2022 IL App (2d) 210709WC-U
No. 2-21-0709WC
Order filed December 16, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

Workers' Compensation Division

LAWRENCE DICKMAN,	)	Appeal from the Circuit Court
	)	of Kane County.
Appellant,	)	
	)	
v.	)	No. 21-MR-463
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, *et al.*	)	
	)	Honorable
(City of Elgin and Elgin Police Department,	)	Kevin Busch,
Appellees).	)	Judge, Presiding

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held* The employer's prior adoption of a doctor's medical opinion that the claimant was permanently disabled from working as a police officer, which opinion had been rendered for purposes of a fitness-for-duty evaluation, was not a judicial admission that barred the employer from contesting the issue of disability during subsequent workers' compensation proceeding, and the employer did not otherwise waive the issue; (2) the Commission's finding that the claimant failed to prove that his work accident was causally related to his current condition of ill-being was not against the manifest weight of the evidence; (3) the Commission's denial of the claimant's claims for additional TTD benefits, maintenance benefits and additional medical expenses was not against the manifest weight of the evidence; and (4) the

Commission's award of PPD benefits was not against the manifest weight of the evidence.

¶ 2 Lawrence Dickman (the claimant) filed a complaint for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)) against the respondents, the City of Elgin, and the Elgin Police Department (employer), for injuries to his left knee, left leg, and lumbar spine that he allegedly sustained on January 12, 2014, while working for the employer. After conducting a hearing, an arbitrator found that the claimant had sustained a compensable work-related accident that caused a temporary aggravation of a preexisting degenerative condition in the claimant's lumber spine. However, the arbitrator found that the claimant had failed to prove that the work accident was causally related to the claimant's current condition of ill-being. The arbitrator awarded the claimant temporary total disability (TTD) benefits for periods that he was unable to work due to the injury through the date the employer called him back to work full duty based upon a doctor's opinion that the claimant was able to return to work without restrictions. The arbitrator also awarded the claimant medical expenses limited to the cost of a functional capacity examination (FCE) performed on November 20, 2014. The arbitrator further awarded the claimant permanent partial disability (PPD) benefits under section 8(d)(2) of the Act (820 ILCS 305/1 *et seq.* (West 2014)) in the amount of 5% loss of use of his left leg, 5% for loss of use of his right leg, and 10% loss of man as a whole. The arbitrator denied the claimant's claims for maintenance benefits and for additional medical expenses, TTD benefits, and PPD benefits.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission unanimously affirmed and adopted the arbitrator's decision.

¶ 4 The claimant sought judicial review of the Commission's decision in the circuit court of Kane County. The circuit court affirmed the Commission's decision.

¶ 5 This appeal followed.

¶ 6 FACTS

¶ 7 The claimant worked for the employer as a patrol police officer. On January 12, 2014, the claimant was attempting to secure a crime scene by raising the crime scene tape when he slipped on ice and fell onto the street. He legs split and he extended his left leg, bent his right knee, and broke his fall with his hands. He immediately felt pain in his left knee. He was taken by ambulance to a hospital emergency room (ER), where he received treatment. He complained of left knee pain and denied any other injury or concern. The ER doctor diagnosed a left knee sprain and recommended that he remain off work until his next physician visit.

¶ 8 When the claimant woke up the next day, he felt low back pain. He went to Provena St. Joseph's Occupational Health Services (Provena) for additional treatment. He complained of pain in his low back and left knee. The Provena records indicate that the claimant reported some mild symptoms in his left low back and stated that he had a prior history of low back symptoms and was treated by a chiropractor in the past. Upon examination, the claimant had no significant tenderness in the lumbar spine, lumbar paraspinal muscles, or sacroiliac joints. He had full range of motion for flexion and extension. His lateral bending was intact on the right and limited on the left. The assessment was a mild strain to the left low back with restricted work.

¶ 9 The claimant subsequently treated with Dr. Craig Popp for his low back condition. Dr. Popp ordered a lumbar MRI, which was performed on April 15, 2014. The MRI revealed a synovial cyst in the claimant's low back at L3-4. When the claimant returned to Dr. Popp on August 29, 2014, Dr. Popp stated that the claimant's arthritic low back condition was aggravated and accelerated by the claimant's January 12, 2014, work accident. Dr. Popp opined that the claimant was limited to light duty, and he would not meet the requirements of police work.

¶ 10 When the claimant returned to Dr. Popp on October 13, 2014, Dr. Popp recommended a Functional Capacity Evaluation (FCE) to determine the claimant's physical capabilities. At that time, Dr. Popp opined that the cyst at L3-L4 shown on the lumbar MRI of October 9, 2014, appeared to be about the same as before.

¶ 11 On December 4, 2014, Dr. Popp opined that the claimant had sustained a significant injury during the work accident which aggravated his preexisting, degenerative low back condition. He found the claimant to be at MMI for his lumbar condition and he stated that the light-duty restrictions he had imposed would be permanent.

¶ 12 On October 15, 2014, the claimant was examined by Dr. Jay Levin, the employer's independent medical examiner (IME). (At the employer's request, the claimant was examined by two doctors with the surname Levin. Dr. Jay Levin, and his brother, Dr. Mark Levin. To avoid confusion, we will refer to each doctor using his first name as well as his surname where appropriate.) Dr. Jay Levin examined the claimant and reviewed his medical records, including the relevant diagnostic images. He diagnosed multi-level degenerative arthritis of the lumbar spine with a lumbar myofascial strain. Dr. Levin opined that the April 15, 2014, lumbar MRI revealed L3-L4 level facet arthritis with degenerative disc changes and a synovial cyst of the left facet with lateral recess stenosis from the cyst. The synovial cyst at L3-L4 was a fluid filled cavity that was adjacent to a joint as a reaction to arthritic changes of the joint and subsequent development of synovial fluid.

¶ 13 Dr. Levin noted that the claimant's right hip complaints were resolved but the claimant continued to report lumbar symptoms. However, the claimant exhibited no local tenderness in the lumbar spine upon examination. Instead, the claimant described transverse low back discomfort consistent with soft tissue myofascial complaints. Dr. Jay Levin recommended an FCE to

determine the claimant's work capacities. Dr. Levin opined that the claimant did not require any additional treatment for his lower lumbar myofascial strain and was at MMI.

¶ 14 On November 7, 2014, the employer advised the claimant's attorney that, based upon Dr. Jay Levin's IME report, it would not authorize any additional treatment and it would terminate the claimant's medical and TTD benefits as of November 7, 2014.

¶ 15 On November 20, 2014, the claimant underwent an FCE at ATI Physical Therapy. The physical therapist who performed the FCE opined that claimant's job as a police officer was at the very heavy physical demand level. The FCE testing demonstrated that claimant could only perform medium physical demand level work. Accordingly, the FCE established that the claimant could not return to work as a full-time police officer. The employer did not (and does not) argue that the FCE was invalid or unreliable.

¶ 16 On November 25, 2014, at the employer's request, and pursuant to the parties' collective bargaining agreement (CBA), the employer required the claimant to undergo a fitness for duty evaluation to be performed by Dr. Richard Rodarte. Dr. Rodarte testified about his findings and conclusions during his evidence deposition. Dr. Rodarte testified that, after examining the claimant and reviewing the claimant's medical records, he concluded that the claimant was unable to perform the essential functions of a police officer due to his back condition and could not return to full-duty work. He noted that claimant's "main limiting activity was referrable to low back pain, a symptom which was pre-existing prior to his work injury of 1/12/14." His diagnosis was degenerative disc disease of the lumbar spine. Dr. Rodarte stated that the claimant should not be placed in situations where restraint or altercation or emergency evacuation was possible. He recommended various activity restrictions, including no repetitive or sustained bending and no sitting for more than one hour straight, not to exceed four hours per day. Dr. Rodarte noted that

he "strongly used the results of the [FCE]" as a basis for his opinion that the claimant could not work fully duty as a police officer. However, Dr. Rodarte gave no opinion as to the cause of the claimant's current disability.

¶ 17 On January 26, 2015, the employer wrote to the claimant that Dr. Rodarte "has determined that you have permanent physical restrictions that do not permit you to return as a full duty police officer." The employer's letter further stated that, pursuant to the CBA, the claimant would be placed on unpaid leave for a period of six months and would be terminated from employment thereafter. The claimant signed his application for a duty related disability pension with the Elgin Police Pension Fund alleging that he was disabled due to his lumbar condition which was related to his work-related accident of January 12, 2014.

¶ 18 On April 27, 2015, Dr. Mark Levin performed an independent medical examination (IME) of the claimant at the request of the attorney for the Elgin Police Pension Board. After examining the claimant and reviewing the claimant's medical and chiropractic records, Dr. Levin issued an IME report containing his preliminary opinions. He opined that the claimant had chronic lumbar scoliosis with degenerative changes of the lumbar spine. According to Dr. Mark Levin, the records clearly demonstrated that the scoliosis and degenerative changes predated any injury that the claimant sustained in the work accident. Dr. Levin's opinions were only preliminary because he requested to see the claimant's MRI studies and bone scan, and he recommended that the claimant undergo another FCE.

¶ 19 On May 11, 2015, Dr. Theodore Suchy performed an IME of the claimant and reviewed some of the claimant's medical records at the request of the attorney for the Elgin Police Pension Board. Dr. Suchy opined that, during the January 12, 2014, work accident, the claimant sustained strains of his left knee and right hip which had resolved and did not cause any impairment affecting

his work as a police officer. Dr. Suchy further opined that the claimant had suffered an exacerbation of a preexisting degenerative disc condition and facet arthropathy of the lumbar spine. This persisted to the point where it caused the claimant to become permanently disabled from police service. On cross examination, Dr. Suchy admitted that the claimant did not inform him of the low back pain he experienced in July and August of 2013, which did not improve. The claimant also did not inform Dr. Suchy of the chiropractic care that he received from July 18, 2013, through August 23, 2013. Dr. Suchy did not review the 2013 chiropractic records.

¶ 20 On June 25, 2015, Dr. Mark Levin received and reviewed Dr. Jay Levin's October 15, 2014, IME report, the November 20, 2014, FCE, and Dr. Rodarte's November 25, 2014, fitness for duty evaluation. Dr. Mark Levin opined that, although the claimant had continuing complaints of pain, he had the capacity to return to work full duty as a police officer.

¶ 21 On August 17, 2015, the claimant's attorney advised the employer's attorney that the claimant was willing to attempt to return to full duty and to give it a "college try." However, the claimant did not return to work.

¶ 22 On January 5, 2016, at the claimant's request Dr. Jeffrey Coe performed an IME of the claimant. Dr. Coe opined that the claimant had suffered injuries to his left knee, both hips, buttocks (gluteal musculature), and lower back, as a result of the January 12, 2014, work injury, which also caused the need for permanent work restrictions that would render the claimant unable to return to work as a patrol officer. Dr. Coe admitted that he did not review the claimant's 2013 chiropractic records. He acknowledged that synovial cysts develop as a result of the degeneration in the facet joint in the lumbar spine. He opined that the claimant's synovial cyst worsened or developed during the period between the claimant's October 9, 2014, lumbar spine MRI and his 2016 MRI. Dr. Coe admitted that, if the claimant's job after he left the employer required him to do a lot of

driving and sitting, that might contribute to the development of the synovial cyst. He opined that a comparison of the MRI films revealed that the claimant's synovial cyst had decreased in size in the period between the April 21, 2014, MRI and the October 9, 2014, MRI.

¶ 23 On April 27, 2016, Dr. Jay Levin performed another IME of the claimant. The claimant told Dr. Levin that he was currently working for Montfort Electronics (Montfort). Dr. Levin opined that the claimant had no physical restrictions from the accident and could return to full duty as a police officer. Dr. Levin testified that an FCE is helpful to determine work capabilities, in concert with other clinical data. He stated that he never saw the FCE in this case and it was unlikely that he ever reviewed Dr. Rodarte's report.

¶ 24 On that same day, the claimant underwent another MRI of his lumbar spine. Dr. Popp reviewed the MRI results. On April 29, 2016, Dr. Popp told the claimant that the MRI showed a progression of the synovial cyst at the L3-L4 level that appeared to be causing pressure upon the thecal sac at L3-L4. There did not appear to be a progression of the bulge and annular tear at the L4- L5 level. Dr. Popp recommended a surgical decompression at L3-L4, a lumbar decompression at L4-L5, and a posterior lumbar fusion at L3-L4 and L4-L5.

¶ 25 On May 12, 2016, Dr. Aruna Ganju examined the claimant regarding his low back and left lower leg pain and weakness. After reviewing the April 27, 2016, MRI of the lumbar spine, Dr. Ganju's impression was that claimant had lumbar stenosis secondary to a synovial cyst at L3-L4. She identified several surgical treatment options and ordered an EMG to determine the appropriate surgery.

¶ 26 On May 16, 2016, the claimant underwent an EMG of his left leg and lumbosacral paraspinal muscles. The results were normal. Dr. Ganju subsequently reviewed the EMG and

confirmed that it was within normal limits. She recommended that the claimant undergo a minimally invasive decompression at L3-L4.

¶ 27 On May 20, 2016, the employer's attorney contacted the claimant's attorney requesting that the claimant return to work full duty.

¶ 28 On June 23, 2016, Dr. Ganju performed a left hemilaminectomy at L3-L4, with aspiration and decompression of the synovial cyst through a minimally invasive approach. Her final diagnosis was "L3-L4 extradural cyst, excision: synovial cyst with focal areas of calcification."

¶ 29 The claimant returned to Dr. Ganju on August 4, 2016, for a post-surgical follow-up examination. The claimant was doing well. He denied any significant complaints of leg pain. His surgical site was well healed. Dr. Ganju was quite pleased with his progress and issued a prescription for physical therapy directed towards the lumbar spine. She instructed him to gradually resume his activities as tolerated. He would follow-up on an as-needed basis. The claimant never returned to Dr. Ganju for further treatment.

¶ 30 On December 28, 2016, Dr. Ganju issued work status letter imposing various work restrictions. On cross examination, the claimant testified that Dr. Ganju did not examine him on December 28, 2016. The claimant called Dr. Ganju, told her his symptoms, and asked her to issue work restrictions. She "was not involved in the workers' compensation case at all."

¶ 31 On October 17, 2016, at the employer's request, Dr. Jay Levin performed another IME and an AMA impairment rating examination. Dr. Levin also reviewed the claimant's updated medical records and all of the diagnostic images to date. During his February 10, 2017, evidence deposition, Dr. Levin concluded that the 2016 MRI showed the L3-L4 synovial cyst extended into the canal at the L3-L4 level, which was a serial change from the previous MRIs taken in 2014. He opined that the progression of the cyst was unrelated to the work accident. Although Dr. Levin

acknowledged that surgery was appropriate to address the claimant's back condition, he concluded that surgery was not necessitated by the accident. Dr. Levin testified that, based on his examination of the claimant on October 17, 2016, and the record of the claimant's final visit to Dr. Ganju on August 4, 2016, the claimant should have been able to return to work full duty six months after his surgery. Dr. Levin's updated AMA impairment rating for the claimant's lumbar spine was 1% of a whole person.

¶ 32 Dr. Levin testified that he disagreed with Dr. Ganju's December 28, 2016, letter imposing permanent restrictions. He also disagreed with the work restrictions recommended by Drs. Rodarte and Suchy. Dr. Levin did not review any IME reports of his brother, Dr. Mark Levin, because he did not want to be accused of a conflict for reviewing a family member's opinions regarding the same patient.

¶ 33 On December 22, 2016, the employer notified the claimant that his employment was terminated immediately because he had abandoned his employment and failed to return to work full duty.

¶ 34 During the arbitration hearing, the claimant testified that he had been treated by a chiropractor between July18, 2013, and August 23, 2013. Some of those treatments were for pain in the claimant's low back. The claimant stated that, from August 24, 2013, until the date of the accident on January 12, 2014, he experienced minor, dull aching in his low back only occasionally. The claimant testified that, following the work accident, the pain in his low back increased dramatically and it became daily or constant as opposed to intermittent. Prior to the work accident, his back pain did not inhibit his activities or his work performance in any way. After the work accident, the pain radiated from the center of his low back to both buttocks through the left side to

the hip. The claimant stated that this was a completely new pain that he had not experienced before the accident.

¶ 35 The claimant testified that his left knee and right hip issues had resolved prior to April 2016.

¶ 36 The claimant further testified that, after the employer's doctors opined that he could return to work full duty, the claimant offered to attempt to return to full duty and give it a "college try" even though he believed he could not perform full duty because he was broke and without any income. He did not return to work because he did not receive a response from the employer. He worked at Montfort 40 hours per week from November 15, 2015, to April 30, 2018, as a sales representative. He did a lot of driving on the job. His low back pain got worse in the first two months at Montfort and began radiating to his foot.

¶ 37 The claimant acknowledged that the employer wrote him on May 20, 2016, requesting that he return to work full duty as a police officer. However, the claimant testified that under the CBA he would need another fitness for duty examination in order to return to full duty, which the respondent never scheduled.

¶ 38 On cross-examination, the claimant acknowledged that he did not undergo an FCE after his June 23, 2016, low back surgery. Dr. Popp did not examine him after he started treating with Dr. Ganju on May 12, 2016. The claimant did not undergo any treatment since he was seen by Dr. Ganju on August 4, 2016.

¶ 39 At the time of arbitration, the claimant was employed full time at Abbot Protection (Abbot), which is in the business of selling and installing security camera systems. He believed he could not safely perform the full duties of a patrol officer for the employer because of his back pain, restricted range of motion, and inability to sit for an entire shift and chase and apprehend subjects.

His constant back pain was worse since doing security system installations. His low back pain shooting to his foot got worse after he started working for Montfort, sitting a day at a time, or when he was in a car doing a lot of driving. While working for Abbot, he carried tools, toolboxes, ladders, and boxes of materials, cameras to install camera systems, climbs ladders, and used a lift. When climbing ladders, he sometimes did bending and twisting.

¶ 40 On cross-examination, the claimant testified that, from July 18, 2013, through August 23, 2013, he treated with Dr. Nathan W. McGowan at AcuCare Total Health chiropractic for back pain. The claimant informed Dr. McGowan that his lower back pain bothered him off and on for years, and the pain went into his gluteal muscles. He did a lot of sitting in a squad car as a police officer, and it was getting harder to get into and out of his car because of low back pain. His low back symptoms came up gradually. The symptoms had not changed since they started. The intensity of his pain complaint was moderate; meaning it inhibited activity. He reported the pain occurred frequently, *i.e.*, 50% to 80% of the time. The pain was at a level of 4/10. It was dull, aching, and burning on the sides. It radiated to both buttocks. The pain was aggravated by lifting and changing positions.

¶ 41 The claimant's pain did not improve for any extended period during his treatment with Dr. McGowan. Dr. McGowan's assessment was that the claimant responded favorably to treatment but progressed more slowly than expected. On August 23, 2013, the claimant reported that there had been no improvement in his symptoms since his last visit. His pain was still at a level of 4 out of 10. He still had tenderness to palpation over the lumbar area. The claimant testified that he did not continue treatment with Dr. McGowan after August 23, 2013, because the chiropractic treatments were not helping or improving his low back condition, but were actually aggravating it.

¶ 42 The arbitrator found that the claimant had failed to prove that his present back condition, for which he underwent surgery on June 23, 2016, was causally related to the work accident. The arbitrator noted that the claimant "had complaints in the lumbar region five months prior to the claimed accident, for which he underwent chiropractic treatment, that brought him no relief." The arbitrator found it significant that the claimant had failed to report these facts to Drs. Coe and Suchy, both of whom found a causal connection between the work accident and the claimant's back condition at various time periods thereafter. The arbitrator noted that Dr. Coe had relied upon the claimant's false representation that his back had been pain free before the work accident. Because the arbitrator found that Dr. Coe's opinion was based upon misinformation, and thereby flawed, it gave "little to no value" to Dr. Coe's opinion. The arbitrator further noted that, although Dr. Rodarte found that the claimant was not fit for duty, he was not asked to give a causation opinion and did not do so.

¶ 43 The arbitrator relied upon the opinions of Dr. Jay Levin and Dr. Mark Levin, neither of whom found the claimant to be disabled. Dr. Jay Levin opined that the claimant could return to full-duty work as a police officer.

¶ 44 The arbitrator also relied upon the evidence as to the progression of the claimant's synovial cyst. The arbitrator stated that the October 9, 2014, MRI "showed no evidence of the synovial cyst at the L3-L4 level." It further noted that, after the claimant began employment as a sales representative in November 2015, that, by his own admission, required him to spend a lot of time in his vehicle, he returned to Dr. Popp with radiating pain down his left leg and into his foot on April 26, 2016. The arbitrator noted that the MRI that was performed three days later "showed a progression of the L3 -L4 synovial cyst that had dissipated according to the October 9, 2014 MRI."

¶ 45 The arbitrator further stated that the claimant had testified that "Dr. Ganju's treatment was not part of the workers' compensation case."

¶ 46 Because the arbitrator found that the January 12, 2014, caused a temporary aggravation of a preexisting back condition that rendered the claimant temporarily unable to work, the arbitrator awarded the claimant TTD benefits for the periods that he was off work due to the temporary work-related injury through November 7, 2014 (the date the employer called him back to full duty work pursuant to Dr. Jay Levin's opinion). As for medical costs, the arbitrator awarded only the cost of the November 20, 2014, FCE, which Dr. Jay Levin had "agreed was in order." The arbitrator denied the claimant's claim for temporary partial disability (TPD) and maintenance benefits.

¶ 47 The arbitrator also determined the nature and extent of the claimant's disability. After considering and weighing each of the factors required by section § 8.lb of the Act (820 ILCS 305/8.1b (West 2014), and the record as a whole, the arbitrator found that the claimant sustained permanent partial disability to the extent of 5% loss of use of the left leg pursuant to section 8(e)(12) of the Act (820 ILCS 305/8(e)(12) (West 2014), 5% loss of use of the right leg pursuant to section 8(e)12, and 10% loss of use of man as a whole under section 8(d)(2)of the Act (820 ILCS 8(d)(2) (West 2014)).

¶ 48 The claimant appealed the arbitrator's decision to the Commission. The Commission unanimously affirmed and adopted the arbitrator's decision.

¶ 49 The claimant sought judicial review of the Commission's decision in the circuit court of Kane County, which affirmed the Commission's decision. The circuit court rejected the claimant's contention that the employer had waived the argument that the claimant was not permanently disabled by adopting and relying upon Dr. Rodarte's opinion in his fitness for duty evaluation that the claimant was permanently disabled from working as a policeman. The circuit court held that

the claimant's waiver argument failed "because no such concept exists in the [Act], and the issue remains whether or not the [claimant] has sufficiently proven his claims." The circuit court further ruled that the Commission's decision to credit the opinions of the employer's independent medical examiners over those of the claimant's treating physician and the claimant's other experts was not against the manifest weight of the evidence. The court concluded that the opinions of the employer's doctors had foundation in the evidence, and it was therefore not for the court to substitute its opinion of the evidence for that of the arbitrator.

¶ 50 This appeal followed.

¶ 51 ANALYSIS

¶ 52 1. Judicial Admission

¶ 53 The claimant argues that the employer's adoption of Dr. Rodarte's opinion that the claimant was permanently disabled from working as a police officer was a judicial admission that bars the employer from contesting the claimant's permanent disability.

¶ 54 A judicial admission is a statement made during a judicial proceeding or contained in a document filed with the court. *Elliott v. Industrial Comm'n*, 303 Ill. App. 3d 185, 187 (1999). Unlike an evidentiary admission, a judicial admission is binding upon a party and may not be contradicted. *International Harvester Co. v. Industrial Comm'n*, 169 Ill. App. 3d 809, 814 (1988). Judicial admissions are defined as "deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998); *Elliott*, 303 Ill. App. 3d at 187. "In order to constitute a judicial admission, a statement must not be a matter of opinion, estimate, appearance, inference, or uncertain summary." *Smith v. Pavlovich*, 394 Ill. App. 3d 458, 468 (2009). Whether witness testimony or some other statement

submitted to a court during a legal proceeding constitutes a judicial admission is a question of law that we review *de novo*. *Elliott*, 303 Ill. App. 3d at 187.

¶ 55 The claimant argues that the employer's January 26, 2015, letter to him was a judicial admission barring the employer from contesting the claimant's disability in the Commission proceedings. That letter, which was signed by Gail Cohen, the employer's Human Resources Director, states in relevant part:

> "Dr. Richard Rodarte, who examined you on November 25, 2014, and who received and reviewed the results of your functional capacity assessment performed by ATI on November 20, 2014, has determined that you have permanent physical restrictions that do not permit your return to full duty as a police officer."

The letter further states that, pursuant to the CBA, the employer would place the claimant on unpaid leave for six months, after which the claimant would be terminated.

¶ 56 As an initial matter, the letter's statement about the claimant's disability could not have been a judicial admission by Ms. Cohen because the extent of the claimant's disability was not a matter within her personal knowledge. There is no evidence that Ms. Cohen is a medical doctor that examined the claimant or otherwise is qualified to testify regarding his medical condition. The record discloses only that she is the employer's Human Resources Director. Ms. Cohen cannot judicially admit facts beyond the scope of her knowledge or expertise. *International Harvester Co.*, 169 Ill. App. 3d at 814 (holding that an employee's statement that his physical condition did not change was not a judicial admission because doctors or medical experts are in a better position to know the actual physical condition of employee). In any event, the medical opinion of Dr. Rodarte, upon which Ms. Cohen relied, is not a judicial admission because it is an *opinion*, not a

statement of concrete fact. *Pavlovich,* 394 Ill. App. 3d at 468 ("[i]n order to constitute a judicial admission, a statement *must not be a matter of opinion*") (emphasis added).

¶ 57 We, therefore, reject the claimant's arguments on this issue. We also reject the claimant's suggestion that the employer waived the argument that the claimant was not permanently disabled during a certain time period.

¶ 58 2. Causation

¶ 59 The claimant argues that the Commission's finding that he failed to prove that the January 12, 2014, work accident was causally related to his current condition of ill-being is against the manifest weight of the evidence.

¶ 60 To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land & Lakes Co. v. Industrial Comm'n,* 359 Ill. App. 3d 582, 592 (2005). A work-related 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. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205 (2003). Whether a causal connection exists between an injury and employment is a question of fact for the Commission to decide. *Swartz v. Illinois Industrial Comm'n,* 359 Ill. App. 3d 1083, 1086 (2005). In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n,* 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n,* 308 Ill. App. 3d 1037, 1041 (1999). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence. *Swartz,* 359 Ill. App. 3d at 1086. Factual determinations are against the manifest weight of the evidence only "when an

opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the [Commission]." *Durand v. Industrial Comm'n*, f224 Ill. 2d 53, 64 (2006). The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

¶ 61 In this case, the Commission relied upon the medical opinions of Drs. Jay Levin and Mark Levin, which it found to be more persuasive than those of Drs. Coe and Suchy. Dr. Jay Levin was the only doctor who reviewed all of the claimant's diagnostic images and all of his treating medical records through December 28, 2016, including his chiropractic records and his postsurgical records. The chiropractic records indicated that the claimant had experienced back symptoms a few months prior to the January 12, 2014, work accident that resembled some of the symptoms he reported after the accident. For example, on August 28, 2015, the claimant told Dr. Popp that he was experiencing low back pain at a level of 3-4 out of 10, which was the same level he reported experiencing during his final chiropractic treatment on August 23, 2013. Dr. Jay Levin further opined the claimant should have been able to return to work full duty six months after his surgery. He based his opinion on his examination of the claimant on October 17, 2016, and on the record of the claimant's final visit to Dr. Ganju on August 4, 2016, when Dr. Ganju noted that the claimant was doing well after the surgical decompression and excision of the synovial cyst. Dr. Ganju had previously opined that the cyst was the cause of the claimant's low back symptoms. Dr. Levin further opined that the progression of the cyst from the time of the January 12, 2014, work accident through 2016 was unrelated to the work accident and that the claimant's surgery was not necessitated by the accident.

¶ 62 Dr. Levin disagreed with the causation and disability opinions of Drs. Coe and Suchy because neither doctor had seen the claimant's chiropractic records, which reflected that the claimant had reported similar back symptoms prior to the work accident that had not resolved. He noted that Dr. Coe's opinions were premised upon the claimant's false statement that he had not experienced any back pain prior to the work accident. Dr. Levin also disagreed with Dr. Rodarte's disability finding and work restrictions based upon the examination findings listed in Dr. Rodarte's November 25, 2014, fitness for duty report. He also disagreed with the permanent restrictions that Dr. Ganju imposed on December 28, 2016, because he found those restrictions to be contrary to Dr. Ganju's August 4, 2016, medical record. During the arbitration hearing, the claimant testified that Dr. Ganju did not examine him or review any FCE report when she issued the permanent work restrictions. She issued the restrictions based entirely on the symptoms the claimant's reported to Dr. Ganju during a phone call.

¶ 63 On April 27, 2015, after reviewing the claimant's medical records, Dr. Mark Levin issued a preliminary opinion that the degenerative changes of the claimant's lumbar spine predated any injury that the claimant sustained in the work accident. Dr. Levin's opinion was preliminary pending his review of the FCE he had ordered, MRI studies, and the bone scan. His causation opinion never changed. After reviewing the November 20, 2014, FCE, Dr. Jay Levin's October 15, 2014, IME report, and Dr. Rodarte's November 25, 2014, fitness for duty evaluation, Dr. Levin opined that, although the claimant had continuing complaints of pain, he had the capacity to return to work full duty as a police officer.

¶ 64 The causation and disability opinions of Drs Jay Levin and Mark Levin were supported by the evidence. Accordingly, the Commission was entitled to rely on them and to credit them over the opinion of the other doctors. It is the Commission's province to resolve conflicts among the

medical opinions and determine the weight to assign to each opinion. *Hosteny*, 397 Ill. App. 3d at 675. We may not re-weigh the evidence or substitute our judgment for the Commission's on these matters. *Pietrzak*, 329 Ill. App. 3d at 333. An opposite conclusion from that reached by the Commission is not clearly apparent such that no rational trier of fact could have agreed with the Commission.

¶ 65 The claimant argues that the Commission's causation finding was against the manifest weight of the evidence because the Commission relied upon the opinion of Dr. Jay Levin, who admitted that he had never seen the November 20, 2014, FCE report that found the claimant to be permanently disabled from performing the essential requirements of his job as a police officer. Although Dr. Levin had ordered that FCE, he rendered his causation and disability opinions without having reviewed the FCE results. The claimant argues that the Commission also erred by failing to consider the November 20, 2014, FCE.

¶ 66 We disagree. Although Dr. Jay Levin testified that he had not seen or reviewed the November FCE report itself, he reviewed other reports which stated the findings of the November 20, 2014, FCE, including Dr. Coe's January 5, 2016, report, Dr. Rodarte's November 25, 2014, fitness for duty evaluation report, and Dr. Suchy's May 11, 2015, report. More importantly, Dr. Jay Levin examined the claimant himself after the claimant's lumbar spine surgery in 2016, and he testified that the assessments made in 2014 would be less important for determining causation and disability than the claimant's physical condition after his surgery.

¶ 67 The fact that the Commission did not explicitly mention the November 20, 2014, FCE report in its opinion does not undermine its decision. The Commission based its opinion on a wealth of other evidence, including Dr. Mark Levin's opinion as to the claimant's disability. Dr. Levin reviewed the results of the November 20, 2014, FCE before rendering his opinion.

Moreover, the Commission reviewed and weighed the opinions of other doctors who had reviewed the November 2014 FCE report. The mere fact that the Commission did not explicitly reference that FCE report does not mean that the Commission did not consider it.

¶ 68 The claimant lists several factual errors allegedly made by the Commission. Virtually all of the "errors" he complains of are not errors at all. While the Commission did err in finding that October 9, 2014, MRI "showed no evidence of the synovial cyst at the L3-L4 level," that error does not require reversal. We review the Commission's judgment, not its reasoning, and we may affirm the Commission's decision on any basis supported by the record. *Dukich v. Workers' Compensation Comm'n*, 2017 IL App (2d) 160351WC, ¶ 43 n.6. Here, there is substantial evidence supporting the Commission's decision, including the medical reports of Dr. Jay Levin and Dr. Mark Levin.

¶ 69 The claimant argues that chiropractic records do not support the Commission's decision because he testified that the symptoms he experienced after the work accident were different from those he experienced before the accident. He testified that the pain he experienced after the accident was far more severe, frequent, and disabling that the pain he had before the accident. Prior to the accident, he was able to work full duty as a policeman. After the accident, he was permanently unable to perform the essential functions of a policeman.

¶ 70 We do not find this argument to be persuasive. Dr. Jay Levin interpreted the chiropractic records as contradicting the claimant's testimony. The claimant's testimony was also contradicted by his normal EMG report and by other evidence. Thus, the Commission did not err by declining to credit the claimant's testimony on this issue. We acknowledge that "a causal connection between a condition of ill-being and a work-related accident can be established by showing a chain of events wherein an employee has a history of prior good health, and, following a work-related

accident, the employee is unable to carry out his duties because of a physical or mental condition." (Emphasis removed.) *Kawa v. Illinois Workers' Compensation Comm'n,* 2013 IL App (1st) 120469WC, ¶ 96. However, the Commission is not required to rely on such evidence when it is contradicted by credible medical opinions, as it was here. *Id.*

¶ 71 3. TTD Benefits, Maintenance Benefits, and Medical Expenses

¶ 72 The claimant concedes that the Commission properly awarded him some of the TTD benefits to which he was entitled. However, he argues that the Commission erred by failing to award him TTD benefits from November 8, 2014, through January 14, 2015. He maintains that he was entitled to receive TTD benefits for that time period because Drs. Popp, Ganju, Rodarte, Coe, and Suchy each opined that he could not return to full duty work, and the employer failed to admit any evidence that it offered the claimant light duty work within the restrictions set by Drs. Popp and Ganju.

¶ 73 A claimant is temporarily and totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of her injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107 (1990). To be entitled to TTD benefits, it is a claimant's burden to prove not only that he did not work, but also that he was unable to work. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 148 (2010). Whether a claimant is entitled to TTD benefits and for how long are questions of fact to be determined by the Commission, and a reviewing court will not disturb the Commission's determination of these issues unless they are contrary to the manifest weight of the evidence. *Archer Daniels Midland Co.*, 138 Ill. 2d at 119-20 (1990); *Shafer v. Illinois Workers' Compensation Comm'n,* 2011 IL App (4th) 100505WC, ¶ 45. A factual finding is contrary to the manifest weight of the evidence only when an opposite conclusion is clearly

apparent—that is, when no rational trier of fact could have agreed with the Commission. *Durand*, 224 Ill. 2d at 64. The test is whether there is sufficient factual evidence in the record to support the Commission's determination, not whether this court, or any other tribunal, might reach an opposite conclusion. *Pietrzak*, 329 Ill. App. 3d at 833.

¶ 74 In this case, the Commission properly awarded TTD benefits for all periods that the claimant was either off work or restricted to light duty work pursuant to a doctor's order prior to November 7, 2014. The Commission terminated TTD benefits as of November 7, 2014, the date the employer e-mailed the claimant's attorney asking that the claimant return to work based on Dr. Jay Levin's opinion that he was at MMI for his lumbar condition. Given its causation finding, which relied in large part on Dr. Jay Levin's opinions, the Commission's decision to terminate TTD benefits on November 7, 2014, was not against the manifest weight of the evidence. (The employer notes in passing that it disputes the payment of TTD, but it has not cross-appealed the Commission's judgment on this issue. Thus, we decline to consider the employer's argument.)

¶ 75 The Commission also properly denied the claimant's claim for maintenance benefits. Whether a claimant is entitled to maintenance benefits is a question of fact to be decided by the Commission, and its finding will not be reversed unless it is against the manifest weight of the evidence. *W.B. Olson, Inc. v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 113129WC, ¶ 39. Fact determinations are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the Commission. *Durand*, 224 Ill. 2d at 64.

¶ 76 The Commission's finding that the clamant was not entitled to maintenance benefits was not against the manifest weight of the evidence. Dr. Jay Levin and Dr. Mark Levin each opined that the claimant could return to his job as a policeman full duty without restrictions. Moreover,

the claimant's subsequent employment at Montfort and Abbot shows that he was able to return to work within the light duty restrictions imposed by his treating physicians. Accordingly, there was no need for vocational rehabilitation or other maintenance benefits, and an award of such benefits would have been unwarranted.

¶ 77 The claimant further argues that the Commission's award of medical expenses was insufficient and against the manifest weight of the evidence. Under section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of his injury. *University of Illinois v. Industrial Comm'n*, 232 Ill. App. 3d 154, 164 (1992). The claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 888 (1990). What is reasonable and necessary is a question of fact for the Commission, and the Commission's determination will not be overturned unless it is against the manifest weight of the evidence. *Cole v. Byrd*, 167 Ill. 2d 128, 136-37 (1995); *University of Illinois*, 232 Ill. App. 3d at 164.

¶ 78 We find that the Commission's award of medical expenses was not against the manifest weight of the evidence. The Commission ordered the employer to pay the cost of the November 20, 2014, FCE that was ordered by Dr. Jay Levin because it found that the FCE was reasonable and necessary to diagnose the claimant's condition as of that date. However, the Commission denied the claimant's claim for medical expenses incurred after the November 20, 2014, FCE. This is consistent with the Commission's causation findings. The Commission found that the work accident caused only a temporary aggravation of the claimant's preexisting back condition which had resolved by November 7, 2014. It further found that the progression of the cyst from the time of the work accident through 2016 was unrelated to the work accident, that the claimant's surgery

was not necessitated by the work accident, and that the claimant's condition of ill-being and his need for further medical treatments after November 7, 2014, was not causally related to the work accident. As noted above, these findings are supported by the evidence. Accordingly, it was logical and proper for the Commission to deny medical benefits after November 7, 2014. During oral argument, the claimant's counsel conceded that the employer paid all medical expenses incurred from the time of the accident through November 20, 2014, and stated that the only medical expenses at issue are those that were incurred after November 20, 2014. The Commission's decision to deny such expenses was not against the manifest weight of the evidence.

¶ 79 4. PPD Benefits

¶ 80 The claimant argues that the Commission's award of PPD benefits was inadequate. (The employer maintains that the PPD award should be reduced**,** but we do not consider this argument because the employer has not cross-appealed the Commission's PPD finding.)

¶ 81 Section 8.1b(b) of the Act provides that, for accidental injuries that occur on or after September 1, 2011, as here, the Commission must base its determination of the amount of PPD awarded on a consideration of the following factors: (1) the reported level of impairment contained in a physician's written impairment report prepared pursuant to AMA guidelines, (2) the injured employee's occupation, (3) the employee's age at the time of injury, (4) the employee's future earning capacity, and (5) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b(b) (West 2014). "None of the factors set forth in section 8.1b is to be the sole determinant of the claimant's disability." *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, ¶ 49. A determination of the extent of a claimant's disability is a question of fact, and the Commission's decision will not be set aside

unless it is against the manifest weight of the evidence. *Peabody Coal Co. v. Industrial Comm'n*, 355 Ill. App. 3d 879, 883 (2005).

¶ 82 Here, the Commission considered each of the required factors and made written findings explaining its reasoning and the weight it attached to each factor, as required by the Act. After reviewing the Commission's findings in light of the record, we cannot say that the Commission's award of PPD benefits was against the manifest weight of the evidence.

¶ 83 CONCLUSION

¶ 84 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County confirming the Commission's decision.

¶ 85 Affirmed.