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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
WORKERS' COMPENSATION COMMISSION DIVISION

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U.S. FOOD SERVICE,	)	Appeal from the Circuit Court
	)	of La Salle County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09-MR-190
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION and DOMINIC	)	
RUBERSTELL,	)	Honorable
	)	Joseph P. Hettel,
Defendants-Appellees.	)	Judge, Presiding

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

**ORDER**

¶ 1 *Held:* (1) Commission properly determined that claimant's application for benefits was timely where evidence demonstrates that claimant filed application within two years after the date of the last payment of medical expenses by a group health carrier; (2) Commission's finding that claimant sustained an injury arising out of and in the course of his employment is not against the manifest weight of the evidence; (3) Commission's awards of TTD and PTD benefits are not against the manifest weight of the evidence; and (4) by failing to cite any authority in support of its contention, respondent forfeited argument that Commission's decision to limit scope upon remand was "defective."

¶ 2 Respondent, US Food Service, appeals from a judgment of the circuit court of La Salle County confirming a decision of the Illinois Workers' Compensation Commission (Commission), awarding to claimant, Dominic Ruberstell, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 1998)). On appeal, respondent challenges the Commission's findings with regard to the timeliness of claimant's application for benefits, the scope of a remand proceeding, accident, temporary total disability (TTD) benefits, and permanency. We affirm.

¶ 3 I. BACKGROUND

¶ 4 To place respondent's arguments in context, we briefly summarize the facts leading to this appeal. Where relevant, additional facts will be set forth in the analysis of the issue to which they pertain. Respondent distributes bulk groceries and produce to hospitals, schools, and other institutions. Claimant began working for respondent in October 1972. On December 12, 2001, claimant filed an application for adjustment of claim, alleging that, while working for respondent, he sustained a repetitive-trauma injury involving his "cervical spine with referral nerve damage, left arm, hand, right leg." The application listed the date of accident as December 16, 1998. The matter proceeded to arbitration on November 22, 2004.

¶ 5 At the arbitration hearing, claimant testified that when he was 12 years old, he lost his right arm in a shotgun accident. Two years later, claimant was fitted with a hook prosthesis. When claimant was first hired by respondent, he worked as a "counter" and a "checker." According to claimant, his duties principally involved manual physical labor, driving a forklift, and operating a pallet jack. After about 20 years of this work, claimant was promoted to a supervisor. Claimant acknowledged that, as a supervisor, his job became less physically demanding.

¶ 6 Claimant testified that for a long time, he noticed that his left hand would go numb and he would drop things, but he did not know why. Claimant also testified that he experienced “[t]errific shoulder and neck pain” and weakness in his right leg. During this time, claimant sought treatment from his family physician, Dr. P. Vadhanasindhu, who diagnosed claimant with spinal stenosis and degenerative disc disease at C4 through C6. On January 16, 1998, Dr. Vadhanasindhu completed an application for short-term disability benefits. On that form, Dr. Vadhanasindhu wrote that claimant’s diagnosis was “at least partially” work related. On April 16, 1998, Dr. Robert Kazan performed a decompressive laminectomy on claimant. Subsequently, claimant was diagnosed with left carpal tunnel syndrome by Dr. A.K. Roy. In September 1998, claimant underwent a left carpal tunnel release. Claimant worked intermittently while receiving treatment. On October 21, 1998, at respondent’s request, claimant was evaluated by Dr. Jay Pomerance, a hand surgeon, for an independent medical examination (see 820 ILCS 305/12 (West 1998)). On December 16, 1998, Dr. Roy released claimant to work light duty “indefinitely.” Nevertheless, claimant continued to report pain and discomfort with his neck, left shoulder, and left arm.

¶ 7 Claimant notified respondent that he was requesting workers’ compensation benefits in mid-December 1998, when a form entitled “Investigation of Injury or Accident” was completed on his behalf. In the form claimant indicated that, to the best of his knowledge, the spinal decompressive surgery, the carpal tunnel release, and his continued problems “are all job related injuries.” Claimant further indicated on the form that the cause of the injuries was repetitive manual lifting of product as well as twisting of handles and levers on forklifts, pallet jacks, and trucks. Thereafter, claimant continued to treat with various physicians, including Dr. Vadhanasindhu, Dr. Roy, and Dr. John

Mikuzis. Among Dr. Mikuzis's recommendations was physical therapy for the neck and left hand. Meanwhile, on January 26, 1999, claimant visited the Spine Center at Lutheran General Hospital, where, at respondent's request, he saw Dr. David Spencer for an independent medical examination. Dr. Vadhanasindhu, noting that claimant continued to report no improvement with his pain, took claimant off work indefinitely as of March 8, 1999. On May 21, 1999, claimant was evaluated by Dr. Rito Maningo for social security disability benefits. On August 17, 1999, claimant began receiving social security disability benefits. On March 10, 2000, Dr. Roy authored a letter to claimant's attorney opining that, given the extent of claimant's right-sided amputation, his left carpal tunnel problems, and his cervical problems, claimant was unable to be employed in any gainful position.

¶ 8 The arbitrator first addressed whether claimant's application for compensation was timely. The arbitrator determined that claimant's injury "manifested itself" on December 16, 1998, the date Dr. Roy released claimant to light duty work indefinitely. Because claimant's application was filed within three years of the manifestation date (see 820 ILCS 305/6(d) (West 1998)), the arbitrator concluded that claimant's application was timely. The arbitrator further concluded that claimant sustained an accident that arose out of and in the course of his employment with respondent and that claimant's condition of ill-being was causally related to his employment. The arbitrator awarded claimant TTD benefits of \$603.33 per week from March 8, 1999 (the date Dr. Vadhanasindhu authorized claimant off work) through the date of the arbitration hearing (November 22, 2004), a period of 308 weeks. See 820 ILCS 305/8(b) (West 1998). In addition, the arbitrator determined that claimant's temporary total disability had become permanent and that he was unable to return to

gainful employment. As such, the arbitrator awarded claimant permanent total disability (PTD) benefits of \$603.33 per week for life. See 820 ILCS 305/8(f) (West 1998).

¶ 9 The Commission affirmed and adopted the arbitrator's decision with regard to accident, causation, TTD, and permanency. However, the Commission modified the arbitrator's decision to reflect that claimant's injury manifested itself on January 16, 1998, the date Dr. Vadhanasindhu completed a short-term disability form indicating that claimant's cervical stenosis and degenerative disc disease were at least partially related to claimant's employment. The Commission noted that under section 6(d) of the Act (820 ILCS 305/6(d) (West 1998)), an employee has three years from the date of accident or two years from the date of the last payment of compensation, whichever is later, to file his application. Given the manifestation date of January 16, 1998, the Commission found claimant's application, which was filed on December 12, 2001, untimely under the three-year limitation period. However, citing to *Legrís v. Industrial Comm'n*, 323 Ill. App. 3d 789 (2001), the Commission noted that "payment of medical benefits through either an employer's workers' compensation carrier or by a group health carrier that qualifies under Section 8(j) of the Act [820 ILCS 305/8(j) (West 1998)] constitutes payment of 'compensation' within the meaning of section 6(d)." The Commission noted that based on the December 12, 2001, filing date of claimant's application, he would have to show that a payment occurred after December 12, 1999, to fulfill the statute of limitations. The Commission did not find any evidence in the record when the last payment of compensation was made. As such, the Commission remanded the matter to the arbitrator "to take further evidence solely on the issues of 1) whether or not payments of medical expenses by [claimant's] group health carrier qualify as being made pursuant to Section 8(j) of the Act, and 2)

when the last payment of medical expenses was made by Respondent's workers' compensation carrier or, if applicable, the group health carrier, in order to determine if the last payment was made subsequent to December 12, 1999."

¶ 10 A remand hearing was held on June 23, 2008. Although no testimony was taken, the parties prepared a "Stipulation of Evidence Upon Remand," to which various documents were attached. Moreover, the parties agreed that if claimant were called, he would testify that he continued seeing Dr. Vadhanasindhu up to August 2, 2001. Relying on the stipulated evidence and citing *Legris*, 323 Ill. App. 3d 789, the arbitrator ruled that payments to a group health carrier qualify under section 8(j) as payments of compensation within the meaning of section 6(d). The arbitrator further found that claimant's application was timely because it was filed within two years after the date of the last payment of medical. The Commission affirmed and adopted the arbitrator's findings on remand. The circuit court of La Salle County confirmed. This appeal ensued.

¶ 11 II. ANALYSIS

¶ 12 On appeal, respondent raises five principal issues: (1) whether claimant's application for benefits was timely; (2) whether the Commission's finding that claimant sustained an accident arising out of and in the course of his employment is against the manifest weight of the evidence; (3) whether the Commission's award of TTD benefits is against the manifest weight of the evidence; (4) whether the Commission's award of PTD benefits is against the manifest weight of the evidence; and (5) whether the Commission's original decision remanding the case to the arbitrator was "defective" in that it precluded the parties from relitigating all issues. We address each contention in turn.

¶ 13

A. STATUTE OF LIMITATIONS

¶ 14 The first issue is whether claimant's application for adjustment of claim was filed within the applicable statute of limitations. Section 6(d) of the Act (820 ILCS 305/6(d) (West 1998)) provides in relevant part that an application for compensation is timely if filed "within 3 years after the date of the accident, if no compensation has been paid, or within 2 years after the date of the last payment of compensation, where any has been paid, whichever shall be later." Where the employee alleges a repetitive-trauma injury, the date of the accident is the "manifestation date," *i.e.*, the date on which both the injury and its causal link to employment becomes plainly apparent to a reasonable person. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 65 (2006); *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987).

¶ 15 As noted above, in this case, the arbitrator set the manifestation date as December 16, 1998. On that date, Dr. Roy released claimant to return to light-duty work indefinitely. Thus, the arbitrator found that claimant's application for adjustment of claim, which was filed on December 12, 2001, was filed within three years after the date of the accident. The arbitrator further noted that claimant's medical bills were paid by respondent. Citing *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499 (1998), and *Legris*, 323 Ill. App. 3d 789, the arbitrator found that medical benefits paid are considered "compensation" and constituted a separate basis for extending the time for filing a claim.

¶ 16 The Commission modified the manifestation date set by the arbitrator. The Commission determined that the date upon which both the fact of the injury and the causal relationship of claimant's employment would be plainly apparent to a reasonable person was January 16, 1998. That was the date that Dr. Vadhanasindhu, claimant's primary-care physician, completed a short-

term disability application indicating that claimant's cervical stenosis and degenerative disc disease were at least partially related to claimant's employment with respondent. Because claimant's application for adjustment of claim was not filed until December 12, 2001, the Commission concluded that claimant's application was not timely under the three-year limitations period set forth in section 6(d). The Commission then considered whether claimant's application was filed within two years after the date of the last payment of compensation. Relying on *Legris*, 323 Ill. App. 3d 789, the Commission noted that the "payment of medical benefits through either an employer's workers' compensation carrier or by a group health carrier that qualifies under Section 8(j) of the Act [820 ILCS 305/8(j) (West 1998)] constitutes payment of 'compensation' within the meaning of section 6(d)." However, finding the record lacking evidence regarding when the last payment of compensation was made, the Commission remanded the matter to the arbitrator "to take further evidence solely on the issues of 1) whether or not payments of medical expenses by [claimant's] group health carrier qualify as being made pursuant to Section 8(j) of the Act, and 2) when the last payment of medical expenses was made by Respondent's workers' compensation carrier or, if applicable, the group health carrier, in order to determine if the last payment was made subsequent to December 12, 1999."

¶ 17 No oral testimony was heard on remand. Instead, the parties prepared a "Stipulation of Evidence Upon Remand." Among other things, the parties stipulated that claimant continued seeing Dr. Vadhanasindhu up to August 2, 2001, and that bills for Dr. Vadhanasindhu, Dr. Kazan, and prescriptions were submitted through company insurance subsequent to December 12, 1999. Attached to the stipulation were various documents, including progress notes from Dr.

Vadhanasindhu's treatment of claimant and letters to claimant from Cigna Healthcare referencing explanations of claimant's group plan benefits with respondent. The latter paperwork showed that claimant was treated by Dr. Vadhanasindhu on various dates between December 2, 1999, and August 2, 2001, and that, in conjunction with this treatment, payments were made by a group health plan to Dr. Vadhanasindhu. Similarly, the paperwork showed that claimant was treated by Dr. Kazan on March 5, 2001, and that, in conjunction with this treatment, a payment was made by a group health plan to Dr. Kazan. The parties further stipulated that if claimant were called to testify, he would confirm the treatment received and the payments made as indicated in these documents. Based on this evidence, the arbitrator found that medical payments were made by respondent subsequent to December 12, 1999. Relying on *Legris*, 323 Ill. App. 3d 789, the arbitrator reiterated that "payments by group health carrier [*sic*] that qualifies under 8(j) of the Act constitutes payments of compensation within the meaning of Section 6(d)." Thus, the arbitrator ruled that claimant's application for adjustment of claim was timely pursuant to section 6(d) as it was filed within two years after the date of the last payment of medical. The arbitrator found "additional support" for its finding in section 8(j) of the Act (820 ILCS 305/8(j) (West 1998)), which provides in relevant part that the time for filing an application for benefits does not begin to run until the termination of medical payments. The Commission affirmed and adopted the decision of the arbitrator.

¶ 18 On appeal, respondent contends that the Commission's finding that claimant's application for compensation was timely is against the manifest weight of the evidence and contrary to law. Claimant does not dispute that, under certain circumstances, the payment of medical expenses constitutes "compensation" for purposes of section 6(d) (820 ILCS 305/6(d) (West 1998)).

However, respondent insists that the Commission erred in finding that payments made by it through claimant's group health carrier constituted "compensation" in this case because claimant failed to establish the prerequisites necessary for such a finding under section 8(j) of the Act (820 ILCS 305/8(j) (West 1998)). The application of a statute of limitations is a question of law subject to *de novo* review. *Frigo v. Silver Cross Hospital & Medical Center*, 377 Ill. App. 3d 43, 58 (2007).

¶ 19 Section 8(j) of the Act provides in relevant part:

"In the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under this Act, then such amounts so paid to the employee from any such group plan as shall be consistent with, and limited to, the provisions of paragraph 2 hereof, shall be credited to or against any compensation payment for temporary total incapacity for work or any medical, surgical or hospital benefits made or to be made under this Act. In such event, the period of time for giving notice of accidental injury and filing application for adjustment of claim does not commence to run until the termination of such payments. This paragraph does not apply to payments made under any group plan which would have been payable irrespective of an accidental injury under this Act." 820 ILCS 305/8(j) (West 1998).

Respondent's argument with respect to the applicability of section 8(j) is threefold. First, respondent asserts that claimant failed to carry his burden of establishing that respondent paid for the group plan either in full or in part. Second, respondent maintains that to apply, section 8(j) requires both that

benefits were paid under group insurance and a credit is taken by respondent for payment of those benefits. According to respondent, no medical benefits were awarded in this case and no credit was taken. Third, respondent argues that section 8(j) requires that the group plan be one that precludes coverage for work-related injuries and that claimant provided no evidence in this regard.

¶ 20 We find respondent's position disingenuous. Respondent was aware that the applicability of section 8(j) was at issue on remand. The Commission expressly referenced that section in its original decision, even couching one of the issues as "whether or not payments of medical expenses by [claimant's] group health carrier qualify as being made pursuant to Section 8(j) of the Act." Nevertheless, respondent chose to proceed on stipulated evidence. In the stipulation of evidence upon remand, the parties agreed that bills for Dr. Vadhanasindhu, Dr. Kazan, and claimant's prescriptions "were submitted through *company insurance*." (Emphasis added.) The parties further stipulated that the bills were paid "as shown by Explanation of Benefits *provided by US Foodservice*." (Emphasis added.) The explanation of benefits consisted of letters from Cigna Healthcare addressed to claimant. All but one of these documents reference a "group account" and state "[b]elow is an explanation of your plan benefits *with U.S. Food Services*." (Emphasis added.) Respondent had the opportunity to dispute this evidence, but opted instead to stipulate to it. We therefore conclude that the parties' stipulation on remand provided sufficient circumstantial evidence to support the conclusion that the group health plan that paid for claimant's medical expenses fell within the parameters of section 8(j). See *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106 (2006) (noting that circumstantial evidence will support an inference that is reasonable and probable).

¶ 21 Respondent also questions the Commission's reliance on *Legris*, 323 Ill. App. 3d 789, in finding that the application for compensation was timely filed. In *Legris*, the employee alleged an accidental injury occurring on July 2, 1989. Thereafter, he treated with multiple physicians, including a company doctor, through 1996. During the same period of time, respondent paid all of the employee's medical expenses by submitting them to its workers' compensation carrier. In December 1996, the employer's workers' compensation carrier notified the employee that it was ceasing benefits. The employee filed an application for adjustment of claim on February 3, 1997. In *Legris*, this court held that "compensation" as used in the limitation provision of section 6(d) of the Act includes payment of medical expenses incurred as a result of an accidental injury. *Legris*, 323 Ill. App. 3d at 790-93. Respondent insists that *Legris* is distinguishable because, unlike claimant, the employee in that case was receiving workers' compensation benefits. However, in *Legris*, we specifically referenced section 8(j) and stated that there was "no logical distinction between the payment of medical benefits under a group plan covering nonoccupational disabilities and the payment of medical benefits under a workers' compensation insurance policy." *Legris*, 323 Ill. App. 3d at 792-93; see also *McMahan*, 183 Ill. 2d at 510-17 (holding that medical benefits constitute "compensation" for purposes of calculating penalties and attorney fees); *Crow's Hybrid Corn Co. v. Industrial Comm'n*, 72 Ill. 2d 168, 174-75 (1978) (holding that insurance payments under group policy extended time within which to provide the employer notification of accident); *Creel v. Industrial Comm'n*, 54 Ill. 2d 580, 581-84 (1973) (holding that insurance payments under group policy extended time within which to file application for benefits); *Caterpillar Tractor Co. v. Industrial Comm'n*, 33 Ill. 2d 78, 80-82 (same). We find that respondent interprets *Legris* too

narrowly. Because claimant's application for adjustment of claim was filed within two years after the date of the last payment of medical expenses, we affirm the Commission's finding that claimant's application was timely.

¶ 22 B. ACCIDENT AND CAUSATION

¶ 23 Next, respondent challenges the Commission's findings with respect to accident and causation. According to respondent, claimant presented no medical evidence to support a finding that he sustained an accident arising out of and in the course of his employment or that any such injury was causally related to his employment.

¶ 24 At the outset, we note that issues related to the Commission's factual findings and the basis for its legal conclusions cannot be reviewed absent a complete record of the proceedings. See *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). As such, the appellant has the burden of providing the reviewing court with a sufficiently complete record to allow for meaningful appellate review. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); *Padgett v. Industrial Comm'n*, 327 Ill. App. 3d 655, 661 (2002). In the absence of a sufficiently complete record, a reviewing court will resolve all insufficiencies apparent therein against the appellant and will presume that the fact finder's ruling had a sufficient legal and factual basis. *Foutch*, 99 Ill. 2d at 391-92; *Lawlyes v. Industrial Comm'n*, 246 Ill. App. 3d 226, 231 (1993). Here, although the record contains two sets of progress notes from Dr. Vadhanasindhu (one from the original arbitration hearing and one from the remand hearing), neither set is complete. In particular, most of the even-numbered pages are missing. It is clear that the arbitrator relied on some of the missing pages, as he references them in

his decision. Without the relevant documents in the record before us, we are compelled to find that the issues of accident and causation were properly decided below. *Lawlyes*, 246 Ill. App. 3d at 231.

¶ 25 However, even on the limited record before us, we do not find these claims of error convincing. An employee who suffers a repetitive-trauma injury must meet the same standard of proof as an employee who suffers a sudden injury. *City of Springfield v. Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 313 (2009). The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the evidence that the injury arose out of and in the course of employment. *Cassens Transport Co., Inc. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330 (1994); see also 820 ILCS 305/2 (West 1998). For an injury to "arise out of" one's employment, its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the injury. *Hosteny v. Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 676 (2009). The "in the course of" element refers to the time, place, and circumstances under which the accident occurred. *City of Springfield*, 388 Ill. App. 3d at 313. Whether an injury arises out of and in the course of one's employment is a question of fact for the Commission to decide, and its determination will not be set aside on appeal unless it is against the manifest weight of the evidence. *City of Springfield*, 388 Ill. App. 3d at 312. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Bassgar, Inc. v. Workers' Compensation Comm'n*, 394 Ill. App. 3d 1079, 1085 (2009).

¶ 26 Here, the evidence established that claimant had his arm amputated when he was 12 years old. Two years later, claimant was fitted with a hook prosthesis. Claimant began working for respondent in October 1972. Claimant testified that when he was first hired by respondent, he

worked as a “counter” and a “checker.” According to claimant, his duties involved loading and unloading trucks and rail cars, bending over to pick up product, lowering product from overhead, and stacking product on pallets. Claimant testified that the type of product he handled varied and included cases of canned goods, 50-pound bags of flour, and 100-pound bags of potatoes. To reach and lower overhead merchandise, claimant would have to climb up to 30 feet, grab an item, and place it on his left shoulder and neck. Claimant’s position also involved driving forklifts and operating pallet jacks. Claimant noted that these duties involved twisting, pulling, and pushing various levers and buttons and constantly tilting his head back to determine where to place merchandise on storage racks. Claimant testified that he performed these duties for more than 20 years before being promoted to a supervisor. In this supervisory role, claimant initially performed the same physical tasks until the unions prohibited company personnel from doing union work. Thereafter, claimant would perform physical tasks only when respondent was “in a bind.” Otherwise, he would walk around the warehouse “directing people.” Claimant would also “keep[] inventories,” which required him to “look up and count.” Claimant testified that for a long time, he noticed that his left hand would go numb and he would drop things, but he did not know why. He also recalled experiencing “[t]errific shoulder and neck pain” and weakness in his right leg.

¶ 27 Claimant sought treatment from Dr. Vadhanasindhu. Late in December 1997, Dr. Vadhanasindhu ordered an MRI of the cervical spine. Based on the MRI, Dr. Vadhanasindhu diagnosed spinal stenosis at C4 through C6 with degenerative disc disease. In January 1998, claimant applied for short-term disability benefits. Dr. Vadhanasindhu completed the physician’s section of the application, indicating that claimant’s injuries were “at least partially” related to work.

Claimant subsequently sought treatment from a neurosurgeon, Dr. Kazan. In April 1998, Dr. Kazan performed a decompressive laminectomy at C4 through C6. Post operatively, claimant reported continued shoulder discomfort as well as paresthesias and numbness radiating into the left upper extremity. Claimant then sought treatment from an orthopaedic surgeon, Dr. Roy, for complaints of pain in the left hand. An EMG/NCV study ordered by Dr. Roy showed severe carpal tunnel syndrome of the left arm. As a result, Dr. Roy performed a left carpal tunnel release in September 1998. Thereafter, claimant continued to treat with Dr. Vadhanasindhu and Dr. Roy with various pain complaints, including some involving the neck, left shoulder, and left wrist.

¶ 28 Despite the foregoing evidence, respondent insists that claimant failed to prove that his symptoms arose out of and in the course of his employment with respondent. Respondent relies on the reports of Dr. Pomerance and Dr. Spencer, both of whom saw claimant at respondent's request. Dr. Pomerance, a hand surgeon, examined claimant in October 1998. Dr. Pomerance diagnosed (1) residual hand pain and paresthesias status post left carpal tunnel syndrome and (2) shoulder complaints related to degenerative changes at the acromioclavicular joint. Dr. Pomerance obtained verbal job information from claimant and was also provided with a written job description. Dr. Pomerance noted that claimant's position did not involve any impact use of the hands, high force grasp, awkward positioning, or sustained hyperflexion or hyperextension of the wrist. As such, he opined that there was no relationship between claimant's carpal tunnel syndrome and his employment. Dr. Spencer, a spine specialist, examined claimant in January 1999. Dr. Spencer noted that, by virtue of the amputation of claimant's right arm when he was 12 years old, claimant "has had to overcompensate by excessive use of his left upper extremity in the physical work activities that

he has been performing over the last 20 years.” Ultimately, Dr. Spencer did not believe that claimant suffered “any identifiable injury to his neck, shoulder or arm as a result of any specific work related activities.” However, he also opined that claimant’s current problem is “fundamentally a problem of overuse of his left upper extremity as a result of his right sided amputation.”

¶ 29 It is the function of the Commission to decide questions of fact and causation, to judge the credibility of the witnesses, and to resolve conflicting medical evidence. *Teska v. Industrial Comm’n*, 266 Ill. App. 3d 740, 741 (1994). Based on the forgoing evidence, it was reasonable for the Commission to conclude that claimant’s injuries arose out of and in the course of his employment with respondent. The evidence reflects that claimant had a significantly physical job over the course of at least 20 years requiring a substantial amount of bending, lifting, twisting, pulling, pushing, and head tilting. Claimant began having complaints of pain in his neck and left shoulder and arm, which gradually caused enough discomfort for him to consult a physician. Those complaints culminated in the diagnosis of cervical stenosis and degenerative disc disease in early 1998. Claimant thereafter underwent a cervical laminectomy in April 1998. The surgery did not relieve claimant’s pain symptoms, and he was subsequently examined by an orthopaedic surgeon. Claimant was diagnosed with left carpal tunnel syndrome for which he underwent a release in September 1998. Dr. Vadhanasindhu believed that claimant’s cervical problems were at least partially related to claimant’s work. Moreover, although Dr. Spencer did not believe that claimant suffered any identifiable injury to his neck, shoulder, or arm as a result of any work activity, his opinion was equivocal. He acknowledged that claimant’s current problem is “fundamentally a problem of overuse of his left upper extremity as a result of his right sided amputation.” Further,

Dr. Spencer noted that because of the amputation, claimant “has had to overcompensate by excessive use of his left upper extremity in the *physical work activities* that he has been performing over the last 20 years.” (Emphasis added.) Admittedly, Dr. Pomerance did not find claimant’s left carpal tunnel symptoms related to any work activities. However, it was reasonable to attribute little weight to the opinion of Dr. Pomerance, given claimant’s excessive use of his left upper extremity because of his right-sided amputation. For these reasons, we cannot say that the Commission’s findings on accident and causation are against the manifest weight of the evidence.

¶ 30 C. TTD BENEFITS

¶ 31 Respondent also contends that the Commission’s award of TTD benefits is unsupported by the evidence and should be reversed. 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 v. Industrial Comm’n*, 372 Ill. App. 3d 527, 542 (2007). The dispositive inquiry is whether the employee’s condition has stabilized, that is, whether the employee has reached maximum medical improvement (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 a claimant is entitled to TTD benefits is a factual inquiry. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm’n*, 387 Ill. App. 3d

244, 256-57 (2008). It is the function of the Commission to decide questions of fact (*Teska*, 266 Ill. App. 3d at 741), and those findings will not be disturbed on appeal unless they are against the manifest weight of the evidence (*Ming Auto Body/Ming of Decatur, Inc.*, 387 Ill. App. 3d at 257). As noted above, a finding is against the manifest weight of the evidence, only where an opposite conclusion is clearly apparent. *Bassgar, Inc.*, 394 Ill. App. 3d at 1085.

¶ 32 The Commission awarded claimant 308 weeks of TTD benefits on the basis that claimant's complaints of pain and inability to work were "credible." Respondent disagrees and cites two grounds in support of its claim that the Commission's award of TTD benefits is against the manifest weight of the evidence. First, respondent insists that there is no proof that claimant was receiving any "active" medical treatment after he saw Dr. Mikuzis in March 1999. It is unclear what respondent means by "active" medical treatment. However, we note that, on remand, respondent stipulated that claimant continued to see Dr. Vadhanasindhu up to August 2, 2001. Moreover, although the record does not contain a complete set of Dr. Vadhanasindhu's progress notes, those in the record do reference visits by claimant through at least October 2003 with complaints of pain in the left shoulder and neck radiating into the lower extremities. Accordingly, we reject this basis for overturning the Commission's award of TTD benefits.

¶ 33 Respondent also argues that the opinions of Dr. Pomerance and Dr. Spencer "were that [claimant] had reached MMI regarding his conditions by March 1999." Respondent further asserts that there is no opinion in the record to contradict the statements of Dr. Pomerance and Dr. Spencer. Respondent does not cite in the record where Dr. Spencer determined that claimant reached MMI in March 1999, and we are unable to find any such opinion. Dr. Pomerance stated that patients who

undergo carpal tunnel syndrome usually reach MMI 6 to 12 weeks after surgery. While we agree that there is no opinion to contradict Dr. Pomerance's opinion, we note that Dr. Pomerance is a hand surgeon and his opinion was limited to the carpal tunnel injury. Dr. Pomerance did not offer an opinion regarding claimant's cervical injury. In any event, we are compelled to affirm the Commission for, as noted previously, respondent has not provided this court with a complete set of progress notes from Dr. Vadhanasindhu. Dr. Vadhanasindhu was claimant's primary-care physician, and claimant continued to seek treatment from him for various problems, including neck and shoulder pain. Accordingly, we affirm the Commission's award of TTD benefits.

¶ 34

#### D. PTD BENEFITS

¶ 35 Next, we address the propriety of the Commission's award of PTD benefits. In a workers' compensation case, the claimant has the burden of establishing by a preponderance of the evidence the extent and permanency of his injury. *Professional Transportation, Inc. v. Workers' Compensation Comm'n*, 2012 IL App (3d) 100783WC, ¶ 33. The extent of a claimant's disability is a question of fact to be determined by the Commission. *Professional Transportation, Inc.*, 2012 IL App (3d) 100783WC, ¶ 33. The Commission's determination on a question of fact will not be set aside on appeal unless it is against the manifest weight of the evidence. *City of Springfield*, 388 Ill. App. 3d at 312. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Bassgar, Inc.*, 394 Ill. App. 3d at 1085.

¶ 36 An employee is totally and permanently disabled when he is unable to make some contribution to industry sufficient to justify payment of wages to him. *A.M.T.C. of Illinois v. Industrial Comm'n*, 77 Ill. 2d 482, 487 (1979). However, the employee need not be reduced to total

physical incapacity before a PTD award may be granted. *Ceco Corp. v. Industrial Comm'n*, 95 Ill. 2d 278, 286 (1983). Rather, the employee must show that he is unable to perform any services except those that are so limited in quantity, dependability, or quality that there is no reasonably stable market for them. *Alano v. Industrial Comm'n*, 282 Ill. App. 3d 531, 534 (1996). An employee can establish his entitlement to PTD benefits by (1) a preponderance of the medical evidence; (2) showing a diligent but unsuccessful job search; or (3) by demonstrating that, because of his age, training, education, experience and condition, there are no available jobs for a person in his circumstance. *Professional Transportation, Inc.*, 2012 IL App (3d) 100783WC, ¶ 33.

¶ 37 Respondent notes that both Dr. Pomerance and Dr. Spencer opined that claimant was capable of work. Dr. Pomerance authorized claimant to return to work in his job as a supervisor. He did not recommend any specific job modifications, but noted that if difficulties arise, they can be individually addressed. Dr. Spencer believed that claimant should be given the opportunity to return to work on a permanent basis in a job that does not require the heavy physical manual labor that he had previously been performing. Respondent acknowledges that both Dr. Vadhanasindhu and Dr. Roy opined that claimant was unable to work. However, respondent asserts that the opinions of Dr. Vadhanasindhu and Dr. Roy are entitled to little weight. Respondent points out that Dr. Vadhanasindhu has not given an updated opinion as to claimant's ability to work since March 1999. Dr. Roy first commented on claimant's ability to work in December 1998, when he released him to light duty indefinitely. In March 2000, Dr. Roy opined that he was unable to work in any gainful employment. However, respondent asserts that Dr. Roy made this latter determination without reexamining claimant. Once again, we are compelled to affirm the Commission for, as noted

previously, respondent has not provided this court with a complete set of progress notes from Dr. Vadhanasindhu. In any event, the evidence was conflicting and the Commission resolved the issue in claimant's favor, as was its province to do. See *Teska*, 266 Ill. App. 3d at 741. Accordingly, we affirm the Commission's award of PTD benefits.

¶ 38

#### E. SCOPE OF REMAND

¶ 39 Next we address respondent's claim that the Commission's initial decision, remanding the case to the arbitrator, was "defective" in that the Commission precluded the parties from relitigating all the issues of the case upon remand. In particular, respondent complains that the remand violated its "constitutional rights" because the limited scope of the remand prevented it from defending itself with regard to whether claimant was its employee on January 16, 1998, the new manifestation date established by the Commission. We find that respondent has forfeited this issue by failing to cite in support of its argument any authority, including the applicable constitutional provision upon which it claims to rely. See Illinois Supreme Court Rule 341(h)(7) (eff. September 1, 2006) (requiring appellant's brief to include argument "which shall contain the contentions of the appellant and the reasons therefor, *with citations of the authorities* and the pages of the record relied on.") (Emphasis added.); *Vallis Wyngroff Business Forms, Inc. v. Workers' Compensation Comm'n*, 402 Ill. App. 3d 91, 94 (2010) (holding that failure to comply with provision of Illinois Supreme Court Rule 341(h)(7) requiring citation to authority results in forfeiture of issue on appeal). Forfeiture notwithstanding, we direct respondent to *AC & S v. Industrial Comm'n*, 304 Ill. App. 3d 875, 879-80 (1999), wherein we held that the manifestation date of an employee's injury need not fall during employment. Under *AC & S*, the fact that claimant was not employed by respondent on the

manifestation date does not bar recovery, where, as here, claimant has established all the other elements of his claim.

¶ 40

### III. CONCLUSION

¶ 41 For the reasons set forth above, we affirm the judgment of the circuit court of La Salle County, which confirmed the decision of the Commission.

¶ 42 Affirmed.