2016 IL App (4th) 150036WC-U

Workers' Compensation
Commission Division
Order Filed: 4/25/2016

No. 4-15-0036WC

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

SPRINGFIELD SCHOOL DISTRICT NO. 186,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Sangamon County
	)	
v.	)	No. 14 MR 697
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*,	)	Honorable
	)	Rudolph M. Braud, Jr.,
(Mark A. Smith, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The decision of the Illinois Workers' Compensation Commission, finding that the claimant's current lumbar spine condition is causally related to her work accident of October 10, 2010, and its award of temporary total disability benefits, medical expenses, and prospective medical care is not against the manifest weight of the evidence.

¶ 2 Springfield School District No. 186 (School District) appeals from an order of the circuit court of Sangamon County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) awarding the claimant, Mark A. Smith, benefits pursuant to the

Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010) as the result of injuries he sustained while working in its employ on October 5, 2010. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing held on April 16, 2013.

¶ 4 At the outset, we note that the claimant filed an earlier application for adjustment of claim alleging that he sustained an injury to his lumbar spine on October 23, 2006, while in the employ of the Springfield Park District. Relevant to this appeal, an MRI scan taken December 28, 2006, revealed a disc bulge at L3-4, mild stenosis at L4-5, and a disc bulge at L5-S1. Beginning January 2007, and continuing through December 2007, Dr. Koteswara Narla, a neurologist, treated the claimant's lumbar spine condition by administering steroid injections. The steroid injections had excellent benefits, resolving the claimant's pain, and allowing him to return to work without restrictions. In September 2008, the claimant settled his worker's compensation case and obtained temporary total disability (TTD) benefits, permanent partial disability (PPD) benefits, and medical expenses.

¶ 5 Following the resolution of the claimant's earlier workers' compensation claim, he began working for the School District as a "substitute janitor." The claimant worked second shift, from 3 to 11 p.m., and his job duties consisted of cleaning classrooms and bathrooms, taking out garbage, and sweeping and mopping the floors. The claimant testified that he had been so employed for two years and he never experienced any back problems between 2008 and 2010. The claimant's supervisor, Michael Morris, confirmed that the claimant worked "pretty steady," including every day in the summer, before his work accident of October 5, 2010.

¶ 6 The claimant testified that, on October 5, 2010, he was emptying heavy recycling bins into a dumpster when he experienced a pop in his low back. After the claimant completed his shift, he returned home and took a hot shower to ease his back pain, but by the following morning he awoke in considerable pain and could hardly get out of bed. The claimant notified his supervisor of the incident, and he was instructed to go to Midwest Occupational Health Associates (Midwest) for evaluation.

¶ 7 The records of Midwest reflect that the claimant presented on October 6, 2010, reporting that he injured his lower back while emptying trash into a dumpster. The nurse's report states that, upon physical examination, the claimant had "discomfort over the low back area, more on the right than the left, with palpation" and limited range of motion with lumbar flexion and extension and lateral bending to the right and left. The nurse also observed that the claimant was able to walk on his heels and toes, with discomfort; he had negative straight leg raises in a sitting position; and normal patellar and Achilles reflexes. The nurse diagnosed the claimant with a lumbar sprain, prescribed Prednisone and Flexeril, and released him to work with restrictions, including no lifting over 10 pounds and no repetitive bending at the waist.

¶ 8 On October 11, 2010, the claimant returned to Midwest, as instructed. He complained that his back pain was radiating into his left inner thigh, but he denied numbness or tingling, bowel or bladder changes, or buckling of his legs. Physical examination was essentially unchanged. The nurse prescribed Tramadol for pain, refilled the claimant's Flexeril prescription, and referred him to physical therapy. At an October 18, 2010, follow-up appointment, the claimant reported no change in his symptoms and that he not yet received insurance approval to start physical therapy.

¶ 9 The claimant started physical therapy on October 22, 2010. The therapist's report from that date states that the claimant had pain with bending and twisting; tenderness with palpation; and decreased strength, range of motion, muscle strength, and functional activity. The therapist noted that the claimant's prognosis is fair to good and she expected him to recover in three to four weeks. The record shows that the claimant participated in six therapy sessions and was able to complete all of the activities in therapy despite complaining of pain throughout each session.

¶ 10 On October 25, 2010, the claimant followed up with the nurses at Midwest, complaining of continued low back pain which he rated a 6 out of 10. Physical examination revealed limited and painful range of motion of the low back with flexion and extension and lateral bending to the right and left. The claimant was prescribed medication and his work restrictions were modified somewhat from a 10-pound lift restriction to a 20-pound lift restriction. On November 2, 2010, the claimant returned to Midwest complaining of increased pain after walking around Washington Park for exercise, as he had been instructed to do in physical therapy. Following his examination on that date, the claimant was diagnosed with "lumbar strain slow to improve" and was referred to Dr. Narla, the neurologist who previously treated him in 2007.

¶ 11 The claimant saw Dr. Narla the following day. Dr. Narla's clinical notes state that claimant injured his back on October 5, 2010, while lifting recycling bins at work. He complained of low back pain radiating down to his left lower extremity which he rated a 6 out of 10. The claimant told Dr. Narla that he finished physical therapy and was taking Tramadol and Flexeril, but the treatment had not provided him with any benefits. Dr. Narla noted that that the claimant's previous lumbar MRI, taken December 28, 2006, showed a disc bulge at L3-4, mild stenosis at L4-5, and a disc bulge at L5-S1. Dr. Narla recorded a clinical impression of increased

disc bulging or "a leak of chemicals producing an S1 radiculopathy on the left." He ordered a lumbar MRI, prescribed Mobic and Hydrocodone for pain, and instructed the claimant to continue taking Flexeril.

¶ 12 The MRI, performed November 11, 2010, was interpreted by the radiologist as showing "[m]ultilevel degenerative changes superimposed on congenital short pedicles resulting in severe central spinal canal stenosis at L3-L4 and moderate central spinal canal stenosis at L4-L5." The scan also revealed "severe bilateral neuroforaminal stenosis at L5-S1."

¶ 13 Also on November 11, 2010, the claimant sought emergency care at Memorial Medical Center for an injury he sustained to his right forearm. The claimant testified that he was walking down a flight of stairs when he began coughing and lost feeling in his legs. His left leg buckled and he grabbed the railing with his right arm to prevent himself from falling down the stairs. X-rays did not show any fractures, but the consulting physician was concerned the claimant tore a tendon. The claimant was given a sling and advised to use ice and elevate the right elbow.

¶ 14 The claimant followed up with Midwest on November 16, 2010, complaining of continued pain in his low back. A nurse reviewed the claimant's MRI and noted that he had "[m]ultilevel degenerative changes with mild diffuse disc bulge and some stenosis." The nurse prescribed daily physical therapy for four weeks and instructed the claimant to follow-up with Dr. Narla.

¶ 15 The claimant began daily physical therapy at Memorial Industrial Rehab on November 23, 2010. In a progress note, dated December 8, 2010, the therapist stated that the claimant might be developing a mindset that it would take a prolonged period of time to recover from his injury. As of December 14, 2010, the therapist noted that the claimant's pain rating and

complaints of soreness seemed consistent with each session. Nevertheless, during the entire course of physical therapy, beginning November 23, 2010, and continuing through his last session on January 10, 2011, the claimant completed all activities with good speed.

¶ 16 On December 14, 2010, the claimant saw Dr. Narla for an epidural injection. In his report from that visit, Dr. Narla diagnosed the claimant with L3-4 stenosis and L5-S1 central disc protrusion producing left-sided radiculopathy. On December 20, 2010, at Midwest, the claimant stated that he felt better for a few days following the epidural injection of December 14, 2010, but that his pain symptoms had returned. He confirmed that he attended daily therapy and took Norco and Mobic every six hours as needed for pain.

¶ 17 On January 4, 2011, the claimant returned to Dr. Narla for a second epidural injection. Dr. Narla's records state that the first epidural injection at L3-4 did not provide the claimant with any benefits and he decided to administer the second epidural at L5-S1 on the left side. Dr. Narla noted that if the epidural injection did not improve the claimant's symptoms, the only remaining options are nerve conduction studies and surgical intervention.

¶ 18 On January 6, 2011, Dr. Dru Hauter performed an independent medical examination (IME) of the claimant at the School District's request. He wrote in his report that the claimant complained of low back pain radiating to his left leg with increased pain after sitting or walking for long periods. The claimant provided a history of his workplace accident and told Dr. Hauter that he has had two epidural injections, attends physical therapy, and takes Meloxicam and Norco for pain. Dr. Hauter's physical examination revealed limited and painful range of motion, hyper-exaggerated response to light touch, and "feigned collapse of the knees with the extremely light touch on the left paraspinous muscle at L1 to the gluteus." He also observed that the

claimant ambulated with a slow, deliberate, wide gait and was hesitant when standing from a seated position. Dr. Hauter reviewed the MRIs and found the following: congenitally narrowed vertebral pedicles with severe spinal stenosis from degenerative changes in the disc and facets at L3-4 and L4-5; bilateral moderate neuro-forminal stenosis at L3-4 and L4-5 caused by the degenerative changes; and severe bilateral neuro-foraminal stenosis at L5-S1. He diagnosed the claimant with a lumbar muscle sprain and congenital spinal stenosis with spinal degeneration at L3-4, L4-5, and L5-S1

¶ 19 Dr. Hauter opined that the claimant's work injury of October 5, 2010, caused a lumbar muscle sprain, which had resolved. He explained that his diagnosis is consistent with the mechanism of injury and "[h]is initial presentation and treatment." Dr. Hauter opined that the claimant was at maximum medical improvement (MMI) for his injury of October 5, 2010, and he concluded that no further treatment is needed for the lumbar muscle sprain.

¶ 20 As to the congenital spinal stenosis and spinal degeneration at L3-4, L4-5, and L5-S1, Dr. Hauter opined that "[t]his problem was not caused or aggravated by the injury of 10/5/10." He explained that the structural problem in the claimant's lumbar spine was documented in the MRI of December 28, 2006, and that the MRI of November 11, 2010, does not demonstrate acute worsening. Although Dr. Hauter acknowledged that the claimant's pain after prolonged walking or sitting, as well as the buckling of his left leg, are consistent with spinal stenosis, he concluded that the claimant has "symptom magnification that is not consistent with this problem." For example, Dr. Hauter observed that the claimant's ability to sit on a table with a loaded spine and knees flexed at 90 degrees without pain is inconsistent with back pain from a mechanical problem. He also stated that any pain caused by lateral rotation of the hips and passive knee

flexion when in a prone position are signs of malingering. Dr. Hauter concluded that the claimant would need surgery to address the preexisting structural problems in his lumbar spine.

¶ 21 On January 10, 2011, the claimant completed physical therapy and followed up with a nurse at Midwest. The claimant reported taking Norco every four hours to relieve his pain and he was referred to Dr. Pineda, an orthopedic surgeon, for evaluation.

¶ 22 The claimant saw Dr. Pineda on January 18, 2011. The claimant provided a history of his workplace accident and related that he has low back pain radiating to his left knee. On physical examination, Dr. Pineda noted the claimant "fires his hip, knee and ankle flexor and extensor" and has "intact light touch sensation." Dr. Pineda reviewed the MRI of November 11, 2010, and determined that the claimant has disc disease at L3-4, L4-5, and L5-S1. Although Dr. Pineda opined that the most severe disc disease was at L3-4, he could not identify the source of the claimant's symptoms due to foraminal narrowing at all three levels. Accordingly, Dr. Pineda recommended an electromyography (EMG) and noted that he would consider surgery based upon the results of the EMG. He diagnosed the claimant with "radicular pain after a work-related injury as described."

¶ 23 The EMG, performed January 21, 2011, was interpreted by Dr. Narla as showing bilateral radiculopathy at L4 on the left and L5 on the right. Dr. Narla commented that the claimant's symptomatology is bilateral in nature and that he has multilevel pathology. He told the claimant to continue taking his medications and to follow up with Dr. Pineda.

¶ 24 The claimant followed up with Dr. Pineda on January 25, 2011. Dr. Pineda reviewed the claimant's MRI and EMG and noted that 80% of the claimant's pain is in his back and 20% is in his left leg. He explained that a decompression would only help the claimant's leg pain and he

may have to consider a more aggressive option such as a decompression and fusion. He ordered a lumbar discrogram to assess whether surgery is an option.

¶ 25 On February 7, 2011, the claimant underwent a lumbar discogram. The report states that, during the procedure, contrast dye leaked out of the nucleus pulposus into the annular tears at all three levels (L3-4, L4-5, and L5-S1). However, the exam did not elicit or reproduce the claimant's left low back pain, left buttocks pain, or posterior left thigh pain. The claimant's post-discogram CT showed moderate to severe central spinal stenosis at L4-5, moderate central spinal canal stenosis at L3-4, and moderate bilateral neural foraminal stenosis at L5-S1.

¶ 26 On February 14, 2011, the claimant returned to Dr. Pineda, reporting that he was doing "pretty well" despite a lot of back pain radiating into his legs. Dr. Pineda noted that the discogram was negative at all three levels and he recommended medical management of the claimant's pain and referred him to Dr. Narla to evaluate whether a stimulator is a better option.

¶ 27 The claimant was seen by Dr. Narla on March 11, 2011. Dr. Narla noted that the discogram report clearly states that no pain was reproduced during the exam, although the claimant "says he was actually jumping off the table" in pain. Dr. Narla did not believe a stimulator was good option since the claimant's stenosis is progressive in nature; instead, he recommended continued use of medication and physical therapy. Dr. Narla's impression remained the same: "[l]umbar back pain following a work-related incident lifting heavy weight in October 2010."

¶ 28 Steven Bockler, a private investigator at SBI Professional Investigations, testified that he videotaped the claimant on May 4 and 6, 2011. The videotape, which was introduced into evidence, was recorded over a two-day period and is nine minutes long. The first portion of

video shows the claimant looking at the front tires of a white pickup truck with another individual. The claimant stood most of the time, but he occasionally bent over to put his hands on his knees. The next portion of video was taken in a Menards' parking lot and shows the claimant lifting two bags of dirt from a shopping cart, placing them into the bed of his pickup truck, and driving away. Although Bockler testified that each bag weighed 40 pounds and contained composted manure, the claimant disputed this testimony, stating that he purchased 20-pound bags of soil. Another video clip shows the claimant gardening at his mother's house. The claimant testified that he pulled weeds, planted seeds, and used his hands to spread dirt. The video also shows the claimant carrying the two bags of dirt from his truck to the side of his mother's house and using a hose to water the ground.

¶ 29 On July 23, 2011, the claimant sought treatment from Dr. Matthew Gornet of the Orthopedic Center of St. Louis. Dr. Gornet's clinical note from July 23, 2011, states that the claimant presented with a chief complaint of low back pain in the left buttocks, left leg, inner thigh, and in his knee with numbness and tingling down both legs. The claimant gave a history of having injured his low back in December 2006, and again on October 5, 2010, while emptying recycling containers into a dumpster at work. Dr. Gornet examined the claimant, reviewed the treatment notes from Drs. Narla and Pineda, and reviewed the MRI, EMG, and discrogram report. Dr. Gornet found a foraminal disc herniation on the left at L4-5, severe foraminal stenosis on the left and moderate foraminal stenosis on the right at L5-S1, spurring and some mild loss of disc height at L3-4, L4-5, and L5-S1.

¶ 30 Dr. Gornet opined that the claimant's symptoms are causally connected to his work injury. He testified that Dr. Hauter's causation opinion was "ludicrous," noting that the

claimant's preexisting low back condition had completely resolved, he returned to work without restrictions, and he was asymptomatic prior to the work accident of October 5, 2010. Dr. Gornet noted that the claimant's low back symptoms have been ongoing since the workplace accident. Dr. Gornet recommended conservative treatment consisting of two injections transforaminal at L4-5 and L5-S1 to see how much pain is resolved. He also instructed the claimant to wean himself off the narcotic pain medication. Dr. Gornet imposed the following work restrictions: no lifting more than 20 pounds, no repetitive bending or lifting, and alternating sitting and standing.

¶ 31 On August 17 and 26, 2011, the claimant underwent a transforaminal injection at L4-5 on the left with facet block, and a transforaminal injection at L5-S1 on the left.

¶ 32 On September 12, 2011, Dr. Hauter issued an addendum to his IME report based upon his review of the EMG and lumbar discogram. His diagnosis and causation opinion remained unchanged and he disagreed with Dr. Gornet's recommendation that the claimant undergo steroid injections.

¶ 33 Despite Dr. Gornet's recommendation that the claimant wean himself off pain medication, the claimant returned to Dr. Narla on September 14, 2011, and obtained a refill of pain medication. On September 22, 2011, Dr. Gornet confronted the claimant about his failure to wean off the pain medication and advised the claimant that if he did not stop taking the medication, he would be considered at MMI.

¶ 34 The claimant returned to Dr. Gornet on November 28, 2011, reporting that he was off of all narcotics. Dr. Gornet testified that he checked Illinois's prescription monitoring website and confirmed that the claimant had, in fact, stopped taking his pain medication. Dr. Gornet

commented that the claimant's success in weaning himself off narcotic pain medication demonstrates that he was highly dedicated and motivated to take a responsible role for his care. He did not observe any signs of magnification, and he testified that the claimant's symptoms of low back pain radiating to the left buttocks, left leg, inner thigh, and numbness and tingling down both legs, were "spot-on" consistent with the structural problems in his lumbar spine. Noting that the claimant has disc pathology at L4-5 and L5-S1, and mild disc degeneration at L3-4, Dr. Gornet recommended a second discogram to locate the source of the claimant's pain symptoms. Dr. Gornet testified that a second discogram is appropriate because the claimant had been taking pain medication for a substantial period of time during the first discogram and, consequently, he did not believe the results of that test were valid. Dr. Gornet advised the claimant that if he has a three level problem, there is little he can do to help. He explained that a right-sided foraminal decompression surgery would help his buttocks and leg pain, but it would not help his low back pain. Dr. Gornet testified that the need for the discogram is causally related to the work accident of October 5, 2010. When asked whether the claimant would be considered at MMI if the test did not produce pain, Dr. Gornet testified the claimant would not be at MMI because he also has "nerve compressive pathology."

¶ 35 On January 30, 2012, the claimant returned to Dr. Gornet. In his notes from that visit, Dr. Gornet wrote that the CT discogram had been denied by the workers' compensation carrier and that they were at a "stand still" pending approval of the discogram. The claimant testified, and the records show, that the claimant continued to follow up with Dr. Gornet pending approval of the discogram.

¶ 36 The claimant testified that he continues to experience constant pain in his low back and he must limit his sitting, standing, and walking because those activities exacerbate his pain. He testified that the School District has not authorized the discogram as recommended by Dr. Gornet and it stopped paying him workers' compensation benefits following Dr. Hauter's IME report. The claimant also testified that the School District has not offered him any light duty work.

¶ 37 Following a hearing held on April 16, 2013, pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2012)), the arbitrator found that the claimant sustained an injury to his lumbar spine, which arose out of and in the course of his employment with the School District on October 5, 2010. The arbitrator awarded the claimant 132 weeks of TTD benefits for the period from October 6, 2010, through April 16, 2013, against which the School District was granted a credit of $2,924.70 for TTD benefits it previously paid. The arbitrator also ordered the School District to pay $32,504.51 for reasonable and necessary medical expenses incurred by the claimant, as well as prospective medical treatment in the form of a discogram as recommended by the claimant's treating physician, Dr. Gornet. The arbitrator further ordered the School District to authorize and pay for any further treatment, if recommended by Dr. Gornet, based upon the results of the discogram.

¶ 38 The School District filed for a review of the arbitrator's decision before the Commission. With one commissioner dissenting, the Commission affirmed and adopted the arbitrator's decision and remanded the matter pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). The dissenting commissioner wrote that, in her opinion, the claimant failed to "prove by a preponderance of the evidence that prospective medical treatment by Dr. Gornet is necessary

and causally related to the low back injury sustained on October 5, 2010." She found the opinions of Dr. Hauter persuasive because he was the only doctor to perform "validity testing" which revealed "significant symptom magnification." As such, the dissenting commissioner would reverse the arbitrator's decision.

¶ 39 The School District sought a judicial review of the Commission's decision in the circuit court of Sangamon County. On December 22, 2014, the circuit court confirmed the Commission's decision, and this appeal followed.

¶ 40 The School District first argues that the Commission's finding that the claimant proved a causal connection between his lumbar spine condition and the October 5, 2010, work accident is against the manifest weight of the evidence. We disagree.

¶ 41 The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Included within that burden is proof that his current condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Id.* at 205. "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." *Id.*

¶ 42 Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its determination of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence.

Certi-Serve, Inc. v. Industrial Comm'n, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. For a finding of fact to be against the manifest weight of the evidence, a conclusion opposite to the one reached by the Commission must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether a reviewing court might have reached the same conclusion is not the test of whether the Commission's determination on a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 43 In support of its argument that the Commission's causation finding is against the manifest weight of the evidence, the School District contends that the claimant had a preexisting degenerative condition in his lumbar spine, which was temporarily aggravated by the work accident of October 5, 2010. According to the School District, the Commission should have relied on Dr. Hauter's opinion that the claimant's symptoms have resolved and any ongoing low back pain is attributable solely to the preexisting condition. We are not persuaded.

¶ 44 In this case, the Commission found the opinion of Dr. Gornet to be "more credible" than the opinion of Dr. Hauter, which it found "not persuasive." Unlike Dr. Hauter, Dr. Gornet opined that the claimant's current condition of ill-being in his lumbar spine was causally connected to the workplace accident of October 5, 2010. Dr. Gornet acknowledged that although the claimant had preexisting disc bulges at L3-4 and L4-5 and mild spinal stenosis at L5-S1, he received three or four epidural shots in December 2006 and January 2007, which had excellent

benefits and completely resolved his low back symptoms. By all accounts, the claimant returned to work without restrictions, was under no active medical treatment, and was not in any pain during the two years leading up to his work accident of October 5, 2010. Dr. Gornet testified that immediately following the October 5, 2010, accident, the claimant's condition deteriorated. The claimant reported that physical therapy and steroid injections provided no relief and he continues to experience pain in his low back, radiating to his left lower extremity, with tingling and numbness in his legs. Dr. Gornet supported his causation opinion by noting that the claimant's symptoms were "spot on" with the MRI, which showed a foraminal disc herniation at L4-5, severe foraminal stenosis at L5-S1, and spurring and loss of disc height at L3-4, L4-5, and L5-S1.

¶ 45 While Dr. Hauter provided a conflicting opinion in this regard—namely that the accident caused a lumbar sprain which has resolved and that his current condition of ill-being is attributable to the preexisting degenerative disease in his lumbar spine—the resolution of such conflicting medical opinions fell within the province of the Commission. *Johns-Manville Corp. v. Industrial Comm'n*, 60 Ill. 2d 221, 228-29 (1975). Thus, it was the Commission's prerogative to decide which of the conflicting medical opinions to accept, and we will not disturb its decision on that matter. See *id.* Although Dr. Hauter's opinion contradicted Dr. Gornet's opinion, the Commission credited Dr. Gornet's testimony and resolved the conflicts in the evidence in favor of the claimant. Based upon the record before us, we are unable to conclude that the Commission's rejection of Dr. Hauter's causation opinion is against the manifest weight of the evidence.

¶ 46 The School District also asserts that the Commission's causation finding is against the manifest weight of the evidence because the claimant's symptoms resolved by March 14, 2011, the date the claimant stopped seeing Drs. Narla and Pineda. We disagree.

¶ 47 We initially note that the medical records show that the claimant last saw Dr. Narla on September 14, 2011, not March 14, 2011. And, contrary to the School District's argument that the claimant stopped treating with Dr. Narla because his symptoms had resolved, our reading of the record reveals that he stopped seeing Dr. Narla at the behest of Dr. Gornet, who specifically instructed him to stop taking narcotic pain medication. Since Dr. Narla was the prescriber of the claimant's pain medication, the Commission could reasonably conclude that the claimant stopped seeing him at Dr. Gornet's request, not because his symptoms had resolved. In any case, the record shows that the claimant was under the continuous care of Drs. Narla, Pineda, *and* Gornet, from November 3, 2010, through April 16, 2013, the date of the arbitration hearing.

¶ 48 In further support of its assertion that the claimant's symptoms resolved by March 14, 2011, the School District points to the surveillance video which shows the claimant driving a truck, shopping at Menards, and gardening at his mother's house. According to the School District, the surveillance video demonstrates the claimant is not credible and "supports a finding that the claimant's injury resolved as of March 14, 2011."

¶ 49 The School District's argument amounts to nothing more than an invitation to reweigh the evidence and find the claimant's version of events incredible. As noted above, it was for the Commission to weigh the evidence and resolve any conflicts in the testimony. Here, the Commission specifically found the claimant credible when he testified that he continues to experience constant pain in his low back and must limit his sitting, standing, and walking

because those activities exacerbate his pain. In assessing the claimant's credibility, the Commission noted that the medical records provide a consistent description of the claimant's low back pain and he remains on a 20-pound lift restriction. To the extent the surveillance video shows the claimant carrying bags of dirt in excess of 20 pounds and performing other household activities, the Commission concluded that the video "is not so damaging" and any inconsistency was immaterial and did not undermine the medical evidence or the claimant's testimony. We cannot say that no rational trier of fact could have found the claimant credible or that an opposite conclusion is clearly apparent from the evidence in the record.

¶ 50 The foregoing analysis leads us to conclude that the Commission's causation determination is supported by sufficient evidence and an opposite conclusion from that reached by the Commission is not clearly apparent. Accordingly, we are unable to conclude that the Commission's finding that the claimant's current condition of ill-being in his lumbar spine is causally related to his work accident of October 5, 2010, is against the manifest weight of the evidence.

¶ 51 We next address the School District's contention that the Commission's award of TTD benefits through April 16, 2013, is contrary to the manifest weight of the evidence.

¶ 52 It is well settled that, when a claimant seeks TTD benefits, the dispositive inquiry is whether his condition has stabilized, *i.e.*, whether the claimant has reached MMI. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 142 (2010). The factors to consider in determining whether an employee has reached MMI include a release to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005). Once an

injured employee has reached MMI, the disabling condition has become permanent and he or she is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). The period of TTD constitutes a question of fact to be resolved by the Commission, whose determination will not be disturbed unless it is against the manifest weight of the evidence. *Interstate Scaffolding*, 236 Ill. 2d at 142.

¶ 53 In this case, the Commission awarded the claimant 132 weeks of TTD benefits, encompassing the period from October 6, 2010, through April 16, 2013, the date of the arbitration hearing. Our review of the record reflects more than sufficient evidence to support the Commission's finding in this regard. Dr. Gornet specifically testified that the claimant had not reached MMI, and he recommended a discogram to determine further treatment options. He explained that a minimally invasive "structural intervention" or a "single level fusion" could improve the claimant's quality of life. Although Dr. Hauter opined that the claimant reached MMI, his IME report failed to identify the date the claimant reached MMI and failed to offer an explanation as to how he arrived at his opinion. As discussed above, the Commission adopted the opinion of Dr. Gornet and there is no basis to conclude that it was contrary to the manifest weight of the evidence.

¶ 54 The School District also asserts that "the claimant failed to provide evidence and testimony that he was not able to work at all." It argues that the surveillance video clearly shows that the claimant is able to work and perform activities outside of his restrictions.

¶ 55 Contrary to the School District's contention, whether a claimant has performed "work" is merely a factor courts consider in determining whether the claimant's condition has stabilized. In *J.M. Jones Co. v. Industrial Comm'n*, 71 Ill. 2d 368, 372-73 (1978), the supreme court held that

the claimant's driving a school bus for an hour in the morning and an hour in the afternoon for seven months while he was unable to work did not preclude a finding that he was temporarily and totally disabled. Then, in *Firestone Tire & Rubber Co. v. Industrial Comm'n*, 76 Ill. 2d 197, 202 (1979), the supreme court held that a claimant's spending two days painting a house did not bar the award for temporary and total disability. Finally, in *Zenith Co. v. Industrial Comm'n*, 91 Ill. 2d 278, 286 (1982), the supreme court held that a claimant's selling hot dogs from a truck with his family for a few hours a day for six months out of a year did not amount to self-employment that barred his TTD benefits.

¶ 56 Here, the Commission considered the surveillance video and found that the claimant's activities depicted therein did not establish that his condition had stabilized. The video shows the claimant shopping at Menards, lifting in excess of his 20-pound restriction, driving his truck, and gardening at his mother's house. The Commission acknowledged that the video depicts the claimant lifting in excess of his weight restriction, but it determined "it was an isolated instance at best." We note that the remaining activities depicted in the surveillance video are mundane. The Commission also noted that the claimant remains on a 20-pound restriction and the School District never offered the claimant a position within his restrictions; nor is there any evidence that the claimant otherwise refused work falling within his restrictions.

¶ 57 In short, given the claimant's persistent symptoms, Dr. Gornet's opinion that the claimant had not reached MMI, and the recommendation for surgical intervention, we conclude that the claimant's current condition of ill-being had not stabilized by the time of the arbitration hearing. As a result, the Commission's award of TTD benefits through the date of the arbitration hearing is not against the manifest weight of the evidence.

¶ 58 Finally, the School District argues that the Commission's award of medical expenses and prospective medical treatment is against the manifest weight of the evidence.

¶ 59 We initially note the School District makes no argument and cites no authority as to why the Commission's award of $32,504.51 in medical expenses is contrary to the manifest weight of the evidence. The School District's failure to properly develop an argument and support it with citation to relevant authority constitutes a forfeiture of the argument. *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 33; Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 60 As to prospective medical expenses, the School District maintains that the Commission's authorization for a "repeat discogram" is contrary to the manifest weight of the evidence because the claimant already underwent a discogram which failed to reproduce pain and was essentially negative. The School District contends that, based upon the negative results, Drs. Pineda, Narla, and Hauter opined that no further treatment was necessary; therefore, it should not have to authorize and pay for the discogram as recommended by Dr. Gornet. Again, we disagree.

¶ 61 Section 8(a) of the Act states, in relevant part:

> "The employer shall provide and pay *** all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury ***." 820 ILCS 305/8(a) (West 2010).

We have held that "[s]pecific procedures or treatments that have been prescribed by a medical service provider are 'incurred' within the meaning of section 8(a) even if they have not been

performed or paid for." *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10. Questions regarding entitlement to prospective medical care under section 8(a) are factual inquiries for the Commission to resolve, and its decisions on factual matters will not be disturbed on appeal unless they are against the manifest weight of the evidence. *Id*.

¶ 62 Here, the Commission's decision to award the claimant prospective medical care in the form of a discogram is not against the manifest weight of the evidence. The claimant testified that he continues to have low back pain radiating to his left leg. Dr. Gornet testified that he believed that, based upon the results of the discogram, the claimant could benefit from a minimally invasive "structural intervention" or a "single level fusion." The Commission, upon reviewing the totality of the evidence, concluded that the discogram recommended by Dr. Gornet is a reasonable and necessary medical test which would help determine whether surgery would help resolve the claimant's low back pain and leg pain.

¶ 63 The School District urges this court to disregard the medical opinion of Dr. Gornet and adopt that of Drs. Narla, Pineda, and Hauter. That is not the function of this court. The Commission specifically found "Dr. Gornet credibly explained why he believes a second [discogram] is necessary—*i.e.*, he wants one done now that [the claimant] has been off of pain medication." The Commission also noted that Dr. Gornet candidly acknowledged that if the discogram comes back negative, his treatment recommendations will change. The Commission concluded that a discogram is more prudent than simply proceeding with surgery and there is nothing in the record refuting the necessity or reasonableness of the test which would allow us to disturb the Commission's decision.

¶ 64 Finally, the School District asserts that the results of the first discogram are valid since the medical records reveal that the claimant did not take pain medication prior to his discogram. The Commission considered, and rejected, this argument. It recognized that "[w]hile [the claimant] may not have taken pain medication the day of his first discogram, [it] has inferred from Dr. Gornet's deposition testimony that he wants another one done now *** [since the claimant] has been off narcotic pain medication for a substantial period of time." Under these facts, we do not find that the Commission's determination that the claimant is entitled to the additional discogram to assess his lumbar spine condition is against the manifest weight of the evidence.

¶ 65 Based upon the foregoing analysis, we affirm the judgment of the circuit court, which confirmed the Commission's decision. And remand this matter back to the Commission for further proceedings.

¶ 66 Affirmed and remanded.