2016 IL App (3d) 150302WC-U
No. 3-15-0302WC
Order filed June 21, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

STEAK 'N SHAKE, Petitioner-Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.* (RICHARD PAQUIN), Respondents-Appellees.	)	Appeal from the Circuit Court of Tazewell County. No. 14-MR-96 Honorable David J. Dubicki, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Commission's finding that claimant established October 26, 2012, as the manifestation date of the repetitive-trauma injuries to his bilateral hands and elbows is not against the manifest weight of the evidence; (2) Commission's finding that claimant's bilateral carpal- and cubital-tunnel conditions were causally connected to his employment with respondent is not against the manifest weight of the evidence; (3) Commission's finding that claimant's medical expenses were reasonable and necessary is not against the manifest weight of the evidence; (4) Commission's award of temporary total disability benefits is not against the manifest weight of the evidence; and (5) Commission's award of

permanent partial disability benefits is not against the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Steak 'N Shake, appeals from the judgment of the circuit court of Tazewell County, which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) awarding benefits to claimant, Richard Paquin, pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)). On appeal, respondent argues that the Commission's finding that claimant established October 26, 2012, as the manifestation date of his repetitive-trauma injuries is against the manifest weight of the evidence. Respondent also challenges the Commission's findings with respect to causation, medical expenses, entitlement to temporary total disability (TTD) benefits, and entitlement to permanent partial disability (PPD) benefits. We affirm.

¶ 4 II. BACKGROUND

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing held on October 24, 2013. Respondent operates a chain of fast casual restaurants. Claimant worked as a grill cook at respondent's location in East Peoria from May 2009 through November 2010. On October 26, 2010, claimant completed an application for adjustment of claim alleging that he sustained repetitive-trauma injuries to "both hands and arms/shoulders" while working for respondent. Claimant listed the date of accident as "on or about 10-26-10." Claimant filed the application for adjustment of claim on November 4, 2010. At the time of the alleged injuries, claimant was 57 years old.

¶ 6 Claimant testified that although his work duties mainly involved cooking, he would help with any task that needed to be done in the restaurant, including rotating stock in the walk-in

cooler and lifting supplies weighing up to 80 pounds. Claimant typically worked 50 hours a week over the course of five days. Claimant estimated that during an average shift, he would cook at least 1,000 hamburgers. Claimant explained that when cooking, he would place preformed hamburger patties on the grill and use a spatula to press them down until they were paper thin. According to claimant, this task involved flexing, extending, and twisting his wrists. Claimant would then use the spatula to flip the hamburgers. Claimant testified that cooking the hamburgers was not difficult unless the hamburger patties had not been thoroughly thawed out. Claimant scraped down the grill between each "run" of 12 hamburgers. In addition, claimant cleaned the grill at least three times a day. Cleaning the grill involved placing a brick on top of a piece of sandpaper and scrubbing the grill. Claimant testified that cleaning the grill required the use of both hands and a lot of force. According to claimant, the busier the restaurant was, the faster he would have to perform his duties.

¶ 7 Claimant testified that after about 10 months to a year of performing these tasks his hands and arms began to bother him. Claimant testified that scraping the grill, flipping the burgers, and smashing the burgers hurt his hands. Claimant further testified that scraping the grill and the heavy lifting bothered his right shoulder. Claimant consulted an attorney regarding his condition, and the attorney sent him to see Dr. Daniel Hoffman. Dr. Hoffman first examined claimant on November 2, 2010. At that time, claimant complained of pain in both arms radiating up to the elbows bilaterally over the prior month. Dr. Hoffman diagnosed bilateral carpal-tunnel syndrome and ordered an EMG/NCV study.

¶ 8 Dr. Edward Trudeau conducted the EMG/NCV study on November 18, 2010. Claimant gave Dr. Trudeau a history of working for respondent as a grill cook for two years. Claimant described his work as involving repetitive motion with his upper extremities. Claimant

complained of paresthesias in the hands, discomfort in the right elbow, and severe pain in the right shoulder. The results of the EMG/NCV study revealed bilateral carpal-tunnel syndrome, moderately severe on either side, right greater than left. No evidence of cubital-tunnel syndrome was noted. Dr. Trudeau believed that if claimant did have cubital-tunnel syndrome, it was either too early or too mild to document. On November 26, 2010, claimant followed up with Dr. Hoffman. Noting that claimant's condition remained unchanged, Dr. Hoffman referred claimant to Dr. Blair Rhode, an orthopedic surgeon.

¶ 9 According to Dr. Rhode's records, claimant presented to him on December 15, 2010, for evaluation of right shoulder, elbow, and wrist injuries. At that time, claimant complained of medial-sided elbow pain with radiation to the ring and little fingers, palmar wrist pain with radiation to the thumb and the long finger, and lateral shoulder pain with weakness to overhead. Claimant reported that his symptoms were secondary to an injury at work. Claimant gave a history of being a cook for respondent for two years. He stated that his job duties required him to perform a significant amount of repetitive activity while cooking. Claimant denied any prior symptomatology, history of diabetes, or thyroid dysfunction. He told Dr. Rhode that his symptoms began 6 to 8 months earlier and that he informed his general manager about his condition 2½ months earlier. Upon examination, claimant demonstrated a positive Phalen's maneuver and a positive Tinel's sign in the right wrist as well as a positive Tinel's sign with paresthesias in the distribution of the ulnar nerve at the right elbow. Claimant's left wrist was negative for both the Phalen's maneuver and Tinel's sign. Claimant's right shoulder demonstrated a half-grade strength loss to supraspinatus isolation and a positive impingement sign with external rotation. Dr. Rhode noted that the EMG/NCV study conducted by Dr.

Trudeau was positive for bilateral carpal-tunnel syndrome with negative findings for cubital-tunnel syndrome.

¶ 10 Dr. Rhode found claimant's subjective and objective findings to be consistent with right carpal- and cubital-tunnel syndrome. He was of the opinion that claimant did not complain or demonstrate objective findings consistent with left carpal tunnel syndrome that day. He also noted that claimant exhibited rotator-cuff symptomatology with supraspinatus isolation strength loss. Dr. Rhode recommended an MRI of the right shoulder and took claimant off work. He treated claimant's right carpal- and cubital-tunnel syndrome conservatively with a steroid injection to the right carpal-tunnel and splinting. Claimant experienced only temporary relief with the injection.

¶ 11 On December 20, 2010, claimant returned to Dr. Hoffman's office with ongoing complaints of pain in both arms radiating up to the elbows. Dr. Hoffman's diagnosis (bilateral carpal-tunnel syndrome) remained unchanged. At that time, Dr. Hoffman drafted two notes, one providing that claimant "is able to actively search for work" and the other providing that claimant "is able to actively work without restrictions." Meanwhile, on December 29, 2010, Dr. Rhode placed claimant on modified sedentary work in response to his shoulder complaints.

¶ 12 On January 12, 2011, claimant returned to Dr. Rhode. Claimant told Dr. Rhode that he was unwilling to live with his current symptomatology. Dr. Rhode discussed that the EMG/NCV study was negative for cubital-tunnel syndrome, but that EMG correlation with cubital-tunnel syndrome is not as accurate as it is for carpal-tunnel syndrome. Claimant indicated that he wished to proceed with surgical intervention. At that time, Dr. Rhode took claimant off work due to bilateral carpal- and cubital- tunnel syndrome.

¶ 13 On February 10, 2011, claimant underwent a right carpal- and cubital-tunnel release performed by Dr. Rhode. Claimant followed up post-operatively with Dr. Rhode. During this time, claimant continued to have left carpal- and cubital-tunnel complaints, and Dr. Rhode noted that claimant demonstrated a positive Tinel's sign in the left wrist and paresthesias in the distribution of the ulnar nerve at the left elbow. On March 29, 2011, claimant underwent a left open carpal- and cubital-tunnel release. During post-operative treatment, which included physical therapy, claimant remained off work. The last complaint of wrist pain documented in Dr. Rhode's records was on May 4, 2011.

¶ 14 Thereafter, claimant continued to treat with Dr. Rhode for complaints involving his right shoulder. Eventually, Dr. Rhode performed a supraspinatus rotator-cuff repair and, subsequently, a manipulation under anesthesia. Dr. Rhode kept claimant off duty during the course of treatment of the right shoulder. On March 21, 2012, Dr. Rhode allowed claimant to work at the medium level with overhead limits of 10 pounds frequently and 20 pounds maximum. Claimant continued to follow up with Dr. Rhode through April 18, 2012. On that date, Dr. Rhode was of the opinion that claimant had plateaued with respect to his shoulder condition. Dr. Rhode released claimant to return on an as-needed basis. He gave claimant restrictions for modified medium heavy duty work with an overhead restriction of 25 pounds frequently and 35 pounds maximum. Dr. Rhode was of the opinion that these restrictions were permanent and that claimant was at maximum medical improvement (MMI).

¶ 15 Claimant testified that following treatment, his hands are fine about 90% of the time. He occasionally feels like they have arthritis in them. Claimant also testified that he still has problems with his right shoulder when he lifts items. Claimant denied any problems with his elbows. Claimant further testified that respondent terminated his employment after he called in

to report that he would not be at work due to the problems with his extremities. Claimant testified that this occurred in November 2010, although he admitted that he was "not good on dates." Claimant stated that he was never given a written or verbal warning before being terminated. Rather, he learned that he was fired when he went to the restaurant and his name was not on the work schedule. Claimant testified that he spoke to a manager named "John" about it.

¶ 16 On cross-examination, claimant testified that he filled out two job description forms, one in November 2010 and one in October 2011. On the form completed in November 2010, claimant wrote that his dates of employment were May of 2009 until November 2010. On the form completed in October 2011, claimant listed his dates of employment as October 2010 through November 2011. When asked for clarification, claimant testified that, to the best of his knowledge, he was hired in May or June of 2009. Claimant also stated that he "honestly couldn't [say]" whether he was employed by respondent in 2011.

¶ 17 Claimant further testified on cross-examination that he applied for and began receiving unemployment soon after he was terminated by respondent. Claimant testified that since he was authorized to return to work in April 2012 by Dr. Rhode, he has looked for work "[o]ff and on," but is currently unemployed. Claimant testified that he has also applied for and began receiving social security disability benefits because of issues with his heart and lungs. Claimant testified that prior to working for respondent, he held various positions, including carpenter, truck driver, and forklift operator.

¶ 18 At respondent's request, claimant presented to Dr. Joseph Newcomer on February 24, 2012, for a section 12 examination (see 820 ILCS 305/12 (West 2010)). Dr. Newcomer authored a report of his findings and testified by evidence deposition. Dr. Newcomer recorded that

claimant was a right-hand-dominant line cook for respondent. About a year and a half into his employment, claimant started having pains in his wrist that would occasionally travel to his elbows. He then had a sharp pain in his shoulder. Claimant stated that because of his symptoms, he sought out the assistance of a lawyer for a referral to a doctor. Claimant treated with Dr. Hoffman, Dr. Trudeau, and Dr. Rhode. Claimant reported that following his treatment he had excellent range of motion and good strength in his shoulder. Claimant felt like he could return to work without much problem. Upon examination, Dr. Newcomer noted that claimant had full range of motion of his wrists and digits, negative Phalen's maneuver, and negative Tinel's sign. Regarding the shoulder, Dr. Newcomer noted that claimant's range of motion lacked only 5 to 10 degrees of forward elevation, his internal and external rotation was good, and he had excellent strength against resisting. Dr. Newcomer's diagnosis was status post bilateral carpal-tunnel release, bilateral cubital-tunnel release, and right rotator-cuff repair. Dr. Newcomer testified that the normal recovery period is 4 to 6 weeks for carpal-tunnel syndrome, 6 to 8 weeks for cubital-tunnel syndrome, and up to six months for a rotator-cuff repair.

¶ 19 Dr. Newcomer noted that prior to his work with respondent, claimant was a truck driver for eight years, and this would be considered a high-demand job. Dr. Newcomer also noted that claimant worked as a carpenter prior to driving a truck, and that this position was another occupation that could cause one to develop compressive neuropathies. Dr. Newcomer was not convinced that claimant's job for respondent was causally related to his diagnoses "in that [claimant] never did seek an occupational health physician's opinion, he went straight to an attorney prior to even having a diagnosis." Dr. Newcomer further stated that he was having a problem with "the causation *** with regards to pinning this completely and solely on [respondent] as a contributing factor, as again [claimant's] decision to seek legal counsel prior to

medical attention is concerning." Dr. Newcomer acknowledged that if claimant's duties as a line cook were "done long enough they could potentially cause a carpal tunnel." Nevertheless, Dr. Newcomer reiterated that he did not believe that claimant's work for respondent "necessarily caused the carpal tunnel," although he acknowledged "the carpal tunnel syndrome *** could have been aggravated." Moreover, based on the results of the EMG study conducted by Dr. Trudeau, Dr. Newcomer did not believe claimant had cubital-tunnel syndrome. Dr. Newcomer opined that where a patient exhibits symptoms of cubital-tunnel syndrome which are not corroborated by an EMG/NCV study, he would consider surgery to be reasonable and necessary only after the failure of conservative treatment. Dr. Newcomer further testified that he did not see anything to suggest that claimant's duties for respondent resulted in his shoulder injury. Dr. Newcomer felt that claimant had reached MMI and was able to work full duty without restrictions. Dr. Newcomer was of the opinion that claimant's medical treatment was reasonable and necessary, even though it was not related to his work activities.

¶ 20 Dr. Rhode also testified by evidence deposition. Dr. Rhode was of the opinion that a grill cook at respondent's restaurant is a highly manual position and highly repetitive. He stated that it is a busy position and that the grill cook has to pound the patties, which are often semi-frozen, into the form of a hamburger. He further stated that this job required a lot of forward reach to manage the cooking of the hamburgers and other food items. Dr. Rhode opined that claimant's job exposure was causative to his symptoms in his bilateral hands and arms and in his right shoulder. Dr. Rhode also opined that even though claimant's diagnostic tests did not show any evidence of cubital-tunnel syndrome, claimant's physical findings were consistent with such a diagnosis. Dr. Rhode further opined that that the medical treatment he provided claimant was reasonable and necessary and that the permanent restrictions he placed on claimant as of April

18, 2012, are related to the job activities that claimant previously performed as a grill cook. On cross-examination, Dr. Rhode opined that EMGs are adjunctive tools. He stated that he would not necessarily operate because of a positive one and would not necessarily refuse to operate because of a negative one. Dr. Rhode opined that it was possible that claimant would have gotten better just by having the carpal-tunnel surgery performed and not the cubital-tunnel surgery.

¶ 21 Based on the foregoing evidence, the arbitrator found that claimant proved by a preponderance of the credible evidence that he sustained accidental injuries to his bilateral hands and elbows as a result of repetitive work activities arising out of and in the course of his employment for respondent with a manifestation date of October 26, 2010. The arbitrator also found that claimant had proven by a preponderance of the credible evidence that the injuries to his bilateral hands and elbows were causally related to his employment. The arbitrator based her conclusions on claimant's testimony regarding his duties for respondent, Dr. Rhode's understanding of claimant's job duties, and Dr. Rhode's causation opinion. The arbitrator also cited the testimony of Dr. Newcomer, noting that he admitted that claimant's position as a grill cook could potentially cause or aggravate neuropathies. Finally, the arbitrator determined that claimant failed to establish that the injury to his right shoulder arose out of and in the course of his employment with respondent. In conjunction with these findings, the arbitrator determined that the medical treatment claimant received for the treatment of his bilateral hands and elbows was reasonable and necessary. The arbitrator awarded claimant TTD benefits from December 15, 2010, through May 24, 2011, a period of 23 weeks. The arbitrator also awarded claimant PPD benefits of: (1) 20.5 weeks because the injuries sustained caused the 10% loss of use of the right hand; (2) 20.5 weeks because the injuries sustained caused the 10% loss of use of the left

hand; (3) 18.975 weeks because the injuries sustained caused the 7.5% loss of use of the right arm; and (4) 18.975 weeks because the injuries sustained caused the 7.5% loss of use of the left arm. The Commission affirmed and adopted the decision of the arbitrator in its entirety. On judicial review, the circuit court of Tazewell County confirmed the decision of the Commission. This appeal by respondent followed.

¶ 22 III. ANALYSIS

¶ 23 A. Manifestation Date

¶ 24 Respondent first challenges the Commission's finding that claimant sustained a repetitive-trauma accident arising out of and in the course of his employment. More specifically, respondent contests the Commission's finding that claimant established October 26, 2010, as the manifestation date of his alleged repetitive-trauma injuries.

¶ 25 To be entitled to benefits under the Act, a claimant must prove by a preponderance of the evidence all elements necessary to justify an award. *Quality Wood Products Corp. v. Industrial Comm'n*, 97 Ill. 2d 417, 423 (1983). This includes establishing that he or she experienced an accident arising out of and in the course of employment. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). In the context of an acute-trauma injury, a claimant must show that an injury is traceable to a definite time, place, and cause. *International Harvester Co. v. Industrial Comm'n*, 56 Ill. 2d 84, 89 (1973); *Elliot v. Industrial Comm'n*, 303 Ill. App. 3d 185, 188 (1999). Similarly, where a repetitive-trauma injury is involved, a claimant must identify a date within the limitations period on which the injury "manifest[ed] itself." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 65 (2006); *Peoria Belwood County Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987).

¶ 26 A repetitive-trauma injury is said to manifest itself on "the date on which both the fact of

the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Peoria Belwood County Nursing Home,* 115 Ill. 2d at 531. This court has recognized, however, that a rule based purely on discovery "would penalize those employees who continue to work without significant complications when the eventual breakdown of the physical structure occurs beyond the statute of limitations period." *Zion-Benton High School District 126 v. Industrial Comm'n,* 242 Ill. App. 3d 109, 114 (1993). Thus, on occasion, the date of accident in a repetitive-trauma injury has been found to be when the employee can no longer perform his job (*Zion-Benton High School District 126,* 242 Ill. App. 3d at 114) or when the onset of pain necessitates medical attention (*Oscar Mayer & Co. v. Industrial Comm'n,* 176 Ill. App. 3d 607, 611-12 (1988); see also *Durand,* 224 Ill. 2d at 72) even if the employee was previously aware of the nature of his or her injury and its relationship to the employment.

¶ 27 The occurrence of a work-related accident is a question of fact. *Pryor v. Industrial Comm'n,* 201 Ill. App. 3d 1, 5 (1990). Likewise, determining the manifestation date of a repetitive-trauma injury involves a factual inquiry. *Durand,* 224 Ill. 2d at 65. In resolving factual matters, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n,* 397 Ill. App. 3d 665, 674 (2009). We review the Commission's factual determinations under the manifest-weight-of-the-evidence standard. *Orsini,* 117 Ill. 2d at 44. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Bassgar, Inc. v. Illinois Workers' Compensation Comm'n,* 394 Ill. App. 3d 1079, 1085 (2009).

¶ 28 In this case, the Commission set the manifestation date of claimant's repetitive-trauma

injury as October 26, 2010. According to respondent, however, there is no trial testimony or treatment record to support a manifestation date of October 26, 2010. In support, respondent asserts that defendant was a "particularly poor historian" and his testimony was inconsistent regarding important details such as the dates of his employment, the nature of his employment for respondent, and the onset date of his hand and elbow symptoms. Respondent also emphasizes that claimant did not obtain medical treatment for his bilateral hand and arm symptoms until after he was referred to a doctor by his attorney. We disagree with respondent and find that there was sufficient evidence from which the Commission could reasonably conclude that October 26, 2010, was the manifestation date of claimant's repetitive-trauma injuries to his bilateral hands and elbows.

¶ 29 In this regard, the record establishes that claimant worked for respondent as a grill cook from May 2009 through November 2010. Claimant grilled an average of 1,000 hamburgers every shift. Claimant grilled each hamburger by placing a preformed patty on the grill, using a spatula to press the patty down until it was paper thin, and then flipping the hamburger with a spatula. Claimant testified that these tasks involved flexing, extending, and twisting his wrists. Further, claimant scraped down the grill between each "run" of 12 hamburgers and cleaned the grill at least three times a day. Cleaning the grill involved placing a brick on top of a piece of sandpaper and scrubbing the grill with both hands using a lot of force. Claimant's other work duties included rotating stock in the walk-in cooler and lifting supplies weighing up to 80 pounds. The busier the restaurant was, the faster claimant would have to perform his duties. Claimant testified that after about 10 months to a year of performing these tasks, his hands and arms began to bother him. On or about October 26, 2010, claimant, seeking a referral to a doctor, consulted an attorney because of his symptoms. As the foregoing demonstrates, claimant

was able to work a period of time after the onset of his symptoms. However, by October 26, 2010, claimant's symptoms began to interfere with his ability to effectively perform the tasks of his position for respondent and he sought medical attention. Based on this evidence, the Commission could reasonably conclude that October 26, 2010, was the date claimant's condition progressed to the point that he necessitated medical treatment. See *Durand,* 224 Ill. 2d at 72; *Oscar Mayer & Co.,* 176 Ill. App. 3d at 611-12. Accordingly, we cannot say that the Commission's decision to set October 26, 2010, as the manifestation date is against the manifest weight of the evidence.

¶ 30 Respondent complains that the evidence was inconsistent regarding the dates and nature of claimant's employment and the onset of his symptoms. However, any alleged inconsistencies merely created a conflict for the Commission to resolve (*Hosteny*, 397 Ill. App. 3d at 674), and respondent cites to nothing that would compel us to overturn the Commission's factual findings based on these alleged inconsistencies. Respondent also makes much of the fact that claimant did not obtain medical treatment for his bilateral hand and arm symptoms until after he was referred to a doctor by his attorney. However, claimant explained that the reason he consulted an attorney was to obtain a physician referral. Moreover, we note that a formal diagnosis is not required to establish a manifestation date. See *Durand*, 224 Ill. 2d at 72. As such, we reject respondent's claim that the Commission erred in setting October 26, 2010, as the manifestation date of claimant's repetitive-trauma injuries.

¶ 31 B. Causation

¶ 32 Respondent next argues that the record does not support the Commission's finding of a causal connection between claimant's bilateral carpal- and cubital-tunnel conditions and his employment. An employee seeking benefits under the Act must establish a causal connection

between the employment and the injury for which he or she seeks benefits. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205 (1993). Causation presents an issue of fact subject to the manifest-weight-of-the-evidence standard of review. *Bassgar, Inc.*, 394 Ill. App. 3d at 1085; *Bernardoni v. Industrial Comm'n,* 362 Ill. App. 3d 582, 597 (2005).

¶ 33 Here, the Commission relied on the medical opinions of Dr. Rhode and Dr. Newcomer in concluding that claimant had proven by a preponderance of the evidence that his bilateral hand and elbow conditions were causally related to his employment. As noted above, claimant's work for respondent required a significant amount of repetitive activity involving his bilateral upper extremities. Claimant sought medical treatment from Dr. Hoffman on November 2, 2010. At that time, claimant complained of pain in both arms radiating up to the elbows bilaterally over the prior month. Dr. Hoffman assessed bilateral carpal-tunnel syndrome and sent claimant to Dr. Trudeau for an EMG/NCV study. The results of the EMG/NCV study revealed bilateral carpal-tunnel syndrome, moderately severe on either side, right greater than left. The study did not reveal any evidence of cubital tunnel syndrome, but Dr. Trudeau noted that it could have been too early or too mild a condition to document at that time. Following the EMG/NCV study, Dr. Hoffman referred claimant to Dr. Rhode.

¶ 34 When claimant saw Dr. Rhode, his complaints included medial-sided elbow pain with radiation to the ring and little fingers and palmar wrist pain with radiation to the thumb and long finger. Upon examination, claimant demonstrated a positive Phalen's maneuver and a positive Tinel's sign on the right wrist as well as a positive Tinel's sign with paresthesias in the distribution of the ulnar nerve at the right elbow. Claimant's left wrist was negative for both the

Phalen's maneuver and Tinel's sign. Dr. Rhode noted that the EMG/NCV study conducted by Dr. Trudeau was positive for bilateral carpal-tunnel syndrome with negative findings for cubital-tunnel syndrome. Ultimately, Dr. Rhode found claimant's subjective and objective findings to be consistent with right carpal- and cubital-tunnel syndrome. Dr. Rhode treated claimant's right carpal- and cubital-tunnel syndrome conservatively with a steroid injection to the right carpal tunnel and splinting. Claimant experienced only temporary relief with this injection and eventually underwent a right-sided carpal- and cubital-tunnel release. Following surgery, claimant continued to have complaints involving his left upper extremity and he demonstrated a positive Tinel's sign in the left wrist and paresthesias in the distribution of the ulnar nerve at the left elbow. Dr. Rhode eventually performed a left-sided carpal- and cubital-tunnel release. At his deposition, Dr. Rhode opined that claimant's bilateral carpal- and cubital-tunnel releases were causally related to his work as a grill cook for respondent.

¶ 35 In contrast to Dr. Rhode, Dr. Newcomer indicated that he was having a problem with causation, specifically "with regards to pinning this *completely and solely* on Steak 'N Shake as a contributing factor" given claimant's decision to seek legal counsel prior to consulting a doctor. (Emphasis added.) Further, Dr. Newcomer did not believe that claimant's employment was related to his cubital-tunnel diagnosis as it was not corroborated by the EMG/NCV study conducted by Dr. Trudeau. Yet, even Dr. Newcomer acknowledged that claimant's job duties, if performed long enough, could cause compressive neuropathies or aggravate preexisting ones.

¶ 36 As the foregoing illustrates, the Commission was presented with differing opinions regarding the causal link between claimant's employment and the repetitive-trauma conditions involving his bilateral hands and elbows. In resolving factual matters, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence,

assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny,* 397 Ill. App. 3d at 674. While Dr. Newcomer was of the opinion that claimant's conditions were not related to his employment, there are several problems with his reasoning. First and foremost, a work-related injury need only be *a* causative factor in the resulting condition of ill-being. See *Sisbro, Inc.*, 207 Ill. 2d at 205. Thus, contrary to Dr. Newcomer's reasoning, claimant's employment with respondent need not be the complete or sole cause of his condition of ill-being. Indeed, Dr. Newcomer noted that claimant has worked in several occupations which have a propensity to develop compressive neuropathies and, as noted above, he acknowledged that if claimant's duties as a cook were performed long enough, they could cause carpal-tunnel syndrome or aggravate a preexisting condition. Further, while claimant's cubital-tunnel diagnosis was not corroborated by the EMG/NCV study, Dr. Rhode testified that EMG correlation with cubital-tunnel syndrome is not as accurate as it is for carpal-tunnel syndrome. More important, Dr. Rhode found claimant's subjective and objective findings to be consistent with his compressive neuropathies. In short, given the repetitive nature of claimant's work activities, Dr. Rhode's correlation between claimant's employment and his bilateral carpal- and cubital-tunnel conditions, and Dr. Newcomer's admission that claimant's job activities could cause or aggravate compressive neuropathies, we cannot say that the Commission's finding that claimant's conditions of ill-being were causally related to his employment with respondent was against the manifest weight of the evidence.

¶ 37 Despite this evidence, respondent suggests that any link between claimant's employment and his diagnosis of cubital-tunnel syndrome is tenuous. Respondent asserts that there was no diagnosis of cubital-tunnel syndrome until claimant saw Dr. Rhode in mid-December 2010 and there was no objective evidence of cubital-tunnel syndrome at any time throughout claimant's

treatment. While claimant may not have been formally diagnosed with cubital-tunnel syndrome until he treated with Dr. Rhode on December 15, 2010, he complained of problems involving his bilateral arms radiating to his elbows when he first treated with Dr. Hoffman on November 2, 2010. Thereafter, he continued to voice complaints involving his elbows not only to Dr. Hoffman, but also to Dr. Rhode, Dr. Trudeau, and Dr. Newcomer. Moreover, although claimant's EMG/NCV was negative for cubital-tunnel syndrome, Dr. Rhode noted that claimant demonstrated a positive Tinel's sign with paresthesias in the distribution of the ulnar nerve at the right elbow. Dr. Rhode later noted paresthesias of the ulnar nerve at the left elbow upon examination. Thus, there was objective evidence of cubital-tunnel syndrome. Regardless, as noted above, Dr. Rhode explained that EMG correlation with cubital tunnel syndrome is not as accurate as it is for carpal tunnel syndrome. Accordingly, respondent's argument does not compel reversal of the Commission's causation finding.

¶ 38 Respondent also complains that the causation opinions of Dr. Rhode and Dr. Newcomer with respect to claimant's bilateral carpal-tunnel diagnosis were based upon an incomplete knowledge of claimant's specific job duties. According to respondent, both physicians only referenced one specific job duty that claimant described at trial (pounding the hamburger patties) as the cause of claimant's conditions. We disagree. At his deposition, Dr. Rhode testified that he had an understanding of claimant's job duties and he noted that they involved a significant amount of repetitive activity, including pounding the hamburger patties and cooking them. However, even accepting respondent's position, flattening the hamburger patties was an essential part of claimant's duties and the Commission could have reasonably concluded that pounding an average of 1,000 hamburger patties per day caused claimant's condition.

¶ 39 C. Medical Expenses

¶ 40 Respondent next alleges that the Commission's award of medical expenses is against the manifest weight of the evidence. However, since this argument is based solely upon the premise that the Commission's finding on causation was erroneous, a premise which we have rejected, we also reject this contention without the need for further analysis. *Tower Automotive v. Illinois Workers' Compensation Comm'n,* 407 Ill. App. 3d 427, 436 (2011).

¶ 41 D. TTD Benefits

¶ 42 Next, respondent maintains that the Commission's award of TTD benefits was against the manifest weight of the evidence. In this regard, respondent alleges that claimant failed to establish causation between his condition of ill-being and his employment. Having previously rejected respondent's contention that the Commission's finding on causation was erroneous, we decline to overturn the Commission's award of medical expenses on this basis. See *Tower Automotive,* 407 Ill. App. 3d at 436.

¶ 43 Alternatively, respondent claims that the Commission's award of TTD benefits was erroneous because claimant was capable of performing his regular job duties during the period of temporary total disability. TTD benefits are available from the time an injury incapacitates an employee from work until such time as the employee is as far recovered or restored as the permanent character of the injury will permit. *Westin Hotel v. Industrial Comm'n,* 372 Ill. App. 3d 527, 542 (2007). The dispositive inquiry is whether the employee's condition has stabilized, that is, whether the employee has reached MMI. *Land & Lakes Co. v. Industrial Comm'n,* 359 Ill. App. 3d 582, 594 (2005). The factors to consider in assessing whether an employee has reached MMI include a release to return to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Freeman United Coal Mining Co. v. Industrial Comm'n,* 318 Ill. App. 3d 170, 178 (2000). Once the injured employee has reached MMI, he is

no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n,* 353 Ill. App. 3d 1067, 1072 (2004). The period during which a claimant is entitled to TTD benefits is a factual inquiry for the Commission. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n,* 387 Ill. App. 3d 244, 256-57 (2008). Hence, the Commission's decision will not be overturned on appeal unless it is against the manifest weight of the evidence. *Ming Auto Body/Ming of Decatur, Inc.,* 387 Ill. App. 3d at 256-57. As noted above, a finding is against the manifest weight of the evidence, only where an opposite conclusion is clearly apparent. *Bassgar, Inc.*, 394 Ill. App. 3d at 1085.

¶ 44 In this case, the Commission, in affirming and adopting the decision of the arbitrator, concluded that claimant was entitled to TTD benefits from December 15, 2010, through May 24, 2011, a period of 23 weeks. The Commission based its decision on the opinion of Dr. Newcomer, who testified regarding the recovery periods for carpal- and cubital-tunnel releases. The evidence of record supports the Commission's finding.

¶ 45 Here, claimant first presented to Dr. Rhode for complaints related to right shoulder pain, elbow pain, and wrist pain on December 15, 2010. At that time, Dr. Rhode took claimant off work due to these conditions. Claimant underwent right-sided carpal- and cubital-tunnel releases on February 10, 2011, and left-sided carpal- and cubital-tunnel releases on March 29, 2011. Dr. Newcomer testified that the typical recovery period is four to six weeks for a carpal-tunnel release and six to eight weeks for a cubital-tunnel release. Based on this evidence, the Commission could have reasonably concluded that claimant's period of temporary total disability began when he first consulted Dr. Rhode and that he reached MMI from his bilateral hand and elbow conditions by May 24, 2011, which was eight weeks after his May 29, 2011,

surgery. As such, we cannot say that the Commission's award of TTD benefits from December 15, 2010, through May 24, 2011, was against the manifest weight of the evidence.

¶ 46 Respondent points out that that Dr. Hoffman issued a full duty work release on December 20, 2010. Standing alone, however, this fact does not establish that claimant's condition had stabilized. Indeed, there was contrary evidence in the record. Dr. Rhode, claimant's principal treating physician, took claimant of work on December 15, 2010, due to claimant's carpal tunnel syndrome, cubital tunnel syndrome, and shoulder pain. Thereafter, claimant continued to seek treatment for complaints related to his bilateral hands and elbows, and Dr. Rhode kept claimant off work as he administered treatment. Although Dr. Rhode authorized claimant to work sedentary duty from December 29, 2010, through January 11, 2011, this was in relation to claimant's shoulder complaints. In fact, Dr. Rhode then took claimant off work completely on January 12, 2011. In light of this conflicting evidence, the fact that Dr. Hoffman authorized claimant to work full duty as of December 20, 2010, does not compel a conclusion opposite that of the Commission.

¶ 47 E. PPD Benefits

¶ 48 Finally, respondent argues that the Commission's award of PPD benefits is against the manifest weight of the evidence. The determination of permanent partial loss of use of a member is not capable of mathematically precise determination, and estimation of partial loss is peculiarly the function of the Commission. *Pemble v. Industrial Comm'n*, 181 Ill. App. 3d 409, 417 (1989). Because of the Commission's expertise in the area of workers' compensation, its finding on the question of the nature and extent of disability should be given substantial deference. *Pemble*, 181 Ill. App. 3d at 417. It is for the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and

draw reasonable inferences from the evidence. *Hosteny*, 397 Ill. App. 3d at 674. As such, the Commission's decision regarding the nature and extent of a claimant's disability will not be set aside on review unless it is contrary to the manifest weight of the evidence. *Pemble*, 181 Ill. App. 3d at 417.

¶ 49 In this case, the Commission awarded claimant permanent partial disability benefits equal to 10% loss of use of each hand and 7.5% loss of use of each arm. Respondent insists that the Commission's award is unwarranted as claimant's current symptoms "seem[] to be in line with a man of [his] age," he denied any problems with his elbows, he was released by Dr. Rhode with a 35 pound lifting limit due only to his right shoulder, and Dr. Newcomer opined that claimant would not have any ongoing impairment. Initially, we find that respondent has forfeited this issue by failing to cite any legal authority (other than for the standard of review) in support of its position. Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) (requiring appellant's brief to include argument, "which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); *ABF Freight System v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 35 (finding that claimant forfeited issue by failing to cite legal authority in support of his argument).

¶ 50 Forfeiture notwithstanding, we do not find that the Commission's award of PPD benefits to be against the manifest weight of the evidence. In reaching its conclusion, the Commission had to resolve conflicts in the evidence regarding the nature and extent of claimant's injuries. For instance, Dr. Newcomer was of the opinion that claimant could return to full duty work without restrictions. However, Dr. Rhode imposed permanent restrictions for modified medium-heavy duty work with an overhead restriction of 25 pounds frequently and 35 pounds maximum. Although Dr. Rhode imposed these restrictions following treatment for claimant's shoulder

complaints (which were not found to be work related), he testified that these restrictions are related to the job activities that claimant performed as a grill cook. Claimant testified that although his hands are "fine" about 90% of the time, he occasionally feels like he has arthritis in them. As noted above, when conflicting medical evidence is presented, it is for the Commission to determine which testimony to accept. *Hosteny*, 397 Ill. App. 3d at 674. While respondent claims that claimant's condition "seems to be in line with a man of [his] age," this statement is speculative and unsupported by any evidence in the record. Moreover, although claimant denied any current problems with his elbows, the fact remains that the cubital-tunnel release resulted in a permanent anatomical difference between claimant's elbows currently and their state prior to the injury. For these reasons, we cannot say that the Commission's award of PPD benefits is against the manifest weight of the evidence.

¶ 51 IV. CONCLUSION

¶ 52 For the reasons set forth above, we affirm the judgment of the circuit court of Tazewell County, which confirmed the decision of the Commission.

¶ 53 Affirmed.