

2015 IL App (1st) 140762WC-U

NO. 1-14-0762WC

Order filed February 27, 2015

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

LEOLA HARRELL,)	Appeal from the
)	Circuit Court of
Appellant,)	Cook County.
)	
v.)	No. 13-L-050255
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (The City of Chicago,)	Robert Lopez Cepero,
Appellee).)	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:* In a second 19(b) hearing, the Commission's finding that the claimant's conditions of ill-being were not causally related to her workplace accident violated the law-of-the-case doctrine because the Commission relied on a doctor's opinion that was substantially the same as another doctor's opinion that was rejected by the Commission at the first 19(b) hearing.

¶ 2 This matter is before the court on an appeal from an expedited order entered by the Illinois Workers' Compensation Commission (the Commission) pursuant to section 19(b) of the Illinois Workers' Compensation Act (the Act) (820 ILCS 305/19(b) (West 2006)). The 19(b) order at issue in this appeal is the second 19(b) order that the Commission has entered in this case, and this appeal of the second 19(b) order raises an issue concerning whether the Commission violated the law-of-the-case doctrine.

¶ 3 The claimant, Leola Harrell, worked for the employer, the City of Chicago, as custodian beginning in 1988. On December 11, 2002, the claimant suffered a slip and fall workplace accident, which resulted in injuries to her right arm, right leg, and low back. The claimant then underwent a course of medical treatments for neck, arm, leg, and back pain. The claimant's treatments included physical therapy and trigger-point injections, but she reported that she continued to experience debilitating pain in her neck, back, shoulders, arms, and legs that precluded her from working.

¶ 4 In 2004, the parties appeared before an arbitrator for an expedited hearing pursuant to section 19(b) of the Act. The parties disputed a number of issues at that hearing, including whether the claimant's conditions of ill-being were causally related to her workplace accident. The arbitrator found that there was no objective evidence that the claimant suffered from a condition that was causing her to have consistent pain. Accordingly, the arbitrator found that there was "no condition of ill-being that is causally connected to a work-related injury."

¶ 5 The claimant appealed the arbitrator's decision to the Commission, and on April 28, 2006, the Commission reversed the arbitrator and found that the claimant was

suffering from the pain she described and that a causal connection existed between the claimant's workplace accident and her current conditions of ill-being. The Commission awarded the claimant temporary total disability (TTD) benefits and remanded the case to the arbitrator "for a determination of a further amount of temporary total disability compensation or of compensation for permanent disability, if any." On January 16, 2007, the circuit court confirmed the Commission's decision.

¶ 6 Almost five years later, on December 9, 2011, the parties again appeared before an arbitrator for a second 19(b) expedited hearing. At the second 19(b) hearing, the employer again disputed the claimant's assertion that she was suffering from pain symptoms that were causally connected to her workplace accident. The arbitrator noted that the April 28, 2006, Commission decision was the law of the case which precluded "a redetermination of whether [the claimant's] complaints of musculoskeletal/myofascial pain in her neck, back, legs, and arms are causally connected to the workplace accident." However, the arbitrator adopted the opinions of the employer's medical expert "to the extent they do not conflict with the law of the case" and denied the claimant benefits after September 1, 2004. The arbitrator found that the claimant failed to prove that her persistent neck, back, leg, and arm pain was causally related to the accident as of September 1, 2004.

¶ 7 The claimant appealed the arbitrator's second 19(b) decision to the Commission. In a decision entered on February 15, 2013, the Commission affirmed and adopted the arbitrator's decision with one commissioner dissenting. The circuit court confirmed the Commission's decision, and this appeal ensued.

¶ 8

BACKGROUND

¶ 9 The issue in this workers' compensation case concerns the application of the law-of-the-case doctrine in a second 19(b) hearing. The issue involves the claimant's complaints of persistent neck, back, leg, and arm pain following a workplace accident, which occurred in December 2002, and whether her continual pain following a first 19(b) hearing is causally related to the accident. In order to understand the issues pertaining to the application of the law-of-the-case doctrine in the second 19(b) hearing, we must review the facts presented at both 19(b) hearings.

¶ 10 The claimant began working for the employer as a custodian in July 1988. Her job duties required her to perform a variety of custodial tasks, including picking up garbage, mopping, stripping and waxing floors, cleaning restrooms, operating snow blowers, and lifting heavy objects. She testified that prior to her accident she felt great and had never injured her back or neck. Her work accident occurred on December 11, 2002, when she fell down a number of stairs while carrying a garbage bag. She hit her back against the stairs, her right leg against the floor, and her right arm against a door. The claimant's supervisor, Dean Fikas, testified that he had known her for 15 years and described the claimant's work prior to the accident as "excellent" and "always professional" with no absenteeism issues. He testified that she worked in many of the high-profile areas of the city hall and the fire academy and that "she always did an outstanding job for us." Prior to the accident, he had never observed the claimant having problems with her neck or back.

¶ 11 The claimant stayed at work after her accident and went upstairs and sat down for the rest of the day. The day following the accident, she went to work and felt sore. On December 13, 2002, she sought medical treatment at the employer's chosen occupational medicine clinic, MercyWorks Occupational Medicine Centers (MercyWorks). Records from MercyWorks indicate that the claimant reported tenderness in her lumbosacral spine, minimal tenderness in the right posterior thigh, tenderness at the deltoid, and slight tenderness in both sacroiliac joints. Dr. Homer Diadula at MercyWorks diagnosed the claimant with a contusion of the right arm, low back, and right leg, prescribed ibuprofen, gentle back exercises, and warm soaks, and released the claimant back to work full duty as of Monday, December 16, 2002.

¶ 12 The next day, Saturday, December 14, 2002, the claimant woke up with what she described as "unbearable pain." Her "whole body was aching," and the left side of her body was numb. She called MercyWorks, but the clinic was closed for the weekend. On Monday, December 16, 2002, the claimant attempted to go to work, but she experienced pain in her back, neck, and legs. She left work, returned to MercyWorks, and reported left- and right-sided numbness, left lower extremity soreness, and low back pain. She reported pain in the 6 to 7 out of 10 range. Dr. Arnold at MercyWorks diagnosed contusions of the low back, right arm, and left thigh. He released the claimant to work light duty.

¶ 13 The claimant returned to MercyWorks on December 17, 2002, after she woke up with pain over her "entire body." She reported complaints of sharp pain in both arms, both legs, lower back, and neck and that her pain was 10 out of 10 in the mornings.

Subsequent MRIs of the claimant's cervical and lumbar spine showed no bulge or herniation to the cervical spine and mild degenerative changes with disc bulges in the lumbar spine.

¶ 14 Dr. Arnold's notes dated December 26, 2002, state that he prescribed physical therapy five times per week for two weeks and directed the claimant to follow up with her primary care physician as soon as possible. The claimant underwent a couple of days of physical therapy, but the therapy ended when the employer denied the therapy. Progress notes from MercyWorks' records from January 2003 state that it closed the claimant's case because the employer denied liability. The notes state that the claimant did not suffer accidental injuries "which arose out of and in the course of employment and the alleged condition of ill-being is not causally connected to the *** injury."

¶ 15 The claimant has not worked since December 17, 2002, and has continued to report neck, back, arm, and leg pain and has not had any new injuries. The claimant followed up with her primary care physician, Dr. Yili Guo, who prescribed Vicodin to help with the pain but did not prescribe any other type of treatments. The claimant was not satisfied with Dr. Guo's care. Therefore, she began treating with Dr. Catherine Anichini beginning in March 2003, with primary complaints of body pain due to the work accident. Dr. Anichini prescribed the claimant medications and physical therapy. She also referred the claimant to Dr. Katoon who administered trigger-point injections for her neck and back. The claimant testified that the injections "helped some" but "never did stop the pain completely."

¶ 16 The claimant underwent the physical therapy prescribed by Dr. Anichini from March 10, 2003, through May 22, 2003. The notes of the physical therapist indicate that she recommended discharging the claimant from physical therapy because the claimant's pain was not improving with the physical therapy; she felt that the claimant would benefit from seeing a specialist. The claimant testified that she got some relief from physical therapy and that she believed that she would have been in worse shape without the physical therapy. She also testified that she was hurting during the therapy and that she could not do all of the activities that the therapist wanted her to do.

¶ 17 The claimant saw a neurologist, Dr. Walter J. Wojcik, in April 2003. Dr. Wojcik's impressions at that time included "no focal abnormality on neurologic examination." He noted that an MRI of the claimant's cervical and lumbar spine showed only mild disc herniations, without "encroachment on the spinal cord, intrathecal space, or neural foramina." He diagnosed the claimant as having musculoskeletal pain that had not yet resolved. He prescribed nonpharmacologic treatments, including warm packs, soothing liniments, neck exercises, and back rubs and massages. He recommended that the claimant obtain a job that did not require manipulation of heavy items or equipment. He opined that the claimant's musculoskeletal pain was causally connected to the work accident and believed that the claimant needed a job "that does not involve lifting objects greater than 20-30 pounds." He did not set up any follow-up appointments.

¶ 18 At the request of the employer, on July 29, 2003, the claimant submitted to an independent medical examination (IME) conducted by Dr. David L. Spencer. Dr. Spencer noted that his examination revealed that the claimant's cervical, thoracic, and

lumbar spine appeared to be normal with no limitation of motion, and he noted that MRIs of the claimant's lumbar and cervical spine were normal except "age appropriate degenerative changes." He opined that the claimant's complaints at the time of his examination were "nonspecific" and that the claimant "has obvious and flagrant findings of symptom magnification with no evidence of any underlying focal injury or abnormalities referable to the fall that occurred on 12/11/02." He concluded that there was "no evidence to support any legitimate residual pain impairment or disability" caused by the workplace accident, and he believed that the claimant was capable of returning to work "without any limitations."

¶ 19 In a letter dated October 31, 2003, addressed to the claimant's attorney, Dr. Anichini noted that the claimant was healthy, active, and hard-working prior to the workplace accident and enjoyed life. She noted that the doctors at MercyWorks ordered physical therapy, but that the therapy stopped after only two visits because "her Workmen's Comp was denied." The doctor believed that this was the "single biggest mistake" made with respect to the claimant's care and that if the claimant had received physical therapy initially when she was injured, her condition would not have progressed to the degree that it had. She further believed that the claimant's condition continued to deteriorate during the first several months following the accident when her primary care physician, Dr. Guo, gave her only medications and failed to send her to physical therapy.

¶ 20 In her letter, Dr. Anichini acknowledged that the claimant's MRI did not show any acute findings and that her symptom description did not fit nicely into a typical "anatomic distribution." Nonetheless, she did not doubt the claimant's complaints, and she

disagreed with Dr. Spencer's opinion that the claimant exhibited significant symptom magnification. She described Dr. Spencer's diagnostic conclusion in his report as "inflammatory and hastily-achieved." She wrote: "While there may be no evidence on exam or MRI to support any 'legitimate' disability as a result of the event of 12/11/02, this does NOT mean that [the claimant] is not experiencing the pain she describes. It merely means that we have not been able to objectify it." Dr. Anichini also noted that clinical psychologist Dr. Sam Rest¹ found the claimant to be "reliable, truthful, and straightforward" and that neurologist Dr. Wojcik recommended that the claimant not return to a position that required heavy, strenuous exertion. Dr. Anichini agreed with Dr. Wojcik that the claimant was "capable of returning to a 'light-duty' position that would not require such physical exertion."

¶ 21 An arbitrator conducted the first 19(b) hearing on January 8, 2004, and issued his decision on June 30, 2004. The arbitrator found that, although a workplace accident occurred on December 11, 2002, the claimant's persistent pain in her back and her neck that radiated into her extremities was not a condition of ill-being that was related to the workplace accident. The arbitrator believed that the claimant's subjective complaints were inconsistent with the medical evidence and her description of the accident.

¶ 22 The arbitrator adopted the "observations and findings made in [the claimant's] MercyWorks treatment records and in Dr. Spencer's IME." In addition, the arbitrator noted that Dr. Anichini conceded that the claimant's MRI was negative for any acute

¹ Dr. Rest's records are not included in the record on appeal.

process and that the claimant's symptom description did not fit into a typical anatomic distribution.

¶ 23 The claimant appealed the arbitrator's decision to the Commission. The Commission reversed the arbitrator's decision on the issue of causation. The Commission found that a "causal connection exists between the work accident and [the claimant's] current condition of ill-being." The Commission, therefore, awarded the claimant temporary total disability benefits and remanded the case to the arbitrator for further proceedings.

¶ 24 In support of its decision, the Commission made numerous factual findings related to causation. The Commission noted the workplace accident and the claimant's reports of back, neck, arm, and leg pain following the accident. The Commission noted that the claimant was still under the care of Dr. Anichini, who had referred the claimant to Dr. Wojcik, and that Dr. Wojcik diagnosed the claimant with a musculoskeletal injury which had not resolved. He had restricted the claimant from heavy lifting and limited her to light-duty work with no lifting over 20 or 30 pounds. The employer had no light-duty work for the claimant.

¶ 25 The Commission found that at the time of the arbitration hearing, the claimant continued "to experience neck and back pain, with tingling and burning from the back of neck down to the middle of her buttocks, and bilateral shoulder pain." The Commission also noted that the claimant testified that "she presently experiences tingling in her arms and legs, and that she never had similar problems in the past." The Commission noted the claimant's testimony that her legs keep her from walking at a normal pace and that

since the workplace accident, she had not suffered any new injuries and the pain had never gone away.

¶ 26 The Commission found the opinions of Drs. Wojcik and Anichini to be persuasive. Specifically, the Commission found as follows:

"The Commission notes Dr. Wojcik diagnosed the [claimant] with chronic musculoskeletal pain, and [the claimant's] treating physician, Dr. Anichini, causally connects the [claimant's] current condition of ill-being to her work related injury of December 11, 2002. [The claimant] first treated with Dr. Anichini on March 4, 2003, at which time [the claimant] made complaints of pain in her neck, back, legs and arms after her fall of December 11, 2002. Dr. Anichini opined that the initial denial of a full course of treatment and physical therapy immediately following her injury was wrong, and possibly would have prevented progression of her condition. Dr. Anichini further indicated that while the MRI study was negative for acute pathology, the [claimant] still required treatment for her disabling condition. Dr. Anichini [*sic*] further indicated she disagreed with the [employer's] Section 12 examiner, Dr. Spencer, who diagnosed 'flagrant symptom magnification'. The Commission notes that Dr. Anichini had the [claimant] examined by Dr. Rest, clinical psychologist, who confirmed no underlying psychopathology to perception of pain. Dr. Anichini also had the [claimant] obtain counseling for emotional distress from her slow recovery. Furthermore, the testimony of [the claimant's] supervisor, Mr. Fikas, reflects favorably on [the claimant's] work ethic and honesty, which is consistent with the opinions of Dr.

Anichini. The Commission finds the opinions of Dr. Anichini more persuasive than those of Dr. Spencer."

¶ 27 The Commission also found that the claimant was entitled to vocational assessment. One commissioner dissented, stating that she would adopt the decision of the arbitrator.

¶ 28 The employer appealed the Commission's decision to the circuit court. The circuit court confirmed the Commission's decision, and the employer did not seek any further review of the decision.

¶ 29 Following the first 19(b) hearing, the claimant continued to complain of the same symptoms with respect to her neck, back, and extremities and treat with Dr. Anichini. In a letter dated February 12, 2004, Dr. Anichini restated her opinion that the claimant's pain was work-related. She also noted in the letter that the claimant saw a rheumatologist who "recommended several blood tests to check for possible rheumatological disease as the source of pain" but that "these tests were negative." The claimant continued to treat with Dr. Anichini and reported no improvement in her conditions.

¶ 30 The claimant followed up with Dr. Anichini on July 30, 2004, and the doctor's notes indicate that the claimant was sad and upset at that time because, at that time, the arbitrator had denied her claim after the first 19(b) hearing and she was still having the same symptoms. Dr. Anichini noted in her report that although there was a lack of objective evidence concerning the cause for the claimant's pain, she believed that the claimant "has the pain she describes."

¶ 31 The claimant requested Dr. Anichini to refer her to an orthopedic surgeon. According to her notes, Dr. Anichini discouraged the claimant from seeing an orthopedic surgeon; because there was a lack of objective evidence concerning the cause of her pain, the doctor did not believe that the claimant would benefit from seeing an orthopedic surgeon. Nonetheless, according to the notes, the claimant felt strongly that she needed to "explore all her options." Therefore, Dr. Anichini referred the claimant to see Dr. Ho, who is an orthopedic surgeon. Dr. Ho examined the claimant, believed that the claimant's pain was musculoskeletal, and recommended rehabilitation modalities.

¶ 32 On December 14, 2004, the claimant reported no change in her pain complaints, and Dr. Anichini kept her on light duty. In February 2005, the claimant complained of increased pain in her knees, hands, elbows, and shoulders. The claimant continued to treat with Dr. Anichini throughout 2005, and Dr. Anichini treated the claimant with medications and kept her on light duty.

¶ 33 In March 2006, in a letter to the claimant's attorney, Dr. Anichini opined that the claimant was unable to work as a janitor and recommended physical therapy and "perhaps work hardening." In a letter written in July 2006, Dr. Anichini noted that she "strongly believe[d] that just because Western medicine has not been able to nicely diagnose [the claimant's] condition does not mean that she is not experiencing the pain she describes." She continued to opine that "had [the claimant] received the appropriate medical treatment under WC in the first place, she would have recovered and been back to work within a few months." In her letter, she outlined the claimant's "persistent pain" since the date of the workplace accident.

¶ 34 In a letter to the claimant's attorney dated December 19, 2006, Dr. Anichini stated, "this point, 4 years after her initial injury, [the claimant] continues to have pain in her neck, back, head, and extremities, as well as fatigue with poor exertion capacity." She opined that the claimant was permanently disabled from her chronic pain syndrome and deconditioning. She recommended the use of a motorized scooter to get around in her home in order to conduct her activities of daily living. The claimant testified that in 2006, when Dr. Anichini recommended the scooter, she was having trouble walking and was not able to balance herself. Her neck, back, arms, legs, and hands hurt to the point that she could not do normal everyday things.

¶ 35 In 2007, the claimant continued to treat with Dr. Anichini and continued to report no improvement. At the request of the employer, the claimant returned to MercyWorks and was examined by Dr. Edward A. Bleier. Dr. Bleier opined that the claimant showed signs of symptom magnification and recommended a functional capacity evaluation (FCE). The claimant underwent an FCE in August 2007, which indicated that the claimant could work at the sedentary-physical-demand level. However, the evaluator considered the results to be invalid because the claimant failed 7 of the 13 validity criteria. The evaluator also opined that the claimant's "guarded behavior did not allow the physical therapist to perform a full assessment."

¶ 36 Following the FCE, Dr. Bleier prescribed a course of work conditioning and took the claimant off work during the conditioning. From August 29, 2007, through September 13, 2007, the claimant underwent work-hardening therapy and treatment. She showed minimal improvement in her work capacity and did not demonstrate the ability to

perform nonsedentary work. Following the work hardening, Dr. Bleier prescribed an EMG/NCV of the claimant's upper and lower extremities. The EMG/NCV study of the claimant's low back and lower extremities was unremarkable; there were no findings of cervical or lumbar radiculopathy. An EMG/NCV of the upper extremities was suggestive of bilateral carpal tunnel syndrome.²

¶ 37 The claimant returned to Dr. Anichini and reported that the work hardening increased her fatigue and pain. Dr. Anichini recommended that the claimant continue with work hardening and tried to get the claimant to accept that she may never get to be pain-free.

¶ 38 On September 27, 2007, the claimant returned to Dr. Bleier and complained that her pain was 8 out of 10 and that her symptoms were unchanged. Dr. Bleier opined that the claimant was at maximum medical improvement and released her to return to work at the sedentary-physical-demand level.

¶ 39 The claimant's medical records indicate that her condition remained unchanged through 2007.

¶ 40 At the request of the employer, the claimant was evaluated by Dr. Andrea Fraley at the Rehabilitation Institute of Chicago (RIC) on March 6, 2008. The claimant reported her chronic pain since the workplace accident. After examining the claimant and her

2 The claimant's bilateral carpal tunnel syndrome is a condition that is not at issue before us in the present appeal. The arbitrator found that the claimant's claim concerning carpal tunnel syndrome was a separate incident or accident and must be litigated separately upon the filing of a timely application for adjustment of claim for that injury. The claimant does not challenge this portion of the Commission's ruling.

medical records, Dr. Fraley recommended a "comprehensive pain program in which [the claimant] could receive medical management, physical and occupational therapy as well as biofeedback and pain psychology." Dr. Bleier's notes dated March 18, 2008, state that he intended to discuss the pain program referral with the employer, *i.e.*, the "Committee on Finance."

¶ 41 On April 3, 2008, the claimant followed up with Dr. Anichini and reported no improvement. Dr. Anichini continued treating the claimant's condition with various medications, including Naprosyn, Ultram, baclofen, trazodone, and Vicodin.

¶ 42 The claimant was examined at RIC by Dr. Steven Santos on April 24, 2008. The claimant reported back pain, as well as pain in both buttocks, thighs, arms, and hands. She described her pain as "burning, tingling and aching." Dr. Santos reported that he began a physical examination of the claimant, but ended the examination when she exhibited a lack of ability to participate and voiced increased pain complaints. He diagnosed the claimant as having chronic pain syndrome following the 2002 work-related injury, diffuse body pain, fibromyalgia variant versus conversion disorder, and sleep disturbance. He recommended a multidisciplinary or interdisciplinary pain program that would include "physician visits, pain psychology, physical or occupational therapy, vocational rehabilitation, biofeedback, relaxation training[,] and other whole body movement therapies."

¶ 43 In June 2008, the claimant followed up with Dr. Bleier who advised the claimant that the employer did not authorize the RIC pain management program. He opined that the claimant was at MMI and released her to work light duty.

¶ 44 In 2009 and 2010, the claimant continued to treat with Dr. Anichini and reported no improvements. On March 15, 2010, the claimant complained of worsening pain in her shoulders and arms.

¶ 45 In February 2010, at the request of the employer, the claimant underwent another IME conducted by Dr. Kevin F. Walsh. The claimant described the workplace accident to the doctor and complained of pain "essentially involving her entire body except the abdomen and chest area." The claimant complained of pain in her arms, legs, and entire back.

¶ 46 Dr. Walsh wrote in his IME report that the claimant "continues to have subjective complaints of pain and discomfort well out of proportion to objective abnormalities." He opined that "[i]t is not at all likely the [claimant's] current subjective complaints are causally related to the injury described in December 2002." He further wrote as follows:

"More likely than not, the [claimant] reached maximal medical improvement with regards to her alleged injury when she concluded treatment at MercyWorks in the weeks following her alleged injury. The ongoing care and treatment provided to the [claimant] over the years is not causally related to an injury in 2002. At best, the [claimant] suffered a contusion/sprain as a result of an alleged injury. It is not at all likely that her symptoms in 2010 are causally related to a contusion/sprain in 2002."

¶ 47 Dr. Walsh testified at the second 19(b) hearing by way of an evidence deposition. He testified that he had the claimant fill out a pain diagram to show the parts of her body where she was experiencing pain. According to Dr. Walsh, the claimant marked her

entire body except her chest and abdomen. He opined that this was nonphysiologic because typically patients have pain in a nerve distribution.

¶ 48 He opined that some of the claimant's complaints might be related to her weight and that her pain complaints were not causally connected to the work accident. During his evidence deposition, the following colloquy took place:

"Q. The Commission has already made a determination with respect to the petitioner's diagnosis up until May 7th of 2004. As of May 7th of 2004, do you have an opinion as to whether the [claimant] was suffering from any ailments as a result of the 2002 accident?

A. There is no evidence in the medical record the patient sustained any permanent ailment as a result of the accident in 2002, so any symptoms after 2004 more likely than not are unrelated to the accident and not causally related to the injury described.

* * *

[T]he basis for the opinion is review of the medical records. When the patient was seen and evaluated at MercyWorks, she was diagnosed with multiple contusions. It is not at all likely the patient would have pain in 2010 as a result of a contusion in 2002. There's no such thing as an eight-year-old contusion. So *** there's certainly no causal connection between the symptoms I was seeing her for in 2010 and the injury described.

* * *

So her subjective complaints when I saw her were certainly not causally related to the injury described. And there's nothing in the medical record by any of her other treating physicians that would suggest she has a permanent condition as a result of her contusion."

¶ 49 Dr. Walsh opined that the claimant had "reached maximum medical improvement with regards to the injury in 2002" and that "[n]o additional treatment is necessary."

¶ 50 At the request of her attorney, in May 2008, the claimant submitted to a medical examination conducted by an occupational medicine specialist, Dr. Thomas E. Cronin. Dr. Cronin testified at the second 19(b) hearing by way of an evidence deposition. Dr. Cronin examined the claimant, reviewed her medical records, and diagnosed her as having chronic pain syndrome, myofascial disorder of the cervical, thoracic, and lumbar spine. He opined that the conditions were related to her workplace accident. He believed that the claimant was unable to work and needed "continuing medical care." He disagreed with Dr. Spencer's opinion that the claimant exhibited symptom magnification.

¶ 51 When Dr. Cronin reexamined the claimant in May 2010, he further opined that the workplace accident aggravated the claimant's preexisting degenerative changes in her lumbar spine and that the claimant developed "reactive depression" as a result of her chronic pain syndrome. He agreed with Dr. Anichini's opinions and disagreed with Dr. Walsh's opinions.

¶ 52 At the request of the employer, the claimant submitted to an examination by a pain medicine specialist, Dr. Howard Konowitz. Dr. Konowitz noted that the claimant's complaints were diffuse myofascial pain, but objectively he could only find myofascial

complaints when he palpated her cervical spine and trapezius muscles. Therefore, he did not believe that the claimant had fibromyalgia. He suggested medication and an interferential unit for localized pain complaints. He believed that the claimant could work light duty and recommended repeating an FCE.

¶ 53 The claimant underwent another FCE on February 9, 2012. The claimant complained of constant pain in her neck, back, legs, as well as pain and weakness in her hands. The evaluator concluded that the results of the FCE were valid and placed the claimant at the sedentary-physical-demand level.

¶ 54 The arbitrator conducted a second 19(b) hearing over the course of three hearing dates: December 9, 2011, and March 14 and 15, 2012. At the hearing, the claimant testified that she continues to treat with Dr. Anichini for her pain symptoms, and she denied sustaining any subsequent injuries to her upper or lower back, arms, or legs. She testified that her condition had not improved since her work accident on December 11, 2002, and that she continued to have significant pain in her neck, back, arms, legs, and hands, which prevented her from doing "normal every day things that people do around everyday living." She testified that her condition had not gotten any better since 2002. She said that the pain has been the same the whole time, but was worse at times.

¶ 55 In ruling on the claimant's second 19(b) petition, the arbitrator noted that the Commission's previous 19(b) decision was the law of the case. Therefore, the arbitrator concluded that "the law of the case doctrine precludes a redetermination of whether [the claimant's] complaints of musculoskeletal/myofascial pain in her neck, back, legs and arms are causally related to the work accident." The arbitrator, however, adopted "the

opinions of Dr. Walsh to the extent they do not conflict with the law of the case" and concluded that the claimant "reached maximum medical improvement by September 1, 2004, having undergone two sets of MRI studies, physical therapy, pain management in the form of various medications and trigger point injections and having consulted a neurologist, a rheumatologist and an orthopedic surgeon." The arbitrator concluded that "[t]here is no credible work-related explanation in the record for [the claimant's] escalating complaints."

¶ 56 The claimant appealed the arbitrator's decision to the Commission, which affirmed and adopted the arbitrator's decision. One commissioner dissented. The dissenting commissioner believed that the arbitrator went "far a field in trying to alter" the Commission's first 19(b) decision on the issue of causation which, the dissenter noted, was confirmed by the circuit court. The dissenting commissioner stated that "there is more evidence now than in 2004 that [the claimant's] work injury has not resolved; Dr. Konowitz, Dr. Cronin, and Dr. Anicini [*sic*] all recognize an ongoing recovery."

¶ 57 The claimant appealed to the circuit court, which confirmed the Commission's decision. The circuit court stated "[t]hat following a review of the September 1, 2004, MMI date there is found to be adequate basis in fact for the Commission's decision." The circuit court added that "[i]t is the responsibility of the trier of fact to resolve questions of credibility and they adopted the opinion of Dr. Walsh noting that the treating physician's opinions were not credible."

¶ 58 The claimant now appeals the circuit court's judgment. The claimant argues that the Commission's relitigation of the issue of causation in the second 19(b) hearing

violated the law-of-the-case doctrine and, alternatively, that the Commission's decision was against the manifest weight of the evidence. We agree with the claimant's argument that the Commission violated the law-of-the-case doctrine.

¶ 59

ANALYSIS

¶ 60 Under the law-of-the-case doctrine, once an issue is litigated and decided, that ends the matter and the unreversed decision of a question of law or fact made during the course of the litigation settles that question for all subsequent stages of the suit. *Irizarry v. Industrial Comm'n*, 337 Ill. App. 3d 598, 606, 786 N.E.2d 218, 224 (2003). The doctrine is based on sound policy that after an issue has been litigated and decided, the finding or ruling should be the end of the disputed issue; an unreversed resolution of an issue of law or fact, made during the course of litigation, settles that issue for all subsequent stages of the litigation. *Id.*

¶ 61 "A party's failure to challenge a legal decision when it had the opportunity to do so renders that decision the law of the case for future stages of the same litigation." *People ex rel. Department of Public Health v. Wiley*, 348 Ill. App. 3d 809, 817, 810 N.E.2d 614, 621 (2004). A decision becomes binding for future stages of the same litigation when there is an opportunity to challenge the decision and further review is not sought. *Id.* The principles underlying the law-of-the-case doctrine should be applied to matters resolved in proceedings before the Commission. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 252, 899 N.E.2d 365, 374 (2008).

¶ 62 An example of the application of the law-of-the-case doctrine in a workers' compensation proceeding is found in *Help At Home v. Illinois Workers' Compensation*

Comm'n, 405 Ill. App. 3d 1150, 943 N.E.2d 644 (2010). In that case, after a 19(b) hearing, an arbitrator found that the claimant sustained injuries to her low back and right shoulder that arose out of and in the course of her employment. *Id.* at 1150-51, 963 N.E.2d at 645. The Commission, however, found that the claimant failed to prove a causal connection with respect to her right shoulder injury, but affirmed and adopted all other aspects of the arbitrator's decision. *Id.*, at 1151, 943 N.E.2d at 645. The Commission remanded the matter to the arbitrator with directions that the arbitrator "may consider any additional evidence with respect to the causal connection of the right shoulder to the accident." *Id.*

¶ 63 The employer appealed the Commission's decision, arguing that the law-of-the-case doctrine precluded the Commission from remanding the matter to the arbitrator for further evidence with respect to the issue of causation as it related to the claimant's shoulder injury. We agreed. *Id.* We noted that the Commission found that the claimant failed to prove causation with respect to the shoulder injury, and the claimant did not seek judicial review of that finding. *Id.* at 1151-52, 943 N.E.2d at 646. We concluded, therefore, that this determination "became the law of the case, and the claimant is barred from raising the issue of a causal connection between her right shoulder injury and the accident *** during any further proceedings on remand." *Id.* at 1152, 943 N.E.2d at 646. We held that, as a matter of law, the Commission had no authority to allow the arbitrator on remand following the 19(b) hearing to consider further evidence relating to a causal connection between the work accident and the conditions of ill-being in the claimant's right shoulder. *Id.*

¶ 64 *Irizarry* provides another example in which this court applied the law-of-the-case doctrine following a 19(b) hearing. In that case, the employee injured multiple parts of his body, including his left knee, neck, right shoulder, and low back, in a work-related accident. *Irizarry*, 337 Ill. App. 3d at 599, 786 N.E.2d at 219. The matter proceeded to a 19(b) hearing, and the arbitrator found in favor of the employee and awarded him TTD benefits and medical expenses. *Id.* The employer did not appeal the arbitrator's decision.

¶ 65 Later, the employee's claim proceeded to a second 19(b) hearing. *Id.* at 602, 786 N.E.2d at 221. At this second 19(b) arbitration hearing, the arbitrator found that the employee's conditions of ill-being with respect to his left leg, neck, right shoulder, and back were causally related to the workplace accident. *Id.* at 605, 786 N.E.2d at 223-24. This portion of the arbitrator's decision was final and reviewable, but the employer did not file a petition for review; therefore, this portion of the arbitrator's decision became the conclusive decision of the Commission. *Id.*

¶ 66 However, when the matter later proceeded to a final hearing, the arbitrator awarded the employee permanent partial disability benefits for his left leg, but denied the claimant's claim with respect to his neck, right shoulder, and back, finding that those conditions were not causally related to the work accident. *Id.* at 605-06, 786 N.E.2d at 224. The Commission adopted the arbitrator's decision and found that no causal connection existed between the work accident and any injuries to the claimant's neck, low back, and right shoulder. *Id.* The *Irizarry* court held that this finding was "inconsistent with the Commission's section 19(b) decisions." *Id.* at 606, 786 N.E.2d at 224. This court, therefore, applied the law-of-the-case doctrine and reversed the Commission. *Id.* at

606-07, 786 N.E.2d at 224-25. In reversing the Commission, the court explained as follows:

"At the section 19(b) stage, [the arbitrator] determined that a causal connection existed between [the employee's] industrial accident and the alleged injuries to his left knee, neck, right shoulder, and back. The determination became a final judgment from which [the employer] did not appeal. The determination thus became the law of the case, and [the employer] was barred from raising the causation issue again during the final proceeding. Accordingly, [the arbitrator] and the Commission erred in revisiting the issue." *Id.*

¶ 67 The court also noted that "[t]he Commission discounted the aforementioned injuries by finding that they were never causally connected to [the employee's] industrial accident, not by finding that their former connection to the accident had ceased at some point without later resuming." *Id.* at 607, 786 N.E.2d at 225. "Only the latter finding could sustain the result the Commission reached." *Id.*

¶ 68 In the present case, in the first 19(b) hearing, the Commission found that the claimant's conditions of ill-being, *i.e.*, persistent pain in her back, neck, and extremities, were causally related to her December 2002 workplace accident. In making this finding, the Commission considered the claimant's testimony during which she described her pain symptoms, the opinions of the claimant's treating physicians, Drs. Anichini and Wojcik, and the contrary opinions of the employer's IME doctor, Dr. Spencer.

¶ 69 At that time, the pain that the claimant began to experience after her workplace accident had not subsided. The claimant's physician, Dr. Anichini, testified that the pain

was real and was causally related to the accident. The employer's expert, Dr. Spencer, opined that the claimant's complaints were "nonspecific" and "incompatible with any focal underlying injury that might or could have occurred to her on 12/11/02." The Commission resolved this conflict of evidence against the employer, finding that the claimant had experienced and continued to experience the pain that she reported and that her conditions of ill-being were caused by the workplace accident. The circuit court confirmed the Commission's decision, and the employer did not seek further review of the Commission's findings in this first section 19(b) hearing.

¶ 70 The Commission's findings in the first 19(b) hearing on issues concerning the conditions of ill-being that the claimant suffered as a result of the work accident became the law of the case with respect to her conditions up to the date of the first 19(b) hearing, which was May 7, 2004. The Commission awarded the claimant TTD benefits from the date of the accident to the date of the hearing. After May 7, 2004, the claimant's complaints of neck, back, arm, and leg pain remained persistent and unresolved. In addition, the claimant did not incur any further accidents.

¶ 71 At the second 19(b) hearing, the Commission revisited the issue concerning whether the claimant's persistent pain since the accident was causally related to the accident. However, the Commission relitigated the issue only with respect to the claimant's condition as of September 1, 2004. The Commission ultimately ruled against the claimant, finding that her conditions of ill-being after September 1, 2004, were not causally related to the accident. In doing so, the Commission adopted the "opinions of Dr. Walsh to the extent that they do not conflict with the law of the case."

¶ 72 The Commission's analysis with respect to the law-of-the-case doctrine is flawed, however, because Dr. Walsh's opinion, in substance, is the same as Dr. Spencer's opinion, the basis of which was rejected by the Commission in the first 19(b) hearing and not subject to relitigation under the doctrine. At the first 19(b) hearing, Dr. Spencer opined that the claimant's pain symptoms were not related to the workplace accident because there was "no evidence of any underlying focal injury or abnormalities referable to the fall that occurred on 12/11/02." Likewise, at the second 19(b) hearing, Dr. Walsh's opinion that the claimant's pain symptoms were unrelated to the workplace accident was based on his observation that "[t]here is no evidence in the medical record the [claimant] sustained any permanent ailment as a result of the accident in 2002." Dr. Walsh's opinion was, in substance, identical to the rejected opinion of Dr. Spencer offered at the first 19(b) hearing.

¶ 73 In an effort to comply with the law-of-the-case doctrine, the Commission limited its reliance on Dr. Walsh's opinion to only the claimant's conditions after September 1, 2004. The Commission, however, did not identify a basis in Dr. Walsh's opinion for a finding that the previously found causal connection between the claimant's pain and the workplace accident ceased during the period of May 7, 2004, through September 1, 2004. Neither the Commission nor Dr. Walsh articulated anything that occurred during this time frame that resulted in a break of the causal chain, such as a new accident or injury or a recovery. Instead, the Commission merely adopted Dr. Walsh's opinion with the vague reference, "to the extent that it does not violate the law-of-the-case doctrine."

¶ 74 There is no aspect of Dr. Walsh's causation opinion that does not violate the law-of-the-case doctrine. The doctor expressly stated that his causation opinion was based on his conclusion that the claimant recovered from her injury "weeks" after the work accident and that the claimant had reached MMI in 2002. Specifically, he wrote in his IME report that "[m]ore likely than not, the [claimant] reached maximal medical improvement with regards to her alleged injury when she concluded treatment at MercyWorks in the *weeks* following her alleged injury." (Emphasis added.) He added that the "ongoing care and treatment provided to the [claimant] over the years is not causally related to an injury in 2002." At the first 19(b) hearing, however, the Commission rejected the employer's assertion that the claimant recovered from her injury in the weeks following her accident. Instead, the Commission found that at the time of the first 19(b) hearing, which was held in May 2004, the claimant continued "to experience neck and back pain, with tingling and burning from the back of neck down to the middle of her buttocks, and bilateral shoulder pain" as a result of the workplace injury. At the second 19(b) hearing, the law-of-the-case doctrine required the Commission to reject Dr. Walsh's opinion which was contrary to this factual finding.

¶ 75 Dr. Walsh did not identify any event, injury, or medical findings during the period between May 7, 2004, and September 1, 2004, that would have broken the established causal connection between the claimant's neck, back, leg, and arm pain and the workplace accident. Instead, his opinion was merely a renewal of the same opinion offered by Dr. Spencer. The Commission's reliance on Dr. Walsh's opinion, therefore, violated the law-of-the-case doctrine because it is inconsistent with its prior 19(b) decision

¶ 76 The employer cites *Weyer v. Illinois Workers' Compensation Comm'n*, 387 Ill. App. 3d 297, 900 N.E.2d 360 (2008), in support of its argument that the Commission did not violate the law-of-the-case doctrine. *Weyer* is distinguishable from the facts of the present case.

¶ 77 In *Weyer*, the employee incurred injuries to his left shoulder and low back in a workplace accident, and in a 19(b) hearing, the Commission found that the claimant's left shoulder injuries were causally related to the workplace accident, but his low back condition was not. *Id.* at 298, 900 N.E.2d at 362. Neither party sought judicial review of the Commission's decision. *Id.* At a second, subsequent 19(b) hearing, the Commission found that the claimant failed to prove that a new condition of the claimant's left shoulder was causally related to the work accident. *Id.* at 305-06, 900 N.E.2d at 367-68. The employee argued that this finding was contrary to the law-of-the-case doctrine. *Id.* at 306-07, 900 N.E.2d at 368.

¶ 78 The specific injury at issue in the second 19(b) hearing was a SLAP (Superior Labrum from Anterior to Posterior) lesion of the claimant's left shoulder glenoid labrum. *Id.* at 304-05, 900 N.E.2d at 366-67. The arbitrator did not address this specific injury during the first 19(b) hearing. An MRI taken prior to the first 19(b) hearing revealed that the claimant's left shoulder glenoid labrum was intact. *Id.* at 301, 900 N.E.2d at 364. The lesion was diagnosed more than two years after the work injury. *Id.* at 308, 900 N.E.2d at 369. In addition, there was conflicting evidence concerning whether the SLAP lesion was related to the work accident. *Id.* at 304-05, 900 N.E.2d at 366-67. The

arbitrator found that the SLAP lesion was unrelated to the workplace accident, and the Commission affirmed. *Id.* at 305-06, 900 N.E.2d at 367-68.

¶ 79 On appeal, the court rejected the employee's argument that the finding was contrary to the law-of-the-case doctrine. *Id.* at 306-07, 900 N.E.2d at 368-69. The court disagreed with the employee because the issues relating to the SLAP lesion were addressed for the first time in the second 19(b) arbitration hearing; the SLAP lesion was not addressed during the first 19(b) hearing. Therefore, the arbitrator did not "reverse" herself in finding that the employee failed to prove that the SLAP lesion was causally connected to the work accident. *Id.* at 307-08, 900 N.E.2d at 369.

¶ 80 The present case is distinguishable from *Weyer* because in the second 19(b) hearing, with respect to her neck, back, leg, and arm pain, the claimant did not seek benefits for a new injury that was previously undiagnosed. At the first 19(b) hearing, the Commission found that the claimant continued "to experience neck and back pain, with tingling and burning from the back of neck down to the middle of her buttocks, and bilateral shoulder pain" from the time of the accident up to the date of the hearing. The issues in the second 19(b) hearing concerned the same, continuing symptoms. The new opinion that the Commission relied on in denying causation after September 1, 2004, was the opinion of Dr. Walsh, which, as noted above, was based on facts that the Commission had previously rejected during the first 19(b) hearing, *i.e.*, that the claimant recovered from her injury in 2002, weeks after the accident, when she treated with MercyWorks.

¶ 81 "The purpose of the law of the case doctrine is to protect settled expectations of the parties, ensure uniformity of decisions, maintain consistency during the course of a

single case, effectuate proper administration of justice, and bring litigation to an end." *Petre v. Kucich*, 356 Ill. App. 3d 57, 63, 824 N.E.2d 1117, 1122 (2005). The doctrine's purpose also includes avoidance of indefinite relitigation of the same issues. *In re Christopher K.*, 217 Ill. 2d 348, 365, 841 N.E.2d 945, 956 (2005). The law-of-the-case doctrine is a "long-established" doctrine. *People v. McNair*, 138 Ill. App. 3d 920, 922, 486 N.E.2d 941, 943 (1985). At the first 19(b) hearing, the Commission made factual conclusions concerning the causal connection between the claimant's work accident and her persistent neck, back, leg, and arm pain. The Commission's requirement that the claimant prove causation a second time in the second 19(b) hearing in light of Dr. Walsh's opinion violated this long-established doctrine's prohibition of indefinite relitigation of issues.

¶ 82 Accordingly, we must reverse the circuit court's judgment that confirmed the Commission's decision, vacate the Commission's decision, and remand this cause to the Commission for further proceedings. On remand, we direct the Commission to exclude Dr. Walsh's reports, testimony, and opinions from its consideration. We remand this claim to the Commission for a redetermination of all of the issues presented at the second 19(b) hearing, including the claimant's entitlement to further TTD benefits and medical expenses, whether the claimant has reached MMI, and the claimant's entitlement to the vocational assessment ordered by the Commission in the first 19(b) proceeding.

¶ 83

CONCLUSION

¶ 84 For the foregoing reasons, we reverse the circuit court's judgment, vacate the Commission's decision, and remand the matter to the Commission for further proceedings consistent with this decision.

¶ 85 Reversed and remanded with directions.