2012 IL App (1st) 113253WC-U
No. 1-11-3253WC
Order Filed: December 28, 2012

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ELITE STAFFING, INC.,	)	Appeal from the Circuit Court
	)	of Cook County.
Respondent-Appellant,	)	
	)	
v.	)	No. 11-L-50354
	)	
RENE AVILA and ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION,	)	Honorable
	)	Robert L. Cepero,
Petitioners-Appellees.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* (1) Commission's award of $44,401.81 in medical expenses is not against the manifest weight of the evidence; (2) Commission's decision that claimant's condition of ill-being is causally related to his employment is not against the manifest weight of the evidence; (3) Commission's award of temporary total disability benefits for the period from February 19, 2010, through March 17, 2010, is not against the manifest weight of the evidence; and (4) claimant's request for sanctions pursuant to Illinois Supreme Court Rule 375(b) would be denied.

¶ 2 Claimant, Rene Avila, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2008)) seeking benefits for injuries he allegedly sustained to his back on November 23, 2009, while employed by respondent, Elite Staffing, Inc. Following a hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)), the arbitrator determined that claimant's current condition of ill-being is causally related to his employment. The arbitrator awarded claimant temporary total disability (TTD) benefits for the period from November 30, 2009, through March 17, 2010, a period of 15-3/7 weeks. See 820 ILCS 305/8(b) (West 2008). In addition, the arbitrator awarded certain medical expenses. See 820 ILCS 305/8(a), 8.2 (West 2008). A majority of the Illinois Workers' Compensation Commission (Commission) modified the award of medical expenses, but otherwise affirmed and adopted the decision of the arbitrator and remanded the cause for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). On judicial review, the circuit court of Cook County confirmed the decision of the Commission. In this appeal, respondent challenges the Commission's findings with respect to medical expenses, causation, and TTD benefits. For the reasons set forth below, we affirm the decision of the Commission and remand the matter for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing held on March 17, 2010, as well as the record on appeal. Claimant testified through an interpreter that he began working for respondent, a temporary staffing agency, in September 2009. On November 23, 2009, while assigned to a maintenance position at a plastics company, claimant slipped and fell as he picked up a sheet of plastic. Claimant testified that he landed such that his

back collided directly with the floor, resulting in immediate pain to his low back and right leg.

¶ 5 Shortly after the accident, claimant presented to the Clearing Clinic, where he was examined by Dr. Anita Carani. Claimant reported low back pain at level eight on a ten-point scale. Upon examination, Dr. Carani noted no signs of trauma to the lumbar spine. Tenderness to palpation was present, but straight leg raising was negative bilaterally and strength testing in the lower extremities was within normal limits. An X ray of the lumbar spine revealed degenerative changes, but no fractures. Dr. Carani diagnosed a contusion of the lumbar spine and prescribed Naproxen. She attributed the injury to claimant's work activities. Dr. Carani authorized claimant off of work the remainder of the day, but allowed him to return to full duty for his next scheduled work shift. Dr. Carani also instructed claimant to follow up in eight days and to call or return to the clinic if new or worsening symptoms develop. Claimant never sought additional treatment at the Clearing Clinic.

¶ 6 When claimant returned to work on November 24, 2009, he was assigned to a position on the packing line. According to claimant, this position was a standing position and required him to work a 12-hour shift. Claimant performed these duties on the two days immediately following the accident, but was then informed by a supervisor that no more work was available to him. Subsequently, the pain in his lower back and right leg worsened, and claimant presented to Dr. Fernando Perez at Marque Medicos.

¶ 7 Dr. Perez examined claimant on November 30, 2009. At that time, claimant rated his pain at level eight on a ten-point scale. Dr. Perez's notes indicate that claimant demonstrated "significant difficulty" when rising in and out of a chair and getting on and off the examination table. Dr. Perez noted tenderness to palpation over the paraspinal musculature of the bilateral lumbar spine and at

the L4-L5 and L5-S1 levels. The lumbar spine active range of motion was severely decreased and painful in all ranges of motion. Straight-leg raising was positive bilaterally at 10 degrees, and muscle strength testing of the bilateral lower extremities was 4/5. X rays of the lumbar spine were negative. Dr. Perez diagnosed a lumbar sprain/strain, which he attributed to the work-related accident of November 23, 2009. Dr. Perez prescribed electrical muscle stimulation (EMS) and cryotherapy over the bilateral lumbar spine for pain control and muscle relaxation. In addition, he recommended physical therapy three times a week and authorized claimant completely off work.

¶ 8 On December 1, 2009, claimant underwent an initial evaluation for physical therapy. At that time, claimant complained of "constant 8-9/10 low back pain" which worsened with movement. The therapist developed a plan consisting of modalities for analgesic effect, gentle flexibility/mobility exercises, and progressive strengthening as tolerated. Thereafter, claimant underwent three sessions of physical therapy. Claimant testified that the physical therapy included walking on a treadmill and doing exercises with a stability ball and a rope. On December 7, 2009, Dr. Perez released claimant to return to work light duty effective December 9, 2009. The restrictions imposed included no lifting or carrying over 20 pounds, no pushing or pulling over 30 pounds, no overheard work, no bending or squatting, and no climbing. Claimant testified that respondent had no work available within these limitations.

¶ 9 Claimant continued to attend physical therapy, and on December 14, 2009, Dr. Perez re-examined claimant. At that time, claimant reported "significant improvement" in his condition, including a decrease in back pain, since beginning physical therapy. However, he still noted intermittent discomfort and mild pain in the lower back, especially after walking for a prolonged

period of time. As a result of the progress claimant made, Dr. Perez opined that ongoing physical therapy was medically warranted, so he prescribed an additional two-week regimen consisting of active therapeutic exercises and physical medicine modalities for the promotion of functional abilities. Dr. Perez continued to impose work restrictions upon claimant, although he noted that respondent was unable to accommodate light-duty work. Dr. Perez concluded that claimant had yet to reach maximum medical improvement (MMI), but he anticipated releasing claimant to full-duty work within two weeks.

¶ 10 On December 22, 2009, claimant underwent a physical therapy reevaluation. At that time, claimant reported low back pain which he rated at level four on a ten-point scale. The therapist concluded that claimant had improved with physical therapy, but noted that overall conditioning and mechanics for functional activity was very poor. The therapist recommended that claimant continue a regimen of physical therapy three times a week as ordered by Dr. Perez "to improve overall condition and mechanics and in hopes of improving the patient's overall function."

¶ 11 Claimant returned to Dr. Perez's office on December 30, 2009. Although claimant acknowledged that, overall, he had experienced improvement in his condition since beginning treatment, he indicated that he had been feeling "slightly worse" recently. In particular, claimant complained of continued lower back pain and discomfort on a frequent basis, made worse with general bending movements and prolonged sitting and standing. After examining claimant, Dr. Perez noted that while claimant had progressed overall, he had not progressed as anticipated. As such, Dr. Perez prescribed an MRI of the lumbar spine to rule out lumbar disc derangement. Dr. Perez also ordered an additional three weeks of physical therapy, consisting of "passive physical

medicine modalities and active therapeutic exercises." Claimant's work restrictions remained unchanged. Dr. Perez also opined that claimant had yet to reach MMI.

¶ 12 Claimant underwent the MRI on January 5, 2010. The MRI showed evidence of mild degenerative disc disease from L2-3 through L5-S1; mild posterior disc bulges at L2-3, L4-5, and L5-S1; and a right paracentral disc herniation at L3-L4. Based on the MRI and claimant's subjective complaints, Dr. Perez's assessment was a lumbar intervertebral disc derangement. Dr. Perez referred claimant for an electrodiagnostic study to rule out lumbosacral radiculopathy.

¶ 13 On January 12, 2010, claimant underwent another physical therapy reevaluation. At that time, claimant reported minimal low back pain. In addition, the therapist reported that claimant had been feeling better since starting therapy. The therapist also noted in relevant part that claimant had been "tolerating activities here in physical therapy including Swiss ball squats and repetitive step-ups with 12-pound weight 20 times. He is doing squat overhead lifting with 5-kilogram weight 15 times. He is walking on a treadmill at 2.5 mph for 10 minutes." Noting that claimant has shown improvement since starting therapy, the therapist recommended that the treatment continue.

¶ 14 On January 21, 2010, claimant underwent an independent medical examination by Dr. Avi Bernstein pursuant to section 12 of the Act (820 ILCS 305/12 (West 2008)). Claimant reported that he was involved in a work-related injury on November 23, 2009, when he slipped on a piece of plastic and landed on his low back. At the time of the examination, claimant complained of pain in the mid-lumbar spine which was worsened by prolonged sitting and bending. Claimant denied radicular symptoms to the lower extremities. Claimant reported that he had been treating at Marque Medicos and had been prescribed "physical therapy where he was told to do walking activities and

special exercises." Physical examination revealed that claimant was able to stand without difficulty. The straight-leg test in a seated position caused complaints of low back pain or a withdrawal response. Claimant indicated tenderness at about the L3 level and lower with palpation. Claimant's neurologic examination was unremarkable. In addition to examining claimant, Dr. Bernstein reviewed the January 5, 2010, MRI. Dr. Bernstein concluded that claimant suffered a lumbar strain or mild discogenic injury as the result of a work-related incident. Noting that claimant still had persistent pain complaints three months after the accident, Dr. Bernstein recommended a "formal physical therapy program" with conditioning and strengthening as well as anti-inflammatory medications. Dr. Bernstein did not support "further chiropractic care or passive modalities in physical therapy as [claimant] has been describing." Dr. Bernstein authorized claimant to perform light-duty work with a 25-pound lifting restriction. He opined that after an additional four weeks of physical therapy, claimant would be at MMI and capable of returning to his prior work without restriction. Dr. Bernstein did not believe that any further therapeutic modalities or diagnostic workups were indicated.

¶ 15 Meanwhile, on January 22, 2010, claimant underwent the electrodiagnostic study ordered by Dr. Perez. The study suggested an acute denervation of the right L4 nerve root. Based on the new study, Dr. Perez modified his diagnosis to a lumbar intervertebral disc derangement and a lumbar radiculopathy. Dr. Perez opined that both of these conditions were the result of the injury claimant sustained at work on November 23, 2009. Dr. Perez's treatment plan involved physical therapy "consisting of passive physical medicine modalities and active therapeutic exercises" at a frequency of three times per week. Dr. Perez continued to authorize light-duty work, and he referred claimant

to a pain-management specialist.

¶ 16 On January 28, 2010, claimant attended a pain-management consultation with Dr. Andrew Engel of Medicos Pain and Surgical Specialists. At that time, claimant reported bilateral low back pain and occasional bilateral leg numbness and tingling. Claimant rated the pain at level four on a ten-point scale. Dr. Engel conducted a physical examination of claimant and reviewed the January 5, 2010, MRI and the January 22, 2010, EMG. Dr. Engel's diagnosis was threefold: (1) lumbar radiculopathy; (2) lumbar herniated disc; and (3) low back pain syndrome. Dr. Engel recommended continued conservative care, including additional physical therapy because "[t]his treatment has helped to decrease his pain." In addition, Dr. Engel prescribed a regimen of medication management, consisting of a nonsteroidal anti-inflammatory, a gastroprotective, and a muscle relaxant. Dr. Engel authorized claimant off work. Dr. Engel opined that the work-related accident of November 23, 2009, was the direct cause of claimant's symptoms.

¶ 17 On January 29, 2010, claimant underwent another physical therapy evaluation. At that time, claimant reported that his pain was down to level four on a ten-point scale. Claimant associated the pain with certain movements and activities, including exercise. Claimant denied pain in his lower extremities. The therapist concluded that there is subjective and objective improvement compared with claimant's prior evaluation. As such, he recommended that claimant continue physical therapy while awaiting further medical intervention.

¶ 18 On February 11, 2010, claimant was examined by Stacy Pond, a physician's assistant at Medicos Pain and Surgical Specialists. Claimant reported that since being placed on medication, he experiences temporary symptomatic relief of his pain. Claimant stated that the pain occasionally

increases with activity. Claimant also described bilateral lower extremity burning, which worsened particularly when lying down. Although claimant rated his pain at level four on a ten-point scale, overall, he felt that the pain was of the same severity since the injury. Following a physical examination, Pond diagnosed persistent severe lumbago with bilateral lumbar radiculopathy, right worse than left, and intractable pain despite conservative treatment with medications, physical therapy, and chiropractic treatment. Pond recommended proceeding to the "next level" of pain management. As such, she prescribed a right L3 and L4 transforaminal epidural steroid injection to address claimant's discogenic pain. Claimant was also instructed to continue physical therapy as tolerated and to remain off work. On February 17, 2010, Dr. Engel administered a right L3 and L4 transforaminal epidural injection pursuant to Pond's recommendation.

¶ 19 Meanwhile, a utilization review report was prepared by chiropractor Edwin Rabin on February 16, 2010. The issue before Rabin was whether the 29 sessions of physical therapy claimant had undergone as of February 1, 2010, were medically necessary and appropriate. Rabin certified 16 physical therapy sessions from November 30, 2009, through December 30, 2009, but declined to certify 13 sessions between January 1, 2010, and February 1, 2010. Rabin explained his finding as follows:

> "ODG [Official Disability Guidelines] supports a maximum of 10 physical therapy sessions for this condition noting that patients should be formally assessed after a 'six-visit clinical trial' to see if the patient is moving in a positive direction, no direction, or a negative direction (prior to continuing with the physical therapy). In this case, the claimant was assessed approximately two weeks after initiating care and was found to be making good

> progress in objective and functional testing. Therefore, continuation of physical therapy would have been warranted. However, at the next reexamination, this claimant's condition was found to be regressing and an MRI was recommended. Evidence-based guidelines for this condition would have been expected to be exhausted at this point, given the frequency of 3 visits per week. More importantly, the claimant had made not [*sic*] significant progress in objective or functional measures over the prior two weeks of frequent care. Providing more of the same treatment that has been shown to be ineffective is not supported by guidelines. The claimant would be expected to have begun a transition toward a self-directed home exercise program from a point earlier in care, and by this time should have been independent in a home exercise program."

Dr. Perez appealed this decision, claiming that the review did not comply with section 8.7 of the Act (820 ILCS 305/8.7 (West 2006)) and other regulatory requirements. On appeal, chiropractor David Cox certified 12 physical therapy sessions to the lumbar spine beginning November 30, 2009, but denied certification as to the remaining 17 physical therapy sessions.

¶ 20 A physical therapy reevaluation dated February 23, 2010, notes that claimant reported temporary improvement following the epidural injection. However, there was an exacerbation of pain after claimant climbed stairs in his apartment building. Claimant rated the pain at level five on a ten-point scale. The therapist noted that claimant was able to achieve full active range of motion with moderate pain on flexion more than extension. Claimant reported moderate tenderness with palpation at the right lower lumbar and upper sacral areas with mild pain on the left side. Claimant was unable to adequately lift his bilateral lower extremities secondary to pain. Noting that claimant

complains of moderate pain depending on the intensity and nature of the activity, the therapist recommended continued physical therapy and encouraged claimant to participate in a home-exercise program on a regular basis.

¶ 21 Pond saw claimant again on February 25, 2010. Claimant presented with a pain score of 5-6/10 after undergoing a right L3 and L4 transforaminal epidural steroid injection on February 17, 2010. Claimant reported that the injection decreased the level of pain to 2/10 for about three days. However, it subsequently increased to about 9-10/10 after claimant lifted a bag of garbage. The pain diminished somewhat after that incident, but it still remained constant and severe. Claimant indicated that the pain is located in the right low back and right leg. Following an examination, Pond recommended a Medrol Dosepak to calm the current exacerbation of pain. Pond wanted to reassess claimant's condition in one week before deciding whether to authorize a second injection. She authorized claimant to remain off work "in an effort to not further aggravate his condition."

¶ 22 Claimant returned to see Pond on March 4, 2010, requesting authorization to undergo the second injection. Claimant noted that he experienced a 30-40% improvement with the first injection, although there was some regression of pain after increased activity. Pond agreed that it was appropriate to proceed with the second injection. Further, given the fact that no light-duty work was available to claimant and so as not to exacerbate his condition, Pond continued to authorize claimant off work. Dr. Engel performed the second injection on March 8, 2010, consisting of a right L3 and L4 transforaminal epidural steroid injection. Claimant stated that the second injection only provided temporary relief.

¶ 23 At the arbitration hearing, claimant testified that he continues to experience pain in his lower

back and right leg. Claimant testified that although he takes painkillers, they provide little relief. Claimant denied any injuries to his lower back prior to the accident on November 23, 2009. Claimant stated that he is still authorized to be off work.

¶ 24 Relying on the opinions of the treating and examining physicians, the arbitrator concluded that claimant's current condition of ill-being as it relates to his back is causally related to his industrial accident of November 23, 2009. In addition, the arbitrator found that respondent was responsible for $18,869.31 in medical expenses. See 820 ILCS 305/8(a), 8.2 (West 2008)). The arbitrator disallowed certain medical expenses on the basis that they were not reasonable or necessary to cure or relieve claimant from the effects of the injury he sustained on November 23, 2009. In particular, the arbitrator found that none of the therapy claimant received at Marque Medicos after December 30, 2009, "resulted in any lasting improvement in [claimant's] condition, and in fact, as a result of this treatment [claimant's] condition worsened." The arbitrator also found that respondent was not required to pay for follow-up visits with Dr. Perez on four dates in January and February 2010 because the certified records from Marque Medicos did not include reports regarding any examination and findings on those dates. Finally, based on the opinions of Drs. Perez, Engel, and Bernstein, the arbitrator determined that claimant was temporarily totally disabled for the period from November 30, 2010, through March 17, 2010, a period of 15-3/7 weeks. See 820 ILCS 305/8(b) (West 2008).

¶ 25 A divided Commission modified the decision of the arbitrator to reflect an award of medical expenses in the amount of $44,401.81, of which $32,100.57 is subject to the medical fee schedule (see 820 ILCS 305/8.2 (West 2008)) and $12,301.21 is awarded with the medical fee schedule

applied. This modified award included, *inter alia*, charges of $29,979 from Marques Medicos for care and treatment from November 30, 2009, through February 19, 2010, subject to the medical fee schedule. In all other respects, the Commission affirmed and adopted the decision of the arbitrator. The Commission remanded the matter for further proceedings in accordance with *Thomas*, 78 Ill. 2d 327. Commissioner Nancy Lindsay concurred in part and dissented in part. She would have disallowed physical therapy expenses from Marques Medicos after December 30, 2009, on the basis that there was no evidence that such expenses were reasonable or necessary. In addition, she opined that the majority's award included charges for office visits with Dr. Perez for which there were no corroborating medical records in evidence. On judicial review, the circuit court of Cook County confirmed the decision of the Commission. This appeal ensued.

¶ 26 II. ANALYSIS

¶ 27 A. Medical Expenses

¶ 28 On appeal, respondent initially challenges several aspects of the Commission's medical expense award. Medical expenses are governed by section 8(a) of the Act (820 ILCS 305/8(a) (West 2008)). That provision states in relevant part:

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

The claimant bears the burden of proving, by a preponderance of the evidence, his entitlement to an award of medical expenses under section 8(a). *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 546 (2007). "Questions as to the reasonableness of medical charges or their causal relationship to a work-related injury are questions of fact to be resolved by the Commission." *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill. App. 3d 893, 903 (2004). The Commission's decision on a factual matters will not be disturbed on appeal unless it is against the manifest weight of the evidence. *F & B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534 (2001). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Will County Forest Preserve District v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110077WC, ¶ 15.

¶ 29 With respect to the award of medical expenses, respondent first contends that there is no evidence in the record establishing that claimant's physical therapy and treatment between December 31, 2009, and January 20, 2010 (the day before claimant underwent the independent medical examination by Dr. Bernstein), was reasonable and necessary to cure or relieve him from the effects of the injury sustained at work on November 23, 2009. Respondent notes that on December 30, 2009, despite weeks of therapy, claimant reported that his condition had worsened. Nevertheless, physical therapy continued to be prescribed, all of which, respondent asserts, did nothing to improve claimant's condition.

¶ 30 The record shows that while claimant reported that he felt "slightly worse" when he saw Dr. Perez on December 30, 2009, Dr. Perez also noted that, overall, claimant's condition had improved since beginning treatment. Nevertheless, Dr. Perez concluded that claimant had not progressed as

anticipated. As a result, he ordered an MRI of the lumbar spine to rule out lumbar disc derangement. He also prescribed an additional three weeks of physical therapy. Based on the result of the MRI, which demonstrated a lumbar intervertebral derangement, Dr. Perez ordered an EMG to rule out lumbosacral radiculopathy. In the meantime, claimant underwent a physical therapy re-evaluation on January 12, 2010. At that time, the therapist noted that while claimant continued to have complaints of back pain, he had shown improvement since starting therapy, and he therefore recommended that the treatment continue. Based on this evidence, the Commission could have reasonably concluded that while claimant continued to have complaints of back pain despite several weeks of physical therapy, his overall condition improved during this time and thus continued therapy was appropriate while additional diagnostic tests were conducted to pinpoint the source of claimant's complaints. As such, we cannot say that the Commission's award of medical expenses from December 31, 2009, through January 20, 2010, is against the manifest weight of the evidence.

¶ 31 Respondent also points out that on January 21, 2010, claimant saw Dr. Bernstein for an independent medical examination. Noting that claimant still had persistent pain complaints months after the accident, Dr. Bernstein recommended a "formal" physical therapy program with conditioning and strengthening. In addition, Dr. Bernstein stated that he did not support "further chiropractic care or passive modalities in physical therapy as [claimant] has been describing." Dr. Bernstein anticipated that claimant would be at MMI after four additional weeks of physical therapy. Based on Dr. Bernstein's report, respondent claims that the physical therapy claimant underwent after December 30, 2009, and through January 20, 2010, "was not in line with the active physical therapy recommended by Dr. Bernstein." Respondent further contends that "[i]t can also be

presumed the physical therapy [claimant] underwent after the January 21, 2010 evaluation was not the type recommended by Dr. Bernstein because [claimant] did not achieve MMI within four weeks as opined by Dr. Bernstein."

¶ 32 Respondent does not explain how it would be possible for claimant's physical therapy regimen to be "in line" with Dr. Bernstein's recommendation prior to the date claimant actually saw Dr. Bernstein for an examination. Moreover, respondent does not direct us to any treatment program developed by Dr. Bernstein that he would accept as appropriate. We point out that, in concluding that claimant's therapy consisted solely of chiropractic care and passive modalities, Dr. Bernstein relied on claimant's description of his therapy. However, there is no evidence that Dr. Bernstein actually reviewed claimant's physical therapy treatment records. The Commission did review these records and determined that, contrary to Dr. Bernstein's finding that claimant's therapy consisted of only passive modalities, claimant's care involved "active modalities/therapy." In support of this finding, the Commission relied on claimant's testimony that during therapy he walked and underwent a series of exercises involving a stability ball and a rope. In addition, the Commission cited the January 12, 2010, physical therapy re-evaluation, which indicated that claimant was performing Swiss ball squats, doing repetitive step-ups with a 12-pound weight, performing squat overhead lifting with a 5-kilogram weight, and walking on a treadmill for 10 minutes. We also note that Dr. Perez repeatedly prescribed "active" therapeutic exercises for claimant. Accordingly, respondent's reliance on Dr. Bernstein's report is not well taken.

¶ 33 Respondent also argues that the Commission erred in finding that expenses associated with four of claimant's follow-up visits with Dr. Perez in January and February 2010 were reasonable and

necessary. According to respondent, the certified records from Marque Medicos for the dates in question did not include any reports regarding any examination or findings on these dates. We disagree. The dates of service in question are January 13, 18, and 25, 2010, and February 4, 2010. The record contains a "daily progress note" from each of those four dates indicating that claimant presented to Marque Medicos for therapy on said dates and was examined by Dr. Perez. Furthermore, the note from each date lists claimant's subjective complaints, Dr. Perez's objective findings, his assessment of claimant's condition, and the treatment plan. Accordingly, we conclude that the Commission's award of medical expenses for these visits is not against the manifest weight of the evidence.

¶ 34 Finally, respondent argues that the following medical care was not reasonable or necessary to cure or relieve claimant from the effects of his work injury: (1) claimant's visits with Medicos Pain and Surgical Specialists; (2) claimant's two epidural steroid injections; and (3) claimant's treatment on December 5, 2009, from a biller known as Specialized Radiology Consultants. According to respondent, the Commission's approval of expenses for this treatment "is in direct conflict with the credible IME report of Dr. Bernstein where he opined [claimant] required no further treatment other than a formal four week regimen of physical therapy."

¶ 35 Dr. Bernstein did not examine claimant until January 21, 2010. Respondent does not explain why Dr. Bernstein's report that no further treatment was required is relevant to assessing the propriety of a medical charge occurring before the date of Dr. Bernstein's examination. Moreover, Dr. Bernstein's report does not reference whether the charge from Specialized Radiology Consultants, which apparently was for the interpretation of a diagnostic film, is appropriate. Because

respondent does not explain why the treatment from Specialized Radiology Consultants was not necessary or reasonable to cure or relieve the effects of claimant's accidental injury, we are compelled to conclude that the Commission's award of this expense is not against the manifest weight of the evidence. With respect to the other two categories of medical expenses outlined in the previous paragraph, the Commission was presented with conflicting medical evidence regarding the necessity of such treatment. As respondent correctly notes, Dr. Bernstein was of the opinion that, other than four additional weeks of physical therapy, claimant required no further treatment. However, claimant's treating physicians thought otherwise. In particular, we note that on January 28, 2010, claimant consulted Dr. Engle of Medicos Pain and Surgical Specialists for pain management. At that time, claimant was prescribed various medications. Claimant returned to Medicos Pain and Surgical Specialists on February 11, 2010. Claimant reported that although he experienced temporary symptomatic relief of his pain with the medications, the pain increased with activity. As a result, Pond recommended proceeding to the "next level" of pain management, which consisted of the epidural injections, which were administered in February and March 2010. It is the function of the Commission to judge the credibility of the witnesses, determine the weight to be given to their testimony, and resolve conflicting medical evidence. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 435-36 (2011). Here, the Commission attributed more weight to the opinions of claimant's treating physicians than it did to the independent medical examiner. Given the Commission's role in resolving conflicts in the evidence, we cannot say that its finding that the foregoing medical expenses were necessary and reasonable to cure or relieve the effects of claimant's accidental injury is against the manifest weight of the evidence.

¶ 36 B. Causation

¶ 37 Next, respondent asserts that the Commission's finding that claimant's current condition of ill-being is causally related to his employment is against the manifest weight of the evidence. Respondent does not develop this argument in its opening brief or cite any authority in support of this argument, resulting in forfeiture of this issue on appeal. See Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) (requiring the appellant's brief to include the contentions of the appellant and the reasons therefor); *People v. Brown*, 363 Ill. App. 3d 838, 840 n.1 (2005). Respondent attempts to clarify its position regarding causation in its reply brief, arguing that the basis for this argument is that claimant's complaints "were a product of unnecessary, unreasonable and ineffective overtreatment." This argument is also subject to forfeiture. See Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) (noting that arguments raised for the first time in a reply brief are considered waived); *Illinois Health Maintenance Organization Guaranty Ass'n v. Department of Insurance*, 372 Ill. App. 3d 24, 45 (2007). Even absent forfeiture, we would reject respondent's position as it is premised on the propriety of the Commission's award of medical care, which we have already determined was not erroneous.

¶ 38 C. TTD Benefits

¶ 39 Respondent next challenges the Commission's award of TTD benefits. Respondent does not dispute that claimant is entitled to TTD benefits from November 30, 2009, through February 18, 2010. However, respondent maintains that TTD benefits for the period from February 19, 2010, through March 17, 2010, should not have been awarded.

¶ 40 TTD benefits are available from the time an injury incapacitates an employee from work until such time as the employee is as far recovered or restored as the permanent character of the injury will permit. *Westin Hotel*, 372 Ill. App. 3d at 542. The fact that the employee has the ability to do light work does not necessarily preclude a finding of temporary total disability. *Whitney Productions, Inc. v. Industrial Comm'n*, 274 Ill. App. 3d 28, 31 (1995). The dispositive inquiry is whether the employee's condition has stabilized, that is, whether the employee has reached MMI. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005). The factors to consider in assessing whether an employee has reached MMI include a release to return to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 178 (2000). Once the injured employee has reached MMI, he is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). The period during which an injured employee is entitled to TTD benefits is a factual inquiry subject to the manifest weight standard of review. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256-57 (2008).

¶ 41 Respondent insists that the Commission's award of TTD benefits for the period from February 19, 2010, through March 17, 2010, is premised on "the dubious opinions of Dr. Perez and Dr. Engel finding [claimant] continued to be temporarily and totally disabled." Respondent argues that the Commission made this determination in error. Respondent relies on the opinion of Dr. Bernstein, who, on January 21, 2010, opined that after four weeks of formal physical therapy, claimant would be at MMI and able to return to full duty work without restrictions. Respondent

reasons that had defendant followed Dr. Bernstein's treatment regimen, he would have been at MMI by February 19, 2010.

¶ 42 We cannot say that the Commission's finding that claimant remained temporarily totally disabled through March 17, 2010, is against the manifest weight of the evidence. The record demonstrates that, as of the date of the arbitration hearing, claimant had not been released to full-duty work. Notably, when claimant was seen at Medicos Pain and Surgical Specialists on February 25, 2010, Pond authorized claimant to remain off work "in an effort to not further aggravate his condition." Similarly, following an examination on March 4, 2010, Pond reiterated this finding, noting additionally that no light-duty work was available for claimant. Indeed, none of claimant's treating medical providers indicated that claimant had reached MMI. To the contrary, the medical evidence establishes that through March 2010, claimant continued to experience various symptoms connected with the work-related accident for which he was still being treated. While Dr. Bernstein, on January 21, 2010, anticipated claimant would reach MMI following four weeks of "formal" physical therapy, he did not develop a treatment plan that he viewed as appropriate. As such, the Commission concluded that the therapy claimant was receiving fell within the parameters of what Dr. Bernstein recommended. At best, this case presents a situation of conflicting medical evidence regarding the issue of whether claimant is entitled to TTD benefits after February 18, 2010. As noted elsewhere, it is the function of the Commission to judge the credibility of the witnesses, determine the weight to be given to their testimony, and resolve conflicting medical evidence. *Tower Automotive*, 407 Ill. App. 3d at 435-36. Based on the record before us, we are unable to conclude

that the Commission's decision that claimant had yet to reach MMI and therefore was entitled to TTD benefits up to the date of the arbitration hearing is against the manifest weight of the evidence.

¶ 43 D. Sanctions

¶ 44 Claimant asks us to impose sanctions against respondent pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) for bringing a frivolous appeal. Claimant contends that the instant appeal was not undertaken in good faith and was only intended to cause unnecessary delay, needlessly increasing the cost of litigation of this case. However, given the conflicting medical evidence of record, as well as the utilization review report, we decline claimant's request for sanctions.

¶ 45 III. CONCLUSION

¶ 46 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County, which confirmed the decision of the Commission. This cause is remanded pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 47 Affirmed; Cause remanded.