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2017 IL App (1st) 161303WC-U

Order filed: September 15, 2017

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

ZBIGNIEW GARDEREWICZ,)	Appeal from the Circuit Court
)	of Cook County Illinois
)	
)	
Appellant,)	
)	
v.)	Appeal No. 1-16-1303WC
)	Circuit No. 15-L-50375
)	
ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION, <i>et al.</i> , (Best Courier and)	Carl A. Walker,
Delivery Services, Appellees).)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's decision was not against the manifest weight of the evidence where the Commission's decisions as to causation and MMI were supported by competent medical opinions such that the opposite conclusion was not clearly apparent. The Commission's credibility determinations regarding the claimant were not against the manifest weight of the evidence.

¶ 2 The claimant, Zbigniew Garderewicz, appeals a decision of the Illinois Workers' Compensation Commission (Commission) denying his claim for certain benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)). The claimant sought benefits for injuries to his cervical and lumbar spine, left hip and right shoulder, allegedly incurred as the result of an industrial accident occurring on April 17, 2012. Following a hearing before Arbitrator Thompson-Smith on July 18, 2014, the arbitrator determined that the claimant's injury to his cervical and lumbar spine and his right shoulder were causally related to the April 17, 2012, accident. The arbitrator determined, however, that the claimant's condition of ill-being regarding his left hip was not causally related to the accident. The arbitrator awarded the claimant temporary total disability (TTD) benefits covering 116 2/7 weeks (April 25, 2012, through the date of the hearing) at the rate of \$726.43 per week. The arbitrator further ordered the employer to pay all reasonable and necessary past and future medical expenses related to the claimant's spinal and right shoulder conditions, but not the claimant's left hip condition.

¶ 3 The employer sought review of the arbitrator's decision before the Commission regarding the claimant's spinal and shoulder injuries. The claimant filed a timely cross-appeal to the Commission regarding his hip injuries. The Commission affirmed and adopted the decision of the arbitrator with modification. The Commission determined that the claimant's compensable injuries reached maximum medical improvement (MMI) on November 5, 2013. Consistent with this finding, the Commission reduced TTD benefits to 80 weeks (April 25, 2012, through November 5, 2013), allowed medical expenses incurred through November 5, 2013, and denied any medical benefits after that date.

¶ 4 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's decision, finding that it was not against the manifest weight of the evidence. The claimant then filed this timely appeal.

¶ 5 The claimant raises the following issues on appeal: (1) whether the Commission's finding that the claimant's condition of ill-being of the left hip did not arise out of and in the course of his employment and was not causally related to the April 17, 2012, accident was against the manifest weight of the evidence; and (2) whether the Commission's finding that the claimant's spinal injuries reached MMI on November 5, 2013, was against the manifest weight of the evidence. The claimant raises three additional issues, all of which are dependent upon a finding that that Commission's decision regarding MMI was erroneous: 3) whether the Commission's determination to award medical benefits only through November 5, 2013, was against the manifest weight of the evidence; 4) whether the Commission's finding that the claimant was not entitled to TTD benefits after November 5, 2013, was against the manifest weight of the evidence; and 5) whether the Commission's decision to deny prospective medical benefits for his spinal condition was against the manifest weight of the evidence.

¶ 6 **BACKGROUND**

¶ 7 The following factual recitation is taken from the evidence presented at the arbitration hearing on July 18, 2014. The claimant, who was 61 years-old at the time of the injury, testified he first began working as a truck driver in Poland in 1979. He received his CDL license in the United States in 1993 and began working for various employers in New York as a dump truck driver. He further testified that he began working for the employer in 2010 as a delivery truck driver. The claimant testified that his job duties varied greatly, depending on the type of delivery. Some deliveries required longer driving distances; some were "no touch" freight and others

required a significant amount of unloading. He explained that many of his deliveries were medical equipment and supplies, which required heavy lifting and often involved climbing stairs and setting up the delivered items. The set up activities required opening heavy boxes and assembling of the delivered goods. The claimant further testified that the majority of his job duties required moving medical equipment and boxes that weighed between 300-500 pounds and that he would regularly have to push and pull pallets weighting in excess of 1,000 pounds, using a hand truck.

¶ 8 The claimant testified that on April 17, 2012, he reported for work at his regular starting time, 5:30 a.m., at which time he received instructions to deliver a truckload of medical equipment to Northwestern Hospital. The claimant testified that the warehouse staff loaded the truck, using an electronic forklift. The load consisted of five, regular-sized 4x4 pallets, weighing 150 pounds each and five oversized 3x5 pallets weighing 350 pounds each. Stacked on the regular pallets were boxes filled with office chairs and tables, shrink wrapped together. Stacked on the oversized pallets were boxed examination tables that weighed approximately 350 pounds each. The job order instructed the claimant to unload the pallets, open the boxes, assemble the equipment, deliver it to and set it up in the appropriate office suites.

¶ 9 The claimant testified that after he arrived at Northwestern Hospital, he proceeded to unload the truck. He did so by using a pallet-jack to lift the pallets and maneuver them onto the loading dock. The claimant further testified that as he began to move the first pallet it began to move backwards. The pallet then began to slip and the claimant kept it from falling only by lifting his hands and right leg, catching the pallet between his upper body and right leg. He testified that he then lost his balance, twisted his neck and upper body to the left and fell hard to the floor of the truck. He testified that he braced his arms in front of him in fear that the pallet

was going to fall on top of him. He then fell onto his left side, causing pain in his right shoulder and his buttocks. He testified that he felt pain, on the left side, from his backside to his ankle and in the two last fingers of his right hand. He further testified that after taking a few moments to calm himself, he stood up, shook off the pain and finished moving the pallet. He then completed his delivery, which took the remainder of the day. The claimant testified that he was in pain throughout the day, as he continued to unload, push, pull and lift heavy objects. He testified that the pain became sharper in nature and he began to feel very stiff and sore by the end of the day.

¶ 10 Upon returning home that evening, the claimant took some over-the-counter medication for his pain. He testified that upon waking the next morning, he had increased pain in the lower and upper back, neck, right shoulder and that he was experiencing tingling in the right hand and pain traveling from the buttock into the left lateral thigh, stopping at the knee. He testified that he thought that the pain symptoms would get better with time and rest. He continued to work for the next week, with all of his deliveries consisting of “no touch” freight.

¶ 11 The claimant testified that initially he did not have pain in the front of his left knee. Over the next week, however, the pain going from his lower back and buttock area became very sharp and shooting in nature, moving into the left thigh then into the lower part of the leg, ankle and toe. He testified that the pain caused a burning sensation and that the pain in the upper back and right shoulder and arm also increased in severity to the point where it became difficult to sleep, stand or sit. He further testified that everything was painful with any movements of the left leg, most noticeably when trying to get up from a seated position. He testified that on the morning of April 25, 2012, he came into work and told his supervisor about his accident the week prior. He reported that he was in pain and wanted to see a doctor. He was directed to go to the Occupational Work Clinic at Advocate Condell Medical Center (Condell).

¶ 12 On April 25, 2012, the claimant was examined at Condell where x-rays were taken of his cervical and lumbar spine and of his chest. The claimant gave a history of pain in the neck, low back and right shoulder after lifting a table while at work. The claimant's sign-in sheet indicated a stated reason for visit as back pain radiating down the left leg, pain radiating from right shoulder to the right hand and that this was a job-related injury. The cervical x-ray was read to indicate no acute abnormalities; the lumbar x-ray was read to indicate diffuse lumbar spondylolysis most prominent at L4-L5 and L5-S1. In addition, the lumbar x-ray also showed degenerative narrowing of the L4-L-5 level and at the L5-S-1 disc space, and spondylosis in the upper lumbar region, with osteophytes. Condell treatment records listed a diagnosis as cervical strain, sciatica and lower back strain. The report indicated pain shooting down the claimant's left leg, but there was no specific recordation of left hip pain. The claimant was advised to return to the clinic the following day. He was prescribed numbing ointment, muscle relaxants and pain medication and advised to stay off work.

¶ 13 On April 26, 2012, the claimant was examined by Dr. Premal Joshipura, at Condell, who documented some small improvement in the right arm, with continued tingling and noted that the left leg was still very painful. Dr. Joshipura noted that the diagnosis remained cervical/lumbar strain and sciatica. He advised the claimant to remain off work, continue pain medications, and to return to Condell on in five days.

¶ 14 The claimant testified that his pain continued to be so severe that he returned to Condell the following day. On April 27, 2012, Dr. James Samuel examined the claimant and documented the claimant's report of shoulder pain improvement but continuing lumbar back pain. Noting that the prescribed pain medication was not sufficient, Dr. Samuel gave the claimant an injection of stronger pain medication. Dr. Samuel reported that it was difficult to perform an examination of

the claimant's back due to the severity of the pain and a positive left straight leg raise test result was noted. The claimant was advised to continue pain medications. The claimant testified that his pain continued to increase and he had extreme difficulty walking. He further testified that his wife purchased a cane and then a walker for him.

¶ 15 On April 30, 2012, the claimant was examined by Dr. Joshipura, who documented the claimant's report of sharp, stabbing pain in the lower back, currently 10 out of 10. The treatment records from this appointment make no reference to pain in the hip, shoulder, mid or upper back, neck, hand, wrist, ankle, foot or knee. Dr. Joshipura released the claimant from further care at Condell and referred him for an emergency neurology consultation the next day, with a physician at the American Institute for Spine and Neurosurgery.

¶ 16 On May 1, 2012, the claimant was examined by Dr. Robert Erickson, at the American Institute for Spine and Neurosurgery. Dr. Erickson recorded a history of the accident on April 17, 2012, including the claimant's description of this injury while in the process of moving a heavy examination table, that he fell in a twisting motion hurting his back and left leg, as well as the neck and right arm. Dr. Erickson noted that the claimant reported to the appointment using a cane to ambulate. A physical examination was positive for limping on the left leg, straight leg raises and weakness in dorsiflexion; poor grip strength on the right side, with paresthesias affecting the last two fingers of the right hand. Dr. Erickson ordered MRIs of the cervical and lumbar spine as well as EMGs of the upper and lower extremities.

¶ 17 On May 17, 2012, the claimant was again examined by Dr. Erickson, at which time the MRI and EMG test results were available. Upon review of the cervical MRI, Dr. Erickson noted no abnormalities, spinal stenosis or foraminal narrowing. He noted a posterior disc osteophyte complex with central protrusion at C5-C6. He further noted mild to moderate spinal canal and

foraminal stenosis and multi-level degenerative disc disease, most pronounced at C6-C7. He further noted mild stenosis, foraminal narrowing and a diffused disc bulge extending toward and compressing traversing a nerve root. Dr. Erickson opined that there was a direct correlation between conditions indicated in the test results and the claimant's pain complaints. Dr. Erickson recommended an anterior cervical discectomy and fusion at C6-C7, followed by lumbar surgery. Dr. Erickson opined that the recommendation for surgery was a direct result of the work injury.

¶ 18 The claimant testified that after Dr. Erickson recommended surgery, his pain continued and significantly impaired his ability to do routine activities of daily life. The claimant further testified that he wanted to move forward with the surgeries as recommended by Dr. Erickson. He remained off work awaiting authorization from the employer's worker's compensation insurance carrier.

¶ 19 On July 30, 2012, the claimant was examined at the request of the employer by Dr. Morris Soriano. The claimant testified that Dr. Soriano took a history from him and that the entire examination lasted approximately five minutes. The claimant also testified that he was not asked any questions regarding his job duties at the time of accident or any details as to how his injury occurred. He further testified that he only told Dr. Soriano that he was injured while moving a large examination table that weighed 350 pounds and that he was asked by Dr. Soriano to walk without the cane but his attempt to do so was unsuccessful.

¶ 20 On October 12, 2012, the claimant sought treatment from Dr. Mark Sokolowski, an orthopedic surgeon. In addition to a physical examination of the claimant, Dr. Sokolowski took a complete history from the claimant and reviewed all medical documentation, including the EMG and MRI test results. He diagnosed radiculopathy at C7 and C8, a substantial disc herniation at C6-C7 with resulting severe spinal canal stenosis and bilateral foraminal narrowing, along with a

smaller herniation at C5-C6. Dr. Sokolowski also diagnosed disc extrusion and impingement at L4-L5. Dr. Sokolowski ordered an MRI of the right shoulder, which he later interpreted to reveal supraspinatus tendinopathy, and new x-rays of the left hip and pelvis, which he interpreted to reveal a mild degenerative condition and osteoarthritis. Dr. Sokolowski ordered pain injections and ordered the claimant to remain off work. The claimant reported that the pain injections provided only minimal relief. Dr. Sokolowski recommended lumbar surgery.

¶ 21 On October 31, 2012, the claimant again sought treatment from Dr. Sokolowski, reporting symptoms of increasing pain and inability to sleep. At this time, Dr. Sokolowski diagnosed left hip osteoarthritis exacerbated by the April 17, 2012, work accident. He then determined that the claimant was in need of further evaluation related to his hip and referred him to Dr. Benjamin Domb, an orthopedic specialist.

¶ 22 On November 19, 2012, the claimant was first examined by Dr. Domb, who diagnosed osteoarthritis of the hip and back pain with radiculopathy. Dr. Domb scheduled hip replacement surgery for February 2013.

¶ 23 On January 17, 2013, the claimant was examined at the request of employer by Dr. Kevin Walsh. Dr. Walsh diagnosed severe osteoarthritis in the left hip and agreed with Dr. Domb's recommended hip replacement surgery. However, he opined that the claimant's condition of ill-being in the left hip was not causally related to the April 17, 2012, accident. He noted the length of time between the date of the accident and the first report of hip pain. In addition, he noted that the specific locale of the claimant's left hip pain, the anterior and lateral portions of the thigh and the buttocks, were more consistent with degenerative osteoarthritis than traumatic injury.

¶ 24 On February 1, 2013, the claimant underwent robotic hip replacement surgery with Dr. Domb. Following an inpatient stay, he was released and underwent home physical therapy with

Accurate Care Home. He then underwent further rehabilitation for both the left hip as well as his lumbar spine at Accelerated Rehabilitation from March 5, 2013 through April 25, 2013.

Following a period of surgical recovery, Dr. Domb released the claimant to work with permanent restrictions of 20-25 pounds for lifting, pushing pulling and to refrain from activities placing strain on the hip.

¶ 25 On April 10, 2013, Dr. Sokolowski gave an evidence deposition in which he opined that the claimant's symptoms in the low back, hip, buttocks, and left leg were all caused by the herniated disc at L4-L3 and the claimant's degenerative hip condition. He further opined that the claimant's current symptoms were causally related to the April 17, 2012, industrial accident.

¶ 26 On June 14, 2013, the claimant returned for treatment from Dr. Sokolowski, reporting symptoms of neck pain radiating into the right shoulder and lumbar pain radiating into the left lower extremity. Dr. Sokolowski noted a distinct altered gait pattern. He continued to recommend lumbar surgery.

¶ 27 On July 20, 2013, the claimant was examined a second time by Dr. Walsh. In an evidence deposition given on January 4, 2014, he persisted in his opinion that the claimant's hip condition was not causally related to his employment. He opined that Dr. Domb's permanent 20-25 pound lifting restrict was too restrictive for a successful hip replacement. He opined that the claimant could return to full-duty work, since delivery driver work would not likely stress the prosthetic components of the hip replacement.

¶ 28 On August 2, 2013, and again October 7, 2013, the claimant was examined by Dr. Sokolowski, who reported no change in the claimant's condition. He continued to recommend lumbar surgery and persisted in his causal connection opinion.

¶ 29 On August 13, 2013, Dr. Domb gave an evidence deposition in which he opined that,

although the claimant had significant severe osteoarthritis and degenerative conditions in the hip, based upon the claimant's description of the accident and his report of being pain free prior to the accident, it was his opinion that the claimant's current condition of ill-being was related to the accident. During cross-examination, Dr. Domb acknowledged that there may have been some language difficulties, but he was able to understand and communicate with the claimant. He further noted that there may have been some discrepancy in how the claimant initially described the accident to his physician-assistant.

¶ 30 On November 5, 2013, the claimant was again examined at the request of the employer by Dr. Soriano. In his evidence deposition given on March 13, 2014, Dr. Soriano testified that his physical examination of the claimant revealed no tenderness or spasms in the cervical spine, and no objective indications of low back functional limitations. He opined that the claimant's subjective reports of pain were not consistent with objective parameters. He further observed that the claimant's Waddell signs, a diagnostic tool designed to detect psychological or non-organic origins of low back pain, were positive. Dr. Soriano opined that the April 17, 2012, accident had resulted in nothing more than a sprain/strain of the cervical and lumbar spine, which had completely resolved by the time of his second examination of the claimant. Dr. Soriano opined that the claimant was in need of no further surgical intervention, had reached MMI, and could be returned to full-duty work without restrictions. In his deposition, Dr. Soriano testified that he took a complete work history of the claimant and he was fully informed as to April 17, 2012, accident.

¶ 31 At the hearing, the claimant was asked if his current condition of ill-being limited his ability to travel. The claimant responded that he "hadn't been anywhere from the time of the accident." It was then pointed out that the claimant had taken a trip to Poland within the prior

year. When asked why he stated he had not been anywhere since the accident, the claimant stated that he “was thinking about some local things.”

¶ 32 The arbitrator found that the claimant had established, by a preponderance of the evidence, that he sustained an accident arising out of and in the course of his employment, which caused pain and symptoms in his right shoulder, neck, upper and lower back and in the two last fingers of his right hand. However, the arbitrator further determined that the claimant had failed to prove that the symptoms in his left hip arose out of and in the course of his employment. On this issue, the arbitrator found the opinions of Drs. Soriano and Walsh to be more persuasive than those of Dr. Domb and Sokolowski. The arbitrator determined that the spinal surgery recommended by Dr. Erickson, was reasonable and necessary, and should be allowed to proceed. However, the arbitrator determined that the hip surgery performed by Dr. Domb following Dr. Sokolowski’s referral was not causally related the accident of April 17, 2012.

¶ 33 Following appeals by both parties to the Commission, the Commission affirmed and adopted the arbitrator’s findings as to the claimant’s condition of ill-being related to his hip. In addition, the Commission rejected the arbitrator’s conclusion that the claimant was in need of spinal surgery and that the claimant’s current condition of ill-being of the cervical and lumbar spine was related to the April 17, 2012, accident. In reaching this conclusion, the Commission gave greater weight to the opinion of Dr. Soriano that the claimant had reached MMI on November 5, 2013, was in need of no further medical or surgical intervention, and could return to full-duty without restrictions. The Commission noted that Dr. Soriano’s opinion was contrary to the opinions of Drs. Domb and Sokolowski. However, it noted that Dr. Soriano reported the Waddell test results and his observation that the claimant’s subjective symptoms were not consistent with objective test results. Regarding the claimant’s overall credibility, the

Commission interpreted the testimony regarding the claimant's trip to Poland as evidence of a lack of candor, rather than a matter of miscommunication as the claimant maintained.

¶ 34 Consistent with its finding that the claimant had reached MMI and could return to work without restriction effective November 5, 2013, the Commission modified the award to include TTD benefits and medical expenses incurred prior to that date.

¶ 35 The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling.

¶ 36 ANALYSIS

¶ 37 1. Causation

¶ 38 On appeal, the claimant first argues that the Commission erred in its conclusion that he failed to establish that his condition of ill-being of his left hip arose out of and in the course of his employment. An injury arises out of and in the course of employment where the origin of injury is somehow connected or incidental to the employment so that a causal connection exists between the injury and the employment. *Warren v. Industrial Comm'n*, 61 Ill. 2d 373, 376 (1975). The aggravation or exacerbation of a preexisting condition will be sufficient to establish a causal connection between a claimant's current condition of ill-being and his employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982). An accidental injury need be neither the sole causative factor nor the primary causative factor, so long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206 (2003). The Commission's determination as to whether the claimant has established the requisite causal connection between his current condition of ill-being and his employment will not be overturned on appeal unless it is against the manifest weight of the evidence. *St Elizabeth Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007).

Causation is a question of fact, and it is the unique function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *Hosteny v. Illinois Worker's Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Docksteiner v. Industrial Comm'n*, 346 Ill. App. 3d 851, 856-57 (2004). For a finding to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007).

¶ 39 Regarding the causal relationship between the claimant's condition of ill-being of the hip and the April 17, 2012, accident, the Commission found the opinions of Drs. Soriano and Walsh to be more persuasive than those of Dr. Domb and Sokolowski. Here, we cannot say that the Commission's weight and interpretation of the medical opinions regarding causation was against the manifest weight of the evidence. All four of the physicians agreed that the claimant had some degree of degenerative condition of the hip. Drs. Domb and Sokolowski relied upon the history given to them by the claimant reporting an onset of hip pain shortly after the accident, as well as their opinions that the claimant's hip pain was causally related to the lumbar spinal injuries that were also causally related to the accident. Drs. Soriano and Walsh observed that the reports given by the claimant following the accident did not show onset of hip pain, but rather low back pain radiating into the hip. They further noted that the specific location of the hip pain supported that conclusion. They also interpreted the objective testing results to show evidence of degenerative disease, but no evidence of traumatic injury. Dr. Walsh was particularly impressed by the apparent lack of immediate pain onset given the rather severe nature of the claimant's degenerative hip condition. He believed that if the accident had any impact on the claimant's hip,

the pain would have been immediate and specifically located in the hip rather than radiating down the left leg from the lumbar region.

¶ 40 Both the claimant and the employer point to subtle differences in the objective and subjective factors relied upon by the four physicians in reaching their conclusions. In the final analysis, unless the evidence on one side is so compelling as to render the opposite conclusion clearly apparent, we must defer to the Commission, which is uniquely situated to weigh competing medical evidence and to resolve any evidentiary conflicts. *Steak 'N Shake v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3rd) 150500WC ¶ 43; *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 505 (2004). Here, the medical opinion testimony regarding causation of the claimant's hip condition was closely balanced, and it simply cannot be said that the conclusion opposite that reached by the Commission is clearly apparent.

¶ 41 2. Maximum Medical Improvement

¶ 42 The claimant next maintains that the Commission erred in finding that he had reached MMI on November 5, 2013, thus terminating his right to TTD benefits and medical expenses after that date. A claimant is temporarily and totally disabled from the time an injury incapacitates him 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 (2007). In determining whether a claimant is no longer entitled to continue receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and he is capable of returning to the workforce. *Holocker v. Illinois Workers' Compensation Comm'n*, 2017 IL App (3d) 160363WC, ¶ 40, citing *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 146 (2010). Consideration will be given to such factors as whether the claimant has been released to return to work, the medical opinion testimony regarding the

present extent of his injuries, and "most importantly, whether the injury has stabilized."

Mechanical Devices v. Industrial Comm'n, 344 Ill. App. 3d 752, 760 (2003). Whether the condition has stabilized may be determined based upon medical opinion testimony that the claimant has reached MMI. *Id.* Once the claimant has reached MMI, his condition has become permanent and he is no longer eligible for TTD benefits. *Id.* The period during which a claimant is temporarily and totally disabled is a question of fact, and as such the Commission's decision regarding whether a claimant has reached MMI will not be overturned on appeal unless it is against the manifest weight of the evidence. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004).

¶ 43 In finding that the claimant reached MMI on November 5, 2013, the Commission relied primarily on Dr. Soriano's report regarding his examination on that date. In that report, Dr. Soriano was particularly struck by his observation that the claimants subjective reports of lumbar and cervical spine pain did not correlate to the objective data from the MRI and EMG tests. It was Dr. Soriano's medical opinion, based upon all subjective and objective factors, that the claimant had a mild degenerative spinal condition that was not aggravated or exacerbated by the April 17, 2012, accident. Dr. Soriano further opined that the claimant suffered, at most, soft tissue injuries that completely resolved by the time he examined the claimant on November 5, 2013, and that the claimant's condition after that date was no longer related to the accident. Additionally, Dr. Soriano's report indicated that the claimant exhibited signs of symptom magnification on the Waddell test.

¶ 44 The claimant challenges the Commission's reliance upon Dr. Soriano's opinion, pointing out that the Commission improperly rejected the arbitrator's finding on that issue. The claimant further suggests that the Commission simply concluded that if the claimant could endure a round

trip flight to Poland shortly before the November 5, 2013, examination by Dr. Soriano, he must no longer be in need of TTD benefits. The claimant also points out that Dr. Soriano's Waddell test results were not consistent with prior symptom magnification reports.

¶ 45 After reviewing the conflicting evidence regarding MMI, we cannot say that the Commission's reliance upon Dr. Soriano's opinion was against the manifest weight of the evidence; nor can we say that the Commission's reference to the claimant's trip to Poland was improper in considering whether he had reached MMI. The weight to be accorded medical opinion testimony is to be determined by the Commission. Here, Dr. Soriano's opinion regarding the relationship between the claimant's subjective complaints and the objective test results, while contradicted by the treating physicians, is not out of the scope his medical expertise. He clearly articulated his interpretation of the subjective reports of pain and how, in his opinion, the reports were not what would be predicted by the objective data. Regarding Dr. Soriano's observations regarding possible symptom magnification, the claimant points to critiques of the Waddell test and Dr. Soriano's interpretation. However, there is no evidence to suggest that the Waddell test was unreliable or that Dr. Soriano incorrectly interpreted the results.

¶ 46 Regarding the claimant's trip to Poland, the claimant suggests that there was an innocent explanation for the claimant's apparent lack of candor regarding the trip and further suggests that the Commission was in error in considering the trip in evaluating whether he had reached MMI. We find nothing in the record to establish that the Commission's consideration of the trip to Poland was against the manifest weight of the evidence. One of the factors related to whether the claimant had reached MMI was whether he could sit for long periods of time. The claimant testified that he could not. The Commission interpreted the round trip flight to and from Poland to indicate that the claimant had reached a point where further treatment would not improve his

condition. The Commission also found that the claimant's testimony regarding the trip adversely impacted his credibility. While the claimant maintains that the Commission mistook his lack of understanding of the question for a lack of forthrightness, the Commission is the ultimate arbiter of credibility and we cannot say that its determination regarding the claimant's credibility was against the manifest weight of the evidence.

¶ 47 3. Remaining Issues

¶ 48 The claimant raises three other issues regarding TTD and medical benefits incurred after November 5, 2013. Each of these arguments is predicated on a determination that the Commission erred in concluding that the claimant had reached MMI on November 5, 2013. Since we are affirming the Commission's finding that the claimant reached MMI on November 5, 2013, there can be no error in the Commission's determination that the claimant was not entitled to TTD and medical benefits after that date. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011).

¶ 49 CONCLUSION

¶ 50 The judgment of the circuit court of Cook County, which confirmed the decision of the Commission, is affirmed. The cause is remanded to the Commission for further determinations consistent with this decision.

¶ 51 Affirmed; cause remaded.