2016 IL App (2nd) 150575WC-U

NO. 2-15-0575WC

Order filed June 21, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

NELSON CENTENO,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Kane County.
	)	
v.	)	No. 14-MR-234
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	David R. Akemann,
(Minute Men of Illinois, Appellee).	)	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 decision to reduce the claimant's medical expenses award by $30,461.68 based on its finding that only his initial six visits to a chiropractic office for low-back treatment were reasonable and necessary was not against the manifest weight of the evidence, and the Commission's decision to deny the claimant's request for penalties and fees under sections 19(*l*), 19(k), and 16 of the Act was not against the manifest weight of the evidence.

¶ 2 On November 15, 2010, the claimant, Nelson Centeno, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for injuries he allegedly sustained on October 7, 2010, while working for the employer, Minute Men of Illinois. On February 15, 2012, the claimant filed a petition for penalties and attorney fees pursuant to sections 19(*l*), 19(k), and 16 of the Act (820 ILCS 305/19(*l*), 19(k), 16 (West 2008)), and a petition for payment of prior unpaid medical bills and prospective medical care pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2008)).

¶ 3 On January 3, 2013, after an expedited hearing under section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)), the arbitrator found that on October 7, 2010, the claimant sustained accidental injuries arising out of and in the course of his employment and that his current condition of ill-being was causally related to the accident. The arbitrator awarded him temporary total disability (TTD) benefits, $97,243.01 in reasonable and necessary medical expenses, and prospective medical care but denied his request for penalties and attorney fees, finding that a legitimate dispute existed with respect to the severity of his low-back condition of ill-being and any treatment associated therewith.

¶ 4 The employer sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On October 30, 2013, the Commission modified the arbitrator's decision by reducing the claimant's medical expenses award to $66,781.33 based upon its finding that only his six initial visits to

West Chicago Chiropractic for low-back treatment were reasonable and necessary. The Commission otherwise affirmed and adopted the arbitrator's decision.

¶ 5 Both the claimant and the employer filed timely petitions for judicial review in the circuit court of Kane County. On May 12, 2015, the circuit court reversed the Commission's decision as to the amount of the TTD award but otherwise confirmed the Commission's decision. The claimant filed a timely appeal.

¶ 6 BACKGROUND

¶ 7 On November 15, 2010, the claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for injuries he allegedly sustained on October 7, 2010, while working for the employer. On February 15, 2012, he filed a petition for attorney fees and penalties pursuant to sections 19(*l*), 19(k), and 16 of the Act and a petition for payment of prior unpaid medical bills and prospective medical care pursuant to section 8(a) of the Act.

¶ 8 The following factual recitation is taken from the evidence presented at the expedited arbitration hearing. The claimant testified that on October 7, 2010, he fell at work, struck his mid low back on a raised top edge of wood framing, and slid down into a seated position against the framing. He indicated that his left ankle "broke" and that he had pain in his back and left knee.

¶ 9 The claimant testified that ambulance personnel called to the scene asked if his ankle was broken, and he responded, "yes." He stated that they did not ask him if he had hurt his back. Aurora Fire Department emergency medical services records indicate that the claimant reported left ankle pain but denied any head, neck, or back injury.

¶ 10 The claimant was taken to the emergency room at Provena Mercy Medical Center, where he complained of left ankle pain and swelling and mild left knee and low-back pain. Left knee and lumbar spine x-rays were unremarkable. He was diagnosed with left ankle fracture, left knee pain, and low-back pain. He was taken off work and told to follow-up at Provena Mercy Occupational Health Services, but he testified that the employer instructed him to go to Tyler Medical Services instead.

¶ 11 On October 8, 2010, the claimant went to Tyler Medical Services, reporting left ankle, left knee, and low-back pain. He was diagnosed with left ankle fracture, left knee sprain, and low-back pain, all secondary to a fall. He was kept off work and referred to Dr. Theodore Suchy, an orthopedic surgeon.

¶ 12 The claimant saw Dr. Suchy that same day. Dr. Suchy's records indicate that the claimant complained about his left ankle but denied any head, neck, or back injury. The claimant testified that he was not asked about his back and that he had been referred to Dr. Suchy only for his ankle. Dr. Suchy diagnosed a displaced bimalleolar left ankle fracture and recommended surgery, which he performed on October 12, 2010.

¶ 13 On November 11, 2010, Dr. Suchy recommended physical therapy for the ankle, which the claimant began on November 15, 2010. He reported that, although his low back had bothered him since the work fall, he had not been treated for it. He was instructed on home low-back exercises.

¶ 14 On November 22, 2010, the claimant sought treatment for his back at West Chicago Chiropractic, where he saw Dr. David Freeland, a chiropractor. Pointing to the L5-S1 central region, he rated the pain a 9 on a scale of 1 to 10 at worst and described the

pain as "constant." He also complained of sporadic left lower extremity anterior thigh pain to his knee, which he rated an 8 at worst. He stated that the leg and back pain were "sharp" and "burning." He denied any history of low-back, ankle, or anterior thigh pain before the accident. Dr. Freeland diagnosed left ankle fracture, lumbar sprain/strain, sciatica, and muscle spasm, noting that the injuries were work related. He began a course of therapy and kept the claimant off work. On November 23, 2010, he referred the claimant to Dr. Howard Freedberg, an orthopedic surgeon.

¶ 15 The claimant saw Dr. Freedberg on November 24, 2010, reporting left ankle and low-back pain after a work injury. After examining him and obtaining x-rays of his left ankle and knee and of his lumbar spine, Dr. Freedberg diagnosed left ankle fracture, lumbar spine sprain/strain, and left knee sprain and indicated that all of the claimant's complaints resulted from his work accident. Dr. Freedberg kept him off work and prescribed a back brace, medication, and continued therapy with Dr. Freeland. The claimant saw Dr. Freedberg again on December 16, 2010, reporting that his ankle was improving with therapy but that there was little improvement with his back. Dr. Freedberg kept him off work and continued his treatment regimen. The claimant saw Dr. Freedberg again on January 13, 2011, reporting that his ankle was improving but that his back was not. He stated that his back felt better during therapy sessions but that the back pain returned after one hour. He also reported left anterior thigh numbness and moderate left knee pain. Dr. Freedberg continued his treatment regimen and ordered a lumber MRI, which the claimant testified was not authorized by the employer.

¶ 16 On March 9, 2011, at the employer's request, the claimant underwent an independent medical examination (IME) by Dr. G. Klaud Miller, an orthopedic surgeon. Dr. Miller reviewed the medical records from Tyler Medical Services, Provena Mercy Medical Center, and Drs. Suchy, Freedberg, and Freeland. In his report, Dr. Miller noted that the claimant stated that his ankle did not aggravate his back and that his low back was gradually worsening. After examining the claimant, Dr. Miller assessed left bimalleolar ankle fracture and low-back pain, most likely secondary to degenerative disc disease. He could not rule out a low-back sprain.

¶ 17 Dr. Miller opined that there was insufficient evidence to substantiate a causal relationship between the claimant's current condition of ill-being and the work accident. He noted that the emergency room and Tyler Medical Services records clearly documented complaints of low-back pain but that the claimant's examinations were nothing more than minimally positive. He noted that the claimant had specifically denied low-back pain to Dr. Suchy on October 8, 2010, and that Dr. Freeland's records were insufficient to confirm or deny anything other than that the claimant complained of pain since the work accident. He also noted that even Dr. Freedberg's examination was normal except for bilateral lumbar spine tenderness. Dr. Miller's own examination showed severe nonphysiologic abnormalities and multiple positive Waddell signs consistent with a non-organic pain syndrome. Dr. Miller stated that the claimant may have suffered a lumbar spine sprain in the work accident, that the lumbar spine sprain should have resolved within two or three weeks, and that his current complaints were nonphysiologic and could not be explained based upon a simple lumbar spine sprain.

¶ 18 When asked to comment on the medical bills, Dr. Miller spoke only in reference to Dr. Freeland's bills and only as they pertain to the care for the back. Dr. Miller noted that Dr. Freeland billed for chiropractic manipulation on every visit as well as multiple passive modalities. Dr. Miller indicated that purely passive modalities are never appropriate and that current guidelines initially allow for only one month of chiropractic treatment for lumbar spine sprains. He stated that if no improvement is documented, alternative non-chiropractic care must be recommended. He opined that only the first month of Dr. Freeland's care could be justified and that the multiple passive modalities could not be justified. He indicated that exercises provided on multiple occasions could be appropriate but that, because of insufficient documentation, he could neither confirm nor deny the appropriateness of the exercise program.

¶ 19 Based on Dr. Miller's IME, the employer disputed whether the claimant's low-back injury was causally related to the work accident. By letter dated April 6, 2011, the employer denied responsibility for any medical treatment to the claimant's low back. The employer did pay TTD benefits and medical expenses for the left ankle, and they are not disputed.

¶ 20 The claimant saw Dr. Freedberg again on March 10, 2011, reporting that his ankle had improved but that his back had not and that he still had knee pain and left anterior thigh numbness and pain. He was given a corticosteroid injection to the left knee.

¶ 21 The claimant saw Dr. Freedberg again on May 5, 2011, reporting that his ankle had improved but that his back had not and that he still had left anterior thigh numbness

and pain. Dr. Freedberg recommended continued therapy and a lumbar spine MRI. The MRI, which was performed on May 11, 2011, showed central protrusion at L5-S1.

¶ 22 The claimant saw Dr. Freedberg again on May 19, 2011. They discussed the MRI findings and the possibility of steroid injections. Dr. Freedberg also recommended hardware removal from the left ankle, which he performed on June 3, 2011.

¶ 23 On June 14, 2011, on Dr. Freedberg's referral, the claimant saw Dr. Christopher Morgan at the Chicago Pain and Orthopedic Institute. Dr. Morgan recommended left L5-S1 and S1 transforaminal epidural steroid injections, which were administered on June 21, 2011. The claimant saw Dr. Morgan again on June 28, 2011, reporting no improvement after the injections. Dr. Morgan recommended bilateral L4-L5 and L5-S1 facet joint injections, which were administered on July 5, 2011. The claimant saw Dr. Morgan again on July 15, 2011, reporting no significant improvement after the injections. Dr. Morgan felt that the claimant would not benefit from further injections.

¶ 24 On August 2, 2011, on Dr. Freedberg's referral, the claimant saw Dr. Thomas McNally, who, like Dr. Freedberg, was an orthopedic surgeon at Suburban Orthopaedics, for a spinal surgical evaluation. Dr. McNally diagnosed lumbar disc displacement and discussed non-operative and operative treatment options. Dr. McNally indicated that the work injury did not cause the degenerative changes in the claimant's lumbar spine and that the L5-S1 disc herniation shown on the lumbar MRI was consistent with a history of trauma. Dr. McNally opined, to a reasonable degree of medical and surgical certainty, that the work injury aggravated and accelerated the pre-existing previously asymptomatic degenerative lumbar spinal conditions and caused them to become symptomatic and

require treatment. He ordered a lower extremity EMG/nerve conduction study to confirm the suspected lumbar radiculopathy. The EMG/nerve conduction study, which was performed on August 15, 2011, was abnormal, consistent with multilevel lumbosacral radiculopathy, more prominent at L3-L4 on the left and bilateral L4-L5 and L5-S1.

¶ 25 The claimant saw Dr. McNally again on September 8, 2011. Dr. McNally referred him to Dr. Eugene Lipov for a left L4-L5 lumbar epidural steroid injection. Dr. McNally noted that, although the claimant had two prior injections without significant relief, he felt an additional injection would be helpful for diagnostic and therapeutic purposes. The claimant testified that the additional injection was not authorized by the employer.

¶ 26 The claimant saw Dr. Freedberg again on October 24, 2011. Dr. Freedberg released him for the fractured ankle but with light duty restrictions. Dr. Freedberg also instructed him to continue treatment for his back with Dr. McNally.

¶ 27 The claimant saw Dr. McNally again on October 27, 2011. Dr. McNally recommended additional physical therapy to the low back with Dr. Freeland.

¶ 28 The claimant saw Dr. McNally again on November 10, 2011, reporting that he had seen Dr. Lipov, who felt that additional injections would not be helpful. Dr. McNally continued him off work, recommended continued therapy with Dr. Freeland, prescribed continued medication, and recommended consideration of lumbar surgery options.

¶ 29 By letter dated November 16, 2011, the employer notified the claimant that, because he had been released from treatment for his left ankle injury and the back injury had always been disputed, TTD benefits would cease after November 3, 2011.

¶ 30 The claimant saw Dr. McNally again on December 22, 2011. Dr. McNally continued him off work and recommended a lumbar discogram. The claimant testified that the lumbar discogram had not been authorized by the employer.

¶ 31 On February 1, 2012, the claimant returned to Dr. Freedberg, complaining of left ankle pain. Dr. Freedberg ordered an MRI. The claimant saw Dr. Freedberg again on February 27, 2012. Dr. Freedberg noted that he saw no surgical indications on the MRI, which was performed on February 22, 2012. He recommended permanent light duty restrictions for the ankle and continued treatment with Dr. McNally for the back.

¶ 32 The claimant testified that Dr. Freedberg had him under a 20-pound lifting restriction for his left ankle and that Dr. McNally had him off work completely for his back. He stated that his back pain was worse than when he last saw Dr. McNally, with pain from the low back down to his left knee. He testified that he was still wearing a lumbar brace, still had left ankle and knee pain, was taking over-the-counter pain medication, was still doing home exercises for his back, and wanted back surgery if it was still prescribed after the discogram. He testified that, before the work accident, he never had any pain in his back, left ankle, left thigh, or left knee; nor did he have any medical treatment for any of these conditions before the work accident.

¶ 33 The employer had the chiropractic charges of West Chicago Chiropractic undergo a clinical peer report and utilization review. The June 14, 2011, utilization review report notes that the claimant had 88 visits to West Chicago Chiropractic between November 22, 2010, and May 31, 2011, for treatment of the low back, left knee, and left ankle.

¶ 34 In his report, Dr. Reese Polesky, the orthopedic surgeon who conducted the review, concluded that "modification of the requested 88 visits of chiropractic manipulations to the low back with up to five [physical therapy] modalities to the low back, left knee, and left ankle [from November 22, 2010, through May 31, 2011,] is recommended, to allow 6 sessions." Dr. Polesky explained his reasoning as follows:

> "The medical records indicate the patient had initiated chiropractic treatment with passive adjunctive physiotherapy on [November 22, 2010], and continued treatment on at least 2-3 per week treatment frequency, until [May 31, 2011]. The chiropractic treatment notes and MD follow-up reports demonstrate the patient's low back complaints ha[ve] remained essentially unchanged. Additionally, corroborative clinical findings to substantiate the patient's level of pain complaint [are] not demonstrated. As noted by the IME, Dr. Miller, the patient's complaints appear nonphysiologic and cannot be explained based upon a simple lumbar spine sprain. Even the DC treatment notes only document tenderness of the lumbar. Furthermore, chiropractic manipulation is not recommended for ankle or knee complaints. Also, the multiple passive modalities could not be justified. The patient had exceeded the maximum duration of care recommended, after the initial month of care, at which point, there was no definitive evidence of functional improvement with rendered care, and so further treatment would not be supported. There is no efficacy for chronic treatment. As noted by the IME, Dr. Miller, only the initial few weeks of care would have been allowable."

The report noted that purely passive modalities are never appropriate and that Official Disability Guidelines (ODG) indicate that one month of chiropractic treatment is sufficient when a diagnosis of lumbar sprain/strain is made. The guidelines further note that if no improvement is documented during this time period, non-chiropractic alternative care must be considered.

¶ 35 Dr. Polesky testified, by evidence deposition, that his report is an expression of the application of the ODG and the American College of Occupational and Environmental Medicine (ACOEM) manual to the medical records, not a reflection of his own personal opinions. In fact, he testified that he does not necessarily agree with the guidelines. He testified that he does not know whether any practitioners use the ODG for standard of care. He stated that the ODG is used when there is a question about treatment parameters, number of treatments, type of treatments, and whether such treatments are appropriate. He testified that, in his private practice, he occasionally consults the ACOEM manual in treatment planning for patients.

¶ 36 Dr. Polesky stated that the opinions in his report are "isolated to what the guidelines say with respect to chiropractic manipulation in these records as it pertains to the back only." He indicated that he was giving no opinions as to the "physical therapy to the knee or ankle." He stated that he had "no opinions in this particular case in connection with the physical therapy treatment" and that he was "only giving opinions in regards to the chiropractic manipulation." He indicated that he had "not in this report intended to give any opinions as to utilization or review of the pure physical therapy

modalities in these records" and that his "only opinion [was] in connection with what would be the ICD-9 coded treatment known as chiropractic manipulation."

¶ 37 However, Dr. Polesky later testified that his opinion was "based on the chiropractic care given to the back whether it be manipulation and/or physical therapy to the back" and that he "did not discuss ODG physical therapy for the ankle." He explained that "all physical therapy, if you looked carefully at the ODG, is based on short-term treatment, and response to that treatment." He continued that "when the treatment gives one hour of relief and there's no significant response over a period of time, we go back to our numerical guidelines in the ODG or the ACOEM." He clarified that his opinions in his report were isolated to what the guidelines say with respect to chiropractic manipulation and treatment, such as "heat modality, electrical stimulation, massage, etc.," as it pertains to the back only.

¶ 38 Dr. Polesky testified that, according to the guidelines, chiropractic manipulation should only be continued past the initial six sessions if the patient is improving. He noted that, here, there was no significant change in the claimant's low-back condition during the course of the prolonged and multiple treatments.

¶ 39 Dr. Polesky acknowledged that, according to the ODG's author, the ODG is "just guidelines, not inflexible proscriptions, and they should not be used as sole evidence for an absolute standard of care" and "cannot take into account the uniqueness of each patient's clinical circumstance." He also acknowledged that the author admonishes that "a physical therapist's judgment is always a consideration in determining the appropriate frequency and duration of treatment."

¶ 40 Dr. Freeland testified at the hearing that, as a chiropractor, he is trained and licensed to treat the entire musculoskeletal system, including the spine and all joints and extremities, such as ankles, knees, and wrists. He testified that his license and training affords him the same tools as a licensed physical therapist for all passive therapies, such as electrical stimulation, moist heat, ultrasound, and light therapy. He described rehabilitation protocols (active therapy), such as Therabands, weight machines, dumbbells, wobble boards, and rocker boards. He testified that his clinic has all of this equipment and that he frequently provides therapy treatment on referral by physicians. He stated that his license and training affords him both the ability to provide conventional physical therapy and to initially diagnose and prescribe it.

¶ 41 Dr. Freeland testified that he began treating the claimant on November 22, 2010. He diagnosed left ankle fracture, lumbar spine strain, muscle spasms, and sciatica. He testified that he prescribed a plan of chiropractic manipulation to the spine only, complimented by electrical interferential stimulation, deep tissue, moist heat, and rehabilitative protocols, and the same for the ankle and knee except no chiropractic manipulation. On November 24, 2010, he referred the claimant to Dr. Freedberg, who managed all of the claimant's care from that point forward.

¶ 42 Dr. Freeland testified that the claimant was discharged from all care at his clinic on October 17, 2011. He stated that the claimant had received maximum benefit to the ankle and knee and that the back had plateaued. He indicated that the back was more difficult to treat, stating, "we had ups and downs." He testified that the goal was to keep the back stabilized and to decrease the sciatic pain. He stated that, after getting the MRI

and EMG studies, it was determined that the claimant was no longer a candidate for conservative chiropractic care, and the claimant became a candidate for surgery. Dr. Freeland noted that the ankle resolved very well. He indicated that when he last saw the claimant, the claimant still had low-back pain and shooting left leg pain and that this radicular pain was consistently present throughout his care.

¶ 43 Dr. Freeland acknowledged receipt of the utilization review report and his right to challenge the opinion and appeal the decision but testified that doing so was "a waste of his time." He also testified that he did not believe that chiropractic manipulation should be discontinued if it does not improve the patient's condition within three to four weeks. He disagreed with the ODG and ACOEM.

¶ 44 The parties stipulated to the unpaid medical bills per the fee schedule, which totaled $97,243.01. The unpaid medical bills from West Chicago Chiropractic totaled $15,138.28 for treatment of the ankle and $32,108.68 for treatment of the back.

¶ 45 On January 3, 2013, the arbitrator found that on October 7, 2010, the claimant sustained accidental injuries arising out of and in the course of his employment and that his current condition of ill-being was causally related to the accident. The arbitrator awarded him TTD benefits of $319 per week for 100 1/7 weeks, from October 8, 2010, through September 7, 2012. The arbitrator also awarded him $97,243.01 in reasonable and necessary medical expenses, finding that all of his medical care was reasonable and necessary. The arbitrator also found that he was entitled to receive prospective medical care prescribed by Dr. McNally. However, the arbitrator denied his request for penalties

and attorney fees, finding that a legitimate dispute existed with respect to the severity of his low-back condition of ill-being and any treatment associated therewith.

¶ 46 The employer sought review of the arbitrator's decision before the Commission. On October 30, 2013, the Commission modified the arbitrator's decision by reducing the claimant's medical expenses award to $66,781.33 based on its finding that only his initial six visits to West Chicago Chiropractic for low-back treatment were reasonable and necessary. The Commission otherwise affirmed and adopted the arbitrator's decision.

¶ 47 Both the claimant and the employer filed timely petitions for judicial review in the circuit court. On May 12, 2015, the circuit court reversed the Commission's decision as to the amount of the TTD award (increasing it from $319 per week to $330 per week) but otherwise confirmed the Commission's decision. The claimant appeals the circuit court's judgment.

¶ 48 ANALYSIS

¶ 49 The first issue is whether the Commission's decision to reduce the claimant's medical expenses award by $30,461.68 based on its finding that only his initial six visits to West Chicago Chiropractic for low-back treatment were reasonable and necessary was against the manifest weight of the evidence. Hoping to get a more favorable standard of review, the claimant tries to reframe the issue by arguing that the Commission made a computational error or mistakenly lumped physical therapy treatments into the disallowed chiropractic treatments. More specifically, he argues that "[t]he Commission ruled to disallow all of the 'low-back chiropractic treatments' awarded by the Arbitrator except for the first six (6) visits, but then mistakenly calculated the value of these to be $30,461.68,

rather than the $5,995.42 that they were originally awarded at per the statutory fee schedule."

¶ 50 The Commission did not make a computational error; nor did it mistakenly lump physical therapy treatments into the disallowed chiropractic treatments. Instead, it found that neither the chiropractic treatments nor the physical therapy performed at West Chicago Chiropractic were reasonable and necessary after the initial six visits.

¶ 51 The Commission's decision provides, in pertinent part, as follows:

> "Dr. David Freeland provided [the claimant] with approximately ninety[1] low-back chiropractic treatments between November 22, 2010[,] and October 17, 2011. The ninety treatments incurred nearly $57,000.00[2] in chiropractic charges. The Commission finds that only six of the low-back chiropractor treatments were reasonable and necessary. The remaining chiropractic treatments to the low-back were not reasonable or necessary. In support of its finding, the Commission relies on Dr. Reese Polesky's June 14, 2011[,] peer review, and the opinion of Dr. G. Klaud Miller. Dr. Polesky opined that six chiropractic sessions to the low-back were warranted. Dr. Polesky noted that [the claimant] exceeded the maximum duration of care after the initial month of care and, at which point, there was no

---

[1] West Chicago Chiropractic actually provided the claimant with 139 low-back treatments during this time period. The 88 treatments were for the period from November 22, 2010, to May 31, 2011.

[2] West Chicago Chiropractic's charges, pursuant to the fee schedule, for low-back treatments actually totaled $33,476.73, and its charges for left ankle treatments totaled $17,459.25.

definitive evidence of functional improvement. In further support, Dr. Miller performed an Independent Medical Examination on March 9, 2011. He opined that the [claimant] may have sustained a lumbar strain, but his current complaints were non-physiologic and could not be explained based upon a lumbar sprain. He noted that Dr. Freeland's chiropractic manipulation on each visit was not appropriate as the current guidelines only allow for one month of chiropractic treatment for a lumbar sprain. The records reflect that [the claimant] gained no improvement from the treatments. The treatments appear to be physical therapy administered by a chiropractor. Therefore, the Commission finds that six treatments to the low back were reasonable and necessary.

Accordingly, the Commission finds the chiropractic treatment that Dr. Freeland provided to [the claimant's] low back on November 22, 2010[,] in the amount of $412.00, and the treatment provided to [the claimant's] low back on November 23, 2010, November 24, 2010, November 26, 2010, November 27, 2010[,] and November 29, 2010[,] each in the amount of $247.00[,] was reasonable and necessary. The remaining chiropractic treatment to the low back was not reasonable or necessary."

¶ 52 The Commission did not distinguish between chiropractic care and physical therapy performed by Dr. Freeland; nor did it find that the physical therapy performed by Dr. Freeland after the first six visits was reasonable and necessary. Instead, it specifically found that only "six treatments to the low back were reasonable and necessary."

¶ 53 The claimant's argument that the treatment should be differentiated and that the Commission erred in not allowing the additional physical therapy fails to take into account the most obvious reason the Commission found only six visits reasonable and necessary, which is that there was no evidence of functional improvement. Whether the treatment was deemed chiropractic or physical therapy was irrelevant to that decision.

¶ 54 Moreover, it is clear from the Commission's decision that it was fully aware that Dr. Freeland was also providing "physical therapy" because it specifically stated:

> "The records reflect that [the claimant] gained no improvement from the treatments. The treatments appear to be physical therapy administered by a chiropractor. Therefore, the Commission finds that six treatments to the low back were reasonable and necessary."

¶ 55 Under section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are necessary to diagnose, relieve, or cure the effects of his injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165 (2011). Whether a medical expense is reasonable or necessary is a question of fact for the Commission, and its finding will not be reversed unless it is against the manifest weight of the evidence. *Id.* A finding of fact is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370, 909 N.E.2d 818, 822 (2009).

¶ 56 Here, the Commission was presented with conflicting medical opinions as to the necessity of the treatment provided by Dr. Freeland. The resolution of conflicting

medical testimony falls within the province of the Commission, and its findings will not be reversed unless they are against the manifest weight of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003).

¶ 57 Relying upon Dr. Polesky's peer review and the opinions of Dr. Miller, the Commission found that only the initial six low-back treatments were reasonable and necessary. Given the opinions of Drs. Polesky and Miller, there was ample evidence to support the Commission's finding that only the claimant's six initial visits to West Chicago Chiropractic for low-back treatment were reasonable and necessary.

¶ 58 The claimant also argues that the Commission erred in denying penalties and attorney fees pursuant to sections 19(*l*), 19(k), and 16 of the Act. A penalty under section 19(*l*) of the Act is like a late fee, and it is mandatory if the payment is late and the employer cannot show adequate justification for the delay. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 552 (1998). When the employer relies on responsible medical opinion or when there are conflicting medical opinions, penalties are not usually imposed. *Avon Products, Inc. v. Industrial Comm'n*, 82 Ill. 2d 297, 302, 412 N.E.2d 468, 470 (1980). The propriety of imposing a penalty under section 19(*l*) is a question of fact for the Commission, and its decision will not be reversed unless it is against the manifest weight of the evidence. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 123, 561 N.E.2d 623, 630 (1990).

¶ 59 Here, the Commission denied the claimant's request for penalties and attorney fees, finding that that a legitimate dispute existed regarding the severity of the claimant's low-back complaints and the reasonableness of his treatment. Because the employer

refused to pay benefits or medical expenses associated with the claimant's low-back issues based on the opinion of its independent medical examiner, Dr. Miller, the Commission found that there was no violation of section 19(*l*) or 19(k).

¶ 60 Dr. Miller opined that the claimant's low-back pain was most likely secondary to degenerative disc disease and that there was insufficient evidence to substantiate a causal relationship between his current condition of ill-being and the work accident. Although Dr. Miller acknowledged that the claimant may have suffered a lumbar spine sprain in the work accident, he opined that the lumbar spine sprain should have resolved within two or three weeks and that the claimant's current complaints were non-physiologic and could not be explained based upon a simple lumbar spine sprain. Given Dr. Miller's opinions, the evidence amply supports the Commission's finding that the employer had a reasonable basis upon which to raise a defense and to rely on Dr. Miller in not paying benefits and medical expenses for the treatment of the claimant's back pain. The Commission, therefore, properly denied the claimant's request for penalties under section 19(*l*). It follows that the Commission properly denied the claimant's request for penalties and attorney fees under sections 19(k) and 16 because the standard for awarding penalties and attorney fees under those provisions is higher than the unreasonable delay standard under section 19(*l*). See *McMahan*, 183 Ill. 2d at 514, 702 N.E.2d at 552.

¶ 61 CONCLUSION

¶ 62 For the foregoing reasons, we affirm the judgment of the circuit court, which confirmed the Commission's decision, and remand the case to the arbitrator for further

proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 63 *Affirmed and remanded.*