

2014 IL App (1st) 131706WC-U
No. 1-13-1706WC
Order filed: December 26, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

JOSE AGUILAR,)	Appeal from the
)	Circuit Court of
)	Cook County.
Appellant,)	
)	
v.)	No. 12 L 51013
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	
)	Honorable
)	Patrick J. Sherlock,
(Aramark Corp., Appellee).)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The Commission did not err in reducing the claimant's permanent partial disability benefits to an award it felt accurately reflected the full nature and extent of his injury where the reduction was based on the opinions of three physicians who determined that the claimant was at maximum medical improvement as of October 5, 2009, and that all further treatment was unreasonable and unnecessary. The Commission judged the credibility of

the physicians, drew reasonable inferences from their reports, determined what weight to give the reports, and resolved conflicts in medical evidence. The Commission's decision contained sufficient findings to permit this court to review its decision. The Commission did not err in reducing the claimant's temporary total disability benefits where three physicians found that the claimant had reached maximum medical improvement as of October 5, 2009, and could return to full duty work. The Commission did not err in decreasing the claimant's award of medical benefits where three physicians opined that the medical services rendered after October 5, 2009, were neither medically reasonable nor necessary.

¶ 2 The claimant, Jose Aguilar, filed an application for adjustment of claim against his employer, Aramark Corp., seeking workers' compensation benefits. He alleged that on July 11, 2009, he injured his neck, back, left arm, and left leg when he fell at work. The claim proceeded to an arbitration hearing under the Workers' Compensation Act (the Act) (820 ILCS 305/1) (West 2008)). The arbitrator found that the claimant did sustain an accident on July 11, 2009, that arose out of and in the course of his employment and that his condition of ill-being was causally related to the accident. The employer was ordered to pay the claimant temporary total disability (TTD) benefits of \$673.19 per week for 46 weeks. The employer was ordered to pay reasonable and necessary medical services in the amount of \$75,429.99. The employer was further ordered to pay the claimant permanent partial disability (PPD) benefits of \$573.44 per week for 112.5 weeks because the injuries sustained caused 22.5% physical impairment of the person-as-a-whole.

¶ 3 The employer appealed to the Illinois Workers' Compensation Commission (Commission). The Commission found that the claimant suffered an aggravation of his pre-existing degenerative lumbar spine condition and reached maximum medical

improvement on October 5, 2009. It found that he required no additional diagnostic or therapeutic treatment after October 5, 2009, and that any subsequent procedures were unnecessary and unreasonable. The Commission modified the arbitrator's award of medical expenses from \$75,429.99 to \$1,879.64. The Commission also modified the arbitrator's award of TTD benefits from 46 weeks to 2 6/7 weeks. Finally, the Commission modified the arbitrator's PPD benefit of 22.5% of the person-as-a-whole to 10% of the person-as-a-whole. The claimant filed a timely petition for review in the circuit court of Cook County which confirmed the Commission's decision. The claimant appeals.

¶ 4

BACKGROUND

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on May 9, 2011. The claimant testified that he had worked for the employer for 18 years. He worked as the account manager. He stated that on July 11, 2009, he was helping a co-worker clean a carpet. The carpet was to be delivered to a client and had a coffee stain on it. The claimant testified that he ran out of water while helping to clean the carpet so he went to the cafeteria to obtain more water. The cafeteria lights were off. The floor had been mopped, but there were no signs indicating that the floor was wet. He slipped while walking across the floor, hit his arm on a table, and landed on his back. He felt pain in his neck, his left arm, and his left leg.

¶ 6 On July 11, 2009, the claimant was examined at Providence Progressive Medical Center. He complained of body pain from a work accident. He was diagnosed with lumbar, shoulder, elbow, and hand pain.

¶ 7 On July 15, 2009, the claimant had a left hand and wrist radiograph, a left elbow radiograph, a left shoulder radiograph, and a lumbar spine radiograph. Dr. Aris Musabji wrote in his report that the left hand, left wrist, and left elbow radiographs were all negative. In the left shoulder he found that there was inferior subluxation of the left humeral head likely relating to glenohumeral joint effusion. The lumbar spine radiograph was unremarkable. Dr. Musabji found no significant degenerative disc disease.

¶ 8 On July 24, 2009, chiropractor Angel Chire first examined the claimant. In his initial evaluation form, Dr. Chire wrote that the claimant told him that while at work he slipped on a freshly mopped floor and fell, landing on his left side, injuring his lower back, left shoulder, left elbow, and left wrist/hand. The claimant presented himself to Dr. Chire to start rehabilitation treatment to cure and relieve the symptoms resulting from his work accident. The claimant complained of constant low back, upper and mid-back, left shoulder, left elbow, and left wrist/hand pain. Dr. Chire diagnosed him with lumbar radiculopathy, lumbar myoligamentous sprain/strain, thoracic myoligamentous sprain/strain, shoulder myoligamentous sprain/strain, left elbow sprain/strain, left wrist sprain/strain, thoracolumbar myofasciatis, and upper thoracic paravertebral myospasms. Dr. Chire wrote that he "selected a plan of treatment that has as its goal to improve [the claimant's] current symptomatology and minimize the possibility of future permanent residuals." Dr. Chire prescribed treatments three times per week for four weeks.

¶ 9 On July 28, 2009, the claimant had a magnetic resonance imaging (MRI) scan. Dr. Gregory Henkle wrote in the MRI scan report that at L4-L5 there was a rightward disk bulge with mild to moderate neuroforaminal narrowing, and that the claimant had mild multilevel degenerative disk disease at L2-L3, L3-L4, and L5-S1.

¶ 10 The claimant testified that he underwent physical therapy from July 24, 2009, through April 23, 2010. He stated that it helped for "some time."

¶ 11 On August 26, 2009, Dr. Bruce Montella provided an orthopedic consult of the claimant. The claimant's chief complaint was weakness in the right neck, arm, low back, and pelvis. In the history section of Dr. Montella's patient notes he wrote "[t]he onset of the symptoms was sudden and not related to an injury or accident. The injury occurred at work. The injury was reported to his employer on June 13, 2009." Dr. Montella recommended maximizing non-operative management of the claimant's lumbar problems, including activity modification, anti-inflammatories, physical therapy modalities, and chiropractic care. The claimant was authorized to return to work with restrictions.

¶ 12 Dr. Chire examined the claimant on September 9, 2009. He diagnosed the claimant with lumbar intervertebral disc bulge, improving lumbar radiculopathy, lumbar myoligamentous sprain/strain, and shoulder myoligamentous sprain/strain, resolving thoracic myoligamentous sprain/strain, left wrist sprain/strain, and thoracolumbar myofascitis, and resolved left elbow sprain/strain and upper thoracic paravertebral myospasms. Dr. Chire recommended that the claimant continue chiropractic treatments.

¶ 13 Dr. Montella examined the claimant on October 1, 2009. He noted that the claimant felt his symptoms had worsened since his last visit. Dr. Montella ordered a series of lumbar epidural steroid injections. The claimant was restricted from working.

¶ 14 On October 5, 2009, Dr. Julie Wehner performed an independent medical examination of the claimant at the employer's request. The claimant complained of low back pain with radiation down the left leg in a circumferential distribution. He informed Dr. Wehner that he had very little pain on the right side. The claimant told her he was "not sure about prior back problems." He denied prior chiropractic treatment. The claimant informed Dr. Wehner that he had meningitis when he was seven years old that resulted in left-sided hemi-paresis involving his left arm and leg and left face. She diagnosed the claimant with low back pain-sprain and contusion. She noted that his clinical examination showed normal findings except for hyperreflexia and positive Babinski consistent with a previous diagnosis of meningitis. His MRI scan showed mild degenerative changes. She noted that his arm, neck, wrist, and shoulder complaints had resolved. Dr. Wehner averred that there was no need for further work restrictions and that there was no medical indication to perform injection treatment for minor degenerative changes without any compressive lesion. She stated that the claimant's subjective complaints of left leg pain were nonanatomic being circumferential in nature and were not supported by any positive straight leg raising. She felt they might be related to his previous meningitis. Dr. Wehner stated that there was no medical indication to order orthotics. She opined that the claimant had reached maximum medical

improvement at that point in time and could return to work at full duty. Dr. Wehner stated that there was no need for any further diagnostic or therapeutic intervention.

¶ 15 On October 21, 2009, Dr. Chire examined the claimant. He diagnosed the claimant with improving lumbar intervertebral disc bulge and lumbar myoligamentous sprain/strain, and resolving lumbar radiculopathy, thoracic myoligamentous sprain/strain, and shoulder myoligamentous sprain/strain. Dr. Chire recommended continued chiropractic care.

¶ 16 Dr. Montella examined the claimant on November 12, 2009. The claimant complained that his symptoms were getting worse. Two lumbar epidural steroid injections were recommended for his lumbar injury. A course of physical therapy was prescribed.

¶ 17 On November 16, 2009, Dr. Erwin Friedman, a podiatrist, examined the claimant. He diagnosed the claimant with cavus feet bilateral and prescribed orthotics. Dr. Freidman opined that orthotics would allow the claimant to maximize his gait and take pressure off his back and lower extremities.

¶ 18 On November 20, 2009, Dr. Montella administered a lumbar epidural steroid injection to the claimant at the left L5-S1 transforaminal space and the left S1 transforaminal space.

¶ 19 On November 30, 2009, Dr. Chire examined the claimant. He wrote in his report that the claimant complained of lower back pain. He diagnosed the claimant with lumbosacral disc herniation, sciatica, lumbosacral sprain/strain, shoulder sprain/strain,

and lumbar spine pain. Dr. Chire recommended continuing the claimant's chiropractic treatments.

¶ 20 On December 8, 2009, Dr. Montella performed a lumbar epidural steroid injection, left S1 transforaminal space and right S1 transforaminal space. The claimant testified that the injections he received from Dr. Montella provided some relief.

¶ 21 Dr. Montella examined the claimant on February 1, 2010. His symptoms had worsened since his last visit. Dr. Montella saw no signs of incongruency or malingering. Dr. Montella recommended a lumbar discography with disc decompression.

¶ 22 On February 3, 2010, Dr. Chire examined the claimant. In his progress report he wrote that the claimant complained of exacerbation of his existing symptoms. He told Dr. Chire that his lower back pain had increased lately, but did not radiate to his legs. Dr. Chire recommended continuing the claimant's chiropractic treatments.

¶ 23 On February 19, 2010, the claimant had an EMG/NCV study. Chiropractor Dr. Farshad Barkhordar wrote in his report that his impression was that the claimant had L5-S1 lumbar radiculopathy on the left side.

¶ 24 On March 2, 2010, Dr. Montella performed a discography and disc decompression on the claimant. His preoperative and postoperative diagnosis was L4-L5 disc herniation and L4-L5 discogenic pain. The claimant testified that he experienced only a few days of relief from pain following his disc decompression.

¶ 25 Dr. Chire examined the claimant on March 22, 2010. In his progress report, he wrote that the claimant reported that his lower back pain had increased, that it was constant and radiated to his left leg, and that the pain increased with any movement of the

thoracic and lumbar spine. Dr. Chire recommended restarting the claimant's chiropractic treatments.

¶ 26 On April 12, 2010, Dr. Montella examined the claimant. The claimant continued to complain of burning and radiating pain. He was restricted to light duty work. A course of physical therapy was ordered.

¶ 27 On May 27, 2010, Dr. Montella examined the claimant. He noted that the claimant had well healed surgical incisions. He stated that the claimant could return to light duty work with no excessive twisting, turning, bending, sitting or standing. He was not to climb stairs, kneel or squat. He was restricted to lifting no more than 10 pounds. A course of physical therapy and chiropractic care was ordered.

¶ 28 Mr. Montella examined the claimant on July 8, 2010. He noted in his patient notes that the claimant's symptoms had worsened since his last visit. Dr. Montella found that there were no signs of incongruency or malingering. A course of physical therapy and chiropractic care was ordered. The claimant was ordered off work.

¶ 29 Dr. Montella examined the claimant on August 5, 2010. Dr. Montella wrote in his patient notes that there had been "significant improvement in the symptoms since the last visit." He noted that the claimant informed him that his "back has improved just a little, still having ongoing pain, tingling and numbness especially when sitting." He found no signs of incongruency or malingering. Dr. Montella wrote that he was "in support of this patient's permanent and total disability." He ordered a course of physical therapy and chiropractic care.

¶ 30 Dr. David Trotter performed a peer review of the claimant's medical records on January 31, 2011. He opined that the only injuries sustained by the claimant were soft tissue sprain/strain injuries without evidence of disc herniation. He felt that the shoulder tendonitis diagnosis was appropriate. He averred that the claimant had reached maximum medical improvement as noted in Dr. Wehner's independent medical examination. He opined that the length of the claimant's treatment was not appropriate because there was no further indication for any treatment as of the October 5, 2009, independent medical examination. He felt that the claimant was capable of full duty work.

¶ 31 On March 4, 2011, Dr. Montella examined the claimant. Dr. Montella felt that there were no signs of incongruency or malingering. Dr. Montella noted that the claimant was on long-term narcotic usage for pain management. He recommended a course of physical therapy and chiropractic care.

¶ 32 On March 28, 2011, Dr. Carl Graf performed an independent medical examination of the claimant at the employer's request. The claimant told Dr. Graf that the second steroid injection he received provided no relief, nor did the shoe orthotics help. His third epidural steroid injection provided relief for approximately two weeks. The claimant reported that the disc decompression also failed to provide relief. The claimant reported that it was recommended that he have a lumbar fusion, but that he was not interested in the surgery so he was seen by Dr. Montella monthly for medications. The claimant complained of pain in the low back radiating into the left calf, pain in the right side of the low back radiating into the upper lumbar and thoracic spines, and occasional neck pain.

The claimant had not been working since the accident, and told Dr. Graf that Dr. Montella informed him that he was permanently disabled and unable to ever return to work. Dr. Graf noted that the claimant complained of pain in the low back radiating down the left leg and encompassing the entire leg, both anterior and posterior following no anatomic distribution.

¶ 33 Dr. Graf wrote in his report that "[i]n my opinion extensive and inappropriate medical treatment was performed. [The claimant] was not only referred to physical therapy but was also referred for chiropractic care. He was also referred, not only for one pair of orthotics, but for two pairs of orthotics for his feet, given a TENS unit, back brace, and dispensed multiple medications." Dr. Graf noted that during the first two examinations by Dr. Montella on August 26, 2009, and October 1, 2009, the claimant had 5/5 strength to his bilateral upper and lower extremities with normal lumbar range of motion. When he was seen by Dr. Chire he was given nine separate diagnoses. Dr. Graf noted that the claimant's EMG was performed by a chiropractor and not a board certified neurologist or other medical doctor.

¶ 34 Dr. Graf wrote in his report that during the examination, the claimant was unable to break the strength of his single index finger in any motor group throughout the left lower extremity. Dr. Graf found this "overly dramatic" and noted that the claimant was able to self ambulate in and out of the examination room which was not consistent with the demonstration of isolated motor strength.

¶ 35 Dr. Graf found: "To a reasonable degree of medical and surgical certainty, I am unable to support [the claimant's] subjective complaints of pain and disability given the

lack of objective findings. Certainly it is my opinion that there are some residual deficits from his childhood meningitis and left hemiparesis, though his bizarre neurologic examination is consistent with him not putting forth the full effort. This is further supported by the fact that [the claimant] demonstrated full strength on evaluation by Dr. Montella for over three months following the injury in question."

¶ 36 Dr. Graf agreed with Dr. Wehner's assessment that the claimant was at maximum medical improvement in October 2009 with no further treatment and care being reasonable or necessary past that point. He opined that the claimant's diagnosis of being totally and completely disabled bore no relationship to the injury in question. He averred that the percutaneous discectomy that was performed was neither reasonable, necessary, nor medically indicated. He stated that the fact that the claimant noted no pain relief following the procedure supported this opinion. Dr. Graf opined that the claimant could return to his previous level of employment as it related to the work-related injury.

¶ 37 Dr. Chire examined the claimant on April 23, 2010. He wrote in the report that the claimant complained of persistent lower back pain radiating into his left leg. He recommended continuing the claimant's chiropractic treatment.

¶ 38 The evidence revealed that the claimant had a history of prior medical treatment to his cervical and lumbar spine. On December 17, 2007, the claimant had an x-ray of his lumbar spine. Dr. A. Michael Simon wrote in his report that the claimant had mild endplate remodeling at L4-L5 and L3-L4 related mild disc degeneration. He was diagnosed with mild multidegenerative disc disease.

¶ 39 On December 29, 2007, the claimant had an MRI scan of the lumbar spine. Dr. Simon found that at L4-L5 the claimant had disc degeneration with spondylotic disc bulge and superimposed broad based central/left paracentral disc protrusion. He had mild to moderate left, and mild right lateral narrowing with left L5 impingement. Dr. Simon found L3-L4 disc degeneration with spondylotic disc bulge, mild left greater than right foraminal narrowing without impingement, and mild central narrowing due to developmental factors. Dr. Simon noted that the claimant had mild degenerative disease at L2-L3 and L5-S1 without herniation or significant acquired stenosis, and posterior outer annular fissure at L2-L3. Finally he found that the claimant had mild developmental central narrowing of the lumbar canal.

¶ 40 On September 2, 2008, the claimant was examined by his primary care physician Dr. Mohammed Saeed for lower back pain. The claimant returned to Dr. Saeed on September 8, 2008, complaining of back pain. He was given a medrol dose pack and taken off work for one week.

¶ 41 The claimant testified that on December 29, 2008, he was in an automobile accident and injured his back. He stated that he missed work for one week as a result of that injury. He stated that as of January 22, 2009, his low back continued to hurt. On February 5, 2009, he went to the emergency room at GlenOaks Hospital for low back pain caused by the automobile accident.

¶ 42 On December 30, 2008, the claimant presented at the Adventist Midwest Health-Adventist GlenOaks Hospital with severe back pain and inability to walk following an automobile accident. He was admitted by Dr. Saeed. His clinical assessment was

cervical muscle injury and lumbar muscle injury with disk disease. He was given medication and released the next day. He was scheduled for physical therapy.

¶ 43 On December 30, 2008, the claimant had an x-ray of the cervical spine. Dr. Vlad Gorengaut wrote in his report that the claimant had bilateral uncovertebral osteoarthritis noted at the C5-C6 level and mild narrowing of the right neural foramen at the C5-C6 and C6-C7 level due to uncovertebral osteoarthritis. On the same day the claimant also had an x-ray of the lumbar spine. Dr. Gorengaut found that the claimant had mild wedging of the L4 vertebral body which he felt might be due to a mild compression fracture.

¶ 44 On December 31, 2008, the claimant had an MRI scan of his lumbar spine. Dr. Patricia Lee found that the claimant had mild narrowing of the intervertebral disc space at L4-L5, moderate to marked circumferential disc bulging slightly greater to the right at L4-L5, bilateral foraminal encroachment and narrowing of the lateral recesses at L4-L5, and mild circumferential disc bulging at L2-L3 and L3-L4.

¶ 45 On January 2, 2009, Dr. Saeed treated the claimant for cervical sprain, pain in both shoulders, back pain, and left wrist pain following an automobile accident on December 29, 2008. He was off work from the date of the accident until mid-January when Dr. Saeed approved light duty work. Dr. Saeed treated the claimant for his injuries from the automobile accident 11 more times in January 2009. On January 30, 2009, he was given a back brace to wear during the day. Dr. Saeed examined the claimant for back pain eight times in February 2009. On February 23, 2009, he was released to return to full duty work.

¶ 46 Based on a chain-of-events analysis, the arbitrator found that the claimant sustained an accident that arose out of and in the course of his employment and that his condition of ill-being was causally related to the accident. The employer was ordered to pay the claimant TTD benefits of \$673.19 per week for 46 weeks. It was ordered to pay the claimant PPD benefits of \$573.44 per week for 112.5 weeks because the injuries he sustained caused 22.5% physical impairment of the person-as-a-whole. The employer was ordered to pay reasonable and necessary medical expenses of \$75,429.99.

¶ 47 The employer sought review of this decision before the Commission. The Commission modified the arbitrator's decision. It found that the claimant suffered an aggravation of a pre-existing degenerative lumbar spine condition and that he reached maximum medical improvement by October 5, 2009, and required no additional diagnostic or therapeutic treatment from that time forward. The Commission found that all subsequent procedures, including the anti-inflammatories, physical therapy, chiropractic treatment, lumbar epidural steroid injections, TENS unit, orthotics, back brace, EMG/NCV, and discogram and plasma disc decompression at L4-L5 were unnecessary and unreasonable. The Commission reduced the amount of reasonable and necessary medical expenses the employer was ordered to pay from \$75,429.99 to \$1,879.64. It reduced the TTD benefit award from 46 weeks to 2 6/7 weeks. Finally, it reduced the PPD award from 22.5% of a person-as-a-whole to 10% of a person-as-a-whole.

¶ 48 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County. The circuit court confirmed the Commission's decision. The claimant appealed.

¶ 49

ANALYSIS

¶ 50 The claimant argues that the Commission erred as a matter of law in reducing the award of PPD benefits based on his pre-existing lumbar condition. The claimant asserts that such an award was erroneous as a matter of law because it inappropriately apportioned part of his current disability to his pre-existing condition.

¶ 51 Once causation is found, the claimant is entitled to an award for the full nature and extent of his disability and any reduction of the award because of apportionment between employment and nonemployment causes of the disability is improper and contrary to law. *Fitts v. Industrial Commission*, 172 Ill. 2d 303, 309, 666 N.E.2d 4, 7 (1996). The claimant argues that in reducing his PPD benefits from 22.5% person-as-a-whole, the Commission apportioned 10% loss of use of the person-as-a-whole to his employment caused condition and attributed the remainder of his disability to his pre-existing condition. The claimant asserts that this is clear from the following language: "Arbitrator Andros rejected [the claimant's] request for a finding of permanent total disability, but awarded [the claimant] 22.5% of the person-as-a-whole in permanent partial disability. After considering all of the evidence, the Commission modifies this award to more accurately reflect the aggravation of [the claimant's] pre-existing lumbar complaints, or 10% of the person-as-a-whole."

¶ 52 The Commission did not apportion the claimant's loss between his employment-caused condition and his pre-existing condition. It reduced the arbitrator's award to one that it felt more accurately reflected the full nature and extent of the claimant's injury. Dr. Wehner, Dr. Graf, and Dr. Trotter found no objective support for the claimant's ongoing lumbar complaints and did not detect any change in the post-accident MRI scan from the pre-accident lumbar MRI scans performed in December 2007 and 2008. Dr. Wehner, Dr. Graf, and Dr. Trotter determined that the claimant was at maximum medical improvement as of October 5, 2009, and could return to work as of that date with no additional diagnostic or therapeutic intervention. The Commission based its decision to reduce the claimant's PPD award on the opinions of these physicians. The Commission acknowledged that the claimant suffered an accident that aggravated a pre-existing condition. It then held that he reached maximum medical improvement from this aggravation on October 5, 2009, and that all further treatment was unreasonable and unnecessary. The Commission awarded the claimant the PPD benefits that it felt reflected the full nature and extent of his injury. The Commission did not engage in any apportionment and committed no error of law.

¶ 53 The claimant argues that because the Commission failed to provide a rationale for finding Dr. Wehner, Dr. Graf, and Dr. Trotter more persuasive than his treating doctors, it is apparent that the Commission incorrectly based its reduction in medical and TTD benefits on the fact that he suffered from a pre-existing lumbar spine condition.

¶ 54 The Commission must make findings of fact and law. *Skzubel v. Illinois Workers' Compensation Comm'n*, 401 Ill. App. 3d 263, 269, 927 N.E.2d 1247, 1252 (2010).

Findings may be implied from the Commission's decision. *Id.* The rationale for requiring the Commission to make findings of fact and law is to make possible a judicial review of the decision. *Id.* The claimant argues that the Commission failed to state an adequate rationale for its partiality toward Dr. Wehner, Dr. Graf, and Dr. Trotter, and such a rationale could not be reasonably inferred. Because no rationale was provided, the claimant asserts that this court is left to infer that the Commission based its summary adoption of Dr. Wehner, Dr. Graf, and Dr. Trotter's opinions on the presence of a pre-existing condition.

¶ 55 "It is the Commission's province to judge the credibility of witnesses, to draw reasonable inferences from the testimony and to determine what weight the testimony is to be given." *Setzekorn v. Industrial Comm'n*, 353 Ill. App. 3d 1049, 1055, 820 N.E.2d 586, 591 (2004). The Commission is to resolve conflicts in medical evidence. *Id.* The Commission's determination on a question of fact will not be disturbed unless it is contrary to the manifest weight of the evidence. *Id.* A court of review will not discard reasonable inferences merely because other inferences could be drawn from the evidence. *Id.* "It is not the prerogative of the reviewing court to reweigh the evidence and substitute its judgment for that of the Commission." *Id.* at 1055, 820 N.E.2d at 591-92. "[I]t is for the Commission to decide which of two conflicting opinions should be accepted." *Id.* 820 N.E.2d at 592.

¶ 56 In the instant case, the Commission found that Dr. Wehner, Dr. Graf, and Dr. Trotter's opinions that the claimant could have returned to full duty work on October 5, 2009, were persuasive. It further found that the claimant reached maximum medical

improvement from his work related injury that caused an aggravation of his pre-existing degenerative lumbar spine condition on October 5, 2009, and that he required no additional treatment or diagnostic testing after that date. The Commission noted that Dr. Wehner, Dr. Graf, and Dr. Trotter all found no objective support for the claimant's ongoing lumbar complaint and did not detect any change in the post-accident MRI scan from the pre-accident lumbar MRI scans performed in December 2007 and 2008. It noted that the claimant's post-accident symptoms appeared no different from his pre-accident symptoms. The Commission judged the credibility of Dr. Wehner, Dr. Graf, and Dr. Trotter, drew reasonable inferences from their reports, and determined what weight to give the reports. It found that Dr. Wehner, Dr. Graf, and Dr. Trotter were credible, and there is evidence in the record to support this credibility determination. It resolved the conflicts in the medical evidence in favor of Dr. Wehner, Dr. Graf, and Dr. Trotter. The Commission is not required to provide a rationale for why it finds one physician more credible than another.

¶ 57 The claimant argues that the Commission did not include sufficient findings for this court to review its decision. Three physicians opined that the claimant had reached maximum medical improvement and was able to return to work on October 5, 2009. Their opinions were admitted into evidence. The Commission noted that Dr. Wehner's examination of the claimant was normal except for hyperreflexia and a positive Babinski's test, findings consistent with the claimant's residual effects from meningitis. It further noted that the claimant's leg complaints were nonanatomic and noted that the MRI scan showed only mild degenerative changes.

¶ 58 The Commission noted that Dr. Wehner, Dr. Graf, and Dr. Trotter did not detect any changes in the post-accident MRI scan from the lumbar MRI scans performed in December 2007 and 2008. On July 11, 2009, the day of the accident, the claimant was examined at Providence Progressive Medical Center. He complained of body pain from a work accident and was diagnosed with lumbar, shoulder, elbow, and hand pain. On July 15, 2009, the claimant had a lumbar spine radiograph. Dr. Musabji wrote in his report that the results of the radiograph were unremarkable and that he saw no significant degenerative disc disease. On July 28, 2009, the claimant had an MRI scan. Dr. Henkle wrote in his report that the claimant had a rightward disc bulge at L4-L5 with mild to moderate neuroforaminal narrowing, and mild multilevel degenerative disc disease at L2-L3, L3-L4, and L5-S1.

¶ 59 The claimant had MRI scans of his lumbar spine prior to his work accident. On December 29, 2007, the claimant had an MRI scan and Dr. Simon wrote in his report that the claimant had disc degeneration with spondylotic disc bulge and superimposed broad based central/left paracentral disc protrusion at L4-L5. The claimant had mild left, and mild right lateral narrowing with left L5 impingement. Dr. Simon noted that the claimant had L3-L4 disc degeneration with spondylotic disc bulge, and mild degenerative disease at L2-L3 and L5-S1. The claimant had another MRI scan on December 31, 2008. Dr. Lee wrote in her report that the claimant had mild narrowing of the intervertebral disc space at L4-L5, moderate to marked circumferential disc bulging at L4-L5, bilateral foraminal encroachment and narrowing of the lateral recesses at L4-L5, and mild circumferential disc bulging at L2-L3 and L3-L4. The findings on all three of these MRI

scans are similar. The disc bulge at L4-L5 was noted in all three MRI scans. The Commission's decision contains sufficient findings to permit this court to review its decision.

¶ 60 The claimant argues that the Commission's decision with respect to medical expenses and TTD benefits is against the manifest weight of the evidence. He argues that Dr. Wehner, Dr. Graf, and Dr. Trotter's opinions were inconsistent with his testimony and the records of his treating doctors. He asserts that his testimony and the medical records from his treating doctors represent the manifest weight of the evidence.

¶ 61 A reviewing court may overturn a Commission's decision only when the decision is contrary to law or if the fact determinations were against the manifest weight of the evidence. *Hamilton v. Industrial Comm'n*, 203 Ill. 2d 250, 254, 785 N.E.2d 839, 841 (2003). The Commission's decision on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 654, 801 N.E.2d 18, 26 (2003). It is the function of the Commission to decide questions of fact, judge witness credibility, and resolve conflicting evidence. *Id.* A finding of fact is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Id.* at 654, 801 N.E.2d at 26-27. "The determination of witness credibility and the weight to be accorded the evidence are matters within the province of the Commission." *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833, 769 N.E.2d 66, 71 (2002). The test of whether the Commission's decision is against the manifest weight of the evidence is whether there is sufficient

factual evidence in the record to support the Commission's determination, not whether this court, or any other tribunal, might reach an opposite conclusion. *Id.*

¶ 62 The determination of the period during which a claimant is temporarily totally disabled is a question of fact to be resolved by the Commission, whose determination will not be disturbed unless it is against the manifest weight of the evidence. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 142, 923 N.E.2d 266, 272 (2010). "A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit." *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542, 865 N.E.2d 342, 356 (2007). The dispositive inquiry is whether the claimant's condition has stabilized and he has reached maximum medical improvement. *Id.* In determining whether a claimant has reached maximum medical improvement, "a court may consider factors such as a release to return to work, medical testimony or evidence concerning the claimant's injury, the extent of the injury, and, most importantly, whether the injury has stabilized." *Id.*

¶ 63 In the instant case, the arbitrator awarded the claimant TTD benefits for 46 weeks commencing September 17, 2009, through August 5, 2010. The Commission decreased the TTD benefits award to 2 6/7 weeks. The claimant testified that following the accident he worked light-duty work through September 16, 2009. At that point he contacted the employer and advised them he was not able to work. Medical evidence was presented that the claimant reached maximum medical improvement and was able to return to full duty work as of October 5, 2009. Dr. Wehner reviewed the claimant's MRI scan and

found that it revealed mild degenerative changes. Based on her examination of the claimant on October 5, 2009, she felt he could return to full duty work and that he did not need any further diagnostic or therapeutic intervention. Dr. Graf opined that the claimant was at maximum medical improvement as of October 5, 2009. He found that the claimant's diagnosis of being totally and completely disabled bore no relationship to his work related injury. He stated that the claimant could return to his previous level of employment. Dr. Trotter performed a peer review of the claimant. He found that the claimant's only work related injuries were soft tissue sprain/strain injuries without evidence of disc herniation. He opined that the claimant had reached maximum medical improvement as of October 5, 2009, and that he was capable of full duty work. Three physicians found that the claimant had reached maximum medical improvement as of October 5, 2009, and that he could return to full duty work. There is sufficient evidence in the record to support the Commission's determination that the claimant was entitled to TTD benefits for a period of 2 6/7 weeks.

¶ 64 The claimant argues that the Commission's decision to decrease his award of medical benefits from \$75,429.99 to \$1,879.64 was against the manifest weight of the evidence. He argues that his pain complaints never subsided after his accident and that a positive EMG, MRI scan, and a discogram provide objective support for his complaints. He further asserts that because the Commission did not specifically find him or his treating doctors to be incredible, it follows that the Commission's reliance on Dr. Wehner, Dr. Graf, and Dr. Trotter was against the manifest weight of the evidence. He

contends that the manifest weight of the evidence supports the arbitrator's award of medical benefits.

¶ 65 Under section 8(a) of the Act (820 ILCS 305/8(a) (West 2008)), a claimant is entitled to recover reasonable medical expenses which are causally related to an accident arising out of and in the scope of his employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165 (2011). Whether a medical expense is reasonable or necessary is a question of fact for the Commission, and its determination will not be overturned on review unless it is against the manifest weight of the evidence. *Id.*

¶ 66 Dr. Wehner, Dr. Graf, and Dr. Trotter all opined that the medical services rendered after October 5, 2009, were neither medically reasonable nor necessary. Dr. Wehner is a board certified orthopedic surgeon. Dr. Graf is a board certified orthopedic spinal surgeon and a fellow of the American Academy of Orthopedic Surgeons. Dr. Trotter is a board certified orthopedic surgeon, a fellow of the American Academy of Orthopedic Surgeons, and a Diplomat of the American Board of Quality Assurance and Utilization Review Physicians. Their qualifications to give opinions regarding the reasonableness of the medical charges were un-rebutted. None of their opinions regarding the reasonableness of the medical charges were impeached or rebutted.

¶ 67 Dr. Wehner diagnosed the claimant with low back pain/sprain and contusion. In her report she noted that the claimant's clinical examination showed normal findings except for hyperreflexia and positive Babinski consistent with a previous diagnosis of

meningitis. Based on the claimant's MRI scan which showed mild degenerative changes, Dr. Wehner opined that there was no need for work restrictions and that there was no medical indication to perform injection treatment. She wrote that the claimant's subjective complaints of left leg pain were nonanatomic and were not supported by any positive straight leg raising. She felt that they might be related to his previous meningitis. She felt that the claimant had no need for orthotics. Dr. Wehner opined that the claimant had reached maximum medical improvement as of October 5, 2009, that he could return to work at full duty, and that there was no need for further diagnostic or therapeutic intervention.

¶ 68 Dr. Trotter performed a peer review and concluded that the only injuries the claimant sustained were soft tissue sprain/strain injuries without evidence of disc herniation. Dr. Trotter averred that the claimant had reached maximum medical improvement as of October 5, 2009, and that he was capable of full duty work. He stated that the length of the claimant's medical treatment was not appropriate because there was no need for any treatment as of October 5, 2009.

¶ 69 Dr. Graf opined that the claimant received extensive and inappropriate medical treatment. He was troubled that the claimant was referred to physical therapy and chiropractic care. Dr. Graf noted that during Dr. Montella's first two examinations of the claimant he had 5/5 strength to his bilateral upper and lower extremities with normal lumbar range of motion. When Dr. Graf examined the claimant he was unable to break the strength of his single index finger in any motor group throughout the left lower extremity. Dr. Graf found this "overly dramatic" and noted that the claimant was able to

self ambulate in and out of the examination room which was inconsistent with the claimant's demonstration of isolated motor strength. He wrote in his report that to a reasonable degree of medical and surgical certainty, he was unable to support the claimant's subjective complaints of pain and disability given the lack of objective findings. Dr. Graf averred that the claimant was at maximum medical improvement as of October 5, 2009, and that no further treatment or care was reasonable or necessary after that point. He opined that the claimant's disability bore no relationship to his work injury. He further stated that the percutaneous discectomy that was performed was neither reasonable, necessary, nor medically indicated. He felt that the fact that the claimant had almost no pain relief following the procedure supported this opinion.

¶ 70 Dr. Wehner, Dr. Trotter, and Dr. Graf all opined that the claimant had reached maximum medical improvement as of October 5, 2009, and that any medical treatment after that date was neither reasonable nor necessary. The employer conceded it was responsible for all reasonable and related medical expenses up to October 5, 2009, totaling \$1,879.64. There was sufficient factual evidence to support the Commission's decision not to allow any medical expenses incurred after October 5, 2009, because the claimant required no additional treatment or diagnostic testing after that date.

¶ 71 **CONCLUSION**

¶ 72 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, confirming the decision of the Commission.

¶ 73 Affirmed.

