

Order filed February 3, 2016

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

DONALD SMITH,)	Appeal from the
)	Circuit Court of
Appellant,)	Winnebago County.
)	
v.)	No. 14-MR-817
)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION, <i>et al.</i>)	Honorable
(Orput Companies, Appellee).)	Eugene G. Doherty, Judge, presiding.

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

ORDER

¶ 1 *Held:* The Commission's findings—that the claimant's current condition of ill-being was not causally related to his work accident and that it was, instead, the result of his preexisting underlying degenerative condition; that he sustained a temporary aggravation of a preexisting degenerative condition and reached maximum medical improvement with regard to the work injury in May 2011 and was, therefore, not entitled to total temporary disability benefits after June 27, 2011; and that he was not entitled to prospective

medical care as a result of the work injury—were not against the manifest weight of the evidence.

¶ 2 On May 16, 2011, the claimant, Donald Smith, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), seeking benefits for injuries he allegedly sustained on February 21, 2011, while working for the employer, Orput Companies.

¶ 3 On July 19, 2013, the claim proceeded to an expedited arbitration hearing under section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)). The arbitrator filed a decision on September 19, 2013, finding that the claimant did sustain an accident that arose out of and in the course of his employment but that his current condition of ill-being was not causally related to the accident. The arbitrator further found that the employer had paid all reasonable and necessary medical expenses. The arbitrator awarded the claimant temporary total disability (TTD) benefits of \$455.15 per week for 18 weeks, from February 22 through June 27, 2011, and gave the employer an \$8,192.70 credit for TTD benefits paid and a \$650.92 credit under section 8(j) of the Act (820 ILCS 305/8(j) (West 2010)) for medical bills paid through its group medical plan.

¶ 4 The claimant sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision. The claimant filed a petition for judicial review in the circuit court of Winnebago County, which confirmed the Commission's decision. The claimant appeals. The issues presented are: (1) whether the Commission's finding that the claimant failed to prove that his current condition of ill-being was causally related to his February 21, 2011,

injury was against the manifest weight of the evidence; (2) whether the Commission's finding that the claimant was not entitled to TTD benefits after June 27, 2011, was against the manifest weight of the evidence; and (3) whether the Commission's finding that the claimant was not entitled to prospective medical care as a result of the February 21, 2011, injury was against the manifest weight of the evidence.

¶ 5

BACKGROUND

¶ 6 The claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for injuries he allegedly sustained on February 21, 2011, while working for the employer. The claim proceeded to an expedited arbitration hearing under section 19(b) of the Act on July 19, 2013. The following recitation of facts is taken from the evidence presented at the hearing.

¶ 7 On the day of the accident, February 21, 2011, the claimant was employed as a maintenance supervisor for the employer. He testified that he slipped on ice while moving a dumpster at work, caught himself, and did not fall to the ground; however, he noticed pain in his neck and right shoulder. He reported the accident to his supervisor and finished his shift. When he returned to work the next morning, he felt a sharp pain in his neck and right arm while pouring a 50-pound bag of salt. He stated that the pain felt like "electric shock" and that he had never experienced that type of pain before. He reported the pain to his supervisor and sought medical treatment.

¶ 8 The claimant had a prior history of treatment for cervical degenerative disc disease and radiculopathy. He testified that he experienced neck stiffness in 2006 and 2007 after a prior injury and that he also had some numbness in the tips of his fingers with certain

activities. However, he stated that he had never experienced the sharp, radiating pain from his shoulder down to his right arm before February 21, 2011. He testified that he had not missed time from work and that he had not had restrictions relative to his prior injury. He stated that he had undergone injections and that surgery had been discussed in 2007 but that he had not undergone surgery and that, at the time of the February 21, 2011, accident, he had been working for over three years without needing treatment.

¶ 9 The claimant testified that his symptoms after the February 21, 2011, accident were different than his prior symptoms. He stated that he did not have pain radiating under the armpit or numbness in his fingers before the accident. He further testified that, after the accident, sleeping was more difficult and driving was more challenging.

¶ 10 Medical records were entered into evidence, documenting the claimant's treatment to his cervical spine prior to the accident. He first saw Dr. Christopher Sliva at Rockford Spine Associates on November 11, 2006, complaining of a three-year history of neck pain, left trapezial pain, and numbness in his left thumb. An examination showed restricted cervical range of motion on flexion, extension, and lateral bending. X-rays showed degenerative disc disease, most prominent at C5-6, but also at C6-7 and C3-4. A magnetic resonance imaging (MRI) scan showed degenerative disc disease, most prominent at C5-6 with a broad-based disc osteophyte complex and bilateral neuroforaminal narrowing. Dr. Sliva diagnosed C5-6 disc osteophyte complex and bilateral foraminal stenosis with predominant neck pain and some C6 nerve root irritation. He recommended physical therapy. After four weeks of physical therapy with little progress, Dr. Sliva recommended cervical epidural steroid injections.

¶ 11 On January 10, 2007, the claimant saw Dr. James Sturm at Rockford Memorial Hospital for a pain management evaluation, reporting a four-year history of significant neck pain that was recently associated with dizziness and lightheadedness with certain arm movements. Dr. Sturm diagnosed C5-6 osteophyte complex, cervical radicular pain of a left-sided C6-type distribution, and several levels of spinal spondylosis. He administered a C6-7 epidural steroid injection. The claimant saw Dr. Sturm again on January 24, 2007, reporting no significant change in his symptoms and complaining of pain in both arms and tingling in the right thumb. Dr. Sturm administered another C6-7 injection. The claimant immediately noted pain in his neck and both armpits.

¶ 12 Dr. Sturm performed a left-sided C6 selective nerve block on February 14, 2007. The claimant saw Dr. Sturm again on February 28, 2007, reporting pain in both upper extremities; numbness in both thumbs; and shooting pain in his neck, both arms, and both armpits with flexion of the neck. Dr. Sturm noted decreased reflexes in both upper extremities and a possible L'hermitte's sign. Because the injections failed to provide relief, Dr. Sturm referred the claimant back to Dr. Sliva.

¶ 13 The claimant saw Dr. Sliva again on March 21, 2007. Upon examination, Dr. Sliva noted unrestricted range of motion, mildly positive Spurling's test with reproduction of shoulder and neck pain, and diminished biceps and triceps on the left. Dr. Sliva recommended an electromyography (EMG) test to evaluate for evidence of active radiculopathy. The claimant underwent an EMG test and nerve conduction study of the left upper extremity on April 16, 2007. The nerve conduction study showed low amplitude left median sensory response, but the EMG test and nerve conduction study

were otherwise normal. Dr. Sliva recommended an RS muscle stimulator to address cervicalgia with radicular features. The claimant received the RS muscle stimulator in May 2007. After using the device, he reported no improvement. He requested further treatment or, in the alternative, asked to be referred to another physician.

¶ 14 The claimant returned to Dr. Sturm on June 11, 2007, reporting muscle spasms of the neck and worsening of pain with left shoulder abduction, left side bending of the neck, cervical extension, and left cervical rotation. Dr. Sturm referred him to the University of Wisconsin Madison Spine Center.

¶ 15 The claimant called Dr. Sliva's office on August 13, 2007, requesting an authorization off of work due to significant pain and an inability to function at work. He reported pain in both sides of his neck extending down into the right arm and left elbow. Dr. Sliva referred him back to Dr. Sturm, who authorized him off of work.

¶ 16 The claimant saw Dr. Bonnie Weigert at the University of Wisconsin Madison Spine Center on August 29, 2007, complaining of constant pain in his neck with stiffness and sometimes sharp, stabbing, severe pain. He indicated that the pain was aggravated with certain positions and that he could reproduce the symptoms with certain body movements. He described significant difficulty sleeping, riding in a car, looking up, turning his head sideways, and doing overhead activity at work.

¶ 17 Dr. Weigert reviewed an October 26, 2006, cervical MRI scan, which showed a disc protrusion at C5-6 with contact of the cord and moderate bilateral neuroforaminal stenosis as well as C4-5 facet changes and abnormality of the neural signal intensity in the T1 vertebral body. On examination, she noted extremely limited cervical range of

motion in a seated position with extension to less than 10 degrees with pain. Lateral bending was to about 20 degrees with a "pinch," particularly on the left side, and rotation was to about 30 degrees. There was also decreased shoulder range of motion bilaterally. She felt that the claimant had underlying cervical degenerative disc disease. She recommended physical therapy and authorized him off of work.

¶ 18 The claimant saw Dr. Weigert again on October 29, 2007, complaining of continued, relatively constant neck pain radiating into the left arm down to the thumb with C6 radicular symptoms. On examination, sensation was normal to light touch, but he had a positive Spurling's sign. She recommended continued physical therapy; an MRI scan, which was performed on November 8, 2007; and a surgical consultation.

¶ 19 The claimant saw Dr. Thomas Zdeblick, an orthopedic surgeon at the University of Wisconsin Madison Spine Center, on November 20, 2007, reporting that he had injured his neck at work about one year earlier. He noted neck stiffness and pain with occasional shooting pain that went past his left shoulder. He stated that he was not working because he was unable to perform his job duties due to neck and left arm pain.

¶ 20 On examination, Dr. Zdeblick noted tenderness of the paraspinal muscles on both sides with diminished fine touch sensation in the C6 nerve distribution on the left side. After reviewing cervical spine X-rays and the November 8, 2007, MRI scan, Dr. Zdeblick diagnosed C5-6 degenerative disc disease and foraminal stenosis. He recommended surgical decompression of the C5-6 foramen with an anterior cervical discectomy and arthroplasty. Because the surgery was noted to be related to a work injury, the claimant was advised that he would need surgical clearance.

¶ 21 The claimant was scheduled for surgery on January 10, 2008, with Dr. Zdeblick, but he cancelled the surgery after insurance coverage was denied. On November 12, 2008, he called Dr. Zdeblick's office stating that he wanted to have the surgery performed elsewhere and that he needed to know what surgery was recommended. The record does not contain any medical records for the period between November 12, 2008, and January 28, 2011, a period of over two years.

¶ 22 On January 28, 2011, about three weeks before the February 21, 2011, accident, the claimant saw his primary care physician, Dr. Jennifer Guffey, complaining of dizziness. He reported "significant" neck pain and right hand numbness with loss of grip strength. He stated that he had a prior workers' compensation injury in 2007 and that he continued to have ongoing pain that affected his ability to sleep. Dr. Guffey diagnosed cervicalgia and osteoarthritis. To further evaluate his complaints, she requested his medical records from Rockford Memorial Hospital, where he had undergone an MRI scan and an EMG.

¶ 23 On February 22, 2011, the day after the accident, the claimant went to see Dr. Guffey, but she was out of the office, and he saw Dr. Bruce Stiles instead. Dr. Stiles' report notes that the claimant had seen Dr. Guffey three weeks earlier stating "last 3 weeks neck hurts on right side and fingers in right hand become tingling." The claimant reported worsening right neck, arm, and hand pain for the "past several months;" numbness and tingling in his right hand; and a known history of degenerative disc disease. He also reported that he had severe pain at work earlier that day while pouring a 50-pound bag of salt. Dr. Stiles authorized him off of work for two days and

recommended a cervical MRI scan, which was performed on February 24, 2011, at Forest City Diagnostic Imaging. The MRI-scan report indicates that the claimant had undergone a previous cervical MRI scan at the same facility on October 26, 2006. As to the February 24, 2011, scan, the radiologist noted "[e]ssentially stable MR cervical spine" as compared to the 2006 scan.

¶ 24 The claimant returned to Rockford Spine Associates on March 9, 2011, where he again saw Dr. Sliva. He stated that he had injured himself at work on February 21, 2011. He noted neck pain radiating into his right shoulder and arm with weakness in his right hand and episodes of left-sided pain radiating into the left shoulder and forearm. Upon examination and review of the claimant's February 24, 2011, cervical MRI scan, Dr. Sliva diagnosed multilevel cervical radiculopathy. He suggested a cervical epidural steroid injection, but the claimant advised that he had not experienced relief in the past with such injections. Dr. Sliva authorized him off of work for one month and referred him for physical therapy. He asked if surgery would be an option, and Dr. Sliva then addressed a potential cervical decompression and fusion if conservative treatment were to fail.

¶ 25 The claimant saw Dr. Sliva again on May 3, 2011, reporting that he had undergone one month of physical therapy without relief. Dr. Sliva recommended that he continue with a home exercise program, discussed surgical and non-surgical treatment options, and released him to return to work with a 30-pound lifting restriction.

¶ 26 At the employer's request, the claimant underwent an independent medical evaluation (IME) conducted by Dr. Sean Salehi, a board certified neurosurgeon, on May 26, 2011. The claimant reported that, after his February 21, 2011, work accident, he felt

pain in his neck and right arm. He acknowledged having experienced neck pain in 2007 after a work accident but denied any right arm symptoms until after the February 21, 2011, accident. After a physical examination and review of the February 24, 2011, cervical MRI scan, Dr. Salehi diagnosed cervical degenerative disc disease.

¶ 27 As to the February 21, 2011, work injury, Dr. Salehi opined that the claimant sustained a cervical strain or a temporary exacerbation of the preexisting degenerative condition. He testified that the radicular arm complaints were not related to the work accident as the claimant had a history of both left and right arm radicular symptoms. In support of his opinion, he cited Dr. Guffey's January 28, 2011, report, noting neck pain and right arm radicular symptoms, including hand numbness and loss of grip strength, as well as Dr. Stiles' February 22, 2011, report, noting several months of developing right neck, arm, and hand pain. He opined that the claimant's degenerative condition would have stabilized and returned to baseline within three months of the accident.

¶ 28 Dr. Salehi agreed with the need for work restrictions but opined that the need for work restrictions was not related to the February 21, 2011, accident. Instead, he testified that, based on the documented existence of right upper extremity symptoms before the accident, the claimant's preexisting condition was symptomatic before the accident, and any need for restrictions or further treatment would, thus, not be related to the accident.

¶ 29 At his attorney's request, the claimant underwent an IME conducted by Dr. Jeffrey Coe, a board certified occupational medicine specialist, on March 6, 2012. The claimant reported that he was injured at work on February 21, 2011, when he slipped on ice while

pushing a dumpster. He also reported that he lifted a bag of salt and noticed an electric pain in his upper extremities, which Dr. Coe referred to as a L'hermitte's phenomenon.

¶ 30 Dr. Coe testified that the claimant admitted a prior cervical injury in 2007 but indicated that, after cervical epidural steroid injections, he had improved enough to return to full-duty work until the February 21, 2011, accident. After the 2007 treatment, he experienced neck stiffness and pain. Dr. Coe testified that the claimant reported that his symptoms after the February 21, 2011, accident were different than his symptoms in 2007 as he had no right arm involvement in 2007. The claimant stated that the right hand symptoms noted to Dr. Guffey on January 28, 2011, were related to right thumb arthritis.

¶ 31 After a physical examination and review of medical records, Dr. Coe diagnosed degenerative disc disease and degenerative arthritis of the cervical spine. He opined that the February 21, 2011, accident aggravated the preexisting condition causing both acute and chronic cervical pain and acute right cervical radiculopathy. He agreed that the claimant needed a cervical decompression and fusion and opined that the claimant was unable to work as a result of the February 21, 2011, accident. He stated that his opinions were based on his March 6, 2012, examination and the 2011 medical records. On cross-examination, he acknowledged that he had not reviewed any medical records from 2006, 2007, or 2008; that he was unaware of the claimant's prior right arm symptoms; and that he was unaware that surgical decompression had been scheduled in 2008.

¶ 32 The claimant testified that he had not undergone any treatment for his cervical spine since his last visit with Dr. Sliva on June 21, 2011. He stated that, at the time of the hearing, his condition was "moderate" and that he still had occasional shooting pain with

certain movements, which he avoided. He testified that Dr. Sliva still recommended surgery and that he wanted to undergo the surgery. Although Dr. Sliva had released him to return to work with restrictions, he stated that the employer did not have any light-duty work for him and that he had not returned to work since the accident. The employer had paid him workers' compensation benefits through approximately June of 2011.

¶ 33 The arbitrator filed a decision on September 19, 2013, finding that the claimant had sustained an accident that arose out of and in the course of his employment but that his current condition of ill-being was not causally related to the accident. The arbitrator found that the employer had paid all reasonable and necessary medical expenses. The claimant was awarded TTD benefits of \$455.15 per week for 18 weeks, from February 22 through June 27, 2011. The employer was given an \$8,192.70 credit for TTD benefits paid and a \$650.92 credit for medical bills paid through its group medical plan.

¶ 34 The claimant sought review of the arbitrator's decision before the Commission, which affirmed and adopted the arbitrator's decision. The claimant filed a petition for judicial review in the circuit court, which confirmed the Commission's decision. The claimant appeals.

ANALYSIS

¶ 35 The claimant first argues that the Commission's finding that he failed to prove that his current condition of ill-being was causally related to his February 21, 2011, injury was against the manifest weight of the evidence. "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has

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, 797 N.E.2d 665, 671 (2003).

¶ 36 "[I]n preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that [his] current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Id.* at 204-05, 797 N.E.2d at 672.

¶ 37 "[E]mployers take their employees as they find them." *Id.* at 205, 797 N.E.2d at 672. When an employee's physical structures, diseased or not, give way under the stress of his usual duties, the law considers it an accident arising out of and in the course of employment. *Id.* Therefore, even though an employee has a preexisting condition that may make him more susceptible to injury, recovery for an accidental injury will not be denied if he can show that the employment was also a causative factor. *Id.*, 797 N.E.2d at 672-73. "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." (Emphasis in original.) *Id.*, 797 N.E.2d at 673.

¶ 38 Whether an employee's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a question of fact for the Commission. *Id.* The Commission's findings of fact will not be disturbed unless they are against the manifest weight of the evidence. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006).

Findings of fact "are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent." *Id.*

¶ 39 Here, the Commission found that the claimant's current condition of ill-being was not causally related to the February 21, 2011, work accident and that it was, instead, the result of his preexisting underlying degenerative condition. The Commission noted that the claimant's symptoms at the time of the hearing were indistinguishable from those noted throughout the 2007 medical records. The Commission also noted that three weeks before the February 21, 2011, accident, the claimant reported significant neck and right upper extremity symptoms. The Commission, therefore, found that, on February 21, 2011, the claimant sustained a temporary aggravation of a preexisting cervical degenerative condition and that his condition had since returned to its baseline.

¶ 40 There is ample evidence to support the Commission's finding that the claimant's current condition of ill-being was not causally related to his February 21, 2011, accident. The claimant has a long history of neck and upper extremity pain predating the February 21, 2011, accident. He sustained an injury to his cervical spine in 2006, for which he treated through 2008, when cervical decompression surgery was recommended.

¶ 41 Although he acknowledged his prior injury at the hearing, the claimant's testimony as to the severity of his condition was contradicted by the medical evidence. The claimant testified that, before 2011, he treated only for neck stiffness and an occasional tingle in the fingers and that, before the February 21, 2011, accident, he did not have any radicular right arm pain, pain in his armpits, or numbness in his fingers. He also testified that he did not lose any time from work after the 2006 injury and that he was able to

continuously work at full duty until February 21, 2011. The medical records refute his testimony in this regard.

¶ 42 As early as January 2007, the claimant reported symptoms involving shooting pain in the right upper extremity and armpit area and right thumb tingling. On February 28, 2007, these symptoms were again noted when he advised Dr. Sturm that, after cervical injections, his symptoms had worsened and he had developed pain and bilateral numbness in his arms and bilateral armpit areas. Dr. Sturm's February 28, 2007, report indicates that the claimant reported significant shooting pain when flexing his neck, which radiated into the upper extremities bilaterally. At that point in 2007, Dr. Sturm noted a L'hermitte's sign, just as Dr. Coe noted when evaluating the claimant in 2012.

¶ 43 In August 2007, the claimant advised Dr. Sliva that the pain in his right upper extremity and neck was so bad that he could not function at work. Although he testified that he did not miss any time from work after the 2006 injury until the February 21, 2011, accident, the records indicate that Dr. Sturm authorized him off of work completely beginning in August 2007. These restrictions were confirmed by Dr. Weigert after the August 29, 2007, evaluation and again by Dr. Zdeblick after the November 20, 2007, evaluation. In fact, the medical records do not indicate that the claimant was ever released to return to work in any capacity by any of his treating physicians after the November 20, 2007, evaluation and before the February 21, 2011, accident.

¶ 44 The claimant testified that his symptoms before the February 21, 2011, accident differed from those he experienced after the accident. He stated that, after the accident, he developed difficulty sleeping and driving, which had not occurred in the past. The

medical records also contradict this testimony. He reported issues with sleeping and driving due to neck and upper extremity pain throughout 2007. The sleep issues must have continued because, when he saw Dr. Guffey on January 28, 2011, three weeks before the February 21, 2011, accident, he reported difficulty sleeping due to neck pain.

¶ 45 The claimant also testified that the right upper extremity complaints noted in Dr. Guffey's January 28, 2011, report were related to issues with his thumb, which he thought may have been related to a prior surgery he had on his right hand; however, the medical records entered into evidence indicate that he had prior surgery on his left hand, not his right. He then testified that the mention of right hand symptoms on January 28, 2011, related to "calcium deposits" in the right thumb. The medical records do not indicate a diagnosis involving calcium deposits in the right thumb.

¶ 46 The claimant also testified that he told Dr. Guffey on January 28, 2011, that his neck was "stiff." The records, however, note that he was having "significant problems" with his neck and that he complained of right hand numbness and loss of grip strength. Dr. Guffey found his complaints significant enough that she requested his medical records from Rockford Memorial Hospital in order to review his prior MRI scans.

¶ 47 The day after the February 21, 2011, accident, the claimant saw Dr. Stiles. While Dr. Stiles' report notes that the claimant experienced pain while pouring a bag of salt at work, it also states that he had worsening symptoms of right neck, arm, and hand pain "over the past several months." The report also notes that he had been seen three weeks earlier for complaints of right neck, arm, and hand pain with tingling in the right hand.

¶ 48 The claimant testified that, at the time of the hearing, his symptoms were "moderate;" he had not undergone medical treatment for his neck since June 21, 2011; and he did not experience constant shooting pain but could reproduce the symptoms with certain movements. However, during treatment in 2006 and 2007, he reported that the same movements reproduced his symptoms.

¶ 49 The Commission's finding that the claimant's current condition of ill-being was not causally related to his February 21, 2011, accident was not against the manifest weight of the evidence. As the Commission correctly noted, the claimant's symptoms at the time of the hearing were indistinguishable from those noted in his 2007 medical records.

¶ 50 The claimant also argues that the Commission's finding that he was not entitled to TTD benefits after June 27, 2011, was against the manifest weight of the evidence. When a claimant seeks TTD benefits, the dispositive inquiry is whether his condition has stabilized, *i.e.*, whether he has reached maximum medical improvement (MMI). *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 142, 923 N.E.2d 266, 271 (2010). When determining whether a claimant is entitled to TTD benefits, the test is whether he remains temporarily totally disabled as a result of a work-related injury and whether he is capable of returning to the work force. *Id.* at 146, 923 N.E.2d at 274. The period during which a claimant is temporarily totally disabled is a question of fact for the Commission, whose determination will not be disturbed unless it is against the manifest weight of the evidence. *Id.* at 142, 923 N.E.2d at 272.

¶ 51 In the present case, the claimant claimed that he was entitled to TTD benefits for the period from February 22, 2011, through the date of the hearing. The employer

disputed that claim but stipulated that he was entitled to TTD benefits for the period from February 22, 2011, through June 27, 2011.

¶ 52 Relying on Dr. Salehi's opinion testimony, the Commission found that the claimant sustained a temporary aggravation of a preexisting degenerative condition and that he reached MMI with regard to the work injury sometime in May 2011.¹ The Commission, therefore, found that he was not entitled to TTD benefits after June 27, 2011. There is ample evidence to support the Commission's finding in this regard.

¶ 53 Dr. Salehi opined that the claimant sustained a cervical strain or a temporary exacerbation of the preexisting degenerative condition. He testified that the radicular arm complaints were not related to the work accident as the claimant had a history of both left and right arm radicular symptoms. He opined that the claimant's degenerative condition would have stabilized and returned to baseline within three months of the accident.

¶ 54 Dr. Sliva released the claimant to return to work with restrictions on May 3, 2011. Dr. Salehi agreed with the need for work restrictions but opined that the need for work restrictions was not related to the February 11, 2011, accident. Instead, he testified that, based on the documented existence of right upper extremity symptoms before the

¹ The Commission made slightly inconsistent findings as to precisely when the claimant reached MMI in regard to the work accident. At one point, the Commission found that he reached MMI "when he was released to return to work with restrictions by Dr. Sliva in May of 2011," which would have been on May 3, 2011, at which time his "condition had returned to its pre-injury state." At another point, the Commission found that he reached MMI "within three months of the February 21, 2011, accident," which would have been by May 21, 2011. At yet another point, the Commission found that he reached MMI "as of the May 26, 2011[,] examination of Dr. Salehi." However, because the employer stipulated that the claimant was entitled to TTD benefits through June 27, 2011, and the Commission found that he reached MMI sometime in May 2011, the Commission's inconsistent findings as to precisely when he reached MMI do not affect our resolution of this appeal.

accident, the claimant's preexisting condition was symptomatic before the accident, and any need for restrictions would, thus, not be related to the accident.

¶ 55 Dr. Salehi's opinion is supported by the February 24, 2011, MRI-scan report, which showed "[e]ssentially stable MR cervical spine" compared to the 2006 scan. His opinion is further supported by the 2007 medical records. The claimant was taken off of work due to his cervical condition in August 2007. Cervical decompression surgery was recommended in November 2007, and, in the interim, he was authorized to remain off of work. He never had the recommended surgery, and the medical records do not show that he was ever released to return to work in a full-duty capacity by any of his treating physicians after November 2007.

¶ 56 Finally, the claimant argues that the Commission's finding that he was not entitled to prospective medical care as a result of the February 21, 2011, accident was against the manifest weight of the evidence. As to the causal connection between the need for further treatment and the February 21, 2011, accident, the Commission found the opinion of Dr. Salehi more persuasive than that of Dr. Coe.

¶ 57 Resolution of conflicts in the medical testimony is within the province of the Commission, and its findings will not be disturbed on appeal unless they are against the manifest weight of the evidence. *Sisbro, Inc.*, 207 Ill. 2d at 206, 797 N.E.2d at 673.

¶ 58 The Commission's finding that the opinion of Dr. Salehi was more persuasive than that of Dr. Coe was not against the manifest weight of the evidence. Dr. Coe testified that his opinion as to the causal connection between the need for surgery and the work accident was based on his understanding that cervical surgical treatment had not been

recommended before the February 21, 2011, accident. He was unaware that the claimant had right arm symptoms before February 21, 2011, and that the claimant had been authorized off of work in 2007 due to the cervical condition. He stated that the claimant reported that his symptoms had improved in 2007 after epidural steroid injections. Given that surgery was recommended in 2007 and scheduled in 2008, Dr. Coe's causal connection opinion regarding prospective medical treatment is called into question.

¶ 59 Relying on Dr. Salehi's testimony and the medical records, the Commission denied the claimant's request for prospective medical benefits, finding that he sustained a temporary aggravation of a preexisting cervical degenerative condition on February 21, 2011; that he reached MMI in regard to that work injury sometime in May 2011; that his symptoms at the time of the hearing were indistinguishable from those noted in the 2007 medical records, at which time surgical decompression was recommended; that his degenerative condition had returned to its pre-injury baseline; and that any need for further treatment was related to that pre-injury condition. There was ample evidence to support the Commission's finding that the claimant was not entitled to prospective medical care as a result of the February 21, 2011, accident.

¶ 60 **CONCLUSION**

¶ 61 For the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County confirming the decision of the Commission and remand this case to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 62 Affirmed and remanded.