Workers' Compensation
Commission Division
Order Filed: November 4, 2016

No. 1-15-1836WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

LUTHERAN SCHOOL OF THEOLOGY AT CHICAGO, Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (Ismael Marquez, Appellee).	))))))))))	Appeal from the Circuit Court of Cook County No. 14 L 50731 Honorable James M. McGing, 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*: We affirmed the judgment of the circuit court which confirmed a decision of the Illinois Workers' Compensation Commission awarding the claimant benefits pursuant Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2012)).

¶ 2 The Lutheran School of Theology at Chicago (School) appeals from an order of the circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) awarding the claimant, Ismael Marquez, benefits pursuant to the

Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)). For the reasons which follow, we affirm.

¶ 3 At the outset, we note that the claimant filed two applications for adjustment of claim alleging that he sustained injuries to his low back on two different dates while working for the School. The claimant's application relating to an accident occurring on November 3, 2004, was the subject of Commission case No. 05 WC 3165, while his application relating to an accident occurring on February 2, 2006, was the subject of Commission case No. 06 WC 7394. Sometime after the November 2004 accident, the School changed workers' compensation insurance carriers and was represented by different counsel in each case. On August 30, 2011, October 24, 2011, and February 22, 2012, the arbitrator heard both cases and issued a consolidated decision on April 5, 2012. This appeal concerns the claim related to the February 2006 accident.

¶ 4 Prior to the events giving rise to the instant claim, the claimant had a medical history that is relevant to the disposition of this case. On August 5, 2002, the claimant presented to the emergency room at the University of Chicago Hospitals with complaints of low back pain after lifting a "heavy carpet cleaning machine at work." He was diagnosed with a back strain, prescribed medication for pain, and instructed to follow-up with Dr. William Chutkow, his primary care physician. The claimant saw Dr. Chutkow on August 13, 2002, and was referred to physical therapy.

¶ 5 The claimant began physical therapy on August 13, 2002, but continued experiencing low back pain. On August 27, 2002, Dr. Chutkow ordered an MRI, which was taken on September 5, 2002. The MRI scan revealed "[d]egenerative disc disease of the lower lumbar spine with mild stenosis at L4-L5." In a follow-up visit on September 24, 2002, Dr. Chutkow reviewed the

MRI, concluded that the changes were not significant enough for surgical intervention, and told the claimant to continue physical therapy. The claimant testified that he attended physical therapy for three or four weeks, felt fine, and did not seek further medical treatment.

¶ 6 Also relevant to this appeal, the claimant testified that, on November 3, 2004, he was employed by the School as a janitor. On that date, he was carrying cleaning supplies up some stairs when he slipped and fell, hitting his low back on the edge of the steps. The claimant stated that he completed an accident report and his boss, Bob Berridge, told him to see a doctor. The claimant went to the University of Chicago Hospitals later that same day and was diagnosed with "back contusion after fall" and "preexisting degenerative disc disease of the lumbar spine." X-rays of the claimant's low back revealed no fracture. The nurse's report states that, upon examination, the claimant had tenderness over the midline from L1-L5 and tenderness over the bilateral lumbosacral paraspinous area. The claimant was prescribed Ibuprofen, released to work with restrictions, and instructed to return on November 10, 2004. The claimant testified that he did not miss any work as a result of the November 2004 accident.

¶ 7 On November 10, 2004, the claimant returned to the University of Chicago Hospitals as instructed, and was seen by Dr. Geoffrey Korn. The doctor diagnosed the claimant with "back pain," referred him to physical therapy, and increased his Ibuprofen dosage.

¶ 8 The claimant underwent a course of physical therapy from November 22, 2004, through December 14, 2004, but made minimal improvement and continued to experience severe pain. In a progress report dated December 14, 2004, the physical therapist wrote that the claimant was "very frustrated," and recommended that he follow-up with Dr. Korn to discuss future plans of care. The claimant saw Dr. Korn the following day, reporting no improvement. The doctor prescribed medications and ordered a lumbar MRI.

¶ 9 On December 20, 2004, the claimant was examined by Dr. Richard Shermer at the School's request. The claimant provided a consistent description of his November 2004 workplace accident, and reported aching pain in his low back and buttocks. Based upon Dr. Shermer's examination and review of the claimant's medical records, he diagnosed the claimant with lumbosacral sprain and lumbar stenosis syndrome. He recommended a lumbar MRI, epidural steroid injections, and physical therapy. Dr. Shermer believed that the claimant's condition was "most likely associated with degenerative disc disease and *** a lumbar stenosis condition."

¶ 10 The claimant underwent an MRI of his low back on January 14, 2005, and followed-up with Dr. Korn on January 19, 2005. Dr. Korn reviewed the MRI, determined that the claimant had a "L4-L5 right lateral nerve root impingement," prescribed medication, and referred him to Dr. Fessler.

¶ 11 The claimant was evaluated a second time by Dr. Shermer on February 3, 2005. Dr. Shermer reviewed the January 2005 MRI report and observed that the claimant had degenerative disc disease at L3-L4, L4-L5, and L5-S1; "multi-level disc bulging"; and stenosis at multiple levels. Dr. Shermer wrote in his report that the claimant "appears *** to have recovered from the contusion sprain and requires no further treatment regarding that element," but his "degenerative disc disease and stenotic condition may require further monitoring and treatment." Dr. Shermer opined that if the claimant does become a surgical candidate it would be on the basis of his preexisting degenerative disc disease.

¶ 12 The claimant saw Dr. Fessler on February 22, 2005, and Dr. Korn on March 9, 2005. The claimant testified that he continued to experience pain in his low back and wanted to

continue treatment; however, he did not see any doctors after his March 9th visit with Dr. Korn because the School's insurance carrier did not approve further treatment.

¶ 13 At the time of the injuries at issue, the claimant testified that, on February 2, 2006, he was at work carrying a 100-pound cabinet when he tripped on a "4 x 4 piece of wood" and fell to the ground. He stated that he immediately felt pain on the left side of his low back and in his testicle.

¶ 14 On February 13, 2006, the claimant went to the emergency room at Little Company of Mary Hospital, complaining of low back pain and bilateral leg pain. X-rays showed discogenic degenerative changes at L3-L4, L4-L5, and L5-S1 with mild marginal endplate osteophyte formation, and mild disc space narrowing at the L5-S1 level.

¶ 15 On February 28, 2006, the claimant sought treatment from Dr. William Baylis at Parkview Musculoskeletal Institute. Dr. Baylis's report of that visit states that the claimant presented with a chief complaint of low back pain with left sciatica and numbness and tingling to his left foot. Physical examination revealed limited range of motion, positive straight leg raises, and slight weakness of toe extensors on the left. Dr. Baylis recorded a clinical impression of "back pain with left-sided sciatica, rule out disc herniation." Dr. Baylis took the claimant off of work and ordered a lumbar MRI. The MRI, taken on March 2, 2006, revealed: (1) left paracentral protruding disc at L5-S1, with moderate left and mild central canal narrowing; (2) disc bulging and facet arthropathy at L4-L5, with moderate right and mild left foraminal narrowing; and (3) bulging and facet arthropathy at L3-L4.

¶ 16 On March 14, 2006, Dr. Baylis referred the claimant to Dr. Neeraj Jain, a pain management specialist, who administered epidural steroid injections on April 3 and April 18, 2006. The claimant returned to Dr. Baylis on April 25, May 23, and June 20, 2006, reporting no

improvement. Dr. Baylis referred the claimant to Dr. Anis Mekhail, an orthopedic surgeon at Parkview Orthopedics, for evaluation.

¶ 17 On July 10, 2006, the claimant presented to Dr. Mekhail with complaints of low back pain radiating down his left leg to the heel. He provided a history of having injured his back while at work in February 2006 and told the doctor that physical therapy and epidural steroid injections did not help. On examination, Dr. Mekhail found positive straight leg raises on the left side with pain shooting down to the left heel, decreased sensation in S1 distribution, decreased deep tendon reflexes on the left and left Achilles weakness. Dr. Mekhail reviewed the lumbar MRI taken March 2, 2006, and noted a left L5-S1 disc herniation, which could explain the claimant's symptoms. Dr. Mekhail diagnosed the claimant with a left-sided L5-S1 herniated disc and left lumbar radiculopathy. He concluded that conservative measures had failed to alleviate the claimant's lumbar spine injury and recommended surgery to alleviate the condition.

¶ 18 On July 19, 2006, Dr. Mekhail operated on the claimant, performing a left L5-S1 decompressive microdiscectomy. According to Dr. Mekhail's post-operative treatment notes dated July 28, 2006, the claimant reported no radicular symptoms, but complained of soreness in his back. Dr. Mekhail prescribed post-operative physical therapy, which the claimant started on August 1, 2006.

¶ 19 In a follow-up visit on September 12, 2006, Dr. Mekhail noted that the claimant started experiencing recurrent radicular symptoms down his left leg and that he was not tolerating physical therapy. Dr. Mekhail discontinued the claimant's physical therapy, ordered a lumbar MRI, and prescribed medication for pain. The lumbar MRI, taken on September 19, 2006, was interpreted by the radiologist as showing: (1) degenerative changes; (2) shallow rightward disc protrusion with mild right-sided neural foraminal narrowing at L3-L4; and (3) shallow leftward

disc protrusion with moderate left-sided neural foraminal narrowing at L5-S1, which may be contributing to a left L5 radiculopathy.

¶ 20 On October 2, 2006, the claimant reported to Dr. Mekhail that he was having significant low back pain as well as left lumbar radiculopathy. After reviewing the September 19, 2006, MRI results, Dr. Mekhail determined that the claimant's pain was more severe and was in a slightly different distribution. Dr. Mekhail discussed surgical options with the claimant and the claimant agreed to proceed with a "redo decompression and fusion" surgery.

¶ 21 On November 1, 2006, the claimant was examined by Dr. Julie Wehner at the request of the School. Dr. Wehner's original report was not admitted into evidence, but a supplemental report dated December 15, 2006, was admitted. In the supplemental report, Dr. Wehner observed that the claimant underwent a left L5-S1 microdiscectomy in July 2006 and had progressed in work hardening, but was taken out of therapy. Her examination showed "marked symptom magnification behavior." Dr. Wehner reviewed the September 2006 MRI and observed normal post-operative findings at L5-S1 and mild degeneration at L4-L5. She opined that "[t]here is nothing on the MRI to explain the extent of [the claimant's] subjective complaints" and he would make an extremely poor candidate for a fusion. Dr. Wehner recommended two to three weeks of work hardening.

¶ 22 The claimant returned to Dr. Mekhail on November 14, 2006, with complaints of severe back and leg pain, and pain in his testicle. Dr. Mekhail noted that the claimant was scheduled for surgery, but surgery was not yet approved. Dr. Mekhail prescribed medications, referred the claimant to Dr. James Boscardin for a second opinion, and kept the claimant off work.

¶ 23 On November 20, 2006, Dr. Boscardin evaluated the claimant. He took a history from the claimant, reviewed Dr. Wehner's reports, the MRIs, and operative report. Dr. Boscardin

found that the claimant may well have some low grade L5 radiculopathy, but opined that the claimant had significant psychological overlay and did not believe he was a good candidate for surgery. Dr. Boscardin recommended a L5 nerve block and encouraged the claimant to return to sedentary-duty work.

¶ 24 The claimant followed-up with Dr. Mekhail on November 30, 2006. After reviewing the reports of Drs. Wehner and Boscardin, Dr. Mekhail decided that surgery was not appropriate until the claimant's out-of-proportion back symptoms subsided. He recommended work conditioning, pain management, and released the claimant to work with a 20-pound weight restriction. The claimant began physical therapy on December 4, 2006, and treated with a pain management specialist on a monthly basis.

¶ 25 On June 21, 2007, the claimant presented to the emergency room at Palos Community Hospital, complaining of severe pain in his back with radiation into his lower extremities. The next day, the claimant was seen by Dr. Henry Fuentes for an orthopedic consultation. Dr. Fuentes diagnosed the claimant with "low back pain with left sciatic, history of L5-S1 microdiskectomy in July 2006." He ordered an MRI of the claimant's lumbar spine, prescribed a Medrol dose pack, Vicodin, and physical therapy.

¶ 26 The claimant underwent a lumbar MRI on June 23, 2007. The radiologist interpreted the scan as showing: (1) post-surgical changes at L5-S1 level with a small left-sided laminectomy defect, and mild epidural fibrosis to the left of the dural sac; (2) moderate encroachment on the left L5-S1 neural foramen which appeared to be due to a combination of facet arthropathy, mild left posterolateral disc bulging, and marginal osteophyte formation; (3) asymmetric right posterolateral annulus bulging and mild facet arthropathy causing mild encroachment on the

right neural foramen at L3-L4; and (4) mild annulus bulging and moderate facet arthropathy causing only mild effacement of the dural sac at L4-L5.

¶ 27 The claimant continued to experience discomfort and surgery was recommended. On June 27, 2007, Dr. Mekhail operated on the claimant, performing a left L4-L5 and L5-S1 decompression with L5-S1 spinal fusion with pedicle screw, and transforaminal lumbar interbody fusion. Dr. Mekhail's post-operative medical records state that the claimant reported significant improvement in his leg pain, but continued to experience some back pain and stiffness. Dr. Mekhail ordered physical therapy and prescribed medication for pain.

¶ 28 The claimant followed-up with Dr. Mekhail on August 30, 2007, reporting that his back pain was much better. Dr. Mekhail found some residual numbness and noted that the claimant had not attended physical therapy. The doctor instructed the claimant to attend physical therapy and recommended that he see a urologist regarding his ongoing scrotal pain.

¶ 29 On September 21, 2007, at the School's request, the claimant saw Dr. Alexander Ghanayem of Loyola University Medical Center, for an independent medical examination (IME). In the history section of his report, Dr. Ghanayem noted that the claimant hurt his back in February 2006, after he fell while carrying a cabinet. Although the claimant denied having prior back problems, Dr. Ghanayem noted in his report that the claimant's medical records state that he had back problems in 2002 and 2005. Dr. Ghanayem wrote that he does not know why the claimant's symptoms degraded over time and he did not offer an opinion as to the cause of the claimant's condition of ill-being since he only had one MRI scan, which was taken in June 2007.

¶ 30 Dr. Ghanayem issued a supplemental IME report on October 12, 2007. The doctor compared the MRI reports of January 2005, March 2006, and June 2007, and observed that,

based upon the March 2006 MRI, "the [claimant] had a disease process that was at least radiographically present and symptomatic prior to his work injury in 2006." Dr. Ghanayem opined that the discectomy of July 2006 "may be related to his work injury," but the subsequent fusion performed in June 2007 was related to the claimant's degenerative disc disease. In his deposition, Dr. Ghanayem acknowledged that his supplemental IME report failed to identify which "work injury" the discectomy "may be related to." When asked on cross-examination which "work injury" he was referring to, Dr. Ghanayem replied, "[y]our guess is as good as mine."

¶ 31 Meanwhile, the claimant continued to follow-up with Dr. Mekhail on a monthly basis, with continued complaints of significant discomfort in his back and left leg. The claimant also treated with the doctors at the Pain Treatment Center, who administered a series of epidural steroid injections and a trial spinal cord stimulator, which was inserted into the claimant's back on December 19, 2008. The trial spinal cord stimulator was removed days later on December 23, 2008, after the claimant reported no improvement.

¶ 32 On February 21, 2009, the claimant saw Dr. Mekhail with the same complaints. Dr. Mekhail believed it was reasonable to redo the left L5-S1 decompression, but he informed the claimant that the procedure would not completely relieve his symptoms. The claimant agreed to proceed with the redo decompression surgery.

¶ 33 At the School's request, the claimant was examined a second time by Dr. Ghanayem on May 27, 2009. He wrote in his report that he compared the MRI scans taken before and after the February 2006 injury, and found no structural changes in the claimant's disc pathology at L5-S1 or L4-L5. Dr. Ghanayem opined that the claimant's symptoms were present before the 2006 injury and "appears to be related to his November 2004 work injury." In his deposition, he

added that, had the February 2006 injury never occurred, the claimant would be in the same structural condition. Thus, although the February 2006 accident "may have temporarily aggravated his symptoms," those symptoms did not change the nature of his condition and "the need for invasive care would be related to the [November] 2004 work injury."

¶ 34 The claimant treated with Dr. Mekhail on June 25 and July 9, 2009. Dr. Mekhail reviewed Dr. Ghanayem's IME report of May 27, 2009, and disagreed with his opinion that the claimant's condition was related to the 2004 injury. Dr. Mekhail opined that the claimant's low back condition of ill-being was causally related to the 2006 workplace injury. He agreed with Dr. Ghanayem that the claimant had preexisting L4-L5 stenosis, but he noted that the claimant also had foraminal stenosis at L5-S1. Dr. Mekhail further opined that a redo-decompression was a valid surgical option. Dr. Mekhail continued the claimant's medications and home exercises, pending approval for surgery.

¶ 35 On October 13, 2009, Dr. Mekhail operated on the claimant, performing a redo left L5-S1 decompression, laminotomy, foraminotomy, partial cystectomy, exploration arthrodesis L5-S1, and hardware removal. The records of Advocate Home Health Services state that the claimant underwent post-operative physical therapy from October 14, 2009, through October 24, 2009. According to Dr. Mekhail's medical records dated January 14, 2010, the claimant's back pain and left leg pain was almost completely resolved, though he still had some numbness down the left S1 distribution.

¶ 36 At the School's request, the claimant was evaluated by Dr. Ghanayem a third time on January 22, 2010. The claimant reported slight improvement in his low back pain, but no change in his leg symptoms. Dr. Ghanayem recommended a brief course of physical therapy of three to

four weeks and believed that light duty work was medically reasonable. Dr. Ghanayem's examination did not change his causation opinion as set forth in his May 27, 2009, report.

¶ 37 On March 18, 2010, Dr. David Fardon, an orthopedic surgeon at Rush University Medical Center, performed an IME of the claimant at the School's request. He wrote in his report that the claimant has a great deal of low back pain radiating to his left leg and occasionally into his right buttock. The claimant provided a history of his workplace accidents and told Dr. Fardon that he attended physical therapy, had a series of epidural injections, underwent three surgeries, and takes medication for pain. Dr. Fardon's physical examination revealed limited and painful range of motion. He also observed that straight leg raising and passive motion of the left leg elicited "dramatic protestations" which were not consistent with the level of movement necessary to provoke such a response. Dr. Fardon diagnosed the claimant with (1) chronic L5 radicular pain and back pain; and (2) symptom magnification. He opined that the claimant has chronic degenerative disc and facet disease in the lumbar spine which has been exacerbated or aggravated by the February 2006 work accident. It also appeared that the claimant has been adversely affected by "disappointing responses" to surgery. Dr. Fardon was not able to give an opinion as to whether further treatment was necessary due to missing medical records; he recommended a functional capacity evaluation based upon the available information.

¶ 38 On November 19, 2010, Dr. Fardon issued a supplemental IME report based upon his review of additional MRI scans. Dr. Fardon opined that the claimant had a temporary aggravation of his preexisting back condition as a result of his November 2004 workplace accident. In support of his opinion, Dr. Fardon explained that he compared the MRI reports from 2002 and 2005 and found "only some minor progression of degenerative change and no effect that would be attributed to an injury." Dr. Fardon opined that the claimant's "need for surgery

was based both upon a preexisting degenerative back condition and the effect of the injury sustained in February of 2006." The doctor explained that the February 2006 accident resulted in "an additional clinically manifest disc herniation that became symptomatic after that injury and led to the first surgery."

¶ 39 At the arbitration hearing held on August 30, 2011, the attorney representing the School in case No. 06 WC 7394 objected to Dr. Fardon's supplemental report on hearsay grounds, which the arbitrator sustained. We note, however, that Dr. Fardon's supplemental report was attached to the School's response to the claimant's penalties petition in case No. 05 WC 3165, which was admitted into evidence as School's exhibit No. 5-A.

¶ 40 Thereafter, the attorney representing the School in case No. 05 WC 3165 filed a motion for a *dedimus potestatem* to take the evidence deposition Dr. Fardon. Dr. Fardon had examined the claimant in March 2010, but for reasons not stated in the record, the attorneys in case No. 05 WC 3165 had not taken an evidence deposition of Dr. Fardon prior to the start of the hearing on August 30, 2011. The parties appeared before the arbitrator on September 27, 2011, on the School's motion for a *dedimus potestatem*. After hearing arguments, the arbitrator denied the School's request to depose Dr. Fardon, but allowed the School's attorney in case No. 05 WC 3165 to call him as a witness at trial.

¶ 41 At the October 24, 2011, arbitration hearing, Dr. Fardon testified that he examined the claimant on March 18, 2010, and prepared a written IME report with his findings later that same day. Dr. Fardon stated that he drafted an addendum on November 19, 2010, following his review of the MRIs taken on January 14, 2005, and September 5, 2002. Dr. Fardon observed no significant difference between the two MRIs. He opined that the claimant's November 3, 2004, workplace accident temporarily exacerbated his symptoms relating to his preexisting

degenerative condition. When asked what caused the claimant's need for surgery performed on July 19, 2006, Dr. Fardon testified, "he had a long standing and moderately extensive degenerative condition in his lower back that was complicated by a disc protrusion that became symptomatic in 2006." Dr. Fardon found no evidence of a permanent injury resulting from the November 3, 2004, accident, and he did not believe that the claimant required additional treatment as a result of that accident.

¶ 42 The claimant testified that he continues to experience constant pain in his low back which radiates down his leg to his foot. He is unable to participate in hobbies or sports and the only "activity" he performs around the house is "walking." The claimant also stated that he still sees Dr. Mekhail and would like a spinal cord stimulator.

¶ 43 Following a consolidated hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2012)), the arbitrator issued a single decision finding that the claimant sustained an injury to his lumbar spine, which arose out of and in the course of his employment with the School on November 3, 2004, and February 2, 2006. Specifically, the arbitrator determined that the accident of November 3, 2004, aggravated the claimant's preexisting degenerative disc disease and stenosis at L4-L5 and L5-S1. However, the arbitrator also found that claimant's current condition of ill-being is causally related to the February 2, 2006, injury which "superseded" the injury of November 3, 2004. The arbitrator noted that, although the claimant did not have complete relief following the November 2004 accident, he continued working and stopped seeking medical care four months later. The arbitrator also observed that, following the February 2006 accident, the claimant complained of more severe symptoms, experienced problems with his left leg and foot, sought continuous medical care and had three surgeries. The arbitrator found the opinion of Dr. Mekhail, that the claimant's current condition of ill-being is

causally related to the February 2006 accident, was more persuasive than the contrary conclusion of Dr. Ghanayem. The arbitrator also found that Dr. Mekhail's causation opinion was supported by the opinions of Drs. Shermer and Fardon.

¶ 44 Based on these factual and credibility determinations, the arbitrator awarded the claimant 1 2/7 weeks of temporary total disability (TTD) benefits for the period from November 7, 2004, through November 15, 2004, and 210 4/7 weeks of TTD benefits for the period from February 3, 2006, through April 15, 2006, July 17, 2006, through January 2, 2007, and May 15, 2007, through September 27, 2010. In addition, the arbitrator ordered the School to pay the reasonable and necessary medical expenses incurred by the claimant after February 1, 2006. The arbitrator denied the claimant's request for prospective medical treatment in the form of a spinal cord stimulator and denied his request for penalties.

¶ 45 The School filed for a review of the arbitrator's decision before the Commission. On October 29, 2012, the Commission issued a unanimous decision, modifying the arbitrator's decision in part and affirming and adopting it in part. In that portion of the decision modified, the Commission corrected a minor error in the arbitrator's decision regarding the denial of penalties and determined that the claimant failed to prove that he was entitled to TTD benefits from November 7, 2004, through November 15, 2004, because he continued working following the November 2004 accident. The Commission otherwise affirmed and adopted the arbitrator's decision and remanded the cause for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 46 The School sought a judicial review of the Commission's decision in the circuit court. On August 1, 2013, the court remanded the matter to the Commission "to specifically articulate the basis for its findings on causal connection in these matters."

¶ 47 On August 22, 2014, the Commission issued its decision and opinion on remand. In its decision, the Commission reviewed the evidence and reached the same conclusions as its original decision. The Commission explained that the claimant had a preexisting degenerative disc disease and stenosis at L4-L5 and L5-S1 which was aggravated by the November 2004, injury and that the November 2004, injury was "superseded" by the February 2006, injury. In support of its findings, the Commission relied upon the causation opinions of Dr. Fardon which it found "more persuasive" than the opinions of Dr. Ghanayem. The Commission also noted that the MRIs taken January 14, 2005, and March 2, 2006, showed that the claimant's condition worsened following the February 2, 2006, accident.

¶ 48 The School sought a judicial review of the Commission's decision (case No. 06 WC 7394) in the circuit court. On May 28, 2015, the court entered an order confirming the Commission's decision. The instant appeal followed.

¶ 49 The School first contends that the Commission improperly relied upon Dr. Fardon's supplemental report wherein the doctor opined that the claimant's low back injury was causally connected to the February 2006 accident. According to the School, this was reversible error as this document was not admitted into evidence in connection with the claimant's claim against it, but was only admitted as an exhibit in support of the School's response to the claimant's penalties petition.

¶ 50 Initially, we note that the arbitrator excluded Dr. Fardon's supplemental report on the basis of the School's hearsay objection. It has been held that "the rule against the admission of hearsay evidence is not absolute and that, under certain circumstances, the probability of the evidence's accuracy and trustworthiness may act as a substitute for cross-examination under oath." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 885 (1990). Here, Dr. Fardon's

supplemental report was one of two reports of the doctor which were presented by the School's attorney in case No. 05 WC 3165. The School's attorney in case No. 06 WC 7394 did not object to the admissibility of Dr. Fardon's original IME report, and did not challenge the authenticity of any of the doctor's reports. Because of these factors, the report was trustworthy and was admissible even though it was hearsay. See *id.* at 886 (doctor's report was admissible, even though it was hearsay, where the respondent did not challenge its authenticity or object to the doctor's other reports). Therefore, the Commission did not err in considering Dr. Fardon's supplemental report.

¶ 51 Moreover, as the Commission correctly noted, Dr. Fardon's supplemental report was attached as an exhibit to the School's response to the claimant's penalties petition (in case No. 05 WC 3165), which was introduced *in toto*, and without objection. We do not see how the School can shield the report from consideration by the Commission. See *Luby v. Industrial Comm'n*, 82 Ill. 2d 353, 363 (1980) ("since the exhibit which included the report was introduced *in toto* by the claimant *** [w]e do not see how he can shield the report from consideration by the Commission because of its lack of authentication").

¶ 52 And, even if the Commission erred by considering Dr. Fardon's supplemental report, any error was harmless. In *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1013 (2005), we pointed out that when an examination of the record as a whole demonstrates that the "erroneously admitted evidence is cumulative and does not otherwise prejudice the objecting party, error in its admission is harmless." Having reviewed the contents of Dr. Fardon's supplemental report, and having examined the record as a whole, it is clear that the doctor's report was cumulative and did not prejudice the School. Specifically, and as discussed more thoroughly below, the Commission's findings as to causation is supported by other competent

evidence, including Dr. Mekhail's and Dr. Shermer's unequivocal conclusion that the claimant's condition of ill-being was causally connected to his work-related accident of February 2, 2006, and were not causally connected to the November 2004 accident.

¶ 53 Next, the School argues that the Commission's finding that the February 2006 accident was an independent, intervening accident that broke the causal chain stemming from claimant's November 2004 work injury, is against the manifest weight of the evidence.

¶ 54 To receive compensation under the Act, a claimant must prove, by a preponderance of the evidence, that he suffered a disabling injury that arose out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The "arising out of" element refers to the causal connection between the accident and the claimant's injury. *Id*. An injury arises out of the employment if it "had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id*.

¶ 55 Every natural consequence that flows from an injury arising out of and in the course of a claimant's employment is compensable unless such injury is caused by an independent intervening act which breaks the causal connection between the employment and the claimant's condition of ill-being. *Greaney*, 358 Ill. App. 3d at 1013; *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 742 (1994). An independent, intervening accident breaks the chain of causation between a work-related injury and an ensuing disability or injury. *Teska*, 266 Ill. App. 3d at 742. A causal connection between an accident and a claimant's condition may be established by a chain of events, including the fact that the claimant was able to perform manual duties prior to the date of an accident and then had a decreased ability to perform such duties immediately following that date. *Zion-Benton Township High School Dist. 126 v. Industrial Comm'n*, 242 Ill.

App. 3d 109, 114 (1993) (citing *Pulliam Masonry v. Industrial Comm'n*, 77 Ill. 2d 469, 471 (1979)). In addition, the aggravation or acceleration of a preexisting condition caused by an accident occurring in the course of employment is a compensable injury under the Act. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982). A finding of a causal relationship may be based upon a medical expert's opinion that an injury "could have" or "might have" been caused by a work-related accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182 (1983).

¶ 56 Whether a claimant's condition is attributable to a preexisting condition or to an aggravation of that condition caused by an employment accident is a question of fact for the Commission. *Sisbro*, 207 Ill. 2d at 205. In resolving questions of fact, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence. *Id*. at 206. Factual determinations by the Commission will not be set aside on review unless it is against the manifest weight of the evidence. *Franklin v. Industrial Comm'n*, 211 Ill. 2d 272, 279 (2004). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006). If the record provides an adequate basis for the Commission's finding with regard to causation, the Commission's decision must be confirmed. See *Sisbro*, 207 Ill. 2d at 215.

¶ 57 In this case, the evidence established that, after the November 2004 accident, the claimant's lumbar spine symptoms and complaints had subsided as a result of treatments that were conservative and progressively less frequent. Although the claimant's symptoms did not completely resolve, the evidence indicates that the claimant did not miss any work and continued performing his regular job duties as a janitor at the School. Following the February 2006

accident, however, the claimant experienced new symptoms, including severe low back pain that radiated down his left leg and into his foot. Also, the severity of the claimant's low back pain increased significantly. These circumstances prevented him from performing his employment responsibilities and hampered his ability to engage in the activities of daily life. The new and increased symptoms caused the claimant to seek medical treatment and to opt for three elective surgeries. Thus, the February 2006 accident necessitated more frequent and more aggressive treatment than the claimant had undergone previously. Drs. Mekhail and Fardon both opined that the claimant's current condition of ill-being is causally related to the February 2006 accident, and was not causally related to the November 2004 accident. The Commission found those opinions persuasive and relied on them in determining that the February 2006 accident "superseded" the November 2004 accident.

¶ 58 As set forth above, credibility determinations and the resolution of conflicts in medical opinions falls within the province of the Commission. *Id.* at 206-07. Here, the testimony of the claimant, his medical records, and the opinions of Dr. Mekhail and Dr. Fardon provide sufficient evidence to support the Commission's finding that the claimant's current condition of ill-being is causally related to the February 2006 injury, which was an independent, intervening accident that broke the chain of causation stemming from the claimant's initial injury in November 2004. Consequently, we cannot conclude that the Commission's holding in this regard is against the manifest weight of the evidence.

¶ 59 Next, the School contends that the Commission's award of TTD benefits and medical expenses are against the manifest weight of the evidence. We note that the School devotes less than a half page of its 48-page brief in support of its argument. Its argument in this regard rests entirely upon its argument addressing the Commission's causation finding. For the same reasons

that we rejected the School's argument regarding the Commission's finding as to causation, we also reject its argument addressed to the Commission's award of TTD benefits and medical expenses.

¶ 60 Based on the foregoing analysis, we affirm the judgment of the circuit court which confirmed the Commission's decision and remand the matter back to the Commission.

¶ 61 Affirmed and remanded.