

No. 1-14-0871WC

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ST. ALEXIUS MEDICAL CENTER,)	Appeal from the Circuit Court
)	of Cook County.
)	
Appellant,)	
)	
v.)	No. 13 L 50821
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	Honorable
)	Edward S. Harmening,
(Zofia Brzyska, Appellee).)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* The judgment of the circuit court was affirmed where the Commission's decision finding that the claimant's right shoulder injury was causally connected to her employment and its award of temporary total disability benefits were not against the manifest weight of the evidence. Additionally, the Commission's award of penalties and attorney fees was not against the manifest weight of the evidence or an abuse of discretion.
- ¶ 2 St. Alexius Medical Center (St. Alexius) appeals from the circuit court order which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) awarding the claimant, Zofia Brzyska, benefits, penalties, and attorney fees pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)). For the reasons that

follow, we affirm the judgment of the circuit court and remand the cause to the Commission for further proceedings.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing on February 28, 2013.

¶ 4 The claimant testified that she was employed by St. Alexius as a housekeeper assigned to clean patient rooms. Her duties included mopping floors, changing bed linens, cleaning bathrooms, removing trash, and sanitizing rooms.

¶ 5 It is undisputed that, on March 31, 2010, the claimant suffered a compensable workers' compensation injury when she fell while working at St. Alexius and injured her right shoulder. Thereafter, the claimant treated with Dr. Keith Schroeder, who performed a debridement of a superior labral anterior posterior (SLAP) lesion, subacromial decompression, and rotator cuff repair on June 29, 2010. On September 13, 2010, the claimant was released to light-duty work.

¶ 6 According to the claimant, when Dr. Schroeder released her to work on a light-duty basis, he restricted her from performing any overhead activity, pushing, pulling, climbing, repetitive motions, and lifting over five pounds. Dr. Schroeder's letter to St. Alexius, dated September 13, 2010, set forth these restrictions. He also sent a letter on that date to Lisa Stedding, St. Alexius's workers' compensation adjuster, updating her on the claimant's condition and work restrictions. Although she was released for light-duty work, the claimant continued with outpatient physical therapy treatment as ordered by Dr. Schroeder and used pain medication as needed. The claimant testified that when she returned to work on September 14, 2010, she was assigned light-duty tasks.

¶ 7 It is undisputed that the claimant was paid TTD benefits between June 29, 2010, and September 13, 2010, and that the claimant worked at her full rate of pay beginning on September 14, 2010.

¶ 8 On October 25, 2010, the claimant treated with Dr. Schroeder, who informed her that, if motion did not return to her shoulder, she would need a procedure called a "manipulation." Dr. Schroeder ordered that the claimant refrain from lifting over 10 pounds and continued his prior restrictions of no overhead activity, pushing, pulling, climbing, or repetitive motions. He also recommended that the claimant continue with physical therapy and pain medication as needed. Dr. Schroeder also wrote a letter to Stedding on that date providing an update on the claimant's condition.

¶ 9 When the claimant saw Dr. Schroeder on December 6, 2010, and January 17, 2011, he again advised her that she may need a manipulation procedure. Dr. Schroeder again wrote a letter to Stedding updating her on the claimant's status and noting that the claimant was to continue with physical therapy, pain medication as needed, and working within her current restrictions.

¶ 10 The claimant testified that, in January 2011, she was assigned to her previous duties cleaning patient rooms. When asked whether she was able to perform her duties, the claimant testified that she "had to" perform her duties because "they told" her that she had to do the work. She explained that many of the tasks required to clean a patient room involved bending, pushing and pulling with both hands.

¶ 11 On February 26, 2011, Dr. Schroeder recommended that the claimant undergo a functional capacity evaluation (FCE). He wrote to Stedding, informing her that the claimant's symptoms had improved, but that she continued to have limited internal rotation "up the back."

¶ 12 The claimant had the FCE recommended by Dr. Schroeder on March 23, 2011. The therapist's report of that evaluation, states that the claimant would benefit from continued rehabilitation therapy and that her work restrictions should include limitations on: lifting 20 pounds from floor to waist on an occasional basis; lifting 10 pounds from waist to shoulder on an occasional basis; overhead lifting to 8 pounds on an occasional basis; and prolonged overhead activities which should include resting periods.

¶ 13 The claimant testified that, in April 2011, she was assigned to a special project which required her to clean baseboards, chairs, and "everything at the bottom" of the entire waiting room. The project took two consecutive days and, according to the claimant, her hand started to "hurt very much." The claimant stated that she told her supervisor about the pain and asked her supervisor to review her work restrictions. According to the claimant, her work restrictions were not honored on a consistent basis.

¶ 14 Dr. Schroeder's office notes, dated April 18, 2011, state that the claimant's daughter called with concerns that the claimant was being asked to perform tasks exceeding her work restrictions. Dr. Schroeder advised the claimant's daughter to make an appointment so that they could discuss the current FCE results.

¶ 15 Angela Lumpkin, the claimant's supervisor at St. Alexius, testified that she was responsible for scheduling and ensuring that there was sufficient staff to maintain the cleanliness of the facility. Lumpkin stated that, when the claimant returned to light-duty work, she had other staff members assist the claimant in completing the duties that she could not perform. However, those staff members were also responsible for performing their own assignments in addition to assisting the claimant. According to Lumpkin, housekeepers, including the claimant, were responsible for cleaning bathrooms, mopping floors, and sanitizing everything in each room,

including beds and furniture. Lumpkin admitted these tasks require bending, leaning, and reaching motions along with pushing and pulling on a mop with both hands.

¶ 16 Lumpkin testified that she was aware that the claimant had injured her shoulder at work in March 2010 and that, when she returned in September of that year, she was only to work on a light-duty basis. According to Lumpkin, her supervisor, Pat Broden, was given a copy of the claimant's written work restrictions. Broden verbally informed Lumpkin that the claimant was not allowed to lift over 15 pounds and was to refrain from frequent bending. Lumpkin denied that the claimant was ever asked to perform tasks in excess of her work restrictions, but she admitted that the claimant continued to perform most tasks related to her original duties. She testified that she usually assigned light-duty housekeepers to the lobby area so they would not have to clean patient rooms. However, when the claimant returned to work, she was assigned to duties on the patient floors. According to Lumpkin, she tried to accommodate the claimant's work restrictions, including having other employees lift heavy linen or garbage bags for her. Lumpkin testified that the claimant never complained to her that she was being required to perform tasks that exceeded her work restrictions.

¶ 17 The claimant next saw Dr. Schroeder on April 21, 2011. Following a physical examination of the claimant, Dr. Schroeder noted that she was improving, but continued to have limited right shoulder rotation up the back. Dr. Schroeder amended the claimant's work restrictions to include resting periods for prolonged overhead activities and scheduled a follow-up visit in one month. Dr. Schroeder wrote a letter to Stedding informing her of the claimant's amended work restrictions as suggested in the recent FCE report. He also wrote a letter to St. Alexius on that same date, stating that the claimant was currently under his care and setting forth her current work restrictions.

¶ 18 The claimant admitted that she did not keep her next scheduled appointment with Dr. Schroeder. She testified that she was still experiencing pain, but that she "had to work."

¶ 19 On July 21, 2011, the claimant was treated at St. Alexius for nausea, vomiting, and diarrhea, but she was not treated for any shoulder complaints.

¶ 20 On August 17, 2011, the claimant went to the St. Alexius emergency room (ER) complaining of a persistent nosebleed. She testified that she also told the ER personnel that, when she woke up the day before, her shoulder pain had worsened. However, the ER report of that visit states that the claimant presented with a "moderate nosebleed" and with "no additional symptoms."

¶ 21 The claimant testified that, while working on August 20, 2011, her supervisor told her to clean several rooms and take out the garbage located in the nursery. After completing her assigned tasks, the claimant went to the St. Alexius ER that same day. She presented with a fever and complaining of weakness and pain in her right shoulder which had begun the day before. The claimant testified that the pain which she experienced that day was the same pain that she had been experiencing since her surgery, only much worse. An x-ray of the claimant's right shoulder taken that day did not reveal any fractures; however, degenerative changes and evidence of a possible "manifestation of inflammatory arthritis process" or "postoperative change" were noted. The claimant was treated with pain medication and told to follow-up with Dr. Schroeder.

¶ 22 On August 22, 2011, the claimant saw Dr. Schroeder, who ordered her to stop working. He also ordered that the claimant have an MRI of her shoulder and an updated FCE. Dr. Schroeder provided Stedding with an update on the claimant's status in a letter of the same date.

¶ 23 On September 14, 2011, the claimant had the MRI as ordered. In a report of that scan, the radiologist noted extensive postoperative changes, edema in the shoulder joint, an interstitial tear of the supraspinatus tendon, and a possible focal tear of the biceps tendon and infraspinatus tendon.

¶ 24 The claimant was seen by Dr. Schroeder on September 17, 2011. The doctor's office notes of that visit state that he administered an injection of Depo-Medrol to the claimant's right shoulder and instructed her to follow-up in four to six weeks. He continued to recommend a manipulation procedure if motion did not return to the claimant's shoulder joint. In a letter to Stedding, Dr. Schroeder set forth the results of the claimant's MRI and informed her of the injection to the claimant's shoulder.

¶ 25 The claimant next saw Dr. Schroeder on October 10, 2011. Dr. Schroeder noted that she had localized swelling in her shoulder, adhesive capsulitis (also known as "frozen shoulder") and a possible infection. He recommended an incision and drainage procedure, outpatient physical therapy, and ordered her to remain off of work. Dr. Schroeder sent a letter to Stedding updating her on the claimant's condition and informing her of a possible infection in the claimant's right shoulder.

¶ 26 On October 11, 2011, Dr. Schroeder performed an incision and drainage procedure on the claimant's right shoulder to treat the infection. The claimant was also treated by an infectious disease specialist.

¶ 27 An October 12, 2011, report by Dr. Percival Bigol, the claimant's primary care physician, states that the claimant's shoulder condition improved after surgery, but she began having problems again, causing her to seek ER care in August. Dr. Bigol stated that, two days before she went to the ER, the claimant woke up with significant pain and redness and saw Dr.

Schroeder, who operated on her shoulder to drain an infection. He advised that the claimant follow up with Dr. Schroeder and with Dr. Ahmed, an infectious disease specialist.

¶ 28 On December 31, 2011, the claimant saw Dr. Schroeder, who again recommended that she stay off work and continue physical therapy. Dr. Schroeder sent a letter to Peggy Tompkins, also one of St. Alexius's workers' compensation adjustors, with an update on the claimant's condition.

¶ 29 The claimant next saw Dr. Schroeder on February 9, 2012. During that visit, Dr. Schroeder recommended that the claimant have additional surgery as her MRI revealed edema and an interstitial tear of the supraspinatus. The claimant told Dr. Schroeder that she wanted to proceed with the surgery. Dr. Schroeder wrote a letter to Tompkins advising her of his surgical recommendation and the claimant's desire to proceed.

¶ 30 On February 27, 2012, St. Alexius informed the claimant that she was terminated.

¶ 31 The claimant testified that she had not received any workers' compensation benefits from St. Alexius since she stopped working on August 22, 2011.

¶ 32 On March 12, 2012, at the request of St. Alexius, the claimant was examined by Dr. M. Bryan Neal, an orthopedic surgeon. Dr. Neal issued a report on that same day outlining the claimant's medical records which he reviewed and the results of his physical examination of the claimant. Based upon his review of the claimant's medical records, Dr. Neal concluded that she had reached maximum medical improvement (MMI) from her work-related injuries by April 21, 2011. His conclusion in this regard was based upon his belief that the claimant had completed her rehabilitation by that date, she had an FCE, she was allowed to work, and had been released from care by Dr. Schroeder. When deposed, Dr. Neal testified to his belief that the claimant had been released to full duty work by Dr. Schroeder on April 21, 2011. In his report, Dr. Neal

wrote that "[b]y all accounts," the claimant had "clinically plateaued" and had reached MMI by April 21, 2011, from the injuries which she sustained as a result of her work accident of March 31, 2010. According to the report, the claimant "spontaneously" developed right shoulder pain in August 2011, "for which repeat imaging revealed a rotator cuff tear;" and it was the treatment of this "new problem," the injection of September 17, 2011, that led to the infection in the claimant's right shoulder and the need for surgical intervention. Dr. Neal testified that the claimant developed this "new condition of her shoulder" around August 19, 2011. He opined that she developed "sudden, acute right shoulder pain" on that day which "was spontaneous and without documented trauma but which was an acute change from her previous status." Dr. Neal stated that the claimant had a "full thickness right shoulder rotator cuff tear, [and] arthrofibrosis with significant loss of motion" caused by the "ill effects of the secondary infection which followed a steroid injection of 9-17-11 given for *** probable adhesive capsulitis." According to Dr. Neal, the re-tearing of the claimant's rotator cuff is not related to her March 31, 2010, work injury, and the subsequent injection, infection, and additional surgery are, therefore, unrelated as well.

¶ 33 On cross-examination, Dr. Neal admitted that someone with a previous rotator cuff tear was more susceptible to subsequent tears. However, he believed that the tendon should be stronger after repair, not weaker, and that the claimant's 2010 surgery had successfully repaired her rotator cuff tear. When asked whether a person could tear a rotator cuff in her sleep, Dr. Neal stated that it was possible, but rare. He also stated that such a spontaneous tear was more likely to occur in a patient with diabetes, which the claimant had been diagnosed with several years earlier.

¶ 34 When the claimant saw Dr. Schroeder on June 4, 2012, he ordered another MRI. Dr. Schroeder's notes of that visit state that the claimant's symptoms had remained unchanged.

¶ 35 The claimant underwent the MRI ordered by Dr. Schroeder on June 8, 2012. The radiologist's report states that the scan revealed "marked atrophy of the supraspinatus, infraspinatus and teres minor muscles," and "proximal extra-articular biceps tendinosis."

¶ 36 On January 9, 2013, the claimant saw Dr. Anthony Romeo at her counsel's recommendation. Dr. Romeo stated that he reviewed the claimant's medical records and examined her. He noted that, after injuring her shoulder while working in 2010, the claimant had surgery, continued under the care of Dr. Schroeder, and returned to work with restrictions. According to Dr. Romeo, the claimant developed increased shoulder pain, prompting Dr. Schroeder to order a new MRI in 2011, which revealed a "re-tear of her rotator cuff and/or nonhealing event." Dr. Romeo stated that Dr. Schroeder treated the tear with a subacromial injection, which possibly caused the subsequent infection. He stated that "[d]ue to her surgical treatment of her shoulder, [the claimant] may have been more prone to seeding an infection to that shoulder as well." Dr. Romeo's "diagnostic impression" was a "[n]onhealing event/re-tear of her right rotator cuff with a history of previous infection." He noted that the claimant is "currently left with a large massive rotator cuff tear and a very stiff and frozen shoulder." Dr. Romeo recommended that the claimant undergo a right shoulder arthroscopy with extensive debridement, possible rotator cuff repair and possible capsular release. The claimant's other option was to "live with her current condition."

¶ 37 The claimant testified that she currently does not have the strength in her shoulder to perform basic tasks, such as dressing herself, combing her hair, cleaning, carrying bags, or showering in the same manner as she did before she injured her shoulder on March 31, 2010.

¶ 38 Following an emergency hearing held pursuant to section 19(b-1) of the Act (820 ILCS 305/19(b-1) (West 2010)), the arbitrator awarded the claimant temporary total disability (TTD) benefits for the weeks between June 29, 2010, and September 13, 2010, and between August 22, 2011, and March 13, 2013. The arbitrator further ordered St. Alexius to pay all reasonable and necessary medical expenses incurred by the claimant and prospective medical treatment, as recommended by Dr. Romeo. Additionally, the arbitrator found that St. Alexius's failure to pay TTD benefits between August 22, 2011, and March 13, 2013, and certain medical expenses was unreasonable, vexatious, and in bad faith. As a consequence, the claimant was awarded penalties pursuant to section 19(k) (820 ILCS 305/19(k) (West 2012)) in the amount of \$15,004.87; penalties pursuant to section 19(l) (820 ILCS 305/19(l) (West 2012)) in the amount of \$10,000; and attorney fees pursuant to section 16 (820 ILCS 305/16 (West 2012)) in the amount of \$6,001.95.

¶ 39 St. Alexius filed for a review of the arbitrator's decision before the Commission. With one commissioner partially dissenting solely on that portion of the decision awarding penalties and attorney fees, the Commission affirmed and adopted the arbitrator's decision and remanded the matter pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 40 St. Alexius sought a judicial review of the Commission's decision in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 41 For its first argument, St. Alexius asserts that the Commission's finding that the claimant's current condition of ill-being is causally related to her work injury of March 31, 2010, is against the manifest weight of the evidence. We disagree.

¶ 42 The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of her claim. *O'Dette v. Industrial Comm'n*,

79 Ill. 2d 249, 253 (1980). Included within that burden is proof that her current condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Even though an employee has a preexisting condition which may make her more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Id.* at 205. "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." (Emphasis in original.) *Id.*

¶ 43 Whether a causal relationship exists between a claimant's employment and her condition of ill-being is a question of fact to be resolved by the Commission, and its determination of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. For a finding of fact to be against the manifest weight of the evidence, a conclusion opposite to the one reached by the Commission must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether a reviewing court might have reached the same conclusion is not the test of whether the Commission's determination on a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 44 In support of its argument that the Commission's causation finding is against the manifest weight of the evidence, St. Alexius relies chiefly upon Dr. Neal's causation opinion and points to the fact that the claimant's condition had improved until the sudden onset of pain in August

2011. However, the Commission found that Dr. Neal's opinions were not credible or persuasive. As the arbitrator's decision which was adopted by the Commission observed, Dr. Neal was under the mistaken belief that as of April 21, 2011, the claimant had been released from care by Dr. Schroeder and authorized to return to full-duty work. The decision also notes the absence of any evidence to support Dr. Neal's conclusion that claimant "spontaneously" developed a "new condition of her shoulder" around August 19, 2011.

¶ 45 As noted earlier, it is the Commission's function to judge the credibility of witnesses and determine the weight to be given their testimony. *O'Dette*, 79 Ill. 2d at 253. Although Dr. Neal provided the sole causation opinion, the Commission is not bound by unrebutted medical testimony. *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1042 (1999). Based upon the record before us, we are unable to conclude that the Commission's rejection of Dr. Neal's causation opinions is against the manifest weight of the evidence. The record simply belies Dr. Neal's belief that the claimant had been authorized to return to full-duty work or that Dr. Schroeder had released her from care by April 21, 2011. And, as the Commission's decision points out, there is no evidence of any intervening cause of the claimant's condition of ill-being which developed on or before August 19, 2011.

¶ 46 The Commission found that the claimant's current condition of right shoulder ill-being is causally related to her accident while working on March 31, 2010. Our reading of the record reflects more than sufficient evidence to support the Commission's finding in this regard. The claimant testified that she continued to experience pain in her right shoulder from the time of her surgery on June 29, 2010, through her ER visit on August 20, 2011. According to the claimant, the pain in her right shoulder that she experienced on August 20, 2011, was the same pain that she had been experiencing since her surgery, only worse. She denied that any other incident

caused the pain in her shoulder. The claimant testified that, when she woke up on August 19, 2011, the pain was worse. The claimant was specifically found to have testified credibly. The record also reflects that, from April 29, 2010, through October 13, 2013, the claimant was under the continuous care of Dr. Schroeder for her right shoulder injury. He advised her on at least six occasions from October 25, 2010, through September 17, 2011, that she might be required to undergo a manipulation procedure if motion did not return to her right shoulder. The doctor's records reveal that, following her surgery on June 29, 2019, the claimant's ability to rotate her right arm was limited. Although Dr. Schroeder released the claimant to return to work from September 14, 2010, through August 22, 2011, she was only authorized to work in a light-duty capacity with specific restrictions. The claimant was never released to return to full-duty work. Additionally, she continued to undergo physical therapy and was prescribed pain medication. We believe that these facts support the conclusion that the claimant was never pain-free following her work related accident on March 31, 2010, and that the exacerbation of that pain in August of 2011, was not the result of any "new condition of her shoulder" that "spontaneously" developed around August 19, 2011; but rather, as the Commission found, "the natural, albeit unfortunate, progression of the underlying injury, which occurred on March 31, 2010."

¶ 47 The foregoing analysis leads us to conclude that the Commission's causation determination is supported by competent evidence and an opposite conclusion from that reached by the Commission on the issue is not clearly apparent. Consequently, we are unable to conclude that the Commission's finding that the claimant's current condition of right shoulder ill-being is causally related to her work accident of March 31, 2010, is against the manifest weight of the evidence.

¶ 48 In a related argument, St. Alexius also contends that the Commission's award of TTD benefits to the claimant for the period following August 20, 2011, and the Commission's order that it pay for medical expenses incurred following that date is against the manifest weight of the evidence. However, its argument in this regard rests entirely upon its argument addressing the Commission's causation finding. For the same reasons that we rejected St. Alexius's argument addressed to the Commission's finding as to causation, we also reject its argument addressed to the Commission's award of TTD benefits and medical expenses.

¶ 49 Next, St. Alexius contends that the Commission erred when it awarded penalties under sections 19(l) and 19(k) and attorney fees under section 16 of the Act. Our analysis of the issue begins with a recognition that the standard for granting penalties under section 19(l) of the Act differs from the standard for granting penalties under section 19(k) and attorney fees under section 16.

¶ 50 Section 19(l) of the Act provides that:

"In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of \$30 per day for each day that the benefits *** have been so withheld or refused, not to exceed \$10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." 820 ILCS 305/19(l) (West 2012).

¶ 51 The additional compensation or penalties authorized under section 19(l) are in the nature of a late fee. *McMahan v. Industrial Comm'n*, 182 Ill. 2d 499, 515 (1998). The assessment of a penalty under section 19(l) is mandatory if the payment is late, and the employer or its insurer

cannot show an adequate justification for the delay. *McMahan*, 182 Ill. 2d at 515. The standard for determining whether an employer has "good and just cause" for a delay in payment is defined in terms of reasonableness. *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC (2011), ¶ 20. "The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified." *Id.* "Generally, an employer's reasonable and good-faith challenge to liability does not warrant the imposition of penalties." *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 763 (2003). When the employer delays in the payment of benefits in reliance upon a reasonable medical opinion, penalties under section 19(1) are ordinarily not imposed. *Mechanical Devices*, 344 Ill. App. 3d at 763. The question of the reasonableness of the employer's delay is a question of fact that will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Jacobo*, 2011 IL App (3d) 100807WC (2011), ¶ 20.

¶ 52 St. Alexius argues that the evidence of record provides a valid basis for its delay in payment of benefits after August 20, 2011. It contends that from April 21, 2011, until August 20, 2011, the claimant had not sought any medical care for her right shoulder injury, and it was unaware that she was having any difficulty performing her work duties. St. Alexius also argues that it was objectively reasonable for it to rely upon Dr. Neal's opinion that the claimant's right shoulder condition post August 19, 2011, was unrelated to her March 31, 2010, work injury.

¶ 53 The Commission determined that St. Alexius's delay in payment was unreasonable under the circumstances. We defer to the Commission's resolution on the issue of reasonableness unless it is against the manifest weight of the evidence.

¶ 54 The record reflects that, as of August 20, 2011, the claimant had not been released from care by Dr. Schroeder, and he had not found her to have reached MMI. As of April 21, 2011, Dr. Schroeder was reporting that the claimant, although improving, still exhibited a limited range of motion in her right shoulder, and there is no evidence that the condition had improved by August 2011. As of September 17, 2011, Dr. Schroeder was still recommending a shoulder manipulation procedure if motion did not return to the claimant's right shoulder joint. Additionally, there is no evidence in the record of any intervening event that St. Alexius was aware of in August 2011 which was responsible for the claimant's increased shoulder pain. As for Dr. Neal's causation opinion, we note that it was first rendered on March 12, 2012, and could not have formed the basis of a delay in the payment of TTD benefits beginning in August of 2011 or a delay in the payment for medical services rendered from August 2011 through February 2012.

¶ 55 We believe that these facts are sufficient to support the Commission's determination that St. Alexius's failure to pay TTD benefits to the claimant beginning in August 2011 and its failure to pay for medical services rendered to the claimant was not objectively reasonable. Consequently, we are unable to find that the Commission's award of penalties pursuant to section 19(l) of the Act is against the manifest weight of the evidence.

¶ 56 The standard for awarding penalties under section 19(k) and attorney fees under section 16 of the Act is higher than the standard under section 19(l). Sections 19(k) and 16 require more than an unreasonable delay in payment. *McMahan*, 183 Ill. 2d at 514-15. These sections of the Act are "intended to address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose." *McMahan*, 183 Ill. 2d at 515.

¶ 57 As stated, section 19(l) penalties are mandatory; whereas, the imposition of penalties under section 19(k) and attorney fees under section 16 is discretionary. *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 24. Consequently, our review of the Commission's award of penalties and fees under sections 19(k) and 16 of the Act involves a two-part analysis. *Id.*, ¶ 25. First, we must determine whether the Commission's findings that the facts justify section 19(k) penalties and section 16 fees are contrary to the manifest weight of the evidence. *Id.* Second, we must determine whether it was an abuse of discretion to award such penalties and fees under the facts presented. *Id.*

¶ 58 Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under 19(k) is appropriate. 820 ILCS 305/16 (West 2012). Section 19(k) of the Act provides that:

"In case[s] where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation *** then the Commission may award compensation additional to that otherwise payable under the Act equal to 50% of the amount payable at the time of such award." 820 ILCS 305/19(k) (West 2012).

¶ 59 As to the propriety of the Commission's award of section 19(k) penalties and attorney fees under section 16, St. Alexius presents the same arguments that it relied upon in seeking reversal of the penalties awarded pursuant to section 19(l).

¶ 60 Regarding the first prong of our analysis, we have already determined that the Commission's finding that St. Alexius's delay in paying the claimant's benefits was unreasonable, is not contrary to the manifest weight of the evidence. Additionally, for the reasons stated earlier, we have concluded that the Commission's rejection of Dr. Neal's causation opinions is not against the manifest weight of the evidence. In our analysis of the propriety of the award of

section 19(l) penalties, we noted that prior to Dr. Neal's opinions which were rendered on March 12, 2012, nothing in the record could reasonably support the conclusion that the condition of the claimant's right shoulder of which she complained on and after August 20, 2011, was not causally related to her work accident on March 31, 2010. The claimant had not been released from care by Dr. Schroeder, she had not reached MMI, Dr. Schroeder was still reporting that the claimant continued to exhibit a limited range of motion in her right shoulder, Dr. Schroeder was still recommending a shoulder manipulation procedure if motion did not return to the claimant's right shoulder joint, and there is no evidence of any intervening event that St. Alexius was aware of in August 2011 which was responsible for the claimant's increased shoulder pain. Finally, also as noted earlier, Dr. Neal did not render his causation opinions until March 12, 2012; and, as a consequence, his opinions could not have formed the basis of a reasonable refusal to pay TTD benefits beginning in August of 2011 or a refusal to pay for medical services rendered to the claimant from August 2011 through February 2012. Absent Dr. Neal's opinion, the only evidence which St. Alexius points to as a justification for its failure to pay benefits to the claimant after August 20, 2011, is the fact that she did not see Dr. Schroeder or obtain other medical treatment for her right shoulder from April 21, 2011, to August 20, 2011, and that she had been working in a light-duty capacity during that period without complaint. However, based on a review of the record as a whole, we do not believe that those circumstances could support a reasonable belief that the condition of the claimant's right shoulder for which she sought treatment on August 20, 2011, was not causally related to the injury she sustained on March 31, 2010.

¶ 61 We conclude, therefore, that the Commission's determination that St. Alexius's refusal to pay TTD benefits after August 20, 2011, and its refusal to pay for medical services rendered to

the claimant from August 2011, through February 2012, was not in good faith is not against the manifest weight of the evidence. Accordingly, we find that the Commission did not abuse its discretion when it awarded the claimant section 19(k) penalties and section 16 fees.

¶ 62 Affirmed and remanded.