

NOTICE  
Decision filed 03/07/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

No. 1-10-0720WC

**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).

Workers' Compensation  
Commission Division  
Filed: March 7, 2011

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT  
WORKERS' COMPENSATION COMMISSION DIVISION

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DONALD ELMORE,	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
Appellant,	)	COOK COUNTY
	)	
v.	)	No. 08 L 51270
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <i>et al.</i> ,	)	
(JAMES PALAGI/FRED'S ENTERPRISES,	)	HONORABLE
	)	SANJAY T. TAILOR,
Appellees).	)	JUDGE PRESIDING.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice McCullough and Justices Hudson, Holdridge  
and Stewart concurred in the judgment.

**ORDER**

HELD: That the decision of the Illinois Workers' Compensation Commission denying the claimant any additional benefits under section 19(h) of the Workers' Compensation Act for an increase in disability, and limiting his right to additional section 8(a) benefits for continued medical care expenses for treatment through December 2, 2002, was not against the manifest weight of the evidence.

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The claimant, Donald Elmore, appeals from a judgment of the Circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) that denied him additional benefits under section 19(h) of the Workers' Compensation Act (820 ILCS 305/19(h) (West 2002)) for an increase in disability, and limiting his right to additional section 8(a) (820 ILCS 305/8(a) (West 2002)) benefits for continued medical care expenses for treatment through December 2, 2002. For the reasons which follow, we affirm the judgment of the circuit court.

The claimant filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 1998)) seeking benefits for injuries he sustained in 2000 while in the employ of the James Palagi/Fred's Enterprises (Palagi). Following a hearing, the arbitrator found that the claimant sustained injuries arising out of and in the course of his employment with Palagi and awarded him benefits under the Act. However, the arbitrator found that "the diagnosed herniated disc at L3-L4 and the treatment for same [was] not causally related to the" claimant's workplace accident.

The claimant appealed the arbitrator's decision to the Commission. In 2002, the Commission issued a decision which "modif[ied] the arbitrator's decision, finding that a causal relationship exist[ed] between [the claimant's] [then-existing] condition of ill-being, specifically in regard to the herniated

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disc at L4-5." The Commission reasoned that a December 2000 shower accident the claimant suffered "did not break the chain of causal connection between the [work] accident and [the claimant's] condition" but that the shower injury was instead "a natural outgrowth" of the original injury. The Commission awarded the claimant additional medical benefits, and it increased his award of permanent disability, but it reaffirmed the arbitrator's finding that the claimant had reached maximum medical improvement as of November 1, 2000. The Commission concluded its findings by stating that "[a]ll other aspects of the Arbitrator's decision are hereby affirmed." The Commission's decision was never appealed.

On February 25, 2003, the claimant filed a petition before the Commission seeking additional section 8(a) benefits for continued medical care and additional benefits under section 19(h) for an increase in disability. A hearing was held before the Commission on the claimant's petition. The following factual recitation is taken from the evidence presented at the arbitration hearing on the claimant's original petition for adjustment of claim, and the evidence presented at the hearing before Commission regarding the petition filed on February 25, 2003.

The claimant, who worked as a laborer for Palagi's construction and remodeling business, testified at the first arbitration hearing that he hurt his back in April 2000, while

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installing a bathroom tub. A September 2000 MRI report indicated that the claimant's L3-4 disc space level showed "more prominent bulging of the margin of the annulus of the disc on the sagittal images" but did not "show evidence for definite disc herniation." The same report indicated that the claimant's L4-5 disc space level showed "evidence for diffuse bulging of the annulus of the disc" but "no evidence for definite disc herniation."

On November 1, 2000, Dr. Edward Goldberg examined the claimant on behalf of the employer. Dr. Goldberg opined that the claimant was able to continue working at his new, less physically demanding job.

The claimant said that his condition gradually improved until December 2000, when he felt a pop, accompanied by a sharp pain, in his back while he was taking a shower. After a January 10, 2001, treatment visit, Dr. Brian Couri stated that the claimant's prior MRI showed "three levels of degenerative discs - the worst was at L3-4 and then L2-3." Dr. Couri's assessment was that the claimant had "probable herniated nucleus pulposus most likely at L3-4." On January 23, Dr. Couri reviewed a new MRI scan and concluded that "the L3-4 disc is still centrally bulged out but it is about the same. At L4-5 it is mildly worse than what it was before." Dr. Couri continued: "He has a central high intensity zone at L4-5 with a bulge/small herniation and some bilateral recess stenosis as well." Dr. Couri's assessment was that the claimant had "worsening herniation at L4-5 with right L4

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and L5 radicular symptoms."

In March, April, and May 2001, the claimant underwent three epidural injections at the L4-L5 level. Records indicate that the claimant reported some relief immediately after two of the injections but that his symptoms returned. After a June 2001 physical examination, Dr. Couri noticed that the claimant had pain in the L4-L5 and L5-S1 area. Dr. Couri recommended a discogram, and, in an August 22, 2001, treatment note, he stated that the claimant's pain was "most likely coming from the L4-5 disc" and that his "diagnosis \*\*\* has always been right L4-5 herniated nucleus pulposis."

In June 2002, following the Commission's initial decision, the claimant underwent an MRI, and the report of the MRI indicated that he had "diffuse disc bulging" and perhaps "mild spinal stenosis" at L3-L4 and "diffuse disc bulging with extension to the neural forami bilaterally" at the L4-L5 level. In May, June, and July 2002 treatment notes, Dr. Couri stated that he believed that the claimant was suffering from a herniation at the L4-L5 level, but Dr. Couri recommended a discogram to determine the source of the claimant's pain. The claimant underwent the discogram in August 2002, and the report of the procedure listed a postoperative diagnosis of "[d]iscogenic pain, L3-L4, at a low volume and low pressure." In his deposition testimony, Dr. Couri stated that the results of the discogram changed his diagnosis of the claimant's condition

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and indicated to him that the claimant's pain was coming from the L3-L4 level, not the L4-L5 level.

In December, 2002, following the discogram, Dr. Couri wrote that the discography "was positive at L3-4 on the right posterior lateral annular tear and reproducing the patient's pain symptoms." Dr. Couri also noted an "internal disc disruption" at L4-L5. He assessed the claimant has having an L3-L4 annular tear that created "concordant low back pain," and he recommended that the claimant undergo intradiscal electrothermal therapy (IDET) at the L3-L4 level. The claimant did so in January 2003.

Medical records indicate that the claimant's condition improved steadily following the IDET and physical therapy, to the point that, in July 2003, he reported that he was "overall \*\*\* about 75% better." However, in August 2003, the claimant again felt a pop in his back, followed by strong pain, while he was in the shower. In an examination shortly after this second shower incident, Dr. Couri assessed the claimant as having made excellent progress following his L3-L4 IDET but as having suffered "[n]ew onset low back pain." Dr. Couri recommended that the claimant undergo an MRI.

In October 2003, Dr. Couri examined the claimant, as well as an August 2003 MRI of the claimant's back, and concluded that, compared to a 2002 MRI, the claimant's new MRI showed "a slight decrease in the bulge at L3-4" but a "slight increase" in the bulge at L4-L5. Dr. Couri noted that the claimant's pain during

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the examination "tend[ed] to be at the L5-S1 or L4-5" levels. Dr. Couri wrote that the claimant had made "excellent progress" on his L3-4 pain "until his recent onset of low back pain." Dr. Couri noted the worsening of the L4-L5 disc but was "uncertain if [the claimant's] pain [was] discogenic."

In December, 2003, Dr. Emil Cheng examined the claimant and assessed him with "L3-4 degenerative disease status post IDET procedure" and "[s]light worsening of the L4-5 disc" as shown in the September 2003 MRI. In a February 2004 treatment note, Dr. Cheng indicated that the claimant reported initial relief after the January 2003 IDET at the L3-L4 level, before he suffered an "acute recurrence of [his] extension-based back pain." Later that month, the claimant underwent joint injections at the L3-L4, L4-L5, and L5-S1 levels. Dr. Couri's March 2004 treatment note states that the claimant's condition improved immediately following the February injections but that his pain eventually returned.

On March 30, 2004, the claimant underwent a nerve block procedure at the L2, L3, L4, and L5 levels, but, in his April 2004 treatment note, Dr. Couri stated that the claimant reported no relief from the procedure. Dr. Couri further stated that he was uncertain whether the claimant's pain was being caused by the L3-L4 disc or by another disc, and he recommended another discogram to determine the source of the pain.

In May 2004, the claimant underwent another discogram. The

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report of that procedure indicates that the "L4-5 disc reproduced" the "right-sided sharp pain" consistent with the claimant's normal pain. The report indicated that "[t]he L3-4 disc increased [the claimant's] right-sided pressure sensation but did not give him the sharp pain which [was] his normal pain." A report of a CT scan taken shortly after the discogram includes the medical impression that the claimant's back had "[c]hanges consistent with degenerative disc changes at L2-L3 and L3-4 and L4-5." The report stated that the degenerative changes appeared "most pronounced at the level of L3-L4." In his later treatment note, Dr. Couri indicated that the L4-L5 disc reproduced the claimant's sharp back pain but the L3-L4 disc reproduced what the claimant said was his normal, dull pain.

In June 2004, the claimant underwent a steroid injection at the L4-L5 level, but, according to Dr. Couri's treatment notes, the claimant reported no relief from the injection. Dr. Couri's note indicated that "because [the claimant] did not get better with the [L4-L5] \*\*\* injection, \*\*\* a good portion of his probable normal dull pain is coming from the [L3-L4] disk, and that the [L4-L5] disk is at least more than likely contributing to the sharp pain in his low back." In his testimony, the claimant equated the pain he felt during the Commission hearing to that he experienced near the time of the April 2000 workplace accident.

In his deposition testimony, Dr. Couri opined that the

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consistency of the claimant's symptoms from the date of his work accident to the date of his L3-L4 IDET procedure indicated that the work accident was related to the L3-L4 problem. Upon further questioning, Dr. Couri indicated that he could not state for certain whether there was a causal relationship between the original work accident and the claimant's L4-L5 problems. Dr. Couri said that he believed that the L4-L5 problems were a result of ongoing degeneration, but he later testified that the claimant's April 2000 work injury could have accelerated those problems just as it could have accelerated the degeneration of all of his discs. Dr. Couri also testified that, near the end of his treatment of the claimant, he had formed the impression that the L3-L4 levels were the source of the claimant's normal pain problems.

In his deposition testimony, Dr. Goldberg, who again examined the claimant on Palagi's behalf in May 2003 and also reviewed the claimant's medical records, opined that the claimant's symptoms in mid-2001 were attributable to the L4-L5 level and responded to epidural injections. Dr. Goldberg believed that the claimant "[s]ubsequently \*\*\* started developing the low back and bilateral lower extremity complaints" that the discogram indicated were attributable to L3-L4. Dr. Goldberg concluded that "the [claimant's] degenerative disc at L3-4 was not aggravated by [the workplace accident] because of the [claimant's] good clinical response after the injections specific

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to L4-5" and also because the bilateral pain attributed to the L3-L4 level was a new symptom. In his written reports, Dr. Goldberg attributed the claimant's L3-L4 problems to "the natural degenerative process" of the claimant's condition.

Following the hearing on the claimant's petition for additional benefits, the Commission denied the claimant any benefits under section 19(h) for an increase in disability, and granted him additional section 8(a) benefits for continued medical care, but only for treatment through December 2, 2002, the date that a discogram indicated that the claimant's state of ill-being was related to his L3-L4 disc level. In its decision, the Commission first interpreted its prior decision as finding a causal link between the claimant's workplace accident and his L4-L5 problems but agreeing with the arbitrator's finding that there was no causal link for the claimant's L3-L4 problems. Since that prior decision was never appealed, the Commission relied on it as a final determination on the causation issue; the Commission therefore limited the claimant's additional recovery to the extent he proved disability and expenses related to the L4-L5 disc level. Relying on Dr. Couri's and Dr. Goldberg's opinions that there was no causal link between the workplace accident and the claimant's L3-L4 problems, the Commission concluded that the claimant had failed to prove an increased work-related disability so as to recover under section 19(h) of the Act. Likewise, because it attributed only the L4-L5 problems to the claimant's

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work-related accident, the Commission denied him additional benefits under 8(a) for all treatment related to the L3-L4 disc level. The Commission declined to award the claimant any vocational rehabilitation or TTD benefits because there was no causation relationship between his L3-L4 problems and because there was no evidence that he was ordered not to work prior to the IDET procedure on his L3-L4 disc levels. The Commission did, however, award the claimant additional medical expenses, in the amount of \$25,244.55, for treatment of his "generalized back pain," up until the December 2, 2002, date Dr. Couri began treating the L3-L4 region specifically.

The claimant filed a petition for judicial review of the Commission's decision in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

For his first assignment of error, the claimant argues that the Commission misinterpreted its earlier order to contain a finding that there was no causal link between his work-related accident and his L3-L4 problems. The claimant does not dispute that, because he never appealed the Commission's initial decision, he is bound by it; he asserts only that the Commission's original decision did not actually include a finding regarding L3-L4. We disagree.

The Commission's prior order very clearly finds a causal link only for the L4-L5 problems. The arbitrator who heard the

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claimant's first petition for benefits found no causal connection for either the claimant's L3-L4 problems or his L4-L5 problems. In the introductory paragraph of its 2002 decision, the Commission states its ruling to modify "the decision of the Arbitrator to find that a causal relationship exists between [the claimant's] present condition of ill-being, specifically in regard to the herniated disc at L4-5." As Palagi observes in its brief, and as the Commission observed in the ruling now at issue, the 2002 Commission decision otherwise affirmed the original arbitrator's findings. If the Commission limited its causation finding "specifically \*\*\* to the herniated disc at L4-5," and if the Commission otherwise upheld the arbitrator's findings, then the Commission adopted the arbitrator's finding that there was no causal link for the L3-L4 problems. Because the claimant never appealed that Commission finding, he is now bound by it. See *Petrie v. Industrial Comm'n*, 160 Ill. App. 3d 165, 170, 513 N.E.2d 104 (1987).

To the extent the claimant argues that the new medical evidence presented at the later Commission hearing shed new light on his condition and provided the Commission cause to revisit its prior causation finding, we conclude there was sufficient evidence in the record to support a finding that the claimant's L3-L4 difficulties were unrelated to his workplace accident. Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by

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the Commission. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984). The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005 (1987). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992). Put another way, the Commission's determination on a question of fact is against the manifest weight of the evidence when no rational trier of fact could have agreed. *Dolce v. Industrial Comm'n*, 286 Ill. App. 3d 117, 120, 675 N.E.2d 175 (1996).

Here, Dr. Goldberg testified, based on the claimant's medical records, that the claimant's workplace accident appeared to relate only to his L4-L5 problems and that the L3-L4 problems were the result of natural degeneration. Dr. Goldberg further opined, again based on the claimant's medical records, that the claimant's more recent pain was caused by his L3-L4 problems; Dr. Couri shared that opinion. This medical evidence is sufficient to sustain the Commission's finding that the claimant's workplace accident was unrelated to his L3-L4 problems.

The claimant's remaining arguments on appeal all rest on the premise that his condition of ill-being and subsequent treatment related to his L3-L4 problems was compensable. For example, to

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support his second argument, that the Commission should have awarded him additional benefits for increased disability, the claimant emphasizes the difficulty caused by his L3-L4 problems. Since those problems have been found to have been unrelated to the claimant's workplace accident, they are irrelevant to the question of whether the disability from work-related injury has increased. Likewise, the claimant's remaining arguments, seeking medical expenses, additional TTD, and vocational rehabilitation, all rely on treatment and disability related to his L3-L4 disc level. Because there is no causal connection between his workplace accident and his L3-L4 problems, we must reject his arguments and affirm the judgment of the circuit court, which confirmed the Commission's decision.

Affirmed.