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2015 IL App (1st) 131829WC-U

FILED: August 7, 2015

NO. 1-13-1829WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CALUMET CITY SCHOOL DISTRICT #156,	)	Appeal from
Appellant,	)	Circuit Court of
	)	Cook County
v.	)	No. 12L51190
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Pamela Daffin-Sibless, Appellee).	)	Honorable Eileen O'Neill Burke, Judge Presiding.

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

ORDER

¶ 1 *Held:* (1) The Commission's finding that claimant's accident arose out of and in the course of her employment was not against the manifest weight of the evidence.

(2) The Commission's finding that claimant's conditions of ill-being in her neck, back, and shoulder were causally connected to her work accident was not against the manifest weight of the evidence.

(3) The Commission's award of medical expenses and prospective medical care was not against the manifest weight of the evidence with the exception of a $945 bill from Allied Anesthesic Associates and $115 of the $149.50 bill from Advocate Christ Hospital which was against the manifest weight of the evidence.

(4) The Commission's award of TTD benefits was not against the manifest

weight of the evidence.

¶ 2 On May 11, 2009, claimant, Pamela Daffin-Sibless, filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2008)), seeking benefits from the employer Calumet City School District #156. She alleged that she sustained injuries to her neck, back, and right shoulder on February 11, 2009, in a work accident when she "fell down [a] flight of stairs." Following a May 19, 2011, hearing, the arbitrator concluded that (1) claimant had established an accident that arose out of and in the course of her employment; (2) the current conditions of ill-being in claimant's neck, back, and right shoulder were causally connected to the February 11, 2009, work accident; (3) the medical treatment received by claimant to date was reasonable, necessary, and related to the work accident and she was entitled to prospective medical care in the form of the anterior cervical discectomy and fusion recommended by her treating physicians; and (4) claimant was entitled to temporary total disability (TTD) benefits for the period of May 9, 2009, through May 9, 2011.

¶ 3 On review, the Illinois Workers' Compensation Commission (Commission) unanimously affirmed the arbitrator's decision.

¶ 4 On judicial review, the circuit court of Cook County confirmed the Commission's decision. This appeal followed.

¶ 5 I. BACKGROUND

¶ 6 The following factual evidence relevant to this appeal was elicited at the May 19, 2011, arbitration hearing.

¶ 7 Claimant worked for the employer as a speech therapist paraprofessional administering therapy to children from second grade through eighth grade—a position she held for almost two years. She conducted both individual and group-therapy sessions. Claimant

testified that on a daily basis, she personally escorted approximately 20 students, out of the 30 to 35 students she saw each day, to and from their classrooms which were located in three different "wings" of the building to and from her office located on the second floor of the building for therapy sessions. Claimant conducted both one-on-one and group therapy sessions. When asked whether students were regularly on the stairways, claimant responded, "[a]lways." In addition to conducting therapy sessions, claimant also had morning and afternoon "duty" where she was required to stand outside and watch the children as they went into and out of the building.

¶ 8 On February 11, 2009, claimant testified that she was preparing to go down the stairs for afternoon duty. She explained the accident as follows:

> "So I was on my way down. So I would have to go down a flight of steps and stop, and then there would be another flight of steps.
>
> So basically I was getting ready to go down the first flight of steps, and the kids were coming up from gym class and they were running rambunctiously all over the place. As I got ready to go down the steps, one of the students came flying up and kind of pushed my leg and I just went tumbling down the steps."

Claimant testified she fell down 8 to 15 steps and was knocked unconscious during her fall. When she awoke, claimant was being placed on a stretcher. She testified, "I had pain in my lower back, my arm and my neck, my [right] shoulder and my neck."

¶ 9 Claimant sought medical treatment at St. Margaret Mercy Hospital that day. The hospital's record reflected she had fallen down 10 to 12 stairs at school. On February 13, 2009, claimant followed up with her primary-care doctor, Tiffany Longo, at which time claimant reported she "fell down a flight of stairs" at work. At that time, claimant complained of neck

pain, mid and lower back pain, and mild pain in her right shoulder. Dr. Longo noted claimant's x-rays "of the cervical, thoracic, and lumbar spine [were] unremarkable for acute injury" and recommended physical therapy for cervical, thoracic, and lumber strain. On April 29, 2009, claimant underwent cervical magnetic resonance imaging (MRI) that indicated bulging discs at C4-C5, C5-C6, and C6-C7. Thereafter, Dr. Longo referred her to Dr. Richard Lim, an orthopedic surgeon.

¶ 10 On May 5, 2009, claimant sought treatment with Dr. Lim. At that time, her chief complaint, as noted by Dr. Lim, was "right sided neck pain" which started when "[s]he tripped over a kid and fell down approximately eight steps in her own estimation." Dr. Lim further noted that claimant had "developed constant numbness and tingling down her right arm over the last couple weeks." After reviewing radiographic studies of claimant's cervical spine which revealed "[m]ild disc space narrowing at C4-C5," "spinal stenosis at C4-C5," and "right sided disc osteophyte complex at C5-[C]6," Dr. Lim diagnosed "[c]ervical stenosis. Right shoulder impingement." Dr. Lim discussed treatment options with claimant, which included physical therapy and anti-inflammatory drugs, or an epidural. Claimant chose to proceed with physical therapy and anti-inflammatory drugs at that time. After three weeks of physical therapy, claimant was still experiencing pain and decided to try an epidural.

¶ 11 On June 4, 2009, claimant received her first epidural injection after which she reported experiencing a 60% decrease in pain that lasted two weeks. On August 27, 2009, claimant received her second epidural injection that resulted in "good pain relief." On December 15, 2009, claimant received her third epidural injection.

¶ 12 On September 4, 2009, claimant saw Dr. Avi J. Bernstein, an orthopedic spine surgeon, for an independent medical examination. At that time, claimant reported she was

involved in a work-related incident "where a little boy essentially pushed her down a flight of stairs. She fell twelve steps, tumbling down the stairs." In addition to conducting a physical examination, Dr. Bernstein reviewed medical reports, including a report from claimant's April 22, 2009, cervical MRI scan. Dr. Bernstein noted it would be helpful to see the images of claimant's cervical MRI scan and further suggested that she undergo a cervical CT myelogram. At that time, he opined, "I believe that this patient has a cervical radiculopathy as the result of her work related fall. She is capable of doing light duty work activity and probably could perform the activities required of a speech therapist. I believe that this patient is going to require a cervical decompression and fusion to relieve her residual radiculopathy."

¶ 13 On October 23, 2009, Dr. Bernstein authored a report in which he noted he had reviewed images of claimant's April 29, 2009, cervical MRI scan, and the "study is not in keeping with her subjective complaints of left upper extremity symptoms." (We note that although Dr. Bernstein's report refers to "left upper extremity symptoms," he testified this was a typographical error and it should say "right.")

¶ 14 On December 17, 2009, claimant underwent a cervical myelogram that, according to a Dr. Chong Kim, revealed "posterior osteophyte disc complex with moderate central canal narrowing" at C4-C5 and "posterior osteophyte disc complex with mild/moderate central canal stenosis" at C5-C6.

¶ 15 On February 2, 2010, Dr. Bernstein authored a second report indicating that claimant's cervical myelogram revealed "no evidence of disc herniation *** [or] nerve root compression," but showed "anterior impingement of the spinal cord greater at C4-5 and slightly at C5-6." Dr. Bernstein noted, "I do not feel that any of the findings are consistent with the patient's subjective complaints" and "I am not optimistic that surgery at the C4 through C6 levels

is optimistically going to relieve [claimant's] symptoms."

¶ 16 At a February 3, 2010, follow-up appointment with Dr. Lim, Dr. Lim noted that "[m]yelogram and post myelogram CT reports *** show moderate stenosis at C4-5 and mild to moderate [stenosis] at C5-6." He recommended claimant undergo surgical intervention as conservative treatment had failed. Claimant declined surgery at that time, opting instead to continue physical therapy.

¶ 17 On February 11, 2010, Dr. Bernstein authored a third report, noting he reviewed Dr. Lim's February 3, 2010, office report and recommendation but believed claimant was at maximum medical improvement (MMI) and that further physical therapy would not alter her medical condition.

¶ 18 At an April 6, 2010, follow-up appointment with Dr. Lim, Dr. Lim noted claimant "continues to complain of pain being a 7 out of 10 on a constant daily basis." He again discussed surgical intervention with claimant and noted, "[w]e will keep her off work."

¶ 19 On July 7, 2010, claimant sought treatment with Dr. Alexander J. Ghanayem, an orthopedic spine surgeon, for her neck and right-sided arm pain. According to Dr. Ghanayem's report from that date, claimant told him she "was injured about 17 months ago when a student pushed her down a flight of stairs." Dr. Ghanayem reviewed claimant's cervical CT myelogram which "reveal[ed] stenosis with a spinal cord compression at C4-5 and C5-6." He also reviewed claimant's cervical MRI which "confirmed the neurological compression secondary to both disc disease and osteophyte formation at C4-5 and C5-6." Dr. Ghanayem opined that claimant suffered ongoing neck and arm pain related to her cervical disc disease and recommended a cervical discectomy and fusion at C4-5 and C5-6. In his evidence deposition, Dr. Ghanayem testified that claimant had preexisting radiographic arthritis in her neck but in his medical

opinion, claimant's injuries were related to the work accident.

¶ 20 In his evidence deposition, Dr. Bernstein disagreed with Dr. Lim and Dr. Ghanayem's diagnoses and recommendations for surgery. According to Dr. Bernstein, while claimant's cervical CT myelogram indicated stenosis, it showed no evidence of spinal cord compression that would necessitate surgical intervention.

¶ 21 On August 29, 2011, the arbitrator issued her decision, finding that (1) claimant had established an accident that arose out of and in the course of her employment; (2) the current conditions of ill-being in claimant's neck, back, and right shoulder were causally connected to the February 11, 2009, work accident; (3) the medical treatment received by claimant to date was reasonable, necessary, and related to the work accident and she was entitled to prospective medical care in the form of the anterior cervical discectomy and fusion recommended by her treating physicians; and (4) claimant was entitled to TTD benefits for the period of May 9, 2009, through May 9, 2011.

¶ 22 On August 8, 2012, the Commission unanimously affirmed the arbitrator's decision and remanded the matter to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 23 On judicial review, the circuit court of Cook County confirmed the Commission's decision. This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, the employer first argues that the Commission erred in finding claimant established an accident that arose out of and in the course of her employment.

¶ 26 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that [s]he has suffered a disabling injury which arose out of

and in the course of h[er] employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). " 'In the course of employment' refers to the time, place and circumstances surrounding the injury." *Id*. In other words, for an accident to be compensable, the injury "generally must occur within the time and space boundaries of the employment." *Id*. In addition, an injury must also "arise out of" the employment to be compensable under the Act. "To satisfy [the 'arising out of'] requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id*. "Stated otherwise, 'an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. [Citations.] A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties.' " *Id*. at 203-04, 797 N.E.2d at 671 (quoting *Caterpillar Tractor Co. V. Industrial Comm'n*, 129 Ill. 2d 52, 58, 541 N.E.2d 665, 667 (1989)).

¶ 27 "The determination of whether an injury arose out of and in the course of a claimant's employment is a question of fact for the Commission to resolve, and its finding in that regard will not be set aside on review unless it is against the manifest weight of the evidence." *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 24, 990 N.E.2d 284. "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent." *Id*. "It is within the province of the Commission to resolve disputed questions of fact, including those of causal connections, to draw permissible inferences from the evidence, and to judge the credibility of the witnesses."

National Freight Industries v. Illinois Workers' Compensation Comm'n, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. "This court will not reject reasonable inferences of the Commission merely because we might have drawn a contrary inference on the particular facts." *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 119, 561 N.E.2d 623, 628(1990). In other words, "[t]he appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion." *Chicago Transit Authority v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120253WC, ¶ 24, 989 N.E.2d 608.

¶ 28 Here, the parties do not dispute that the accident occurred "in the course of" claimant's employment, as she was working in the school building at the time of her February 11, 2009, fall down the stairs. They dispute only whether the accident "arose out of" claimant's employment.

¶ 29 To determine whether a claimant's injury arose out of her employment, and is therefore compensable under the Act, we must first determine the type of risk to which she was exposed. *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 478, 949 N.E.2d 1151, 1156 (2011). Risks to employees fall into three categories: (1) risks that are distinctly associated with one's employment; (2) risks that are personal to the employee, such as idiopathic falls due to a weak knee; and (3) neutral risks that have no particular employment or personal characteristics, such as those that the general public is commonly exposed. *Id*. In this case, claimant was injured when she fell (or was tripped or pushed) down a flight of stairs. There is no evidence in the record that claimant suffered a physical condition that caused or contributed to her fall. Nor do we find that the risk of falling down stairs was a risk distinctly associated with her employment. Further, this court has held that falling while traversing stairs

is a neutral risk of which the general public is commonly exposed, and any injuries resulting from such a fall generally do not arise out of one's employment. See *Village of Villa Park v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 130038WC, ¶ 20, 3 N.E.3d 885. However, injuries resulting from a neutral risk may be compensable under the Act "where the requirements of the claimant's employment create a risk to which the general public is not exposed." *Id*. " 'The increased risk may be qualitative *** or quantitative, such as where the claimant is exposed to a common risk more frequently than the general public.' " *Id*. (quoting *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 353, 732 N.E.2d 49, 54 (2000) (Rakowski, J., specially concurring)).

¶ 30 In this case, the arbitrator noted as follows:

> "[Claimant] testified, and a preponderance of the records admitted into evidence support, that on the date and time of the accident, she was walking down a flight of stairs when a number of students were going up the stairs and one of the students forced his way between the [claimant] and the hand railing, pushing the [claimant] and causing her to fall down the stairway approximately twelve steps. The [claimant] testified that her job required her to use this stairway on a regular basis to go from her office on the second floor of the school down to the first floor in order to accompany students back to her office for speech therapy. The [claimant] testified, and the Arbitrator finds her testimony credible, that the stairway in effect, was regularly crowded with students going up and down the stairways."

¶ 31 As stated above, the risk involved in simply descending a stairway is a neutral risk common to the general public and is not unique to one's employment. However, based on the evidence in the record, the arbitrator reasonably could have concluded that claimant was exposed to an increased risk of injury to which the general public was not exposed from a *qualitative* standpoint. As the arbitrator noted, claimant "was walking down a flight of stairs when a number of students were going up the stairs and *one of the students forced his way between the [claimant] and the hand railing, pushing the [claimant] and causing her to fall* down the stairway approximately twelve steps." (Emphasis added.) The risk of injury faced by claimant under these particular facts, where a student physically collided with her while she was traversing the stairs, was qualitatively increased over the risk of injury posed to the general public. While the employer points out claimant gave other accounts of the accident at various times—from falling down the stairs, to tripping over a student, to being pushed by a student—the arbitrator found the account given by claimant at the arbitration hearing was credible and supported by a preponderance of the evidence in the record. We will not substitute our judgment as to the credibility of a witness for that of the Commission. See *National Freight*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473 (it is within the province of the Commission to judge the credibility of witnesses). There is sufficient evidence in the record to support the Commission's finding that claimant's accident arose out of her employment, and therefore, its decision was not against the manifest weight of the evidence.

¶ 32 Next, the employer argues the Commission erred in finding claimant's current conditions of ill-being in her neck, back, and right shoulder were causally connected to her February 2009 work accident. Specifically, the employer asserts that the Commission's failure to adopt the opinion of Dr. Bernstein rendered its finding of causation against the manifest weight

of the evidence.

¶ 33 "Whether a causal connection exists between a claimant's condition of ill-being and her work accident is a question of fact to be resolved by the Commission, and its resolution of the matter will not be disturbed unless it is against the manifest weight of the evidence." *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 913, 851 N.E.2d 72, 79 (2006). "It is the Commission's duty to resolve conflicts in the evidence, particularly medical opinion evidence." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592, 834 N.E.2d 583, 592 (2005). "The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion." *Id*. "For the Commission's decision to be against the manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result." *Id.*

¶ 34 In this case, the Commission determined claimant's current condition of ill-being was causally related to her February 11, 2009, work accident. In forming its opinion, it relied on the "credible testimony" of claimant, the testimony of her treating physician, Dr. Ghanayem, and the medical records admitted into evidence, including those of Dr. Lim and Dr. Longo. We find the record supports the Commission's decision and it was not against the manifest weight of the evidence.

¶ 35 Here, Dr. Longo's February 13, 2009, report indicates that claimant complained of right shoulder and neck pain at the time of the accident for which she was treated at St. Margaret Mercy Hospital. According to claimant's testimony, prior to the work accident, she did not suffer from any neck pain. Two days later, on February 13, 2009, claimant presented to Dr. Longo with pain in her neck, mid and lower back, and mild pain in her right shoulder. Dr. Longo diagnosed a cervical, thoracic, and lumbar strain, and prescribed pain relievers and

physical therapy. On April 28, 2009, claimant again saw Dr. Longo at which time she reported pain in her right upper back, right shoulder, and arm, as well as numbness and tingling associated with the pain in her right arm which began one week prior. Following a cervical MRI demonstrating bulging discs at C4-C5, C5-C6, and C6-C7, claimant began treating with Dr. Lim.

¶ 36 When claimant first saw Dr. Lim on May 5, 2009, she reported a "constant numbness and tingling down her right arm" that had developed "over the last couple weeks." After reviewing radiographic studies of her cervical spine, Dr. Lim diagnosed "cervical stenosis" and "[r]ight shoulder impingement." At that time, claimant opted for conservative treatment which included physical therapy. When physical therapy failed to relieve her symptoms, claimant underwent a series of epidural injections. Claimant was still experiencing pain at her February 3, 2010, follow-up appointment with Dr. Lim, who at that time noted conservative treatment had failed and recommended claimant undergo surgery. At her April 6, 2010, follow-up appointment with Dr. Lim, Dr. Lim again discussed surgical intervention as she continued to "complain of pain being a 7 out of 10 on a constant daily basis."

¶ 37 Claimant then saw Dr. Ghanayem on July 7, 2010. After reviewing claimant's cervical CT myelogram and cervical MRI, Dr. Ghanayem opined that claimant's ongoing neck and arm pain was related to her cervical disc disease and he recommended surgery as well. In his evidence deposition, Dr. Ghanayem testified in his medical opinion, claimant's clinical injuries were related to the work accident.

¶ 38 In contrast, Dr. Bernstein, who examined claimant on September 4, 2009, disagreed with Dr. Lim and Dr. Ghanayem's diagnoses. After Dr. Bernstein reviewed claimant's cervical MRI scan and myelogram, he opined that the findings were not consistent with claimant's subjective complaints and showed no evidence of disc herniation or root compression.

Based on his reading of claimant's cervical studies, he did not feel she was a candidate for surgery.

¶ 39 The employer argues that Dr. Bernstein's testimony was "convincing, detailed, and fact-based," whereas Dr. Ghanayem's testimony was "vague and unpersuasive and should therefore be given no weight." While the record clearly contains conflicting medical opinions, it was the Commission's responsibility to weigh the evidence and resolve any conflicts. After reviewing the medical records and testimony, the Commission assigned greater weight to the opinions of Dr. Ghanayem and Dr. Lim. Based on the above, we cannot say an opposite conclusion from that of the Commission was clearly apparent from the record. Therefore, the Commission's decision as to causation was not against the manifest weight of the evidence.

¶ 40 The employer next argues that the Commission erred by awarding certain medical expenses and authorizing the surgery recommended by Dr. Lim and Dr. Ghanayem. Specifically, the employer challenges the award of the following medical expenses: (1) a $872.64 bill from RS Medical for services rendered on March 19, 2010, which according to the employer was after claimant reached MMI; (2) a $945 bill from Allied Anesthesia Associates that, according to the employer, "cannot be substantiated by the medical evidence because there are no corresponding medical records to this bill"; (3) a $1,500 bill from Midwest Anesthesiologist, Ltd., for claimant's third epidural injection which the employer argues should not have been given based on a "utilization review" recommending non-certification based on a determination that claimant had no "clearly identifiable progress" from the previous two epidurals; (4) a $22.80 bill from CEP America-Illinois, which according to the employer constitutes "balance billing" where the provider had accepted a negotiated amount; (5) a $22.31 bill from MiraMed Revenue Group because it too constitutes "balance billing"; (6) a $149.20 bill

from Advocate Christ Hospital, $115 of which is for a hepatitis B vaccination and the remainder of which constitutes "balance billing"; (7) a $244 bill from Dr. Warren D. Robinson because it "contains an illegible date of service" that could pertain to the third epidural injection which, according to the employer, should have been denied; and (8) a $4,829 bill from Midwest Orthopaedic because according to the employer, any balance allegedly owed constitutes "balance billing" or was for services accrued after claimant reached MMI.

¶ 41 Initially, we note that the Commission did not order the employer to pay specific medical bills, but instead ordered the employer to "pay for all disputed medical services *pursuant to the Fee Schedule*, as provided in the Act." (Emphasis added.) It necessarily follows that the employer's liability terminates upon payment of the medical services pursuant to the fee schedule. Thus, based on the Commission's decision, to the extent that any bills disputed by the employer are indeed "balance bills"—a determination this court cannot make based on the evidence before us—the employer is not liable.

¶ 42 Next, we are not persuaded by the employer's argument that the Commission's failure to adopt the opinion of Dr. Bernstein—who concluded claimant had reached MMI on February 10, 2010—rendered the Commission's award of medical expenses for medical services accruing after that date manifestly erroneous. Again, we note that it is within the Commission's province to weigh the credibility of the witnesses and to resolve conflicts in the evidence. The Commission found the opinions of claimant's treating physicians to be more credible. Its decision to award medical expenses accruing after February 10, 2010, and to authorize prospective surgery was not against the manifest weight of the evidence.

¶ 43 Regarding the $945 bill from Allied Anesthesia Associates, we agree with the employer that no corresponding medical evidence exists in the record before us to substantiate

the bill. Further, claimant fails to direct our attention to anywhere in the record where support for the bill can be found. Here, the bill indicates a date of December 15, 2009, which was the date of claimant's third epidural injection. However, there exists a separate bill from Midwest Anesthesiologists in the amount of $1,500 purportedly for this same epidural injection. Thus, we find the Commission's decision regarding the employer's liability for the $945 bill was against the manifest weight of the evidence.

¶ 44 We further agree with the employer's assertion that it is not liable for $115 of the $149.20 bill from Advocate Christ Hospital because that charge was for a hepatitis B vaccination that is unrelated to claimant's accident. Thus, to the extent that the Commission awarded payment for the hepatitis B vaccination, its decision was against the manifest weight of the evidence. We note the employer also asserts the remainder of this bill is a "balance bill." As indicated above, however, the Commission awarded medical expenses pursuant to the fee schedule, so *if* those expenses have already been paid pursuant to the fee schedule, the employer is not liable for the remainder.

¶ 45 Regarding the $1,500 bill from Midwest Anesthesiologists and the $244 bill from Dr. Robinson—both of which the employer asserts pertain (or may pertain) to claimant's third epidural injection which in its opinion she should not have received, we find the Commission's decision to award payment was not against the manifest weight of the evidence. While the record contains an August 16, 2009, "utilization report" recommending against a third epidural injection, we note the report indicates "[t]he final decision regarding medical treatment is ultimately that of the healthcare provider/treating physician." Further, despite the employer's assertion that the report was unrebutted, Dr. Lim's October 23, 2009, office note states, "[w]e have a letter stating that the [third epidural] shot was not allowed[,] however [claimant] states

that she received a phone call stating that was overridden and she was approved for the shot."

¶ 46 Last, the employer challenges the Commission's award of TTD benefits for the period of April 6, 2010, through March 11, 2011. It asserts that the record contains no evidence claimant was restricted from work during the above periods or was unable to perform her job duties. According to the employer, Dr. Lim restricted claimant from work beginning on May 5, 2009, through his last appointment with her on April 6, 2010. It then argues that the next indication of any work restriction is contained in a March 11, 2011, letter from Dr. Ghanayem that states, "[t]his authorized absence begins: March 11, 2011, ongoing." The Employer asserts, "[i]t is uncontroverted that Dr. Ghanayem meant exactly what this note says, that [claimant's] period of lost time *begins* on March 11, 2011." (Emphasis in original). We disagree.

¶ 47 First, the record contains no indication that Dr. Lim returned claimant to work on April 6, 2010, or any date thereafter. In fact, Dr. Lim's April 6, 2010, office note indicates that he "had a long discussion with [claimant] regarding surgical intervention" that "she is strongly considering" and notes, "[w]e will keep her off of work." When claimant first saw Dr. Ghanayem for a second opinion on July 7, 2010, he also recommended surgical intervention. At a follow-up appointment on August 20, 2010, Dr. Ghanayem noted claimant's "pain is getting worse. Simple things such as doing her hair and activities of daily living are becoming problematic for her." The office note further stated, "we will await approval for her [surgery]," indicating that claimant decided to undergo the surgery recommended by both her treating physicians. At a follow-up appointment on September 1, 2010, Dr. Ghanayem noted claimant "is having increased symptoms in both her neck and arm" and that they were still awaiting approval for surgery. On September 20, 2010, Dr. Ghanayem noted claimant's condition remained unchanged since his last evaluation. Finally, we note that Dr. Ghanayem's March 11,

2011, office note states claimant's symptoms in her right arm were "getting worse" and "[s]he *remains* off work." (Emphasis added). This statement clearly indicates Dr. Ghanayem was aware that claimant was not working prior to March 11, 2011.

¶ 48 Based on this evidence, the Commission could have concluded that claimant continued to be restricted from work as her condition had not changed, or was getting worse, while she awaited approval for the surgery recommended by both her treating physicians. Thus, the Commission's award of TTD was not against the manifest weight of the evidence.

¶ 49 III. CONCLUSION

¶ 50 For the reasons stated, we reverse the portion of the circuit court's judgment affirming the Commission's award of medical expenses regarding the $945 bill from Allied Anesthesia Associates and $115 of the $149.20 bill from Advocate Christ Hospital. We otherwise affirm the circuit court's judgment confirming the remainder of the Commission's decision and remand the matter back to the Commission for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322.

¶ 51 Reversed in part; affirmed in part. Cause remanded.