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2016 IL App (1st) 152429WC-U

FILED: November 18, 2016  
Modified upon denial of rehearing: January 20, 2017

NO. 1-15-2429WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

RG CONSTRUCTION SERVICES, INC.,	)	Appeal from
Appellant,	)	Circuit Court of
v.	)	Cook County
	)	No. 15L50012
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION <i>et al.</i> (Enrique Jaimes, Appellee).	)	Honorable
	)	Carl Anthony Walker,
	)	Judge Presiding.

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

### ORDER

¶ 1 *Held:* The Commission committed no error in finding claimant's shoulder condition of ill-being after March 12, 2013, was causally related to his August 2012 work accident and awarding him benefits under the Workers' Compensation Act.

¶ 2 On August 31, 2012, claimant, Enrique Jaimes, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)), seeking benefits from the employer, RG Construction Services, Inc. Following a hearing, the arbitrator found claimant sustained work-related injuries arising out of and in the course of his employment on August 10, 2012, and awarded him (1) 68 weeks' temporary total disability

(TTD) benefits from August 11, 2012, through November 19, 2013; (2) past medical expenses pursuant to the medical fee schedule of \$282 to Dr. Ronald Silver and \$8,352.05 to Prescription Partners; and (3) prospective medical expenses for the physical therapy recommended by Dr. Silver.

¶ 3 On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. It also 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). On judicial review, the circuit court of Cook County confirmed the Commission. The employer appeals, arguing the Commission erred in finding claimant's shoulder condition of ill-being after March 12, 2013, was causally related to his August 2012 work accident and its award of TTD benefits and past and prospective medical expenses was against the manifest weight of the evidence. We affirm and remand.

¶ 4 I. BACKGROUND

¶ 5 On November 19, 2013, the arbitration hearing was conducted. Claimant, then age 50, testified with the aid of a Spanish-speaking interpreter. He stated he worked for the employer as a carpenter for approximately 25 years and was a union member. On August 10, 2012, he was injured at work when he lifted a 25- to 30-pound box of ceiling tile, stepped on an electrical pipe, and fell forward. Claimant testified he fell to the floor with the box and the box hit his shoulders. After falling, he noticed pain in his arms and shoulders. Claimant denied having any injuries to, or experiencing symptoms in, either of his shoulders prior to his August 2012 accident. He also denied ever previously seeking medical treatment in connection with his shoulders.

¶ 6 On the day of his accident, claimant finished working and then sought treatment

in the emergency room at Christ Hospital. The record reflects he complained of shoulder pain after a fall at work and was diagnosed with bilateral acromioclavicular contusions.

¶ 7 On August 22, 2012, claimant began seeing Dr. Silver, an orthopedic surgeon. At arbitration, he submitted Dr. Silver's medical records and deposition, taken July 22, 2013. The record reflects that, during their first visit, Dr. Silver recorded a history of claimant's work accident and, on examination, found claimant "had severely limited range of motion in both shoulders with pain." Dr. Silver's impression was a rotator cuff tear of claimant's right shoulder and impingement of the left shoulder. He also determined that claimant was temporarily disabled from his work as a carpenter.

¶ 8 During his course of treatment with Dr. Silver, claimant received subacromial cortisone injections in both shoulders. Dr. Silver also recommended anti-inflammatory medication and physical therapy. Claimant underwent physical therapy three times a week for four weeks in September and October 2012. On October 5, 2012, Dr. Silver noted claimant's physical therapist recommended discontinuing physical therapy due to claimant's lack of progress. Dr. Silver recommended a magnetic resonance imaging (MRI) scan of both shoulders, which claimant underwent on November 15, 2012.

¶ 9 On December 5, 2012, claimant followed up with Dr. Silver who reviewed both claimant's MRI films and the corresponding MRI reports. He stated claimant's MRIs demonstrated "massive retracted rotator cuff tears" in both shoulders. Specifically, Dr. Silver testified the right shoulder MRI showed "a massive global retracted rotator cuff tear" with ruptures of the supraspinatus, the infraspinatus, and the subscapularis. He stated claimant's injury "involved every aspect of the rotator cuff" and "[t]here was basically no cuff remaining." Dr. Silver testified the left shoulder was basically the same. Further, he opined claimant was not a surgical

candidate due to the "severe retraction" and stated there was "not any tissue to repair." Rather, Dr. Silver recommended cortisone injections and long-term physical therapy. According to Dr. Silver, claimant remained temporarily disabled. The record reflects claimant received additional physical therapy, attending six visits between December 7, 2012, and January 8, 2013.

¶ 10 Claimant also continued to follow up with Dr. Silver, who provided him with cortisone injections. On December 12, 2012, Dr. Silver noted claimant was in severe pain and could "barely" lift his arms to 90 degrees. On January 16, 2013, he stated claimant had not been approved for further physical therapy and, as a result, he could no longer lift his arms beyond 80 degrees forward flexion. He opined claimant would be permanently disabled without physical therapy. On March 20, 2013, Dr. Silver stated claimant had regained 95 to 100 degrees of forward flexion bilaterally due to "using his home continuous passive motion machine." He continued to state claimant would be permanently disabled without physical therapy. On April 17, 2013, Dr. Silver stated claimant's shoulders had "deteriorated due to [the] lack of physical therapy for his massive rotator cuff tears." He stated claimant had approximately 60 to 70 degrees "of painful active forward flexion bilaterally." On May 15, 2013, Dr. Silver found claimant "was developing frozen shoulders." Finally, on June 19, 2013, he found claimant "had hardly any motion left in his shoulders."

¶ 11 Dr. Silver opined claimant's shoulder conditions, as diagnosed after his two MRIs, were causally connected to his August 2012 work accident. He believed claimant's rotator cuff tears were new injuries and did not preexist his August 2012 accident. Dr. Silver based his opinion on claimant having "no previous history of any shoulder dysfunction" and because, prior to the accident, claimant was working full-time as a carpenter without restrictions. Additionally, he testified claimant's MRIs did not show atrophy of the muscles, which he stated would have been

present "if there was preexisting tearing." Finally, Dr. Silver found claimant's accident, which involved "falling and crashing on his shoulder," was "a reasonable mechanism of injury to cause rotator cuff tearing."

¶ 12 Dr. Silver further testified that he had not released claimant from his care and was "still waiting to get him into physical therapy." Specifically, he recommended 8 to 10 months of continuous therapy "with further injections." Dr. Silver testified the physical therapy claimant already received was insufficient because it had been interrupted and claimant had "stiffened up again." Further, he stated claimant had not been given a chance to reach maximum medical improvement.

¶ 13 On cross-examination, Dr. Silver denied finding "any atrophy or disuse in the arm or shoulders" on examination of claimant. Further, he agreed that there were "some" degenerative changes on claimant's MRIs, but stated that had "nothing to do with the rotator cuff tear[s]." Dr. Silver testified there was nothing in his reading of the MRIs or the radiologists reading that found "degenerative tears." Further he stated claimant's MRI showed effusion on both shoulders, stating there were "long effusions in both joints."

¶ 14 The record reflects claimant was evaluated on three occasions at the employer's request by Dr. Prasant Alturi, an orthopedic surgeon. Dr. Alturi prepared reports following each of his evaluations, which claimant submitted into evidence at arbitration. Additionally, the employer submitted Dr. Alturi's deposition, taken July 31, 2013.

¶ 15 On September 11, 2012, Dr. Alturi conducted his first evaluation of claimant, who provided a history of his August 2012 work accident and complained of pain in both shoulders. Dr. Alturi's impression was right shoulder arthritis and "possible rotator cuff arthropathy," and left shoulder pain with "possibly [a] rotator cuff tear." In his report, he stated as follows:

"[Claimant's] findings today are suggestive of bilateral shoulder rotator cuff tears. There clearly is a chronic component to his injuries. He has advanced arthritic changes in his right shoulder x-rays and has atrophy in his left shoulder. These are chronic findings. [Claimant] states that he had no problems with either shoulder prior to the work injury from August of 2012. This is implausible given his physical findings and today's evaluation as well as the x-ray findings."

Dr. Alturi noted that claimant insisted he had no significant pain in either shoulder prior to his work injury. Thus, based upon the history provided by claimant, Dr. Alturi stated claimant's August 2012 work accident "may have aggravated his bilateral shoulder conditions." He recommended conservative care for three to four months and found claimant capable of working with temporary restrictions.

¶ 16 On December 20, 2012, Dr. Alturi reevaluated claimant. He noted no significant change in claimant's shoulder condition. After examining claimant and reviewing his medical records, including claimant's MRI films and reports, Dr. Alturi diagnosed claimant with rotator cuff arthropathy of both the right and left shoulders. Specifically, he found claimant "appear[ed] to have advanced arthritic changes in both of his shoulders with rotator cuff tears." Dr. Alturi also noted "significant symptom magnification" by claimant, stating his subjective complaints did not correlate with his objective findings. Dr. Alturi believed claimant's shoulder conditions were better than what claimant was representing to him, but testified he "didn't know what [claimant's] actual level of function was."

¶ 17 Dr. Alturi opined claimant's shoulder conditions, as reflected on his MRIs were

not causally related to his work accident. He testified his opinion was based on two factors. First, Dr. Alturi found claimant had severe arthritis, which "could not have developed that quickly." Second, he stated that, if claimant had experienced an acute injury, an effusion or edema would have been visible on his MRIs. He found no effusion evident on either of claimant's MRIs and deemed claimant's shoulder conditions "chronic in nature." Again, he found claimant's report of no symptoms prior to his work accident to be "implausible," stating "[s]ome degree of stiffness and/or weakness would have been expected." Dr. Alturi testified as follows: "I think [claimant's report of no prior symptoms is] not possible. I think that's not a credible history. He must have had abnormalities in his shoulders before that work injury."

¶ 18 Dr. Alturi testified claimant was "a poor surgical candidate" due to the "inconsistencies on his exam," his age, and the chronic nature of his condition. He testified that if claimant were much older, he would be a good candidate for shoulder replacements. With respect to claimant's ability to work and need for future treatment, he stated as follows:

"It is unlikely that [claimant] can return to unrestricted carpentry. If a modified position were made available that would allow him to avoid any significant reaching or lifting with his arms extended away from his body, then he may be able to perform those types of duties. Sedentary work is reasonable for him as well.

[Claimant's] condition will not completely resolve with additional therapy. However, a course of supervised therapy twice a week for 4-6 weeks, followed by a transition to a home exercise

program is appropriate to help optimize his shoulder function and minimize his on-going symptoms."

¶ 19 On January 29, 2013, Dr. Alturi authored a report for the purpose of clarifying some of his opinions after his second evaluation of claimant. He opined claimant had no objective findings that indicated any type of permanent aggravation to claimant's chronic shoulder conditions and that any correlation between claimant's current condition and the work injury were based on unsubstantiated subjective complaints. Dr. Alturi stated as follows:

"The association between [claimant's] reported work injury and his shoulder condition is based upon his report of worsening symptoms immediately following the work incident.

However, I do not consider [claimant] to be a credible historian. [Claimant] reported no symptoms prior to the work injury which is implausible, given the severity of the mechanical abnormalities in his shoulder."

Further, Dr. Alturi stated he could not exclude a temporary aggravation of claimant's condition as a result of his work accident, which he stated "would have been expected to resolve by three to four months of conservative care."

¶ 20 On March 12, 2013, Dr. Alturi evaluated claimant for a third time. He authored a report, dated April 3, 2013, stating claimant reported no significant change in his condition. Dr. Alturi noted claimant continued to have pain and dysfunction in both of his shoulders associated with chronic rotator cuff arthropathy. Contrary to claimant's assertions of no improvement, he found claimant was better than when he was previously assessed. Dr. Alturi determined claimant's condition had "significantly improved" and he "appear[ed] to have reached his pre-injury



state." Dr. Alturi opined claimant was at maximum medical improvement "with regards to the temporary work-related aggravation of his chronic degenerative condition" and stated he was capable of returning to full-duty work. Additionally, he testified he recommended symptomatic care for claimant until he became older, at which time reconstructive surgery for both shoulders would be appropriate.

¶ 21 On cross-examination, Dr. Alturi agreed that it was his opinion that claimant was "not able to work in the full range of carpentry which is classified as heavy in nature." Nevertheless, he believed claimant could return to the pre-accident work he had been doing for the employer "[b]ecause he was doing it before."

¶ 22 At arbitration, claimant testified that, currently, he could not "lift" his shoulders. However, he stated he was able to help his wife with grocery shopping. Claimant stated he lifted groceries that weighed around five pounds and were not too heavy. The arbitrator noted claimant made the following movements as he testified: "from a sitting position that had both hands on either side at his knees [claimant] was raising his arms up approximately two inches." Claimant also testified he helped his wife with yard work, stating he mowed his grass in five minute intervals.

¶ 23 At arbitration, the employer additionally presented the testimony of Jeffrey Lister, its carpenter superintendent and claimant's supervisor. Lister described claimant's job duties prior to his work accident as framing walls, hanging drywall, insulating, and "dropping ceiling tile." He testified claimant's carpenter duties also included those that could be performed without overhead lifting. Lister stated the employer always accommodated an employee's restrictions that included no overhead lifting.

¶ 24 On April 11, 2013, Lister called claimant after being informed by his supervisors

that claimant was released to return to work. Lister testified he asked if claimant could return to work the following day. According to Lister, claimant refused, stating " '[n]o, I have to talk to my doctor.' " Following that call, Lister e-mailed his superior and informed him that claimant refused to return to work.

¶ 25 Finally, the employer submitted surveillance videos of claimant taken on September 24 and 25, 2013, and October 4 and 5, 2013. The arbitrator characterized the videos as showing claimant "walking, talking, standing, or driving" and "[a]t one point, \*\*\* scratching his head with his left arm, lifting it up over his shoulder, and using his right arm to speak on a cell phone." On review, we find the surveillance footage is consistent with the arbitrator's description. In particular, footage from on October 5, 2013, shows claimant lifting his left arm above shoulder level to scratch the top of his head while holding a cellular phone to his ear with his right hand.

¶ 26 On March 4, 2014, the arbitrator issued his decision, finding claimant sustained work-related injuries arising out of and in the course of his employment on August 10, 2012. With respect to causation, the arbitrator noted claimant denied having injuries to, or receiving treatment for, either of his shoulders prior to his work accident. Also, he found the opinions of Dr. Silver more persuasive than those of Dr. Alturi. The arbitrator awarded claimant (1) 68 weeks' TTD benefits from August 11, 2012, through November 19, 2013, the date of the arbitration hearing; (2) past medical expenses pursuant to the medical fee schedule of \$282 to Dr. Silver and \$8,352.05 to Prescription Partners; and (3) prospective medical expenses for the physical therapy recommended by Dr. Silver.

¶ 27 On December 12, 2014, the Commission affirmed and adopted the arbitrator's decision without further comment and remanded the matter to the arbitrator for further proceedings

pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322. On August 11, 2015, the circuit court confirmed the Commission.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. Causation

¶ 31 On appeal, the employer first argues the Commission erred in finding claimant's condition of ill-being after March 12, 2013, was causally related to his August 2012 work accident. It maintains claimant sustained only a temporary aggravation of preexisting conditions in his shoulders and relies on Dr. Alturi's opinion that, as of March 12, 2013, each of claimant's shoulders had returned to its pre-injury state. Further, the employer argues Dr. Silver's opinions were refuted by the surveillance videos and, therefore, Dr. Alturi's opinions were more credible.

¶ 32 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). "The 'arising out of' component is primarily concerned with causal connection and is satisfied where the claimant shows his or her "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.* at 203, 797 N.E.2d at 672.

¶ 33 "Whether a causal connection exists between an employee's condition of ill-being and his or her employment is a question of fact for the Commission." *Bolingbrook Police Department v. Illinois Workers' Compensation Comm'n*, 2015 IL App (3d) 130869WC, ¶ 52, 48 N.E.3d 679. Further, "[i]t is within the province of the Commission to resolve conflicts in the evidence, especially as they relate to medical opinion evidence." *Westin Hotel v. Industrial*

*Comm'n*, 372 Ill. App. 3d 527, 538, 865 N.E.2d 342, 353 (2007). We apply a manifest-weight-of-the-evidence standard when reviewing the Commission's factual determinations and will not overturn its decision unless an opposite conclusion is clearly apparent. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 53, 11 N.E.3d 453. Additionally, "[t]he relevant inquiry is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other might reach an opposite conclusion." *Westin Hotel*, 372 Ill. App. 3d at 538-39, 865 N.E.2d at 353.

¶ 34 Here, the Commission found claimant's current condition of ill-being was causally related to his August 2012 work accident. It based its decision on claimant's testimony "that he had never injured nor had treatment for either shoulder prior to the accident," as well as Dr. Silver's opinions, finding them more persuasive than those provided by Dr. Alturi. We find the record contains sufficient support for the Commission's decision and it is not against the manifest weight of the evidence.

¶ 35 First, the record contains no evidence that claimant had any shoulder-related injuries or problems prior to his August 2012 accident. At arbitration, he denied having any shoulder symptoms or treatment that predated his accident, and he consistently reported the same lack of problems to both Dr. Silver and Dr. Alturi. Further, the record contains no direct evidence to support an opposite conclusion. Rather, it shows claimant had worked for the employer for 25 years and had been performing full-duty carpentry work prior to his accident. However, after his August 2012 accident, claimant began reporting pain in his shoulders and continuously sought medical care.

¶ 36 Second, the record reflects no error in the Commission's reliance on Dr. Silver's opinions over those of Dr. Alturi. Dr. Silver opined claimant suffered massive rotator cuff tears

that were causally related to claimant's August 2012 work accident. He determined they were new injuries and did not preexist claimant's accident. Dr. Silver based his opinion on three factors: (1) claimant having "no previous history of any shoulder dysfunction" and performing full-duty carpentry work for the employer prior to his accident; (2) no atrophy of the muscles reflected on claimant's MRIs, which he stated would have been present "if there was preexisting tearing"; and (3) claimant's accident, which he found was "a reasonable mechanism of injury to cause rotator cuff tearing."

¶ 37 Conversely, Dr. Alturi believed claimant's rotator cuff tears preexisted his work accident and claimant's condition, as reflected on his November 2012 MRIs, was not causally related to his work accident. However, in reaching his opinions, Dr. Alturi disregarded claimant's assertion that he had no prior shoulder issues, finding claimant was not credible and such a history was "implausible, given the severity of the mechanical abnormalities in his shoulder." He determined claimant "must have had abnormalities in his shoulders before [his] work injury." As discussed, above, such a determination is not supported by record. Rather, the evidence presented reflects an opposite conclusion, *i.e.*, that claimant had no history of shoulder-related symptoms, problems, or treatment prior to August 2012.

¶ 38 Further, we note Dr. Alturi testified that claimant's shoulder injuries rendered him unable "to work in the full range of carpentry." Thus, had such injuries been present prior to August 2012, claimant, according to Dr. Alturi, would not have been capable of performing the full range of his carpentry duties. However, nothing in the record indicates that claimant experienced any limitations. Instead, it shows claimant performed full-duty work for the employer as a carpenter prior to his August 2012 accident.

¶ 39 On appeal, the employer argues Dr. Alturi's opinions are entitled to greater weight

because they were corroborated by the surveillance videos. It emphasizes that footage from October 5, 2013, showed claimant lifting his left arm above shoulder level to scratch his head. The employer maintains that footage was in conflict with claimant's reports to Dr. Silver and his testimony at arbitration that he could not "lift his shoulders."

¶ 40 In this instance, we do not find the surveillance videos dispositive. The greater weight of the evidence clearly indicated claimant had no prior history of shoulder problems and post-accident MRIs that documented significant shoulder injuries. Moreover, Dr. Silver's causation opinions were not based on claimant's report of his post-accident abilities. Instead, he relied on claimant's lack of shoulder problems prior to August 2012, the MRI films and reports, and the mechanism of claimant's accident. Thus, surveillance footage, which at most showed a single instance of claimant lifting his left arm above shoulder level to scratch his head, does not warrant a different result from that reached by the Commission.

¶ 41 B. TTD Benefits

¶ 42 The employer next argues the Commission's decision to award claimant a total of 68 weeks' TTD benefits was against the manifest weight of the evidence. It argues claimant failed to establish his entitlement to TTD benefits after April 11, 2013, the date he was contacted by the employer through Lister and asked to return to work.

¶ 43 "A claimant is temporarily and totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of her injury will permit." *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 45, 976 N.E.2d 1. "The determination of whether claimant was unable to work and the period of time during which a claimant is temporarily and totally disabled are questions of fact to be determined by the Commission, and the Commission's resolution of these is-

sues will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Id.*

¶ 44 Here, the record contains evidence to support the Commission's TTD award through Dr. Silver's opinions and testimony. Dr. Silver opined claimant sustained massive rotator cuff tears in both shoulders as a result of his August 2012 accident. Further, he found claimant's accident rendered him temporarily disabled from work and he testified claimant had not been given the opportunity to reach maximum medical improvement. Dr. Silver never released claimant to return to work in any capacity.

¶ 45 Again, the employer relies on Dr. Alturi's opinion that claimant had preexisting shoulder conditions which, although they were aggravated by his accident, returned to their pre-injury state in March 2013, rendering claimant capable of returning to work. It also points to the surveillance videos, which it maintains showed claimant was "lying about his complaints." However, as already discussed, the Commission committed no error in finding Dr. Silver more persuasive and rejecting Dr. Alturi's opinions of a preexisting condition of ill-being and an ability by claimant to work with that condition. Further, we continue to find the surveillance videos—and their limited depictions of claimant—were not dispositive and did not demonstrate claimant's ability to return to carpentry work.

¶ 46 Finally, to the extent the employer argues claimant was not entitled to TTD benefits after April 11, 2013, because he refused a request to return to work, we also disagree. The employer, through Lister, contacted claimant about returning to work. Although Lister testified the employer would accommodate work restrictions, the record fails to reflect claimant had been released to return to work by Dr. Silver. Rather, the employer's offer was based on Dr. Alturi's opinions, which the Commission rejected as not persuasive.

¶ 47 In this instance, the record supports the Commission's finding that claimant was

entitled to 68 weeks' TTD benefits. Its decision was not against the manifest weight of the evidence.

¶ 48 C. Past Medical Expenses

¶ 49 On appeal the employer further challenges the Commission's award of past medical expenses. Under the Act, a claimant is entitled to recover reasonable and necessary medical expenses that are causally related to his or her accidental injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165 (2011). "Whether a medical expense is either reasonable or necessary is a question of fact to be resolved by the Commission, and its determination will not be overturned on review unless it is against the manifest weight of the evidence." *Id.*

¶ 50 In its challenge to medical expenses, the employer relies on the same arguments it raised with respect to its challenge to causation and TTD benefits. Thus, for the reasons already stated, we reject its contentions. Further, on appeal, the employer asserts the Act's fee schedule should apply to any medical expenses awarded. We note, however, that the arbitrator awarded past medical expenses to be paid "pursuant to the medical fee schedule." The Commission affirmed and adopted the arbitrator's decision. Thus, to the extent the employer argues error occurred, we disagree and find none.

¶ 51 D. Prospective Medical Expenses

¶ 52 Finally, on appeal, the employer challenges the Commission's award of prospective medical expenses in the form of the physical therapy recommended by Dr. Silver. "Section 8(a) of the Act entitles a claimant to compensation for all necessary medical, surgical, and hospital services 'thereafter incurred' that are reasonably required to cure or relieve the effects of the injury." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 593, 834 N.E.2d 583,



593 (2005) (quoting 820 ILCS 305/8(a) (West 2002)). "Specific procedures or treatments that have been prescribed by a medical service provider are 'incurred' within the meaning of section 8(a) even if they have not been performed or paid for." *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10, 981 N.E.2d 1193. Questions regarding a claimant's entitlement to prospective medical care are questions of fact for the Commission and subject to a manifest-weight-of-the-evidence standard of review. *Id.*

¶ 53 Here, Dr. Silver recommended claimant receive long-term continuous physical therapy of 8 to 10 months for his shoulder injuries. The employer challenges the Commission's award of prospective medical expenses, arguing claimant already underwent physical therapy with very little change in his condition. However, the record reflects claimant underwent four weeks of physical therapy in September and October 2012 and then had six additional visits in December 2012 and January 2013. Thus, the therapy claimant received was not the long-term, continuous therapy recommended by Dr. Silver to improve claimant's shoulder function. In fact, Dr. Silver addressed that issue, stating claimant's physical therapy had been interrupted, causing him to "stiffen[] up again." He found claimant had not been given an opportunity to reach maximum medical improvement.

¶ 54 The employer also relies on Dr. Alturi's opinions and the surveillance footage in arguing the Commission's award of prospective medical expenses was against the manifest weight of the evidence. However, as discussed the Commission found Dr. Silver more persuasive than Dr. Alturi and that finding is supported by the record. Additionally, for the reasons already expressed we cannot say the surveillance footage warrants an opposite conclusion than that reached by the Commission. Thus, the Commission's award of prospective medical expenses was not against the manifest weight of the evidence.

¶ 55

III. CONCLUSION

¶ 56 For the reasons stated, we affirm the circuit court's judgment, confirming the Commission's decision and remand the matter to the Commission for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322.

¶ 57 Affirmed and remanded.