



In the Missouri Court of Appeals
Eastern District
DIVISION ONE

PATRICIA (PARRISH) OTWELL,	)	No. ED109447
	)	
Appellant,	)	Appeal from the Labor and
	)	Industrial Relations Commission
vs.	)	
	)	
TREASURER OF MISSOURI AS	)	
CUSTODIAN OF THE SECOND	)	
INJURY FUND,	)	
	)	
Respondent.	)	FILED: November 2, 2021

Introduction

Patricia (Parrish) Otwell (“Otwell”) appeals from the decision of the Labor and Industrial Relations Commission (the “Commission”) awarding her permanent partial disability (“PPD”) against the Treasurer of Missouri as Custodian of the Second Injury Fund (the “SIF”). Otwell settled her case with Daimler Chrysler (“Employer”) following her diagnosis of bilateral carpal tunnel syndrome (the “Primary Injury”) and subsequently sought an award of permanent total disability (“PTD”) from the SIF as a result of the combination of her Primary Injury with her preexisting disabilities, including psychiatric illness. Otwell raises five points on appeal. Point One asserts the Commission erred in excluding all testimony from vocational expert Timothy Lalk (“Lalk”). Point Two challenges the Commission’s exclusion of testimony from a different expert witness based on the exclusion of Lalk’s testimony. Point Three claims the Commission erred in finding Otwell had no preexisting psychiatric disability contributing to a PTD finding

because the record supports a finding that Otwell suffered from a preexisting psychiatric disability at the time she suffered the Primary Injury. Point Four asserts the Commission erred in finding that the award for the Primary Injury could not support an award of PTD against the SIF. Point Five maintains the Commission erred in denying PTD, or erred in not awarding PPD for the Primary Injury combined with preexisting disabilities of the right shoulder, incontinence, and psychiatric illness, because the evidence supported a finding that Otwell had preexisting psychiatric disability. Because the Commission abused its discretion in excluding the entirety of Lalk's testimony, we grant Point One. On remand, we direct the Commission to admit Lalk's report and deposition testimony into evidence and determine its impact, if any, on the Commission's award. The remaining points on appeal raise issues that the Commission will necessarily revisit on remand in light of Lalk's testimony and its reevaluation of Otwell's claim of preexisting psychiatric disability. For that reason, our holding on Point One is dispositive of this appeal and moots our consideration of the remaining points on appeal. Accordingly, we reverse the Commission's award and remand for further proceedings consistent with this opinion.

Factual and Procedural History

Otwell, now sixty-three years old, began working for Employer in 1984 and continued until May 2009, when Otwell accepted an offer to retire following the closure of Employer's St. Louis plant.

Otwell reported complaints of bilateral upper extremity pain to Employer in February 2009, when she developed occupational injuries to her hand due to repetitive actions. On February 10, 2009, Employer referred Otwell to a physician, and Otwell was ultimately diagnosed with bilateral carpal tunnel syndrome. Otwell underwent carpal-tunnel release surgery in April 2009.

The same year, Otwell filed a workers' compensation claim against Employer for the Primary Injury. Otwell initially alleged PPD, and she settled her Primary Injury claim with Employer in February 2010. In January 2016, Otwell amended her claim, seeking coverage under the SIF for PTD. Otwell alleged she was unemployable in the open labor market and was permanently and totally disabled due to the combination of her Primary Injury with preexisting disabilities of a prior shoulder injury, incontinence, and psychiatric illness. Otwell has not been employed following her retirement from her job with Employer in 2009.

Otwell settled her Primary Injury claim with Employer for 16% PPD on each wrist. Otwell later pursued her claim for PTD against the SIF before an Administrative Law Judge ("ALJ"), who conducted a hearing on Otwell's SIF claim on March 6, 2019.

Otwell alleged various disabilities predated her 2009 Primary Injury. In 2008, Otwell developed urinary incontinence and underwent bladder sling procedures and additional therapy. Otwell attributed her incontinence to having operated a particular machine while working for Employer. Otwell settled her claim for this injury with Employer for 2.5% PPD. Otwell also claimed a right shoulder injury that occurred while working for Employer prior to 2005.

Otwell further alleged she suffered from a psychiatric disability that pre-dated the 2009 Primary Injury. At the hearing before the ALJ, Otwell testified about her history of mental illness stemming from abuse outside her employment. Otwell alleged that the combination of her preexisting psychiatric disability and physical impairments rendered her permanently and totally disabled.

In support of her claim for PTD, Otwell proffered expert witness testimony from Lalk, a vocational rehabilitation counselor. Lalk prepared an eighteen-page vocational rehabilitation evaluation report in 2017 after he interviewed Otwell in 2014 and reviewed her medical records

and deposition.¹ Lalk concluded that Otwell was unable to maintain employment in the open market and was permanently and totally disabled. Lalk conducted a personal interview and vocational testing of Otwell during which he observed Otwell had difficulty communicating, poor mood control, and often stopped to cry between questions. Otwell told Lalk that she had experienced depression throughout her life.

In addition to interviewing Otwell, Lalk reviewed her medical records from a number of physicians and counselors dating back to 2005. Relevant to this appeal, Lalk remarked that the 2005 medical records showed Otwell complained of difficulty sleeping. Lalk further reported that Otwell's treating physician in 2007 recorded Otwell's complaints of stress and anxiety, and prescribed her medication for depression. Lalk also reviewed records from 2007 through July 2009 of Elaine Toon ("Toon"), a licensed professional counselor who treated Otwell. Toon's records disclosed complaints of depression and anxiety that Otwell reported she had suffered most of her life. The counselor's records indicated Otwell raised issues of suicidal ideation, childhood neglect, and abuse. Toon diagnosed Otwell with major depression recurrent, post-traumatic stress disorder ("PTSD"), generalized anxiety disorder, and gambling addiction. Counseling records from January 2008 indicated Otwell described having panic attacks and stress related to her work as well as other physical, mental, and emotional issues. Lalk also reviewed records related to Otwell's hospital admission on March 23, 2009, for suicidal and homicidal ideation with a diagnosis of major depression. Otwell was subsequently released, but was hospitalized again in December 2009 for reported suicidal ideation, panic attacks, and decreased sleep and appetite following the loss of her husband. Otwell's hospital records revealed an assessment of major depression and with an indication of a single, severe episode.

¹ Lalk's report did not include a review of Dr. David Volarich's records, but made an addendum after reviewing those records indicating that the additional information did not change his opinion.

Lalk also reviewed the records of psychiatrist Dr. Adam Sky (“Dr. Sky”), who performed a 2017 independent psychiatric exam (“IPE”). Dr. Sky’s records indicated Otwell suffered from depression beginning in the late 1980s and had a history of major depression disorder, moderate to severe recurrent, generalized anxiety disorder, PTSD, and gambling disorder.

As part of his review of Otwell’s medical records, Lalk read a 2012 report prepared by Dr. Eli Shuter (“Dr. Shuter”). Dr. Shuter had conducted an independent medical evaluation (“IME”) of Otwell in 2011 but died before testifying in Otwell’s proceedings. The ALJ had ruled Dr. Shuter’s report inadmissible because the report was prepared by a non-testifying expert. During Lalk’s deposition, the SIF cross-examined him as to whether he “relied” on Dr. Shuter’s report in reaching his conclusions regarding Otwell’s PTD. Counsel for the SIF defined “rely” as “reviewed, read, looked at and then subsequently came to your conclusions because of reviewing, reading and looking at those things.” Based on the SIF’s definition, Lalk answered yes. Lalk’s report first mentions Dr. Shuter in his medical records review on page six and discusses Dr. Shuter’s report for one page of the twelve-page review of medical records. Lalk noted that Dr. Shuter indicated Otwell reported having anxiety and depression since the 1990s when she first received psychiatric treatment, and that Dr. Shuter identified multiple preexisting disabilities, including anxiety and depression. Lalk testified that he reviewed Shuter’s IME along with Dr. Sky’s IPE and other medical records.

Lalk testified he did not know precisely when Otwell’s psychiatric symptoms began. But based on his review of all the medical records provided to him and his discussions with Otwell, Lalk opined that Otwell reported psychiatric conditions predating the Primary Injury, particularly depression and anxiety dating back to the 1980s or early 1990s. In concluding that the totality of the medical records demonstrated evidence that Otwell suffered psychiatric problems impacting

her ability to work prior to the Primary Injury, Lalk referenced Otwell's early counseling records as well as the patient histories recorded by later physicians. In his report's two-page summary and conclusions, Lalk made no mention of Dr. Shuter or Dr. Shuter's IME report. Lalk's summary and conclusions referred to other medical providers, particularly Toon and Dr. Sky, in reaching his conclusion that Otwell was permanently and totally disabled.

The SIF objected to the admission of Lalk's testimony in its entirety. As a basis for its objection, the SIF argued that Lalk relied upon the report of Dr. Shuter when forming his opinion as to the nature and extent of Otwell's disability. The ALJ agreed and excluded the entirety of Lalk's testimony, finding Lalk referenced and relied on Dr. Shuter's report in several places in his report and deposition. The ALJ considered Lalk's own testimony that he had reviewed and relied on Dr. Shuter's findings in forming his own conclusions. The ALJ excluded all of Lalk's testimony and report as inadmissible hearsay.

Otwell also sought to introduce testimony from Dr. David Volarich ("Dr. Volarich"), who conducted an IME in 2018 and reviewed Otwell's medical records. The Commission adopted the ALJ's finding that Dr. Volarich did not review any psychiatric medical records. The Commission affirmed the ALJ's ruling to exclude the portion of Dr. Volarich's testimony where he concurred with Lalk's assessment that Otwell was permanently and totally disabled due to the combination of the Primary Injury and her psychiatric disability.

Following the hearing, the ALJ found in favor of Otwell and awarded her PPD against the SIF on June 27, 2019. The ALJ denied Otwell's claim for an award of PTD, finding no substantial evidence that Otwell suffered from a significant preexisting psychiatric disability. As a result, the ALJ did not factor in Otwell's preexisting psychiatric disability in its computation of the PPD award. In rejecting Otwell's claim of preexisting psychiatric disability, the ALJ found

that critical patient history on complex medical treatment remained unverified. The ALJ awarded Otwell PPD based on the Primary Injury at 16% referable to each wrist combined with the preexisting conditions of incontinence at 2.5% PPD and right shoulder disability at 15% PPD. The ALJ found the combination of these disabilities amounted to an increased overall PPD of 33.33% of the body as a whole (133.32 weeks). The ALJ found the SIF was liable for an additional 32.52 weeks of PPD.

Otwell filed an application for review of the ALJ's award to the Commission. Otwell alleged the ALJ erred in not admitting certain exhibits and portions of testimony and in finding she did not have a preexisting psychiatric disability so as to support an award of PTD.

The Commission issued its decision in December 2020 affirming and adopting the ALJ's award of PPD with minor changes. The Commission found Otwell was not entitled to PTD benefits against the SIF because she did not clearly prove her psychiatric conditions were disabling at the time of the Primary Injury. The Commission noted the ALJ considered relevant to Otwell's credibility the lack of hospitalization or treatment records corroborating her claim of suicidal thoughts predating the Primary Injury. The Commission found that by failing to clearly prove preexisting psychiatric disability, Otwell did not meet the required first step in order to then determine the preexisting disability's synergistic effect in combination with the Primary Injury. Otwell now appeals.

Points on Appeal

Otwell raises five points on appeal. Point One asserts the Commission erred in excluding Lalk's vocational expert testimony because Lalk did not solely rely on Dr. Shuter's inadmissible report, which itself did not express an opinion on employability or PTD, in concluding that Otwell had preexisting psychiatric disability. Point Two maintains the Commission erred in excluding Dr. Volarich's testimony based on exclusion of Lalk's testimony in that Dr. Volarich

merely indicated he agreed with Lalk on the issue of PTD, and the SIF did not timely object to his testimony. Point Three contends the Commission erred in finding there was no evidence of documented symptoms of psychiatric disability predating the Primary Injury because the law does not require a preexisting condition be symptomatic and because substantial evidence from expert testimony supported finding Otwell suffered from a preexisting psychiatric disability. Point Four posits the Commission erred in finding the Primary Injury settlement of 16% per wrist could not support PTD because Section 287.220² does not require a specific threshold on the Primary Injury to combine with a preexisting condition. Point Five argues the Commission erred in either not awarding PTD or not awarding PPD for the Primary Injury combined with psychiatric illness, right shoulder injury, and incontinence because the evidence supported finding Otwell suffered from a preexisting psychiatric disability.

Standard of Review

We adhere to the standard for reviewing decisions of the Commission in workers' compensation as set forth in Article V, section 18 of the Missouri Constitution and Section 287.495.1. Hogenmiller v. Miss. Lime Co., 574 S.W.3d 333, 336 (Mo. App. E.D. 2019). The Constitution directs us to determine whether the Commission's decision is "authorized by law" and "whether it is supported by competent and substantial evidence upon the whole record." Id. (quoting Mo. Const. art. V, section 18; Johme v. St. John's Mercy Healthcare, 366 S.W.3d 504, 509 (Mo. banc 2012)). Under Section 287.495.1, we may modify, reverse, remand or set aside the Commission's decision on the following limited grounds: "(1) the Commission acted without or in excess of its powers; (2) the award was procured by fraud; (3) the facts found by the Commission do not support the award; or (4) there was not sufficient competent evidence in the

² All Section references are to RSMo (2016), unless otherwise indicated.

record to warrant the making of the award.” Id. (citing 287.495.1(1)–(4); Johme, 366 S.W.3d at 509).

“We defer to the Commission’s determinations with regard to witness credibility and the weight accorded to conflicting evidence.” Id. (citing Greer v. SYSCO Food Servs., 475 S.W.3d 655, 664 (Mo. banc 2015)). “An award that is contrary to the overwhelming weight of the evidence is, in context, not supported by competent and substantial evidence.” Reynolds v. Wilcox Truck Line, Inc., 587 S.W.3d 675, 681 (Mo. App. W.D. 2019) (quoting Hampton v. Big Boy Steel Erection, 121 S.W.3d 220, 223 (Mo. banc 2003)). Additionally, “[w]e will not overturn the Commission’s decision on the admissibility of evidence absent an abuse of discretion.” Farmer v. Treasurer of Mo. as Custodian of the Second Injury Fund, 567 S.W.3d 228, 230 (Mo. App. S.D. 2018) (internal citations omitted). However, we review the Commission’s determinations of law de novo without deference to the Commission. Hogenmiller, 574 S.W.3d at 336 (internal citation omitted).

While generally we limit our review only to the findings of the Commission and not the ALJ, where the Commission affirms and adopts the ALJ’s award in its decision, we may review the findings of the ALJ as adopted by the Commission. Cardwell v. Treasurer of the State of Mo., 249 S.W.3d 902, 906 (Mo. App. E.D. 2008) (internal citation omitted).

Discussion

I. Point One—Exclusion of Expert Witness Testimony

In Point One, Otwell argues the Commission erred in excluding the entirety of Lalk’s vocational expert testimony because Lalk did not improperly rely on inadmissible testimony to reach his conclusion that Otwell had preexisting psychiatric disability and was PTD.

Section 490.065.2, RSMo (Cum. Supp. 2018), governs the admissibility of expert testimony in civil, non-jury proceedings and sets forth the parameters for the facts on which an expert opinion may reasonably rely. The statute provides as follows:

- (1) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise;
- (2) Testimony by such an expert witness in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact;
- (3) The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable;
- (4) If a reasonable foundation is laid, an expert may testify in terms of opinion or inference and give the reasons therefor without the use of hypothetical questions, unless the court believes the use of a hypothetical question will make the expert's opinion more understandable or of greater assistance to the jury due to the particular facts of the case.

Section 490.065.1, RSMo (Cum. Supp. 2018); see Hogenmiller, 574 S.W.3d at 336–37 (internal citation omitted); see also Kivland v. Columbia Orthopaedic Grp., 331 S.W.3d 299, 310–11 (Mo. banc 2011) (applying pre-amended Section 490.065 to review the Commission's admission of expert witness testimony in workers' compensation proceedings).

Because the Commission's admission or exclusion of expert witness testimony is discretionary, we consider only whether the Commission's evidentiary ruling abused its discretion. See Farmer, 567 S.W.3d at 230 (internal citation omitted); see also Hogenmiller, 574 S.W.3d at 337 (internal citation omitted); Daly v. State Tax Comm'n, 120 S.W.3d 262, 267 (Mo. App. E.D. 2004) (internal citations omitted) (noting "[a] trial court, and by extension the Commission, retains broad discretion over the discovery process and the admissibility of

evidence”). “In deciding whether to admit an expert’s testimony, the Commission is required to ensure . . . only that the statutory factors are met—not that they are met to any particular degree.” Hogenmiller, 574 S.W.3d at 337 (internal citation omitted). The Commission abuses its discretion to exclude expert witness testimony where it “erroneously finds that the requirements of the expert witness statute are not met.” Kivland, 331 S.W.3d at 311 (internal citation omitted). We will reverse the evidentiary ruling where it is “clearly against the logic of the circumstances then before the trial court and . . . so unreasonable and arbitrary that the ruling shocks the sense of justice and indicates a lack of careful deliberate consideration.” Revis v. Bassman, 604 S.W.3d 644, 650 (Mo. App. E.D. 2020) (omission in original) (internal quotation omitted).

Here, Otwell presented Lalk’s vocational expert testimony in support of her claim for PTD. Section 287.020 defines “total disability” to mean “inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.” Section 287.020; Reynolds, 587 S.W.3d at 682 (quoting Scott v. Treasurer of State—Custodian of Second Injury Fund, 417 S.W.3d 381, 386 (Mo. App W.D. 2014)). “It is well established that the test for determining whether a claimant is permanently and totally disabled ‘is whether the worker is able to compete in the open labor market.’” Id. (internal quotation omitted). “The ability to compete in the open labor market hinges on whether, in the ordinary course of business, any employer would be reasonably expected to hire the individual given his or her present physical condition.” Id. (internal quotation omitted); see also Atchison v. Mo. State Treasurer, 603 S.W.3d 719, 724 (Mo. App. S.D. 2020) (affirming the Commission’s award of PTD for SIF liability under Section 287.220.2 after finding the employee’s preexisting disabilities of degenerative disc and joint diseases combined with the

primary injury were serious enough to be a hindrance of obstacle for future employment). Thus, an expert opinion as to Otwell's ability to compete in the open labor market due to her alleged preexisting psychiatric disability, in addition to her preexisting shoulder injury and incontinence, is relevant to her claim for PTD. See Reynolds, 587 S.W.3d at 682 (internal citation omitted).

The SIF argued that Lalk, when rendering his opinion as to Otwell's preexisting psychiatric disability, improperly relied on the inadmissible report of the deceased, non-testifying Dr. Shuter. The SIF sought to have the Lalk's testimony excluded from evidence. The ALJ ruled to exclude the entirety of Lalk's testimony, and the Commission adopted that evidentiary ruling.

"An expert cannot be an expert in all fields, and it is reasonable to expect that experts will rely on the opinion of experts in *other fields*["] State ex rel. Mo. Highway & Transp. Comm'n v. Modern Tractor & Supply Co., 839 S.W.2d 642, 655 (Mo. App. S.D. 1992) (emphasis in original) (quoting United States v. 1,014.16 Acres of Land, 558 F. Supp. 1238, 1242 (1983)). Yet "if the testifying expert merely acts as a conduit for another non testifying expert's opinion, the 'expert opinion' is hearsay and is inadmissible["] Id. (internal quotation omitted); see also Bruflat v. Mister Guy, Inc., 933 S.W.2d 829, 833 (Mo. App. W.D. 1996) (citing Modern Tractor, 839 S.W.2d at 655), *overruled by Hampton*, 121 S.W.3d 220 on the grounds that a reviewing court is not required to view the evidence and all reasonable inferences drawn therefrom in the light most favorable to the Commission.

Hence, the issue before us is whether Lalk's testimony can reasonably be viewed as merely a conduit for Dr. Shuter's inadmissible hearsay report. In assessing the ALJ's ruling and the Commission's adoption of said ruling, we are mindful that an "[e]xpert opinion partially based on other expert opinion is not necessarily inadmissible." Garrett v. Treasurer of State of

Mo. as Custodian for Second Injury Fund, 215 S.W.3d 244, 249 (Mo. App. S.D. 2007) (citing Section 490.065, RSMo (1994)). “Reliance on information and the opinions of others does not automatically disqualify an expert’s testimony.” Matter of Care & Treatment of Lester Bradley v. State, 554 S.W.3d 440, 454 (Mo. App. W.D. 2018) (internal citations omitted) (denying an appellant’s challenge to the admission of a psychologist’s expert testimony relying on the opinion and conclusions of non-testifying evaluators). Rather, “[a]n expert is allowed to rely on hearsay to support the expert’s opinion where . . . the expert testifies that the evidence is of a sort reasonably relied on by experts in the field and the trial court [] finds that the evidence is otherwise reasonably reliable.” Peterson v. Nat’l Carriers, Inc., 972 S.W.2d 349, 351 (Mo. App. W.D. 1998) (affirming the trial court’s admission of expert witness testimony over objection on grounds that all or some of it should be excluded as based on inadmissible hearsay); see also Bradley, 554 S.W.3d at 454 n.10 (noting expert witnesses may consult and summarize a hearsay source in arriving at their own opinion); Modern Tractor, 839 S.W.2d at 655 (noting an expert in one field may rely on hearsay from an expert in another field). In finding that Missouri law does not prohibit an expert from relying on hearsay when rendering an opinion, Peterson discussed the guidelines under federal rules. Peterson, 972 S.W.2d at 354. Indeed, Missouri has since explicitly adopted statutory language even more closely aligned with Federal Rule of Evidence 703. See State ex rel. Gardner v. Wright, 562 S.W.3d 311, 315–16, 317 (Mo. App. E.D. 2018) (noting the legislature amended Section 490.065 in 2017 and “adopt[ed] an approach to the admissibility of expert opinions that is consistent with federal standards”). “Merely because an expert relied on information and opinions of others does not automatically disqualify his testimony[;] [a]s long as such sources serve only as a background for his opinion and are not

offered as independent substantive evidence . . . he should not be precluded from testifying.” Peterson, 972 S.W.2d at 354 (omission in original) (internal quotation omitted).

Given the well-defined direction of Peterson and the 2017 legislative amendments, we find the Commission abused its discretion in excluding the entirety of Lalk’s testimony. See Farmer, 567 S.W.3d at 230 (internal citation omitted); Peterson, 972 S.W.2d at 354 (internal citation omitted); see also Revis, 604 S.W.3d at 650 (internal citation omitted). The record before us demonstrates a lack of careful consideration by the ALJ and Commission as to reasons for Lalk’s opinion as to Otwell’s PTSD. See Revis, 604 S.W.3d at 650 (internal citation omitted). The Southern District in Garrett held the Commission was free to disregard the expert witness’s opinions on PTSD because the opinions merely “parroted” the opinion of another physician, and the expert witness had not independently reviewed the employee’s condition nor discussed or obtained any PTSD history directly from the employee. Garrett, 215 S.W.3d at 249. The facts in Garrett are substantially distinguished from the present case. See id. Here, the record before us shows that Lalk conducted his own personal interview and evaluation of Otwell. Lalk also reviewed multiple sources of medical records relating to Otwell, Dr. Shuter’s report being just one of the records reviewed. See id. Although Lalk said in cross-examination that he “relied” on Dr. Shuter’s report in forming his opinion, we reject this response as dispositive on this issue of reliance because of the broad definition of the term “rely” upon which SIF’s counsel premised his question. A thorough review of Lalk’s deposition testimony and report exhibits minimal contextual discussion of Dr. Shuter’s IME report. The limited reference to Dr. Shuter’s report could scarcely allow Lalk’s testimony to be viewed or otherwise characterized as a mere “conduit” for Dr. Shuter’s testimony. See id.; Modern Tractor, 839 S.W.2d at 655 (internal citation omitted). Lalk’s discussion of Dr. Shuter’s report consists of a single page in the twelve-

page medical records review. Without question, Lalk noted Dr. Shuter's reference to Otwell's self-reporting of experiencing and receiving treatment for anxiety and depression since the 1990s. But Lalk identified similar findings in several other records, including Toon's 2007–2009 counseling records indicating Otwell suffered depression and anxiety most of her life and Dr. Sky's IPE report indicating Otwell's history of depression beginning in the late 1980s. Lalk testified he reviewed these records along with Dr. Shuter's report and other medical records. Importantly, we note that Lalk's summary and conclusions make no mention of Dr. Shuter or Dr. Shuter's report, significantly undermining the SIF's argument that Lalk's conclusions merely parroted Dr. Shuter's report. See Garrett, 215 S.W.3d at 249. To the contrary, Lalk's testimony and report clearly demonstrate that in forming his opinion that Otwell was PTD and suffered from a preexisting psychiatric disability, Lalk referred to numerous other medical providers, particularly Toon and Dr. Sky. Lalk considered records from a host of medical providers dating back to 2005. Lalk also personally interviewed and evaluated Otwell, making his own observations and conducting vocational testing. These facts are substantially and materially different from the facts of Garrett. See id. Given the record before us, we are persuaded that the Commission's ruling to exclude Lalk's testimony in its entirety was clearly against the logic of the circumstances and displayed a lack of careful, deliberate consideration. See Revis, 604 S.W.3d at 650 (internal citation omitted).

Any concerns the ALJ and Commission intended to address by excluding Lalk's testimony are more appropriately addressed as matters affecting the weight and credibility afforded to the evidence at issue. See id. at 656 (quoting Kivland, 331 S.W.3d at 311) (“[A]ny weakness in the factual underpinnings of the expert's opinion . . . goes to the weight that testimony should be given and not its admissibility.”) (omission in original); Bradley, 554

S.W.3d at 454 (internal quotation omitted) (“[Q]uestions regarding the sources and bases of an expert’s opinion affect the weight rather than the admissibility of the opinion.”); see also Patterson v. Cent. Freight Lines, 452 S.W.3d 759, 767 (Mo. App. E.D. 2015) (internal citations omitted) (noting the Commission may determine the weight accorded to medical expert testimony and is deemed an expert on an employee’s employability). The deference we give to the weight and credibility accorded to the evidence by the Commission does not supplant the rules governing admissibility of expert testimony—which are issues of law relegated to this Court. See Hogenmiller, 574 S.W.3d at 336 (internal citation omitted). Point One is granted.

On remand, we direct the Commission to admit Lalk’s testimony and reconsider the award in light of Lalk’s testimony, according the weight and credibility to the evidence as it deems proper. See id. In particular, although the ALJ found that the record lacked medical evidence of preexisting psychiatric disability, the record before it, and the Commission, did not contain critical evidence from the vocational expert testimony of Lalk or certain parts of Dr. Volarich’s IME testimony, which may prove relevant to determining whether Otwell established PTD from the combination of her preexisting psychiatric disabilities and the Primary Injury. See Atchison, 603 S.W.3d at 724; Reynolds, 587 S.W.3d at 682 (internal citation omitted); Patterson, 452 S.W.3d at 767 (internal citations omitted).

Because the Commission will necessarily address the remaining points on appeal when reconsidering Otwell’s workers’ compensation award with respect to her claim of preexisting psychiatric disability, Point One resolves the appeal.

Conclusion

The decision of the Commission is reversed. We remand to the Commission for reconsideration of the award consistent with this opinion.



KURT S. ODENWALD, Presiding Judge

Kelly C. Broniec, J., concurs.
John P. Torbitzky, J., concurs.