

2015 IL App (1st) 140350WC-U

NO. 1-14-0350WC

Order filed: June 26, 2015

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

DOMINGA SLATER,)	Appeal from the
)	Circuit Court of
Appellant,)	Cook County.
)	
v.)	No. 13-L-50579
)	
THE ILLINOIS WORKERS')	Honorable
COMPENSATION COMMISSION, <i>et al.</i>)	Edward S. Harmening,
(Aramark/Evanston Hospital, Appellees).)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Harris concurred
in the judgment.

ORDER

¶ 1 *Held:* The circuit court's judgment confirming the Commission's decision was affirmed, holding that the Commission's finding that the claimant sustained a lumbar sprain as a result of the accident instead of symptomatic lumbar facet syndrome was not against the manifest weight of the evidence; its finding that her medical treatment after December 29, 2009, was neither reasonable nor medically necessary was not against the manifest weight of the evidence; its finding that she sustained permanent injuries to the extent

of 5% loss of use of the person as a whole was not against the manifest weight of the evidence; its finding that she was not entitled to temporary total or temporary partial disability benefits after December 29, 2009, was not against the manifest weight of the evidence; and its denial of her request for penalties and attorney fees was proper.

¶ 2 The claimant, Dominga Slater, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for injuries she allegedly sustained while working for Aramark/Evanston Hospital (Aramark). After a hearing, the arbitrator found that the claimant proved that, on June 24, 2009, she sustained an accidental injury arising out of and in the course of her employment with Aramark and that her current lumbar spine/leg condition of ill-being was causally related to the accident. The arbitrator awarded the claimant temporary total disability (TTD) benefits, temporary partial disability (TPD) benefits, permanent partial disability (PPD) benefits for 37.5 weeks based on her finding that the injuries sustained caused 7.5% loss of use of the person as a whole, reasonable and necessary medical and prescription expenses, penalties, and attorney fees.

¶ 3 Both the claimant and Aramark appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission), which modified the arbitrator's decision, finding that the claimant sustained left ankle and lumbar sprains as a result of the accident; she reached maximum medical improvement (MMI) on December 29, 2009; she is not entitled to TTD benefits, TPD benefits, or medical expenses after December 29, 2009; and the injuries sustained caused 5% loss of use of the person as a whole. Therefore, the Commission vacated the award for TTD benefits, TPD benefits, and

medical expenses after December 29, 2009; decreased the PPD award to 25 weeks; vacated the award of penalties and attorney fees; and affirmed on all other issues.

¶ 4 The claimant filed a timely petition for judicial review in the circuit court of Cook County, which confirmed the Commission's decision. The claimant appeals.

¶ 5 BACKGROUND

¶ 6 The following factual recitation is taken from the evidence presented at the arbitration hearing. The claimant was working as a cafeteria worker for Aramark on June 24, 2009, when she slipped and fell on her buttock, hitting her left ankle on a table base. She noticed immediate left ankle pain and swelling but did not notice any back or buttock pain. She notified her supervisor of the fall, and was told to go to Evanston Hospital's emergency room. At the emergency room, she complained of left ankle, low back, and tailbone pain and was diagnosed with an ankle sprain/contusion and a coccyx contusion.

¶ 7 The claimant saw Dr. Susan Piazza at Omega Evanston (Omega) the next day, complaining of left ankle pain and swelling and midline and left-sided low back pain and was diagnosed with a lumbar strain and an ankle sprain. During the five months she was treated at Omega, from June 25 through December 2, 2009, she was told to continue working with restrictions. During that time, she worked fewer hours than she had before.

¶ 8 She saw Dr. Piazza again on July 1 and July 8, 2009, complaining of 7 out of 10 back pain. Her ankle pain had resolved. Lumbar spine x-rays showed mild focal degenerative changes at L3-L4 and possible medullary sponge kidney. The radiologist noted that the pain may be due to renal process or passage of kidney stones, and she was told to see her primary care doctor about the kidney issues. She saw Dr. Piazza again on

July 22, 2009, complaining of 5 out of 10 back pain, heaviness of her right leg, polyuria, and low back burning. She saw Dr. Jane Cullen at Omega on August 3, 2009, complaining of right lateral back pain. She stated that her primary care doctor had referred her for a computerized tomography (CT) scan and to a urologist. She saw Dr. Piazza again on August 12, 2009, reporting 0 pain at that time but 4 out of 10 back pain intermittently over the past week. She said that her CT scan had shown kidney stones and that she had been diagnosed with nephrolithiasis. She next saw Dr. Piazza on August 18, 2009, complaining of 4 out of 10 left-sided low back pain. The doctor noted that the radiation to the left leg had resolved. She saw Dr. Piazza again on September 23, 2009, complaining of 8 out of 10 back pain radiating to her left thigh and left lateral hip pain. Dr. Piazza ordered a magnetic resonance imaging (MRI) scan of the lumbar spine.

¶ 9 The September 30, 2009, MRI scan of the lumbar spine was within normal limits with no focal disc herniation identified. The MRI scan showed a "trace amount of facet arthropathy and generalized disc bulge without evidence of focal disc herniation, central stenosis or neural foraminal narrowing" at L3-L4 and L5-S1.

¶ 10 The claimant saw Dr. Thomas Hudgins at Omega on October 20, 2009, but his notes are not contained in the record. She saw Dr. Cullen again on December 2, 2009, complaining of 10 out of 10 pain in the left buttock area. She stated that the pain was no longer radiating to her thigh. Dr. Cullen advised her to see Dr. Hudgins again, but she did not see Dr. Hudgins; nor did she return to Omega.

¶ 11 Instead, on December 4, 2009, she saw Dr. Lorena Ramirez, a chiropractor, at Marque Medicos, complaining of 6 out of 10 low back pain radiating down her left leg.

She noted her June 24, 2009, slip and fall and subsequent treatment and said that the pain had continued. Dr. Ramirez told her to continue working with restrictions and ordered a lumbar spine MRI scan. The December 8, 2009, MRI scan showed mild facet arthrosis and a 2 to 3 millimeter posterior disc bulge/protrusion at L3-L4, "slightly elevating the posterior longitudinal ligament and indenting the thecal sac without significant spinal stenosis or neuroforaminal narrowing." She underwent extensive physical therapy and chiropractic treatment at Marque Medicos from December 2009 through April 2010.

¶ 12 Dr. Ramirez also referred her to Dr. Krishna Chunduri at Medicos Pain & Surgical Specialists (Medicos Pain). She saw Dr. Chunduri on December 22, 2009, complaining of 7 out of 10 low back pain radiating down her left leg. Dr. Chunduri diagnosed her with an L3-L4 disc herniation/protrusion with left radiculitis and lumbago.

¶ 13 At Aramark's request, she underwent an independent medical examination (IME) by Dr. Prem Pahwa on December 29, 2009. Aramark offered Dr. Pahwa's report into evidence, and the claimant's counsel objected based on hearsay and lack of foundation. Aramark's counsel stated that he had been unable to locate Dr. Pahwa. Because the first two pages of Dr. Pahwa's report, which contain his history and examination findings, are in one of the claimant's exhibits, the arbitrator ruled that those two pages would be considered but the third page, which contains his opinions, would not. The Commission affirmed that ruling. On examination, Dr. Pahwa noted no abnormalities.

¶ 14 The claimant saw physician assistant Stacy Pond at Medicos Pain on January 5, 2010, complaining of 8 out of 10 back pain. She stated that her left leg pain had resolved. Pond recommended left L3 and L4 transforaminal epidural steroid injections.

Dr. Andrew Engel, who is board certified in anesthesiology and pain medicine and practices pain management at Medicos Pain, administered the injections on January 13, 2010. He testified that, at that time, he agreed with Pond that the claimant had a lumbar herniated disc causing radiculitis.

¶ 15 The claimant saw Pond again on January 26, 2010, complaining of severe back pain after the injections. Pond told her to stop working and to take a break from physical therapy. She saw Dr. Engel two days later, complaining of severe back pain radiating to her pelvis and knee. He acknowledged that the injections were unsuccessful but opined that they were still medically necessary because they can eliminate the need for surgery in one in three patients. He ordered an electromyography (EMG) test, which was normal, indicating that the claimant did not have radiculopathy. The claimant returned to Omega on February 16, March 16, April 13, and April 20, 2010, complaining of 6 out of 10 left-sided low back pain radiating down her left leg.

¶ 16 Dr. Engel testified that where, as here, a patient has decreased lumbar extension and flexion and MRI scan findings of facet arthropathy and possible discogenic disease, statistically it is more likely that the disc is causing the pain. Therefore, he thought it was appropriate to perform a provocative discogram, which is diagnostic in nature, to see if the L3-L4 disc was causing her pain.

¶ 17 Dr. Engel performed the discogram at L2-L3, L3-L4, and L4-L5 on April 21, 2010. During the discogram, the claimant complained of no increased pain at L2-L3, 7 out of 10 non-concordant right side pain at L4-L5, and 10 out of 10 concordant left side pain radiating down her left leg at L3-L4. However, a post-discogram CT scan showed

that all of the discs from L2-L3 through L5-S1 were "Dallas class 0" discs, meaning they were normal, non-surgical discs.

¶ 18 The claimant saw Dr. Engel again on April 28, 2010, complaining of 6 out of 10 low back pain radiating to her posterior thigh. Dr. Engel testified that the injections had not helped her, her discography was negative, and her physical examination was not typical for facet syndrome because she had limited lumbar flexion, and patients with facet syndrome usually have full lumbar flexion. Therefore, he referred her to Dr. Giri Gireesan, a spine surgeon, for a second opinion. When she saw Dr. Gireesan on June 9, 2010, he diagnosed her with discogenic low back pain at L3-L4 aggravated as a result of a work-related injury and advised Dr. Engel that she would benefit from facet injections.

¶ 19 The claimant saw Dr. Engel again on June 16, 2010, complaining of 6 out of 10 left-sided back pain radiating to her left calf. Dr. Engel testified that Dr. Gireesan thought she had facet disease at L3-L4. Dr. Engel changed her diagnosis to lumbar facet syndrome, a lumbar herniated disc, and low back pain syndrome. He testified that facet injections, which Dr. Gireesan recommended, are no longer done and that the standard now is to perform medial branch blocks, which are diagnostic in nature, followed by radiofrequency ablation, which is therapeutic in nature.

¶ 20 On June 21, 2010, Dr. Engel performed left L3 and L4 medial branch blocks. He stated that, in the recovery room, the claimant had no low back pain and exhibited a full range of lumbar spine motion, which led him to believe that the facet joint was the root cause of her pain. He performed confirmatory medial branch blocks on July 5, 2010, and a medial branch radiofrequency ablation on July 26, 2010.

¶ 21 During a follow-up visit to Pond three days later, the claimant reported an acute exacerbation of her pain, which Dr. Engel opined did not indicate that the ablation was unreasonable or unnecessary because neuritis, or nerve irritation, is a known complication of ablation. He testified that the ablation helped her, noting that she rated her pain 4 out of 10 during an August 4, 2010, follow-up visit.

¶ 22 Dr. Engel testified that he kept the claimant off work from January 13 through August 4, 2010, due to the difficulty determining her pain source and the fact that she was not getting relief from the treatment. On August 4, 2010, he referred her for a functional capacity evaluation (FCE). The August 25, 2010, FCE showed that she could function at a light duty physical demand level. She saw Dr. Engel on September 7, 2010, complaining of 4 out of 10 left-sided low back pain. Noting that her FCE showed that she was able to lift 20 pounds, he released her to work with a 20-pound lifting restriction and recommended work conditioning. She began work conditioning but testified that she stopped after a few sessions due to lack of transportation and financial issues.

¶ 23 The claimant returned to work part time doing light duty work on October 5, 2010. She stated that she requested full-time work but was told no full-time work was available.

¶ 24 The claimant saw Dr. Engel again on October 13 and November 10, 2010, complaining of 4 out of 10 back pain. On November 10, 2010, Dr. Engel discharged her from pain management with "permanent" work restrictions.

¶ 25 At Aramark's request, the claimant underwent another IME on January 24, 2011, this time by Dr. Carl Graf. Dr. Graf's March 9, 2012, deposition testimony was admitted into evidence at the arbitration hearing and is discussed later in this decision.

¶ 26 The claimant returned to Dr. Engel on May 2, 2011, about six months after she was released from his care, complaining of 6 out of 10 back pain. He recommended that she resume work conditioning. She did so on May 10, 2011. She next saw Dr. Engel on June 13, 2011, complaining of 5 out of 10 back pain and stating that she had been hospitalized for five days with a possible kidney stone and a urinary tract infection. She saw Dr. Engel again on July 11, 2011, complaining of 4 out of 10 back pain. She next saw him on August 16, 2011, rating her pain 2 out of 10. Noting that she had successfully completed her work conditioning program, he released her to full-duty work.

¶ 27 The claimant testified that she was glad she had undergone the treatment. She stated that she was improved but still had pain in her buttocks/left low back, which she rated 3 to 4 out of 10 at best and 7 out of 10 at worst. She testified that she was working seven days per week, 35 hours per week at Deli Time and four to eight hours per week at Aramark. She stated that she was taking over-the-counter pain medication at least four times per week, which she never had to do before the accident. She testified that she was able to perform her job but that she had increased back pain by the end of her shift. She stated that before the accident she could clean her tub, but now she feels a ripping sensation in her mid low back when she bends over. She testified that before the accident she was able to get a full night's sleep without back pain, but now she tosses and turns and is awakened by the pain three or four nights per week. She stated that she was not able to play with her grandchildren like she did before the accident. She testified that before the accident she could carry her two-year-old grandchild, but if she does that now, her back hurts.

¶ 28 Dr. Engel testified that he is the director of pain management at Medicos Pain and the chief medical officer for Marque Medicos, Medicos Pain, and Ambulatory Surgical Care Facility. He opined that the claimant had L3-L4 disc disease and facet arthropathy. He opined that her work accident aggravated a pre-existing asymptomatic facet problem, stating that the accident did not cause the arthropathy, but it did cause the arthropathy to become symptomatic, and, once arthropathy becomes symptomatic, it is facet syndrome. He opined that her treatment was reasonable and medically necessary.

¶ 29 On cross-examination, Dr. Engel testified that the claimant had a contained disc herniation where the nucleus herniates into but not through the annulus. He stated that, based on the discography, he was sure that the disc was not causing her pain and that, based on the medial branch blocks and successful ablation, he was sure that the facet syndrome was causing her pain. He acknowledged that her EMG was normal, which indicates that there was no radiculopathy. He also acknowledged that her post-discogram CT scan was normal, meaning that there was no degenerative disc disease. He also acknowledged that her lumbar flexion was limited, which is atypical for someone with lumbar facet syndrome. He also acknowledged that there was a note in the medical record about a kidney stone issue she had in July 2011 and that a kidney stone can result in what a patient perceives as back pain. He testified that if her pain was currently 7 out of 10, he would like to see her again. He would again offer her medial branch blocks to see if the facet joint was still causing her pain. If so, she might need another ablation.

¶ 30 On redirect examination, Dr. Engel testified that the claimant did not have radiculopathy and that her leg pain was likely referred from the L3-L4 facet joint. His ultimate diagnosis was lumbar facet syndrome at L3-L4.

¶ 31 At his deposition, which was entered into evidence, Dr. Graf testified as follows. He is a board certified orthopedic spine surgeon. On January 24, 2011, he performed an IME of the claimant. She reported a June 24, 2009, slip and fall at work. She stated that she did not have any back pain immediately after the fall, but, two days later, began having low back pain radiating down her left leg. She rated her initial pain 7 or 8 out of 10 and her current pain 5 out of 10. She said the pain sometimes still radiates down her leg. Dr. Graf reviewed records from Omega, Marque Medicos, and Medicos Pain; Dr. Pahwa's IME report; the December 2009 lumbar spine MRI scan; the EMG report; the discogram report; and the FCE. On examination, Dr. Graf noted no neurologic deficits.

¶ 32 Dr. Graf opined that there was no reason to give the claimant the transforaminal epidural steroid injections in January 2010 because such injections are for leg radiculopathy, and she denied leg symptoms shortly before the injections. In addition, given her test results and his physical examination findings, he opined that there was no reason to perform a discogram in April 2010 or to give her facet injections in June 2010. He noted that her EMG, MRI scan, and physical examination were all normal and showed no neurological deficits, but she was given significant medical restrictions in her FCE. Upon reviewing the discogram and post-discogram CT scan, he found nothing of significance. Given the negative CT scan, he could not explain the 10 out of 10 concordant pain noted during the discogram. He testified that she "had subjective

complaints of pain" that "could not be objectively validated." He opined that she had reached MMI and was capable of full-duty work as of Dr. Pahwa's IME on December 29, 2009; that her initial treatment was reasonable and medically necessary; but that her treatment after December 29, 2009, was neither reasonable nor medically necessary.

¶ 33 On cross-examination, Dr. Graf acknowledged that he did not review Dr. Engel's June or July 2010 notes about the medial branch blocks and ablation. He also acknowledged that the claimant might have suffered a lumbar strain as a result of the accident but testified that her symptoms would have resolved within about four weeks. He also acknowledged that it is possible for referred pain to be misinterpreted as radicular symptoms. He also acknowledged that a medial branch block is one test used to diagnose facet injuries. He testified that a medial branch block is performed to see if a nerve root ablation, or burning of that nerve, would be of any benefit. He acknowledged that if a patient is injected at L3-L4 on the left side and is pain-free in the waiting room 30 minutes later, that is a positive diagnostic finding. He also acknowledged that confirmatory medial branch blocks are often used to confirm that the positive finding was not a false positive. He testified that he was not provided Dr. Engel's June and July 2011 notes regarding the medial branch blocks or the radiofrequency ablation.

¶ 34 On redirect examination, Dr. Graf opined that the June and July 2011 medial branch blocks and radiofrequency ablation were not reasonable or medically necessary. He noted that those procedures were performed long after she had reached MMI in December 2009. He also noted that her EMG and straight leg raise tests were negative;

there was no nerve effacement on the MRI scan; her CT scan did not indicate radiculopathy; and her MRI scans showed only very early degenerative changes.

¶ 35 On re-cross examination, Dr. Graf acknowledged that Dr. Gireesan had ruled out the disc as the cause of her pain and that, when a patient has ongoing complaints of pain and you rule out one causative factor, it is reasonable to explore what might be causing the pain. On further redirect examination, he opined that, in this case, the claimant was at MMI on December 29, 2009, and the subsequent treatment was not reasonable.

¶ 36 The arbitrator found that the claimant proved that, on June 24, 2009, she sustained an accidental injury arising out of and in the course of her employment with Aramark and that her current lumbar spine/leg condition of ill-being was causally related to the injury. The arbitrator awarded her TTD benefits of \$238 per week for 32 weeks (from January 26 through September 6, 2010); TPD benefits totaling \$3,792.65 (for the period of October 5, 2010, through August 16, 2011); PPD benefits of \$214.20 per week for 37.5 weeks based on her finding that the injuries sustained caused 7.5% loss of use of the person as a whole; reasonable and necessary medical and prescription expenses totaling \$70,180.76; \$13,808 in penalties; and \$1,523.20 in attorney fees.

¶ 37 Both the claimant and Aramark appealed the arbitrator's decision to the Commission, which modified the arbitrator's decision, finding that the claimant sustained left ankle and lumbar sprains as a result of the accident; that she reached MMI on December 29, 2009; that she is not entitled to TTD benefits, TPD benefits, and medical expenses after December 29, 2009; and that the injuries sustained caused 5% loss of use of the person as a whole. Therefore, the Commission vacated the award for TTD

benefits, TPD benefits, and medical expenses after December 29, 2009; decreased the PPD award to \$214.20 per week for 25 weeks; vacated the award of penalties and attorney fees; and affirmed on all other issues.

¶ 38 The claimant filed a timely petition for judicial review in the circuit court of Cook County, which confirmed the Commission's decision. The claimant appeals.

¶ 39

ANALYSIS

¶ 40 The claimant first argues that the Commission erred in finding that she sustained a lumbar sprain as a result of the accident instead of symptomatic lumbar facet syndrome. The Commission is the ultimate decision maker in workers' compensation cases, and it is not bound by the arbitrator's decision. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 63, 862 N.E.2d 918, 924 (2006). The determination of the nature and extent of an employee's injuries arising out of and in the course of employment is a factual question for the Commission. *Zarley v. Industrial Comm'n*, 84 Ill. 2d 380, 386, 418 N.E.2d 717, 720 (1981). The credibility of witnesses and causal connection are also questions of fact for the Commission. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954, 958 (1984). The Commission's factual findings will not be reversed on appeal unless they are against the manifest weight of the evidence, *i.e.*, when an opposite conclusion is clearly apparent. *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. The appropriate test is whether there is sufficient evidence in the record to support the Commission's finding not whether this court or any other court might have reached the same conclusion. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90, 93 (1982). Accordingly, "[a] reviewing court will not reweigh the evidence, or reject

reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924.

¶ 41 The Commission noted that, although Dr. Engel initially diagnosed the claimant with a herniated disc, he subsequently rejected that diagnosis in light of the medical evidence and ultimately settled on a diagnosis of lumbar facet syndrome. She was treated for both lumbar facet syndrome and a herniated disc. The Commission found that she did not respond favorably to the treatments for lumbar facet syndrome and noted that even Dr. Engel acknowledged that she did not have classic lumbar facet syndrome. The Commission also noted that Dr. Engel kept her off work from January 13 through August 4, 2010, due to a difficulty in determining her pain source and the fact that the treatments were not relieving her pain. The Commission found that, instead of a solid diagnosis that resulted in improvement from the treatment, her time off work and treatment regiment was driven by her subjective complaints. Therefore, the Commission placed little, if any, weight on Dr. Engel's diagnosis or causation opinions.

¶ 42 The Commission found that Dr. Graf's opinions more closely mirrored the evidence than did those of Dr. Engel. Dr. Graf opined that, at most, the claimant might have sustained a lumbar strain as a result of the accident; that the lumbar strain would have resolved within about four weeks of initial onset; and that, as of December 29, 2009, she had reached MMI. He noted that she had no objective testing to indicate a herniated disc and/or treatment needed for the same. He further found that even if she had a working diagnosis of lumbar facet syndrome, the diagnostic testing and/or treatment did not support the same. Thus, he opined that her complaints, physical examination

findings, and objective tests do not support the need for the treatment she was given. The Commission assigned more weight to Dr. Graf's opinions because it found that his opinions more closely followed the evidence than did those of Dr. Engel. It is within the province of the Commission to resolve conflicting medical testimony, and its findings will not be reversed unless they are against the manifest weight of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E. 2d 665, 673 (2003).

¶ 43 The Commission's finding that the claimant sustained a lumbar sprain instead of lumbar facet syndrome as a result of the accident is not against the manifest weight of the evidence. After examining the claimant and reviewing her medical records, Dr. Graf opined that, at most, she might have sustained a lumbar strain as a result of the accident. Dr. Graf's opinion is amply supported by the record. His opinion is supported by the notes of the medical providers that initially treated her. At the emergency room immediately after the accident on June 24, 2009, she was diagnosed with an ankle sprain/contusion and a coccyx contusion. When she followed up with Dr. Piazza at Omega the next day, she was diagnosed with a lumbar strain and an ankle sprain. In addition, the medical evidence suggests that her lasting subjective back complaints may have actually been the result of her kidney stones. Dr. Graf's opinion is also supported by numerous objective negative diagnostic tests, including x-rays, two MRI scans, a CT scan, and an EMG. Finally, his opinion is supported by Dr. Pahwa's clinical examination finding that, as of December 29, 2009, there were no abnormalities.

¶ 44 Although the claimant attacks the bases underlying Dr. Graf's opinion, that argument goes to the weight to be accorded his testimony, which is a question for the

Commission to decide. See *Cassens Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 332, 633 N.E.2d 1344, 1349 (1994). The claimant's criticisms are not so persuasive that we could hold that the Commission was not entitled to rely on Dr. Graf's opinion or that an opposite conclusion is clearly apparent.

¶ 45 The claimant next argues that the Commission erred in failing to award medical expenses after December 29, 2009. Under section 8(a) of the Act (820 ILCS 305/8(a) (West 2008)), a claimant is only entitled to recover reasonable medical expenses that are causally related to the accident and that are necessary to diagnose, relieve, or cure the effects of her injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165 (2011). Whether a medical expense is reasonable or necessary is a question of fact for the Commission, and its finding will not be reversed unless it is against the manifest weight of the evidence. *Id.*

¶ 46 Dr. Graf opined that, at most, the claimant might have sustained a lumbar strain as a result of the June 24, 2009, accident; that the lumbar strain would have resolved within about four weeks of initial onset; that she had reached MMI as of December 29, 2009; that her initial treatment was reasonable and medically necessary; but that her treatment after December 29, 2009, was neither reasonable nor medically necessary. Given Dr. Graf's testimony, there was ample evidence to support the Commission's finding that the claimant's medical treatment after December 29, 2009, was neither reasonable nor medically necessary.

¶ 47 The claimant next argues that the Commission erred in awarding 5% loss of the person as a whole in PPD. "It is well-settled that because of the Commission's expertise

in the area of worker's compensation, its findings on the question of the nature and extent of permanent disability should be given substantial deference." *Mobil Oil Corp. v. Industrial Comm'n*, 309 Ill. App. 3d 616, 624, 722 N.E.2d 703, 709 (2000). Accordingly, the nature and extent of a claimant's permanent disability is a question of fact to be resolved by the Commission, and its finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Baumgardner v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 274, 278-79, 947 N.E.2d 856, 860 (2011).

¶ 48 There was ample evidence to support the Commission's finding that the claimant sustained permanent injuries to the extent of only 5% loss of use of the person as a whole. The Commission's finding is supported by Dr. Graf's testimony. After examining the claimant and reviewing her medical records, he opined that, at most, she might have sustained a lumbar strain as a result of the accident and that the strain would have resolved within about four weeks of initial onset. He noted that she "had subjective complaints of pain" that "could not be objectively validated." The Commission's finding is also supported by numerous objective negative diagnostic tests and by Dr. Pahwa's examination finding that, as of December 29, 2009, there were no abnormalities.

¶ 49 The claimant next argues that the Commission erred in denying TTD and TPD benefits after December 29, 2009. A claimant is temporarily totally disabled from the time an injury incapacitates her until such time as she is as far recovered as the permanent nature of her injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118, 561 N.E.2d 623, 627 (1990). When a claimant seeks TTD benefits, the dispositive inquiry is whether her condition has stabilized, *i.e.*, whether she has reached

MMI. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 142, 923 N.E.2d 266, 271 (2010). The period during which a claimant is temporarily totally disabled is a question of fact for the Commission, and its determination will not be reversed unless it is against the manifest weight of the evidence. *Id.*, 923 N.E.2d at 272. A claimant is entitled to TPD benefits when she "is working light duty *** and earns less than *** she *** would be earning if employed in the full capacity of the job or jobs." 820 ILCS 305/8(a) (West 2008). Whether a claimant is entitled to TPD benefits is also a question of fact for the Commission.

¶ 50 There was ample evidence to support the Commission's finding that the claimant was not entitled to TTD or TPD benefits after December 29, 2009. The Commission's finding is supported by Dr. Graf's opinion testimony that she had reached MMI and was capable of returning to full-duty work as of December 29, 2009. The Commission's finding is also supported by the objective negative diagnostic tests and by Dr. Pahwa's examination finding that, as of December 29, 2009, there were no abnormalities.

¶ 51 Finally, the claimant argues that the Commission erred in denying penalties and attorney fees pursuant to sections 19(l), 19(k), and 16 of the Act (820 ILCS 305/19(l), 19(k), 16 (West 2008)). A penalty under section 19(l) of the Act is like a late fee, and it is mandatory if the payment is late and the employer cannot show adequate justification for the delay. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 552 (1998). When the employer relies on responsible medical opinion or when there are conflicting medical opinions, penalties are not usually imposed. *Avon Products, Inc. v. Industrial Comm'n*, 82 Ill. 2d 297, 302, 412 N.E.2d 468, 470 (1980). The propriety of

imposing a penalty under section 19(l) is a question of fact for the Commission, and its decision will not be reversed unless it is against the manifest weight of the evidence.

Archer Daniels Midland, 138 Ill. 2d at 123, 561 N.E.2d at 630.

¶ 52 The Commission found that Aramark had a reasonable basis upon which to raise a defense and to rely on its doctor in not paying TTD benefits and medical expenses. Given Dr. Graf's medical opinions that the claimant had reached MMI and was capable of returning to full-duty work as of December 29, 2009, and that her subsequent medical treatment was neither reasonable nor medically necessary, the evidence amply supports the Commission's finding that Aramark had a reasonable basis upon which to raise a defense and to rely on Dr. Graf in not paying TTD benefits and medical expenses. Therefore, the Commission properly denied the claimant's request for penalties under section 19(l). It follows that the Commission properly denied the claimant's request for penalties and attorney fees under sections 19(k) and 16 because the standard for awarding penalties and attorney fees under those provisions is higher than the unreasonable delay standard under section 19(l). *McMahan*, 183 Ill. 2d at 514, 702 N.E.2d at 552.

¶ 53 CONCLUSION

¶ 54 For the foregoing reasons, we affirm the judgment of the circuit court, which confirmed the Commission's decision.

¶ 55 Affirmed.