

Workers' Compensation
Commission Division
Filed: November 18, 2013

No. 1-12-3069WC

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

INES GUTIERREZ,)	Appeal from the
)	Circuit Court of
Appellant,)	Cook County
)	
v.)	
)	Nos. 12-L-50227
ILLINOIS WORKERS' COMPENSATION)	12-L-50252
COMMISSION, <i>et al.</i> ,)	
(Carl Buddig & Co.,)	Honorable
)	Margaret Brennan,
Appellee).)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The Illinois Workers' Compensation Commission's decisions, that the claimant's condition was causally connected to the workplace accident and that the claimant was not entitled to penalties and fees, were not against the manifest weight of the evidence.

¶ 2 The claimant, Ines Gutierrez, appeals from the circuit court order which set aside the decision of the Workers' Compensation Commission (Commission) decision which held that her current condition of ill-being was causally connected to a workplace accident on November 5, 2009. She

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also appeals from the circuit court order which confirmed the Commission's refusal to award her penalties and fees under sections 19(l), 19(k), and 16 of the Workers' Compensation Act (Act) (820 ILCS 305/19, 305/16 (West 2008)) in connection with a workplace accident on December 19, 2008. For the reasons that follow, we reverse the judgment of the circuit court which set aside the Commission's decision which held that the claimant's November 5, 2009, workplace accident caused her current condition of ill-being, and we affirm the judgment of the circuit court which confirmed the Commission's decision to deny the claimant an award of fees and penalties.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing, which commenced on August 18, 2010, and continued over various dates until the arbitrator issued its decision on June 3, 2011.

¶ 4 The claimant testified that, on December 19, 2008, while in the employ of Carl Buddig and Company (Buddig), she slipped and fell down the stairs leading out of a trailer, injuring her lower back. After the fall, she immediately was taken to Ingalls Memorial Hospital where she was treated and released the same day. The claimant followed up with a chiropractor, Dr. Manish Pandya, who ordered that she stop working and treated the claimant with conservative therapies. Dr. Pandya then referred her to Dr. Axel Vargas, who administered two cortisone shots to her lower back. Dr. Vargas referred the claimant to Dr. James Diesfeld, a pain specialist, who also administered injections to her lower back. In February 2009, the claimant underwent an MRI, which she was told showed a herniated disc in her lower back. She testified that she continued seeing Dr. Diesfeld throughout 2009 and received physical therapy treatment from Sports and Ortho Physical Therapy.

¶ 5 The claimant stated that, on November 5, 2009, she was carrying boxes at work when she

felt an impact "in the back, [as if] somebody pushed [her]." She turned around and saw a man with a garbage cart. She testified that the garbage cart was full and that she "felt like everything moved in [her] back." When asked by the arbitrator as to where exactly she was struck, the claimant testified "my lower back," "in the center," and around the belt line. She testified that she immediately informed her supervisor, Walter Mazur, and a human resources manager, David Streeter, about the accident and requested permission to see a doctor because her back pain was worsening.

¶ 6 The claimant testified that human resources referred her to Dr. Bruce Horton, whom she saw on November 11, 2009. She did not return to follow-up with Dr. Horton, choosing instead to continue treatment with Dr. Diesfeld, who subsequently referred her to Dr. Ronald Michael. Dr. Michael restricted her from working as of January 15, 2010, and recommended that she have fusion surgery. The claimant testified that she sought a second opinion from Dr. Wesley Yapor, and he also recommended the surgery. Other than the two workplace incidents, the claimant denied having any previous back injuries or pain.

¶ 7 The medical records establish the following. The claimant saw Dr. Pandya beginning on February 4, 2009, and continuing through June 2009, for chiropractic treatments. A February 10, 2009, MRI scan revealed a herniated disc at the claimant's L5-S1 disc level. Dr. Pandya testified that he initially treated the claimant three times per week with chiropractic therapies. When his conservative course of therapy failed to relieve the claimant's symptoms, he referred her to Dr. Vargas, who recommended steroid injections.

¶ 8 On February 19, the claimant first saw Dr. Vargas, who administered steroid injections on

March 4 and April 4 of 2009. The April 4 report states that the claimant reported significant improvement in her symptoms after the initial injection, including decreased left-sided sciatica, lower extremity paresthesia and low back pain. (Dr. Vargas was never deposed.)

¶ 9 Dr. Pandya next referred the claimant to Dr. Diesfeld, a pain management specialist. A report by Dr. Diesfeld, dated June 10, 2009, indicates that the claimant rated her pain between 2 and 9 on a scale of 10 and reported that the pain was worse when lying down or walking. She reported to him that the pain was generally constant and associated with weakness and numbness in her lower extremities. He recommended another steroid injection, prescribed medication, ordered a back brace, and advised the claimant to continue with chiropractic treatments. He administered steroid injections on June 18 and July 2, which he testified improved the claimant's pain symptoms. On July 22, he ordered a work restriction with a maximum lifting of 5 pounds. The next day, he administered another steroid injection. Dr. Diesfeld testified that, when he saw the claimant on August 11, she was doing very well with her treatment, and he ordered physical therapy treatment.

¶ 10 On August 28, 2009, the claimant saw Dr. Suchy, an orthopedic surgeon, at the request of Buddig. Dr. Suchy opined that the claimant suffered a contusion to her lumbosacral spine and that "there [was] a causal relationship between" her condition and the December 19, 2008, injury. He agreed that her treatment to date was medically necessary, but that no further treatment was needed based on his objective findings. Dr. Suchy testified that, despite the MRI showing a herniation at L5-S1, there was no evidence of spinal stenosis, meaning the herniation was not big enough to cause any impingement on the spinal cord. He testified that the claimant had a negative root sign and negative straight leg test, which did not support her subjective complaints of low back pain. In his

opinion, the claimant had reached maximum medical improvement (MMI) and could perform her regular activities and job without restrictions.

¶ 11 On October 27, Dr. Diesfeld recommended that the claimant continue working with a 5 pound lifting restriction for four weeks. On November 3, he administered another steroid injection.

¶ 12 On November 11, 2009, the claimant saw Dr. Horton after the garbage cart incident on November 5. Dr. Horton wrote in his report that the claimant reported that, at the time of garbage cart incident, she was still being treated for an earlier back injury from a December 19, 2008, workplace fall. Dr. Horton wrote that the claimant's x-rays were unremarkable. He asked that the claimant stop all medications, obtain her MRI and medical records, stop working, and schedule a follow-up for further evaluation. A follow-up note indicates that the claimant called Dr. Horton the same day and informed him that she would continue treatment with her current doctors. Dr. Horton wrote that he advised her not to take the medication that he prescribed and would need to rely on her treating physician to authorize any work modifications. He testified that he did not believe the claimant would need surgery, but he acknowledged that he never reviewed the claimant's MRI or other medical records.

¶ 13 In a November 16, 2009, report, Dr. Diesfeld reported that the claimant was progressing well until she was struck in the back by the garbage cart at work. The claimant reported that the incident caused a sudden onset of back pain and burning. Dr. Diesfeld recommended that she continue working with a five pound restriction level for two weeks, consult with Dr. Michael regarding the possibility of surgical intervention, and continue treating with Dr. Pandya. Dr. Diesfeld testified that he did not see the garbage cart that allegedly struck the claimant and did not know the speed at which

it struck her. Nevertheless, he testified that, based on a reasonable degree of medical certainty and based on the claimant's history and presentation, he believed that the November 5 garbage cart incident either exacerbated the claimant's existing condition or caused a new back pain.

¶ 14 In a November 23, 2009, report, Dr. Diesfeld reported that the claimant was referred to Dr. Michael for a neurosurgical evaluation and was continuing physical therapy sessions three times per week. He noted that the claimant reported that the pain radiated into the right calf region and that she felt a "burning in the back area." Dr. Diesfeld testified that he believed the claimant's subjective complaints aligned with his objective findings.

¶ 15 On November 30, 2009, the claimant saw Dr. Michael upon referral from Dr. Diesfeld. Dr. Michael reported that the claimant initially injured her lower back on December 19, 2008, after slipping on ice and falling down some stairs at work. He wrote that the claimant reported a second injury on November 5, 2009, after a coworker pushed her and struck her back with a cart. He saw the claimant again on December 7 and reported that he recommended lumbar fusion surgery as an option to treat her herniated disc. The claimant wanted to proceed with the surgery, and Dr. Michael wrote that the claimant would need a discogram before surgery. (Dr. Michael was never deposed.)

¶ 16 On January 14, 2010, Dr. Michael performed the discogram, which showed the L5-S1 disc was "pathologic on tension, morphologic and pain provocation grounds." A second MRI was performed that same day, which showed significant disc protrusion, causing displacement of the left S-1 nerve root. A January 15, 2010, note by Dr. Diesfeld stated that the claimant was still in pain following the discogram; he administered a pain patch and prescribed Vicodin. On January 18, the claimant saw Dr. Michael, who wrote that she wanted to proceed with the lumbar fusion surgery.

¶ 17 On January 27, 2010, the claimant saw Dr. Yapor, a neurosurgeon, for a second opinion. He reported that the claimant had low back pain after injuring herself at work twice, the second injury occurred after a garbage cart struck her. Dr. Yapor reported that he believed the claimant had "black disc syndrome with a central degenerated disc" at her L5-S1 level and that surgery was advisable. Dr. Yapor testified that "black disc" is the same as a desiccated disc, meaning a dried-out or nonhydrated disc, and the condition was related to the claimant's herniated disc. He opined that fusion surgery was necessary to treat the claimant's condition. Dr. Yapor testified that he did not know where the garbage cart struck the claimant's back, but he stated that it did not matter. He testified that the second injury exacerbated the claimant's initial injury and symptoms, which "basically was the proximate cause of her need for surgery." He admitted that his written report did not contain a causation opinion. Dr. Yapor testified that he believed the claimant's treatment thus far was reasonable and medically necessary for her condition.

¶ 18 Dr. Michael wrote in reports from the claimant's visits on February 1, March 24, and April 20 of 2010, that he recommended lumbar fusion surgery as an option for the claimant and that the claimant should remain off work as they sought approval for the surgery.

¶ 19 On May 20, 2010, the claimant saw Dr. Suchy at the request of Buddig. In his June 7 report, Dr. Suchy stated that, since his previous exam, the claimant reported a second injury in which she was hit in the back with a garbage cart. Dr. Suchy wrote that the claimant had stopped working as of January 2010 and had significant symptoms, including pain, numbness and tingling. He noted that she tested positive on the straight leg test on the right leg and that a second MRI showed more significant disc protrusion than the initial MRI. Dr. Suchy testified that, while the claimant's pain

complaints predominantly involved her right side whereas the MRI showed disc protrusion on the left side, she also reported pain on the left side. He testified and stated in his report that it was his opinion, based on a reasonable degree of medical and orthopedic surgical certainty, that "there [was a] causal relationship between the injury that allegedly occurred on November 5, 2009," and the claimant's current condition. He stated that the claimant, based on his current exam, needed further treatment, possibly surgical intervention, and was not at MMI. Dr. Suchy admitted that his opinion was based on the accuracy of the claimant's history regarding the accident with the garbage cart.

¶ 20 On June 14, July 12 and July 26, November 1, and December 27 of 2010, the claimant saw Dr. Michael, who wrote each time that the claimant was still waiting for approval for the lumbar fusion surgery.

¶ 21 Buddig brought in a garbage cart which was similar to the one that struck the claimant on November 5, 2009. The cart measured 47 inches tall and rested at the claimant's "mid to upper back, below her shoulders," about four inches below her shoulders.

¶ 22 Jack Davis, a custodian employed by Buddig, testified that, on November 5, 2009, the claimant was stacking boxes on an empty pallet near where he was standing with his garbage cart. He testified that his cart was only half-full at the time and probably weighed about 100 lbs. He stated that, when the claimant stood up, she took two steps back and lightly bumped into his cart with her left shoulder. Davis stated that she turned and told him that he hit her with his cart, but then she continued stacking boxes. He testified that his supervisor, Walter Mazur, asked him about the incident as the claimant told him he hit her with his cart. Davis testified that he told Mazur that the claimant "backed into the cart on her own."

¶ 23 Walter Mazur, a supervisor at Buddig, testified that the workplace policy regarding accidents required him to complete an accident report and file it with the safety manager and human resources. He denied that, on November 5, 2009, the claimant reported an accident to him. He also denied speaking to Jack Davis about an incident involving the claimant.

¶ 24 David Streeter, a safety manager at Buddig, testified that no workplace accident report was completed for the November 5 incident. Rather, he testified that, on November 10, 2009, the claimant came into his office, appearing extremely nervous and slightly upset. She told him that a coworker pushed a garbage cart at an extremely high rate of speed into her back. Streeter testified that the claimant was "flailing her arms and [twisting] routinely" as she spoke. He was "amazed" at her ability to twist after sustaining the alleged injury she described. He told the claimant that he did not think she was being truthful and that she would have to see a company doctor on her own time. Streeter spoke to Dr. Horton on November 12. After that conversation, which left Streeter believing the claimant's injury was not legitimate, he spoke to Mazur and Davis; Davis told him what had happened.

¶ 25 Regarding the payment of medical bills, the record contains two letters, dated November 24, 2009, and January 28, 2010, from the claimant's counsel and addressed to Buddig's prior counsel, stating that she was submitting unpaid medical bills to date. A May 4, 2010, letter from Buddig's prior counsel states that it received the claimant's medical bills and records and agreed to pay any outstanding bills for services rendered for the August 28, 2009, accident. An August 6, 2010, letter from the claimant's counsel to Buddig's present counsel, states that he attached the medical bills that remain unpaid per his request, that the case was set for hearing on August 18, and that temporary

total disability (TTD) benefits had not been paid for nine weeks, beginning February 5, 2009, through April 13, 2009, or from November 5, 2009, to date.

¶ 26 Andrew Fernandez, an attorney with the firm representing Buddig, testified that he reviewed the claimant's medical bills and investigated whether the provider had been paid. He testified that his firm was assigned the case in July 2010, and he was unaware of any bills that the claimant had submitted to Buddig's previous counsel. He denied knowing that the claimant sent letters requesting that medical bills be paid in January, August, and October of 2010. Fernandez stated that the claimant submitted medical bills sometime after he sent a November 18, 2010, letter, requesting the outstanding bills and supporting documentation associated with the December 2008 injury.

¶ 27 The record contains the November 18, 2010, letter from attorney Fernandez sent to the claimant's counsel, requesting a list of the claimant's medical bills from her first accident through the date of her second accident. Fernandez testified that the claimant's submitted bills totaled \$97,314.15. In a December 15, 2010, letter, Buddig's counsel acknowledged receipt of the claimant's medical bills and requested an updated list of outstanding medical bills, because the bills seemed outdated and that there was at least a \$13,000 discrepancy thus far. After his investigation, which took several days, Fernandez completed his January 7, 2011, report showing that there was a \$19,134 discrepancy in the total amount of outstanding medical bills.

¶ 28 In an October 15, 2010, motion, the claimant sought penalties and attorney fees pursuant to sections 16, 19(k), and 19(l) of the Act, alleging that, despite the overwhelming evidence of a workplace injury, Buddig refused to pay TTD from February 5, 2009, to that date and denied payment of medical expenses. The claimant alleged that Buddig was "acting vexatiously and in bad

faith."

¶ 29 Following a hearing, the arbitrator found that the claimant's current state of ill-being was caused by both workplace incidents. Regarding the December 19, 2008, injury, the arbitrator awarded the claimant 9 5/7 weeks of TTD benefits pursuant to section 8(b) of the Act (820 ILCS 305/8(b) (West 2008)) in the amount of \$299.67 for the time period between February 5, 2009, through April 13, 2009. He also ordered Buddig to pay the claimant's medical bills for dates of service from December 19, 2008, through November 4, 2009, pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2008)); and penalties and fees pursuant to section 19(k) of the Act (820 ILCS 305/19(k) (West 2008)) and section 16 of the Act (820 ILCS 305/16 (West 2008)) on medical bills outstanding as of August 18, 2010, for service dates between December 19, 2008, and August 24, 2009.

¶ 30 Regarding penalties and attorney fees, the arbitrator noted that Buddig failed to pay medical bills for the December 19, 2008, injury even after Dr. Suchy's August 24, 2009, exam in which he deemed the claimant's medical expenses necessary to treat that injury and after Buddig wrote in its May 4, 2010, letter that it would pay for services rendered through August 28, 2009. He further noted that Buddig was allowed to depose five doctors, all of whom testified that the claimant's injuries were causally related to the accidents. The arbitrator also noted that, despite the medical evidence and Buddig's stipulation at the hearing that it was not disputing the December 19, 2008, accident, Buddig objected to the claimant's introduction of her medical records and bills. Based on Buddig's conduct, the arbitrator found that its delay in the payment of the medical bills from the December 19, 2008, accident was unreasonable and vexatious. Therefore, he awarded section 19(k)

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penalties on the total of the outstanding medical bills related to the initial accident for dates of service between December 19, 2008, and August 24, 2009. The claimant was also awarded attorney fees under section 16.

¶ 31 Regarding the November 9, 2009, injury, the arbitrator awarded the claimant 49 4/7 weeks of TTD benefits pursuant to section 8(b) of the Act in the amount of \$299.67 for the time period between January 15, 2010, through December 27, 2010. He also ordered Buddig to pay the claimant's medical bills for dates of service from November 5, 2009, through December 27, 2010, pursuant to section 8(a) of the Act; and the reasonable cost of an L5-S1 fusion surgery pursuant to sections 8(a) and 8.2 of the Act (820 ILCS 305/8.2 (West 2008)). The arbitrator found that the claimant's reported pain, the MRI reports, and the opinions of Dr. Diesfeld and Dr. Yapor demonstrated that her present condition of ill-being was "causally related to the undisputed accidental injury of December 19, 2008 and to the aggravating accidental injury of November 5, 2009."

¶ 32 Buddig sought review of this decision before the Commission. On February 1, 2012, the Commission issued a ruling affirming and adopting the arbitrator's decision except that it modified the award for TTD benefits, utilizing a \$309.33 per week rate, beginning January 15, 2010, and continuing through March 10, 2011, and reversed the arbitrator's award of penalties and late fees. The Commission found that Buddig's failure to pay medical expenses was not unreasonable or vexatious, because the "bills were not transmitted in a timely manner." The Commission also remanded the case, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980), for further proceedings to determine an amount of temporary total compensation or

compensation for permanent disability.

¶ 33 Buddig sought judicial review of the Commission's decision in the circuit court of Cook County. The circuit court consolidated the two cases, and on September 27, 2012, the court set aside the Commission's decision that the claimant's current condition of ill-being was causally connected to the November 5, 2009, accident. The circuit court reasoned that the Commission's findings regarding causation "hinged upon a small fraction of the evidence in the record and relied in large part on [the claimant's] credibility." The court found that the claimant's testimony that the garbage cart struck her lower back was inconsistent with the actual garbage cart, which the court found could not have struck her in the lower back. The court noted that the arbitrator took judicial notice of the fact that the cart rested approximately four inches below the claimant's shoulder. The court also considered the testimony of Davis and Streeter persuasive in that both reported a light impact and that the claimant continued working after the incident without any problem. The circuit court disregarded the testimony of the various physicians because their opinions were based upon the claimant's incredible history. The court also confirmed that portion of the Commission's decision which denied an award for penalties and fees. The claimant now appeals.

¶ 34 The claimant first argues that the circuit court improperly made credibility determinations of the witnesses when it set aside the Commission's finding that her current state of ill-being was causally related to the November 5, 2009, accident. We agree.

¶ 35 An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (West 2010). The "arising out of" component addresses the causal connection between a work-related injury and the claimant's condition of ill-being. *Vogel v.*

Indus. Comm'n, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807 (2005). A claimant need prove only that some act or phase of his or her employment was a causative factor in the ensuing injury. *Id.* A work-related 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. *Id.* The claimant has the burden of proving, by a preponderance of the evidence, some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63, 541 N.E.2d 665 (1989).

¶ 36 Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984). It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). 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. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005 (1987). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992). Put another way, the Commission's determination on a question of fact is against the manifest weight of the evidence when no rational trier of fact could have agreed. *Dolce v. Industrial Comm'n*, 286 Ill. App. 3d 117, 120, 675 N.E.2d 175 (1996). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test 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, 440 N.E.2d 90 (1982).

¶ 37 Here, there was ample evidence in the record to support the Commission's determination that the November 5, 2009, workplace accident was a causative factor in the claimant's condition of ill-being. The claimant testified that the garbage cart struck her lower back and that she "felt like everything moved in [her] back." She further testified that she reported the incident to her supervisor and human resources and asked to see a doctor. It was undisputed that the claimant was still being treated for her previous injury when the second accident occurred, and Dr. Diesfeld testified that, based on a reasonable degree of medical certainty, he believed the second accident either exacerbated her existing condition or caused new back pain. Dr. Yapor and Dr. Suchy, Buddig's independent medical evaluator, also agreed that there was a causal relationship between the claimant's current condition and the November 5, 2009, accident. Further, a second MRI showed increased disc protrusion at the claimant's L5-S1 level after the second accident.

¶ 38 Buddig argues that Dr. Yapor's testimony regarding causation should have been excluded because it was not contained in his written report. Even excluding Dr. Yapor's testimony, the claimant's testimony and the testimony and reports of Dr. Diesfeld and Dr. Suchy sufficiently support the Commission's conclusion. Further, while the circuit court placed great emphasis on the fact that the garbage cart rested about four inches below the claimant's shoulders and Davis's testimony that the impact was light, the claimant testified to the opposite. The claimant testified that the cart struck her center, lower back area around her belt line and caused increasing pain in her lower back. It is the function of the Commission to resolve conflicts in the evidence (*O'Dette*, 79 Ill. 2d at 253), and we will not disturb the Commission's finding where there is sufficient evidence in the record to

support it (*Orsini*, 117 Ill. 2d at 44). Here, the Commission apparently relied upon the testimony of the doctors, the medical tests and records, and the claimant's testimony in determining the causal relationship. Therefore, we reverse the circuit court's decision to set aside the Commission's finding that the November 5, 2009, accident caused the claimant's current condition of ill-being.

¶ 39 Next, the claimant argues that the Commission erred in not awarding her penalties and attorney fees pursuant to sections 16, 19(k) and 19(l) of the Act for Buddig's delay in paying medical bills associated with her initial accident on December 18, 2008. We disagree.

¶ 40 Section 19(l) of the Act provides:

"In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of \$30 per day for each day that the benefits *** have been so withheld or refused, not to exceed \$10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." 820 ILCS 305/19(l) (West 2012).

¶ 41 Penalties under section 19(l) are in the nature of a late fee. *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC (2011), ¶ 20, 959 N.E.2d 772. The assessment of a penalty under section 19(l) is mandatory if the payment is late, and the employer or its insurer cannot show an adequate justification for the delay. *Id.* The standard for determining whether an employer has "good and just cause" for a delay in payment is defined in terms of reasonableness. *Id.* "The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would

have believed that the delay was justified." *Id.* The question of reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence. *Id.*

¶ 42 In this case, Buddig presented evidence justifying its delay in paying medical bills associated with the claimant's initial injury. While Dr. Suchy's August 24, 2009, exam determined that the claimant's medical expenses to date were medically necessary, there is no evidence on the record that the claimant timely submitted those bills for payment. The May 4, 2010, letter from Buddig's prior counsel stated that it would pay for services rendered through August 28, 2009, and that it received the claimant's bills, but there is no evidence in the record that Buddig's prior counsel transferred those records to Fernandez's firm when it took over the case in July 2010.

¶ 43 Further, the record shows that Fernandez's firm requested, in a letter dated November 18, 2010, that the claimant submit unpaid medical bills from the date of the initial injury through the date of the second alleged injury. After sending that letter, Fernandez testified that he received numerous medical bills and that he spent several days investigating and contacting service providers to determine the actual amount that was outstanding. He testified that the bills which remained outstanding were significantly less than the claimant's submitted bills. Buddig paid once it had received and investigated the medical bills submitted to it. There is no evidence in the record that establishes that the claimant submitted unpaid medical bills to Buddig's current counsel before Fernandez acknowledged receiving them after his November 2010 letter. Moreover, the records supplied by the claimant were not updated bills and required extensive investigation by Buddig to determine the actual amount owed. Under these facts, we do not find that the Commission's

determination, that Buddig's delay was not unreasonable, is contrary to the manifest weight of the evidence.

¶ 44 Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under 19(k) is appropriate. 820 ILCS 305/16 (West 2012). Section 19(k) of the Act provides:

"In case[s] where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation *** then the Commission may award compensation additional to that otherwise payable under the Act equal to 50% of the amount payable at the time of such award." 820 ILCS 305/19(k) (West 2012).

¶ 45 The standard for awarding penalties under section 19(k) and section 16 is higher than the standard for awarding penalties under section 19(l) because they require more than an "unreasonable delay" in payment of an award. *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 24. Rather, section 19(k) penalties and section 16 fees are intended to address situations where the delay is deliberate or the result of bad faith or improper purpose. *Id.* Additionally, while section 19(l) penalties are mandatory, the imposition of penalties under section 19(k) and fees under section 16 is discretionary. *Id.*

¶ 46 Our review of the Commission's denial of penalties and fees under sections 19(k) and 16 of the Act involves a two-part analysis. *Id.*, ¶ 25. First, we determine whether the Commission's findings that the facts do not justify section 19(k) penalties and section 16 fees are contrary to the manifest weight of the evidence. *Id.* Second, we determine whether it would be an abuse of discretion to refuse to award such penalties and fees under the facts presented. *Id.*

¶ 47 Regarding the first prong of the analysis, we already determined that the Commission's finding, that Buddig's delay in paying the claimant's medical bills was not unreasonable, is not contrary to the manifest weight of the evidence. In addition, there is no evidence in the record that Buddig's delay was deliberate or the result of bad faith or an improper purpose. Rather, Buddig agreed that it was not disputing the December 19, 2008, injury and requested proof of the unpaid medical bills through the date of the second injury. It paid the bills once it independently investigated the numerous bills submitted by the claimant. Under these facts, we do not find that the Commission abused its discretion when it determined that the facts do not justify section 19(k) penalties and section 16 fees.

¶ 48 Based on the foregoing reasons, we reverse the judgment of the circuit court which set aside that portion of the Commission's decision holding that the November 5, 2009, workplace accident was a causative factor in the claimant's current condition of ill-being, and we reinstate the Commission's decision in toto; and, we affirm that portion of the circuit court's judgment which confirmed the Commission's decision to deny penalties and attorney fees pursuant to sections 16 and 19 of the Act. Finally, we remand the matter to the Commission for further proceedings.

¶ 49 Affirmed in part and reversed in part.

¶ 50 Cause remanded.