2015 IL App (5th) 140487WC-U

Workers' Compensation
Commission Division
Order Filed: November 6, 2015

No. 5-14-0487WC

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IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ROYCE McCAIN,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Madison County.
	)	
v.	)	No. 13-MR-44
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*,	)	Honorable
	)	Donald M. Flack,
(Kellermeyer Building Services, 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 Commission's decision which found that (1) the claimant's current condition of ill being is unrelated to his work accident, (2) the claimant is only entitled to temporary total disability benefits through December 7, 2011, and (3) the claimant is not entitled to maintenance benefits or vocational rehabilitation is not against the manifest weight of the evidence.

¶ 2 The claimant, Royce McCain, appeals from an order of the circuit court of Madison County which confirmed a decision of the Illinois Workers' Compensation Commission which found, *inter alia*, that: his current condition of ill-being is not related to his accident while working for Kellermeyer Building Services (Kellermeyer) on October 29, 2010; he is only entitled to temporary total disability (TTD) benefits pursuant to section 8(d) of the Workers' Compensation Act (Act) (820 ILCS 305/8(d) (West 2010)) for the period from October 29, 2010, through December 7, 2011; and he is not entitled to maintenance benefits or vocational rehabilitation. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following facts are taken from the evidence adduced at the arbitration hearing conducted on May 17, 2013. We begin with facts regarding a prior work-related injury sustained by the claimant that is relevant to this case. On August 9, 2007, the claimant was on the job working for a prior employer, Haas Environmental at Granite City Steel (Haas), when he suffered an accident causing injury to his left lower back and left leg. The claimant's treating physician, Dr. David Raskas, diagnosed him with an L5-S1 disc protrusion and radiculopathy. After conservative treatment failed, the claimant underwent three back surgeries with Dr. Raskas: December 3, 2007, March 18, 2008, and September 3, 2008. The December 3, 2007, surgery included an L5-S1 microdiscectomy and laminotomy and L5-S1 microdissection with removal of herniated disc. The claimant's disc herniation recurred, however, and on March 18, 2008, Dr. Raskas performed an L5-S1 complete discectomy with decompression, an L5-S1 anterior lumbar fusion, and inserted a cage at L5-S1.

¶ 4 On August 26, 2008, a CT scan disclosed a bulging, degenerative disc at L3-L4 and L4-L5 disc space. The surgery of September 3, 2008, consisted of a revision of the previous laminectomy, a microdissection and neurolysis. Dr. Raskas's notes from that surgery state that

the neurolysis accomplished a meticulous removal of the scar tissue over the S1 nerve root. The doctor also noted that he "swept the spinal canal *** [and] [t]here was no loose tissue or compression on the nerve root." Post-operatively, Dr. Raskas diagnosed the claimant with nerve damage to his S1 nerve root and chronic neuropathic pain. He recommended a trial dorsal column stimulator, stating that, in the event the trial was successful and the claimant received a permanent implant, he may be able to return to medium duty work. The claimant elected to forego this procedure, however, and according to Dr. Raskas's notes, "to live with the symptoms in his leg, taking narcotic medication."

¶ 5 On April 1, 2009, Dr. Raskas found the claimant to be at maximum medical improvement (MMI) and released him from treatment subject to permanent restrictions of no lifting, pushing, pulling over 20 pounds or repetitive bending, turning or twisting at the waist. The claimant was also ordered to change positions in standing or sitting and to walk every 15 minutes. Dr. Raskas limited the claimant to four hours of work per day, five days per week.

¶ 6 According to the claimant's testimony, his condition improved significantly after he was released from care by Dr. Raskas. The claimant stated that he was able to "have a normal life," weaning himself off of his medications and resuming playing sports, including softball and basketball. He testified that he never returned to work at Haas because of a layoff. Acting *pro se*, the claimant settled his prior workers' compensation claim, obtaining permanent partial disability (PPD) benefits for 72% loss of man as a whole in the amount of $107,829, plus prior advances.

¶ 7 In February of 2010, the claimant returned to full-duty work as a custodian when he was hired by Eurice Cleaning Services (Eurice) to work at a department store. In his testimony, the claimant emphasized that he was able to resume his work duties without any limitations.

According to the claimant, he believed that Dr. Raskas's permanent job restrictions of April 1, 2009, pertained only to his employment at Haas. The claimant admitted that, for this reason, he did not subsequently observe the permanent work restrictions placed by Dr. Raskas.

¶ 8 In July of 2010, Kellermeyer succeeded Eurice to the contract with the department store, and the claimant, then age 36, began employment with Kellermeyer as the head custodian. He described his job responsibilities as mopping, cleaning windows (at times on a ladder), cleaning floors with a scrubber, buffing floors, unloading and stocking supplies. On October 29, 2010, the claimant was working in the restroom of a store when he slipped on some soap on the floor and fell to the ground. The claimant testified that, as he fell, his right leg "went up in the air" and his head and shoulder hit the edge of the sink. The claimant heard a "pop" and remained on the floor, using his cell phone to contact the manager on duty for help. He described his pain as primarily on his right side with a little bit on his left. The claimant's manager referred him to Concentra Medical Center for treatment.

¶ 9 At Concentra, the claimant was seen by Dr. Gary Gray, who reported that the claimant had suffered contusions of the head, right shoulder and right thoracolumbar region and a muscular strain of the right lower extremity. According to Dr. Gray's medical records, the claimant reported pain of 8.5 on a scale of 10 over the upper thoracic and upper and lower lumbar areas. Dr. Gray also observed that, in the supine position, the claimant could perform right straight leg raises to only 80 degrees before complaining of pain; whereas, inconsistently, he had no trouble lifting his leg while in a sitting position. Dr. Gray treated the claimant with acetaminophen and an ice pack and returned him to work at full duty. However, several hours after being released, the claimant telephoned Dr. Gray and reported that he could not work and that he was going to the emergency room. The claimant testified that he was continuing to have

pain in his lower right back and lower right buttock radiating down his right leg. Dr. Gray's medical records state that the doctor felt an emergency room visit was unnecessary based upon the claimant's symptoms, and he advised the claimant against it. The claimant proceeded to the emergency room of Memorial Hospital where his lumbar spine was x-rayed, disclosing no compression fracture and a fairly well-preserved disc height with no abnormal soft tissue. He was diagnosed with lumbosacral strain, prescribed pain medication and released.

¶ 10 On November 4, 2010, the claimant sought treatment from his family physician, Dr. Migual Granger, complaining primarily of low back pain. According to Dr. Granger's medical records, a physical examination proved positive for pain with flexion, extension, and rotation of the lumbosacral spine. Dr. Granger recommended physical therapy and took the claimant off of work. He also referred the claimant to an orthopedic surgeon, Dr. Daniel Schwarze.

¶ 11 On December 16, 2010, the claimant was seen by Dr. Schwarze, who diagnosed him with lumbosacral strain, acute sacroiliitis with SI strain, and right sciatica. Dr. Schwarze noted that the claimant described a shooting pain across the small of his back going into the pelvic brim, and pain and numbness radiating down his right leg. A lumbosacral examination disclosed a range of motion of 20% at best. The doctor noted that straight-leg raising caused the claimant excruciating back pain and that the knee/chest position also exacerbated his back and leg pain. The claimant described his work injury of August 9, 2007, and stated that it was completely resolved. Dr. Schwarze ordered a CT scan of the claimant's lumbosacral spine and an EMG and nerve conduction studies of his bilateral lower extremities. He prescribed physical therapy and kept the claimant off of work.

¶ 12 The claimant underwent his CT scan on December 22, 2010, after which the radiologist reported no definite disc protrusion, canal stenosis or foraminal stenosis. There was some soft

tissue noted in the left side of the canal at the L5-S1 level involving the left S1 nerve root; however, the radiologist found that this was likely scar tissue rather than a recurring disc fragment. Dr. Schwarze saw the claimant again on January 13, 2011, and noted that the claimant had "refused his diagnostic [neurological] workup." The doctor reported that the claimant moved about the room rigidly with a limited range of motion. Straight leg raising was positive on the right; however, muscle strength testing and light touch sensation were both inconsistent. At that time, the claimant requested to be reevaluated by his former spine surgeon Dr. Raskas. Dr. Schwarze noted that he supported this request.

¶ 13 On January 10, 2011, the claimant saw Dr. James Doll, a physiatrist, for an examination pursuant to section 12 of the Act (820 ILCS 305/12 (West 2010)). The doctor obtained a medical history from the claimant and reviewed various medical records that the claimant provided to him. He noted a complete resolution of the claimant's head, shoulder and thoracic contusions resulting from his work injury of October 29, 2010. Dr. Doll reported that the claimant initially denied any prior lower back problems, but subsequently admitted having a L5-S1 spine fusion in 2007.

¶ 14 Dr. Doll noted that the claimant complained of ongoing low back pain of 7 to 8.5 out of 10, which is made worse with sitting, standing, lying flat, bending, lifting and twisting. Upon examination, the doctor reported a positive result with regard to passive trunk rotation and axial compression and a moderately reduced lumbar range of motion. However, Dr. Doll noted that the claimant's physical examination findings were unremarkable from an objective standpoint, and that the diagnostic testing he underwent failed to reveal any objective abnormalities associated with the injury of October 29, 2010. The doctor expected that the claimant would be at MMI after six additional sessions of physical therapy. Dr. Doll stated that, in his opinion, the

claimant's condition warranted neither surgical intervention nor lumbosacral injections, nor should they be anticipated in relation to the claimant's October 29 work injury. However, he recommended that, after the claimant completed the 6 sessions of physical therapy, he be subject to certain activity restrictions, including no lifting of greater than 10 pounds, alternating sitting and standing, and avoiding repetitive bending, twisting and squatting activities.

¶ 15 On January 31, 2011, the claimant returned to Dr. Granger for a follow-up examination, at which time the doctor noted pain with rotation and flexion which was radiating down the right lower extremity. Dr. Granger referred the claimant to Dr. David Kennedy, a neurosurgeon.

¶ 16 On February 24, 2011, the claimant was seen by Dr. Kennedy. On examination, Dr. Kennedy found the range of motion of the claimant's lumbar spine to be about 50% in forward flexion. Straight-leg raising was equivocally positive on the right side but negative on the left. Dr. Kennedy diagnosed the claimant with a lumbar strain with right-sided sciatic features. He authorized him to remain off of work, and recommended a lumbar myelogram with a follow-up CT scan in order to identify structural abnormalities in more detail, particularly with respect to nerve root compression. Dr. Kennedy noted that, "based on the available information," he attributed the claimant's symptoms and need for treatment to his work accident of October 29, 2010.

¶ 17 On June 9, 2011, the claimant underwent the myelogram and CT scan. The myelogram revealed mild degenerative disc disease changes at the L1-L2, L2-L3, and L3-L4 disc spaces. It was observed that the right L5 nerve root sheath filled to a lesser degree than the left L5 nerve root sheath. According to the notes of Dr. William Baber, the radiologist who performed the myelogram, the asymmetric filling might be due to previous surgery, but impingement related to L4-L5 disc pathology could not be ruled out.

¶ 18 On September 30, 2011, Dr. Kennedy performed a selective nerve root block at L5-S1 on the right side of the claimant's spine. Following an examination on October 18, 2011, Dr. Kennedy noted that the claimant had not obtained much relief from the initial injection but would likely benefit from additional epidural steroid or trigger point injections. The doctor believed that the claimant was suffering from ongoing right-sided sciatic symptoms, and referred him to Dr. Barry Feinberg.

¶ 19 Dr. Feinberg administered epidural injections to the claimant on both October 26 and November 17, 2011. In his report, Dr. Feinberg noted that the claimant reported pain symptoms of 8.5 on a scale of 10 and suffered from discogenic disease at L5-S1 level. He noted that the claimant's myelogram revealed an L5 nerve root cutoff. According to the claimant's testimony, he experienced only temporary relief following these injections.

¶ 20 Kellermeyer conducted video surveillance of the claimant on October 26 and 27, 2011. The video of October 26 depicted the claimant getting in and out of a vehicle and riding in a vehicle; going down stairs; and talking on his cell phone for prolonged periods of time while on a balcony, intermittently standing, turning, and walking back and forth across the surface. The claimant engaged in each of these activities without any notable pain or difficulty. Then, in the video of October 27, the claimant is observed walking up the stairs with a visible limp that was not present the day before; however, at several points during his ascent, the claimant looks directly at the camera.

¶ 21 At the direction of Kellermeyer, the claimant underwent a second examination by Dr. Doll on December 5, 2011. In addition to performing the examination, Dr. Doll reviewed the claimant's recent medical records and the surveillance videos. According to Dr. Doll's report, the claimant complained of continued lower back pain with right leg symptoms, describing his pain

as an 8 on a scale of 10. The claimant also stated that his pain is worsened by sitting, standing, lying flat, bending, lifting and twisting. The L4-L5 injections failed to substantially help the claimant. On examination, Dr. Doll noted that the claimant was "fidgety and writhing in reported discomfort." The claimant demonstrated a limited ability to bear weight on his right lower extremity and had difficulty sitting squarely in a chair or lying on the examination table due to severe right lumborsacral pain. Dr. Doll was unable to perform a straight-leg raising test on either side because of the claimant's complaints of severe pain at any degree of elevation. In his review of the surveillance videos, Dr. Doll noted that the claimant engaged in numerous activities inconsistent with his complaints of severe lower back pain. Specifically, Dr. Doll observed the claimant standing, descending stairs, and walking without any apparent difficulties other than a mild trace antalgic gait favoring the right leg. Dr. Doll opined that the claimant was at MMI as of December 5, 2011, and that no further medical treatment was required. On December 7, 2011, Kellermeyer terminated the claimant's TTD benefits.

¶ 22 On December 13, 2011, the claimant was seen by Dr. Kennedy who observed that, despite undergoing several spinal injections, the claimant had experienced no lasting relief from his pain symptoms. Dr. Kennedy, therefore, opined that nothing further could be done. The doctor assessed the range of motion in the claimant's back as "fairly good," but noted that the claimant believed his pain precluded him from performing normal activities. Dr. Kennedy recommended that the claimant undergo a functional capacity evaluation (FCE) to ascertain whether there were any permanent restrictions upon the claimant's ability to do his job. In his records of this visit, Dr. Kennedy makes no mention of any surgical recommendation for the claimant.

¶ 23 On March 2, 2012, Benedicte Hanquet, a physical therapist, performed an FCE of the claimant at the request of Dr. Kennedy. She testified that, based upon objective factors such as increased heart rate, she believed the claimant put forth a full physical effort during the evaluation and his reports of pain and disability were reliable. Hanquet opined that the FCE results showed that the claimant could not return to work as a janitor. She recommended work restrictions of no lifting over 31 pounds, no frequent lifting, carrying of 21 pounds only occasionally, and limitations on standing and stooping. Hanquet testified that, in evaluating his own abilities, the claimant perceived himself as meeting the physical demands for light strength work, and that this perception was consistent with the effort he demonstrated during the FCE. Hanquet reviewed the surveillance videos and opined that the claimant's activities were consistent with the restrictions she imposed. She also acknowledged that, when the claimant was on the stairs in the October 27, 2011, tape, it appeared as though he was aware of the fact that he was under surveillance.

¶ 24 The deposition of Dr. Kennedy was admitted into evidence. Dr. Kennedy stated that the CT scan of December 22, 2010, showed the prior history of anterior fusion at L5-S1. The doctor testified that, at that time, he believed the claimant's symptoms were compatible with a lumbar strain with right-sided sciatic features, but that a lumbar myelogram was needed to ascertain whether there was any nerve-root compression on the right side. When the myelogram confirmed the presence of extrinsic nerve compression, Dr. Kennedy recommended selective injections around the L5-S1 nerve root in an effort to combat the claimant's pain. The injections ultimately provided the claimant with only limited relief. Dr. Kennedy acknowledged in his notes from a follow-up visit on December 13, 2011, that there were no further pain procedures that could help the claimant. Dr. Kennedy opined that the only course of treatment that could

help the claimant would be a foraminotomy at L5-S1 on the right side in order to decompress the nerve root. When questioned as to why there is no reference to a foraminotomy in his notes from the December 13, 2011, visit, Dr. Kennedy stated that he was under the impression that this procedure would not be authorized by Kellermeyer. For this reason, he recommended an FCE for the claimant to determine his permanent work restrictions. Although Dr. Kennedy never saw or examined the claimant after the follow-up of December 13, 2011, he reviewed the FCE, and recommended the same work restrictions as Hanquet of no lifting over 31 pounds and only occasional bending, twisting or stooping.

¶ 25 Dr. Kennedy testified regarding correspondence he sent to counsel for Kellermeyer on September 13, 2012, in which he advised that the claimant's myelographic studies revealed evidence of root compression and that his pain was temporarily relieved by the performance of a selective nerve block at L5-S1 on the right side. In the correspondence, Dr. Kennedy opined that the pain "is due to injury to the S1 nerve root from his fall" of October 29, 2010. On cross-examination, Dr. Kennedy confirmed his opinion that the claimant's current lower back symptoms were attributable to his work accident of October 29, 2010. The doctor acknowledged that the June 9, 2011, myelogram also revealed mild degenerative disc disease changes at the L1-L2, L2-L3, and L3-L4 disc spaces, and that this condition was not caused by the work accident. Dr. Kennedy also acknowledged the possibility that the right-side nerve impingement could have been caused by the claimant's 2007 and 2008 back surgeries.

¶ 26 On re-direct examination, Dr. Kennedy explained that the compression at the S1 nerve root was "likely" caused by residual disc material left from the 2007 fusion surgery, and that the claimant "probably dislodged" a piece of the disc material at the time of the fall of October 29, 2010. Dr. Kennedy testified that the claimant's incidence of immediate onset right-sided leg pain

where none existed before, together with the fact that his previous disc issues involved the left leg, led to a conclusion that the work fall caused the external nerve root compression. In explaining his statement in the medical record of December 13, 2011, that there was nothing further that could be done for the claimant, Dr. Kennedy testified that this comment was referring to the absence of any further pain relief procedures, such as injections.

¶ 27 On May 21, 2012, at the direction of his counsel, the claimant was evaluated by Frank Trares, a rehabilitation specialist. Trares was informed of the claimant's back condition and work restrictions and made some recommendations to the claimant as to how to secure employment in a self-directed job search. Trares also suggested a rehabilitation plan. The claimant tendered into evidence job search logs regarding his self-directed job search, which had proved unsuccessful.

¶ 28 In his deposition, Dr. Doll testified consistently with his medical reports and reaffirmed his opinion that the claimant was at MMI as of the date of his examination on December 5, 2011, and that no further treatment was required. In reaffirming his opinions, Dr. Doll noted various inconsistencies in the claimant's reports of pain, and the lack of objective findings supporting the claimant's symptoms as reported in the January 10, 2011, examination. In particular, the doctor testified that the CT scan of December 22, 2010, showed some post-operative soft tissue on the left spine at L5-S1, suspected to be scar tissue; however, there was no disc protrusion or foraminal stenosis on the right which would support the claimant's complaints of pain on the right side of his spine and right extremity. The claimant had full range of motion throughout his lower extremities, and they displayed no abnormal tone or muscle atrophy. The claimant was negative in the straight-leg raise testing, which, according to Dr. Doll, suggested a lack of radiculopathy or of any inflamed or pinched nerve. Dr. Doll also noted that the claimant's

reports of lower back pain and numbness were diffuse in nature, making it difficult or impossible to link his symptoms to any particular nerve root or condition.

¶ 29 With regard to the examination of December 5, 2011, Dr. Doll testified that he could find no real basis for the claimant's reports of worsening right leg pain which was exacerbated by sitting, standing, lying flat, bending, lifting or twisting. For example, the doctor found no muscle spasms, and the x-ray report revealed only mild degenerative and post-operative changes. Based upon his review of the CT/myelogram report of June 9, 2011, Dr. Doll found mild impingement of the right L5 nerve root; however, he described this finding as incidental, because the claimant's examination reports failed to reveal a distribution of symptoms correlating with the L5 nerve root. Dr. Doll also viewed the surveillance videos and noted marked inconsistencies between the claimant's movements and his reported back pain of 8 out of 10. Dr. Doll opined that the lesser filling of the L5 nerve root sheath was not caused by the accident of October 29, 2010, and that there was no residual disc material dislodged as a result of the accident of October 29, 2010. He based his opinion in this regard upon a review of Dr. Raskas's surgical report which stated that all disc material had been removed, and also upon the fact that the nerve block at L5-S1 provided the claimant with little or no relief of his claimed symptoms.

¶ 30 Following a hearing under section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)), the arbitrator issued a decision finding that the claimant sustained injuries resulting from the accident of October 29, 2010, and that the accident arose out of and in the course of his employment with Kellermeyer. The arbitrator awarded the claimant TTD benefits from October 29, 2010, through December 7, 2011. However, the arbitrator found that the claimant failed to prove that the current condition of ill-being of his right lower back or his need for prospective medical care are causally related to his work injury of October 29. Consequently, the arbitrator

denied the claimant TTD benefits after December 7, 2011, and the surgery recommended by Dr. Kennedy. The arbitrator also denied the claimant's request for vocational rehabilitation and maintenance benefits, finding that the claimant failed to prove that his work accident resulted in a reduction of earning capacity. The arbitrator dismissed as not credible the claimant's testimony that he was symptom-free following his 2007 and 2008 back surgeries, and similarly rejected his repeated statements that the work restrictions imposed by Dr. Raskas applied only to his job at Haas. He also found the surveillance videos in which the claimant was able to perform a variety of movements without any observable difficulty to be inconsistent with his complaints of severe lower back pain. Finally, the arbitrator found Dr. Doll's testimony as to causation to be more credible than that of Dr. Kennedy. In particular, he found Dr. Doll's opinion that there was no dislodged disc material at L5-S1 to be consistent with the medical evidence, particularly Dr. Raskas's report.

¶ 31 The claimant sought a review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On February 3, 2014, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision and remanding the matter pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 32 The claimant sought judicial review of the Commission's decision in the circuit court of Madison County. On September 2, 2014, the circuit court entered an order confirming the Commission's decision. The instant appeal followed.

¶ 33 The claimant argues that the Commission's determination that the current condition of ill-being in his right lower back and right leg is unrelated to his work accident of October 29, 2010, is contrary to the manifest weight of the evidence. In support of this argument, he challenges several of the factual findings underlying the Commission's decision. Primarily, he disputes the

Commission's reliance upon the opinion of Dr. Doll over that of Dr. Kennedy, who opined that the claimant's right lower back and right leg symptoms were attributable to his work-related fall of October 29, 2010.

¶ 34 We will not reverse a decision by the Commission unless it is contrary to law or against the manifest weight of the evidence (*Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006)), meaning that no rational trier of fact could have agreed with the outcome. *Dolce v. Industrial Comm'n*, 286 Ill. App. 3d 117, 120 (1996). Whether we may have drawn variant inferences or reached a different conclusion is immaterial; we must defer to the determination of the Commission as long as there is sufficient evidence to support it. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982). Where medical testimony might be construed as conflicting, the resolution of such a conflict falls within the province of the Commission, and its findings will not be reversed unless contrary to the manifest weight of the evidence. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 37 (1982); *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205-06 (2003). Further, in cases involving a preexisting medical condition, the employee must establish that his work-related accident aggravated or accelerated the preexisting injury such that his current condition of ill-being is causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition. *Caterpillar Tractor Co.*, 92 Ill. 2d at 36-37; *Sisbro*, 207 Ill. 2d at 205-06. In addition, liability under the Act cannot rest upon imagination, speculation or conjecture; it must be based upon facts affirmatively connecting the employee's duties as a cause of the resulting injury. *Arbuckle v. Industrial Comm'n*, 32 Ill. 2d 581, 585 (1965); *Chicago Rotoprint v. Industrial Comm'n*, 157 Ill. App. 3d 996, 1000 (1987).

¶ 35 In this case, we see no basis to disturb the Commission's finding that Dr. Doll's opinion was more reliable than that of Dr. Kennedy on the issue of causation of the claimant's current lower back condition. In his first examination of the claimant on January 10, 2011, Dr. Doll noted that the claimant's complaints of severe lower back and leg pain which was confined to his right side. However, he observed that the diagnostic testing of the claimant failed to uncover any objective abnormality arising from his accident of October 29, 2010, which could account for those particular symptoms. Dr. Doll's findings in this regard are consistent with the claimant's medical records. The emergency room x-ray taken on the day of the fall showed no compression fracture or abnormal soft tissue. The CT scan of December 22, 2010, revealed some soft tissue on the left side of the spinal canal which the radiologist thought to be residual scarring from the claimant's surgeries; however, there was an absence of any disc protrusion, canal stenosis or foraminal stenosis. The claimant was subsequently seen by Drs. Granger and Schwarze and obtained a diagnosis from Dr. Schwarze of lumbrosacral strain, sacroiliitis and right sciatica. Both doctors noted the claimant's prior back surgeries and disc pathology, and referred him for physical therapy. However, neither doctor specifically assessed his symptoms as resulting from or being aggravated by his fall of October 29.

¶ 36 Dr. Doll provided detailed testimony regarding inconsistencies in the claimant's descriptions of right-sided pain and numbness, which ultimately could not be reconciled with the objective medical evidence and testing. For example, Dr. Doll pointed out that some of the symptoms the claimant conveyed to him were inconsistent with those reported to Dr. Schwarze, and that the range and diffuseness of symptoms reported to both doctors were difficult to correlate to any particular diagnosis. With regard to his examination of December 5, 2011, Dr. Doll noted that the claimant complained of worsening right-sided pain which increased with

sitting, standing, lying flat, bending, lifting and twisting. However, Dr. Doll again was unable to find physiological evidence, such as muscle spasms or large disc herniation, which would account for these symptoms. Dr. Doll's impressions find support in our review of the surveillance tapes of the claimant. The tape, obtained shortly after the claimant had reported pain of 8.5 on a 10-point scale and an impaired ability to sit or stand for more than several minutes, depicts him standing, turning and walking for extended periods of time, unaided by any device and not in any discernible pain.

¶ 37 The claimant argues that Dr. Doll failed to properly consider the results of his CT scan and myelogram of June 9, 2011, which suggested a right nerve impingement at S-1. He urges that we adopt the opinion of Dr. Kennedy, who, based upon these results, concluded that the claimant's current symptoms were caused by his fall of October 29, 2010. We are not persuaded by the claimant's argument on this point.

¶ 38 In his September 13, 2012, letter to counsel for Kellermeyer, Dr. Kennedy stated that the claimant's lower back and leg symptoms were "due to his injury to the S1 nerve root from his fall" of October 29. Dr. Kennedy reaffirmed this conclusion in his deposition testimony and then opined, for the first time, that the compression at the S1 nerve root was "likely" caused by residual disc material left from the 2007 surgery, and that the claimant "probably" dislodged some disc material during his fall. As observed by the Commission, however, Dr. Raskas's records state that, after the claimant's final surgery of September 3, 2008, there remained "no loose tissue or compression on the nerve root." The CT scan of December of 2010 also showed no disc protrusion but only some loose tissue, most likely scarring from surgery. Although the CT/myelogram revealed mild degenerative disc changes and possible impingement related to disc pathology, there is no evidence showing the origin of the disc material which Dr. Kennedy

believed became dislodged during the fall. Accordingly, there is no basis to reverse the Commission's rejection of Dr. Kennedy's theory, or its adoption of the testimony and opinion of Dr. Doll.

¶ 39 The claimant also challenges the Commission's rejection of his testimony as not credible; in particular, his statements that he was largely asymptomatic within a short period after his three back surgeries. We see no reason to disturb this finding. In April of 2009, following the surgeries, Dr. Raskas diagnosed the claimant with nerve damage to his S1 nerve root and chronic neuropathic pain. He recommended that the claimant undergo a spinal stimulator trial which he believed could possibly enable the claimant to one day return to medium duty work. The claimant elected to forego this procedure, however, and "live with" his pain with the assistance of narcotic medication. He then settled his workers' compensation claim related to that injury, subject to permanent work restrictions. Nonetheless, by the claimant's account, he was, within a few months, able to return to his job without limitation and to "live a normal life," including playing basketball and softball, without any aid from pain medication. This testimony, particularly when contrasted with the claimant's accounts of progressive and debilitating pain allegedly arising solely from his fall of October 29, could reasonably have been discounted by the Commission as disingenuous. The Commission's determination is further substantiated by Dr. Doll's testimony detailing the claimant's inconsistent and objectively questionable accounts of his pain symptoms.

¶ 40 Next, the claimant argues that the Commission's denial of TTD benefits after December 7, 2011, is against the manifest weight of the evidence.

¶ 41 It is well-settled that, when a claimant seeks TTD benefits, the dispositive inquiry is whether his condition has stabilized, meaning whether the claimant has reached MMI. *Interstate*

Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n, 236 Ill. 2d 132, 142 (2010). The period of temporary total disability constitutes a question of fact to be resolved by the Commission, whose determination will not be disturbed unless it is against the manifest weight of the evidence. *Id.*

¶ 42 Here, Dr. Doll testified that the claimant had reached MMI as of December 5, 2011. This conclusion was also supported by the records of Dr. Kennedy following his examination of the claimant on December 13, 2011. The Commission adopted the opinion of Dr. Doll, and there is no basis to conclude that it was contrary to the manifest weight of the evidence.

¶ 43 Finally, the claimant disputes the Commission's denial of maintenance or vocational rehabilitation benefits, arguing that such denial is against the manifest weight of the evidence. In order to be entitled to such benefits, the claimant must prove that he suffered a reduction in his earning capacity as a result of his work injury, and that rehabilitation will increase his earning potential. *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 506 (2004).

¶ 44 In support of his argument, the claimant states simply that the Commission based its denial of maintenance benefits upon "the existence of restrictions" imposed by Dr. Raskas prior to the claimant's employment with Kellermeyer. The argument is without merit. Following the claimant's FCE, Hanquet recommended work restrictions for the claimant of no lifting of over 31 pounds, and only occasional bending, twisting or stooping. Dr. Kennedy concurred in these restrictions. These limitations were less restrictive than those imposed by Dr. Raskas in April of 2009, which included no lifting, pushing or pulling of over 20 pounds and no repetitive bending, turning or twisting at the waist. Also, the evidence established that the claimant's job at Kellermeyer did not require lifting in excess of 20 pounds. In light of this, we conclude that the Commission's finding that the claimant failed to prove that his accident of October 29, 2010, led

to decreased earning capacity is sufficiently supported by the facts. We hold, therefore, that the Commission's denial of maintenance or vocational rehabilitation benefits is not against the manifest weight of the evidence.

¶ 45 For the foregoing reasons we affirm the judgment of the circuit court which confirmed the Commission's decision and remand this matter back to the Commission for further proceedings.

¶ 46 Affirmed and remanded to the Commission.