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2015 IL App (1st) 140564WC-U

FILED: June 26, 2015

NO. 1-14-0564WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MANUEL BADILLO,	)	Appeal from
	)	Circuit Court of
Appellant,	)	Cook County
	)	No. 13L50642
v.	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION <i>et al.</i> (Rollprint Packaging	)	Carl Anthony Walker,
Products, Inc., Appellee).	)	Judge Presiding.

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

### **ORDER**

*Held:* (1) The Commission erred in finding that claimant's lumbar spine injury was limited to a contusion or sprain and denying benefits associated with that condition after October 17, 2011, including prospective medical care in the form of the work conditioning program recommended by one of claimant's doctors.

(2) The Commission's causal connection findings with respect to the conditions of ill-being in claimant's left and right shoulders were supported by the record and not against the manifest weight of the evidence.

(3) The Commission committed no error in refusing to order the employer to pay penalties and attorney fees pursuant to sections 19(k) and 16 of the Workers' Compensation Act (820 ILCS 305/19(k), 16 (West 2010)) but did err in failing to order the employer to pay claimant penalties pursuant to section 19(l) of the Act (820 ILCS 305/19(l) (West 2010)) due to the employer's late payment of

undisputed medical expenses.

¶ 1 On August 17, 2011, claimant, Manuel Badillo, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)), seeking benefits from the employer, Rollprint Packaging Products, Inc. Following a hearing, the arbitrator determined claimant sustained accidental injuries arising out of and in the course of his employment on July 12, 2011. She adopted the opinion of the employer's examining physician and found claimant suffered an injury to his lumbar spine that was limited to a contusion or sprain and that medical treatment claimant received after October 17, 2011, including surgery performed in November 2011, was unrelated to claimant's work accident. The arbitrator also determined no causal relationship existed between claimant's accident and the conditions of ill-being in his right shoulder and cervical spine. She awarded claimant 10-4/7 weeks' temporary total disability (TTD) benefits but denied his claims for past and prospective medical expenses, and penalties and attorney fees.

¶ 2 On review, the Workers' Compensation Commission (Commission) modified the arbitrator's denial of medical expenses, ordering the employer to pay claimant outstanding expenses of \$3,974.45. It otherwise affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Cook County confirmed the Commission. Claimant appeals, arguing the Commission's (1) causal connection decisions with respect to the conditions of ill-being in his lumbar spine and shoulders were against the manifest weight of the evidence; (2) decisions as to medical expenses, prospective medical care, and TTD benefits were against the manifest weight of the evidence; and (3) denial of penalties and attorney fees was against the manifest weight of the evidence. We affirm in part, reverse in part, and remand to the Commission.

¶ 3

## I. BACKGROUND

¶ 4 At arbitration, the 64-year-old claimant testified with the aid of an interpreter. He stated he worked for the employer, a manufacturer of plastic and aluminum products, for approximately 30 years. Claimant held the position of a "rewinder" in the employer's "slitter department" and his job "was to inspect and scan the material through a machine and a computer." Claimant testified his position had a 100-pound lifting requirement and that his work station consisted of a folding chair with a back, a machine, and a computer.

¶ 5 Claimant testified, on July 12, 2011, he was sitting in his work chair and inspecting a roll of aluminum when a forklift struck a metal table that was behind his chair and forced the table into the back of his chair. He described the incident as follows:

"While I was inspecting [the roll of aluminum], at that moment I felt an impact which elevated me to the air. It was taking me directly to the front of the machine. At that moment[,] I kind of deviated with my right arm so that I would not hit myself with the machine. At that moment[,] I fell on my back on the concrete on the ground on top of my back."

Claimant testified the impact from the forklift was "very hard" and he was "elevated \*\*\* about five feet in the air." He clarified that he fell on his back and "mostly on [his] right side." Also, his right arm struck the machine. On cross-examination, claimant acknowledged he did not know how fast the forklift had been traveling; however, he believed it must have been "coming fast because [the impact] elevated [him]." Immediately after falling, claimant noticed pain in his arms and back and felt "something was running [or] shooting in [his] neck." He denied experiencing any problems with his neck, back, arms, or shoulders prior to his July 2011 accident.

¶ 6 Coworkers who witnessed the accident called claimant's supervisors and claimant

was interviewed by Steven Mrowinski, the employer's operations manager. At arbitration, claimant submitted a document entitled "SUPERVISOR'S REPORT OF WORK-RELATED INJURY" that was prepared by Mrowinski on the date of the accident. Mrowinski reported claimant's accident occurred when a forklift driver "clipped the edge of the table closest to the aisle, [which] pushed the table into the slitter[']s chair and knocked [claimant] out of the chair." The employer submitted an employer's first report of injury form, which was also prepared by Mrowinski and identified the parts of claimant's body affected by the accident as a "Bruised back and arm—Right Back, Shoulders[,] and Arm."

¶ 7 Following his accident, claimant did not finish out the work day and testified he was sent home. The next day, he contacted the employer and stated he was unable to work. The employer referred him to Concentra Medical Center (Concentra). Claimant testified he initially received treatment at Concentra in Addison, Illinois, but, beginning July 19, 2011, transferred his care to Concentra in West Chicago.

¶ 8 Medical records show claimant was seen at Concentra on July 13, 2011, the day after his accident. His chief complaint was listed as being with his back, which had been injured the previous day and records show he reported "upper back pain going down to [his] waist." Claimant's records contain a history of his work accident, stating he was injured when a table was forced into the back of his chair by a forklift and he was "ejected" from the chair. Claimant reported that he injured his lower back, both shoulders, and left arm. His doctor noted claimant experienced tenderness since his accident in his left scapula, trapezius, shoulder, and clavicle. Claimant was found to have a normal range of motion in his left shoulder. His doctor assessed him as having a left shoulder contusion, back contusion, and a contusion of the thorax. Claimant was prescribed medication and physical therapy. He was also given activity restrictions of no

lifting over 20 pounds, no pushing or pulling over 20 pounds of force, no reaching above shoulders, no climbing, and no climbing stairs or ladders.

¶ 9 On July 15, 2011, claimant began physical therapy at Concentra. Records show he complained of pain and stiffness in his upper back and low back with "no radic symptoms." Claimant testified physical therapy helped "[v]ery little." He further stated he was off work from July 13, 2011, to July 17, 2011. On July 18, 2011, he returned to work in a light-duty capacity. On July 21 and 27, 2011, claimant missed work due to pain.

¶ 10 On July 28, 2011, claimant had a follow-up visit at Concentra and saw Dr. Inderjote Kathuria. Dr. Kathuria noted claimant made no complaints of radicular symptoms and reported no numbness or tingling but was still "tender in the low back and upper back." He assessed claimant as having a back contusion or strain and released him to return to full-duty work with physical therapy. Claimant testified he experienced "[a] little bit of improvement" prior to being released to return to full-duty work on July 28, 2011. However, upon returning to full-duty, he experienced a lot of pain in his back and some pain in his shoulders.

¶ 11 On August 4, 2011, claimant saw Dr. Scott Cole at Concentra. He reported that he continued to have pain and stiffness in his low back and that he was unable to take medication at work due to drowsiness. He asserted he had aching pain that did not radiate and which was exacerbated by standing or movement. Dr. Cole assessed claimant as having a back/buttock contusion and prescribed medication and physical therapy. He also recommended activity restrictions of no lifting over 15 pounds and no pushing or pulling over 20 pounds of force. Claimant testified he returned to work for the employer with his new restrictions.

¶ 12 Physical therapy notes from August 11, 2011, show claimant reported "feeling improved overall but not 100%." He was discharged from physical therapy based on a finding

that he had "met appropriate functional and impairment goals." The same day, claimant saw Dr. Cole and reported feeling no better. Dr. Cole noted claimant had diffuse back pain that was not present before claimant's work accident. Claimant's pain was described as "located on mid back and all over his back" and Dr. Cole noted claimant's pain did not radiate and claimant denied weakness or pain in either of his lower extremities. Following an examination, Dr. Cole found claimant's subjective complaints exceeded objective findings and opined claimant's condition "may be also related to degenerative changes (non-work related)." He recommended claimant continue with his previous medications and begin a home exercise program. Dr. Cole also continued claimant's activity restrictions and recommended that he see a physiatrist.

¶ 13 Claimant testified he decided to choose his own doctor and, on August 12, 2011, he saw Dr. Lorena Ramirez, a chiropractor, at Marque Medicos. Dr. Ramirez documented an accident history similar to the history claimant provided at arbitration except for noting that, at the time of his accident, claimant had been sitting "on a stool-like seat" with no back. At arbitration, claimant asserted that portion of the history documented by Dr. Ramirez was incorrect. Dr. Ramirez further noted claimant complained "of bilateral shoulder pain and low back pain rated at a 6/10." She diagnosed claimant as having "[l]umbar spine pain" and "[s]houlder pain." Dr. Ramirez recommended x-rays, physical therapy, and that claimant not work.

¶ 14 On August 15, 2011, claimant began physical therapy. An initial therapy evaluation shows claimant reported constant low back pain that was worse on the left than the right and "one time, \*\*\* went down to the left lower extremity." Claimant testified the physical therapy he underwent at Marque Medicos was better than the physical therapy he previously received at Concentra and helped his condition.

¶ 15 On August 17, 2011, claimant underwent a magnetic resonance imaging (MRI) of

his lumbar spine, revealing a "subligamentous posterior disk herniation" at the L5-S1 level of claimant's spine "with mildly extruded nucleus pulposus \*\*\* elevating the posterior longitudinal ligament and indenting the ventral surface of the thecal sac without significant spinal stenosis." Dr. Ramirez also referred claimant for an EMG/NCV study, which was performed on August 26, 2011, and showed "evidence of acute denervation of the left L5-S1 nerve roots" and evidence of right-sided L5-S1 involvement. Finally, on September 12, 2011, MRIs were performed on both of claimant's shoulders. According to the MRI reports, the impressions from claimant's right shoulder MRI were "[a]cromioclavicular joint arthropathy with inferior projecting osteophytes" and "[t]ype III acromion." The impressions from claimant's left shoulder MRI were "[t]ype III acromion" and "[m]ild changes of acromioclavicular joint arthropathy."

¶ 16 The record shows Dr. Ramirez referred claimant to Dr. Andrew Engel, a pain management specialist. On September 13, 2011, claimant saw Dr. Engel, who noted claimant was "suffering from left-sided greater than right-sided low back pain" that radiated down his left leg to his calf and bilateral shoulder pain that was also worse on the left side. Dr. Engel also recorded a history of accident that stated claimant sat on a stool-type seat without a back while working. Further, he assessed claimant as having a lumbar herniated disc, lumbar radiculopathy, and shoulder pain. Dr. Engel recommended prescription medication pain management, continued physical therapy, and that claimant remain off work until his pain substantially decreased. Additionally, Dr. Engel noted claimant denied experiencing low back or shoulder symptoms prior to his work accident and opined that "[s]ince the mechanism \*\*\* of his work-related accident [was] consistent with his current pain complaints, the work-related accident \*\*\* [was] the direct cause of [claimant's] current pain complaints."

¶ 17 The record reflects Dr. Ramirez also referred claimant to Dr. Ellis Nam, an ortho-

pedic surgeon, in connection with claimant's shoulder complaints. On September 19, 2012, claimant saw Dr. Nam and complained of bilateral shoulder pain that was worse on his left side. Again, Dr. Nam documented a similar history as claimant reported at arbitration but noted claimant had been "sitting on a stool" when the accident occurred. Dr. Nam reviewed claimant's September 12, 2011, left and right shoulder MRIs. With respect to claimant's left shoulder, he noted "some increased signal along the rotator cuff attachment site," which he felt was "consistent with a partial rotator cuff tear." Dr. Nam stated claimant's right shoulder MRI "demonstrate[d] a slight increased signal change along the attachment site." He diagnosed claimant with a left shoulder partial rotator cuff tear and right shoulder pain. Dr. Nam administered a cortisone injection in claimant's left shoulder and recommended continued physical therapy. He also recommended claimant perform no overhead lifting with either arm, no lifting with his left arm, and no lifting greater than five pounds with his right arm. Claimant testified that, for the most part, his shoulder complaints were resolved by the shoulder therapy he received and the injection provided by Dr. Nam.

¶ 18 On October 4, 2011, claimant followed up with Dr. Engel. He reported pain in his low back that was worse on his left side and numbness that radiated down his left leg. Dr. Engel recommended L5 and S1 transforaminal epidural steroid injections, which he performed on claimant on October 13, 2011. Claimant testified the injections temporarily resolved his leg complaints and, when his pain returned it was "a little bit less" than it had been.

¶ 19 On October 17, 2011, claimant saw Dr. Engel and reported continued pain. Dr. Engel noted claimant complained of pain on both sides of his low back and numbness that radiated down his left leg to his calf. He also reported bilateral shoulder pain that was worse on the left side. Dr. Engel referred claimant to Dr. Robert Erickson, a neurosurgeon, noting the



transforaminal epidural steroid injections did not help to decrease claimant's pain. He also continued claimant off work.

¶ 20 On October 17, 2011, claimant was examined by Dr. Kathleen Weber at the request of the employer's insurance company. Dr. Weber interviewed claimant, reviewed his medical records, and conducted an examination. According to Dr. Weber, claimant reported being injured while sitting in a folding chair at work. He asserted a forklift hit a table behind him and caused him to be propelled five feet into the air. Dr. Weber noted claimant stated he landed on "the machine table on his left elbow, the forearm region, hitting his machine table, and sustaining a 'big bruise' and swelling of the forearm." Claimant then reported he flew backwards "and hit on the mid lower back, and left shoulder." With respect to his current symptoms, Dr. Weber noted claimant failed to describe any cervical spine pain and stated his right shoulder hurt " 'a little bit' once in awhile in the posterior aspect." Regarding his left shoulder, claimant described pain in the posterior, anterior, and mid-collar bone region. Claimant asserted his left shoulder was better but his pain persisted. He also described his lumbar spine as his worst problem. Claimant reported feeling pain mostly on his left side. Dr. Weber noted he denied any radicular-type symptoms but stated he very rarely felt "a tingling in his left shin."

¶ 21 Following her examination of claimant, Dr. Weber had "no diagnosis" with respect to claimant's cervical spine. She noted claimant had no cervical pain and his examination was normal. As to claimant's shoulders, she diagnosed him with "[b]ilateral shoulder pain, non-specific" and stated as follows:

His examination was normal. He had normal range of motion, no scapular dyskinesia, no rotator cuff weakness, and negative impingement. Although he has pre-existing AC joint DJD, his exam-

ination was not consistent with AC joint arthritis. It is my opinion that there is no specific active diagnosis in regards to his bilateral shoulder complaints."

Finally, Dr. Weber diagnosed claimant with "nonspecific lumbar pain." She opined that, based upon the mechanism of his injury, he may have sustained a lumbar contusion. However, Dr. Weber also opined claimant's "exam is non-specific with non-physiological findings and there is no active diagnosis."

¶ 22 With respect to causation, Dr. Weber first noted inconsistencies in claimant's reported accident histories. In particular, she pointed out that some of his medical records contained a history of claimant sitting on a stool with no back at the time of his accident rather than a folding chair, as well as inconsistencies in the manner in which he landed. Dr. Weber further stated as follows:

"It seems reasonable that [claimant] may have sustained a back contusion or a strain based on the mechanism. If indeed he fell backwards landing on the back and the left shoulder, he may have contused the left shoulder. I can find no specific mechanism to connect a right shoulder injury to the mechanism that he describes, and he describes no specific cervical complaints or injury at the time. Thereafter, based on the information that I was provided I would state that there is a causal relationship in regards to lumbar complaints and left shoulder complaints. I cannot find a causal relationship in regards to the right shoulder or cervical complaints in regards to the injury of July 12, 2011."

¶ 23 Further, Dr. Weber found no evidence of any disability in claimant at the time of her evaluation. She noted that, although claimant had subjective complaints with respect to his lumbar spine, he had "no significant findings on examination." Dr. Weber stated claimant's MRI revealed "a tiny central protrusion with no central or nerve impingement noted." Further, she found "evidence of symptom magnification with cogwheeling" and noted his medical records did not "show consistent examinations or complaints." Dr. Weber opined, based on her examination, that claimant had "no ongoing pathology in regards to his back and \*\*\* no current disability in regards to his cervical spine, bilateral shoulders, or lumbar spine as related to the incident of July 12, 2011." She believed that claimant needed no further treatment for injuries he sustained as a result of his work accident, he had reached maximum medical improvement (MMI), and he could return to full-duty work.

¶ 24 On October 28, 2011, claimant saw Dr. Erickson, who recorded a history of claimant being "hit by a table, which knocked him off of a chair [and caused] him to fall approximately [five] feet." He noted claimant complained of back pain that was predominantly on his left side and radiated to his left thigh and shin, affecting all of his toes. Dr. Erickson found claimant's August 2011 MRI scan showed a subligamentous disc herniation at L5-S1 and his EMG was "suggestive of L5-S1 nerve abnormality." He recommended evoked potential testing of claimant's lower extremities. On November 11, 2011, Dr. Erickson noted the "evoked potential testing \*\*\* revealed a predominant delayed S1 on the left side and a lesser delay on the right." He prescribed surgery, finding claimant "was an ideal surgical candidate for minimally invasive hemilaminectomy on the left side at L5-S1." Further, he opined claimant's injuries were a direct result of his July 2011 work accident. On November 14, 2011, claimant returned to see Dr. Engel, who agreed with Dr. Erickson's surgical recommendation.

¶ 25 On November 18, 2011, Dr. Erickson performed surgery on claimant. In his operative report he noted a "major finding was that of thickened ligament and bulging disc, trapping the S1 nerve root." At arbitration, claimant testified surgery reduced his back pain. He stated that, prior to surgery, he experienced pain shooting down his left leg and, after surgery, his leg pain was resolved.

¶ 26 On November 28, 2011, claimant followed up with Dr. Nam. He reported that his right shoulder was "doing pretty good" and his left shoulder was "doing well." However, Dr. Nam noted claimant was under lifting restrictions with respect to his shoulders and claimant was concerned that he had not tested his shoulders, particularly his left shoulder, to see how they would respond with normal lifting activities. Dr. Nam stated claimant would see if his shoulder pain returned with normal lifting activities and recommended re-evaluation in one month. Dr. Nam's records also show he reviewed Dr. Weber's October 17, 2011, report and stated as follows:

"Dr. Weber does agree that there is a causal relationship regarding [claimant's] left shoulder work injury of [July 12, 2011]. I do agree with her assessment; however[,] I also agree that [claimant] did injure his right shoulder from the same mechanism of injury described to me in clinic. I did not see any obvious tear of his right shoulder, whic [*sic*] is progressing well at this time. I am concerned whether Dr. Weber had a chance to review [claimant's] MRI of his left shoulder dated [September 12, 2011]. Although the official report states that there is no evidence of rotator cuff ab-

normality, in my review of the films, I do feel that there is evidence of a partial rotator cuff tear."

¶ 27 On December 21, 2011, claimant followed up with Dr. Erickson, who noted claimant reported complete relief of his left-sided radicular symptoms. He felt claimant could "safely begin physical therapy with progress to work conditioning." Dr. Erickson further addressed Dr. Weber's report, stating as follows:

"In [Dr. Weber's] report, there is a thorough discussion of small discrepancies in the injury history. I will not comment on her summary of those multiple histories. I will comment on her summarization of the lumbar spine problem. She explained that although he has subjective complaints that he has no significant findings on examination. I agree that the small disc herniation in itself was quite small. We operated based on the exact correlation between the preoperative evoked potential testing in his subjective complaint. At the surgery[,] we found that the S1 nerve was trapped between the joint and the bulging disc herniation. His evoked potential abnormality reversed during the operative procedure itself, and his radicular complaint disappeared promptly.

These facts stand in direct contradiction to the opinion that the back injury was insignificant. It is clearly not a simple myofascial strain."

¶ 28 On January 9, 2012, claimant followed up with Dr. Nam and reported his shoulders were "doing well with occasional pain in his left shoulder." Dr. Nam released claimant

from care based on claimant's assertion that his shoulders were "functioning pretty good for the most part." He also released claimant to return to full-duty work with respect to his shoulders.

¶ 29 Following his back surgery, claimant continued to see Dr. Engel and consistently reported improvement with his back-related pain. On January 16, 2012, Dr. Engel addressed Dr. Weber's report. Initially, he conceded that his accident history was incorrect in stating claimant had been sitting on a stool and that, after further discussion with claimant, "it appears that he was sitting on a folding chair with a back." However, Dr. Engel found it irrelevant whether claimant had been sitting in a stool or chair at the time of his accident as he "was ejected [five] feet into the air with his work-related accident and the low back pain was likely secondary to landing." Dr. Engel asserted it was important that claimant improved after surgery. Dr. Engel further stated as follows:

"7. [Claimant] had positive EMG/NCV and SSEP's that matched [his] disc herniation on MRI. Dr. Weber believes the disc herniation at L5-S1 is not the root cause of [claimant's] pain even though he has positive EMG/NCV and SSEP's. More importantly, Dr. Weber did not have the opportunity to review the operative report. Dr. Erickson was able to visualize the disc and found that the bulging disc at L5-S1 trapped the S1 nerve root. It is clear that [claimant] has more than a tiny protrusion as the L5-S1 disc was causing [claimant's] radiculopathy that was demonstrated by EMG/NCV and SSEP. The disc disease was documented in the surgical report.

8. Dr. Weber's physical examination and my physical examination also deferred [*sic*]. Prior to surgery, I found [claimant's] positive straight leg raise testing, which is an objective sign of radiculopathy. This finding was in line with [claimant's] EMG/NCV and SSEP. Dr. Weber does not find positive straight leg raise testing. After surgery, [claimant's] straight leg raise testing is negative in line with [claimant's] improvement."

¶ 30 On February 6, 2012, Dr. Engel, released claimant to return to light-duty work with the restriction of no lifting greater than five pounds. On February 10, 2012, claimant followed up with Dr. Erickson, who noted there had been "much improvement" to claimant's radicular pain and "near total relief of his back pain." Dr. Erickson recommended a work conditioning program as directed by claimant's physical therapist. On February 14, 2012, claimant returned to work for the employer in a light-duty capacity.

¶ 31 On September 6, 2012, the arbitrator issued her decision in the matter, finding claimant sustained accidental injuries that arose out of and in the course of his employment on July 12, 2011. She adopted Dr. Weber's findings and conclusions, determining that no causal relationship existed between claimant's work accident and any condition of ill-being in his right shoulder and cervical spine and the condition of ill-being in his lumbar spine was limited to a contusion or sprain. The arbitrator also found claimant's lumbar spine surgery was not causally connected to his accidental injury and adopted Dr. Cole's finding "that the symptoms far outweighed the objective findings." As stated, she awarded claimant 10-4/7 weeks' TTD benefits, representing July 13, 2011, through July 17, 2011; July 21, 2011; July 27, 2011; and August 12, 2011, through October 17, 2011. The arbitrator also denied claims for past and prospective med-

ical expenses, and penalties and attorney fees.

¶ 32 On June 14, 2013, the Commission modified the arbitrator's decision with respect to medical expenses, finding claimant entitled to expenses totaling \$3,974.45. It otherwise affirmed and adopted the arbitration's decision. On February 25, 2014, the circuit court confirmed the Commission's decision.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 On appeal, claimant argues the Commission erred when determining whether the conditions of ill-being in his lower back and shoulders were causally connected to his July 12, 2011, work-related accident. Specifically, claimant contends the Commission erred in finding the injury he sustained to his lumbar spine was limited to a contusion or sprain, which reached MMI as of October 17, 2011. He also argues the Commission erred in failing to find that he sustained a partial rotator cuff tear with impingement in his left shoulder and pain in his right shoulder, which were causally related to his work accident. Claimant maintains the Commission's decision was contrary to the manifest weight of the evidence given the opinions of his treating physicians, Dr. Ramirez, Dr. Engel, Dr. Nam, and Dr. Erickson; his lack of symptoms prior to his work accident; the ongoing symptoms he experienced following his accident; the fact that he was never discharged from care by any of his treating physicians; and the objective evidence of a trapped nerve found by Dr. Erickson during claimant's November 2011 surgery.

¶ 36 "Whether a causal connection exists between a claimant's condition of ill-being and her 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." *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 913, 851 N.E.2d



72, 79 (2006). The Commission's findings will be held contrary to the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *National Freight Industries v. Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. In resolving issues related to causation, it is the Commission's function "to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence." *Dig Right In Landscaping v. Workers' Compensation Comm'n*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739.

¶ 37 Claimant first argues the Commission erred in finding that the work-related injury he sustained to his lumbar spine was limited to a contusion or sprain. Claimant maintains that, instead, the manifest weight of the evidence supports a finding that his work accident caused a "herniated disc at L5-S1 with trapped S1 nerve radiculopathy" for which he underwent surgery in November 2011. After reviewing the record, we agree with claimant. "Although we are reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when \*\*\* the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion." *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 119, 881 N.E.2d 523, 529 (2007). With respect to claimant's lumbar spine injury, we find an opposite conclusion is clearly apparent.

¶ 38 On July 12, 2011, claimant was involved in a work-related accident and immediately began complaining of back pain. The record fails to reflect he had any previous problems with his back; however, after his accident, he consistently reported back-related symptoms. Approximately one month after his accident, claimant began reporting radicular symptoms in his left lower extremity and an MRI of his lumbar spine revealed a "subligamentous posterior disk herniation" at the L5-S1 level of his spine. Shortly thereafter, claimant underwent an EMG/NCV study that showed "evidence of acute denervation of the left L5-S1 nerve roots" and evidence of

right-sided L5-S1 involvement. On November 18, 2011, Dr. Erickson performed surgery on claimant's lower back and noted a "major finding was that of thickened ligament and bulging disc, trapping the S1 nerve root." Claimant testified that following surgery, his back condition improved and his radicular symptoms resolved. Both Dr. Erickson and Dr. Engel opined claimant's low back pain and radicular symptoms were causally related to his work accident. Additionally, both doctors pointed out that claimant's November 2011 surgery revealed a trapped nerve, which once corrected during surgery, resolved the radicular complaints in claimant's lower extremities.

¶ 39 In finding claimant's lumbar spine injury limited to a contusion or sprain, the Commission relied on the opinions of Dr. Weber, who examined claimant on October 17, 2011, at the request of the employer's insurance company. Dr. Weber opined it was reasonable claimant may have sustained a back contusion or strain as a result of his work accident. She noted that, although claimant had subjective complaints, "he ha[d] no significant findings on examination." Initially, we note Dr. Weber incongruously stated claimant "denies any radicular-type symptoms, but does state very rarely that he will get a tingling in the left shin anteriorly." The "tingling" noted by Dr. Weber was consistent with the radicular-type symptoms claimant reported to his other medical providers during the same time frame.

¶ 40 Additionally, the record fails to reflect Dr. Weber ever reviewed, or offered any opinion regarding, Dr. Erickson's finding of a trapped nerve during claimant's November 2011 surgery. This finding constituted objective evidence and supported claimant's subjective complaints. Further, both Dr. Erickson and Dr. Engel addressed Dr. Weber's report and opinions. Dr. Erickson found the facts of claimant's case stood in "direct contradiction to [Dr. Weber's] opinion that [claimant's] back injury was insignificant." In particular, he noted as follows:

"We operated based on the exact correlation between the preoperative evoked potential testing in his subjective complaint. At the surgery[,] we found that the S1 nerve was trapped between the joint and the bulging disc herniation. His evoked potential abnormality reversed during the operative procedure itself, and his radicular complaint disappeared promptly."

Dr. Engel also found it important that claimant improved after surgery. Further, he noted "Dr. Erickson was able to visualize the disc [during surgery] and found that the bulging disc at L5-S1 trapped the S1 nerve root." He opined that condition caused claimant's radiculopathy. Significantly, Dr. Engel also found claimant's radiculopathy had been confirmed on diagnostic tests, including the EMG/NCV study performed in August 2011.

¶ 41 Here, we find the Commission erred in relying on Dr. Weber's opinion that claimant sustained only a sprain or contusion to his lower back as a result of his work accident, which resolved by October 17, 2011. Rather, the manifest weight of the evidence supports claimant's position that his work accident caused a "herniated disc at L5-S1 with trapped S1 nerve radiculopathy" for which he underwent surgery in November 2011. An opposite conclusion from that of the Commission with respect to claimant's lumbar spine condition of ill-being is clearly apparent.

¶ 42 Claimant also argues the Commission erred in failing to find he sustained a partial rotator cuff tear in his left shoulder that was causally related to his work accident. He relies on Dr. Nam, who first examined claimant on September 19, 2011. Dr. Nam reviewed claimant's left shoulder MRI and found "some increased signal along the rotator cuff attachment site, which he opined was "consistent with a partial rotator cuff tear." For the reasons that follow, we find no

error by the Commission as to this issue.

¶ 43 Neither the arbitrator's decision nor the Commission's decision explicitly references claimant's left shoulder condition. However, both essentially adopted the opinions of Dr. Weber who found a causal relationship between claimant's accident and his left shoulder complaints. However, she diagnosed claimant with "[b]ilateral shoulder pain, non-specific" and found no current disability in his left shoulder as of the date of her October 17, 2011, examination. Dr. Weber noted her examination of claimant's shoulders was normal, finding he had a normal range of motion, no rotator cuff weakness, and negative impingement.

¶ 44 Although Dr. Nam found evidence of a partial rotator cuff tear in claimant's left shoulder after reviewing claimant's MRI, neither the MRI report nor Dr. Weber noted the same finding. As stated, it is the Commission's function to resolve conflicting medical evidence and we cannot say it erred in resolving the conflicting evidence in this case in favor of Dr. Weber. Additionally, the record shows claimant reported that, for the most part, his shoulder complaints resolved following the injection provided by Dr. Nam on September 19, 2011, and physical therapy. By November 28, 2011, he reported to Dr. Nam that his left shoulder was "doing well." Thus, we find the Commission could have reasonably relied on Dr. Weber's opinion that an examination of claimant's left shoulder was normal and he had no disability as of October 17, 2011, was appropriate and its decision is not against the manifest weight of the evidence.

¶ 45 Claimant further argues the Commission erred in failing to find a causal relationship between his right shoulder pain and his work accident. Again, in finding no causal relationship, the Commission relied on Dr. Weber's opinions. Dr. Weber was unable to find a mechanism of injury to connect claimant's accident to a right shoulder injury and her report shows claimant provided an accident history of landing on, or impacting, the left side of his body. At

arbitration, claimant testified he fell mostly on his right side and his right arm struck a machine; however, his medical records contain no similar history. Additionally, his testimony directly conflicts with the history he provided to Dr. Weber. Further, claimant's initial medical records support Dr. Weber's opinion. On July 13, 2011, the day following his accident, claimant sought medical care and, although he generally reported injuring both of his shoulders, he specifically complained of only tenderness in his left shoulder as a result of his accident. He was also diagnosed with only a left shoulder contusion.

¶ 46           Once again, the record contains support for the Commission's determination and an opposite conclusion is not clearly apparent. The Commission's finding that claimant's right shoulder condition of ill-being was unrelated to his work accident was not against the manifest weight of the evidence.

¶ 47           On appeal, claimant raises several additional challenges to the Commission's decision regarding medical expenses, prospective medical care, and TTD benefits. His arguments are largely based on the assertion that the Commission erred with respect to its causal connection findings. As discussed, the Commission erred in finding claimant's lower back injury was limited to a contusion or sprain, which resolved by October 17, 2011, the date of Dr. Weber's examination. Thus, the Commission's denial of benefits associated with that condition was also error. The record reflects claimant is entitled to benefits in connection with his lower back condition after October 17, 2011, including prospective medical expenses in the form of the work conditioning program recommended by Dr. Erickson. We remand to the Commission for an award of benefits under the Act consistent with this court's decision, as well as prospective medical expenses for the work conditioning program recommended by Dr. Erickson.

¶ 48           Finally, claimant argues the Commission erred in failing to award him penalties

and attorney fees. First, we find the Commission committed no error in refusing to award claimant penalties and attorney fees pursuant to sections 19(k) and 16 of the Act (820 ILCS 305/19(k), 16 (West 2010)). "The standards under section 16 and section 19(k) are similar" and "[b]oth require an unreasonable or vexatious delay in payment." *Residential Carpentry, Inc. v. Workers' Compensation Comm'n*, 389 Ill. App. 3d 975, 983, 910 N.E.2d 109, 117 (2009). "[A]n employer's reasonable and good faith challenge to liability ordinarily will not subject it to penalties under the Act." *Matlock v. Industrial Comm'n*, 321 Ill. App. 3d 167, 173, 746 N.E.2d 751, 756 (2001). The Commission's decision as to penalties and attorney fees will not be disturbed unless it is contrary to the manifest weight of the evidence. *Global Products v. Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 414, 911 N.E.2d 1042, 1048 (2009).

¶ 49 Here, the employer relied on the medical opinions of Dr. Weber when challenging liability for claimant's condition after October 17, 2011. The record fails to reflect its position was unreasonable or not taken in good faith. Thus, we find the Commission's decision with respect to section 19(k) penalties and section 16 attorney fees was not against the manifest weight of the evidence.

¶ 50 However, we agree with claimant's assertion that the Commission erred in failing to award him penalties pursuant to section 19(l) of the Act (820 ILCS 305/19(l) (West 2010)). In particular, the record reflects that the employer was late in paying certain medical expenses and had no good faith basis for denying payment.

¶ 51 "Penalties under section 19(l) are in the nature of a late fee" and are "mandatory '[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay.'" *Jacobo v. Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, ¶ 20, 959 N.E.2d 772 (quoting *McMahan v. Industrial Comm'n*, 183 Ill.2d 499, 515,

702 N.E.2d 545, 552 (1998)). "The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness." *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 20, 959 N.E.2d 772. "The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified." *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 20, 959 N.E.2d 772. We will reverse the Commission's denial of section 19(l) penalties where it is contrary to the manifest weight of the evidence. *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 29, 959 N.E.2d 772.

¶ 52 On October 17, 2011, claimant was examined by Dr. Weber at request of the employer's insurer. Based on Dr. Weber's opinions, the employer challenged its liability for medical expenses and TTD benefits incurred *after* the date of Dr. Weber's examination. The record shows the employer accepted liability for causally related expenses incurred prior to October 17, 2011. In fact, in the parties' request for hearing, the employer asserted "all reasonable, necessary[,] and causally-related medical bills [were] paid through October 20, 2011." Further, as noted by the Commission, Dr. Weber "did not opine that any of the treatment [claimant] underwent before October 17, 2011[,] was unreasonable or unrelated to [his] accident." As a result of that finding, the Commission awarded claimant \$3,974.45 in medical expenses claimant incurred prior to October 17, 2011—from August 12, 2011, to October 13, 2011—and which remained unpaid through the date of the arbitration hearing. The employer did not seek review of the Commission's decision.

¶ 53 Thus, the record reflects the employer delayed in paying certain causally-related medical expenses without adequate reason for its delay. In its brief, the employer argues it ultimately paid the expenses awarded by the Commission and, therefore, it is "reprehensible" for

claimant to continue to seek penalties. However, that the employer eventually paid amounts it owed to claimant does not mean it is excused from paying penalties pursuant to section 19(*l*) for its late payment. As stated, penalties under that section are mandatory when there is no adequate justification for delay. The employer has offered no justification for its nonpayment of causally-related medical expenses, which claimant incurred prior to October 17, 2011. As a result, section 19(*l*) penalties on those expenses are mandatory and should have been imposed by the Commission.

¶ 54

### III. CONCLUSION

¶ 55 For the reasons stated, we reverse the portions of the circuit court's judgment, which affirmed the Commission's (1) finding that claimant's lumbar spine injury was limited to a contusion or sprain, which resolved by October 17, 2011; (2) denial of benefits associated with claimant's lumbar spine injury after October 17, 2011; and (3) denial of penalties pursuant to section 19(*l*) of the Act. We affirm the portions of the circuit court's judgment, which confirmed the Commission's decision with respect to claimant's left and right shoulder injuries and denial of section 19(*k*) penalties and section 16 attorney fees. Further, we remand to the Commission so that it may, consistent with this decision, award claimant benefits under the Act—including prospective medical expenses for the treatment recommended by Dr. Erickson—and impose section 19(*l*) penalties.

¶ 56

Affirmed in part and reversed in part; cause remanded.