

No. 1-15-1183WC

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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RICHARD JANKOWSKI,	)	Appeal from the
	)	Circuit Court of
Appellee,	)	Cook County
	)	
v.	)	Nos. 13 L 50758
	)	14 L 50784
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <i>et al.</i> ,	)	
	)	Honorable
(Dean Dairy Holdings, LLC. - Huntley, Illinois,	)	Robert Lopez Cepero,
Appellant).	)	Judge, Presiding.

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

**ORDER**

¶ 1 *Held:* The Commission's original decision awarding the claimant benefits pursuant to the Workers' Compensation Act, but finding that he did not sustain an injury to his cervical spine arising out of and in the course of his employment was not against the manifest weight of the evidence. Consequently, we: reversed the circuit court's judgment which reversed the Commission's original decision and remanded the matter back to the Commission with directions; vacated the Commission's decision following the circuit court's remand; vacated the circuit court's order confirming the Commission's decision on remand; and reinstated the Commission's original decision.

¶ 2 Dean Dairy Holdings, LLC. - Huntley, Illinois (Dean) appeals from an order entered by the circuit court on May 2, 2014, that reversed the July 22, 2013 decision of the Illinois Workers' Compensation Commission (Commission) that awarded the claimant, Richard Jankowski, benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), but found that he did not sustain an injury to his cervical spine arising out of and in the course of his employment and remanded the matter back to the Commission with directions. Dean also appeals from the circuit court's order entered on March 18, 2015, which confirmed the Commission's decision following the remand. For the reasons which follow, we: reverse the circuit court's order of May 2, 2014; vacate the circuit court's order of March 18, 2015; vacate the Commission's decision on remand; reinstate the Commission's decision of July 22, 2013; and remand this matter back to the Commission.

¶ 3 The claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for injuries he sustained on October 5, 2009, while in the employ of Dean. The following facts relevant to our disposition of this appeal are taken from the evidence introduced at an arbitration hearing on January 4, 2013.

¶ 4 Prior to his work accident of October 5, 2009, which gave rise to the instant litigation, the claimant sustained work-related injuries on August 16, 2003, and May 14, 2005. The claimant was treated by Dr. Rolando Izquierdo from September 17, 2003, through December 22, 2003, for the injury which he sustained on August 16, 2003. An MRI of the claimant's spine, taken on October 20, 2003, revealed mild osteophyte at the ridge of C5-C6, and minor disc bulges at C4-C5 and C6-C7. Following his injury of May 14, 2005, the claimant came under the care of Dr. John Liu. On December 16, 2005, the claimant underwent cervical fusion surgery at the C5-C6 and C6-C7 levels which was performed by Dr. Liu. The claimant continued under the care of

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Dr. Liu postoperatively and returned to full-time work duties in 2006. As of August 14, 2007, Dr. Liu noted pseudoarthrosis lines at both of the endplates at the C6 level and opined that there did not appear to be a solid arthrodesis across the graft and indicated that the claimant might require additional surgery. He advised the claimant to return for a follow up visit in six months. The claimant continued under the care of Dr. Liu through January 21, 2009.

¶ 5 Relating to the accident giving rise to the instant claim, the claimant testified that while he was working on October 5, 2009, the stainless steel cart he was pushing met with resistance due to faulty wheels. As a result, his head and neck were caused to jerk. The claimant stated that he immediately experienced pain in his neck and left upper back. The claimant told his foreman, Nellie Martinez, that he had hurt his neck and went to the company's first aid cabinet accompanied by Martinez and obtained pain medication. According to the claimant, he attempted to see Dr. Liu, but was told that December was the earliest that an appointment could be scheduled.

¶ 6 On October 16, 2009, the claimant presented at Physicians Immediate Care, Dean's occupational health clinic, complaining of severe neck and upper back pain. The claimant gave a history of experiencing pain in his neck and upper back when pushing carts loaded with milk while working on October 5, 2009. The claimant was examined by Dr. Warren Wollin who noted limited range of motion and tenderness to palpation of the claimant's cervical spine. An x-ray of the claimant's cervical spine revealed that the fusion hardware remained stable. Dr. Wollin restricted the claimant to no lifting greater than 25 pounds and no pushing or pulling greater than 50 pounds. The claimant continued working, and Dean accommodated his restrictions.

¶ 7 On October 22, 2009, the claimant returned to Physicians Immediate Care, complaining of pain and was again seen by Dr. Wollin. On examination, Dr. Wollin noted that the claimant was tender to palpation from C2 through T3 and had limited cervical range of motion, secondary to pain. The claimant continued to treat at Physicians Immediate Care through December 18, 2009, where he was prescribed pain medication and underwent physical therapy. During that period, the claimant consistently complained of pain in his cervical spine, neck and shoulder.

¶ 8 On December 22, 2009, the claimant was seen by Dr. Liu. Dr. Liu noted that the claimant had done "very well from surgery[,]" but that his work accident while pushing a cart had provoked pain in his neck, left trapezius and sub-component in the left arm. According to Dr. Liu's notes, the cervical x-ray which he reviewed failed to reveal any hardware malfunction, and although the claimant's fusion appeared solid, there was new evidence of retrolisthesis at C4-C5. Dr. Liu ordered both a CT scan and MRI.

¶ 9 The claimant was seen on a weekly basis at Physicians Immediate Care from December 30, 2009, through January 25, 2010. Records of those visits reflect that the claimant complained of left-sided cervical pain and left-sided neck and shoulder pain radiating into his upper extremities. Dr. Wollin's notes reflect that the claimant's cervical and upper thoracic spine were tender on palpation. During that period, the claimant continued physical therapy and remained on work restrictions. On January 25, 2010, the claimant complained of worsening pain in his cervical spine, with intermittent pain radiating down his left forearm. As of that visit, Dr. Wollin discontinued the claimant's physical therapy due to the claimant's increased pain and revised his work restrictions to no lifting more than 15 pounds and no pushing or pulling greater than 35 pounds.

¶ 10 On January 28, 2010, the claimant underwent the CT scan and MRI which Dr. Liu had ordered. The CT scan demonstrated mild, multilevel cervical changes from C3 through C7, most prominent at C4-C5, causing mild spinal stenosis and mild right neural foraminal stenosis. The radiologists report also noted left foraminal stenosis. The MRI revealed the same findings.

¶ 11 The claimant returned to Physicians Immediate Care for follow-up treatment on February 1, 2010, complaining of pain in his left-upper back and lower-left neck. Dr. Wollin noted left-sided palpation tenderness from C5 through T4.

¶ 12 When the claimant was seen at Physicians Immediate Care on February 8, 2010, his complaints and physical examinations remained unchanged. Dr. Wollin advised the claimant to see Dr. Liu to review the findings of his diagnostic tests. When he was seen by Dr. Wollin on February 22, 2010, he reported a decrease in pain which the claimant attributed to less strenuous activity at work.

¶ 13 On March 9, 2010, the claimant presented to Dr. Liu and reported some decrease in pain, but stated that he still remained uncomfortable. Dr. Liu's records reflect that he reviewed the claimant's CT scan and MRI and noted evidence of partial bone arthrodesis at the fusion site, but found no evidence of pseudoarthrosis. Dr. Liu was of the opinion that the source of the claimant's pain was coming from the C4-C5 level. He instructed the claimant to continue conservative care, but advised him that an extension of the fusion might be warranted in the event that conservative treatment failed.

¶ 14 The claimant was seen by Dr. Wollin on March 12, 2010. He continued complaining of pain in his left-upper back and lower-left neck. Dr. Wollin again noted left-sided palpation tenderness from C5 through T4. He continued the claimant on a course of conservative care and referred him to Dr. Lipov for pain management. The claimant continued to treat at Physicians

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Immediate Care through June of 2010, during which period Dr. Wollin continued to request authorization for a pain management consultation.

¶ 15 On June 20, 2010, the claimant was examined by Dr. Jack Enter, an associate of Dr. Wollin. On physical examination of the claimant, Dr. Enter found tenderness to palpation in the left paracentral musculature and trapezius area, extending from C3 to T4, and slight pain on complete lateral rotation to the left and complete flexation. Dr. Enter's notes of that visit reflect that the claimant told him that he had been doing garden and yard work. Dr. Enter wrote that "[t]he patient's statements to this examiner are suspicious of malingering."

¶ 16 The claimant returned to Physicians Immediate Care on July 5, 2010. Dr. Wollin noted that, although the claimant had been working with restrictions, there had been no change in his symptoms. The claimant continued to complain of pain radiating into the left shoulder, and Dr. Wollin's findings on examination remained unchanged. Dr. Wollin discharged the claimant from his care with permanent restrictions of no lifting more than 25 pounds from floor to waist and no pushing or pulling more than 50 pounds.

¶ 17 The claimant was examined on July 16, 2010, by Dr. Jesse Butler, at the request of Dean. Dr. Butler's report of that examination states that the claimant gave a history of having developed neck and shoulder pain while pushing milk containers at work. Dr. Butler reviewed the claimant's CT scan and MRI taken on January 28, 2010, and noted that they revealed disc degeneration at the C4-C5 and C7-T1 levels, but found no evidence of stenosis or herniation. When deposed, Dr. Butler testified that he found the claimant's alignment normal, saw no signs of spinal cord compression and did not feel that the claimant had any structural problems that would require additional treatment. According to Dr. Butler's report, his examination of the claimant revealed a healed left anterior neck incision, normal tenderness to palpation of the

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spine, with negative Spurling's maneuver, and negative Hoffman's signs on both sides. Dr. Butler noted that his examination of the claimant's shoulder revealed tenderness to palpation in the AC joint with localized tenderness over the bicep tendon and pain with cross-body adduction. The claimant had full range of motion and no weakness of the rotator cuff. Dr. Butler diagnosed a shoulder strain, cervical strain, and mild adjacent level disease. He was of the opinion that the claimant's work accident of October 5, 2009, had caused a temporary aggravation of his cervical spine condition and that the claimant had reached maximum medical improvement (MMI) of his spine condition as of the date of that examination. He did not, however, believe that the claimant had reached MMI of his left shoulder and was of the opinion that the claimant's restrictions should not be removed at that time.

¶ 18 Dr. Liu last examined the claimant on August 17, 2010. He found no clinical change in the claimant's condition. Dr. Liu noted that the claimant denied any primary shoulder pain, but did report occasional radicular symptoms down the left arm. He also noted that updated x-rays of the claimant's spine revealed no evidence of pseudoarthrosis or listhesis at the adjacent level and the cervical fusion hardware remained stable. His examination revealed that the claimant was strong in all muscle groups and showed no point tenderness along the left shoulder. According to his records, Dr. Liu was unable to elicit any passive left shoulder pain either on movement or on internal or external rotation of the shoulder joint. He was of the opinion that continued conservative care was the best treatment option for the claimant. Dr. Liu instructed the claimant to return for a follow-up visit in one year or as needed.

¶ 19 On October 21, 2010, the claimant saw Dr. Izquierdo, the physician who had treated him for his 2003 work accident. The claimant reported pain in his neck and trapezius areas, radiating to his left elbow. Dr. Izquierdo noted that the claimant's left shoulder was negative for all

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orthopedic and radiological tests. On examination, he found cervical and upper-thoracic tenderness on palpation along with limited cervical range of motion. Dr. Izquierdo was of the opinion that the claimant's shoulder was not the cause of his symptoms. He referred the claimant to Dr. William Tontz, a spine surgeon, for a second opinion.

¶ 20 The claimant returned to see Dr. Izquierdo on December 6, 2010, complaining of pain in his shoulder blade and elbow, radiating down his forearm. Dr. Izquierdo reevaluated the claimant's shoulder and again determined that it was not the cause of his symptoms. Dr. Izquierdo diagnosed neck pain with cervical radiculopathy and opined that there was no reason for further evaluation of the claimant's left shoulder. He again referred the claimant to Dr. Tontz for clinical evaluation.

¶ 21 The claimant was seen by Dr. Tontz on December 14, 2010. According to the records of that visit, the claimant complained of constant pain in the left side of his neck, his left elbow and in his mid-back and gave a history of an injury while working on October 5, 2009. Dr. Tontz interpreted the claimant's CT scan as showing "apparent pseudoarthrosis." He took note of the claimant's 2005 fusion surgery, but opined that the claimant's symptoms were causally related to his work accident. Dr. Tontz restricted the claimant to no lifting more than 25 pounds and ordered a CT myelogram of the claimant's cervical spine.

¶ 22 The claimant had a CT myelogram of his cervical spine on January 19, 2011. The radiologist's report of that scan noted intact orthopedic hardware at C5 to C7, mild degenerative disc space narrowing at C4-C5 and C7-T1 above and below the fused segments, right small herniations at C7-T1 and T1-T2, and minimal foraminal narrowing on the left at C5-C6 and C6-C7. The report states that the radiologist did not see any definite cause for the claimant's left arm radiculopathy.



¶ 23 Dr. Tontz next saw the claimant on January 25, 2011. The claimant reported persistent pain and stated that he experienced nausea and migraines since the CT myelogram. Dr. Tontz interpreted the results of the test as pseudoarthrosis across the C4-C7 corpectomy site. He recommended against surgery and prescribed a course of physical therapy.

¶ 24 The claimant returned for a follow-up visit with Dr. Tontz on February 8, 2011. Dr. Tontz noted the claimant's complaints of pain in his neck, left arm and head. Dr. Tontz found evidence of post-CT myelogram meningeal irritation and recommended that the claimant remain off of work for one week.

¶ 25 When the claimant next saw Dr. Tontz on February 22, 2011, he reported that his symptoms were improving until he returned to work when his symptoms returned. Dr. Tontz noted extreme pain in the claimant's neck with limited cervical range of motion. He recommended an additional week off of work and recorded his hope that the claimant would reach MMI in six to eight weeks. Dr. Tontz referred the claimant to Dr. John Prunskis for pain management, who the claimant saw on that same day. Dr. Prunskis's records reflect that the claimant complained of pain in his left shoulder and left-upper arm. Dr. Prunskis noted evidence of myofascial pain of the left splenius capitis and splenius cervicis and left-sided cervical pain on rotation. He scheduled the claimant for an EMG of his bilateral upper extremities, a cervical epidural injection, and a blood test.

¶ 26 On March 1, 2011, Dr. Tontz instructed the claimant to remain off of work until he had the EMG ordered by Dr. Prunskis. The claimant had an EMG on March 10, 2011, that revealed evidence of mild, active and chronic cervical radiculopathy at C5-C6 and C6-C7.

¶ 27 When the claimant saw Dr. Tontz on March 15, 2011, he instructed the claimant to remain off of work based upon the positive findings of the EMG and the claimant's continued

complaints of pain. He advised the claimant to follow-up with Dr. Prunskis for cervical epidural injections. As Dr. Tontz was leaving his practice, he referred the claimant to Dr. Greg Drake.

¶ 28 On April 8, 2011, Dr. Prunskis administered a cervical epidural injection to the claimant.

¶ 29 Dr. Drake saw the claimant on April 25, 2011. Following his examination of the claimant, Dr. Drake noted intermittent pain in the claimant's neck, left shoulder and left trapezius areas, along with spasms from the posterior and left sides of the neck into the periscapular region and cervical tenderness on palpation. Dr. Drake instructed the claimant to remain off of work pending his review of the claimant's EMG. After reviewing the EMG, Dr. Drake advised the claimant to remain off of work. He was of the opinion that continued physical therapy and further cervical epidural injections were a better course of treatment than surgery. However, he advised the claimant that he might be a candidate for revision fusion surgery in the event that the epidural injections provided no relief.

¶ 30 When the claimant was seen by Dr. Prunskis on April 29, 2011, he continued to complain of neck and shoulder pain. The claimant received a cervical epidural injection.

¶ 31 The claimant returned to see Dr. Drake on June 20, 2011, and reported that his first epidural injection gave him 30% pain relief for several days. Dr. Drake recommended that the claimant receive two more injections.

¶ 32 On July 15, 2011, the claimant was examined Dr. Gunnar Anderson. Dr. Anderson testified that, based upon the history that the claimant gave, his review of the claimant's medical records and diagnostic tests and his examination of the claimant, he diagnosed a failed fusion, but was unable to determine if the failed fusion was the source of the claimant's persistent pain. According to Dr. Anderson, the failed fusion was not caused by the claimant's work accident of October 5, 2009. He reasoned that "failed fusions don't occur from—in the neck do not occur

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from the pushing of objects four years after the operation is performed, this fusion never healed." Dr. Anderson testified that revision fusion surgery would occur regardless of the claimant's work accident as it was merely a question of time before the fusion became symptomatic. He stated that there was no evidence to show that anything occurred at the time of the claimant's work accident that affected his cervical spine, and there were no new findings on the claimant's diagnostic tests performed after the accident. Dr. Anderson opined that the claimant's work accident on October 5, 2009, did not aggravate, accelerate or exacerbate his preexisting cervical condition.

¶ 33 The claimant returned to see Dr. Drake on August 5, 2011, complaining of continued severe neck pain with left-upper extremity radiculopathy. As of that date, Dr. Drake was of the opinion that the claimant might require a posterior cervical fusion with exploration. Dr. Drake noted that, contrary to Dr. Anderson's opinions, the claimant was doing well following his 2005 fusion surgery until he aggravated his symptoms when pushing a cart at work on October 5, 2009.

¶ 34 The claimant saw Dr. Prunskis on September 16 and 30, 2011, complaining of pain in his neck, shoulder and left elbow. Dr. Prunskis administered cervical epidural injections on both dates. When he saw the claimant on October 21 and 28, 2011, Dr. Prunskis gave the claimant left-sided cervical facet joint injections.

¶ 35 Pursuant to Dr. Drake's referral, the claimant was seen by Dr. Thomas McNally on October 31, 2011. Dr. McNally examined the claimant and reviewed his medical records and diagnostic tests. His interpretation of the claimant's diagnostic tests differed slightly from that of the radiologist. Dr. McNally found that the CT scan showed neuroforaminal stenosis at C5-C6, C6-C7 and C7-T1. He read the MRI to reflect left foraminal stenosis at C7-T1 which is

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consistent with left-sided complaints. According to Dr. McNally, the CT myelogram also indicated clear evidence of foraminal narrowing of the left at C5-C6, C6-C7, and C7-T1, and the EMG indicated mild active and chronic cervical radiculopathy. In his review of the claimant's diagnostic studies, Dr. McNally found evidence of non-union of the fusion at C5-C6 and C6-C7 as well as space narrowing and vertebral body spurring at C4-C5 and C7-T1. He diagnosed the claimant as suffering from cervical disc degeneration, cervical spinal stenosis, cervical spondylosis, and cervical fusion nonunion. Dr. McNally recommended revision fusion surgery for problems above and below the operated levels, and advised the claimant to remain off of work. Dr. McNally acknowledged that the claimant's work accident on October 5, 2009, did not cause the degenerative changes in his cervical spine. However, he opined that the claimant's work accident aggravated his preexisting, previously asymptomatic, degenerative spinal condition, causing the condition to become symptomatic and require treatment. Dr. McNally reasoned that the claimant "sustained an injury and then he had symptoms and those symptoms have been present since that injury of October 5, 2009[,] requiring medical treatment.

¶ 36 On May 30, 2012, Dr. Butler wrote an addendum to his earlier report, stating that the claimant's diagnostic studies following his work accident do not show adjacent level degeneration or stenosis affecting the nerve root or spinal cord, but do reflect a mild bulge at C4-C5 which is not significant. He testified that, although both he and Dr. McNally found a causal connection between the onset of the claimant's complaints of pain and his work accident, he found no post-incident diagnostic test results which showed evidence of an aggravation or acceleration of the claimant's preexisting cervical spine condition.

¶ 37 On July 2, 2012, Dr. Anderson issued an addendum to his prior report, stating his belief that Dr. McNally's opinions were based on incomplete information regarding the claimant's prior

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medical history. He too found no post-incident diagnostic test results which showed evidence of an aggravation or acceleration of the claimant's preexisting cervical spine condition. Although he was unable to exclude that the claimant might have sustained an aggravation of his cervical spine condition as a result of his work accident, he stated that it was unlikely given the mechanics of the accident. Dr. Anderson was also of the belief that any aggravation which might have occurred was only temporary and that the claimant had recovered by August 2010. He also found it significant that Dr. Liu had diagnosed the nonunion of the claimant's fusion as early as 2007 and had discussed the possibility of the claimant having additional surgery.

¶ 38 The claimant testified that, as of the date of the arbitration hearing, he had constant neck pain, radiating down into his left shoulder and arm. However, the arbitrator specifically noted that, based upon his personal observations of the claimant during the arbitration hearing, the claimant did not appear to be in distress or pain and moved around the hearing room in a normal fashion, showing no signs that he would be incapable of performing some work activities. The claimant denied any "major" pain symptoms prior to October 5, 2009. He was unsure whether Dr. Liu had discussed the possibility of further surgery in 2006. The claimant stated that he had not been released to return to work since being taken off of work on February 8, 2011.

¶ 39 Following the arbitration hearing held on January 4, 2013, pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2012)), the arbitrator issued his decision on January 31, 2013, finding that the claimant sustained an accident on October 5, 2009, which arose out of and in the course of his employment with Dean. However, the arbitrator found that the claimant did not sustain an injury to his cervical spine arising out of or in the course of his employment, or at most, he sustained a temporary cervical strain which did not permanently aggravate or accelerate his preexisting cervical condition. The arbitrator found that Dean had paid the claimant all of the

temporary total disability (TTD) benefits to which he was entitled up to July 16, 2010, the date upon which he reached MMI. As a consequence, the arbitrator denied the claimant any further TTD benefits. The arbitrator also found that Dean had paid all of the claimant's medical expenses which were causally related to his work injury of October 5, 2009, and therefore, denied him any award for additional medical expenses or prospective medical care. Additionally, the arbitrator denied the claimant's petition for an award of fees and penalties, finding that Dean had relied on qualified medical opinions in not authorizing benefits.

¶ 40 The claimant sought a review of the arbitrator's decision before the Commission. On July 22, 2013, the Commission issued a unanimous decision, affirming and adopting the arbitrator's decision and remanding the matter back to the arbitrator pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 41 Thereafter, the claimant sought judicial review of the Commission's decision in the circuit court of Cook County. On May 2, 2014, the circuit court entered an order holding that the Commission's finding that the claimant sustained only a temporary cervical sprain as a result of his work-related accident of October 5, 2009, was against the manifest weight of the evidence and remanded the case back to the Commission with directions to: (1) enter a finding that, as of the date of the initial arbitration hearing, the claimant suffered a permanent aggravation and acceleration of his preexisting degenerative cervical condition, causally related to his work accident; (2) consider the reasonableness and necessity of the fusion surgery proposed by Dr. McNally; (3) consider the claimant's entitlement to TTD benefits through January 4, 2013; and (4) take whatever new evidence is necessary to reach conclusions on the issues identified by the court.

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¶ 42 Dean filed a petition pursuant to Illinois Supreme Court Rule 306(a)(6) (eff. Feb. 16, 2011) for leave to appeal the circuit court's order of May 2, 2014. This court denied the petition on June 9, 2014.

¶ 43 On remand, the Commission entered a unanimous decision on September 23, 2014, finding no basis in the record to alter its original decision of July 2, 2013. However, pursuant to the circuit court's order of May 2, 2014, the Commission reversed the arbitrator's decision and found that the claimant suffered a permanent aggravation and acceleration of his preexisting degenerative cervical condition as a result of his work accident and that his current condition of ill-being is causally related to his work accident. The Commission awarded the claimant TTD benefits from February 8, 2011, through January 4, 2013. In addition, the Commission found that the fusion surgery recommended by Dr. McNally is reasonable and necessary and ordered Dean to authorize and pay for the fusion surgery.

¶ 44 Dean sought judicial review of the Commission's September 23, 2014, decision. On March 18, 2015, the circuit court entered an order confirming the Commission's decision.

¶ 45 On April 1, 2015, the circuit court entered an order pursuant to the joint motion of the parties, consolidating the claimant's original judicial review action with Dean's action for judicial review of the Commission's decision on remand. This appeal followed.

¶ 46 When, as in this case, the circuit court reverses the Commission's decision and the Commission enters a new decision on remand, this court's first inquiry on appeal from the circuit court's order confirming the Commission's decision on remand is whether the circuit court erred in reversing the original decision. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 785-86 (2005). Dean argues that the circuit court erred in reversing the Commission's finding in its original decision that the claimant sustained only a temporary cervical sprain as a result of his

work-related accident of October 5, 2009, and was, therefore, not entitled to any additional TTD benefits, medical expenses or the fusion surgery recommended by Dr. McNally. It argues that, in reversing the Commission's original finding on the issue of a causal connection between the claimant's work accident on October 5, 2009, and his current condition of cervical spine ill-being, the circuit court improperly reweighed the evidence and witness credibility. We agree.

¶ 47 There is no disputing the fact that the claimant had fusion surgery in 2005, almost four years prior to the work injury giving rise to the instant case. However, employers take their employees as they find them. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 199 (2002). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery under the Act will not be denied as long as it can be shown that the employment was also a causative factor of the employee's condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003).

¶ 48 To obtain compensation under the Act, a claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (*O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between his employment and his injury (*Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989)).

¶ 49 In cases such as this one, where the claimant suffers from a preexisting condition, his recovery will depend upon his ability to prove that his work related accident aggravated or accelerated the preexisting condition such that his current condition of ill-being can be said to have been causally related to his work accident and not simply the result of a normal degenerative process. *Sisbro*, 207 Ill. 2d at 204-05. Whether a claimant's condition of ill-being is attributable solely to a degenerative process of his preexisting condition or to an aggravation



or acceleration of that preexisting condition, because of a work-related accident, is a factual determination to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 205.

¶ 50 The Commission's finding on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315 (2009). Whether a reviewing court might reach the same conclusions is not the test of whether the Commission's determinations are against the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's decision. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 51 The medical evidence of record establishes that the claimant suffers from a failed cervical fusion. However, in its original decision, the Commission found that, although the claimant sustained an accident on October 5, 2009, which arose out of and in the course of his employment with Dean, he did not sustain an injury to his cervical spine as a result of that accident, or at most, he sustained a temporary cervical strain which did not permanently aggravate or accelerate his preexisting cervical condition. The Commission's determination in that regard is supported by the opinions of Drs. Butler and Anderson.

¶ 52 Dr. Anderson opined that the claimant's work accident on October 5, 2009, did not aggravate, accelerate or exacerbate his preexisting cervical condition. He testified that there was no evidence to show that anything occurred at the time of the claimant's work accident that affected his cervical spine and there were no new findings on the claimant's diagnostic tests performed after the accident. He stated that the claimant's failed fusion was not caused by his

work accident of October 5, 2011, reasoning that failed neck fusions do not occur from the pushing of objects four years after the operation was performed. Dr. Anderson testified that revision fusion surgery would occur regardless of the claimant's work accident as it was merely a question of time before the fusion became symptomatic.

¶ 53 Dr. Butler was of the opinion that, although there was a causal connection between the onset of the claimant's complaints of pain and his work accident of October 5, 2009, the work accident only caused a temporary aggravation of the claimant's cervical spine condition and that the claimant reached MMI of his spine condition as of July 16, 2010. Dr. Butler found no post-incident diagnostic test results which showed evidence of an aggravation or acceleration of the claimant's preexisting cervical spine condition.

¶ 54 In contrast, Dr. McNally opined that, although the claimant's work accident on October 5, 2009, did not cause the degenerative changes in his cervical spine, the work accident aggravated the claimant's preexisting, previously asymptomatic, degenerative spinal condition, causing the condition to become symptomatic and require treatment.

¶ 55 Dr. Drake noted that the claimant was doing well following his 2005 fusion surgery until he aggravated his symptoms when pushing a cart at work on October 5, 2009. And Dr. Tontz opined that the claimant's symptoms were causally related to his work accident.

¶ 56 In its original decision, the Commission found the causation opinions of Drs. Butler and Anderson to be more persuasive than the opinions of Dr. McNally and gave greater evidentiary weight to their testimony. The Commission relied upon the opinions of Drs. Butler and Anderson in making its finding that the claimant, at most, sustained a temporary cervical strain as a result of his October 5, 2009, work accident, and that the accident did not permanently aggravate or accelerate the claimant's preexisting cervical spine condition. The Commission

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specifically made note of the fact that Dr. Liu had diagnosed the nonunion of the claimant's cervical fusion in 2007 and raised the possibility that the claimant might require additional surgery.

¶ 57 It was function of the Commission to judge the credibility of the witnesses, determine the weight to be accorded their testimony, and to resolve the conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. According the required deference to the Commission's resolution of the conflict in medical opinions and the weight it attached to the testimony of Drs. Butler and Anderson, we are unable to find that the Commission's original decision was against the manifest weight of the evidence. We believe that the circuit court usurped the fact finding function of the Commission when it reweighed the evidence and reversed the Commission's original decision.

¶ 58 For the foregoing reasons, we: reverse the circuit court's order of May 2, 2014; vacate the Commission's decision on remand entered on September 23, 2014; vacate the circuit court's order of March 18, 2015, confirming the Commission's decision on remand; reinstate the Commission's original decision of July 22, 2013; and remand this matter back to the Commission.

¶ 59 Circuit court reversed in part and vacated in part; Commission's decision on remand vacated and its original decision reinstated and remanded.