Workers' Compensation Commission Division
FILED: January 10, 2011

No. 1-09-3137WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

SUPERVALU d/b/a/ JEWEL FOODS, INC.,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
Appellant,	)	
	)	
v.	)	No. 09--L--50514
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al.* (Edward Cryan,	)	Sanjay Tailor,
Appellee.)	)	Judge, Presiding

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McCULLOUGH and Justices Hoffman, Hudson, and Stewart concur in the judgment.

ORDER

Held: The Commission's finding that the claimant proved a causal connection between his current condition of ill-being and a work-related accident on October 9, 2007, its decision to award temporary total disability benefits from October 10, 2007 through April 11, 2008, and its decision to award prospective medical treatment including surgery was not against the manifest weight of the evidence.

The claimant, Edward Cryan, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2008)), seeking benefits for

injuries he allegedly sustained while working for SUPERVALU d/b/a/ Jewel Foods, Inc. (employer). The matter proceeded to an arbitration hearing where the arbitrator found that the claimant sustained a cervical strain and aggravated his preexisting cervical degenerative disc disease during an accident at work on October 9, 2007. The arbitrator found that the medical care and treatment that the claimant had received was reasonable and necessary and that the claimant was entitled to 26 3/7 weeks of temporary total disability (TTD) benefits representing a period from October 10, 2007, through April 11, 2008. However, the arbitrator found that the complainant had reached maximum medical improvement (MMI) on approximately March 11, 2008, and it declined to award TTD benefits after April 11, 2008. The arbitrator also declined to award prospective medical care in the form of surgery.

Both parties appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission upheld the arbitrator's decision in part and reversed in part. The Commission found that the claimant's current condition is causally connected to the accident, that the claimant has not yet reached MMI, that he is entitled to TTD benefits from the time of the accident through April 11, 2008, and that he is entitled to all prospective medical care recommended by his treating physician, including surgery.

The employer filed a petition for judicial review of the Commission's decision in the circuit court of Cook County. The circuit court confirmed the Commission's decision. This appeal followed.

BACKGROUND

The claimant is a 47-year-old man who has worked for the employer for 14 years. At the time of the accident at issue, the claimant was working as a driver. His duties included driving, hooking up trailers, and delivering and unloading products to different stores in the Chicago area. He used an electric mule to unload the products.

On October 9, 2007, the claimant was unloading pallets when eight one-half gallons of apple juice fell from the top of a pallet and struck his head. He was not knocked over, but he testified that his knees buckled and he felt pain in his neck and back. Following the accident, the claimant drove himself back to his store, where he filled out an accident report. The employer sent him to Concentra, the company clinic, where the claimant sought treatment later that evening.

The claimant later contacted the employer's workers' compensation carrier and was told to make an appointment with a physician from a list of doctors to which the company and the union had agreed. The claimant selected orthopedic surgeon Dr. Kevin Koutsky from the list.

Dr. Koutsky began treating the claimant on October 17, 2007. Dr. Koutsky examined the claimant and took x-rays of his cervical spine and thoracic spine. The x-rays of the cervical spine showed a loss of normal cervical lordosis with significant degenerative disc disease noted at C5-C6 as well as C4-C5. There was no clear evidence of fracture, dislocation or spondylolisthesis. Dr. Koutsky's diagnosis at this time was cervical and thoracic spondylosis and radiculitis. He prescribed anti-inflammatory medications, muscle relaxants, and pain relievers and recommended that the claimant undergo physical therapy. He also ordered an MRI of the

claimant's cervical and thoracic spine. The MRI was performed on October 25, 2007. It showed disc degeneration but no evidence of any large herniated discs or spinal cord impingement.

The claimant returned to see Dr. Koutsky on November 19, 2007, at which time Dr. Koutsky recommended trigger point injections. The claimant had trigger point injections on December 10 and December 26, 2007, and January 9, 2008. One week after his first injection, the claimant returned to Dr. Koutsky for a follow-up appointment. Dr. Koutsky's notes of that appointment reflect that the claimant was "still having a lot of chronic disabling pain in the neck and upper extremities," and that the claimant was going to continue with trigger point injection treatment and "continue following up with the pain clinic." Dr. Koutsky also discussed with the claimant the possibility of surgery in the event that his symptoms did not improve despite conservative treatment. Dr. Koutsky referred the claimant to Dr. Thomas Brown, a neurosurgeon at the Chicago Institute of Neurosurgery and Neuroresearch.

The claimant saw Dr. Brown on January 7, 2008. Dr. Brown examined the claimant and reviewed the diagnostic films. According to Dr. Brown's notes, the claimant "appear[ed] to be in chronic pain," and was "no better in regard to his pain" even though he had been in physical therapy two to three times per week and had been on a neck exercise program since early November. The claimant told Dr. Brown that the first trigger point injection "did not help at all" and the second injection helped "for about three days." Dr. Brown's notes reflected that the claimant's "neck range of motion [was] about 2/3 normal in flexion and right rotation, 25% normal in extension, and 50% normal in left rotation." He noted that the claimant "[went] through the range of motion very slowly noting increased neck pain with all movements," and

that "the claimant [had] some rather undo [*sic*] cervical spinal tenderness but no paraspinal muscle tenderness or spasm."

Dr. Brown concluded that the claimant "mainly ha[d] mechanical neck pain." He suggested that the claimant "could also have bilateral carpel tunnel syndrome," although he noted there were "no signs of that" and that "there [was] no evidence of carpel tunnel syndrome on either side." Dr. Brown recommended that the claimant "pursue all reasonable conservative treatment" before considering cervical surgery and suggested that "if it comes to surgery, perhaps we should have [the claimant] undergo an EMG of his neck and upper extremities to rule out carpel tunnel syndrome since if he has that problem, surgery will not affect it." However, Dr. Brown stated that he planned to see the claimant again as needed and noted that "if he does require surgery, I told him I would be happy to see him back at any time."

The claimant returned to Dr. Koutsky on January 14, 2008. Dr. Koutsky's notes of that visit reflect that the claimant "is still having a lot of chronic disabling pain in the neck," and that the ongoing physical therapy had produced only "limited improvement of his symptoms." Dr. Koutsky recommended that the claimant continue with physical therapy and also prescribed cervical cortisone epidural injections. Moreover, Dr. Koutsky again discussed the possibility of surgery if the epidural injections and other treatments did not help. The claimant underwent epidural injections on February 6, 2008, and February 25, 2008.

Reports of the claimant's physical therapy sessions from January 8 and 11, 2008, reflect that the claimant had shown progress "in regards to functional activity," including "tolerance to light overhead lifting and endurance activity." However, the reports note that the claimant's

"cervical spine range of motion has not improved significantly overall" since he began physical therapy on October 31, 2007. The reports stress that "this lack of cervical range of motion improvement continues to be a concern as his active available range is not within normal limits, and this is a vital component of his job as a truck driver, as well as for driving safely on local streets in the community beyond the ten minutes he commutes to and from therapy or to pick his kids up from school."

Reports of the claimant's physical therapy sessions in late January reflect further improvement in certain physical abilities, but no improvement and even regression in his cervical range of motion. For example, the report of the January 29 and 31, 2008, sessions show that the claimant had progressed to the point that he was able to perform at a physical demand level of "medium" below the shoulders and "light" above the shoulders with "fair to good tolerance and no flare ups of cervical spine pain if overhead lifting is kept to a minumum." However, the report also noted that the claimant exhibited "decreased tolerance to soft-tissue mobilization of the mid to proximal cervical spine this week as evidenced by increased muscle guarding and shaking," and that his "cervical spine range of motion continues to be very limited." Reports of the claimant's February 5 and 7, 2008, sessions repeat this pattern. Specifically, the February reports note that the claimant was performing at the same physical demand level but also state that he had further decreased tolerance to manual therapy and that his range of cervical motion "continues to be very limited." The reports also note that, although the claimant had received his first epidural injection earlier that week, "no subjective or objective improvements are noted at this time."

On February 11, 2008, the claimant saw Dr. Michael Kornblatt, an orthopedic surgeon at the Illinois Bone and Joint Institute, for a Section 12 examination at the request of the employer's workers' compensation carrier. Dr. Kornblatt took a history, reviewed the medical records and diagnostic tests, performed a physical examination of the claimant and rendered his opinions. According to Dr. Kornblatt, the claimant suffered from a cervical strain with preexisting cervical and thoracic degenerative disc disease. Dr. Kornblatt opined that the claimant's present condition was causally related to the claimant's work accident in that the work accident aggravated his preexisting cervical disc disease. In Dr. Kornblatt's opinion, the claimant was capable of working with a 25-pound lifting restriction immediately, and he would reach maximum medical improvement within four weeks, at which time he could resume full employment without restrictions. Dr. Kornblatt asserted that there were no surgical indications, and in fact, concluded that "surgical treatment [was] contraindicated." He also concluded that further formal physical therapy was no longer required. He recommended, however, that the claimant should be performing aerobic exercise and upper extremity strengthening exercise, and that "active range of motion of the cervical spine should be encouraged."

On February 27, 2008, the claimant returned to Dr. Koutsky. Dr. Koutsky's notes reflect that the claimant "was still having a lot of chronic disabling pain in the neck and upper extremity," and that he had "failed conservative management" including physical therapy, multiple injections, and medications. Dr. Koutsky concluded that he did not believe that the claimant "is able to work in any capacity" because he needed narcotic medications to control his discomfort and "[w]orking while taking narcotic recommendations is not recommended."

Accordingly, Dr. Koutsky concluded that the claimant was a reasonable candidate for cervical surgery. He also noted that the claimant had seen Dr. Brown for a neurosurgical evaluation, that Dr. Brown concurred with his assessment, and that "we are still awaiting approval for surgery." Dr. Koutsky signed a work status report for the claimant that indicated that the claimant was off work until further notice.

The claimant's last office visit with Dr. Koutsky was on March 26, 2008. At that time, Dr. Koutsky's notes reflect that the claimant "did undergo the epidural with little relief of his symptoms . . . he is having symptoms that are disabling for him. They interfere with his activities of daily living, as well as his ability to function." The doctor refilled the claimant's pain medications and again noted "we are still awaiting approval for surgery."

The matter was submitted to arbitration on April 11, 2008. At the arbitration hearing, the claimant testified that he did not notice any improvement from the first epidural injection, and that, after the second injection, he may have felt better for approximately seven days. Concerning his present condition, the claimant testified that he still has pain is in his "whole neck area," that he is tired of the pain, and that the pain seems to be "intensifying" and "worsening." The claimant stated that he sometimes experiences numbness in his fingers. He testified that he takes pain medication which takes the edge off for him but never makes his pain go away. Although the claimant testified that he had carpel tunnel surgery in 2001, he stated that he did not have any of these problems prior to October 9, 2007, and indicated that he did not have any prior injuries involving his neck prior to or after that date.

The arbitrator found Dr. Kornblatt to be credible and gave particular weight to his opinions. Specifically, the arbitrator accepted Dr. Kornblatt's conclusion that the claimant had suffered a cervical strain and aggravated his preexisting cervical degenerative disc disease during the October 9, 2007, work accident. Moreover, based upon Dr. Kornblatt's opinion that the claimant would have reached maximum medical improvement by approximately March 11, 2008, the arbitrator awarded the claimant temporary total disability benefits from October 10, 2007, through the date of the arbitration hearing, which was April 11, 2008. The arbitrator also found that the medical care and treatment of the claimant that had been rendered up to that time was reasonable and necessary.

The arbitrator ruled, however, that the claimant was not entitled to prospective surgical care because he found that surgery was "neither reasonable or [*sic*] necessary based upon the opinion of Dr. Kornblatt." The arbitrator suggested that Dr. Brown's opinions supported this conclusion. According to the arbitrator, Dr. Brown believed that the claimant suffered from mechanical neck pain at the time he examined the claimant and therefore "felt that surgery was not warranted." The arbitrator acknowledged, however, that "more conservative" treatment "may be necessary."

Both parties appealed the arbitrator's decision to the Commission. The Commission reversed the arbitrator's decision in part and upheld it in part. First, the Commission found that the claimant's present condition is causally related to the October 9, 2007, work accident and that the claimant "has not yet reached maximum medical improvement." In reaching these conclusions, the Commission relied on the medical records and the physical therapy records,

which "show that [the claimant's] symptoms have been persistent." Specifically, the Commission noted that Dr. Koutsky's records show that the claimant consistently reported significant pain beginning on October 17, 2007, and continuing through February 2008, and that the physical therapy records from January 2008 reflect that the claimant's cervical spine range of motion had not improved significantly overall from the time that he began physical therapy on October 31, 2007. Accordingly, the Commission found it "apparent from the records that the claimant's condition has not materially improved with conservative treatment."

The Commission also relied heavily on Dr. Koutsky's opinions, which it found to be credible and more persuasive than Dr. Kornblatt's opinions. Dr. Koutsky indicated on February 27, 2008, that he believed that the claimant was not able to work "in any capacity," that the claimant required narcotic medication to control his discomfort, and that "working while taking narcotic medication is not recommended." The Commission found that these opinions were consistent with the claimant's physical therapy records. For example, the Commission noted that the physical therapist indicated in January 2008 that the claimant's lack of cervical range of motion "continue[d] to be a concern as his available range was not within normal limits" and noted that "cervical range of motion is a vital component for [the claimant's] job as a truck driver."

By contrast, the Commission found Dr. Kornblatt's opinions unpersuasive and "contrary to [the claimant's] treating physician's opinions as well as the physical therapist's opinions." The Commission found it significant that, although Dr. Kornblatt found that the claimant's range of motion in his cervical spine was "diminished in all directions," he nevertheless concluded that

"physical therapy was no longer indicated" and cleared the claimant to work immediately with a 25-pound lifting restriction with alternating positions. The Commission found these opinions and recommendations to be unpersuasive.

The arbitrator had relied on Dr. Kornblatt's opinions in concluding that any causal connection between the claimant's work injury and his subsequent symptoms terminated as of March 11, 2008. Accordingly, the Commission rejected the arbitrator's conclusion on this issue. Relying on the opinions and findings of Dr. Koutsky and the physical therapist, the Commission found that the claimant's present condition is causally related to the accident, that his condition has not reached maximum medical improvement, and that he is entitled to prospective medical treatment.

The Commission upheld the arbitrator's award of temporary total disability benefits through April 11, 2008. It rejected the employer's argument that TTD benefits should not be awarded after February 11, 2008, because work within the restrictions Dr. Kornblatt recommended was offered to the claimant at that time. In so holding, the Commission reiterated that it found Dr. Kornblatt's opinions and recommendations "unpersuasive" and concluded that "it was not realistic or safe for the claimant to return to work as his cervical range of motion was not within normal limits and he was taking narcotic medication."

The Commission also found that the claimant was entitled to all prospective medical treatment recommended by Dr. Koutsky, "including, but not limited to, surgery." It noted that the claimant had undergone "significant conservative treatment" including physical therapy, medication use, trigger point injections, and cervical epidural injections, and that none of these

treatments had provided relief. Further, the Commission pointed out that Dr. Brown "did not foreclose the possibility of surgery, and, in fact, indicated that he would be happy to see [the claimant] again if [he] decided to undergo surgery." Accordingly, the Commission concluded that the claimant had "failed conservative treatment and is entitled to explore other treatment options including surgery."

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

This appeal followed.

ANALYSIS

A. Causal connection between work injury and the claimant's present condition

The employer argues that the Commission's finding of a causal connection between the October 9, 2007, accident and the claimant's present condition is against the manifest weight of the evidence. According to the employer, the totality of the evidence overwhelmingly supports the arbitrator's conclusion that the claimant sustained a cervical strain and a temporary aggravation of preexisting degenerative disc disease that had resolved by March 11, 2008. Thus, the employer contends that any symptoms which occurred after March 11, 2008, were not caused by the accident and are therefore not compensable. We disagree.

To obtain compensation under the Act, a claimant must show by a preponderance of the evidence that he has suffered a disabling injury arising out of and in the course of his or her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The "arising out of" component addresses the causal connection between a work-related injury and the claimant's

condition of ill-being. *Sisbro*, 207 Ill. 2d at 203. A claimant need prove only that some act or phase of his or her employment was a causative factor in his or her ensuing injury. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592. (2005). An accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro*, 207 Ill. 2d at 205.

Whether a causal connection exists is a question of fact for the Commission. *Land and Lakes Co.*, 359 Ill. App. 3d at 592. In resolving disputed issues of fact, including issues related to causal connection, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). We will overturn the Commission's causation decision only when it is against the manifest weight of the evidence. The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). For the Commission's decision to be against the manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result. *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721, 729-30 (2000). This occurs "only when the court determines that no rational trier of fact could have agreed with the Commission's decision." *Fickas*, 308 Ill. App. 3d at 1041.

Applying these standards, we cannot conclude that the Commission's causation finding was against the manifest weight of the evidence. In concluding that the claimant's current condition is causally related to the accident, the Commission relied on Dr. Koutsky's records and the records prepared by the claimant's physical therapist. These records suggested that several of the claimant's symptoms persisted from the time of the accident through the claimant's last recorded visit to Dr. Koutsky on March 26, 2008. Specifically, Dr. Koutsky's records show that the complainant consistently reported significant pain from the time of his first office visit on October 17, 2007, and continuing through his last visit on March 26, 2008. From mid-January through late February of 2008, Dr. Koutsky described the complainant's pain as "chronic" and "disabling," and in his March 26 record, he noted that the complainant was having "disabling" symptoms that were "interfer[ing] with his activities of daily living as well as his ability to function." The physical therapy records also reflect that complainant consistently complained of neck pain and that he suffered from a limited range of cervical motion which impaired his ability to do his job through late February 2008, the date of his final physical therapy session. Dr. Koutsky's records reflect that these symptoms had not materially improved by late March despite extensive conservative care, including 27 sessions of physical therapy, regular at-home exercises, three trigger point injections, and two epidural injections. Moreover, during the April 11, 2008, arbitration hearing, the claimant testified that the pain seemed to be *intensifying* and *worsening* and was not eliminated by his pain medication.

The employer's expert, Dr. Kornblatt, agreed that the claimant's symptoms as of February 11, 2008, were "causally related" to the October 2007 work accident, which he believed

aggravated a preexisting condition of degenerative disc disease. Nevertheless, Dr. Kornblatt concluded that the claimant was able to work with a 25-pound lifting restriction immediately, that he would reach MMI by March 11, 2008, and that neither surgery nor further physical therapy were indicated. Dr. Kornblatt reached these conclusions even though he acknowledged that the claimant complained of pain and that the range of motion in the claimant's cervical spine was "diminished in all directions."

As noted above, evaluating medical testimony and determining the credibility of conflicting medical experts is uniquely within the province of the commission. When medical opinions are in conflict, it is for the Commission to determine which opinion is to be accepted, and the Commission may attach greater weight to the treating physician's opinion. *Piasa Motor Fuels v. Industrial Comm'n*, 368 Ill. App. 3d 1197, 1206 (2006). In this case, the records prepared by the claimant's treating physician suggest that the claimant's chronic pain and other symptoms were causally related to his work accident through at least March 26, 2008, and that those symptoms would not improve until surgery is performed. These conclusions are consistent with the physical therapy records and with the claimant's own testimony. As the sole judge of the credibility of medical and other testimony, the commission was free to credit this evidence and to reject Dr. Kornblatt's contrary opinions, which were based on a single examination of the claimant. See, *e.g.*, *Edgcomb v. Industrial Comm'n*, 181 Ill. App. 3d 398, 404-05 (1989) (opinions of claimant's treating physicians and surgeon which were based on extensive examination and contact with the claimant outweighed the testimony of the employer's physician who examined the claimant for approximately seven minutes); *O'Dette v. Industrial Comm'n*, 79

Ill. 2d 249, 253 (1980) (it is the Commission's function to judge the credibility of the claimant and other witnesses and to resolve their conflicting testimony).

Moreover, evidence of prior good health and a change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000). Here, the claimant testified that he did not have any injuries involving his neck prior to or after the October 2007 accident, that he did not have any of his current symptoms before the accident, and that his neck pain had persisted since the time of the accident and had worsened by the time of the arbitration hearing. This provided further evidence to justify the Commission's finding of causation.

The employer argues that the Commission "ignored" critical record evidence in reaching its decision, such as (1) certain entries in the January and February 2008 physical therapy records which suggested that certain of the claimant's physical capabilities were improving, and (2) certain recommendations made by Drs. Brown and Kornblatt. The employer appears to assume that the Commission ignored this evidence merely because it did not discuss it in its decision. That assumption is baseless. The Commission explicitly considered all of the physical therapy records and the medical reports of both Dr. Brown and Dr. Kornblatt. Indeed, the Commission discussed this evidence in some detail and expressly based its decision, in part, on the physical therapy records.

Moreover, the fact that the Commission did not reference certain particular portions of these records and reports in its decision does not mean the Commission failed to consider them.

"A presumption exists that the Commission . . . considered all competent and proper evidence in reaching [its] decision," and the Commission's decision "need not recite all of the underlying evidence." *Swift and Co. v. Industrial Comm'n*, 150 Ill. App. 3d 216, 220-21 (1986); see also *Setzekorn v. Industrial Comm'n*, 353 Ill. App. 3d 1049, 1054 (2004). Thus, the employer's argument that the Commission ignored critical evidence fails as a matter of law. See *Swift and Co.*, 150 Ill. App. 3d at 220-21 (rejecting employer's argument that the absence of any express comment in the Commission's decision concerning the testimony of employer's witnesses or the conflicting evidence presented by each party proves that the Commission failed to consider the evidence).

In any event, none of the evidence cited by the employer contradicts the Commission's causation finding. The employer argues that the physical therapy reports from late January and February 2008 "documented steady improvement" in the claimant's physical capabilities and "directly contradict" the Commission's conclusion that the claimant's condition was not improving. This argument fails. Although the physical therapy records from January 29 and 31, 2008, do show that the claimant was able to perform at a physical demand level of "medium" below the shoulders and "light" above the shoulders, they also note that the claimant exhibited "decreased tolerance to soft-tissue mobilization of the mid to proximal cervical spine" and that the claimant's "cervical spine range of motion continues to be very limited." The February 5 and 7, 2008, records note further decreased tolerance to manual mobilization of the cervical spine, continued limitation of cervical range of motion, and "no subjective or objective improvements" from the first epidural injection. Thus, contrary to the employer's argument, the

physical therapy records support the Commission's conclusion that the claimant continued to experience debilitating symptoms through February 2008.

The employer also stresses the fact that Dr. Brown recommended that the claimant undergo an EMT before having surgery in order to confirm that his symptoms are not the result of carpel tunnel syndrome, which would not be corrected by surgery. According to the employer, this recommendation amounts to a "critical opinion" "as to causation" because it suggests that carpel tunnel syndrome—not the October 2007 accident—could be the cause of the complainant's current symptoms, and that the surgery recommended by Dr. Koutsky "would not be warranted" if that were the case. Contrary to the employer's suggestion, however, Dr. Brown did not offer a causation opinion that conflicted with Dr. Koutsky's opinion. Dr. Brown diagnosed the claimant with "mechanical neck pain," not carpel tunnel syndrome. Although he stated in passing that the claimant "could also have bilateral carpel tunnel syndrome," he noted twice in his report that his examination of the claimant revealed "no evidence" of that. Moreover, although Dr. Brown suggested that the claimant should "perhaps" undergo an EMG prior to surgery "to rule out carpel tunnel syndrome" he did not foreclose the possibility of surgery. To the contrary, he indicated that he would be "happy to see [the claimant] back again" if the claimant "does require surgery." Thus, nothing in Dr. Brown's report contradicts the Commission's conclusion that the complainant's current condition is causally related to the October 2007 accident.

Accordingly, considering all of the evidence, we conclude that the Commission's finding of a causal relation was not against the manifest weight of the evidence.

B. The Commission's award of TTD benefits through April 11, 2008

The Commission affirmed the arbitrator's award of TTD benefits through the date of the arbitration hearing, which was April 11, 2008. The employer argues that no TTD benefits should be awarded after February 12, 2008, because work within the restrictions that Dr. Kornblatt recommended was made available to him on February 13, 2008. The employer asserts that both Dr. Kornblatt and the physical therapist concluded that the claimant was able to work with certain restrictions by February 13, and that Dr. Koutsky's conclusion that he was not able to work in any capacity was not credible in light of this evidence. Thus, the employer argues that the Commission's decision to award TTD benefits through April 11, 2008, was contrary to the manifest weight of the evidence.

We disagree. A claimant is temporarily and totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of her injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107 (1990). Once an injured claimant has reached MMI, he is no longer eligible for TTD benefits. *Archer Daniels Midland*, 138 Ill. 2d at 118. In determining whether a claimant has reached MMI, a court may consider factors such as a release to return to work, medical testimony or evidence concerning the claimant's injury, the extent of the injury, and, most importantly, whether the injury has stabilized. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (2003). To be entitled to TTD benefits, it is a claimant's burden to prove not only that he did not work, but also that he was unable to work. *Westin Hotel v. Industrial Comm'n of*

Illinois, 372 Ill. App. 3d 527, 542-43 (2007). The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20. If there is sufficient evidence in the record to support the Commission's determination, it will not be set aside. *Beattie v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006).

In this case, there was ample support in the record for the Commission's conclusion that the claimant had not yet reached MMI. Dr. Koutsky's records and the physical therapy records show that the claimant was still experiencing a great deal of pain and a limited range of motion in his cervical spine in late February and March of 2008, and that the extensive conservative treatments he had undergone had not cured or improved these symptoms. Dr. Koutsky concluded that the claimant needed additional treatment including surgery, and he restricted the claimant from working in any capacity. This evidence, standing alone, is more than sufficient to support the Commission's determination that the claimant had not reached MMI. See *Westin Hotel*, 372 Ill. App. 3d at 542-43 (commission reasonably could have found that, because conservative treatment was unsuccessful and claimant had not yet undergone surgery, claimant had not reached MMI).

The record also supports the Commission's determination that the claimant is not able to work. On February 27, 2008, Dr. Koutsky concluded that the claimant was unable to work "in any capacity" because he had failed conservative treatments, he was experiencing "chronic disabling pain," and required narcotic medication to control his discomfort. The claimant

testified that his pain was worsening at the time of the arbitration hearing and that his pain medication did not make the pain go away. Moreover, the January and February, 2008 physical therapy records indicate that the claimant's cervical range of motion was "very limited" and that this was a "concern" because having a normal cervical range of motion was "a vital component of his job as a truck driver." Accordingly, the Commission reasonably concluded that "it was not realistic or safe for [the claimant] to return to work." Although Dr. Kornblatt opined that the claimant would reach MMI by March 11, 2008, and could work with restrictions as of February 11, 2008, the Commission found his opinions unpersuasive and "contrary to [the claimant's] treating physician's opinions as well as the physical therapist's opinions." We cannot say that the Commission's decision to credit the evidence of the claimant's treating physician and other record evidence over Dr. Kornblatt's opinions was against the manifest weight of the evidence.

C. The Commission's award of prospective medical care including surgery

The employer argues that the Commission erred in determining that the claimant is entitled to prospective medical treatment as recommended by Dr. Koutsky, including surgery. Section 8(a) of the Act entitles a claimant to compensation for all necessary medical, surgical, and hospital services "thereafter incurred" that are reasonably required to cure or relieve the effects of the injury. 820 ILCS 305/8(a) (West 2002). Specific procedures or treatments that have been prescribed by a medical service provider are "incurred" within the meaning of the statute, even if they have not yet been paid for. *Homebrite Ace Hardware v. Industrial Comm'n*, 351 Ill. App. 3d 333, 341 (2004).

The employer argues that the Commission should not have approved surgery in this case for several reasons. First, the employer asserts that the claimant was improving with conservative treatment[1] and had not yet "exhaust[ed] all noninvasive treatment as recommended by Drs. Brown and Kornblatt." In addition, the employer contends that the diagnostic testing did not support surgical intervention, and it criticizes Dr. Koutsky's decision to recommend surgery before ordering an EMS to rule out carpel tunnel syndrome, as recommended by Dr. Brown. Accordingly, the employer maintains that Dr. Koutsky's recommendation of surgery lacked credibility and argues that the Commission's decision to credit his opinion over Dr. Kornblatt's opinion that surgery was not indicated is against the manifest weight of the evidence.

We find that there was adequate evidence in the record to support the Commission's decision to award prospective relief, including surgery. Contrary to the employer's argument, the evidence did not show that the claimant was "improving with conservative treatment" in material respects. Although the physical therapy records suggest that the claimant showed progress with regard to certain physical abilities, they also indicate that claimant's neck pain and cervical range

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[1] For example, the employer notes that the claimant testified that he "improved with the second epidural [shot] two days prior to Dr. Koutsky's surgical recommendation" on February 27, 2008, and that the physical therapist recommended additional physical therapy and noted improvements in the claimant's functional level in February 2008. As shown below, however, any minimal improvements from these treatments were short-lived and unavailing. In addition, the employer's argument that the claimant's condition was still improving in late February 2008 directly contradicts its argument that the claimant had reached MMI by February 11, 2008.

of motion was not improving despite extensive conservative care. Moreover, the medical records and the claimant's testimony establish that the claimant experienced significant, chronic neck pain beginning shortly after the accident and continuing through the time of the arbitration hearing.

Other evidence further confirms that non-surgical treatments were not working. For example, the claimant told Dr. Brown that the first trigger point injection "did not help at all" and that the second injection helped only "for about three days." At the arbitration hearing, the claimant testified that he did not notice any improvement from the first epidural injection, and that he may have felt better for approximately seven days after the second injection. The physical therapy records for February 5 and 7, 2008, indicate that the claimant showed "*no* subjective or objective improvements" after the first epidural injection (emphasis added), and Dr. Kornblatt noted in his February 11, 2008, report that the trigger point injections and the first epidural injection "provided no relief." Thus, the record evidence supports the conclusion that any benefits that the claimant received from conservative treatments were minimal and short-lived and that his overall condition continued to deteriorate despite these treatments.

Moreover, contrary to the employer's suggestion, Dr. Brown did not rule out surgery as a treatment option. Rather, he merely recommended that the claimant "pursue all reasonable conservative treatment before considering" surgery, and he noted that he would be happy to see the claimant again if surgery were ultimately required. As noted above, the claimant underwent an extensive regimen of conservative treatments which provided him little relief. Much of these treatments occurred after Dr. Brown issued his recommendation. Accordingly, Dr. Koutsky

concluded that conservative measures had failed and that surgery was the next logical step. This opinion does not conflict with Dr. Brown's recommendation, and the Commission was entitled to accept it.

It is true that Dr. Koutsky's records do not explain precisely why he believed that surgery would alleviate the claimant's symptoms. It is also true that the MRI showed disc degeneration but no evidence of any large herniated discs or spinal cord impingement. Thus, it is possible that reasonable doctors could disagree as to whether surgery is indicated in this case. However, as noted above, the Commission was entitled to assess the credibility of the medical experts and to credit Dr. Koutsky's opinion over Dr. Kornblatt's, and we cannot say that Dr. Koutsky's recommendation of surgery in this case was inherently unreasonable. See *Land and Lakes Co.*, 359 Ill. App. 3d at 593-94 (rejecting employer's argument that surgery was not indicated for degenerative disc disease where the discs were not herniated, and holding that where "conservative treatment failed to alleviate [the claimant's] symptoms," [i]t is difficult to say that [claimant's doctor's] recommendation [of surgery] is inherently unreasonable or that the Commission's decision to authorize the surgery is against the manifest weight of the evidence"). The appropriate question is not whether we would have reached the same conclusion in the first instance. Rather, the only question is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982). Given Dr. Koutsky's opinion and the other evidence discussed above, we believe that there is.

CONCLUSION

The judgment of the circuit court of Cook County confirming the Commission's decision is affirmed and the cause is remanded to the Commission for further proceedings.

Affirmed and remanded.