2015 IL App (1st) 140527WC-U
No. 1-14-0527WC
Order filed: December 18, 2015

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MICHAEL STUPAY,	)	Appeal from the Circuit
	)	Court of Cook County
Appellant,	)	
	)	
	)	
	)	
v.	)	No. 12 L 51459
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, HESTER DECORATING	)	
CO., INC.,	)	Honorable
	)	Edward S. Harmening,
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 findings of the Workers' Compensation Commission that: the claimant had exceeded his permissible number of physicians under section 12(a) of the Workers' Compensation Act; his lumbar spine condition is not causally related to his injury while working; and the claimant's entitlement to temporary total disability benefits ended on March 3, 2010, are not against the manifest weight of the evidence.

¶ 2 The claimant, Michael Stupay, appeals from an order of the circuit court of Cook County that confirmed a decision of the Workers' Compensation Commission (Commission) fixing his rights to certain benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)). The claimant argues that those portions of the Commission's decision finding that he had exceeded his permissible number of physicians under section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)) and declining to order payment for certain medical expenses are against the manifest weight of the evidence. He also argues that the Commission's finding that his lumbar spine condition is not causally related to his accident while working on February 18, 2009, and its termination of his right to temporary total disability benefits on March 3, 2010, are also against the manifest weight of the evidence. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the arbitration hearing of May 11, 2012. At the time of the hearing, the claimant was 31 years of age and a journeyman painter. He began his employment with Hester in April of 2008. The claimant testified that his work duties included constant moving around and ascending and descending ladders and scaffolding. He was often required to carry paint equipment, buckets weighing between 50 and 60 pounds each, and sprayers which weighed in excess of 25 pounds. According to the claimant, there were times when he was trying to "hurry things along" and would have to carry two 5-gallon paint buckets at one time. The claimant also acknowledged that there would be days in which he would not have to carry any paint.

¶ 4 The claimant testified that, on February 18, 2009, he was working in a parking garage and was standing on a scaffold, taping pipes in preparation for painting. The scaffold was on an incline. According to the claimant, as he was "getting down," the scaffold "collapsed *** and

[he] came straight down on" his right ankle, causing him "a lot of pain." The claimant rested his foot for awhile, and when he attempted to stand up, he found that he could not bear weight on his right foot. Later that day, he notified his supervisor, Joe Cronin, about the accident. The claimant testified that prior to this accident he had never experienced any accidents, injuries or medical problems involving his right foot or ankle.

¶ 5 On the day of the accident, the claimant went to the emergency room at Silver Cross Hospital, complaining of right leg pain. According to emergency room records, the claimant reported that he had fallen earlier that day when he either "jumped" or "came straight down" off of a collapsing scaffold. On examination, Dr. David Mikolajczak, the emergency room physician, noted a decreased range of right ankle motion. Right ankle x-rays were negative for any fracture or dislocation, but demonstrated "severe soft tissue swelling" adjacent to the lateral malleolus and medial malleolus. However, the radiologist was unable to exclude the possibility of significant soft-tissue injury or a subtle non-displaced fracture. Dr. Mikolajczak diagnosed the claimant with a right ankle sprain. He applied a posterior mold and splint to the claimant's right leg, and provided him with crutches. The doctor prescribed Ibuprofen and Vicodin, and instructed the claimant to keep his right ankle elevated and avoid weight bearing for the next couple of days. He released the claimant to return to work on February 23, 2009, and instructed him to follow up with Dr. A. Puppala, an orthopedic physician, within two to three days.

¶ 6 The claimant testified that he never saw Dr. Puppala. Instead, he sought treatment from Dr. William Farrell of Parkview Orthopedic Group, with whom he had previously received treatment for a non-work related condition. According to Dr. Farrell's records, on February 20, 2009, he removed the posterior mold and observed significant swelling and tenderness in the claimant's right ankle, both laterally and medially. He instructed the claimant to remain off of

work and to continue taking Ibuprophen. On February 22, however, the claimant suffered an allergic reaction to the medication causing him to be hospitalized from February 23 through February 26. The claimant consulted with a nephrologist, Dr. Tunji Alausa, who diagnosed him with acute renal failure. Upon his release, Dr. Alausa recommended that the claimant discontinue the use of all non-steroidal anti-inflammatory medication.

¶ 7 Later in the afternoon on February 26, 2009, the claimant returned to Silver Cross' emergency room stating that he had experienced an hour of severe lower back pain when he bent over after taking a shower. According to the emergency room records, the claimant described the pain as radiating from his right lower back to his lower abdomen. The claimant denied experiencing any similar episodes in the past. The emergency room physician, Dr. Heather Taras, noted that the claimant had a full range of lumbar spine motion upon examination. The claimant was discharged with a diagnosis of myofascial lumbar strain, given a prescription for Tramadol and instructed to follow up with Dr. Mark Christensen. Hospital records state that the claimant's symptoms had resolved. The claimant followed up with Dr. Alausa on March 2, 2009, and stated that he was "feeling fine.""

¶ 8 After his release from Silver Cross, the claimant remained under the care of Dr. Farrell for several months. The claimant testified that Dr. Farrell gradually weaned him off of his crutches and into a CAM walker. Medical records state that, on March 4, 2009, Dr. Farrell examined the claimant and noted tenderness in his right ankle both medially and laterally, some residual lateral swelling and a negative drawer test. He instructed the claimant to continue wearing the CAM walker, remain off of work, and start physical therapy.

¶ 9 On March 25, 2009, Dr. Farrell noted the claimant was improving but that, upon removal of the CAM walker, he exhibited definite residual swelling and bruising over the lateral ankle

ligaments. Drawer testing was again negative. The doctor released the claimant to sendentary duty and instructed him to start to wean off the CAM walker.

¶ 10 In an examination on April 15, 2009, Dr. Farrell noted that the claimant's physical therapy appeared to be aggravating his right ankle symptoms and that it may be necessary to suspend the therapy for the immediate term. The doctor stated that the claimant continued to have swelling over the lateral ankle area, which was unusual. He also had secondary pain on the medial side and tenderness over the anterior talofibular and bibular calcaneal ligaments of his right ankle. Dr. Farrell restricted the claimant from light duty on the basis that his work involved standing and climbing on ladders. He ordered an MRI for the claimant's right ankle and instructed him to return in one week.

¶ 11 On April 17, 2009, the claimant underwent the MRI, which revealed no significant ankle joint effusion or any bone marrow edema to suggest fracture or contusion. The radiologist noted that there was "no acute appearing lateral ankle ligament injury," although there was abnormal thickening of the interior (*sic*) talofibular and calcaneal fibular ligament, which was "most likely related to scarring from [an] older injury." On April 21, 2009, the claimant was examined by Dr. Farrell's physician assistant, who observed "mild to moderate swelling in the lateral aspect" of the claimant's right ankle, but that he walked without a limp. The physician assistant recommended that the claimant begin sedentary work, if available.

¶ 12 The claimant was next examined by Dr. Farrell on May 13, 2009, at which time the doctor noted that his condition had changed minimally despite physical therapy. Dr Farrell interpreted the MRI as showing involvement of the anterior talofibural and calcaneal fibular ligaments of the right ankle. He noted pain over the injury site but "no gross instability." Dr. Farrell suspended the claimant's physical therapy and released him to sedentary duty.

¶ 13 When the claimant returned to Dr. Farrell on May 27, 2009, the doctor noted some benefit from the cessation of aggressive physical therapy but that the claimant was "still tender and swollen over the lateral ankle complex." He prescribed work hardening and again released the claimant to sedentary duty. According to the doctor, he could not yet entertain the idea of releasing the claimant to full duty, because he "is on scaffolds" and "needs to be safe performing those maneuvers prior to entry back to work."

¶ 14 The claimant testified that, on the recommendation of Dr. Farrell, he commenced work hardening at Newsome Physical Therapy. At his initial evaluation on June 1, 2009, therapist Heather Thompson noted that the claimant had a projected work tolerance at a light medium physical demand level. Thompson noted that the claimant "self rates his job at a very heavy physical demand level *** based on an occasional lift and carry of buckets weighing 65 pounds each." The claimant told Thompson that he "usually carries two [buckets] at a time, which places his occasional lift and carry at 130 pounds." She also noted that the claimant "is on his feet for his entire day's work." Based on the description the claimant provided, Thompson did not recommend a return to work at that time, but instead recommended a course of daily work hardening, with the sessions progressing from 3 to 6 hours per day over time. She noted the claimant was wearing an ankle brace and that he reported swelling even with use of the brace. The claimant described stair usage as his most difficult activity.

¶ 15 The claimant completed at least 17 work hardening sessions between June 2 and July 2, 2009. In a functional capacity evaluation performed on June 24, 2009, Thompson noted that the claimant had "progressed to a frequent lift/carry of 35# and a bilateral (occasional) bucket carry of 30# each." In a progress summary for the same date, Thompson advised Dr. Farrell of the claimant's progress and ongoing complaints. She advised against the claimant's return to full

duty based upon his own description of his job duties as having a "very heavy" physical demand level. Thompson noted that the claimant was progressing but continuing to report occasional right ankle pain.

¶ 16 On June 25, 2009, the claimant was re-evaluated by Dr. Farrell's nurse practitioner at which time the claimant reported that he had been participating in work hardening but that he has had no change or improvement in his symptoms. The nurse noted mild effusion in the claimant's ankle but that his drawer sign was negative and his collateral ligaments were intact. She also observed that he walked without a limp. The nurse continued with the claimant's restriction to sedentary work. However, she noted the claimant had reported that no such work was available at Hester. A Medrol Dosepak was prescribed, and the claimant was instructed to follow up in two to three weeks. This was his last consultation with Dr. Farrell. When asked when he first started "having issues" involving his back, the claimant responded that it was "probably going through *** work hardening."

¶ 17 On July 2, 2009, the claimant sought a "second opinion" from Dr. Breck Tiernan of Advanced Foot and Ankle Centers. Dr. Tiernan is a "board qualified" but not yet certified podiatrist. According to Dr. Tiernan's testimony, the claimant came to him because their wives were friends. The doctor stated that he and his wife socialized with the claimant and his wife. In his medical history, Dr. Tiernan noted that the claimant had recently undergone work hardening and had reported no relief from any of the physical therapy he had received so far. Prior x-rays of his right ankle disclosed no fractures or dislocations, but a "small notch to the distal aspect of the lateral malleolus" with no bone fragments present. Dr. Tiernan diagnosed the claimant with tibiofibular and calcaneofibular ligament sprains. He injected the claimant's right ankle with a corticosteroid, noting that the claimant reported 10% relief as a result. He fitted the

claimant for custom orthodics, ordered an ankle brace and instructed the claimant to discontinue work hardening and to begin physical therapy. He also instructed the claimant to remain off of work.

¶ 18 On July 9, 2009, the claimant began physical therapy with Brightmore Physical Therapy. During his initial evaluation, the claimant reported that his past physical therapy and work hardening "were to no avail."

¶ 19 The claimant saw Dr. Tiernan again on July 23, 2009. At that visit, the claimant rated his right ankle pain at 7 on a 10-point scale and stated that he experienced no improvement from his recent physical therapy. The doctor prescribed a repeat right ankle MRI, which was performed on July 24. According to the findings of the interpreting radiologist, the MRI disclosed very significant hypertrophic fibrotic thickening of the anterior talofibular ligament with continuing fibril tearing through its midsubstance which is consistent with a previous rupture and fibrosis. The radiologist observed that, although not definitive with this study, the hypertrophic thickening of the ligament appeared to protrude into the anterolateral gutter of the ankle, raising visual suspicion of an anterolateral ankle impingement syndrome. The radiologist noted that the claimant's tarsal tunnel appeared open with no visualized impingement or entrapment of the posterior neurovascular bundle.

¶ 20 The claimant returned to Dr. Tiernan on July 30, 2009, reporting that there was still no improvement in his condition and that he is unable to perform the simplest tasks at home without pain and discomfort. Dr. Tiernan recommended that the claimant undergo surgery, including an ankle arthroscopy, anterior talofibular (ATF) ligament repair and repair of the peroneal tendons. The doctor issued a note stating that the claimant would be "likely to return to work in three months after the surgery."

¶ 21 On August 7, 2009, Dr. Tiernan performed outpatient surgery on the claimant consisting of right ankle arthroscopy with extensive debridement, repair of the ATF ligament and peroneal tendons and a sural nerve decompression. On release, the claimant was given a CAM walker and instructed to avoid weight-bearing activity and lifting anything over 25 pounds.

¶ 22 When the claimant was examined by Dr. Tiernan on August 10, 2009, the doctor noted "pain on all ranges of motion with guarding by the patient." On August 20, the doctor removed the claimant's sutures, administered a nerve block to the medial aspect of the right ankle joint, and instructed the claimant to begin partial weight-bearing and resume physical therapy.

¶ 23 On September 23, 2009, the claimant was evaluated at Brightmore Physical Therapy (Brightmore), and the therapist noted that he had a slow antalgic gait pattern with significant tumidity on the right dorsum of the foot and significantly reduced tarsal mobility. The physical therapist reported that the "rehabilitation potential" for the claimant was "excellent at this time." In the following months, however, the therapist recorded a 20% "overall" improvement in the claimant's right foot condition, and that there were "minimal gains" due to his persistent complaints of pain at the peroneal tendon area and the medial Achilles tendon. Dr. Tiernan injected the claimant's peroneal tendons, but the claimant experienced no resulting improvement. Consequently, the doctor instructed him to discontinue physical therapy. The doctor placed the claimant in a CAM walker and instructed him to avoid weight-bearing activity for two weeks. Following an examination on November 30, Dr. Tiernan reported that movement of the fourth and fifth metatarsals of the claimant's right foot elicited pain in the bases of the bones at the metatarsal tarsal joints. The doctor now suspected a possible long plantar ligament injury. He injected the long plantar ligament, but this produced "no real improvement" for the claimant; in fact, the claimant subsequently informed Dr. Tiernan that it made the pain worse.

¶ 24 On December 2, 2009, Dr. Tiernan injected the claimant's fourth metatarsal tarsal joint, but this again produced no relief. The doctor ordered another MRI and instructed the claimant to remain off of work. The MRI was performed on December 7, and, according to the radiologist, demonstrated "moderate tenosynovitis of both peroneal tendons," but no other acute or chronic pathological process that would account for the claimant's ongoing symptoms. Again, the radiologist found that the tarsal tunnel appeared open, with no visualized impingement. In his report of December 9, 2009, Dr. Tiernan similarly noted that the MRI revealed no abnormalities with the exception of some synovitis of the peroneal tendons. Dr. Tiernan's report states that he was referring the claimant for nerve conduction velocity (NCV) and electromyogram (EMG) tests, and a neurology consultation. He issued a note ordering that the claimant remain off of work.

¶ 25 On January 12, 2010, the claimant presented to Dr. Milena Appleby, of Professional Neurological Services, Ltd. In her report, Dr. Appleby stated that the claimant came to her because of constant pain and tingling in the lateral side of his right foot which was aggravated by standing and walking. After performing a neurological examination, Dr. Appleby found that the claimant exhibited signs of tarsal tunnel syndrome, and that EMG and nerve conduction studies were warranted. Dr. Appleby proceeded with those studies, after which she reported that they revealed "no signs of neuropathy." She noted that the distal motor latencies of both lateral plantar nerves, both tibial nerves, and both common peroneal nerves were normal. Sensory nerve conduction studies and H-reflex latencies also were normal.

¶ 26 The claimant saw Dr. Tiernan the same day, January 12, 2010, at which time the doctor noted that the claimant "states that the neurologist states a possible tarsal tunnel syndrome in the right foot." Upon examination, Dr. Tiernan noted for the first time a positive Tinnels sign on the

right distal to the tarsal tunnel. The doctor administered a local injection to the right foot tibial nerve at the tarsal tunnel. The claimant reported 85% relief from this injection, stating that it was the "first injection that actually helped." Dr. Tiernan ordered the claimant to remain off of work for "at least next month."

¶ 27 On his next visit to Dr. Tiernan, however, the claimant reported that the injection administered on January 12 had lasted for only six hours. In the ensuing month, the doctor administered two more injections to the tibial nerve at the tarsal tunnel, along with steroid injections to "area of possible impingement." The claimant again reported 85% initial relief. At his deposition, Dr. Tiernan testified that he believed he had administered 13 injections to the claimant by this point.

¶ 28 On March 3, 2010, the claimant underwent a section 12 examination (820 ILCS 305/12 (West 2010)) with Dr. Samuel Vinci, who is double-board certified in both podiatric foot and ankle surgery. Dr. Vinci obtained a history of the claimant's injury, symptoms and treatment to date. He also reviewed the claimant's x-rays, MRI scans, physical therapy and work hardening notes and evaluations. According to Dr. Vinci's report, the claimant stated that he was injured at work when a scaffold collapsed and he "fell from a height of approximately 5 to 6 feet." The claimant denied injury to any other areas of his body. The claimant also stated that he received "at least 50 shots around his ankle" from Dr. Tiernan, and that Dr. Tiernan "possibly considered sending him to a neurologist."

¶ 29 Dr. Vinci noted that the claimant walked with a slight limp and favored his right lower extremity. The doctor performed a non-weightbearing examination, and noted that the claimant's subjective complaints were of numbness and burning in the first intermetatarsal space. However, the doctor found no abnormalities from a clinical standpoint that would explain these symptoms.

Dr. Vinci observed that, while the claimant's distribution of discomfort appeared to be in the pathway of the medial dorsal cutaneous nerve and possibly the intermediate dorsal cutaneous nerve, there was no evidence of tarsal tunnel syndrome. With regard to neurological symptoms, the doctor found no tenderness with palpation or percussion around the posterior tibial nerve and no positive Tinel or Valleix phenomenon.

¶ 30 With regard to the claimant's work duties, Dr. Vinci noted that his work-hardening report from Newsome stated that, as of June 24, 2009, the claimant demonstrated a work tolerance to a medium physical demand level with an occasional lift and carry of 50 to 60 pounds. He also exhibited a frequent work tolerance to a medium-heavy physical demand level with a frequent lift and carry of 35 pounds. Dr. Vinci noted that the claimant had self-rated his job at a very heavy physical demand level with an occasional lift and carry of two buckets weighing 65 pounds each.

¶ 31 Dr. Vinci opined that the claimant's February 18, 2009, work accident resulted in a right ankle sprain that "should have healed up in a relatively normalized fashion without complications in a period of four to six months," with the claimant being released back to work at that point. The doctor also stated that, based upon his review of the 2009 MRIs, he found nothing which would have prompted him to recommend a surgical arthroscopy for the claimant or a release of his peroneal tendons. Rather, he interpreted both MRIs as showing chronic degenerative changes and no acute changes directly resulting from his work injury of February 18, 2009. Additionally, Dr. Vinci did not feel that the claimant had benefitted at all from the surgery performed by Dr. Tiernan; in fact, the doctor opined that the claimant's complaints resulted from a combination of: "one, postsurgical complications, and secondly, some chronic underlying conditions about his right ankle" that were well-documented in the MRI tests. In

particular, the doctor attributed the claimant's intermetatarsal space discomfort to some residual effects of nerve damage from the arthroscopic procedure. Dr. Vinci noted that, according to the claimant, the surgery had merely shifted his pain symptoms from the right ankle to the heel and arch area of his right foot. The doctor stated that, in his opinion, the claimant was at maximum medical improvement from the injury sustained in his work accident, and was ready to resume work as a painter.

¶ 32 On March 7, 2010, Hester discontinued the claimant's TTD benefits based upon Dr. Vinci's finding that the claimant could return to full duty. The claimant applied for and received unemployment benefits of about $500 per week extending through late September of 2010.

¶ 33 The claimant last saw Dr. Tiernan on March 17, 2010, stating that his pain was unimproved. In his report of that date, Dr. Tiernan noted that the claimant complained of throbbing pains with numbness and tingling, primarily on the lateral and plantar aspects of the right foot. Dr. Tiernan informed the claimant he had "nothing left to offer him in the form of treatment for his condition." He recommended that the claimant be evaluated by a "pain management specialist and a neurologist" for possible complex regional pain syndrome. The doctor further noted that, at that visit, the claimant had asked him to prepare a letter contesting the recommendation of Dr. Vinci that the claimant return to work. The claimant requested a recommendation that he be confined to desk duty. Dr. Tiernan accommodated the claimant's request, and sent a letter to the claimant's attorneys disputing Dr. Vinci's findings pertaining to his symptoms and condition. The letter contained no statement regarding the claimant's ability to return to any type of work duties. However, Dr. Tiernan issued a note to the claimant specifying that he return to "desk work only" with "no walking or extended standing."

¶ 34 At his deposition, Dr. Tiernan testified that, beginning around October or November of 2009, the claimant's pain had shifted from the area of his right ankle to the plantar aspect of his foot. At that point, he began to suspect that the claimant's problems were neurological rather than orthopedic in nature. The doctor testified that, in his March 17, 2010 report, he referred the claimant to a pain management specialist because there was "nothing really wrong with him" from an orthopedic standpoint, and he required a neurological evaluation. Dr. Tiernan opined that, as of March 17, the claimant had not reached maximum medical improvement due to his neurological issues.

¶ 35 On cross-examination, Dr. Tiernan admitted that the claimant's January 12, 2010, neurological examination by Dr. Appleby was undertaken pursuant to Dr. Tiernan's specific referral. The doctor acknowledged that Dr. Appleby's report revealed no signs of neuropathy on the electrodiagnostic study, and no evidence of tarsal tunnel syndrome. Dr. Tiernan stated that he did not refer the claimant to Dr. Kelly, and was unsure "how he got" to him.

¶ 36 The claimant first saw Dr. Kelly on May 7, 2010. According to the doctor's initial notes, the claimant reported sharp pain in the right heel and lateral plantar region of his foot, radiating up his lower leg. The claimant also complained of pain in the arch of his foot with associated numbness, tingling and burning involving his toes. The claimant told the doctor that he had been given physical therapy followed by work hardening which severely aggravated his pain. According to Dr. Kelly's notes, the claimant "apparently continued to complain very severely about the pain, but despite this work hardening stated inappropriately that he was able to tolerate moderate duty levels." The notes also state that the claimant "apparently had an IME about a month ago with an orthopedic surgeon who spent a total of five minutes evaluating [the claimant] and 10 minutes taking x-rays," and that, "based on this inadequate brief evaluation, it

was determined that [the claimant] could go back to work with medium duty as was proposed by the inappropriate evaluation with work hardening." Dr. Kelly noted that the claimant denied ever having undergone an EMG.

¶ 37 Following an examination, Dr. Kelly reported a significant Tinel sign both proximally in the tarsal tunnel as well as over the adductor canal. The doctor reported that, clinically, the claimant has a definitive right tarsal tunnel syndrome involving both the medial and lateral plantar branches, definitively related to the claimant's work accident. The doctor also concluded that the claimant was "potentially *** beginning to develop an early problem with autonomic nerve dysfunction, which could well progress if left untreated to an RSD/complex regional pain syndrome type 1." Dr. Kelly prescribed a trial of Cymbalta and an EMG of the lower extremities, with additional treatment contingent upon the EMG results. He instructed the claimant to remain off of work.

¶ 38 The claimant returned to Dr. Kelly on June 4, 2010, reporting no improvement from his use of Cymbalta. The claimant complained of significant pain involving the right foot, particularly the plantar aspect, but also involving the entire foot with episodic swelling, color changes, and sensitivity to touch marked by allodynia. Dr. Kelly performed an EMG on the claimant's lower extremities, which he described as "abnormal" and "consistent with" a chronic and active right-sided tarsal tunnel syndrome. However, Dr. Kelly found no evidence of any underlying lumbosacral radiculopathy, sensory/motor polyneuropathy, or superimposed peroneal monoeuropathies. Dr. Kelly recommended that, given the clinical presentation of a secondary complex regional pain syndrome, sympathetic ganglion blocks be performed at L2, L3 and L4 on the right side. If this were to significantly help the complex regional pain syndrome but the claimant continued to experience tarsal tunnel symptoms, Dr. Kelly recommended a repeat tarsal

tunnel steroid nerve block for the distal tibial nerve to be performed proximally within the tarsal tunnel as well as distally over the adductor canal.

¶ 39 At Hester's request, the claimant was again examined by Dr. Vinci on September 2, 2010. The doctor noted that the claimant reported intermittent arch pain and constant pain on the outside aspect of his foot in the distribution of the sural nerve above and below his surgical incision. The claimant stated that he experienced no improvement from a nerve block administered three weeks earlier. Based upon his examination, Dr. Vinci concluded that the major difference in the claimant's right foot condition between this and the prior examination is that the claimant currently clearly manifests some form of nerve damage in the distribution of the sural nerve. Dr. Vinci disagreed with Dr. Kelly's diagnosis that the claimant was suffering from RSD or tarsal tunnel syndrome. However, he believed that the claimant's current symptomology was going to be permanent in nature, and that it was not likely to improve with any type of nerve blockage or surgical procedure. He stated that, consistent with his opinion of March 3, 2010, he believed that the claimant "was" at maximum medical improvement. Dr. Vinci further opined that the claimant could return to work as a painter.

¶ 40 In the months of October and November of 2010, Dr. Kelly administered a series of sympathetic nerve blocks to the claimant, all of which were unsuccessful. He noted that the claimant was using Percocet sparingly when his pain was particularly severe. Dr. Kelly also reported symptoms of a right-sided L5 as well as L2-3 episodic lumbar radiculopathy for which he recommended lumbar steroid injections. However, when he performed two L4-L5 steroid injections in January of 2011, it provided little improvement.

¶ 41 On December 22, 2010, the claimant saw Dr. Milton Kondiles, a podiatrist, on referral by Dr. Kelly. His impression was a right sural nerve entrapment, peroneal tondonitis, lateral ankle

instability, tarsal tunnel syndrome and muscle weakness. He administered a cortisone injection and prescribed a custom ankle brace, a repeat MRI in two weeks, and Celebrex.

¶ 42 The claimant underwent right ankle and right foot MRIs on December 30, 2010. Dr. Kondiles reported that the MRIs were "basically negative for any soft tissue pathology." He diagnosed the claimant with complex regional pain syndrome and prescribed physical therapy. He continued to keep the claimant off of work. On February 7, 2011, Dr. Kondiles drafted a letter addressed "to whom it may concern," recommending that the claimant undergo surgery for "repair of peroneal tendons" and "neurolysis" due to the claimant's persistent pain and failure to respond to epidurals. He noted that the claimant had been treated for complex regional pain syndrome with physical therapy and epidurals which did not seem to help. He described the claimant's discomfort as arising from "his ankle area with symptoms of saphenous nerve entrapment and peroneal tendon pain with edema."

¶ 43 On February 15, 2011, Dr. Vinci reviewed the claimant's MRIs of December 30, 2010, and concluded that, consistent with his prior examinations, the claimant has some chronic tendonitis-type issues that would continue. However, these issues would not cause permanent disability to the claimant, nor result in an inability to perform his work duties.

¶ 44 On February 18, 2011, the claimant saw Dr. Kelly, who noted his agreement with Dr. Kondiles's recommendation that the claimant undergo surgery with regard to the tenosynovitis and particularly the tarsal tunnel syndrome, as this is likely contributing to his complex regional pain syndrome. Dr. Kelly also stated that he had ordered an MRI for the claimant's lumbar spine, because the claimant has a lumbosacral polyradiculopathy which was unresponsive to epidural injections. According to Dr. Kelly, the lumbosacral polyradiculopathy was "secondary to the work injury" in that it "was never symptomatic before" and "only has been symptomatic

since the injury." He also stated that it was likely a contributing factor to the claimant's complex regional pain syndrome. Dr. Kelly wrote out a script recommending a right tarsal tunnel release.

¶ 45 The claimant underwent his lumbar spine MRI on March 21, 2011. The noted indication for the MRI is "patient fell in February of 2009, chronic low back pain radiating to the right leg." The radiologist interpreted the MRI as showing "diffuse lumbar spondylosis with multi-level annular disc bulging and hypertrophy of posterior elements causing neural foraminal and spinal stenosis."

¶ 46 The claimant saw Dr. Kelly on March 31, 2011, and the doctor interpreted the MRI as showing moderate disc bulging at L4-L5 and L5-S1. Dr. Kelly opined that the claimant's tarsal tunnel syndrome is the "main etiology" of his complex regional pain syndrome, and that the complex regional pain syndrome was not likely to improve until the tarsal tunnel is surgically repaired. He continued to keep the claimant off of work.

¶ 47 The claimant next saw Dr. Kelly the following year on March 9, 2012. Dr. Kelly noted that the claimant was now experiencing "a greater preponderance of symptoms along his lumbosacral nerve roots" with pain radiating down the lateral aspect of his right leg to the lateral part of his right foot. The claimant was also complaining of "pain, numbness and tingling in the plantar aspect of his foot" consistent with tarsal tunnel syndrome, and swelling and color changes consistent with complex regional pain syndrome. However, Dr. Kelly noted that the "worst of his pain seems to be in the lateral aspect of his foot and in the L5 dermatome." Dr. Kelly recommended that, in light of the worsening of the claimant's symptoms, particularly in his lumbar spine, he undergo both a tarsal tunnel release and also a "trial of a spinal cord stimulator to manage his chronic lumbrosacral radicular neuropathic pain, both of which are likely contributing to the persistence of his RSD." The claimant last saw Dr. Kelly on March 20, 2012,

although his treatment notes of that visit do not appear in the record. A prescription slip of that date reflects an order by Dr. Kelly for a thoracic spine MRI without infusion, "s/p fall."

¶ 48 In his testimony, the claimant stated that, his wife is a teacher and he has three young children. He stated that his wife and Dr. Tiernan's wife were friends and that the couples socialized in the past. The claimant acknowledged that, in his visit with Dr. Tiernan on March 17, 2010, he requested that the doctor write a letter contesting Dr. Vinci's recommendation that he return to work. According to the claimant, when he received Dr. Tiernan's instruction on March 17 that he see a neurologist and pain management specialist, he conducted a Google search for "networks," which led him to Illinois Physician's Network (IPN). He contacted IPN, and they referred him to "Dr. Kelly, MD" of Health Benefits Pain Management.

¶ 49 In describing his job responsibilities, the claimant testified that he had to use a paint sprayer to prime the walls prior to any new paint job. The sprayers can be large or small, and the large ones are on wheels. The claimant could not recall having told a physical therapist at Newsome that he had to carry two buckets of paint at a time two to seven times per day. He testified that one bucket of paint weighs 50 to 60 pounds. According to the claimant, his job required him to kneel or stoop on a "daily basis" when he was "patching" or taping baseboards.

¶ 50 The claimant testified that, at some point after he saw Dr. Vinci in March of 2010, he contacted Steve Hester, the owner of Hester, and requested office work. According to the claimant, Steve responded that there was no desk work and that he just wanted the claimant to recover. He admitted that he did not contact Hester after his June 24, 2009, functional capacity examination in order to attempt to resume his painting job. Although his benefits were terminated on March 7, 2010, after Dr. Vinci's report, the claimant did not attempt to resume full

duty. The claimant acknowledged that, while he was off of work, he took care of the children while his wife worked.

¶ 51 John Jacob testified on behalf of Hester. He worked for Hester for over nine years and was currently running its commercial division. According to Jacob, the level of functioning demonstrated by the claimant during his functional capacity evaluation of June 24, 2009, was sufficient for him to have returned to work in his regular duty capacity. Jacob testified that a 5-gallon can of paint weighs about 53 pounds and that the claimant is not required to lift more than one can at a time. According to Jacob, the claimant did not typically perform much spray-painting. Also, contrary to the claimant's testimony, kneeling comprised a very small percentage of the claimant's job. In addition, most of the jobs had elevators, so the claimant did not have to climb stairs. However, Jacob acknowledged that the claimant did have to ascend scaffolds.

¶ 52 Hester offered into evidence video surveillance of the claimant which was conducted on various dates between July of 2009 and December of 2010. Throughout this time period, the surveillance depicts the claimant performing a variety of household functions and chores and taking care of his children. In particular, he repeatedly is seen going in and out of his garage or other buildings and his vehicle; lifting his children in and out of the car; carrying his youngest child along with an infant seat and placing it in the car; strapping his children in the car; walking a child from the bus while carrying his backpack. He is also seen grocery shopping, pushing a loaded shopping cart and then placing purchased items in his car. The claimant is depicted using a "weed whacker," shoveling snow and spreading salt, as well as using a broom to clear snow off of his car. He is, at times, shown bearing weight on his right foot, and in many instances, is depicted moving without the aid of any assistive device for his foot.

¶ 53 Dr. Vinci's deposition was admitted into evidence. He testified that, when he re-examined the claimant on September 2, 2010, he noted sensory problems with the sural nerve but no evidence of reflex sympathetic dystrophy. He perceived the sural nerve issue to be a complication resulting from the surgery performed by Dr. Tiernan. According to Dr. Vinci, the sural nerve problem would not prevent the claimant from resuming work as a painter.

¶ 54 Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)), the arbitrator found that the claimant had an accident on February 18, 2009, that arose out of and in the course of his employment with Hester, and that his current condition of complex regional pain syndrome and the current condition of ill-being in his right foot and ankle are causally related to his accident. The arbitrator found no causal connection, however, between his work accident and his right tarsal tunnel syndrome or his lumbar spine condition. The arbitrator also concluded that the claimant had not exceeded his choice of physicians under section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)), and that Dr. Kelly was a valid referral on the chain of referrals from Dr. Tiernan. She awarded the claimant TTD benefits for 162 weeks, for the period of February 19, 2009, through March 28, 2012, plus $12,736.80 for accrued and necessary medical expenses. The arbitrator also ordered Hester to authorize and pay for a consultation for the claimant with a board-certified pain management specialist, "other than Dr. Kelly," to be agreed upon by the parties, plus any subsequent treatment deemed necessary by that specialist.

¶ 55 Both parties filed petitions for review of the arbitrator's decision before the Commission. With one commissioner dissenting, the Commission agreed with the arbitrator's findings that the claimant proved a causal connection between his work-related accident of February 18, 2009, and the injury to his right foot, but that he failed to prove any causal relationship between that

accident and his lumbar spine condition. The Commission reversed the arbitrator's finding that the claimant's tarsal tunnel syndrome was not causally related to his work accident and concluded that, based upon Dr. Kondiles's notes, tarsal tunnel surgery was necessary. However, the majority determined that Hester would not be liable to pay for the procedure, because the physician who recommended the tarsal tunnel release, Dr. Kelly, was outside of the claimant's permissible choice of physicians under section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)). The Commission ordered Hester to pay the claimant's medical expenses only through his treatment with Dr. Tiernan, and vacated "any [portion of the] $12,736.80 awarded to compensate [the claimant] for his incurred medical expenses with Dr. Kelly and his progeny." Finally, the Commission modified the arbitrator's order with regard to TTD benefits, awarding the claimant benefits from February 19, 2009, through March 3, 2010.

¶ 56 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's decision. This appeal followed.

¶ 57 The claimant's first allegations of error pertain to the Commission's determination that he exceeded the permissible number of physician choices allowed to him under section 8(a) of the Act. After finding that Dr. Tiernan was the claimant's second choice of physician, the Commission observed that, based upon Tiernan's referral of the claimant to a neurologist and pain management specialist, treatment with either of these specialists would constitute covered medical services under Dr. Tiernan's referral chain. However, the Commission found that Dr. Kelly was not proven to have the credentials of either of these specialties, and accordingly denied coverage to the claimant for Dr. Kelly's medical bills. The claimant asserts that this finding was contrary to the manifest weight of the evidence.

¶ 58 As a preliminary matter, the claimant contends that Hester forfeited this issue by failing to raise it both in its statement of review and its statement of exceptions, in violation of Rule 7040.70 of the Rules Governing Practice before the Commission (50 Ill.Admin. Code § 7040.70(d) (2014)). Accordingly, the Commission erred in considering the issue *sua sponte.* The claimant maintains that, at a minimum, he was deprived of his due process right to be heard on the issue. We disagree.

¶ 59 Rule 7040.70(d) provides that the Commission will only consider "the issues raised in both the Review proceedings stipulation form or its equivalent *** in the party's statement of exception(s) and/or addition(s) and supporting brief, and *** those in any complying response thereto." 50 Ill.Admin. Code § 7040.70(d) (2014). However, as we observed in *Greaney v. Industrial Comm'n,* 358 Ill. App. 3d 1002, 1026 (2005), Rule 7040.70(d) conflicts with the mandate of section 19(b) of the Act, which provides that "the jurisdiction of the Commission to review the decision of the arbitrator shall not be limited to the exceptions stated in the Petition for Review." 820 ILCS 305/19(b) (West 2002). Additionally, section 19(e) of the Act states that, once a petition for review and agreed statement of facts has been filed, "the Commission shall promptly review the decision of the arbitrator and all questions of law or fact" appearing from the statement of facts. 820 ILCS 305/19(e) (West 2012). We held that, to the extent that Rule 7040.70(d) conflicts with the mandate of section 19 of the Act, section 19 must prevail. *Greaney,* 358 Ill. App. 3d 1026; accord, *Klein Construction/Illinois Insurance Guaranty Fund v. Workers' Compensation Comm'n,* 384 Ill. App. 3d 233 (2008).

¶ 60 We agree that, in its petition for review and statement of exceptions, Hester failed to specifically raise as error the arbitrator's finding that the claimant did not exhaust his choice of physicians under section 8(b). However, in its supporting brief, Hester did challenge Dr. Kelly's

lack of credentials as the type of specialist referred by Dr. Tiernan. Notwithstanding this fact, there is no dispute that a proper petition for review and agreed statement of facts were filed in this case. Under section 19(b) and (e) of the Act, therefore, the Commission was vested with jurisdiction over the petition for review and was required to entertain any questions of law or fact emerging from the agreed statement of facts. Accordingly, the claimant's argument fails.

¶ 61 We also fail to discern how the claimant was denied an opportunity to be heard on this issue. In his statement of exceptions, the claimant noted the arbitrator's conclusion that "Dr. Kelly was found to be within the permissible referral chain" under section 8(b) of the Act. Hester disputed the claimant's assertion in its brief before the Commission, arguing that the arbitrator's conclusion was erroneous. The question of whether the claimant had exhausted his choice of physicians was therefore placed at issue before the Commission, and the claimant's claim that he was deprived of an opportunity to be heard is without merit.

¶ 62 We now turn to the argument that the Commission's finding that the claimant had exhausted his physician choices was against the manifest weight of the evidence. In general, section 8(a) requires an employer to pay for all medical, surgical, and hospital services that are reasonable and necessary to cure or relieve the effects of an injury to an employee arising out of and in the course of his employment. 820 ILCS 305/8(a) (West 1998). The section is subject to the following restriction:

> "Notwithstanding the foregoing, the employer's liability to pay for such medical services selected by the employee shall be limited to:
>
> (1) all first aid and emergency treatment; plus
>
> (2) all medical, surgical and hospital services provided by the physician, surgeon or hospital initially chosen by the employee or by any other physician, consultant,

expert, institution or other provider of services recommended by said initial service provider or any subsequent provider of medical services in the chain of referrals from said initial service provider; plus

(3) all medical, surgical and hospital services provided by any second physician, surgeon or hospital subsequently chosen by the employee or by any other physician, consultant, expert, institution or other provider of services recommended by said second service provider or any subsequent provider of medical services in the chain of referrals from said second service provider." 820 ILCS 305/8 (West 2010).

¶ 63 The Commission determined that Dr. Farrell was the claimant's first choice of physician and that his second choice was Dr. Tiernan. The claimant does not dispute this finding on appeal, but argues that Dr. Tiernan's general referral to a neurologist and pain management specialist, without naming any specific individual or group, was nonetheless a valid referral. In support of this position, he cites *Courier v. Industrial Comm'n,* 282 Ill. App. 3d 1 (1996). We find that case to be readily distinguishable from the instant case.

¶ 64 In *Courier,* the physician of the employee's second choice advised her by her second visit that he would not treat her unless she lost a substantial amount of weight. We held, under the limited factual scenario in that case, that the physician's refusal to treat the employee compelled her to seek treatment from another physician. *Courier,* 282 Ill. App. 3d at 8. Further, because there was no evidence that the employee had engaged in "doctor shopping," the refusing physician was held not to constitute a "choice" under section 8(a). *Id.* In this case, unlike *Courier,* the claimant's second-choice physician did not essentially "refuse" to render care to the claimant after little more than a preliminary visit. Rather, Dr. Tiernan determined, after comprehensive treatment, that he could provide no further relief to the claimant based upon his

medical expertise, and referred the claimant to a specialist or specialists who could provide such care. Additionally, *Courier* involved no issue of a referral, unspecified or otherwise. Accordingly, it is inapposite to the issue at bar.

¶ 65 In any event, we need not determine whether the general referral constituted a valid referral in this case, because we agree with the Commission that there is insufficient evidence that Dr. Kelly qualified either as a neurologist or a pain management specialist.

¶ 66 As is the case with any element of a workers' compensation claim, the claimant bears the burden of proving, by a preponderance of the evidence, his entitlement to an award of medical expenses under section 8(a). *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill. App. 3d 893, 903 (2004). The question of whether a particular physician properly falls within a chain of referrals from another physician is one of fact for the Commission, and its decision on this issue will not be disturbed unless it is against the manifest weight of the evidence. *Absolute Cleaning/SVMBL v. Industrial Comm'n,* 409 Ill. App. 3d 463 at 468-69 (2011); *Nabisco Brands, Inc. v. Industrial Comm'n,* 266 Ill. App. 3d 1103 (1994).

¶ 67 Here, Dr. Tiernan testified that he did not refer the claimant to Dr. Kelly or approve his choice. Dr. Tiernan did not know who Dr Kelly was or how the claimant found him. There was no testimony, curriculum vitae or any other evidence establishing Dr. Kelly's credentials or the type of medicine he practiced. Medical reports in the record refer to him simply as "Dr. Kelly, M.D." The arbitrator stopped short of finding that he was any form of specialist and noted only that he was "neither a podiatrist nor a surgeon." The claimant testified that, after Dr. Tiernan's referral, he conducted a "google search," but never identified the subject or purpose of the search. Although the claimant asserts that Dr. Kelly "held himself out" as a specialist in the areas of neurology and pain management, there is insufficient evidence in the record that he was

anything more than a general practitioner. We see no basis to disturb the Commission's finding that the fact that Dr. Kelly's letterhead read "Health Benefits Pain Management Services," without more, is insufficient to prove that he was a neurologist or pain management specialist.

¶ 68 The claimant next challenges the Commission's denial of medical benefits for the treatment of his lower back based upon its finding that the back condition was not causally related to his work accident. Specifically, he argues that the sympathetic ganglion blocks at L2, L3 and L4, as ordered by Dr. Kelly on June 4, 2010, were necessary not to resolve his lower back issues *per se*, but to treat his complex regional pain syndrome, which the medical evidence proved was causally related to his work accident. Thus, the denial of these benefits was contrary to the manifest weight of the evidence.

¶ 69 Initially, we note that, contrary to the claimant's argument, the Commission did not deny coverage for the spinal sympathetic nerve blocks which were administered during 2010 and early 2011 based upon any finding that they were not causally related to his work accident.[*] Rather, coverage was denied on this basis only for two *prospective* procedures, namely, a "thoracic spine MRI and *** spinal cord stimulator trial" as ordered by Dr. Kelly on March 9, 2012. There is no basis to disturb this decision. The record indicates that Dr. Kelly ordered these procedures upon discovering in his March 9, 2012, examination of the claimant, that the claimant's spinal symptoms had significantly worsened. In denying coverage for the procedures, the arbitrator found that they were premised upon Dr. Kelly's incorrect assumption, as shown in his medical reports, that the claimant's lumbar spine problems had originated with his work accident. However, the arbitrator determined that this assumption was "at odds with the evidence." The

[*] Although, as stated above, such coverage was ultimately denied on the basis that Dr. Kelly fell outside of the permissible choice of physicians under section 8(a).

Commission agreed with this finding, and adopted the arbitrator's rejection of all of the "spine-related opinions" as expressed by Dr. Kelly.

¶ 70 The claimant does not appear to dispute that his lower-back condition was not caused by his work injury. Indeed, there was no evidence that he complained of any back issues to Drs. Farrell, Tiernan or Vinci, or during his work hardening or physical therapy sessions. The EMG performed by Dr. Kelly on June 4, 2010, revealed no evidence of any underlying lumbosacral radiculopathy. Nonetheless, the claimant suggests that the prospective spinal procedures ordered by Dr. Kelly were necessary to alleviate his complex regional pain condition.

¶ 71 We find no substantive evidence to support this position. Dr. Kelly repeatedly administered lumbar blocks and injections to the claimant which produced no real relief for his complex regional pain syndrome. As the claimant admits in his brief, Dr. Kelly emphasized that his radiating pain symptoms were not related to his lower back issues, but to his tarsal tunnel syndrome. Dr. Kelly characterized the tarsal tunnel syndrome, rather than the spinal issues, as the primary etiology of the claimant's complex regional pain syndrome. Therefore, there is no basis to conclude that the prospective spinal procedures as recommended by Dr. Kelly were intended to improve the condition of the claimant's right foot or ankle rather than exclusively his lower back. For these reasons, we cannot conclude that the Commission's denial of benefits for the prospective treatment of his lower back condition is against the manifest weight of the evidence. See *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984).

¶ 72 Finally, the claimant contends that the Commission's reduction of his TTD benefits to extend from February 18, 2009, through March 3, 2010, rather than through March 28, 2012, is against the manifest weight of the evidence.

¶ 73 In order to establish his entitlement to TTD benefits, the claimant must prove not only that he did not work, but that he was unable to work, and the duration of that inability to work. *Cropmate Co. v. Industrial Comm'n*, 313 Ill. App. 3d 290, 296 (2000). The period of temporary total disability encompasses the time from which the injury incapacitates the claimant from work until such time as he is as far recovered or restored as the permanent character of the injury will permit, i.e., until the condition has stabilized. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107 (1990); *Shafer v. Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 45. The determination of whether the claimant was unable to work and the duration of his temporary disability are questions of fact for the Commission to resolve, and its finding on these issues will not be overturned on appeal unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill.2d 38, 44 (1987); *Cropmate Co.*, 313 Ill. App. 3d at 296. For a finding of fact to be against the manifest weight of the evidence, a conclusion opposite to the one reached by the Commission must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether a reviewing court might have reached the same conclusion is not the test of whether the Commission's determination on 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).

¶ 74 The claimant acknowledges that, as of March 3, 2010, Dr. Vinci opined that he had reached maximum medical improvement and was capable of returning to work as a painter. However, he argues that the Commission did not adopt the opinion of Dr. Vinci. Instead, it based the reduction of his TTD benefits on an erroneous conclusion that he failed to notify

Hester that he had been released to sedentary duty as far back as March 25, 2009, and failed to inquire about office work.

¶ 75 First, we disagree that the Commission rejected Dr. Vinci's opinion. In fact, it expressly concluded that the claimant's "condition of being temporarily and totally disabled ceased on March 3, 2010, the date of the Section 12 examination" performed by Dr. Vinci. Dr. Vinci reaffirmed his opinion as stated in his March 3 report following his re-examination of the claimant on September 2, 2010. We find that, based upon Dr. Vinci's examinations of the claimant, comprehensive review of the claimant's medical history, and understanding of his work requirements, the Commission could reasonably have found his opinion to be credible.

¶ 76 We recognize that Dr. Vinci's opinion conflicted with that of Dr. Kondiles and particularly that of Dr. Kelly, who recommended uniformly that the claimant remain completely off of work from the date of his first visit on May 7, 2010, through March 20, 2012. However, we will not substitute our judgment for that of the Commission with regard to matters contingent upon determinations of credibility. This is particularly true with regard to medical questions, for which the Commission is deemed uniquely qualified. See *Long v. Industrial Comm'n*, 76 Ill .2d 561, 566 (1979). Additionally, the facts and circumstances of this case tended to support the conclusion of Dr. Vinci that the claimant had reached maximum medical improvement by March 3, 2010. The claimant admitted that he spent his time off of work taking care of his three young children while his wife worked. Video surveillance depicted him performing household jobs, some of them strenuous and weight-bearing, including lifting and carrying children, groceries and other items. Some of the footage revealed the claimant placing weight on his right foot and performing tasks without any assistive device. He continued performing some of these tasks

even at the height of his pain symptoms as reported to his doctors. The Commission appeared to doubt the claimant's credibility with regard to his claimed inability to return to any type of work.

¶ 77 Accordingly, the Commission's award of TTD benefits for the period of February 19, 2009, through March 3, 2010, was not contrary to the manifest weight of the evidence.

¶ 78 Based upon the foregoing analysis, we affirm the judgment of the circuit court which confirmed the Commission's decision, and remand this matter back to the Commission for further proceedings.

¶ 79 Affirmed and remanded.