2015 IL App (1st) 131856WC-U

Order filed: January 16, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

CITY OF CHICAGO - DEPARTMENT OF AVIATION, Plaintiff-Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (Jeffrey Mazurkiewicz, Defendant-Appellee).	)	Appeal from the Circuit Court of Cook County, Illinois. Appeal No. 1-13-1856WC Circuit No. 12-L-51529, 50723 Honorable Eileen Burke, Judge, Presiding.

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

ORDER

¶ 1 *Held*: (1) The Commission did not err in allowing into evidence a transcript of a deposition of the claimant's treating physician; and (2) the Commission's finding that the claimant's current condition of ill-being was causally related to his employment and its finding that the claimant was entitled to TTD benefits and medical expenses were not against the manifest weight of the evidence.

¶ 2 The claimant, Jeffrey Mazurkiewicz, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), seeking benefits for left ankle and leg injuries which he allegedly sustained while working for the City of Chicago,

Department of Aviation (employer) on April 20, 2007. After a section 19(b) hearing, the arbitrator found that the claimant's current condition of ill-being of his left ankle and leg was causally related to his employment. The arbitrator awarded temporary total disability (TTD) benefits for a period of April 21, 2007, through March 27, 2008, and July 16, 2008, through December 2, 2010 (the date of the hearing), for a total of 173 1/7 weeks. The arbitrator also ordered the employer to pay $5,708.07 for reasonable and necessary medical expenses and prospective medical expenses for treatment recommended by the claimant's treating physician. The employer sought review before the Illinois Workers' Compensation Commission (Commission), which modified the decision of the arbitrator to provide a slightly lower average weekly wage but affirmed the award in all other respects. The employer then sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the decision of the Commission. The employer then filed a timely appeal with this court.

¶ 3 FACTS

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on December 2, 2010.

¶ 5 On April 20, 2007, the claimant was working as a seasonal status tow truck driver at O'Hare Airport. The parties stipulated that the claimant sustained an accidental injury on that date. The claimant testified that his job required him to respond to calls to remove vehicles that had violated parking ordinances or became disabled at the airport. The claimant parked his tow truck to take a short restroom break and, upon returning to the truck, stepped in a pothole and twisted his left ankle. He reported the accident to his supervisor, Greg Kendrick, who instructed the claimant to report immediately to the emergency department at Resurrection Medical Center (Resurrection).

¶ 6 Records from Resurrection established that the claimant had soft tissue tenderness and swelling. X-rays revealed a mild deformity of the toes, but no breaks. He was given an air cast and crutches and told to follow up with MercyWorks, the employer's designated medical care provider. The claimant was also instructed to remain off work for two days.

¶ 7 After leaving Resurrection, the claimant reported immediately to MercyWorks where he gave a history of stepping into a pot hole and twisting his left ankle. A diagnosis was given of left ankle sprain as well as contusion of the left foot. The claimant was instructed to continue using the air cast and crutches and to return to MercyWorks in three days.

¶ 8 On April 23, 2007, the claimant returned to MercyWorks as instructed. Following an examination, the claimant was released to return to work under restrictions including sedentary work only, no climbing, and only minimal walking. The claimant testified that the employer had no work within those restrictions, and he remained off work. During this time, the claimant continued to treat at MercyWorks and received physical therapy at Athletic and Therapeutic Institute for Physical Therapy.

¶ 9 On June 6, 2007, the claimant underwent an MRI of the left ankle which showed continuing pathologies. The claimant was advised to seek treatment from a specialist.

¶ 10 On June 27, 2007, the claimant was examined by Dr. George Holmes, a Board certified orthopedic surgeon at the Midwest Orthopedics Institute at Rush Hospital in Chicago. Dr. Holmes noted pain with palpitation of the left ankle, but further noted no evidence of fracture of dislocation. Dr. Holmes prescribed electrical stimulation and the application of a Lidoderm patch, both for pain management, and suggested that treatment in this manner for a month might permit the claimant to return to work.

¶ 11 In compliance with the employer's policy, the claimant continued to treat at MercyWorks after being examined by Dr. Holmes. Medical records from MercyWorks from this time period established that the physicians at MercyWorks were aware of the treatment prescribed by Dr. Holmes and acquiesced in his treatment plan.

¶ 12 On August 16, 2007, the claimant underwent an EMG test ordered by Dr. Holmes. After reviewing the EMG results, Dr. Holmes diagnosed sinus tarsi syndrome (a condition in the area where the ankle and the heel bone meet). Dr. Holmes also strongly recommended that the claimant be examined by a knee specialist regarding knee and hamstring pain which the claimant had reported in the weeks following the accident. Dr. Holmes also referred the claimant to the Rush Hospital Pain Center for additional pain management treatment.

¶ 13 On September 14, 2007, the claimant was examined by Dr. Asokumar Buvanendran, a Board certified pain management and treatment specialist at Rush Pain Center. The claimant gave a history of severe left ankle pain, mild left posterior leg and knee pain, all following an industrial accident on April 20, 2007. Dr. Buvanendran diagnosed nerve damage, prescribed pain medication and ordered an MRI of the lumbar spine to evaluate the left leg pain. He also prescribed an IV regional bier block to be performed at a subsequent visit.

¶ 14 On September 24, 2007, the claimant underwent the IV bier block, which consisted of medication being introduced into the blood at the locale of the pain. A second bier block was performed on October 8, 2007. Subsequent blocks were administered on October 26, 2007, November 9, 2007, and November 12, 2007. The claimant reported minimal temporary relief from these procedures.

¶ 15 On October 24, 2007, the claimant had a follow up appointment with Dr. Holmes. Treatment notes from that appointment indicate that Dr. Holmes was aware of and agreed with Dr. Buvanendran's course of treatment.

¶ 16 On November 21, 2007, the claimant was again seen by Dr. Holmes, who opined that from an orthopedic perspective the claimant was at maximum medical improvement (MMI). He noted, however, that while nothing further could be done orthopedically, Dr. Buvanendran's pain management treatments should continue.

¶ 17 On January 9, 2008, Dr. Holmes again examined the claimant. Based upon the claimant's report of only minimal relief from the bier blocks, Dr. Holmes attempted a diagnostic block of sinus tarsi nerve, which resulted in complete relief of the claimant's pain. Dr. Holmes opined that the claimant could benefit from a cryoprobe procedure.

¶ 18 On January 23, 2008, Dr. Holmes noted that the claimant continued to report pain relief following the sinus tarsi nerve block and recommended that the claimant discuss a possible cryoprobe procedure with Dr. Buvanendran. The claimant was able to meet with Dr. Buvanendran that same day. Treatment notes from that appointment indicate that the claimant and Dr. Buvanendran discussed the possibility of a cryoprobe procedure as recommended by Dr. Holmes, as well as a trial with a spinal cord electrical stimulator.

¶ 19 On February 8, 2008, Dr. Buvanendran performed a trigger point injection in anticipation of scheduling the cryoprobe, which would require prior authorization by the employer.

¶ 20 On March 20, 2008, while continuing to await authorization for the cryoprobe procedure, the claimant contacted Dr. Holmes and requested a release to return to work without restriction. The claimant explained to Dr. Holmes that he was a candidate for promotion from seasonal to

full time and wanted to return to work in hopes of being able to secure the promotion. Dr. Holmes released the claimant to unrestricted work.

¶ 21 On March 27, 2008, the claimant returned to work.

¶ 22 On April 8, 2008, the cryoprobe procedure was performed. At a follow up visit with Dr. Buvanendran on April 28, 2008, the claimant reported significant pain relief following the procedure. The claimant was able to stop taking all pain medications. Dr. Buvanendran released the claimant from his care with instructions to return on an as needed basis.

¶ 23 On May 15, 2008, Dr. Holmes noted that cryoprobe was successful in managing and reducing the claimant's pain. Dr. Holmes opined that the claimant had, as a result of the cryoprobe procedure, reached MMI.

¶ 24 On June 4, 2008, the claimant reported to Dr. Holmes with severe left ankle pain. Dr. Holmes diagnosed an infection at the site of the cryoprobe procedure. Dr. Holmes ordered the ankle immobilized with a walker boot, prescribed antibiotics, and ordered diagnostic testing to determine the presence of possible abscess formation in the ankle or heel. He also advised an infectious disease consultation. The consultation revealed no abscess and the claimant was advised to continue a 10-day antibiotic treatment and then follow up with Dr. Holmes. The claimant continued to work during this course of treatment.

¶ 25 On June 11, 2008, Dr. Holmes recommended a brief course of physical therapy, which the claimant commenced on June 19, 2008, and completed on July 9, 2008. On July 10, 2008, Dr. Holmes observed no improvement in the claimant's condition following the physical therapy sessions. He noted that the claimant reported increasing levels of pain in the ankle with pain radiating up the leg from the ankle. Dr. Holmes opined that the claimant did not present a good case for surgical intervention. He further opined that the claimant's best course of treatment

would be to continue a pain management protocol under Dr. Buvanendran. Dr. Holmes also determined that the claimant should be completely off work. The claimant testified at the hearing that his last day of employment was July 16, 2008, and that he had not been able to work since that date.

¶ 26 On July 30, 2008, an MRI revealed significant left ankle sensory mononeuropathy. A Functional Capacity Evalatuation (FCE), previously ordered by Dr. Holmes revealed that the claimant could perform heavy work, but had significant pain when using the left ankle and foot.

¶ 27 On August 11, 2008, the claimant was again examined and treated by Dr. Buvanendran. Treatment notes from that appointment indicate that the claimant reported significant relief following the cryoprobe, but had since experienced significant pain. Dr. Buvanendran then began a regime of treatment, including a return to previous levels of pain medication, additional bier blocks and nerve blocks and a second cryoprobe, all with the goal of gradually increasing the claimant's pain tolerance.

¶ 28 On May 27, 2009, the claimant was examined at the request of the employer by Dr. Howard Konowitz. Dr. Konowitz opined that the claimant had sinus tarsi syndrome and was not a continuing candidate for pain management. Specifically, Dr. Konowitz opined that the claimant should discontinue the use of pain medications, such as Lyrica. He further opined that the claimant had reached MMI for pain management.

¶ 29 On July 22, 2009, the claimant was again examined by Dr. Holmes, who noted that Dr. Buvanedran's treatment plan had been suspended.

¶ 30 During the time period from July 2009 to May 2010, the claimant continued to receive periodic treatment from Dr. Holmes and Dr. Buvanendran with no improvement.

¶ 31 On May 17, 2010, the claimant was referred by Dr. Buvanendran to Dr. Steven Haddad, a board certified orthopedic surgeon, for a consultation. Dr. Haddad diagnosed possible left ankle Chronic Regional Pain Syndrome (CRPS), a condition of the autonomic nervous system secondary to soft tissue injury. Dr. Haddad recommended further testing.

¶ 32 Dr. Buvanendran agreed with Dr. Haddad's diagnosis of CRPS, but disagreed with the recommendation for further testing, noting that the tests themselves might increase or aggravate the claimant's pain. Instead, he recommended a series of lumbar epidural injections near L5-S1 with the goal of blocking pain reception.

¶ 33 On May 27, 2010, Dr. Buvanendran performed the first lumbar epidural injection and noted that the claimant reported pain relief of 50 to 60%. A second epidural injection was administered on June 4, 2010, with similar relief. The claimant was advised by Dr Buvanendran to continue with pain medication while awaiting future injections. Dr. Buvanendran also ordered the claimant to remain off work.

¶ 34 On June 7, 2010, the employer requested a medical documentation review by Dr. Elizabeth Kessler. Her report, entered into evidence by the employer, stated her opinion that the claimant did not have CRPS, but merely sustained an ankle sprain that would have completely resolved itself within a matter of a few weeks without the necessity of any of the treatments the claimant had received from Drs. Holmes and Buvanendran. Although the report was admitted into evidence, no curriculum *vitae* or any form of evidence establishing Dr. Kessler's credentials or expertise was provided. The arbitrator noted this lack of evidence in assigning no weight to the report.

¶ 35 On July 29, 2010, Dr. Buvanendran attempted to schedule the next epidural injection and order an EMG to evaluate the possibility of a spinal column stimulator. The employer refused to authorize any further treatment for the claimant.

¶ 36 On September 3, 2010, the claimant was examined by Dr. Buvanendran, who noted that no further treatment would be authorized for the claimant. Dr. Buvanendran then issued a report in which he opined that the claimant suffered from CRPS attributable to the April 20, 2007, accident and that the claimant could benefit from continuing pain management treatment including epidural injections.

¶ 37 The claimant testified at the hearing that he has ongoing symptoms including difficulty standing and walking for more than 15 minutes before needing to sit. He also reported problems with uneven surfaces and going up and down stairs or inclines.

¶ 38 On November 11, 2010, the claimant's attorney deposed Dr. Buvanendran, pursuant to notice to the employer's attorney. The record contains a copy of the employer's attorney's agreement to participate in the deposition. The record also contains a copy of a letter from the employer's attorney dated November 11, 2010, purporting to withdraw the agreement to the deposition. The record further indicated that the letter was sent via fax to claimant's counsel the morning of the scheduled deposition. According to the letter, the employer's attorney was not satisfied that all documents subpoenaed from Dr. Buvanendran had been received prior to the deposition. The claimant's counsel proceeded with the deposition, noting for the record that the deposition had been taken pursuant to notice and agreement by the parties.

¶ 39 When counsel for the claimant moved for admission of a transcript of the deposition at the hearing, the employer's counsel objected, arguing that the deposition had not been taken by agreement of the parties or order of the Commission as required Commission's Rules. Rule

7030.60(a)) of the Rules Governing Practice before the Illinois Workers' Compensation Commission provide that: "[e]vidence depositions of any witness may be taken, before hearing, only upon stipulation of the parties or upon order *** issued by the Arbitrator or Commissioner to whom the case has been assigned upon application of either party."

¶ 40 The arbitrator rejected the employer's argument that the deposition had not been taken upon agreement of the parties, finding instead that the purported "withdrawal" of agreement on the morning of the deposition was insufficient to negate the prior agreement. The arbitrator observed that if all subpoenaed documents had not been received, the appropriate course of action would have been to raise an objection at the deposition and at the hearing. The arbitrator allowed the evidence deposition to be admitted.

¶ 41 The arbitrator found that the claimant had established that his current condition of ill-being was causally related to the industrial accident on April 20, 2007. In so finding, he relied upon the medical records of Drs. Holmes, Haddad and Buvanendran, as well as the opinions of Drs. Haddad and Buvanendran that the claimant's current condition was CRPS attributable to the soft tissue injury incurred on April 20, 2007. The arbitrator gave more weight to the opinions of these treating physicians than to those of Drs. Konowitz and Kessler, particularly noting the lack of credentials presented for Dr. Kessler. The arbitrator found that $5,708.07 in medical expenses incurred at Rush Pain Center, physical therapy at Athletic and Therapeutic Institute, an MRI performed at Glenbrook Hospital, and prescriptions were reasonable and necessary. He further found that the treatment protocol proposed by Dr. Buvanendran for the claimant's CRPS diagnosis was reasonable and necessary. The arbitrator also determined that the claimant had been off work by order of Dr. Holmes as of July 16, 2008, and had not reached MMI as of the date of the hearing. The determination that the claimant had not reached MMI was based upon

the opinions of Drs. Holmes and Buvanendran, who opined that the claimant's pain from CRPS had yet to be completely treated by Dr. Buvanendran.

¶ 42 The employer sought review of the before the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's findings of causation, past and prospective medical expenses, and period of TTD benefits. The Commission adjusted the amount of the claimant's average weekly wage for purposes of calculating the amount of TTD benefits. The employer raised an evidentiary objection to the admission of the transcript of Dr. Buvanendran's deposition, which the Commission rejected.

¶ 43 The employer sought judicial review of the Commission's decision in the circuit court of Cook County which confirmed the decision of the Commission.

¶ 44 **ANALYSIS**

¶ 45 1. Dr. Buvanendran's evidence deposition

¶ 46 The evidentiary rulings of the Commission will be overturned only where they resulted from an abuse of discretion. *Cassens Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 327 (1994). An abuse of discretion occurs only when no reasonable person would take the view adopted by the Commission. *Hagemann v. Illinois Workers' Compensation Comm'n*, 399 Ill. App. 3d 197, 204 (2010). The employer argues that the evidentiary ruling at issue herein should be subject to *de novo* review as the issue involves whether the admission of Dr. Buvanendran's deposition violates the Commission Rule 7030.60(a). The employer maintains that administrative rules are akin to statutes and are thus subject to *de novo* review. See *Union Electric Co. v. Department of Revenue*, 136 Ill. 2d 385, 391 (1990). While the employer is correct in observing that administrative rules are generally subject to *de novo* review, evidentiary rulings, such as whether to admit deposition testimony over objection, are reviewed for an abuse

of discretion. *Cassens*, 262 Ill. App. 3d at 327. We will therefore review the Commission ruling admitting Dr. Buvanendran for an abuse of discretion.

¶ 47 Here, the employer suggests that a fax sent on the morning of the deposition was sufficient to withdraw consent to the deposition and, therefore, because there was no agreement to take the deposition, the deposition was not admissible. The Commission rejected this argument and we cannot say that its ruling constituted an abuse of discretion. We note that the Commission followed its own prior precedent in ruling that an evidence deposition is admissible "by agreement" where the parties had previously agreed to the deposition but one party sought to withdraw that agreement shortly before the deposition was to be taken. The Commission found that a last minute withdrawal of agreement was not proper under Commission Rule 7030.60(a). The Commission held that, once an agreement to hold a deposition is given, the deposition must take place and any objections to the procedure or content of the deposition must be addressed by way of objection, particularly where, as here, the purported "withdrawal" of agreement is attempted the day of the scheduled deposition. In addressing the employer's objection to the admission of Dr. Buvanendran's deposition, the Commission was following a procedure instituted in its *Spilker* decision in 2006. We find the Commission's decision to follow its previously articulated interpretation of Rule 7030.60(a) was not an abuse of discretion. As the Commission made clear in adopting the arbitrator's evidentiary ruling, the proper procedure for the employer to object to Dr. Buvanendran's deposition was to attend the deposition as agreed and make specific objections during the deposition and at the time of hearing.

¶ 48 The employer also argues that the deposition was inadmissible surprise medical testimony in violation of our holding in *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840 (1996). Specifically, the employer maintains that the claimant did not provide a complete set of

Dr. Buvanendran's treatment records prior to the deposition. The employer's argument fails in two respects. First, it is well settled that there is no discovery in workers' compensation and thus neither party is under an obligation to provide medical records to the other. *Boyd Electric v. Illinois Workers' Compensation Comm'n*, 403 Ill. App. 3d 256, 259 (2010). Second, opinions of treating physicians are not subject to *Ghere* where the records in the employer's possession are sufficient to put the employer on notice that the treating physician will have an opinion as to causation. *Homebright Ace Hardware v. Industrial Comm'n*, 351 Ill. App. 3d 333, 339 (2004).

¶ 49 Simply put, the employer is responsible for obtaining whatever medical records it deems necessary by use of subpoenas served directly upon the medical provider. Commission Rule 7110.70(c) provides that "the employer shall have the initial responsibility to promptly seek the desired information for those providers of medical, hospital and surgical services of which the employer has knowledge." Here, the record indicates that the employer issued a subpoena to Dr. Buvanendran but failed to take steps to enforce the subpoena. The employer cannot claim that it was surprised by Dr. Buvanendran's opinion testimony when it: (1) had in its possession Dr. Buvanendran's treatment notes for all but the last three appointments; and (2) had issued a subpoena for the notes from those last three appointments but failed to take steps to enforce the subpoena. Given this record, it cannot be said that the Commission's admission of Dr. Buvanendran's deposition violated the principles articulated in *Ghere*.

¶ 50 Regarding Dr. Buvanendran's deposition, the employer lastly maintains that it was denied due process when the deposition was admitted without an opportunity to cross-examine the witness. This argument, of course, assumes that the employer had no opportunity to cross-examine Dr. Buvanendran at the deposition. The facts herein establish otherwise. The employer

had an opportunity to cross-examine Dr. Buvanendran but chose to forego that opportunity when it decided not to attend the deposition.

¶ 51 2. Causation

¶ 52 The employer next maintains that the Commission erred in finding that the claimant had established the existence of a causal connection between his current condition of ill-being and the April 20, 2007, accident.

¶ 53 In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. 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 (1992). 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 (1982). Although we are reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when the clearly evident, plain, and indisputable weight of

the evidence compels an opposite conclusion. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993).

¶ 54 In this case, the Commission's finding that the claimant's CRPS condition in his left ankle was causally connected to his workplace accident is not against the manifest weight of the evidence. The Commission based its decision on the testimony and medical records of Drs. Buvanendran, Holmes and Haddad, as well as the various diagnostic tests, all of which combined to establish a chain of events showing a prior condition of good health, followed by a change after a work injury. The totality of this evidence established that the claimant had no ill-being associated with his left ankle prior to April 20, 2007, with a progressively worsening condition following the accident. It has long been established that a chain of good health, accident, and injury can establish causation. *Illinois Power Co. v. Industrial Comm'n*, 176 Ill. App. 3d 317, 327 (1998). Here, the medical testimony and records of the treating physicians established the chain from the accident to the soft tissue injury of the ankle sprain, though the infection resulting from the cryoprobe procedure to the diagnosis of CRPS, a condition which can develop from soft tissue injury. Based upon this record, it cannot be said that the Commission's causation finding was against the manifest weight of the evidence.

¶ 55 3. TTD benefits

¶ 56 The employer next maintains that the Commission erred in awarding TTD benefits after May 15, 2008, the date upon which Dr. Holmes originally found that the claimant reached orthopedic MMI.

¶ 57 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 his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 149

(1990). 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. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 148 (2010). The dispositive question is whether the claimant's condition has stabilized, *i.e.*, whether he has reached MMI. *Id.*

¶ 58 The factors to consider in assessing whether a claimant has reached MMI include a release to return to work, medical testimony or evidence concerning the claimant's injury, and the extent of the injury. *Id.* Once an injured claimant has reached MMI, the disabling condition has become permanent and he is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004).

¶ 59 The determination whether a claimant was unable to work and the period of time during which a claimant is temporarily and totally disabled are questions of fact to be determined by the Commission, and the Commission's resolution of these issues 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.

¶ 60 In this case, Dr. Holmes opined that the claimant had reached orthopedic MMI and was able to return to work without restriction by May 15, 2008. However, the record is clear that shortly after that opinion was issued, the claimant's neurological conditions traceable to the April 2007 accident began to appear. The employer completely ignores that, after the infection following the cryoprobe in April 2008, the claimant's treating physicians all removed the claimant from work and continued treatment which would have continued up to the date of hearing. Specifically, Dr. Holmes fully restricted the claimant from all work on July 16, 2008, and Dr. Buvanendran kept the claimant off from all work since October 13, 2008. No treating physician opined that the claimant had reached MMI as of the date of the hearing. In sum, there

was ample evidence supporting the Commission's conclusion that the claimant's condition had not stabilized by December 2, 2010, and that he was entitled to TTD benefits up to that date. Accordingly, the Commission's decision to continue TTD benefits after May 15, 2008, was not against the manifest weight of the evidence.

¶ 61 4. Medical Expenses

¶ 62 The employer next maintains that the Commission's award of medical expenses incurred by the claimant was against the manifest weight of the evidence. We disagree. Section 8(a) of the Act entitles a claimant "to recover reasonable medical expenses, the incurrence of which are *causally related to an accident arising out of and in the scope of her employment* and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury." (Emphasis added.) 820 ILCS 305/8(a) (West 2006); see also *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470 (2011); *University of Illinois v. Industrial Comm'n*, 232 Ill. App. 3d 154, 164 (1992) ("Under section 8(a) of the Act, an employee is only entitled to recover reasonable medical expenses which are causally related to the accident."). Whether medical treatment is necessary to cure or treat an injury that is causally related to a work-related accident is a question of fact for the Commission, and the Commission's determination of that issue will not be overturned unless it is against the manifest weight of the evidence. *Zarley v. Industrial Comm'n*, 84 Ill. 2d 380, 389 (1982); *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 51.

¶ 63 In this case, the Commission's finding that the medical treatment was reasonable and necessary was not against the manifest weight of the evidence. The record established that the claimant received short term relief from the bier blocks, physical therapy and nerve blocks for which medical expenses were awarded.

¶ 64 5. Prospective Medical Expenses

¶ 65 The employer lastly maintains that the Commission erred in awarding the prospective medical treatment prescribed by Dr. Buvanendran. Prospective treatment prescribed by a treating physician is compensable and the Commission has the authority to award payment for such treatment. *Plantation Manufacturing Company v. Industrial Comm'n*, 294 Ill. App. 3d 705, 709 (1997). Here, the Commission adopted the arbitrator's finding that Dr. Buvanendran prescribed a regime of treatment reasonably likely to relieve the claimant's continuing symptoms. There is nothing in the record to indicate that the Commission's reliance upon Dr. Buvanendran's opinion, given his expertise and familiarity with the claimant's condition, was against the manifest weight of the evidence.

¶ 66 CONCLUSION

¶ 67 For the foregoing reasons, we affirm the decision of the Commission and remand the matter to the Commission for further proceedings.

¶ 68 Commission affirmed and cause remanded.