Workers' Compensation
Commission Division
FILED: January 24, 2011

No. 1-10-0109WC

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

H&H ELECTRIC,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09-L-50324
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION and MAHDI BUSTAMI,	)	Honorable
	)	Elmer James Tolmaire III,
Defendants-Appellees.	)	Judge Presiding

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

ORDER

Held: The Commission's findings that: (1) claimant's current condition of ill-being is causally related to his industrial accident; (2) claimant is entitled to 30-4/7 weeks of TTD benefits; and (3) an award of penalties, attorney fees, and additional compensation was appropriate are not against the manifest weight of the evidence.

Claimant, Mahdi Bustami, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2006)) alleging that he sustained injuries to his "right side lower back, right side thigh and buttox [*sic*]" on October 4, 2007, while working for respondent, H&H Electric. At the arbitration hearing, the parties stipulated that claimant sustained an industrial accident on October 4, 2007, but disagreed on various issues, including causation, the period during which claimant was temporarily totally disabled, and whether penalties should be assessed against respondent. Ultimately, the arbitrator determined that claimant's current condition of ill-being is causally related to claimant's employment, and he awarded claimant 30-4/7 weeks of temporary total disability (TTD) benefits. In addition, the arbitrator assessed penalties against respondent under section 19(k) of the Act (820 ILCS 305/19(k) (West 2006)), additional compensation under section 19(l) of the Act (820 ILCS 305/19(l) (West 2006)), and attorney fees under section 16 of the Act (820 ILCS 305/16 (West 2006)). The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator. On judicial review, the circuit court of Cook County confirmed. Before this court, respondent challenges the Commission's findings with respect to causation, TTD benefits, and penalties. We affirm and remand for further proceedings.

I. BACKGROUND

Claimant first became employed with respondent in 2005, working at various times as an electrician, a directional boring machine operator, and a general laborer. Claimant's duties required occasional bending, reaching, twisting, crawling, and climbing ladders. In addition, claimant was required to occasionally lift and carry between 50 and 100 pounds and frequently lift and carry

between 20 and 50 pounds.

At the hearing on claimant's application for adjustment of claim, the parties stipulated that on October 4, 2007, claimant sustained accidental injuries that arose out of and in the course of his employment. Regarding the details of the accident, claimant explained, "I picked up 4-inch steel pipe. They're about 10-feet long. I'm not sure how much the pounds are. Walking it across about 40, 50 feet. That's when I started feeling a little pain in my right lower back." Claimant was able to work an additional hour or two before he "couldn't take it anymore." Claimant testified that he developed "a strong pain in [his] lower right back along with underneath the buttocks and around the groin area." Claimant stated that he had never experienced this type of pain before. During claimant's lunch break, he called Dr. Lee-Ann Yang of Loyola University Medical Center (Loyola) and scheduled an appointment for October 9, 2007. At the time the accident occurred, claimant was 25 years old.

In the meantime, claimant returned to work on October 5, 2007 (a Friday). However, because he was still in pain, he advised a coworker that he would be unable to do as much as he usually did. Claimant did not work the weekend following the injury. Claimant testified that on Monday, October 8, 2007, the pain was still present. Nevertheless, he returned to work, operating the directional boring machine. Claimant testified that the only labor involved in this task is "remov[ing] a 10-foot rod off the track" when the machine malfunctions.

Claimant saw Dr. Yang as scheduled on October 9, 2007. Claimant indicated that he does a lot of construction-type work, including lifting up to 100 pounds, cutting asphalt, and using a jackhammer and a sledgehammer. Claimant told Dr. Yang that about 10 to 14 days earlier he noted

a pain at the lower right back "out of the blue." Claimant was unable to recall anything specific that might have caused the pain, although he did report that before the onset of the pain occurred he was setting streetlights, which required lifting and twisting. Claimant also related that he experienced pain with movement while street cutting the previous week, a task which involved bending over at a 90-degree angle to handle a large, motorized hand saw. Dr. Yang noted that claimant was in a minor motor vehicle accident four years earlier, but that he had no back pain as a result. Dr. Yang's physical examination revealed reproducible pain over the right sacroiliac joint. Straight-leg raising was negative, although Dr. Yang noted some discomfort to the calf when the right leg was raised to a 90-degree angle. Dr. Yang diagnosed low back pain as a result of lifting heavy objects. Suspecting that claimant had a mild disc bulge, Dr. Yang ordered X rays of the lumbar spine and the sacroiliac joints. She also recommended physical therapy. Claimant requested Dr. Yang to allow him to return to work because on one occasion in the past, he was laid off because he took time off due to an injury. Dr. Yang agreed, releasing claimant to light duty pending the results of the imaging studies.

Both the sacroiliac and lumbar spine X rays were interpreted as normal. On October 22, 2007, Dr. Yang wrote claimant a letter explaining that neither film showed any specific abnormalities that could be causing his pain. As a result, Dr. Yang opined that the source of the pain could be from soft tissue strain rather than from any bony abnormality.

Despite Dr. Yang's note, claimant returned to work performing his normal tasks. Claimant explained that respondent's work schedule is "either full duty or no duty." Claimant ceased working for respondent approximately two weeks after the October 4, 2007, accident. According to claimant, this occurred after "Clarence," the general manager, told him that he could no longer work for

respondent because of "liability issues." Clarence also indicated that claimant was holding back other workers by asking for help when he needed it and that the company did not want to risk claimant getting injured.

On November 1, 2007, claimant returned to Loyola, where he was seen by Dr. Michael Gill. Dr. Gill noted that claimant's job involved a lot of heavy lifting and that he had been seen previously by Dr. Yang for right side low back pain. Upon reviewing the X rays and physically examining claimant, Dr. Gill diagnosed low back muscle strain. Although Dr. Gill did not believe that there was a disc etiology, he agreed with Dr. Yang's recommendation for physical therapy and he prescribed pain medication.

The prescribed course of physical therapy commenced on November 7, 2007, and continued for several weeks. The therapy intake form stated that claimant's injury occurred "early 10/07 around 10/04/07" when claimant "lift[ed] 75# steel pipe from floor *** over shoulder to rest behind head." The form lists claimant's primary complaints as "diff[iculty] tying shoes," "diff[iculty] lifting/carrying 3 month-old niece," "pain [with] squatting, lifting, twisting," and "constant" right low back pain. The therapist determined that claimant's symptoms were consistent with a diagnosis of right-sided low-back pain. The therapist felt that claimant's rehabilitation potential was "excellent." In a progress summary dated November 21, 2007, the therapist noted that claimant demonstrated improved functional strength and increased tolerance for functional activities, including tying his shoes, bending, and lifting light weights. Nevertheless, claimant continued to present signs and symptoms of right gluteal strain and pain with certain positions and movements. As a result, the therapist recommended three additional weeks of therapy.

Claimant failed to show for an appointment with Dr. Yang on November 27, 2007. However, claimant presented at Loyola the following day, November 28, 2007, and was examined by Dr. Paula Marfia. Dr. Marfia's notes reflect complaints of pain in the lower back radiating to the buttock with occasional pain over the lateral hip. Dr. Marfia noted an onset date of September 2007. Claimant told Dr. Marfia that he feels no better with physical therapy, and he described an episode during one session in which he experienced a shooting pain down his right leg. Dr. Marfia recorded that claimant's therapist indicated that he was making a "fair" effort and had some improvement overall. Dr. Marfia recommended that claimant continue physical therapy for at least three additional weeks, and noted that without improvement, an MRI would be appropriate to check for disc etiology. In an addendum to Dr. Marfia's report, Dr. Josephine Dlugopolski-Gach wrote that claimant was "very frustrated because he needs to get back to work soon but cannot figure out why he is not improving significantly." Dr. Dlugopolski-Gach agreed that additional physical therapy was appropriate and that an MRI might be necessary.

Claimant continued to attend physical therapy through December 27, 2007. In a progress summary report dated December 24, 2007, the therapist noted that while claimant's subjective complaints of low back pain remain unchanged, functionally, claimant is able to perform "quite well." The therapist recommended that claimant transition to a work-conditioning program to further enhance his functional strength and endurance.

Claimant followed up with Dr. Yang on December 27, 2007, complaining of sharp pains in the lower back, which had worsened since he was first examined. Claimant also reported that the pain increased with physical therapy. Dr. Yang's examination revealed pain at the right buttock near

the sacroiliac joint and positive straight-leg raising. Dr. Yang diagnosed low back pain and suspected that claimant had a full disc herniation. Noting that claimant had yet to undergo an MRI, Dr. Yang strongly advised claimant to do so. In addition, she discontinued claimant's physical therapy and referred him to an orthopaedic spine surgeon, Dr. Anthony Rinella. The MRI was taken on December 28, 2007. The radiologist interpreted the film as showing a moderate far right lateral herniated disc at L4-L5 and mild right neuroforaminal stenosis. In a letter dated December 31, 2007, Dr. Yang informed claimant that the MRI demonstrated that a disc herniation is "likely the cause of [his] pain."

The evaluation with Dr. Rinella took place on January 10, 2008. Claimant provided a history to Dr. Rinella of a work injury in September 2007. Claimant stated that he was lifting a 4-inch, 10-foot long steel pipe weighing approximately 125 pounds when he felt a sudden pain in his back. Claimant told Dr. Rinella that physical therapy increased his pain. Dr. Rinella's physical examination revealed mild right sacroiliac tenderness and right paraspinal tenderness with forward flexion. Dr. Rinella diagnosed a work-related lumbar strain. Concluding that claimant maximized conservative management, Dr. Rinella did not believe that a work-hardening program would be beneficial. Instead, he recommended a functional capacity evaluation (FCE) to set permanent restrictions and noted that it was unlikely that claimant would be able to tolerate a long-term career moving 100-pound objects regularly. Dr. Rinella also opined that no imaging studies, injections, or surgical intervention would be beneficial and that claimant would be at maximum medical improvement (MMI) after completing the FCE.

Claimant testified that a nurse from the workers' compensation insurance carrier was present

at his appointment with Dr. Rinella. According to claimant, the nurse told him that the FCE would not be authorized because additional therapy would be more beneficial. Claimant also testified that he felt that Dr. Rinella's assessment that he had no options "wasn't right," so he decided to seek another opinion.

Meanwhile, on January 31, 2008, claimant was sent by respondent to Dr. Kern Singh, for an independent medical evaluation (IME) pursuant to section 12 of the Act (820 ILCS 305/12 (West 2006)). Dr. Singh recorded a history of injury at work on October 4, 2007. Claimant told Dr. Singh that he noticed a "pop" in his lower back and had increasing back pain after he lifted a steel pole weighing about 75 pounds. At the time of the examination, claimant reported right-sided back pain that localized above the ilium in the lumbar paraspinal region. Upon examination, Dr. Singh noted "several nonorganic/Waddell findings, including hyperexaggeration of symptoms with percussion of [claimant's] lumbar spine, pain with simulated axial loading, pain with simulated axial rotation, and pain with simulated nerve stretch signs." Dr. Singh also reviewed claimant's MRI and interpreted it as showing "normal lumbar lordosis, minimal loss of disk height, and normal signal intensity, with no evidence of disk herniation, spondylolisthesis, or fracture." Ultimately, Dr. Singh diagnosed a lumbar muscular strain which was causally related to the October 2007 work accident. Remarking that claimant's MRI was normal, Dr. Singh found that claimant was at MMI, that he did not need additional medical treatment or an FCE, and that he should be able to return to his prior job full duty without restrictions. At the arbitration hearing, claimant testified that Dr. Singh's evaluation lasted only one or two minutes. In response to Dr. Singh's report, respondent ceased paying TTD benefits to claimant early in February 2008.

Claimant saw Dr. Yang again on February 6, 2008. She diagnosed chronic low back pain and noted that claimant planned to seek another opinion from Dr. Mark Lorenz, an orthopaedic physician recommended by his girlfriend. Claimant presented to Dr. Lorenz on February 20, 2008, reporting pain in his lower back radiating toward his right hip and occasionally down the right lower extremity. Claimant told Dr. Lorenz that he was at work on October 4, 2007, when he twisted his body awkwardly as he bent over to cut some pipe. Claimant further related that prior to that incident, secondary to repetitive lifting at work, claimant noticed some aching in his lower back but he did not think much of it and "sort of expected that from heavy work days." Dr. Lorenz's examination revealed reversal of spinal rhythm primary for right-sided buttock pain and palpable spasms on the left side of the lower back. Straight-leg raising on the right side reproduced buttock pain. Sensory examination demonstrated a slight decrease in sensation along the lateral anterior thigh. Dr. Lorenz interpreted claimant's MRI as showing a far lateral disc herniation impinging the L4 nerve root and exiting at the L4 foramina on the right. Dr. Lorenz noted that the herniation is "clearly visible on one of the cuts and in addition to that it was read by the radiologist at that level as well." Dr. Lorenz diagnosed L4 radiculopathy on the right side secondarily for a lateral disc herniation. Dr. Lorenz opined that claimant's disc herniation occurred as a result of the October 4, 2007, incident. He also opined that claimant's ongoing pain is "more likely than not related to the repetitive lifting secondarily to his line of work." Dr. Lorenz recommended that claimant remain off work "without lifting or exposure to vibration or sitting which has been problematic for him." Dr. Lorenz also prescribed a transforaminal epidural at L4-L5.

Claimant underwent the epidural on March 10, 2008, and followed up with Dr. Lorenz on

April 16, 2008. Claimant told Dr. Lorenz that after the epidural his pain was worse for about one week. Claimant did report one day where he was without pain in the groin and thigh area, but the pain subsequently returned. Dr. Lorenz's diagnosis was L4-5 disc herniation. Because the initial epidural provided little benefit, Dr. Lorenz decided against additional injections. Instead, Dr. Lorenz recommended an L4-5 lateral discectomy. However, claimant was apprehensive about surgery, so Dr. Lorenz ordered a repeat MRI of the lumbar spine to determine if there were any changes of the disc. In the interim, Dr. Lorenz authorized claimant to remain off his job and recommended an FCE to evaluate the parameters under which claimant could return to work. The repeat MRI was taken on April 17, 2008, and was interpreted as showing an "L4-5, right foraminal and extra foraminal protrusion with moderate right foraminal stenosis, annular tear and encroachment upon the right L4 nerve root."

On April 30, 2008, claimant underwent an FCE. The FCE was determined to be valid and placed claimant at the medium physical-demand level, capable of occasionally lifting 50 pounds. Claimant's position with respondent was considered at the heavy physical-demand level, requiring the ability to occasionally lift and carry up to 100 pounds and frequent lifting and carrying up to 50 pounds. As a result, the evaluator concluded that claimant's capabilities did not meet the requirements of his position with respondent. The evaluator nevertheless determined that claimant may benefit from a work-conditioning program which would attempt to increase his functional capabilities to the heavy physical-demand level.

On May 7, 2008, claimant saw Dr. Lorenz. At that time, claimant reported ongoing pain towards his right hip and groin, although the pain no longer radiated into the lower extremity.

Claimant told Dr. Lorenz that he could cope with the pain provided he did not exert himself. Claimant also told Dr. Lorenz that he did not wish to pursue surgery. Upon reviewing the repeat MRI and the results of the FCE, Dr. Lorenz concluded that claimant could not return to his previous job and that the medium-duty physical-demand level recommended in the FCE was permanent.

At the arbitration hearing, claimant testified that he had not had any additional accidents or injuries since October 4, 2007. Claimant further testified that he experiences "constant pain" along the right lower side and back and in the groin area. He occasionally takes Norco for the pain. Claimant testified that he has yet to return to work.

Respondent offered into evidence recordings of surveillance conducted on claimant over three dates in April 2008. Video from April 17, 2008, shows claimant walking, sitting, and driving a car. Video from April 25, 2010, shows claimant mowing a lawn, riding as a passenger in a car, stopping at some stores, and returning to his residence. Video from April 30, 2010, shows claimant squatting, bending, and lifting a bucket of water as he assists others washing a car.

Based on the foregoing evidence, the arbitrator concluded that claimant's accidental injury of October 4, 2007, "might or could have caused his L4-L5 disc herniation and L4 radiculopathy." In reaching this conclusion, the arbitrator relied principally on the causation opinions of Drs. Yang and Lorenz. The arbitrator discounted the opinions of Drs. Singh and Rinella because they diagnosed claimant with a lumbar strain (as opposed to a disc herniation), there was no evidence that Dr. Rinella reviewed claimant's December 2007 MRI, and, although Dr. Singh did review the MRI, his interpretation differed significantly from the other interpreters. With respect to TTD benefits, the arbitrator noted that the parties stipulated that claimant was temporarily totally disabled from

November 7, 2007, through February 5, 2008. The arbitrator determined that claimant was entitled to additional TTD benefits for the periods from October 19, 2007 (the date he was told by respondent to leave work), through November 6, 2007, and from February 6, 2008, through May 7, 2008 (the date Dr. Lorenz released claimant to medium-duty work). The arbitrator found that claimant is entitled to maintenance benefits from May 8, 2009, through May 19, 2008 (the date of the arbitration hearing) because respondent "is unable or refuses to accommodate the restrictions placed on the [claimant]." Finally, the arbitrator determined that an award of penalties and attorney fees was appropriate. The arbitrator's decision was based on two findings. First, the arbitrator concluded that the opinion of Dr. Singh was "not credible given the substantial medical evidence to the contrary." Second, the arbitrator cited respondent's failure to "provide any written explanation for its non-payment of benefits, contrary to 7110.70 of the Rules Governing Practice before the Commission." Accordingly, the arbitrator awarded additional compensation of $3,120 pursuant to section 19(l) of the Act (820 ILCS 305/19(l) (West 2006)), penalties of $4,834.74 pursuant to section 19(k) of the Act (820 ILCS 305/19(k) (West 2006)), and attorney fees of $4,242.15 pursuant to section 16 of the Act (820 ILCS 305/16 (West 2006)). The Commission affirmed and adopted the decision of the arbitrator and remanded the cause for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). On judicial review, the circuit court of Cook County confirmed. This appeal followed.

II. ANALYSIS

A. Causation

On appeal, respondent first challenges the Commission's finding that claimant's accidental

injury of October 4, 2007, is causally connected to claimant's L4-L5 disc herniation and L4 radiculopathy. Whether a causal connection exists between a work-related injury and the employee's condition of ill-being is a question of fact for the Commission. *Navistar International Transportation Corp. v. Industrial Comm'n*, 331 Ill. App. 3d 405, 415 (2002). In making this determination, the resolution of conflicts in the evidence, particularly medical opinion evidence, is particularly within the province of the Commission. *Navistar International Transportation Corp.*, 331 Ill. App. 3d at 415. As such, the Commission's decisions on such matters will not be disturbed on review unless they are against the manifest weight of the evidence. *Navistar International Corp.*, 331 Ill. App. 3d at 415. A decision is contrary to the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Navistar International Transportation Corp.*, 331 Ill. App. 3d at 415. The test is not whether this or any other tribunal might reach an opposite conclusion, but whether there is sufficient factual evidence in the record to support the Commission's determination. *Navistar International Transportation Corp.*, 331 Ill. App. 3d at 415.

Reviewing the record, we find sufficient factual evidence to support the Commission's decision. In particular, the evidence shows that claimant had no lower back problems or difficulties until his undisputed work accident of October 4, 2007. Immediately after the accident, however, claimant felt pain in his right lower back and groin that was so severe he had to limit his work activities and seek treatment. Dr. Yang diagnosed claimant with low back pain, but suspected "a mild disc bulge." An MRI confirmed the existence of a herniated disc at L4-L5 and mild right neuroforaminal stenosis. Upon reviewing the MRI, Dr. Yang reiterated that the herniation was "likely the cause of [claimant's] pain." Dr. Lorenz also interpreted the MRI as showing "a far lateral

disk herniation impinging on the L4 nerve root exiting at the L4-5 foramina on the right." Dr. Lorenz noted that the radiologist that initially read the MRI reached the same conclusion. Dr. Lorenz opined that claimant's disc herniation occurred as a result of the October 4, 2007, accident.

In contrast to the opinions of Drs. Yang and Lorenz were the opinions of Drs. Rinella and Singh. Both Dr. Rinella and Dr. Singh diagnosed a lumbar strain, as opposed to a disc herniation. However, the Commission discounted Dr. Rinella's opinion because there was no evidence that Dr. Rinella reviewed claimant's December 2007 MRI at the time he made his diagnosis. Although Dr. Singh reviewed the MRI, the Commission found his testimony not credible. The Commission pointed out that Dr. Singh's reading of the MRI differed significantly from the conclusions of the radiologist, Dr. Yang, and Dr. Lorenz. As noted above, the resolution of conflicts in medical opinion evidence is particularly within the province of the Commission. *Navistar International Transportation Corp.*, 331 Ill. App. 3d at 415. Therefore, based on our review of the record, we cannot say that the Commission's finding that claimant's disc herniation and radiculopathy were causally related to his accident of October 4, 2007, is against the manifest weight of the evidence.

In its brief, respondent contends that the Commission erred in relying on the opinion of Dr. Yang. Respondent claims that Dr. Yang changed her diagnosis from a "lumbar strain" to a "disc herniation" to "chronic low back pain." We find this claim disingenuous for several reasons. First, we find no evidence in the record that Dr. Yang ever diagnosed claimant with a lumbar strain. It is true that, on October 22, 2007, after claimant's sacroiliac joint and lumbar X rays came back normal, Dr. Yang told claimant that the source of the pain *could* be from soft tissue strain rather than from any bony abnormality. However, Dr. Yang never wavered in her suspicion that a disc etiology was

causing claimant's low back pain, even during her last examination of claimant in February 2008. At that time, her diagnosis was "chronic low back pain." However, her progress notes also reflect that she counseled claimant on smoking cessation, warning him that that smoking can "worsen disk disease by decreasing blood flow to an area that already does not have a heavy blood supply." This clearly suggests that Dr. Yang continued to believe that a disc etiology was the cause of claimant's back pain.

Respondent also insists that Dr. Yang "merely provided the source of the [claimant's] pain and did not link it with any alleged injury or date of accident." Dr. Yang could not expressly link claimant's accident to a particular date because claimant did not relate a specific date of injury to her. Nevertheless, the record clearly demonstrates that Dr. Yang did link the disc herniation to an incident at work. Claimant initially visited Dr. Yang just days after the undisputed accident of October 4, 2007. At that time, claimant told Dr. Yang that he worked with heavy materials and that he has to lift objects weighing up to 100 pounds. Although Dr. Yang diagnosed right lower back pain "when lifting heavy objects," she nevertheless suspected a disc bulge. X rays, however, were negative for any disc etiology, and Dr. Yang encouraged claimant to see a physical therapist. After claimant reported that the physical therapy seemed to exacerbate the problem, Dr. Yang again diagnosed low back pain, and, suspecting a disc herniation, advised claimant to undergo an MRI. When the MRI confirmed a disc problem, Dr. Yang notified claimant that a disc herniation is "likely the cause of [his] pain." Respondent reads this causation opinion in isolation, ignoring Dr. Yang's initial diagnosis of back pain as a result of heavy lifting, which claimant described as part of his job duties.

Respondent also criticizes the Commission's reliance on Dr. Lorenz's opinion principally

on the basis that the mechanism of injury related to Dr. Lorenz differed with the mechanism of injury provided to others. According to Dr. Lorenz's progress notes, claimant told him that he injured himself at work on October 4, 2007, when he twisted his body awkwardly as he bent over to cut some pipe. We point out that a similar mechanism of injury was also reported to Dr. Yang on October 9, 2007, although it is unclear whether she linked it to claimant's disc herniation. To the extent that any discrepancies exist among the histories related to the medical professionals, we presume that the Commission was aware of them but opted to resolve them in a manner adverse to respondent as was its province to do. See *Navistar International Transportation Corp.*, 331 Ill. App. 3d at 415. In any event, respondent's position loses its potency because it failed to dispute the accident before the Commission. Respondent also argues that Dr. Lorenz's opinion should be discounted because he stated that claimant's injuries resulted from a repetitive trauma injury secondary to his line of work and claimant did not allege a repetitive trauma injury in his application for adjustment of claim. Once again, respondent isolates portions of testimony to the exclusion of other testimony. Dr. Lorenz actually opined that claimant's disc herniation occurred as a result of a work accident on October 4, 2007.

B. TTD Benefits

Next, respondent challenges the Commission's award of TTD benefits. A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as his condition has stabilized or he is as far recovered as the character of his injury will permit. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256 (2008). The period of time a claimant is temporarily totally disabled is a question of fact for the Commission, and

its decision will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Ming Auto Body/Ming of Decatur, Inc.*, 387 Ill. App. 3d at 256-57. In resolving questions of fact, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence. *Ming Auto Body/Ming of Decatur, Inc.*, 387 Ill. App. 3d at 257. A factual finding by the Commission will not be set aside on review unless it is against the manifest weight of the evidence. *Ming Auto Body/Ming of Decatur, Inc.*, 387 Ill. App. 3d at 257. For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Ming Auto Body/Ming of Decatur, Inc.*, 387 Ill. App. 3d at 257.

Respondent initially challenges the Commission's award of TTD benefits on the basis that claimant failed to sustain his burden of establishing a causal connection between his current condition of ill-being and the October 4, 2007, work accident. As discussed above, however, we have already determined that the Commission's decision on causal connection is not against the manifest weight of the evidence.

Respondent also challenges the TTD benefits awarded for the period from October 19, 2007, through November 6, 2007. Respondent claims that the only reason that Dr. Yang issued an off-duty slip was because claimant insisted that she do so. Respondent further contends that the work restrictions provided by Dr. Yang were vague as they reflected only "light duty" without any specific restrictions. As set forth below, the reason Dr. Yang issued the off-duty slip and the nature of the restrictions she imposed are irrelevant. Claimant's unrebutted testimony was that respondent's work schedule is "either full duty or no duty." Claimant told Dr. Yang that on one occasion in the past, he was laid off because he had to take off work due to an injury. Thus, when claimant returned to

work after seeing Dr. Yang, he performed his regular duties. Shortly thereafter, claimant was told by his general manager that he could no longer work for respondent because of "liability issues" and because he was holding back other workers by asking for help. This evidence suggests that respondent had no intention of accommodating any work restrictions. Accordingly, we find that the Commission's award of TTD benefits for the period from October 19, 2007, through November 7, 2009, was not against the manifest weight of the evidence. We also conclude that the Commission's award of TTD benefits after February 5, 2008, was not against the manifest weight of the evidence. On that date, claimant apparently received Dr. Singh's IME report opining that claimant had no lumbar spine pathology and could return to unrestricted work activities. As detailed above, however, the Commission did not find Dr. Singh credible because his findings differed significantly from other medical providers. Thus, we conclude that the Commission's award of TTD benefits was not against the manifest weight of the evidence.

C. Penalties

Finally, respondent challenges the Commission's assessment of penalties under section 19(k) of the Act (820 ILCS 305/19(k) (West 2006)), additional compensation under section 19(l) of the Act (820 ILCS 305/19(l) (West 2006)), and attorney fees under section 16 of the Act (820 ILCS 305/16 (West 2006)). The Act's penalty provisions are not intended to inhibit contests of liability or appeals by employers who honestly believe that an employee is not entitled to compensation. *Avon Products, Inc. v. Industrial Comm'n*, 82 Ill. 2d 297, 301 (1980). Additional compensation under section 19(l) is appropriate where an employer fails, neglects, or refuses to make payments or unreasonably delays payment of workers' compensation benefits without good and just cause.

McMahan v. Industrial Comm'n, 183 Ill. 2d 499, 515 (1998). Penalties under section 19(k) of the Act and attorney fees under section 16 of the Act are appropriate where a delay in payment or the termination of benefits is "deliberate or the result of bad faith or improper purpose." *McMahan*, 183 Ill. 2d at 515. Under either scenario, where an employer acts in reliance on a reasonable medical opinion or when there are conflicting medical opinions, penalties and attorney fees will not ordinarily be imposed. *Avon Products, Inc.*, 82 Ill. 2d at 302. The standard is one of objective reasonableness (*Board of Education of the City of Chicago v. Industrial Comm'n*, 93 Ill. 2d 1, 9 (1982)), and the employer bears the burden of justifying the delay in the payment of compensation (*Zitzka v. Industrial Comm'n*, 328 Ill. App. 3d 844, 848 (2002)).

One of the ways that an employer may show an objectively reasonable belief that an employee is no longer entitled to workers' compensation benefits is through an employer-requested medical examination. *R.D. Masonry, Inc. v. Industrial Comm'n*, 215 Ill. 2d 397, 409 (2005). The relevant inquiry is whether the employer's conduct in relying on the opinion of its medical experts is reasonable under all of the circumstances presented. *Continental Distributing Co. v. Industrial Comm'n*, 98 Ill. 2d 407, 415-16 (1983). Differing medical opinions "must be weighed carefully, considering such factors as the length and thoroughness of the examination, the extent of the observation and testing performed, the specialty of the doctor, whether the doctor is the treating physician, and whether the doctor possessed all available information before rendering the opinion." *Ford Motor Co. v. Industrial Comm'n*, 140 Ill. App. 3d 401, 406 (1986). Furthermore, the employer may not rely on its qualified medical opinion to the exclusion of other medical opinions. *Ford Motor Co.*, 140 Ill. App. 3d at 406. Whether the employer's conduct justifies the imposition of

penalties, additional compensation, and attorney fees is a question of fact for the Commission that will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Anders v. Industrial Comm'n*, 332 Ill. App. 3d 501, 508-09 (2002). However, even where the employer shows a reasonable basis for having discontinued benefits, its failure to inform the employee in writing of its reason for terminating benefits is a factor to consider. 50 Ill. Admin. Code § 7110.70 (2006); *Connell v. Industrial Comm'n*, 170 Ill. App. 3d 49, 56 (1988).

In this case, the arbitrator cited two principal reasons for the imposition of additional compensation, penalties, and attorney fees. First, the arbitrator found the opinion of Dr. Singh "not credible given the substantial medical evidence to the contrary." Second, the arbitrator noted that respondent failed to provide any written explanation for its nonpayment of benefits, contrary to section 7110.70 of the Rules Governing Practice Before the Commission. See 50 Ill. Admin. Code § 7110.70 (2006). The Commission affirmed and adopted the decision of the arbitrator. After reviewing the record, we cannot say that the Commission's decision is against the manifest weight of the evidence.

Initially, we point out that respondent does not dispute that it failed to provide claimant with a written explanation for the termination of benefits. Indeed, in its briefs before this court, it does not even address this finding. It has been held that the failure to provide a written explanation for the termination of benefits as required by § 7110.70 demonstrates the employer's lack of good faith and therefore justifies the imposition of penalties under sections 16, 19(k), and 19(l) (820 ILCS 305/16, 19(k), 19(l) (West 2006)). *Connell*, 170 Ill. App. 3d at 55-56. However, even if were to find that the failure to provide claimant a written explanation for the termination of benefits is

insufficient, by itself, to impose penalties, we would still conclude that the Commission's decision is not against the manifest weight of the evidence.

Respondent argues that it was justified in terminating claimant's benefits based on Dr. Singh's evaluation. We disagree, as the evidence clearly shows that respondent relied on the opinion of Dr. Singh to the exclusion of other medical providers. Dr. Singh examined claimant on only one occasion on January 31, 2008. By claimant's undisputed account, the examination lasted only one or two minutes. Dr. Singh interpreted claimant's December 2007 MRI as negative for any disc herniation. Based on his reading of the MRI, Dr. Singh concluded that claimant could return to full duty without restrictions. However, Dr. Singh's interpretation of the MRI differed significantly from the two medical professionals who had the opportunity to review the MRI prior to the time Dr. Singh authored his report. Both the radiologist who initially read the film and Dr. Yang, claimant's treating physician, indicated that MRI showed a disc herniation. Moreover, three weeks prior to claimant's appointment with Dr. Singh, Dr. Rinella concluded that it was unlikely that claimant would be able to return to his position with respondent. Dr. Singh did not provide an explanation for his difference of opinion regarding his interpretation of the MRI or his opinion that claimant could return to work full duty. Moreover, just three weeks after Dr. Singh rendered his opinion, claimant was seen by Dr. Lorenz, who also interpreted the MRI as showing a disc herniation. Given that Dr. Singh's interpretation was contradicted by every other medical professional who reviewed the MRI, the Commission could have found that respondent relied on Dr. Singh's opinion to the exclusion of other medical providers and it was therefore objectively unreasonable.

Respondent insists that its reliance on Dr. Singh's opinion was not improper because Dr.

Singh's diagnosis of lumbar strain was consistent with the diagnosis reached by Dr. Rinella. Respondent's comparison with Dr. Rinella's diagnosis is misplaced. Dr. Rinella did not have the benefit of reviewing claimant's December 2007 MRI in making his diagnosis. We point out that prior to claimant undergoing the MRI, Dr. Yang also indicated the possibility of a soft tissue injury. However, she changed her opinion after claimant underwent the MRI. Respondent asserts that Dr. Yang later changed her diagnosis again to "chronic low back pain." As we noted earlier, we do not interpret this diagnosis as excluding a disc etiology as the source of claimant's pain.

Respondent also insists that penalties are unwarranted because claimant is a "non-credible, unreliable and 'illogical' historian and witness." Respondent asserts that claimant "repeatedly provided inconsistent and contradictory accident histories, symptoms and treatment progress." However, respondent did not dispute accident before the Commission. Moreover, the Commission apparently found claimant's testimony credible, as was within its province to do as the trier of fact. See *Navistar International Transportation Corp.*, 331 Ill. App. 3d at 415.

III. CONCLUSION

For the reasons set forth above, we affirm the judgment of the circuit court of Cook County, which confirmed the decision of the Commission. This cause is remanded for further proceedings pursuant to *Thomas*, 78 Ill. 3d 327.

Affirmed and remanded for further proceedings.