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2017 IL App (1st) 162229WC-U

FILED: September 29, 2017

NO. 1-16-2229WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

RICHARD VAN WAZER,	)	Appeal from
Appellant,	)	Circuit Court of
	)	Cook County
v.	)	No. 16L50048
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (Arata Exposition, Inc., Appellee).	)	Honorable
	)	Kay M. Hanlon,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: (1) The Commission's finding of no causal relationship between claimant's work accident and his alleged lumbar disc herniation was not against the manifest weight of the evidence.

(2) Claimant established the Commission erred in calculating his TTD compensation rate and the rate awarded is increased to $1,262.80; however, claimant otherwise forfeited his claims of error as they relate to the Commission's TTD award.

(3) The Commission committed no error in denying claimant's request for penalties and attorney fees.

¶ 2 On October 29, 2013, claimant, Richard Van Wazer, filed an application for ad-

justment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2012)), seeking benefits from the employer, Arata Exposition, Inc. Following a hearing, the arbitrator found claimant sustained work-related injuries on September 19, 2013, in the form of strains to his left Achilles, left hip/thigh, and left lower leg. He awarded claimant temporary total disability (TTD) benefits of $887.47 a week for 1/7 weeks and ordered that the employer receive a set-off of $92,941.28 for TTD benefits it already paid to claimant. Additionally, the arbitrator denied all of claimant's claims for benefits associated with his lumbar spine condition of ill-being, finding that condition was not causally related to the work accident. He also denied claimant's request for penalties and attorney fees.

¶ 3 On review, the Illinois Workers' Compensation Commission (Commission) modified the arbitrator's decision by finding claimant sustained a lumbar strain that was causally connected to his work accident and that he was entitled to prospective medical care in the form of a four-week work conditioning program. The Commission further determined that there was "no causal connection between [claimant's] work injury and his preexisting lumbar spondylosis or herniated disc, or the lumbar surgery proposed by" one of claimant's doctors. The Commission otherwise affirmed and adopted the arbitrator's decision. Pursuant to *Thomas v. Industrial* Comm'n, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980), the Commission remanded the matter to the arbitrator for a determination of claimant's entitlement to additional benefits under the Act, if any.

¶ 4 Claimant sought judicial review of the Commission's decision with the circuit court of Cook County. The circuit court confirmed the Commission's decision and claimant appeals, arguing (1) the Commission's finding that there was no causal relationship between his work accident and his alleged lumbar disc herniation was against the manifest weight of the evi-

dence, (2) the Commission's denial of prospective medical care in the form of the lumbar spine surgery recommended by one of his doctors was against the manifest weight of the evidence, (3) the Commission erred in its award of TTD benefits, and (4) the Commission's finding that he was not entitled to an award of penalties and attorney fees was against the manifest weight of the evidence. We modify the TTD compensation rate awarded to claimant and affirm the circuit court's judgment as modified. We also remand the matter to the Commission pursuant to *Thomas*.

¶ 5 I. BACKGROUND

¶ 6 On February 17, 2015, the arbitration hearing was conducted. Claimant testified he was 41 years old and worked as a union carpenter. He was a member of Local 181, which he described as a carpenter's union that primarily performed "trade show work." Claimant explained that trade show work required him to lay carpet and build, service, and dismantle trade show booths. He testified the employer was in the business of building and dismantling trade show booths for its clients. On September 19, 2013, claimant was injured while working on a job for the employer. He stated he performed jobs for the employer on three or four previous occasions. In September 2013, he worked for the employer a total of two days.

¶ 7 On the day of his accident, claimant was laying booth carpeting with another employee. He testified he lunged forward awkwardly while moving a roll of carpet, "threw [his] left foot out there," and "felt a sharp nerve jolt from what felt like [his] ankle to [his] butt" or his "butt to [his] ankle." After the incident, claimant thought the pain might subside and continued to work. However, his pain only worsened and he reported his injury to his immediate supervisor, Mike Jacobi. Claimant testified Jacobi contacted the employer's "offices" and the employer's purchasing manager, Dave Trybus, arrived with paperwork for claimant to complete. Trybus also

escorted claimant to a medical facility for a toxicology exam.

¶ 8 Medical records show claimant was seen on September 19, 2013, at Occupational Health Centers of Illinois (Occupational Health) by Dr. Dan Paloyan. Dr. Paloyan noted claimant "complain[ed] about his [l]eg" and reported pushing a heavy roll of carpeting at work when "he slipped and stepped forward awkwardly on his left foot and felt a sharp pain in the left [A]chilles area which extended to the left thigh area, posterior." Claimant also reported "a past history of back problems" and that he "had chiropractic treatment in the recent past." He denied any history of lumbar disc disease or radiculopathy.

¶ 9 On examination, Dr. Paloyan noted tests involving claimant's lumbar spine were "[n]egative" and "[n]ormal." He found no tenderness in the lumbar spine and "[n]ormal [f]ull [a]ctive range of motion." Dr. Paloyan did find moderate tenderness in claimant's left knee and left leg, and tenderness in his left ankle. He assessed claimant as having strains in his left Achilles and lower leg, as well as a "sprain/strain" in his "hip/thigh." Claimant was prescribed medication and told to return early the following day if he was not doing well.

¶ 10 Claimant returned to Occupational Health the next day and saw Dr. Angelo Lambos. Dr. Lambos noted claimant was handling a roll of carpet and, as he "dropped it[,] he went forward with his left leg *** causing a stretch of the back of his buttock/thigh." Claimant complained of pain in his left buttock that at times would travel into the back of his left thigh. He underwent x-rays of the left hip and lumbar spine, which were both negative. Dr. Lambos assessed claimant as having a "[s]prain/strain" of the "hip/thigh" and recommended limited duty restrictions and physical therapy. On September 23, 2013, claimant began physical therapy. He reported injuring his left leg on September 19, 2013, when he "stepped awkwardly," caught himself with his left foot, and "felt a sharp shooting pain from [his] waist to [his] foot." Claimant

complained of left hip pain that occasionally radiated into the back of his knee.

¶ 11 On September 26, 2013, claimant had a second physical therapy visit and reported continued leg pain. The same day, he saw Dr. Young Lee at Occupational Health. Dr. Lee's records state claimant was being seen for a "[r]evisit for [a] low back strain" and that claimant had been "working within duty restrictions" and his symptoms were improving. On examination of claimant's lumbar spine, he noted "tenderness of the midline LS-spine at the level of L4, L5, S1 and S2." Dr. Lee diagnosed claimant with a lumbar strain and recommended physical therapy and modified activity.

¶ 12 On October 3, 2013, claimant followed up with Dr. Lee to recheck his "strain of low back and [left] hip." He reported feeling no better after having had four physical therapy visits and that his "pattern of symptoms [was] no better." On examination, Dr. Lee found tenderness in claimant's lumbar spine and left hip. He assessed claimant as having lumbar radiculopathy, a lumbar strain, and a "[s]prain/strain" of the "hip/thigh." Dr. Lee continued to recommend physical therapy and modified activity.

¶ 13 Claimant continued to follow up at Occupational Health and undergo physical therapy. On October 18, 2013, he saw Dr. Inderjote Kathuria, who recommended a magnetic resonance imaging (MRI) scan. On November 25, 2013, Dr. Lee referred claimant to an orthopedic surgeon.

¶ 14 The record shows that from September 26 to November 25, 2013, claimant's medical records consistently identified him as "working modified activity" or "working within [his] duty restrictions." However, at arbitration, claimant testified he did not return to work after his accident and there was "no light duty with regard to [his] union work." Additionally, he stated the employer did not provide him with any work within his restrictions.

¶ 15 On December 2, 2013, claimant saw Dr. Charles Mercier, an orthopedic surgeon, pursuant to Dr. Lee's referral. He complained of "left radicular low back pain with occasional right foot numbness." Dr. Mercier noted the following history: "[Claimant] does admit to a prior low back problem since childhood that he has been receiving chiropractic treatments [on] an irregular basis. He was receiving chiropractic treatments just prior to the accident." Dr. Mercier further noted that claimant was "not working as there is no light duty available." He recommended an MRI, work restrictions, and continued physical therapy. The record reflects claimant's MRI was performed on December 31, 2013.

¶ 16 On January 6, 2014, claimant followed up with Dr. Mercier and reported persistent pain. Dr. Mercier noted as follows: "[Claimant] did have his MRI of the lumbosacral spine revealing a central disk protrusion at L5-S1 with minimal annular edema. These findings associated with degenerative findings revealed mild to moderate central stenosis associated predominantly with central disk protrusion and partial annular tear." He recommended claimant receive an epidural steroid injection, which claimant underwent on February 3, 2014, with "minimal results." Dr. Mercier then referred claimant to Dr. Sean Salehi, a neurosurgeon.

¶ 17 On February 7, 2014, claimant saw Dr. Salehi for the first time. He provided a history of handling a large roll of carpet at work, stepping forward with his left foot, and feeling "tingling from the left leg all the way up to the back." Claimant complained of low back pain on his right side and "pain starting in the left buttock that goes down the left posterior leg to the calf." Dr. Salehi reviewed claimant's December 2013 MRI and diagnosed him with lumbar degenerative disc disease at L2-3 through L5-S1, a disc herniation at L4-5, and lumbosacral spondylosis at L5-S1. Dr. Salehi recommended surgery in the form of a left L4 through S1 hemilaminectomy and a discectomy at L4-5.

¶ 18 On April 2, 2014, claimant was evaluated by Dr. Wellington Hsu at the employer's request. Dr. Hsu prepared a report in connection with his evaluation, which the employer submitted at arbitration. Dr. Hsu's report shows he reviewed medical records for treatment claimant received after his September 2013 accident. Further, he noted claimant provided a history of handling a roll of carpet and experiencing "an immediate onset of left lower extremity radiating pain down to the buttocks" that was also "associated with significant low back pain." Claimant's chief complaint to Dr. Hsu was left lower extremity radiating pain. Additionally, Dr. Hsu stated he reviewed claimant's December 2013 MRI and found there was evidence of mild bilateral foraminal stenosis at L4-5 and L5-S1 and moderate and age-appropriate multilevel spondylosis. He saw no evidence of instability, focal disc herniation, or nerve root compression.

¶ 19 Dr. Hsu diagnosed claimant with a lumbar strain and lumbar spondylosis at L4-5 and L5-S1. He opined claimant's current condition was causally related to his alleged work accident, noting claimant continued to have left lower extremity radiating pain, as well as some low back pain. Dr. Hsu believed claimant's symptoms were "secondary to a soft tissue injury in the low back muscle injury [*sic*]." He further found that claimant had preexisting lumbar spondylosis as shown on his MRI; however, he did not believe that condition was the cause of claimant's "current conditions."

¶ 20 Additionally, Dr. Hsu opined the treatment claimant had received was appropriate. He recommended further treatment as follows:

> "I believe that *** claimant can benefit from work hardening, five days a week, for a total of four weeks ***. I believe that treatment will help him improve his lower extremity and upper back symptoms. This will also allow him to get back to the demand level job of a carpenter."

Dr. Hsu opined claimant would reach maximum medical improvement after a work hardening program was complete and stated claimant could not return to full-duty capacity at that time. He recommended work restrictions of no heavy lifting over 20 pounds and only occasional bending, crouching, and stooping.

¶ 21 On July 10, 2014, Dr. Hsu authored an addendum report to address Dr. Salehi's surgical recommendations. He opined that claimant was not a good surgical candidate and stated he "was not impressed with the MRI findings of stenosis." Dr. Hsu further stated as follows:

> "Dr. Salehi's [February 7, 2014,] note indicates a different read of an MRI that may indicate nerve root impression [*sic*]. Because I have not been given any new imaging studies or provided any new information regarding his symptoms, I would stand by my previous opinions that at the time of my independent medical examination and at this current time, surgical treatment would likely not improve the pathology seen on the MRI to the point where [claimant's] symptoms would improve."

Dr. Hsu also opined that Dr. Salehi's proposed surgery was not causally related to claimant's work injury. He noted his opinion that claimant's work accident caused a soft tissue injury and stated he did "not believe that the mechanism that [claimant] experienced [was] consistent with causing a structural injury to the lumbar spine."

¶ 22 On October 2, 2014, Dr. Salehi authored a letter regarding claimant. He noted that, during their initial visit, claimant complained of low back pain and pain that radiated into his left leg. Dr. Salehi stated claimant "reported that he had no prior history of low back or leg pain before" his September 2013 work accident. He noted his personal review of claimant's lumbar spine MRI "showed lateral moderate bilateral foraminal stenosis at L5-S1 ***, as well as

an inferiorally extruded disc at left L4-5." Dr. Salehi further stated he reviewed Dr. Hsu's reports but continued to find claimant's September 2013 work injury "resulted in a herniated disc at L4-5 as well as a permanent exacerbation of a pre-existing lumbosacral spondylosis at L5-S1." He continued to recommend surgery for claimant and opined claimant's need for surgery was causally related to his work accident "as [claimant] reported that he had no prior history of low back or leg pain before the injury."

¶ 23 At arbitration, claimant submitted Dr. Salehi's deposition, taken December 5, 2014. Again, Dr. Salehi opined claimant's back and leg symptoms were causally related to his September 19, 2013, work accident. Dr. Salehi testified he based his opinion on the mechanism of injury described to him, the "history provided," and claimant's MRI. He opined the surgery he recommended was necessary to relieve the injuries claimant sustained at work in September 2013.

¶ 24 On cross-examination, Dr. Salehi testified he did not review any of claimant's medical records that predated the September 2013 accident. He stated that when he questioned claimant about previous treatment for his lumbar spine, claimant "denied any prior history of low back or leg pain." Additionally, Dr. Salehi testified that he would need to review any medical records that predated the September 2013 work accident to determine whether they warranted a change in his opinions regarding accident and causation.

¶ 25 At arbitration, claimant testified he had not undergone the surgery recommended by Dr. Salehi because it had not been authorized by either the employer or its insurer. He asserted he continued to experience pain, specifically a "[t]hrobbing down the back of [his] left leg." Additionally, claimant testified that, prior to September 19, 2013, he experienced general back pain, muscle pulls, and strains but "[n]othing of th[e] sort" he experienced after that date. He

acknowledged previously receiving chiropractic treatment, but denied that he had "regular chiropractic treatment" prior to his accident. Rather, he asserted he occasionally visited a chiropractor for adjustments. Also, he denied that his chiropractic care involved treatment for pain radiating down his leg. Claimant's chiropractic records were not submitted into evidence at arbitration.

¶ 26 On March 10, 2015, the arbitrator issued his decision in the matter, finding claimant sustained work-related injuries to his left Achilles, left hip/thigh, and left lower leg but not to his lumbar spine. As stated, he awarded claimant TTD benefits of $887.47 a week for 1/7 weeks and ordered that the employer receive a credit of $92,941.28 for TTD benefits it already paid. The arbitrator further denied claimant prospective medical expenses for the surgery recommended by Dr. Salehi, as well as claimant's motion for penalties and attorney fees.

¶ 27 On December 17, 2015, the Commission issued its decision. It modified the arbitrator's decision by finding claimant suffered a lumbar strain that was causally connected to his work injury. However, it found "there [was] no causal connection between [claimant's] work injury and his preexisting lumbar spondylosis or herniated disc, or the lumbar surgery proposed by Dr. Salehi." The Commission further found claimant entitled to prospective medical care in the form of the four-week work conditioning program Dr. Hsu recommended to treat claimant's lumbar strain. It otherwise affirmed and adopted the arbitrator's decision. Pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980), the Commission remanded the matter to the arbitrator for a determination of claimant's entitlement to additional compensation, if any. On July 6, 2016, the circuit court of Cook County confirmed the Commission's decision.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. Causation

¶ 31 On appeal, claimant first argues the Commission's decision that his disc herniation was not causally related to his September 19, 2013, work accident was against the manifest weight of the evidence. He contends his testimony and medical records support an opposite conclusion and the Commission erred in relying on Dr. Hsu's opinions over those provided by Dr. Salehi.

¶ 32 To obtain an award of benefits under the Act, a claimant must show "that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). An injury arises out of a claimant's employment if it "had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.* at 203, 797 N.E.2d at 672.

¶ 33 "Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Dig Right In Landscaping v. Workers' Compensation Comm'n*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739. In deciding a question of fact, "[i]t is the Commission's duty to resolve conflicts in the evidence, particularly medical opinion evidence." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592, 834 N.E.2d 583, 592 (2005). "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent." *Dig Right In Landscaping*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739. On review, "the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination," not whether this court might reach the same conclusion. *Id.*

¶ 34 The record shows the Commission determined claimant's work accident caused

him to suffer a lumbar strain but that there was "no causal connection between [claimant's] work injury and his preexisting lumbar spondylosis or herniated disc." In so holding, the Commission relied on claimant's medical records and Dr. Hsu's opinions, finding them more persuasive than those provided by Dr. Salehi. We find the record supports the Commission's decision and it is not against the manifest weight of the evidence.

¶ 35 Here, Dr. Hsu evaluated claimant and diagnosed him with a lumbar strain and lumbar spondylosis at L4-5. He reviewed claimant's December 2013 MRI, but found no evidence of a focal disc herniation or nerve root compression. Further, Dr. Hsu determined claimant's lumbar spondylosis was a preexisting condition and not the cause of his current symptoms. He opined that only claimant's lumbar strain was causally connected to the work accident, finding the accident caused a soft tissue injury and that claimant's symptoms were "secondary" to that "soft tissue injury in the low back muscle." Dr. Hsu did not believe that claimant's mechanism of injury was "consistent with causing a structural injury to the lumbar spine."

¶ 36 Conversely, Dr. Salehi provided medical treatment to claimant and, after reviewing his December 2013 MRI, diagnosed him with lumbar degenerative disc disease, a disc herniation at L4-5, and lumbosacral spondylosis. He determined claimant's work accident resulted in a herniated disc at L4-5 and a permanent exacerbation of a pre-existing lumbosacral spondylosis at L5-S1. Dr. Salehi recommended surgery in the form of a left L4 through S1 hemilaminectomy and a discectomy at L4-5.

¶ 37 Clearly, Dr. Hsu's opinions support the Commission's decision in this case. Although Dr. Salehi offered conflicting opinions, as discussed, it was within the province of the Commission to resolve the conflict. We can find no error in the Commission's reliance on Dr. Hsu's interpretation of claimant's MRI or his causation opinions.

¶ 38 Moreover, the record shows the Commission had a legitimate basis for finding Dr. Salehi less persuasive than Dr. Hsu. At his deposition, Dr. Salehi testified his opinions were based, in part, on the history provided by claimant. He asserted that when he questioned claimant about previous lumbar spine issues, claimant "denied any prior history of low back or leg pain." However, both claimant's testimony at arbitration and his medical records demonstrate that the history relied upon by Dr. Salehi was inaccurate. At arbitration, claimant acknowledged his prior low back issues and chiropractic treatment. Further, both Dr. Paloyan and Dr. Mercier noted reports by claimant of "a past history of back problems" or a "low back problem since childhood." Both also noted claimant had undergone chiropractic treatment, which Dr. Paloyan described as being "in the recent past."

¶ 39 Here, an opposite result from that reached by the Commission is not clearly apparent and, as stated, its decision was not against the manifest weight of the evidence. We note the Commission's denial of prospective medical expenses in the form of the surgery recommended by Dr. Salehi is also supported by Dr. Hsu's medical opinions. Thus, while claimant also challenges that portion of the Commission's decision, for the reasons already stated, the Commission committed no error.

¶ 40 B. TTD Benefits

¶ 41 On appeal, claimant next challenges the Commission's TTD award. He first argues the Commission erred in calculating his weekly benefit. Specifically, he contends that the parties stipulated that his average weekly wage was $1,894.20, which "correlates to a TTD rate of $1,262.80," rather than the $887.47 awarded by the Commission. In response, the employer does not address claimant's calculation or his specific argument. Instead, it maintains claimant forfeited this issue by failing to support his argument with citation to legal authority.

¶ 42 Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) requires an appellant to support his arguments with citation to legal authority. "The 'failure to properly develop an argument and support it with citation to relevant authority results in forfeiture of that argument.' " *Compass Group v. Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 33, 28 N.E.3d 181 (quoting *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37, 992 N.E.2d 103). However, the forfeiture rule "is a limitation upon the parties and not a restriction upon a reviewing court." *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 505, 812 N.E.2d 65, 69 (2004). Here, this specific challenge by claimant to the Commission's TTD award concerns a simple mathematical calculation. Thus, we decline to apply forfeiture and address the merits of his claim.

¶ 43 Under the Act, the TTD compensation rate "shall be equal to 66 2/3 % of the employee's average weekly wage." 820 ILCS 305/8(b)(1) (West 2012). On the parties' request for hearing form, they agreed claimant's average weekly wage totaled $1,894.20. Thus, as argued by claimant, he was entitled to a weekly TTD benefit of $1,262.80, *i.e.*, a compensation rate equal to two-thirds of his average weekly wage. The rate actually ordered by the Commission, $887.47, is not supported by the record. Therefore, we modify claimant's TTD award to reflect a TTD compensation rate of $1,262.80.

¶ 44 On appeal, claimant further challenges the Commission's TTD award, arguing that the Commission (1) "should have awarded TTD benefits for as long as [claimant] was seeking medical care due to the [September 2013] work injury" because he proved his lower back, hip, and leg pain was causally related to his work accident and (2) should not have awarded a set-off of $92,941.28 to the employer. Again, the employer responds by arguing claimant forfeited these contentions by failing to support his argument with citation to relevant authority. With

respect to these two specific challenges to the Commission's TTD award, we agree with the employer.

¶ 45 As stated, "[t]he 'failure to properly develop an argument and support it with citation to relevant authority results in forfeiture of that argument.' " *Compass Group*, 2014 IL App (2d) 121283WC, ¶ 33, 28 N.E.3d 181 (quoting *Ramos*, 2013 IL App (3d) 120001, ¶ 37, 992 N.E.2d 103). Here, not only did claimant fail to cite any legal authority to support his contentions on appeal, he also failed to present properly developed arguments to support his claims of error. We note his brief contains two sentences asserting the Commission erred in the length of TTD it awarded to him and with respect to the set-off it awarded to the employer. Neither sentence contained any factual support from the record. Further, both sentences amounted to only bare assertions by claimant that the Commission erred.

¶ 46 C. Penalties and Attorney Fees

¶ 47 Claimant's last challenge to the Commission's decision concerns its denial of his motion for penalties and attorney fees. He argues the employer was late in paying both TTD benefits and medical expenses, warranting the imposition of penalties and attorney fees under sections 19(*l*), 19(k), and 16 of the Act. 820 ILCS 305/19(*l*), 19(k), and 16 (West 2012).

¶ 48 Section 19(*l*) provides for penalties in the event either the employer or its insurer "without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits." 820 ILCS 305/19(*l*) (West 2012). Further, it states that "[a] delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." *Id*.

¶ 49 "Penalties under section 19(*l*) are in the nature of a late fee." *Jacobo v. Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, ¶ 20, 959 N.E.2d 772. Also, they are mandatory when payment is late and the employer "cannot show an adequate justification for the

delay." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 552 (1998). "[T]he employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified." *Jacobo,* 2011 IL App (3d) 100807WC, ¶ 20, 959 N.E.2d 772. "The Commission's evaluation of the reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence." *Id.*

¶ 50 Here, claimant argues the employer was late in the payment of both TTD and medical expenses. With respect to TTD, the Commission affirmed the arbitrator's award "of 1/7 weeks, through September 23, 2013[,] after the statutory waiting period." Claimant argues the employer delayed in paying TTD benefits until January 23, 2014. The employer responds that its late payment was justified because, until December 2013, claimant's medical records documented that he "was working a modified position." A review of the record supports the employer's assertion that, although claimant testified he did not return to work after his September 2013 accident, medical records from September to November 2013, consistently described him as "working modified activity" or "working within [his] duty restrictions." It was not until December 2, 2013, that he was described as "not working as there is no light duty available." Given these facts, we find no error in the Commission's denial of section 19(*l*) penalties based on the late payment of TTD benefits.

¶ 51 Claimant also argues the employer delayed in the payment of his medical expenses because it did not pay medical bills he incurred on September 19, 2013, the day of his accident, until February 15, 2014. We note that the Act requires "[a]ll payments to providers for treatment *** shall be made within 30 days of receipt of the bills as long as the claim contains substantially all the required data elements necessary to adjudicate the bills." 820 ILCS

305/8.2(d)(2) (West 2012). Here, the record does not reflect the date on which claimant's September 19, 2013, medical bills were transmitted to, or received by, the employer. As a result, claimant has failed to establish any untimely payment of medical expenses by the employer and cannot demonstrate his entitlement to section 19(*l*) penalties.

¶ 52 Finally, we note that, unlike section 19(*l*) penalties, penalties and attorney fees imposed pursuant to sections 19(k) and 16 require a "higher standard" and "address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose." *Id.* ¶ 44. Here, because claimant failed to establish that the employer's conduct warranted the imposition of section 19(*l*) penalties, he also cannot establish that the employer's actions met the "higher standard" required by sections 19(k) and 16. Thus, the Commission committed no error in denying claimant's request for penalties and attorney fees.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we modify the circuit court's judgment, confirming the Commission's decision, to reflect claimant's entitlement to a TTD compensation rate of $1,262.80, and affirm the circuit court's judgment as modified. We also remand the matter to the Commission pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322.

¶ 55 Affirmed as modified; cause remanded.