No. 03-10-0145WC
Order filed March 2, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ALDI, INC.,	)	Appeal from the Circuit Court
	)	of Will County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09-MR-887
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION,	)	
	)	
	)	
Defendant-Appellee	)	Honorable
	)	Barbara Petrungaro,
(Stephanie Newman, Appellee).	)	Judge, Presiding.

JUSTICE HUDSON delivered the order of the court.
Presiding Justice McCullough and Justices Hoffman, Holdridge, and Stewart concurred in the judgment.

ORDER

Held: The Workers' Compensation Commission properly determined claimant's carpal tunnel syndrome was caused by her employment, and its decisions regarding the date of claimant's accident, the timely filing of her claim, medical expenses, and temporary total disability were not contrary to the manifest weight of the evidence.

Claimant, Stephanie Newman, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2006)) seeking benefits from respondent, Aldi, Inc. The arbitrator found claimant suffered a repetitive trauma injury to her left

wrist (carpal tunnel syndrome) and awarded claimant 52 weeks temporary total disability (TTD) at a rate of $690.67 per week and ordered that respondent, Aldi, Inc., pay for carpal tunnel surgery. The arbitrator also imposed penalties and fees against respondent. The Workers' Compensation Commission (Commission) vacated the award of penalties and fees but otherwise affirmed the arbitrator's decision. It remanded for further proceedings in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). The circuit court of Will County confirmed the decision of the Commission, and this appeal followed. For the reasons that follow, we affirm.

I. BACKGROUND

At the arbitration hearing, claimant testified that she is now known as Stephanie Steffes. She began working for respondent in January 2002 as a cashier. She was subsequently promoted to shift manager. As a shift manager, part of the time she performed management duties and at other times she worked as a cashier. She then became an assistant manager, which entailed full-time management duties. She then became a salaried employee. Claimant was transferred to respondent's store in Streator in November 2005. Prior to working at Streator, all the stores claimant worked at were "right-handed." By this she meant that a cashier would use her right hand to scan items. The store in Streator was a left-handed store. Her duties included stocking the store, cleaning, and operating the cash registers. She would work alone until between noon and 2 p.m., when another employee would arrive. The employee would take over the cash register, and claimant would continue cleaning and stocking. Stocking required claimant to use her hands a lot. Claimant stated "[t]he pallets were always over [her] head." She would also prepare purchase orders. A small amount of "book work" was also involved. Claimant typically worked from 5:30 a.m. until between 4 p.m. and 6 p.m. Often, claimant worked double shifts and did not leave until 8:30 p.m.

In March 2007, claimant transferred to respondent's Joliet store. This was also a left-handed

store. After working at the Joliet for a few months, claimant's wrist started to bother her. In September 2007, claimant's wrist got so bad that she would cry at work. On September 12, she submitted an accident report to respondent. She explained that she was trying to get to see a doctor about her wrist, as she was experiencing "bad" pain and not sleeping. She would pick up things and then drop them. Prior to September 12, claimant experienced some pain in her wrist, but it started getting worse at that point. The pain got worse when she worked. In October 2007, she saw Dr. Mass, who diagnosed carpal tunnel syndrome.

Claimant was shown a job description generated by respondent. Dr. Cohen--the doctor who examined claimant on respondent's behalf--relied upon the job description. She testified that the job description was more representative of her duties in Joliet than when she worked in Streator. Claimant also reviewed a videotape that purportedly showed her job. She pointed out the MDT (a hand held computer used to place orders for merchandise) she used was wider and possibly heavier than the one in the video. She also disagreed with the video's depiction of her job as involving no overhead lifting. Further, the manner in which the video depicted a person scanning items during check out was "very slow" compared to the company's goal of having cashiers scan at least 55 items per minute. Also, the video indicated that someone in claimant's position would have to use a floor-cleaning machine periodically; claimant, in fact, had to run it daily. The lifting claimant did as well as running the floor-cleaning machine both required claimant to flex her wrists.

During cross-examination, claimant explained that when she was stocking items, she simply placed cases of goods on shelves and customers would remove individual items from the cases. When ringing up an order, most items were scanned, which required no buttons to be pushed. When claimant was preparing purchase orders, she used an device called an MDT, which was slightly bigger than the palm of her hand. Claimant would have to enter quantities of the items she wished

to order into the MDT. Claimant acknowledged that she sought treatment for her left hand in 2004 and received a cortisone shot in both hands at that time. An EMG was performed on claimant's right hand; claimant could not recall if one had been performed on her left hand as well. When asked whether she had another EMG in 2006, claimant responded that she did not specifically remember that she did, but she stated that she had had "a few EMGs." She stated that she did not feel pain during these earlier times to the magnitude she did in 2007. Prior to 2007, no doctor had ever advised her that her work was having an impact upon her left wrist. Claimant explained that before September 2007, she had no significant pain. Her wrists were "[j]ust annoying, just achy, nothing, you know what I mean, it wasn't troubling me." She added, "It wasn't affecting me in any way." It was "[n]ot so much numbness and tingling right away as achy pain[;] it was an annoyance." She did not experience these pains before working for respondent. She agreed that she had never reported anything about her wrists to her supervisor before September 2007. Claimant also agreed that the job description generated by respondent was accurate regarding the Joliet store. On April 16, 2004, Dr. Siddiq, claimant's neurologist, recommended an EMG on both hands. She recalled undergoing an EMG on April 23, 2004. She stated that it was possible that she had an EMG on her left hand in July 2006 but did not specifically recall. She testified that if that is what is in the medical records, she would not dispute it. In September 2007, MRIs of both wrists were performed.

Claimant submitted the medical records generated by her treating physician, Dr. Daniel Mass. In a letter to respondent's workers' compensation carrier, Mass reviewed claimant's medical history and his examination of her. The letter documented that Mass observed "a very positive compression test and Tinel at the left carpal tunnel." He recommended carpal tunnel release surgery. In a subsequent letter, Mass stated that he had reviewed the results of claimant's blood tests and an MRI of her cervical spine. He noted that the MRI showed no indication of nerve impingement syndrome

and that claimant's blood test results were normal. Mass then opined that claimant's carpal tunnel syndrome was aggravated by her employment. In a June 2008 letter, Mass reiterated that claimant exhibited "no signs of cervical radiculopathy."

Respondent called Clayton Dombroski, one of its district managers. The Joliet store was in the district he manages. Prior to being a district manager, Dombroski managed a store for five or six months. He testified that he was familiar with the job duties of a cashier as well as an assistant manager and manager. Respondent teaches their cashiers the ergonomics of the job, including how to position their chairs, not to twist too much, and to let the product come to them rather than reaching for it. Sometimes a cashier would have to orient a product so that the bar code faced the scanner. Occasionally, an item's code number would have to be entered manually. Dombroski participated in the job analysis during which the video tape of claimant's job was produced. He described the duties of a manager for the analysis, noting any difference between how the Joliet store operated compared to the rest of the company. Dombroski testified that the new MDT machine that respondent began using in 2007 was actually slightly bigger than the one it replaced. According to Dombroski, a manager's duties are varied throughout the course of a day. During cross-examination, Dombroski testified that cashiers were expected to scan between 42 items and 46 items per minute. He stated that stores may have different goals; however, he testified that an expectation of 55 items per minute would be unusual.

Respondent also presented the evidence deposition of Dr. Michael Cohen, a board certified orthopaedic surgeon. Cohen examined claimant at respondent's request in December 2007. He reviewed the records of the doctors that had treated claimant as part of the examination. He went over the medical records with claimant and obtained a history from her. He also conducted a physical examination. He noted an excellent range of motion and no Tinel's sign. Cohen believed

that, in accordance with claimant's subjective complaints, her history, and EMG results "pointed towards a C6 radiculopathy." He noted an MRI taken on claimant's left wrist on September 12, 2007, was normal. He also testified that an x ray of claimant's cervical spine was normal as well. Cohen opined that all EMGs except one were in the normal range, the exception being one performed on November 13, 2007, that showed C6 radiculopathy. He did not believe that the EMG results indicated carpal tunnel syndrome and that her "pattern of symptoms" fit better with a diagnosis of C6 radiculopathy than carpal tunnel syndrome. At the time of the examination, Cohen could not rule out employment as a cause of claimant's condition of ill being. He explained that one possible cause of radiculopathy would be a herniated disc. If, Cohen explained, claimant was engaged in heavy lifting at work, there could be a causal relationship. Hence, Cohen recommended an MRI of claimant's cervical spine to attempt to identify the etiology of the condition.

Cohen noted that the records of Dr. Analytis document complaints by claimant regarding throbbing in her wrists in 2004. EMGs in 2004 and 2006 were, however, normal. An MRI performed in May 2008 showed some disc bulging, but "no specific disc herniation or foraminal stenosis that would indicate the etiology of the C6 radiculopathy." "Lab work" from March 2008 was also normal. Cohen further testified that Analytis's records do not support a diagnosis of carpal tunnel syndrome. Cohen testified that claimant only experienced night awakenings when she was laying on her arm, whereas, if she had carpal tunnel syndrome, she would have experienced them regardless of the position of her arm. At one point, a cortisone injection was administered. Cohen later testified that this appeared to be a carpal tunnel injection, though the medical records did not identify it as such. Claimant "had a long span of relief from that injection." Cohen testified that the fact that claimant received relief from this injection was "the strongest point of evidence in terms of support of a diagnosis of carpal tunnel syndrome." Cohen felt that since a significant amount of

time had passed since the injection, another one should be attempted before surgery was performed. If such a shot were successful, he would agree with Mass that carpal tunnel release surgery was the appropriate course.

Cohen also opined that claimant's employment would not be a causative factor in aggravating carpal tunnel syndrome. To this end, he noted that claimant engaged in a large variety of activities at work. He then explained that, according to the medical literature, "a person who has a large variety of activities, even though some of which may pose some risk in and of themselves to [*sic*] carpal tunnel syndrome, that is a protective type situation as opposed to someone doing the identical thing all day long." That is, engaging in a "variety of activities makes it less likely that [one is] going to have carpal tunnel syndrome." Cohen further testified that he reviewed the job description and video generated by respondent and he remained of the same opinions after reviewing them.

During cross-examination, Cohen acknowledged that he did not necessarily disagree with the course of treatment proposed by Mass, except that he would try one more injection first. He agreed that certain symptoms, such as losing one's grip on an item and not being able to grasp things, could be consistent with carpal tunnel syndrome as well as C6 radiculopathy. Cohen explained that sometimes an EMG will be normal in a patient that suffers from carpal tunnel syndrome, and sometimes the converse is true. Cohen also testified that in 2004, Dr. Analytis treated claimant regarding both hands, and another doctor—Dr. Pulluru—treated her right hand. Pulluru did, however, provide injections in both of claimant's hands. According to Cohen, neither scanning items during checkout nor operating the MDT would likely cause carpal tunnel syndrome.

The arbitrator found that claimant's condition of ill being was causally related to her employment with respondent. In support, he found that claimant had experienced prior problems with her right wrist, but her left hand and wrist did not bother her at this time. She began working

at a "left-handed store" in November 2005, and by the end of 2006, her left wrist was sore and numb. These problems worsened over time. During September 2007, her condition worsened to the point she was crying at work. On September 12, 2007, claimant sought permission from her employer to see a physician. Mass's records show that on October 29, 2007, he determined conservative treatment had failed. He placed claimant off work until after she received carpal tunnel release surgery. The arbitrator expressly cited Mass's letters indicating a diagnosis of carpal tunnel syndrome and recommending surgery. He further noted that Mass was the first physician to relate claimant's condition to her employment. Earlier medical records documenting previous treatment to her wrists do not indicate the claimant was told she had carpal tunnel syndrome. While there was a finding of "probable carpal tunnel syndrome and positive Tinel's on the left side" in 2006, no doctor indicated that the condition was work related. The arbitrator then noted claimant's testimony that her condition first affected her performance at work on September 19, 2007. The arbitrator found that Cohen's findings were "not credible" and his claim that claimant's work duties could not cause carpal tunnel syndrome "unpersuasive." He also found it noteworthy that Cohen did not disagree with the course of treatment recommended by Mass, outside of performing an additional injection prior to performing surgery. Accordingly, the arbitrator found that claimant did sustain a work-related injury and that she gave timely notice of her condition. He awarded TTD and found that the proposed carpal tunnel release was reasonable and necessary. He also awarded penalties and fees. Besides vacating the awards of penalties and fees, the Commission affirmed and adopted the opinion of the arbitrator. The circuit court of Will County confirmed, and this appeal followed.

II. ANALYSIS

Respondent raises five issues in this appeal. First, it asserts that the Commission's decision that claimant sustained an accidental injury in the course of and arising out of her employment is

contrary to the manifest weight of the evidence. Second, respondent argues that the Commission's determination that claimant's injury manifested itself on September 12, 2007, is also against the manifest weight of the evidence. Third, it contends that claimant's claim was not timely filed. Fourth, it alleges error in the Commission's award of medical benefits. Fifth, it challenges the Commission's decision to award TTD. We find none of these contentions persuasive.

When a party challenges a factual determination of the Commission on review, we apply the manifest-weight standard. *White v. Workers' Compensation Comm'n*, 374 Ill. App. 3d 907, 911 (2007). A decision is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Morton's of Chicago v. Industrial Comm'n*, 366 Ill. App. 3d 1056, 1061 (2006). Resolving conflicts in the evidence and assigning weight to the evidence are matters primarily for the Commission, as is assessing the credibility of witnesses. *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 847 (1996). We owe added deference to the Commission's determinations when it makes findings regarding medical evidence. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 538 (2007). Questions of law are reviewed *de novo*. *Beelman Trucking v. Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370 (2009). Furthermore, respondent, as the appellant, carries the burden of affirmatively showing error before this court. *Lenny Szarek, Inc. v. Workers' Compensation Comm'n*, 396 Ill. App. 3d 597, 606 (2009). With these principles in mind, we will turn to the arguments raised by respondent.

Before reaching the merits, however, we note that both parties make numerous factual assertions in the argument sections of their brief without citation to the record. This violates Supreme Court Rule 341(h)(7), which requires that factual assertions in the argument section of a brief be supported by citation to the pages of the record upon which the assertion relies. Official Reports Advance Sheets No. 8 (April 11, 2007), R. 341(h)(7), eff. March 16, 2007. The parties

would be well advised to abide by such rules in the future. We also note that respondent cites *Minder v. McDonalds*, 08 IWCC 0784 (2008), a case from the Commission in support of its first argument. This is improper. See *S & H Floor Covering, Inc. v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 266 (2007) ("Decisions of the Commission in unrelated cases have no precedential impact on cases before this court"). We have expressly held, "Decisions of the Commission are not precedential and thus should not be cited." *Global Products v. Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 413 (2009). Accordingly, we strike respondent's references to this decision by the Commission from its brief.

A. CAUSATION

Respondent first contends that the Commission's finding that claimant sustained a work-related injury is contrary to the manifest weight of the evidence. When a claimant alleges a repetitive trauma injury such as carpal tunnel, the claimant must meet the same standard of proof as a claimant suffering an acute trauma injury. *Three D Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 47 (1989). The claimant must show that the injury resulted from employment rather than from the normal degenerative aging process. *Gilster Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182 (2001). That is, "[w]hen a worker's physical structure gives way under repetitive job-related stresses on the body, the injury is considered to arise out of and in the course of employment." *Interlake Steel, Inc. v. Industrial Comm'n*, 130 Ill. App. 3d 269, 273 (1985). The date an injury is deemed to have occurred in a repetitive trauma case is the date the injury manifests itself, which is the date on which the causal connection between the injury and employment would become plainly apparent to a reasonable person. *Three D Discount Store*, 356 Ill. App. 3d at 47.

The arbitrator relied on three items of evidence in finding a causal relationship between claimant's condition of ill being and her employment. He expressly cited claimant's testimony, her

medical records, and Mass's opinion that claimant's injury was work related. On its face, this evidence would provide adequate support for the Commission's decision. Indeed, the opinion of Mass would typically provide adequate support for the Commission's decision in itself. See *Adams v. Industrial Comm'n*, 245 Ill. App. 3d 459, 467 (1993) ("The written opinions of Rosenbaum and Walker that the claimant could return to work as of December 1987 are sufficient to support the Commission's determination").

Respondent, nevertheless, argues that the Commission should have accepted the testimony of its expert, Cohen, rather than the opinion of Mass. Respondent begins by asserting the Mass did not review claimant's medical records, accident reports, or a detailed job description. While we agree that Mass does not discuss claimant's past medical records in any detail in the records entered into evidence, it is apparent from his letter to respondent's workers' compensation carrier dated October 23, 2007, that he had some awareness of the claimant's medical history. For example, in his letter, he refers to claimant receiving an injection four years ago, that she experienced relief for four years, and that she eventually sought treatment at an emergency room. The letter also mentions a "work up" performed by a rheumatologist that ruled out thyroid problems, diabetes, and rheumatoid arthritis. Respondent attempts to infer that Mass believed claimant was left handed when, in fact, her right hand was dominant from the following statement: "[Claimant] started to develop numbness and tingling in her left hand, which is the one that scans and does much of the heavy duties at work with finger flexion, wrist flexion activities." Claimant did scan with her left hand. As for "heavy duties," we note that Mass's statement is consistent with claimant performing heavy duties with both hands (a proposition for which there is evidence to support), rather than implying she used the left to the exclusion of the right. Thus, respondent's assertion that Mass was unaware of which of claimant's hand was dominant is unpersuasive. We also note that Mass

described his physical examination of claimant in the letter, which included finding a "very positive compression test and Tinel at the left carpal tunnel." Thus, Mass cited objective findings in support of his opinion. In short, we reject respondent's attempts to diminish the weight to which Mass's opinion is entitled.

Respondent also attempts to enhance the weight of Cohen's testimony. After reciting Cohen's credentials, respondent details the extensive examination of claimant Cohen performed. Respondent then cites Cohen's belief that claimant suffered from cervical radiculopathy and his opinion that her job would have been protective regarding carpal tunnel syndrome. We note that Cohen testified that Tinel's sign is indicative of carpal tunnel syndrome and, though Cohen's examination did not reveal this phenomenon, Mass did find Tinel's sign. We also note that Cohen testified that the fact that claimant received relief from an earlier injection provided evidence that her condition was carpal tunnel. We agree that, as presented by respondent, Cohen's opinion is well grounded and supported by sound reasoning. Respondent also points out that claimant did not perform any one duty more than 35% of the day; however, it has been held that "[t]here is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 193-194 (2005).

Ultimately, we cannot say that Cohen's opinions are so compelling that the Commission was required to accept them over Mass's opinion. The Commission's expertise in medical matters is well recognized. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984), quoting *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 565-66 (1979). Resolving conflicts in the evidence is a task primarily for the Commission. *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d at 847. In this case, two experts offered divergent opinions on a medical issue. The Commission carefully considered these opinions

and decided to credit Mass's. Having reviewed the record and the decision of the Commission, we cannot say that the Commission was required to reject Mass's opinion. Accordingly, we reject respondent's first argument.

B. DATE OF THE ACCIDENT

Respondent next charges that the Commission erred in determining the date of the accident. Generally, a repetitive trauma injury is deemed to occur on the date that the injury "manifests itself." *White*, 374 Ill. App. 3d at 911. The date an injury "manifests itself" is "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987). A formal diagnosis is not necessary. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 72 (2006). Relevant factors include the employee's history of medical treatment; the severity of the injury; and the effect the injury has upon the employee's performance. *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607, 610 (1988). Often, an injury is said to manifest itself either on the date when the condition requires medical treatment or on the date when the employee is no longer able to work. *Durand*, 224 Ill. 2d at 72. The inquiry is objective in nature and dependent on the totality of the facts and circumstances of each case. *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 47 (1990); *Luttrell v. Industrial Comm'n*, 154 Ill. App. 3d 943, 958 (1987). It presents a question of fact for the Commission. *Oscar Mayer & Co.*, 176 Ill. App. 3d at 610-11.

The Commission found that claimant's injury manifested itself on September 12, 2007. In support, it placed considerable weight on the fact that Mass first diagnosed carpal tunnel syndrome, recommended surgery, and attributed the injury to claimant's employment in September 2007. It further noted that, while claimant had experienced prior problems with her wrists, no doctor

informed her that she had carpal tunnel syndrome as a result of her employment. Moreover, claimant testified that, while she had experienced problems with her wrist before September 2007, she had experienced no significant pain and that her wrists were "just annoying." In 2004, Dr. Analytis believed claimant was suffering from arthritis. The same year, another doctor diagnosed right wrist tendonitis with possible ulnar nerve irritation, but did not indicate the cause of the condition. In 2006, another doctor diagnosed "possible carpal tunnel syndrome," but did not indicate the condition was work related. The Commission also noted that it was not until September 2007 that the injury affected claimant's job performance. That no medical provider related claimant's condition to employment prior to September 2007 and that claimant's job performance was unaffected before this time provides evidentiary support for the Commission's decision.

Respondent, nevertheless, argues that information claimant provided on an "employee accident report" filed on April 2, 2004, makes that the date the injury manifested itself. Thus, according to respondent, the Commission's decision otherwise is contrary to the manifest weight of the evidence. Indeed, the report contains the following statement: "my wrist started hurting very badly when I do activity. I believe it could be carpo tunal [*sic*] do [*sic*] to stocking and ringing at the register." We initially note that since the standard we are applying here is objective (*Three "D" Discount Store*, 198 Ill. App. 3d at 47), claimant's subjective beliefs are not dispositive. Further, we note the similarities between this case and *Durand*, 224 Ill. 2d 53. In *Durand*, the claimant testified that she believed that the pain she was experiencing in her wrists in 1997 was caused by her employment, but she was unsure whether it was carpal tunnel syndrome because it was intermittent and not "real severe." The supreme court, reversing a decision of the Commission, observed that, in 1997, the claimant "first noticed her hand and wrist pain, opined it could be carpal tunnel syndrome, and guessed it may bear some relation to her work, but declined to mention it to her

supervisor for at least three months." *Durand*, 224 Ill. 2d at 71. The court then found this earlier speculation by the claimant to be no bar to recovery, explaining:

> "If [the claimant] would have filed a claim in 1997, she certainly would have had difficulty proving her injury. Her description and understanding of the hand and wrist pain was sketchy and equivocal. At that time, it was not so constant or severe that it warranted medical treatment or reassignment to different work. As Justice Holdridge suggested in his dissent, 'the circumstances signal periodic discomfort leading to doubt about the existence of a distinct injury.' [*Durand v. Industrial Comm'n*, 358 Ill. App.3d at 246, 294 (2005)] (Holdridge, J., dissenting, joined by Donovan, J.). The record strongly suggests that this doubt lingered until 2000, when [the claimant's] pain finally necessitated medical treatment. A reasonable person would not have known of this injury and its putative relationship to computer keyboard work before that time, and it was against the manifest weight of the evidence to conclude otherwise. [The claimant's] claim was timely. We decline to penalize an employee who diligently worked through progressive pain until it affected her ability to work and required medical treatment." *Durand*, 224 Ill. 2d at 74.

Durand provides sound guidance here. Like the claimant in *Durand*, claimant in this case was unsure whether she had carpal tunnel syndrome prior to September 2007. The report claimant filed in April 2004 stated the she "believe[d] it could be" carpal tunnel syndrome, while in *Durand*, the claimant testified that she "wasn't sure" her pain was carpal tunnel syndrome (*Durand*, 224 Ill. 2d at 60). Both claimants suspected their condition was work related, but, as in *Durand*, neither the Commission nor this court deem this a bar to recovery. The mere fact that claimant speculated in 2004 that her condition may have been carpal tunnel syndrome is insufficient to render the Commission's determination that her injury manifested itself in September 2007 contrary to the

manifest weight of the evidence. The Commission could properly rely on other considerations—namely, when her condition began to impair her ability to work and when she was formally diagnosed with the carpal tunnel syndrome—in making this determination. Parenthetically, we also note that approximately contemporaneously to claimant's filing of the accident report, two doctors diagnosed claimant with conditions other than carpal tunnel syndrome. Further, an EMG conducted at about the same time proved negative.

In sum, the Commission's decision that claimant's injury manifested itself in September 2007 is not contrary to the manifest weight of the evidence.

C. STATUTE OF LIMITATIONS

A workers' compensation claim must be filed within three years of an accidental injury. 820 ILCS 305/6(d) (West 2006). Respondent's argument on this point is dependent on the success of respondent's previous argument, and, as we have rejected the earlier one, we reject this one as well. We will, however, comment briefly on respondent's reliance on *Castanada v. Industrial Comm'n*, 231 Ill. App. 3d 734 (1992). In that case, on facts somewhat similar to those present in this case, this court affirmed a decision of the Commission finding that the limitations period had run where the claimant's injury was found to have manifested itself more than three years before the claim was filed. Because *Castanada* involved the affirmance of a decision of the Commission, it provides little guidance here, where respondent requests that we reverse a decision of the Commission. In *Castanada*, the Commission found, as a matter of fact, that the claimant's injury manifested itself outside the limitations period, and this court simply found that there was sufficient evidence in the record such that the Commission's decision was not against the manifest weight of the evidence. See *Castanada*, 231 Ill. App. 3d at 739. The *Castanada* court expressly recognized the deference owed to the Commission in circumstances such as these. *Castanada*, 231 Ill. App. 3d at 738 ("We note,

moreover, that all of the cases discussed above showed deference to the Commission's determination of the issue"). In this case, unlike *Castanada*, the Commission found in favor of the claimant. Though the evidence bears similarities to the evidence in *Castanada*, ultimately, it is conflicting and the Commission's decision does find support in the evidence. Indeed, by recognizing the deference due the Commission, *Castanada* actually supports affirming in the instant case. Helpful to respondent would have been a case where the Commission was reversed on similar facts, as that would have shown at what point this deference would be overcome. Respondent has not set forth such a case.

D. MEDICAL EXPENSES

Respondent next contends that the Commission's decision to award past and prospective medical benefits is contrary to the manifest weight of the evidence. In essence, respondent's argument is simply a request that we reweigh the opinions of Mass and Cohen and find Cohen's to be entitled to more weight. As we noted previously, Mass's opinion is not as ungrounded as respondent asserts. Further, there were valid reasons for the Commission to give less weight to Cohen's testimony, including Cohen's statement that an injection would provide more diagnostic information and, depending on the results of such an injection, he might agree with Mass's recommendation that claimant undergo carpal tunnel release surgery. Resolving conflicts regarding medical evidence is primarily for the Commission. *Westin Hotel*, 372 Ill. App. 3d at *538; Ghere*, 278 Ill. App. 3d at 847. We see no reason to substitute our judgment for that of the Commission on this issue.

E. TEMPORARY TOTAL DISABILITY

Finally, respondent challenges the Commission's award of TTD. A claimant is entitled to TTD up to the point where his or her condition has stabilized, that is, to the point that he or she

reached maximum medical improvement (MMI). *Interstate Scaffolding, Inc. v. Workers' Compensation Comm'n*, 236 Ill. 2d 132, 142 (2010). Put differently, an employee may receive TTD from the time he or she is incapacitated by a work-related injury until the employee is as far recovered as the permanent character of the injury allows. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). To be entitled to TTD, an employee must prove not only that he or she did not work, but that the employee was unable to work. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256 (2008).

Respondent argues that claimant did not carry her burden of proving that she could not work. It notes that Mass released claimant to work on October 23, 2007, after prescribing a wrist brace. On October 29, Mass ordered claimant off work, stating that conservative treatment had failed and that claimant could not return to work until after surgery. A treatment note indicates that claimant had actually used the brace for only three days. Apparently, respondent believes that three days was insufficient to assess the efficacy of the brace. However, respondent points to no expert testimony in support of this notion. Absent such an opinion, we cannot say that Mass was unreasonable in finding conservative treatment had failed after three days. Indeed, as a medical matter, the Commission is far more qualified to make this determination than this court. See *Berry*, 99 Ill. 2d at 407. Respondent points out that an EMG performed on November 23, 2007, found no evidence of carpal tunnel syndrome. We note that Cohen testified that sometimes an EMG will be normal in a patient that suffers from carpal tunnel syndrome. Respondent also requests that we reassess the evidence and attribute more weight to Cohen's opinion. This we decline to do, as we perceive no basis for holding that the Commission erred in performing this function, which, of course, is a function primarily for the Commission to perform. *Ghere*, 278 Ill. App. 3d at 847

In short, the Commission's decision regarding TTD is not contrary to the manifest weight of

the evidence.

III. CONCLUSION

In light of the foregoing, the decision of the circuit court of Will County confirming the decision of the Commission is affirmed. This cause is remanded for further proceedings in accordance with *Thomas*, 78 Ill. 2d 327.

Affirmed and remanded.