

NOTICE
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Workers' Compensation
Commission Division
FILED: January 24, 2011

No. 1-10-0040WC

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JMI CRAFTED COMMERCIAL MILLWORK,)	Appeal from the Circuit Court
)	of Cook County, Illinois
Appellant,)	
)	
v.)	No. 09--L--50082
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Kevin Sheehan,)	Elmer James Tolmaire, III,
Appellee.))	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McCullough and Justices Hoffman, Hudson, and Stewart concur in the judgment.

ORDER

Held: The Commission's finding that the claimant proved a causal connection between his current condition of ill-being and a work-related accident and its decision to award temporary total disability benefits through the date of the arbitration hearing and other medical benefits was not against the manifest weight of the evidence.

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The claimant, Kevin Sheehan, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2004)), seeking benefits for injuries he allegedly sustained while working for JMI Crafted Commercial Millwork, Inc. (employer). The matter proceeded to arbitration. The parties stipulated that on September 11, 2003, the claimant sustained accidental injuries arising out of and in the course of his employment with the employer. The arbitrator found, however, that the claimant's current condition of ill-being of his lower back and legs and the consequent need for lumbar surgery are not causally connected to the accident because the chain of causation was broken by four subsequent intervening events which caused the claimant's current condition. The arbitrator found that the claimant sustained a strain for which he reached maximum medical improvement (MMI) on October 15, 2003, and awarded temporary total disability (TTD) benefits from September 11, 2003, through November 9, 2003. Based on its causation finding, however, the arbitrator denied the claimant's requests for additional TTD benefits through the date of the arbitration and for prospective medical treatment including surgery.

The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission reversed the arbitrator's decision, with one commissioner dissenting. The Commission found that the claimant's current condition of ill-being is causally connected to his September 11, 2003, work accident. Accordingly, the Commission ordered the employer to pay TTD benefits for a period of 181 weeks, which encompassed the entire period between the date of the accident and the date of the arbitration except for a few weeks during which the claimant had returned to work in November and early

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December of 2003. The Commission also ordered the employer to pay medical bills that the claimant had incurred after October 15, 2003, and to “provide prospective medical care in the form of lumbar surgery as recommended by Dr. Chang, including all associated and follow-up care.”

The employer sought judicial review of the Commission’s decision in the circuit court of Will County. The court confirmed the Commission’s decision. This appeal followed.

BACKGROUND

The claimant is a 40-year-old truck driver. His job with the employer involved loading, unloading, and going to job sites making deliveries and pick-ups. On September 11, 2003, his truck broke down. While he was a passenger in the tow truck, it was involved in a collision with another vehicle. The impact was violent. The right side of the tow truck launched up in the air and slammed back down. The claimant was bounced around inside the cab while he braced himself with his hands and feet. Claimant testified that he felt soreness in his arms, neck, and back immediately after the accident.

The claimant was taken by ambulance to South Suburban Hospital. The hospital records indicate that the claimant complained of pain in his neck, low back, and left elbow and was diagnosed with strains to the neck, back and left elbow. The claimant was discharged and given a referral to Dr. Weber.

The claimant saw Dr. Weber for the first time on September 17, 2003. He did not have any radicular symptoms at that time, but he continued to have significant pain in the neck and lower back. Dr. Weber ordered physical therapy and restricted the claimant to sedentary work.

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A note in Dr. Weber's records reflects that claimant called Dr. Weber on September 22, 2003, and reported that he was "having shooting pain down both of his legs."

The claimant participated in physical therapy from September 18, 2003, through October 29, 2003. The initial therapy evaluation on September 18, 2003, indicates that the claimant's neck and lower back started bothering him right after the September 11, 2003, accident and that he "started to get intermittent left buttock and left thigh symptoms" "a few days later." The daily treatment record for September 18, 2003, indicates, "neck better, leg hurts. It was even radiating down both thighs earlier today." On September 25, 2005, the daily treatment record indicates, "the other day the pain radiated down both legs. Today, it was greater in the left leg." On September 29, 2003, the therapy progress report states that the claimant was "greatly improved" after six therapy sessions and that his pain was "no longer radiating down the legs as often," but also noted that the claimant still experienced frequent central low back pain.

The physical therapy records indicate that the claimant continued to experience back pain and intermittent leg pain throughout the first several weeks of October 2003. For example, on October 2, the "Daily Treatment Record" (treatment record) indicates that patient complained of left buttock and thigh pain that "has been really bad the past couple of days." On October 6, the therapy progress report indicates, "[l]ow back pain decreased by at least 60%, pain no longer radiates down his legs often. Claimant still experiences occasional central low back pain. If he attempts to lean forward for five minutes, he really experiences low back pain." The October 9 treatment record stated that the claimant reported that his left thigh and buttock pain and other left leg symptoms were "abolished with exercise." However, the October 13 treatment record

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indicates that the claimant “had a horrible weekend. The pain kept radiating down the left leg and he wasn’t doing much at all.”

The claimant saw Dr. Weber again on October 6, 2003. At that time, Dr. Weber noted that the physical therapy had improved the claimant’s neck, but he continued to have pain in his low back and his pain had been radiating down his legs intermittently, especially the left leg. Dr. Weber ordered an MRI to determine whether the claimant had a disc injury, and he maintained the claimant’s sedentary work restriction.

A lumbar MRI was performed on October 14, 2003. The MRI revealed a small left central disc protrusion at L5-S1 which abutted the nerve root in the left lateral recess. There was also mild diffuse bulging without herniation at L4-5.

On October 15, 2003, the claimant told his physical therapist that he “[a]lmost got run over the other day, so he had to do a roll to get out of the way of a car and his back is a little sore.” During the arbitration, the claimant testified that this incident occurred in a parking lot in Indiana. The claimant testified that he was on his hands and knees beside his truck attempting to light a lantern when another car came at him at about 40 miles per hour. He testified that he had to roll out of the path of the oncoming care quickly to avoid being hit. He testified that although he felt pain when he rolled out of the way of the car, the pain was no worse than what he had previously experienced since the September 11, 2003, accident.

The claimant’s lower back and leg pain continued after the “roll over” incident with intermittent periods of temporary relief. The October 16, 2003, physical therapy progress report notes the therapist’s concern that claimant had continuing daily radiating leg pain. The claimant

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was able to abolish leg pain and decrease his low back pain in clinic, but these symptoms returned after about four hours. The October 27, 2003, treatment record indicates that the claimant had constant tingling in the left calf and burning in the left thigh and low back. Although the thigh and calf improved with exercise, the calf symptoms remained. Over the next few days, the claimant's leg symptoms decreased with exercise but returned.

Dr. Weber referred the claimant to Dr. Chami for pain treatment. Dr. Chami administered epidural injections beginning on October 30, 2003. A note written by one of the claimant's physical therapists on November 4, 2003, indicates that the claimant called and was doing well with only occasional pain when bending. Thus, the claimant was discharged from physical therapy. On November 13, 2003, Dr. Chami's records indicate that the epidural shots helped and restored function of the claimant's back to almost normal.

On November 12, 2003, Dr. Weber noted that the claimant had had a "drastic reduction" of pain and was able to perform most activities without much discomfort. He was walking much better with no limp, and he was experiencing no pain with leg raises or other leg movements. Accordingly, Dr. Weber released him to return to work with no restrictions. The claimant worked from November 9, 2003, until he was fired on December 4, 2003.

The claimant received additional epidural injections on November 18, 2003, and December 2, 2003. Although the claimant's symptoms and functional abilities improved intermittently throughout November and early December of 2003, the medical records report that his back pain waxed and waned (from 0 to 50% or greater, according to the claimant) during this period. Moreover, some of the claimant's other symptoms, including pain and weakness in his

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left leg and foot, recurred intermittently. The claimant would improve dramatically after each epidural injection, but his symptoms of pain, tingling, and weakness in his left leg would eventually return.

Sometime in the fall of 2003, the claimant felt an “explosion” of pain when he was walking up a hill or descending down a hill. (The claimant offered several different versions of the incident.) The claimant testified that the pain he experienced after this incident was “the same” as the pain he had experienced after the September 11, 2003, accident. Dr. Chami’s November 13, 2003, records indicate that the pain that the claimant experienced after walking down the hill was relieved by “[o]ne does of Tylenol #3.”

Dr. Weber referred the claimant to Dr. Chang, an orthopedic surgeon. The claimant saw Dr. Chang for the first time on December 2, 2003. He reported back pain with pain and weakness in the left leg. Dr. Chang noted that physical therapy had actually worsened claimant’s pain but that the epidural injections had helped somewhat. After reviewing the October 14, 2003, MRI and an EMG performed on November 18, 2003, the doctor diagnosed the claimant as suffering from chronic left L5 radiculopathy with L4-5, L5-S1 bulges. However, because the bulges were relatively small and not causing any significant nerve impingement, Dr. Chang initially hoped to treat the injury without surgery. He recommended additional physical therapy and prescribed a brace to help stabilize claimant’s foot. Dr. Chang indicated, however, that if these treatments did not improve the claimant’s condition significantly, he would recommend lumbar surgery.

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In late December of 2003, the claimant was driving when another car pulled in front of him, forcing the claimant to slam on the brakes. The claimant stated that he was jostled in the car during this incident, that he “felt something move” in his lower spine, and that he felt significant back pain. Shortly after this incident, the claimant experienced increased tingling in the left thigh (which had become constant), continued back pain, and intermittent numbness and tingling in the right foot.

On December 30, 2003, Dr. Chang indicated that the claimant was having increased low back and left leg pain for the last week or so and it had gotten quite severe. He noted that the claimant was experiencing decreased range of motion and weakness of the left leg. He ordered another MRI, which was performed on January 7, 2004. This MRI indicated a small central left disc herniation at L5-S1 with mild disc degeneration and disc protrusion which abutted the nerve root, and L4-5 mild disc degeneration and bulging without definite herniation. Dr. Chang suspected that the claimant’s symptoms were related to the L5-S1 disc herniation. Because there was no significant nerve impingement, however, Dr. Chang recommended additional physical therapy rather than surgery.

The claimant’s pain and left leg strength improved somewhat in February 2004, but he continued to have back and leg pain and weakness in his left big toe. He underwent additional epidural injections which provided no significant relief. Because the claimant remained symptomatic, Dr. Chang recommended surgery (an L5-S1 laminectomy and discectomy).

On January 25, 2005, Dr. Chang noted claimant’s symptoms of low back and bilateral leg pain had been worsening for several months. Claimant continued to have back tenderness and

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left leg weakness but had also been getting right leg weakness for several months. He also had mild weakness in his right ankle and big toe. The records indicate that claimant's request for surgery to workers' compensation was denied.

On September 12, 2005, the claimant went to the emergency room of South Suburban Hospital where he was treated for severe back pain. The claimant stated that he had wrenched his back while having sex with his girlfriend. Three days later, he returned to Dr. Chang, complaining of severe low back pain. He reported pain radiating into both legs, significant weakness in the left ankle and big toe. Dr. Chang ordered a new MRI, which was performed on October 19, 2005. Dr. Chang concluded that the new MRI confirmed the L5-S1 disc degeneration and herniation which was causing compression on the right side similar to where it was before. The claimant was very symptomatic, and Dr. Chang again recommended surgery (an L5-S1 laminectomy and a discectomy). Dr. Chang saw the claimant for three follow-up appointments between November 2005 and January 2006. Dr. Chang made the same recommendations and confirmed that the claimant remained unable to work. Dr. Chang's records reflect that approval for surgery had been denied.

The claimant saw Dr. Chang again on October 26, 2006. He complained of severe low back pain radiating into both legs, worse on the left. The doctor indicated that the surgery he was now recommending was an L4-5, L5-S1 laminectomy, fusion with INFUSE and instrumentation, possible inner body fusion with a vertebral spacer and INFUSE.

On November 6, 2006, Dr. Chang testified by way of deposition. He testified that the final MRI did not indicate any new pathology following the September 2005 sex incident. Dr.

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Chang stated that the MRI on October 14, 2003, showed a small left-sided herniation at L5-S1. His impression was chronic left L5 radiculopathy with L4-5, L5-S1 disc bulges. The subsequent MRIs confirmed the same problem. Dr. Chang testified that the claimant's complaints were consistent from the time of the September 11, 2003, incident through October 2005. The only difference was the effect on the right side which was mild and would be treated in the same surgery. Dr. Chang testified that he was now recommending a fusion (as opposed to a laminectomy) because he wanted to rescue the nerve and the claimant's back injury had remained untreated for so long that a simple laminectomy may not improve the nerve.

Dr. Chang testified within a reasonable degree of medical certainty that the claimant's back pain, bilateral leg pain, and severe leg weakness are all attributed to the work injury of September 11, 2003. Although he stated that it was difficult to know exactly when the herniation occurred, Dr. Chang found it significant that the claimant's symptoms arose after the work injury and persisted throughout the relevant time period. According to Dr. Chang, the injections provided only temporary relief and the pain recurred repeatedly. Thus, he concluded that conservative treatments had been unsuccessful and that surgery was indicated. He testified that he ordered the claimant off work as a result of the work injury the first time that he saw him on December 2, 2003, and that this order continued until the time of the hearing.

Dr. Chang testified that the facts that the claimant experienced increased back pain while ascending or descending a hill in the Fall of 2003, while driving in late December of 2003, and while having sex with his girlfriend in September 2005 did not change his opinion that the claimant's injuries were caused by the September 11, 2003, work accident. He stated that the

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relief that the claimant had experienced prior to the incident on the hill was only temporary, and that it was common to get relief from symptoms—even complete relief—on a temporary basis. For this same reason, he testified that the fact that the claimant was temporarily able to return to work in November 2003 did not change his causation opinion. In addition, Dr. Chang noted that MRIs taken after the driving and sex incidents showed no change in the claimant’s condition.

On January 17, 2007, Dr. Zelby, employer’s section 12 examiner, testified by way of deposition. Dr. Zelby had examined claimant and written a report on May 19, 2004. Although Dr. Zelby concluded that the claimant’s MRIs “demonstrate[] a competent cause for left leg pain,” he found that the claimant was magnifying his symptoms. He stated that the claimant had a “markedly antalgic gait” while in Dr. Zelby’s office, but when Dr. Zelby saw him getting into his car after the examination, he had a “markedly different gait” “only slightly favoring” the left leg. Because the claimant had normal lower extremity reflexes and no muscular atrophy, Dr. Zelby suspected that his motor function was in fact normal. Accordingly, Dr. Zelby concluded that the claimant was “trying to deceive” him, and predicted that he will “have a poor outcome” “irrespective of treatment.”

After reviewing the medical records, Dr. Zelby concluded that the claimant had suffered a lumbar strain during the September 11, 2003, accident and then suffered a herniated disc with resulting lumbar radiculopathy during the subsequent “roll over” incident in mid-October of 2003 (when the claimant rolled out of the path of an oncoming car). In support of this conclusion, Dr. Zelby stated that the claimant had complained only of lower back pain and “intermittent radicular symptoms into both legs” after the September 11, 2003, incident, but

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began complaining of “radiating pain down the leg” and “predominantly left sided radicular leg pain” in late October 2003, after the “roll over” incident. Thus, Dr. Zelby concluded that the claimant’s pain and his inability to work did not result from his work-related accident.

An arbitration hearing was held on March 20, 2007. The arbitrator found that the claimant’s current condition of ill-being of his lower back and legs and the consequent need for lumbar surgery are not causally connected to the September 11, 2003, work accident because the chain of causation was broken by four subsequent intervening accidents—the “roll over” incident in October 2003, the incident on the hill shortly thereafter, the driving incident in late December of 2003, and the sex-related injury in September 2005. The arbitrator accepted Dr. Zelby’s opinions that the claimant merely sustained a strain during the September 11, 2003, accident and that he “did not have any leg symptoms of any consistency” until after the subsequent “roll over” incident. The arbitrator found that claimant had reached maximum medical improvement from the strain on October 15, 2003, and that any subsequent back and leg complaints were caused by the “roll over” incident and were not causally related to the work-related accident. The arbitrator also relied on the November 12, 2003, record of Dr. Weber, which noted a “drastic reduction” of pain, and on the November 13, 2003, report of Dr. Chami that indicated that claimant’s back pain had resolved.

Based on these findings, the arbitrator awarded temporary total disability benefits from September 11, 2003, through November 9, 2003, the date that the claimant temporarily returned to work. However, the arbitrator denied the claimant’s requests for additional TTD benefits through the date of the arbitration and for prospective medical treatment including surgery.

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The claimant appealed the arbitrator's decision to the Commission. The Commission reversed the arbitrator's decision, with one commissioner dissenting. The Commission found that the claimant's current condition of ill-being is causally connected to his September 11, 2003, work accident. It rejected the arbitrator's conclusion that the claimant did not have consistent leg pain prior to the "roll over" incident, finding that the medical records established that the claimant "had developed significant radicular complaints" of leg pain after the September 11, 2003, accident and prior to the "roll over" incident. The Commission also found that the claimant's condition "waxed and waned" and "steadily deteriorated" following the September 11, 2003, work accident, but never really resolved. The Commission noted that the medical records showed that the claimant's symptoms remained consistent from the time of the accident through the date of the hearing, and that his symptoms waxed and waned both before and after each of the alleged intervening accidents. Moreover, it found that the MRIs taken in 2003, 2004, and 2005 showed "essentially the same" condition.

Accordingly, the Commission rejected the arbitrator's conclusion that the intervening accidents broke the chain of causation and adopted Dr. Chang's conclusion that the claimant's current condition of ill-being is causally related to the September 11, 2003, work accident. Accordingly, it ordered the employer to pay TTD benefits for a period of 181 weeks, which encompassed the entire period between the date of the accident and the date of the arbitration except for a few weeks during which the claimant had returned to work in November and early December of 2003. The Commission also ordered the employer to pay medical bills that the claimant had incurred after October 15, 2003, and to "provide prospective medical care in the

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form of lumbar surgery as recommended by Dr. Chang, including all associated and follow-up care.”

The employer sought judicial review of the Commission’s decision in the circuit court of Will County. The court confirmed the Commission’s decision. This appeal followed.

ANALYSIS

A. Causal Connection Between Work Injury and the Claimant’s Present Condition

The employer argues that the Commission’s finding of a causal connection between the September 11, 2003, accident and the claimant’s present condition is against the manifest weight of the evidence. According to the employer, the totality of the evidence overwhelmingly supports the arbitrator’s conclusion that the claimant sustained a lumbar strain during the September 11, 2003, accident followed by four intervening, non-work-related accidents that broke the causal chain and caused new, more serious injuries. We disagree.

To establish causation under the Act, a claimant need prove only that some act or phase of his employment was a causative factor in his ensuing injury. *Land and Lakes Co. v. Industrial Comm’n*, 359 Ill. App. 3d 582, 592 (2005). An accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm’n*, 207 Ill. 2d 193, 205 (2003). Every natural consequence that flows from the injury which arose out of and in the course of the claimant’s employment is compensable under the Act, unless it was caused by an independent, intervening accident. *Teska v. Industrial Comm’n*, 266 Ill. App. 3d 740, 742 (1994).

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An independent, intervening accident is one which completely breaks the chain of causation between the original work-related injury and an ensuing condition of ill-being. *International Harvester Co. v. Industrial Comm'n*, 46 Ill. 2d 238, 245 (1970); *Global Products v. Illinois Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 411 (2009). A non-work-related incident which is a contributing cause with the compensable injury in an ensuing condition does not constitute an intervening cause sufficient to break the causal chain. *International Harvester*, 46 Ill. 2d at 247; *Teska*, 266 Ill. App. 3d at 742. Thus, when the claimant's condition is weakened by a work-related accident, a subsequent accident that aggravates the condition does not break the causal chain. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786 (2005). So long as a "but-for" relationship exists between the original work-related accident and the subsequent condition, the employer remains liable for the subsequent condition. *Lee v. Industrial Comm'n*, 167 Ill. 2d 77, 87 (1995); *Global Products*, 392 Ill. App. 3d at 412.

Causation, including the existence of an intervening cause, is a question of fact for the Commission. *Global Products*, 392 Ill. App. 3d at 411. It is the function of the Commission to decide questions of causation, to judge the credibility of witnesses, and to resolve conflicting medical evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07 (1984). A reviewing court may not substitute its judgment for that of the Commission merely because other inferences from the evidence could be drawn. *Berry*, 99 Ill. 2d at 407. Findings of the Commission will not be overturned unless they are against the manifest weight of the evidence, *i.e.*, unless the record discloses that an opposite conclusion clearly was the proper result. *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721, 729-30 (2000). When the evidence is sufficient to support the

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Commission's causation finding, we must affirm. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

Applying these standards, we cannot conclude that the Commission's causation finding was against the manifest weight of the evidence. The weight of the evidence establishes that none of the four subsequent incidents were independent, intervening causes that completely broke the chain of causation. The employer argues that the "roll over" incident was an intervening cause because the claimant "did not develop any symptoms of leg complaints of any consistency until after this *** incident." The record belies this claim. Although it is not clear exactly when the "roll over" incident occurred, the evidence suggests that it occurred shortly before October 15, 2003.¹ Dr. Weber's records indicate that the claimant complained of "shooting pain down both of his legs" more than three weeks earlier, on September 22, 2003. The initial physical therapy evaluation on September 18, 2003, indicates that the claimant "started to get intermittent left buttock and left thigh symptoms" "a few days" after the September 11, 2003, accident. The daily treatment records for September 18, September 25, and September 29, 2003, reference pain radiating down the claimant's thighs and legs. The October 2, 2003, treatment record indicates that the claimant was experiencing left buttock and thigh pain that "has been really bad the past couple of days." The October 6, 2003, therapy progress report also references pain radiating down the claimant's legs. Thus, the claimant's assertion that the claimant had no radicular leg pain until mid-October 2003 is contradicted by the record.

¹ The claimant first reported the "roll over" incident during an October 15, 2003, physical therapy session. At that time, he said that the incident had occurred "the other day."

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The employer also maintains that “no MRI was needed until after [the “roll over”] incident” and that “any findings from the MRI should be attributed to this intervening incident.” The employer fails to mention Dr. Weber’s October 6, 2003, record, however, which states that “[w]e need to get an MRI to rule out a disc injury to [the claimant’s] lower back.” In addition, even assuming that the “roll over” incident occurred prior to the October 14, 2003, MRI, there is no evidence suggesting that the disc bulging and mild herniation detected in that MRI was caused by the “roll over” incident and not the initial accident. The consistency of the claimant’s back and leg symptoms before and after October 14, 2003, suggests the opposite conclusion. Moreover, even if the “roll over” incident caused new injuries, the employer presented no evidence suggesting that they were truly “intervening” injuries as opposed to aggravations of a back condition that was caused by the initial work-related accident.

The Commission’s conclusion that the remaining three allegedly-intervening accidents did not break the causal chain also finds support in the record. The medical records and Dr. Chang’s testimony established that the claimant’s symptoms were consistent from the time of the work-related accident through the date of the hearing and that his symptoms waxed and waned both before and after each allegedly intervening incident. Moreover, Dr. Chang testified that the MRIs taken before and after these incidents showed essentially the same pathology. See *Teska*, 266 Ill. App. 3d at 743 (subsequent non-work-related incident did not break the causal chain where an MRI taken after the incident “showed only the same progression of disc injury” that had existed after the work-related injury).

Thus, the Commission's conclusion that the claimant's current condition of ill-being and need for surgery is causally related to the initial work accident is not against the manifest weight of the evidence. At most, the four subsequent incidents aggravated his work-related injury and caused flare-ups of pain traceable to that initial injury. They did not cause entirely new and unrelated injuries that broke the causal chain. See, e.g., *Teska*, 266 Ill. App. 3d at 742-43 (reversing the Commission's finding that claimant suffered an intervening accident when he experienced pain while bowling approximately a year after he sustained a cervical injury at work, and holding that "[m]erely because claimant experienced an upsurge of neck pains while bowling *** does not mean that the causal connection was broken"); *Lasley Construction Co., Inc. v. Industrial Comm'n*, 274 Ill. App. 3d 890, 893 (1995) (holding that claimant's fall at work was at least a contributing factor to disc herniation that could have been caused by subsequent incidents where his back was weakened as a result of the initial injury); see also *Mendota Township High School v. Industrial Comm'n*, 243 Ill. App. 3d 834, 836 (1993). Had it not been for the initial work-related injury, the claimant would not have experienced severe pain while rolling over, walking up a hill, driving, and having sex. Thus, those later incidents are merely contributing causes, not the sole causes of the claimant's condition. See *Mendota*, 243 Ill. App. 3d at 846; *Lasley Construction Co.*, 274 Ill. App. 3d at 893. The Commission correctly found that the initial accident played a causal role in the claimant's condition.²

² The fact that the claimant reported that he felt better before some of the subsequent incidents and worse after them does not change this analysis. See *Vogel*, 354 Ill. App. 3d at 788 (holding that the fact that the claimant testified that he was "doing fine" and experiencing no pain

The employer's remaining arguments on the causation issue lack merit. First, the employer contends that there is insufficient evidence in the record to support the Commission's conclusion that the September 11, 2003, accident was significant enough to cause the claimant's current injuries. However, the claimant testified that the impact was violent, that the right side of the tow truck he was riding in "launched up in the air and slammed back down really hard," and that he was "bounced around" inside the cab. Moreover, Dr. Chami's records indicate that the tow truck was struck on the passenger side and hit again from behind which drove into into the colliding vehicle once more. The claimant testified that he felt soreness in his arms, neck, and back immediately after the accident. This evidence is sufficient to support the Commission's conclusion that the accident was "significant" and that it played a causal role in the claimant's current condition of ill-being.

The employer also argues that the Commission improperly discounted Dr. Zelby's opinions merely because he was the employer's section 12 examiner. As the claimant correctly notes, however, the Commission rejected Dr. Zelby's opinion because it was contradicted by the record, not because of his status. Dr. Zelby based his opinion in large part on the assertion that the claimant did not complain of radicular pain shooting down his legs until late October, 2003, after the "roll over" incident. As noted above, that assertion is incorrect. The medical records and physical therapy records document that the claimant repeatedly complained of pain radiating

until after he was involved in an subsequent, non-work-related accident "d[id] nothing to change the fact" that the claimant was in a weakened condition as a result of the initial work-related accident and was therefore susceptible to the injury he suffered after the subsequent accident).

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down his legs beginning on September 22, 2003. Accordingly, the Commission's finding that Dr. Zelby's opinion was entitled to little weight is supported by the record and entirely proper.

B. TTD Benefits and Other Medical Benefits.

The employer argues that the Commission's award of TTD benefits from December 4, 2003, through the date of the arbitration hearing is against the manifest weight of the evidence. In support of this argument, the employer notes that the claimant's treating physicians cleared him to return to work with certain restrictions shortly after the September 11, 2003, work accident and that Dr. Weber cleared him to return to work with no restrictions on November 12, 2003. The employer also notes that the claimant was able to work without restrictions from November 9, 2003, until December 4, 2003. Thus, the employer argues that the claimant had reached MMI on November 13, 2003, and was not entitled to TTD benefits or any other medical benefits after that date.

We disagree. A claimant is temporarily and totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107 (1990). Once an injured claimant has reached MMI, he is no longer eligible for TTD benefits. *Archer Daniels Midland*, 138 Ill. 2d at 118. In determining whether a claimant has reached MMI, a court may consider factors such as a release to return to work, medical testimony or evidence concerning the claimant's injury, the extent of the injury, and, most importantly, whether the injury has stabilized. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (2003). To be entitled to TTD benefits, it is a claimant's burden to prove not only that

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he did not work, but also that he was unable to work. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542-43 (2007). The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20. If there is sufficient evidence in the record to support the Commission's determination, it will not be set aside. *Beattie v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006).

In this case, there was ample support in the record for the Commission's conclusion that the claimant had not yet reached MMI and that he was unable to work from December 4, 2003, through the time of arbitration. Dr. Chang testified that he ordered the claimant off work from December 2, 2003, though the time of arbitration, that conservative treatments had failed, and that it was not safe for the claimant to work until after he had surgery. This evidence, standing alone, is sufficient to support the Commission's determination that the claimant had not reached MMI. See *Westin Hotel*, 372 Ill. App. 3d at 542-43 (commission reasonably could have found that, because conservative treatment was unsuccessful and claimant had not yet undergone surgery, claimant had not reached MMI). The fact that the claimant was released to work for a short period before December 2, 2003, is irrelevant. Moreover, the medical records and Dr. Chang's testimony demonstrate that any improvements in the claimant's symptoms were only temporary and that the claimant was ultimately unable to work due to his continuing pain. The employer's argument that the claimant was not entitled to TTD benefits after November 13,

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2003, depends upon the erroneous assertion that the claimant's current injuries were caused by subsequent intervening incidents rather than the initial work accident.

The employer also notes that there were unexplained gaps in the claimant's treatment between April 2004 and January 2005 and between January 2005 and September 2005. As the Commission noted, however, Dr. Chang had already recommended surgery and ordered the claimant off work by April 2004, and he ordered the claimant to remain off work until after surgery. Thus, as of April 2004, the claimant was waiting for the employer to approve surgery, and he had no reason to pursue other treatment at that time unless he had a particularly serious flare-up of pain or other symptoms.

CONCLUSION

The Commission's conclusion that the claimant proved that his current condition of ill-being is causally related to the September 11, 2003, work accident is not against the manifest weight of the evidence. The Commission's decision to award TTD benefits through the date of the arbitration hearing and other medical benefits is also supported by the evidence. We therefore affirm the judgment of the circuit court of Cook County, which confirmed the Commission's decision, and the matter is remanded to the Commission for further proceedings.

Affirmed and remanded.