2016 IL App (1st) 153184WC

Workers' Compensation
Commission Division
Order Filed: December 23, 2016

No. 1-15-3184WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

DAYTON FREIGHT LINES, INC.,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	No. 15 L 50395
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	Honorable
	)	Robert Lopez-Cepero,
(John Mitchell and Harbor Freight, Appellees).	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson, Harris, and Moore 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 as modified, finding that the claimant's work-related accident of December 30, 2012, sustained while he was in the employ of Harbor Freight merely resulted in an exacerbation of his preexisting condition and that the claimant's current condition of ill-being is causally related to work accidents in 2001 and 2003 suffered while the claimant was employed by Dayton Freight Lines, Inc., and awarding temporary total disability benefits pursuant to the Workers' Compensation Act (820 ILCS 305/*et seq.* (West 2000)) and prospective medical expenses to be paid by Dayton Freight Lines, Inc.

¶ 2 Dayton Freight Lines, Inc. (Dayton) appeals from an order of the circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), which found that the work-related accident sustained by the claimant, John Michell, while working for Harbor Freight (Harbor), merely resulted in an exacerbation of his pre-existing condition of ill-being and that the claimant's current condition of ill-being is causally related to work-related accidents which the claimant sustained while working for Dayton in 2001 and 2003, and awarding the claimant temporary total disability (TTD) benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2000)), and prospective medical expenses to be paid by Dayton. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the Commission's decision of October 16, 2007, from which no judicial review was sought, and the evidence adduced at the arbitration hearings held on April 11, 2006, and August 24, 2012.

¶ 4 On August 29, 2001, while working for Dayton, the claimant suffered an injury to his low back while lifting snow blowers. The claimant sought treatment for his injury from several physicians. An MRI of the claimant's back was ordered by Dr. John Shea on April 1, 2002. That scan revealed that the claimant suffered from herniated discs at L3-4 and L4-5. On June 11, 2002, the claimant underwent a microdiskectomy at L3-4 which was performed by Dr. Shea. Following surgery, the claimant underwent a course of physical therapy. When the claimant was seen by Dr. Shea on November 15, 2002, the doctor ordered an MRI of the claimant's back. That MRI scan revealed scar tissue at L3-4 and a possible recurrent disc herniation at that level. Dr. Shea released the claimant to return to full-duty work on January 16, 2003.

¶ 5 On April 4, 2003, while working for Dayton, the claimant injured his low back, neck and left hip when the top of the truck and trailer he was driving struck an overpass bridge. The claimant sought medical treatment at the Palos Community Hospital. Subsequently, the claimant was treated by Dr. Shea and Dr. Matthew Hepler. Dr. Hepler ordered an MRI of the claimant's lumbar spine which revealed a recurrent disc herniation at L3-4. When the claimant saw Dr. Hepler on July 18, 2003, the doctor ordered an MRI of the claimant's cervical spine. That scan revealed a herniated disc at C6-7. Following a lumbar diskogram, Dr. Hepler recommended that the claimant undergo lumbar fusion surgery and referred the claimant to Dr. George Cybulski for a second opinion. After examining the claimant, Dr. Cybulski agreed with Dr. Hepler's surgical recommendation.

¶ 6 The claimant was examined by Dr. Alexander Ghanayem at Dayton's request. Following his examination of the claimant, Dr. Ghanayem recommended that he undergo cervical fusion surgery, but the doctor did not believe that lumbar fusion surgery was necessary.

¶ 7 On July 8, 2004, Dr. Hepler operated on the claimant. The surgery consisted of an anterior cervical diskectomy at C6-7, a left C6-7 foraminotomy, an anterior cervical fusion with instrumentation, and a right hip bone graft. Following surgery, the claimant was referred to the Rehabilitation Institute of Chicago (RIC) for chronic pain management.

¶ 8 At Dayton's request, the claimant was examined by Dr. Avi Bernstein in March 2005. Dr Bernstein recommended that the claimant have a functional capacity examination (FCE) which was performed on April 5, 2005. The report of that examination states that the claimant is capable of working at the light-medium to medium category with no lifting greater than 35 pounds. On April 13, 2005, following his review of the FCE, Dr. Bernstein opined that the

claimant had reached maximum medical improvement (MMI) and could return to work with a 35 pound lifting restriction.

¶ 9 On June 13, 2005, the claimant had an initial evaluation at the RIC. He complained of low back pain and neck pain radiating into his lower extremities. The evaluation was performed by Dr. Meullner who diagnosed the claimant as suffering from low back and radicular pain, consistent with a L4-5 disc herniation status post laminectomy; and neck and radicular pain, consistent with a L6-7 disc herniation status post laminectomy effusion.

¶ 10 On June 16, 2005, the claimant was examined by Dr. Richard Shermer at Dayton's request. Dr. Shermer also reported that the claimant had reached MMI and could work within the restrictions outlined in the FCE. When the claimant saw Dr. Hepler on September 26, 2005, the doctor imposed permanent restrictions on the claimant of no lifting of more than 35 pounds and opined that the claimant was unable to return to his former work as a truck driver.

¶ 11 The claimant filed two applications for adjustment of claim pursuant to the Act, seeking benefits for injuries he sustained on August 29, 2001 (docket No. 02 WC 49143), and April 4, 2003 (docket No. 03 WC 26244), while in the employ of Dayton. The two claims were consolidated and proceeded to an arbitration hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2006)) which was held on April 11, 2006. Following that hearing, the arbitrator issued a decision on June 15, 2006, in which he found that the claimant sustained accidental injuries to his low back, legs and cervical spine, which arose out of and in the course of his employment with Dayton on August 29, 2001, and April 4, 2003. The arbitrator awarded the claimant 74 2/7 weeks of TTD benefits for his August 29, 2001, accident and 157 4/7 weeks of TTD benefits for his April 4, 2003, accident. In addition, the arbitrator awarded $15,016 for

medical expenses incurred by the claimant and ordered Dayton to pay for prospective pain management treatment.

¶ 12 Dayton sought a judicial review before the Commission of the arbitrator's June 15, 2006, decision. In a decision dated October 16, 2007, the Commission reduced the claimant's medical expense award to $1,157 and affirmed and adopted the remainder of the arbitrator's decision. No petition for judicial review of the Commission's decision was filed by either the claimant or Dayton.

¶ 13 Following the April 11, 2006, arbitration hearing, the claimant continued to undergo pain management treatment at the RIC where he came under the care of Drs. Meullner, Palstaras, Joseph and Press. Throughout 2007, 2008 and 2009, the claimant complained of low back pain, radiating down his legs with a burning sensation in his feet and was prescribed pain medication. On August 1, 2008, Dr. Joseph completed an assessment of the claimant in which he diagnosed lumbar-sacral spondylosis at L3-4 along with posterior cervical spinal fusion and discogenic back pain. Dr. Joseph was of the opinion that the claimant had reached MMI with the exception of routine follow-up care. He released the claimant to return to full-time work on August 4, 2008. The claimant received follow-up pain management treatment at the RIC for the remainder of 2008 and 2009. During his visits to the RIC, the claimant continually complained of low back pain. When the claimant was seen by Dr. Joseph on June 2, 2010, he complained of disabling pain. He reported experiencing mid-back muscle spasms which were severe at times and stated that his pain was worse with physical activity.

¶ 14 In 2010, Dayton provided vocational rehabilitation services to the claimant which, according to the claimant, resulted in his obtaining employment as a security guard. He testified that, although the security guard position did not require lifting and only minimal standing, he

could not tolerate the drive to work. On August 30, 2010, the claimant began working part time at Harbor as a retail clerk. According to the claimant, he worked 5 to 15 hours per week.

¶ 15 When the claimant saw Dr. Joseph on September 1, 2010, he complained of pain in his neck and low back which radiated down his arm and a burning sensation in his legs. On October 15, 2010, the claimant told Dr. Joseph that, after working 2 hours, his pain level was 8 on a scale of 10. When he returned to see Dr. Joseph on December 15, 2010, the claimant told the doctor that he could not tolerate working more than 15 to 20 hours per week. Dr. Joseph advised the claimant to continue working part time for three months to build up his tolerance.

¶ 16 The claimant testified that, while working at Harbor on December 30, 2010, he felt a sharp, stabbing pain in his back as he was moving stock. According to the claimant, he had experienced the same type of pain "many times" on earlier occasions. The claimant stated that he received medical treatment from Harbor's company doctor, Dr. Lambos, at Concerta on January 3, 2011. During that visit, the claimant reported that he experienced low back pain when he grabbed a floor jack from a pallet on a display flat while working at Harbor.

¶ 17 Subsequently, the claimant filed a third application for adjustment of claim pursuant to the Act, seeking benefits from Harbor for injuries he sustained on December 30, 2010 (docket No. 11 WC 09262).

¶ 18 On referral from a friend, the claimant sought treatment from Dr. Michael Zindrick on January 11, 2011. He gave a history of having injured his back while moving a hydraulic jack at work on December 30, 2010. The claimant informed the doctor of his prior back injuries and of the fact that he had been a chronic pain management patient at the RIC for the past four to six years. He complained of pain in his back, left buttock, groin, thigh and leg, with numbness and tingling in both feet. He reported that his back and leg symptoms worsened after his work

accident on December 30, 2010. X-rays taken of the claimant's lumbar spine on that date revealed degenerative disc disease which was worse at L3-4. Dr. Zindrick recorded an impression that the claimant's symptoms appeared to be a significant worsening of his preexisting back pain. Dr. Zindrick prescribed pain medication and a Medrol Dose Pack and recommended that the claimant remain off of work. The doctor also ordered an MRI of the claimant's lumbar spine. That MRI was performed on January 18, 2011, and revealed: an L3-4 disc bulge on the left with osteophyte causing a mild compression; evidence of disc bulging at L2-3, L4-5 and L5-S1 with a mild to moderate bilateral foraminal narrowing; mild disc bulging at L1-2 and T12-L1; and posterior annular tears of the L2-3, L3-4, and L5-S1 discs. When the claimant was next seen by Dr. Zindrick on January 28, 2011, he reported that he was feeling better. He also told the doctor that his back problems pre-dated his December 30, 2010, work accident. After viewing the claimant's MRI, Dr. Zindrick recorded a belief that the scan revealed significant degenerative changes at L3-4 and what looked like a new disc herniation at L3-4. Dr. Zindrick released the claimant to return to light-duty work. On February 28, 2011, the claimant received an epidural steroid injection as recommended by Dr. Zindrick. When the claimant returned to see Dr. Zindrick on March 4, 2011, he reported that his back pain was the same, but his neck pain was worse. Dr. Zindrich recommended that the claimant remain off of work and ordered an MRI of his cervical spine. The claimant next saw Dr. Zindrick on April 1, 2011, and reported that his symptoms were unchanged. When the claimant was seen by Dr. Zindrick on May 13, 2011, he complained of pain in his neck, shoulders, back, buttocks, and legs. Dr. Zindrick recorded an impression of cervical, dorsal and lumbar discogenic pain and recommended that the claimant remain off of work.

¶ 19 The claimant underwent an MRI of his cervical spine on May 18, 2011, which reflected postoperative changes at C6-7, consistent with a cervical spine fusion without any focal disc protrusion; and evidence of mild degenerative and spondylitic changes with mild disc bulging at C3-4, C4-5 and C5-6.

¶ 20 At Dayton's request, the claimant was again examined by Dr. Bernstein on May 19, 2011. The claimant complained of chronic neck pain; pain in his head, shoulders, upper back and arms; numbness and tingling in his right forearm, fingertips and hands; and low back pain which travels into his buttocks, hips, legs and feet. However, he specifically denied a new injury on December 30, 2010; rather, he reported a flare-up in symptoms. Following his examination of the claimant, Dr. Bernstein diagnosed chronic diffuse subjective complaints of neck and low back pain.

¶ 21 In his records of the claimant's June 7, 2011, visit, Dr. Zindrick noted that the claimant's MRI did not reveal any evidence of significant spinal stenosis, neuroforaminal stenosis, or disc herniation. On that date, the doctor recorded an impression of cervical, dorsal and lumbar diskogenic pain with an acute increase in lumbar pain. Dr. Zindrick recommended that the claimant remain off of work and prescribed physical therapy. When the claimant was seen by Dr. Zindrick on June 15, 2011, he complained of increasing low back pain. He also informed the doctor that his pain had not abated and that his medication was not controlling the pain. X-rays taken of the claimant's lumbar spine showed no changes from previous studies. On June 30, 2011, the claimant reported to Dr. Zindrik that his pain was slightly better with the change in his medication. Dr. Zindrick recommended that the claimant consider a spinal fusion at the L3-4 level with a repeat laminectomy and an extension of the laminectomy at L2-3 down to L4-5.

¶ 22 The claimant was examined by Dr. Srdjan Mirkovic on July 21, 2011, at Harbor's request. The claimant reported to Dr. Mirkovic that he had constant low back pain and sporadic, bilateral leg pain with numbness and tingling in his feet and toes. He also reported occasional weakness and difficulty walking. The claimant told the doctor that, while working on December 30, 2010, he experienced a sharp, sudden return of his stabbing back pain as well as leg symptoms with the low back pain significantly worse than the bilateral leg pain. He reported that, since that time, his symptoms have remained constant. Dr. Mirkovic noted that the claimant stated that his symptoms are similar in intensity and distribution to his past symptoms. Following his examination of the claimant, Dr. Mirkovic diagnosed chronic low back pain, but found no objective clinical evidence or imaging studies that the claimant incurred any structural injury on December 30, 2010. He opined that the claimant's symptoms were related to his chronic, underlying low back pain. Dr. Mirkovic was of the belief that the claimant's accident of December 30, 2010, "more likely than not," temporarily aggravated his underlying chronic degenerative condition. Dr. Mirkovic made note of the fact that the claimant felt that his symptoms are at their pre-December 30, 2010, level, which the doctor found consistent with his expected recovery following the December 30 exacerbation. Dr. Mirkovic recommended that the claimant return to a chronic pain management program.

¶ 23 When Dr. Mirkovic was deposed, he testified that, in his opinion, the events of December 30, 2010, "more likely than not probably aggravated [the claimant's] preexisting underlying chronic degenerative condition with an aggravation of the preexisting low back pain." He stated that the aggravation was temporary, meaning that the claimant returned to baseline status. The doctor stated that the claimant's complaints at the time that he saw him "more likely than not related to the underlying chronic low back pain rather than *** the events on December 30,

2010." On cross-examination, Dr. Mirkovic conceded that it is possible that the claimant's increase in symptoms following the December 30, 2010, accident could represent a new injury. Dr. Mirkovic also opined that the claimant is capable of working and suggested that he have an FCE to see "how much he can do."

¶ 24 The claimant next saw Dr. Zindrick on August 5, 2011, at which time his symptoms remained unchanged. He complained of significant neck pain, back pain, numbness and tingling, and weakness in both legs. As of that visit, Dr. Zindrick diagnosed a disc herniation and significant disc degeneration at the L3-4 level. Dr. Zindrick continued to recommend surgery and advised the claimant to remain off of work.

¶ 25 On August 17, 2011, Dr. Bernstein issued a supplemental report in which he stated that, after his review of the claimant's MRI scans, he did not believe that the claimant required any ongoing medical treatment due to any work injuries. Dr. Bernstein went on to state that: "It is my opinion that [the claimant's] current condition is a result of his prior accidents of August 29, 2001 and April 4, 2003 and not the result of a new incident on December 30, 2010, or the development of worsening neck pain in March, 2011."

¶ 26 The claimant was examined by Dr. Zindrik on September 20, 2011, January 13, 2012, February 24, 2012, March 23, 2012, May 11, 2012, and June 29, 2012. During these visits, the claimant continued to complain of low back pain, leg pain, numbness and tingling, and weakness in his legs. Dr. Zindrik's diagnosis of a disc herniation and disc degeneration at the L3-4 level remained unchanged. He also continued to recommend that the claimant have surgery and restricted him from working.

¶ 27 When Dr. Zindrick was deposed, he was questioned concerning the claimant's medical records and MRI scans. When asked for his opinion as to the cause of the claimant's condition

necessitating the surgery which he was recommending, Dr. Zindrick stated that the cause of the problem predated his first examination of the claimant and his December 2010, work accident. On cross-examination, Dr. Zindrick reiterated his opinion that the symptoms which the claimant complained when he treated him predated the claimant's December 30, 2010, work accident. And, although he had not reviewed all of the claimant's medical records, he found the symptoms for which he treated the claimant "very similar" to what he had read in the records from the RIC and Dr. Hepler. He testified that the claimant's accident while working at Harbor "was an exacerbation of his preexisting condition;" that is, "a temporary increase in the symptoms but it appears to have come back to baseline."

¶ 28 All three of the claimant's pending claims were consolidated for a section 19(b) hearing which was held on August 24, 2012. At that hearing, the claimant testified that he has been in constant pain since 2001. According to the claimant, he has good days and bad days. On a good day his pain level is a 3 on a scale of 10; whereas, on bad days the pain is a 9. He testified that his low back symptoms increased following his December 30, 2010, accident and that his pain medication was increased. He stated that he believed that his work accident of December 30, 2010, aggravated his condition, although he had experienced similar aggravation of his symptoms before that date. The claimant testified that he attempted to return to work at Harbor for one day in March 2011, but was sent home after several hours. He stated that Dr. Zindrick took him off of work on April 1, 2011, and that, as of the date of the arbitration hearing, he had not returned to work

¶ 29 On October 15, 2012, the arbitrator issued his decision, finding that the claimant sustained an injury to his lumbar spine which arose out of and in the course of his employment with Harbor on December 30, 2010. The arbitrator also found that the injury which the claimant

suffered while working for Harbor was an intervening injury which has permanently affected his lumbar spine condition and is the cause of his ongoing need for treatment and his inability to work. The arbitrator ordered Harbor to pay the claimant 136 5/7 weeks of TTD benefits for the period from December 30, 2010, through the date of the arbitration hearing and ordered Harbor to authorize the prospective fusion surgery recommended by Dr. Zindrick. The arbitrator ordered Dayton to continue paying weekly wage differential benefits from October 7, 2010. In addition, the arbitrator denied the claimant's petition for the imposition of penalties under sections 19(k) and 19(*l*) of the Act (820 ILCS 305/19(k), (*l*) (West 2010)), and attorney fees under section 16 of the Act (820 ILCS 305/16 (West 2010)).

¶ 30 The claimant and Harbor both sought a review before the Commission of the arbitrator's October 15, 2012, decision. On September 27, 2013, the Commission, with one commissioner dissenting, issued its decision, affirming the arbitrator's decision in part and reversing that decision in part. The Commission reversed the arbitrator's finding on causal connection, holding that the claimant's December 30, 2010, accident while in the employ of Harbor merely resulted in an exacerbation of his preexisting conditions and that his condition of ill being is causally connected to his 2001 and 2003 accidents while in the employ of Dayton; not the result of his accident while working for Harbor. As a consequence, the Commission reversed the arbitrator's TTD award and his order that Harbor authorize prospective medical treatment. The Commission ordered Dayton to pay the claimant 102 5/7 weeks of TTD benefits for the period from October 7, 2010, through the date of the arbitration hearing, to be reduced by the amount which Dayton paid the claimant during that period for wage differential benefits. The Commission also ordered Dayton to authorize and pay for the claimant's prospective physical therapy and spinal-fusion surgery. In all other respects, the Commission affirmed and adopted the arbitrator's decision.

The dissenting commissioner voted to affirm the arbitrator's decision in its entirety. The matter was remanded to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 31 Dayton filed a petition for judicial review of the Commission's September 27, 2013 decision in the circuit court of Cook County. The circuit court entered an order on April 30, 2014, which provides, in relevant part, as follows: "It is hereby ordered that Dayton Freight's appeal of the Commission's 19[(b)] decision as to causation and prospective medical is denied and the matter is remanded to the Commission for calculation of TTD/maintenance/wage differential owed."

¶ 32 It appears that following the entry of the circuit court's remand order, an arbitrator issued a decision captioned "Clarification of Temporary Total Disability/Wage Differential/ Maintenance Owed." However, the Commission found that the arbitrator lacked jurisdiction to issue that decision and struck it from the record.

¶ 33 On April 30, 2015, the Commission issued a unanimous decision and opinion on remand from the circuit court, reaffirming the claimant's entitlement to TTD benefits from Dayton for the period from October 7, 2010, through the date of the arbitration hearing on August 24, 2012. The Commission determined that the claimant is due $30,255.24, calculated as follows: $63,939.77 for 98 2/7 weeks of TTD benefits at $650.55 per week; less $27,834.51 for 98 2/7 weeks of maintenance benefits paid by Dayton, $1,985.50 for part-time wages paid to the claimant by Harbor, and $3,864.52 for the TTD benefits paid to the claimant by Harbor.

¶ 34 Dayton filed a petition in the circuit court for judicial review of the Commission's April 30, 2015, decision. The circuit court entered an order on October 21, 2015, affirming the Commission's April 30, 2015, decision in part and reversing that decision in part. According to

its written order, the circuit court affirmed the Commission's "findings of causation and prospective medical expenses." The order states that:

> "Dayton's brief attempts to reopen the argument for causation, arguing the Harbor injury was an intervening and superseding cause of [the claimant's] injuries. However, this court already affirmed the Commission's finding on causation in its April 30, 2015 [*sic*] order and finds the Commission's subsequent decision was not clearly erroneous."

The circuit court reversed the Commission's "calculation of 'temporary total disability (TTD), maintenance, and wage differential," finding that the Commission erred in awarding the claimant TTD benefits after he reached MMI on August 1, 2008, until his injury while working for Harbor on December 30, 2010. As a consequence, the circuit court "adjusted" the period during which the claimant is entitled to TTD benefits to December 31, 2010, through August 24, 2012. This appeal followed.

¶ 35 Prior to addressing the issues raised by the parties, we again find need to comment on the briefs which we have received. Illinois Supreme Court Rule 341(h)(3) (eff. Jan. 1, 2016) requires that an appellant's brief contain "a concise statement of the applicable standard of review for each issue." The standard-of-review section in Dayton's brief consists of a regurgitation of general statements that questions of law are reviewed *de novo*, questions of fact are subject to a manifest-weight standard, and that a clearly-erroneous standard is applied to mixed questions of law and fact. Rather than state its position as to the appropriate standard applicable to each of the issues it raised, Dayton decided to hedge its bets by stating that "the Commission's decision reversing the Arbitrator on the issue of casual connection was either contrary to law, clearly erroneous or contrary to the manifest weight of the evidence." This is

hardly what was intended when the supreme court amended Rule 341(h)(3) to require appellants to state the standard of review on each issue raised. Had the supreme court intended to promulgate a guessing game, it would have said so. Moreover, Rule 341(h)(6) requires that an appellant's brief contain a Statement of Facts with appropriate references to the pages of the record on appeal. Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). Dayton's statement of facts, rather than referencing the pages of the record supporting numerous factual allegations, cites only to the arbitrator's decision, leaving this court to scour 11 volumes of record in an effort to find the underlying factual support.

¶ 36 Far too often of late, we have been required to remind litigants that the Illinois Supreme Court Rules addressed to the content of briefs are not advisory suggestions and compliance with their requirements is not optional. In the past, we have noted the deficiencies in the briefs which we have received, but nevertheless addressed the issues raised and resolved those appeals without striking the offending brief or appendix. In the future, however, this court may not be so inclined. Practitioners would be well advised to heed our warning.

¶ 37 Turning now to the issues presented in this appeal, we first address the jurisdictional issue raised by the claimant and Harbor. They assert that this court lacks jurisdiction to address the issues of causation and prospective medical care because Dayton failed to file a timely appeal from the circuit court's order of April 30, 2014. The claimant and Harbor contend that the April 30, 2014, order "was a final determination on the issues of causation and prospective medical care." We find no merit in the argument.

¶ 38 Subject to exceptions created by statute or set forth in the Illinois Supreme Court Rules, the jurisdiction of the appellate court is limited to reviewing appeals from final judgments. *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989). Jurisdiction to review final decisions of the

Commission is vested in the circuit court. This court's jurisdiction in workers' compensation cases is confined to appeals from final orders of the circuit court. 820 ILCS 305/19(f) (West 2014). Contrary to the assertions of the claimant and Harbor, the circuit court's order of April 30, 2014, is not a final order. When, as in this case, the circuit court reverses a decision of the Commission, in whole or in part, and remands the matter back to the Commission for further proceedings involving the resolution of questions of law or fact, the order is interlocutory and not appealable. *Stockton v. Industrial Comm'n*, 69 Ill. 2d 120, 124-25 (1977).

¶ 39 Although, in its order of April 30, 2014, the circuit court affirmed those portions of the Commission's decision of September 27, 2013, relating to causation and prospective medical care, the circuit court also remanded the matter back to the Commission for the purpose of calculating the "TTD/maintenance/wage differential owed" to the claimant. The function of the Commission on remand was more than a simple mathematical computation. As evidenced by its decision on remand, the Commission undertook a review of the TTD benefits to which the claimant was entitled and provided for credits against that sum. In its decision of September 27, 2013, which is the subject of the circuit court's April 30, 2014, order, the Commission awarded the claimant 102 5/7 weeks of TTD benefits to be paid by Dayton; however, in its decision of April 30, 2015, following the remand from the circuit court, the Commission reduced the period for which the claimant is entitled to TTD benefits to 98 2/7 weeks.

¶ 40 The circuit court's April 21, 2014, order is interlocutory in nature and was not appealable in its own right. *Id*. at 124; *Downey v. Industrial Comm'n*, 44 Ill. 2d 28, 29 (1969); *Mayrath Co. v. Industrial Comm'n*, 33 Ill. 2d 224, 225 (1965). It is the order of October 21, 2015, which is final and appealable (see *Stockton*, 69 Ill. 2d at 125), and Dayton's appeal from that order drew into issue all prior interlocutory orders (*Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433

(1979)), including the circuit court's order of April 30, 2014, which addressed the issues of causation and prospective medical care.

¶ 41 Having rejected the jurisdictional challenges of both the claimant and Harbor, we now turn to the issues raised by Dayton. Dayton argues that the Commission's finding of a causal relationship between the claimant's current condition of ill being and his 2001 and 2003 work-related accidents while in its employ is contrary to the law and the facts. As a related issue, Dayton argues that the Commission erred in finding that the claimant's accident on December 30, 2010, while working for Harbor merely resulted in an exacerbation of his preexisting conditions and was not an intervening accident which broke the causal connection between the claimant's prior injuries and his current condition of ill being.

¶ 42 Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). The issue of whether a claimant's condition of ill being is attributable solely to a preexisting condition or is attributable to a work-related accident is also a question of fact to be resolved by the Commission, subject to review under a manifest weight standard. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). In resolving such issues, it is the function of the Commission to judge the credibility of witnesses and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest

weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 43 In this case, Dr. Zindrick, the claimant's treating physician, testified that the cause of the claimant's condition of ill-being predated his first examination of the claimant and the claimant's December 2010, work accident. He stated that the claimant's accident while working at Harbor "was an exacerbation of his preexisting condition;" that is, "a temporary increase in the symptoms but it appears to have come back to baseline." Dr. Mirkovic, Harbor's expert medical witness, testified that the claimant's complaints at the time that he saw him "more likely than not related to the underlying chronic low back pain rather than *** the events on December 30, 2010." He opined that the claimant's accident of December 30, 2010, "more likely than not," temporarily aggravated his underlying chronic degenerative condition. Dr. Bernstein, Dayton's own expert medical witness, issued a report in which he wrote: "It is my opinion that his [the claimant's] current condition is a result of his prior accidents of August 29, 2001, and April 4, 2003, and not the result of a new incident on December 30, 2010, or the development of worsening neck pain in March, 2011." There is no medical opinion in the record before us which finds a causal connection between the claimant's current condition of ill-being and his work-related accident of December 30, 2010.

¶ 44 Nevertheless, Dayton argues that the weight of evidence refutes the Commission's holding that the claimant's accident of December 30, 2010, merely resulted in a temporary exacerbation of his preexisting condition which then returned to baseline and was not an intervening event which severed the causal connection from his preexisting condition. In support of its argument, Dayton relies upon this court's analysis in *National Freight Industries v. Illinois*

Workers' Compensation Comm'n, 2013 IL App (5th) 120043WC. However, we find that Dayton's reliance is misplaced.

¶ 45 *National Freight Industries* is a case in which the Commission found that a subsequent motor vehicle accident was an independent intervening cause that broke the chain of causation from the claimant's earlier work injury. After analyzing the evidence in that case, we concluded that it was reasonable for the Commission to conclude that the motor vehicle accident resulted in more than a mere aggravation of the injuries which the claimant sustained in his initial work accident. *Id*. ¶ 33. In short, we found that the Commission's decision was *not* against the manifest weight of the evidence as there was sufficient evidence in the record to support the Commission's causation finding. In this case, Dayton attempts to use our analysis in *National Freight Industries* to support its argument that the Commission's finding as to causation *is* against the manifest weight of the evidence. However, we set forth no test in *National Freight Industries* for determining whether an event is an independent intervening cause that severs the chain of causation from an earlier work injury; rather, we merely recounted the evidence in the record which supported the Commission's resolution of the issue.

¶ 46 Dayton further supports its causation argument with its interpretation of the claimant's medical records from both before and after the accident of December 30, 2010, and based upon that interpretation, argues that we should find that the manifest weight of the evidence establishes that the claimant's accident while working for Harbor on December 30, 2010, was an independent intervening cause that broke the chain of causation from his preexisting condition. However, what Dayton is essentially asking this court to do is to reweigh the evidence. We believe that, in addition to the causation opinions of Drs. Zindrick, Mirkovic and Bernstein, the records of the claimant's medical care from 2003 through December 2010 prior to his accident

while working at Harbor and the claimant's own testimony support the Commission's finding as to causation.

¶ 47 As early as 2003, Dr. Hepler recommended that the claimant undergo lumbar fusion surgery. From the time that he was first seen at the RIC in June of 2005, the claimant continuously complained of low back pain, radiating into his lower extremities. He continued as a pain management patient at the RIC throughout the period from 2005 to 2010. When the claimant saw Dr. Joseph in September 2010, he again complained of disabling pain in his low back which radiated down his arm and a burning sensation in his legs, and in October 2010, he told Dr. Joseph that his pain level was 8 on a scale of 10 after working only 2 hours. When he saw Dr. Joseph on December 15, 2010, the claimant told the doctor that he could not tolerate working more than 15 to 20 hours per week. Although when Dr. Zindrick first treated the claimant on January 11, 2011, he noted that the claimant's symptoms appeared to be significantly worse than his preexisting back pain, when he was deposed, Dr. Zindrick stated that the claimant's work accident of December 30, 2010, resulted in a temporary exacerbation of his preexisting condition that manifested itself in a temporary increase in pain symptoms that appear to have returned to baseline. Further, the claimant himself testified that, while working on December 30, 2010, he felt a sharp, stabbing pain in his low back, but then went on to state that he had experienced the same type of pain "many times" prior.

¶ 48 Whether a causal connection exists between the claimant's injuries sustained while working for Dayton and his current condition of ill-being is a question of fact to be resolved by the Commission. Based upon the opinions of Drs. Zindrick, Mirkovic and Bernstein, a fair reading of the claimant's medical records and the claimant's own testimony, we are unable to conclude that the Commission's determination that the claimant's current condition of ill-being is

causally related to the injuries he sustained while working for Dayton and that his accident while working for Harbor on December 30, 2010, merely resulted in a temporary exacerbation of the claimant's preexisting condition is against the manifest weight of the evidence.

¶ 49 Dayton next argues that, assuming the Commission was correct in its finding of causation, it erred both in awarding the claimant TTD benefits following his December 30, 2010, accident and in ordering it to authorize and pay for prospective lumbar fusion surgery. Dayton asserts that, if the claimant's accident while working for Harbor merely resulted in a temporary exacerbation of his preexisting condition, there "is no basis for an award of ongoing TTD benefits or for an award of prospective lumbar fusion surgery." Its argument in this regard appears to be predicated on the fact that the Commission found that, following the temporary exacerbation of his preexisting condition as a result of his December 30, 2010, accident, the claimant returned to "baseline."

¶ 50 Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) provides that an appellant must provide this court with citations of the authorities relied upon in support of its arguments. Failure to cite authority in support of an argument results in its forfeiture. *Levy Co. v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 131338WC, ¶ 9. In its brief, Dayton failed to cite any authority for its argument that, if the Commission's causation finding was correct, the Commission erred in ordering it to pay ongoing TTD benefits and prospective medical care. Therefore, the argument has been forfeited. Forfeiture aside, we find the argument is without merit.

¶ 51 It is clear from the record that the claimant continued to experience low back pain from the time of his initial injury in 2001 through the arbitration hearing on August 24, 2012. From the time of his initial injury in 2010 until his accident of December 30, 2010, the claimant

continuously complained to his medical providers of low back pain. He was a pain management patient at the RIC from 2005 through December 2010, and was prescribed pain medication for that entire period. As early as 2003, Dr. Hepler recommended that the claimant undergo lumbar fusion surgery as a result of the injuries he sustained while working for Dayton, Dr. Cybulski concurred in that recommendation, and in June of 2011, Dr. Zindrick also recommended lumbar fusion surgery. It is true that Dr. Zindrick opined that the claimant had returned to baseline following the temporary exacerbation of his symptoms resulting from the December 30, 2010, accident. However, baseline for the claimant consisted of constant low back pain and permanent work restrictions. Although the claimant was working 5 to 15 hours per week at Harbor prior to his December 30, 2010, accident, on December 15, 2010, he reported to Dr. Joseph that his pain level after working only 2 hours was 8 on a scale of 10. The claimant did not work following his December 30, 2010, accident and was taken off of work by Dr. Zindrick on January 11, 2011, and kept off of work by the doctor through the date of the arbitration hearing.

¶ 52 A claimant is temporarily and totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). The duration of TTD is controlled by the claimant's ability to work and his continuation in the healing process. *City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (1996). The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119.

¶ 53 In this case, there is no evidence in the record supporting the proposition that the claimant was capable of working after December 30, 2010, or that he had reached MMI after that date and

before the date of the arbitration hearing. Although the claimant worked part time for Harbor prior to December 30, 2010, even though he was suffering low back pain, the evidence of record reflects that by December 15, 2010, his pain level after working only 2 hours was 8 on a scale of 10. From December 31, 2010, through the date of the arbitration hearing on August 24, 2012, the claimant remained off of work; all but 11 days of which was pursuant to the orders of Dr. Zindrick. Further, the claimant received continuous treatment at the RIC for low back pain from 2005 through December 2010. Based upon these facts, we believe that the Commission could reasonably have found that the claimant's condition of low back pain causally related to his accidents while working for Dayton had not stabilized, but rather had increased to such a level that he was no longer capable of performing even part-time work. And the fact that the claimant performed part-time work for Harbor prior to December 30, 2010, is not dispositive of his entitlement to TTD benefits after that date. See *Sunny Hill of Will County v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 130028WC, ¶ 26. We conclude, therefore that the Commission's award of TTD benefits to the claimant to be paid by Dayton is not against the manifest weight of the evidence. We note that the claimant has not appealed from that portion of the circuit court's order which reduced the period for which he is entitled to TTD benefits. Consequently, we will not address the issue of the reduction.

¶ 54 Finally, as to the question of Dayton's liability for prospective lumbar fusion surgery, we note that, pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)), a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of his employment and which are necessary to relieve or cure the effects of the claimant's injury. *University of Illinois v. Industrial*

Comm'n, 232 Ill. App. 3d 154, 164 (1992). Having determined that the Commission's finding that the claimant's current condition of ill-being is causally related to the injuries that he suffered while working for Dayton is not against the manifest weight of the evidence, it follows that Dayton is responsible for whatever medical expenses are reasonable and necessary to relieve or cure the effects of the injuries he sustained while working for Dayton, including his current condition of ill-being. Dr. Zindrick recommended that the claimant undergo lumbar fusion surgery to relieve or cure his lumbar pain, a condition from which the claimant suffered both prior to and after December 30, 2010. We are unable to conclude, therefore, that the Commission's order that Dayton authorize and pay for the claimant's prospective lumbar fusion surgery is against the manifest weight of the evidence.

¶ 55 For the reasons stated, we affirm the orders of the circuit court which confirmed the Commission's decision on the issues of causation and Dayton's obligation to pay TTD benefits to the claimant and to authorize and pay for his prospective lumbar fusion surgery.

¶ 56 Affirmed and remanded.