2024 IL App (1st) 232054WC-U

Workers' Compensation
Commission Division
Order Filed: September 27, 2024

No. 1-23-2054WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

HCR MANORCARE,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	No. 2022 L 050574
	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*,	)	Honorable
	)	Jean M. Golden,
(Brittany Bird, Appellee).	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Mullen, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* Finding that the Illinois Workers' Compensation Commissions' determinations as to accident, causal connection, temporary total disability, medical expenses, and permanent partial disability are not against the manifest weight of the evidence, we affirmed the judgement of the circuit court which confirmed the decision of the Illinois Workers' Compensation Commission, awarding the claimant benefits

pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)).

¶ 2 HCR ManorCare (HCR) appeals from a judgment of the circuit court which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), awarding the claimant, Brittany Bird. benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)) for work related injuries she sustained on June 9, 2015. For the reasons which follow, we affirm the judgement of the circuit court.

¶ 3 The following recitation of the facts relevant to a disposition of this appeal is taken from the evidence adduced at an arbitration hearing held on June 17, 2019.

¶ 4 At all times relevant, the claimant was employed by HCR as a certified nursing assistant and had been so employed since January 7, 2015. Her duties included transferring patients from their rooms to rehab rooms and assisting patients with showering, bathing, feeding, dressing, and bathroom needs. The claimant testified that, on June 9, 2015, using a gait belt, she was assisting a patient get out of bed and into a wheelchair. The claimant stated that she put the patient's hands on her shoulders and had her hands under the gait belt. The patient rose to a standing position and, as they were transitioning to the wheelchair, the patient began to wobble. When the patient was above the wheelchair, she went down fast, pulling the claimant's neck forward. According to the claimant, she felt pain in her neck. The claimant stated that she thought she had pulled something but continued to get the patient ready for breakfast. Following the incident, the claimant attempted to do her job, but at approximately 2:00 p.m., she was unable to continue with her duties due to pain in her neck and left shoulder. The claimant notified her supervisor and completed an incident report which contains the following statement: "I was transferring E..O… In room 48-2 with a gait belt from her bed to her wheelchair this morning at 7:30 AM; during the transfer she was wobbly,

so I steadied her and continued to transfer to the chair and felt pain in my neck; neck feels like a pulled muscle." After reporting the incident, the claimant was told to go to Little Company of Mary Care Station that day or the following morning. The claimant left work and went home.

¶ 5 The claimant testified that, when she was not better, she went to Little Company of Mary Urgent Care (Little Company of Mary) the following morning, June 10, 2015. The records of that visit contain a consistent history of the incident and state that the claimant reported that her pain had worsened and was radiating down her left shoulder to the other side of her neck. She was examined and told not to work for several days.

¶ 6 On June 12, 2015, the claimant returned to Little Company of Mary for a follow-up visit. The notes of that visit state that the claimant reported that her neck pain was better after taking her prescribed medication but was still at a level 4 on a scale of 10. The claimant also reported tingling in her left arm. The notes state that an examination of the claimant revealed "pain with palpation cervical paraspinals left and trap left full AROM left upper extremity decreased AROM flexion/extension and rotation left neck." The diagnosis was neck pain/strain. Physical therapy was ordered.

¶ 7 The claimant began physical therapy at Goodlife Physical Therapy on June 10, 2015. The records of her initial evaluation described the location of the claimant's pain as the "bilateral posterior aspects of the neck; bilateral superior scapular region of the shoulder and shoulder gridle."

¶ 8 On June 19, 2015, the claimant was seen at Little Company of Mary for a follow-up visit. The claimant reported little change in her pain, and her diagnosis of neck pain/strain remained unchanged. She was prescribed pain medication and ordered to remain off work from June 19,

2015, through June 26, 2015.

¶ 9 When the claimant was seen at Little Company of Mary on June 26, 2015, she reported that her neck was sore and that the pain radiated down her arm. The claimant also reported that she was taking her prescribed pain medication and that physical therapy was helping. She was again prescribed pain medication, advised to continue physical therapy, and it was recommended that she remain off of work from June 26, 2015, through July 3, 2015. A follow-up appointment was scheduled.

¶ 10 The claimant returned to Little Company of Mary for her follow-up visit on July 3, 2015, and reported continuing pain that had only improved about 10% since June 9, 2015. She also reported that she experienced little relief with physical therapy. The records of that visit note that the claimant had very limited range of motion in her neck with occasional pain radiating down her left arm. As of that visit, the claimant's diagnosis was a cervical strain with radiculopathy. She was advised to continue with her pain medication and to remain off of work. The claimant was referred to an orthopedic surgeon.

¶ 11 On July 13, 2015, the claimant was examined by Dr. Anis Mekhail at Parkview Orthopedic. The notes of that visit reflect that the claimant complained of neck pain radiating down her left arm with numbness and tingling. She reported that the condition began on June 9, 2015, when she was lifting a patient from bed to a wheelchair using a gait belt and felt a twinge in her neck. The claimant reported that her pain got worse, ranging from 4 to 8 on a scale of 10. She also stated that physical therapy was not helping and that she was taking pain medication which was barely taking the edge off of her pain. On examination, Dr. Mekhail noted: "positive Sperling going down the left arm in the ulnar aspect of the arm; positive cubital tunnel, positive Tinel sign but she had intact

sensation, normal motor power, symmetric deep tendon reflexes, no abnormal reflexes in the upper or lower extremities, normal gait; has significant stiffness of her neck turning her head only about 20* in either direction and also extending mostly 10-20*." Dr. Mekhail diagnosed significant neck pain, left cervical radiculopathy, and positive cubital tunnel syndrome. Dr. Mekhail ordered an MRI of the claimant's cervical spine and an EMG of her right upper extremity, prescribed a Medrol Dosepak and tramadol, and ordered the claimant to remain off of work.

¶ 12 The claimant had the recommended MRI on July 17, 2015, and the EMG on July 21, 2015.

¶ 13 The claimant was next seen by Dr. Mekhail on July 30, 2015. The notes of that visit state that the claimant was still experiencing neck pain along with numbness and tingling in her left ring and little fingers. Dr. Mekhail's physical examination revealed negative Sperling, and that the claimant was neurologically intact with a limited range of motion, lacking 20 degrees of rotation at each side. Dr. Mekhail's notes state that the claimant's MRI was essentially normal at the neck, and her EMG was normal. He diagnosed whiplash injury. Dr. Mekhail prescribed physical therapy three times per week and continued the claimant on off-duty status.

¶ 14 On September 3, 2015, the claimant was examined at the request of HCR by Dr. Frank Phillips at Midwest Orthopedics. In his report dated that same day, Dr. Phillips noted that his examination of the claimant revealed some posterior cervical and scapular tenderness bilaterally; limited range of motion with flexion, extension, and side bending, all limited by axial neck pain; Sperlings and Lhermitte's were negative for reproduction of any radicular symptoms; her upper extremity motor exam was 5/5; sensation was intact in a C5 through C8 dermatomal pattern; and her reflexes were symmetric. Dr. Phillips interpreted the claimant's July 17, 2015, MRI as revealing no evidence of disc herniation or any acute structural injury to her cervical spine.

According to Dr. Phillips, the claimant likely sustained a cervical sprain/strain injury with no structural injury. He recommended that the claimant complete her course of physical therapy and opined that, after completion, she would be at MMI and could resume regular work duties.

¶ 15 The September 3, 2015, records of Goodlife Physical Therapy state that the claimant was unable to tolerate overhead activity or repetitive upper extremity activity without pain.

¶ 16 The claimant testified that, following her examination by Dr. Phillips, HCR ordered her to return to work or she would be terminated.

¶ 17 The claimant returned to see Dr. Mekhail on September 12, 2015. In the notes of that visit, the doctor wrote that the claimant continued to complain of tingling in the ulnar aspect of her hand and that she still had limited range of motion and posterior neck tenderness. Dr. Mekhail found the claimant to be neurologically intact. Although the claimant did not think that she was capable of performing her job duties, Dr. Mekhail was of the opinion that she could do light duty work with a 10-pound weight restriction. As of that visit, Dr. Mekhail's primary diagnosis was left cervical radiculopathy and a strain with a secondary diagnosis of left cubital tunnel syndrome. He renewed the claimant's prescriptions for pain medication and ordered additional physical therapy.

¶ 18 The claimant returned to work at HCR on September 21, 2015, in a full duty capacity. She testified that she was still experiencing pain in her neck and in her left shoulder, radiating down her left arm. The claimant stated that after 3 hours of work her pain was so great that she had to take a break. She advised her supervisor that she was leaving and went to Palos Immediate Care.

¶ 19 September 21, 2015, records of Palos Immediate Care reflect that the claimant presented complaining of neck pain and numbness and tingling in her left arm and hand to the 5th digit. She reported having injured herself at work in June and reinjured herself that day. A physical

examination of the claimant revealed reduced range of motion in her neck for lateral rotation, decreased flex/extension, positive TTP paravertebral areas, full range of motion in her upper extremities, and 5/5 normal sensation. An X-ray of the claimant's cervical spine was taken, the results of which were negative. The discharge instructions to the claimant were to take Norco for pain, stop taking tramadol, ice, continue the Medrol Dosepak, and not to take Valium with Norco. The claimant was advised to follow-up with her physician in the next 24 to 48 hours. Her discharge diagnosis was neck pain.

¶ 20 On referral by her attorney, the claimant was seen by Dr. Ronald Silver at Orthopedic Specialists of the North Shore on September 25, 2015. The notes of that visit contain a history of the claimant lifting heavy patients as a nursing assistant on September 21, 2015, when she experienced severe pain in the left side of her neck, radiating into her left shoulder and arm with numbness and tingling. According to the note, the claimant stated that she had a prior accident involving her neck which had resolved prior to the instant accident. Dr. Silver noted that his examination of the claimant revealed: tenderness over her cervical spine on the left, trapezius muscles on the left, and parascapular muscles on the left; no range of motion of the neck due to severe pain and spasms; and normal shoulder motion on the left. The claimant's neurological examination was normal and the X-rays of her cervical spine were within normal limits. The claimant had significant soft tissue swelling and inflammation around the trapezius for which topical medication was prescribed. Dr. Silver also prescribed additional pain medication, ordered physical therapy, ordered an MRI of the claimant's cervical spine, and maintained her on off-work status. In addition, Dr. Silver referred the claimant to a spine pain specialist. The claimant testified that Dr. Silver referred her to Dr. Jared Kalina at the Kalina Pain Institute.

¶ 21 When the claimant was seen by Dr. Kalina on September 29, 2015, she complained of constant shooting and achy neck pain on the left greater than on the right, radiating into her left shoulder blade and the back of her arm, along with tingling pain in her left 4th and 5th digits. The claimant reported that the pain is worse when turning her head and sitting upright but is reduced with ice and medication. Dr. Kalina's records contain a history of the claimant having been injured while working at HCR on June 9, 2015. As to the mechanism of her injury, the records state that the claimant was assisting a patient go to the bathroom using a gait belt when the patient lost her balance and began falling backwards. The claimant pulled back on the gait belt to steady the patient when she experienced a sudden onset of neck pain. The claimant denied prior episodes of neck pain. Dr. Kalina's records also note that the claimant returned to work on September 21, 2015, but could not perform her duties due to pain. Dr. Kalina's records contain a brief history of the claimant's medical treatment and state that Dr. Silver would manage the claimant's medications.

¶ 22 On October 2, 2015, the claimant underwent an MRI scan of her cervical spine as ordered by Dr. Silver. That scan revealed a moderate sized C6-7 paracentral to the left disc bulge and a mild central C5-6 disc bulge.

¶ 23 The claimant testified that Dr. Silver also referred her to the Spine & Pain Center for physical therapy where she was seen by Dr. Dan Catarello on October 5, 2015. The notes of that visit reflect that the claimant complained of a sharp achy pain in her upper back and left upper extremity. The notes contain a history of the claimant helping a patient to steady herself when she pulled on her neck, causing pain and a loss of normal function of the claimant's neck and left upper extremity. The claimant's physical therapy was directed to her neck and left upper extremity.

¶ 24 After nine sessions of physical therapy, the claimant was seen by Dr. Kalina again on

October 20, 2015, complaining of constant neck pain radiating into her left shoulder blade and into the back of her arms and tingling in her left 4th and 5th digits. The claimant reported transient pain relief after her nine physical therapy sessions. After examining the claimant, Dr. Kalina diagnosed acute brachial neuritis, acute myalgia, acute cervical spondylosis, radiculopathy in the cervical region, and muscle spasms of the neck. Cervical steroid injections were scheduled to reduce the claimant's radicular pain. Dr. Kalina prescribed medication for the claimant's pain.

¶ 25 Dr. Kalina's records reflect that she administered cervical transforaminal epidural injections to the claimant on October 27, 2015, and November 10, 2015.

¶ 26 Dr. Silver's November 15, 2015, records reflect that the claimant continued to be symptomatic, had limited range of motion in her cervical spine to left and right twisting and forward flexion, and numbness, tingling, and pain down her left arm. The claimant was directed to continue with physical therapy and remain off of work.

¶ 27 The claimant underwent an upper extremity NCS/EMG on November 20, 2015, which was performed by Dr. Aleksandr Goldvekht. Dr. Goldvekht interpreted the test as abnormal with evidence of mild left C7 radiculopathy and focal left ulnar entrapment neuropathy at the cubital tunnel. Dr. Goldvekht recommended clinical correlation.

¶ 28 Dr. Kalina's notes of the claimant's November 24, 2015, visit reflect that the claimant continued to experience neck pain radiating into her left shoulder blade and into the back of her arms and tingling in her left 4th and 5th digits. According to Dr. Kalina's notes, the cervical transforaminal epidural injections she administered resulted in no significant relief from the claimant's radicular pain. Dr. Kalina noted the results of the claimant's MRI scan and recent EMG/NCV study, and referred the claimant to Dr. Mark Sokolowski, an orthopedic spine surgeon.

¶ 29 The claimant was seen by Dr. Sokolowski on December 2, 2015. In his notes of that visit, Dr. Sokolowski recorded the claimant's complaints of neck pain, left arm pain, numbness, and tingling in her left ring and small fingers. The notes contain a history of the claimant's symptoms having begun on June 9, 2015, when a patient she was assisting began to fall backwards and jerked the claimant forward, causing the onset of neck pain radiating down her left arm. Dr. Sokolowski's examination of the claimant revealed: the Sperling sign was positive for production of periscapular pain and neck and arm pain; Frank cervical facet joint tenderness to palpation, neck pain with extension and relative relief on flexion; equivocal Tinel sign over the left elbow; decreased sensation in the claimant's left 4th and 5th digits; negative Hoffman sign; normal reflexes; and symmetrically intact strength throughout her upper extremities and all muscle groups with the exception of the left grip. After his examination and review of the claimant's cervical MRI and EMG, Dr. Sokolowski diagnosed neck pain and symptoms consistent with ulnar nerve entrapment and cervical facet joint mediated pain. He found the claimant to be a good candidate for a medial branch block, and if the block failed to give her long lasting relief, then radio-frequency ablation. Dr. Sokolowski found that the claimant's numbness, paresthesia, and tingling localized to the left 4th and 5th digits were most likely cubital tunnel in origin.

¶ 30 When the claimant saw Dr. Silver on December 23, 2015, he found that her range of motion was limited and painful due to her September 21, 2015, work-related injury. According to Dr. Silver's notes, the claimant reported that prior to that accident her neck was normal. Dr. Silver recommended that the claimant continue with physical therapy, and he prescribed pain medication.

¶ 31 The claimant was next seen by Dr Kalina on December 29, 2015, complaining of continued left-sided neck pain. On the recommendation of Dr. Sokolowski, Dr. Kalina referred the claimant

to a hand surgeon, Dr. Todd R. Rimington. Dr. Kalina's care plan was to schedule the claimant for a diagnostic left C5, C6 and C7 MBB and to keep her off of work.

¶ 32 On January 12, 2016, the claimant presented to Dr. Rimington, complaining of persistent pain in her left arm and elbow, radicular symptoms extending from her neck down to her hand, and numbness in her small and ring fingers. The notes of that visit contain a history of the claimant having hyperextended her neck when a patient she was moving began to fall. The claimant reported having left arm and neck pain since that incident. Following his examination of the claimant and review of her MRI and EMG findings, Dr. Rimington's assessment was cubital tunnel syndrome on the left and cervical radiculopathy. Finding that conservative treatment had failed. Dr. Rimington recommended cubital surgery.

¶ 33 On January 19, 2016, the claimant underwent a medial branch block. She had a postoperative diagnosis of cervical spondylosis without myelopathy. According to the claimant, the injection provided relief for several days.

¶ 34 When the claimant saw Dr. Silver on January 27, 2016, he referred her to Dr. Blair Rhode of Orland Park Orthopedics for evaluation and treatment of her left elbow.

¶ 35 The claimant was seen by Dr. Rhode on January 29, 2016. The record of that visit contains a history of the claimant transferring a patient to go to the bathroom when the patient began to fall and grabbed the claimant's arms. The claimant reported a sudden onset of cervical pain with numbness and tingling in her little and ring fingers. When the claimant returned to full-duty work she was only able to tolerate her work for three hours until her symptoms worsened, and she went home. Dr. Rhode assessed a component of double crush syndrome aggravating the claimant's cubital tunnel syndrome. He recommended that the claimant continue conservative treatment and

home stretching. Dr. Rhode dispensed a night splint and gave the claimant a left cubital tunnel steroid injection. The claimant was kept in an off-work status and advised to return for a follow-up reassessment. The claimant testified that the injection administered by Dr. Rhode did not provide relief for her left arm and hand symptoms.

¶ 36 On January 29, 2016, Dr. Kalina performed a diagnostic left C5, C6, and C7 MMB which resulted in a reduction of the claimant's pain for about one hour. After noting the surgery recommendations of Drs. Rimington and Rhode, Dr. Kalina recommended that the claimant return to Dr. Sokolowski.

¶ 37 In his notes of February 3, 2016, Dr. Silver recorded that the claimant continues to experience pain, but her range of motion, although limited, was improved regarding left and right side twisting and forward flexion. Dr. Silver transferred the claimant's pain management care to Dr. Kalina.

¶ 38 When the claimant returned to see Dr. Rhode for a follow-up reassessment, he noted that she wished to proceed with a cubital tunnel release. Dr. Rhode recommended that the claimant remain off of work and prescribed medication.

¶ 39 Dr. Sokolowski examined the claimant on February 17, 2016. Following that examination, he assessed neck pain and clinical evidence of cubital tunnel syndrome. Dr. Sokolowski also noted that the claimant was scheduled for cubital tunnel release in the next several weeks and that he recommended that she proceed with the procedure. He found that no surgical intervention for the claimant's cervical spine was indicated.

¶ 40 On March 4, 2016, the claimant was examined by Dr. Charles Carroll at the request of HCR. In his report dated that same day, Dr. Carroll recorded a history of an injury to the claimant's

left elbow on June 9, 2015, sustained when she was lifting a patient to go to the bathroom using a gait belt. The claimant reported that she was pulled forward by the patient and felt pain in her neck and a pulling feeling in the elbow that went from her neck down to her fingers on the ulnar side of her hand. The report states that, after his examination of the claimant and review of her treatment records and diagnostic studies, Dr. Carroll was of the opinion that the claimant suffered from an unrelated cubital tunnel syndrome stemming from sensitivity in the cervical spine. He did not believe that the claimant's work accident caused her cubital tunnel syndrome. He did find that the claimant exhibited tenderness over her ulnar nerve and cervical spine and that there was evidence of ulnar nerve compression. According to Dr. Carroll, the claimant had not reached maximum medical improvement (MMI) but could return to work with the following restrictions: a five-pound lifting limitation on the left, wearing an elbow pad, and no forceful gripping or grasping. He noted that a release may be helpful to relieve the claimant's ulnar nerve compression and recommended that she see a hand surgeon. Dr. Carroll found that the claimant required pain medication, but there was no need for anti-inflammatories.

¶ 41 On March 21, 2016, Dr. Rhode noted that the claimant continues to have left elbow pain and was awaiting surgery. He continued the claimant's medications and off-work status.

¶ 42 On March 31, 2016, Dr. Carroll authored a letter to HCR, stating that, based on his examination of the clamant, review of her medical records, and the history of her alleged injury, he did not find that the claimant's work activities caused, exacerbated, or accelerated her condition of cubital tunnel syndrome.

¶ 43 The claimant was seen by Dr. Rhode in April, May, and June 2016. During those visits, the claimant continued complaining of increasing left elbow pain, neck pain, and increasing

weakness. The claimant testified that surgery had not yet been authorized by HCR's insurance carrier.

¶ 44 When the claimant was seen by Dr. Catarello on June 9, 2016, she complained of sharp-achy pain in her upper back region which was aggravated by local movement and physical exertion. Dr. Catarello referred the claimant to Dr. Scott Glaser at Advocate Physical Medicine.

¶ 45 The claimant was seen on June 13, 2016, by Dr. Glaser. The notes of that visit state that the claimant's chief complaint was neck pain. Dr. Glaser diagnosed cervical facet arthropathy. He administered a bilateral C5-6, C6-7, and C7-T1 intraarticular facet joint injection.

¶ 46 On June 21, 2016, the claimant underwent a left open cubital release performed by Dr. Rhode. Dr. Rhode's postoperative diagnosis was left cubital tunnel syndrome.

¶ 47 Dr. Rhode treated the claimant postoperatively in June and July 2016. The claimant was to begin therapy and remain off work. On August 3, 2016, Dr. Rhode found that the claimant had full passive range of motion. He prescribed medication and authorized the claimant to return to modified work duties with no use of her left upper extremity.

¶ 48 When the claimant saw Dr. Glaser on August 15, 2016, she continued to complain of neck pain. Dr. Glaser's diagnosis remained unchanged, cervical facet arthropathy. He administered a bilateral C5, C6, C7, and C8 medial branch nerve block.

¶ 49 Dr. Rhode examined the claimant in September 2016 and found no change in her condition since August 2016. When he examined the claimant on October 21, 2016, Dr. Rhode noted that pain was elicited at the medial epicondyle, and the claimant had full passive range of motion. He ordered continued therapy, and although he found that the claimant was not capable of full-duty work, Dr. Rhode continued her restrictions for light duty. Dr Rhode also recommended that the

claimant proceed with an FCE as she had plateaued.

¶ 50 The claimant underwent a C4-5, C5-6, and C6-7 cervical discography on October 31, 2016, which was administered by Dr. Glasser. Following the procedure, the claimant had a CT scan which demonstrated a 3-4mm central posterior broad-based disc herniation at the C6-7 level with an extruded nucleus polyposis which indents the ventral surface of the fecal sac with some central stenosis and mild neuroforaminal narrowing. No significant posterior disc bulging, protrusion, or herniation was seen at the C5-6 level. There was no significant posterior disc bulging, protrusion, herniation, spinal stenosis, or significant neuroforaminal narrowing seen at the C4-5 level. The claimant testified that the injections did not help her symptoms.

¶ 51 When she saw Dr. Sokolowski on November 16, 2016, the claimant reported that the cubital tunnel release had improved her arm and hand pain, but she still experienced neck pain of 7 on a scale of 10. She also denied any acute neurologic changes. After examining the claimant and reviewing the CT scan, Dr. Sokolowski noted disc pathology and an extended herniation at C6-7. He assessed clear ongoing discogenic neck pain and recorded that he would recommend surgery if the claimant was a good candidate for ACDF at C6-7.

¶ 52 On February 6, 2017, Dr. Sokolowski noted that the claimant reported persistent neck pain at a level of 8 on a scale of 10. After his examination of the claimant and review of the report of her provocative discogram, Dr. Sokolowski's assessment remained unchanged, ongoing discogenic pain. He was to seek approval for ACDF surgery at C6-7 and placed the claimant on off-work status.

¶ 53 On February 23, 2017, the claimant was examined for the second time by Dr. Phillips at HCR's request. In his report of that examination dated the same date, Dr. Phillips noted the

claimant's complaints of left-sided neck pain, pain radiating down her left arm, swelling and aggravation of her pain around the site of her cubital tunnel surgery, and occasional paresthesias difficulty in the left hand. Dr. Phillips reported that the claimant had subjective neck pain complaints that outweigh any objective findings. He opined that the claimant sustained a cervical sprain/strain in 2015 and was not a candidate for fusion surgery. Dr. Phillips found no objective contraindication to the claimant resuming normal activities and working unrestricted. According to Dr. Phillips, the claimant was at MMI and did not need any additional treatment related to her 2015 injury.

¶ 54 The claimant testified that, following Dr. Phillips' February 23, 2017, examination, she continued to see Dr. Rhode monthly from February through October 2017 and Dr. Sokolowski every 60 days during that period.

¶ 55 On September 12, 2017, Dr. Sokolowski reported that he had received approval from the claimant's group insurance carrier to proceed with ACDF surgery. On November 29, 2017, Dr. Sokolowski operated on the claimant. The surgery consisted of an anterior cervical discectomy at C6-7 with decompression of the spinal cord, nerve roots, and foraminotomy; an anterior cervical arthrodesis at C6-7; and the insertion of a machined biomedical device at C6-7.

¶ 56 On December 12, 2017, Dr. Sokolowski noted that the claimant reported improvement in her neck pain and no radiating arm pain. His examination of the claimant on that date revealed mild cervical paraspinal tenderness to palpation, full shoulder range of motion, intact strength throughout both arms, sensation of all muscle groups grossly intact to light touch in all dermatomal distributions, and negative Hoffman sign. Dr. Sokolowski ordered physical therapy and kept the claimant on off-work status.

¶ 57 On December 21, 2017, the claimant was evaluated at ATI Physical Therapy. Her treatment plan was four sessions of therapy per week for a total of 12 visits. After completing 11 sessions, the claimant was evaluated on January 25, 2018. It was noted that she made progress with arm range of motion and strength, had decreased subjective pain complaints, and had increased functional capabilities.

¶ 58 On January 31, 2018, Dr. Sokolowski noted that the claimant reported neck pain at a level of 5 on a scale of 10, without radiating arm pain. Dr. Sokolowski's examination of the claimant revealed mild cervical paraspinal tenderness to palpation, mild neck pain with extension, full shoulder range of motion, intact strength throughout both arms, sensation of all muscle groups grossly intact to light touch in all dermatomal distributions, and a negative Hoffman sign. Dr. Sokolowski ordered continued physical therapy and adjusted the claimant's medications. He maintained the claimant on off-work status.

¶ 59 ATI Physical Therapy's record dated March 15, 2018, states that the claimant had attended twenty-five sessions of physical therapy with good progress, noting arm range of motion, strength, and decreased subjective pain complaints. The report states that the claimant's lifting ability was consistent with light duty work. Because the claimant's work as a certified nurse assistant requires functioning at a medium duty level, it was recommended that the claimant transition from formal physical therapy to a work conditioning program to increase her functional capabilities and facilitate her safe return to full-duty work.

¶ 60 In his notes of March 16, 2018, Dr. Sokolowski recorded that the claimant reported diminished pain to 3 on a scale of 10. Dr. Sokolowski ordered continued work conditioning and maintained the claimant on off-duty status.

¶ 61 On May 1, 2018, the claimant reported that she had progressed to minimal pain. Dr. Sokolowski noted that the claimant was to return to full-duty work.

¶ 62 On June 7, 2018, the claimant was examined at HCR's request for a third time by Dr. Phillips. In a report dated that same day, Dr. Phillips wrote that the claimant stated that her symptoms had improved, that she had no real neck or arm pain, and denied any neurologic symptoms. According to the report, Dr. Phillips' opinions expressed in his earlier reports had not changed. He found the claimant to be at MMI from her work accident as well as from her surgery. Dr. Phillips opined that, assuming that her fusion has healed, there is no objective contraindication to the claimant resuming regular unrestricted duty.

¶ 63 The deposition of Dr. Sokolowski was taken on December 13, 2018. He testified to the claimant's medical treatment and diagnostic studies. He interpreted the claimant's post discogram CT scan taken on November 16, 2016, to demonstrate an extruded herniation at C6-7. Dr. Sokolowski described the claimant's spine surgery, which he performed. Dr. Sokolowski opined, within a reasonable degree of medical and surgical certainty, that the claimant's condition for which he performed surgery was caused by her work injury on June 9, 2015. He based that opinion on the claimant's pre-June 9, 2015, medical history; the temporal correlation between the onset of symptoms and the work incident; corroborative physical examination findings; positive diagnostic studies, including provocative discography which, on the post discogram CT scan, confirmed disc pathology at C6-7; provocative pain response; amelioration of symptoms with surgery; and the November 2015 EMG which was consistent with cervical radiculopathy and cubital tunnel syndrome. Dr. Sokolowski testified that the history of the accident given by the claimant to various medical providers was essentially consistent with the history given to him. According to Dr.

Sokolowski, the report of the July 21, 2015, EMG stating that the study was of the claimant's right upper extremity was a typographical error; it should have stated that it was of the left upper extremity. Dr. Sokolowski also opined that the claimant's cubital tunnel syndrome was causally related to her work injury. He based that opinion on the temporal correlation between the onset of arm symptoms and the work incident, the documentation of Dr. Mekhail of cubital tunnel syndrome four days after the injury, the November 2015 EMG demonstrating cubital tunnel syndrome, the fact that the claimant experienced some relief following the cubital tunnel release, and the complete resolution of the claimant's arm pain after cervical spine surgery.

¶ 64 On cross-examination, Dr. Sokolowski affirmed his belief that the report of the July 21, 2015, EMG stating that the study was of the claimant's right upper extremity was a typographical error. He testified that on examination he thought that the claimant had cubital tunnel syndrome, and the EMG of November 20, 2015, confirmed that belief. According to Dr. Sokolowski, the claimant may have had a small asymptomatic protrusion at C6-7 that was rendered symptomatic by her work injury. He stated that he disagreed with Dr. Phillips' opinion that the claimant only sustained a cervical strain because a strain would have resolved in three to six months, and the claimant clearly had ongoing symptoms thereafter. He also noted that Dr. Phillips reported in his IME report that he saw a C6-7 protrusion on September 3, 2015. Dr. Sokolowski observed that Dr Mikhail's note of his examination four days following the claimant's work accident states that she had stiffness in her neck and limited range of motion. Dr. Sokolowski also disagreed with Dr. Phillips' assessment that the claimant's symptoms were unexplained. He based his disagreement on the results of the discogram and the fact that the claimant's C6-7 surgery relieved her pain. He testified that the claimant did not exhibit symptom magnification. According to Dr. Sokolowski,

the fact that the claimant was able to do heavy work as a certified nurse's aide without complaints and symptoms prior to her work accident of June 9, 2015, was consistent with his opinion that the work accident caused the symptoms for which he treated her.

¶ 65 On January 29, 2019, Dr. Phillips prepared an addendum to his report addressed to HCR's attorneys, stating that he had reviewed Dr. Sokolowski's deposition transcript and that it did not alter the opinions he expressed in his prior reports. According to Dr. Phillips, Dr. Sokolowski's diagnosis is not based on any objective findings, and he did not concur with Dr. Sokolowski's assertion that the claimant's injury necessitated surgery at the C6-7 level. He was uncertain based on the discogram report and the lack of objective findings as to which level was responsible for the claimant's pain and which level was specifically injured by her work accident.

¶ 66 Dr. Carroll conducted a medical records review at the request of HCR. He issued a report of that review on April 19, 2019, stating that his opinions were unchanged, and that he did not agree with Dr. Rhode's opinion that the claimant's left elbow complaints were related to her work accident. According to Dr. Carroll, the claimant's work activities did not cause her ulnar neuritis. He based that opinion on his records review, his examination of the claimant, and her inconsistent histories.

¶ 67 The deposition of Dr. Rhode was taken on March 7, 2019. He testified that the claimant's November 20, 2015, EMG demonstrated left-sided cubital tunnel syndrome and C7 cervical radiculopathy, and her October 2, 2015, MRI revealed disc bulge at C5-6 and C6-7. He stated that, after his examination of the claimant, he diagnosed left-sided C7 radiculopathy and cubital tunnel syndrome due to her work-related injury. Dr. Rhode opined that the claimant sustained a traumatically induced cubital tunnel syndrome superimposed with a traumatically induced cervical

radiculopathy, causing a double crush phenomenon. He based his opinion on the claimant's description of the mechanism of her injury and the timing of the onset of her symptomology. Dr. Rhode stated that, after he performed a cubital tunnel release, the claimant showed signs of improvement, and if she had a good recovery in symptomology after she had a C6-7 ACDF, that would be consistent with his diagnosis of a double crush injury. He admitted that his opinion as to the mechanism of injury is based solely upon the claimant's report to him. Dr. Rhode stated that the variances in the descriptions of the mechanism of her injury given by the claimant did not alter his opinion as to the cause of her condition. According to Dr. Rhode, the multitude of descriptions of the mechanism of injury given by the claimant over the course of a year are actually very consistent.

¶ 68 At the arbitration hearing held on June 17, 2019, the claimant testified that she had not seen a doctor for her neck, left arm, or elbow since May 1, 2018. She stated that she still experiences some pain for which she takes over-the-counter medication. At the time of the hearing, the claimant was working in the garage of a Walmart Super Center writing vehicle service orders and operating the cash register. Admitted in evidence was an exhibit setting forth the claimant's unpaid medical bills and the Blue Cross Blue Shield lien with attached bills for the surgery performed by Dr. Sokolowski.

¶ 69 Following the arbitration hearing, the arbitrator issued a written decision on April 3, 2020, finding that the claimant sustained an accident on June 9, 2015, that arose out of and in the course of her employment with HCR and that her current condition of ill-being is causally related to that accident. The arbitrator ordered HCR to pay all reasonable and necessary medical expenses incurred by the claimant and set forth in two exhibits introduced in evidence. The arbitrator found

that the claimant's average weekly wage was $649.09. He awarded the claimant 151 weeks of temporary total disability (TTD) benefits at the rate of $432.72 per week, toward which HCR was granted a credit of $3260.76 for TTD benefits paid to the claimant; 125 weeks of permanent partial disability (PPD) benefits at the rate of $389.45 per week for a 25% loss of a person as a whole; and 44.28 weeks of PPD benefits at the rate of $389.45 per week for a 17.5% loss of use of her left arm. In addition, the arbitrator found that all of the claimant's treating medical providers were within the "Two Doctor Rule."

¶ 70 HCR filed a petition for review of the arbitrator's decision before the Commission. On September 21, 2022, the Commission issued a unanimous decision affirming the arbitrator's decision on the issues of accident, causal connection, the duration of TTD benefits, medical expenses, and the "Two Doctor Rule." Finding that the parties stipulated to an average weekly wage of $335.51 and not $649.09 as found by the arbitrator, the Commission modified the arbitrator's weekly benefit calculations accordingly. The Commission recalculated the claimant's TTD award, fixing her weekly benefit as $220.67. The Commission reduced the claimant's PPD award to 100 weeks at the rate of $220.00 per week for a 20% loss of a person as a whole, and reduced the claimant's PPD award to 31.625 weeks at rate of $220.00 per week for a 12% loss of the use of her left arm. The Commission also modified several portions of the arbitrator's section 8.1b(b) (820 ILCS 305/8.1b(b) (West 2020)) analysis and corrected scrivener's errors in the arbitrator's decision.

¶ 71 HCR sought a judicial review of the Commission's decision in the circuit court of Cook County. On October 6, 2023, the circuit court issued an order affirming the Commission's decision, and this appeal followed.

ANALYSIS

¶ 72 For its first assignment of error, HCR argues that the Commission's finding that the claimant suffered an accident arising out of and in the course of her employment on June 9, 2015, is against the manifest weight of the evidence. It contends that the claimant gave ten separate inconsistent accident histories, noting that Dr. Carroll stated that the claimant's various descriptions make it difficult to relate her need for medical care for her elbow condition to her alleged work accident and make it difficult to get an understanding of her injury. HCR also argues that the claimant was not credible, having reported to Dr. Phillips that she had no prior history of neck issues and three weeks later telling Dr. Silver that a prior neck condition had resolved. HCR also notes that the claimant testified that she never attempted to find a job after Dr. Silver kept her off work but later admitted that she contacted HCR to obtain an employment verification letter and held herself out as a certified nurse assistant for hire on two job websites. The claimant also testified that she did not know that the job websites existed and later stated that she forgot that they existed.

¶ 73 To obtain compensation under the Act, the claimant must establish by a preponderance of the evidence that she suffered a disabling injury that arose out of and in the course of her employment. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 591–92 (2005). Whether an employee suffered an accident which arose out of and in the course of her employment is a question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Farris v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130767, ¶ 68. For the Commission's resolution of a fact question to be contrary to the manifest weight of the evidence, an opposite

conclusion must be clearly apparent. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 39. Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 74 In affirming the decision of the arbitrator on the issue of accident, the Commission was clearly aware of the variances in the descriptions of the mechanism of injury given by the claimant to her medical providers. As the arbitrator noted, and the Commission affirmed, all of the medical providers that took a history from the claimant noted that she reported that she was injured transferring a patient to a wheelchair while working. We have reviewed the various descriptions of the incident contained in the record that were given by the claimant, and although they may differ as to whether the patient wobbled, swayed, was falling, or lost balance, or whether the patient pulled the claimant's neck forward, or the claimant felt a twinge in her neck as she was lifting the patient, or that the claimant's neck hyperextended when the patient pulled on her arms, or that the claimant's injury occurred when she attempted to grab the patient as she was falling, the fact remains that the claimant was consistent in reporting that she was injured when the patient she was attempting to transfer from bed to a wheelchair became wobbly and started to fall. We find, as did Dr. Rhode, that the mechanisms of injury described by the claimant to her various medical providers are very consistent.

¶ 75 On the issue of the claimant's credibility, the arbitrator specifically found that the claimant credibly testified that she was injured on June 9, 2015, as she was transferring a patient from bed

to a wheelchair. By affirming and adopting the arbitrator's decision as to accident, the Commission implicitly adopted the arbitrator's credibility finding. It is the function of the Commission to assess the credibility of a witness. *ABBF Freight System v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19. The four minor contradictions in the claimant's testimony or her statements to physicians form no basis upon which to question the credibility finding of the Commission.

¶ 76 Based on the record before us, we cannot conclude that the Commission's finding that the claimant suffered an accident arising out of and in the course of her employment with HCR on June 9, 2015, is against the manifest weight of the evidence.

¶ 77 Next, HCR argues that, assuming no error in the Commission's finding as to accident, the Commission's finding that the claimant's left arm and cervical spine conditions are causally related to her June 9, 2015, work accident is against the manifest weight of the evidence. In support of its causation argument, HCR relies on the opinion of Dr. Carroll as to the claimant's left arm condition and the opinion of Dr. Phillips as to her cervical spine condition.

¶ 78 According to his reports, Dr. Carroll was of the opinion that the claimant suffered from an unrelated cubital tunnel syndrome stemming from sensitivity in the cervical spine. He did not believe that the claimant's work activities caused, exacerbated, or accelerated her cubital tunnel syndrome. Noting the claimant's various descriptions of the mechanism of her injury, Dr. Carroll was of the opinion that, absent a clear indication as to the mechanism of the claimant's accident, it cannot be determined whether there is a causal connection between her accident and her condition of left arm ill-being. HCR again contends that the claimant's differing versions of her accident "are not variations on a cohesive theme."

¶ 79 Dr. Rhode, the claimant's treating physician who performed her left-sided cubital release surgery, testified that he diagnosed left-sided C7 radiculopathy and cubital tunnel syndrome due to her work-related injury. He testified that the claimant's November 20, 2015, EMG demonstrated left-sided cubital tunnel syndrome. Dr. Rhode opined that the claimant sustained a traumatically induced cubital tunnel syndrome superimposed with a traumatically induced cervical radiculopathy, causing a double crush phenomenon. According to Dr. Rhode, the varying descriptions of the mechanism of injury given by the claimant did not alter his causation opinion; he found the claimant's` descriptions to be very consistent.

¶ 80 Dr. Phillips opined that the claimant's cervical spine condition is not causally related to her work accident of June 9, 2015. He interpreted the claimant's cervical spine MRI as "unremarkable," showing only a disc bulge at C6-7 which was of no clinical significance. Dr. Phillips diagnosed a cervical sprain/strain which should have resolved following two additional sessions of physical therapy. He reported that the claimant's subjective neck pain complaints outweighed any objective findings and found symptom magnification. In his February 23, 2017, IME report, Dr. Phillips opined that the claimant was at MMI and did not need any further treatment.

¶ 81 Dr. Sokolowski, the claimant's treating physician who performed her spine surgery, opined, within a reasonable degree of medical and surgical certainty, that the claimant's condition for which he performed surgery was caused by her work injury on June 9, 2015. He based that opinion on the claimant's pre-June 9, 2015, medical history; the temporal correlation between the onset of the claimant's symptoms and her work accident; corroborative physical examination findings; and positive diagnostic studies, including provocative discography confirming disc

pathology at C6-7, provocative pain response, amelioration of symptoms with surgery, and the November 2015 EMG, which was consistent with cervical radiculopathy and cubital tunnel syndrome. Dr. Sokolowski disagreed with Dr. Phillips' opinions and found no evidence of symptom magnification.

¶ 82 In a workers' compensation case, the claimant has the burden of establishing, by a preponderance of the evidence, some causal relationship between her employment and her injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989). Whether a causal relationship exists between a claimant's employment and her injury is a question of fact to be resolved by the Commission and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984).

¶ 83 In the portion of his decision relating to causation, which the Commission affirmed, the arbitrator found the causation opinion of Dr. Sokolowski "more persuasive and credible than the opinion of Dr. Phillips." The arbitrator also found the causation opinion of Dr. Rhode to be "more complete in explanation and more credible than the IME reports of *** [HCR's] section 12 examining physician [Dr. Carroll]." In conclusion, the arbitrator found, and the Commission affirmed, that the claimant's conditions of cervical spine ill-being and cubital tunnel syndrome were causally related to her June 9, 2015, work accident.

¶ 84 It was the function of the Commission to resolve conflicts in the evidence, including medical testimony; assess the credibility of the witnesses; assign weight to the evidence; and draw reasonable inferences from the evidence. *ABBF Freight System*, 2015 IL App (1st) 141306WC, ¶ 19. Based upon the causation opinions of Drs. Rhode and Sokolowski, which the Commission

found more credible and persuasive than the opinions of Drs. Carroll and Philips, we are unable to conclude that the Commission's finding of a causal connection between the claimant's conditions of cervical spine ill-being and cubital tunnel syndrome and her June 9, 2015, work accident is against the manifest weight of the evidence.

¶ 85 Next, HCR argues that the Commission's awards of TTD benefits and payment of reasonable and necessary medical expenses are against the manifest weight of the evidence. The arguments are based solely on HCR's accident and causation arguments. Having rejected its arguments as to accident and causation, we also reject HCR's arguments addressed to TTD and medical expenses for the same reasons.

¶ 86 Finally, HCR argues that the Commission's award of PPD benefits is against the manifest weight of the evidence. HCR asserts, without citation to authority, that the Commission should have awarded the claimant PPD benefits for a 2.5% loss of the person as a whole. We reject the argument for two reasons.

¶ 87 First, HCR cited no authority in support of the argument. Failure to properly develop an argument and support it with relevant authority results in forfeiture of the argument. *Ramos v. Kewanee Hospital,* 2013 IL App (3d) 120001, ¶ 37; Ill. S. Ct. R 341(h)(7) (eff. Oct. 1, 2020).

¶ 88 Second, the nature and extent of an injured employee's disability is a question of fact for the Commission to determine and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Sysco Food Services of Chicago v. Illinois Workers' Compensation Commission,* 2017 IL App (1st) 170435WC, ¶ 50. Because of the Commission's expertise, its findings as to the nature and extent of disability should be given substantial deference. *Continental Tire of America, LLC v. Illinois Workers' Compensation*

Commission, 2015 IL App (5th) 140445WC, ¶ 20. Granting the Commission the deference owed on the issue of nature and extent of the claimant's injuries, we cannot conclude that the Commission's PPD award in this case is against the manifest weight of the evidence.

¶ 89 Based upon the foregoing analysis, we affirm the judgement of the circuit court which confirmed the decision of the Commission awarding benefits to the claimant pursuant to the Act for injuries she sustained on June 9, 2015, while working for HCR.

¶ 90 Affirmed.