2019 IL App (1st) 1181388WC

No. 1-18-1388WC
Order filed: April 12, 2019

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MICHAEL DONOVAN, Plaintiff-Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION and ILLINOIS BELL TELEPHONE CO. d/b/a AT&T, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Cook County. No. 17-L-50937 Honorable Carl Anthony Walker, Judge, Presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Hoffman, Hudson, Cavanagh and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's finding that the claimant failed to prove a compensable injury arising out of and in the course of his employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Michael Donovan, appeals the judgment of the circuit court of Cook County which confirmed the Illinois Workers' Compensation Commission's (Commission) decision denying the claimant's application for adjustment of claim seeking benefits, penalties

and attorney's fees under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.*, (West 2014)) for a neck injury he allegedly sustained in a single-vehicle accident on January 30, 2014, while employed by the respondent, AT&T.

¶ 3 BACKGROUND

¶ 4 The claimant filed an application for adjustment of claim seeking benefits under the Act for a neck injury he allegedly sustained in a single-vehicle accident on January 30, 2014, while employed by the respondent, AT&T. On September 22, 2016, an arbitration hearing was held. At the hearing, the arbitrator clarified that the disputed issues were accident, notice, causal connection, penalties under sections 19(k) and 19(l) of the Act (820 ILCS 305/19(k), 19(l) (West Supp. 2013)), and attorney's fees under section 16 of the Act (820 ILCS 305/16 (West 2014)). The following factual recitation is taken from the evidence adduced at the arbitration hearing, which included medical records and the testimonies of the claimant, Theresa Donovan, Eric White and Louis Sacco.

¶ 5 A. Prior Medical Treatment

¶ 6 1. The Claimant's Testimony

¶ 7 The claimant testified that he received cervical spine injections from 2012 to 2013, but he denied having any prior incidents or accidents involving his cervical spine. After receiving the injections, he returned to work and was able to perform all required job duties. According to the claimant, prior to January 30, 2014, he had never received a medical recommendation for a cervical spine fusion.

¶ 8 On cross-examination, the claimant acknowledged that medical records showed he was treated by Dr. John Prunskis at the Illinois Pain Institute for "cervical spondylosis" and that he underwent a "radio frequency lesioning" procedure on July 9, 2013. However, the claimant did

not recall Dr. Prunskis diagnosing him with cervical spondylosis, and he did not understand the meaning of that medical term. The claimant was also unable to recall the procedure that had been performed on his cervical spine.

¶ 9 2. Medical Records

¶ 10 The medical records from the Illinois Pain Institute showed that the claimant was seen by Dr. Prunskis for neck and back pain on several occasions between February 14, 2012, and July 9, 2013. At his initial appointment on February 14, 2012, the claimant described a burning, spasm-like pain in the area between his shoulder blades and neck, as well as his lower back. The claimant also indicated that he was having difficulty at work because the pain, which he rated as 8 out of 10, made it difficult to walk for more than five minutes at a time. Dr. Prunskis reviewed MRI scans of the claimant's cervical spine and observed "spondylosis at C5/C6 and C6/C7" and "some osteophytes." Dr. Prunskis also reviewed MRI scans of his lumbar spine and observed "some disc desiccation and facet degenerative changes."

¶ 11 Based on his examination and review of the MRI scans, Dr. Prunskis opined that the claimant had cervical disc disease and osteophytes in the cervical spine; cervical facet arthropathy on the left side greater than the right; lumbar disc degeneration with low back pain; and myofascial pain of the rhomboid muscles medial to both scapulae and the left trapezius muscle. From May 1, 2012, to July 9, 2013, Dr. Prunskis administered epidural steroid injections, facet joint injections, nerve branch blocks and radiofrequency ablations in the claimant's cervical spine.

¶ 12 B. January 30, 2014

¶ 13 1. The Claimant's Testimony

¶ 14 On January 30, 2014, the claimant testified that he was employed by AT&T as a premises

technician and had been so employed since 2011, although he was initially hired on June 15, 2001. As a premises technician, the claimant traveled to different locations to both install and repair "Uverse" television and internet systems. In performing installations and repairs, the claimant was required to climb telephone poles, run wire, carry heavy equipment and maneuver in small spaces (e.g., attics, crawl spaces, etc). Because the claimant's job duties required him to travel to different locations, AT&T provided the claimant with a company truck.

¶ 15 The claimant testified to the following details regarding the January, 30 2014, incident. The claimant was driving his work truck westbound on Illinois Route 20 to perform installations and repairs in Pingree Grove, Illinois. The claimant recalled that there were extremely windy and snowy conditions. He was traveling at approximately 45 to 50 miles per hour but began reducing speed as he approached a curve in the road. As he slowed down, "the wind came up and all [he] could see in front of [him] was two headlights coming toward [him]." To avoid a head-on collision, the claimant made a sudden movement "over to the right," causing his truck to run off the road. Although he was not entirely aware of what had happened until it was over, the claimant recalled planting his foot on the brake pedal and bouncing around all over the inside of the cab until the truck came to a sudden stop in a ditch. According to the claimant, the bouncing was "almost like sitting on a bronco buck." Although the claimant was a little shocked and experienced stiffness from bouncing around the cab, he otherwise felt fine.

¶ 16 The claimant immediately called Eric White, his supervisor, advising White that his truck was stuck in a ditch. During their conversation, the claimant explained that he had driven his truck off the road to avoid a head-on collision. At White's direction, the claimant called "fleet services" and requested a tow truck to pull his truck out of the ditch. After the claimant’s truck was pulled from the ditch, the claimant attempted to drive the truck but had difficulty steering.

As such, the claimant pulled into the parking lot of a nearby police station to conduct a visual examination of the vehicle. At that time, White "showed up" and directed the claimant to return to work, although the claimant had planned to file a police report, because there was no damage to the truck. After White left the parking lot, the claimant attempted to drive the truck but was unable to properly steer. The claimant called White and advised him of the steering issue. At White's direction, the claimant again called fleet services and had the truck towed to AT&T's garage in Elgin, Illinois. The claimant filled out a "red book" regarding the incident before reporting to work the following day.

¶ 17 2. White's Testimony

¶ 18 White testified that he was employed by AT&T at the time of the hearing and had been so employed for the last 16 years. White was first employed as a manager of network services, but had been employed as both a senior technical professional process and quality manager since March 2014. White was the claimant's supervisor from January 2013 through March 2014.

¶ 19 White testified to the following details regarding the January 30, 2014, incident. White recalled sending the claimant out to work on January 30, 2014, in severe snow storms and white-out conditions. At approximately 11:30 a.m. or 12 p.m., White was at a job site with another technician when he received a phone call from the claimant. During the phone call, White learned that the claimant had driven into a ditch to avoid a head-on collision and that the claimant's truck was stuck in the snow. The claimant indicated that he was fine and that no other vehicles were involved in the incident. White instructed the claimant to call "fleet," AT&T's automobile repair maintenance department, to pull him out of the ditch and then drive the truck, if possible, to a nearby parking lot but stay out of traffic. White informed the claimant that he was on his way to meet the claimant.

¶ 20 White subsequently found the claimant in the parking lot of the police station in Pingree Grove. After confirming that the claimant was fine, White inspected the truck and observed no physical damage. When White inquired whether the claimant had noticed any mechanical issues while driving the truck, the claimant stated that he had noticed "something funky with the steering" while driving the truck in a straight line. White raised the hood and observed an accumulation of snow in the whole front end of the truck, including the engine compartment and tire wells. White concluded that the truck could not be driven and instructed the claimant to call fleet services to have the truck towed from the parking lot to the garage in Elgin.

¶ 21 Approximately two hours later, White received a phone call from the claimant where he learned that the mechanic who inspected the truck had determined that snow accumulation in the suspension area had caused the truck "to drive funny." The claimant did not complain of any injuries, so White sent him back to work in the same truck.

¶ 22 C. January 31, 2014 – February 14, 2014

¶ 23 1. The Claimant's Testimony

¶ 24 The claimant testified that he reported to work on January 31, 2014, and attempted to give White the red book he had completed regarding the January 30, 2014, incident. White explained, however, that the claimant did not need to fill out a red book because there was no damage to the truck. White clarified that employees were only required to fill out a red book if an accident involving a company vehicle resulted in damage over $500. White then directed the claimant to throw away, or shred, the red book. Although the claimant requested, he was not allowed to fill out any type of accident or incident report. On cross-examination, the claimant acknowledged that he had a prior workers' compensation claim against AT&T, and that he was familiar with AT&T's policies and procedures regarding workplace injuries. Specifically, the

claimant was aware that AT&T required an employee to notify a manager of a work injury.

¶ 25 The claimant testified that, after speaking with White, he went to AT&T's garage and found his work truck, along with a note from the mechanic. The mechanic indicated that the truck "had to thaw out overnight because the engine compartment was packed with snow" and that it was "okay to go." The claimant left the garage in his work truck to perform his regular job duties.

¶ 26 From January 31, 2014, through February 14, 2014, the claimant continued to perform his regular job duties and drove the truck that was involved in the January 30, 2014, incident. During that time, however, the claimant noticed that his cervical spine, or neck, "was getting sorer and sorer every day." The claimant recalled having difficulty turning his head due to the severity of the pain on the left side of his neck. According to the claimant, he complained about his neck pain to White after the incident.

¶ 27 2. White's Testimony

¶ 28 White testified that the claimant reported to work on January 31, 2014, and inquired about filling out a red book. AT&T introduced, as Exhibit 3, a blank booklet entitled "Motor Vehicle Accident Report." White testified that the booklet was known as a red book at AT&T and that employees were required to fill out a red book if they were involved in a motor vehicle accident that resulted in damage to an AT&T vehicle, a non-company vehicle, or any non-company property. White recalled that he had advised the claimant that it was unnecessary to fill out a red book because there was no property damage, motor vehicle damage, or non-company vehicle damage.

¶ 29 On cross-examination, White admitted that no pictures were taken on January 30, 2014, although he acknowledged that "Item 10" in the red book directed an employee of the company

to take pictures "of all vehicles involved, skid marks and the accident scene and transmit the photos to [the] risk manager." When asked how he had arrived at his determination that a red book was unnecessary, White explained that he had discussed the incident with his supervisor, the area manager, and "because there was no injur[y], no property damage, no company vehicle damage, no non-company vehicle damage, that they considered it an incident and [decided] to record it as a non-medical incident." White denied that the claimant attempted to give him a completed red book on January 31, 2014, and maintained that he had never advised an employee to throw out, or shred, a completed red book. White later explained that an employee would likely report him to a union steward if he refused to accept a completed red book.

¶ 30 White also testified that the claimant did not report any injuries or physical complaints on January 31, 2014. White explained that AT&T's policy required employees to immediately notify a supervisor when an injury occurred. White maintained that he would have reported an injury in the Safety Injury Reporting (SIR) system if the claimant would have notified him of a workplace injury. White reported four workplace accidents in 18 months and had never deviated from this process. On cross-examination, White clarified that he was employed as a network services manager during the referenced 18-month period and that safety was not a metric used to determine manager bonuses. White further explained that bonuses were based on efficiency, productivity and attendance.

¶ 31 On January 31, 2014, White and the claimant attended the "morning tailgate," which is a weekly meeting attended by all U-verse technicians and managers to discuss employee achievements and important company issues, including safety and work-place injuries. White explained that he asked, and the claimant agreed, to speak about the truck incident at the morning tailgate to inform other technicians of how he had avoided the accident. While speaking, the

claimant provided a detailed explanation of the truck incident. The claimant stated that he was driving 10 miles per hour in a flat plain area because it was very windy and he could not see more than three feet in front of him. The claimant then stated that he saw headlights and a vehicle in his lane as he approached a curve, which caused him to drive his truck toward a roadside median. The claimant stated that the other "vehicle did not go back into its lane and[,] with his quick thinking *** he walked away injury free."

¶ 32 From January 31, 2014, to February 14, 2014, the claimant performed his regular job duties without reporting any injuries or physical complaints. The claimant also operated the same truck that was involved in the January 30, 2014, incident.

¶ 33 D. February 14, 2014

¶ 34 1. The Claimant's Testimony

¶ 35 On cross-examination, the claimant admitted that he and Louis Sacco, the claimant's on-duty manager, were involved in a verbal altercation after the claimant left work early on February 14, 2014. The claimant had previously requested that AT&T accommodate his blood pressure and stress issues by reducing his weekly hours to 45 or 48 with an occasional 50-hour workweek. The claimant recounted that, on February 14, 2014, he had finished the job and sent Sacco a text message indicating that he was heading to the garage because he was having blood pressure issues. The claimant also recalled speaking with Sacco on the phone after sending the text message, but he did not know who initiated the call. The claimant was also unable to recall the substance of their conversation, but he admitted that he may have been upset by Sacco's failure to comply with the requested accommodation and that it was possible he used profanity. The claimant did not remember whether he called White after the verbal altercation. When the claimant was asked whether he had reason to think his job was in jeopardy after the February 14,

2014, altercation, he answered "I don't know."

¶ 36 2. White's Testimony

¶ 37 White testified that he was aware of the verbal altercation that took place between the claimant and Sacco on February 14, 2014. White explained that Sacco, who had been a member of AT&T's management since September 2013, was acting as duty manager on February 14, 2014. Technicians are directed to contact a duty manager after 4:00 p.m. with any issues or questions and to check completion of work for the day. After White left work, he received a voicemail message from the claimant on his company cell phone, indicating that he had an argument with Sacco and that he would probably lose his job. White claimed that he also heard laughter as the claimant was hanging up the phone at the end of the message. White attempted to return the claimant's phone call but the call went directly to voicemail. White then called Sacco.

¶ 38 3. Sacco's Testimony

¶ 39 Sacco testified that he was employed by AT&T in the internet entertainment and field services division at the time of the hearing and had been so employed for nine years. Sacco explained that he was initially employed as a premises technician but later promoted to duty manager. On cross-examination, Sacco admitted that he and the claimant worked together as premises technicians before he acquired the management position.

¶ 40 On February 14, 2014, Sacco was acting as the claimant's duty manager. At approximately 5 p.m. or 6 p.m., Sacco was at home when he missed a phone call from the claimant. When Sacco returned the claimant's phone call, the claimant advised Sacco that he was going home. Sacco repeatedly questioned the claimant regarding the procedure that the claimant was to follow before leaving work. The claimant responded by swearing at Sacco and blaming Sacco for not answering the phone. Shortly after their conversation, the claimant sent Sacco a

text message asking who was scheduled as duty manager the following day. Sacco replied that he was scheduled as duty manager.

¶ 41 E. February 15, 2014

¶ 42 1. The Claimant's Testimony

¶ 43 The claimant testified that he reported to work on February 15, 2014. While performing his regular job duties, the claimant began experiencing "stroke-like" symptoms and was directed to seek medical attention. While the claimant was unable to "remember much of anything that day," he recalled that he was taken by ambulance to St. Alexius Medical Center and that magnetic resonance angiography (MRA) studies were conducted on his brain and cervical spine. The claimant could not recall receiving a specific diagnosis but remembered that he was directed to schedule a follow-up appointment.

¶ 44 2. Sacco's Testimony

¶ 45 Sacco testified that he and the claimant exchanged several text messages on February 15, 2014. The claimant indicated that he had no "WAP," which Sacco explained was a wire access point for AT&T's wireless set top boxes. After Sacco confirmed that there were no extra access points on the other technician's trucks, Sacco informed the claimant that they would "cross that bridge" when the claimant needed one. Subsequent to this exchange, Sacco received a frantic phone call from a woman named Terry, who identified herself as the claimant's wife. When Terry asked Sacco if he had recently spoken with the claimant, Sacco informed her that he had within the last hour. Terry informed Sacco that the claimant slurring his words and was mildly unresponsive. Terry advised Sacco that she had called 9-1-1 and that the claimant was in the Moretti's parking lot on Route 20. Sacco then called the claimant on another phone. When the claimant answered, Sacco confirmed that he was unresponsive and was slurring his words. Sacco

then heard sirens and people knocking on the claimant's truck window. After the call ended, Sacco drove to the location Terry had described to ensure that the claimant's truck was locked, and then went to check on the claimant at the hospital.

¶ 46 3. Medical Records

¶ 47 The medical records showed that the claimant was admitted in the emergency room at St. Alexius Medical Center on February 15, 2014. Due to concerns that the claimant was having a stroke, he was referred to Dr. Daniele Anderson for a neurologic consultation. Dr. Anderson noted that the claimant had previously suffered a stroke in February 2012 and was experiencing similar symptoms, including left-sided weakness and speech difficulty. In addition, the claimant reported tingling and numbness in his left face, arm and leg. While a CT scan of the claimant's brain revealed no acute abnormality, he scored 5 on the National Institutes of Health Stroke Scale and met all criteria for administration of a tissue plasminogen activator (tPA). After Dr. Anderson administered the tPA, she noted an improvement in the claimant's speech. However, the claimant continued experiencing some mild weakness in his left arm and numbness and tingling in his left arm, leg and face. Based on her examination, Dr. Anderson concluded that the claimant's symptoms were attributable to either a stroke or transient ischemic attack (TIA). Consequently, Dr. Anderson followed stroke protocol and ordered MRIs of the claimant's brain and cervical spine, MRAs of the claimant's head and neck, a 2-D echocardiogram, certain therapies, and further lab testing.

¶ 48 The medical records demonstrate that the claimant underwent the recommended diagnostic tests at St. Alexius Medical Center on February 15, 2014. The interpreting radiologist noted that the MRA scan of the claimant's neck was unremarkable and that the MRA scan of the claimant's head, which was compared to a previous MRA scan from February 5, 2012, was also

unremarkable. The radiologist also noted that the MRI scan of the claimant's brain revealed non-specific white matter disease possibly evidencing chronic small vessel ischemic change, but that the MRI revealed no acute intracranial abnormality or evidence of acute infarction. Lastly, the radiologist noted that the MRI scan of the claimant's cervical spine, which was compared to a previous MRI scan from March 13, 2012, revealed (1) no evidence for cord compression, (2) severe spinal stenosis with narrowing of the bilateral neuroforamina at C5-C6 and C6-C7 with no significant change from the March 13, 2012, scan and (3) a posterior disc bulge resulting in moderate spinal stenosis at C3-C4 and C4-C5, which were new findings since the March 13, 2012, scan.

¶ 49 F. February 18, 2014

¶ 50 1. The Claimant's Testimony

¶ 51 The claimant testified that he presented for a follow-up appointment with Dr. Reinhold Llerena on February 18, 2014. On that date, Dr. Llerena expressed the opinion that the claimant had not suffered from a stroke on February 15, 2014. Consequently, Dr. Llerena referred the claimant for a neurosurgery evaluation.

¶ 52 2. Medical Records

¶ 53 The medical records show that the claimant was seen by Dr. Llerena on February 18, 2014. On that date, Dr. Llerena noted that he had reviewed the claimant's diagnostic test results from St. Alexius Medical Center and found no evidence that would suggest the claimant had a stroke on February 14, 2014. Dr. Llerena, instead, diagnosed the claimant with spinal stenosis in the cervical spine with severe restriction of extension. Dr. Llerena opined that this condition could have caused the claimant's symptoms on February 15, 2014. Dr. Llerena also referred the claimant for a neurosurgical consultation.

¶ 54 G. February 20, 2014 – February 21, 2014

¶ 55 1. The Claimant's Testimony

¶ 56 The claimant testified that he reported to White when he returned to work on February 20, 2014, and that he worked the entire day without incident. The following day, on February 21, 2014, the claimant was surprised when he was asked to attend a disciplinary meeting regarding the verbal altercation between the claimant and Sacco that occurred on February 14, 2014. The meeting was attended by the claimant, White, Sacco and a union representative. At the meeting, the claimant understood that he was accused of threatening Sacco, but he did not recall threatening Sacco and did not believe his job was in jeopardy. The claimant left the meeting after announcing that he was going to see a doctor because he had pain in his neck. While the claimant testified that no disciplinary action had been taken against him since the meeting, he acknowledged that he had not returned to work since February 21, 2014.

¶ 57 2. White's Testimony

¶ 58 White testified that the claimant returned to work on February 20, 2014. Although White was aware that the claimant had possibly suffered a stroke on February 15, 2014, White sent the claimant out to work the entire day. On cross-examination, White testified that he did not receive any paperwork regarding a stroke, but that the claimant provided a doctor's note stating that he was cleared for work.

¶ 59 At approximately 8:15 a.m. on February 21, 2014, White, the claimant, Sacco and Ed Bash, the union steward, attended a meeting regarding the claimant's altercation with Sacco on February 14, 2014. According to White, the claimant appeared upset and did not want to answer any questions. White recalled the claimant staring at him for the entirety of the meeting while the attendees argued. The claimant and Bash announced that they needed "a couple of minutes" and

left the room. When they returned five minutes later, the claimant announced that he was leaving work because they were "causing him stress." The claimant did not provide any other reason or mention any physical complaints. Since the February 21, 2014, meeting, the claimant's employment status has remained "[p]ending investigation with labor and our HR department for possible termination." White explained that the investigation was incomplete because the claimant had not returned to work. On cross-examination, White admitted that no formal disciplinary action had been taken against the claimant.

¶ 60 3. Medical Records

¶ 61 The medical records show that, after leaving the disciplinary meeting on February 21, 2014, the claimant presented to Alexian Brothers Medical Group complaining of neck and bilateral arm pain. During the patient intake process, the claimant completed a form entitled "Spine Patient Health Assessment Form," in which he was asked whether the problem was associated with an injury. In response, the claimant described the injury as follows: "PUT WORK TRUCK IN DITCH TO AVOID HEAD ON ACCIDENT[.]" (Emphasis in original.).

¶ 62 The medical records show that the claimant was examined by Dr. Bryan Bertoglio on February 21, 2014. During the examination, the claimant described constant aching and sharp neck pain into his upper thoracic spine, along with "parasthesias of the left UE below the elbow." The claimant indicated that the pain radiated into his bilateral scapula and shoulders and down his left posterolateral upper arm. The claimant also indicated that the pain was provoked "by any cervical ROM as well as general activity." Dr. Bertoglio documented that the claimant's neck pain was severely exacerbated by a motor vehicle accident that occurred two or three weeks earlier when the claimant drove into a ditch to avoid a head-on collision. Dr. Bertoglio noted that the claimant planned on filing a workers' compensation claim.

¶ 63 Dr. Bertoglio diagnosed the claimant with an acute cervical strain, chronic cervical pain and severe cervical stenosis at C5-C6 and C6-C7. In reviewing the claimant's medical records, Dr. Bertoglio observed that the claimant had a preexisting condition of cervical stenosis. Because Dr. Bertoglio opined that the claimant's condition was secondarily exacerbated by the recent motor vehicle accident, he concluded that the claimant's injury was work-related. Dr. Bertoglio further noted that the claimant had undergone conservative measures over the years, including physical therapy, radiofrequency ablation and injections. Dr. Bertoglio ultimately recommended that the claimant undergo cervical decompression "with an ACDF C5-6/C6-7" and remain off of work. Dr. Bertoglio recognized that complete relief was uncertain due to the claimant's multifactoral symptoms; however, he concluded that the severity of the stenosis warranted surgical decompression and scheduled the claimant for surgery on February 27, 2014.

¶ 64 H. February 27, 2014 – March 1, 2014

¶ 65 The medical records showed that the claimant was subsequently examined by Dr. Llerena for pre-operative clearance, and that, on February 27, 2014, Dr. Bertoglio performed cervical spine surgery on the claimant. On that date, Dr. Bertoglio noted that he had previously diagnosed the claimant with cervical spondylosis at C4-C5, C5-C6 and C6-C7 and stenosis with myelopathy and radiculopathy. Dr. Bertoglio documented that, based on his diagnosis, he performed the following procedures: (1) C4-C5, C5-C6, and C6-C7 intercervical discectomy and fusion with microdissection with the operating microscope, structural allograft and instrumentation; and (2) intraoperative fluoroscopy, electromyogram and somatosensory evoked potentials monitoring. The claimant was discharged from the hospital on March 1, 2014. Upon discharge, he was diagnosed with cervical spinal stenosis, spondylosis with myelopathy, and radiculopathy post C4-C7 surgery with discectomy and fusion. The attending physician, Dr.

Taeksoo Shin, noted the claimant had a "questionable history for CVA. He had similar symptoms 2 years ago, but MRI was negative according to the patient. He has hypertension, depression, and thyroid disease, and history of diabetes."

¶ 66 I. March 3, 2014

¶ 67 1. White's Testimony

¶ 68 White testified that he received an unusual call from an unknown number on March 3, 2014. The caller identified herself as Terry and indicated that she was the claimant's wife. Terry stated that she was having trouble submitting a workers' compensation claim. White then asked why the claimant was not making the claim and when the claimant had hurt himself. In response, Terry stated that the claimant "can't call and that [the claimant] really hurt himself on January 30th but he didn't want to let [White] know." White advised Terry that he would contact his supervisor and the claims department.

¶ 69 2. Theresa (Terry) Donovan's Testimony

¶ 70 Theresa Donovan (Terry) testified that she called White on March 3, 2014, and advised him that the claimant needed to get a workers' compensation claim filed for the January 30, 2014, accident. In response, White told Terry that the claimant had prior back problems and that the accident had nothing to do with the claimant's current back problems. Because White seemed unwilling to file the claim, Terry stated that the claimant would have to file the claim on his own. Terry also reminded White that the claimant had previously tried to file the claim on two or three occasions but White had completely ignored him. White then told Terry that he would call her back. White called her back 20 minutes later with the workers' compensation claim number and the claim was filed later that day. On cross-examination, Terry denied that White asked her why the claimant was not reporting the claim himself.

¶ 71 J. March 1, 2014 – September 22, 2016

¶ 72 1. The Claimant's Testimony

¶ 73 The claimant testified that he was seen by several doctors for pain management from March 1, 2014, to September 22, 2016, the date of the arbitration hearing. During that time, the claimant received injections and underwent various pain management modalities, including three inpatient stays at medical facilities. None of the claimant's treating physicians had released him to work in any capacity. At the time of the arbitration hearing, the claimant was undergoing pain management treatment with Dr. Arpan Patel.

¶ 74 The claimant had not sustained any additional injuries since January 30, 2014. Although the claimant did not receive temporary total disability (TTD) payments from AT&T, he received either short or long-term disability benefit payments, and his medical bills had been paid by AT&T's group health insurance carrier. The claimant also applied for, and received, social security disability benefits beginning in February 2014.

¶ 75 Despite having surgery, the claimant continued to experience limited motion in his neck. Specifically, he had difficulty moving his neck to the left, as well as moving his neck up and down. While the pain can be alleviated with hydrocodone, the pain rendered him unable to get out of bed some days. The claimant took up to four hydrocodone tablets per day, used heat packs and performed exercises to decrease pain.

¶ 76 2. Medical Records

¶ 77 The medical records showed that the claimant continued receiving treatment for his cervical spine from March 1, 2014, through September 22, 2016. On March 18, 2014, the claimant reported to Dr. Llerena that his headaches had improved since the surgery. Dr. Llerena did not authorize the claimant to return to work, but instructed the claimant to follow up with Dr.

Bertoglio. When the claimant reported for follow-up appointments with Dr. Bertoglio on April 15, 2014, and May 27, 2014, he was instructed to remain off of work.

¶ 78 At a visit with Dr. Llerena on June 2, 2014, the claimant reported severe pain with unusual symptoms, including shortness of breath while bending forward and mild dizziness. Dr. Llerena diagnosed the claimant with cervical spine stenosis and ordered him to undergo an MRI under anesthesia within one week.

¶ 79 On September 11, 2014, the claimant was seen by Dr. Lukasz Chebes at Alexian Brothers Medical Center for pain management. On that date, the claimant complained of persistent neck and radicular pain following the February 27, 2014, surgery. The claimant reported that he experienced no significant pain relief from a cervical epidural steroid injection, which was administered on August 20, 2014. Dr. Chebes diagnosed the claimant with cervicalgia and cervical radiculitis. To alleviate the claimant's pain, Dr. Chebes prescribed narcotic pain medications. Dr. Chebes also scheduled the claimant for an interlaminar cervical epidural steroid injection, which was administered on September 19, 2014.

¶ 80 At a visit with Dr. Chebes on October 2, 2014, the claimant reported that the recent injection had relieved some of his pain. After Dr. Chebes administered a second interlaminar cervical epidural steroid injection on October 17, 2014, the claimant reported pain relief for two weeks but also experienced "new upper thoracic pain just below the fusion without radiation." Dr. Chebes added a diagnosis of thoracic spine pain and ordered a thoracic MRI.

¶ 81 On November 7, 2014, the claimant underwent the recommended thoracic MRI. The interpreting radiologist noted mild degenerative anterior marginal osteophyte formation in the mid and lower thoracic spine with no central canal or neuroforaminal stenosis at any thoracic level.

¶ 82 On November 13, 2014, Dr. Chebes noted that there was no significant upper thoracic findings in the recent MRI scans and recommended cervical nerve blocks. On December 5, 2014, Dr. Chebes administered bilateral diagnostic medial branch nerve blocks at C4, C5, C6 and C7.

¶ 83 On January 12, 2015, Dr. Chebes noted that the claimant reported 75% improvement after receiving a left atlantoaxial joint injection on December 19, 2014. While the claimant reported that his remaining upper neck pain radiated into his cervical area, he explained that his pain did not radiate down his arm and that the nerve blocks resolved his lower neck pain.

¶ 84 On March 11, 2016, the claimant returned to Dr. Chebes for more injections. At a follow-up visit, Dr. Chebes noted that the claimant reported a 70% improvement.

¶ 85 On April 12, 2016, Dr. Chebes noted that the claimant's cervicalgia was stable. Dr. Chebes also documented that he was decreasing the claimant's narcotic pain medication.

¶ 86 At a visit with Dr. Bertoglio on May 13, 2016, the claimant reported ongoing pain in his upper-mid cervical region to the base of the left side of his neck, dizziness, dimming vision, and presyncope while turning his head in certain positions. Dr. Bertoglio noted that the claimant's described symptoms were concerning for dynamic posterior circulation compromise. Dr. Bertoglio diagnosed the claimant with possible dynamic vertebral artery compression, C3-C4 spondylosis and adjacent segment degeneration status post C4-C7 ACDF. He recommended a dynamic angiogram and reviewed the case with another physician. Dr. Bertoglio indicated that if dynamic compromise was demonstrated at C3-C4, or no dynamic compromise was identified, then he would consider a C3-C4 ACDF for radicular pain and degeneration or at a different level if dynamic compression was identified.

¶ 87 At a visit with Dr. Bertoglio on June 10, 2016, the claimant reported ongoing pain in the neck to the proximal shoulders/base of the neck posteriorly without significant change. Because

the claimant's dynamic angiogyam ruled out VA compression, Dr. Bertoglio diagnosed the claimant with C3-C4 spondylosis/stenosis from adjacent segment degeneration. Dr. Bertoglio discussed with the claimant the option of another surgery versus further pain management with another pain management specialist, as Dr. Chebes was leaving the practice.

¶ 88 On July 13, 2016, the claimant presented for an appointment with Dr. Patel. On that date, the claimant reported neck pain, upper back pain and bilateral shoulder pain. Dr. Patel recommended a C4-C5 epidural steroid injection followed by dual diagnostic C2, C3 and C4 medial branch blocks to determine if facet arthropathy was resulting in the claimant's occipital headaches and neck pain. He also recommended considering radiofrequency ablation and trigger point injections to address the myofascial component of the claimant's neck pain.

¶ 89 K. Dr. Srdjan Mirkovic's January 6, 2015, Report

¶ 90 AT&T admitted, as Exhibit 1, the report of Dr. Srdjan Mirkovic, dated January 6, 2015. Dr. Srdjan Mirkovic's report, which was prepared at AT&T's request, set forth his findings and opinions on the issue of causal connection. In preparing the report, Dr. Mirkovic reviewed medical records from St. Alexius Medical Center, physician reports from Drs. Bertoglio, Prunskis, Llerena, Chebes, and Anderson. In addition, Dr. Mirkovic reviewed the February 4, 2012, October 9, 2012, and February 15, 2014, cervical MRIs, the November 7, 2014 thoracic MRI, the February 27, 2014 surgical report, and a February 31, 2014, post-surgical report. Dr. Mirkovic also considered AT&T's description of the January 30, 2014, incident involving the claimant's truck.

¶ 91 In reviewing the claimant's medical records, Dr. Mirkovic observed that the claimant had a clearly documented history of chronic neck pain dating back to 2007 and 2008. Dr. Mirkovic also observed that the claimant underwent aggressive, non-operative pain management treatment

with Dr. Prunskis from 2012 to 2013. During that time, Dr. Prunskis administered 25 cervical spine injections, including epidural steroid injections, cervical facet injections, cervical median nerve branch blocks, and cervical rhizotomies. Dr. Mirkovic observed, however, that the claimant's condition failed to improve after receiving the injections, as evidenced by the claimant's continued complaints of pain at levels of 8/10 or 9/10 at visits with Dr. Prunskis on February 4, 2012, and June 18, 2013. Dr. Mirkovic noted that "[t]he extent and aggressive nature of the nonoperative care that [the claimant] underwent during that period of time, without significant improvement, also emphasizes the inability to identify a clear pain generator, to explain the patient's symptoms." (Emphasis in original.).

¶ 92 Dr. Mirkovic also observed that the claimant's February 15, 2014, cervical MRI, which was compared to his prior March 13, 2012, cervical MRI, showed no structural change in cord compression at C5-C6 or C6-C7. Dr. Mirkovic determined that the lack of any structural change was consistent with a lack of clinically objective findings to suggest an ongoing cervical myelopathy to explain the claimant's symptoms or a clear pain generator. Additionally, the comparison revealed only moderate changes from C3-C4 and C4-C5, which Dr. Mirkovic opined were likely the result of progressive degeneration. In addition, Dr. Mirkovic observed that Dr. Llerena documented no complaints of increased neck pain or any new clinical or neurological findings in relation to the claimant's cervical spine when the claimant presented for the appointment on February 18, 2014.

¶ 93 Dr. Mirkovic also considered AT&T's description of the January 30, 2014, truck incident. AT&T described the incident as follows:

> "[The claimant's] vehicle was traveling at approximately 5 to 10 miles per hour, due to traffic, secondary to the snow[—]the patient's vehicle got stuck in the snow and that subsequently, there was no evidence of damage to the vehicle."

¶ 94 Based on his review of the medical records and AT&T's description of the truck incident, Dr. Mirkovic concluded that the claimant suffered from a preexisting degenerative condition which had progressed over the years and that the described truck incident "would not have been of sufficient magnitude to permanently cause, aggravate, accelerate or exacerbate [the claimant's] preexisting chronic cervical condition." Accordingly, Dr. Mirkovic opined that the claimant's medical condition was not causally related to the truck incident and that the claimant's need for surgical intervention was unrelated to the truck incident.

¶ 95 On November 28, 2016, the arbitrator issued a decision denying the claimant benefits under the Act. After considering the evidence, the arbitrator found that the claimant failed to prove (1) "a compensable neck injury on January 30, 2014," while working as a premises technician for AT&T; (2) "any causal connection between the alleged injury at work and any ongoing condition;" and (3) his entitlement to penalties and attorney fees. The arbitrator also found that the claimant failed to give timely notice of his alleged injury to AT&T and that all other issues were moot.

¶ 96 In so finding, the arbitrator determined that the claimant lacked credibility regarding the severity of his alleged January 30, 2014, work-related accident. In support of her credibility determination, the arbitrator noted the following: (1) the claimant suffered from a severely degenerated cervical spine condition prior to January 30, 2014; (2) the claimant did not receive any medical treatment on January 30, 2014; (3) there was no damage to the truck; (4) the claimant did not seek medical attention for his cervical spine until he was treated for stroke-like symptoms on February 15, 2014; (5) the claimant did not mention the January 30, 2014, truck incident when he was treated on February 15, 2014, or February 18, 2014; (6) Dr. Llerena advised the claimant that he did not suffer a stroke and his condition likely stemmed from

degeneration on February 18, 2014; (7) the claimant first reported that his symptoms were the result of the January 30, 2014 truck incident on February 21, 2014, after he attended a disciplinary meeting at work; (8) the conflicting testimonies of White and Sacco; and (9) the claimant's evasive answers on cross-examination.

¶ 97 The arbitrator also determined that Dr. Mirkovic's medical opinion was more persuasive than that of Dr. Bertoglio. Specifically, the arbitrator noted that Dr. Bertoglio's opinion was based on the claimant's representation that his symptoms were exacerbated by a motor vehicle accident; whereas, Dr. Mirkovic's opinion was based on his review of the medical records and a more accurate description of the January 30, 2014, incident. Accordingly, the arbitrator concluded that AT&T's conduct in denying benefits was "not unreasonable, vexatious and/or in bad faith."

¶ 98 On December 5, 2016, the claimant sought review of the arbitrator's decision before the Commission. On June 1, 2017, the Commission unanimously affirmed and adopted the arbitrator's decision. However, on June 26, 2017, that decision was recalled to permit the parties to present oral argument. Following oral argument, the Commission entered a final order affirming and adopting the arbitrator's decision on October 4, 2017.

¶ 99 On October 26, 2017, the claimant sought judicial review of the Commission's decision in the circuit court of Cook County. On June 6, 2018, the court confirmed the Commission's decision. The claimant filed a timely notice of appeal.

¶ 100 ANALYSIS

¶ 101 On appeal, the claimant argues that the Commission's findings that he failed to prove (1) he sustained "an accident" arising out of and in the course of his employment with AT&T and (2) he is entitled to penalties and attorney's fees were contrary to law and against the manifest

weight of the evidence. AT&T argues that the Commission's findings—that the claimant failed to prove he sustained a compensable injury on January 30, 2014, and (2) a causal connection between his current condition of ill-being and his alleged work injury—were supported by the manifest weight of the evidence. We affirm.

¶ 102 To obtain compensation under the Act, an employee bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment. 820 ILCS 305(d) (West 2014). “In the course of employment” refers to the time, place and circumstances surrounding the injury. *Lee v. Industrial Comm'n*, 167 Ill. 2d 77, 81 (1995); *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366 (1977). "That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment." *Sisbro Inc., v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (citing 1 A. Larson, Worker’s Compensation Law section 12.01 (2011)). "It is not enough, however, to simply show that an injury occurred during working hours or at the place of employment." *Sisbro Inc.*, 207 Ill. 2d at 203. The injury must also "arise out of" the employment. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393 (1995).

¶ 103 To satisfy the "arising out of" component, which is primarily concerned with causal connection, "it must be shown that the injury 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." *Sisbro Inc.*, 207 Ill. 2d at 203 (citing *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989)). “Typically, an injury arises out of one’s employment if, at the time of the occurrence, the employee was performing acts he or she was instructed to perform by the employer, acts which he or she had a common law or statutory duty to perform,

or acts which the employee might reasonably be expected to perform incident to his or her assigned duties." *Caterpillar Tractor Co.*, 129 Ill. 2d at 58.

¶ 104 In the case at bar, the Commission, in affirming and adopting the arbitrator's decision, found that the claimant failed to prove (1) that he sustained a compensable injury on January 30, 2014, and (2) that his current condition of ill-being was causally related to his alleged work injury. The Commission's decision does not separately address issues relating to accident and causal connection; however, the decision provides an in-depth discussion, and findings, relating to both issues. While the claimant's arguments focus on whether he sustained an accident "arising out of" and "in the course of" his employment, we observe that the majority of his arguments relate to undisputed facts. Specifically, that he suffers from a cervical spine condition and that he drove his truck into a ditch while traveling to perform for AT&T on January 30, 2014. AT&T argues that the claimant suffered from a preexisting degenerative condition and that the January 30, 2014, incident did not cause injury or aggravate the claimant's condition. Thus, in our view, the central dispute between the parties is whether the January 30, 2014, accident was a causative factor in the claimant's current cervical spine condition.

¶ 105 In preexisting condition cases, recovery depends on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being resulted from the work-related injury, rather than a normal degenerative process of the preexisting condition. *Sisbro Inc.*, 207 Ill. 2d at 204-05. However, it is not necessary "that the employee demonstrate that the injury was 'the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being.' " *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n*, 371 Ill. App. 3d 882, 887-88 (2007) (quoting *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005)).

¶ 106 Whether a causal connection exists between a claimant's injury and his or her employment presents a question of fact. *Land & Lakes Co.*, 359 Ill. App. 3d at 592. Whether a claimant's condition of ill-being is the sole result of a preexisting condition also presents a question of fact." *St. Elizabeth's Hosp.*, 371 Ill. App. 3d at 888 (citing *Sisbro, Inc.*, 207 Ill. 2d at 205). A reviewing court will disturb a factual determination of the Commission only where it is contrary to the manifest weight of the evidence. *Vogel v. Industrial Comm'n,* 354 Ill. App. 3d 780, 786 (2005). It is the role of the Commission to resolve conflicts in the evidence, especially conflicts regarding medical-opinion evidence. *Navistar International Transportation Corp. v. Industrial Comm'n,* 331 Ill. App. 3d 405, 415 (2002). It is also the role of the Commission to assess the credibility of witnesses and assign weight to their testimony. *Paganelis v. Industrial Comm'n,* 132 Ill. 2d 468, 483-84 (1989). In order for a reviewing court to find a decision to be against the manifest weight of the evidence, an opposite conclusion must be clearly evident. *Tinley Park Hotel & Convention Center v. Industrial Comm'n,* 356 Ill. App. 3d 833, 842 (2005). It is not enough that a reviewing court, or some other tribunal, might come to a different result. *Pietrzak v. Industrial Comm'n,* 329 Ill. App. 3d 828, 833 (2002).

¶ 107 In the present case, AT&T argued before the arbitrator that there was no causal connection between the January 30, 2014, incident and the claimant's condition of ill-being. AT&T's position, as set forth by its medical expert, Dr. Mirkovic, was that the claimant's current condition was the result of the normal degenerative process of his preexisting cervical spine condition. AT&T further contended that the January 30, 2014, incident was of insufficient magnitude to cause or aggravate the claimant's preexisting cervical condition. The claimant's position, as set forth by his medical expert, Dr. Bertoglio, was that his current condition was exacerbated by the January 30, 2014, incident.

¶ 108 As previously noted, the arbitrator accepted AT&T's argument, finding more credible the opinion of Dr. Mirkovic that the claimant's current condition was the result of the normal degenerative process of his preexisting cervical spine condition. The arbitrator cited significant evidence in support of her decision and also provided reasons for her rejection of certain evidence that was favorable to the claimant, including the claimant's testimony and the medical opinion of Dr. Bertoglio. The Commission adopted the decision of the arbitrator and we cannot say that an opposite conclusion is clearly apparent from the record.

¶ 109 The testimony of White demonstrated that the January 30, 2014, incident did not result in any damage to the truck and that the claimant continued working and driving the same truck for several weeks following the incident without complaining of any injuries. White also testified that the claimant, in describing the truck incident at the morning tailgate on January 31, 2014, stated that he was traveling at approximately 10 miles per hour and that he walked away from the incident injury-free.

¶ 110 The medical records from February 2014 showed that the claimant did not seek medical treatment following the incident until he experienced stroke-like symptoms on February 15, 2014. The records also indicated the claimant did not report severe neck pain resulting from the January 30, 2014, incident on February 15, 2014, or when he reported for a follow-up appointment with Dr. Llerena on February 18, 2014. The medical records from the claimant's February 18, 2014, visit evidenced that Dr. Llerena, after reviewing the claimant's medical records and diagnostic test results, advised the claimant that he did not suffer from a stroke on February 15, 2014, and that the claimant's symptoms likely stemmed from his degenerative cervical condition. Past medical records further demonstrated that the claimant suffered from a severely degenerative cervical spine condition prior to January 30, 2014.

¶ 111 Dr. Mirkovic's medical opinion, which was based on his review of the claimant's medical records and his understanding that there was no damage to the claimant's truck on January 30, 2014, established that the January 30, 2014, truck incident was insufficient to cause, or aggravate, the claimant's cervical spine condition. Dr. Mirkovic, in comparing the claimant's MRI scans, also observed neither cord compression nor structural change at C5-C6 or C6-C7 and, although he observed moderate changes from C3-C4 and C4-C5, he opined that these changes likely resulted from progressive degeneration rather than an acute injury. Thus, there was ample evidence supporting the Commission's finding that the claimant failed to prove the January 30, 2014, incident was a causative factor in his current cervical spine condition.

¶ 112 Nevertheless, the claimant maintains that the Commission's finding is against the manifest weight of the evidence. Specifically, the claimant argues that his testimony, coupled with the medical opinion of Dr. Bertoglio, clearly showed that he sustained an injury to his cervical spine on January 30, 2014. However, the Commission rejected the claimant's testimony and the medical opinion of Dr. Bertoglio, finding that the claimant lacked credibility and that Dr. Mirkovic's medical opinion was more persuasive.

¶ 113 In doing so, the Commission noted that the claimant's testimony that he suffered severe neck pain after he bounced around the cab of the truck on January 30, 2014, conflicted with White's testimony and was also unsupported by the medical records. The Commission also noted that the claimant's testimony on direct examination was "suspiciously clear" when it supported his theory of the case but, on cross-examination, the claimant was unable to recall details of the discussion that took place during the disciplinary meeting on February 21, 2014, or his conversation with Sacco on February 14, 2014, which gave rise to the disciplinary meeting. Moreover, the Commission found it significant that the first report documenting the January 30,

2014, incident as a contributing cause of the claimant's cervical condition occurred immediately after he left the disciplinary meeting on February 21, 2014. Thus, the Commission determined that Dr. Bertoglio's medical opinion, which was based on the claimant's unsubstantiated report that his symptoms were severely exacerbated by the January 30, 2014, incident, was unpersuasive.

¶ 114 While the claimant takes issue with the Commission's credibility determinations and its resolution of the conflicting medical opinions, it is well-settled that such determinations are within the exclusive purview of the Commission. *Shafer v. Illinois Workers' Compensation Com'n,* 2011 IL App (4th) 100505WC, ¶ 38. In light of the foregoing, there is ample evidence to support the Commission's determination that the claimant's failed to prove by a preponderance of the evidence that (1) he sustained an injury arising out of and in the course of his employment and (2) his current condition of ill-being was causally related to the January 30, 2014, work accident. Accordingly, we cannot say that the Commission's decision was against the manifest weight of the evidence.

¶ 115 The claimant also argues that the Commission's denial of penalties under sections 19(k) and 19 (l) of the Act (820 ILCS 305/19(k), 19(l) (West Supp. 2013)) and attorney's fees under section 16 of the Act (820 ILCS 305/16 (West 2014)) was against the manifest weight of the evidence or an abuse of discretion. As we have determined that the Commission's decision denying the claimant benefits was not against the manifest weight of the evidence, it follows that we cannot find that the Commission erred in denying the claimant's request for penalties and attorney's fees under the Act. Thus, we find a full discussion of these issues unnecessary and conclude that the Commission's denial of penalties and attorney's fees was neither against the manifest weight of the evidence nor an abuse of discretion.

¶ 116 CONCLUSION

¶ 117 We affirm the judgment of the circuit court which confirmed the Commission's decision denying the claimant's request for benefits, penalties and attorney’s fees under the Act.

¶ 118 Affirmed.