2017 IL App (5th) 160408WC-U

Order filed November 9, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

WILLIAM WILSON,	)	Appeal from the Circuit Court
	)	of the Fourth Judicial Circuit,
	)	Montgomery County, Illinois
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 5-16-0408WC
	)	Circuit No. 14-MR-155
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, *et al.*, (Pro-Built Buildings,	)	Douglas J. Jarman,
Appellees).	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's finding that the claimant's current condition of ill-being of the lumbar spine was not causally related to an industrial accident on August 13, 2013, was not against the manifest weight of the evidence. The Commission's rejection of the claimant's motion to supplement the record was appropriate as a matter of law. The timing of the employer's section 12 examination was not improper as a matter of law.

¶ 2 The claimant, William Wilson, appeals a decision of the Illinois Workers' Compensation Commission (Commission) denying his claim for benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)). The Commission affirmed and adopted the arbitrator's finding that: 1) the claimant suffered a work-related accident on August 13, 2013; 2) the industrial accident caused a sprain to the claimant's right knee that had completely resolved by October 22, 2013; and 3) the claimant failed to prove that his condition of ill-being of his lumbar spine was causally related to the August 13, 2013, industrial accident. The claimant sought judicial review of the Commission's decision in the circuit court of Montgomery County. While the matter was pending before the circuit court, the claimant filed with the Commission a motion to supplement the record, seeking to bring to the Commission's attention evidence potentially impacting the credibility of the employer's medical opinion expert. The Commission denied the claimant's petition to supplement the record. The claimant did not file an appeal from the Commission's decision denying his motion to supplement the record. Rather, he filed with the circuit court a document self-styled as "Petitioner's Motion to Supplement the Evidence." Subsequently, the circuit court issued judgment confirming the Commission's original decision as well as the Commission's decision denying the claimant's motion to supplement the record. The claimant then filed this appeal.

¶ 3 FACTS

¶ 4 The following factual recitation is from the evidence presented at the arbitration hearing held before Arbitrator Maureen Pulia in Urbana, Illinois, on May 28, 2014, and facts discussed in the Commission's order dated December 2, 2015.

¶ 5 The claimant, a 54-year-old building estimator, alleged an injury to his right knee occurring on August 13, 2013, while he was in the employment of Pro-Built Buildings. The

claimant testified that he was employed by the employer for approximately four years prior to the accident. He testified that as a building estimator he had various and numerous job responsibilities. His job duties included meeting with some customers, drafting contracts, ordering materials, unloading material, going out on site visits, performing various repairs on-site, handling the day-to-day operations regarding scheduling work at the buildings, and setting up and monitoring work schedules for work crews.

¶ 6 The claimant testified that on August 13, 2013, he met the crews in the morning at the warehouse in Hillsboro, Illinois. After the crews left the warehouse, the claimant went to the office, which was at another location in Hillsboro. While at the office, the claimant got a call from one of the crews telling him that they needed additional material and that they were sending one of the crew members, Philip Cunningham, to the warehouse to get the materials. The claimant instructed Cunningham to call him when he got close to the warehouse so he could help load the materials. The claimant testified that he left the office and went to the warehouse and opened the doors for Cunningham. When Cunningham arrived, the claimant climbed onto a forklift, backed it out and loaded the material on it, and drove the forklift and materials back toward Cunningham's truck. The claimant testified that he then jumped down off the forklift to help Cunningham put the materials in the back of the truck. He further testified that, after the truck was loaded, he got back on the forklift and drove it back into the shed. Once in the shed, the claimant testified, he "jumped" down off the forklift onto the concrete floor. He testified that when his feet hit the floor he felt an immediate pain in his right knee radiating down to the ankle. He testified that when he hit the concrete he doubled over in pain. The claimant testified that Cunningham was out of the line of sight when he hurt his knee, so he immediately yelled to get Cunningham's attention. When Cunningham came into sight, the claimant told him what

happened. The claimant testified that he told Cunningham to lock up the building before taking the material to the job site. He testified that he hobbled over to the truck and went back to his office. As the claimant arrived back at the office, he saw two people on the concrete, Tracy and Wayne Wilson. He opened the door to the truck, and got out of the truck with some difficulty and pain. He asked Tracy to get him a 3-foot piece of pipe to use as a crutch to help him walk. He testified that by using the pipe to help himself walk, he managed to go into the office. Once there, he called Becky Myers, the employer's workers compensation coordinator, and reported the accident to her. He then met with Myers and filled out a written accident report.

¶ 7 Philip Cunningham was called as a witness by the employer. Cunningham testified that he did not witness the accident. However, he stated that prior to the accident he noticed that the claimant walked with a definite limp. He further testified that in the week prior to the injury he had conversations with the claimant about his physical complaints.

¶ 8 The record contains a written accident report–Illinois Form 45: Employer's First Report of Injury–which lists an accident date of August 13, 2013. The report contains the notations "stepping off forklift" and "something popped in right knee." The form was completed with the assistance of Dean Lessman, one of the owners of the company. The form contains no reference to lumbar spinal injuries or pain.

¶ 9 Dean Lessman testified that he completed the accident report form as factually described by the claimant. He testified that the claimant reported no back pain after the accident. He further testified that he had observed that the claimant had back problems prior to August 13, 2013, by the way he walked. He further testified that over the four years of his employment, the claimant had stated on a few occasions that his back and knees were "bothering him." Lessman testified that he did not record any of these discussions, but he had communicated them to his business

partner on several occasions.

¶ 10 On August 13, 2013, later in the day of the accident, the claimant sought treatment at Bonutti Orthopedic Clinic in Effingham, Illinois. He gave a history of something had "popped in his right knee while at work" that morning. The claimant reported that when he "stepped off" the forklift he had a sharp shooting pain in the medial aspect of his knee. Treatment records indicate that the claimant had no bruising or swelling, but did have some tenderness in the medial aspect of the right knee. The claimant reported no numbness or tingling, demonstrated increased tenderness when bearing weight, but he was able to bear weight. A preliminary examination revealed no significant pathologies. He had tenderness with knee extension, but with full range of motion. Diagnostic x-rays of the right knee showed a normal tracking patella. The report also noted that the claimant presented to the treatment office with the use of a cane. The attending physician's assistant diagnosed right knee pain for possible strain. The claimant was ordered off work until August 16, 2013, and instructed to take ibuprofen for pain as needed. The treatment notes contain no complaints regarding his low back or report of back injury.

¶ 11 On August 15, 2013, the claimant started experiencing numbness in his right leg that radiated into his foot. He testified that during the night he could feel nothing in his right leg. On August 16, 2013, he called Dr. Peter Bonutti to report the new symptoms, which he reported as increasing over the previous 24 hours. On August 20, 2013, Dr. Bonutti ordered the claimant be placed on sedentary duty due to his right knee pain. Dr. Bonutti ordered a CT scan of the right leg. Dr. Bonutti's treatment notes from August 20, 2013, contain no reference to lumbar spine or low back pain.

¶ 12 On August 19, 2013, the claimant gave a recorded statement to an employee of the employer's workers' compensation insurance carrier. According to the transcript, when asked

what happened on August 13, 2013, the claimant stated: "I pulled into the, I was driving the forklift, I pulled into the bay, which is the area where we parked the lift inside the building and I turn the truck off and just step down off the fork truck and when I did, I had a shooting pain go into my lower part of my leg right, right in the left side of the, the knee my right knee cap." The claimant further stated that he stepped onto his right leg first; he did not think he twisted anything when he stepped down; he just had sharp pain that went into his knee and that he doubled over from the pain. The claimant also stated that he did not fall down and that the only part of his body that he injured was his right knee.

¶ 13 The claimant also testified that he had three prior knee surgeries, including a knee joint replacement, the most recent being five or six years prior. He testified that no specific trauma caused the prior surgeries.

¶ 14 On August 23, 2013, the claimant underwent an MRI of the right knee. He gave a history of knee injury at work and a previous right knee replacement. The MRI report showed no significant pathology and no indication of prosthesis damage.

¶ 15 On August 27, 2013, the claimant was again examined by Dr. Bonutti. The chief complaint was right knee pain, which the claimant rated as 6/10 on a pain scale. The claimant described the pain as "stabbing and burning" and reported that the pain was constant and occurs with activity and while sleeping at night. The claimant told Dr. Bonutti that he had stepped off a forklift approximately 2 1/2 feet and torqued his right leg. He reported immediate sharp medial knee pain after he stepped off the forklift. Dr. Bonutti noted that the claimant continued to use a cane to get around. Dr. Bonutti noted that the claimant had a right total knee replacement in 2007 with follow-up surgery on November 10, 2008.

¶ 16 Dr. Bonutti's treatment notes from the August 27, 2013, examination also noted the

claimant now reported "some numbness" in his lower back and thighs. Dr. Bonutti also noted the claimant's long history of back problems following a spinal fusion approximately 20 years prior. Dr. Bonutti noted that the back and thigh pain might be caused by the claimant's limping and the pain in his knee. Dr. Bonutti also noted that the claimant was significantly overweight. He noted decreased spine extension, full range of motion in the hip, and positive straight leg raise. Dr. Bonutti diagnosed a right knee sprain, right knee pain, and lumbago. Dr. Bonutti suggested therapy and a hinge brace stabilization. At the claimant's request, Dr. Bonutti administered a pain medication injection into the right knee. Dr. Bonutti opined that the claimant's primary problem of radiculopathy related to his lumbar spine, not his right knee. Dr. Bonutti suggested pharmacological and physical therapy and took the claimant off work for two weeks to see how he would respond to therapy. Dr. Bonutti ordered an MRI of the lumbar spine.

¶ 17 On September 12, 2013, the claimant underwent an MRI of his low back. Dr. Bonutti read the results as showing some laminectomy changes, posterior fusion at L5 - S1, moderate spinal stenosis at L3 - L4, and no significant interval changes since the last lumbar spinal MRI performed on February 5, 2008. The claimant was authorized to be off work on September 13, 2013, through September 16, 2013.

¶ 18 On September 17, 2013, the claimant was re-examined by Dr. Bonutti. He complained of right knee pain and low back pain. He stated that his low back pain was severe and, as a result, he was unable to sit, stand, or walk. He reported that he still needed a cane for walking. Dr. Bonutti noted that the claimant had a long history of chronic back discomfort and leg pain, and that he remained remarkably overweight. Dr. Bonutti reviewed the recent lumbar spine MRI and noted a prior fusion at L5 - S1, with some stenosis at L3 - L4. Dr. Bonutti reported no acute pathology other than degenerative disc disease and facet hypertrophy with stenosis at L3 - L4.

Dr. Bonutti added spinal stenosis to his prior diagnoses. Dr. Bonutti could not explain the claimant's right knee pain or back pain; or why the pain became markedly worse in the week following the accident. Dr. Bonutti opined that the claimant should undergo a weight reduction and physical conditioning program, since he was significantly de-conditioned. He suggested that petitioner continue bracing and undergo conservative treatment with therapy for his right knee. He recommended that the claimant remain off work until he could have his lumbar condition evaluated by an orthopedic surgeon.

¶ 19 On October 8, 2013, the claimant received another pain/anti-inflammatory injection for right knee pain.

¶ 20 On October 18, 2013, the claimant sought treatment from Dr. Benjamin Cady, a family practitioner at the Springfield Clinic. The claimant gave a history of "hopping off a forklift" on August 13, 2013, and feeling immediate sharp pain in his right knee. He reported that physical therapy for his knee had not improved his right leg numbness. The claimant also told Dr. Cady that after the recent MRI of his lumbar spine his low back pain had increased. He asked Dr. Cady for a referral to a back specialist. Dr. Cady diagnosed spinal stenosis and ordered physical therapy, evaluation and conservative treatment. Dr. Cady advised the claimant to return if needed, and suggested that the claimant engage in diabetes and weight loss education.

¶ 21 On October 22, 2013, the claimant underwent an examination at the request of the employer pursuant to section 12 of the Act. 820 ILCS 305/12 (West 2010). The examination was performed by Dr. Richard Lehman. Dr. Lehman evaluated both the claimant's right knee and his low back. Dr. Lehman reviewed all of the claimant's treatment records, took a history from the claimant, and performed an examination. The claimant reported excruciating lumbar spine pain and radiating pain down his leg. He stated that initially after the accident he was having only

numbness, and was now having pain and numbness since the MRI evaluation. He reported that his pain was going down into his leg and he has pain in his back. He gave a history of injuring his right knee and back when he "stepped off of" a forklift and felt a sharp pain in his knee on August 13, 2013. He stated that the pain was initially in his knee, but later he had discomfort in his back. The claimant also informed Dr. Lehman that he had a right knee replacement in 2008 and low back surgery in 1987.

¶ 22 Dr. Lehman was of the opinion that the claimant was engaged in significant symptom magnification throughout his evaluation. He noted no objective malformations in the right knee and observed that the total knee appeared to be in excellent condition. Dr. Lehman was of the opinion that the claimant's complaints of severe back pain did not appear to be in concert with what the MRI showed, the mechanism of the injury, or the timing of the onset of subjective pain manifestations. Dr. Lehman's diagnosis was intact total knee replacement, degenerative arthritis, and degenerative spinal stenosis at L3 - L4. He did not believe that the claimant's knee injury was significant, and further opined that the claimant had a mild soft tissue strain of the right knee, and has no issues with his total knee replacement. Dr. Lehman did not believe the claimant's complaints of significant back pain were in any way related to his jumping down off the forklift in the manner described by the claimant. He was further of the opinion that the timing of claimant's low back pain complaints was inconsistent with the results of the lumbar spinal MRI. He opined that the claimant had typical degenerative arthritis above and near his spinal fusion consistent with the natural progression of degenerative changes once someone has a spinal fusion. He opined that the treatment the claimant had received to date was reasonable for a degenerative condition, but it was not causally related to the August 13, 2013, work injury. Dr. Lehman also opined that the claimant's right knee had reached maximum medical improvement

as no further medical treatment would improve the condition. He suggested that the claimant consult an orthopedic spine surgeon for his subjective complaints of back pain. He opined that the claimant was able to work in a sedentary position, primarily seated, with no repetitive lifting over 20 pounds, no squatting, and no kneeling.

¶ 23 On December 5, 2013, the claimant was examined by Dr. Matthew Gornet at the Orthopedic Center of St. Louis, on the referral of Dr. Cady. The claimant reported low back pain to both sides, both buttocks, hips, right leg worse than left, and down his right leg to his anterolateral calf, then to his knee, heel, and ankle. He gave a history of pain of increasing severity and magnitude after an industrial accident on August 13, 2013. The claimant described the accident to Dr. Gornet as occurring when he jumped off a forklift approximately three feet down to the concrete floor. He stated that he had sudden pain in his right knee and progressively increasing pain in his low back. He gave a history of his prior back fusion, stating that he had done well after his fusion and did not recall any significant treatment, other than an MRI of the lumbar spine in 2008. He reported that his symptoms were constant and severe, and he was ambulating with a cane. He reported that his symptoms were worse with bending, lifting, prolonged sitting or standing, with some relief while lying down. He reported prominent pain, numbness, and weakness in his right leg and occasional pain in the left leg.

¶ 24 Following the examination and review of diagnostic tests, Dr. Gornet opined that the claimant's current symptoms were causally connected to his work-related injury as it was described to him by the claimant. Dr. Gornet opined that the claimant was capable of working light duty with no lifting greater than 10 pounds, alternating between sitting and standing positions as needed, and no repetitive bending or lifting. Dr. Gornet also suggested that he would be better able to diagnose and treat the claimant's current condition if the claimant's hardware

was removed. He was of the opinion that once the hardware was removed he could get a "clear picture of the pathology in [the claimant's] back," and could better understand what areas need to be treated. Dr. Gornet gave a working diagnosis of aggravation of some pre-existing arthritis at either L3 - L4 or L4 - L5, or a disc injury at L3 - L4 or L4 - L5 coupled with symptomatic stenosis at L3 - L4. There is nothing in the record regarding follow-up treatment by Dr. Gornet.

¶ 25 On April 7, 2014, Dr. Lehman gave an evidence deposition. He testified that the majority of his practice involved performing orthopedic surgery and that he devoted less than 1% of his time to performing independent medical exams. Dr. Lehman stated that the claimant's Waddell test was positive for signs of symptom magnification. He opined that it was not possible to sprain a knee stepping off or decelerating your body weight off a forklift, and have a completely normal MRI, as occurred in the claimant's situation. As such, Dr. Lehman opined that it would be very difficult to relate the claimant's subjective complaints to stepping off of a forklift given an MRI that showed no acute pathologies. Dr. Lehman opined that the claimant's low back condition was not causally related to the forklift accident, since there were no objective indications of acute injury following the accident. He testified that his opinion regarding a lack of a causative relationship between the claimant's current condition of his low back and his employment would be the same even if the claimant had "jumped" rather than "stepped" off the forklift, because the diagnostic tests showed no acute process. Dr. Lehman noted that the claimant's MRI from August 2013 was essentially unchanged from the February 2008 MRI, and he was of the opinion that the changes that were shown appeared to be long-term and chronic.

¶ 26 Dr. Lehman additionally opinioned that the claimant's complaints of pain were in excess of what would be expected for a patient with spinal stenosis. He agreed with Dr. Gornet's diagnosis of pre-existing arthritis primarily at L3 - L4, but did not think that taking the hardware

out was going to help better evaluate L3 - L4 or L4 - L5. Rather, he opined that the claimant's pain was coming from his spinal stenosis at L3 - L4, and had been emanating from that location since 2008, as was evident on the MRI scan dated February 5, 2008. Dr. Lehman opined, based upon all the objective test results, that the claimant did not suffer any injury to his back on the date of the accident. He also noted that the MRI scan following the August 2013 accident was practically unchanged from the February 5, 2008, lumbar spine MRI. Dr. Lehman further opined the opinion that, based upon the claimant's description of the forklift accident, there was insufficient pressure or stress from the downward thrust generated to cause an acute lumbar spine injury.

¶ 27 The employer offered into evidence certified records from the Bonutti Clinic from 2006 to the date of hearing. The records indicated extensive treatment for right knee and low back problems dating back to 2006. The claimant had a total right knee replacement on December 17, 2007, followed by a course of physical therapy. The records further showed the claimant continued to have difficulty standing or sitting for long periods. The claimant also reported having trouble sleeping at night and was unable to lie on his back because he would awaken. He was observed as having a slight decrease in strength and range of motion postoperatively. On February 24, 2006, the claimant underwent arthroscopic debridement of the medial meniscus, debridement of the lateral femoral condyle, and surgical meniscus repair. On September 18, 2006, the claimant underwent a partial lateral meniscectomy. On August 22, 2007, the claimant underwent arthroscopic surgical procedures related to right knee pain. On December 17, 2007, he underwent a right total knee replacement. On February 5, 2008, he underwent an MRI of the lumbar spine that showed spinal stenosis at L3 - L4 that was moderate to severe and exacerbated by mild facet joint hypertrophy. On February 5, 2008, the claimant reported severe back

problems following a prior fusion of the spine. On February 12, 2008, Dr. Bonutti noted that the claimant had chronic back and leg pain, and was of the opinion that some of the pain was consistent with back and lumbar conditions, but some of it related to hamstring tendons or area surrounding the knee. On November 10, 2008, the claimant underwent surgery to revise the total right knee replacement. On January 9, 2009, Dr. Bonutti made a record notation stating that the claimant was progressing well but that he might have some permanent restrictions with range of motion, and risk for aching of the anterior right knee.

¶ 28 The claimant testified that he had not returned to work for employer. As of the date of the hearing, he had not been released to unrestricted work. He had been receiving unemployment benefits and public aid for approximately one month prior to the hearing. He had not received any medical treatment recently because he did not have insurance. He testified that he still has shooting pains from his back into his right hip and down his leg into his ankle. With respect to his right knee, the claimant testified that he is unable to place full weight onto the knee. He testified that he continues to experience pressure on the outside of his knee with some shooting pains under his knee. He takes Tramadol for his pain.

¶ 29 The arbitrator noted that no one witnessed the accident and that the only evidence regarding how the accident occurred was the claimant's testimony. The arbitrator further noted that there was some discrepancy in the record regarding whether the claimant "stepped down" or "jumped off" the forklift before coming down on the concrete warehouse floor. The arbitrator determined that the claimant sustained a strain of his right knee causally related to the accident, which had completely resolved as of October 22, 2013. She based that finding on the opinions of Dr. Bonutti and Dr. Lehman that the claimant's subjective complaints were not consistent with the objective findings, and that the claimant exhibited significant symptom magnification. The

arbitrator also based the finding on the claimant's prior treatment records that established that he had knee pain of varying severity since his prior surgeries in 2008 and 2009.

¶ 30 Regarding the claimant's lumbar spine, the arbitrator found that the current condition of ill-being was not causally related to the August 13, 2013, accident. She found to be significant the fact that the results of the lumbar spine MRI in 2013 were unchanged from the results of the MRI in 2008. She further noted that the claimant's objective diagnostics limitations were, according to Dr. Bonutti, more likely related to the claimant's right hamstring and knee. Additionally, she noted there were no diagnostic tests administered after the injury on August 13, 2013, that showed any acute objective findings. The arbitrator further noted that the opinions of both Drs. Lehmen and Bonutti supported a conclusion that the claimant's lumbar spinal condition was chronic and degenerative. She noted that Dr. Gornet was the only physician who opined that a causal connection existed between the injury on August 13, 2013, and the claimant's lumbar spine condition of ill-being. The arbitrator discounted Dr. Gornet's opinion because the claimant's statement that he had "jumped" off the forklift differed from his statements to Dr. Lehman that he had "stepped" off the forklift. The arbitrator gave greater weight to Dr. Lehman's opinion that "stepping off" of a forklift would not put enough stress to create a trauma to the lumbar spine.

¶ 31 The arbitrator awarded the claimant temporary total disability (TTD) benefits for 9 1/7 weeks, covering the period from August 14, 2013, through September 5, 2013, and September 13, 2013, through October 22, 2013. The arbitrator further determined that the claimant was not eligible for prospective medical expenses since all such expenses were related to the condition of his lumbar spine.

¶ 32 The claimant appealed the arbitrator's decision to the Commission, which unanimously

affirmed and adopted the arbitrator's award. The claimant then sought judicial review of the Commission's decision in the circuit court of Montgomery County.

¶ 33 While the matter was pending before the circuit court, the claimant filed with the Commission a motion styled "Motion to Supplement the Record to Include Evidence of Respondent Fraud." He asserted that the motion was filed pursuant to section 25.5(a)(2) of the Act. 820 ILCS 305/25.5(a)(2) (West 2010). In his motion, the claimant argued that the employer and its attorney violated section 25.5(a)(2) of the Act, which makes it unlawful for any person to "[i]ntentionally make or cause to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any workers' compensation benefit." Appended to the motion was a document dated September 24, 2014, titled "Settlement Agreement Between the Missouri State Board of Registration for the Healing Acts and Richard Lehman," wherein Dr. Lehman was publically reprimanded for documenting a physical examination on January 13, 2013, without performing the relevant physical examination of the individual as specified on that date. The claimant acknowledged that he was not the patient involved in the reprimand, but argued that the reprimand issued against Dr. Lehman in this unrelated matter directly impacted the credibility of the examination he conducted of the claimant, and that this evidence should be considered by the Commission in its review of the arbitrator's award. The claimant's attorney submitted an affidavit attesting to having discovered the existence of the settlement agreement on December 5, 2014.

¶ 34 The Commission denied the claimant's motion to supplement the record. The Commission found that at no time did the claimant challenge Dr. Lehman's written report or deposition testimony detailing his examination of the claimant on October 22, 2013. The Commission further found that Dr. Lehman's public reprimand in Missouri, in an unrelated

matter, did not provide any evidence of fraud or material misrepresentation in the instant matter. The Commission characterized the document as, at best, something that might have been available to challenge Dr. Lehman's credibility, but was no evidence of fraud or misrepresentation in the claimant's matter. The Commission further determined that, pursuant to section 19(e) of the Act, "no additional evidence shall be introduced by the parties before the Commission on review of the decision of the [a]rbitrator." 820 ILCS 305/19(e) (West 2010). The Commission found no basis upon which to allow the claimant's motion and denied the request to supplement the record.

¶ 35 After the Commission issued the order denying the claimant's motion to supplement the record, the claimant filed "Petitioner's Motion to Supplement the Evidence" with the circuit court. Attached to the motion were copies of email correspondence between counsel for the claimant and counsel for the employer in which claimant's counsel asked if employer's counsel knew of the public reprimand, and if so, why was that information not provided to claimant's counsel. The employer's counsel replied that he knew about the reprimand but did not believe that the reprimand was particularly relevant, that he was under no statutory obligation under the Act to provide discovery, and that claimant's theory that the Lehman reprimand proved fraud or intentional misrepresentation in their matter was "frivolous" and "completely unfathomable."

¶ 36 The circuit court confirmed the decision and award of the Commission and denied the claimant's motion to supplement the evidence. The claimant then filed this timely appeal.

¶ 37 ANALYSIS

¶ 38 1. Causation

¶ 39 On appeal, the claimant first argues that the Commission erred in its conclusion that he failed to establish that his condition of ill-being of his lumbar spine arose out of and in the course

of his employment. An injury arises out of and in the course of employment where the origin of injury is somehow connected or incidental to the employment so that a causal connection exists between the injury and the employment. *Warren v. Industrial Comm'n*, 61 Ill. 2d 373, 376 (1975). The aggravation or exacerbation of a preexisting condition will be sufficient to establish a causal connection between a claimant's current condition of ill-being and his employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982). An accidental injury need be neither the sole causative factor nor the primary causative factor, so long as it is *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206 (2003).

¶ 40 The Commission's determination as to whether the claimant has established the requisite causal connection between his current condition of ill-being and his employment will not be overturned on appeal unless it is against the manifest weight of the evidence. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). Moreover, causation is a question of fact, and it is the unique function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Docksteiner v. Industrial Comm'n*, 346 Ill. App. 3d 851, 856-57 (2004). For a finding to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007).

¶ 41 Regarding the causal relationship between the claimant's condition of ill-being of the lumbar spine and the August 13, 2013, accident, the Commission found that the claimant gave

somewhat conflicting descriptions of the accident and the weight of medical opinion testimony established that the force generated by the claimant's dismount of the forklift was not sufficient to cause the claimant's injury. We cannot say that the Commission's weight and interpretation of the record evidence regarding causation was against the manifest weight of the evidence. We note, as did the Commission, that no one witnessed the accident other than the claimant. The claimant described his actions variously as "stepping down," "hopping down," or "jumping down" from the forklift. He also did not mention back pain as a symptom immediately after the accident, as his initial complaints were limited to right knee pain.

¶ 42 In addition, the medical evidence did not support the claim that the claimant's lumbar spinal condition was a result of the accident. The post-accident MRI on September 12, 2013, was clinically identical to the MRI taken on February 5, 2008. The claimant's treating physician, Dr. Bonutti, reported no acute pathology on the September 2013 MRI and opined that the condition of the claimant's lumbar spine was the result of chronic degenerative conditions. There was also evidence that Dr. Bonutti questioned the claimant's subjective reports of low back pain, noting that the reports of significant pain only arose after the September 2013 MRI.

¶ 43 We also cannot say that the Commission's decision to give weight to Dr. Lehman's causation opinion than Dr. Gornet's opinion was against the manifest weight of the evidence. While the claimant strenuously attacked Dr. Lehman's credentials and credibility, the record shows that it was the claimant's differing description of his dismount from the forklift ("stepping down" vs. "jumping down") that caused the Commission to give greater weight to Dr. Lehman's opinion over Dr. Gornet's opinion. Simply put, the Commission determined, based upon the claimant's previous description of the accident, that the account he gave to Dr. Lehman was more accurate than the one he gave to Dr. Gornet. Having made that factual finding, the Commission

found Dr. Lehman's opinion that stepping down from the forklift did not generate sufficient force trauma to cause the claimant's lumbar spine condition. We cannot say that the opposite conclusion is clearly apparent from the record. In the final analysis, unless the evidence on one side is so compelling as to render the opposite conclusion clearly apparent, we must defer to the Commission, which is uniquely situated to weigh competing medical evidence and to resolve any evidentiary conflicts. *Steak 'n Shake v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150500WC, ¶ 43; *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 505 (2004).

¶ 44 Moreover, the claimant's argument that he has established the requisite causal connection by showing a chain of events of previous good health, an accident, followed by subsequent injury must fail. The chain of events theory of causation provides that the Commission *may* infer a causal nexus between an accident and a subsequent condition of ill-being, but it does not require the Commission to reach the conclusion in the claimant's favor. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 39. Here, the Commission, in light of the record evidence supporting a lack of a causal nexus, chose not to rely on the chain of events theory of causation. We cannot say that this finding was against the manifest weight of the evidence.

¶ 45 For the foregoing reasons, we hold that the Commission's finding that the claimant failed to prove a causal connection between the condition of ill-being of his lumbar spine and the accident on August 13, 2013, was not against the manifest weight of the evidence.[1]

[1] The claimant cited two unpublished orders in support of his argument that the Commission's causation determination was against the manifest weight of the evidence. We remind the claimant that, pursuant to Supreme Court Rule 23(e)(1) (eff. July 1, 2011), "unpublished orders"

¶ 46 2. Motion to Supplement the Record

¶ 47 The claimant next maintains that the Commission erred in denying his motion to supplement the record. He argues that section 25.5(a)(2) of the Act (820 ILCS 305/25.5(a)(2) (West 2010)), which subjects fraud or intentional misrepresentation in Commission proceedings to criminal sanctions, implicitly allows the Commission to supplement the record after the record before the arbitrator has been closed. The claimant cites no authority in support of this proposition, nor have we found any. The employer responds that: 1) the Commission had no jurisdiction to grant the motion to supplement and record; 2) the circuit court had no jurisdiction where the claimant failed to file a new appeal with the circuit court to challenge the Commission's ruling denying the motion; and 3) even if section 25.5(a)(2) implicitly permitted the Commission to reopen the record upon proof of fraud before the Commission, the claimant in the instant matter has failed to establish fraud in these proceedings.

¶ 48 We review questions regarding the Commission's jurisdiction, as well as questions of statutory construction and application, *de novo*. *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418, ¶ 13; *Farris v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130767WC, ¶ 46. In addition, we can affirm the Commission on any basis appearing in the record, even where the Commission relied upon a different reasoning. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 283 Ill. App. 3d 785, 793 (1996).

¶ 49 The Commission is an administrative agency, and as such, possesses only the jurisdiction and authority granted to it under the Act. *Krantz v. Industrial Comm'n*, 289 Ill. App. 3d 447, 450-51 (1997). Under the Act, there is no authority allowing the Commission to retain jurisdiction

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may only be cited as precedent under certain limited circumstances not present in the instant matter.

over a matter after the jurisdiction of the circuit court has been invoked. 820 ILCS 305/19(b) (West 2010). Further, while the Commission may amend its decisions to correct clerical errors, the Act does not allow the Commission to consider a petition to amend, correct, or supplement the record after decision and award has been entered. 820 ILCS 305/19(f) (West 2010). Moreover, since 1989, "no additional evidence shall be introduced by the parties before the Commission on review of the decision of the [a]rbitrator." 820 ILCS 305/19(e) (West 2010). The claimant argues that an exception exists, or should exist, to these statutory provisions where the record is shown to be the result of fraud or willful misrepresentation. He points to the criminal sanctions provided for fraud in the Act. 820 ILCS 305/25.5(a)(2) (West 2010).

¶ 50 The claimant's argument lacks merit. The mere fact that Act provides criminal sanctions for fraud or willful misrepresentation in proceedings before the Commission does not imply that the proceeding before the Commission can be reopened or the record supplemented after the arbitration decision has been issued. On the contrary, sections 25.5(c) and (e) of the Act specifically provides the remedy for an employee who believes himself to be the victim of fraud or non-compliance on the part of the employer: the claimant must pursue the allegation of fraud by contacting the fraud and insurance non-compliance unit of the Illinois Department of Insurance. 820 ILCS 305/25.5(c), (e) (West 2010). Because the Act clearly provides the remedy for a claimant to pursue a claim of fraud against the employer, there is no basis for asserting that a different, implicit remedy is also available.

¶ 51 We also agree with the Commission's observation that the claimant has presented nothing "to reflect any evidence of fraud; nor does [the claimant] allege any specific false or fraudulent material statement or material misrepresentation for [the] purpose of denying any workers' compensation benefit." The mere fact that Dr. Lehman received a public reprimand from the

medical licensing board in Missouri in an unrelated matter is not evidence of fraud in the instant matter. It is well-settled, even in civil cases, that evidence of prior bad acts does not prove propensity to commit the same act. *Powell v. Dean Foods Co.*, 2013 IL App (1st) 082513-B, ¶¶ 88-89. Moreover, even if the evidence had been available at the time of the hearing, it would not likely have changed the outcome of the case. *Kyles v. Whitley*, 514 U.S. 419, 434 (1995) (the "touchstone of materiality is a 'reasonably probability' of a different result"). Here, the claimant made no allegations against Dr. Lehman that any of his testimony was false, and Dr. Lehman's opinions regarding the claimant's nature and extent of injuries were based on the claimant's own statements and the objective medical records. Accordingly, we find that the Commission has committed no error in denying the claimant's request to supplement the record.

¶ 52 3. Section 12 Examination

¶ 53 The claimant lastly maintains that the Commission erred in permitting the employer to schedule a section 12 examination too soon after the accident. He maintains that the rapid scheduling of the section 12 examination before the claimant was able to consult with a treating orthopedic spinal specialist violated the "spirit" of the Act. The employer maintains that this issue is being raised for the first time before this court and is therefore forfeited. *Jetson Midwest Maintenance v. Industrial Comm'n*, 296 Ill. App. 3d 314, 316 (1998). The employer also maintains that the claimant has failed to cite any case authority for the proposition that the "spirit" of the Act is violated when the employer schedules a section 12 examination too quickly. *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 208 (2009).

¶ 54 We will review the interpretation and application of statutory provisions *de novo*. *Butler Manufacturing Co. v. Industrial Comm'n*, 85 Ill. 2d 213, 216 (1981). Section 12 of the Act

provides, in relevant part, that an employee "shall be required, if requested by the employer, to submit himself, at the expense of the employer, for examination to a duly qualified medical practitioner or surgeon selected by the employer, *at any time and place reasonably convenient for the employee****." (Emphasis added.) 820 ILCS 305/12 (West 2010). Thus, the statute expressly permits the employer to request an examination at *any* time reasonably convenient to the claimant. The claimant has provided no authority for the proposition that a section 12 examination cannot be requested too soon during the course of a claimant's treatment. Our research leads us to conclude that section 12 cannot be used to "harass or oppress an employee by unnecessary examinations." *R.D. Masonry, Inc. v. Industrial Comm'n*, 215 Ill. 2d 397, 407 (2005). Here the claimant has raised no evidence to support his claim that the scheduling of the examination was timed to harass or oppress him by cutting off his access to benefits. To the extent that this issue has been properly preserved for review, we find that the scheduling of the claimant's examination did not violate section 12 of the Act.

¶ 55 4. Appellate Sanctions

¶ 56 Both parties are asking this court to impose sanctions on opposing counsel. The "Conclusion" of the appellee's brief contains a request that this court sanction claimant and his counsel pursuant to Supreme Court Rule 137, for the "unfounded allegations that Dr. Lehman and [Employer's] legal counsel committed fraud." Claimant's counsel, in the penultimate paragraph of his reply brief, asks "that the grievous acts of the [employer] be disciplined in an appropriate fashion by this Court." These arguments are underdeveloped and without any citation to authority. We apply the old adage that this court "is not a repository into which [parties] may foist the burden of argument and research." *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1098 (2007), quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993),

citing *Pecora v. Szabo*, 109 Ill. App. 3d 824, 825-26 (1982).

¶ 57 CONCLUSION

¶ 58 The judgment of the circuit court of Montgomery County, which confirmed the Commission's decision, is affirmed.

¶ 59 Affirmed.