2020 IL App (5th) 200027WC-U

NO. 5-20-0027WC

Order Filed: September 25, 2020

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

THE AMERICAN COAL COMPANY,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Williamson County.
	)	
v.	)	No. 19-MR-259
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION *et al*.	)	Honorable
	)	Jeffrey A. Goffinet,
(Donovan Nalley, Appellee).	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's judgment confirming the Illinois Workers' Compensation Commission's decision, which found claimant's current condition of ill-being was related to the March 20, 2013, work-related accident and awarded claimant temporary total disability benefits for the period of June 24, 2013, through August 9, 2018.

¶ 2 The appellant, the American Coal Company (employer), appeals from an order of the circuit court of Williamson County confirming a decision of the Illinois Workers' Compensation

Commission (Commission) awarding claimant, Donovan Nalley, temporary total disability (TTD) benefits under the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2012)) for injuries he sustained to his neck and right shoulder on March 20, 2013, while working for employer. For the reasons that follow, we affirm.

¶ 3 I. Background

¶ 4 While the facts relating to claimant's work-related accident are generally not disputed, the parties presented conflicting expert medical opinions as to claimant's neck and right shoulder injuries. The following factual recitation was taken from the evidence presented at the arbitration hearing held in Herrin, Illinois, on August 9, 2018, which included deposition transcripts of medical experts, and from the record on appeal.

¶ 5 Claimant, a roof bolter, has a medical history stemming from a previous work-related accident that is relevant to this appeal. While working for employer, claimant was hit by a falling rock and received treatment at Harrisburg Medical Center on September 10, 2012. Claimant suffered a concussion without loss of consciousness, a closed head injury and neck and right shoulder strains. A subsequent cervical CT scan revealed degenerative changes with no acute bone abnormality, minimal posterior diffuse disc bulging and minimal spinal canal narrowing at C3-4, C5-6 and C6-7.

¶ 6 On March 20, 2013, claimant was injured while riding in a mantrip (an underground mine vehicle). While traversing an area of rough terrain located inside the mine, the shocks on the mantrip failed, and claimant struck his head and shoulder on the roof of the mantrip several times. In a failed attempt to keep himself planted in his seat, claimant raised his right arm above his head and held it against the ceiling. Claimant's head, however, struck the ceiling several times, knocking him unconscious. After approximately 15 to 20 minutes, the mantrip came to a

stop and claimant regained consciousness. As claimant exited the mantrip, he attempted to pick up his lunchbox and tools, which weighed 30 pounds, when he experienced sharp pain throughout his back, shoulder and neck. Claimant testified that the pain "took [him] to his knees" and "[he] couldn't move."

¶ 7 After the claimant left the mine, he was transported to Harrisburg Medical Center where he underwent X-rays of his right shoulder and a CT scan of his head, cervical spine and lumbar spine. The X-rays showed mild changes of osteoarthritis, but no fracture or dislocation, and the cervical CT scan was negative for fracture or subluxation. After comparing this cervical CT scan to the September 10, 2012, cervical CT scan, the radiologist observed no acute bony abnormality or significant interval change. Claimant was diagnosed with right shoulder, cervical and lumbar spine strains, and he was referred to his primary care physician, Dr. James Alexander.

¶ 8 On March 21, 2013, claimant presented to Dr. Alexander's office, where he was examined by a nurse practitioner. Claimant complained of headaches, as well as right shoulder, lower back and neck pain. Claimant was diagnosed with osteoarthritis of the shoulder; neck and lumbar strains; shoulder and rotator cuff tendonitis; subacromial bursitis and shoulder contusion. Claimant was administered a corticosteroid injection and allowed to work light-duty, ground level with restrictions. Claimant returned to work the next day.

¶ 9 On March 26, 2013, claimant returned to Dr. Alexander's office and, once again, was examined by a nurse practitioner. Claimant reported that his neck and back pain had improved, but he complained of pain in his radicular arm, right acromioclavicular, glenohumeral joint and subacromial region, as well as shoulder joint stiffness. Claimant believed his right shoulder was his biggest problem, due to experiencing burning sensations, pain radiating into his fingers and

pain when he raised his right arm. Claimant was diagnosed with rotator cuff tendonitis with resolving neck and back stiffness, and work restrictions were continued.

¶ 10 On March 29, 2013, claimant underwent a right shoulder MRI. Dr. Louis A. Leskosky, the radiologist who read the MRI and authored the report, observed an abnormal signal within the supraspinatus tendon at the insertion site consistent with significant tendonosis. Dr. Leskosky noted mild arthritis of the AC joint with hypertrophic spurring but found no evidence of rotator cuff tear, biceps tendon injury, bursitis or joint effusion.

¶ 11 On April 2, 2013, claimant presented to Dr. Alexander. Dr. Alexander examined claimant's right shoulder and also interpreted the March 29, 2013, MRI. Dr. Alexander agreed that the MRI showed supraspinatus tendonosis but no rotator cuff tear. Dr. Alexander diagnosed claimant with shoulder cuff tendonitis and adhesive capsulitis of the right shoulder. Dr. Alexander restricted claimant from bolting roofs with his right arm and directed him to continue with only light-duty work. On referral from Dr. Alexander, claimant began physical therapy at Apex Network Physical Therapy on April 4, 2013.

¶ 12 On April 17, 2013, at employer's request, claimant presented to Dr. Matthew Collard, an orthopedic surgeon, for a section 12 examination (see 820 ILCS 305/12 (West 2012)). Claimant complained that he was unable to sleep due to increased shoulder pain, and numbness and tingling in several fingers on his right hand. Dr. Collard noted that the shoulder MRI revealed mild degenerative changes at the AC joint but otherwise no fracture, dislocation or osseous pathology was observed. Dr. Collard opined that claimant was not likely a candidate for surgical intervention, noting that the "MRI otherwise looks pretty normal ***." Dr. Collard diagnosed claimant with right shoulder arthralgia status post work injury and right shoulder adhesive

capsulitis. He also recommended continuation of light-duty work, physical therapy and anti-inflammatory medications.

¶ 13 On May 8, 2013, claimant returned to Dr. Collard for a follow-up visit. Dr. Collard noted that, despite significant improvement in forward flexion and abduction in claimant's right shoulder, limitations in external rotation continued. Dr. Collard administered a cortisone injection and recommended claimant continue physical therapy. Dr. Collard also noted that surgical intervention, including manipulation, would be considered, unless claimant showed improvement before the next visit.

¶ 14 On May 29, 2013, claimant returned to Dr. Collard for a follow-up visit. Claimant reported significant improvement in his overall range of motion in his right shoulder following the previous cortisone injection. Claimant reported some pain when lifting overhead, but otherwise was doing better. A physical examination of the right shoulder showed improved range of motion and strength in forward flexion and adduction and +4/5 strength in abduction and forward flexion. Claimant was ordered to continue light-duty work and return for a follow-up visit in three weeks.

¶ 15 On June 12, 2013, after participating in 26 physical therapy sessions since April 4, 2013, claimant completed therapy. Although claimant reported a reduction in pain, he had some restrictions in range of motion and strength with occasional muscle spasms. The physical therapy progress summary notes contained in the record are unclear as to claimant's reported pain level—first noting a pain level of 0/10 and subsequently noting "7/10 at its worst and 3-4/10 at its best." The progress summary also reflected that claimant had reported experiencing a dull ache in the shoulder at the end of the workday.

¶ 16 On June 19, 2013, claimant reported to Dr. Collard for the final time. Claimant reported stiffness and decreased range of motion over the previous week. However, Dr. Collard noted that the progress summary reflected continued improvement with range of motion and that it appeared goals had been met. Dr. Collard commented that internal and external rotation had improved, and claimant's strength looked very good. Dr. Collard diagnosed claimant with resolving adhesive capsulitis and rotator cuff strain. Dr. Collard subsequently released claimant to return to full-duty work and anticipated releasing claimant from his care in four weeks.

¶ 17 On June 20, 2013, claimant returned to full-duty work and was assigned to bolt a roof. Claimant, although concerned, attempted to perform overhead work. However, within an hour of beginning work, his neck and right shoulder pain became so intense that he had difficulty using his right arm. Claimant estimated he worked 12 to 14 hours that day. Later that evening, claimant was unable to sleep due to pain, so he went to Heartland Hospital, where he received injections to reduce swelling and decrease the pain. He was advised to follow up with Dr. Alexander. Claimant did not return to work for employer.

¶ 18 On June 21, 2013, claimant visited Dr. Alexander's office, where he was examined by a nurse practitioner. Claimant reported horrible shoulder and neck pain, which triggered a migraine headache. Claimant was diagnosed with a shoulder sprain, migraine headache and cervicalgia.

¶ 19 On June 24, 2013, claimant returned to Dr. Alexander's office complaining of worsening shoulder pain. He was then referred to Dr. John T. Davis, an orthopedic surgeon at Orthopedic Institute of Southern Illinois, who examined claimant later that same day. After administering X-rays and reviewing the MRI scan acquired by Dr. Alexander, Dr. Davis opined that claimant suffered from partial bursal-sided rotator cuff tearing with some potential nerve root impingement in his right extremity. Claimant was, again, placed on light-work duties, which

included no repetitive lifting, no pushing or pulling and a 10-pound or less lifting restriction. However, the record indicates that employer was unable to accommodate the light-work duty restrictions at that time. Dr. Davis, noting his concern that claimant's condition originated in the cervical spine, recommended additional diagnostic studies, including a nerve conduction study and MRI of the cervical spine.

¶ 20 On June 26, 2013, at employer's request, claimant reported to Dr. James J. Coyle for a section 12 evaluation. Claimant underwent a cervical MRI that showed diffuse spondylitic changes with no evidence of large disc herniation. Dr. Coyle observed a mild disc protrusion on the left side at C6-7. Dr. Coyle noted that claimant had symptoms suggestive of cervical radiculopathy, but no findings on the MRI correlated with claimant's current symptoms. Dr. Coyle diagnosed claimant with neck and right upper extremity pain.

¶ 21 Dr. Coyle also recommended electrodiagnostic testing (electromyography (EMG) and nerve conduction studies (NCS)), and that further evaluation of the right shoulder was warranted in the event the tests were negative. He also opined that, if the tests were negative, claimant could "work in a full-duty capacity with regard to his cervical spine." Later that same day, the EMG and NCS tests were administered by Dr. David Peeples, a board-certified neurologist. Dr. Peeples concluded that the testing was normal and revealed no findings of cervical radiculopathy, brachial plexopathy, neurogenic thoracic outlet syndrome or upper extremity neuropathy. Dr. Peeples further concluded that, if there was cervical root impingement, it was insufficiently severe to manifest in electrical abnormalities.

¶ 22 On July 11, 2013, claimant presented to Dr. Davis for a follow-up visit. Dr. Davis noted that claimant's electrodiagnostic testing was normal, but the cervical MRI showed spondylosis with degenerative disc disease, bulging discs and foraminal encroachment at C4-5, C5-6 and C6-

7. Dr. Davis opined that claimant's symptoms were not from his right shoulder. Consequently, Dr. Davis recommended, prior to performing surgery on the right shoulder, a formal evaluation of the cervical spine by a neck specialist to determine whether the cervical spine and nerve irritation was contributing to claimant's symptoms. Claimant's light-work duty restrictions continued.

¶ 23 On September 30, 2013, at employer's request, claimant reported to Dr. Mitchell Rotman, a board-certified orthopedic surgeon. Dr. Rotman subsequently testified at a deposition as follows. He conducted a section 12 examination and reviewed the March 29, 2013, right shoulder MRI. He agreed with the radiologist that the study showed degenerative changes, referred to as "tendinosis," in the supraspinatus tendon but no tears. He explained that the MRI also showed changes consistent with aging of the tendon, referred to as "tendinopathy," which occurs as a person ages. Given claimant was over 40, it was not unusual for partial lesions to appear in the rotator cuff. Dr. Rotman also distinguished tendinopathy and tendinosis, as observed on the MRI, from tendinitis, which would involve swelling or edema.

¶ 24 Following a review of Dr. Davis's deposition transcript, Dr. Rotman disagreed with Dr. Davis's opinion that the right shoulder MRI showed an interstitial tear of the rotator cuff. Dr. Rotman explained that Dr. Davis's opinion was also inconsistent with Dr. Collard's and the reviewing radiologist's opinions. In particular, Dr. Rotman found that the March 29, 2013, MRI showed only age-related changes not attributable to claimant's March 20, 2013, accident. He believed that a rotator cuff injury was inconsistent with the mechanism of injury and found no evidence of a shoulder injury, frozen shoulder, pain emanating specifically from the rotator cuff or tendinopathy or tendinosis of the rotator cuff. Dr. Rotman also found it significant that there was no documented change in the March 20, 2013, cervical CT scan when compared to the

September 10, 2012, cervical CT scan. Dr. Rotman opined, within a reasonable degree of medical certainty, that claimant suffered a neck strain, which was consistent with the mechanism of injury, and that claimant did not need additional medical treatment or work restrictions as a result of the work accident. Dr. Rotman, therefore, believed that claimant had reached maximum medical improvement (MMI) on September 30, 2013.

¶ 25 On October 5, 2017, claimant returned to Dr. Davis, complaining of persistent right shoulder and paracervical pain. Aside from the September 30, 2013, examination with Dr. Rotman, claimant had not received any other medical treatment involving his neck or right shoulder since his visit with Dr. Davis on July 11, 2013. In his October 5, 2017, report, Dr. Davis recommended a cervical MRI and nerve conduction study with further treatment predicated on the outcome of those studies.

¶ 26 Because employer refused to authorize payment for a cervical spine specialist, a deposition of Dr. Davis was scheduled in anticipation of a section 19(b) hearing (820 ILCS 305/19(b) (West 2016)). Dr. Davis testified in his deposition as follows. Claimant's complaints on October 5, 2017, were essentially unchanged from July 11, 2013. He believed that claimant needed either additional studies or an evaluation with a cervical spine specialist. He opined that claimant's shoulder condition was related to the accident, and, as a result, an evaluation by a neck specialist was necessary. Dr. Davis's opinion regarding causation was based in large extent on claimant's own explanation that his symptoms manifested contemporaneously with the accident. In making this determination, Dr. Davis reviewed the electrodiagnostic testing and the cervical MRI report from June 26, 2013. Dr. Davis agreed that the electrodiagnostic testing, performed on June 26, 2013, was normal and revealed no findings of cervical radiculopathy, brachial plexopathy, neurogenic thoracic outlet syndrome or upper extremity neuropathy.

¶ 27 Dr. Davis further acknowledged that he was not an expert with regard to cervical conditions and had no reason to disagree with, nor was he comfortable disputing, Dr. Peeples' conclusions. He further agreed that the cervical MRI showed pathology that could accurately be described as degenerative and that degenerative changes could cause nerve root impingement. Dr. Davis acknowledged that the right shoulder pathology could have been in existence prior to the accident and that there was no way to specifically determine the date of the age of pathology shown on either the cervical MRI or the right shoulder MRI. Dr. Davis acknowledged that one explanation for the change in character and location of claimant's symptoms was that claimant sustained another injury upon his return to work on June 20, 2013.

¶ 28 Next, claimant testified to the following. His symptoms had remained unchanged since the accident on March 20, 2013, and, given the condition of his shoulder and neck, he did not believe he could return to work. Provided this, he desired to undergo the cervical work-up that Dr. Davis had recommended. Moreover, claimant further testified that, although he had received sickness and accident benefits from June 23, 2013, through December 21, 2013, he never received TTD benefits following the accident.

¶ 29 On September 28, 2018, the arbitrator issued his decision, finding that claimant's current condition of ill-being was causally related to the March 20, 2013, work-related accident. The arbitrator awarded claimant reasonable and necessary medical expenses and prospective medical treatment but did not award TTD benefits. Additionally, the arbitrator ordered employer to authorize claimant's evaluation by a cervical spine specialist and indicated that TTD benefits would be pending based on the prospective medical treatment recommended by Dr. Davis.

¶ 30 On October 25, 2018, employer filed a timely petition for review of the arbitrator's decision with the Commission. On June 28, 2019, the Commission awarded claimant TTD

benefits for the period of June 24, 2013, through August 9, 2018, but otherwise affirmed and adopted the arbitrator's decision. In reaching its decision, the Commission stated the following:

> "The Commission also finds [claimant] presenting to his arbitration hearing in a condition not dissimilar to the condition in which he presented to Dr. Davis on October 5, 2017, which itself was not dissimilar to how he presented to Dr. Davis on July 11, 2013, as evidence that his condition has not yet stabilized, a necessary prerequisite to terminate TTD benefits.
>
> The Commission, given the circumstances particular to this case, is disinclined to find that [claimant] was at MMI as of July 11, 2013 based on [claimant's] not treating his injuries from that date until October 5, 2017[,] as [employer] argued. The Commission finds [claimant] did not treat his injuries over that period of time simply because [employer] refused Dr. Davis' recommendation to have [claimant] examined by a neurologist, an examination that Dr. Davis deemed necessary before further treatment could be contemplated."

The Commission also found no evidence to suggest that claimant was expected to return to Dr. Davis's care prior to completing the recommended examination. Therefore, based on employer's refusal to authorize the recommended examination, the Commission found claimant's treatment was "halted" and his condition had "not yet stabilized, a necessary prerequisite to terminate TTD benefits."

¶ 31 On July 16, 2019, employer filed a timely appeal to the circuit court of Williamson County, which confirmed the Commission's decision. On January 21, 2020, employer filed a timely appeal.

¶ 32 II. Analysis

¶ 33 Employer challenges the Commission's finding that claimant's current condition of ill-being was related to the March 20, 2013, work-related accident, and the Commission's award of TTD benefits for the period of June 24, 2013, through August 9, 2018. We will address these claims of error in turn.

¶ 34 A. Causal Connection

¶ 35 Employer asserts that the Commission's finding that claimant's current condition of ill-being is causally related to the March 20, 2013, accident is against the manifest weight of the evidence. According to employer, the opposite conclusion is clearly apparent where the record shows that Drs. Collard, Rotman, and Leskosky did not identify any pathology consistent with the accident. In response, claimant disputes that Drs. Collard, Rotman, and Leskosky are in concert regarding the pathology and further argues that the Commission's finding was supported by the totality of the evidence.

¶ 36 "A claimant bears the burden of establishing a causal connection between his or her condition of ill-being and employment." *ABF Freight System v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19. " 'Whether a causal connection exists between a claimant's condition of ill-being and [his] work-related accident is a question of fact to be resolved by the Commission, and its resolution of the matter will not be disturbed on review unless it is against the manifest weight of the evidence.' " *RG Construction Services v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 132137WC, ¶ 46 (quoting *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 913 (2006)). " 'The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion.' " *Id.* (quoting *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005)). " 'For the Commission's decision to be against the

manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result.' " *Id.* (quoting *Land & Lakes*, 359 Ill. App. 3d at 592).

¶ 37 Additionally, "[a]s the trier of fact, the Commission is primarily responsible for resolving conflicts in the evidence, assessing the credibility of witness, assigning weight to evidence, and drawing reasonable inferences from the record." *ABF Freight System*, 2015 IL App (1st) 141306WC, ¶ 19. "This is especially true regarding medical matters, where we owe great deference to the Commission due to its long-recognized expertise with such issues." *Id.*

¶ 38 Although employer contends that the medical evidence did not support the Commission's finding, the conflicting medical evidence was subject to differing interpretations. Specifically, Dr. Leskosky evaluated the March 29, 2013, MRI and found no evidence of a rotator cuff tear, biceps tendon injury, bursitis or joint effusion but observed an abnormal signal within the supraspinatus tendon that was consistent with significant tendonosis. Following a section 12 evaluation, Dr. Rotman agreed with Dr. Leskosky's opinion that there was no rotator cuff tear and further opined that the MRI showed degenerative changes that were inconsistent with the mechanism of injury. In contrast to Dr. Davis's opinion provided via deposition testimony, Dr. Rotman opined that claimant did not sustain an injury to his shoulder whatsoever. Similarly, Dr. Collard also characterized the MRI as revealing mild degenerative changes at the AC joint but, contrary to Dr. Rotman's opinion, diagnosed claimant with right shoulder arthralgia status post-work injury and right shoulder adhesive capsulitis, which could be treated with physical therapy and steroid injections. In contrast to the other medical experts, Dr. Davis reviewed the MRI and diagnosed claimant with partial bursal-sided rotator cuff tearing with some potential nerve root impingement in the affected extremity. The record also reflects that Dr. Davis related claimant's

condition to the work accident based on the history provided, the subjective complaints and the objective medical exam findings and studies.

¶ 39 In adopting the arbitrator's conclusions, the Commission noted the conflicting opinions of the section 12 examiners and afforded their respective opinions less weight. In contrast, the Commission gave greater weight to Dr. Davis's opinion based on the claimant's unchanged condition at the time of the arbitration hearing, his testimony, the medical records, and Dr. Davis's testimony. Consistent with Dr. Davis's opinion, the Commission declined to find that claimant had reached MMI and further concluded that claimant's residual complaints resulted from the accident. Based on the foregoing, we find ample support for the Commission's finding that claimant's current condition of ill-being was causally related to the March 20, 2013, work accident.

¶ 40 As stated previously, in resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *ABF Freight System*, 2015 IL App (1st) 141306WC, ¶ 19. Therefore, after carefully reviewing the record, we cannot say that the Commission's finding was against the manifest weight of the evidence.

¶ 41 B. Temporary Total Disability

¶ 42 Employer also challenges the Commission's award of TTD benefits for the period of June 24, 2013, through August 9, 2018. In support, employer argues that the award of TTD benefits was against the manifest weight of the evidence due to (1) claimant's unreasonable, four-year delay in proceeding to hearing following Dr. Davis's July 11, 2013, recommendation

for a spinal evaluation; and (2) claimant's failure to prove entitlement to TTD after July 11, 2013, based on the medical evidence. We disagree.

¶ 43 Generally, a claimant is entitled to TTD from the date of an injury until the time he reaches MMI. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 177 (2000). A claimant reaches MMI when his condition stabilizes, that is, the condition has recovered as far as the character of the injury allows. *Id.* This presents a question of fact. *Id*. at 175. Therefore, the Commission's determination of the duration of TTD benefits will not be set aside on review unless it is contrary to the manifest weight of the evidence. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 759 (2003).

¶ 44 As discussed above, the Commission found that claimant had not reached MMI as of July 11, 2013, the date Dr. Davis recommended claimant undergo an examination by a spine specialist, have an MRI of the cervical spine and have a EMG/NCS study performed. Prior to performing right shoulder surgery, Dr. Davis wanted an answer to a specific medical question—whether claimant's cervical spine and nerve irritation was contributing to his shoulder symptoms? The Commission, aware of the parties' dispute as to the cause of the delay, concluded that employer's decision not to authorize the recommended treatment resulted in claimant's treatment stopping and prevented his condition from stabilizing. The Commission also concluded that claimant desired to undergo the recommended procedure.

¶ 45 In contrast to the Commission's decision, employer argues that "[i]nstead of taking some proactive measures to force the case to [a] hearing or to obtain [a] spinal evaluation, [c]laimant did nothing." For that reason, employer contends that the four-year delay before proceeding to hearing was unreasonable. Employer finds support for its contention in *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1088 (2004), which affirmed a decision by the Commission to

reduce a claimant's TTD benefits based on a finding that a 19-month delay in considering surgical options was unreasonable. We view *Walker* as distinguishable from the case *sub judice*.

¶ 46 In *Walker*, a claimant, who had ruptured his back on two separate occasions, underwent a laminectomy following each occasion. *Id.* at 1085-86. The claimant continued to experience back pain, pain down both legs and numbness in his left foot. *Id*. at 1086. The surgeon who performed the two surgeries indicated that he was unable do anything to resolve the claimant's condition, so the claimant sought a second opinion from Dr. David Robson on September 15, 1999. *Id*.

¶ 47 Dr. Robson offered the claimant two options, " 'either accept his condition with permanent light duty work restrictions' or undergo surgery." *Id.* Robson indicated that, even with successful surgery, the claimant " 'would still be left with light to moderate restrictions.' " *Id*. Dr. Robson told the claimant " 'to think his options over and let me know.' " *Id*. Without a third surgery, Dr. Robson concluded that claimant would then have " 'reached the point of maximum medical improvement.' " *Id*. The claimant had a follow-up visit with Dr. Robson on October 4, 2000, and having received no treatment since the September 15, 1999, visit, the claimant's medical condition had not significantly changed. *Id*. Employer paid claimant TTD benefits through October 13, 2000. *Id*. The claimant subsequently waited until the April 19, 2001, arbitration hearing to affirmatively manifest his desire to have surgery. *Id.*

¶ 48 The Commission, finding that the claimant's condition had stabilized and that he had reached MMI as of September 15, 1999, reduced the arbitrator's award of TTD benefits accordingly. *Id*. at 1087. The Commission concluded that the claimant's delay in deciding whether to have the third surgery was unreasonable. *Id*. at 1088. The Commission reasoned that:

" '[T]he record is devoid of any evidence of steps taken by Petitioner to obtain the recommended surgery at any time between September 15, 1999 and the date of the Arbitration hearing on April 19, 2001. Rather, based on the record, Petitioner waited approximately a year and a half to decide whether to undergo the recommended surgical procedure while continuing to collect temporary total disability benefits. The Commission finds Petitioner's lengthy delay in considering surgical options to be unreasonable.' " *Id.*

¶ 49 This court found that the Commission's decision that the claimant's 19-month delay was unreasonable was a reasonable inference to be drawn from the evidence and was not against the manifest weight of the evidence. *Id.* at 1090. In doing so, we expressed that, "[i]f a claimant may delay the process for purposes of securing additional TTD benefits, he may under the circumstances be able to collect benefits to which he would not otherwise be entitled." *Id.*

¶ 50 Dissimilar to the facts presented in *Walker*, here, claimant's treating surgeon, Dr. Davis, recommended the spinal evaluation procedure and claimant demonstrated a desire to undergo the procedure to stabilize his condition, but employer refused to authorize it. The Commission, after considering the dispute, attributed the delay to employer, rather than claimant. Thus, unlike *Walker*, where the delay was entirely caused by the claimant's indecision, the delay in the present case was attributed to a delay by employer in withholding its authorization. Moreover, unlike *Walker*, where the Commission found that the claimant's condition had stabilized as of September 15, 1999, here, the Commission found claimant's condition had not stabilized. The Commission observed that claimant appeared at the August 9, 2018, arbitration hearing in a condition similar to his condition documented earlier by Dr. Davis on October 5, 2017, and July 11, 2013. Thus, as discussed above, claimant had not reached MMI, which is inapposite to the

Commission's conclusion in *Walker*. Accordingly, we find employer's reliance on *Walker* unpersuasive.

¶ 51 Employer also argues that claimant failed to prove entitlement to TTD benefits after July 11, 2013, based on the medical evidence. As detailed above, the Commission reviewed the differing medical opinions and explained its reasoning for giving greater weight to Dr. Davis's opinion. We will not substitute our judgment for that of the Commission merely because different reasonable inferences might have been drawn from the evidence. *Boatman v. Industrial Comm'n*, 256 Ill. App. 3d 1070, 1072 (1993). Thus, we find that the Commission's decision to award claimant TTD benefits for the period of June 24, 2013, through August 9, 2018, was not against the manifest weight of the evidence.

¶ 52 III. Conclusion

¶ 53 For the foregoing reasons, we affirm the circuit court's judgment, which confirmed the Commission's decision, and remand the case pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 54 Affirmed and remanded.