

2012 IL App (5th) 110255WC-U
No. 5-11-0255WC
Order filed September 24, 2012

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

ALLIED VAN LINES,)	Appeal from the Circuit Court
)	of St. Clair County.
Appellant,)	
)	
v.)	No. 10-MR-314
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	
)	
(Randall Russell, Sr. and A-1)	Honorable
Moving and Storage, Inc.,)	Stephen P. McGlynn,
Appellees).)	Judge, Presiding.

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

ORDER

Held: (1) Commission did not err in excluding from evidence document submitted following the closing of proofs and not shown to be relevant to the proceedings; (2) given the existence of factors supporting both an employer-employee relationship and independent contractor status, the Commission's finding of an employer-employee relationship is not against the manifest weight of the evidence; (3) Commission's finding of a causal relationship between claimant's current condition of ill-being and his employment would not be disturbed given conflicting medical evidence; (4)

award of TTD benefits for period of time in 2001 would be modified to terminate on date claimant reached maximum medical improvement; and (5) given Commission's finding on causation, permanency award would not be overturned on appeal.

¶ 1 Respondent, Allied Van Lines, appeals from the judgment of the circuit court of St. Clair County confirming a decision of the Illinois Workers' Compensation Commission (Commission) awarding benefits to claimant, Randall Russell, pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2000)). On appeal, respondent challenges the Commission's findings with respect to the exclusion of certain evidence, the existence of an employer-employee relationship, causation, the period of temporary total disability, and the nature and extent of claimant's injury. For the reasons that follow, we affirm as modified.

¶ 2 I. BACKGROUND

¶ 3 On July 31, 2002, claimant filed an application for adjustment of claim alleging that on July 15, 2000, he sustained an injury to his lower back while in the employ of A-1 Moving and Storage, Inc. (A-1). On September 18, 2002, claimant filed a second application for adjustment of claim with respect to the same alleged injury, but naming respondent as the employer. The two claims were consolidated for review. At the arbitration hearing, which was held on May 31, 2007, the principal issues in dispute were the existence of an employer-employee relationship and causation. Also in dispute and relevant to this appeal were the period of temporary total disability (TTD) and the nature and extent of claimant's alleged injury. The following factual recitation is taken from the evidence presented at the consolidated arbitration hearing.

¶ 4 A. EMPLOYER-EMPLOYEE RELATIONSHIP

¶ 5 A-1, a Missouri corporation, is a moving and storage company serving both residential and

commercial customers with operating authority in the state of Missouri. Claimant began working as an over-the-road truck driver in March 1974 and, at all times relevant herein, owned his own tractor. Claimant eventually became affiliated with A-1 and began working as an “owner-operator” or contract driver. As such, claimant was paid on commission. This relationship continued until November 1996, when claimant became a salaried employee of A-1. In May 1998, claimant notified A-1 that he was leaving its employment to become an over-the-road driver for another company, Behrens. In October 1998, claimant returned to A-1 pursuant to a “Contractor Service Operating Agreement” (the 1998 Agreement). The 1998 Agreement was in effect on July 15, 2000, when claimant allegedly sustained the injuries at issue.

¶ 6 Respondent, a Delaware corporation, is a wholly-owned subsidiary of a holding company known as SIRVA. Through its various subsidiaries, including respondent, SIRVA provides moving and relocation services nationwide to individuals, corporations, and the military. To provide some of these services, respondent retains agents. The roles and responsibilities of respondent and its agents are set forth in an “Agency Contract.” Respondent had an agency relationship with A-1 pursuant to an “Agency Contract” that was in effect on July 15, 2000.

¶ 7 The testimony of the following three witnesses was presented regarding the relationship between the parties: claimant, Michael Duncan (A-1’s representative), and Thomas Lambert (respondent’s representative). Claimant testified in person at the arbitration hearing. Both Duncan and Lambert testified by deposition. By agreement of the parties and the arbitrator, Lambert’s deposition was taken on June 25, 2007, after the arbitration hearing had concluded and following the closing of proofs.

¶ 8 Claimant testified that A-1 is an agent for respondent and that he worked out of A-1's office in Rolla, Missouri. According to claimant, A-1 displayed respondent's logo on its doors, trucks and a billboard. In addition, claimant's uniform featured respondent's logo. Claimant testified that although he owned the tractor he operated, the attached trailer was owned by respondent and displayed respondent's name. Claimant further related that respondent provided all of the equipment inside the trailer, including pads, straps, dollies, and walk boards. Claimant stated that he operated under respondent's permits, including its Interstate Commerce Commission (ICC) permit and that, pursuant to federal regulations, respondent ensured that he was qualified to drive on highways. Claimant testified that from the time he signed the 1998 Agreement with A-1, he had been dispatched exclusively through respondent's central dispatch. Claimant stated that if he wanted to haul freight for another company, he would have to obtain respondent's permission or "quit A-1 and Allied." Claimant added, however, that respondent "never did give us permission to haul for any other company."

¶ 9 Claimant testified that whereas A-1 was primarily engaged in residential moving, the type of items he hauled for respondent was classified as "special products" and included hospital equipment, computers, and electronics. Claimant related that the customers he serviced were respondent's customers, the money he earned was on freight hauled through respondent's dispatch, and the bills of lading that he would carry were respondent's. Claimant also testified that he carried a Qualcomm communication device that belonged to respondent. Claimant likened the Qualcomm device to a "combination e-mail and GPS [global positioning system] unit" which allowed claimant to communicate with respondent's dispatch.

¶ 10 Claimant acknowledged that he signed the 1998 Agreement with A-1. Pursuant to that agreement, claimant was designated an independent contractor and his tractor was leased to A-1. Nevertheless, he stated that his contact with A-1 was limited. Claimant related that if he needed money, A-1 would advance him the funds. However, he did not report his whereabouts to A-1 and no one at A-1 knew what he was doing on a day-to-day basis. Moreover, claimant stated that A-1 was not involved in moving “special products,” he rarely visited A-1’s facility, and he was unable to communicate with A-1 using the Qualcomm device.

¶ 11 Claimant never received a 1099 or W2 form from respondent. Rather, as an owner-operator, claimant would receive a 1099 form from A-1 at the end of the calendar year. According to claimant, however, the money disbursed to him through A-1 came from respondent and A-1 merely reconciled his commissions and expenses. Claimant stated that if there was a problem with his compensation, he would contact both respondent’s dispatcher and someone at A-1. Claimant testified that on his income tax returns for 1999 and 2000, he deducted various expenses associated with trucking, including a deduction for the interest paid on his truck loan, a depreciation allowance on the truck, and a business-use-of-home deduction. Claimant also testified that he would take a deduction for labor expenses when he hired someone to help him.

¶ 12 Claimant testified that he did not enter into any contract with respondent. He also acknowledged that he never completed an employment application for respondent and that he was never interviewed by respondent. Further, claimant related that as an owner-operator, he had discretion as to which jobs to accept and respondent did not direct him as to the route he had to take. In addition, claimant stated that he was responsible for truck repairs and any traffic fines. According

to claimant, there was no difference in his job duties as an owner-operator and his job duties as a salaried employee for A-1.

¶ 13 Claimant stated that at the time he was injured, he had an occupational disability policy through Transguard Insurance. Claimant thought that this policy was a workers' compensation policy. Claimant also admitted that he listed himself as self-employed on some medical records and that he listed himself as one of three employers on a workers' compensation claim filed in Missouri.

¶ 14 Duncan, A-1's general manager, described A-1 as a "stand-alone moving and storage entity that *** has its own operating authority *** in the state of Missouri conducting moving and storage services." Duncan elaborated that a moving and storage company operates on a local level whereas a van line "is a large broad-based-type operation with multistate authorities as well as—in [respondent's] case—international." Duncan stated that A-1's business is predominantly residential, although they also do commercial moving. When asked about the relationship between A-1 and respondent, Duncan responded: "Allied Van Lines is strictly a van lines. Whereas A-1 Moving & Storage is a moving and storage company that is—can be an agent for multiple van lines."

¶ 15 Duncan testified that claimant came to A-1 in 1983 to drive a truck for respondent. At the time he was an "owner-operator" or "contractor." Duncan testified that when claimant first became affiliated with A-1, he was a "household goods driver, logistics driver" pulling A-1's trailer and driving his tractor. Claimant later used his tractor to pull respondent's trailer when he began transporting for respondent's special products division. When claimant became a salaried employee, he drove one of A-1's tractors while pulling respondent's loads in respondent's trailers at respondent's direction. In May 1998, claimant notified A-1 that he was quitting to become an over-

the-road driver “sponsored” by one of respondent’s other agents. At that time, claimant was released from his obligations at A-1. Duncan explained that under respondent’s “system,” the driver has to have a full release from the then-sponsoring agent to drive for another agent. In October 1998, claimant returned to A-1 as a contract driver, not as an employee. Under this arrangement, claimant was “sponsored” by A-1 and drove his own tractor under respondent’s dispatch. Duncan testified that when claimant’s relationship with A-1 changed from employer-employee to owner-operator, the type of work he performed did not change. Rather, he explained, the difference was that as an employee, claimant “could not decide when he did or did not want to work.” In addition, when claimant was an employee, A-1 was solely responsible for work-related expenditures.

¶ 16 Duncan testified that when claimant returned, claimant and A-1 executed the 1998 Agreement. According to Duncan, under the 1998 Agreement, claimant provided the tractor for any freight he would be hauling, but operated under respondent’s ICC permit. In addition, respondent supplied the trailer, dispatched claimant, obtained the customers, provided the bills of lading, and billed the customers. Duncan further testified that under the 1998 Agreement, claimant paid for fuel, vehicle maintenance, and tolls. Duncan testified that claimant could reject a dispatch from respondent. Duncan also testified that claimant was required to maintain various insurance policies, including liability coverage and workers’ compensation. However, he related that hauling for anyone other than respondent “would be in violation of the exclusive contract with Allied Van Lines.”

¶ 17 Duncan testified that A-1 had no involvement with where claimant was going and A-1 would not know where claimant was on a given day. Further, claimant would not call into A-1 with respect to his daily activities. Moreover, because claimant was not an employee of A-1, he was not required

to report an injury to A-1. Duncan testified that A-1 was compensated for the “accounting aspect of sponsoring” claimant. This involved keeping track of claimant’s insurance payments, wiring claimant money when he needed it, and, when settlements came in from respondent, extracting A-1’s percentage and settling out with any advances against claimant’s compensation. Further, A-1 would issue the appropriate tax form to claimant at the end of each calendar year.

¶ 18 Duncan testified that the 1998 Agreement is between claimant and A-1. Duncan acknowledged that the agreement expressly provides that respondent is not a party to the agreement. However, A-1 is a party to an “Agency Contract” with respondent. According to Duncan, that contract “outlines the stipulations of sponsoring a driver to the Allied Van Lines system.” Duncan further related that A-1 gets paid for the services it provides as an agent for respondent.

¶ 19 Lambert testified that he is director of agency development for SIRVA. As such, he is responsible for the recruitment and training of agents, as well as the administration and termination of contracts between respondent and its agents. Lambert testified that he is not involved in the actual day-to-day operations of dispatching or hauling except to the extent that there is a question regarding those functions in the context of a contract itself. It was Lambert’s understanding that A-1 is in the business of moving and storage of household belongings. Lambert testified that if A-1 had to move goods across state lines, it would operate under respondent’s operating authority. Lambert added that while A-1 could “legally” move goods from Missouri to another state if they held their own authority, doing so would violate their agency contract with respondent.

¶ 20 Lambert testified that the agency arrangement is spelled out in an “Agency Contract.” According to Lambert, the “Agency Contract” authorizes each agent to utilize respondent’s brand

name and trademarks and to operate under respondent's interstate operating authority. The agent's role is essentially to provide the sale of interstate moves, the registration of shipments with respondent, and to provide certain transportation services. In addition, the agent is required to have adequate warehouse and storage facilities. Furthermore, the agent is responsible for providing all labor for sales, transportation, and warehousing services. Lambert testified that the "Agency Contract" expressly states that an employer-employee relationship does not exist between respondent and the agent and that respondent is not an employer of the agent's employees.

¶ 21 Lambert testified that before driving for respondent, an agent would seek to qualify a driver with respondent. While this process does not require the driver to complete an employment application with respondent, it does require the completion of a "qualification application." Lambert testified that the qualification application is a release to allow respondent to inspect the driver's motor-vehicle records and an agreement to submit to drug screening. According to Lambert, this process is done through the agent.

¶ 22 Lambert testified that respondent does not instruct drivers the route to take and there were no requirements as to where a driver has to purchase fuel. Lambert testified that daily contact with a driver is not necessarily required unless the shipment requires a status update. According to Lambert, a driver is free to refuse a dispatch. Lambert testified that any equipment used by A-1 that is qualified in respondent's operation is supposed to say "Allied" on it. Lambert further testified that the tractor cab will also have respondent's name on it if it is operating under respondent's authority. Lambert added that there would also be a number provided to respondent by the United States Department of Transportation on the side of claimant's tractor. Lambert testified that if operating

under respondent's interstate authority, the bills of lading were respondent's. Lambert testified that typically in the Qualcomm relationship, the agent either owns the device or buys it through respondent. However, Lambert acknowledged that he was unaware of how claimant obtained the Qualcomm device he testified about.

¶ 23 Lambert was aware that claimant was involved in its special products division. Lambert acknowledged that, to some degree, the special products division is handled differently than the moving and storage end of the business. Lambert testified that while the loads for special products handled by claimant would have been booked through either A-1 or one of respondent's other agents, all of the dispatches for special products are handled by respondent. Lambert later indicated that he would not be surprised if A-1 did not secure any of claimant's loads. Lambert testified that the special product customers are either respondent's customers or those of respondent's agents.

¶ 24 Lambert testified that, in addition to the agency contract, respondent and the agent entered into an "equipment lease agreement" for the agent to lease to respondent equipment to transport shipments. Lambert identified Deposition Exhibit No. 2 as the "equipment lease agreement" in effect between respondent and A-1 on July 15, 2000. Lambert testified that he is personally familiar with the "equipment lease agreement" through his position with respondent. As discussed more thoroughly below, the attorneys for both claimant and A-1 objected to the admission of the "equipment lease agreement." Upon reviewing the deposition transcript, the arbitrator sustained the objection of claimant's attorney.

¶ 25 **B. THE JULY 15, 2000, INJURY**

¶ 26 Claimant testified that on July 15, 2000, he was at respondent's "cross dock" in the Chicago

area to haul freight classified as “special products.” While there, claimant went to tip a machine backwards onto a dolly. Claimant did not realize that the machine was top heavy, and, as he tried to stop it from falling, he injured his lower back. Claimant did not immediately seek medical treatment because he thought that he had only sustained a sprain. Thereafter, claimant continued to haul freight for respondent through September 30, 2000.

¶ 27

C. MEDICAL TREATMENT

¶ 28 In September 2000, claimant consulted Dr. Roja Balakrishnan, with complaints of back pain and leg numbness. Diagnostic tests were ordered, including an MRI of the lumbar spine, which was taken on September 25, 2000, and a referral was made to Dr. Gregory Brandenburg. Dr. Brandenburg interpreted the MRI as showing significant disc degeneration with desiccation and disc space narrowing at L5-S1 causing bilateral foraminal narrowing. Dr. Brandenburg also noted disc desiccation and degeneration to a lesser degree at L3-4. Dr. Brandenburg’s impression was discogenic lumbar pain. He recommended a lumbar epidural steroid injection and physical therapy and authorized claimant off work. In follow up, claimant reported doing well with the therapy and injections, but stated that he engaged in activities that exacerbated the pain. Dr. Brandenburg recommended that claimant continue physical therapy and that he work with a physiatrist in a pain-management setting. Claimant was subsequently referred to Dr. Jeffrey Woodward.

¶ 29 Claimant first consulted Dr. Woodward on November 27, 2000. Claimant reported an accident at work in July 2000 which resulted in an abrupt onset of lumbar pain, primarily in the left low back area, and significant radiating left leg symptoms developing a few weeks later. Dr. Woodward noted that the September 25, 2000, MRI showed significant diffuse degenerative disc

disease at all levels except L4-5 with severe degenerative changes noted at L3-4 and L5-S1. Dr. Woodward diagnosed significant multiple-level degenerative disc disease, subacute left L5-S1 paraspinal pain, and associated left S1 radiculitis. Dr. Woodward referred claimant to Dr. John Charles Mace, a neurosurgeon.

¶ 30 Dr. Mace examined claimant on January 17, 2001, for complaints of low back pain radiating down the posterior aspect of his left leg to his ankle. Dr. Mace noted that the MRI taken in September 25, 2000, established the existence of moderate to severe degenerative disc disease from L3 through S1 which preexisted his work accident and a disc protrusion and fragment to the left at L5-S1. A lumbar myelogram ordered by Dr. Mace showed stenosis at L3-4 and a lateral disc herniation at L5-S1. Dr. Mace diagnosed a left L5-S1 disc herniation with radicular symptoms. On February 27, 2001, Dr. Mace performed surgery, consisting of a left L5-S1 laminotomy, foraminotomy, and microdiscectomy. At the time Dr. Mace operated on claimant, he felt the only intervention required was at the L5-S1 disc space and he did not note any evidence of a disc herniation at the L3-4 level. Dr. Mace felt that claimant's injury at work was a causative factor in his low back pain, his leg pain, and his need for surgery. In this regard, he noted that while claimant's degenerative disc disease was preexisting, claimant was asymptomatic until the work injury. Therefore, he opined, the July 15, 2000, accident "aggravated his symptoms and caused his symptoms."

¶ 31 Following surgery, Dr. Mace ordered a course of physical therapy. Dr. Mace continued to treat claimant until June 4, 2001. Claimant reported several weeks of minimal back discomfort and no leg discomfort. However, he later noted more lumbar pain and the return of leg symptoms with

increasing activities. A repeat MRI showed no evidence of recurrent disc herniation, only some epidural fibrosis. Dr. Mace opined that the recurrence and disappearance of the leg symptoms was consistent with a nerve-root irritation. Dr. Mace did not believe that claimant had reached maximum medical improvement (MMI) by his last visit, and he referred him back to Dr. Woodward for consideration of an epidural injection. Dr. Mace authorized claimant off work during the time he treated claimant.

¶ 32 Claimant returned to Dr. Woodward on June 4, 2001. At that time, claimant related that he developed an abrupt increase in pain and discomfort in his back three weeks earlier when he rolled over in bed. Dr. Woodward provided claimant with an oral cortisone dose and recommended a left leg nerve conduction study. Dr. Woodward released claimant to modified duty which included lifting up to a maximum of 10 pounds and no driving. Claimant returned to Dr. Woodward's office on June 12, 2001. At that time, claimant reported 30% pain relief with the oral steroid. Dr. Woodward noted that the nerve conduction study was normal, but, due to persistent pain, he recommended a left S1 epidural steroid injection. Dr. Woodward anticipated claimant would reach MMI in six to eight weeks "at most." The injection provided only temporary relief, and, despite complaints of ongoing back and leg discomfort, Dr. Woodward released claimant from his care on July 3, 2001. At that time, a physical examination was normal and claimant had no pain upon movement in the examination room. Dr. Woodward's final diagnosis was work-related L5-S1 disc herniation with associated left S1 radiculopathy. Dr. Woodward released claimant to full-time modified duty with frequent lifting, pushing, and pulling up to 50 pounds and the resumption of truck driving with no restrictions.

¶ 33 At his deposition, Dr. Woodward testified that the degeneration noted on the September 2000 MRI was “significant” and preexisted the July 2000 accident. Nevertheless, he opined that the most likely cause of the L5-S1 disc herniation was the work-related injury that claimant described occurring on July 15, 2000. Dr. Woodward further testified that he was unable to form an opinion to a reasonable degree of medical certainty whether rolling over in bed specifically caused the reported pain. He did note, however, that postoperatively, there were no objective findings on physical examination, the nerve study was negative for evidence of radiculopathy, and that the postsurgical MRI ordered by Dr. Mace was negative in terms of any evidence of nerve-root impingement.

¶ 34 Claimant underwent a functional capacity evaluation (FCE) on July 17, 2001, at the request of Dr. Woodward. The validity of the FCE was “equivocal,” with testing indicating less than maximum voluntary movement, especially with lifting tests. The FCE also indicated that claimant’s movement patterns were inconsistent with the pain he reported. In a report dated August 6, 2001, Dr. Woodward, after reviewing the FCE report, stated that claimant had reached MMI and that no further medical evaluation or treatment was indicated. Duncan, A-1’s representative, testified that claimant had been disqualified from working for respondent as of December 2000. Therefore, after being released to modified duty, claimant testified that he searched for work until accepting a job with ProPak Logistics (ProPak) in September 2001. Claimant initially worked for ProPak as a forklift operator. However, this position caused him pain, and he was made a supervisor. Claimant continued to work for Propak until April 2003.

¶ 35 Also in September 2001, claimant was examined by Dr. Ronald Pak at the request of Transguard Insurance, the company with whom he had an occupational disability policy. Claimant told Dr. Pak that he sustained an injury at work, that conservative treatment was not responsive, and that he eventually underwent surgery. Although claimant reported doing well after surgery, in April 2001, he noted an acute onset of focal back pain after rolling over in bed, with subsequent conservative treatment providing only temporary relief. Dr. Pak diagnosed chronic back pain with a history of lumbar microdiscectomy, laminotomy, and foraminotomy. Dr. Pak concluded that claimant was at MMI, but he did not think that claimant could return to his job as an over-the-road truck driver.

¶ 36 On March 12, 2002, a pallet struck claimant while working for ProPak. Claimant reported this incident to his family physician, Dr. Grace Beaumont. Dr. Beaumont's progress note states that claimant "had an accident at work where a pallet fell on him on 3-12-02. Since then he has persistent back pain." At the arbitration hearing, claimant denied that the back pain referenced in Dr. Beaumont's note was related to the pallet incident. According to claimant, he only experienced a splinter in his hand as a result of the pallet falling on him. He added that Dr. Beaumont's treatment was limited to a nerve study.

¶ 37 Claimant testified that his back pain never subsided after the February 2001 surgery. Because of this persistent pain, claimant consulted Dr. Thomas Satterly on December 3, 2002, upon a referral from Dr. Beaumont. At that time, claimant completed a patient intake form which indicated that his condition was not work related. According to Dr. Satterly's records, claimant provided a history of "surgery on his back in February, and then in April he rolled over in bed one night and had severe

pain in his back.” Dr. Satterly stated that while “this” was originally a workers’ compensation injury, it “has now been resolved and settled.” Dr. Satterly’s neurological examination was essentially normal. Nevertheless, Dr. Satterly was concerned that claimant may have had scar tissue around his previous surgical site. As such, his initial plan was to determine if he could improve claimant’s discomfort by alleviating some nerve-root irritation. To this end, Dr. Satterly gave claimant a steroid pack. Claimant reported only some improvement, so Dr. Satterly opted to treat with an epidural injection and manipulation. Claimant showed some improvement, but as time went on, he continued to have pain in his back and a recurrence of pain down his leg. Thereafter, additional conservative treatment was administered, including pain medication, a TENS unit, and a back brace.

¶ 38 Although claimant got somewhat better, Dr. Satterly stated that claimant never got “well.” A myelogram and CT scan showed a large ruptured disc at L3-4, a small bulging disc at L4-5, and degenerative changes at L5-S1 with disc space narrowing. Dr. Satterly noted that claimant’s L3-4 level, which previously showed some spinal stenosis and regeneration, now showed some changes off to the left side, which was consistent with a ruptured disc. Dr. Satterly recommended an L3-4 discectomy with laminectomy. He added that claimant may also need to have the L4-5 looked at and a fusion to help stabilize the entire back “since the original injury did give him a ruptured disc at L5-S1 with bulging discs at other levels and [he] has now had further breakdown.”

¶ 39 On April 16, 2003, Dr. Satterly performed a fusion at the L3-4 level and opened up the nerve root at the L5-S1 level. Following surgery, claimant reported doing well with no significant back pain. As time progressed, claimant reported ongoing back pain with intermittent radiation down his

leg with more bad days than good days. When Dr. Satterly last treated claimant for his back on April 15, 2005, claimant reported intermittent pain in his legs, which Dr. Satterly attributed to an irritation of the nerves with muscle spasm and fibrosis. Dr. Satterly told claimant that this was probably a “chronic” situation, and he did not recommend any further surgery. At that time, Dr. Satterly felt that claimant had reached MMI.

¶ 40 Dr. Satterly initially viewed claimant’s history of rolling over in bed “kind of like an intervening incident or an aggravation.” In mid June 2003, claimant’s attorney authored two letters directed to claimant. In the letters, claimant’s attorney stated that because claimant did not mention the original work injury or because it was resolved, he would be unable to claim temporary total disability (TTD) benefits or medical benefits. The attorney instructed claimant to provide Dr. Satterly with “that history and obtain an opinion as to whether he believes the treatment which he rendered is a result of that original problem or complications resulting therefrom.”

¶ 41 On June 26, 2003, claimant and Dr. Satterly discussed in more detail the July 15, 2000, work injury. In a progress note from that visit, Dr. Satterly noted that there was some confusion regarding the etiology of claimant’s condition. Dr. Satterly noted that claimant had a long-standing problem with his back and that when rolling over in bed one night, he exacerbated his condition. Dr. Satterly stated that claimant did not have any new disc changes from the rolling-over-in-bed episode. Rather, he explained, claimant’s situation was such that it is “all related to his preexisting work-related injury where he has had multiple disc problems.” Dr. Satterly noted that over time, “these disc problems are degenerating” and that the symptomatology would not start just from rolling over in bed, “but it has aggravated that preexisting condition due to the work-related problem.”

¶ 42 Dr. Satterly did not recall authorizing claimant off work during his treatment because he thought claimant was already off work. Nevertheless, he stated that with the types of symptoms claimant had, he would not have been able to return to work during his treatment. Furthermore, he felt that as of the last time he saw claimant, work limitations would have included no lifting more than 10 pounds, no repeated lifting more than five pounds, and restrictions on sitting, standing, walking, and driving.

¶ 43 At his evidence deposition, Dr. Satterly reiterated that rolling over in bed one day would not cause all of claimant's pain or cause a new ruptured disc to occur. He felt that there was some underlying etiology or causation, which he attributed to an aging component and to a significant prior trauma that injured his L5-S1 disc and likely weakened the L3-4 disc to some degree. Dr. Satterly further explained that as time progressed, claimant developed scar tissue over the site of his L5-S1 surgery that resulted in leg pain. Accordingly, claimant's leg pain was partly due to his previous surgery and partly due to a new problem at L3-4 which was accelerated by his injury. On cross-examination, Dr. Satterly acknowledged writing a letter in which he opined that the cause of claimant's problems was rolling over in bed in April 2002. Dr. Satterly changed his opinion on June 26, 2003, after he and claimant spoke in more detail about the work accident. Dr. Satterly elaborated that while claimant probably had degenerative changes before he was injured at work, the work accident resulted in an injury which aggravated and ruptured a disc at L5-S1 and interfered with other parts of the spine. As time passed, claimant engaged in other activities eventually resulting in rolling over in bed which became the "final mechanism that pushed the degenerative process over

the edge.” Dr. Satterly added that he had no reason to discuss causation until claimant approached him about the issue.

¶ 44 On January 17, 2005, Dr. Marvin Mishkin examined claimant pursuant to section 12 of the Act (820 ILCS 305/12 (West 2000)) at the request of respondent. Claimant told Dr. Mishkin that he experiences constant lower back pain and intermittent pain in the left leg that radiates down the back of his thigh to the foot. Dr. Mishkin obtained a detailed history from claimant, conducted a physical examination, took an X ray of the lumbar spine, and reviewed various medical records and diagnostic films. Dr. Mishkin concluded that claimant had degenerative disc disease at L3-4 and L5-S1 prior to his accident at work on July 15, 2000. Dr. Mishkin stated that it was “questionable” whether the surgery performed by Dr. Mace in February 2001 was a result of or was caused by the incident of July 15, 2000. Dr. Mishkin based his opinion on the fact that claimant had preexisting degenerative disc disease of the lumbar spine, the fact that claimant failed to seek immediate medical care after the incident, and findings by one of the physicians showing no neurological deficit. Moreover, Dr. Mishkin did not believe that claimant’s subsequent complaints of pain and discomfort and the surgery performed by Dr. Satterly in April 2003 were caused by the incident of July 15, 2000. In support, Dr. Mishkin cited the fact that claimant was able to drive hundreds of miles for weeks after the alleged work incident, medical findings showing no evidence of neurological deficit, evidence of preexisting degenerative disc disease, the fact that claimant underwent back surgery in February 2001, the result of the FCE showing limited effort and possible symptom magnification, and the fact that the findings of Dr. Satterly when he operated were not significantly different than those noted on the MRI and X rays when Dr. Mace operated. Dr. Mishkin testified that claimant had

reached MMI by January 17, 2005. He further determined that claimant was able to drive and that he was capable of gainful employment with restrictions including no repetitive bending or lifting of 20 to 35 pounds, and sitting, standing, and walking as desired.

¶ 45 **D. FINDINGS OF ARBITRATOR, COMMISSION, AND CIRCUIT COURT**

¶ 46 Based on the evidence presented at the arbitration hearing, the arbitrator concluded that an employer-employee relationship existed between respondent and claimant. The arbitrator relied on the following findings: (1) claimant drove only respondent's trailers; (2) respondent's name was on claimant's tractor; (3) claimant drove under respondent's license; (4) claimant used respondent's bills of lading; (5) claimant used some of respondent's equipment, including dollies, pads, and material; (6) all of the loads came from respondent; (7) claimant was dispatched only by respondent; (8) claimant could not haul for anyone else unless he had permission from respondent; (9) claimant never handled a load for anyone other than respondent; and (10) respondent provided claimant with a Qualcomm device to keep track of claimant and to allow claimant to communicate electronically with respondent on a 24-hour basis. Conversely, the arbitrator ruled that there was no employer-employee relationship between A-1 and claimant.

¶ 47 The arbitrator also found that claimant's current condition of ill-being is causally related to the accident of July 15, 2000, based on the chain of events and the records of claimant's treating physicians. The arbitrator found the opinions of Drs. Mace and Satterly "persuasive and reliable," and she categorized claimant's testimony as credible. The arbitrator rejected the notion that claimant sustained a subsequent intervening accident significant enough to break the original chain of causation. The arbitrator awarded temporary total disability benefits from October 1, 2000, through

September 13, 2001, and from April 16, 2003, through April 15, 2005. Finally, the arbitrator concluded that claimant sustained a permanent partial disability to the extent of 50% of the person as a whole.

¶ 48 A majority of the Commission affirmed and adopted the decision of the arbitrator. Commissioner Lamborn dissented. He agreed that A-1 was not claimant's employer. However, he also would have concluded that respondent did not maintain control over the manner of claimant's work so as to create an employer-employee relationship. The circuit court of St. Clair County confirmed the decision of the Commission. This appeal followed.

¶ 49 II. ANALYSIS

¶ 50 A. Evidentiary Issue

¶ 51 On appeal, respondent first challenges the Commission's exclusion from evidence of an "equipment lease agreement" it wished to introduce in conjunction with the deposition testimony of Lambert. The Commission's evidentiary rulings will not be disturbed on review absent an abuse of discretion. *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 947 (2006). An abuse of discretion occurs where no reasonable person would take the view adopted by the lower tribunal. *Certified Testing*, 367 Ill. App. 3d at 947.

¶ 52 At the arbitration hearing, respondent tendered an "Exhibits List" referencing 25 items. Exhibit 23 was described as the evidence deposition of respondent's vocational rehabilitation expert. Exhibit 24 was described as the evidence deposition of an unnamed representative of respondent. On the "Exhibit List," in the margin next to the descriptions of exhibits 23 and 24, respondent noted that these exhibits were "to be submitted with proposed decision." Prior to the admission of

respondent's exhibits at the arbitration hearing, the arbitrator and the parties' attorneys had the following conversation:

“ARBITRATOR TEAGUE: I also have what has been marked as Allied Exhibits 1 through 25. Exhibits 23 and 24 are going to be copies of depositions that are to be taken in the next two to three weeks. It's my understanding that transcripts of those depositions will be tendered at the time proposed decisions are due in this case.

Does [claimant] have any objections to Allied's 1 through 25?

MR. BADGLEY [claimant's attorney]: No objection.

ARBITRATOR TEAGUE: Does A-1 *** have any objection to Allied's 1 through 25?

MR. MCBREARTY [A-1's attorney]: No objection.

ARBITRATOR TEAGUE: Keep in mind that proofs will be closed today. If I don't receive the deposition transcripts with proposed decisions, the exhibits will not come into evidence. Are the parties clear?

MR. POWERS [respondent's attorney]: Yes, Your Honor.

MR. BADGLEY: Yes, Your Honor.

MR. MCBREARTY: Yes, Your Honor.

ARBITRATOR TEAGUE: Okay. Allied Exhibits 1 through 25 are admitted into evidence, including the perspective exhibits that will be marked as 23 and 24.”

At the close of the arbitration hearing, the arbitrator reiterated that the proofs would close that day with the exception of the depositions referenced earlier, “which will be admitted contingent upon the fact they’re taken within the next 21 days and submitted with proposed decisions.”

¶ 53 Lambert’s deposition was taken on June 25, 2007. At the beginning of the deposition, claimant’s attorney noted that proofs had been closed but for the deposition testimony and he objected to Lambert “referring to any exhibits other than those previously marked and offered by the respondent” when proofs were closed on the date of the arbitration hearing. In response, respondent’s attorney argued that Lambert was entitled to refer to documentation relevant to respondent’s case. With respect to the “equipment lease agreement,” respondent’s attorney stated that there was no need to put that document into evidence at the time of the arbitration hearing because Lambert was not available to testify at that time. During Lambert’s testimony, claimant’s attorney objected to the admission of various documents, including the “equipment lease agreement.” In a notation in the margin of the deposition transcript, the arbitrator sustained the objections on the basis that the “proofs were closed 5/31 [with the] exception of dep testimony—no exhibits were mentioned and should have been submitted @ trial.” The Commission affirmed and adopted the arbitrator’s decision without comment.

¶ 54 We find that the Commission’s decision to exclude from evidence the “equipment lease agreement” did not constitute an abuse of discretion. At the arbitration hearing, respondent requested that the proofs remain open for the depositions of a vocational expert and an unnamed representative of respondent. However, the “Exhibit List” tendered on the day of the arbitration hearing did not reference the “equipment lease agreement” and at no time did respondent indicate

that it planned to offer that document as an additional exhibit. In fact, at Lambert's deposition, respondent's attorney admitted that the "equipment lease agreement" was not part of the "Exhibit List," as evidenced by the following colloquy between the attorneys for claimant and respondent:

"MR. BADGLEY [claimant's attorney]: You gave me this document, equipment lease agreement, which is marked as Exhibit 1.

MR. POWERS [respondent's attorney]: No, it should be 2.

MR. BADGLEY: Then where is 1?

MR. POWERS: One is already the earlier agreement which is part of the exhibits already ***, and as I said earlier when I was talking about Mr. Lambert's testimony, he was bringing this document in, but because the trial didn't—or his testimony did not appear, *we waited till today to put that in* because we were waiting for it. We had a copy of a similar agreement which I could not put into evidence at that point for his testimony.

MR. BADGLEY: My objection is to Exhibit 2 then." (Emphasis added.)

As the foregoing demonstrates, respondent did not seek to admit the "equipment lease agreement" until after the close of proofs.

¶ 55 Nevertheless, respondent claims that the "equipment lease agreement" should have been admitted because it was material and relevant to this case on the issue whether there is an employer-employee relationship between claimant and either A-1 or respondent. As a general rule, relevant evidence is admissible. *Galowich v. Beech Aircraft Corp.*, 209 Ill. App. 3d 128, 135 (1991). "Evidence is relevant if it tends to either prove a fact in controversy or render a matter in issue more or less probable, and each party may present evidence relevant to his theory of the case or

inconsistent with an opponent's theory." *Galowich*, 209 Ill. App. 3d at 135. Here, the record does not support respondent's assertion that the "equipment lease agreement" was relevant to these proceedings.

¶ 56 As noted above, when respondent's attorney moved to introduce the "equipment lease agreement" into evidence, claimant's attorney objected. McBrearty, A-1's attorney, also objected on a separate basis. McBrearty claimed that there was "no showing that this particular equipment lease agreement has anything to do with the piece of equipment driven by claimant on the date of the accident." In response, respondent's attorney posed the following question to Lambert, and Lambert provided the following response:

"Q. (By Mr. Powers) Let me ask you this, Mr. Lambert: Where you have a lease agreement with A-1 or with an agent, were there general terms as to the provisions of that lease for all the equipment?"

A. Yes. Again, the equipment lease agreement spells out the general terms, *and then behind this there would be a specific agreement identifying the actual vehicle itself*. In other words, by vehicle identification number, year, make and so forth."

Subsequently, the following colloquy occurred between A-1's attorney and Lambert regarding the "equipment lease agreement":

"Q. (By Mr. McBrearty) All right. Attached to this is there anything on there reflecting that this specific agreement applies to the specific piece of equipment that [claimant] was driving on the date of this accident, on allegedly July 15th of 2000?"

A. No, not part of this.

Q. So we can't tell by looking at this if this lease agreement applies to the equipment that [claimant] was driving; is that correct?

A. That's correct."

Given respondent's failure to reference the "equipment lease agreement" prior to the closing of proofs and the lack of evidence regarding the applicability of the document to the piece of equipment claimant was operating on the date of the accident, we simply cannot say that no reasonable person would agree with the view adopted by the lower tribunal. As such, the Commission's decision to exclude the "equipment lease agreement" did not constitute an abuse of discretion.

¶ 57 B. Employer-Employee Relationship

¶ 58 Respondent next argues that an employer-employee relationship did not exist between it and claimant. Rather, respondent insists, the evidence supports a finding that claimant is an independent contractor engaged in his long-established trucking business. Alternatively, respondent contends that if an employer-employee relationship exists between claimant and anyone, it is A-1. Claimant asserts that the Commission weighed the appropriate factors and properly concluded that the evidence supported an employer-employee relationship between respondent and him.

¶ 59 "An employment relationship is a prerequisite for an award of benefits under the Act, and the question of whether a person is an employee remains 'one of the most vexatious *** in the law of compensation.' " *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 174 (2007) quoting *O'Brien v. Industrial Comm'n*, 48 Ill. 2d 304, 307 (1971). In assessing whether an individual is an employee, Illinois courts have articulated a number of factors, including the right to control the manner in which the work is done, the nature of the work performed by the alleged employee in relation to the

general business of the employer, the method of compensation, the right to discharge, and the label the parties place upon their relationship. *Roberson*, 225 Ill. 2d at 175; *Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 1122 (2000); *Area Transportation Co. v. Industrial Comm'n*, 123 Ill. App. 3d 1096, 1100 (1984). Also relevant are whether the purported employer dictates the worker's schedule, whether income and social security taxes are withheld from the worker's paycheck, and whether the purported employer supplies the worker with materials and equipment. *Roberson*, 225 Ill. 2d at 175; *Ware*, 318 Ill. App. 3d at 1122; *Area Transportation Co.*, 123 Ill. App. 3d at 1100. While no single factor is determinative and the significance of the factors will change depending on the work involved, the right to control and the nature of the work performed by the alleged employee in relation to the general business of the employer are often regarded as the two most important factors. *Roberson*, 225 Ill. 2d at 175; *Ware*, 318 Ill. App. 3d at 1122.

¶ 60 The question whether an employer-employee relationship existed at the time of an accident is one of fact. *Ware*, 318 Ill. App. 3d at 1122. Where elements of both an employer-employee relationship and independent contractor status are present, the Commission is empowered to draw the inferences either way. *Area Transportation Co.*, 123 Ill. App. 3d at 1099. A court of review will not overturn a factual finding of the Commission unless it is against the manifest weight of the evidence. *Roberson*, 225 Ill. 2d at 173. A factual finding is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Ware*, 318 Ill. App. 3d at 1122.

¶ 61 Respondent contends that the application of the aforementioned factors to the present case demonstrates that claimant is an independent contractor. Respondent concedes the fact that it supplied claimant with a trailer and some moving equipment. However, it insists that these factors

alone do not establish the existence of an employer-employee relationship and that many other factors point to independent contractor status. For instance, respondent asserts that it was the intent and understanding of the parties involved, as evidenced by their long-standing relationships and the contractual agreements they executed, that claimant was an independent contractor. Respondent also points to the fact that claimant filed income tax returns for which he deducted expenses associated with his tractor, claimant believed that his insurance policy with Transguard was a workers' compensation policy, claimant never completed an employment application with respondent, claimant did not have income or social security taxes withheld from his pay, claimant referred to himself as self-employed when receiving medical treatment, and claimant listed himself as one of three employers on his claim for workers' compensation benefits in Missouri. As such, respondent asserts that it and A-1 only provided claimant with an opportunity to make money in his independent trucking business.

¶ 62 We begin our analysis by addressing the right to control. Although there was some evidence presented supporting an employer-employee relationship, most notably claimant's testimony that he could not haul for another company without respondent's approval and Duncan's testimony that under respondent's "system" the driver has to have a full release from the then-sponsoring agent to drive for another company, most of the evidence related to this factor suggests independent contractor status. For instance, claimant was free to accept or reject a dispatch from respondent. Respondent did not dictate the routes claimant was required to take, and it did not require him to refuel at any particular location. Additionally, claimant was responsible for purchasing fuel, repairing the tractor, and paying traffic fines.

¶ 63 We next examine the nature of claimant's work in relation to the general nature of respondent's business. *Ware*, 318 Ill. App. 3d at 1122. "Regarding this factor, our supreme court noted 'because the theory of workmen's compensation legislation is that the cost of industrial accidents should be borne by the consumer as a part of the cost of the product, this court has held that a worker whose services form a regular part of the cost of the product, and whose work does not constitute a separate business which allows a distinct channel through which the cost of an accident may flow, is presumptively within the area of intended protection of the compensation act.'" *Ware*, 318 Ill. App. 3d at 1124, quoting *Ragler Motor Sales v. Industrial Comm'n*, 93 Ill. 2d 66, 71 (1982). This factor points to an employer-employee relationship. While respondent insists that claimant operated his own independent trucking business, there was no evidence that claimant had customers of his own. See *Ware*, 318 Ill. App. 3d at 1124. In fact, the evidence establishes that after 1998, claimant hauled freight designated as "special products" exclusively for customers dispatched by respondent pursuant to bills of lading provided by respondent. Further, claimant operated under respondent's ICC permits, and he was paid a commission on what respondent billed these customers. See *Ware*, 318 Ill. App. 3d at 1124-25. Thus, as we found in *Ware*, respondent was in the business of hauling freight for various customers and it was claimant's job to haul freight for *respondent's* customers. See *Ware*, 318 Ill. App. 3d at 1125.

¶ 64 Since an examination of the two most important factors reveals aspects of both an employer-employee relationship and independent contractor status, we look to other factors. Pointing to an independent contractor relationship is the fact that claimant was paid a commission rather than on an hourly basis. Further, neither income nor social security taxes were withheld from his payments,

claimant owned his own tractor, and claimant's agreement with A-1 referred to claimant as an independent contractor. In addition, claimant did not complete an employment application with respondent, he did not interview with respondent, and he purchased what he thought was workers' compensation insurance. However, there is also evidence of an employer-employee relationship. For instance, respondent provided the trailer claimant used to haul freight. While respondent seems to discount the importance of the trailer, it, along with claimant's tractor, was one of the most significant pieces of equipment necessary for claimant to carry out his duties. Respondent also provided other incidental moving equipment, such as pads, straps, and dollies. Moreover, claimant operated under respondent's ICC permits, respondent required its drivers to complete a "qualification application" to ensure that they are qualified to drive on highways, respondent's name or logo was featured on the trailer, claimant's uniform, and claimant's tractor cab, and respondent issued the bills of lading. In addition, claimant communicated exclusively with respondent using a communications device provided by respondent. Finally, we note Duncan's testimony that respondent disqualified claimant from driving within their system in December 2000, suggesting that respondent had a right to discharge.

¶ 65 In sum, an examination of the evidence as a whole establishes that elements of both an employer-employee relationship and independent contractor status exist. Respondent emphasizes that it did not have a written contractual relationship with claimant whereas A-1 did. While a written contractual agreement is another factor to consider in assessing one's employment status, it does not, as a matter of law, settle the issue. *Wenholdt v. Industrial Comm'n*, 95 Ill. 2d 76, 80 (1983). Thus, given the existence of factors supporting both an employer-employee relationship and independent

contractor status, we cannot say that the Commission's finding of an employer-employee relationship between respondent and claimant is against the manifest weight of the evidence. See *Luby v. Industrial Comm'n*, 82 Ill. 2d 353, 359 (1980) ("The inference drawn by the Commission was that [the] claimant was an employee, and unless a contrary inference is the only one which could be reasonably drawn, the Commission's decision must be upheld."); *M.W.M. Trucking Co. v. Industrial Comm'n*, 62 Ill. 2d 245, 255 (1976) (noting that where the record "presents an arguable question of fact as to whether [the] claimant was an employee," the Commission's determination will be upheld); *Earley v. Industrial Comm'n*, 197 Ill. App. 3d 309, 318 (1990) (noting that where the facts are "susceptible" to a finding of either an employer-employee relationship or independent contractor status, the Commission's finding will not be disturbed); *Area Transportation Co.*, 123 Ill. App. 3d at 1099 (noting that where elements of both relationships are present, the Commission is empowered to draw the inferences either way).

¶ 66 Respondent nevertheless compares the present case to *West Cab Co. v. Industrial Comm'n*, 376 Ill. App. 3d 396 (2007). In *West Cab Co.*, the respondents were corporations that shared common ownership and operated out of the same location. Two of the respondent corporations operated taxi leasing businesses and the other respondent corporation operated a delivery service. Pursuant to a lease agreement, lessees would come to one of the corporations to lease a taxi, the corporation would log the lessee in while noting the time and mileage, and when the taxi was returned, the lessee would pay his or her lease fee. The lease agreement specifically rejected the lessor/lessee relationship as being a principal and an agent or an employer and an employee relationship. The claimant leased a taxi from one of the corporations on a regular basis and was

operating the leased taxi when he was killed. On appeal, this court concluded that the Commission's finding of an employer-employee relationship between decedent and one of the respondent corporations was against the manifest weight of the evidence. In particular, we held that the facts that the leased taxi was painted to the corporation's specifications and that a limitation existed on subleasing the taxi did not support a finding of an employer-employee relationship. *West Cab Co.*, 376 Ill. App. 3d at 403-06. However, as noted above, in this case there are many more factors supporting an employer-employee relationship than there were in *West Cab Co.* Thus, *West Cab Co.* is not dispositive of this appeal.

¶67 We also find unconvincing respondent's insistence that if an employer-employee relationship existed, it was between A-1 and claimant. The Commission concluded that there was "scant evidence that [claimant] was controlled by A-1" and that the relationship between A-1 and claimant was more akin to that of an accountant-client relationship. The record supports this finding. Claimant testified that his contact with A-1 was limited. He explained that A-1 would advance him money if needed. A-1 would also reconcile any advances claimant received against the money he earned while hauling for respondent. At the end of the year, A-1 would issue claimant his 1099 tax form. However, A-1 had no involvement with where claimant was going on a particular day, claimant did not report his whereabouts to A-1, and no one working for A-1 would be aware of his day-to-day activities. Additionally, there was no evidence that A-1 supplied any equipment to claimant. Further, claimant noted that whereas A-1 was primarily engaged in residential moving, he hauled goods classified as "special products" for respondent. Claimant stated that A-1 was not involved in moving "special products." Thus, as the Commission concluded, after 1998, the

relationship between claimant and A-1 was more of an accounting-type relationship than an employer-employee relationship.

¶ 68 Finally, respondent argues that even assuming the Commission properly determined the existence of an employer-employee relationship, it cannot be held liable for workers' compensation coverage based on the "equipment lease agreement" with A-1. However, we do not address this contention for, as noted above, the "equipment lease agreement" was properly excluded from evidence.

¶ 69 C. Causation

¶ 70 Respondent next argues that the Commission's finding that claimant's lumbar condition after 2001 was causally related to his July 15, 2000, work accident is against the manifest weight of the evidence. According to respondent, the evidence demonstrates that claimant developed a new lumbar condition at a different disc level after his initial surgery in February 2001 that is unrelated to the injury of July 15, 2000. Claimant responds that the opinions of his primary treating physicians clearly establish a causal relationship between his current condition of ill-being and the accident of July 15, 2000.

¶ 71 An employee seeking workers' compensation benefits has the burden of proving all elements of his claim. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995). Among other things, the employee must establish that there is a causal connection between the employment and the injury for which he seeks benefits. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860 (2005). To be compensable under the Act, one's employment need not be the sole cause or even the primary cause of his condition of ill-being, it need only by a causative factor. *Tower Automotive v. Illinois*

Workers' Compensation Comm'n, 407 Ill. App. 3d 427, 434 (2011). Moreover, employers take their employees as they find them. *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). "Thus, even through an employee has a preexisting condition that may make him or her more vulnerable to injury, recovery will not be denied where the employee can show that a work-related condition aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to be causally related to conditions in the workplace and not merely the result of a normal degenerative process of the preexisting condition." *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 596-97 (2005).

¶ 72 Whether a causal connection exists between a claimant's condition of ill-being and his employment is a question of fact for the Commission. *Bernardoni*, 362 Ill. App. 3d at 597. It is the function of the Commission to decide questions of fact and causation, to judge the credibility of the witnesses, and to resolve conflicting medical evidence. *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741 (1994). Although we might draw different inferences from the facts, a reviewing court will not overturn the Commission's decision on a factual matter unless it is against the manifest weight of the evidence. *P.I.&I. Motor Express, Inc./For U, LLC v. Industrial Comm'n*, 368 Ill. App. 3d 230, 240 (2006). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Will County Forest Preserve District v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110077WC, ¶ 15.

¶ 73 In support of its argument that the Commission's causation decision is against the manifest weight of the evidence, respondent relies on the chain of factual events which occurred following claimant's February 2001 operation. Respondent notes that following the surgery performed by Dr.

Mace, claimant's symptoms improved, his physical examination and diagnostic studies were normal, and he was able to return to work. According to respondent, claimant's lumbar condition did not appreciably change until early 2002, when two important events occurred. First, in March 2002, a pallet fell on claimant while at work for ProPak, resulting in a back injury. Second, in April 2002, claimant rolled over in bed and developed severe pain in his back and leg.

¶ 74 The Commission was presented with conflicting opinion testimony regarding the relationship, if any, between claimant's current condition of ill-being and the work accident of July 15, 2000. Dr. Satterly, one of claimant's treating physicians, initially viewed claimant's history of rolling over in bed "kind of like an intervening incident or an aggravation." However, after claimant raised the issue of causation at the request of his attorney, Dr. Satterly and claimant discussed the accident at work in more detail. Thereafter, Dr. Satterly clarified his opinion. Dr. Satterly stated that claimant did not have any new disc changes from the rolling-over-in-bed episode. He explained that the work accident resulted in an injury which aggravated and ruptured a disc at L5-S1, likely weakened the L3-4 disc to some degree, and interfered with other parts of the spine. Dr. Satterly further explained that as time progressed, claimant developed scar tissue over the site of his L5-S1 surgery that resulted in leg pain. Accordingly, Dr. Satterly felt that claimant's leg pain was partly due to his previous surgery and partly due to a new problem at L3-4 which was accelerated by his work injury. Thus, Dr. Satterly concluded, claimant's situation was such that it is "all related to his preexisting work-related injury where he has had multiple disc problems."

¶ 75 In contrast to the opinion of Dr. Satterly was that of the independent medical examiner, Dr. Mishkin. Dr. Mishkin did not believe that claimant's complaints of pain and discomfort after 2001

or the surgery performed by Dr. Satterly in April 2003 were the result of the incident at work on July 15, 2000. Dr. Mishkin based this opinion on the fact that claimant was able to drive hundreds of miles for weeks after the alleged work incident, findings that showed no evidence of neurological deficit, the existence of preexisting degenerative disc disease, the fact that claimant underwent back surgery in February 2001, the result of the FCE showing limited effort and possible symptom magnification, and the findings of Dr. Satterly when he operated were not significantly different than those noted on the MRI and X rays when Dr. Mace operated.

¶ 76 The Commission found the opinion of Dr. Satterly “persuasive and reliable” while attributing no weight to the opinion of Dr. Mishkin. As noted above, it is the function of the Commission to decide questions of fact and causation, to judge the credibility of the witnesses, and to resolve conflicting medical evidence. *Teska*, 266 Ill. App. 3d at 741. Given the Commission’s role, we cannot say that its decision to adopt the causation opinion of one of claimant’s treating physicians over that of an independent medical examiner is against the manifest weight of the evidence.

¶ 77 The events of March 2002 and April 2002 do not persuade us otherwise. The Commission, in affirming and adopting the decision of the arbitrator, considered these events but determined that they were not significant enough to break the original chain of causation. The record supports this finding. First, the evidence surrounding the pallet incident of March 2002 is meager. It essentially consists of Dr. Beaumont’s progress note referencing that claimant had experienced persistent back pain since the pallet incident and claimant’s testimony acknowledging the pallet incident but denying any resultant back pain. Notably, respondent does not cite any evidence regarding the nature of the pallet incident, such as what part of the body the pallet struck or whether claimant required time off

work because of the incident. In addition, it does not appear that any diagnostic films were taken, and the record suggests that only conservative treatment was administered in response to this incident. Given the lack of details surrounding this event, the Commission properly assigned little weight to it.

¶ 78 Second, the evidence regarding exactly when claimant rolled over in bed is equivocal. Dr. Satterly provided deposition testimony that this event occurred in April 2002. The progress note of claimant's first visit with Dr. Satterly on December 3, 2002, states that claimant provided a history of "surgery on his back in February, and then in April he rolled over in bed one night and had severe pain in his back." Thus, this passage also supports Dr. Satterly's understanding that the rolling-over-in-bed incident occurred in April 2002. However, Dr. Satterly's note also suggests that claimant's first back operation occurred in February 2002, when, in fact, it is undisputed that claimant initially underwent surgical intervention in February 2001. Moreover, the progress notes from Dr. Woodward and Dr. Pak both reference claimant reporting back pain after rolling over in bed in April or May of 2001. Given the equivocal evidence regarding when this event occurred, the Commission was also warranted in attributing little weight to it. We also point out that while Dr. Satterly originally indicated that rolling over in bed was "kind of like an intervening incident or an aggravation," he later clarified his opinion and concluded that rolling over in bed did not result in a new injury to claimant's back. Thus, to the extent that the evidence may be said to support the notion that claimant experienced back pain after rolling over in bed in April 2002, the Commission was justified in finding that it did not break the original chain of causation.

¶ 79 Finally, respondent questions Dr. Satterly's credibility. In particular, respondent questions

Dr. Satterly's explanation of pathology at the L5-S1 and L3-4 levels while the level in between (L4-5) was "fine." The record does not support respondent's concern. A myelogram and CT scan ordered by Dr. Satterly prior to the April 2003 operation showed a large ruptured disc at L3-4, *a small bulging disc at L4-5*, and degenerative changes at L5-S1 with disc space narrowing. Dr. Satterly recommended an L3-4 discectomy with laminectomy and noted that he may also need to have the L4-5 looked at with a fusion to help stabilize the entire back. In his operative note, Dr. Satterly wrote that the L4-5 level "is quite unstable with motion testing." Thus, contrary to respondent's contention, the L4-5 level was not "fine." Therefore, we conclude that the Commission's finding that claimant's current condition of ill-being is causally related to his work accident of July 15, 2000, is not against the manifest weight of the evidence.

¶ 80

D. TTD Benefits

¶ 81 Respondent next challenges the Commission's award of TTD benefits. The duration of TTD is not defined by whether the claimant can find a job elsewhere. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 179 (2000). Rather, TTD benefits are available from the time an injury incapacitates an employee from work until such time as the employee is as far recovered or restored as the permanent character of the injury will permit. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542 (2007). The fact that the employee has the ability to do light work does not necessarily preclude a finding of temporary total disability. *Whitney Productions, Inc. v. Industrial Comm'n*, 274 Ill. App. 3d 28, 31 (1995). The dispositive inquiry is whether the employee's condition has stabilized, that is, whether the employee has reached MMI. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005). The factors to consider in assessing

whether an employee has reached MMI include a release to return to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Freeman United Coal Mining Co.*, 318 Ill. App. 3d at 178. Once the injured employee has reached MMI, he is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). The period during which a claimant is entitled to TTD benefits is a factual inquiry. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256-57 (2008). It is the function of the Commission to decide questions of fact (*Teska*, 266 Ill. App. 3d at 741), and those findings will not be disturbed on appeal unless they are against the manifest weight of the evidence (*Ming Auto Body/Ming of Decatur, Inc.*, 387 Ill. App. 3d at 257). As noted above, a finding is against the manifest weight of the evidence only where an opposite conclusion is clearly apparent. *Will County Forest Preserve District*, 2012 IL App (3d) 110077WC, ¶ 15.

¶ 82 In this case, the Commission awarded TTD benefits for two distinct periods of time, from October 1, 2000, through September 13, 2001, and from April 16, 2003, through April 15, 2005. Initially, respondent argues that the award of TTD benefits from April 16, 2003, through April 15, 2005, was improper because claimant failed to prove his condition of ill-being for that period of time was causally related to his work injury. As noted above, we find unpersuasive respondent's argument that claimant's condition of ill-being after 2001 is not related to his employment. Therefore, we reject respondent's challenge to TTD for this period of time.

¶ 83 Respondent also argues that claimant failed to prove that he was unable to work for the time period of June 4, 2001, to September 13, 2001. Thus, respondent reasons, claimant was not entitled to TTD benefits for this period of time. Claimant's sole argument in response is to suggest that

respondent waived consideration of this issue because it did not dispute that he was temporarily totally disabled between October 1, 2000, and September 13, 2001. However, in the request for hearing form submitted to the arbitrator for the purpose of defining the issues to be tried, respondent asserted that claimant was temporarily totally disabled only from October 1, 2000, through June 4, 2001. Furthermore, respondent challenged claimant's eligibility for TTD benefits between June 4, 2001, and September 13, 2001, in its statement of exceptions before the Commission and in the brief it filed with the circuit court. Therefore, we will address respondent's argument.

¶ 84 The record shows that after Dr. Mace operated on claimant in February 2001, he continued to see claimant until June 4, 2001. Following surgery, claimant reported several weeks of minimal back discomfort and no leg discomfort. However, he later noted more lumbar pain and the return of leg symptoms with increasing activities. A repeat MRI showed no evidence of recurrent disc herniation, only some epidural fibrosis. Dr. Mace opined that the recurrence and disappearance of the leg symptoms was consistent with a nerve-root irritation. Dr. Mace did not believe that claimant had reached MMI by this time, his last visit with Dr. Mace, and he referred claimant back to Dr. Woodward for consideration of an epidural injection. Dr. Mace authorized claimant off work during the time he treated claimant.

¶ 85 Claimant returned to Dr. Woodward on June 4, 2001. Dr. Woodward provided claimant with an oral cortisone dose and recommended a left leg nerve conduction study. Dr. Woodward released claimant to modified duty which included lifting up to a maximum of 10 pounds and no driving. Claimant returned to Dr. Woodward's office on June 12, 2001. At that time, claimant reported limited pain relief with the oral steroid. Dr. Woodward noted that the nerve conduction study was

normal, but, due to persistent pain, he recommended a left S1 epidural steroid injection. Dr. Woodward anticipated claimant would reach MMI in six to eight weeks “at most.” The injection provided only temporary relief, and, despite complaints of ongoing back and leg discomfort, Dr. Woodward released claimant from his care on July 3, 2001. At that time, Dr. Woodward released claimant to full-time modified duty with frequent lifting, pushing, and pulling up to 50 pounds and the resumption of truck driving with no restrictions. Thereafter, claimant underwent a functional capacity evaluation (FCE) on July 17, 2001. The validity of the FCE was “equivocal,” with testing indicating less than maximum voluntary movement, especially with lifting tests. The FCE also indicated that claimant’s movement patterns were inconsistent with the pain he reported. In a report dated August 6, 2001, Dr. Woodward, after reviewing the result of the FCE, stated that claimant had reached MMI and that no further medical evaluation or treatment was indicated.

¶ 86 Based on the foregoing testimony, we agree that, before subsequently reaggravating his injury, claimant reached MMI prior to September 13, 2001. However, we disagree with respondent that claimant reached this state by June 4, 2001. Instead, we conclude that claimant reached MMI by August 6, 2001. In so finding, we note that although Dr. Woodward released claimant to modified duty on June 4, 2001, he did not find claimant to be at MMI. Moreover, the limitations he imposed upon claimant were especially restrictive given claimant’s employment was that of an over-the-road truck driver. While Dr. Woodward eased these restrictions by the time he last saw claimant on July 3, 2001, he still offered no opinion as to MMI and he referred claimant for an FCE. It was only after Dr. Woodward reviewed the FCE on August 6, 2001, that he concluded that claimant was at MMI. Further, this date corresponds with Dr. Woodward’s estimate on June 12, 2001, that

claimant would reach MMI in six to eight weeks. Accordingly, following the initial surgery, claimant's physical condition had stabilized as far as his injury would permit by August 6, 2001. See *Nascote Industries*, 353 Ill. App. 3d at 1072-73; *Freeman United Coal Mining Co.*, 318 Ill. App. 3d at 178 ("When a court determines the duration of TTD, the only questions that need to be asked and answered are whether the claimant has yet reached maximum medical improvement and, if so, when."). Therefore, we modify the Commission's award to reflect that claimant is entitled to TTD benefits for the periods from October 1, 2000, through August 6, 2001, and from April 16, 2003, through April 15, 2005.

¶ 87

E. Permanency

¶ 88 Finally, respondent contends that the Commission's award of permanent partial disability benefits representing a loss of 50% of the person as a whole is contrary to the manifest weight of the evidence. In this regard, respondent adopts and restates its arguments relating to the existence of an employer-employee relationship and causal connection. Having rejected those arguments, we likewise reject respondent's challenge to the Commission's permanency award.

¶ 89

III. CONCLUSION

¶ 90 For the reasons set forth above, we modify the period of TTD awarded, but otherwise affirm the judgment of the circuit court of St. Clair County, which confirmed the decision of the Commission.

¶ 91 Affirmed as modified.