# ILLINOIS OFFICIAL REPORTS

## Appellate Court

***Kawa v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120469WC**

| | |
|---|---|
| Appellate Court Caption | BRYON KAWA, Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Ford Motor Company, Appellee). |
| District & No. | First District, Workers' Compensation Commission Division<br>Docket No. 1-12-0469WC |
| Rule 23 Order filed | February 4, 2013 |
| Rule 23 Order withdrawn | June 3, 2013 |
| Opinion filed | June 3, 2013 |
| Held<br>(*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*) | In the matter of claimant's application for workers' compensation benefits for the injuries he suffered in a work-related vehicular accident, the confirmation of the Workers' Compensation Commission's decision that claimant had reached maximum medical improvement and denying temporary total disability, vocational rehabilitation and maintenance benefits was reversed and the cause was remanded for reconsideration of those issues, but the portion of the judgment denying penalties and attorney fees and the calculation of claimant's average weekly wage was upheld, since claimant proved his condition was related to the accident and the denial of temporary total disability, medical, vocational rehabilitation and maintenance benefits required reconsideration. |
| Decision Under Review | Appeal from the Circuit Court of Cook County, No. 11-L-50726; the Hon. Margaret Ann Brennan, Judge, presiding. |

| | |
|---|---|
| Judgment | Affirmed in part and reversed in part; cause remanded. |
| Counsel on Appeal | Cullen, Haskins, Nicholson & Menchetti, PC, of Chicago (John W. Powers, of counsel), for appellant.<br><br>Power & Cronin, Ltd., of Oak Brook (John P. Fassola and Kunal M. Ganti, of counsel), for appellee. |
| Panel | JUSTICE STEWART delivered the judgment of the court, with opinion.<br>Presiding Justice Holdridge and Justices Hoffman and Hudson concurred in the judgment and opinion.<br>Justice Turner specially concurred in part and dissented in part, with opinion. |

## OPINION

¶ 1 The claimant, Bryon Kawa, was employed as a launch engineer for the employer, Ford Motor Co., when he was involved in a job-related vehicle accident. As a result of the accident, the claimant underwent treatments for injuries to his right shoulder, right knee, and low back, and the claimant has experienced continuous shoulder, back, and knee pain since the date of the accident. After a hearing pursuant to section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/19(b) (West 2010)), the arbitrator found that the claimant engaged in an injurious practice, which both imperiled and retarded his recovery, by declining to participate in a multidisciplinary pain management program that included psychological treatments. The arbitrator further found that, due to the claimant's failure to participate in the multidisciplinary pain management program, he failed to prove that his conditions of ill-being were causally related to the work accident and found that he was at maximum medical improvement (MMI) as of February 25, 2008, the day his treating physician recommended the multidisciplinary pain management program. The arbitrator also found that "any and all treatment after February 25, 2008, was and is neither necessary nor reasonable unless and until [the claimant] fully complies with the prescription of participation in a multidisciplinary pain management program with strong psychological elements." The arbitrator denied temporary total disability (TTD) benefits after June 4, 2008, and found that the claimant was not entitled to any further TTD benefits until he completed the multidisciplinary pain management program. The arbitrator also denied vocational rehabilitation and maintenance benefits and denied the claimant's request for penalties and attorney fees.

¶ 2 The claimant appealed the arbitrator's decision to the Workers' Compensation

Commission (Commission). The Commission affirmed and adopted the arbitrator's decision, except that the Commission found that the claimant did not engage in an injurious practice by declining to participate in the multidisciplinary pain management program. The Commission found, however, that the claimant had reached MMI because he "chose not to avail himself of further treatment." The claimant appealed the Commission's decision to the circuit court, and the circuit court entered a judgment confirming the Commission's decision. The claimant now appeals the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 The claimant worked for the employer as a launch engineer at an assembly plant in Chicago, Illinois. The claimant's job required him to lift components and teach operators how to use particular pieces of equipment. He had to bend, stoop, and move around vehicles. The weight of the components that the claimant had to lift varied between 1 and 50 pounds. In addition, the claimant's job duties required a lot of walking inside the employer's large manufacturing facility. The claimant estimated that he walked about five miles each day inside the facility. The claimant typically worked 10- to 12-hour shifts. The employer's vocational rehabilitation consultant, Julie Bose, believed that the claimant's job would be classified as sedentary-light on the Matheson's classification scale. However, she never actually observed a launch engineer's job duties, and the employer had not provided her with a written job description.

¶ 5 On February 13, 2007, the employer sent the claimant and four other workers to its assembly plant located in Dearborn, Michigan. The claimant rode in the backseat of a 12-passenger van owned by the employer. During the ride to Dearborn, the driver lost control of the van. The van skidded and rolled 360 degrees. The claimant estimated that the van was traveling between 50 and 60 miles per hour when the driver lost control. The claimant had been wearing his seatbelt, but when the van stopped rolling, he was on the van's floorboard.

¶ 6 The claimant testified that he sustained bruising on the left side and on the back of his head, as well as injuries to his neck, back, chest, right shoulder, and right knee. An ambulance carried the claimant to a nearby hospital for emergency medical treatment. Records from the emergency room indicate that the claimant had tenderness in his right shoulder, mid chest, right knee, and back and had an abrasion on his right shoulder. At the hospital, the emergency room staff took CT scans of the claimant's neck, chest, abdomen, head, and low back. The CT scan of the lumbar spine showed a "[s]mall central disc protrusion at the L5-S1 level without spinal stenosis." They also took X-rays of his right leg and shoulder. According to the imaging report, the X-rays showed no right knee fracture and "no focal lysis." In addition, the surrounding soft tissues of the knee showed no abnormality. The X-ray of the right shoulder showed an "acromioclavicular separation." The emergency room staff provided the claimant with a sling for his right arm and pain medication.

¶ 7 After the accident, the claimant contacted his primary care physician, Dr. Evan Geissler, who referred the claimant to Dr. Nicole Einhorn. The claimant first saw Dr. Einhorn on February 19, 2007. She examined the claimant's right shoulder and right knee and took additional X-rays. She also recommended an MRI of the claimant's right shoulder. Dr.

Einhorn's diagnosis of the claimant's right shoulder was a high-grade A/C joint separation. Dr. Einhorn indicated in her report that she would schedule the surgery "once workers comp approval is given." Dr. Einhorn prescribed pain medication and recommended the surgery on the claimant's right shoulder. The claimant testified that during his initial visits with Dr. Einhorn, he was in extreme pain. He described the pain as a 10 on a scale of 1 to 10. In addition, he had difficulty sleeping because of the right shoulder and right collarbone pain. The slightest movement of the shoulder caused him extreme pain.

¶ 8 On March 12, 2007, at the request of the employer, the claimant submitted to an independent medical examination (IME) conducted by Dr. Blair Rhode. Dr. Rhode's examination focused primarily on the claimant's right shoulder, but the claimant testified that he also examined his knee. Dr. Rhode recommended conservative care including the use of a sling. Dr. Rhode also noted that the claimant was negative for anxiety and depression.

¶ 9 On March 21, 2007, the claimant began treatments by Dr. Koh. Dr. Koh noted that the claimant was in a significant amount of pain and was taking high doses of narcotic medication. He prescribed Norco and also recommended surgery on the right shoulder.

¶ 10 On May 10, 2007, Dr. Koh performed the surgery on the claimant's right shoulder. The claimant continued to follow up with Dr. Koh after the surgery. The claimant testified that after the surgery, he noticed that he had difficulty moving his shoulder through a full range of motion. He still experienced a lot of pain when he tried to move his shoulder in a normal manner. He testified that he did not have any problems with his right shoulder, low back, or right knee prior to the accident. On May 10, 2007, the claimant also began treatments with Dr. Nader for pain management and low back pain.

¶ 11 Dr. Koh saw the claimant on May 18, 2007. Dr. Koh noted that the claimant had lost some range of motion in his shoulder and encouraged the claimant to start moving and using his arm to try to get some motion back. He prescribed physical therapy for the right shoulder. On May 31, 2007, the claimant began physical therapy three times per week.

¶ 12 The claimant went back for a second IME with Dr. Rhode on June 8, 2007. Dr. Rhode wrote in his report that the claimant presented for an IME of his right shoulder, lower back, and right knee. Dr. Rhode wrote that "[t]he claimant is mildly magnified in his symptomatology. He is essentially inhibitory to examination relative to his right shoulder due to pain." Dr. Rhode diagnosed the claimant with grade 3 acromioclavicular separation–post open repair and lumbar strain.

¶ 13 After seeing Dr. Rhode for the second IME, the claimant continued with his physical therapy. On June 15, 2007, an MRI scan was taken of the claimant's right knee. The radiologist's impression from the MRI included "very small right joint effusion," and "very mild chondromalacia patellae." At this time, the claimant was still using a sling most of the time, except during therapy. Physical therapy notes indicate that the claimant reported that he experienced high intensity pain when he took off his sling.

¶ 14 The claimant saw Dr. Koh on July 6, 2007, and he recommended different medications and continued physical therapy for the claimant's shoulder. The claimant continued with the physical therapy through July and August 2007. At this time, the claimant was on high doses of Norco every four to six hours and had limited ability to move his arm. Dr. Koh believed

that the claimant would remain on complete disability at this time, but would be able to return to desk work after an arthroscopic capsular release on the claimant's right shoulder.

¶ 15 Physical therapy progress notes from July 2007 indicate that the claimant was progressing slowly with respect to his shoulder and knee. On August 22, 2007, the claimant saw Dr. Koh, who took additional X-rays and recommended continued physical therapy and the arthroscopic capsular release to improve the range of motion in the claimant's right shoulder. Dr. Koh's notes indicate that the claimant still experienced anterior medial pain in his right knee. The claimant was given a knee injection, and he continued with physical therapy for his knee and shoulder. Dr. Koh also referred the claimant to Dr. Rittenburg for low back treatments.

¶ 16 The claimant saw Dr. Rittenburg on August 31, 2007. He recommended an MRI of the lumbar spine to evaluate for any disc pathology or other underlying injury. He diagnosed chronic axial low back pain. In his report, Dr. Rittenburg wrote that it was likely that the claimant's back would be addressed after the claimant's scheduled shoulder surgery.

¶ 17 Dr. Koh performed the arthroscopic capsular release on the claimant's right shoulder on September 10, 2007. The claimant continued with physical therapy after the surgery and continued to follow up with Dr. Koh.

¶ 18 On September 22, 2007, an MRI of the clamant's lumbar spine was taken. The radiologist's impression from the MRI was "Mild degenerative changes in the lower spine but no spinal canal or neuroforaminal stenosis." Dr. Rittenburg prescribed physical therapy for the claimant's lower back that included pool treatment, strengthening exercises, and ultrasound.

¶ 19 As of October 2007, the claimant was still using a sling. Dr. Koh wrote in a report dated October 26, 2007, that he recommended continued physical therapy for the claimant's shoulder and knee and that he did not think that the claimant was able to do any sort of lifting or activity with his right arm, including using a computer mouse. He also noted right knee pain.

¶ 20 The claimant saw Dr. Rhode a third time for an IME on November 26, 2007. With respect to the claimant's shoulder, Dr. Rhode diagnosed the claimant as having a grade 3 acromioclavicular separation–six months post open repair and two months post arthroscopic lysis of adhesions. Dr. Rhode noted that there was significant loss of range of motion in the claimant's right arm and believed that there was "a significant psychological component to the claimant's current shoulder disease state that will require management." With respect to the claimant's low back, Dr. Rhode diagnosed the claimant as having a lumbar strain. In his report, he wrote, "I believe the claimant demonstrates evidence of persistent low back pain due to lumbar dysfunction due to a lumbar strain sustained in a motor vehicle accident." He felt that there was also a psychological component with respect to the claimant's low back condition. With respect to the claimant's right knee pain, Dr. Rhode wrote that the claimant appears to exhibit significant pain referred to the medial parapatellar retinaculum. He wrote, "As with the shoulder and lumbar issues, I am concerned that the claimant's psychological state of being will supersede any intervention from a musculoskeletal standpoint at this current time."

¶ 21 Dr. Rhode recommended a psychiatric evaluation, continued aggressive physical therapy with the right shoulder, and a multidisciplinary approach with respect to the lumbar spine. Dr. Rhode wrote that he would be extremely cautious in proceeding with any invasive treatment on the claimant's knee based on his assessment that "the claimant's psychological state supercedes any anatomic pathology at this point."

¶ 22 Physical therapy progress reports from December 2007 indicate that the claimant continued to progress slowly with respect to pain, mobility, and strength goals.

¶ 23 On December 28, 2007, the employer's vocational rehabilitation consultant, Julie Bose, attended the claimant's appointment with Dr. Koh. Bose met the claimant in Dr. Koh's waiting room and began asking him medical questions while they were in the waiting room. According to Bose, the claimant would not confirm or deny his identity. According to the claimant, however, he did not want to disclose his private medical information in the company of other patients in the waiting room.

¶ 24 The claimant met with Dr. Koh, and Bose later came in and spoke with the doctor. Bose wrote in her report concerning her meeting with Dr. Koh that there was a tentative diagnosis of frozen shoulder or adhesive capsulitis that was partially derived from the claimant not using his right arm. Dr. Koh recommended that the claimant discontinue the use of the sling because it was making his frozen shoulder worse. In his December 28, 2007, report, Dr. Koh wrote that the claimant "still had a lot of pain in his shoulder, a 9/10 and also anterior medial knee pain and plica." The claimant had no use of his right arm and could not do any significant work involving squatting, kneeling, standing, or walking.

¶ 25 According to Bose, Dr. Koh recommended a psychiatric or a psychological evaluation. The doctor agreed to Bose's suggestion of a comprehensive pain evaluation that included psychiatric or a psychological component. Dr. Koh indicated that he had good experiences with Rehabilitation Institute of Chicago (RIC), which is a multidisciplinary program as opposed to an anesthesiology-based program. Dr. Koh made the recommendation for the claimant to be evaluated by RIC, and the employer approved Dr. Koh's recommendation.

¶ 26 On January 8, 2008, the employer sent the claimant a letter informing him that he had been placed on "no work available status" effective January 2, 2008, due to the following medical restrictions: avoid repetitive squatting, kneeling, prolonged standing, walking; no use of right arm; and no driving. On February 26, 2008, the employer sent the claimant another letter again stating that he had been placed on "no work available" status since January 3, 2008.

¶ 27 On February 25, 2008, the claimant went to RIC, and he was interviewed by various vocational specialists and doctors. A report of his psychological evaluation states that the claimant's "pain problem appears to be affected by psychosocial factors that could be addressed with psychological intervention." The report also states that the claimant "appears to be focused on further medical intervention, but with education may be open to a more multi-disciplinary approach to pain management that would include psychological intervention." A report from a physician's evaluation indicated that the claimant suffered from: (1) post right acromioclavicular joint reconstruction secondary to acromioclavicular joint separation, (2) right shoulder adhesive capsulitis status post arthroscopic capsular

release and manipulation under anesthesia, (3) chronic low back pain not otherwise specified, (4) multilevel midlumbar degenerative disc disease, (5) right patellofemoral pain syndrome plus/minus pes bursitis, and (6) mild myofascial pain syndrome, lumbar region.

¶ 28 According to Bose, the staff at RIC believed that the claimant was "a bit on the paranoid side" and was skeptical about their program. After their evaluation, RIC staff recommended that the claimant would benefit from their pain program if Dr. Koh could send a letter stating that he could attend the program without use of a sling, that knee surgery was not scheduled, and that the claimant could participate fully in the program.

¶ 29 The claimant testified that after his initial visit at RIC, someone scheduled the treatments at RIC to begin on March 17, 2008. According to the claimant, the March 17, 2008, appointment at RIC was made without his input or consent and before Dr. Koh had read any reports or documents relevant to RIC's recommended program. The claimant testified that he was not comfortable with RIC because a lot of the questions he was asked at RIC concerned jobs he had applied for, social security benefits, salary information, and whether he had filed a products liability lawsuit. He was also uncomfortable with having to go to Chicago every day for the program from his home in Indiana, and he believed that RIC had less equipment than the hospital where he was then undergoing physical therapy. For these reasons, he decided not to attend the appointment at RIC scheduled for March 17, 2008. According to Bose, Dr. Koh furnished RIC with written authorization for the claimant to participate in the program. In addition, Bose testified that the employer agreed to furnish the claimant with lodgings in the area of the RIC program so he could attend the program.

¶ 30 Bose testified that on March 12, 2008, with the prior approval of the claimant's attorney, she arrived at a scheduled visit with Dr. Koh and the claimant. The claimant would not speak with Bose but allowed her to speak with Dr. Koh in his presence. Dr. Koh told Bose that the claimant had some concerns about the RIC pain program, that the claimant felt that he was asked some questions that were inappropriate, and that the claimant did not have confidence in the program. Dr. Koh said that the claimant would rather attend a pain program in Indiana. Dr. Koh told Bose that the claimant should continue with therapy because he was making some progress and that if the claimant did not want to go to RIC, they could consider an alternative program. Dr. Koh stated that he preferred a multidisciplinary program.

¶ 31 On March 12, 2008, Dr. Koh wrote in his report that he believed that the claimant was improving and recommended continued physical therapy and continuing his physical restrictions. He wrote that the claimant was not comfortable with the RIC program and felt "extremely strong" about it. Dr. Koh believed that, while the benefit of the RIC pain management program was high, if the claimant was not willing to participate, an alternative pain management program would be reasonable to consider.

¶ 32 The employer, however, never recommended or approved an alternative pain management program. Instead, on March 25, 2008, the employer filed a motion to suspend benefits pursuant to section 19(d) of the Act. In the motion, the employer admitted that the work-related accident occurred, that the claimant sustained injuries as a result of the accident, and that the claimant underwent treatment for his right shoulder, right knee, and lower back, but that he had not returned to work. The employer alleged that the claimant would benefit

from the interdisciplinary pain management program at RIC, but the claimant had refused to participate. The employer concluded that the claimant's failure to enter the RIC program constituted "an injurious practice, which has both imperiled and retarded his recovery." Therefore, the employer requested a suspension of the claimant's compensation pursuant to section 19(d) of the Act (820 ILCS 305/19(d) (West 2008)).

¶ 33 Instead of the RIC program, Dr. Koh referred the claimant to a pain management program at St. Margaret Mercy Hospital in northwest Indiana that was closer to the claimant's home. According to Bose, the St. Margaret Mercy program is not a multidisciplinary program but was an anesthesiology-based program. She did not believe that the claimant's participation in a non-multidisciplinary pain program would be effective because Dr. Koh and other physicians who had evaluated the claimant believed that there was "a psychological overlay." Nonetheless, she testified that the type of approach that St. Margaret Mercy provided could have some positive effect. Because the claimant was adamantly opposed to the RIC program, Bose believed that the claimant's attendance in the RIC program would likely have been unsuccessful.

¶ 34 The employer's workers' compensation claims representative, Jennifer Nawracaj, also testified that the St. Margaret Mercy program is anesthesia based. She testified that it included injections and medications. Nawracaj testified that she did not approve the program because a multidisciplinary approach had been recommended for the claimant.

¶ 35 On May 28, 2008, Dr. Koh wrote that the claimant was making slow but steady progress in physical therapy. The claimant's therapist, Sarah Skinner, believed that he was ready for work conditioning. Dr. Koh recommended work conditioning followed by a baseline functional capacity evaluation (FCE). Bose testified that she attended the claimant's May 28, 2008, examination with Dr. Koh. According to Bose, at that evaluation, Dr. Koh indicated that the claimant could do sedentary work, but could not do significant squatting, kneeling, standing, or walking, and that his right arm should not be elevated above 90 degrees. In addition, the claimant was able to drive for only short distances, 10 to 15 minutes, due to shoulder pain.

¶ 36 On June 2, 2008, the employer's attorney sent the claimant a letter indicating that the employer had the ability to accommodate the claimant's work restrictions. On June 6, 2008, the claimant met with Christina Peace, who was a training supervisor working for the employer at the Chicago assembly plant. The claimant met with Peace to talk about returning to work with the employer. At that time, the claimant's launch engineer position had been filled and was no longer open. Peace told the claimant that the only open position that was available at the Chicago plant was production supervisor. According to Peace, the claimant told him that he was not interested in that position because he was physically unable to perform the duties. Peace testified that the claimant reported an inability to drive, that his arm was not fully functional and was still in a sling, and that the claimant may have mentioned something about his back. The claimant told Peace that he wanted to remain an engineer. Peace provided the claimant with postings for various jobs with the employer at locations other than the Chicago assembly plant. According to the claimant, none of the listed jobs were located in Illinois or Indiana. Most of the jobs were located in Michigan.

¶ 37 On June 9, 2008, the claimant submitted to an IME conducted by Dr. Bare at the request of the employer. In his report, Dr. Bare wrote that his diagnosis was "Right shoulder mild residual adhesive capsulitis, knee pain." He did not believe that the claimant's "subjective and objective findings correlate." He also did not believe any further physical therapy was warranted. In addition, he did not believe that a multidisciplinary pain approach would help the claimant at that point in time. He wrote that it may have been beneficial when it was originally prescribed, but he felt that it was past the point in which it would be helpful. He recommended weaning the claimant off narcotic medications and utilizing anti-inflammatories for pain. Dr. Bare felt that the claimant was doing better than the claimant believed he was doing and that the claimant would be able to do all activities except heavy overhead lifting with his right shoulder. According to Dr. Bare, squatting, kneeling, and driving were very reasonable for the claimant. He did not feel that the claimant's knee warranted any restrictions. He did not believe that the claimant was at MMI and recommended that he continue with stretching and strengthening. He believed that the claimant "should be able to resume his normal activities as an engineer at this time."

¶ 38 On June 10, 2008, Peace sent the claimant a letter informing him that he was cleared to work on June 4, 2008, and she included a list of available positions with the employer.

¶ 39 A physical therapy report dated June 23, 2008, indicated that physical therapy treatments for the claimant's right shoulder had resulted in improvement in the areas of functional passive and active range of motion, assisted mobility, and functional strength. Treatments of the right knee focused on restoring standing strength/endurance and long distance community ambulation. The claimant reported ongoing difficulty with ambulation as a result of "knee pain during stance phase, patellar pathology, and reports of instability during midstance on his right lower extremity."

¶ 40 On July 3, 2008, Peace provided the claimant with additional job listings with the employer. Peace testified that she provided the claimant with the lists of openings with the employer on a weekly basis.

¶ 41 On July 10, 2008, Peace sent another letter to the claimant concerning job listings with the employer. According to the claimant, Peace told him that there was no guarantee he could get any particular position, but that she would help him submit his resume internally. Peace testified that she thought that some of the open positions were sedentary, desk-based positions. The claimant testified that he did not apply for any of the job listings that Peace provided because he was undergoing treatments and therapy and none of the jobs were located nearby, and he did not believe that he could drive for long periods of time.

¶ 42 The claimant was terminated from the employer in July 2008.

¶ 43 Dr. Koh's August 22, 2008, report states that the claimant still had complaints of right shoulder pain and weakness and right anteromedial knee pain and discomfort. Dr. Koh's diagnosis at that time was plica syndrome, synovitis of the knee, arthrofibrosis, adhesive capsulitis of the shoulder, and rotator cuff tendinitis. Concerning the claimant's shoulder, Dr. Koh recommended pain management followed by work conditioning and a FCE to determine his final function level with regard to his shoulder. With respect to the claimant's knee, he recommended a right knee arthroscopic plica resection. He noted that nonsurgical

management, including physical therapy and injection around the plica had failed. Dr. Koh continued restricting the claimant to driving no greater than 10 to 15 minutes, no repetitive squatting, kneeling, standing, walking, or using the right arm beyond 90 degrees.

¶ 44 The claimant first went to St. Margaret Mercy for pain management on September 18, 2008. At St. Margaret Mercy, the claimant was treated by Dr. Ravi Kanakamedala. Dr. Kanakamedala primarily treated the conditions of the claimant's back, including numbness and tingling in his low back and legs. He prescribed medications and additional physical therapy. At the same time, the claimant continued treatments with Dr. Koh.

¶ 45 An October 20, 2008, reevaluation report from Dr. Dasari at the St. Margaret Mercy pain management center indicated that the claimant was dealing with shoulder and right knee pain. Dr. Dasari recommended continued physical therapy and chiropractic manipulation and a bilateral L5 transforaminal epidural steroid injection if the claimant's back pain persisted.

¶ 46 On October 27, 2008, Dr. Koh performed arthroscopic surgery on the claimant's right knee. Dr. Koh's diagnosis of the claimant's knee was "Right knee medial plica syndrome." After the surgery, the claimant walked with the assistance of a crutch for a while. At that time, the claimant was receiving physical therapy for his knee, back, and shoulder three times per week.

¶ 47 In January 2009, the claimant began treatments with a chiropractor, Dr. Hammett, upon a referral from Dr. Kanakamedala. Dr. Hammett examined the claimant, took X-rays, and began chiropractic treatments. At first, Dr. Hammett treated the claimant three times per week. At the time of the hearing, she was treating him two times per month. On January 14, 2009, Dr. Koh limited the claimant to only sedentary work and use of the right shoulder to only below the shoulder level.

¶ 48 Dr. Kanakamedala's reevaluation report dated January 29, 2009, indicated that the claimant's spine showed decreased lordosis, mild tenderness over the spinous process of L4-L5, and that the claimant had a decreased range of motion in his shoulder. According to Dr. Kanakamedala, the claimant was suffering from lumbar disc disease, shoulder arthritis, and knee arthritis.

¶ 49 At the employer's request, the claimant saw Dr. Bare for another IME on February 26, 2009. In his written report, Dr. Bare wrote that the claimant complained of a lot of difficulty with his right hand, right upper extremity, and his right knee which were limiting his ability to do the normal activities of daily living. Dr. Bare's diagnosis was "Right upper extremity pain, right knee pain." Dr. Bare wrote that the claimant "continues to exhibit subjective complaints that do not have objective basis for his subjective complaints." He believed that the claimant had reached MMI for his shoulder and his knee following the accident and needed "no further orthopaedic work-up or care and no further physical therapy." Based on his examination which revealed no objective deficits or findings, he believed that the claimant could return to work full duty without restrictions, and he believed that the claimant's continued use of the sling was counterproductive.

¶ 50 He recommended that the claimant pursue the psychological evaluation and care that had been previously recommended. He wrote that he agreed with pain management through the pain specialists and recommended that he continue to treat with Dr. Ravi Kanakamedala. He

did not find any evidence to suggest chronic regional pain syndrome and believed that the claimant should be weaned from medications over three to six months.

¶ 51 Dr. Bare wrote that the surgical procedures had been reasonable and within the realm of standard care. With respect to the knee surgery, he wrote as follows:

> "I was suspect of him getting any better following the arthroscopy, which he does not have appeared to have gotten much better. I believe it was reasonable to perform knee arthroscopy after failing extensive conservative management which he did. Thus I believe it was reasonable."

¶ 52 After Dr. Bare's examination, the claimant continued his treatments with Dr. Kanakamedala and Dr. Koh. On March 5, 2009, Dr. Kanakamedala recommended continuing with medications and chiropractic adjustments for the low back.

¶ 53 A report by Dr. Kanakamedala dated April 2, 2009, states that the claimant's pain was being managed with Norco and Celebrex and that the medications reduced his pain by 70%. Dr. Kanakamedala wrote that the claimant's "pain medications will be refilled as he is not showing signs of addiction or aberrant use." A reevaluation by Dr. Kanakamedala on April 30, 2009, states that the claimant was being treated with Norco and Lyrica. The doctor recommended that the claimant continue with his medications. In his reevaluation report dated May 29, 2009, Dr. Kanakamedala recommended continuing with medications and a consideration of an epidural steroid injection to bring the pain down. At this time, the claimant reported that his pain was reduced by 40% with medications.

¶ 54 In a deposition taken on May 4, 2009, Dr. Koh testified that the claimant was suffering from chronic pain issues concerning his right shoulder. With respect to the claimant's knee, Dr. Koh testified that the claimant had an inflamed plica which was not uncommon after a traumatic injury to the knee. Dr. Koh believed that this knee condition was the result of the rollover accident. Dr. Koh believed that the claimant had developed "complex regional pain syndrome" in his shoulder which is a condition in which the patient has pain in excess and out of proportion to the amount of physical damage. He believed that physical therapy and pain management were important parts of the claimant's treatment. Dr. Koh also wanted to avoid the claimant developing chronic pain syndrome with respect to his knee. He testified that chronic pain syndrome "may actually be part of the reason why he has some continued discomfort around his knee" and that the usual treatment for chronic pain syndrome is medications and physical therapy.

¶ 55 Dr. Koh testified that, concerning the right shoulder, he recommended light-duty work at or below the level of the claimant's shoulder. According to Dr. Koh, the claimant cannot do any significant lifting with his right arm. In addition, because the claimant had a significant amount of pain while driving, he limited the claimant's driving to no more than 15 to 20 minutes. The doctor also noted that the claimant's use of narcotic pain medications could adversely affect his driving ability.

¶ 56 Dr. Koh did not feel that he was able to quantify the final restrictions necessary for the claimant until he reached MMI and underwent a function capacity evaluation. Dr. Koh testified that he has discouraged the claimant from using a sling because it added to his adhesive capulitis, but the claimant continued to use the sling because he has constant pain

around his shoulder. He testified that the claimant's ability to squat, kneel, stand, and walk were improving, but his progress had been slow, which was not uncommon with patients with chronic pain syndrome. Dr. Koh testified that he was not an expert at managing chronic pain syndrome, which is why he referred the claimant to different experts in that area. Dr. Koh believed that the claimant may always have some component of chronic pain syndrome.

¶ 57 Dr. Koh was uncertain how much more he could offer the claimant from an orthopaedic point of view. He testified that he would defer to the pain management specialists who were involved with his care. He believed that it was likely that the claimant would have some permanent limitations with respect to his right shoulder. He testified that there were definitely psychosocial elements to the claimant's complaints because it had been emotionally difficult for the claimant to be injured and out of work. He believed that there would be value to addressing the psychosocial element to the claimant's complaints.

¶ 58 Dr. Koh did not believe that the claimant was lying about his pain. He testified, "[H]e does have *** some of the elements of a complex pain syndrome, the swelling, the hand changes *** that's a consistent medical, physical correlation with a pain syndrome."

¶ 59 Dr. Koh testified that, at the time of the deposition, the claimant was restricted from driving more than short distances because of pain and the limited movement of his right shoulder. Driving would not be safe or comfortable for the claimant.

¶ 60 On June 4, 2009, at the request of Dr. Koh, the claimant underwent a functional capacity evaluation. The claimant then underwent a six-week work hardening program beginning on June 15, 2009. Once the work hardening program began, the claimant's physical therapy ended. The work hardening program was five days per week and primarily focused on gaining more strength in his knee, back, and shoulder. In addition, the program provided stretching of the shoulder joint. The claimant testified that, over the course of the work hardening program, he gained some strength in his right arm and, with the help of physical therapy and chiropractic treatments, gained a little more range of motion, but still had a problem with swelling in his right hand.

¶ 61 He also noticed that when he changed from one piece of equipment to another, his legs would go numb. Also, he testified that a change in the weather causes extreme discomfort in his shoulder, collarbone, knee, and low back.

¶ 62 A reevaluation report dated July 9, 2009, by Dr. Kanakamedala stated that the claimant continued to experience unresolved pain in his right shoulder, low back, and neck, but that the claimant would like to finish seeing a chiropractor before undergoing an epidural steroid injection for low back and leg pain. Dr. Kanakamedala continued treatments with medications (Norco and Lyrica) and encouraged the claimant to use a TENS unit on his shoulder and back.

¶ 63 In a letter dated June 17, 2009, Dr. Bare opined that the FCE was conducted adequately. Although he stated in his letter that the claimant was at MMI and that he did not believe that a work hardening program would be beneficial, he also stated that the claimant would likely "need to be on [prescription] medications indefinitely if a multi-disciplinary pain regimen is not offered and given to him." He believed that a multidisciplinary pain management program was "necessary."

¶ 64 After the claimant completed the work hardening program, he underwent a second FCE on July 22, 2009.

¶ 65 On August 13, 2009, the claimant had a follow up visit with Dr. Koh, which was the last visit with Dr. Koh prior to the arbitration hearing. At the August 13, 2009, visit, Dr. Koh gave the claimant injections for his shoulder and knee. The claimant also saw Dr. Kanakamedala on August 20, 2009.

¶ 66 At the time of the hearing, the claimant was still being treated by Dr. Hammett and Dr. Koh, and was scheduled to see Dr. Nader with respect to shoulder and knee pain and to develop a possible course of action. In a report dated August 13, 2009, Dr. Koh wrote that he believed that the claimant was at MMI and that he had permanent restrictions with respect to his right shoulder and his ability to stand, stoop, squat, and kneel.

¶ 67 On October 5, 2009, the arbitrator began a hearing pursuant to section 19(b) of the Act. At the time of the arbitration hearing, the claimant was taking Norco two times per day, Celebrex once per day, and Lyrica once per day. In addition, the claimant testified that he used a TENS unit. He testified that he had not used a sling for "quite a while" but used a cane for longer walks. He testified that for short distances, he could walk without the use of a cane, but most of the time, he used the cane because his right leg fatigues. The cane, however, was not prescribed by any of his doctors. He testified that he still had problems with numbness in his legs, certain movements with his shoulder, swelling and tingling sensation in his fingers, knee pain, and lack of grip strength. He still experienced tightness, soreness, and tingling from his low back and into his legs. He testified that many of the symptoms manifest themselves when the weather changes.

¶ 68 At the conclusion of the hearing, the arbitrator found that there was no dispute that the claimant sustained injuries to his neck, back, chest, right shoulder, and right knee as a result of the work-related vehicle accident. At the time of the arbitration hearing, however, the claimant's subjective complaints of pain in his low back, right shoulder, and right knee did not comport with the objective findings. Based on the evidence presented, the arbitrator concluded that the claimant's condition of ill-being "may be entirely related to psycho-emotional conditions which may or may not arise from his accident of February 13, 2007." The arbitrator continued:

> "[The claimant's] own refusal to follow his doctor's prescription for multi-disciplinary pain management with a strong psychological element is the reason that we cannot determine the nature and extent of his psycho-emotional ill-being, nor if those conditions explain his entire complaints to the elimination of any physical ill-being. The severity of the shock experienced by [the claimant] in his accident of February 13, 2007, certainly could have lead to psycho-emotional trauma that now have lead to somatization into the subjective pain complaints he no[w] continues to report. The prescription of psycho-emotional evaluation and treatment, which he refused to follow, may have given him the tools he needs to appropriately respond to his new psycho-emotional condition.
>
> Based on the foregoing, the Arbitrator concludes that [the claimant's] refusal to comply with his treater's prescription makes it impossible to determine if he has any condition of physical ill-being or if his complaints are solely attributable to his

somatization from his psycho-emotional conditions. It also makes it impossible to determine what condition of psychoemotional conditions of ill-being he suffers, what treatment may be available to resolve those conditions or if those conditions are causally related to his accident of February 13, 2007. Accordingly, the Arbitrator concludes that [the claimant] has failed to meet his burden of proving what conditions of ill-being, if any, he presently suffers and whether or not those conditions, if any, are causally related to his accident of February 13, 2007."

¶ 69 The arbitrator also found that the claimant's refusal to participate in a multidisciplinary pain management program with strong psychological elements was and is an injurious practice preventing improvement or recovery from his psychoemotional condition and preventing the claimant from returning to the jobs offered to him by the employer within the physical restrictions placed on the claimant by his treating doctors. The arbitrator further concluded "that the reasonable and necessary treatment of the multi-disciplinary pain management program with a strong psychological element was a prerequisite to any further physical treatment."

¶ 70 The arbitrator found that "as of February 25, 2008, [the claimant] had reached maximum medical improvement unless and until he elects to participate in and successfully complete a multi-disciplinary pain management program with strong psychological elements." Based on this finding, the arbitrator concluded "that any and all treatment after February 25, 2008, was and is neither necessary nor reasonable unless and until [the claimant] complies with the prescription of participation in a multi-disciplinary pain management program with strong psychological elements and successfully completes that program." The arbitrator held that the employer was not responsible for the cost of any treatment after February 25, 2008.

¶ 71 The claimant appealed the arbitrator's decision to the Commission. The Commission affirmed and adopted the arbitrator's decision. The Commission stated, "As noted by the Arbitrator, it comes down to whether [the claimant] had reached maximum medical improvement-(MMI) and/or injurious practices that landed [the claimant] at MMI unless he complied with the multidisciplinary pain management program at RIC or other equivalent type treatment facility. [The claimant] clearly refused to attend the RIC pain program." The Commission agreed with the arbitrator that because the claimant refused to participate in a multidisciplinary pain program, "it is impossible to assess the psychosocial aspect without such medical viewpoint so it is likewise not possible to determine if his current condition of ill-being is related or not." The Commission found that the claimant was at MMI physically from an orthopedic point of view and that he failed to prove that his current condition of ill-being was causally related. The Commission further found that "there was no injurious practice by [the claimant] declining to attend the multidisciplinary program at RIC but that [the claimant] had reached maximum medial improvement because [the claimant] chose not to avail himself of further treatment."

¶ 72 The claimant appealed the Commission's decision to the circuit court. The employer, however, did not appeal from the Commission's finding that the claimant's refusal to participate in the RIC program was not an injurious practice. The circuit court entered a judgment confirming the Commission's decision on all issues, and the claimant now appeals from the circuit court's judgment.

¶ 73 DISCUSSION

¶ 74 I.

¶ 75 Causation

¶ 76 On appeal, the claimant takes issue with the Commission's finding that he failed to prove that his condition of ill-being was causally related to the work-related vehicle accident.

¶ 77 Under the Act, a compensable injury is one that both "arises out of" and is "in the course of" a claimant's employment. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). "An injury is said to 'arise out of' one's employment when there is a causal connection between the employment and the injury; that is, the origin or cause of the injury must be some risk connected with the claimant's employment." *Id.* at 676, 928 N.E.2d at 483. "[W]hether an injury arose out of and in the course of one's employment is generally a question of fact." *Id*. at 674, 928 N.E.2d at 482. We will not reverse findings of fact unless they are against the manifest weight of the evidence. *R&D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 868, 923 N.E.2d 870, 878 (2010).

¶ 78 "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009). The appropriate test is not whether this court might have reached the same conclusion, but whether the record contains sufficient evidence to support the Commission's determination. *R&D Thiel*, 398 Ill. App. 3d at 866, 923 N.E.2d at 877. "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." *Hosteny*, 397 Ill. App. 3d at 674, 928 N.E.2d at 482. Resolution of conflicts in medical testimony is also within the province of the Commission. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003).

¶ 79 On review, a court "must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Sisbro*, 207 Ill. 2d at 206, 797 N.E.2d at 673. However, despite the high hurdle that the manifest weight of the evidence standard presents, it does not relieve us of our obligation to impartially examine the evidence and to reverse an order that is unsupported by the facts. *Boom Town Saloon, Inc. v. City of Chicago*, 384 Ill. App. 3d 27, 32, 892 N.E.2d 1112, 1117 (2008). In the present case, we believe that the Commission's finding on the issue of causation was against the manifest weight of the evidence.

¶ 80 The parties agreed that the claimant was involved in a work-related vehicle accident that resulted in injuries to the claimant's right shoulder, right knee, and low back. In addition, prior to the accident, the claimant did not suffer from any conditions of ill-being with respect to his shoulder, knee, and back. After the accident, the claimant experienced severe pain, and his medical treatments included two shoulder surgeries, a knee surgery, narcotic pain medications, chiropractic treatments for low back, and extensive physical therapy for the right shoulder, right knee, and low back. The pain that the claimant suffers from began at the

time of the accident and has continued without interruption up to the arbitration hearing.

¶ 81 The records from the emergency room treatments immediately after the accident documented injuries to the claimant's neck, back, chest, right shoulder, and right knee. The emergency room staff took CT scans of the claimant's neck, chest, abdomen, head, and low back, as well as X-rays of his right shoulder and right knee. Although the claimant's treatments immediately following the accident largely focused on treatments, including surgeries, for the more severe right shoulder injury, the medical records also show that the claimant's treating physicians prescribed conservative treatments for his low back and right knee, including physical therapy and pain medications.

¶ 82 A dispute between the parties with respect to the claimant's treatments for his right shoulder, right knee, and low back injuries did not arise until December 28, 2007, when the employer's vocational rehabilitation consultant, Bose, met with Dr. Koh and discussed whether the claimant might benefit from a pain management program that included a psychiatric or psychological component. Bose and Dr. Koh agreed that the claimant could benefit from the RIC multidisciplinary pain management program. Dr. Koh prescribed an initial assessment with the RIC program.

¶ 83 On February 25, 2008, the claimant was evaluated by staff members at RIC. The staff at RIC concluded that the claimant's pain appeared to be affected by psychosocial factors that could be addressed with psychological intervention. They believed that the claimant could benefit from their program if Dr. Koh could send a letter stating that the claimant could attend the program without the use of a sling, that knee surgery was not scheduled, and that the claimant could participate fully in the program. The claimant, however, was uncomfortable with the RIC program because he felt that the evaluators asked inappropriate questions, believed that its facility lacked adequate equipment for physical therapy, and felt that it was located too far from his home. He did not have confidence in the RIC program.

¶ 84 After the RIC evaluation, Dr. Koh noted that the claimant's feelings toward the RIC program were "extremely strong." Dr. Koh, therefore, believed that an alternative pain management program other than RIC should be considered. Dr. Koh also noted that the claimant was making some progress with physical therapy and recommended continued physical therapy. Bose agreed at the arbitration hearing that the claimant's attendance in the RIC pain management program would likely be unsuccessful due to the claimant's lack of confidence in the program.

¶ 85 Following the claimant's rejection of the RIC program, he continued his treatments with Dr. Koh, and he began an anesthesiology-based pain management program at St. Margaret Mercy where he was treated by Dr. Kanakamedala and Dr. Dasari. On October 27, 2008, he underwent arthroscopic knee surgery, and in January 2009, he began chiropractic treatments with Dr. Hammett. The unbroken chain of events began with an automobile accident that led to numerous medical interventions and that resulted in continuous right shoulder, right knee, and low back pain up to the time of the arbitration hearing. Although some treating and examining physicians felt that the pain the claimant experienced was influenced by psychological factors, no expert testified that the claimant was untruthful in his description of the pain he experienced at the time of the arbitration hearing.

¶ 86 The Commission, however, found that the claimant failed to prove that his conditions of ill being "as of February 25, 2008" were causally connected to the work-related vehicle accident. The Commission based this finding on the claimant's failure to attend the RIC program. The Commission found that the claimant was at MMI from an orthopedic point of view and that the claimant's failure to participate in the multidisciplinary pain program made it impossible to assess the psychosocial aspect of his condition of ill-being.

¶ 87 We believe that the Commission's finding is against the manifest weight of the evidence because the chain of events leading up to the claimant's condition "as of February 25, 2008" and after that date clearly establishes a causal nexus between the accident and his conditions of ill-being, whether psychological or physical. Regardless of whether the claimant's complaints of pain on and after February 25, 2008, are based on physical findings, psychological conditions, or a combination of the two, the undisputed evidence establishes that the onset of the claimant's conditions began no sooner than his work-related accident. The record contains no intervening cause that broke the chain of events leading up to the claimant's conditions of ill-being at the time of the arbitration hearing.

¶ 88 "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908, 911 (1982).

¶ 89 For example, in *Bocian v. Industrial Comm'n*, 282 Ill. App. 3d 519, 668 N.E.2d 1 (1996), a firefighter was involved in two separate work-related accidents that resulted in injuries to his left arm and neck. After the second accident, the firefighter began experiencing symptoms of depression and complained of pain in his left arm and side. He was left handed but was no longer able to hold anything in his left hand. He became distraught over the family's financial future and whether he was going to lose his job. His personality changed, he became withdrawn, started drinking heavily, and began expressing suicidal thoughts. Seven months after his second workplace accident, the firefighter committed suicide as a result of his depression.

¶ 90 The firefighter's widow brought an action for death benefits under the Act. *Bocian*, 282 Ill. App. 3d at 520, 668 N.E.2d at 1. The Commission, however, denied the widow's claim, finding that the firefighter's suicide did not arise out of and was not in the course of his employment. *Id*. at 526, 668 N.E.2d at 5. The Commission relied on testimony that, even prior to the accidents, the firefighter was unhappy, had an explosive personality, and had made statements throughout the years that if he had a gun he would shoot himself. *Id*. The Commission was faced with conflicting opinions from psychiatrists concerning whether the firefighter's depression and subsequent suicide were job related, and it gave more weight to the opinion of the psychiatrist who found that there was no causal connection.

¶ 91 On appeal, however, the court held that the Commission's finding on the issue of causation was against the manifest weight of the evidence. *Id*. The court noted that the firefighter's "second work-related injury was a line of demarcation in his mental and physical condition." *Id*. at 528, 668 N.E.2d at 6. In addition, the psychiatrists agreed that the "triggering event" in the suicide was a letter the firefighter received related to his injuries and

his future ability to work. *Id*. The court held that the evidence established "an unbroken chain of events" that began with the work-related injuries "which led to the completely unprecedented manifestation of a psychological illness known as major depression, which in turn led to [the firefighter's] suicide, triggered by his reaction to [the] letter regarding the current state of his work-related injuries." *Id*. at 528, 668 N.E.2d at 6-7.

¶ 92 In reversing the Commission's finding under the manifest-weight-of-the-evidence standard, the court stated as follows:

> "All the evidence in the record clearly, plainly and indisputably establishes that the onset of [the firefighter's] major depression began no sooner than his work-related accidents ***. Likewise, the record indisputably establishes that [the firefighter's] suicide was the product of this major depression, and more importantly, the letter *** was the 'triggering event' which led to the suicide. Since [the] letter concerned the status of [the firefighter's] work-related injury, it must be concluded that the 'unbroken chain' of causation connected his work-related injuries to his suicide." *Id*. at 529, 668 N.E.2d at 7.

¶ 93 Likewise, in *Darling v. Industrial Comm'n*, 176 Ill. App. 3d 186, 530 N.E.2d 1135 (1988), the employee sought benefits for repetitive accidental injury to his arm as a result of his work duties. The Commission, however, found that the employee failed to prove that he sustained accidental injuries arising out of and in the course of his employment. *Id*. at 187, 530 N.E.2d at 1136. The court, however, reversed the Commission, noting that a "causal connection between work duties and a condition may be established by a chain of events including petitioner's ability to perform the duties before the date of the accident and inability to perform the same duties following that date." *Id.* at 193, 530 N.E.2d at 1140. In reversing the Commission's finding on causation, the court stated: "Here, a causal connection is shown from the events which reveal a prior state of good health; a good work record; a definite accident date; a resulting disability; and petitioner's inability to work, or even use his left arm or hand at all, after that date." *Id*.

¶ 94 In the present case, the evidence establishes that, prior to the vehicle accident, the claimant did not suffer from pain or complications with respect to his right shoulder, right knee, or low back. In addition, he did not suffer from any psychological conditions. The onset of the claimant's pain symptoms began when the claimant was in the work-related vehicle accident, and he has experienced uninterrupted pain since the time of that accident. The work-related accident was, unquestionably, a line of demarcation in the claimant's physical and/or mental condition with respect to symptoms of right shoulder, right knee, and low back pain. Regardless of whether some component of the claimant's conditions of ill-being is psychological, the record unquestionably establishes that the conditions of ill-being are causally related to the work accident. The Commission's finding on the issue of causation is against manifest weight of the evidence.

¶ 95 "While we are not easily moved to set aside a Commission's decision on a factual question, we will not hesitate to do so where the clearly evident, plain, and indisputable weight of the evidence compels an apparent, opposite conclusion." *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567, 613 N.E.2d 822, 825 (1993). Under the

facts of the present case, we are compelled to set aside the Commission's decision on the issue of causation.

¶ 96 Although the claimant declined to attend the RIC multidisciplinary pain management program, that fact did not break the chain of events that lead to the claimant's conditions of ill-being he suffered at the time of the arbitration hearing, even if the claimant's conditions are entirely psychological. "It is *** well established that a psychological injury is compensable if it results from an accidental injury." *BMS Catastrophe v. Industrial Comm'n*, 245 Ill. App. 3d 359, 365, 614 N.E.2d 473, 477 (1993). "A causal connection between a condition of ill-being and a work-related accident can be established by showing a chain of events wherein an employee has a history of prior good health, and, following a work-related accident, the employee is unable to carry out his duties because of a physical *or mental condition*." (Emphasis added.) *Id*. The unbroken chain of events clearly establishes that any psychological issues the claimant had at the time of the arbitration hearing were related to the February 13, 2007, vehicle accident.

¶ 97 In its reasoning, the Commission, in evaluating the issue of causation, placed considerable emphasis on the claimant's refusal to participate in the RIC pain management program. However, if the claimant had failed to prove a causal connection between his psychological conditions of ill-being and the work-place accident, then whether the claimant refused to participate in the RIC pain management program would be irrelevant

¶ 98 Furthermore, we agree with the claimant that the record does not support the assertion that he refused to participate in *all* multidisciplinary pain management programs. Instead, the record establishes that he refused to participate only in the RIC program because he was not comfortable with it and because he was concerned with travel requirements. His treating physician, Dr. Koh, advised Bose that they should consider an alternative program because the claimant's reservations were "extremely strong," and Bose admitted that the claimant's success in the RIC program would be limited because of his reservations. Bose also admitted during her testimony that programs other than RIC were available in the area, but the employer never suggested or authorized an alternative pain management program after February 25, 2008.

¶ 99 We also find it significant that the Commission determined that "there was no injurious practice by [the claimant] declining to attend the multidisciplinary program at RIC." The Commission's finding that the claimant did not engage in an injurious practice includes an implicit finding that the employer failed to prove that the RIC's pain management program was reasonably essential to promote the claimant's recovery or that the claimant's refusal to attend the RIC's program was in bad faith or outside the bounds of reason. *Keystone Steel & Wire Co. v. Industrial Comm'n*, 72 Ill. 2d 474, 481, 381 N.E.2d 672, 675 (1978). For these reasons, we must reverse the Commission's finding that the claimant failed to prove that his conditions of ill-being were causally related to the work accident.

¶ 100 II.

¶ 101 Maximum Medical Improvement

¶ 102 The claimant also takes issue with the Commission's finding, based on the arbitrator's

decision, that he had reached MMI as of February 25, 2008, "unless he complied with the multidisciplinary pain management program at RIC or other equivalent type treatment facility."

¶ 103 "The factors to be considered in determining whether a claimant has reached maximum medical improvement include a release to return to work, with restrictions or otherwise, and medical testimony or evidence concerning claimant's injury, the extent thereof, the prognosis, and whether the injury has stabilized." *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 178, 741 N.E.2d 1144, 1150 (2000).

¶ 104 The Commission's finding that the claimant had reached MMI as of February 25, 2008, is based on the claimant declining to attend the RIC pain management program. The Commission's finding with respect to MMI, based on evidence concerning the RIC program, suffers from the same problems concerning causation noted above. The employer failed to prove that the RIC program was either reasonably essential to promote the claimant's recovery or that the claimant's refusal to attend the RIC's program was in bad faith or outside the bounds of reason. Accordingly, it cannot be a basis for finding that the claimant had reached MMI.

¶ 105 On and after February 25, 2008, all of the medical experts agreed that the claimant suffered from work-related conditions of ill-being, whether psychological, physical, or a combination of both. On January 2, 2008, and again on February 26, 2008, the employer sent the claimant a letter stating that it had no work available because of his medical restrictions. Accordingly, the Commission's finding that the claimant reached MMI as of February 25, 2008, is contrary to the manifest weight of the evidence.

¶ 106 As an alternative to February 25, 2008, as the date of MMI, the Commission also noted that the employer gave the claimant a list of job openings in June 2008, but he did not apply for any of the jobs. Therefore, the claimant was at MMI in June 2008. In June 2008, however, as evidenced by the employer's own records, the claimant was still under medical restrictions that prevented him from doing any significant work involving squatting, kneeling, standing, or walking. In addition, the claimant could not drive for any significant length of time because of the conditions of his shoulder and the narcotic medications he was taking. The record on appeal does not establish any of the job requirements for any of the job listings or whether any of the employment opportunities fit within the claimant's medical restrictions. The employer's training supervisor, Peace, testified that the only position open at the Chicago assembly plant was the position of production supervisor, but the claimant did not believe that the job fit within his medical restrictions. Peace agreed that the employer had to accommodate the claimant's medical restrictions that included no repetitive squatting, kneeling, prolonged standing, walking, no use of the right arm, and no driving more than 10 to 15 minutes. She offered vague testimony that they could have somehow "worked around" these restrictions for the position of production supervisor, except for the driving restriction.

¶ 107 Peace provided the claimant with listings of other job openings at some of the employer's other facilities, but none of the jobs were within a short driving distance from his home in Indiana. Peace testified that the claimant's medical restrictions could be accommodated in some unnamed engineering position because, "to [her] knowledge" a lot of engineering

positions "can be sedentary, computer based." However, she did not identify any specific engineering position that fit this description that was available to the claimant. In addition, with respect to the listings of the employer's job openings, Peace could not guarantee that the claimant would actually be hired to fill any of the jobs, and she did not identify any specific job opening that was within the claimant's medical limitations. In fact, on direct examination, she could not remember what the claimant's specific medical limitations were during the time she was providing him lists of job openings.

¶ 108 Even the employer's medical expert, Dr. Bare, concluded on June 9, 2008, that the claimant was not at MMI and could not do any overhead lifting with his right shoulder, although he also believed at that time that the claimant could squat and kneel. He later admitted that the claimant's arthroscopic knee surgery conducted by Dr. Koh on October 27, 2008, was reasonable in light of the failure of "extensive conservative management."

¶ 109 The employer's own records state that the claimant's medical restrictions in June 2008 include restrictions from "repetitive squatting, kneeling, prolonged standing, walking–No use of right arm" as well as no driving more than 10 to 15 minutes. As late as June 17, 2009, Dr. Bare opined that the claimant would likely "need to be on [prescription] medications indefinitely if a multi-disciplinary pain regimen is not offered and given to him." He believed that a multidisciplinary pain management program was "necessary." The employer has not recommended or authorized any multidisciplinary pain management program for the claimant's condition of ill-being, other than the RIC program that the claimant, the Commission found, reasonably declined in good faith. Accordingly, the Commission's finding that the claimant reached MMI as of February 25, 2008, is not supported by the manifest weight of the evidence.

¶ 110 III.

¶ 111 Temporary Total Disability (TTD) Benefits

¶ 112 The claimant next takes issue with the Commission's findings with respect to TTD benefits, which it adopted from the arbitrator's findings. The arbitrator found that, as of February 25, 2008, the claimant had reached MMI "unless and until he elects to participate in and successfully complete a multi-disciplinary pain management program with strong psychological elements." The arbitrator then denied the claimant TTD benefits after June 4, 2008, because on that date, the employer indicated in a letter that it would accommodate the claimant's restrictions, but the claimant did not apply for any available jobs with the employer. The arbitrator, however, also concluded that the claimant would not be entitled to any further TTD benefits "unless and until he elects to participate in and successfully complete a multi-disciplinary pain management program with strong psychological elements."

¶ 113 We believe that the Commission's decision with respect to TTD benefits is against the manifest weight of the evidence because of the reasons noted above. The Commission denied the claimant TTD benefits because he did not participate in the RIC pain management program. However, the Commission found that the employer failed to prove that the RIC pain management program was reasonably essential to promote the claimant's recovery or

that the claimant's refusal to attend the RIC's program was in bad faith or outside the bounds of reason. Accordingly, the claimant's refusal to participate in the RIC program cannot be a basis for denying him further TTD benefits. Furthermore, the RIC program is the only multidisciplinary program that the claimant declined to participate in. The employer did not suggest or approve any other multidisciplinary program despite Dr. Koh's recommendation that an alternative program be considered. The claimant cannot be faulted for his failure to attend some unnamed, unapproved multidisciplinary pain management program.

¶ 114 In addition, the record does not support the Commission's alternative finding that the claimant had reached MMI as of June 4, 2008, when the employer asserted that it could accommodate the claimant's medical limitations. At best, the record establishes that on June 4, 2008, the employer claimed in a letter authored by its attorney that it could accommodate the claimant's medical restrictions (even though it said it could not do so in another letter dated February 26, 2008). The employer never offered the claimant any job that fit within his medical restrictions or established that such work was available to him. The record establishes that, as of June 4, 2008, the employer's own records indicate that the claimant had significant medical restrictions. The record establishes that on and after June 4, 2008, the claimant was suffering from conditions of ill-being that, although perhaps were affected by psychological elements, were nonetheless causally related to the workplace accident and were unresolved. Accordingly, the Commission's denial of TTD benefits as of February 25, 2008, or alternatively, as of June 4, 2008, was against the manifest weight of the evidence. We remand for further consideration of the issue of TTD benefits.

¶ 115 IV.

¶ 116 Medical Benefits

¶ 117 The claimant next appeals the Commission's decision with respect to medical benefits. Again, the Commission adopted the arbitrator's findings that denied the claimant's medical care after February 25, 2008. Specifically, the arbitrator's findings, adopted by the Commission, included a finding "that the reasonable and necessary treatment of the multi-disciplinary pain management program with a strong psychological element was a prerequisite to any further physical treatment." The Commission's findings with respect to medical care are against the manifest weight of the evidence because, as noted above, the Commission also found that the claimant's refusal to participate in the RIC pain management program was not an injurious practice, and the employer never recommended or approved a pain management program alternative to the RIC program. Therefore, the claimant's refusal to participate in the RIC program cannot be a basis for denying all medical treatment after February 25, 2008. To the extent that the Commission denied medical care after February 25, 2008, based on the claimant's failure to attend the RIC program, we reverse the Commission's finding and remand for further consideration of those medical services.

¶ 118 With respect to some of the specific medical expenses that the Commission denied, the clamant's medical services after February 25, 2008, included the claimant's knee surgery that the employer's own independent medical examiner, Dr. Bare, found to be reasonable after conducting an IME of the claimant on February 26, 2009. The Commission's denial of

medical expenses for the surgery, therefore, was against the manifest weight of the evidence.

¶ 119 The Commission's denial of expenses for the claimant's TENS unit because it was not prescribed by Dr. Rittenburg is also against the manifest weight of the evidence. The claimant's medical records admitted at the arbitration hearing included an April 11, 2008, referral from Dr. Rittenburg that stated as follows: "Please try TENS unit–if effective, issue home unit."

¶ 120 The Commission's denial of expenses for pain management at St. Margaret Mercy is also against the manifest weight of the evidence. All of the claimant's treating and examining physicians agreed that the claimant would benefit from a pain management program. As noted above, the record unquestionably establishes that the claimant's need for a pain management program is causally related to the workplace accident.

¶ 121 The employer wanted the claimant to attend the RIC pain management program, but the claimant was not comfortable with that program for various reasons that are noted above. After the claimant declined the RIC program, the employer did not recommend or authorize an alternative pain management program, but, instead, sought to terminate all of the claimant's benefits under the Act because it claimed that the claimant's refusal to attend the RIC program was an injurious practice. The Commission rejected the employer's argument and found that the claimant's refusal to participate in the RIC program was not an injurious practice.

¶ 122 When the employer did not authorize an alternative pain management program, the claimant went to a program located close to his residence, St. Margaret Mercy. Although St. Margaret Mercy was not a multidisciplinary program, the evidence, nonetheless, established that the program was prescribed by the claimant's treating physician, Dr. Koh, and was beneficial to the claimant in addressing the conditions of ill-being that were causally related to the workplace accident.

¶ 123 Even the employer's vocational rehabilitation consultant, Bose, admitted during her testimony that the type of approach that St. Margaret Mercy provided could have some positive effect on the claimant's conditions of ill-being. When the claimant submitted to an IME by Dr. Bare at the request of the employer on February 26, 2009, Dr. Bare also recommended that the claimant continue to treat with Dr. Ravi Kanakamedala at St. Margaret Mercy. A report by Dr. Kanakamedala at St. Margaret Mercy dated April 2, 2009, states that the program had reduced the claimant's pain by 70% with pain medications. In a later report dated May 29, 2009, the claimant reported a 40% reduction in his pain as a result of the treatments at St. Margaret Mercy. Accordingly, based on the record before us, the Commission's denial of medical expenses for treatments at St. Margaret Mercy, including chiropractic treatments recommended by Dr. Kanakamedala, is against the manifest weight of the evidence.

¶ 124 We remand for the Commission to reconsider all of the claimant's medical expenses that he incurred on and after February 25, 2008.

¶ 125 V.

¶ 126 Section 19(k) Penalties and Attorney Fees

¶ 127 The claimant argues that the Commission's denial of penalties and attorney fees pursuant to sections 16 and 19(k) of the Act (820 ILCS 305/16, 19(k) (West 2010)) is against the manifest weight of the evidence. Section 19(k) penalties are intended to address situations where the employer deliberately delays payment of compensation under the Act or when the employer's delay in payment is the result of bad faith or improper purpose. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 553 (1998). With respect to attorney fees, section 16 of the Act provides for an award of attorney fees when an award of additional compensation under section 19(k) is appropriate. 820 ILCS 305/16 (West 2010). The imposition of penalties and attorney fees under sections 19(k) and section 16 fees is discretionary. *McMahan*, 183 Ill. 2d at 515.

¶ 128 In the present case, we believe that the Commission's denial of section 19(k) penalties and section 16 attorney fees was not against the manifest weight of the evidence. Although we reverse the Commission's findings with respect to causation, MMI, TTD benefits, and medical benefits, we cannot conclude that the manifest weight of the evidence requires a finding that the employer had no basis for its denial of benefits after June 8, 2008. Accordingly, we affirm the Commission's findings with respect to penalties and attorney fees.

¶ 129 VI.

¶ 130 Vocational Rehabilitation and Maintenance Benefits

¶ 131 Next, the claimant takes issue with the Commission's decision with respect to vocational rehabilitation and maintenance. The Commission adopted the arbitrator's finding that vocational rehabilitation would be futile because the claimant believed he could not work. The Commission also adopted the arbitrator's conclusion that the claimant "is not entitled to vocational rehabilitation and maintenance benefits unless and until he elects to participate in and successfully complete a multidisciplinary pain management program with strong psychological elements." For the reasons noted above, we reverse the Commission's denial of vocational rehabilitation and maintenance benefits. That denial is based on a finding unsupported by the record that the claimant failed to prove that his conditions of ill-being were causally related to the workplace accident by declining to attend the RIC pain management program. We remand for further proceedings on the claimant's request for vocational rehabilitation and maintenance benefits.

¶ 132 VII.

¶ 133 Average Weekly Wage Calculation

¶ 134 Finally, the claimant argues that the Commission's finding with respect to his average weekly wage is contrary to the manifest weight of the evidence. In a workers' compensation case, the claimant has the burden of establishing his or her average weekly wage. *Cook v. Industrial Comm'n*, 231 Ill. App. 3d 729, 731, 596 N.E.2d 746, 748 (1992). The

determination of an employee's average weekly wage is a question of fact for the Commission, which will not be disturbed on review unless it is against the manifest weight of the evidence. *Ogle v. Industrial Comm'n*, 284 Ill. App. 3d 1093, 1096, 673 N.E.2d 706, 708-09 (1996).

¶ 135 The arbitrator's finding, adopted by the Commission, with respect to the claimant's average weekly wage included a finding that the claimant failed to meet his burden of proving that overtime pay should have been included in his average weekly wage calculation. The arbitrator wrote, "At best, [the claimant] has established that on six of his 26 paychecks in the year preceding the accident, certain payments were made for rather sporadic overtime or shift premium work. The Arbitrator cannot conclude, based on this evidence, that [the claimant]'s overtime was regular and mandatory." On appeal, the claimant argues that his overtime needed to be only regular *or* mandatory, not regular *and* mandatory, to be included in his average weekly wage.

¶ 136 "Overtime includes those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week." *Airborne Express, Inc. v. Illinois Workers' Compensation Comm'n*, 372 Ill. App. 3d 549, 554, 865 N.E.2d 979, 983-84 (2007).

¶ 137 At the arbitration hearing, the claimant produced six pay stubs for the prior year, two of which included overtime pay and four that indicated a "shift premium." The claimant admitted that the six pay stubs were the only ones he had that reflected a shift premium or overtime. In determining the average weekly wage, the arbitrator found that the claimant "was initially quite evasive on the question of whether the check stubs produced at trial consisted of all the overtime pay he was claiming for the 52 weeks prior to the date of the accident." The arbitrator found that 6 paychecks out of 26 paychecks for the year preceding the accident did not fulfill the claimant's burden to prove that the overtime should be included in the average weekly wage calculation. Based on the record before us, we cannot find that the arbitrator's calculation of the claimant's average weekly wage was against the manifest weight of the evidence.

¶ 138 CONCLUSION

¶ 139 For the foregoing reasons, we reverse that portion of the circuit court's judgment that confirmed the Commission's findings on the issues of causation, MMI, TTD benefits, medical benefits, and vocational rehabilitation and maintenance benefits, and we remand to the Commission for further proceedings on those issues. We affirm that portion of the circuit court's judgment that confirmed the Commission's denial of penalties and attorney fees and its calculation of the claimant's average weekly wage.

¶ 140 Affirmed in part and reversed in part; cause remanded.

¶ 141 JUSTICE TURNER, specially concurring in part and dissenting in part.

¶ 142 While I concur with the majority's decision in some respects, I would affirm the Commission's decision *in toto*, except for its findings on causation.

¶ 143 As to causation, I agree with the majority's holding the Commission erred in concluding claimant's refusal to accept the recommended treatment was an intervening cause severing a causal relationship. However, unlike the majority, I do not find this holding dispositive of the remaining issues.

¶ 144 First, the causation analysis about whether an intervening cause severed the causal relationship is a separate matter with different legal standards from whether one of the factors contained in section 19(d) of the Act exists that grants the Commission discretion to reduce an award. See *Global Products v. Illinois Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 410-11, 911 N.E.2d 1042, 1045-46 (2009).

¶ 145 Second, under the plain language of section 19(d) of the Act (820 ILCS 305/19(d) (West 2010)), whether claimant committed an injurious practice is a separate consideration from whether claimant refused treatment reasonably essential to promote his recovery. The majority cites no case and I have found none that holds a claimant cannot be denied benefits under section 19(d) for refusing treatment even if the refusal of treatment is not itself also considered an injurious practice. Indeed, the case relied upon by the majority, *Keystone Steel & Wire Co.*, does not even mention "injurious practice," and confines its analysis to the reasonableness and good faith of the claimant. Accordingly, the majority's opinion the Commission's finding the claimant did not engage in an injurious practice includes an implicit finding "the employer failed to prove the RIC's pain management program was reasonably essential to promote the claimant's recovery or that the claimant's refusal to attend the RIC's program was in bad faith or outside the bounds of reason" (*supra* ¶ 99) lacks a legal basis.

¶ 146 Moreover, the majority's implicit finding is a mischaracterization of the Commission's position. The Commission explicitly stated claimant "had reached MMI because [claimant] chose not to avail himself of further treatment." It found claimant's subjective complaints exceeded objective findings, and claimant declined to attend a multidisciplinary pain program as recommended by his treating physician. The Commission's order cannot accurately be construed to include an implicit finding claimant's refusal to attend the RIC's program was reasonable. As the supreme court has noted, "[t]he Act provides incentive for the injured employee to strive toward recovery and the goal of returning to gainful employment by providing that TTD benefits may be suspended or terminated if the employee refuses to submit to medical, surgical, or hospital treatment essential to his recovery, or if the employee fails to cooperate in good faith with rehabilitation efforts." *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 146, 923 N.E.2d 266, 274 (2010); see also *Hayden v. Industrial Comm'n*, 214 Ill. App. 3d 749, 755-56, 574 N.E.2d 99, 103-04 (1991) (TTD properly terminated when the injured employee was unwilling to cooperate with vocational placement efforts). Accordingly, the implicit finding that serves as the basis for reversing the Commission on the remaining issues is erroneous.

¶ 147 In the case *sub judice*, the arbitrator concluded that as of February 25, 2008, claimant had reached MMI unless and until he elected to participate in and successfully complete a pain

management program with psychological elements. Claimant was awarded TTD benefits through June 4, 2008, the date the employer indicated it would accommodate claimant's restrictions. On the record before this court, the Commission's decision to deny benefits to claimant was not an abuse of discretion as it is clear the Commission found claimant refused to submit to treatment reasonably essential to promote his recovery. Finally, as indicated, the Commission's error on the issue of causation is not dispositive, and I further note it does not require reversal on the denial of benefits. "We will affirm a decision of the Commission if there is any basis in the record to do so, regardless of whether the Commission's reasoning is correct or sound." *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 208, 904 N.E.2d 1122, 1136 (2009).