2013 IL App (5th) 120581WC-U

NO. 5-12-0581WC

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

PAMELA JENKINS, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Memorial Hospital, Appellee).	)))))))))	Appeal from the Circuit Court of St. Clair County. No. 11-MR-284 Honorable Stephen P. McGlynn, Judge, presiding.

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

ORDER

¶ 1 *Held*: It was not inconsistent for the Commission to find that the claimant suffered a compensable injury, and to also determine that her condition of the date of the arbitration hearing was not causally connected to her workplace accident where medical testimony was presented that the claimant suffered a temporary injury which had resolved. The Commission's determination that the claimant's condition of ill-being on the date of the arbitration hearing was not causally related to her workplace accident is not against the manifest weight of the evidence.

¶ 2 The claimant, Pamela Jenkins, filed an application for adjustment of claim against her employer, Memorial Hospital, seeking workers' compensation benefits for a disabling condition of ill-being allegedly caused by a workplace accident. The claim proceeded to an expedited arbitration hearing on December 20, 2010, under section 19(b) of the Workers' Compensation Act (820 ILCS 305/19(b) (West 2010)). The arbitrator found that, on June 24, 2010, the claimant was involved in an accident that arose out of and in the course of her

employment. The arbitrator found that the claimant was temporarily totally disabled from June 24, 2010, through August 26, 2010, at which time she had reached maximum medical improvement. The arbitrator ordered the employer to pay temporary total disability (TTD) benefits of $877.25 per week for 9 1/7 weeks. The employer was ordered to pay all reasonable and necessary medical services through August 26, 2010. The parties stipulated that the employer had paid those bills. Any bills incurred after August 26, 2010, were denied, and the claimant's request for prospective medical benefits was also denied. The arbitrator found that the claimant's current condition of ill-being was not causally related to the accident.

¶ 3 The claimant appealed to the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's ruling. The claimant filed a timely petition for review in the circuit court of St. Clair County. The circuit court confirmed the Commission's decision. The claimant appealed.

¶ 4 BACKGROUND

¶ 5 The following factual recitation is taken from the record and the evidence presented at the arbitration hearing.

¶ 6 The claimant is a registered nurse and has worked for the employer since 1998. She has been an operating room nurse since 1999. She testified that on June 24, 2010, she was in the break room when a nurse in an operating room dropped a bottle of phenol. Phenol is a caustic substance which can cause irritation and tissue damage if inhaled. She was about 20 to 30 feet away from where the spill occurred and was exposed to the phenol vapors. The claimant testified that no phenol got on her and that she never went in the operating room after the spill. She testified that she was in the area with vapors for about 1½ hours after the spill, at times five to six feet from the room where the spill occurred. She stated that after the spill she wore her surgical mask. At some point the HAZMAT team came in and closed

the area. The claimant did not know how long the phenol was on the floor before it was cleaned up.

¶ 7 The claimant testified that her reaction to the phenol started with burning of her eyes, congested nose, heavy breathing, and nausea. She stated that she went to the locker room and took a shower, but the phenol smell was coming down the stairs and she "got another good whiff." She called the emergency room and was told to report there for treatment. While she was waiting for treatment in the emergency room, the claimant's skin turned red, and she itched badly. She was taken to the decontamination room to shower. After her shower, she was seen by Dr. Byler who told her she should have washed with glycine soap. There was no glycine soap at the hospital so she had to douse herself with rubbing alcohol. Another doctor examined her and admitted her to the hospital. The claimant testified that she was in the hospital for two days. She was under the care of her primary care physician, Dr. David Rawdon. Dr. Rawdon diagnosed the claimant with chemical pneumonitis.

¶ 8 Dr. Christopher Schenewerk also cared for the claimant while she was in the hospital. In his patient notes Dr. Schenewerk wrote that the claimant's physical exam showed no wheezing in the right or left lung field, good air entry bilaterally, and no crackles bilaterally.

¶ 9 On June 24, 2010, the claimant had a chest x-ray due to shortness of breath. Dr. Timothy Manda wrote that there were no infiltrates, consolidates, or effusions. He wrote that the cardiac silhouette and mediastinum were within normal limits.

¶ 10 On June 25, 2010, the claimant had another chest x-ray. It showed that the cardiomediastinal silhouette was stable, that there was no developing vascular congestion, and no developing airspace infiltrate, effusion, or pneumothorax. Dr. Aaron Settler wrote that, based on the x-ray, his impression was stable chest without acute cardiopulmonary process.

¶ 11 Dr. James Vest, a board-certified internal medicine and pulmonary medicine

physician, testified by evidence deposition on November 22, 2010, that he first saw the claimant on July 6, 2010. He stated that pursuant to the history the claimant gave him, she was working as a nurse in an operating room when a bottle of phenol was dropped, the glass was broken, and fumes went into the operating room. She developed wheezing, shortness of breath, burning eyes, cough, headaches, and blurred vision. She was transferred to the emergency room where she was given IV steroids, respiratory treatment, and subsequently admitted to the hospital. He stated that the claimant was a fairly healthy woman who reported that she never smoked and had no previous history of any type of pulmonary disease, including any recurrent pneumonia. He testified that past medical history is significant when treating pulmonary disease because in order to determine whether a causal relationship exists between an event and a certain condition, the physician has to be sure that the patient did not have any type of preexisting condition that could have precipitated or aggravated her current condition. He stated that in light of the claimant's negative pulmonary history, there was a direct causal relationship between her exposure to phenol and her medical problems.

¶ 12 Dr. Vest testified that the claimant's respiratory rate was a little more than normal, her chest was hyperinflated, she had diminished breath sounds, and there were wheezes and high-pitched tones in her lung fields. He stated that a hyperinflated chest is usually associated with reactive airways, bronchospastic airways, or twitchy airways. He diagnosed the claimant with phenol exposure with multisystem involvement including her eyes, nose, and lungs. He opined that she had reactive airway disease secondary to the phenol exposure. He testified that there was no way to determine the extent of damage the phenol exposure had done to her lungs because with chemical exposure improvement in lung function can take a long time.

¶ 13 Dr. Vest testified that he prescribed two puffs of an Advair inhaler each morning and

placed her on home respiratory treatments. He originally prescribed Xopenex nebulizer respiratory treatments at home every four hours, but decreased the treatments to twice daily. He stated that, as of the date of the deposition, she was still on that prescription. He testified that Xopenex is a bronchodilator. He testified that he also prescribed the steroid prednisone. He originally prescribed 20 milligrams of prednisone per day and told her to taper down to 10 per day if she had a couple of good days. The claimant tried unsuccessfully to taper down to a lower dose.

¶ 14 Dr. Vest testified that he examined the claimant on August 24, 2010. Dr. Vest stated that the claimant complained of difficulty sleeping, headaches, burning eyes, and pain on deep inhalation. He testified that her respiration rate was below normal, she had redness of her nose, diminished breathing sounds at the bases, and her chest showed hyperinflation. He averred that she had improved very little since her examination in July.

¶ 15 Dr. Vest testified that he examined the claimant again on September 28, 2010. He stated that her exam showed expiratory wheezing at the bases and some hyperinflation. He felt she was not improving.

¶ 16 Dr. Vest testified that he kept the claimant off work at the time of his first examination, on July 6, 2010, and that she continued to be off work. He stated that he took her off work because her reactive airways showed little, if any, improvement. He said that people with reactive airways have a tendency to have exacerbations and can become very sensitive to any kind of cold, perfume, smoke, or smell. Additionally, he took her off work because she was having difficulty walking and climbing stairs, and her job in the operating room would have been hampered by her difficulties. He stated that he did not know how much longer the claimant would be off work because it depended on how much her reactive airway disease improved.

¶ 17 Dr. Glennon Paul, a board-certified internal medicine, allergy, asthma, and

immunology physician, testified by evidence deposition on October 13, 2010. He testified that, on August 26, 2010, he conducted an independent medical evaluation of the claimant, at the request of the employer. In his report he wrote that a bottle of phenol was dropped in an operating room and the fumes permeated the operating room. At the time of the accident, the claimant was not in the operating room. She told Dr. Paul that after the accident she was in and out of the operating room and that, as a result, she suffered from burning of the eyes and throat, and shortness of breath. She washed in a decontamination room then went to the emergency room. She was admitted to the hospital for evaluation and treatment. He wrote that her x-ray on the date of the accident showed no abnormality and her follow-up x-ray on June 25, 2010, showed no significant abnormality.

¶ 18 Dr. Paul said that the claimant complained of shortness of breath without wheezing or coughing, lightheaded feeling, and headaches. He stated that the claimant's physical examination was "entirely unremarkable with the exception that the patient was taking frequent and deep breaths." He diagnosed the claimant with hyperventilation syndrome. He stated that it occurs with patients who have chronic anxiety or stress. It can cause lightheadedness and headaches. He stated that it is treated by teaching the patient how to do diaphragmatic breathing.

¶ 19 Dr. Paul testified that he performed a number of tests on the claimant including a chest x-ray which was normal. He testified that a pulmonary function test was performed and it revealed a mild obstructive airway disease with decreased carbon monoxide diffusion capacity which had a 51% improvement after bronchodilators. Dr. Paul testified that there were irregularities with the first pulmonary function test. He stated that the respiratory therapist noticed that the claimant was sticking her tongue in the mouthpiece during the test, but not after receiving the bronchodilator. He stated that the original test revealed a moderate to mild obstruction which reversed to completely normal after the bronchodilators were

given. Dr. Paul averred that a person who has a true obstruction, a true asthmatic, would never return completely to normal as a baseline.

¶ 20 Terri Beckham testified by evidence deposition. She testified that she is a respiratory therapist and that she works with Dr. Paul. She stated that she had been a respiratory therapist since 1977 and that she administers between 78 to 102 pulmonary function tests per month. On August 26, 2010, Ms. Beckham administered a pulmonary function test to the claimant. She stated that patients should not take a breathing treatment on the morning of their test because it can open up their lungs. She stated that the claimant constantly stuck her tongue in the mouthpiece and blocked the airflow. Ms. Beckham testified that because the mouthpiece was clear she could see through it.

¶ 21 The claimant testified that when she was sent to Dr. Paul, she was not given any instructions that she should not take her medication prior to her appointment. She stated that prior to leaving for her appointment with Dr. Paul, she took prednisone, one puff of Advair, and did her morning Xopenex nebulizer treatment. She testified that upon arrival at her appointment with Dr. Paul, she had blood and allergy tests. The allergy tests involved needle pricks on her arms, and she was instructed to keep her arms away from her body so as not to invalidate the tests. She stated that because she could not move her arms she had to adjust the mouthpiece for the pulmonary function test with her tongue. She said the therapist told her one time to keep her tongue away from the mouthpiece.

¶ 22 Ms. Beckham testified that she performed a second pulmonary function test on the claimant using a rubber mouthpiece that the claimant could not stick her tongue in. She stated that after the first test, the claimant was informed not to take any medication in compliance with the office's policy that a patient should not take medicine for four hours prior to the test. She stated that the first test was performed at 8:30 a.m. and the second one was performed at almost 1 p.m. After the second test, she performed a methacholine

stimulation test on the claimant. She stated that when she does the test, the computer generates a report based on the patient's height, weight, age, sex, and performance results.

¶ 23 The claimant testified that after the first pulmonary function test she had a urinalysis, an EKG, and an x-ray of her sinus. She also spoke to Dr. Paul. She then had a second pulmonary function test. She stated that the test was performed about 45 minutes after she received a breathing treatment.

¶ 24 Dr. Paul testified that a second pulmonary function study was performed which was normal at the baseline. He stated that when the second pulmonary function test was performed the claimant was unable to stick her tongue in the mouthpiece and the study was normal. He then had the claimant inhale methacholine, which is a drug that will cause someone with underlying asthma to have an asthma attack. The test was negative. He concluded that "the first pulmonary function study test that [the claimant] performed had to be abnormal because of this irregularity she used when she performed the pulmonary function study."

¶ 25 Dr. Vest testified that a methacholine stimulation test is performed on patients who might have occupational lung disease such as reactive airways due to chemical exposure. He described methacholine as a histamine. He stated that if the patient is on steroids the test is worthless because the steroids block the histamine. He stated that to get an accurate test, the patient would have to be off bronchodilators for 24 to 48 hours before the test and steroids for at least one week.

¶ 26 The claimant testified that the respiratory therapist was instructed to give her a test that would induce asthma. She stated that she was worried about the test because Dr. Paul was not her doctor, she did not feel good after the battery of tests she had already done, they had not taken her vital signs, and she did not see any type of emergency equipment available in case she had a bad reaction. The claimant testified that she was told not to worry. She

stated that the methacholine stimulation test did not cause an asthma attack, but caused her to have a severe headache, sore throat, chest pain, difficulty breathing, and dizziness.

¶ 27 In his report, Dr. Paul wrote that at the time of the accident the claimant had a minor irritation from the phenol resulting in eye and throat irritation along with itching of the skin. He opined that she probably had a mild induced asthma at the time of her exposure, but that she had no asthma at the time of the exam. He concluded that the claimant did not have reactive airway disease at the time of his examination due to exposure to phenol, but that she may have had some reactive airway disease at first because wheezing was detected in the emergency room. He averred that she had symptoms of hyperventilation syndrome documented by arterial blood gas studies and her symptomatology of lightheaded feeling, tingling all over, and tightness in her chest. He felt that her hyperventilation problem may be self-induced. He stated that the claimant needed instruction on diaphragmatic breathing exercises and some mild nerve pills. He opined that her current condition was not causally related to her exposure to phenol on June 24, 2010, and that she had reached maximum medical improvement. He stated that she could return to work if she would stop hyperventilating and that she did not need any restrictions. He averred that he did not expect the claimant to have any permanent impairment as a result of the phenol exposure.

¶ 28 Dr. Vest testified that after the claimant returned from her evaluation with Dr. Paul she was having more trouble with shortness of breath. He stated that the anxiety and stress caused an exacerbation of her condition.

¶ 29 Dr. Vest testified that hyperventilation syndrome could be a myriad of things. It could be caused by anxiety or stress, or it could be a real disease. He said that people who have asthma or lung disease hyperventilate because they cannot get their breath and they are diagnosed as having hyperventilation syndrome. He stated that he had "a real problem when somebody is diagnosed as hyperventilation syndrome without a specific cause or without

etiology." Dr. Vest opined that he had not seen hyperventilation syndrome in the claimant, but that if she had it, it would be secondary to her reactive airway disease. He agreed that hyperventilation syndrome can be self-induced.

¶ 30 Dr. Vest testified that he had not performed any pulmonary function tests on the claimant because he did not think they would be very accurate. He stated that he was doing peak flow tests on the claimant at that time. Dr. Vest testified that in a peak flow test the patient blows into a machine and it measures the amount of air that the patient gets. He testified that for the claimant, a normal peak flow would be between 300 and 350. He stated that her peak flows were between 150 and 250 so he knew that there was acute bronchospasm or abnormalities in the chest. He stated that, in his experience, if the peak flow is not within a certain level, a pulmonary function study will not be reliable.

¶ 31 Dr. Vest testified that the claimant had a handheld peak flow meter at home to perform tests. He stated that he instructed her to keep a log of her readings. Dr. Vest explained that the log helps in his evaluation of patients because during an exam a patient may complain of shortness of breath and the peak flow readings provide an objective test to verify the patient's subjective report.

¶ 32 The claimant testified that she keeps a notebook where she records the results of her twice daily home peak flow tests. She testified that her results for the week prior to the arbitration hearing ranged from 270 to 340, with the majority of the readings being over 300. Only three were below 300. The claimant testified that her only current symptom was shortness of breath. She did not have coughing or wheezing.

¶ 33 Dr. Vest testified that the claimant told him that she was in the operating room when the phenol crashed to the floor and he based his causal connection opinion on that history. He also testified that his opinion was based on her history of no prior pulmonary disease, and stated that opinion might change if the claimant had been diagnosed with pneumonia within

the last six months before the date of the accident.

¶ 34 Medical records from the claimant's treatment in February 2010 were admitted into evidence. On February 15, 2010, the claimant was examined by Dr. Bryan Warner complaining of a cough. He noted that she had a fever and diagnosed her with lower left lobe pneumonia. He recommended that she not work for three days. On February 18, 2010, the claimant was reexamined by Dr. Warner. The diagnosis remained the same and he recommended that she not work until February 23, 2010. She returned to see Dr. Warner on February 23, 2010. He diagnosed her with bilateral pneumonia and told her not to work that day or the next.

¶ 35 The report from a chest x-ray taken on February 18, 2010, was admitted into evidence. Dr. Stanley Kim interpreted the x-ray and wrote that there was patch pulmonary opacity in the right mid lobe suggestive of patch mild pneumonia. The left lung was clear.

¶ 36 The claimant testified that prior to her exposure to phenol she had never suffered from asthma and had never been treated for any pulmonary condition. She stated that in the spring of 2010 she went to Dr. Warner with flu-like symptoms and a low-grade fever. He diagnosed her with pneumonia, but she felt that diagnosis was incorrect.

¶ 37 The claimant testified that she still suffers from shortness of breath and her physical strength has been weakened. She stated that, due to her condition of ill-being, she cannot perform her job with the employer.

¶ 38 The arbitrator found that the claimant did sustain an accident that arose out of and in the course of her employment. The employer was ordered to pay the claimant TTD benefits of $877.25 per week for 9 1/7 weeks for the period of June 24, 2010, through August 26, 2010. The arbitrator found that the claimant had reached maximum medical improvement on August 26, 2010. The employer was ordered to pay the claimant's reasonable and necessary medical services through August 26, 2010. All medical expenses incurred after

August 26, 2010, were denied. The arbitrator found that the claimant's current condition of ill-being was not causally related to the June 24, 2010, accident. She stated as follows:

> "Dr. Vest's causation opinion is based on an incorrect history. [Claimant] reported to Dr. Vest she was in the operating room at the time of the phenol spill, when in fact, [Claimant] was at lunch and in the break room. Dr. Vest also noted, his opinion would differ if [Claimant] had been treated for pneumonia within six months. [Claimant] had been treated for pneumonia within four months from the date of exposure.
>
> Additionally, 90% of [Claimant's] peak flow readings testified to at the time of the trial were within the normal range, as described by Dr. Vest.
>
> The Arbitrator does not find the opinions of Dr. Vest to be less than credible, simply based upon an incorrect history. The Arbitrator relies on the opinions of Dr. Paul, as they are based upon the history of facts as presented at trial."

¶ 39 The claimant sought review of the arbitrator's decision. The Commission affirmed and adopted the arbitrator's decision. The claimant appealed the Commission's decision to the circuit court. The circuit court confirmed the Commission's decision. The claimant filed a timely notice of appeal.

¶ 40 ANALYSIS

¶ 41 The claimant argues that the arbitrator implicitly found a causal connection between her exposure to phenol and her suffering from reactive airway disease by ordering payment of TTD benefits and medical bills through August 26, 2010, and, under the law-of-the-case doctrine, the arbitrator could not also make a determination that her condition of ill-being at the time of the arbitration hearing was not causally connected to the phenol exposure. The claimant argues that by ordering the employer to pay the claimant's medical expenses for Dr. Vest's treatment of her reactive airway disease, the arbitrator, as a matter of law, determined

that the claimant's reactive airway disease was causally related to the June 24, 2010, phenol spill. She argues that because the arbitrator did not make a further finding that the connection between the phenol spill and the claimant's reactive airway disease had ceased, under the law-of-the-case doctrine, the arbitrator was also required to find that the reactive airway disease allegedly suffered by the claimant at the time of the arbitration hearing was causally related to the June 24, 2010, phenol spill.

¶ 42 The claimant clearly misconstrues the law-of-the-case doctrine. Under that doctrine, once an issue is litigated and decided, that ends the matter and the unreversed decision of a question of law or fact made during the course of litigation settles that question for all subsequent stages of the suit. *Irizarry v. Industrial Comm'n*, 337 Ill. App. 3d 598, 606, 786 N.E.2d 218, 224 (2003). "A party's failure to challenge a legal decision when it had the opportunity to do so renders that decision the law of the case for future stages of the same litigation." *People ex rel. Department of Public Health v. Wiley*, 348 Ill. App. 3d 809, 817, 810 N.E.2d 614, 621 (2004), *aff'd*, 218 Ill. 2d 207 (2006). The principles underlying the law-of-the-case doctrine should be applied to matters resolved in proceedings before the Commission. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 252, 899 N.E.2d 365, 374 (2008).

¶ 43 The claimant argues that the law-of-the-case doctrine binds the arbitrator to her causation decision that the claimant suffered from reactive airway disease caused by her exposure to phenol; therefore, she could not also find that the claimant's condition of ill-being at the time of the arbitration hearing was not causally related to the phenol spill. However, this misstates the law. A decision only becomes binding for future stages of the same litigation when there is an opportunity to challenge the decision and further review is not sought. *Wiley*, 348 Ill. App. 3d at 817, 810 N.E.2d at 621. In the instant case, the law-of-the-case doctrine is inapplicable to separate findings of an arbitrator in the same decision.

¶ 44 The claimant next argues that the Commission erred in finding that her condition of ill-being on December 20, 2010, was not causally related to the June 24, 2010, phenol spill. Although the claimant continues to base her argument on the law-of-the-case doctrine, the thrust of her position is that the Commission's determination that the claimant suffered an injury which arose out of her employment justifying an award of TTD benefits is irreconcilably inconsistent with its finding that her condition of ill-being at the time of the arbitration hearing was not causally connected to her workplace injury. The claimant argues that because the arbitrator did not specify what disabling condition the claimant suffered from and awarded medical expenses up to August 26, 2010, she, by implication, found that the claimant suffered from all the conditions for which she sought medical treatment up to that date. The claimant asserts that she was being treated by Dr. Vest for reactive airway disease in December 2010. She argues that an implied finding that she was suffering from reactive airway disease as a result of the accident until August 26, 2010, dictates a finding that she was still suffering from that condition at the time of the arbitration hearing unless the Commission makes a specific finding that the causal connection ceased to exist. Although it is difficult to separate the claimant's position from her irrelevant assertion of the law-of-the-case doctrine, we interpret the claimant's argument to be that the Commission's determination that the claimant's condition of ill-being at the time of the arbitration hearing is not causally connected to the accident is against the manifest weight of the evidence. Accordingly, we will address that argument.

¶ 45 "In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." *R&D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 867, 923 N.E.2d 870, 878 (2010). "Whether a causal connection exists between a claimant's condition of ill-being and his work-related accident is a question of fact to be resolved by the Commission." *Westin Hotel v.*

Industrial Comm'n, 372 Ill. App. 3d 527, 538, 865 N.E.2d 342, 353 (2007). "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). A reviewing court will not overturn the decision of the Commission regarding whether a claimant's condition of ill-being is causally connected to a workplace accident unless the decision is against the manifest weight of the evidence. *Westin Hotel*, 372 Ill. App. 3d at 538, 865 N.E.2d at 353. "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). The appropriate test for whether the Commission's decision is supported by the manifest weight of the evidence is whether there is sufficient evidence in the record to support the Commission's determination. *R&D Thiel*, 398 Ill. App. 3d at 866, 923 N.E.2d at 877.

¶ 46 Here, the Commission found that the claimant sustained an accidental injury that arose out of and in the course of her employment. Accordingly, it ordered payment of TTD and medical benefits through August 26, 2010, the date it determined that the claimant had reached maximum medical improvement. However, the Commission found that her condition of ill-being at the time of the arbitration hearing was not causally related to the accident on June 24, 2010.

¶ 47 It is apparent that the Commission found that the claimant suffered a temporary injury which had resolved and had reached maximum medical improvement by August 26, 2010. In doing so, the Commission relied on the opinions of Dr. Paul. In his IME report and his testimony, Dr. Paul specifically opined that the claimant had suffered a temporary injury as a result of the phenol exposure, but that any injury had resolved by the time of his

examination. Dr. Paul examined the claimant on August 26, 2010, and found that the claimant's physical examination was entirely unremarkable. He testified that the claimant's chest x-ray was normal and that the claimant's second pulmonary function test was normal at the baseline. The first test showed some irregularities, but there was testimony that the claimant caused the irregularities by sticking her tongue in the mouthpiece. He testified that the methacholine stimulation test was negative. Dr. Paul averred that at the time of the accident, the claimant had eye and throat irritation, itchy skin, and may have had some reactive airway disease because she was wheezing in the emergency room. He concluded that at the present time she did not have reactive airway disease due to exposure to phenol. He diagnosed the claimant with hyperventilation syndrome which may be self-induced. He opined that her current condition was not related to the June 24, 2010, accident, and stated that, by the time of his examination, any effects of the phenol exposure had resolved, and the claimant had reached maximum medical improvement.

¶ 48 The Commission also relied upon evidence that the claimant had normal peak flow readings at the time of the arbitration hearing. Dr. Vest testified that the claimant's normal peak flow readings would be between 300 and 350. The claimant testified that in the week before the arbitration hearing, the results of her peak flow tests ranged from 270 to 340, with only three below 300. She testified that her only symptom was shortness of breath and that she did not have coughing or wheezing.

¶ 49 Dr. Vest testified that he had not performed any pulmonary function tests on the claimant. He opined that the claimant had reactive airway disease secondary to her exposure to phenol. He stated that she still had reactive airway disease and needed respiratory treatments. He testified that her condition would wax and wane and be subject to flare-ups. Because of the nature of the disease, he stated he did not know when the claimant would be better.

¶ 50 The Commission discounted the causation opinion of Dr. Vest because it was based upon an inaccurate history. Dr. Vest testified that he based his causal connection opinion on the history that the claimant was in the operating room when the phenol spilled. The claimant was not in the operating room when the phenol spilled. Dr. Vest also testified that his causation opinion might change if the claimant had been diagnosed with pneumonia within six months before the date of the accident. Medical records revealed that in February 2010, Dr. Warner diagnosed the claimant with pneumonia.

¶ 51 "When faced with conflicting medical testimony as to causation, it is the province of the Commission to evaluate that testimony." *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 174, 741 N.E.2d 1144, 1147 (2000). The Commission weighed the testimony of Dr. Vest and Dr. Paul. It found that Dr. Vest's opinion was based on an incorrect history. The Commission relied on Dr. Paul's opinions. Dr. Paul opined that any injury resulting from the phenol exposure had resolved and the claimant had reached maximum medical improvement by August 26, 2010. In determining that the claimant's current condition of ill-being was not causally related to the June 24, 2010, accident, the Commission also relied on the claimant's testimony that at the time of trial her peak flow readings were within the normal range as described by Dr. Vest.

¶ 52 In this case, the Commission was faced with conflicting medical opinions on the issue of whether the claimant's condition of ill-being at the time of the arbitration hearing was causally connected to her phenol exposure. The Commission adopted the opinions of Dr. Paul, who testified that the claimant had suffered a temporary injury which had resolved by the time of his examination. Based upon that testimony, it was not inconsistent for the Commission to find that the claimant suffered a compensable injury, and to also determine that her condition on the date of the arbitration hearing was not causally connected to her workplace accident. There is sufficient evidence in the record to support a finding that the

claimant had reached maximum medical improvement by August 26, 2010, and that her condition of ill-being at the time of the arbitration hearing was not causally related to the June 24, 2010, accident. Accordingly, the decision of the Commission must be affirmed.

¶ 53 CONCLUSION

¶ 54 For the foregoing reasons, the judgment of the circuit court, confirming the decision of the Commission, is affirmed, and this cause is remanded to the Commission pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 55 Affirmed and remanded.