was not against the manifest weight of the evidence; and (3) the Commission did not err by awarding the claimant permanent partial disability benefits in the amount of 50 percent loss of the person-as-a-whole without apportioning the award among the claimant's neck, shoulder, and jaw injuries.

¶ 2 The claimant, Mbambi Ndumba, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)), seeking benefits for injuries to her head, jaw, neck, arm and "other parts of the body" that she claimed to have sustained in a work-related accident on November 6, 2006, while she was employed by respondent McLean County Nursing Home (employer). After conducting a hearing, an arbitrator found that the claimant had proven work injuries arising out of and in the course of her employment and awarded the claimant temporary total disability (TTD) benefits from November 7, 2006, through May 31, 2007, and from May 14, 2008, through April 11, 2011, a period of 187 6/7 weeks. The arbitrator also awarded the claimant permanent partial disability (PPD) benefits under section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2006)) for 200 weeks in the amount of 40 percent of the person-as-a-whole.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). Although the Commission agreed with the dates of disability found by the arbitrator, the Commission calculated that the periods of disability amounted to 180 weeks, not 187 6/7 weeks, as found by the arbitrator. Accordingly, the Commission modified the TTD award to 180 weeks. In addition, the Commission increased the arbitrator's PPD award by awarding PPD benefits in the amount of 50 percent of the person-as-a-whole. The Commission affirmed and adopted the arbitrator's decision in all other respects. Commissioner Lamborn concurred in part and dissented in part. Specifically, Commissioner Lamborn concurred with the majority's decision to modify the claimant's TTD benefits but dissented from the majority's decision to award PPD benefits in the amount of 50 percent loss of the person as a whole.

¶ 4 The employer then sought judicial review of the Commission's decision in the circuit court of McLean County, which confirmed the Commission's ruling.

¶ 5 This appeal followed.

¶ 6 FACTS

¶ 7 The claimant worked for the employer as a certified nursing assistant (CNA). The parties stipulated that the claimant suffered a work-related accident on November 6, 2006. On that date, the claimant was working with a combative patient who kicked the claimant in the left shoulder, upper torso, and jaw area on the left side.

¶ 8 That same day, the claimant treated at Healthpoint in Normal, Illinois. Healthpoint's medical records indicate that the claimant reported the work injury and was complaining of blurred vision, a "pop" in her "R TMJ area," facial swelling, and pain in her neck upon moving. The records also indicate that, more than an hour after the injury, the claimant began experiencing a severe headache. The treating physician assessed a "head injury unspecified" and referred the claimant to the emergency room (ER) at OSF St. Joseph Medical Center for further evaluation. The ER records note that the claimant was "kicked in the face" by a "resident at [the employer]" and was experiencing pain in her left face and jaw and in her entire head and neck. The claimant characterized the intensity of the pain as a 10 out of 10.

¶ 9 On November 8, 2006, the claimant began treating with Dr. Charles Liang at Carle Clinic. The claimant was referred to Dr. Christopher Rink for physical therapy. When Dr. Rink first saw the claimant on November 13, 2006, the claimant reported that her condition was "improving." Upon examining the claimant, Dr. Rink noted that the claimant was holding her head in an extremely upright position but was able to move her head "fluently." The claimant reported that she was "having a lot of jaw discomfort, neck discomfort, headaches and radiating

left arm pain" since the work accident, but her symptoms were improving. Dr. Rink diagnosed "[f]acial trauma with sprain of the left temporomandibular joints [TMJ], cervical strain consistent with a whiplash-type injury with possible nerve root irritation from a nerve root stretch injury." He prescribed anti-inflammatory medication and physical therapy and suggested that the claimant remain off work until her arm symptoms resolved or settle down.

¶ 10 The claimant returned to Dr. Liang for a follow-up appointment on November 15, 2006. Dr. Liang's record of that visit indicates that the claimant felt that she was "doing better" overall. However, she was still experiencing "muscle tension and discomfort bilaterally in the right and left cervical musculature." When the claimant's neck was palpated, her neck pain would radiate into her shoulders and upper arms. The claimant rated her neck pain as 6 out of 7 with palpation of the neck, and 4 out of 10 at rest. The claimant's right TMJ was very tender to palpation and popped audibly when she opened her mouth. The claimant rated her TMJ pain as 9 out of 10. Dr. Liang diagnosed a "[s]lowly improving neck strain" and "right TMJ pain which is related to her trauma."

¶ 11 On November 28, 2006, the claimant returned to Dr. Rink for a follow-up appointment. Dr. Rink's medical record of that visit indicates that the claimant was "not much different" from when Dr. Rink last saw her. The claimant "still ha[d] a tremendous amount of tenderness throughout the cervical paraspinal region and upper shoulder regions." Although she had a 'fairly full range of motion" in her neck, the claimant was experiencing "a lot of discomfort with flexion and extension activities." She had "increased pain throughout the upper shoulder and neck region" upon manual muscle testing of the shoulder area. Dr. Rink diagnosed "injury to the right TMJ" and "[c]ervical strain with myofascial involvement." The doctor also noted that the claimant's description of her discomfort suggested "radicular involvement," and he noted that he

would "continue to monitor" it. He kept the claimant off work.

¶ 12 The claimant returned to Dr. Rink on December 7, 2006. Dr. Rink noted no "significant change" since the last appointment. The claimant was "still having a lot of neck and jaw pain." However, Dr. Rink also noted that the claimant reported feeling "a lot of burning at the top of her head and along the side" and "a vice like pain across her head." Dr. Rink indicated that these symptoms suggested "occipital nerve involvement." The claimant had tenderness upon palpation of the occipital notch region. She also had "a tremendous amount of guarding in the upper trapezius regions and cervical paraspinal muscles," and was "diffusely tender to palpation throughout those areas." Dr. Rink assessed: (1) a right TMJ sprain with injury; (2) a "[c]ervical sprain with significant myofascial involvement"; and (3) "[d]escription of occipital neuralgia." Dr. Rink ordered an MRI of the claimant's cervical spine "given the persistence and the prominence of her symptoms." He wanted to rule out cervical disc involvement. Dr. Rink continued the claimant's physical therapy and continued to keep her off work.

¶ 13 On December 12, 2006, the claimant underwent an MRI of her cervical spine. Six days later, Dr. Rink reviewed the MRI and concluded that it "look[ed] relatively unremarkable." The radiologist noted that the MRI showed mild dehydration of the discs, but no herniation. Thus, Dr. Rink ruled out cervical spinal injury as the cause of the claimant's symptoms and concluded that the claimant's neck and upper shoulder conditions and the straightening of the claimant's cervical spine were probably the result of myofascial pain syndrome.[1] He noted that the claimant

[1] "Myofascial pain syndrome" is a chronic pain disorder. In myofascial pain syndrome, pressure on sensitive points in certain muscles (trigger points) causes pain in seemingly unrelated parts of the body. This is called referred pain. Myofascial pain syndrome typically occurs after a muscle has been contracted repetitively. This can be caused by repetitive motions used in jobs or hobbies

"appear[ed] to be in discomfort" and was "diffusely tender to palpation throughout the cervical paraspinal muscles," upper trapezius muscles and interscapular region." He observed that the claimant "barely moved her neck at all during conversation." Dr. Rink diagnosed persistent jaw pain due to injury of the right TMJ following a blow to the head, and "[p]ersistent neck and upper shoulder pain secondary to a cervical sprain progressing into a myofascial pain syndrome involving the neck and upper shoulder regions, unchanged." He kept the claimant off work.

¶ 14 Dr. Rink referred the claimant to Dr. Dennis Holmes, a dentist, for purposes of evaluating her TMJ condition. The claimant first saw Dr. Holmes on January 8, 2007. Dr. Holmes' medical record reflects that the claimant reported experiencing "pain and popping of her right TMJ after being kicked in the face by a resident she was attempting to transport at work." She had "severe," "debilitating," and "constant" pain in her neck, specifically the trapezius and sternocleidomastoid. She was having difficulty opening her mouth due to the popping and sticking of her right joint. Dr. Holmes recommended that the claimant wear a mandibular hard occlusal splint. He opined that the claimant's TMJ-related pain was causing only a "small minority percentage of her pain," and that the popping of her TMJ joint "will likely not resolve for months or years." Dr. Holmes recommended continued physical therapy for the claimant's neck pain and muscle pain. Thereafter, Dr. Holmes began treating the claimant's TMJ condition on an ongoing basis.

¶ 15 On February 6, 2007, the claimant was examined by Dr. Robert Martin, the employer's independent medical examiner (IME). Based upon his examination and review of the medical records, Dr. Martin opined that the claimant suffered from a post-concussion syndrome, a right TMJ dislocation, and mild multilevel degenerative disc disease of the cervical spine. In his initial

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or by stress-related muscle tension.

IME report (which was prepared on February 6, 2007), Dr. Martin opined that all of these medical conditions except the degenerative disc disease were causally related to the claimant's November 6, 2006, work injury. He concluded that the degenerative disc disease was a preexisting condition.[2] Dr. Martin did not believe the claimant was able to return to work at that time. He recommended an MRI of the claimant's brain.

¶ 16 After the MRI was performed, Dr. Martin prepared an updated report (dated February 23, 2007). In his updated report, Dr. Martin noted that the MRI did not show anything which represented chronic post traumatic changes from the November 6, 2006 injury. He felt that the claimant should see a neurologist, but he did not believe there was any ongoing central nervous system problems related to the November 2006 work injury.

¶ 17 On March 12, 2007, Dr. Martin prepared an additional report in which he opined that the claimant had reached maximum medical improvement from any concussion associated with the November 2006 work injury. However, Dr. Martin concluded that the claimant still needed treatment for her TMJ condition. Dr. Martin further opined that, as of March 12, 2007, the claimant was able to work as a CNA without restrictions. The employer stopped the claimant's TTD benefits on March 14, 2007.

¶ 18 The claimant continued to treat with Dr. Holmes for her TMJ condition. The splint prescribed by Dr. Holmes did not reduce the claimant's pain and popping in her right jaw.

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[2] According to Dr. Martin, the degenerative disc disease revealed on the December 2006 MRI scan could not have been caused by the work accident that occurred only one month before that MRI was taken. If the degenerative disc disease had been caused by the work injury, it "would have taken some significant period of time to develop[,] *** I'm talking about a period of years."

Accordingly, Dr. Holmes referred the claimant to Dr. David Efaw, an oral surgeon. On May 3, 2007, Dr. Efaw performed an arthroscopic procedure to clean out the claimant's joint. That procedure also was not effective. Dr. Holmes then referred the claimant to Dr. Mark Piper, and oral surgeon practicing in St. Petersburg, Florida, for a surgical repair of the joint. Dr. Holmes testified that he chose Dr. Piper because he is the leader in the field of surgical treatment for the claimant's condition.

¶ 19 The claimant continued to treat with Dr. Rink through May 2007. On May 30, 2007, Dr. Rink noted that the claimant's myofascial pain symptoms in her neck and shoulders were improving. Her neck and shoulder discomfort was "easing down" and she was able to turn her head easily. Her TMJ injury remained symptomatic but was stable and improved. Accordingly, Dr. Rink released her to work full duty. The claimant did not return to work with the employer, however, because she had been terminated on March 15, 2007. The claimant continued physical therapy through June 19, 2007.

¶ 20 On July 10, 2007, the claimant saw Dr. Karyn Catt, a neurologist at Carle Clinic. Dr. Catt reported that the claimant's neck pain had "resolved around May 2007." Dr. Catt noted that the claimant had experienced migraine headaches and tension headaches following a head injury she sustained in November 2006 while working as a CNA. Dr. Catt stated that these symptoms had "significantly improved so that [the claimant] is now just having mild tension headaches approximately two days per week." Dr. Catt also noted that the claimant had suffered a TMJ injury during the November 2006 work accident which was a "contributing factor to her headaches." Dr. Catt further stated that the claimant had a "[h]istory of myofascial pain of the neck and shoulder" and a "left rotator cuff strain," but noted that the claimant reported that her neck pain "ha[d] completely resolved."

¶ 21 The claimant returned to Dr. Rink on July 30, 2007 for a follow up appointment. In his medical record of that visit, Dr. Rink noted that, "[o]verall, [the claimant] is still doing pretty well, but remains somewhat symptomatic." The claimant continued to experience headaches, but they were improving. She still had some left shoulder discomfort (mainly upon palpation of the trapezius region), and she still seemed to have guarding of the left trapezius region, but "nothing like it had been." She was still having some jaw symptoms. Dr. Rink's impressions included: "(1) [c]oncussion with suspected post-concussion syndrome, now much improved; (2) [l]eft shoulder strain with myofascial pain involvement, much improved; and (3) [TMJ] injury, symptomatic, but appears to be stabilizing."

¶ 22 The claimant saw Dr. Piper on November 19, 2007. Following his examination, Dr. Piper recommended a reconstructive arthroplasty of the right TMJ joint, which he performed on July 31, 2008. After the surgery, Dr. Piper took the claimant off work.[3] Thereafter, he continued to treat the claimant's TMJ condition.

¶ 23 During her treatment with Dr. Piper, the claimant continued to complain of neck pain. On November 4, 2008, Dr. Piper noted that the claimant's neck condition was not improving with physical therapy. Accordingly, Dr. Piper performed a nerve block in the claimant's neck which temporarily relieved her neck pain, and he referred the claimant for chiropractic treatment for her neck, shoulders, and back. On several occasions between June 2009 and September 2010, Dr. Piper opined that the claimant was experiencing "sympathetic pain" in her neck or arising from her neck.[4] On November 12, 2008, the claimant treated with a chiropractor who

[3] The employer resumed paying TTD benefits as of August 2, 2008.

[4] For example, on June 16, 2009, Dr. Piper wrote a letter to Dr. Holmes and a Dr. Bower in which he stated that the claimant "does have some degree of sympathetic nerve dysfunction."

diagnosed her with a cervical sprain, chronic pain, and neck pain. Thereafter, Dr. Piper continued to restrict the claimant from full work duties due to her cervical irritation and "complex regional pain syndrome," which he related to her right-sided facial symptoms. In March 2010, Dr. Piper recommended that the claimant see a neck specialist. Approximately five months later, he recommended that the claimant undergo neck rehabilitation.

¶ 24 While Dr. Piper was treating her TMJ condition, the claimant was also seeing Dr. Robert Seidl, an orthopedic surgeon who was treating the claimant's left shoulder condition. Dr. Seidl diagnosed impingement syndrome in the shoulder and a partial tear of the rotator cuff. He performed surgery on May 14, 2008, decompressing the subacromial space and debriding the partial thickness tear. Dr. Seidl took the claimant off work on that date. The claimant returned to Dr. Seidl on April 21, 2009, complaining of pain and weakness in the shoulder. Dr. Seidl suggested home exercise. On November 12, 2009, the claimant saw Dr. Seidl's physician's assistant with complaints of ongoing pain in the shoulder and the left side of the neck. The physician's assistant discovered edema in the claimant's left trapezius. He administered an injection and suggested that the claimant avoid heavy lifting with the left arm.

¶ 25 During his April 23, 2010, evidence deposition, Dr. Seidl opined that the condition he treated in the claimant's left shoulder was causally related to her November 6, 2006, work accident. Dr. Seidl noted that the claimant had no symptoms of neck, shoulder or upper left trapezius pain prior to her accident. He explained that the initial neck pain could have caused the

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On December 7, 2009, Dr. Piper wrote the claimant a letter informing her that she had "cervical irritation that probably is emanating from the sympathetic nervous system." On September 3, 2010, Dr. Piper wrote a letter stating that the claimant "continue[d] to have cervicogenic pain which was proved by a nerve block today in my office."

claimant to change her posture, which in turn could have led to weakness and irritation to the upper arm and trapezius when performing daily activities with an altered posture. In time, this could have led to an impingement in her left shoulder.

¶ 26 On May 8, 2012, the claimant returned to Dr. Piper complaining of persistent pain in her jaw the right side of her face. In his medical record of that visit, Dr. Piper noted that he had previously diagnosed this pain as "cervical and sympathetic in origin." In a May 14, 2012 letter to Dr. Bowers, Dr. Piper opined that the claimant's residual facial pain was "not coming from her temporomandibular joints, but rather is of cervical sympathetic origin." He further opined that "[t]his separate neuropathic pain problem still relates to the original trauma."

¶ 27 The claimant returned to Dr. Rink on February 9, 2010, complaining of discomfort in her shoulder, trapezius, and upper back. Dr. Rink reinitiated an ongoing course of treatment consisting of therapy, injections, and medication which continued intermittently through the date of the arbitration hearing. Dr. Rink ultimately ordered a functional capacity evaluation (FCE) which identified restrictions that Dr. Rink felt were permanent. He released the claimant to work under those permanent restrictions on April 1, 2011, and the claimant began working under those restriction shortly thereafter. Throughout her treatment with Dr. Rink from May 2010 through May 2012, the claimant repeatedly complained of ongoing neck pain. In February 2012, Dr. Rink noted that the claimant had decreased neck strength and decreased cervical range of motion. He again noted decreased cervical range of motion in May 2012. On June 28, 2013, Dr. Rink treated the claimant for severe headaches. In his June 28, 2013, medical record, Dr. Rink diagnosed "[c]hronic cervical, upper shoulder myofascial pain with associated occipital neuralgia," and opined that there was a "strong relationship" between the claimant's previous

shoulder injury, her TMJ injury, and her cervical occipital neuralgia.[5]

¶ 28 During his August 31, 2012, evidence deposition, Dr. Rink opined that the claimant's current conditions of ill-being were causally related to her November 6, 2006, work accident. Specifically, Dr. Rink opined that, when the claimant was kicked by a patient at that time, she "suffered an injury to her [TMJ], *** a blunt injury to the head, strain of the neck region resulting in Myofascial Pain Syndrome leading to a chronic shoulder-impingement syndrome as well as ongoing myofascial pain." He explained that the blow to the head caused the "ongoing myofascial conditions and impingement syndrome of the left shoulder," which necessitated the permanent restrictions outlined in the claimant's FCE.

¶ 29 When asked to provide the reasons for his causation opinion, Dr. Rink stated that,

> "[i]t was consistent from the first time that I saw [the claimant]. She really didn't change to a tremendous degree. She had the persistence of this upper-shoulder-region muscle involvement which, with time, you'll see development of these other almost mechanics-type issues like the impingement of the shoulder."

During cross-examination, Dr. Rink clarified that the shoulder impingement developed from tightness or spasm of the shoulder muscles resulting in an "altering or changing of her

[5] In 2012, Dr. Rink referred the claimant to Dr. Ji Li for a consultation and a possible trigger point injection. After examining the claimant on December 5, 2012, Dr. Li noted that the claimant had had "chronic pain at right neck, jaw, and right occipital headache since 2006," as well as bilateral shoulder pain and occasional hypersensitivity on the right side of her face. Dr. Li. opined that the claimant's pain was "related to cervical and occipital neuralgia and CRPS of her right face." He further opined that her pain was "also associated with myofascial pain."

mechanics." Specifically, Dr. Rink opined that the ongoing tightness in the claimant's shoulder muscles could have irritated the rotator cuff tendon which, in turn, led to the shoulder impingement.

¶ 30 Because the claimant was still treating with Dr. Rink for the trapezius and cervical muscle strain many years after the accident, the employer had an additional IME performed with Dr. Ryon Hennessy, an orthopedic surgeon, on October 8, 2012. After reviewing the medical records and examining the claimant, Dr. Hennessy prepared a report. During his subsequent evidence deposition, Dr. Hennessy opined that, as a result of the November 6, 2006, work injury, the claimant suffered a cervical strain. He also opined that the medical care the claimant received through March 12, 2007, was reasonable and necessary to treat her cervical strain. However, Dr. Hennessy concluded that there was no objective evidence of any condition of the cervical spine at the time of his October 8, 2012, examination. He further noted that, based upon his review of the medical records, the claimant would have been at MMI in need of no additional treatment for her cervical strain injury as of March 12, 2007. Dr. Hennessy opined that the claimant was "capable of fully duty work without restrictions as of March 12, 2007, with regard to her cervical strain and upper trapezial strain that she sustained on November 6, 2006. He also stated that there was "no objective data to support a subjective complaint [or] need for work restrictions." He noted that the claimant's "ranges of motion were normal," her neurological examination was "almost entirely normal," and the MRI scans of her cervical spine were normal.

¶ 31 Dr. Hennessy was asked whether the claimant's continued subjective complaints of neck pain and radicular symptoms might be causally related to the November 6, 2006, work accident. Dr. Hennessy responded that "it's very difficult to explain it as cervical radiculopathy if the MRI is normal and there is no neurological impingement." Dr. Hennessy opined that the claimant did

not have a permanent condition related to her cervical spine. Moreover, he opined there was no objective evidence supporting any further subjective complaints. He noted that "[c]ervical strains are measured in terms of weeks to months, not in terms of almost six to seven years."

¶ 32 The claimant remained under various work restrictions through the date of the arbitration hearing.

¶ 33 During the arbitration hearing, the claimant testified that, since the November 6, 2006, work accident, she has had continuing pain and discomfort which have prohibited her from full activity, including an ability to work unrestricted. The claimant stated that, at all times throughout the course of her treatment, she has experienced problems with pain in her jaw, shoulder, and upper neck area. At the time of the arbitration hearing, the claimant was still experiencing pain which limited her strength and movement when moving or lifting her arms above shoulder level.

¶ 34 The claimant testified that she wanted to work and was able to work if her restrictions are accommodated. She testified regarding various jobs she held after the November 2006 accident. For example, she did office cleaning work from March until May of 2008, and again from June until July of 2011. She also worked as a cook for a food service company from June of 2011 until October of 2011, primarily preparing pizzas. She also worked at Illinois State University from October of 2011 until April of 2012 as a prep cook in a cafeteria. During cross examination, the claimant also testified that in November of 2010, she asked the employer's director of nursing, Mark Riehle, if she could return to work in a capacity where her restrictions would be accommodated. The claimant also testified about her efforts to find other work elsewhere. She introduced exhibits outlining the various employers she contacted in an effort to obtain work in accordance with her restrictions.

¶ 35 Didier Mafwala Pembele, the claimant's husband, also testified. Pembele testified regarding the difficulties the claimant has had since her injury. He testified that the claimant does some light housework, but cannot do all of it and he needs to help with many of the house chores.

¶ 36 Matt Riehle, the employer's director of nursing, testified on behalf of the employer. Riehle testified that, after her work injury, the claimant was released to work full duty by Dr. Rink and attempted to return to work for one day. However, after working for a half day, the claimant claimed that she could not do the work. Riehle also testified that the employer offered the claimant the opportunity to return to work as a CNA in August of 2009 and again in December 2010 and January 2011. The latter offers were made after the claimant spoke to Riehle about returning to work in November of 2010. According to Riehle, the claimant seemed very anxious about returning to work at that time and said only that she wanted to return to work; she said nothing at that time about wanting to return to work in a restricted duty capacity only.

¶ 37 The arbitrator found that the claimant had proven work injuries arising out of and in the course of her employment, and a causal relationship between her November 6, 2006, work accident and her current conditions of ill-being. The arbitrator found the opinions of Dr. Seidl and Dr. Rink persuasive on the issue of causation as it pertained to the claimant's left shoulder treatment. In addition, the arbitrator noted that there was "really no dispute as to the issue of causation between the claimant's TMJ and the [work] accident and the evidence established that relationship as well." Regarding the claimants other conditions f ill-being (including her ongoing complaints of pain in her neck, face, trapezius, and upper shoulder), the arbitrator noted that: (1) "[f]or the past several years, the claimant's treatment has centered around her right sided facial pain and pain in the left side of the neck and upper trapezius, and that "[h]er complaints of

pain to Dr. Rink since he resumed her care in 2010 have been consistent"; (2) Dr. Rink has consistently described the claimant's condition as "chronic cervical, upper shoulder myofascial pain with associated occipital neuralgia."; (3) Dr. Piper last saw the claimant on May 14, 2012 and diagnosed cervical sympathetic pain; (4) nerve studies performed in late 2012 and August 2013 both revealed chronic left cervical radiculopathy at C 7-8; and (5) while some of the claimant's symptoms were "admittedly subjective," "she did perform a valid FCE on May 2, 2012 establishing her limitations from those conditions." The arbitrator concluded that "the above evidence supports a finding of causation between the claimant's accident and her ongoing conditions of ill being."

¶ 38 In calculating the amount of TTD benefits to which the claimant entitled, the arbitrator noted that Dr. Rink and others had the petitioner off work from the date of accident through May 31, 2007. After that, she was only restricted from repetitive work by Dr. Rink's note of July 31, 2007. Dr. Seidl took her off again beginning on May 14, 2008. She remained either off work or under restriction while she was active in treatment through April 1, 2011, when Dr. Rink placed her on restrictions which he said were permanent in nature. Shortly after that date, the petitioner began working under those restrictions. Accordingly, the arbitrator awarded the claimant TTD benefits from November 7, 2006, through May 31, 2007, and again from May 14, 2008 through April 1, 2011, "a period of 187 6/7 weeks." The arbitrator ruled that the employer was entitled to a credit for the weeks of TTD it had already paid.

¶ 39 Regarding medical expenses, the arbitrator noted that the employer had already paid all medical associated with the petitioner's TMJ condition. The arbitrator ordered the employer to pay any unpaid medical bills for treatment to the claimant's shoulder, cervical spine or trapezius muscle strain, along with any treatment related to the claimant's "CRPS diagnosis."

¶ 40 Moreover, the arbitrator determined that the claimant should receive a PPD award "for a percentage man as a whole to address her various injuries." Based on a consideration of the FCE report and other medical evidence, the arbitrator found that the claimant was no longer able to perform her usual job as a certified nurse's assistant. De However, the arbitrator noted that the claimant had "demonstrated an ability to work cleaning offices, working as a food prep clerk, and working preparing pizzas." Although she "claimed subjective difficulties" in performing these jobs, the arbitrator found that there was "no evidence to support that the reason for her ending those various employments was related to her injuries." Accordingly, the arbitrator found that the claimant "sustained injury to the extent of 40 % person as a whole pursuant to Section 8 (d) (2) for her injuries."

¶ 41 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). Although the Commission agreed with the dates of disability found by the arbitrator, the Commission calculated that the periods of disability amounted to 180 weeks, not 187 6/7 weeks, as found by the arbitrator. Accordingly, the Commission modified the TTD award to 180 weeks.

¶ 42 In addition, the Commission increased the arbitrator's PPD award by awarding PPD benefits in the amount of 50 percent of the person-as-a-whole. In support of this conclusion, the Commission noted that the claimant suffered severe injuries to her jaw, shoulder and cervical spine as a result of the work accident and has undergone multiple surgeries and years of physical therapy and various pain management measures. The claimant has since developed myofascial pain syndrome, among other issues. The Commission further noted that the claimant faced "extensive issues" during her activities of daily living and is never pain free. She "needs her husband to help her care for their children and with regular household chores." For example, the

claimant “can only lift light clothes and cannot do heavy laundry or grocery shop by herself.” Moreover, the Commission found that the claimant's life “is limited by the pain she constantly experiences.” She “has trouble getting dressed and doing her hair,” “sleeping is very painful,” “she has difficulty eating hard foods,” and “her jaw is painful to touch and swollen.”

¶ 43 Moreover, the Commission found that the claimant's “career has also been greatly affected by her work injury.” She is unable to return to her previous employment as a CNA. She was given permanent work restrictions of not lifting more than 25 pounds and no repetitive overhead work. A FCE found her capable of working at the light to sedentary capacity. A labor market survey suggested that she would be capable of working as an unskilled cleaner, housekeeper or unskilled cashier. In addition, the claimant testified that she attempted to return to work in the food service industry and as a cleaner but was unable to keep those jobs due to increased pain.

¶ 44 In sum, the Commission found that the claimant “is extremely limited in her personal and professional life as a result of this work related injury and multiple medical issues.” Accordingly, the Commission awarded the claimant PPD benefits for 250 weeks in the amount of 50% loss of use of the person-as-a-whole. The Commission affirmed and adopted the arbitrator’s decision in all other respects.

¶ 45 Commissioner Lamborn concurred in part and dissented in part. Commissioner Lamborn concurred with the majority’s decision to modify the claimant’s TTD benefits but dissented from the majority’s decision to award PPD benefits in the amount of 50 percent loss of the person-as-a whole.

¶ 46 The employer sought judicial review of the Commission's decision in the circuit court of McLean County, which confirmed the Commission's ruling.

¶ 47 This appeal followed.

ANALYSIS

¶ 48 1. The Claimant's Cervical Condition

¶ 49 The employer argues that the Commission's finding that the claimant's current cervical condition is causally related to the claimant's November 6, 2006, work accident is against the manifest weight of the evidence.

¶ 50 To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Thus, even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his 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).

¶ 51 The issue of causal connection is a factual question to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 206; *Vogel*, 354 Ill. App. 3d at 786. When 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 owe particularly "substantial deference" to the Commission's findings regarding medical issues, "as its expertise in this area is

well recognized." *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 18; see also *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). A reviewing court may not substitute its judgment for that of the Commission on factual issues merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence, *i.e.*, only when the opposite conclusion is "clearly apparent." *Swartz*, 359 Ill. App. 3d at 1086. 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). When the evidence is sufficient to support the Commission's causation finding, we will affirm. *Id.*

¶ 52 Although the employer concedes that the claimant suffered work-related TMJ and shoulder injuries, it argues that the evidence does not support a causal relationship between the claimant cervical symptoms after March 2007 and the November 6, 2006, work accident. As to the cervical condition, the employer maintains that the evidence clearly establishes that the claimant suffered nothing more than a cervical strain during the November 2006 work accident which had completely resolved by March 2007, when the claimant was released to return to work without restrictions. The four MRI studies of the claimant's cervical spine were normal, and Dr. Martin opined that the claimant had suffered only a cervical strain that had resolved by March 2007. Moreover, Dr. Rink's medical records immediately after the accident "show nothing more serious that a cervical strain." There is no evidence in the medical records that the claimant complained of neck pain or sought treatment for any cervical condition between March 2007 and November 8, 2008, when he complained of neck pain to Dr. Piper. The employer maintains that this 20-month gap in treatment suggests that the claimant's neck symptoms after 2007 were

caused by the progression of his preexisting degenerative cervical condition, not by the November 2006 work accident. Accordingly, the employer argues that the Commission should not have awarded any TTD benefits and medical expenses for the treatment of any neck or trapezius symptoms after March 2007.

¶ 53 We disagree. Contrary to the employer's argument, there is ample medical evidence supporting the Commission's causation finding. Although Dr. Rink's and Dr. Liang's initial treatment records suggest that the claimant had suffered a cervical strain that was improving, that improvement did not last long. On November 28, 2006, Dr. Rink noted that the claimant had "increased pain throughout the upper shoulder and neck region." He diagnosed injury to the right TMJ and cervical strain "with myofascial involvement." He also noted possible radicular symptoms. On December 7, 2006, the claimant was still having a lot of neck pain and had "a tremendous amount of guarding in the upper trapezius regions and cervical paraspinal muscles." Dr. Rink diagnosed a cervical sprain "with significant myofascial involvement." On December 18, 2006, Dr. Rink concluded that the claimant's neck and upper shoulder conditions and the straightening of her cervical spine were probably the result of myofascial pain syndrome. He diagnosed "[p]ersistent neck and upper shoulder pain secondary to a cervical sprain progressing into a myofascial pain syndrome involving the neck and upper shoulder regions." Dr. Holmes' January 8, 2007, medical record indicates that the claimant reported experiencing "severe," "debilitating," and "constant" pain in her neck and trapezius.

¶ 54 The claimant testified that, at all times throughout the course of her treatment (and through the date of the arbitration hearing), she has experienced pain in her jaw, shoulder, *and upper neck area*. But even assuming that her neck pain temporarily resolved in May 2007,[6] the

[6] Drs. Rink and Catt noted that the claimant's neck pain appeared to resolve in May 2007, not in

medical records show that it returned no later than November 8, 2008. Thereafter, the claimant complained consistently of neck pain to Drs. Piper and Rink. Dr. Piper performed a nerve block in the claimant's neck to treat her neck pain and referred her for chiropractic treatment for her neck, shoulders, and back. On several occasions between June 2009 and September 2010, Dr. Piper opined that the claimant was experiencing "sympathetic pain" in her neck or arising from her neck. He continued to restrict the claimant from full work duties due to her cervical irritation and "complex regional pain syndrome," which he related to her right-sided facial symptoms. In March 2010, Dr. Piper recommended that the claimant see a neck specialist. Approximately five months later, he recommended that the claimant undergo neck rehabilitation.

¶ 55 On November 12, 2009, the claimant saw Dr. Seidl's physician assistant with complaints of ongoing pain in the shoulder and the left side of the neck. Throughout her treatment with Dr. Rink from May 2010 through May 2012, the claimant repeatedly complained of ongoing neck pain. In February and May 2012, Dr. Rink noted that the claimant had decreased neck strength and decreased cervical range of motion.

¶ 56 Moreover, both before and after the 20-month gap in reports of neck pain, Drs. Rink and Piper diagnosed the claimant as suffering from myofascial pain syndrome. Both doctors opined that the claimant's myofascial pain syndrome caused many of the claimant's pain symptoms and conditions of ill-being. Moreover, both doctors opined that the claimant's myofascial pain syndrome was caused by the November 2006 work accident. For example, on June 28, 2013, Dr. Rink diagnosed "[c]hronic cervical, upper shoulder myofascial pain with associated occipital neuralgia," and opined that there was a "strong relationship" between the claimant's previous

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March 2007 as the employer claims. Dr. Rink released the claimant to full duty work on May 30, 2007, not in March 2007 as the employer claims.

shoulder injury, her TMJ injury, and her cervical occipital neuralgia. During his evidence deposition, Dr. Rink opined that the claimant suffered a cervical strain during the November 2006 work accident which caused "ongoing myofascial pain." On May 14, 2012, Dr. Piper opined that the claimant's residual facial pain was "not coming from her temporomandibular joints, but rather is of cervical sympathetic origin." He further opined that "[t]his separate neuropathic pain problem still relates to the original trauma."

¶ 57 Accordingly, the medical evidence suggests that: (1) the clamant suffered from cervical myofascial pain both before and after the 20-month gap in treatment for neck pain; (2) the claimant's myofascial pain syndrome caused many of her pain symptoms, including her neck, face, and shoulder pain; and (3) the claimant's myofascial pain syndrome (including the neck pain she suffered after November 2008) was caused by the November 2006 work accident. Thus, there was ample medical evidence suggesting a causal relationship between the work accident and the claimant's ongoing neck symptoms. Although the claimant's two IME doctors reached a different conclusion, it was the Commission's province to resolve conflicts in the medical opinion evidence. *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). The Commission's causation finding and its decision to award TTD benefits for all of the claimant's work-related, disabling conditions (including her myofascial neck pain) was not against the manifest weight of the evidence.

¶ 58 2. The Commission's PPD Award

¶ 59 The employer argues that the Commission erred by awarding the claimant PPD benefits in the amount of 50 percent loss of the person-as-a-whole without apportioning the award among the claimant's neck, shoulder, and jaw injuries. The employer argues that the Commission's failure to apportion the PPD award among these separate injuries precludes meaningful review of

the award. The employer is mistaken.

¶ 60 Because of the Commission's expertise in the area of worker's compensation, its findings on the question of the nature and extent of permanent disability should be given substantial deference. *Mobil Oil Corp. v. Industrial Comm'n*, 309 Ill. App. 3d 616, 624 (2000); *Jewel Food Cos., Inc. v. Industrial Comm'n*, 256 Ill. App. 3d 525, 534 (1993). It is not the province of a reviewing court to substitute its judgment for that of the Commission merely because it might have made a different finding. *Grischow v. Industrial Comm'n*, 228 Ill. App. 3d 551, 559 (1992). It is for the Commission to resolve disputes in the evidence and draw reasonable inferences and conclusions from that evidence, and the Commission's decision will not be set aside on review unless it is contrary to the manifest weight of the evidence. *Grischow*, 228 Ill. App. 3d at 559; see also *Baumgardner v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 274, 278–79 (2011). In order for a finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 852 (1996).

¶ 61 Section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2006)) does not expressly require the apportionment of PPD awards in the manner urged by the employer. Nor has any published decision construing section 8(d)(2) required such apportionment or suggested that meaningful appellate review is precluding by the Commission's failure to apportion a PPD award among various bodily injuries caused by the same work accident. To the contrary, the fact that we have reviewed "unapportioned" PPD awards under similar circumstances to those presented here supports the opposite inference. See, *e.g.*, *Piasa Motor Fuels v. Industrial Comm'n*, 368 Ill. App. 3d 1197 (2000); *Levkovitz v. Industrial Comm'n*, 256 Ill. App. 3d 1075 (1994); *Mitchell v. Industrial Comm'n*, 148 Ill. App. 3d 690 (1986).

¶ 62 The reason that such apportionment is not required is simple. The purpose of section 8(d)(2) is to determine the overall disabling effect that a work-related accident has on a claimant, *i.e.*, the degree to which the claimant's ability to perform work activities or activities of daily living has been hampered or diminished by a work-related injury. Thus, if a claimant suffers multiple injuries as the result of a single work accident, it does not matter what percentage of his disability is caused by each injury. What matters is the degree to which all of these work injuries, in the aggregate, have disabled the claimant.

¶ 63 Accordingly, the Commission did not err in failing to apportion its PPD award among the claimant's various bodily injuries.[7] Such apportionment would have been particularly difficult and inappropriate in this case because so many of the claimant's work-related, disabling

[7] After oral argument, the employer submitted our recent decision in *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, as additional authority. The employer notes that, in *Corn Belt*, we "remanded the issue of permanency for the Commission to articulate grounds in conformance with 820 ILCS 305/8.1b(b), finding in part that without an explanation of its ruling and reasons, the Commission's decision was difficult to review as to whether it is against the manifest weight of the evidence." *Corn Belt* is distinguishable and does not support the employer's argument in this case. *Corn Belt* applied section 8.1b(b) of the Act, which expressly requires the Commission to explain in its written order the relevance and weight of the factors it used in determining the claimant's level of disability. 820 ILCS 305/8.1b(b) (West 2012). That section has no application here because it applies only to injuries occurring on or after September 1, 2011. 820 ILCS 305/8.1b (West 2012). In any event, section 8.1b(b) does not suggest that a person-as-a-whole PPD award for injuries to multiple body parts must be apportioned or allocated among the different injuries.

conditions were caused by an underlying myofascial pain syndrome and were therefore interrelated.

¶ 64 Moreover, the Commission's decision to award the claimant PPD benefits in the amount of 50 percent loss of the person-as-a-whole was amply supported by the evidence. The claimant's jaw, shoulder, and myofascial pain conditions (including her neck pain) severely limited the claimant in both her work and her professional activities. The claimant testified that she needs her husband's help in caring for her children and in performing basic household chores. She cannot shop for herself or lift anything heavier than "light clothes." Her constant pain is debilitating. She has trouble getting dressed and doing her hair. Sleeping is very painful and she has difficulty eating hard foods. In addition, the claimant's career has also been greatly affected by her work injury. She is unable to return to her previous employment as a CNA. She was given permanent work restrictions of not lifting more than 25 pounds and no repetitive overhead work. A FCE found her capable of working at the light to sedentary capacity. She attempted to return to work in the food service industry and as a cleaner but was unable to keep those jobs due to increased pain. Thus, the Commission's PPD award was not against the manifest weight of the evidence.

¶ 65 CONCLUSION

¶ 66 For the foregoing reasons, we affirm the judgment of the circuit court of McLean County, which confirmed the Commission's decision.

¶ 67 Affirmed.