2022 IL App (5th) 220399WC-U

Workers' Compensation
Commission Division
Order Filed: December 20, 2022

NO. 5-22-0399WC

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

NATHANIEL L. McGAHA,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Wayne County.
	)	
v.	)	No. 2021 MR 17
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	Honorable
	)	Kimbara G. Harrell,
(Dollar General Corporation, Appellee).	)	Judge, Presiding.

JUSTICE BARBERIS delivered the judgment of the court.

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

ORDER

¶ 1 *Held*: We reverse the circuit court's decision in part, reverse the Commission's decision in part, and reinstate the arbitrator's decision in part, where the Commission's finding that claimant failed to prove causal connection was against the manifest weight of the evidence. We affirm the circuit court's decision in part and affirm the Commission's decision in part, where the Commission's denial of penalties and fees was neither against the manifest weight of the evidence nor an abuse of discretion.

¶ 2 On June 7, 2019, claimant, Nathaniel McGaha, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2018)), seeking benefits for injuries he allegedly sustained to both arms while working for employer, Dollar General Corporation, on December 31, 2018.[1] On October 23, 2019, following a coverage dispute, claimant filed a petition for immediate hearing pursuant to section 19(b) of the Act (*id.* § 19(b)), along with a petition for attorney fees pursuant to section 16 of the Act (*id.* § 16)) and penalties pursuant to sections 19(k) and 19(*l*) of the Act (*id.* § 19(k), (*l*)). On October 29, 2019, employer filed responses to claimant's petitions, along with a motion to dismiss his claim. On December 5, 2019, claimant filed a supplemental petition for penalties and attorney fees.

¶ 3 On January 24, 2020, following several continuances, the matter proceeded to a section 19(b) hearing. The arbitrator issued a written decision on March 23, 2020, finding that claimant sustained a work-related accident on December 31, 2018, and that his current conditions of ill-being were causally related to his work accident. Accordingly, the arbitrator awarded claimant medical expenses and prospective medical treatment pursuant to section 8(a) of the Act (*id.* § 8(a)), along with temporary total disability (TTD) benefits pursuant to section 8(b) of the Act (*id.* § 8(b)). The arbitrator denied claimant's request for attorney fees pursuant to section 16 of the Act (*id.* § 16), as well as his request for penalties pursuant to sections 19(k) and 19(*l*) of the Act (*id*. § 19(k), (*l*)).[2] Employer sought review of the arbitrator's decision before the Illinois

[1]Claimant alleged in the application for adjustment of claim that he sustained injuries to his body as a whole, including injuries to his bilateral upper extremities, left elbow, and left hand. Claimant subsequently filed an amended application for adjustment of claim, realleging injuries to his bilateral upper extremities but adding "aggravation of anxiety." Claimant also amended the location of the work accident.

[2]The arbitrator also denied claimant's request for benefits under section 19(m) of the Act (820 ILCS 305/19(m) (West 2018)); however, claimant does not challenge the arbitrator's denial of benefits under section 19(m) on appeal.

Workers' Compensation Commission (Commission). Claimant filed a cross-review of the arbitrator's decision on the issue of penalties and attorney fees.

¶ 4 On May 7, 2021, the Commission issued a decision reversing the arbitrator's decision, in part, and affirming the arbitrator's decision, in part. The Commission found that claimant proved he sustained an elbow fracture as a result of the December 31, 2018, work accident, but that he failed to prove his current conditions of carpal and cubital tunnel in both arms were causally connected to the December 31, 2018, work accident. Based on this finding, the Commission reversed the arbitrator's award of TTD benefits and prospective medical treatment. The Commission also modified the arbitrator's award of medical expenses. The Commission affirmed and adopted the arbitrator's decision in all other respects, including the arbitrator's denial of attorney fees and penalties. The Commission remanded the matter back to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 (1980). Claimant sought judicial review of the Commission's decision before the circuit court of Wayne County.

¶ 5 On May 25, 2022, the circuit court entered a written decision confirming the Commission's decision. Claimant now appeals.

¶ 6 I. Background

¶ 7 The following factual recitation was taken from the evidence adduced at the arbitration hearing held on January 24, 2020. We limit our recitation to those facts relevant to our disposition of this appeal.

¶ 8 Claimant testified that employer hired him as a store manager in October 2018, but he did not begin his job duties as store manager until he completed training and passed a background check. As store manager, claimant was required to work on days when the store received

deliveries of "totes" and "rolltainers" containing store merchandise. Claimant, along with other store employees, replenished and restocked the store with the merchandise contained in the totes and rolltainers. Claimant testified that his job duties required lifting and "moving non-stop."

¶ 9 Claimant sustained an injury on December 31, 2018, while replenishing and restocking the store. Claimant explained that his left arm slipped when he pulled on a rolltainer stuck in a store aisle, causing his left elbow to strike a different rolltainer behind him. He heard a pop, observed swelling in his left elbow, and experienced tingling in the fingers in his left hand. Employer directed him to seek immediate medical treatment at Fairfield Urgent Care.

¶ 10 Claimant's medical records showed that he presented to Fairfield Memorial Hospital for an urgent care visit on December 31, 2018.[3] Claimant complained of sharp left elbow pain, as well as "decreased mobility, numbness and tingling in the arms." Claimant reported that the "[p]inky side of [his] arm up past elbow alternate[d] from numb to shooting pain." Claimant advised that his symptoms began after he struck his left elbow on a container at work. X-rays of claimant's left elbow revealed a closed fracture. A nurse practitioner applied a posterior molding with a sling and recommended that claimant work light duty until he could be seen by an orthopedic specialist at Wabash General Hospital.

¶ 11 Claimant's medical records showed that he presented to Wabash General Hospital for an initial evaluation with Dr. Justin Miller and Dr. Miller's physician assistant, Kayla Wilcox,[4] on January 9, 2019. Claimant complained of throbbing and shooting pain in his left elbow following an injury at work on December 31, 2018. Claimant denied having any prior injuries to his left elbow. A physical examination of claimant's left elbow revealed swelling and tenderness to

[3]Claimant's medical records indicated that he was 39 years old at the time of his injury, and that he was left-hand dominant.

[4]Claimant repeatedly referred to Dr. Miller during his testimony at the hearing; however, his medical records indicated that he was actually seen by Wilcox at each visit. The medical records showed that Dr. Miller reviewed claimant's x-rays and approved Wilcox's plan of care.

palpitation over the olecranon. Claimant exhibited positive neurological symptoms, including paresthesia. Additional elbow x-rays confirmed that claimant suffered from a left elbow fracture. Wilcox advised claimant to wear a compression sleeve in lieu of a sling. Wilcox released claimant to work light duty with restrictions of no lifting over five pounds with the left hand, and no pushing, pulling, or lifting with the left arm. Wilcox directed claimant to follow up in four weeks.

¶ 12 Claimant testified that he returned to work following the injury, but employer failed to accommodate his work restrictions. Claimant continued to restock and replenish the store, which required him to lift, push, and pull with his left arm. He attempted to protect his left arm by using his right arm when possible. He notified employer that the work increased his symptoms, but employer made no changes. He continued working without accommodations.

¶ 13 Claimant testified that he fell into a frozen lake while rescuing his dog on February 2, 2019. He denied sustaining any additional injuries on February 2, 2019, aside from scraping his knee when he crawled out of the lake. He denied receiving emergency medical treatment for his left elbow relating to the February 2, 2019, incident. Instead, claimant returned to Dr. Miller's office for his next regularly scheduled appointment on February 6, 2019. Claimant continued working under light-duty restrictions without accommodations following the February 2, 2019, incident.

¶ 14 Claimant's medical records showed that he presented for a follow-up appointment with Wilcox on February 6, 2019. Claimant indicated that the onset of his injury occurred at work on December 31, 2018. Claimant reported "a new injury recently when falling through the ice trying to save his dog from drowning" and complained of "some pain" at the appointment. Claimant exhibited no neurological symptoms. An examination of claimant's left elbow revealed

tenderness to palpitation over the olecranon, as well as pain with full pronation and supination. Wilcox noted the following assessments: "[c]losed fracture of left olecranon process with routine healing, subsequent encounter"; "[t]riceps tendonitis"; and "[o]lecranon bursitis, left elbow." Wilcox recommended a course of occupational therapy and directed claimant to continue with the previously recommended work restrictions.

¶ 15 On cross-examination, claimant acknowledged that he reported the February 2, 2019, incident at the February 6, 2019, appointment, but denied reporting that he sustained a new injury to his left elbow during the incident. Claimant advised Dr. Miller that he scraped his knee during the incident and "that was it."

¶ 16 Claimant testified that he continued working for employer without accommodations. He continued to protect his left arm by using his right arm when possible. Two other store employees were under light-duty restrictions at the same time as claimant. In February 2019, employer scheduled claimant an additional 26 hours per week due to a staffing shortage.

¶ 17 Claimant's medical records showed that he presented for an initial occupational therapy evaluation at Fairfield Memorial Hospital on February 18, 2019. At that time, claimant's diagnoses included left upper extremity pain due to closed fracture of left olecranon process, triceps tendinitis, and olecranon bursitis. He complained of pain during muscle and grip strength testing, which he described as a sharp, shooting pain originating from the olecranon up towards his shoulder and down to the hand. He also complained of constant pain, which he described as sharp, shooting, radiating, aching, and tingling. He reported that work worsened his pain.

¶ 18 Claimant testified that his symptoms worsened after he began occupational therapy. Claimant attributed the worsening of his symptoms to working 28 or 29 consecutive days for employer. Claimant also missed several occupational therapy sessions due to the increase in his

work hours. According to claimant, Dr. Miller suspected claimant pinched a nerve and recommended that he discontinue occupational therapy.

¶ 19 Claimant's medical records showed that he presented for an appointment with Wilcox on March 6, 2019. Claimant complained of hypersensitivity in the left elbow and a sharp "electrical" pain in his left hand. Claimant reported that he experienced "a claw hand" when he felt the shooting pain. He described the "claw hand" as "a locking in his [left] hand, more prominent in the middle, ring, and little fingers." Claimant reported that his symptoms presented three to four weeks earlier, but he denied sustaining a new injury to his left elbow. Claimant exhibited positive neurological symptoms, including paresthesia. A physical examination of claimant's left elbow revealed positive signs of ulnar nerve compression and positive "Phalen's at elbow." Wilcox noted that employer approved occupational therapy for claimant. Wilcox noted no improvement in claimant's condition and recommended an EMG/nerve conduction test (EMG) of the left upper extremity to further diagnose his ulnar neuropathy. Wilcox also continued claimant's work restrictions.

¶ 20 On cross-examination, claimant testified that he first reported the "claw hand" symptom at the March 6, 2019, appointment. Claimant agreed that he did not experience the "claw hand" symptom until after the February 2, 2019, incident.

¶ 21 Claimant testified that employer did not approve the EMG until he hired an attorney three months later. When claimant initially called employer's adjuster, Alisha Wright, about the EMG, Wright asked if he needed the EMG due to his fall in the lake. According to claimant, Wright advised that the February 2, 2019, incident constituted an intervening accident.

¶ 22 Claimant's medical records documented the following correspondence between Dr. Miller's office and Adjuster Wright. Wright called Dr. Miller's office on March 19, 2019, and

"stated that she did not know what was going on with [claimant]." Wright stated that claimant stopped attending occupational therapy, and that she had not received a copy of the March 6, 2019, office note regarding claimant's need for a left upper extremity EMG. Wright "stated they would have to go over the notes to see if they [could] do anything, because he had a[n] intervening accident to his elbow." Dr. Miller's office called Wright on March 20, 2019, and advised that claimant could not attend occupational therapy until he underwent the EMG. Wright inquired whether claimant's need for the EMG related to the February 2, 2019, incident. Wright was unsure if she would approve the EMG.

¶ 23 Claimant submitted into evidence an email his attorney, Heidi Hoffee, sent Adjuster Wright on May 30, 2019. In the email, Attorney Hoffee requested Wright to either authorize the EMG or provide a reason for the denial. Claimant's medical records showed that Wright called Dr. Miller's office on May 31, 2019, and advised that she approved the EMG for diagnostic purposes only. Claimant filed an application for adjustment of claim against employer on June 7, 2019, alleging that he sustained injuries to his bilateral upper extremities, left elbow, and left hand while unloading rolltainers on December 31, 2018.

¶ 24 Claimant's medical records showed that he underwent the EMG at Wabash General Hospital on June 11, 2019, and that he presented for a follow-up appointment with Wilcox on June 13, 2019. At the follow-up appointment, claimant reported numbness in all fingers in his left hand and radiating pain when he made a fist with his left hand. In addition, claimant first reported experiencing the same symptoms in his right upper extremity. Claimant exhibited positive signs of paresthesia, muscle weakness, and numbness in his left upper extremity. Wilcox noted that the EMG of claimant's left elbow revealed "a compromise of the left ulnar nerve

across the region of the elbow" and a "moderate compromise of the [left] median nerve across the region of the carpal tunnel."[5]

¶ 25 Claimant testified that Dr. Miller diagnosed him with carpal tunnel syndrome and recommended surgery for his left elbow based on the EMG results. Claimant submitted into evidence an email Attorney Hoffee sent employer's attorney, Peter Sink, on July 11, 2019. In the email, Attorney Hoffee indicated that she attached various medical records and bills from Wabash General Hospital and Fairfield Memorial Hospital. Attorney Hoffee requested that employer pay the outstanding balance of claimant's medical bills, which totaled $634.89 as of March 2019. Attorney Hoffee also requested that employer authorize the surgery recommended by Dr. Miller. Attorney Hoffee advised Attorney Sink that employer's agent contacted claimant to discuss the case after he obtained legal representation and that employer's agent[6] contacted claimant's medical providers to discuss issues of causation and unreasonable delay of payment of benefits.

¶ 26 Claimant's medical records showed that he presented for a follow-up appointment with Wilcox on July 24, 2019. Claimant reported constant weakness and "dropping objects due to diminished sensation in the [left] wrist and hand." Claimant exhibited positive neurological symptoms, including paresthesia. Wilcox made no notation regarding claimant's right upper extremity during the visit. Wilcox recommended that claimant undergo a left ulnar nerve decompression with possible transposition and a left carpal tunnel release. Wilcox directed claimant to remain off work until he underwent the recommended surgery. Claimant's medical

[5]The medical record from the June 13, 2019, visit that has been included in the record is incomplete. The medical record does not include a diagnosis for claimant's left arm condition; however, the parties appear to agree that he was diagnosed with carpal and cubital tunnel syndromes.

[6]While the agent's name has been redacted from the emails, it appears Attorney Hoffee is referencing Adjuster Wright.

records from Dr. Miller's office indicated that a nurse faxed Adjuster Wright a request for surgery with the results of the EMG on July 25, 2019.

¶ 27 Claimant testified that Dr. Miller placed him off work pending surgery, but employer declined to approve the surgery. Claimant submitted into evidence an email Attorney Hoffee sent Attorney Sink on July 24, 2019. Attorney Hoffee indicated in the email that she attached claimant's medical records from Wabash General Hospital and again requested that employer authorize the recommended surgery. Attorney Hoffee also attached an "off[-]work slip" from Dr. Miller's office.

¶ 28 Claimant submitted into evidence an exchange of emails between Attorney Hoffee and Attorney Sink that occurred between August 2, 2019, and August 6, 2019. Attorney Hoffee emailed Attorney Sink on August 2, 2019, and August 5, 2019, requesting that employer commence TTD payments and send a wage statement. Attorney Sink responded on August 6, 2019, and stated that the medical records he received from Attorney Hoffee consisted of two pages from the July 24, 2019, office visit, which indicated claimant needed surgery. Attorney Sink requested the medical records dating back to the date of the accident. Attorney Sink then posed the following inquiries: "Where are the records showing his healed elbow fracture in February and then his Emergency trip to ER after re-injuring [h]is elbow after falling through ice to save his drowning dog? Why do I not find it surprising that you did not send these records?" Attorney Sink asserted that claimant's elbow fracture healed and that his symptoms relating to the carpal and cubital tunnel syndromes began after the February 2, 2019, incident. Attorney Sink further asserted that employer denied all benefits pending an independent medical examination (IME), "and due to the clear records of an [i]ntervening accident with the current symptomology he is complaining of not developing until after the intervening accident." Lastly,

Attorney Sink stated, "I've got more—but we will wait for [t]rial to share that information if this cannot get resolved short of [t]rial."

¶ 29 Attorney Hoffee responded on August 6, 2019, stating that she resent the July 11, 2019, email, which included claimant's medical records. Attorney Hoffee denied the existence of medical records showing that claimant's fracture healed or that he presented to the emergency room on February 2, 2019. Attorney Hoffee asserted that, instead of scheduling an IME in February 2019, employer's agent contacted claimant's medical provider and advised that claimant sustained a new injury. According to Attorney Hoffee, such conduct "fit the definition of unreasonable and vexatious and violate[d] the physician-patient privilege." Attorney Hoffee also stated, "Now, six months later, after authorizing further treatment and testing, your client states that [it] has no intention of any [*sic*] paying benefits due under the Act." According to Attorney Hoffee, "[d]iscussion of a future IME [was] not a reasonable basis to deny TTD, payment of medical bills and authorization of treatment today."

¶ 30 Attorney Sink responded on August 6, 2019, directing Attorney Hoffee to figure out claimant's wages herself and to prove up her own case. Attorney Sink indicated that he was unaware of an adjuster contacting claimant's treatment provider and suspected that claimant may have asked the adjuster to contact his treatment provider before he hired an attorney. Attorney Sink directed Attorney Hoffee to review the medical records to find where the x-rays showed a healed elbow fracture. Attorney Sink also directed Attorney Hoffee to discuss the intervening accident with claimant and reiterated that there was "much more where that came from, but we'd save that for [t]rial." Attorney Sink next stated that benefits were terminated because of claimant's intervening accident, "not because of a planned future IME as [Attorney Hoffee]

suggest[ed]." However, Attorney Sink noted that employer was "setting up an IME." Also, on August 6, 2019, Attorney Sink sent Attorney Hoffee the following email:

> "So you cannot answer to anything else I brought up—Correct? You sent me 2 pages of records which said NOTHING. They were essentially just off-work slips. I'm not playing a game—you accused my client of serious breaches and published it and actually committed libel in doing so. I have copied them on your email and asked them to forward it to their legal department."

¶ 31 On August 7, 2019, employer sent notice of an IME scheduled for September 5, 2019, pursuant to section 12 of the Act (820 ILCS 305/12 (West 2018)). Claimant's medical records from Dr. Miller's office indicated that claimant left a voicemail on August 19, 2019, stating that employer denied coverage for the surgery and scheduled an IME.

¶ 32 Claimant testified that he presented for an IME with Dr. Lawrence Li at employer's request on September 5, 2019. Claimant received two phone calls while in the waiting room at Dr. Li's office. He first received a phone call from Matrix, employer's agent, advising that employer scheduled him to return to work on September 14, 2019. Claimant next received a phone call from Dr. Miller's office advising that he was "no longer covered through insurance." Claimant's medical records confirmed that he received a phone call from a nurse at Dr. Miller's office regarding employer's denial of treatment on September 5, 2019.

¶ 33 Attorney Hoffee sent Attorney Sink an email on September 5, 2019, stating that employer directed claimant to return to full-duty work and advised claimant's treatment provider that it would not cover medical bills incurred after July 2019. Attorney Hoffee noted that employer failed to provide claimant with the basis for its decisions. According to Attorney Hoffee,

employer could not have relied on Dr. Li's medical opinion, given that the calls were placed prior to the examination.

¶ 34 Dr. Li prepared a report setting forth his findings and opinions regarding claimant's conditions following the examination on September 5, 2019. Dr. Li formulated his opinions based on his review of claimant's medical records and his physical examination of claimant. Dr. Li also reviewed videos provided by employer, which depicted claimant rescuing his dog on February 2, 2019, playing in a pool tournament on January 12, 2019, and operating a puppet with his left hand on an unknown date. According to Dr. Li, the video of claimant playing pool on January 12, 2019, depicted claimant shooting pool accurately with both hands and holding multiple balls in his left hand at the same time. Dr. Li additionally noted that the video of the February 2, 2019, incident showed claimant fall into the ice, use both arms to lift himself out of the water onto the ice, and then crawl to land.

¶ 35 In his report, Dr. Li noted that claimant stated he first experienced radiating pain, numbness, and tingling in his left arm in mid-January 2019; however, claimant's medical records indicated he first reported those symptoms on March 6, 2019. In addition, Dr. Li noted that the medical records indicated claimant's symptoms began three to four weeks prior to the March 6, 2019, appointment, which coincided with the February 2, 2019, incident. When Dr. Li asked claimant how the left arm injury affected his personal life, claimant stated he was unable to do anything with his left hand. Specifically, claimant reported that he was unable to throw, run a power washer, and play pool. Claimant elaborated that he previously played pool up to 25 hours per week prior to his injury but could only play for an hour due to pain following the work accident. Claimant also advised Dr. Li that he developed symptoms in his right upper extremity because he favored his right arm.

¶ 36 Based on his review of the EMG study and physical examination, Dr. Li agreed that claimant currently suffered from carpal and cubital tunnel syndromes in his left elbow. However, Dr. Li opined that claimant's current elbow conditions did not relate to his December 31, 2018, work injury. In support, Dr. Li noted that claimant did not report symptoms related to the conditions until March 2019, and that the onset of his symptoms coincided with the February 2, 2019, incident. Dr. Li opined that the left carpal and cubital tunnel syndromes were "most likely pre-existing," but made symptomatic by the February 2, 2019, incident. In Dr. Li's opinion, claimant did not have "anything wrong with his right elbow." At most, Dr. Li believed claimant suffered from pre-existing right carpel tunnel syndrome, which did not manifest until June 2019. Dr. Li was unable to attribute claimant's right upper extremity symptoms to either the December 31, 2018, work accident, or the February 2, 2019, incident, given that his symptoms did not begin until June 2019. Dr. Li opined that claimant's medical treatment up to the date of the IME was reasonable and necessary. Dr. Li recommended no additional treatment for the December 31, 2018, work injury, noting that claimant's elbow fracture completely resolved three months after the initial injury.

¶ 37 Contrary to Dr. Li's report, claimant testified that he did not advise Dr. Li that he was unable to use his left upper extremity. Claimant also testified that he committed to playing in the pool tournament prior to the December 31, 2018, work accident. According to claimant, he used a pool cue that weighed 20 ounces and was within his work restrictions. He also explained that he waited four to five hours between pool matches at the tournament. When claimant left the pool tournament, he went directly to work for a truck delivery. Claimant again denied sustaining any injuries to his upper extremities during the February 2, 2019, incident.

¶ 38 On cross-examination, claimant acknowledged that he advised Dr. Li he was unable to power wash. He claimed, however, that he informed Dr. Li that he continued to power wash, but the process took longer than it did before he sustained the injury. Employer played a video of claimant power washing his back deck on August 28, 2019. Claimant acknowledged that he was not wearing a compression sleeve in the video, and that he was able to hold the power washer over his head with his left arm.

¶ 39 Attorney Nicholas Navarro, a different attorney from the firm representing employer, emailed Attorney Hoffee on September 27, 2019, advising that he received Dr. Li's IME report the night before and reviewed the report that day. Attorney Navarro indicated that he attached the IME report to the email for Attorney Hoffee's review. Relying on the medical opinions of Dr. Li, Attorney Navarro stated that claimant's current condition of ill-being resulted from an intervening accident, not the December 31, 2018, work accident. Attorney Navarro further stated that the December 31, 2018, work accident resulted in a contusion which resolved three months after the accident date, placing claimant at maximum medical improvement in April 2019.

¶ 40 Claimant submitted into evidence a copy of the petition for penalties and fees he filed on October 23, 2019. Claimant alleged in the petition that employer unreasonably and vexatiously delayed the payment of benefits without good cause. The matter was set for hearing on November 5, 2019.

¶ 41 Claimant also submitted into evidence copies of the responses filed by employer on October 29, 2019. In response to claimant's section 19(b) petition, employer alleged that it possessed legal and factual defenses to claimant's allegations, which it intended to prove following receipt of a "properly noticed motion" for a section 19(b) hearing. In response to claimant's petition for attorney fees and penalties, employer alleged that claimant failed to

provide proper notice of the petition. Also, on October 29, 2019, employer filed a motion to dismiss claimant's claim, alleging that its attorney received no medical records and no information showing that claimant "was presently undergoing any medical treatment." Employer additionally alleged that its attorney made several attempts to settle the claim, and that claimant's attorney had taken no further action to bring resolution of the claim by way of trial or settlement.

¶ 42 Claimant submitted documentation showing that, on November 5, 2019, the arbitrator continued the hearing to December 16, 2019. The arbitrator directed the parties to agree on a date for an arbitration hearing.

¶ 43 Claimant submitted a copy of the supplemental petition for penalties and attorney fees he filed on December 5, 2019. Claimant alleged in the supplemental petition that employer received timely notice of the previously filed petitions on October 18, 2019. Claimant alleged that employer's responses and motion to dismiss contained misleading and incorrect allegations. Claimant further alleged that, as of November 25, 2019, employer had neither paid benefits nor provided available dates for its witnesses. Claimant asserted that employer continued to be late with its payment of benefits without adequate justification. Claimant further asserted that employer's frivolous filings demonstrated a continuation of unreasonable and vexatious delay of payment.

¶ 44 Claimant testified that he remained off work at Dr. Miller's recommendation from July 24, 2019, to January 7, 2020. According to claimant, no other doctor released him to work during that time period. Claimant received no income during that time period and applied for a medical card, which was approved in December 2019. He underwent the recommended left elbow surgery on December 23, 2019. Dr. Miller released claimant to light-duty work on January 7, 2020, and full-duty work with no restrictions on January 21, 2020. However, employer notified

claimant of the termination of his employment via email two weeks before the January 24, 2020, arbitration hearing.

¶ 45 Claimant's medical records showed that Dr. Miller performed a left wrist open carpal tunnel release and left elbow ulnar nerve decompression with anterior subcutaneous transposition on claimant on December 23, 2019. Claimant's medical records showed he presented for a post-operative visit with Wilcox on January 7, 2020. Wilcox noted that claimant reported improvement in his left elbow and wrist pain following surgery. Wilcox noted that claimant reported right elbow and wrist pain, and that claimant denied sustaining an additional injury to his right arm. Claimant stated that he began experiencing symptoms in his right arm "when he hurt his [left] arm and was using his [right] arm more at work." Wilcox released claimant to work light duty with restrictions of no lifting over 10 pounds with the left hand for two weeks. Wilcox also recommended that claimant obtain an EMG of his right upper extremity.

¶ 46 The arbitrator admitted into evidence at the hearing the January 13, 2020, email that employer sent claimant. Claimant testified that the email indicated that he voluntarily resigned from his management position with employer. Claimant attempted to call the phone number listed in the email, but no one answered. He left a voicemail stating that he did not resign from his job. Claimant testified that he also received correspondence from employer on December 20, 2019, denying his request for leave. According to claimant, employer denied his request for leave because employer's workers' compensation insurance carrier declined to authorize the surgery.

¶ 47 Claimant testified that he suffered from no health issues prior to the December 31, 2018, work accident. He denied experiencing ulnar neuropathy prior to the work accident. Claimant

testified that the surgery improved the symptoms in his left arm. He continued treating with Dr. Miller at the time of the hearing. Dr. Miller recommended an EMG of claimant's right arm.

¶ 48 Claimant submitted two medical bills into evidence at the hearing. A medical bill from Wabash General Hospital listed a balance of $19,961.98 for treatment claimant received from December 23, 2019, to January 2, 2020. A medical bill from Clinical Radiologists listed a balance of $131 for x-rays claimant underwent from December 31, 2018, to March 6, 2019.

¶ 49 On March 23, 2020, the arbitrator issued a written decision, finding that claimant sustained an accidental injury arising out of and in the course of his employment, and that his current conditions of ill-being were causally related to the work accident. Specifically, the arbitrator found that claimant proved "he sustained left wrist carpal tunnel syndrome, left cubital tunnel syndrome, bursitis and tendonitis, and right upper extremity neuropathies, including right carpal tunnel syndrome, as a result of the work accident on 12/31/2018 and its sequalae." In so finding, the arbitrator determined that claimant did not sustain an intervening accident on February 2, 2019, as alleged by employer. Accordingly, the arbitrator awarded claimant reasonable and necessary medical expenses totaling $20,092.98, as well as prospective medical treatment for his right arm. The arbitrator also awarded claimant TTD benefits for the time period from July 24, 2019, to January 21, 2020 (26 weeks). The arbitrator denied claimant's request for attorney fees pursuant to section 16 of the Act (*id*. § 16), along with his request for penalties pursuant to sections 19(k) and 19(*l*) of the Act (*id.* § 19(k), (*l*)). Employer sought review of the arbitrator's decision before the Commission. Claimant filed a cross-review of the arbitrator's decision on the issue of penalties and attorney fees.

¶ 50 On May 7, 2021, the Commission issued a written decision, finding that claimant sustained a left elbow fracture arising out of and in the course of his employment on December

31, 2018, but that his current conditions of carpal and cubital tunnel syndromes were not causally connected to the December 31, 2018, work accident. In so finding, the Commission agreed with the arbitrator's determination that claimant did not sustain an intervening accident on February 2, 2019. However, the Commission, similar to Dr. Li, noted that claimant's symptoms relating to the alleged carpal and cubital tunnel syndromes occurred three months after the accident, thus, a medical opinion was necessary to connect claimant's carpal and cubital tunnel syndromes to the accident. Accordingly, the Commission reversed the arbitrator's award of TTD benefits for time lost due to claimant's carpal and cubital tunnel syndromes. The Commission also modified the arbitrator's award of medical expenses, finding any treatment provided to claimant after March 6, 2019, unrelated to the work accident. The Commission affirmed the arbitrator's denial of penalties and fees, finding that employer relied on a medical opinion which justified its denial of benefits. Claimant sought judicial review of the Commission's decision before the circuit court of Wayne County.

¶ 51 On May 25, 2022, the circuit court confirmed the decision of the Commission. Claimant now appeals.

¶ 52 II. Analysis

¶ 53 Claimant raises two contentions on appeal. First, claimant contends that the Commission's finding that he failed to prove a causal connection between his work accident and current condition of ill-being was against the manifest weight of the evidence. Second, claimant contends that the Commission's finding that he failed to establish entitlement to attorney fees and penalties was against the manifest weight of the evidence. We address these contentions in turn.

¶ 54 1. Causal Connection

¶ 55 To obtain compensation under the Act, a claimant bears the burden of proving, by a preponderance of the evidence, all elements of his claim (*O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980)), including a causal relationship between his work accident and his condition of ill-being (*Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003)). "A claimant need prove only that some act or phase of his or her employment was a causative factor in his or her ensuing injury." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005) (citing *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786 (2005)). "An accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Id.* (citing *Sisbro*, 207 Ill. 2d at 205).

¶ 56 Whether a causal relationship exists between a claimant's employment and his injury presents a question of fact to be resolved by the Commission, and the Commission's resolution of such issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). While this court is reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when the clearly evident, plain, and undisputable weight of the evidence compels an opposite conclusion. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993).

¶ 57 Here, the Commission's finding that claimant failed to prove his left carpal and cubital tunnel syndromes were not causally related to the December 31, 2018, work accident was against the manifest weight of the evidence. Despite discrediting Dr. Li's opinion that claimant sustained an intervening accident on February 2, 2019, the Commission based its decision on Dr. Li's medical opinion that claimant's conditions were not causally related to the December 31, 2018, work accident because his symptoms did not develop until three months after the accident. However, claimant's medical records showed that claimant consistently reported neurological symptoms, including paresthesia, numbness, and tingling, when he received treatment following the accident. Claimant denied having any prior injuries to his left arm and reported no prior injuries to his treatment providers. Claimant testified that his symptoms worsened after he worked for employer without accommodation for 28 or 29 consecutive days. The Commission did not find claimant's testimony lacked credibility. Instead, the Commission found that claimant was required to present a medical opinion to causally relate his current conditions to the December 31, 2018, work accident. In our view, claimant was not required to present a medical opinion showing causation where he exhibited symptoms of carpal and cubital tunnel syndromes in his left arm consistently following the work accident and had no prior history of injury to his left arm. Thus, we conclude that the Commission's finding the claimant failed to prove causal connection was against the manifest weight of the evidence.

¶ 58 In addition, the Commission's finding that claimant failed to prove his right arm condition was causally related to the December 31, 2018, work accident was against the manifest weight of the evidence. Claimant testified that he favored his right arm after sustaining the injury to his left arm. Claimant testified that he developed symptoms in his right arm when he began using his right arm to compensate for his left arm. The Commission did not find that claimant's

testimony lacked credibility. The medical records also supported claimant's testimony regarding the timeline of his right-sided symptoms. Thus, we conclude that the Commission's finding that claimant failed to prove a causal connection between his right arm condition and work accident was against the manifest weight of the evidence.

¶ 59 2. Attorney Fees and Penalties

¶ 60 Section 19(*l*) of the Act provides for penalties when either the employer or its insurer "without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits." 820 ILCS 305/19(*l*) (West 2020). Section 19(*l*) further provides that "[a] delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." *Id.* Section 19(*l*) penalties are in the nature of a late fee. *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, ¶ 19. Section 19(*l*) penalties are mandatory when payment is late and the employer "cannot show an adequate justification for the delay." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515 (1998). "[T]he employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified." *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 19. "The Commission's evaluation of the reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence." *Id.*

¶ 61 "Generally, an employer's reasonable and good-faith challenge to liability does not warrant the imposition of penalties" (*USF Holland, Inc. v. Industrial Comm'n*, 357 Ill. App. 3d 798, 805 (2005)), and an employer is entitled to rely in good faith on an opinion of its examining physician to dispute liability (*Continental Distributing Co. v. Industrial Comm'n*, 98 Ill. 2d 407, 415-16 (1983)).

¶ 62 Here, the Commission affirmed the arbitrator's decision that claimant failed to prove entitlement to penalties, finding employer's assertion of an intervening accident unpersuasive but not finding its challenge to liability unreasonable. The Commission found that employer relied on Dr. Li's medical opinion. After carefully considering the evidence, we cannot say that an opposite conclusion is clearly apparent. See *Schroeder v. Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC, ¶ 32 (this court may affirm the decision of the Commission on any basis appearing in the record regardless of the Commission's precise reasoning).

¶ 63 The evidence showed that employer authorized medical treatment for claimant without issue up to March 6, 2019, when Wilcox recommended the EMG to properly diagnose claimant's ulnar neuropathy in the left arm. Claimant testified, and the medical records confirmed, that employer initially refused to authorize the EMG. It appears employer declined to authorize further treatment due to the change in claimant's condition and belief that claimant sustained a new injury when he rescued his dog on February 2, 2019. Employer did, however, authorize the EMG on May 31, 2019. Claimant underwent the EMG on June 11, 2019, which revealed carpal and cubital tunnel syndromes in claimant's left arm. He next presented for a follow-up appointment with Wilcox on June 13, 2019, at which time Wilcox and Dr. Miller recommended surgery. Wilcox placed claimant off work pending surgery on July 24, 2019. Attorney Hoffee sent Attorney Sink an email on July 11, 2019, requesting that employer pay the outstanding balance of claimant's medical bills, which totaled $634.89 as of March 2019. Attorney Hoffee also requested that employer authorize the left elbow decompression and transposition surgery recommended by Dr. Miller. Employer declined to pay benefits and authorize the surgery based

on the change in claimant's condition following the February 2, 2019, incident. Employer subsequently scheduled an IME for September 5, 2019.

¶ 64 Although employer denied coverage for the surgery prior to obtaining Dr. Li's medical opinion on the issue of causation, the Commission could have concluded that employer's denial was reasonable under the circumstances. Claimant's condition changed from a left elbow fracture to carpal and cubital tunnel syndromes in both arms. While the medical records appeared to indicate that claimant's symptoms began after his December 31, 2018, work accident, the medical records did not definitively indicate that his carpal and cubital tunnel syndromes related to the December 31, 2018, work accident. Claimant did not provide employer with a medical opinion from either Dr. Miller or Wilcox relating his current conditions to his work accident or work activities. Employer instead scheduled an IME to obtain a medical opinion on the issue. Under these circumstances, we cannot say that the Commission's denial of section 19(*l*) penalties was against the manifest weight of the evidence.

¶ 65 Lastly, we note that, unlike penalties imposed pursuant to section 19(*l*), penalties and attorney fees imposed pursuant to sections 19(k) and 16 require a "higher standard" and "address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose." *Jacobo,* 2011 IL App (3d) 100807WC, ¶ 43. Because we determined that claimant failed to show employer's conduct warranted imposition of section 19(*l*) penalties, he cannot establish that employer's actions met the higher standard required for sections 19(k) and 16 penalties and fees. Thus, the Commission did not err by denying claimant's request for sections 19(k) and 16 penalties and fees.

¶ 66 III. Conclusion

¶ 67 For the reasons stated, we reverse the portion of the decision of the circuit court confirming the decision of the Commission regarding causal connection, TTD benefits, medical expenses, and prospective medical treatment. We affirm the portion of the decision of the circuit court confirming the decision of the Commission regarding penalties and fees. We reverse the decision of the Commission on the issues of causal connection, TTD benefits, medical expenses, and prospective medical treatment, and we reinstate the portion of the decision of the arbitrator on those issues. We affirm the decision of the Commission regarding penalties and fees.

¶ 68 Circuit court's decision affirmed in part and reversed in part.
Commission's decision affirmed in part, reversed in part; arbitrator's decision reinstated in part.