2016 IL App (2d) 150865WC-U

FILED: June 23, 2016

NO. 2-15-0865WC

IN THE APPELLATE COURT

OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

BARBARA LEO, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (DuPage School District No. 88, Appellee).	)))))))))	Appeal from Circuit Court of DuPage County No. 12MR1256 Honorable Bonnie M. Wheaton, Judge Presiding.

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

ORDER

¶ 1 *Held*: The Commission's original decision, finding a causal connection between claimant's work accidents and the condition of ill-being in her back, was not against the manifest weight of the evidence.

¶ 2 Claimant, Barbara Leo, filed two applications for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2004)), seeking benefits from the same employer, DuPage School District No. 88, and alleging separate work-related accidents on September 23, 2004 (case No. 05WC00630), and May 18, 2005 (case No. 05WC027977). Following a hearing, the arbitrator determined claimant sustained accidental in-

juries arising out of and in the course of her employment on both dates. In separate decisions, he awarded claimant (1) 27-4/7 weeks' temporary total disability (TTD) benefits from October 22, 2004, to May 2, 2005; (2) 219-1/7 weeks' TTD benefits from May 19, 2005, to July 30, 2009; (3) medical expenses, totaling $2,733.50; and (4) permanent and total disability (PTD) benefits for life, commencing July 31, 2009.

¶ 3 On review, the Workers' Compensation Commission (Commission), clarified that one of the doctors referenced by the arbitrator was claimant's treating physician rather than an independent medical examiner, modified the dollar amount of TTD benefits to be paid to claimant per week between October 22, 2004, and May 2, 2005, and otherwise affirmed and adopted the arbitrator's decisions. On judicial review, the circuit court of DuPage County reversed, finding the Commission's decision was against the manifest weight of the evidence. Claimant appealed and, in March 2014, this court vacated the circuit court's order and remanded with directions that it enter a new order clarifying its findings. *Leo v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 130187WC-U.

¶ 4 On remand, the circuit court reversed the Commission's determination that claimant's condition of ill-being was causally related to her September 2004 and May 2005 work accidents and its corresponding award of benefits. The court remanded the matter to the Commission "for a recalculation of benefits" based on a "soft tissue lumbar strain arising out of" claimant's work accidents. In February 2015, the Commission issued a decision and opinion on remand consistent with the circuit court's decision. It awarded claimant (1) 27-4/7 weeks' TTD benefits from October 22, 2004, through May 2, 2005; (2) 2-4/7 weeks' TTD benefits from May 19, 2005, through June 5, 2005; (3) 25 weeks' permanent partial disability (PPD) benefits under section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2004)) for a 5% loss of use of the person

as a whole; and (4) medical bills claimant incurred through July 18, 2005. On judicial review, the circuit court confirmed the Commission's decision. Claimant appeals, arguing the Commission's original decision, finding her back condition of ill-being was causally connected to her September 2004 and May 2005 work accidents, was not against the manifest weight of the evidence. We reverse in part, vacate in part, and reinstate the Commission's original decision as modified.

¶ 5 I. BACKGROUND

¶ 6 At arbitration, claimant testified she worked for the employer as a teacher's aide since January 1998. She dealt with special education students and her duties included taking students around the building, helping students participate in gym, and assisting teachers as needed. Claimant testified, on September 23, 2004, she was at work and assisting a 16- or 17-year-old student in the bathroom. She and another individual were lifting the student into a wheelchair when claimant felt a sharp pain in her lower back and left hip. Claimant finished her workday and reported the incident to her supervisor. She sought medical care the following day. Claimant denied that she ever experienced any low back problems prior to September 23, 2004.

¶ 7 Claimant testified she sought medical care from DuPage Medical Group, where her family doctor was located, and saw Drs. Nikoleit and Momoyama (the doctors' first names do not appear in the appellate record). Claimant testified she continued to work after her accident and noticed worsening pain. On October 22, 2004, Dr. Nikoleit took her off work. Claimant stated Dr. Nikoleit prescribed medication, including Skelaxin, a muscle relaxer, and Vicodin. In November 2004, he ordered a magnetic resonance imaging (MRI).

¶ 8 On February 14, 2005, claimant began seeing Dr. Steven Mather, an orthopedic surgeon. She reported experiencing lower back pain and intermittent left leg pain since the date

of her September 2004 work accident. Claimant provided a history of lifting a child with severe cerebral palsy who weighed approximately 160 pounds and feeling a twinge in her back and then pain. Dr. Mather noted claimant underwent an MRI on November 30, 2004. Although he was unable to review claimant's MRI films at that time, he stated the MRI apparently revealed "a spondylolysis defect of L5." On examination, Dr. Mather noted claimant could flex forward approximately 40 degrees before her low back pain became limiting. His impression was spondylolysis with radiculopathy and probable lateral stenosis.

¶ 9 On May 2, 2005, claimant returned to Dr. Mather and reported continued pain in her left buttock and leg and rated her pain at 3 to 4 out of 10. Dr. Mather noted claimant had undergone three epidural steroid injections. He stated examination revealed "a slightly-positive straight leg raise on the left." Dr. Mather reviewed claimant's MRI films, which he stated showed severe foraminal stenosis bilaterally at L5/S1. His impression was spondylolisthesis with aggravation of lateral stenosis. Dr. Mather recommended that, since claimant's pain was under control, she return to work with a 10-pound lifting limit and no excessive bending or twisting. Claimant testified she returned to work on May 2, 2005.

¶ 10 Claimant alleged a second work-related accident occurred on May 18, 2005. On that occasion, she was walking with a blind student around the building when the student "threw his cane in [her] step and [she] tripped and fell on the sidewalk." Claimant testified, after her fall, she felt terrible pain in her lower back and her "back was shaking." She went to the nurse and reported her injury. That evening, claimant went to the emergency room at Elmhurst Hospital. Claimant testified she was instructed to make an appointment with Dr. Mather the following morning. She stated she made an appointment but did not see Dr. Mather because she "was told [she] couldn't go." Claimant asserted the employer did not authorize any treatment for her of any

sort. She testified her condition was a lot worse after her second work accident.

¶ 11 At arbitration and over claimant's objection, the employer was permitted to submit surveillance tapes showing claimant engaging in outdoor activities on June 5 and 6, 2005, and October 15, 2005. The June 5, 2005, recording, which lasted approximately 19 minutes, showed claimant pushing a spreader across her lawn and speaking with a neighbor. Claimant was shown occasionally bending at the waist to varying degrees. The June 6, 2005, footage, which was approximately three minutes long, showed claimant pushing a shopping cart in a parking lot and placing small plastic bags or items in the trunk of her car. Finally, the footage taken October 15, 2005, which was approximately three minutes long, showed claimant pruning flowers while standing and occasionally bending at the waist.

¶ 12 Claimant testified she lived with her son who suffered from mild to moderate mental retardation and was a student at the school where she worked. She stated her son was unable to help her around the house and she performed the gardening when it had to be done. Claimant testified she was using the spreader on June 5, 2005, to move around and get some exercise. She noted she had been lying around for two weeks and had a family history of blood clots. Claimant stated, at the time, she was taking the medications Vicodin and Skelaxin, which helped to dull her pain. Claimant further asserted she was tired and in pain in October 2005, when the surveillance footage showed her clipping rose bushes.

¶ 13 Claimant's neighbor, Audrey Dickerson, testified she recalled the occasion on June 5, 2005, when claimant was using a spreader in her yard. On that date, Dickerson was "weeding [a] flower bed" outside her own home and had the opportunity to speak with claimant. Dickerson testified she had been a nurse for over 30 years and based on her experiences and observations of claimant, Dickerson believed claimant was in pain. Specifically, she noticed "diffi-

culties" in claimant's gait and "whole body movement," which she attributed to pain.

¶ 14 On June 13, 2005, claimant returned to Dr. Mather and provided a history of her second work accident. On examination, Dr. Mather noted some tenderness in claimant's left lower back and that she had pain with both flexion and extension of the lumbar spine. His impression was a low back strain secondary to a trip-and-fall in May 2005. Dr. Mather recommended physical therapy three times a week for four weeks and noted claimant was off work for the summer. He believed claimant's spondylolisthesis was stable and not significantly changed from her most recent injury.

¶ 15 On August 8, 2005, Dr. Mather noted claimant was not improving and had constant chronic lower back pain. He also stated claimant's left leg continued to bother her every day. Dr. Mather noted, on examination, claimant could flex forward approximately 30 degrees and was restricted because of pain across the lower back with some pain running down both legs. His impression was spondylolisthesis and sciatica. Dr. Mather recommended a repeat MRI and an electromyography (EMG). On October 24, 2005, claimant followed up with Dr. Mather and reported continued back and bilateral leg pain. Dr. Mather continued to recommend a new MRI and an EMG. He also stated claimant was "most likely going to require L5-S1 laminectomy and fusion" and continued her off work.

¶ 16 On January 19, 2006, Dr. Mather authored a letter regarding claimant's condition. He stated as follows:

> "It is clear [claimant] has a spondylolisthesis at L5/S1. She has significant foraminal stenosis of the lumbar spine at L5/S1 which had never been symptomatic prior to the date of injury, September 23, 2004. As long as I have known her, she has had back

> pain with radicular pain down the left leg which has been documented by the physical therapy notes, as well, and her complaints and findings have always been very consistent. ***
>
> I believe her spondylolisthesis at L5/S1 was aggravated by her work injury of September 23, 2004. She has failed conservative management, and she is going to require a new MRI to confirm her diagnosis and, most likely surgery. I believe her treatment to date has been reasonable and medically necessary and that she had an asymptomatic condition prior to the September 23, 2004 injury.
>
> If her MRI is unchanged, she is going to require an L5/S1 laminectomy and fusion. I have placed her off work until we can do the proper workup. The aggravation at L5/S1 is work related and confirmed by several clinical findings including persistent restrictive range of motion of the lumbar spine, positive straight leg raise maneuver on the left, and symptoms which correlate with her MRI findings."

¶ 17 On May 15, 2006, claimant returned to Dr. Mather with chief complaints of low back pain and bilateral leg pain. She reported the employer's workers' compensation insurer would not approve her surgery. Dr. Mather recommended waiting for authorization for an L5-S1 fusion. He also prescribed Vicodin for acute pain and continued claimant off work.

¶ 18 On June 16, 2006, Dr. Mather's evidence deposition was taken. During the deposition, he was shown the June 5 and 6, 2005, surveillance footage. After viewing the footage,

Dr. Mather testified he did not see claimant exhibit any manifestations of pain and agreed that the tapes showed claimant bending at the waist several times on June 5, 2005. He acknowledged claimant was seen bending in excess of 40 degrees, an activity that appeared inconsistent with physical therapy notes from June 15, 2005, showing she could only bend 40 degrees and was limited by pain. Dr. Mather determined from the footage that it appeared claimant's function was not bad. As a result, he stated he "would be much less likely to recommend surgical stabilization." Further, he testified that, based on the tape, it was difficult to corroborate claimant's level of pain with what she reported to him.

¶ 19 Dr. Mather agreed that he would describe claimant as working at a slow pace while performing yard work on the tapes and testified that, as a general rule, someone experiencing difficulty or pain would perform work at a slower rate than someone who was not in pain. However, he found what he observed on the tapes inconsistent with claimant's report to him that she was able to do very little around the house. Specifically, Dr. Mather testified the tapes showed claimant putting her hands on her hips and hyperextending by approximately five degrees while speaking with a neighbor. He stated people with spondylolisthesis tend not to hyperextend while standing because it is painful and, instead, they would go into flexion when they hurt. When questioned as to whether he believed claimant had been an accurate historian regarding her medical condition, Dr. Mather stated as follows:

> "She said she could bend 40 degrees limited by pain and we have a videotape that shows she can bend 120 degrees. That's all I'm going to answer on that question."

Dr. Mather acknowledged that he did not know whether claimant had been taking any medications on June 5, 2005, but did not think that claimant being on medication would change his opinion regarding her manifestations of pain.

¶ 20 Dr. Mather further testified that being overweight could aggravate a preexisting L5-S1 spondylolisthesis and he agreed that, even if claimant's work accidents had not occurred, it was possible her preexisting condition would have become symptomatic. Finally, he testified that after seeing the surveillance tapes his opinion had changed regarding claimant's activities, in that he believed she could probably work and probably could have returned to work at the time she was under surveillance. Also, his opinion as to causal connection had changed in that, after viewing the tapes, he believed claimant had a back strain as a result of her September 2004 accident.

¶ 21 Claimant testified Dr. Mather refused contact with her after his deposition and she did not see him again. On July 25, 2006, claimant began seeing Dr. Stavros Maltezos, a neurosurgeon. Claimant provided a history of both work accidents and complained of back pain down to her buttocks and into her thighs. Dr. Maltezos diagnosed claimant with L5-S1 spondylolisthesis.

¶ 22 On September 11, 2007, Dr. Maltezos performed surgery on claimant's lower back. Thereafter, he prescribed medication and physical therapy, which claimant testified did not do any good. Following surgery, claimant developed an infection and subsequently underwent six additional surgeries. Claimant testified her last surgery was on June 18, 2008.

¶ 23 At arbitration, claimant submitted Dr. Maltezos's evidence deposition, taken April 10, 2009. He described spondylolisthesis as "a slippage either anteriorly or posteriorly of one vertebral segment upon another." Dr. Maltezos stated claimant had a forward slip of L5 over S1.

He noted claimant did not provide any history of back pain prior to September 23, 2004, and testified spondylolisthesis can be an asymptomatic condition that stays asymptomatic for a patient's lifetime. Dr. Maltezos stated spondylolisthesis could become symptomatic as the result of degeneration or trauma. He opined, by claimant's history, that her "symptomatic onset" in September 2004 was work related and her condition was further "aggravated by the incident in [May] 2005." Dr. Maltezos also opined claimant was not a malingerer. The basis for his opinion was that claimant had been compliant with treatment and did everything he had asked her to do and had made progress. Further, during his deposition, the following colloquy occurred between claimant's counsel and Dr. Maltezos:

> "Q. Now, once pain is elicited by trauma superimposed upon this condition of spondylolisthesis, is that a progressive pain?
>
> A. It certainly can be.
>
> Q. In this case, did you find it to be progressive?
>
> A. In her case, it definitely was."

¶ 24 On January 19, 2010, Dr. Maltezos authored a letter regarding claimant's employability and physical work restrictions. He opined claimant was "capable of only the most sedentary work," stating "she had a major spine deformity which was made symptomatic by the work injury." Dr. Maltezos further opined as follows:

> "The combination of that deformity, that injury, the magnitude of surgery required, subsequent complications superimposed on premorbid and post-morbid deconditioning generally result in complete disability for any sort of physical work. In fact, this injury usually results in complete disability. With treatment and through

> her own hard work, [claimant] has reestablished a baseline level of conditioning to the point where I believe she would be able to maintain sedentary work. I do not believe she would be capable of standing or walking longer than 15 minutes at a time. I do not believe she would be capable of any lifting or carrying to any significant degree. *** Though she may experience additional, modest improvement, I do not foresee her physical capabilities progressing to even the light physical demand level."

¶ 25 At arbitration, claimant submitted a report, dated March 16, 2010, and authored by Dr. David Trotter, an orthopedic surgeon. Dr. Trotter reviewed claimant's medical records and the surveillance tapes at the employer's request. He opined claimant's September 2004 and May 2005 work accidents "resulted at most in a sprain/strain injury of the lumbosacral spine superimposed upon pre-existent and ongoing significant degenerative abnormalities of the spine including spondylolysis, spondylolisthesis[.]" Dr. Trotter did not believe claimant's preexisting spine abnormalities were either caused or chronically aggravated by claimant's work accidents. He stated as follows:

> "Should there have been any significant causation or aggravation of the clinical and radiographic abnormalities of spondylolysis and spondylolisthesis, and for that matter sciatica, then there would have been expected to have been a much more dramatic presentation and/or subsequent follow-up documentation of the combination of the claimant's subjective and objective findings overall. The injuries sustained were clearly soft tissue and do not appear at

> all to have caused the bony deficits or the bony slippage compatible with spondylolysis or spondylolisthesis. Also, the injuries do not appear to have caused any significant aggravation of the subjective sciatica."

¶ 26 Dr. Trotter further opined claimant's work injuries appeared "to have resolved within approximately a six to eight week period post the date of injury." He found medical treatment rendered past approximately eight weeks after each accident had been medically unreasonable and unnecessary. Additionally, he stated as follows:

> "It is implausible to this reviewer that the claimant was asymptomatic prior to the date of injury of September 23, 2004 and/or May 18, 2005. The claimant appears to have had long-standing, pre-existent degenerative abnormalities that do not appear to have been associated with the date of injuries on any causation or aggravation basis. The claimant appears to have had likely pre-existent and/or ongoing sciatica that does not appear to have resulted in any acute nerve root impingement based on the normal neurologic examination."

¶ 27 At arbitration, the employer submitted Dr. Trotter's deposition, taken May 18, 2010. He reiterated his opinions that claimant had a preexisting condition in her spine which was neither caused nor aggravated by her work accidents. On cross-examination, the following colloquy occurred between Dr. Trotter and claimant's attorney:

"Q. Now, Doctor you had no knowledge of what [claimant] was like or felt with relation to her low back prior to the first occurrence on September 23, 2004; is that correct?

A. Well, I feel that's not really correct in that she had such significant disease on her imaging studies that I feel it was probable that she had back pain. And likely sciatica, too.

Q. That's conjecture, right?

A. It's based on a reasonable degree of medical probability.

Q. If she said that she was asymptomatic, how would that fit into your equation?

A. I factor [it] in and still come up with the same answer.

Q. In any event, you are basing part of your opinion on the fact it's your thought that she was having back pain prior to the incident on September 23, 2004.

A. That is correct, yes.

Q. Did you see any records that would document that pain?

A. No."

Dr. Trotter further testified he found it "improbable" that claimant was asymptomatic from her preexisting back conditions.

¶ 28 At arbitration, the employer also submitted the evidence deposition of Dr. David Spencer, taken May 19, 2009. On June 28, 2005, Dr. Spencer, an orthopedic surgeon, examined claimant at the employer's request. Dr. Spencer also viewed the surveillance videos. He noted instances in which claimant was bending in excess of 90 degrees. Dr. Spencer testified he would

not interpret the surveillance footage as depicting an individual with a back impairment or with any outward signs of back pain. He noted claimant also appeared to be hyperextending her back while speaking with another individual. Dr. Spencer testified that, generally, a person with a significant back affliction stands with a slight forward bend rather than a backward bend to relieve pressure on the back. He found claimant's hyperextending to be further evidence that she was not experiencing any significant back pain at that time. Dr. Spencer testified the surveillance footage appeared to be "evidence of an individual without any significant back impairment."

¶ 29 Dr. Spencer opined that whatever injuries claimant sustained as a result of her work-related accidents, she had recovered from them without any residual impairment. He stated claimant's spondylolisthesis was a preexisting condition and not caused by either work accident. Dr. Spencer further testified that claimant's weight, given that she was 5 feet 1 inch tall and weighed over 200 pounds, was a contributing factor to her condition.

¶ 30 On cross-examination, Dr. Spencer testified that if claimant's preexisting condition had been asymptomatic prior to her September 2004 accident, became symptomatic after that accident, and more symptomatic after the May 2005 accident, it was "absolutely" possible that trauma superimposed upon her condition could cause pain. He agreed that claimant's work accidents involved the type of trauma that could aggravate her condition and cause pain. Dr. Spencer further testified that claimant's back pain at the time the surveillance footage was taken could have been quelled by having had three "shots in the back" and taking pain medication. Additionally, such factors would probably have made her better able to walk and bend over. Finally, Dr. Spencer agreed that, if claimant's work accidents had aggravated her preexisting spondylolisthesis, her onset of pain could have been progressive to the point she ultimately re-

quired surgery.

¶ 31 Claimant testified she remained under the care of Dr. Maltezos. She stated she was undergoing physical therapy to strengthen her muscles and was also taking morphine. Claimant testified the pain in her lower back would not go away. She was in pain all day long and walked with the aid of a cane.

¶ 32 Claimant further testified she was not working and no doctor had released her for work. On February 22, 2010, she saw a rehabilitation expert, Susan Etenberg, at her attorney's request. Claimant submitted Etenberg's evaluation report at arbitration. Based upon a review of claimant's medical records and an interview with claimant, Etenberg opined claimant was not capable of performing her past work as a special education teacher's aide. She also determined claimant was not a good candidate for vocational rehabilitation and opined no stable labor market existed for her. Etenberg found claimant would not be an appropriate training candidate based on her restrictions and pain complaints, claimant's past work did not provide transferable skills within her restrictions, claimant had a work-life expectancy of 10 years, there was no indication claimant had not cooperated with all treatment, and medical records showed claimant had permanent restrictions.

¶ 33 On July 15, 2011, the arbitrator issued his decisions, finding claimant sustained accidental injuries that arose out of and in the course of her employment and her current condition of ill-being was causally connected to her work-related accidents. Specifically, he found claimant's September 2004 work accident aggravated her preexisting condition of ill-being. The arbitrator found claimant credibly testified that she had no lower back problems prior to her work accident. Additionally, he stated he chose to rely on Dr. Maltezos's opinion, "that the initial occurrence on September 23, 2004, compounded by the occurrence on May 18, 2005, aggravated

or exacerbated claimant's preexisting spondylolisthesis," finding that opinion more persuasive than those offered by Drs. Mather, Trotter, and Spencer. Finally, the arbitrator stated as follows with respect to the surveillance footage:

> "The Arbitrator further notes that he has viewed the videotaped surveillance footage *** and finds the activities depicted therein to be *de minimis* and non dispositive. The footage shows [claimant] pushing a spreader across her lawn, chatting with a neighbor, pruning flowers and pushing a shopping cart in a Jewel parking lot, where she is also seen placing 3 or 4 plastic shopping bags of purchases in the trunk of her car. While it is true that at no time is [claimant] seen exhibiting signs of pain or discomfort, and in fact appears to bend at the waist, it is also true that she is not engaging in what one could reasonably describe as very strenuous activities."

On July 31, 2012, the Commission modified the arbitrator's decision as stated but otherwise affirmed and adopted his decision without further comment.

¶ 34 On judicial review, the circuit court of DuPage County reversed, finding the Commission's decision was against the manifest weight of the evidence. Claimant appealed and, in March 2014, this court vacated the circuit court's order and remanded with directions that it enter a new order clarifying its findings. *Leo*, 2014 IL App (2d) 130187WC-U. On May 21, 2014, on remand, the circuit court reversed the Commission's determination that claimant's condition of ill-being was causally related to her September 2004 and May 2005 work accidents and its corresponding award of benefits. The court remanded the matter to the Commission "for a

recalculation of benefits" based on a "soft tissue lumbar strain arising out of" claimant's work accidents.

¶ 35 Ultimately, in February 2015, the Commission issued a decision and opinion on remand. In connection with claimant's September 2004 accident, it again awarded claimant 27-4/7 weeks' TTD benefits from October 22, 2004, through May 2, 2005. It also awarded her 25 weeks' PPD benefits for a 5% loss of use of the person as a whole. With respect to claimant's May 2005 accident, the Commission determined claimant had been capable of returning to work by June 5, 2005, and that she reached maximum medical improvement on July 18, 2005. It awarded her 2-4/7 weeks' TTD benefits from May 19, 2005, through June 5, 2005, and medical bills she incurred through July 18, 2005. On August 12, 2005, the circuit court confirmed the Commission's decision and opinion on remand.

¶ 36 This appeal followed

¶ 37 II. ANALYSIS

¶ 38 On appeal, claimant argues the record contains sufficient evidence to support the Commission's original, July 2012 decision and it was not against the manifest weight of the evidence. She contends that, when reviewing that decision, the circuit court improperly substituted its judgment for that of the Commission and erroneously reversed the Commission. Claimant seeks reinstatement of the Commission's July 2012 decision.

¶ 39 Initially, we note the employer responds to claimant's contentions on appeal by arguing the *circuit court's* decision—confirming the Commission's decision and opinion on remand—was not against the manifest weight of the evidence and, therefore, must be affirmed. However, "[w]here, as here, the trial court reverses the Commission's initial decision and the Commission enters a new decision on remand, this court must decide whether the *Commission's*

initial decision was proper. (Emphasis added.) *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 785-86, 821 N.E.2d 807, 812 (2005). Under the circumstances presented, we review the propriety of the Commission's initial, July 2012 decision.

¶ 40 "To prevail on a claim for benefits under the Act, the employee must establish, among other things, that his or her current condition of ill-being is causally connected to a work-related injury." *Elgin Board of Education School District U-46 v. Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 948-49, 949 N.E.2d 198, 203-04 (2011). "In cases involving a preexisting condition, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to be causally connected to the work-related injury." *Id.* at 949, 949 N.E.2d at 204. Whether a causal connection exists between a claimant's work accident and his or her condition of ill-being is a question of fact for the Commission. *Tolbert v. Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 53, 11 N.E.3d 453.

¶ 41 "As the trier of fact, the Commission is primarily responsible for resolving conflicts in the evidence, assessing the credibility of witnesses, assigning weight to evidence, and drawing reasonable inferences from the record." *ABF Freight System v. Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19, 45 N.E.3d 757. "This is especially true regarding medical matters, where we owe great deference to the Commission due to its long-recognized expertise with such issues." *Id.*

¶ 42 On review, the Commission's causation finding should not be overturned unless it is against the manifest weight of the evidence. *Shafer v. Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 38, 976 N.E.2d 1. "A factual finding is against the manifest weight of the evidence if the opposite conclusion is 'clearly apparent.' " *Id.* (quoting *Swartz v. Industri-*

al Comm'n, 359 Ill.App.3d 1083, 1086, 837 N.E.2d 937, 940 (2005)). Further, the appropriate test is whether the record contains sufficient evidence to support the Commission's determination, not whether a reviewing court might reach the same conclusion. *Dig Right In Landscaping v. Workers' Compensation Comm'n*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739.

¶ 43 Here, in connection with its initial decision, the Commission determined claimant suffered from a preexisting condition of ill-being in her back that was aggravated by her September 2004 and May 2005 work accidents. It also found the care and treatment claimant received between her two accidents was causally related to her first, September 2004 accident and that her current condition of ill-being was causally related to her second, May 2005 accident. The Commission based its decision on findings that claimant was asymptomatic until after her first work accident; Dr. Maltezos's opinions were more persuasive than those provided by Drs. Mather, Trotter, and Spencer; and the videotaped surveillance footage was not dispositive and depicted claimant performing only *de minimis* activities. After reviewing the record, we find it contains sufficient evidence to support the Commission's decision such that it was not against the manifest weight of the evidence.

¶ 44 Evidence shows claimant suffered from L5-S1 spondylolisthesis, a condition which predated her work accidents. However, the record reflects claimant's condition did not become symptomatic until after she was injured at work. Specifically, claimant denied ever experiencing any lower back problems prior to September 23, 2004, the date of her first work accident, and the record is devoid of any documentary evidence or testimony by claimant that would support an opposite conclusion. Further, following both accidents, claimant consistently reported pain in her lower back and lower extremities.

¶ 45 The record also contains medical opinion evidence which supports the Commis-

sion's factual findings. In particular, Dr. Maltezos diagnosed claimant with L5-S1 spondylolisthesis and concluded that condition was made symptomatic by claimant's September 2004 accident and then aggravated by the May 2005 work accident. He noted spondylolisthesis could become symptomatic as the result of trauma and could be progressive. He opined claimant's condition was progressive and that she was not a malingerer, noting she was compliant with his recommendations and had made progress with treatment. Finally, Dr. Maltezos determined claimant could perform only sedentary work as a result of her spine condition, work accidents, and the magnitude of the surgery she required.

¶ 46 In challenging the Commission's decision, the employer has relied heavily on the surveillance footage it submitted, arguing it demonstrates that claimant did not suffer "anything worse than a back strain" as a result of her work accidents. It maintains that because Dr. Maltezos did not review the surveillance footage, his opinions were entitled to less weight than those of Dr. Mather, Dr. Trotter, and Dr. Spencer, all of whom reviewed the footage and used it to form the basis of their opinions.

¶ 47 As stated, the Commission gave little weight to the surveillance footage, finding the activities depicted were "*de minimus* and non dispositive." It noted claimant was not engaged in very strenuous activities. After reviewing the surveillance footage we cannot disagree with the Commission's characterization of claimant's activities or its findings.

¶ 48 Moreover, we note Dr. Spencer's deposition testimony supports a finding that medical treatment claimant received and pain medication she was taking impacted her ability to perform the activities depicted in the surveillance footage. Specifically, during his deposition, Dr. Spencer agreed that claimant's back pain at the time the surveillance footage was taken could have been quelled by "shots in the back" and pain medication, and that such factors would prob-

ably have made claimant better able to walk and bend over. We note that in May 2005, approximately one month before the June 2005 surveillance video, Dr. Mather's notes reflect that claimant had undergone three epidural steroid injections. Further, claimant testified that, in June 2005, she had been taking pain medication that helped to dull her pain. Thus, the record contains evidence to support the Commission's finding that the surveillance footage was not dispositive, as well as its reliance on the causation opinion of Dr. Maltezos over those given by doctors who relied on the surveillance footage when forming their opinions, *i.e.*, Drs. Mather, Trotter, and Spencer.

¶ 49 Additionally, the record shows Dr. Trotter's opinions were based in large part on his determination that claimant's back condition was likely symptomatic prior to her first work accident. However, such a finding is refuted by the evidence presented, which indicates that, although claimant suffered from a preexisting condition of ill-being, that condition did not become symptomatic until after her September 2004 work accident.

¶ 50 In this instance, conflicting evidence was presented regarding the issue of causation. However, as stated, it was within the province of the Commission to weigh the evidence presented, particularly the medical evidence, and resolve any conflicts. Given the circumstances presented, we cannot say an opposite conclusion from that reached by the Commission was clearly apparent. Thus, the Commission's initial July 2012 decision was not against the manifest weight of the evidence and the circuit court erred in reversing the Commission.

¶ 51 In it is initial decision, the Commission awarded claimant (1) 27-4/7 weeks' TTD benefits from October 22, 2004, to May 2, 2005; (2) 219-1/7 weeks' TTD benefits from May 19, 2005, to July 30, 2009; (3) medical expenses, totaling $2,733.50; and (4) PTD benefits for life, commencing July 31, 2009. We note the employer's challenge to the Commission's decision,

including its challenge to the benefits awarded, focused on causation and its position that claimant suffered no more than a back strain as a result of her work accidents. As discussed, the Commission's decision as to causation was not against the manifest weight of the evidence and we find no error in its award of benefits.

¶ 52 However, on appeal, claimant contends the Commission's initial decision should be corrected with respect to the dollar amount of PTD awarded because the Commission's award fell below the minimum rate applicable to her claim. She notes she raised this issue before the Commission on remand and prior to the issuance of its second, February 2015 decision. Further, in support of her position, claimant cites case law for the proposition that the issue of an incorrect rate calculation by the Commission may not be forfeited. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 297 Ill. App. 3d 662, 668, 697 N.E.2d 934, 937-38 (1998) (stating "the issue of exceeding the maximum rate is not waivable").

¶ 53 In its July 2012 decision, the Commission ordered the employer to pay claimant PTD benefits pursuant to section 8(f) of the Act (820 ILCS 305/8(f) (West 2004)). Specifically, it awarded claimant $211.91 per week for life, beginning July 31, 2009. Under the Act, weekly compensation rates for payments made pursuant to section 8(f) "shall in no event be less than 50% of the State's average weekly wage in covered industries under the Unemployment Insurance Act [(820 ILCS 405/100 *et seq*. (West 2004))]." 820 ILCS 305/8(b)(4.1) (West 2004)).

¶ 54 Here, claimant maintains that the correct statutory rate for an award of PTD benefits to her was at least $394.50 per week, *i.e.*, 50% of the State's average weekly wage at the time of her May 2005 accident (the accident from which the Commission's PTD award stems). Initially, we note the employer does not challenge claimant's assertion or address the issue at all in its appellate brief. Further, we find claimant's calculation is consistent with the State average

weekly wage as published by both the Commission and the Illinois Department of Employment Security—both of which identify the State average weekly wage in May 2015 as $788.99.

¶ 55 Given these circumstances, the minimum rate applicable to the Commission's PTD award was the $394.50 figure identified by claimant on appeal. Thus, we modify the Commission's PTD award to reflect that amount.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we reverse the circuit court's May 21, 2014, judgment, reversing and remanding the matter to the Commission; vacate the Commission's February 19, 2015, decision and opinion on remand; vacate the circuit court's August 12, 2015, order, confirming the Commission's decision and opinion on remand; and reinstate the Commission's original July 2012 decision and award as modified.

¶ 58 Reversed in part and vacated in part; original Commission decision reinstated as modified.