2024 IL App (1st) 231397WC-U

Workers' Compensation
Commission Division
Order Filed: November 22, 2024

No. 1-23-1397WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

THOMAS MANGIAMELI,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County.
	)	
v.	)	No.21-L-050382
	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al*.	)	Honorable
	)	Daniel P. Duffy
(Village of Hoffman Estates, Appellee).	)	Judge, Presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Hoffman and Mullen concurred in the judgment.
Presiding Justice Holdridge dissented. Justice Cavanagh joined in the dissent.

ORDER

¶ 1 *Held*: We affirm the order of the circuit court confirming the decision of the Commission, where the Commission correctly applied the presumption contained in section 1(d) of the Workers' Occupational Diseases Act (820 ILCS 310/1(d) (West 2020)) and the Commission's finding that claimant failed to prove his workplace exposures were a contributing factor in his development of prostate cancer was not against the manifest weight of the evidence.

¶ 2 Claimant, Thomas Mangiameli, appeals from an order of the circuit court of Cook County, which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) denying him benefits under the Workers' Occupational Diseases Act (Act) (820 ILCS 310/1 *et seq*. (West 2020)) for prostate cancer he developed while working for employer, Village of Hoffman Estates, as a firefighter. For the following reasons, we affirm.

¶ 3 I. Background

¶ 4 In October 2017, claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for prostate cancer he allegedly developed as a result of an occupational exposure. The matter proceeded to an arbitration hearing on January 17, 2019. The following factual recitation was taken from the evidence adduced at the hearing.

¶ 5 Claimant testified that he worked for employer as a firefighter from August 26, 1988, until his retirement in July 2018. Claimant's job duties required him to respond to various emergency calls, including car accidents, medical emergencies, and fires. Claimant worked two to three shifts per week. He responded to 5 to 10 calls during each shift. On cross-examination, claimant testified that he became a "combined paramedic firefighter" in 1989 or 1990.

¶ 6 Claimant identified a Hoffman Estates Fire Department Staff Incident Responses report, which detailed his calls from 2005 to 2017. The report listed 1558 calls during that time period. According to the report, claimant spent 507.45 hours responding to calls with an average incident time of .32 hours. Claimant responded to 143 fires, 29 over pressure/explosions, 9 rescues, 169 hazardous conditions, 271 service calls, 283 good intent calls, 650 false alarms, and 4 severe weather calls. Claimant testified that the report did not include medical emergencies, car accidents or the calls he responded to from 1988 to 2005. Claimant estimated that he responded to over

15,000 calls during his employment. On cross-examination, claimant testified that the report included calls involving car accidents with fires.

¶ 7 Claimant testified that he wore protective equipment while performing his job duties, including boots, bunker pants, a bunker coat, gloves, a hood, and a helmet. Claimant also had a mask and air-pack that provided him with fresh air. Claimant explained that the equipment improved during his tenure as a firefighter. Claimant wore his mask when he responded to fires with heavy smoke and heat. He generally did not wear his mask for outdoor situations or non-structure fires. On cross-examination, claimant testified that he could wear a mask in any situation, even if employer did not direct him to do so.

¶ 8 Claimant testified that he responded to 5 to 15 car or semi-truck accidents per week. He did not wear a self-contained breathing apparatus (SCBA) when he responded to an auto accident unless there was a fire. Claimant did not wear an air mask if there were injuries on the scene. During auto accidents, claimant encountered radiator fluid, oil, gasoline, and smoke. On cross-examination, claimant could not recall how many accidents resulted in leaking fluids or fumes.

¶ 9 Claimant testified that he did not wear a mask when he responded to outdoor fires, although he was exposed to smoke. Claimant recalled that he coughed up "black stuff" and blew "black stuff" out of his nose after fighting fires without his mask on. He also had "black stuff" on his wrists and around his neck.

¶ 10 Claimant testified that he also responded to fires in houses, apartments, industrial buildings, fields, and dumpsters. He did not "mask up" until he reached areas of heavy smoke and heat. He usually fought fires for 15 to 30 minutes, depending on the size. After suppressing the fire, claimant began the "overhaul" process. During overhaul, he tore open ceilings and walls to ensure there was

no fire extension or people or animals in the building. At the beginning of his career, claimant did not wear a mask during overhaul because the overhaul occurred after the structure was ventilated. Later in his career, gas monitors were brought in to check for oxygen, carbon monoxide, hydrogen sulfide, and upper and lower explosive limits. Claimant took off his mask and air-pack when levels normalized. After completion of work at the scene of a fire, claimant rolled the truck hose, attached a new truck hose to the truck, cleaned tools, and refilled air bottles.

¶ 11 Claimant testified that he did not shower or change clothes until he completed all tasks. When asked if he noticed anything about his person after a fire, claimant responded, "Once again, you're wiping soot off your neck, blowing your nose, black soot coming out if you happen to catch some smoke, you are coughing up some black soot." On cross-examination, claimant denied receiving any medical treatment for respiratory or breathing issues during his career.

¶ 12 Claimant testified that his protective equipment also contained soot and residue after a fire. During the first 10 years of his career, claimant rinsed off his protective equipment with a hose and hung it to dry. Employer then purchased special washing machines for the protective equipment. Claimant used the special washing machines when possible.

¶ 13 Claimant testified that the diesel engines of the firetrucks ran inside the station garage for 5 to 10 minutes with the doors open or cracked to ventilate the exhaust. Employer began using exhaust collection devices in the 1990s. Claimant regularly smelled exhaust in the firehouse.

¶ 14 Claimant testified that his father was diagnosed with prostate cancer at age 72. His father was a fire chief in World War II and later worked as a tool and dye man. Claimant's father lived to age 94 and died of old age, not cancer. Claimant had four older brothers and none of them had been diagnosed with cancer.

¶ 15 Claimant next testified regarding his medical history. Claimant was 59 years old at the time of the hearing. In 2002, at age 43, he was diagnosed with elevated prostate-specific antigen (PSA) levels, but a biopsy showed no malignancy. Claimant was then diagnosed with elevated PSA in 2015 and again on November 29, 2016. Claimant underwent further testing, including a biopsy, in January 2017 and suffered a neck injury on February 28, 2017. Biopsy results from March 22, 2017, revealed malignancy of the prostate. Claimant was 57 years old when he was diagnosed with prostate cancer. Claimant underwent a prostatectomy and removal of a lymph node on May 17, 2017. Claimant underwent additional treatment in the form of hormone radiation therapy from October 2017 through January 2018. Claimant underwent Cyberknife Radiation for several days in late December 2017 and early January 2018. Claimant's medical provider then recommended hormone replacement therapy for the next two years. Claimant continued the therapy through the time of the arbitration hearing. Claimant's prostate cancer was in remission at the time of the hearing, but he underwent testing every four months. Claimant also underwent neck surgery in February 2018, and he was released to work full duty for that injury in June 2018. He ultimately retired on July 16, 2018. Claimant's medical records confirmed his testimony regarding his diagnosis and treatment of prostate cancer.

¶ 16 Employer submitted a series of off-work slips from claimant's medical providers into evidence at the hearing. The off-work slips indicated that claimant's prostate cancer was an "injury/illness off-duty" as opposed to an "injury/illness on-duty."

¶ 17 Both parties presented medical opinions on the issue of causation. Claimant presented the evidence deposition of Dr. Peter Orris, M.D., and employer presented the evidence deposition of Dr. Lev Elterman, M.D.

¶ 18 Dr. Orris testified that he worked as the chief of occupational and environmental medicine at the University of Illinois Hospital & Health Sciences System. Dr. Orris also taught various medical school classes, including internal medicine, preventative medicine, occupational medicine, and environmental medicine. Dr. Orris was board-certified in occupational and preventative medicine. He also received a master's degree in public health from Yale University. Dr. Orris reviewed 50 to 60 studies and forms of literature assessing the occupational exposures of firefighters to carcinogens. Dr. Orris additionally edited the state-of-the-art reviews of firefighters' health in 1995 and followed the issue closely since that time.

¶ 19 Dr. Orris testified regarding firefighters' exposures during the different stages of fire suppression. According to Dr. Orris, firefighters become exposed to various chemicals and compounds during the "overhaul" process when they are not wearing respirators or SCBA. Specifically, firefighters become exposed to chlorinated organic compounds, chlorinated plastics, wood, and carbon monoxide. According to Dr. Orris, the studies showed that such chemicals become carcinogenic when burned.

¶ 20 Dr. Orris testified that he conducted a physical examination of claimant, and he reviewed claimant's work, personnel, and medical history records. At claimant's counsel's request, Dr. Orris prepared a report, dated August 10, 2018, containing his findings and opinions regarding claimant's condition. Claimant provided Dr. Orris with a description of his job duties, which was consistent with claimant's testimony at the hearing. Claimant advised Dr. Orris that he responded to 15 to 20 calls per week. Claimant further advised that 75% of the calls were medical and 25% of the calls were fires.

¶ 21 Dr. Orris testified that claimant was exposed to multiple carcinogens while performing his job duties as a firefighter. Dr. Orris noted that claimant was primarily exposed to carcinogens during the overhaul process. Dr. Orris also noted that claimant was exposed to diesel exhaust, which "has not been particularly associated in the literature with prostate cancer, but it is a well[-]known carcinogen." Dr. Orris further noted that claimant absorbed chemicals through his skin when he touched his protective equipment. Dr. Orris cited a study indicating that various chemical compounds build up on inadequately washed protective equipment. Dr. Orris agreed that claimant's occupation as a firefighter increased his exposure to carcinogens.

¶ 22 When asked if claimant's elevated PSA in his 40s related to his occupational exposure as a firefighter, Dr. Orris responded, "What we know from the literature is that often firefighters will develop prostate cancer at an earlier age than the general population." Dr. Orris noted that the general population develops prostate cancer at age 70 or 71 but "the incidence rate of prostate cancer begins to go up in the 50s." Dr. Orris explained that claimant's family history of prostate cancer doubled claimant's risk of developing the cancer. However, Dr. Orris indicated that family history only accounts for 10% of all prostate cancer. Dr. Orris opined that claimant's occupation as a firefighter and his family history increased his risk to develop prostate cancer. Dr. Orris opined that claimant's occupation as a firefighter for 29 years "was a cause of his prostate cancer." Dr. Orris was unable to explain which chemicals specifically caused claimant's prostate cancer.

¶ 23 Dr. Orris testified that he reviewed the opinions of Dr. Elterman and disagreed with Dr. Elterman's opinion that the available literature was contradictory on the issue of causation between prostate cancer and the occupational exposure of firefighters. In Dr. Orris's opinion, the literature on firefighters with respect to prostate cancer was surprisingly consistent and strong. Dr. Orris

disagreed with Dr. Elterman's opinion that claimant's occupational exposure was not a factor in claimant's development of prostate cancer, but Dr. Orris agreed that claimant's family history of prostate cancer doubled claimant's risk for developing the cancer.

¶ 24 Dr. Orris testified that the study Dr. Elterman relied upon showed that excess "bladder and prostate cancer incidence were found among firefighters less than 65 years of age and was limited to ages 45 to 59." In Dr. Orris's opinion, the studies and literature demonstrated a probable association between the exposures of firefighters to certain chemicals and various cancers, including prostate cancer.

¶ 25 On cross-examination, Dr. Orris agreed that claimant's diet and the fact that he barbequed his food increased his risk for cancer and exposed him to carcinogens. Dr. Orris also agreed that claimant was obese, which increased his risk for certain cancers.

¶ 26 Dr. Elterman testified that he was a board-certified urologist in Illinois, who diagnoses and treats approximately 10 patients for prostate cancer each week. Dr. Elterman conducted an independent medical examination (IME) of claimant at employer's request. Dr. Elterman did not have an independent recollection of his examination of claimant and relied upon his records.

¶ 27 Dr. Elterman testified that he reviewed claimant's medical records when he conducted the examination. Dr. Elterman noted that claimant's father was diagnosed with prostate cancer, which increased claimant's risk to develop prostate cancer. Dr. Elterman agreed that firefighters are exposed to carcinogens, but he did not know the specific carcinogens to which claimant was exposed. When asked if he had an opinion as to whether or not claimant's employment was a causative factor of his development of cancer, Dr. Elterman responded, "Yes." When asked to elaborate, Dr. Elterman responded, "I thought that [claimant's] prostate cancer was not related to

his employment as a firefighter." When asked for the basis of his opinion, Dr. Elterman stated, "Basis was the review of the literature and the fact that he was high risk for prostate cancer due to his family history." Dr. Elterman cited a study showing that a son of a father with prostate cancer was twice as likely to develop prostate cancer than the average man. In Dr. Elterman's opinion, there was no statistically significant increase in prostate cancer incidence among firefighters when compared to the general public. According to Dr. Elterman, the available literature, at best, demonstrated an inconclusive relationship between firefighting and the development of prostate cancer.

¶ 28 On cross-examination, Dr. Elterman testified that he was not board-certified in toxicology, public health, preventative medicine, industrial hygiene, or epidemiology. He also never held a job in those fields. Dr. Elterman never conducted a research study on the incidence of cancer in firefighters. Dr. Elterman agreed that a person's development of prostate cancer can be influenced by multiple factors, including a person's environment. Dr. Elterman was unfamiliar with various studies on the correlation between the occupational exposures of firefighters and prostate cancer, including the study showing that firefighters experience a higher incidence of prostate cancer at an earlier age than members of the general public. Dr. Elterman disagreed that the study he relied upon in formulating his opinions showed an increased incidence of prostate cancer among firefighters, but he acknowledged a page of the study showing an increased incidence of prostate cancer among firefighters under the age of 64. Dr. Elterman further acknowledged that claimant was under the age of 64 when he was diagnosed with prostate cancer.

¶ 29 On redirect, Dr. Elterman testified that the study he relied upon indicated that there was no excess risk of prostate cancer among firefighters. Dr. Elterman further testified that his opinions did not change based on the questioning posed on cross-examination.

¶ 30 On June 9, 2019, the arbitrator issued a decision, finding that claimant proved a causal connection between his prostate cancer and his employment as a firefighter. Accordingly, the arbitrator awarded claimant benefits under the Act. Employer filed a petition for review of the arbitrator's decision with the Commission.

¶ 31 On August 16, 2021, the Commission, with one commissioner dissenting, issued a decision reversing the arbitrator's decision on the issue of causation. In doing so, the Commission agreed with the arbitrator's finding "that the preponderance of the testimonial, documentary and expert opinion evidence supports that [claimant] has met his burden of demonstrating exposure to carcinogens under Section 1(d) of the Illinois Occupational Disease Act as a result of his employment with [employer]." However, the Commission disagreed with the arbitrator's finding that employer failed to rebut the presumption that claimant's cancer was causally related to his employment under section 1(d) of the Act. The Commission, relying on *Johnston v. Illinois Workers' Compensation Comm'n*, 2017 IL App (2d) 160010WC, concluded that only "*some*" evidence was required for an employer to rebut the presumption under section 1(d) of the Act. (Emphasis in original.) The Commission found that Dr. Elterman's opinion and the off-work slips indicating that claimant's prostate cancer was an "off-duty" illness were sufficient to rebut the presumption. The Commission, relying on the opinion of Dr. Elterman, found that claimant failed to prove that his exposure to certain hazardous substances as a firefighter was a contributing factor to his development of prostate cancer. Accordingly, the Commission reversed the arbitrator's

decision and vacated the arbitrator's award of benefits. The dissenting commissioner would have affirmed the arbitrator's decision, finding the opinion of Dr. Orris "to be highly persuasive and much more worthy of reliance than the opinion" of Dr. Elterman. Claimant sought judicial review of the Commission's decision before the circuit court of Cook County.

¶ 32 On July 28, 2023, the circuit court entered an order confirming the Commission's decision. Claimant filed a timely notice of appeal.

¶ 33 II. Analysis

¶ 34 On appeal, claimant first argues that the Commission misapplied the presumption under section 1(d) of the Act. Specifically, claimant argues that the Commission improperly considered the presumption under section 6(f) of the Workers' Compensation Act (820 ILCS 305/6(f) (West 2020)) when determining the weight afforded to the presumption under section 1(d) of the Act. Claimant maintains that employer was required to overcome a strong presumption by clear and convincing evidence. We disagree.

¶ 35 Section 1(d) of the Act provides as follows:

> "Any condition or impairment of health of an employee employed as a firefighter, emergency medical technician (EMT), emergency medical technician-intermediate (EMT-I), advanced emergency medical technician (A-EMT), or paramedic which results directly or indirectly from any bloodborne pathogen, lung or respiratory disease or condition, heart or vascular disease or condition, hypertension, tuberculosis, or cancer resulting in any disability (temporary, permanent, total, or partial) to the employee shall be rebuttably presumed to arise out of and in the course of the employee's firefighting, EMT, EMT-I, A-EMT, or paramedic employment and, further, shall be rebuttably presumed to be causally

> connected to the hazards or exposures of the employment." 820 ILCS 310/1(d) (West 2020).

The presumption set forth in section 1(d) of the Act is similar to the presumption set forth in section 6(f) of the Workers' Compensation Act, which provides as follows:

> "Any condition or impairment of health of an employee employed as a firefighter, emergency medical technician (EMT), emergency medical technician-intermediate (EMT-I), advanced emergency medical technician (A-EMT), or paramedic which results directly or indirectly from any bloodborne pathogen, lung or respiratory disease or condition, heart or vascular disease or condition, hypertension, tuberculosis, or cancer resulting in any disability (temporary, permanent, total, or partial) to the employee shall be rebuttably presumed to arise out of and in the course of the employee's firefighting, EMT, or paramedic employment and, further, shall be rebuttably presumed to be causally connected to the hazards or exposures of the employment." 820 ILCS 305/6(f) (West 2020).

This court reviews *de novo* any questions concerning the scope and application of the presumption. *Simpson v. Illinois Workers' Compensation Comm'n*, 2017 IL App (3d) 160024WC, ¶ 39.

¶ 36 Contrary to claimant's argument, we find that the Commission properly reviewed caselaw interpreting the similar presumption set forth in section 6(f) of the Worker's Compensation when interpreting section 1(d) of the Act. See *Relf v. Shatayeva*, 2013 IL 114925, ¶ 39 ("When construing statutes, it is appropriate to consider similar and related enactments, though not strictly *in pari materia*. We must presume that several statutes relating to the same subject are governed by one spirit and a single policy, and that the legislature intended the several statutes to be consistent and harmonious.").

¶ 37 Specifically, we find that the Commission properly considered and applied this court's decision in *Johnston*, 2017 IL App (2d) 160010WC when interpreting section 1(d). In *Johnston*, this court held that the rebuttable presumption set forth in section 6(f) of the Workers' Compensation Act was a bursting-bubble presumption, which placed the burden on the employer to come forward with some evidence to negate the presumption. *Id.* ¶ 37. This court concluded that it was not a "strong rebuttable presumption, requiring clear and convincing evidence." *Id.* ¶ 45. Instead, this court concluded that the presumption required "the employer to offer *some* evidence sufficient to support a finding that something other than claimant's occupation as a firefighter caused his condition." *Id.* (Emphasis in original.)

¶ 38 Given the similarities in the presumptions set forth in section 1(d) of the Act and section 6(f) of the Workers' Compensation Act, we conclude that employer was only required to offer some evidence to rebut the presumption set forth in section 1(d) of the Act. Thus, we reject claimant's argument that the Commission misapplied the presumption set forth in section 1(d) of the Act.

¶ 39 Claimant next argues that the Commission's finding that employer offered sufficient evidence to rebut the presumption set forth in section 1(d) of the Act was contrary to the law and against the manifest weight of the evidence. We disagree.

¶ 40 Claimant's argument in this regard is primarily based on his assertion that employer was required to overcome the "strong" presumption by clear and convincing evidence—an assertion we have rejected. As stated, to rebut the presumption set forth in section 1(d) of the Act, employer was only required "to offer *some* evidence sufficient to support a finding that something other than claimant's occupation as a firefighter caused his condition." (Emphasis in original.) *Johnston*,

2017 IL App (2d) 160010WC, ¶ 45. Again, this court reviews *de novo* any questions concerning the scope and application of the presumption. *Simpson*, 2017 IL App (3d) 160024WC, ¶ 39.

¶ 41 In the present case, Dr. Elterman's opinion constituted some evidence that supported a finding that something other than claimant's occupation as a firefighter caused his prostate cancer. Dr. Elterman testified that he was a board-certified urologist who routinely treats patients with prostate cancer. Dr. Elterman opined that claimant's occupation as a firefighter was not a causative factor in his development of prostate cancer. Dr. Elterman testified that claimant likely developed prostate cancer as a result of his family history of the cancer, which made claimant twice as likely to develop the cancer. In our view, this evidence was sufficient to rebut the presumption set forth in section 1(d) of the Act.

¶ 42 In arguing that the evidence was insufficient to rebut the presumption, claimant attacks the validity and bases for Dr. Elterman's opinion. However, the basis for an expert's opinion is typically a matter of weight for the trier of fact to determine. See *Snelson v. Kamm*, 204 Ill. 2d 1, 26-27 (2003) ("While Kamm contends that Sarnelle's opinions were not adequately supported, the basis for a witness' opinion generally does not affect his standing as an expert; such matters go only to the weight of the evidence, not its sufficiency. [Citation.] Indeed, the weight to be assigned to an expert opinion is for the jury to determine in light of the expert's credentials and the factual basis of his opinion. [Citation.]"). Thus, we find it appropriate to consider such arguments below.

¶ 43 Claimant next argues that the Commission's finding that he failed to prove his employment was a causative factor in the development of his prostate cancer was against the manifest weight of the evidence. We disagree.

¶ 44 It is well-settled that employment need only be a cause, not the main or only cause, of a condition for recovery to be had under the Act. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 596 (2005). It is the claimant's burden to establish before the Commission each and every element of his or her claim by a preponderance of the evidence. *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1202 (2000).

¶ 45 The question of whether a claimant suffers from a work-related occupational disease presents a factual question. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 21. This court reviews the Commission's factual findings under the manifest-weight standard. *Id*. For a finding of fact to be against the manifest weight of the evidence, the opposite conclusion must be clearly apparent. *Id*. It is within the province of the Commission to resolve conflicts in the record, judge the credibility of witnesses, assign weight to evidence, and draw reasonable inferences from the evidence. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995). This court owes substantial deference to the Commission's resolution of medical questions, due to the Commission's expertise in this realm. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979).

¶ 46 In the present case, the Commission found that claimant failed to prove that his exposures to carcinogens as a firefighter were a contributing factor to the development of his prostate cancer. The Commission based its finding on "the current state of scientific studies and the persuasive opinion of Dr. Elterman." Dr. Elterman opined that claimant's employment as a firefighter was not a causative factor in his development of prostate cancer. Dr. Elterman opined that the studies and literature did not establish a statistically significant correlation between the firefighter occupation and prostate cancer. Dr. Elterman instead attributed claimant's prostate cancer to

genetics, given that claimant's father also suffered from prostate cancer. Dr. Elterman testified that claimant's family history of prostate cancer doubled claimant's risk for developing the cancer.

¶ 47 Claimant argues that Dr. Elterman's testimony was unreliable, noting that Dr. Elterman had no credentials in oncology and was unfamiliar with the medical literature showing a causal relationship between the firefighter occupation and cancer. Claimant also notes that Dr. Elterman admitted that he had no knowledge of the chemicals to which claimant was exposed in the course of his employment as a firefighter. Notably, however, claimant does not contend that Dr. Elterman was not qualified to provide expert opinion testimony. Claimant, instead, disputes the bases of Dr. Elterman's opinions. See *Snelson*, 204 Ill. 2 at 26 ("the basis for [an expert] witness' opinion generally does not affect his standing as an expert; such matters go only to the weight of the evidence, not its sufficiency"). The dissent reweighs the evidence and substitutes its own credibility determination for that of the Commission, finding that "Dr. Elterman could not have reasonably concluded that claimant's employment as a firefighter was not a contributing cause of his prostate cancer." In doing so, the dissent overlooks one important undisputed fact—that claimant had a family history of prostate cancer. The dissent does not address the literature Dr. Elterman relied on which showed that claimant's family history of prostate cancer doubled his risk for developing the cancer. Under these circumstances, it was not unreasonable for Dr. Elterman to conclude that claimant's prostate cancer was attributable to genetics.

¶ 48 We acknowledge claimant's position that the medical opinion of Dr. Orris was more credible and persuasive; however, it was within the province of the Commission to resolve the conflicts in the evidence, assign weight to be accorded to the evidence, and draw reasonable inferences therefrom. *Bernardoni*, 362 Ill. App. 3d at 597. It was claimant's burden to prove a

causal connection and it was the Commission's function to weigh the evidence. It appears that the Commission did not find Dr. Orris's opinion credible or give his opinion much weight in rendering its decision. While this court may have weighed the evidence differently, we cannot say that the Commission's finding was against the manifest weight of the evidence where it was supported by the medical opinion of Dr. Elterman.

¶ 49 We agree with the dissent that the Act affords special protections to firefighters "because Illinois values the vital services provided by them and because it is understood that, due to the nature of their work, they come into contact with carcinogens, chemicals, pathogens, and other substances which are detrimental to their health and to which the ordinary person is not regularly exposed." We note, however, that the scientific studies, at this point in time, regarding the correlation between the development of prostate cancer and the occupation of a firefighter are evolving. We reiterate that, in the present case, claimant had a family history of prostate cancer which doubled his risk for developing the cancer. Under these circumstances, we will not usurp the function of the Commission to weigh the evidence and make credibility determinations. See *Ameren Illinois v. Illinois Workers' Compensation Comm'n*, 2024 IL App (5th) 220606WC-U, ¶ 44 ("If reasonable minds could disagree on the question of causation, our duty is to defer to the Commission's finding on causation."); see also *East St. Louis Police Department v. Illinois Workers' Compensation Comm'n*, 2023 IL App (5th) 220536WC-U, ¶ 41 ("The Commission's finding of causation is a factual finding, to which we owe great deference, especially in view of the Commission's long-recognized expertise in medical matters." (Internal quotation marks omitted.)).

¶ 50 We also note that claimant's remaining arguments were premised on the success of his argument that the Commission's finding on the issue of causation was against the manifest weight of the evidence. Because we have concluded that the Commission's finding on that issue was not against the manifest weight of the evidence, we need not address claimant's remaining arguments.

¶ 51 III. Conclusion

¶ 52 For the reasons stated, we affirm the Cook County circuit court's order confirming the Commission's decision.

¶ 53 Affirmed.

¶ 54 PRESIDING JUSTICE HOLDRIDGE, dissenting.

¶ 55 The majority has affirmed the Commission's finding that claimant failed to prove his exposures to carcinogens as a firefighter were a contributing factor to his development of prostate cancer. The Commission arrived at this determination by its application of our decision in *Johnston v. Illinois Workers' Compensation Comm'n*, 2017 IL App (2d) 160010WC, to the facts of the present case. *Supra* ¶ 31. I dissented in *Johnston* because I believe that the majority in that case eviscerated protections provided to firefighters, EMTs, and paramedics under the Workers' Compensation Act. By applying *Johnston* in this case, the majority does the same to the Occupational Diseases Act. For the same reasons I dissented in *Johnston*, I dissent here.

¶ 56 The Workers' Compensation Act and the Occupational Diseases Act afforded special protections to firefighters, EMT's, and paramedics because Illinois values the vital services provided by them and because it is understood that, due to the nature of their work, they come into

contact with carcinogens, chemicals, pathogens, and other substances which are detrimental to their health and to which the ordinary person is not regularly exposed. The effect of the majority's decision in *Johnston* and in the present case is to weaken those protections to such a degree that they are effectively meaningless. What was a high bar for the employer to prove that a firefighter's employment was not a cause of certain specified medical conditions, has now become a very low bar. This court has made it so that the employer of a firefighter can offer any plausible alternative explanation as to how an employee's medical condition came to be, and that employee is then in the situation they would have been in had the protections provided in section 6(f) of the Workers' Compensation Act or section 1(d) of the Occupational Diseases Act never existed.

¶ *57* Yet even under the standard set forth in *Johnston*, I believe the Commission's decision in that case was against the manifest weight of the evidence. Dr. Elterman's opinion that claimant's exposures to carcinogens as a firefighter were not a contributing factor to his development of prostate cancer was so lacking in foundation as to be unworthy of credence. Expert opinions must be supported by facts and are only as valid as the facts and reasons underlying them. See *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 24. The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the basis for the expert's opinion. *Id*. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. *Id*.

¶ 58 As the majority stated, Dr. Elterman testified that he relied upon a particular study in forming an opinion that there is not an increased incidence of prostate cancer among firefighters, and it was this opinion that led him to the conclusion that claimant's employment as a firefighter was not a contributing cause of his prostate cancer. *Supra* ¶ 28. Yet, on cross-examination, Dr.

Elterman admitted that the study he relied upon actually did show an increase of prostate cancer in firefighters under the age of 64 and that claimant was under the age of 64. *Id*. Dr. Elterman essentially admitted that he came to his opinion because of a study which he believed did not apply to claimant, and then when he discovered that the study showed the opposite of what he believed, he still did not change his opinion. Given the information available to him, Dr. Elterman could not have reasonably concluded that claimant's employment as a firefighter was not a contributing cause of his prostate cancer. Moreover, Dr. Elterman was unfamiliar with numerous studies on the correlation between the occupational exposures of firefighting and prostate cancer. *Id*. Because Dr. Elterman's opinion lacked sufficient foundation to support a finding of no casual connection, the employer failed to rebut the statutory presumption of a causal connection between claimant's cancer and his employment as a firefighter.

¶ 59 Firefighters are exposed to chlorinated organic compounds, chlorinated plastics, wood, and carbon monoxide, which become carcinogenic when burned. *Supra* ¶ 19. Claimant was exposed to these carcinogens and more over the course of his career. As Commissioner Tyrrell aptly noted in his dissent, "[t]o say that [claimant's] almost 30 years of active-duty service as a firefighter played no role in his subsequent cancer strains credulity to say the least." *Mangiameli v. Village of Hoffman Estates*, Ill. Workers' Comp. Comm'n, No. 17-WC-30825 (Aug. 16, 2021) (Tyrrell, dissenting). I agree.

¶ 60 For the above reasons, I would find that the employer failed to rebut the statutory presumption of causation in this case, and I would, therefore, reverse the Commission's decision and remand the matter to the Commission.