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Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 180302WC-U
No. 4-18-0302WC
Order filed May 14, 2019

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

BEELMAN TRUCK CO.,	)	Appeal from the Circuit Court
	)	of Sangamon County.
Appellant/Cross-Appellee,	)	
	)	
v.	)	No. 17-MR-774
	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION and REX KIEFFER,	)	Honorable
	)	Ryan Cadigan,
Appellees/Cross-Appellants.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's decision regarding notice, accident, causation, and penalties pursuant to section 19(l) of the Act (820 ILCS 305/19(l) (West 2010)) were not contrary to the manifest weight of the evidence; the law of the case doctrine did not apply where earlier order asserted to be law of the case was neither final nor appealable; and Commission did not err in failing to order respondent to pay penalties in accordance with sections 16 and 19(k) of the Act (820 ILCS 305/16, 19(k) (West 2010)).

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Beelman Truck Co., appeals an order of the circuit court of Sangamon County confirming a decision of the Illinois Workers' Compensation Commission (Commission) awarding certain benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)) to claimant, Rex Kieffer. Claimant has filed a cross-appeal, challenging certain aspects of the Commission's decision. For the reasons that follow, we affirm.

¶ 4 Litigation between the parties commenced when claimant filed an application for adjustment of claim on December 23, 2010, which was subsequently amended. It alleged injuries to claimant's arms and shoulders, which resulted from claimant rolling tarps that covered the top of the trailer of the truck he drove at work (the litigation focused on claimant's left shoulder). An initial arbitration hearing was held in September and December 2012, and the arbitrator found for claimant on the issues of notice, accident, and causation. The Commission affirmed, though it disagreed with the arbitrator on a factual matter. Respondent sought review, but the circuit court found respondent's appeal premature (the issue of vocational rehabilitation had not been addressed) and remanded. A second arbitration hearing, before a different arbitrator, was held in March and September 2016. The arbitrator found that claimant lacked credibility, was employable, did not perform a *bona fide* job search, but awarded claimant 40% loss of use of the person as a whole. The arbitrator also denied claimant's request for penalties and fees. Both parties appealed to the Commission, which imposed penalties in accordance with section 19(l) of the Act (820 ILCS 305/19(l) (West 2010)) but otherwise affirmed (The Commission also vacated some testimony and factual findings made by the arbitrator concerning claimant's ability to read and write). The circuit court of Sangamon County confirmed the Commission's decision, and both parties appealed to this court.

¶ 5 II. BACKGROUND

¶ 6 Claimant began working for respondent on June 23, 2009. Claimant passed a pre-employment physical. Claimant worked as a truck driver, delivering coal from a mine in Farmerville to the Archer Daniels Midland (ADM) plant in Decatur. Sometimes he had to clean out the back of the truck with a shovel. He also had to roll and unroll a tarp that covered the truck's trailer.

¶ 7 Claimant had a week of training when he started working for respondent. As part of his training for this position, claimant was instructed on how to use a crank to maneuver the tarp on the top of the trailer. Claimant did not have any problems with his shoulder during training. In fact, he had not had any problems with his shoulder prior to working for respondent. He chose March 26, 2010, as the date his injury occurred as that is the first time he sought medical care for his shoulder.

¶ 8 Part of claimant's job also involved hauling ash. Sometimes, a trailer was preloaded with ash, and claimant simply had to take it to its destination and dump it. Other times, trailers needed to be loaded. Claimant would have to roll the tarp up to get loaded. Respondent had fitted half its trailers with electronic tarp rollers, but claimant's trailer was manually operated. Claimant would also have to roll and unroll the tarp during the unloading process. During safety meetings, the subject of getting electric tarps for all the trailers was discussed. Claimant stated that because he was taller, he found it easier to work the crank overhead. Sometimes, ash or coal would freeze to the trailer, and claimant had to remove it with a shovel. Claimant was paid by the load and usually tried to work 60 hours per week.

¶ 9 Claimant first sought medical treatment for his shoulder on March 26, 2010, from Dr. Andrew Klann. He testified that he first noted problems about two months earlier. Claimant testified that on the day prior to this first visit, he told Edgar Searcy, respondent's terminal

manager, that he was having problems with his shoulder and would not be at work on the next day. Edgar told claimant he did not have to fill out any paperwork at that time. When claimant saw Klann on March 26, claimant testified, he could hardly raise his arm. Klann's records indicate that claimant had been experiencing pain for two years, but it had been bad for the past two months. Claimant told Klann that he did not suffer a specific accident. Claimant was taken off work on March 26, 2010. Klann referred claimant to Dr. Brett Wolters, an orthopedic surgeon. Claimant alleges rolling the tarp caused the injuries to his shoulders.

¶ 10 On April 2, 2010, claimant signed a short-term disability claim form that indicated his condition was not work-related. On April 20, 2010, claimant first saw Dr. Wolters. Prior to this appointment, he signed an intake form stating his condition was not work-related. Wolters' records indicate claimant's condition had been ongoing for six month to a year and had gotten progressively worse (claimant did not know who filled out this form). Wolter diagnosed left shoulder impingement with possible adhesive capsulitis. He recommended physical therapy and ordered an MRI. That same day, claimant went to the Springfield Clinic Physical Therapy Department. Records there state that claimant had been experiencing this condition for two years (claimant denied reporting this to the physical therapist).

¶ 11 On May 2, 2010, claimant underwent the MRI. The radiologist noted that claimant had had left shoulder pain for one to two years (claimant denied telling this to the radiologist). The MRI showed possible bone contusions or microfractures, a full tear of one tendon and a partial tear of another, degenerative changes, and another possible partial tendon tear. On May 12, 2010, claimant returned to see Wolters. Wolters recommended surgery. On May 14, 2010, claimant saw Klann for a pre-operative physical. Records from this visit indicate claimant had been experiencing pain for two years, but it only became unbearable two months ago (claimant

denied telling this to Klann). Wolters performed surgery on May 17, 2010. The post-operative diagnosis was a full thickness rotator-cuff tear, with impingement. Wolters ordered further physical therapy.

¶ 12 Claimant continued to experience pain in his left shoulder. An MRI was performed on September 2, 2010. The radiologist's report indicated claimant had re-torn a tendon, but Wolters diagnosed adhesive capsulitis. Wolters recommended further surgery. He performed a capsular release on September 20, 2010. Claimant then continued in physical therapy. This did not result in significant improvement.

¶ 13 In notes from a visit on December 3, 2010, Klann opined that claimant's work aggravated his shoulder condition. Wolters offered a similar opinion in conjunction with a December 10, 2010, visit by claimant. During that visit, Wolters advised claimant to stop physical therapy, continue on pain medication, and be re-evaluated in three months.

¶ 14 On May 18, 2011, claimant was evaluated by Dr. Michael Cohen on respondent's behalf. Cohen opined that claimant's job activities would not cause a rotator cuff tear, absent some traumatic injury. Further, if claimant had suffered such an injury, he would have noticed immediately and been able to identify some specific activity as a cause of his condition of ill-being.

¶ 15 On June 8, 2011, claimant saw Wolters, who felt claimant was at maximum medical improvement (MMI) and kept him off work. Wolters saw claimant on November 11, 2011. He recommended another MRI, and, if it was negative, a functional capacity evaluation (FCE). Claimant described his pain as being at a level of 6 out of 10 at this appointment.

¶ 16 Claimant testified that he had difficulty reading. He got through high school, but was in a special education curriculum. Claimant has dyslexia. He routinely signs papers that others

complete without knowing the content of them. At some point after the initial injury, claimant began experiencing right-shoulder pain. He was not working at this time, but, according to claimant, he was "over-working" his right arm to compensate for his left.

¶ 17 Claimant had a friend named Gene Boblitt assist him with documenting his job search. Claimant would call and ask a potential employer if they were hiring, and Boblitt would write down the pertinent information.

¶ 18 On cross-examination, claimant gave a detailed account of his employment history. Claimant agreed when counsel asked him whether he was testifying that prior to two months before when he first sought treatment with Klann, he never had a problem with his shoulder.

¶ 19 Debra Kieffer, claimant's wife, also testified. They have lived together for 12 years. She assisted him with his job search. Claimant's reading ability did not allow him to "get on the computer and search." She looked up jobs for him. She did not find any jobs she thought claimant could do that did not involve significant lifting, which he could not do in light of the condition of his shoulder. On cross-examination, Debra acknowledged that her brother owns a farm. Claimant did not help her brother on the farm, outside of occasionally mowing the lawn.

¶ 20 Troy Stone next testified. He works for respondent and trained claimant. The type of trailer claimant used had a tarp on it to keep debris from blowing out. The trailer has a 40-foot-long bed. Stone instructed claimant on how to use the tarps. He instructed claimant on how to best use the cranking system so that it would be easier to operate. Ergonomically, it should be "right in front of your body." The crank handle is adjustable. Typically, this would not require overhead work. Stone estimated that it would take 20 seconds to roll the tarp across the trailer. On cross-examination, Stone testified that there was not enough time in a day to make the trip from Farmersville to Decatur six times. Sometimes a driver would have to shovel up to 10 feet

of coal. On redirect-examination, Stone explained that the trip to Decatur often involved significant waiting, particularly at the ADM plant. Sometimes there are "hundreds of trucks" there. Sometimes, there is no wait at all.

¶ 21 The next witness was Edgar Searcy. When he was first hired, he drove the same ADM route that claimant drove. He subsequently became a terminal manager, the position he held at the time of claimant's injury. He was claimant's supervisor. Claimant would make two trips to the ADM plant in Decatur per day. Rolling the tarp took 15 to 20 seconds. Except in the winter when coal would sometimes stick in the trailer, it was not necessary to roll up the tarp when dumping coal. On a typical day, claimant would have to roll the tarp twice and four times if he had to check to make sure all the coal came out. On cross-examination, Searcy clarified that on each occasion that claimant had to roll the tarp, he also had to unroll it first. In the winter, rolling the tarp can become difficult, depending on the conditions, as the tarp can get stiff. When Searcy rolled a tarp, he tried to keep the crank "about the chest or waist level" because "you get more torque" and also "because you don't have to worry about hurting your shoulder." Hurting one's shoulder was a concern when rolling a tarp. Searcy agreed that claimant was a good worker. He never had a problem with claimant's work ethic or honesty.

¶ 22 Tracy Fortenberry testified next. She stated that she is a vocational consultant. At respondent's request, Fortenberry performed a labor market survey for claimant. She explained, "A labor market survey is a sampling of jobs in the area," taking into consideration an "individual's educational and vocational background" as well as his medical restrictions. She testified that she found "various jobs in the Springfield area" suitable for claimant. She opined that claimant would be able to find employment without assistance. On cross-examination, Fortenberry acknowledged that she had never spoken with claimant. She was not told that he

could not read or write. She admitted that many of the jobs she identified included a requirement that the prospective employee be able to complete paperwork and that she did not know what this entailed. She agreed that claimant would be suitable for only 1 out of 10 positions she had identified if he could not read or write. She further agreed that being unable to read or write "may make it very difficult for [claimant] to get a job." She was unaware that claimant's counsel had requested vocational services from respondent on claimant's behalf. On redirect-examination, she stated that claimant's employment history indicated that he would not need assistance applying and interviewing for jobs.

¶ 23 The next witness called was Dave Patton. He drives a truck for another company (Curry) and has observed respondent's trucks at the ADM facility, including claimant's truck. He testified that it is not possible to load coal into a trailer without removing the tarp, as trailers are loaded from the top. It is, however, possible to load fly ash without removing the tarp, as they "put a chute inside the tarp." It takes about three hours to complete one run from Farmersville to Decatur "if everything goes right." Thus, it is possible to do three runs per day. On cross-examination, he testified that a one-way trip from Farmersville to Decatur takes an hour and 15 minutes.

¶ 24 Todd Schutz testified that he was a diesel mechanic working for respondent while claimant was employed there. He testified that when the tarps were in good condition, they rolled "pretty decent." However, "when you lose a bow or get a bar bent, it's very difficult to roll" them. It causes stress on the shoulders. Schutz testified that respondent was switching to electric tarps because "they were getting shoulder injuries." On cross-examination, Schutz agreed that he was not a truck driver.

¶ 25 Claimant submitted the evidence deposition of Dr. Wolters. Wolters testified that he is an orthopedic surgeon. He first examined claimant on April 20, 2010. On the intake form claimant completed for Wolters, though he states that his injury is not work related, he also states that his job aggravates the condition of his shoulder. Wolters noted claimant had left shoulder pain and a limited range of motion. He suspected a frozen shoulder or a rotator cuff tear. During the first surgery on May 17, 2010, he removed a spur and repaired a large tear. Wolter acknowledged that Cohen believed that Wolter should not have done this surgery if claimant had a frozen shoulder. Wolter characterized this opinion as "debatable" and noted that he ordered physical therapy to address claimant's shoulder stiffness prior to surgery. Wolter did not believe claimant's shoulder was frozen at the time of this surgery. Following the first surgery, claimant's range of motion regressed. Wolter performed a capsular release on September 20, 2010, which, he testified, "went great." Claimant attended physical therapy; however, when Wolter saw claimant on September 29, 2010, he had regressed again. At the time of claimant's final visit on November 11, 2011, claimant was still significantly limited and, Wolter opined, could not perform his old job.

¶ 26 Wolter disagreed with Cohen that a full-thickness rotator cuff tear could not occur in the absence of acute trauma. He had personally seen such injuries caused by repetitive trauma. He further opined that claimant's condition was aggravated by his job.

¶ 27 On cross-examination, Wolters stated that when he indicated claimant could not work, he meant that he could not work in his former job, not that he could not work in some restricted capacity. Wolters agreed that claimant's rotator cuff tear could have predated his employment with respondent. Moreover, if he had such a tear, the activities of daily living could aggravate it.

Wolters admitted never having seen a video or written description of claimant's job duties. Claimant had reached MMI.

¶ 28 Dr. Michael Cohen also testified via evidence deposition. Cohen is an orthopedic surgeon. He examined claimant on respondent's behalf. Cohen reviewed a DVD of claimant's job activities, including use of the crank to maneuver the tarp. He also reviewed a written job description. At the time of the first surgery, Cohen opined, claimant had adhesive capsulitis, a rotator cuff tear, and some impingement. He further opined that these conditions were unrelated to claimant's employment with respondent. He explained that a rotator cuff tear, in a person of claimant's age, would typically result from acute trauma. He did not believe that using the crank 12 times per day was enough to cause the tear. He criticized Wolters' treatment of claimant, noting that surgery is not recommended for a person with adhesive capsulitis. The surgery can make it worse, which, he opined, is what happened in this case.

¶ 29 On cross-examination, Cohen testified that having the crank over one's shoulder increases the risk of a rotator cuff tear. He agreed that it was possible for a rotator cuff tear in a 43-year-old individual to be caused by repetitive trauma. Cohen opined that by doing the first surgery before resolving claimant's adhesive capsulitis, claimant's prognosis for getting his range of motion back was diminished.

¶ 30 The first arbitrator hearing was held before Nancy Lindsay. She awarded claimant benefits under the Act. She first noted that claimant's "reading and writing skills are very limited." She then found claimant sustained an accident arising out of and in the course of his employment on March 26, 2010. Further, she found the condition of ill-being of his left shoulder was causally related to his employment with respondent. She based her opinion on claimant's testimony, which she found credible; the sequence of events; and the opinions of claimant's

treating physicians (Dr. Wolters and Dr. Klann). She specifically credited Wolters' testimony over that of Dr. Cohen (respondent's independent medical examiner).

¶ 31 The arbitrator further found that respondent received timely notice of the accident. She specifically noted that respondent's terminal manager told claimant that he did not have to fill out any paperwork at that time. She determined claimant's average weekly wage was $759.30. She found that the medical services rendered to claimant were reasonable and necessary and ordered respondent to pay for them as well as prospective medical services and a vocational assessment. She ordered respondent to pay temporary total disability benefits from March 26, 2010, to September 6, 2012, less a credit for sums paid by a group disability plan. The arbitrator denied claimant's request for fees and penalties.

¶ 32 The Commission modified the arbitrator's decision regarding claimant's average weekly wage, reducing it to $740.91. It further struck the arbitrator's finding that claimant lacked the ability to read and write. At respondent's request, the Commission made a number of special findings. First, it found that claimant's use of the crank, shoveling, and using an axe constituted repetitive activity. Second, it found claimant's testimony unrebutted that he provided notice to respondent. Third, except on the issue of his ability to read and write, the Commission expressly found claimant credible.

¶ 33 The parties sought review in the circuit court. That court remanded, finding the appeal "premature" (the vocational rehabilitation issue had not been resolved). See *Supreme Catering v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 111220WC. Further proceedings followed. A second arbitration hearing, before a different arbitrator, was held in March and September 2016. The following additional evidence was adduced.

¶ 34 On August 12, 2013, claimant saw Wolters' physician's assistant. Claimant was still under work restrictions and was unable to move his arm above his head or behind his back due to adhesive capsulitis. Claimant was unable to work and needed pain medication. The physician's assistant did not believe further surgery was indicated but thought an MRI was warranted to assess other causes of shoulder pain. She also recommended an FCE. In February 2014, claimant fell on ice, which resulted in low-back pain. This required continuing medical treatment.

¶ 35 Ellen Carter testified for claimant. Claimant grew up in her neighborhood, and she worked with him in her capacity as a teacher's aide in a special education program. She also tutored claimant. She estimated claimant was 13 or 14 years old at this time. Carter testified that claimant would be able to read a few words with repetition, however, he would forget them by the time he returned a few days later. She added that these were three and four letter words. In school, Carter would assist claimant by reading tests to him and writing down his answers. On cross-examination, Carter stated that after he graduated from high school, she only saw claimant occasionally. She considered his family "not close friends but acquaintances."

¶ 36 Nancy Schrenk testified that she was claimant's teacher in the early 1980s for a year or two. Claimant could not read or write. She was able to teach claimant short words, but he often forgot them quickly. Claimant had dyslexia. He was interested in world affairs. Schrenk added that there were things that claimant was good at, he simply had a particular learning disability. Shrank recalled an occasion, over 10 years prior to the hearing, that claimant came to her for help filling out some job applications, as he was between marriages and did not have anyone else helping him.

¶ 37 Debra Kieffer next testified. She and claimant were married in 2011. Claimant cannot read or write. She takes care of the checkbook and pays the bills. Claimant is in pain all the time. Repetitive activity, like yard work, causes him pain. He cannot lift his arm to change the oil in a vehicle.

¶ 38 Gene Boblitt was the next witness to testify. Boblitt had been a friend of claimant for 25 years; he stated they were "[l]ike brothers." He assisted claimant with his job search. Boblitt testified that they contacted three employers per day for "[a] long time." This took about 15 minutes per day. He made a record of the employers that claimant contacted. Boblitt also assisted claimant in filling out certain medical forms. On cross-examination, Boblitt explained that they picked potential employers out of the telephone book, selecting those that they thought might be hiring people with claimant's skills. Most did not have any openings. Boblitt testified that there were some words claimant could read, but he had a hard time distinguishing between similar words. Claimant has worked as a landscaper. He has done some plumbing and maintenance. He worked at Lowe's for three or four years. Boblitt testified that claimant would help his brother-in-law on his farm, including driving a tractor and bobcat. On redirect-examination, Boblitt stated that claimant was still trying to find a job, as he liked to stay active.

¶ 39 Claimant then testified. Since the first hearing, he has seen Wolters a "couple of times." Claimant still takes hydrocodone. He typically takes it every other day. He also takes Aleve for shoulder pain. Claimant testified that activity makes his shoulder pain worse. He can only lift 5 to 10 pounds. Claimant sleeps in a recliner in his living room.

¶ 40 Claimant testified that he contacts three employers per day. He has never gotten a job or an interview. He is still trying to find work.

¶ 41 On cross-examination, claimant agreed that the records indicate that he did not look for work from June 27, 2012, to December 22, 2014. If an employer asked for a resume, claimant would give them one, but this was a rare occurrence. Claimant's wife works as a secretary for the National Guard. She is "pretty astute" with a computer. Claimant acknowledged that he had 15 years' experience driving a truck. He has a commercial driver's license (CDL).

¶ 42 On redirect-examination, claimant explained that the extended period during which he did not look for work was due to his doctor keeping restrictions imposed on him. He does not ask his wife to help him more because she works full time. Because of the condition of his shoulder, he cannot load a truck, which limits the types of driving jobs he could perform.

¶ 43 Karen Kane Thaler next testified that she is a vocational consultant. She performed a labor market survey for claimant at respondent's request and updated it subsequently. Her analysis included a review of claimant's medical condition and work history. She contacted employers to ascertain whether jobs were actually appropriate for claimant. She opined that claimant was employable. On cross-examination, she denied being made aware that the Commission had ordered respondent to provide claimant with vocational assistance. Kane Thaler stated that she would have been able to provide claimant with such assistance. She never spoke with claimant. She thought claimant could read and write. However, she was aware that testing had been done that indicated claimant could not do so. Some of the jobs she identified in her labor market survey required the ability to read and write. Indeed, "[a]t some level," all would have required some reading and writing ability. Kane Thaler opined that if claimant could only read at a kindergarten or first-grade level, it would affect his ability to find work; however, she still believed that claimant "would be able to participate in the work force without any limitation."

¶ 44 Dr. Steven Fritz, a clinical psychologist, testified via evidence deposition. He met with claimant on two occasions at the request of claimant's attorney. He reviewed various documents including the previous decision of the arbitrator and Commission, some of claimant's testimony, and a report from Dr. Stephen Vincent (also a clinical psychologist). Fritz opined that claimant is "in the mildly developmentally delayed range of intellectual functioning." This would indicate an IQ of 70 or below. Fritz saw no reason to believe that claimant was malingering. Claimant appeared to be giving a "good effort" during testing. Fritz did not believe that claimant was dyslexic. He explained that dyslexia is a very specific disorder, and claimant was not dyslexic simply because he could not read. Fritz did not observe claimant transpose letters. During testing, claimant could not complete fill-in-the-blank questions if required to read them, but he could if Fritz read the question to him. This indicated that claimant's problem was reading rather than comprehension.

¶ 45 On cross-examination, Fritz stated that his practice consists mostly of psychotherapy and assessments. Fritz administered the Wide Range Achievement Test (WRAT), the Weschler Memory Scale (in part), and the Weschler Adult Intelligence Scale 4 (WAIS4). Fritz measured claimant's IQ at 60, which would place him in the .4th percentile. The memory test indicated "very poor recall." Fritz agreed that the results claimant achieved would be inconsistent with graduating high school. It would be possible for a person to "fabricate the results of these studies by subjectively responding erroneously."

¶ 46 On redirect-examination, Fritz stated that the only way he could reconcile claimant's test results with the fact that he graduated from high school was that the special education must have provided claimant with certain accommodations. Fritz did not believe claimant fabricated his

answers on the tests. Dr. Vincent measured claimant's IQ in the borderline range 20 years earlier.

¶ 47 Delores Gonzalez was hired by claimant to assess his vocational abilities. She prepared a report, which was entered into evidence. Claimant performed the WRAT. It indicated that he was reading at below a kindergarten level. This would indicate an IQ level of 60. Other objective testing (administered by Fritz) was consistent. Gonzalez noted that claimant would be competing for jobs with "individuals who are generally more educated." She opined:

> "From a vocational perspective, considering his age, education, work history, mental functioning capabilities, and residual functional capacity, it is my opinion that [claimant] is not employable on the open labor market. Prospective employers in the usual course of selecting new employees for jobs that offer significant and competitive wages would avoid hiring an individual with [claimant's] overall profile in favor of individuals who are more work ready, who would have higher academic skills, and who would not have to be accommodated."

¶ 48 Telephone records from claimant and Boblitt were entered into evidence. Of the 529 calls claimant claimed to have made, the records substantiated 416 of them.

¶ 49 The second hearing was held before a different arbitrator, Edward Lee. The arbitrator first found that, on March 26, 2010, claimant "sustained permanent restrictions to his non-dominant left upper extremity." He noted that claimant had been able to maintain stable employment for 25 years prior to his work-related accident. Citing claimant's credibility, the arbitrator found that claimant had not engaged in a good-faith job search. He then found that claimant was employable and determined that claimant was permanently and partially disabled to the extent of 40% loss of use of the person as a whole. Both parties sought review.

¶ 50 The Commission struck much of the testimony pertaining to claimant's ability to read. It found claimant was entitled to the cost of the vocational assessment performed by Gonzalez. Finally, it vacated that arbitrator's denial of penalties and imposed penalties in accordance with section 19(l) of the Act (820 ILCS 305/19(l) (West 2010)). The Commission also struck some scandalous material from the arbitrator's decision. We commend the Commission for doing so and express our surprise at the arbitrator's inclusion of such a gratuitous and unnecessary comment. It otherwise affirmed. The trial court confirmed, and this appeal followed.

¶ 51 III. ANALYSIS

¶ 52 We will address respondent's appeal first; then, we will turn to claimant's cross-appeal

¶ 53 A. RESPONDENT'S APPEAL

¶ 54 On appeal, respondent raises five main issues. First, it contends that the Commission's decision regarding notice is contrary to the manifest weight of the evidence. Second, it argues that the Commission's decisions regarding accident and causation are erroneous. Third, it argues that the Commission's findings regarding permanent partial disability should be affirmed (apparently, respondent is preemptively addressing issue it believes will be raised in claimant's cross-appeal). Fourth, it challenges the imposition of penalties pursuant to section 19(l) of the Act (820 ILCS 305/19(l) (West 2010)). Fifth, it asserts that the Commission properly struck additional evidence pertaining to claimant's ability to read and write presented in the second arbitration hearing (again, apparently raising this issue preemptively). As for the issues raised preemptively, we will consider them only to the extent that they are addressed in claimant's cross-appeal and will not address them here.

¶ 55 1. Notice

¶ 56 Respondent first asserts that the Commission's findings regarding notice are erroneous. It is undisputed that a claimant must prove the he provided his employer with notice of an accident within 45 days. 820 ILCS 305/6(c) (West 2010). In a repetitive trauma case, this is measured from the date that the injury "manifests" itself. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987). This is "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Id.* Notice must apprise the employer not only of the injury but also of its causal relationship to the claimant's employment. *White v. Industrial Comm'n*, 374 Ill. App. 3d 907, 911-12 (2007). The failure to give notice is a bar to recovery. *Silica Sand Transport, Inc. v. Industrial Comm'n*, 197 Ill. App. 3d 640, 651 (1990). If no notice is given, it is immaterial whether the respondent was not prejudiced. *White*, 374 Ill. App. 3d at 911. It has been noted that "the legislature has mandated a liberal construction on the issue of notice." *Gano Electric Co. v. Industrial Comm'n*, 260 Ill. App. 3d 92, 96 (1994).

¶ 57 Respondent claims that the Commission erred as a matter of law, as it found only that claimant gave notice of his injuries to respondent. Indeed, the Commission's decision does not expressly state that claimant provided notice of the industrial nature of his injuries. However, as the Commission cited claimant's testimony and it was possible to infer from that testimony that claimant provided notice as required by the Act, we do not believe the Commission misapprehended this very basic and well-established facet of workers' compensation law. Hence, we will review this issue as a question of fact, using the manifest-weight standard. *Gano Electric Co.*, 260 Ill. App. 3d at 96. A decision is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992).

¶ 58 On the notice issue, claimant testified as follows:

"Q. You went to the doctor. Did you tell anybody at that time well, did you tell anybody your shoulders were bothering you at work?

A. Yes. I told Edgar. I had to tell him a day ahead of time I was going to be taking off because I took off, I think it was like 11:00 that day, I took a short day to go to the doctor.

Q. Did you tell him why?

A. I told him my shoulder was bothering me, and he said go in and see what they have to say. I wondered if I needed to fill paperwork out, and he said, No, just go in there and see what they have to say.

Q. Who is Edgar?

A. He was the terminal manager at the time."

This conversation took place the day before claimant first sought treatment from Dr. Klann on March 26, 2010.

¶ 59 Whatever the exact contours of what claimant told Edgar Searcy, it is *inferable* from claimant's comments regarding the need to fill out paperwork that claimant referenced a relationship between his injury and his employment. Searcy was claimant's supervisor; obviously, the paperwork pertained to claimant's employment in some way. At the very least, we cannot say that an opposite conclusion is clearly apparent here. Respondent makes no attempt to show that it was prejudiced by the notice it received. Respondent points out that claimant signed a short-term disability form on April 2, 2010. Respondent further points out other occasions after claimant initially gave notice that suggest that his injury was not work related. While this might have been relevant to the question of prejudice in that it may have

rendered the notice provided somewhat ambiguous, respondent cites nothing to suggest it could somehow undo the notice respondent received on March 25, 2010.

¶ 60 Respondent claims *White*, 374 Ill. App. 3d 907, "is on all fours" with this case. Respondent overlooks the procedural posture of these two cases however. In *White*, the Commission drew an inference that notice was insufficient, and the reviewing court found that inference not to be contrary to the manifest weight of the evidence. *Id.* at 913. Here, the Commission drew a contrary inference and the evidence, though similar to that in *White* in many respects, contains a basis for the Commission to infer that respondent received notice. As such, *White* is not on "all fours" with this case.

¶ 61 In sum, we find this argument unpersuasive.

¶ 62 2. Accident and Causation

¶ 63 Of course, to be compensable, a claimant must suffer a work-related accident. An accident is work related if it arises out of and occurs in the course of employment. *William G. Ceas & Co. v. Industrial Comm'n*, 261 Ill. App. 3d 630, 636 (1994). Furthermore, a claimant's condition of ill-being must have been caused by such an accident. See *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 887 (2007). Both issues present questions of fact. *Pryor v. Industrial Comm'n*, 201 Ill. App. 3d 1, 5 (1990). As such, review is conducted in accordance with the manifest-weight standard. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). This means an opposite conclusion must be clearly apparent before we will reverse. *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741-42 (1994). As we read respondent's argument, it is more about causation than accident, as it is undisputed that claimant's activities were work-related—the issue is whether they caused the injury to his shoulder.

¶ 64 Respondent seizes on the colloquial meaning of the term "repetitive" and asserts that claimant did not perform repetitive activities such that he could have suffered a repetitive-trauma injury. Essentially, respondent is arguing that claimant's injuries were not repetitive enough to fall under this theory of recovery. Respondent contends that the evidence showed that claimant used a pick and shovel only sporadically—an observation with which we agree. However, even respondent concedes that, on any given day, claimant "would be using a crank to unroll and roll the tarp somewhere between two [to] six times per shift." Respondent attempts to minimize this, asserting that this amounted to only two to five minutes of such activity. We note that there was also testimony that this activity could be quite difficult. Thus, the question is whether the activity in which claimant engaged was sufficiently repetitive to cause his condition of ill-being. This raises an issue in which medical considerations are highly relevant (see *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 314-15 (2009)) and best resolved through the testimony of experts and the expertise of the Commission (see *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979) (recognizing Commission's expertise regarding medical matters)). We owe considerable deference to the Commission's resolution of conflicts in medical evidence. *Hicks v. Industrial Comm'n*, 251 Ill. App. 3d 320, 326 (1993) (quoting *Old Ben Coal Co. v. Industrial Comm'n*, 217 Ill. App. 3d 70, 83 (1991)) ("In the presence of conflicting medical opinion, the Commission's determination is given substantial deference and will be upheld unless it is contrary to the manifest weight of the evidence.").

¶ 65 Here, the medical experts provided conflicting testimony. Respondent points to Dr. Cohen's opinion that claimant's condition was not causally related to his employment with respondent. Cohen opined:

> "It's certainly possible that he could develop some tendinitis in the shoulder or a strain to the shoulder with the activities that he was performing at Beelman Truck Company, however, an acute rotator cuff tear would have produced a significant amount of acute pain that Mr. Kieffer certainly would have noticed and identified the specific activity he was doing at the time that occurred which is not the case in any of the records I've had to review. Therefore, I do not believe that the rotator cuff tear is related to Mr. Kieffer's work activities at Beelman Truck Company. At worst, I believe he had a shoulder tendinitis and/or impingement syndrome that could have been aggravated by his activities at Beelman Truck Company."

However, Dr. Wolter disagreed with Cohen that a full-thickness rotator cuff tear could not occur in the absence of acute trauma. He stated that he had personally seen such injuries caused by repetitive trauma. He also opined that claimant's condition of ill-being was aggravated by his job. Though claimant's job is not as repetitive as working on an assembly line, Wolters' testimony provides a basis to conclude the claimant's regular use of the cranking mechanism placed enough stress on his shoulder to cause an injury. Thus, we have a conflict in the evidence, which is a matter primarily for the Commission to resolve. *Hicks*, 251 Ill. App. 3d at 326. Respondent does not attempt to show why Cohen's opinion is so obviously superior to Wolters' that an opposite conclusion is clearly apparent. Indeed, particularly since Cohen's opinion makes room for the possibility that claimant's employment aggravated his condition, we cannot say that the Commission's decision is against the manifest weight of the evidence.

¶ 66 3. Penalties

¶ 67 Respondent also challenges the Commission's decision to impose penalties in the amount of $10,000 pursuant to section 19(l) of the Act (820 ILCS 305/19(l) (West 2010)). This section

allows an award of compensation that is "in the nature of a late fee." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515 (1998). It applies "whenever the employer or its carrier simply fails, neglects, or refuses to make payment or unreasonably delays payment 'without good and just cause.' " *McMahan*, 183 Ill. 2d at 515 (quoting 820 ILCS 305/19(l) (West 1992)). Where no sufficient justification for the delay is shown by a respondent, an award pursuant to section 19(l) is mandatory. *McMahan*, 183 Ill. 2d at 515. We review this issue using the manifest-weight standard. See *Oliver v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 143836WC, ¶ 33. To the extent respondent's argument implicates a legal issue, review is *de novo*. *Beelman Trucking v. Industrial Comm'n*, 233 Ill. 2d 364, 370 (2009).

¶ 68 Respondent contends that the fact that it was continuing to dispute and appeal its obligation to pay renders penalties inappropriate under the Act. Respondent cites nothing in support of this proposition, save section 19(l) itself. That section provides as follows:

> "If the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d). In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or

> more shall create a rebuttable presumption of unreasonable delay." 820 ILCS 305/19(l) (West 2010).

Respondent asserts, "There is absolutely no legal precedent that requires [r]espondent to pay an award before an award becomes final when [r]espondent continues to dispute the compensability of the claim.

¶ 69 We disagree. It is axiomatic that when the language of a statute is plain, it is the duty of a court to implement it without further aids of construction. *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418, ¶ 21. We may not "depart from the plain language and meaning of a statute by reading into it exceptions, limitations or conditions that the legislature did not express." *Id*. Nothing in the plain language of this statute limits its applicability to after the entry of a final judgment.

¶ 70 Moreover, in *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1074 (2004), we held that "penalties under section 19(l) may properly be awarded following a claimed injury but prior to a judicial determination of liability." Since penalties may be imposed prior to final judgment, *a fortiori*, the mere fact that litigation is ongoing does not render a delay in payment reasonable. Rather, only where an employer interposes a *good faith* challenge to liability are section 19(l) penalties unwarranted. *Id*. Respondent makes no attempt to establish that its challenge was a *good faith* one, and we will not assume that it was. On appeal, respondent as the appellant, bears the burden of establishing such propositions. *In re Estate of Elson*, 120 Ill. App. 3d 649, 656 (1983). Respondent had not attempted to carry this burden here.

¶ 71 We find respondent's argument lacking.

¶ 72 B. CLAIMANT'S CROSS-APPEAL

¶ 73 In his cross-appeal, claimant first contends that the Commission erred in striking testimony offered during the second arbitration hearing regarding claimant's intellectual capacity. However, claimant concedes that this issue need be addressed only if we were to reverse and remand the Commission's determination regarding the extent of claimant's disability. Claimant does not challenge the Commission's ruling on this issue, and respondent's brief contains a section arguing that the Commission's determination was proper. As such, we will not address this evidentiary issue further. Second, claimant argues that the Commission failed to follow the law-of-the-case doctrine concerning certain awards made during the first arbitration hearing when it did not incorporate them into the order following the second arbitration hearing. Third, claimant asserts that the Commission should have awarded penalties and attorney fees in accordance with sections 16 and 19(k) of the Act (820 ILCS 305/16, 19(k) (West 2010)). We will address the latter two contentions.

¶ 74 1. Law of the Case

¶ 75 Claimant argues that the Commission failed to appropriately apply the law-of-the-case doctrine. Claimant points out that the order following the initial arbitration hearing stated, *inter alia*, that respondent was to pay claimant $506.15 per week for 127 5/7 weeks for temporary total disability (TTD); pay for an MRI and FCE as recommended by Dr. Wolters; and to provide a "vocational assessment pursuant to applicable Commission Rules." We note that it also ordered respondent to pay $0 pursuant to sections 16, 19(k), and 19(l) of the Act. 820 ILCS 305/16, 19 (West 2010). The Commission modified the amount of TTD to $493.94, but otherwise affirmed the findings set forth above. This order was appealed, but the trial court found that the appeal was premature.

¶ 76 Claimant correctly points out that the law-of-the-case doctrine applies in workers' compensation proceedings. See, *e.g., Irizarry v. Industrial Comm'n*, 337 Ill. App. 3d 598, 606 (2003). Section 19(f) of the Act makes a decision of the Commission conclusive in appropriate circumstances: "The decision of the Commission acting within its powers, according to the provisions of paragraph (e) of this Section shall, in the absence of fraud, be conclusive unless reviewed as in this paragraph hereinafter provided." 820 ILCS 320/19(f) (West 2010). Several cases have applied the doctrine.

¶ 77 In *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244 (2008), an initial section 19(b) hearing (820 ILCS 320/19(b) (West 1994)) was held in 1995 and a permanency hearing was held in 2002. After the first hearing, the arbitrator found that the claimant sustained an accident arising out of and occurring in the course of employment; that the claimant's condition of ill-being was causally related to that accident; that the claimant was entitled to TTD; that the claimant was entitled to medical expenses; and that issues concerning vocational rehabilitation and maintenance should be deferred until after claimant underwent a second surgery. In November 1996, the Commission vacated the portion of the order addressing vocational rehabilitation and maintenance, as they were not properly at issue in a section 19(b) hearing, but otherwise affirmed. No appeals were taken.

¶ 78 No further hearings were held until November 2002, when the parties appeared to address additional medical expenses, TTD, and permanency. During the second hearing, information was developed that the claimant had perpetrated a fraud upon the court during the earlier hearing. Nevertheless, the arbitrator concluded that she could not disturb the result of the earlier proceeding. The Commission agreed, holding that the arbitrator properly refused to vacate the results of the earlier proceeding. Citing *Irizarry*, 337 Ill. App. 3d 598, "the Commission found

that the [earlier] findings that the claimant had suffered an employment-related accident and that his resulting injury was causally connected to that accident became final because neither party sought judicial review of the Commission's section 19(b) award." *Ming Auto Body*, 387 Ill. App. 3d at 251. As such, "[t]he Commission concluded that the doctrine of law of the case precluded a subsequent challenge or review of those findings." *Id*. Pursuant to those earlier findings, claimant had established a casual connection between his additional treatment flowing from his original injury and his employment, fraud notwithstanding. *Id.* at 251-52.

¶ 79 This court affirmed. It first noted, "Under the law-of-the-case doctrine, a court's unreversed decision on an issue that has been litigated and decided settles the question for all subsequent stages of the action." *Id*. That is, once a "finding became a final judgment, it also became the law of the case and was not subject to further review." *Id.* at 253. The court emphasized that this "decision was not challenged, and it became final [when the Commission issued its decision and no one appealed in] 1996." *Id*.

¶ 80 In *Irizarry*, 337 Ill. App. 3d 598, an initial section 19(b) hearing was held in 1991, which resulted in awards of medical expenses and TTD. No appeal was taken A second one was held in 1994. The arbitrator awarded TTD for two periods, but terminated TTD 15 months prior to the second hearing. The arbitrator denied the claimant's request for further TTD, medical expenses, and vocational rehabilitation. The claimant appealed to the Commission and the circuit court, and both affirmed. The matter proceeded to a final hearing in 1999. The employer attempted to dispute causation. This court held that the employer could not raise the causation issue again based on the results of the 1994 hearing. It explained:

> "At the section 19(b) stage, [the arbitrator] determined that a causal connection existed between [the claimant's] industrial accident and the alleged injuries to his left

> knee, neck, right shoulder, and back. The determination became a final judgment from which [the employer] did not appeal. The determination thus became the law of the case, and [the employer] was barred from raising the causation issue again during the final proceeding." *Irizarry*, 337 Ill. App. 3d at 606-07.

Like the *Ming Auto Body* court, the *Irizarry* court noted that the earlier decision had become final.

¶ 81 In *Weyer v. Illinois Workers' Compensation Comm'n*, 387 Ill. App. 3d 297, 307 (2008), the court stated, "Under the law-of-the-case doctrine, the unreversed decision of a question of law or fact made during the course of litigation settles that question for all subsequent stages of the suit." See also *McDonald's Corp. v. Vittorio Ricci Chicago, Inc.*, 125 Ill. App. 3d 1083, 1087 (1984) ("The trial court order becomes the 'law of the case' *only if there is a final and appealable order*. [Citation.] In the instant case the trial court has already determined in the action for rent and possession that Ricci was in default on the lease. *That order was a final and appealable order from which no appeal was perfected*. *** This is the law of the case." (Emphasis added.)); *cf. Arnold Schaffner, Inc. v. Goodman*, 73 Ill. App. 3d 729, 732 (1979) ("A trial court would not be bound by the order or findings in question because a trial court order becomes the 'law of the case' only if there is a final and appealable order."). In *Help at Home v. Illinois Workers' Compensation Comm'n*, 405 Ill. App. 3d 1150, 1151-52 (2010), this court held: "The claimant never sought a judicial review of the Commission's determination"; therefore, "[t]he determination, thus, became the law of the case." Quite simply, a final judgment is a prerequisite to the application of the doctrine. *People v. Patterson*, 154 Ill. 2d 414, 469 (1992) ("Further, and more important, a finding of a final judgment is required to sustain application of the [law-of-the-case] doctrine."); *Wakehouse v. Goodyear Tire & Rubber Co.*, 353 Ill. App. 3d

346, 352 (2004) ("Finally, similar to *res judicata* and estoppel, application of the law of the case doctrine requires a final judgment.").

¶ 82 In this case, following the initial arbitration hearing, both parties sought review. The trial court remanded. As the trial court determined that the initial appeal was premature, there was no appealable order at that time (such a remand makes the second arbitration hearing more a continuation of the first, simply held on a later day, as sometimes takes place). Indeed, as the original decision was not properly before this court until now, it is still subject to reversal. Accordingly, the situation in the instant case is markedly different from that in the authorities set forth above. Hence, since there was neither a final order nor a proper appeal, the law-of-the-case doctrine does not apply here.

¶ 83 Parenthetically, we note that if the earlier arbitration decision was the law of the case, claimant's next argument would be foreclosed. The initial arbitration decision expressly awarded claimant $0 pursuant to sections 16, 19(k), and 19(l) of the Act. 820 ILCS 305/16, 19 (West 2010). We presumably also would have to vacate the award in accordance with section 19(l) made following the second arbitration hearing.

¶ 84 To conclude, we reject claimant's arguments on this point.

¶ 85 2. Penalties and Fees

¶ 86 Claimant also argues that the Commission erred in declining to impose fees pursuant to sections 16 and 19(k) of the Act. 820 ILCS 305/16, 19(k) (West 2010). The standards under these two sections are similar. Both require an unreasonable or vexatious delay in payment before an award to a claimant can be granted. *Vulcan Materials Co. v. Industrial Comm'n*, 362 Ill. App. 3d 1147, 1150 (2005). Generally, "an employer's reasonable and good faith challenge to liability ordinarily will not subject it to penalties under the Act." *Matlock v. Industrial*

Comm'n, 321 Ill. App. 3d 167, 173 (2001). Where an employer is cognizant of facts that would warrant denying benefits, penalties and fees are not appropriate. *Electro-Motive Division v. Industrial Comm'n*, 250 Ill. App. 3d 432, 436 (1993). Good faith is to be judged objectively, hence the issue is whether an employer's denial was objectively reasonable. *Id*. The burden is on the employer to demonstrate that its denial of benefits was objectively reasonable. *Id*. We review this issue applying the manifest-weight standard. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 753 (2003). A decision of the Commission is against the manifest weight of the evidence only where an opposite conclusion is clearly apparent. *Caterpillar, Inc.*, 228 Ill. App. 3d at 291.

¶ 87 Claimant complains that the Commission did not explain the basis for denying his request for an award under sections 16 and 19(k). We remind claimant that we review the result to which the Commission arrived at rather than its reasoning. See *Boaden v. Department of Law Enforcement*, 267 Ill. App. 3d 645, 652 (1994). Further, on appeal, the burden is on the party bringing the appeal—that is, the appellant—to establish error in the proceedings below. *Solomon v. City of Evanston*, 29 Ill. App. 3d 782, 787 (1975) ("It is established that on appeal the party claiming error has the burden of establishing any irregularities, and one who seeks to reverse a decree carries the burden of showing that it is erroneous."). Here, given that the manifest-weight standard applies, this means that claimant must establish, based on the record, that it is clearly apparent that penalties against respondent were warranted (that is, that an opposite conclusion is clearly apparent).

¶ 88 Claimant further complains that respondent "did not call a single witness to explain why it failed to pay benefits." However, claimant cites nothing to indicate that this is the *sine qua non* of proving a reasonable delay. It would seem to us that an argument that a respondent had a

bona fide reason to dispute liability would be sufficient and could be based on the evidence in the record. See, *e.g.*, *Miller v. Industrial Comm'n*, 255 Ill. App. 3d 974, 979 (1993) ("If an employer acts in reliance upon qualified medical opinion and disputes whether the employment was related to the alleged disability, such penalties are not ordinarily imposed."). Indeed, claimant offers no persuasive reason why Cohen's opinion was not an adequate basis for respondent to dispute liability. Also, recall that the inquiry here is whether respondent's actions were "objectively reasonable" (*Electro-Motive Division*, 250 Ill. App. 3d at 436), thus respondent's actual mental state is beside the point.

¶ 89 Claimant relies on *Roodhouse Envelope Co. v. Industrial Comm'n*, 276 Ill. App. 3d 576 (1995), in support of this argument.[1] In that case, the Commission entered an award in favor of the claimant, and the employer did not appeal. *Id.* at 578. Two months passed without the employer paying the award. The employer claimed it was attempting to negotiate with the claimant during this period, which it advanced as its good-faith basis to delay payment (a proposition the court rejected). Claimant asserts that the employer in *Roodhouse* had a legitimate objection to the award as the reviewing court reversed a portion of the decision; however, what the reviewing court was addressing was the award of penalties and fees rather than the underlying award. *Id.* at 584. Hence, unlike this case where respondent had an arguable good-faith basis to dispute the award, such a circumstance is not referenced in *Roodhouse*. Further differentiating *Roodhouse* is the fact that the employer did not appeal the Commission's underlying determination (the appeal concerned the subsequently awarded penalties and fees) where in this case, respondent appealed and had a good faith basis to do so. As such, *Roodhouse*

[1]Our review is somewhat complicated here, as respondent fails to provide pinpoint citations to the precise portions of *Roodhouse* and *McMahon* it believes supports is position.

provides little guidance here. *McMahan*, 183 Ill. 2d at 515-16, which claimant asserts is "similar" is actually inapposite in that the reason the employer claimed its conduct was not unreasonable or vexatious involved a dispute between the employer and its insurance carrier. No similar facts exist here.

¶ 90 In short, claimant has failed to persuade us that an opposite conclusion to the Commission's is clearly apparent.

¶ 91 IV. CONCLUSION

¶ 92 In light of the foregoing, the order of the circuit court of Sangamon County confirming the decision of the Commission is affirmed.

¶ 93 Affirmed