2017 IL App (1st) 161951WC-U

Workers' Compensation
Commission Division
Order Filed: June 30, 2017

No. 1-16-1951WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

LUIS CUADRADO,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	No. 16 L 50072
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*,	)	Honorable
	)	Kay M. Hanlon,
(F.H. Paschen, S.N. Nielsen & Associates, Appellee).	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hudson, Harris, and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the circuit court's order confirming the decision of the Illinois Workers' Compensation Commission limiting the benefits to which the claimant is entitled under the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2010)).

¶ 2 The claimant, Luis Cuadrado, appeals from an order of the circuit court which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), limiting the benefits to which he is entitled under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et*

seq. (West 2010)) for injuries he sustained on April 21, 2011, while in the employ of F.H. Paschen, S.N. Nielsen & Associates (F.H. Paschen). For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence introduced at the arbitration hearings on July 2, 2014, and July 14, 2014.

¶ 4 At all relevant times, the claimant was employed by F.H. Paschen as a journeyman cement finisher. On April 21, 2011, the claimant was working at the bottom of a 45-foot shaft when one of his coworkers slipped while climbing down a ladder, fell down the shaft, and landed on the claimant. The claimant testified that, immediately prior to impact, he heard someone yell, "look out," prompting him to duck and bend over, but "the next thing you know, [he] was on the ground and [his coworker] was lying next to [him]." The claimant explained that he experienced immediate and "excruciating pain" in his neck, the right side of his back, and both knees. The claimant stated that he remained in the shaft with his coworker, who had been knocked unconscious, for approximately 45 minutes until help arrived.

¶ 5 According to the Chicago Fire Department's ambulance report, the claimant complained of neck pain, back pain, and a headache, but he denied blurry vision, nausea, vomiting, and any other pain or injury. The ambulance transported the claimant to Christ Hospital's emergency department.

¶ 6 The records of Christ Hospital reflect that the claimant suffered blunt trauma on the work site when a coworker fell 40 feet and landed on the claimant's back and shoulder. The attending emergency room physician examined the claimant's neck, chest, abdomen, upper and lower extremities, and conducted a neurological exam. The doctor observed no tenderness or gross deformities, no abrasions, lacerations, or ecchymosis, and normal range of motion of the hip,

knee and ankle. Examination of the claimant's back revealed subjective pain complaints with movement. CT scans of the cervical, thoracic, and lumbar spines were "negative," although the doctor noted that the scans showed "spondylotic changes *** which may be contributing to [a] moderate degree of central canal narrowing." The claimant was diagnosed with a muscle strain in his back, prescribed medication for pain, and discharged from the hospital with authorization to return to work.

¶ 7 On April 25, 2011, the claimant saw his primary care physician, Dr. Luis Chavarria, complaining of neck pain, upper back pain extending to the right scapular area, tightness in his forehead, occasional blurred vision, some chest pain, low back pain with movement, "weird dreams," and pain in both knees. Physical examination was unremarkable. Dr. Chavarria diagnosed the claimant with neck pain, prescribed Norco for pain, and took the claimant off of work for two weeks.

¶ 8 On April 28, 2011, at the request of F.H. Paschen, the claimant treated with Dr. Stephen Hartsock, an orthopedic physician at Advanced Occupational Medicine Specialists. Dr. Hartsock's notes of that visit state that the claimant complained of neck pain, pain in the right side of his upper back, and low back pain, which radiates down his legs with intermittent numbness and tingling. Physical examination revealed mild tenderness over the cervical spine. The Spurling's sign and seated straight leg raise test were both negative, but the one-leg hyperextension test was positive bilaterally. Dr. Hartsock diagnosed the claimant as having a neck sprain, thoracic strain, lumbago, and lumbar radiculopathy. He prescribed medication for pain, two weeks of physical therapy, and released the claimant to light-duty work. He advised the claimant to return for a follow-up.

¶ 9 Also on April 28, 2011, the claimant returned to Dr. Chavarria, reporting no improvement in his neck pain. The doctor advised the claimant to follow the treatment recommendations of Dr. Hartsock.

¶ 10 On May 14, 2011, the claimant followed up with Dr. Hartsock, reporting improvement in his neck and back. The doctor examined the claimant's neck and low back and noted "tightness with all movements" and a positive "TTP of right paraspinal muscles or lumbar spine." Dr. Hartsock continued the claimant's light-duty work restrictions, refilled his medications, and instructed the claimant to follow-up in two weeks.

¶ 11 On May 19, 2011, the claimant began physical therapy as prescribed by Dr. Hartsock. According to the therapist's initial evaluation, the claimant complained of neck and back pain. The therapist observed restricted and painful range of motion in the claimant's cervical and lumbar spine, tenderness in the cervical, thoracic and lumbar spine, and mild inflammation of lumbar paraspinals. The record shows that the claimant participated in 10 sessions of physical therapy from May 19, 2011, through June 8, 2011, and he consistently complained of pain in his neck and low back.

¶ 12 The claimant followed-up with Dr. Hartsock on June 17, 2011. According to the doctor's treatment notes, the claimant stated that his "neck is feeling mildly better" but that his back pain remains unchanged. The claimant also reported that his left knee "has been very painful lately." The doctor continued the claimant's work restrictions, prescribed medication for pain, and ordered MRIs of the cervical and lumbar spine.

¶ 13 The MRI of the claimant's lumbar spine, performed August 4, 2011, was interpreted by the radiologist as showing: (1) diffuse lumbar spondylosis with multilevel disc desiccation; (2) L5-S1 mild diffuse underlying generalized disc bulge with a superimposed broad-based central

disc protrusion; and (3) disc bulges at all levels from L1-2 through L4-5 with varying degrees of central canal and neural foraminal stenosis. The MRI of the claimant's cervical spine disclosed: (1) diffuse cervical spondylosis with mild multi-level disc desiccation and minimal spondylolisthesis at C3-4 and C4-5; (2) a small broad-based left paracentral disc osteophyte complex at C2-3; (3) broad-based right paracentral/ central disc protrusion at C3-4; (4) a small broad-based right paracentral foraminal disc osteophyte complex at C4-5; and (5) diffuse central disc osteophyte complexes at C5-6 through C7-T1.

¶ 14 On September 7, 2011, the claimant sought treatment from Dr. Mark Bowen of Northwestern Orthopedic Institute, regarding his bilateral knee pain. According to a "patient information form," the claimant stated that he was referred to that location by "Dave Stole." Dr. Bowen's records of that visit stated that the claimant reported a history of having bilateral knee pain and back pain following a work accident of April 21, 2011. The claimant complained of pain in the center of his kneecap, swelling, and popping and cracking in his knees. Dr. Bowen's physical examination of the claimant's knees revealed no atrophy, asymmetry or swelling. There was "mild plus patellofemoral crepitus bilaterally" and some joint line tenderness along the medial joint line. Meniscal rotation tests were mildly positive, while Lachman and posterior drawer tests were negative. There was no carus or valgus instability and the claimant's range of motion was symmetrical. Dr. Bowen ordered MRIs of the claimant's knees and took him off work.

¶ 15 On September 19, 2011, the claimant underwent an MRI of both knees. The radiologist interpreted the right knee scan to be normal. The MRI scan of the left knee was interpreted as showing knee joint effusion and an "intrasubstance tear of the posterior horn of the medial meniscus (but no surface disruption)."

¶ 16 On September 21, 2011, the claimant presented to Dr. Mark Nolden at Northwestern Orthopedic Institute, with a chief complaint of neck pain, upper back pain, and low back pain radiating into the bilateral posterior thighs. Physical examination of the claimant's neck and back were unremarkable. Dr. Nolden reviewed the MRI report of August 4, 2011, and noted that it showed mild degenerative disc changes with stenosis at L3-4 and L4-5, but that "these images are unremarkable as well." The doctor recorded a clinical impression of mild lumbar spondylosis and myofascial back pain. The doctor's treatment notes also state, in relevant part, as follows:

> "I discussed the above with [the claimant] and I reassured him that I saw nothing of concern on his physical examination or radiographic studies. All that I would recommend is continuation of physical therapy and its associated soft-tissue modalities. Nothing else needs to be done at this point in time. He will follow-up with me in four weeks so I can monitor his progress. At that time, he will bring in his MRI for my own review which is quite important regarding treatment going forward."

¶ 17 September 28, 2011, the claimant returned to Dr. Bowen for a follow-up regarding his bilateral knee pain. Dr. Bowen reviewed the MRI scans of September 19, 2011, and noted that the left knee had an "intrameniscal signal *** but no definitive break at the surface." Thus, the doctor concluded that that there is no meniscus tear, just a signal in the meniscus itself. He recommended physical therapy to "see how [the claimant] responds."

¶ 18 The claimant testified that, on September 29, 2011, he sought "physical therapy" treatment at Gold Coast Wellness Center based upon a friend's referral and because he knew the owner. Although the claimant stated that he received physical therapy, a case history document

states that the claimant "has been advised of both the risks and benefits of chiropractic treatment for his condition ***." The medical records from Gold Coast Wellness show that the claimant underwent 15 chiropractic sessions through December 15, 2011.

¶ 19 On October 31, 2011, the claimant returned to Dr. Bowen, reporting increased pain in his knees. Physical examination disclosed no swelling or tenderness, no effusion, no joint line tenderness, full and symmetrical range of motion, negative meniscal rotation tests, and "very slight patellofemoral crepitation." Dr. Bowen diagnosed the claimant with "[m]echanical knee pain without any obvious evidence of intraarticular meniscal pathology." He referred the claimant to Dr. Ellen Casey "for evaluation and consideration of other potential treatments."

¶ 20 On November 14, 2011, the claimant was seen by Dr. Nolden for a follow-up regarding his back condition. Dr. Nolden's treatment records state that the claimant has been "making steady progress" in physical therapy "by his own report." The doctor noted, however, that he received no progress notes from any physical therapist and that he instructed the claimant to tell his physical therapist to forward copies of the progress notes to his office for documentation. Dr. Nolden told the claimant to continue physical therapy and to follow-up in one month.

¶ 21 The claimant testified that, on April 30, 2012, approximately five months after he last saw Drs. Bowen and Nolden, he sought treatment from Dr. Chadwick Prodromos on referral from Dr. Odisho of Gold Coast Wellness Center. According to a patient registration form, however, the claimant stated that he was referred to Dr. Prodromos by his attorney, Jerry Beckerman. Dr. Prodromos' medical records state that the claimant presented with bilateral knee pain following his work accident of April 21, 2011. The doctor examined the claimant's knees and observed medial joint line tenderness, severe patellofemoral crepitus in the left knee, and mild patellofemoral crepitus in the right knee. X-rays of the left knee showed a "superior

patellar spur and a small separate ossicle at the quadriceps tendon insertion" and "some degenerative changes laterally." Dr. Prodromos diagnosed the claimant with articular cartilage injury of the left knee and chondromalacia of the right knee. He opined that the claimant's condition "is undoubtedly posttraumatic and not degenerative because of the asymmetry between the two knees." The doctor ordered a 3T MRI of the left knee to evaluate the articular cartilage and told the claimant to follow-up in one week.

¶ 22 On May 4, 2012, a 3T MRI of the left knee was obtained. The radiologist interpreted the scans as disclosing: (1) a patellar focal 5 millimeter full thickness cartilage defect; (2) femoral trochlear groove chondromalacia; (3) medial compartment diffuse cartilage thinning; and (4) tricompartmental osteoarthritis.

¶ 23 In a follow-up visit on May 7, 2012, Dr. Prodromos reviewed the 3T MRI scan and noted that it "clearly showed a torn medial meniscus, as well as a chondral defect 5 mm on the patella." He stated that "[t]hese were clearly missed by his initial low-quality open MRI" and he reiterated his opinion that the claimant's torn medial meniscus was "clearly caused by trauma." In his deposition, Dr. Prodromos explained that the cartilage damage in the claimant's left knee was "posttraumatic" and not degenerative because chondromalacia of the patella is always symmetric. Accordingly, Dr. Prodromos opined that the claimant's bilateral knee condition of ill-being is causally related to the workplace injury on April 21, 2011.

¶ 24 On June 19, 2012, Dr. Prodromos operated on the claimant's left knee, performing a micro-fracture of trochlea and micro-fracture of medial femoral condyle. Preoperative diagnoses were left knee torn medial meniscus and chondromalacia of the patellofemoral joint. The post-operative diagnosis, however, was chondromalacia of the patellofemoral joint. The operative report states that, "despite the appearance on the MRI of a tear," no tear was found on the medial

meniscus. The patella had some partial thickness tearing but no full thickness articular cartilage defects.

¶ 25 The claimant followed up with Dr. Prodromos on a monthly basis from June 25, 2012, through October 29, 2012. During that time period, the claimant underwent a course of physical therapy and reported improvement in his left knee.

¶ 26 On February 13, 2013, at F.H. Paschen's request, Dr. David J. Raab of the Illinois Bone and Joint Institute, performed a records review of the claimant's bilateral knee condition. Based upon his review of the claimant's medical records and MRI scans of September 19, 2011, and May 4, 2012, Dr. Raab diagnosed the claimant with degenerative arthritis of the medial compartment and patellofemoral joints. He noted that the 3T MRI of May 4, 2012, taken more than one year after the work accident of April 21, 2011, "clearly showed degenerative changes of the patellofemoral joint and medial compartments" and appeared to show chondromalacia in both the medial femoral condyle and medial tibial plateau, as well as the patella and frochlea. He did not see evidence of meniscal tears on any of the MRIs and Dr. Prodromos' operative report confirmed that there was no medial or lateral meniscal tears. Dr. Raab opined that the treatment the claimant received and the surgery he underwent were not causally related to the work-related injury, but were the result of his preexisting degenerative condition. The doctor reasoned that the medical records from Christ Hospital and Dr. Hartsock, taken shortly after the April 21, 2011, work accident, do not mention any injuries to the right or left knee. Dr. Raab concluded that, based upon the MRIs and Dr. Prodromos' operative report, the claimant's knee conditions are preexisting and not related to the work accident.

¶ 27 On February 25, 2013, the claimant returned to Dr. Prodromos, complaining that physical therapy was aggravating his knee. The doctor discontinued physical therapy and ordered the claimant to undergo a Functional Capacity Evaluation (FCE).

¶ 28 The FCE, conducted April 9, 2013, demonstrated that the claimant's functional capabilities were at the medium physical demand level. The therapist noted that he was able to lift 65.6 pounds above his shoulders, 107.8 pounds from desk to chair, and 65.6 pounds from chair to floor. The claimant's work as a cement mason, however, is at a heavy physical demand level, which requires occasional lifting of up to 100 pounds. The therapist recommended work restrictions consistent with the medium physical demand level.

¶ 29 On April 12, 2013, the claimant was seen by Dr. Prodromos, who reviewed the FCE report and agreed with the therapist's findings. Dr. Prodromos discharged the claimant from care with permanent restrictions "pursuant to the FCE."

¶ 30 On April 17, 2013, at the request of F.H. Paschen, the claimant saw Dr. Raab for an independent medical examination (IME). The claimant reported a consistent history of his injury and complained of pain in both knees. Physical examination was unremarkable. X-rays taken of the left knee revealed joint space narrowing of the medial compartment and early degenerative changes of the patellofemoral joint. According to Dr. Raab's report, the right knee appeared fairly unremarkable and the claimant does not have significant complaints. As to the left knee, the claimant has early degenerative arthritis. Dr. Raab reiterated his opinion that the claimant's condition of ill-being in both knees is not causally related to his work-related injury. In his deposition, Dr. Raab disputed the causation opinion of Dr. Prodromos, explaining that there is no basis to conclude that a lack of symmetry of clinical findings demonstrates that some trauma occurred to one knee versus the other. Dr. Raab testified that bilateral body parts are not

necessarily the same and he has had many patients with degenerative knee conditions in which one knee warrants a total knee replacement and the other knee "is in pretty good shape."

¶ 31 In a letter dated May 1, 2013, Dr. Raab stated that he reviewed the additional records, including the April 12, 2013, office visit from Dr. Prodromos, the FCE, and the claimant's work description. He noted that the FCE was valid and he agreed with the therapist's finding that the claimant's functional capabilities are in the medium physical demand level. Because Dr. Raab believed the claimant's work restriction are permanent, he acknowledged that the claimant may not be able to return to work as a cement mason since that type of work is in the heavy physical demand level.

¶ 32 On August 27, 2013, F.H. Paschen had the claimant examined by Dr. Mash at M&M Orthopedics regarding his spine condition. Dr. Mash reviewed medical treatment records of the claimant's care from the date of injury onward as well as surveillance footage of the claimant taken November 18, 2011, through September 28, 2012. Dr. Mash opined that the claimant sustained a temporary exacerbation of his cervical and lumbar spine conditions as a result of the work accident of April 21, 2011, but that those conditions had resolved by November 2011. He also stated that the medical treatment of the claimant's cervical or lumbar spine was not necessary.

¶ 33 Following the arbitration hearing, the arbitrator issued a decision, finding that the claimant sustained injuries to his neck, low back, and both knees, which arose out of and in the course of his employment with F.H. Paschen. The arbitrator awarded the claimant temporary total disability (TTD) benefits for the periods from April 22, 2011, through November 18, 2011, and June 19, 2012, through September 29, 2012, and temporary partial disability (TPD) benefits from September 30, 2012, through April 12, 2013. In addition, the arbitrator determined that the

claimant exceeded his choice of physicians under section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)), and that F.H. Paschen would not be liable to pay for medical expenses incurred after November 18, 2011, the date he stopped treating with his second-choice physician. Thus, the arbitrator ordered F.H. Paschen to pay reasonable and necessary medical expenses incurred by the claimant through November 18, 2011. Last, the arbitrator determined that the claimant was entitled to weekly wage differential payments pursuant to section 8(d)1 of the Act (820 ILCS 305/8(d)1 (West 2010)), beginning April 13, 2013, and continuing through the duration of his disability.

¶ 34 Both the claimant and F.H. Paschen filed for a review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission modified the arbitrator's decision in part and affirmed and adopted it in part. In that portion of the decision modified, the Commission found that the claimant's bilateral knee condition is not causally connected to his work accident of April 21, 2011. It specifically found the causation opinions of Dr. Raab to be "more persuasive" than Dr. Prodromos because Dr. Prodromos did not review the claimant's medical records prior to the claimant seeing him. The Commission also noted that, following the work accident, the claimant sought treatment for his neck and back, but did not seek treatment for his knees until September 7, 2011, when he saw Dr. Bowen. As a consequence, the Commission vacated the arbitrator's award of TTD benefits from June 19, 2012, through September 29, 2012, TPD benefits, and the wage differential award. The Commission concluded that the claimant was only entitled to TTD benefits from April 22, 2011, through November 18, 2011. The Commission also awarded the claimant benefits of $669.64 per week for 50 weeks because his cervical and lumbar spine conditions constituted a permanent and partial disability (PPD), reflecting a 10% loss of a man as a whole pursuant to section 8(d)2 of the Act (820 ILCS

305/8(d)2 (West 2010)). The Commission otherwise affirmed and adopted the arbitrator's decision.

¶ 35 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County. On June 20, 2016, the circuit court entered an order confirming the Commission's decision. This appeal followed.

¶ 36 The claimant first argues that the Commission's finding that he failed to prove a causal connection between his bilateral knee condition and the April 21, 2011, work accident is against the manifest weight of the evidence. In support of this argument, he challenges the Commission's reliance upon the causation opinions of Dr. Raab over that of Dr. Prodromos, who opined that the claimant's bilateral knee condition was attributable to his work-related accident of April 21, 2011.

¶ 37 The claimant in a workers' compensation case 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). As part of his burden, the claimant must establish that his current condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on review 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).

¶ 38 Applying these standards, we cannot conclude that the Commission's finding that the claimant failed to prove that his bilateral knee condition was causally related to his work accident of April 21, 2011, was against the manifest weight of the evidence. The Commission rejected the claimant's testimony that he injured both knees as a result of the work accident as not credible, noting that he never complained about his knees when he presented to Christ Hospital on the day of the accident. The Commission also noted that, although the claimant mentioned knee pain to Dr. Chavarria on April 25, 2011, it observed that it was "part of a litany of complaints"—namely, the claimant complained of neck and back pain, blurred vision, tightness in his forehead, chest pain, and "weird" dreams. The Commission further noted that the claimant only sought treatment for his neck and back and there is no record of him having sought medical treatment for his knees until September 7, 2011, when he saw Dr. Bowen. While Dr. Bowen referred the claimant to Dr. Casey for evaluation, the claimant did not see Dr. Casey or another doctor for his knees until he saw Dr. Prodromos on April 30, 2012. The Commission could reasonably find that the claimant's delay in reporting the alleged bilateral knee injury and failure to seek prompt medical treatment, belie the veracity of his testimony.

¶ 39 The Commission also supported its decision by relying upon the medical opinion of Dr. Raab who opined that the claimant's bilateral knee injuries were not attributable to the April 21, 2011, work accident. Dr. Raab based his opinion on the medical records prepared

contemporaneous to the April 21, 2011, accident, including the ambulance report and emergency room records which fail to reference any injuries to the claimant's knees; MRI scans which showed degenerative arthritis of the medial compartment and patellofemoral joints; and Dr. Prodromos' postoperative report which confirmed that no tear was found on the medial meniscus. While Dr. Prodromos provided a conflicting opinion—namely, that the claimant's bilateral knee condition was causally related to the April 21, 2011, work accident—the resolution of such conflicting medical opinions falls squarely within the province of the Commission. See *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 847 (1996) (it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded to the evidence, and draw reasonable inferences from the evidence). Here, the Commission dismissed Dr. Prodromos' opinion as unpersuasive, noting that he did not review the claimant's medical history. Although Dr. Prodromos' opinion contradicted Dr. Raab's opinion, the Commission credited Dr. Raab's testimony and resolved the conflicts in the evidence in favor of F.H. Paschen. Based upon the record before us, we are unable to conclude that the Commission's rejection of Dr. Prodromos' causation opinion was against the manifest weight of the evidence.

¶ 40 Next, the claimant argues that the Commission erred in refusing to award him certain medical expenses based upon its finding that he exceeded the limit of permissible medical providers. See 820 ILCS 305/8(a) (West 2010).

¶ 41 In general, section 8(a) of the Act 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 2010). That provision, however, 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. Thereafter the employer shall select and pay for all necessary medical, surgical and hospital treatment and the employee may not select a provider of medical services at the employer's expense unless the employer agrees to such selection. At any time the employee may obtain any medical treatment he desires at his own expense. This paragraph shall not affect the duty to pay for rehabilitation referred to above." 820 ILCS 305/8(a) (West 2010).

¶ 42 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) of the Act. *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, 468-69 (2011).

¶ 43 Here, the Commission determined that Dr. Chavarria was the claimant's first choice of physician and that his second choice of physicians was Drs. Bowen and Nolden at Northwestern Orthopedic Institute. The claimant does not dispute this finding on appeal, but argues that Dr. Bowen, the physician treating his bilateral knee condition, abandoned him, and thus, the two-physician limitation should not apply in this case. In support of his argument, he cites *Courier v. Industrial Comm'n*, 282 Ill. App. 3d 1 (1996).

¶ 44 In *Courier*, the claimant's second-choice physician advised her on the second visit that he would not treat her unless she lost a substantial amount of weight. *Id*. at 8. We held, under the limited factual scenario in that case, that the physician's refusal to treat the claimant compelled her to seek treatment from another physician. *Id*. 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) of the Act. *Id*.

¶ 45 Unlike in *Courier*, the claimant's second-choice physician, Dr. Bowen, did not "refuse" to render care. Rather, the medical records show that Dr. Bowen recommended rehabilitation, and referred the claimant to Dr. Casey for further treatment. As the Commission correctly observed, the claimant never sought treatment from Dr. Casey and did not participate in rehabilitation for his knees. Rather, the Commission found that the claimant sought chiropractic care from Gold Coast Wellness Center and then treated with Dr. Prodromos. Because the doctor in *Courier* did not recommend rehabilitation or refer the claimant to another doctor for treatment, we find *Courier* distinguishable from the case at bar. Based upon this evidence, we see no basis

to disturb the Commission's finding that the claimant exceeded the limit of permissible medical providers.

¶ 46 The claimant argues in the alternative that, assuming he exceeded the limit of permissible medical providers, he "should be able to disregard the medical bills of Dr. Bowen and submit the medical bills of Dr. Prodromos" pursuant to *Courier* and *Pluto v. Industrial Comm'n*, 272 Ill. App. 3d 722 (1995). We disagree.

¶ 47 In *Pluto*, 272 Ill. App. 3d at 729, this court specifically rejected the claimant's argument that he should be able to choose which physician should be considered his first and second choice. We explained that, "under the claimant's theory, an employee could seek treatment from a number of doctors and submit the bills of those providers which were for the greatest amount." *Id*. at 730. Noting that the claimant presented no evidence that the claimant's first and second choice physicians were unavailable or unable to refer the claimant to providers who could provide the necessary treatment, we found no compelling reason to deviate from the two physician rule. *Id.* Because the bills for which the claimant sought reimbursement were from providers who represented the claimant's fourth and fifth choice, we affirmed the Commission's denial of those medical expenses. *Id.*

¶ 48 Similarly, in the case *sub judice*, the Commission determined that the claimant failed to provide evidence that Dr. Bowen was unavailable or otherwise abandoned his care. Rather, as discussed above, the record supports the Commission's finding that the claimant failed to follow through with Dr. Bowen's referral and recommendation for physical therapy. Instead, the claimant saw a chiropractor and followed the advice of his attorney by seeking care from Dr. Prodromos. Because Dr. Prodromos fell outside the chain of referrals allowed under section 8(a) of the Act, the Commission's denial of these medical expenses was consistent with the Act.

¶ 49 Based upon the foregoing analysis, we affirm the circuit court's judgment confirming the Commission's decision.

¶ 50 Affirmed.