2015 IL App (1st) 141723WC-U

NO. 1-14-1723WC

Order filed: September 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

GLORIA GARCIA,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County.
	)	
v.	)	No. 13-L-50757
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Carl Walker,
(ITW Paslode, 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*: The Workers' Compensation Commission had jurisdiction to consider the claimant's second section 19(h) petition, which was filed within 30 months from the date of the Commission's decision granting her first section 19(h) petition. The Commission's finding that the claimant failed to meet her burden of establishing a material change in her condition since the Commission's decision granting her first section 19(h) petition was not against the manifest weight of the evidence.

¶ 2 The claimant, Gloria Garcia, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 1998)), seeking benefits for injuries she sustained while working for the employer, ITW Paslode (Paslode). At the arbitration hearing, the parties stipulated that, on August 27, 1999, the claimant sustained accidental injuries arising out of and in the course of her employment with Paslode. The arbitrator found, *inter alia*, that the claimant proved that her current condition of ill-being was causally related to the accidental injuries and that the injuries sustained caused permanent disability to the extent of 35% loss of use of her right arm. She appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision on October 21, 2004.

¶ 3 On November 23, 2004, she filed a timely petition for review under sections 19(h) and 8(a) of the Act (820 ILCS 305/19(h), 8(a) (West 2002)), seeking additional permanency and medical expenses. On August 8, 2008, after a hearing, the Commission granted her section 19(h) petition, finding that she sustained a material increase in her disability to the extent of an additional 15% loss of use of her right arm. The Commission also granted, in part, her section 8(a) petition for additional medical expenses. She filed a timely petition for judicial review in the circuit court of Cook County, which confirmed the Commission's decision.

¶ 4 On August 30, 2010, she filed a second section 19(h) petition for review, seeking an additional 7.5% loss of use of her right shoulder. After a hearing, the Commission denied her petition, finding that she failed to prove a material increase in her condition.

She filed a timely petition for judicial review in the circuit court of Cook County, which confirmed the Commission's decision. She filed a timely appeal. We affirm.

¶ 5 BACKGROUND

¶ 6 On January 21, 2000, the claimant filed an application for adjustment of claim, seeking benefits for injuries she sustained while working for Paslode. At the January 22, 2004, arbitration hearing, the parties stipulated that on August 27, 1999, the claimant sustained accidental injuries arising out of and in the course of her employment with Paslode. She testified that on that date she was holding a screwdriver in her right hand and trying to remove screws from tools when her hand started swelling and she began experiencing pain in her right arm and shoulder. She denied any right arm problems before that date.

¶ 7 She first sought treatment on August 31, 1999, at Lake Forest Hospital Occupational Health Service. She was diagnosed with right arm and shoulder strain, placed on restricted duty, given medication, and referred for physical therapy. When she resumed working on September 17, 1999, her hand became swollen and she began experiencing pain radiating up her arm into her shoulder.

¶ 8 She was referred to Dr. Christ Pavlatos of Lake Forest Orthopaedic Associates. When she saw him on November 2, 1999, he diagnosed her with right shoulder impingement with mild paraspinal muscle tenderness of the neck. He imposed work restrictions and treated her with physical therapy, anti-inflammatory medication, and cortisone injections, but her symptoms persisted. After a January 18, 2000, right

shoulder MRI scan, he diagnosed her with a rotator cuff tear and acromioclavicular (AC) joint pain. On March 29, 2000, he performed a right shoulder arthroscopy with decompression and rotator cuff repair. When she continued complaining of pain after the surgery, he treated her with Vicodin and more physical therapy. On May 22, 2000, he gave her a cortisone injection into the AC joint. He released her to work two weeks later but indicated that she could only perform office duties. On July 24, 2000, he released her to work four hours per day with no lifting over 10 pounds and no work above waist level. On July 27, 2000, she went to the emergency room, complaining of pain and swelling in her arm after resuming work, and was given Vioxx for pain. When she saw Dr. Pavlatos the next day, he kept her off work for 10 days and prescribed Flexeril for muscle spasms.

¶ 9 On August 17, 2000, she saw Dr. John Brna, who works with Dr. Pavlatos, for back and shoulder blade pain and numbness in her arm while working. He kept her off work for three weeks and ordered physical therapy. When she saw him again on September 7, 2000, he noted that she had an excellent range of motion and was gaining strength. He recommended one more physical therapy session and released her to full duty as of September 28, 2000. When she returned on September 28, 2000, complaining of severe shoulder pain, he noted that this was her pattern as a chronic pain patient and that he thought her shoulder was completely healed. He encouraged her to take over-the-counter medication and go back to work. He offered her no further treatment.

¶ 10 When she saw Dr. Pavlatos again on October 10, 2000, he found that she had reached maximum medical improvement (MMI). However, because of her continued

complaints of pain, he thought she should be evaluated by a pain management physician, and he referred her to Dr. Ronald Pawl at Lake Forest Hospital Center for Rehabilitation.

¶ 11 She saw Dr. Pawl on October 19, 2000, complaining of shoulder pain, radiating down her back in the thoracic and lumbar area to her right lower extremity and tingling in the entire right side, including the upper and lower extremity. On November 7, 2000, she reported that she was unable to do household activities, was waking up every night, could not sleep on her right side, and was unable to do things she could do before the accident. On November 8, 2000, she was diagnosed with myofascial pain syndrome, pain disorder associated with psychological factors, and depression. She was prescribed an antidepressant and began an outpatient pain management program, which included physical and occupational therapy, psychological counseling, and biofeedback sessions. She was discharged from the pain management program on January 24, 2001, after 10 weeks. In a January 24, 2001, letter to Dr. Brna, Dr. Dinora Ingberman, a doctor at the Center for Rehabilitation, noted that the claimant had not shown consistent efforts in her therapies and had not reported pain improvement after her pain management program.

¶ 12 On February 9, 2001, she returned to Dr. Pavlatos, complaining of right shoulder pain radiating down her extremities. He gave her a cortisone injection into the right AC joint but noted that she was complaining of more pain than he could detect on examination. On February 28, 2001, she reported that she had experienced some pain relief about a week after the injection but that the pain had returned. He offered her the option of undergoing an AC joint resection, but she declined. She saw him again on

March 1, 2001, stating that she wanted to resume full-duty work, and he released her to work "as tolerated." She saw him again on June 28 and August 31, 2001. Noting her persistent AC joint pain, he administered a cortisone injection on August 31, 2001. On September 10, 2001, she reported that the injection had not helped. On September 27, 2001, he wrote her a letter, recommending that she see another orthopedic surgeon because he did not feel he could be of any further benefit to her.

¶ 13 On February 4, 2002, she sought treatment with Dr. Gerald Kane at the Orthopedic Center of Lake County, who prescribed Vioxx. By January 31, 2003, he had diagnosed her with adhesive capsulitis of the right shoulder and recommended manipulation of the shoulder under general anesthesia, which she declined. In a July 10, 2003, report, Dr. Kane noted that she had been treated with anti-inflammatory medication, Neurontin, and physical therapy exercises, but that she had persistent right shoulder pain and limited abduction of about 90 degrees. He listed her diagnoses as degenerative changes in the rotator cuff, glenoid labrum abnormality, and AC joint arthropathy of the right shoulder. He noted that surgery had been advised but that she was unsure about more surgery because the first surgery had not alleviated her condition. He indicated that she was disabled from working because she could not use her arm effectively and could not do any lifting, reaching, carrying, or overhead work.

¶ 14 The claimant testified that she worked at Paslode off and on from the date of the accident until April 3, 2001, but she had not worked since that date. She received temporary total disability benefits while she was off work. She stated that she was

experiencing pain, swelling, and loss of range of motion in her right shoulder and that she was taking pain medication regularly but that the medication did not help her pain.

¶ 15 Dr. Mark Levin conducted an independent medical examination of the claimant on March 28, 2001. In his March 28, 2001, report, he noted that she complained of pain around the front and back of her right shoulder with pain extending up the right side of her neck to her head. She was not on any medication. On examination, she complained of pain with palpation over the entire right cervical paraspinal muscles, from the occiput down to the trapezius area. There was no cervical spasm. She also complained of pain with palpation over the right scalp going up to her right temporal area, in the right trapezius area, and over the right AC joint. Abduction was to 130 degrees on the right and 170 degrees on the left. He noted no asymmetry despite her complaint of right shoulder swelling. He had medical records from 1999 and January 2000. After reviewing a December 2000 MRI scan, he noted minimal signal changes in the rotator cuff. He also noted improvement from a January 2000 MRI scan. He found no objective pathology that could correlate with her marked complaints and found her to be at MMI. He indicated that her current subjective neck and myofascial discomfort could not be related back to her work injury and found nothing to prevent her from working full duty. However, he again noted her subjective discomfort and indicated that he would be glad to review Dr. Pavlatos' and Dr. Pawl's records and comment further. In an April 3, 2001, report, he indicated that he had reviewed additional records from Dr. Pavlatos, Dr. Brna,

Dr. Pawl, and Lake Forest Hospital. He noted Dr. Pavlatos' full-duty release of March 1, 2001. His findings remained unchanged.

¶ 16 In his March 1, 2004, decision, the arbitrator found, *inter alia*, that the claimant proved that her current condition of ill-being was causally related to the accidental injuries sustained on August 27, 1999, and that the injuries sustained caused permanent disability to the extent of 35% loss of use of her right arm. She appealed the arbitrator's decision to the Commission, which affirmed and adopted the arbitrator's decision on October 21, 2004.

¶ 17 On November 23, 2004, she filed a timely petition for review under sections 19(h) and 8(a) of the Act, seeking additional permanency and medical expenses. At the January 14, 2008, hearing on the petition, she testified that she continued receiving treatment for her right shoulder injury after the arbitration hearing. She saw Dr. Kane throughout 2006; underwent additional therapy in 2006; and saw Dr. Peter Snitovsky, who works with Dr. Kane, in 2007. She testified that the pain had been more severe and more frequent since the arbitration hearing. She indicated that the pain was usually very strong in her right shoulder and that she had to sleep on her back. She stated that she had pain when she did simple tasks, such as washing dishes or opening the refrigerator; that she had to sit on her bed to get up; and that her husband sometimes had to help her get dressed. She testified that she had not injured her right arm since the arbitration hearing.

¶ 18 On cross-examination, she testified that she had not worked or sought work since leaving Paslode. She indicated that the pain was worse after the surgery because she

continued working and that, although she was no longer working, the pain was sometimes worse when she tried to wash dishes. She stated that, if she wanted to read a book, she had to put the book on a table because she could not hold it out in front of her. She testified that she was in constant pain even if she was just sitting, doing nothing.

¶ 19 In an October 28, 2003, report, Dr. Kane noted that he first saw the claimant in February 2002, about 2 ½ years after her initial injury and 2 years after her surgery. At that time, she had significant limitation of motion in her right shoulder, significant weakness of external rotation in her right shoulder, "[AC] joint arthropathy with capsular hypertrophy and bony proliferative changes encroaching upon the supraspinatus myotendinous junction," and irregularity in the glenoid labrum. She had been treated with anti-inflammatory medication and exercises to help increase her strength and range of motion in her shoulder and had been given steroid injections in her shoulder.

¶ 20 In an August 26, 2004, report, Dr. Kane noted that the claimant had difficulty raising her right arm and that reaching above 90 degrees caused pain and limitation of use in her right shoulder. He listed her diagnoses as rotator cuff tendinopathy, glenoid labrum abnormality, and AC joint arthropathy of the right shoulder.

¶ 21 In a November 30, 2004, report, Dr. Kane noted that the claimant had received further injections in her right shoulder, but they afforded only temporary relief, and he felt that they should not be given on a regular basis. She was exercising her right shoulder to help increase her range of motion and strength and taking anti-inflammatory medication to diminish the pain. She still had significant limitation of motion in her right

shoulder with definite weakness of external rotation. He had discussed surgery with her to decompress the shoulder and repair the rotator cuff, but she was reticent to undergo another surgery because she did not feel that the first surgery had helped her. He listed her diagnoses as rotator cuff tear of the right shoulder with impingement of the rotator cuff. He noted that she had been unable to return to work, that she had persistent right shoulder problems, that she had increased shoulder pain since being off Vioxx, that she was unable to drive, and that she had persistent weakness and limitation of motion in her right shoulder.

¶ 22 In a July 20, 2007, report, Dr. Snitovsky noted that the claimant reported pain between her scapula and mid-spine going all the way down to the mid-sacral area. She also reported pain over her posterior shoulder and occasional numbness in her right hand. On examination, he noted tenderness over the posterior axillary line, passive range of motion, abduction to 90 degrees and forward flexion to 150 degrees (both with pain), a positive Hawkins sign, and tenderness over the sacrum.

¶ 23 Dr. Jay Pomerance conducted an independent medical examination of the claimant on July 10, 2006. In his report, he noted that she did not bring any of her radiographic studies for his review. During the examination, she complained of right shoulder and anterior chest pain and reported increased pain in her shoulder, neck, and back when she walked. She also mentioned discomfort in her elbow, forearm, and wrist. On examination, he noted marked limitations in neck range of motion. He noted right shoulder motion of 145 degrees of forward flexion, 105 degrees of abduction, 30 degrees

of external rotation, and internal rotation to L5, compared with left shoulder motion of 170 degrees of forward flexion, 165 degrees of abduction, 50 degrees of external rotation, and internal rotation to T10. There was breakaway strength on manual muscle testing of the right upper extremity with 4 out of 5 strength on the left side. There was normal shoulder contour with no atrophy. There were equivocal signs of shoulder impingement but negative drop-arm, sulcus, and Speed's tests. There was diffuse tenderness throughout the shoulder without any one specific area of focal tenderness.

¶ 24 Dr. Pomerance reviewed the claimant's medical records and reports of December 2000 and January 2002 MRI scans. He described her as having a "constellation of clinical complaints" and noted that some of her complaints were "bizarre" and difficult to correlate with any known upper extremity diagnoses, *e.g.*, back pain with elbow motion, shoulder pain with forearm motion, neck pain with wrist motion, and breakaway strength in the right upper arm to manual muscle testing. He indicated that he would await receipt of shoulder and cervical spine MRI scan films and a nerve conduction study and that he would issue an addendum after reviewing those records. He did not believe she would benefit from additional care and described her prognosis as "guarded, at best." He indicated that "[o]ne would have to consider non-organic causes" of her numerous "bizarre" complaints. He opined that she was at MMI. There is no indication that Paslode ever provided him with the additional records he requested.

¶ 25 On August 8, 2008, the Commission granted the claimant's section 19(h) petition, finding that she sustained a material increase in her disability to the extent of an

additional 15% loss of use of her right arm. The Commission also granted, in part, her section 8(a) petition for additional medical expenses but awarded only those expenses for care rendered through July 10, 2006, the date Dr. Pomerance found her to be at MMI. The Commission agreed with Dr. Pomerance that she had reached MMI, noting that she had undergone extensive conservative care since arbitration with little or no improvement. She filed a timely petition for judicial review in the circuit court of Cook County, which confirmed the Commission's decision on November 25, 2009.

¶ 26 On August 30, 2010, she filed a second section 19(h) petition for review, seeking an additional 7.5% loss of use of her right shoulder. At the May 15, 2012, hearing on the petition, she testified that, since the 2008 hearing on the first section 19(h) petition, Dr. Luis Salazar of Provida Family Medicine had been treating her for her shoulder pain. He had been giving her Mobic for pain and Skelaxin to relax her shoulder muscles. She stated that she had not injured her right shoulder since the last hearing. She testified that she had immediate pain in her right shoulder when she reached for something and a very strong pain in her right shoulder no matter what she did. She indicated that the pain was in the front part of her right shoulder and her shoulder blades.

¶ 27 On cross-examination, she testified that her 2001 surgery resulted in a loss of range of motion in her shoulder. She stated that, at the time of the last hearing in 2008, her pain was worse than it was during the 2004 arbitration hearing and that her current pain was more frequent and severe. She acknowledged that, at the time of the last hearing in 2008, her pain was so bad that she had to sleep on her back; she could not

wash the dishes; she felt pain when she tried to open the refrigerator; she could not hold a book; her husband had to help her dress; she took Vicodin, Vioxx, and Flexeril; and she had restrictions consisting of no lifting, reaching, carrying, or overhead work. She also acknowledged that Dr. Salazar had not increased her restrictions since the last hearing.

¶ 28 Her medical records indicate that, on January 28, 2008, she saw Rosalva Acosta, a physician's assistant in Dr. Salazar's office, complaining of arthralgias shoulder pain that had improved with Mobic; insomnia; and headaches when she tried to do any housework, such as washing dishes or bending. Acosta diagnosed her with insomnia, fatigue and malaise, headache, and back pain and continued her on Mobic and Skelaxin.

¶ 29 During an October 27, 2008, follow-up visit, the claimant presented a bill from Dr. Kane listing her diagnoses as shoulder adhesive capsulitis, cervical disc syndrome, shoulder impingement syndrome, low back pain, rotator cuff sprain/strain, and neck sprain/strain. Acosta, therefore, changed her diagnoses to low back pain, adhesive capsulitis shoulder, intervertebral disc disorder of cervical region with myelopathy, other affections of shoulder region, rotator cuff sprain, and acute cervical sprain. During follow-up visits on March 31 and September 29, 2009, the claimant noted that her pain was managed with Mobic and Skelaxin, and the medications were continued.

¶ 30 She saw Dr. Salazar on March 30, 2010, complaining of continued thoracic back, neck, and shoulder pain and reporting that she was waking up once per night to take pain medication. He diagnosed her with osteoarthritis of multiple sites.

¶ 31 On April 14, 2010, she saw Acosta again, reporting that she had a pinched nerve in her back, that her head was swollen and painful, and that she could not even brush her hair. Acosta continued her on Mobic and Skelaxin.

¶ 32 She saw Dr. Salazar again on June 1, 2010, reporting that, as a result of her surgery in 2000, she was unable to abduct her shoulder more than 90 degrees without significant pain and that all of her muscles were painful. He diagnosed her with rotator cuff syndrome and continued her on Mobic and Skelaxin.

¶ 33 On September 13, 2010, she saw Dr. Salazar again, reporting that she was waking up in the night because of the shoulder pain and that she had difficulty staying in one position. Her diagnoses were adhesive capsulitis of the shoulder, rotator cuff sprain, intervertebral disc disorder of cervical region with myelopathy, low back pain, other affections of the shoulder region, and acute cervical sprain. Dr. Salazar continued her on Mobic and Skelaxin.

¶ 34 She saw Dr. Salazar again on October 4, 2010. He diagnosed her with mood disorder and adhesive capsulitis of the shoulder and continued her on Mobic and Skelaxin.

¶ 35 On July 30, 2013, the Commission denied her second section 19(h) petition, finding that she had failed to prove a material increase in her condition. She filed a timely petition for judicial review in the circuit court of Cook County, which confirmed the Commission's decision on May 21, 2014. She filed a timely notice of appeal.

¶ 36 ANALYSIS

¶ 37 Before reaching the merits of the claimant's appeal, we must address Paslode's argument that the appeal should be dismissed because the Commission lacked subject matter jurisdiction over the claimant's second section 19(h) petition because it was filed outside the 30-month period allowed by section 19(h). Section 19(h) of the Act provides, in pertinent part, that any award under the Act providing for compensation in installments "may at any time within 30 months *** after such *** award be reviewed by the Commission at the request of either the employer or the employee on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended." 820 ILCS 305/19(h) (West 2008). The purpose of section 19(h) is to set a period of time in which the Commission may consider whether an injury has recurred, increased, diminished, or ended. *Cuneo Press, Inc. v. Industrial Comm'n*, 51 Ill. 2d 548, 549, 283 N.E.2d 880, 881 (1972). The 30-month period is triggered by the filing of the Commission's decision, and judicial review of the Commission's decision does not toll the 30-month period. *Id.*

¶ 38 The 30-month period "is a jurisdictional requirement that may be raised at any time." *Eschbaugh v. Industrial Comm'n*, 286 Ill. App. 3d 963, 968, 677 N.E.2d 438, 442 (1996). "It is an absolute and unconditional restriction on the right of review." *Id.* Therefore, the Commission is divested of its review jurisdiction for change of disability 30 months after an agreement or award of compensation. *Id.*

¶ 39 Here, the Commission entered its original decision on October 21, 2004, affirming and adopting the arbitrator's decision. Pursuant to section 19(h), either party had 30

months, or until April 21, 2007, to file a petition. See 820 ILCS 305/19(h) (West 2002). The claimant availed herself of this provision and filed a timely petition on November 23, 2004. The Commission entered its decision granting that petition on August 8, 2008, awarding her an additional 15% loss of use of her right arm. She filed a second section 19(h) petition on August 30, 2010, which is the subject of this appeal. She argues that the Commission's August 8, 2008, decision granting her first section 19(h) petition started a new 30-month period within which to file another section 19(h) petition. We agree.

¶ 40 The court addressed this issue in *Hardin Sign Co. v. Industrial Comm'n*, 154 Ill. App. 3d 386, 506 N.E.2d 1066 (1987). There, the claimant filed a second section 19(h) petition more than 30 months after the entry of the original award. *Id.* at 388, 506 N.E.2d at 1067. On appeal, the claimant argued that the Commission's award of additional disability benefits and medical expenses pursuant to his first section 19(h) petition was a new "award," which created a new date from which the 30-month period would begin to run. *Id.* at 389, 506 N.E.2d at 1068. The court agreed, reasoning as follows:

> "In the first section 19(h) petition, claimant sought additional total temporary disability compensation as well as additional medical and incidental expenses because he was experiencing recurrent difficulty from his original injury. After a hearing, the Industrial Commission found a change in circumstances and increased the original award so as to include the additional benefits requested. In this regard, it is our conclusion that section 19(h) of the Act mandates that additional review of an award be encouraged so as to effectuate the purpose and spirit of the

> Act. Furthermore, such method of determination of a claimant's disability eliminates the most difficult problem of attempting to anticipate the progress of a claimant's disability and making a somewhat speculative award to him to cover anticipated increases or decreases in disability. We therefore conclude (1) that no party should be barred from filing more than one section 19(h) petition during the appropriate time limitation, and (2) that the 30-month time limitation provided for in section 19(h) should begin anew from the date of the Industrial Commission's decision on the first section 19(h) petition. Consequently, claimant's second section 19(h) petition was properly and timely filed." *Id.* at 390, 506 N.E.2d at 1069.

¶ 41 In *Behe v. Industrial Comm'n*, 365 Ill. App. 3d 463, 848 N.E.2d 611 (2006), the court further clarified the issue. There, the claimant argued that *Hardin Sign Co.* stood for the proposition that a successive section 19(h) petition would be allowed as long as it was filed within 30 months of the Commission's decision on the prior section 19(h) petition. *Id.* at 467, 848 N.E.2d at 615. The employer disagreed, arguing that, unlike the claimant in *Hardin Sign Co.*, the claimant there was not awarded additional compensation pursuant to his first section 19(h) petition; the limitations period set out in section 19(h), therefore, expired 30 months from the date of the Commission's initial decision; and, because the claimant did not file his second section 19(h) petition within this 30-month period, the Commission lacked jurisdiction to hear his claims. *Id.* The court agreed, noting that the holding in *Hardin Sign Co.* was made in the context of a change in

circumstances that had occurred since entry of the claimant's award. *Id.* In *Behe*, unlike in *Hardin Sign Co.*, the Commission denied the claimant's first section 19(h) petition, finding that he had not proved a change in circumstances warranting an increase in the original award. *Id.* The *Behe* court stated that, in *Hardin Sign Co.*, the "court held that a successive section 19(h) petition filed outside the 30-month limitations period will be permitted only if an award was granted for a change in circumstances on the previous section 19(h) petition." *Id.* at 468, 848 N.E.2d at 615. The *Behe* court held that "the denial of a section 19(h) petition does not toll the 30-month limitations requirement." *Id.*

¶ 42 Here, as in *Hardin Sign Co.*, and unlike in *Behe*, the Commission granted the claimant's first section 19(h) petition, awarding her an additional 15% loss of use of her right arm. Therefore, the 30-month time limitation set out in section 19(h) began anew from the date of the Commission's decision granting her first section 19(h) petition, her second section 19(h) petition was timely filed, and the Commission had jurisdiction to consider it. See *Hardin Sign Co.*, 154 Ill. App. 3d at 390, 506 N.E.2d at 1069.

¶ 43 We now turn to the merits of the claimant's appeal. She argues that the Commission's finding that she failed to meet her burden of establishing a material change in her condition since the Commission's 2008 decision was against the manifest weight of the evidence. We disagree.

¶ 44 In a section 19(h) proceeding, the issue is whether the employee's disability has recurred, increased, diminished, or ended since the award. *Howard v. Industrial Comm'n*, 81 Ill. 2d 50, 59, 405 N.E.2d 750, 755 (1980). The evidence presented in prior

proceedings is relevant in determining whether the employee's condition at the time of the award has changed. *Id.* at 60, 405 N.E.2d at 755. To warrant a modification in benefits, the change in condition must be material. *Motor Wheel Corp. v. Industrial Comm'n*, 75 Ill. 2d 230, 236, 388 N.E.2d 380, 382 (1979).

¶ 45 Whether there has been a sufficient change in the employee's disability to warrant a modification of the award is an issue of fact for the Commission. *Howard v. Industrial Comm'n*, 89 Ill. 2d 428, 430, 433 N.E.2d 657, 659 (1982). 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 v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006).

¶ 46 Here, the Commission's finding that the claimant failed to prove a material change in her condition since the Commission's 2008 decision is not against the manifest weight of the evidence. She bases most of her argument of a material change on an alleged new diagnosis of adhesive capsulitis. This argument is belied by the medical records. During the arbitration hearing, she offered Dr. Kane's medical records, which demonstrate that by January 31, 2003, he had diagnosed her with adhesive capsulitis of the right shoulder and recommended manipulation of the shoulder under general anesthesia, which she declined. In addition, the arbitrator's March 1, 2004, decision, which was affirmed and adopted by the Commission on October 21, 2004, notes that she "sought treatment with Dr. Kane, who evaluated her for the first time on February 4, 2002[,] and diagnosed right rotator cuff impingement and prescribed medication; later, Dr. Kane diagnosed adhesive

capsulitis of the right shoulder and recommended manipulation of the shoulder under general anesthesia, which [she] declined." The record demonstrates that she has suffered from adhesive capsulitis dating back to at least January 31, 2003, which was before the initial arbitration hearing. Therefore, Dr. Salazar's current diagnosis of adhesive capsulitis represents no change in her condition.

¶ 47 In support of her argument that her condition has progressively worsened since the 2008 hearing on her first section 19(h) petition, she also notes that she cannot abduct her right shoulder more than 90 degrees without significant pain. However, as far back as July 10, 2003, Dr. Kane noted that she had persistent right shoulder pain and limited abduction of about 90 degrees. Thus, the fact that she cannot abduct her right shoulder more than 90 degrees without significant pain represents no change in her condition.

¶ 48 In denying her second section 19(h) petition, the Commission noted that she continued to treat with Dr. Salazar and continued to take Skelaxin and Mobic as she was at the time of her first section 19(h) hearing. The Commission found that the medical evidence demonstrates that she was taking those medications for her neck and low back issues as well as for her shoulder pain. The Commission observed that, before the first section 19(h) hearing, she had pain; she had issues opening the refrigerator, holding a book, and doing dishes; and she had restrictions, such as no lifting, reaching, carrying, or overhead work. The Commission noted that, during the second section 19(h) hearing, she testified that she experienced pain no matter what she did and that her restrictions had remained the same as they were after the first section 19(h) hearing. The Commission

found no objective evidence to support a finding that her condition had materially increased since the first section 19(h) hearing, noting that her subjective complaints were substantially the same as her complaints before the first section 19(h) hearing. Therefore, the Commission found that she failed to prove a material increase in her condition. There is ample evidence in the record to support the Commission's finding that she failed to show a material change in her condition since the Commission's 2008 decision, granting her first section 19(h) petition.

¶ 49 CONCLUSION

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

¶ 51 Affirmed.