2016 IL App (1st) 152753WC-U
No. 1-15-2753WC
Order filed: November 10, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CLINTON YOUNG,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 15-L-50017
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION and	)	
SOUTHWEST AIRLINES, INC.,	)	Honorable
	)	James M. McGing,
Defendants-Appellees.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: (1) The Commission's finding that claimant failed to prove his entitlement to prospective medical care, specifically a laminectomy and discectomy at L5-S1 and a lumbar fusion, is not against the manifest weight of the evidence given the conflicting medical evidence; (2) the Commission's decision to terminate claimant's temporary total disability benefits as of April 12, 2013, was not against the manifest weight of the evidence in light of the conflicting medical evidence; and (3) claimant was not entitled to maintenance benefits.

¶ 2 Claimant, Clinton Young, sought benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) for injuries he allegedly sustained to his low back while working for respondent, Southwest Airlines, Inc. Following a hearing, the arbitrator determined that claimant's injuries were compensable under the Act. The arbitrator awarded claimant 152-4/7 weeks of temporary total disability (TTD) benefits and reasonable and necessary medical expenses. The arbitrator also determined that claimant is entitled to undergo a functional capacity evaluation (FCE) and a vocational assessment. However, the arbitrator denied claimant's request for prospective medical care consisting of two distinct back operations. The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator and remanded the matter for further proceedings. On judicial review, the circuit court of Cook County confirmed. Claimant now appeals, challenging the Commission's findings with respect to prospective medical care and duration of TTD benefits. Claimant also contends that he is entitled to an award of maintenance benefits. We affirm and remand.

¶ 3 I. BACKGROUND

¶ 4 Claimant filed two applications for adjustment of claim, alleging injuries to his low back while working for respondent. The first application (10 WC 35982) alleged an injury occurring on March 20, 2010. The second application (13 WC 2200) alleged an injury occurring on January 11, 2013. The claims, which were consolidated, proceeded to an arbitration hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)) on February 27, 2014. The following evidence was presented at the consolidated hearing.

¶ 5 In June 2000, claimant was hired as a ramp agent for American Trans Air. Claimant began working for respondent in the same capacity in January 2005. As a ramp agent, claimant was assigned various tasks, including unloading bags from a truck, placing them on a conveyer belt, removing the bags from the conveyor belt, and arranging them inside aircraft. Claimant testified that the bags typically weighed between 10 and 75 pounds, although some bags weighed as much as 120 pounds. The number of bags per flight varied based on the occupancy level of the aircraft. Smaller flights had between 40 and 50 bags while larger flights had as many as 250 bags. Claimant testified that if he was assigned to unload bags from a truck, he typically stood while performing his duties. However, if he was assigned to remove the bags from the conveyer belt and arrange them inside the aircraft, he would kneel. Claimant testified that his work shift lasted eight hours, during which he was constantly lifting and maneuvering bags except when he was on break. Claimant acknowledged that he had previously sustained several injuries while in respondent's employ, including a shoulder injury in 2006 and a back injury in 2008. Claimant returned to work full duty following these injuries.

¶ 6 Regarding the injuries at issue, claimant testified that on March 20, 2010, he was working at Midway Airport in Chicago. On that date, claimant was assigned to remove bags from the conveyer belt and arrange them inside the aircraft. As claimant was in a kneeling position, he removed a heavy bag from the conveyer belt and felt a sharp pain in his lower back. Claimant notified his supervisor of the injury and was instructed to seek medical assistance.

¶ 7 Claimant sought treatment for his injury at the Clearing Clinic on March 22, 2010. At that time, claimant reported the onset of low-back pain while loading baggage at work. Claimant denied any radiation to the lower extremities, numbness, or tingling. Examination of the spine revealed tenderness to palpation in the thoracic and lumbar areas and muscle spasm bilaterally in

the lumbar area. Claimant was diagnosed with a sprain of the lumbar spine. He was prescribed pain medication, a muscle relaxant, and physical therapy. Claimant was placed on restricted duty with lifting limited to 15 pounds or less. However, claimant did not return to work.

¶ 8 Claimant did not feel that his condition was improving from the physical therapy, so a friend recommended he see Dr. Mark Chang, an orthopaedic spine specialist. Claimant first consulted Dr. Chang on June 22, 2010. Upon examination of the lower back, Dr. Chang noted mild tenderness and mild paraspinal spasms. Claimant denied any numbness or weakness in the legs. Dr. Chang also reviewed an MRI of the lumbar spine taken in April 2010, which showed L5-S1 mild disc degeneration and a small central disc bulge, but no significant nerve impingement. Dr. Chang diagnosed acute lower back pain secondary to aggravation of L5-S1 disc degeneration with no radiculopathy. Dr. Chang instructed claimant to remain off work and recommended continued physical therapy. Claimant reported that the physical therapy was not helping him. As a result, Dr. Chang recommended epidural injections and a home-exercise program. He also prescribed pain medication and a muscle relaxant.

¶ 9 Dr. G. Klaud Miller conducted an independent medical examination (IME) of claimant on September 13, 2010. As part of the IME, Dr. Miller reviewed claimant's job description and his medical records. Claimant told Dr. Miller that he injured his lower back while loading luggage inside an airplane. Claimant reported a previous episode of low back pain in 2008, but stated that he eventually returned to work. Dr. Miller noted that claimant's symptoms were in the lumbosacral spine bilaterally with occasional left-sided gluteal and posterior thigh pain. Dr. Miller's physical examination was normal with the exception of left-sided lumbar paraspinal tenderness. Dr. Miller diagnosed degenerative disc disease of the lumbar spine. Dr. Miller recommended no additional treatment, but advised that claimant maintain a home exercise

program. Dr. Miller opined that claimant was at maximum medical improvement (MMI), but noted that if claimant returns to his previous position, he will likely suffer another episode of low back pain. As a result, Dr. Miller recommended a position which requires frequent lifting of no more than 25 pounds.

¶ 10 At a follow-up appointment on January 11, 2011, Dr. Chang noted that claimant was still awaiting approval for the epidural injections. Dr. Chang was concerned that due to the long delay, claimant may reach the point where the injections may not help at all. Dr. Chang added that claimant may have to consider surgery.

¶ 11 Dr. Miller examined claimant a second time on March 23, 2011. At that time, claimant stated that his condition had deteriorated. Claimant reported bilateral lumbosacral spine pain, but denied any gluteal or leg pains. Dr. Miller's physical examination was nearly identical to the one conducted on claimant's previous visit with the exception that the back tenderness was bilateral from L4 to S1. Dr. Miller reiterated his diagnosis of degenerative disc disease. According to Dr. Miller, claimant's symptoms were simply another episode of low back pain similar to the one claimant had in 2008, attributable to his preexisting degenerative disc disease. Dr. Miller did not feel that there was a "direct causal connection" between claimant's accident and the diagnosis, although he acknowledged that claimant's symptoms may have been aggravated by heavy lifting at work. Dr. Miller did not recommend any surgery. Moreover, he disagreed with Dr. Chang's recommendation for injections, explaining that while injections are appropriate for individuals with radicular pain, claimant has never reported radicular symptoms. He allowed, however, that such a treatment is low risk and worthwhile as a "last gasp." If claimant opts for the injection treatment and it is unsuccessful, Dr. Miller would declare him at MMI.

¶ 12 During a visit on April 19, 2011, Dr. Chang noted that claimant was still awaiting approval for the epidural injections. At that time, Dr. Chang noted that claimant "still has pain in the right leg." On or about August 30, 2011, claimant received approval for the injection treatment. Claimant underwent a series of three injections between September 14, 2011, and January 25, 2012. When claimant next saw Dr. Chang in May 2012, he reported that the injections had not helped. Due to the failure of conservative treatment, Dr. Chang recommended surgery, specifically an L5-S1 laminectomy and discectomy, pending a new MRI of claimant's lumbar spine. According to Dr. Chang, the new MRI showed "a similar degree of mild to moderate central disc herniation." After discussing his options, claimant opted to undergo the operation recommended by Dr. Chang.

¶ 13 On October 3, 2012, claimant underwent an IME by Dr. Babek Lami. At that time of the examination, claimant localized his pain to the lumbar spine bilaterally from L1 to L5. Claimant also reported slight numbness bilaterally in the buttocks, but he did not have any radicular symptoms in his lower extremities. Claimant denied any previous back problems, although Dr. Lami noted that Dr. Chang's records suggest he had back problems in 2008 for which he underwent treatment. Upon physical examination, Dr. Lami noted flexion of the lumbar spine to only 80 degrees before claimant reported pain. Dr. Lami concluded that the March 2010 accident resulted in an aggravation of claimant's preexisting condition. Dr. Lami felt that claimant should have been at MMI within weeks or months of his reported injury. Dr. Lami also opined that claimant should have returned to full duty without any restrictions within three months of the March 2010 injury. Noting that claimant reported no radicular symptoms, Dr. Lami felt that the decompression surgery recommended by Dr. Chang "is not the answer and will cause more issues." He also did not feel that claimant was a candidate for any other type of

surgery or injections. Instead, Dr. Lami recommended a home exercise program. Dr. Lami rated claimant's impairment as two percent of the person as a whole based on American Medical Association guidelines.

¶ 14 On December 26, 2012, claimant underwent an IME by Dr. Sean Salehi. Claimant told Dr. Salehi that he injured his low back at work on March 20, 2010, while lifting a heavy bag. Claimant complained of constant pain in the low back while active. He also reported some tingling in the low back. Upon physical examination, Dr. Salehi noted that claimant weighed 350 pounds, was 74 inches in height, and had a body-mass index (BMI) of 45.10. Dr. Salehi diagnosed lumbar degenerative disc disease. Dr. Salehi found that the mechanism of injury described was consistent with an annular tear of the L5-S1 disc or aggravation of a preexisting condition rendering it symptomatic. Dr. Salehi remarked that he "d[id] not see the need for any further treatment beyond a FCE to determine [claimant's] permanent restrictions." Dr. Salehi did not feel that a laminectomy and discectomy would help claimant's mechanical back pain. In this regard, Dr. Salehi elaborated at his deposition that patients who complain of pain related to the spine fall in two broad categories: (1) those with sciatica, *i.e.*, pain radiating to the upper or lower extremities, and (2) those with mechanical back pain, *i.e.*, pain along the spine resulting from an incompetent disc. Dr. Salehi noted that a decompression procedure is used to treat the former and fusion surgery is used to treat the latter. Given the lack of radiculopathy in claimant, Dr. Salehi would not recommend for claimant a decompression procedure, such as a laminectomy and discectomy. Further, Dr. Salehi stated that "[h]ad it not been because of his elevated BMI a lumbar fusion would have been a possibility; however, a fusion given his BMI will put him at increased risk of complications and less likely chance of symptomatic improvement and is therefore not recommended." Dr. Salehi opined that claimant will be at

MMI at the conclusion of the FCE. Dr. Salehi further determined that until the FCE is completed, claimant could safely work at no more than a medium-duty capacity, *i.e.*, no lifting greater than 35 pounds, no pushing/pulling more than 50 pounds, and no repetitive bending or twisting.

¶ 15 In a progress note dated January 8, 2013, Dr. Chang noted that claimant underwent an IME on December 26, 2012. Dr. Chang noted that the examiner concluded that claimant requires fusion surgery rather than a decompressive operation, but, because of claimant's weight, does not recommend the procedure. Dr. Chang felt that the examiner "confuse[d]" claimant's issues. Dr. Chang expressed that while claimant does have lower back pain, "his predominant pain is the left leg pain."

¶ 16 Claimant returned to work full duty as a ramp agent late in 2012. However, on January 11, 2013, claimant felt a sharp pain in his back as he was lifting a bag off a conveyer belt. Claimant reported the injury to his supervisor and was taken off work. On February 12, 2013, claimant consulted Dr. Chang. At that time, claimant reported that shortly after returning to work he "started having severe lower back and left leg pain again." Dr. Chang renewed his recommendation for surgery. In the meantime, he instructed claimant to remain off work. While awaiting approval for surgery, claimant continued to complain of low-back and left-leg pain. At a follow-up appointment on March 19, 2013, Dr. Chang noted that he recommended the L5-S1 laminectomy and discectomy to relieve claimant's left leg pain. He stated that while this surgery may also relieve some of claimant's back pain, there will be some residual lower back pain. As a result, Dr. Chang also recommended fusion surgery to maximize claimant's relief. According to Dr. Chang's notes, however, claimant "elect[ed] to avoid the fusion surgery."

¶ 17 Dr. Lami examined claimant a second time on April 12, 2013. At that time, claimant told Dr. Lami that he returned to work. Claimant reported that on January 11, 2013, he was loading the conveyer belt with a bag weighing in excess of 50 pounds when he twisted his back, causing an increase in pain. At that time of the examination, claimant localized the pain to his lower back area and in his buttocks. Claimant did not report any pain radiating to his lower extremity. Upon physical examination, Dr. Lami noted that claimant can flex his lumbar spine to 70 degrees before he reports pain. Dr. Lami diagnosed degenerative disc disease at L5-S1. Dr. Lami opined that the degenerative changes seen on the MRI, including an annular tear, were not caused by any work injury. Moreover, Dr. Lami did not find any particular injury occurring at work on January 11, 2013. Rather, Dr. Lami stated that claimant "may have [had] an increase of back pain as a result of his preexisting condition." Dr. Lami did not recommend any surgery for claimant, including a lumbar decompression. Dr. Lami concluded that claimant had reached MMI from any work-related accident. He added that from an objective standpoint, there is no reason why claimant cannot return to full duty even with a degenerative disc. He allowed, however, that if the degenerative disc will cause claimant increased pain, then he should pursue a career which would be less taxing on his lower back. Dr. Lami opined that the need for any restrictions would be due to claimant's personal health not due to any work-related injury.

¶ 18 Claimant returned to Dr. Chang's office on May 28, 2013. At that time, claimant reported that based on a recent IME, he was released to return to full duty work. Dr. Chang disagreed with this recommendation, finding that the IME physician did not give any justification for returning claimant to full duty. In this regard, Dr. Chang noted that an FCE that was previously done indicated that claimant could work at the medium level capacity, which is

below claimant's required demand for work. Claimant told Dr. Chang that he did not want to risk injuring himself, so he opted not to return to work.

¶ 19 In a letter dated June 9, 2013, Dr. Salehi reported that he had reviewed Dr. Lami's IME of April 12, 2013. Dr. Salehi found that Dr. Lami's IME "mirrors" Dr. Salehi's IME of December 26, 2012, "in explaining [claimant's] symptoms and lack of *** candidacy for a surgical intervention." Dr. Salehi noted, however, that Dr. Lami disagreed with Dr. Salehi's finding that claimant's injuries were work related. Dr. Salehi reiterated his conclusion that claimant "had a clear work related injury resulting in an annular tear of his L5-S1 disc or the work accident resulted in an aggravation of such a condition." This opinion was based on the fact that claimant had no ongoing prior lower back pain other than an incident in 2008. Dr. Salehi also reiterated that claimant is not a candidate for a lumbar fusion based on the fact that his high BMI would result in significant complications post surgery.

¶ 20 Claimant continued to follow up with Dr. Chang, including visits throughout the remainder of 2013. During this time, claimant remained off work. Claimant reported persistent low back pain radiating into the buttocks and down the right leg. However, at a visit on November 12, 2013, claimant reported low back and left leg pain.

¶ 21 Based on the foregoing evidence, the arbitrator determined that claimant sustained injuries arising out of and in the course of his employment with respondent. The arbitrator further determined that claimant proved that his condition of ill-being with respect to his low back was causally related to the work accidents. Specifically, the arbitrator found that claimant's preexisting degenerative disc disease became symptomatic following the work accidents in March 2010 and January 2013. However, the arbitrator determined that claimant failed to prove that his symptom of radiating pain into his lower extremities is causally related to the work

injuries. In this regard, the arbitrator stated that claimant "did not report nor did Dr. Chang or the other medical providers and evaluators note any complaints of lower extremity pain prior to Dr. Chang's report on January 8, 2013, of radiating left leg pain." The arbitrator further stated that after the second injury on January 11, 2013, claimant "did not report any lower extremity pain to Dr. Lami or to Dr. Chang until July 23, 2013, at which time Dr. Chang noted right leg pain."

¶ 22 The arbitrator awarded claimant 152-4/7 weeks of TTD benefits, from March 20, 2010 (the date of the first accident), through December 21, 2012 (presumably the date claimant returned to work), and from February 12, 2013 (the date claimant first saw Dr. Chang following the second accident), through April 12, 2013 (the date Dr. Lami opined that claimant was at MMI). The arbitrator also awarded reasonable and necessary medical expenses and determined that claimant is entitled to undergo an FCE and a vocational assessment pursuant to Rule 7110.10 (50 Ill. Admin. Code § 7110.10 (eff. June 22, 2006)). However, the arbitrator denied claimant's request for prospective medical care, finding that claimant failed to prove that the surgeries recommended by Dr. Chang were reasonable and necessary. With respect to the laminectomy and discectomy at L5-S1, the arbitrator explained that claimant failed to prove that his current symptoms of radiating pain to his lower extremity were causally related to the work injuries. The arbitrator noted that Dr. Miller, Dr. Lami, and Dr. Salehi all indicated that claimant suffers from mechanical back pain due to degenerative disc disease and therefore a laminectomy and discectomy would not be beneficial. In addition, the arbitrator found Dr. Chang's opinion regarding surgery to be of "no probative value" on the basis that his finding that claimant's predominant pain was left leg pain was not supported by the treatment records. In this regard,

the arbitrator reiterated that Dr. Chang's first reference to any left leg pain was on January 8, 2013.

¶ 23 The Commission affirmed and adopted the decision of the arbitrator in its entirety. The Commission remanded the matter for further proceedings pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980). On judicial review, the circuit court of Cook County confirmed the decision of the Commission. This appeal by claimant followed.

¶ 24 II. ANALYSIS

¶ 25 A. Prospective Medical Care

¶ 26 On appeal, claimant first argues that the Commission erred in denying prospective medical treatment in the form of back surgery. Section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)) governs medical care. That provisions states in relevant part:

> "The employer shall provide and pay * * * all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2010).

Specific procedures or treatments that have been prescribed by a medical service provider are "incurred" within the meaning of section 8(a) even if they have not been performed or paid for. *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill. App. 3d 650, 655 (1999). The claimant bears the burden of proving, by a preponderance of the evidence, his or her entitlement to an award of medical care under section 8(a). *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 546 (2007). Questions regarding entitlement to prospective medical care under section 8(a) are factual inquiries for the Commission to resolve. *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill. App. 3d 893, 903 (2004). We owe great deference to the factual findings of the

Commission, especially where medical issues are involved, as its expertise is well recognized in the medical field. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). As such, the Commission's decisions on factual matters will not be disturbed on appeal unless they are against the manifest weight of the evidence. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534 (2001). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Will County Forest Preserve District v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110077WC, ¶ 15.

¶ 27 At the outset, we note that claimant's medical records reference two distinct procedures: (1) an L5-S1 laminectomy and discectomy and (2) a lumbar fusion. The former procedure was intended to relieve claimant's back and left-leg pain while the latter procedure was intended to relieve his mechanical back pain. With respect to the laminectomy and discectomy at L5-S1, we note that Dr. Chang recommended the procedure on the basis that claimant's predominant complaints involved pain in the left leg. However, the Commission, in affirming and adopting the decision of the arbitrator, determined that claimant failed to prove that his complaints of radiating pain into his left lower extremity were causally related to his work accidents. In support, the Commission noted that the first reference to any pain radiating to the left leg was Dr. Chang's progress note of January 8, 2013. The Commission further determined that following the second accident, claimant did not report any lower extremity pain until July 23, 2013, at which time Dr. Chang noted right leg pain. We find that the evidence supports the Commission's conclusion, given that the first reference to any pain radiating to the left leg was Dr. Chang's progress note of January 8, 2013, almost three years after claimant's initial accident. Moreover, although we disagree with the Commission's finding that claimant did not complain of left-leg pain following the second accident, we point out that claimant's reports of such pain

after the second accident were inconsistent. Dr. Chang's notes occasionally reference left leg pain, but at other times reference only right leg pain or no leg pain at all. Moreover, claimant denied any pain radiating to his lower extremities during many other medical visits, including when he saw Dr. Lami on April 12, 2013, after the second accident.

¶ 28 The Commission further found that claimant failed to prove that the L5-S1 laminectomy and discectomy was reasonable to relieve the effects of his work injuries. The Commission relied on the opinions of Dr. Miller, Dr. Lami, and Dr. Salehi. Dr. Miller did not believe that any surgical intervention was appropriate. Dr. Lami opined that the laminectomy and discectomy were not appropriate because claimant did not report any radicular symptoms. Similarly, Dr. Salehi explained that claimant was not a candidate for a laminectomy and discectomy because of the lack of pain radiating down the legs. Although Dr. Chang recommended the laminectomy and discectomy, the Commission found his opinion of no probative value given the inconsistent evidence regarding claimant's left leg pain. We find that the evidence supports the Commission's conclusion that claimant failed to prove that the L5-S1 laminectomy and discectomy was reasonable to relieve the effects of his work injuries. That procedure was intended principally to relieve claimant's left-leg pain. As noted above, however, the evidence regarding claimant's left-leg pain was contradictory. Given the inconsistent evidence regarding claimant's left-leg pain in conjunction with the conflicting medical opinions, the Commission could have reasonably concluded that the L5-S1 laminectomy and discectomy was not reasonable to relieve the effects of claimant's work injuries. Hence, we conclude that the Commission's finding that claimant did not prove his entitlement to an L5-S1 laminectomy and discectomy is not against the manifest weight of the evidence.

¶ 29 Claimant acknowledges that the Commission denied his request for the L5-S1 laminectomy and discectomy on the basis that he did not prove that his current symptoms of radiating pain into his lower extremities are causally related to his work injuries. Indeed, claimant does not vigorously dispute the Commission's finding in this regard. Instead, claimant focuses on the reasonableness and necessity of the lumbar fusion surgery. In this regard, claimant initially contends that the Commission did not address the need for a lumbar fusion. We disagree. In rendering its decision, the Commission stated that claimant did not prove that the surgery recommended by Dr. Chang was reasonable and necessary. Dr. Chang recommended two procedures, the laminectomy and discectomy at L5-S1 *and* the lumbar fusion. Thus, we conclude that the propriety of the lumbar fusion was tacitly addressed by the Commission. Moreover, we find that the Commission's finding that claimant failed to prove that the lumbar fusion was reasonable and necessary was not against the manifest weight of the evidence. In this regard, we note that Dr. Chang was the only physician who recommended the fusion. Neither Dr. Miller nor Dr. Lami recommended any type of surgery. Further, although Dr. Salehi indicated that a lumbar fusion "would have been a possibility," he did not recommend the procedure because claimant's elevated BMI significantly increased the risk of complications and decreased the chance of symptomatic improvement. In light of the conflicting medical opinions regarding the necessity of the lumbar fusion, and given the Commission's role in resolving such conflicts, we cannot say that the Commission's finding that claimant failed to prove that the lumbar fusion is reasonable and necessary is against the manifest weight of the evidence.

¶ 30 B. TTD Benefits

¶ 31 Claimant next argues that the Commission erred in terminating his TTD benefits as of April 12, 2013, because he had not reached MMI by that date. TTD benefits are available from the time an injury incapacitates an employee from work until such time as the employee is as far recovered or restored as the permanent character of the injury will permit. *Westin Hotel*, 372 Ill. App. 3d at 542. The dispositive inquiry is whether the employee's condition has stabilized, that is, whether the employee has reached MMI. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005). The factors to consider in assessing whether an employee has reached MMI include a release to return to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 178 (2000). Once the injured employee has reached MMI, he is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). The period during which a claimant is entitled to TTD benefits is a factual inquiry for the Commission. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256-57 (2008). Hence, the Commission's decision will not be overturned on appeal unless it is against the manifest weight of the evidence. *Ming Auto Body/Ming of Decatur, Inc.*, 387 Ill. App. 3d at 256-57. As noted above, a finding is against the manifest weight of the evidence, only where an opposite conclusion is clearly apparent. *Will County Forest Preserve District*, 2012 IL App (3d) 110077WC, ¶ 15.

¶ 32 In this case, the Commission awarded claimant 152-4/7 weeks of TTD benefits, consisting of two distinct periods, from March 20, 2010 (the date of claimant's first work accident), through December 21, 2012 (presumably the day claimant returned to work), and from February 12, 2013 (the day claimant sought medical care for the second work accident), through

April 12, 2013 (the day Dr. Lami determined claimant could return to work). Claimant insists that it was improper for the Commission to terminate his TTD benefits as of April 12, 2013, because he had not reached MMI by that time. According to claimant, he "cannot be said to have reached MMI since he needed and wanted to undergo surgery after failing conservative treatment." After reviewing the record, however, we cannot say that a conclusion opposite to that of the Commission is clearly apparent. The evidence shows that as of April 2013, Dr. Chang did not believe that claimant was at MMI as he continued to recommend that claimant undergo back surgery. As noted earlier, however, neither Dr. Lami, Dr. Miller, nor Dr. Salehi recommended any type of surgery for claimant, and the Commission agreed that claimant failed to prove that the proposed back surgeries were reasonable and necessary. Given the lack of treatment options for claimant, Dr. Lami opined that claimant had reached MMI and that he can return to full duty as of Dr. Lami's April 12, 2013, examination of claimant. He further opined that, to the extent that claimant's back condition causes increased pain, claimant should pursue a career that will be less taxing on his back. In other words, the Commission was presented with conflicting evidence regarding claimant's condition on April 12, 2013. The Commission resolved this conflict in respondent's favor. Given the foregoing evidence, we cannot say that the Commission's decision was against the manifest weight of the evidence.

¶ 33 C. Maintenance

¶ 34 Finally, claimant argues that it we determine that the Commission's decision is not against the manifest weight of the evidence, he should be awarded maintenance. According to claimant, since an award of vocational rehabilitation was ordered and he is still employed by respondent, "it can be implied that he was either waiting for the implementation of a rehabilitation plan or authorization for surgery." We disagree.

¶ 35 Section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)) provides that an "employer shall * * * pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto." The statute is flexible and does not limit "rehabilitation" to formal training. *Connell v. Industrial Comm'n*, 170 Ill. App. 3d 49, 55 (1988). However, by its plain terms, Section 8(a) requires the employer to pay only those maintenance costs and expenses that are incidental to rehabilitation. In other words, an employer is obligated to pay maintenance benefits only "while a claimant is engaged in a prescribed vocational-rehabilitation program." *W.B. Olson, Inc. v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 113129WC at ¶ 39; see also *Nascote Industries*, 353 Ill. App. 3d at 1075. Thus, if the claimant is not engaging in some type of "rehabilitation," such as physical rehabilitation, formal job training, or a self-directed job search, the employer's obligation to provide maintenance is not triggered. In this case, the Commission merely authorized an FCE and a vocational *assessment*, not vocational rehabilitation. See 50 Ill. Admin. Code § 7110.10 (eff. June 22, 2006) (providing that the employer, in consultation with the injured employee, shall prepare "a written assessment of the course of medical care, and, if appropriate, rehabilitation required to return the injured worker to employment."). Moreover, claimant testified at the arbitration hearing that he had not conducted a self-directed job search. Additionally, claimant does not cite, and our research has failed to uncover, a case or rule requiring an employer to provide maintenance benefits when a vocational assessment is ordered, but the claimant is not engaged in any "rehabilitation." As such, we conclude that claimant is not entitled to an award of maintenance benefits.

¶ 36 III. CONCLUSION

¶ 37 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County, which confirmed the decision of the Commission. This cause is remanded for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 38 Affirmed; Cause remanded.