2014 IL App (4th) 130165WC-U
No. 4-13-0165WC
Order filed April 24, 2014

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IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

API CONSTRUCTION CO.,	)	Appeal from the
	)	Circuit Court of
	)	Sangamon County.
Appellant,	)	
	)	
v.	)	No. 12-MR-552
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*,	)	
	)	Honorable
	)	John Schmidt
(Larry Richards, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's determination that the claimant's condition of ill-being was causally related to his work activities is not against the manifest weight of the evidence. The Commission resolved conflicting medical evidence in favor of the opinions of two physicians who found that the claimant's work activities aggravated preexisting conditions. Where it is unclear from the

> record whether certain medical bills were subject to fee schedule reductions, contractual offset, or were paid by an insurance carrier or some other source, and the Commission made no finding concerning the amount of credit the employer was to receive, the matter must be remanded to the Commission for a determination of the employer's liability for medical expenses and 820 ILCS 305/8(j) (West 2008) credits. The Commission's determination that the claimant was temporarily totally disabled from April 17, 2009, through July 20, 2010, is not against the manifest weight of the evidence where the claimant was under the treatment of physicians and not released to work by his doctor until July 20, 2010.

¶ 2 The claimant, Larry Richards, filed an application for adjustment of claim against his employer, API Construction Co., seeking workers' compensation benefits for injuries he allegedly sustained to his hands, his left elbow, and his left shoulder on March 26, 2009. The claim proceeded to an arbitration hearing under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq*. (West 2008)). The arbitrator found that the claimant did sustain an accident that arose out of and in the course of his employment. He was awarded temporary total disability (TTD) benefits of $1,102.49 per week for 65 4/7 weeks, reasonable and necessary medical expenses of $60,700.41, and permanent partial disability benefits of $664.72 per week for 160.3 weeks because the injuries sustained caused 17.5% loss of the right hand, 17.5% loss of the left hand, 25% loss of the left shoulder, and 10% loss of the left elbow. The employer appealed to the Illinois Workers' Compensation Commission (Commission). The Commission modified the arbitrator's decision. The Commission found that the arbitrator's award regarding the elbow was somewhat excessive. It reduced the left arm award to a 30% loss of the left arm in total, 25% for the left shoulder and 5% for the left elbow. It ordered the employer

to pay the claimant $664.72 per week for 147.65 weeks for this loss. The Commission affirmed and adopted all other aspects of the arbitrator's award. The employer filed a timely petition for review in the circuit court of Sangamon County which confirmed the Commission's decision. It remanded the matter to the Commission "for determination for credit for union payment of disability." The employer appeals.

¶ 3 BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on February 7, 2011, and April 25, 2011.

¶ 5 The claimant testified that he started working for the employer on February 2, 2009, and had been working as a union insulator since 2001. He obtained his jobs through his union, and prior to working for the employer, he worked at a number of different places.

¶ 6 The claimant testified that his job duties for the employer included insulating piping, boiler walls, penthouse walls, and ceilings. On March 26, 2009, he was working in the penthouse, an area at the top of the boiler, insulating the walls. He applied two layers of three inch mineral wool board insulation which was held on with two inch stainless steel washers. Once the second layer was applied, he installed stainless steel diamond mesh over the insulation. The mesh had to be cut with a grinder or bolt cutter.

¶ 7 The claimant testified that he was also doing pipe and tank insulation. He had to climb pipes and hangers to get to the pipes he needed to insulate. He wrapped insulation around the pipes and then wrapped the insulation in stainless steel mesh to hold it in

place. Sometimes the claimant worked on scaffolding; other times he had to use a body harness. As of March 26, 2009, the scaffolding had been removed for about one week, so the claimant had to climb and pull himself around on a body harness while wearing a 12 to 15 pound tool belt.

¶ 8 The claimant testified that on March 26, 2009, he noticed that his hands were tingling and going numb. He stated that he had never experienced this before. The claimant informed Roger Sofa, the night shift foreman, that his hands were tingling and felt like they were falling asleep and going numb into his arms. He told Mr. Sofa that he would wait for a few days to see if the symptoms cleared up, but if they did not, he wanted to see a doctor. He continued to work. On March 30, 2009, he told Mr. Sofa that his hands had not improved, that his elbow and left shoulder hurt, and reiterated that if he did not improve, he wanted to see a doctor. The claimant testified that Mr. Sofa made a note of it and "stuck it on the wall." The claimant continued working after March 30, 2009. His symptoms did not improve. He stated that his hands went numb while he was sleeping causing him to awake, and that if he held something for a period of time, his hands would go numb. His grip strength suffered because of the pain in his elbow and shoulder, and he was not able to hold the insulation as well as he wanted. At this point, he told Mr. Sofa that he wanted to be examined by medical personnel.

¶ 9 On April 7, 2009, the claimant testified that he met with Arthur Tillman, the employer's "safety man." On April 8, 2009, Mr. Tillman took the claimant to Midwest Occupational Health Associates where he was examined by Jennifer Frank.

¶ 10 Jennifer Frank, APN-C for Dr. Gregory Clem, wrote in her patient notes that the claimant reported that his symptoms started on March 30, 2009. He described his symptoms as numbness in bilateral hands including all of his fingers except the fifth digit. He described the pain as going from the bilateral forearms down into the wrist. The claimant complained that his hands had been falling asleep at night and waking him up. He claimed that he had difficulty sleeping. His hands also fell asleep when he was driving. The claimant complained of pain in his left shoulder and left elbow. The claimant informed Ms. Frank that he believed that his symptoms were from his job which included climbing and cutting stainless steel mesh, cutting wire, and twisting wire. Ms. Frank diagnosed the claimant with left shoulder pain/tendonitis, and bilateral forearm pain with neuropathy into bilateral hands.

¶ 11 The claimant completed a report of injury on April 15, 2009. In the report he wrote that he injured himself "cutting stainless steel diamond mesh with 8" bolt cutters, twisting of wire with wire nippers, climbing on pipes to install diamond mesh with no scaffold in penthouse. Wearing body harness and tool belt with tools, pulling self around from pipe to pipe." He listed the nature of his injury as "pain in elbow and shoulder, hands falling asleep and hurting at wrist and palms."

¶ 12 On April 15, 2009, the claimant was examined at Midwest Occupational Health Association by nurse practitioner Molly Baur for follow up for left shoulder pain, left elbow pain, and bilateral neuralgia symptoms in his forearms. The claimant told Ms. Baur that he had been using bolt cutters on stainless steel diamond mesh. He told her that his symptoms did not gradually present themselves, instead he awoke on March 30, 2009,

and started experiencing left shoulder pain, left elbow pain, and neuralgia symptoms bilaterally. He denied any known injury. She diagnosed him with left shoulder strain, left lateral epicondylitis, and bilateral upper extremity neuralgia. She referred the claimant to Dr. Koteswara Narla, a neurologist, and placed him on restrictions of no lifting more than 10 pounds with the left arm, limited use of the left arm, and no overhead activities.

¶ 13 On April 15, 2009, the claimant was examined by Dr. Narla. In his patient notes, Dr. Narla wrote that the claimant reported that he worked cutting diamond mesh with two hands and starting March 30, 2009, he began to experience tingling and numbness in both hands and an achy feeling in his shoulder and left elbow. He had no symptomology in the way of tingling or numbness or any pain in the shoulder or elbow prior to this. Dr. Narla diagnosed the claimant with bilateral carpal tunnel syndrome, left elbow tendonitis, and left shoulder tendonitis.

¶ 14 On April 20, 2009, Dr. Narla performed nerve conduction studies on the claimant. The tests revealed moderate to severe carpal tunnel compression of the median nerves on both sides involving both motor and sensory component, mostly demyelinating in nature with some sensory axonal component on both sides. There was no evidence of ulnar entrapment neuropathy, radial sensory neuropathy, large fiber neuropathy, or cervical radiculopathy or plexopathy.

¶ 15 In an addendum to her patient notes dated April 15, 2009, Ms. Baur wrote that she spoke to Dr. Narla and he felt that the neuralgia symptoms in the claimant's forearms were severe carpal tunnel syndrome and that it was present prior to March 30, 2009. Dr.

Narla told Ms. Baur that the repetitive work using the bolt cutters on the stainless steel diamond mesh aggravated the claimant's underlying carpal tunnel syndrome. Dr. Narla recommended conservative treatment initially.

¶ 16 On April 17, 2009, the claimant was seen at Midwest Occupational Health Association by Dr. Jeffrey Brower. Dr. Brower wrote in his notes that the claimant was in for follow up on his bilateral hand numbness. He noted that the claimant denied any problems with his arms until approximately two and one-half weeks prior. The claimant told Dr. Brower that his problems came on fairly rapidly. The claimant told Dr. Brower that his job duties were hand intensive, that he used a bolt cutter and exerted a lot of forceful grip, and that he did a lot of twisting of steel mesh. Dr. Brower wrote that the first course of treatment would be to stop the activities that the claimant felt caused the symptoms. Dr. Brower restricted him from any forceful gripping, no vibratory tools, and no lifting over 10 pounds.

¶ 17 Ms. Baur treated the claimant on April 24, 2009, and April 30, 2009, for left shoulder tendonitis, bilateral carpal tunnel syndrome, severe, and left lateral/medial epicondylitis.

¶ 18 On May 13, 2009, Dr. Chris Wottowa examined the claimant. In his patient notes he wrote that the claimant's symptoms began at the end of March when he was cutting some pipes without scaffolding. He noted that there was not one specific injury that caused the pain, but gradually throughout the day the claimant's shoulder and elbow began hurting more and more until by the end of the day when he was miserable. The claimant told Dr. Wottowa that he had numbness and tingling in both hands starting

around the same time as his shoulder and elbow pain. There was no specific injury or trauma that caused it, but he noticed the symptoms after a day when he was cutting stainless steel diamond mesh and twisting wire with end nippers. That day his numbness and tingling was constant, but since then it has been intermittent. Dr. Wottowa diagnosed the claimant with left shoulder rotator cuff tendonitis as well as irritation of the coracoids, left lateral and medial epicondylitis, and bilateral carpal tunnel syndrome. He recommended a cortisone injection and physical therapy for the shoulder, bilateral carpal tunnel releases and an injection to the medial and lateral epicondyle of the left elbow for tendonitis. He restricted the claimant from lifting overhead and lifting more than five pounds.

¶ 19 On May 18, 2009, Dr. Clem examined the claimant. He diagnosed the claimant with moderately severe carpal tunnel syndrome bilaterally. He wrote that the claimant's carpal tunnel needed to be fixed so that he could see what residual symptoms the claimant had with regard to his left elbow and left shoulder.

¶ 20 On June 8, 2009, the claimant had a magnetic resonance imaging (MRI) scan of his left shoulder. Dr. Robert Dodenhoff read the scan and wrote in his report that the claimant had rotator cuff tendinosis and distal infraspinatus. No complete tear of the rotator cuff was detected.

¶ 21 Dr. Scott Sherwood examined the claimant on May 27, 2009, and assessed him with bilateral carpal tunnel syndrome. On June 4, 2009, Dr. Sherwood performed a right carpal tunnel release on the claimant. On July 9, 2009, Dr. Sherwood performed a left carpal tunnel release on the claimant.

¶ 22 In a questionnaire the claimant completed on September 2, 2009, for Dr. Jeffrey Smith, he wrote that his injury occurred when he was cutting stainless steel diamond mesh with bolt cutters. He also wrote that he was pulling himself around from pipe to pipe with his arms while wearing a body harness and tool belt with no scaffold to walk on.

¶ 23 In a letter written from Dr. Smith to Dr. Farruk Kureishy, the claimant's primary care physician, Dr. Smith stated that he examined the claimant on September 3, 2009, for an evaluation of his left shoulder and left elbow. Dr. Smith wrote that the claimant had been having problems since March 2009. The claimant described the source of his pain as having to pull himself from pipe to pipe while wearing a body harness. Dr. Smith diagnosed the claimant with left shoulder impingement with mild improvement with a steroid injection and left elbow lateral epicondylitis without evidence of instability. He suggested that the claimant undergo therapy with ultrasound, theraband strengthening exercises, and taping.

¶ 24 Dr. David Fletcher testified by evidence deposition. He stated that his practice predominantly focuses on occupational medicine. He testified that he examined the claimant on September 14, 2009, for an independent medical examination requested by the employer. Dr. Fletcher testified that the claimant told him he was working as a union insulator and developed gradually the onset of upper extremity discomfort of his shoulder, elbow, and hands. There was no specific event. He gave a manifestation date of symptoms as March 30, 2009. The claimant told Dr. Fletcher that on March 26, 2009, he was cutting mesh with bolt cutters, twisting wires, and afterwards felt numbness,

tingling, and pain in both hands. He denied having experienced those symptoms prior to the March 2009 onset.

¶ 25 Dr. Fletcher testified that he performed a thorough upper extremity and cervical spine examination of the claimant. He diagnosed the claimant with left shoulder impingement, left tennis elbow, and left radial tunnel syndrome. The claimant had already undergone bilateral carpal tunnel surgery. Dr. Fletcher opined that, to a reasonable degree of medical certainty, the claimant's bilateral carpal tunnel syndrome, left shoulder impingement, and left radial tunnel syndrome were causally related to his work. He stated that the job activities as an insulator were sufficient to cause work-related carpal tunnel syndrome. Dr. Fletcher testified that even though the claimant only worked for the employer for a short duration and that he had preexisting conditions that developed over the years from his trade, "this was the straw that broke the camel's back, these job activities."

¶ 26 Dr. Fletcher recommended that the claimant have an arthroscopy of the left shoulder and further electrodiagnostic studies of the left radial tunnel syndrome. Dr. Fletcher testified that, to a reasonable degree of medical and surgical certainty, the carpal tunnel surgeries received by the claimant were reasonable to cure him of the complaints he presented. He opined that within a reasonable degree of medical certainty his prescription for an arthroscopy of the claimant's left shoulder was reasonable given the claimant's symptoms.

¶ 27 Dr. Fletcher testified that the claimant told him that his injuries happened simultaneously. He stated that it had been his experience that often patients who have an

injury that developed over a long period of time focus on one particular event. Dr. Fletcher was asked on cross examination about differences in the history the claimant gave to his medical providers. He responded that there was overall consistency. He stated: "there's a slight discrepancy as far as some of the details, but based on my experience there's a high risk in epidemiology of insulators and development of cumulative trauma disorders. I mean, he's told the same facts. There's a little bit of difference. I just don't feel it's much variation that it would alter my opinion as an occupational medicine doctor regarding causation." He stated that he believed the claimant would have begun the development of the bilateral carpal tunnel syndrome, radial tunnel syndrome, and shoulder impingement while working with prior employers. He admitted that it was possible that an activity of daily living could have triggered the symptomology of the bilateral carpal tunnel syndrome. Dr. Fletcher testified that a person can be asymptomatic with severe carpal tunnel syndrome and then something triggers it and it becomes clinical.

¶ 28 Dr. Joon Ahn examined the claimant on September 21, 2009. In his patient notes he wrote that the claimant had been climbing on top of power towers and that there was no scaffolding so he had to do a lot of pulling and tugging. Dr. Ahn diagnosed the claimant with left lateral epicondylitis at the elbow/left bicipital tendinopathy and subacromial impingement symptom. He recommended a cortisone injection to the shoulder at the bicipital groove and subacromial areas. He also recommended therapy. The claimant told Dr. Ahn that he opted not to treat with him and preferred to go back to his previous doctor.

¶ 29 Dr. Kevin Walsh, a board certified orthopedic surgeon, testified by evidence deposition. He stated that he examined the claimant on February 4, 2010, for an independent medical evaluation at the request of the employer. He said that the claimant told him that he was working in a boiler house climbing around, that he had to cut wire mesh with a little bolt cutter, and that this repetitive use led to his symptoms. He reported to Dr. Walsh that all at once after about 2 months on the job, his right hand went numb. He switched the cutter to his left hand and subsequently developed numbness in his left hand as well. The claimant also noticed pain over his left elbow and shoulder.

¶ 30 Dr. Walsh testified that the claimant's carpal tunnel syndrome was not causally related to his work activities for the employer because it is extremely atypical for someone to have severe carpal tunnel only 17 days after a complaint of accident. He testified that classically, EMG studies do not show any abnormalities until at least three weeks after the onset of damage to the nerve. Additionally, he stated that typically a patient does not develop severe carpal tunnel syndrome in both the left and right upper extremities simultaneously. Dr. Walsh testified that the claimant's carpal tunnel syndrome was so severe as of the date of diagnosis that any activity of daily living could have brought about the same complaints. While Dr. Walsh did not think the claimant's condition was causally related to a specific work event in March 2009, he testified that the bilateral carpal tunnel releases were necessary procedures because the claimant had moderate to severe disease. Dr. Walsh went on to state that more likely than not, the claimant had reached maximum medical improvement after the carpal tunnel releases and

that more likely than not the claimant did not require restrictions following the bilateral carpal tunnel releases.

¶ 31 Dr. Walsh opined that the claimant's left shoulder impingement syndrome, and his left elbow medial and lateral epicondylitis were most likely not related to his work with the employer. Dr. Walsh testified that the medical care the claimant received for his left shoulder impingement was appropriate. He stated that, in his opinion, the claimant did not need any additional treatment of his left shoulder as a result of a work-related event. Dr. Walsh testified that he felt that the medical care the claimant received for his left lateral epicondylitis was reasonable. He clarified that there was no causal connection between that treatment and the claimant's work for the employer. Dr. Walsh testified that the claimant required no additional medical or surgical intervention as a result of any work injuries for his lateral epicondylitis.

¶ 32 Dr. Walsh stated that based on his examination of the claimant, the claimant's subjective complaints of pain and discomfort were not based on objective findings. He stated that the claimant did not require any restrictions with regard to work activities. Dr. Walsh opined that more likely than not the claimant could return to his occupation as an insulator with no work restrictions.

¶ 33 On April 27, 2010, Dr. Smith examined the claimant to evaluate his left elbow and shoulder. His impression was left shoulder impingement and left lateral epicondylitis. He recommended that the claimant have left shoulder arthroscopy and subacromial decompression. He referred the claimant to Dr. Kenneth Tuan.

¶ 34 Dr. Tuan examined the claimant on May 4, 2010. In his patient notes he wrote that the claimant had left shoulder impingement with acromioclavicular joint pain. He stated that since the claimant had failed conservative treatment consisting of injections and extensive therapy, he recommended arthroscopy with decompression and distal clavicle excision. He noted that during the surgery he would look at the claimant's rotator cuff and shoulder cartilages and perform repair if any significant tears were seen.

¶ 35 On May 26, 2010, Dr. Tuan performed a left shoulder arthroscopy with subacromial decompression and a distal clavicle excision on the claimant. His pre and post operative diagnosis was left shoulder impingement with acromioclavicular joint pain.

¶ 36 On July 13, 2010, Dr. Tuan examined the claimant as a follow up for his shoulder surgery. At that time, he released the claimant from his care. He advised the claimant that he could work with his shoulder as tolerated.

¶ 37 On July 20, 2010, Dr. Smith examined the claimant for a follow up evaluation of his elbow. The claimant complained that his elbow ached all the time and that grasping, gripping, and lifting aggravated it. Dr. Smith recommended a steroid injection. If that did not alleviate his symptoms, Dr. Smith felt the claimant would be a good candidate for a partial lateral epicondylectomy, extensor digitorium communis and extensor carpi radialis brevis release, and a posterior interosseous nerve ligation. He released the claimant to return to work at regular duty.

¶ 38 The claimant testified that he was laid off on April 17, 2009. He received workers' compensation benefits until March 10, 2010. He then contacted his union hall and

received a short term disability package of $6,800. After Dr. Smith released him on July 20, 2010, the claimant applied for unemployment benefits.

¶ 39 On January 10, 2011, the claimant returned to work. At the time of the arbitration hearing he was working for Cherne Industries insulating piping. He stated that he was not as physically strong as he used to be, that his grip was not as strong, and that his elbow hurts and stiffens up. He stated that he had constant left elbow pain and that from time to time he had left shoulder pain.

¶ 40 The claimant testified that some of his medical bills were paid through the workers' compensation carrier, others were paid through his health insurance, and some bills remained unpaid. The claimant testified that the employer contributed to both his health insurance premiums and his disability insurance. The employer's attorney stated that the employer wanted a section 8(j) credit for the amounts both the disability and health insurance paid. The claimant's counsel stated that "if it turns out that there is an actual employer contribution to this, then certainly the [employer] would be entitled to a credit."

¶ 41 On cross examination the claimant was asked what he was alleging caused his condition. The claimant responded that it was the cutting of the diamond mesh, climbing around scaffolds, pulling himself from pipe to pipe, and twisting the wire to hold the mesh and the insulation on. He was asked if a specific traumatic event caused all his injuries as opposed to repetitive trauma. He responded in the affirmative.

¶ 42 The arbitrator found that the claimant sustained an injury that arose out of and in the course of his employment. The arbitrator ordered the employer to pay TTD of

$1,102.49 per week for 65 4/7 weeks from April 17, 2009, through July 20, 2010, and gave the employer credit for $57,786.48 for TTD previously paid. He ordered the employer to pay $60,700.41 for reasonable and necessary medical services, and gave it a credit for any of the medical expenses which it previously paid including any payments made through the union health insurance. The arbitrator granted the claimant permanent partial disability benefits of $664.72 per week for 160.3 weeks because his injuries caused a 17.5% loss of the right hand, a 17.5% loss of the left hand, a 25% loss of the left upper extremity for the shoulder, and a 10% loss of the left upper extremity for the elbow epicondylitis.

¶ 43 The employer appealed to the Commission. The Commission modified the arbitrator 's decision. The Commission found that the claimant described the work which he performed for the employer and that his testimony, while containing some minor variation, credibly identified the basic mechanism of injury and was corroborated by the medical records of his treating physicians and by the reports of the employer's independent medical examination examiners. The Commission found that while the claimant had only been working for the employer for a few months, the claimant had been doing insulation work since the 1990's and was performing the described work when he became symptomatic. The Commission noted that the employer's questioning of the claimant regarding accident "goes to repetitive trauma versus specific injury and appears to expect [the claimant] to understand the concept of repetitive/cumulative trauma as a doctor or lawyer practicing before the Commission for which [the claimant] clearly has no such concept or understanding." The Commission held that the evidence

and testimony established that the claimant met the burden of proving accident that arose out of and in the course of employment. The Commission noted that Dr. Fletcher, the employer's first independent medical examiner, found accident and a causal connection between the injuries and the claimant's work. The employer's second independent medical examiner, Dr. Walsh, was the only contrary opinion. The Commission found that the claimant met the burden of proving entitlement to TTD as awarded, with the employer entitled to credit for amounts paid. The Commission noted that both independent medical examiners found the claimant's medical treatment reasonable for his conditions. The Commission held that the claimant met his burden of proving entitlement to medical expenses and that the employer was entitled to credit for amounts paid as well as any section 8(j) credit for group insurance payments.

¶ 44 The Commission found that the arbitrator's finding of 17.5% regarding each hand for the bilateral carpal tunnel syndrome release was clearly supported by the evidence and testimony and it affirmed and adopted that portion of the arbitrator's decision. The Commission found that the arbitrator's award for the un-operated elbow was somewhat excessive and modified the award to 30% loss of the arm in total, 25% for the left shoulder for 63.25 weeks and 5% for the un-operated left elbow for 12.65 weeks. Other than the modification for the left arm, the Commission affirmed and adopted the arbitrator's decision.

¶ 45 The employer sought judicial review of the Commission's decision in the circuit court of Sangamon County. The court, after hearing arguments and reviewing the record and written briefs, held that the Commission's decision was not against the manifest

weight of the evidence. The circuit court confirmed the Commission's decision and remanded it "to the Commission for a determination for credit for union payment of disability." The employer now appeals.

¶ 46 **ANALYSIS**

¶ 47 The employer argues that the Commission's finding that the claimant's condition of ill-being was causally related to a work related injury occurring on March 26, 2009, or from a repetitive trauma is against the manifest weight of the evidence.

¶ 48 A claimant bears the burden of proving by a preponderance of the evidence that his injury arose out of and in the course of his employment. 820 ILCS 305/2 (West 2008). "Both elements must be present in order to justify compensation." *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 477, 949 N.E.2d 1151, 1156 (2011). Generally, the question of whether an injury arose out of or in the course of a claimant's employment is a question of fact to be resolved by the Commission, and its determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1056, 1059-60, 820 N.E.2d 531, 534 (2004). A decision is against the manifest weight of the evidence when an opposite conclusion is clearly apparent. *Durand v. Industrial Comm'n*, 224 Ill.2d 53, 64, 862 N.E.2d 918, 924 (2006).

¶ 49 " 'In the course of employment' refers to the time, place[,] and circumstances surrounding the injury." *Sisbro v. Industrial Comm'n*, 207 Ill.2d 193, 203, 797 N.E.2d 665, 671 (2003). To satisfy the arising out of component, it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as

to create a causal connection between the employment and the accidental injury. *Id*. at 203, 797 N.E.2d at 672. "Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52, 58, 541 N.E.2d 665, 667 (1989).

¶ 50 The employer argues that the Commission improperly assumed the case was a repetitive trauma case when the claimant alleged a specific accident and that it did not have the authority to substitute its own theory of causation. The employer does not cite any authority for this proposition. The Commission found that a claimant cannot be expected to have the same understanding as a doctor or lawyer practicing before the Commission of the difference between a repetitive trauma injury and a specific accident injury. An employee who suffers a repetitive trauma injury must meet the same standard of proof as an employee who suffers a sudden injury. *Durand*, 224 Ill.2d at 64, 862 N.E.2d at 924. The Workers' Compensation Act is a remedial statute intended to provide financial protection for injured workers, and it is to be liberally construed to accomplish that objective. *Flynn v. Industrial Comm'n*, 211 Ill. 2d 546, 556, 813 N.E.2d 119, 125 (2004). A review of the facts shows that the claimant pointed to a specific time when his injuries manifested themselves and alleged that certain work activities caused his injuries. He never described a specific accident. Because the Act is to be liberally construed, we

will not penalize the claimant because he incorrectly labeled the cause of his condition of ill-being as being from a specific accident injury and not from a repetitive trauma injury.

¶ 51 The employer disputes the causal connection between the claimant's bilateral carpal tunnel syndrome, left shoulder tendonitis, and left elbow epicondylitis and his work duties. It argues that the claimant gave differing accounts of how his injury occurred evidencing that he could not point to one thing that brought about a traumatic injury or accident.

¶ 52 While the claimant did not repeat the details of his injury in the exact same manner each time he reported it, his accounts are substantially the same. The claimant testified that on March 26, 2009, he first reported to Mr. Sofa that his hands were tingling and felt like they were falling asleep. He stated that he experienced numbness into his arms. On March 30, 2009, he told Mr. Sofa that his hands had not improved and that his elbow and left shoulder hurt. On April 8, 2009, Ms. Frank examined the claimant. The claimant complained of numbness in his hands and left shoulder and elbow pain. He told her that he believed that his symptoms were related to his job duties which included climbing, cutting stainless steel mesh, cutting wire, and twisting wire. In the report of injury the claimant completed on April 15, 2009, he wrote that he injured himself "cutting stainless steel diamond mesh with 8" bolt cutters, twisting of wire with wire nipper, climbing on pipes to install diamond mesh with no scaffold in the penthouse. Wearing body harness and tool belt with tools, pulling self around from pipe to pipe." He listed the nature of his injury as "pain in elbow and shoulder, hands falling asleep and hurting at wrist and palms." On April 15, 2009, the claimant told Ms. Baur that he

experienced left shoulder pain, left elbow pain, and bilateral neuralgia symptoms in his hands. He told her that he had been using bolt cutters on stainless steel diamond mesh. He said the symptoms started on March 30, 2009. On April 15, 2009, the claimant told Dr. Narla that on March 30, 2009, he began experiencing tingling and numbness in both hands and an achy feeling in his left shoulder and left elbow. He reported that he had been cutting diamond mesh with both hands. On April 17, 2009, the claimant told Dr. Brower that his bilateral hand numbness came on fairly rapidly at the end of March 2009. He told Dr. Brower that his job duties were hand intensive and included using a bolt cutter and twisting steel mesh. On May 13, 2009, the claimant told Dr. Wottowa that he had shoulder and elbow pain, and numbness and tingling in his hands, and that his symptoms began at the end of March 2009 when he was cutting pipes without scaffolding. He stated he had no specific injury, but that he noticed the symptoms after a day of cutting stainless steel diamond mesh and twisting wire with end nippers. On September 3, 2009, the claimant told Dr. Smith that he had problems with his left shoulder and left elbow since the end of March 2009, and that it was caused from pulling himself from pipe to pipe while wearing a body harness. In the questionnaire he completed for that visit he wrote that his injury occurred when he was cutting stainless steel diamond mesh with bolt cutters and pulling himself from pipe to pipe with his arms while wearing a body harness and tool belt. The claimant told Dr. Fletcher that he had no specific injury but that his symptoms manifested themselves on March 30, 2009. He told Dr. Fletcher that on March 26, 2009, he was cutting mesh with bolt cutters, twisting wires, and afterwards he felt numbness, tingling, and pain in both hands. On September

21, 2009, the claimant told Dr. Ahn that he was injured climbing on top of power towers without scaffolding and that he had to do a lot of pulling and tugging. The claimant told Dr. Walsh that he had been climbing around and cutting wire mesh with bolt cutters and that this repetitive use led to his symptoms.

¶ 53 The claimant consistently attributed his injury to cutting stainless steel diamond mesh and climbing around without scaffolding. The claimant stated consistently that he had no numbness or tingling in his hands, and no pain in his shoulder or elbow prior to the onset of the symptoms at the end of March 2009. Dr. Fletcher testified that while there was "a slight discrepancy as far as some of the details," the claimant had told the same facts and that the variation was not enough to alter his opinion with regard to causation.

¶ 54 The employer argues that the claimant's bilateral carpal tunnel syndrome was so advanced that any activity of daily living could have brought about the same complaints of pain. Employers take their employees as they find them. *Sisbro, Inc.*, 207 Ill.2d at 205, 797 N.E.2d at 672. When an employee's body, diseased or not, gives way under the stress of his usual work duties, the law views it as an accident arising out of and in the course of employment. *Id.* "Thus, even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor." *Id.*, 797 N.E.2d at 672-73. The claimant's employment need not be the sole cause or even a primary cause for his condition of ill-being, it need only be a causative factor. *Tower*

Automotive v. Illinois Workers' Compensation Comm'n, 407 Ill. App. 3d 427, 434, 943 N.E.2d 153, 160 (2011).

¶ 55 Dr. Narla performed nerve conduction studies on the claimant and determined that he had moderate to severe bilateral carpal tunnel syndrome. He told Ms. Baur that the claimant had carpal tunnel syndrome prior to working for the employer, but that his work for the employer aggravated the claimant's underlying condition. Dr. Fletcher, the first physician hired by the employer to perform an independent medical evaluation, opined that the claimant's bilateral carpal tunnel syndrome, left radial tunnel syndrome, and left shoulder impingement were causally related to his work with the employer. He testified that even though the claimant had worked for the employer for a short duration, and that he had preexisting conditions that developed over the years from his trade, his work with the employer "was the straw that broke the camel's back." Dr. Fletcher testified that often when patients present with an injury that developed over a long period of time, they focus on one event as the cause. Dr. Fletcher testified that a person with severe carpal tunnel syndrome can be asymptomatic until an event triggers the symptoms.

¶ 56 The employer argues that there was no relationship between the claimant's injuries and his work as evidenced by Dr. Walsh's opinion that the claimant's condition of ill-being was not causally related to his employment. "It is the Commission's duty to resolve conflicts in the evidence, particularly medical opinion evidence." *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). In this case, the Commission resolved the conflicting medical evidence in favor of Dr. Narla and Dr. Fletcher's opinions that the claimant's work activities aggravated preexisting conditions

and that his condition of ill-being was causally related to his work activities for the employer. The test for whether the Commission's ruling was against the manifest weight of the evidence is whether the evidence is sufficient to support the Commission's finding, not whether this court might reach an opposite conclusion. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶38, 976 N.E.2d 1. There is sufficient evidence in the record to support the Commission's decision that the claimant's condition of ill-being was causally related to his work duties for the employer.

¶ 57 The employer next argues that the Commission's finding that the employer must pay $60,700.41 in medical bills is against the manifest weight of the evidence and should be reversed. It argues that it paid for some of the medical bills, that the total amount of bills paid as a result of fee schedule reductions and other contractual offsets is $19,142.31, and that the balances on all other bills is $3,039.52. It argues that the claimant cannot be awarded a "windfall" of $60,700.41 in medical bills which were reduced by fee schedule and other contractual provisions. The employer does not argue that the medical expenses were unreasonable or unnecessary.

¶ 58 Employers are obligated to provide and pay "the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2008). The amount that an employer can be required to reimburse the claimant for medical

expenses is the amount that was actually paid to the service providers, not the amount billed. *Tower Automotive,* 407 Ill. App. 3d at 436-7, 943 N.E.2d at 162.

¶ 59 Other than modifying the arbitrator's decision regarding the award for the loss of the left arm, the Commission affirmed and adopted his decision. The arbitrator held that the employer shall have credit for any medical expenses which it previously paid. The Commission found that the claimant "met the burden of proving entitlement to the medical expenses as awarded per the fee schedule with [the employer] being entitled to credit for amounts paid as well as any section 8(j) credit for group medical insurance payments." It ordered the employer to pay the claimant the sum of $60,700.41 for medical expenses under section 8(a) of the Act.

¶ 60 The claimant submitted an exhibit listing medical bills totaling $60,700.41. The exhibit appears to reflect payments from the workers' compensation carrier, the claimant's health insurance provider, and the claimant. There are also numerous bills on the list that show no payments, but show a balance of zero. There was no testimony or evidence presented at the hearing that explained the exhibit and bills. It is unclear from the record whether the bills that show no payments but a zero balance were subject to fee schedule reductions, contractual offsets, or were paid by an insurance carrier or some other source. Additionally, it is not clear from the record whether the difference between the amount billed and the amount paid by an insurance carrier was then charged to the claimant or was reduced pursuant to fee schedule reductions or contractual offsets. The Commission made no finding concerning the amount of credit the employer was entitled to receive. Because the employer can only be required to pay for the amount of medical bills paid or

due pursuant to a negotiated rate and not the amounts billed, we remand to the Commission for a determination of this amount and a determination of the credit due the employer pursuant to section 8(j).

¶ 61 The employer argues that the Commission's finding that it must pay the claimant 65 4/7 weeks of TTD and is not entitled to section 8(j) credits is against the manifest weight of the evidence. The arbitrator ordered the employer to pay the claimant TTD of $1,102.49 per week for 65 4/7 weeks for the period of April 17, 2009 through July 20, 2010, with the employer to be given credit for $57,786.48 in TTD previously paid. The Commission affirmed and adopted this award. The employer argues that any TTD awarded beyond March 12, 2010, was against the manifest weight of the evidence because the claimant was treating for injury to his left shoulder and this injury was not related to his work.

¶ 62 "Temporary total disability benefits are awarded for the period from when an employee is injured until he or she has recovered as much as the character of the injury will permit." *Land and Lake Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594, 834 N.E.2d 583, 594 (2005). The time during which a claimant is temporarily totally disabled is a question of fact for the Commission, and a reviewing court will only disturb the Commission's findings if they are against the manifest weight of the evidence. *Id*. at 593, 834 N.E.2d at 593.

¶ 63 The claimant consistently reported left shoulder pain. Dr. Fletcher testified that he believed there was a relationship between the claimant's left shoulder impingement and his work duties for the employer. As discussed, the Commission's determination that the

claimant sustained an injury to his left shoulder that arose out of and in the course of his employment was not against the manifest weight of the evidence.

¶ 64 The employer argues that as of March 2010, the claimant was no longer treating for a work related claim and that Dr. Walsh indicated he was at maximum medical improvement and could return to work with no restrictions. The claimant's left shoulder impingement was causally related to his employment. On May 26, 2010, Dr. Tuan performed a left shoulder arthroscopy with subacromial decompression and a distal clavicle excision on the claimant. Dr. Tuan did not release the claimant from his care until July 13, 2010. At that time Dr. Tuan advised the claimant that he could work as his shoulder tolerated. Dr. Smith did not release the claimant to return to regular duty work until July 20, 2010. Therefore, there is sufficient evidence in the record to support the Commission's finding that the claimant was temporarily totally disabled from April 17, 2009, through July 20, 2010.

¶ 65 The employer argues that it is entitled to section 8(j) credit for $6,800 in disability payments the claimant received. The circuit court affirmed the Commission's decision and remanded the matter to the Commission "for determination for credit for union payment of disability." Because cases remanded to an agency for further proceedings involving disputed questions of law or fact are not final for appeal purposes, this court ordered the parties to show cause why the appeal should not be dismissed for lack of jurisdiction. The claimant conceded that the employer was entitled to a section 8(j) credit of $6,800 and both parties asserted that the circuit court order only required the

Commission to assess the credit. The show cause order was dismissed. On remand the employer is entitled to a $6,800 credit.

¶ 66 Commencing March 30, 2009, the claimant consistently complained of numbness and tingling in his hands, and left shoulder and left elbow pain. He testified that he never experienced these symptoms prior to the end of March 2009. Dr. Fletcher testified that while the claimant had preexisting conditions, his conditions of ill-being were causally related to his work for the employer. Dr. Narla told Ms. Baur that the claimant had preexisting carpal tunnel syndrome and that his job duties for the employer aggravated the condition. There was sufficient evidence in the record to support a finding that the claimant's employment was a causative factor in his conditions of ill-being. Because it is not clear from the record which medical bills have been paid and which have been reduced pursuant to the fee schedule or other contractual offsets, this matter is remanded to the Commission for a determination of the employer's liability for medical expenses and section 8(j) credits. The claimant was entitled to TTD benefits from April 17, 2009, through July 20, 2010. He was treated for a condition of ill-being that was causally related to his employment until Dr. Smith released him to return to regular duty work on July 20, 2010. Both parties agree that the employer is entitled to a credit of $6,800 for money it paid toward the disability benefits the claimant received. This credit will be awarded to the employer on remand to the Commission.

¶ 67 **CONCLUSION**

¶ 68 For the foregoing reasons, we affirm the Commission's finding of a causal connection between the claimant's condition of ill-being and his employment, its award

of TTD benefits, and its award of partial permanent disability benefits. The Commission award of medical expenses is vacated. We remand to the Commission for a determination of the employer's liability for the claimant's medical expenses and the employer's section 8(j) credits. We also remand to the Commission to assess the $6,800 credit to the employer for contributions toward disability payments the claimant received.

¶ 69 Affirmed in part; Commission decision vacated in part; and remanded with directions.