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2016 IL App (1st) 153126WC-U

Order filed: November 18, 2016

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

SOUTHWEST AIRLINES,)
) Appeal from the Circuit Court
) of Cook County, Illinois
)
 Appellant,)
 Cross-Appellee,)
)
 v.)
) Appeal No. 1-15-3126WC
) Circuit Nos. 14-L-50011,
) 14-L-50016, 14-L-50848,
) 14-L-50920, 14-L-50966
 ILLINOIS WORKERS' COMPENSATION)
 COMMISSION, *et al.*, and Kelly Margrave,)
) Honorable
 Appellees,) Robert Lopez-Cepero,
 Cross-Appellant,) Judge, Presiding.

KELLY MARGRAVE,)
)
 Cross-Appellant,)
)
 v.)
)
)
 SOUTHWEST AIRLINES and ILLINOIS)
 WORKERS' COMPENSATION)
 COMMISSION,)
)
 Defendant,)
 Cross-Appellees.)

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The Commission's findings that the current conditions of ill-being in the claimant's right ankle, right knee, lumbar spine, and right shoulder were causally related to a work-related accident were not against the manifest weight of the evidence; (2) the Commission's decision to award TTD benefits, medical benefits, and prospective medical treatment was not against the manifest weight of the evidence; and (3) the claimant was entitled to penalties under sections 19(k) and 19(l) of the Illinois Workers Compensation Act and attorney fees under section 16 of that Act.

¶ 2 The claimant, Kelly Margrave, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), seeking benefits for injuries to her right ankle, right knee, lumbar spine, and right shoulder which she alleged were causally related to an accident she sustained while working for respondent Southwest Airlines (employer). After conducting a hearing, an arbitrator found that the claimant sustained an accident that arose out of and in the course of her employment, and that the claimant's current conditions of ill-being in her right ankle, right knee, lumbar spine, and right shoulder were causally connected to the work accident. The arbitrator awarded the claimant temporary total disability (TTD) benefits, medical benefits, and prospective medical treatment, including but not limited to diagnostic procedures and surgeries recommended by her doctors. The arbitrator also awarded penalties under sections 19(k) and 19(l) of the Act (820 ILCS 305/19(k), (l) (West 2010)), as well as attorney fees under section 16 of the Act (820 ILCS 305/16 (West 2010)).

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission vacated the arbitrator's award of penalties under section 19(k) and attorney fees under section 16. The Commission unanimously affirmed and

1-15-3126WC

adopted the arbitrator's decision in all other respects, including the arbitrator's award of penalties under section 19(l).

¶ 4 The claimant and the employer each sought judicial review of the Commission's decision in the circuit court of Cook County. The employer appealed the Commission's findings on accident and causation, its award of benefits, and its imposition of penalties under section 19(l) of the Act. The claimant cross-appealed the Commission's denial of penalties under section 19(k) and attorney fees under section 16. The circuit court remanded the matter to the Commission, directing the Commission to "provide a detailed, reasoned opinion to support its opinions on the issues of accident, causal connection, TTD, past medical, prospective medical treatment, penalties and fees."

¶ 5 Pursuant to the circuit court's remand order, the Commission issued a new decision affirming and adopting its previous findings. The employer and the claimant cross-appealed the Commission's order to the circuit court of Cook County, which affirmed the Commission's decision.

¶ 6 This appeal and cross-appeal followed.

¶ 7 **FACTS**

¶ 8 The claimant worked for the employer as a flight attendant. Although she lived in St. Louis, her employment with the employer was based out of Chicago Midway Airport. Her job duties included greeting passengers, assisting with luggage, and serving passengers refreshments. On August 7, 2011, the claimant was working on a flight from Fort Lauderdale to New Orleans. As the aircraft was on its final descent, the claimant was walking to the plane's forward galley carrying a full bag of trash when her ankle became wrapped around a backpack strap that was protruding into the aisle. The claimant dropped the bag of trash and fell forward, bracing herself

with her arms on an armrest in the aisle. During the arbitration hearing, the claimant testified that she fell forward in a “twisting” motion and experienced an immediate “pop” in her right ankle and a burning sensation in her right knee.

¶ 9 When the plane landed, the claimant was taken by ambulance to Ochsner Medical Center in Kenner, Louisiana, where she was diagnosed with right knee and right ankle sprains. The claimant was taken off work and was directed to seek further evaluation and care from an orthopedist.

¶ 10 On the following day, the claimant returned to St. Louis and the employer sent her to Concentra Medical Center where she was examined and treated by Dr. Dennis Keesal. The claimant reported that she had injured her right ankle and right knee when her foot and ankle got caught in a backpack strap. The claimant was experiencing pain in her right ankle and in the lateral collateral ligament of her right knee. Dr. Keesal diagnosed a right ankle sprain, sprains of the LCL and cruciate ligaments, and possible derangement of the lateral cartilage of the right knee. Dr. Keesal recommended an MRI of the claimant’s right knee, which was performed on August 26, 2011. The MRI revealed some swelling, a small tear of the posterior horn of the lateral meniscus, and a possible chronic tear of the anterior horn of the medial meniscus. Dr. Keesal referred the claimant to an orthopedic surgeon.

¶ 11 On August 29, 2011, the claimant was seen by Dr. Timothy Kremcheck, an orthopedic surgeon in Cincinnati, Ohio, who had previously treated the claimant. The claimant reported that she had injured her right ankle and right knee during a flight on August 7, 2011, when she tripped over a passenger’s bag and twisted her right leg. She told Dr. Kremcheck that the condition in her right ankle was somewhat improved but that the right knee was still painful and she could not put much weight on it. She also had problems extending and flexing the knee. On

physical examination, the claimant had significant pain on palpation of the lateral aspect of her right knee and on manipulation of her right patella. Dr. Kremcheck reviewed an MRI of the claimant's right knee and opined that it revealed tricompartmental degenerative joint disease but no significant or definitive meniscal tears. Dr. Kremcheck injected the knee with Marcaine and Depo-Medrol, prescribed home exercises, and kept the claimant off work pending reevaluation in six weeks.

¶ 12 The claimant testified that, by the end of August of 2011, she began to experience low back symptoms. She had been sitting at home with her leg propped up on her recliner chair. The claimant discussed her back symptoms with the employer's claims adjuster who attributed it to the claimant's sitting so much with her leg elevated. The claimant testified that the condition progressed from being a nagging sensation in her back at the end of August to a radiating pain which began to develop when she stood up while using her crutches. The pain radiated into her buttocks and down her right leg.

¶ 13 On October 10, 2011, the claimant sought treatment from Dr. Daniel Roach, a chiropractor, because of constant aching and tightness in her buttocks. The claimant had previously treated with Dr. Roach for lower back issues in February 2011, approximately six months prior to her work accident. On examination, Dr. Roach noted that the claimant had low back pain with radiation indicative of a disc protrusion or prolapse. The claimant reported experiencing discomfort increasing with movement and prolonged sitting. She described her pain as a 7 on a scale of 1-10.

¶ 14 Dr. Roach's October 10, 2011, medical record indicates that the claimant was involved in a car accident but suffered no major trauma. During his subsequent evidence deposition, Dr. Roach testified that this reference to a car accident pertained to a motor vehicle accident that the

claimant had suffered several years prior to the October 2011. Although Dr. Roach had treated the claimant prior to her August 2011 work accident, he testified that he had not seen any previous indication of the lower back and leg symptoms that the claimant exhibited in October 2011. Dr. Roach testified that the treatment he provided to the claimant in February, 2011, was primarily for headaches and cervical issues, that the adjustments he performed in the claimant's thoracic and lumbar areas were merely preventative, and that the claimant did not have any symptoms in those areas at that time.

¶ 15 The claimant testified that, by the time she saw Dr. Roach on October 10, 2011, her back pain was "severe" and had become "unbearable." She was still on crutches at that time and was doing a lot of sitting. She testified that the low back and leg symptoms she was experiencing at that time were of a character that she did not have previously. She acknowledged that she had previously experienced an occasional ache and tightness in her back and that Dr. Roach had treated her for some "minor" low back issues in February 2011.¹ However, the claimant testified that these prior low back issues were not significant, and she had no treatment for low back problems between March, 2011 and October, 2011.

¶ 16 On October 27, 2011, the claimant was examined by Dr. John Bartsch, an orthopedic surgeon associated with Dr. Kremchek. At that time, the claimant complained of right ankle and knee pain as well as low back pain with radiation on the right side. She described her back pain as a 9 on a scale of 1 to 10. She related the onset of back pain as being September 14, 2011, approximately one month after her work injury. After examining the claimant, Dr. Bartsch noted that the range of motion in her lower back was limited, straight leg raising was positive, and there was some sensation loss on the right side. The claimant was tender to palpation from the

¹ The claimant noted that her job required her to lift luggage and pull her suitcase in airports.

mid lumbar paraspinals to the gluteal region on the right side, and she had pain in the spinous process region over the paraspinals on the right. Dr. Bartsch obtained an EMG of the claimant's right leg on November 3, 2011, which was normal. Due to the severity of the claimant's pain and the progression of her symptoms, Dr. Bartsch ordered an MRI of the claimant's lumbar spine to evaluate her for disc pathology.

¶ 17 The claimant underwent a lumbar MRI on November 7, 2011. The MRI revealed: (1) a central disc protrusion at L5-S1, which abutted but did not displace the right S1 root; (2) a disc bulge a L3-L4 and retrolisthesis² with slight involvement of the right L4 root; and (3) mild lower lumbar facet arthropathy. Dr. Bartsch recommended an SI epidural injection and prescribed Oxycodone.

¶ 18 The claimant testified that, sometime during the week following her November 7, 2011, appointment with Dr. Bartsch, she fell when her right leg gave out on her while she was attempting to get in the shower. In an effort to brace her fall, the claimant extended her right arm, thereby injuring right shoulder.

¶ 19 On November 15, 2011, the claimant submitted an Application for Adjustment of Claim seeking benefits for injuries to her right ankle, right knee, low back, and right shoulder, all of which she claimed were causally connected to the August 7, 2011, work accident. The claimant testified that her shoulder injury occurred sometime after the November 7, 2011, appointment with Dr. Bartsch and before the Application was signed on November 15, 2011.

¶ 20 On November 29, 2011, the claimant was seen by Dr. Matthew Gornet, a spine surgeon, on referral from Dr. Kremchek. The claimant reported sustaining a work injury on August 7,

² "Retrolisthesis" is an acute, degenerative spinal condition in which a single vertebra gets displaced and moves backwards onto the vertebra lying immediately below it.

2011, when her ankle caught the strap of a backpack causing her to twist and fall forward. The claimant indicated that she had immediate pain and swelling in her ankle. Although she did not feel any significant back pain initially, she noted a gradual increase in low back pain which became more pronounced four to six weeks following the accident. Dr. Gornet's records made no reference to the claimant having injured her right shoulder.

¶ 21 Dr. Gornet reviewed the November 2011 MRI and opined that it revealed a large central disc herniation at L5-S1 which correlated with the claimant's symptoms. Dr. Gornet further opined that "the twisting accident" that the claimant had suffered at work on August 7, 2011, was "causally connected to her symptoms" and to her lower back injury. Dr. Gornet indicated that, while the claimant may not have sustained an immediate disc herniation in the accident, the work injury produced a disc injury which progressed over a period of weeks and eventually led to the onset of her symptoms. He concluded that this would explain the delay in the progression of the claimant's symptoms. Dr. Gornet recommended epidural steroid injections at L5-S1 on the right side. He noted that, if the injections did not help, he would consider performing a microdiscectomy or fusion. He referred the claimant to Dr. Kaylea Boutwell, who administered epidural steroid injections on December 2 and December 14, 2011. The claimant did not obtain any significant relief as a result of those injections.

¶ 22 On December 4, 2011, the employer stopped paying the claimant TTD benefits. The claimant was still off work at the time.

¶ 23 On December 12, 2011, the claimant was examined by Dr. Kathleen Weber, an orthopedic surgeon and the employer's independent medical examiner. Dr. Weber evaluated the claimant with respect to her right ankle and right knee injuries only. At that time, the claimant continued to complain of symptoms in both her right ankle and her right knee. Dr. Weber

concluded that the “mechanism of injury” suggested that the claimant had likely sustained an ankle sprain during her August 7, 2011, work accident. Dr. Weber opined that the claimant’s ankle examination was normal, that the ankle sprain she suffered during the work accident should have resolved by that time, and that the claimant was at MMI with respect to her ankle injury.

¶ 24 Regarding the right knee, Dr. Weber noted that the claimant had some preexisting arthritis in the knee and that a lateral meniscal change was observable on the MRI. However, Dr. Weber opined that there was no meniscal pathology upon examination. Dr. Weber noted that the claimant had received two injections into her right knee with “absolutely no improvement in her symptoms,” which suggested that her knee complaints were not intra-articular in nature. Dr. Weber further opined that the claimant’s complaints of a burning sensation on the lateral aspect of the knee might be related to lumbar radiculopathy rather than a knee issue. Accordingly, Dr. Weber recommended that the claimant’s lumbar spine be fully evaluated. Because of this, Dr. Weber could not opine that the claimant was at MMI with respect to her right knee.

¶ 25 Dr. Weber did not examine the claimant's lumbar spine. However, based on the medical records she reviewed and the claimant's history of lumbar complaints, Dr. Weber opined that the claimant’s low back problem was not related to the August 7, 2011, work accident. Dr. Weber noted that the claimant reported that she began experiencing back pain while doing home exercises in September of 2011, and that her back pain worsened as she continued with those exercises. Dr. Weber opined that the claimant sustained only a right ankle sprain and a right knee sprain as a result of the work accident.

¶ 26 On December 15, 2011, the claimant returned to Dr. Gornet for a follow up examination. Dr. Gornet opined that the claimant had “failed injections” and had failed physical therapy for

her back. He recommended a CT discogram at L4-L5, L5-S1, and possibly also at L3-L4. He kept the claimant off work. On January 11, 2012, a discogram was performed which confirmed disc pathology at L5-S1. When Dr. Gornet saw the claimant again on January 26, 2012, he recommended that the claimant have fusion surgery performed at that level. Dr. Gornet also noted at that time that the claimant had recently fallen several times “when her leg gave out on her,” and that the claimant thought she had injured her right shoulder in one of those falls. However, Dr. Gornet did not examine the claimant’s right shoulder or make any treatment recommendations for that alleged injury.

¶ 27 At the employer’s request, the claimant underwent a second independent medical examination on February 21, 2012. This time, the defendant was examined by Dr. Frank Phillips, an orthopedic surgeon, who evaluated the claimant’s lower back. Dr. Phillips reviewed various medical records provided to him as well as the diagnostic studies. Dr. Phillips' review of the MRI revealed what he described as a central disc prolapse at L5-S1 just contacting the right S1 nerve root. Dr. Phillips opined that the claimant’s S1 nerve root was being contacted, and acknowledged that this is a common basis for lumbar surgical intervention. Dr. Phillips further opined that the CT discogram was consistent with annular fissures at L5-S1, a type of lumbar pathology that can correlate with lumbar symptoms.

¶ 28 Dr. Phillips noted that the claimant had sustained a twisting injury to her lower extremity with muscular pain around the hip gluteal area and opined that this was related to the August 7, 2011, work injury. He diagnosed a gluteal/lumbar sprain/strain, and opined that the claimant’s buttock pain was a consequence of the work injury. However, Dr. Phillips concluded that “the clinical picture to date was not necessarily consistent with discogenic back pain,” but instead was more of a muscular-ligamentous type injury. Accordingly, Dr. Phillips did not believe that the

claimant was a candidate for a lumbar disc replacement fusion. He recommended an evaluation and further treatment by a specialist in rehabilitative medicine with a focus on physical therapy. Dr. Phillips testified that the claimant was not at MMI. He imposed a work restriction of avoiding repetitive bending or lifting more than 25 pounds due to the claimant's gluteal/lumbar injury.

¶ 29 On May 30, 2012, Dr. Phillips prepared a supplemental report after having reviewed additional medical records, including Dr. Roach's prior treatment records involving the claimant's lumbar spine. In his supplemental report, Dr. Phillips' again opined that the claimant had sustained a gluteal/lumbar sprain/strain injury as a result of the August 7, 2011, work injury, and he reaffirmed his prior work restrictions and treatment recommendations.

¶ 30 On June 27, 2012, the claimant was examined by her independent medical examiner, Dr. Corey Solman (an orthopedic surgeon). The primary focus of Dr. Solman's examination was the claimant's right shoulder and right knee. After reviewing the claimant's medical records and examining the claimant, Dr. Solman opined that the claimant's right ankle, right knee, and right shoulder conditions were causally related to the August 7, 2011, work accident.

¶ 31 Dr. Solman's examination of the claimant's right shoulder revealed: (1) a diminished range of motion and tenderness on palpation in the area of the biceps, which suggested a pathology of the biceps; (2) deep shoulder pain at extremes of motion, indicating inflammation of the lining of the joint; (3) positive O'Brien's and SLAP tests³ and pain with rotational stress of the shoulder, suggesting inflammation in the biceps tendon and labral abnormalities. Dr.

³ An "O'Brien's Test" is an orthopedic test of the shoulder that attempts to test specifically for glenohumeral joint labral tears, and, more specifically, for "SLAP" lesions. "SLAP" is an acronym for superior labral tear from anterior to posterior.

Solman testified that his physical examination findings were consistent with the mechanism of injury described by the claimant (*i.e.*, falling from a standing position and bracing her fall with an extended right arm), which he noted could cause tears of the labrum or biceps. Dr. Solman recommended an MRI arthrogram of the right shoulder to document any substantial biceps, rotator cuff, and/or labral pathology. He noted that surgery might be indicated depending upon the outcome of the MRI. Dr. Solman opined that because the shoulder injury was due to a fall caused by the weakness in the right lower extremity that it was indirectly related to the accident of August 7, 2011.

¶ 32 The claimant told Dr. Solman that she continued to have moderately severe, sharp pain on the upper outside corner of her right kneecap. She was having difficulty squatting, kneeling, and going up and down stairs, and she reported having episodes when her knee gave way. Upon physical examination, Dr. Solman noted crepitus in the knee cap joint with range of motion and tenderness over the patellofemoral joint. He diagnosed right patellofemoral pain and possible chondromalacia. Dr. Solman testified that an injury to the patella commonly causes the knee to feel unstable and that, 95 percent of the time, people with knee cap problems describe problems with giving-way and pain. He recommended further treatment for the claimant's right knee condition, including an arthroscopic evaluation and debridement to remove any torn cartilage under her kneecap joint.

¶ 33 Dr. Solman testified that the August 7, 2011, work accident aggravated the claimant's right knee patellofemoral condition necessitating further medical treatment. He further stated that this injury caused the claimant to have instability in her knee which led to the fall in which she injured her right shoulder. Thus, Dr. Solman opined that the shoulder injury was an indirect result of the knee injury the claimant suffered during the August 7, 2011, work accident.

¶ 34 Dr. Gornet was deposed on July 11, 2012, and his deposition testimony was received into evidence at the arbitration hearing. During his deposition testimony, Dr. Gornet opined that there was a causal relationship between the claimant's low back injury and the August 7, 2011, work accident. He noted that the claimant currently had a disc injury at L5-S1 and that, prior to the work accident, the claimant had no history of significant low back pain, no prolonged course of treatment for back symptoms, and had no MRI studies performed on her back. He also noted that the claimant had been working full duty prior to the accident. Dr. Gornet opined that, after the August 7, 2011, work injury, the claimant developed an inflammatory disc pathology over a period of weeks and her low back became symptomatic. According to Dr. Gornet, the claimant suffered a structural injury to a spinal disc during the work accident which caused disc protein to leak out of the disc. That, in turn, caused chemical irritation, which led to further mechanical symptoms and sensitization of the nerves and annulus, causing ingrowth of further nerves and a further sensitive disc. Dr. Gornet stated that the claimant had the classic presentation of an inflammatory disc condition becoming severe enough over a period of 6 to 8 weeks that she required treatment. He also noted that the narcotic pain medications the claimant was initially prescribed may have masked her initial back symptoms. Dr. Gornet noted that the mechanics of the claimant's work injury, the chronology of her complaints, and the positive findings on the MRI all indicated that the claimant's low back problems were attributable to the work accident, even though the claimant did not experience any low back pain immediately after the accident. He stated that there was no other plausible explanation for the cause of the claimant's disc injury.

¶ 35 Dr. Gornet further opined that the claimant was not at MMI and remained in need of medical care and treatment for her low back. He continued to keep the claimant off work pending the employer's authorization for surgery. During the entire period of time that Dr.

Gornet has treated the claimant, he has opined that she is totally disabled from work. Dr. Gornet testified that all medical treatment previously rendered was reasonable and necessary.

¶ 36 Dr. Solman was deposed on September 26, 2012, and his deposition was received into evidence. During his deposition testimony, Dr. Solman again opined that claimant's right shoulder condition was causally related to the August 7, 2011, work accident and that the claimant was in need of medical care and treatment for both the right shoulder and right knee.

¶ 37 Dr. Weber was deposed on November 7, 2012, and her deposition testimony was received into evidence. Dr. Weber did not examine the claimant's back because it was beyond the scope of her examination. However, Dr. Weber opined that the claimant's back complaints were not related to the August 7, 2011, work accident. Dr. Weber did not find the claimant to be at MMI in regard to the right knee because some of her right knee complaints may have been related to her low back condition and further evaluation of the claimant's lumbar condition was indicated.

¶ 38 Dr. Phillips was deposed on February 5, 2013, and his deposition testimony was received into evidence. During his deposition testimony, Dr. Phillips' reaffirmed his opinion that there was no injury to the claimant's lumbar spine. However, he stated that the claimant had sustained a strain that was related to the accident of August 7, 2011, for which further treatment was indicated, and that he had imposed lifting restrictions of 25 pounds. Dr. Phillips stated that he disagreed with Dr. Gornet's recommendation that a fusion procedure be performed.

¶ 39 During the arbitration hearing, the claimant testified that she was still experiencing pain in her right knee, that the range of motion of the knee was limited, and she was unable to bend or squat. The claimant also testified that she continued to experience pain and swelling as well as a popping and grinding sensation in her right ankle. She had a limited range of motion and a lack

of strength in the right ankle. As to her low back, the claimant testified that she was in constant pain 100% of the time and had continual pain radiating from the back to the buttocks and right leg. Regarding her right shoulder, the claimant stated that the range of motion of the shoulder was limited and she had lost strength in the shoulder to the point where she had problems holding onto a gallon of milk. The claimant noted that she wanted to proceed with the medical treatment recommended by Drs. Gornet and Solman.

¶ 40 The claimant was cross-examined at length about her pre-accident medical treatment, especially in regard to her low back. She acknowledged that she had a history of some intermittent tightness in her lower back as a result of pulling heavy luggage through airports and performing her job duties, including lifting heavy luggage overhead. She admitted that she occasionally sought some treatment for these aches and pains. However, the claimant testified that she did not have back symptoms to the degree and severity that she had at the time of arbitration. Moreover, the claimant noted that, prior to the August, 7, 2011, work accident, she was not undergoing any ongoing medical treatment for low back problems or taking any medications for her lower back, and she was working full duty without restrictions.

¶ 41 Medical records of treatments the claimant received prior to the August 2011 work accident were introduced at the arbitration hearing. These records indicated that, on February 18, 2005, the claimant saw Dr. Travis Keller, her primary care physician, in Olathe, Kansas. Dr. Keller's record of that visit indicates that the claimant had been suffering from back pain for several years and that her back pain had been more painful in the previous week. The claimant told Dr. Keller that her back pain was the result of a motor vehicle accident that had occurred approximately two years prior. The defendant reported that she had undergone chiropractic treatment and physical therapy for the condition. Dr. Keller provided the claimant with Mobic

(an nonsteroidal anti-inflammatory medication) and Flexeril (a muscle relaxant). On May 19, 2005, the claimant returned to Dr. Keller complaining of right-sided neck pain and shoulder pain after falling down a flight of stairs. In March 2007, the claimant underwent chiropractic treatment in Chicago. In the chiropractor's intake form, the claimant indicated that she had been suffering from "severe" neck and back pain for the previous five years, and she reported that these conditions were getting worse. Three years later (in March 2010), the claimant returned to Dr. Keller complaining of right-sided lower back pain that radiated down to her right buttock and down her proximal thigh.

¶ 42 The arbitrator found that the claimant sustained an accident that arose out of and in the course of her employment and that the claimant's current conditions of ill-being in her right ankle, right knee, lumbar spine, and right shoulder were causally connected to the work accident. Specifically, the arbitrator found that: (1) on August 7, 2011, the claimant sustained an accidental injury arising out of and in the course of her employment to her right ankle and right knee; (2) subsequent to the accident of August 7, 2011, the claimant experienced symptoms to her low back that were causally related to the work accident; and (3) because of the injury and instability in the claimant's right leg, she sustained a fall and injured her right shoulder.

¶ 43 The arbitrator noted that the claimant credibly testified that she began to experience low back symptoms several weeks after the accident. The arbitrator concluded that Dr. Gornet's testimony was consistent with the claimant's testimony regarding a gradual onset of low back pain. The arbitrator found Dr. Gornet's causation opinion to be more credible than Dr. Weber's causation opinion because Dr. Weber "did not examine [the claimant's] low back." He also found Dr. Gornet's causation opinion to be more credible than that of Dr. Phillips, who opined that the claimant had merely sustained a gluteal strain.

¶ 44 Moreover, the arbitrator found that “the fact that [the claimant] had some low back pain prior to the accident does not support [the employer's] position that her low back problems predate[d] the accident” because “[the claimant's] testimony and the testimony of Dr. Roach clearly indicate that [the claimant] had no significant low back symptoms immediately preceding the accident.” Further, the arbitrator noted that it was “undisputed” the claimant was “able to perform her regular full work duties” prior to the August 7, 2011, work accident.

¶ 45 In addition, the arbitrator found that “[the claimant's] weakness and instability in her right lower extremity caused her to fall and injure her right shoulder to be credible and likewise [found] Dr. Solman's opinion as to its causal relationship to be credible.”

¶ 46 The arbitrator awarded the claimant TTD benefits from August 7, 2011, through February 8, 2013, a period of 78 4/7 weeks.⁴ In so ruling, the arbitrator relied upon Dr. Gornet's opinion that the claimant remained temporarily totally disabled and in need of medical treatment for the entire time that he has been treating her. Moreover, the arbitrator noted that Dr. Weber “could not state that [the claimant] was at MMI for the right knee injury.” Although Dr. Weber opined that the claimant could return to work in regard to her right knee and right ankle injury, the arbitrator found that this opinion was “impossible to reconcile” with her opinion that the claimant was not at MMI. The arbitrator also noted that Dr. Phillips had opined that the claimant had a

⁴ The arbitrator noted that the employer had paid TTD benefits from August 8, 2011, through December 4, 2011, a period of 16 6/7 weeks, at the rate of \$660.00 per week for total of \$11,125.79. TTD benefits for the remaining period from December 5, 2011, through February 8, 2013, a period of 61 5/7 weeks, remained due and owing to the claimant. These benefits were payable at the rate of \$660.00 per week for a total of \$40,731.40 due to the claimant.

gluteal strain related to the work accident and was in need of additional medical care and treatment, and that Dr. Phillips imposed work restrictions upon the claimant. The arbitrator observed that the employer never offered the claimant work that conformed to Dr. Phillips' work restrictions. Moreover, the arbitrator reiterated his finding that Dr. Gornet's opinion was more credible than Dr. Weber's and Dr. Phillips' opinions.

¶ 47 The arbitrator also found that all of the medical treatment provided to the claimant up to the time of arbitration was reasonable and necessary, and that the employer was liable for the payment of all medical expenses associated with such treatment. The arbitrator awarded the claimant TTD benefits, medical benefits, and prospective medical treatment, including but not limited to diagnostic procedures and surgeries recommended by her doctors.

¶ 48 The arbitrator also found that the employer's conduct "has been unreasonable and vexatious" and that the claimant is therefore entitled to penalties under sections 19(k) and 19(1) of the Act (820 ILCS 305/19(k), (1) (West 2010)), as well as attorney fees under section 16 of the Act (820 ILCS 305/16 (West 2010)). In support of these findings, the arbitrator noted that: (1) the employer stopped paying the claimant TTD benefits on December 4, 2011, one week *prior* to Dr. Weber's examination of the claimant; (2) neither of the employer's examining physicians, Dr. Weber or Dr. Phillips, "provided any basis for the termination of [TTD] benefits"; (3) Dr. Weber's opinion that the claimant could return to work was contrary to her own opinion that the claimant was not at MMI in regard to his knee; (4) although Dr. Phillips opined that the claimant did not sustain a lumbar spine injury, he did state that the claimant sustained a gluteal strain injury for which additional treatment was indicated and for which the claimant was subject to work restrictions; (5) the employer did not tender Dr. Phillips' treatment recommendations to the claimant, and it never offered the claimant work conforming to Dr. Phillips's work restrictions.

The arbitrator found that the claimant was entitled to penalties under section 19(1) of \$30 per day up to the statutory maximum of \$10,000.00. The arbitrator also awarded penalties under section 19(k) of \$20,365.70, which is 50% of the total TTD benefits owed the claimant, and attorney fees under Section 16 in the amount of \$8,146.28.

¶ 49 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission unanimously affirmed and adopted the arbitrator's findings on accident and causation and the arbitrator's award of TTD benefits, medical benefits, and prospective medical treatment. However, the Commission vacated the arbitrator's award of penalties under section 19(k) and attorney fees under section 16. The Commission acknowledged that "the [a]rbitrator is correct that [the employer] failed to follow the treatment recommendation made by its Section 12 examiner, Dr. Phillips." However, the Commission noted that, while Dr. Phillips diagnosed the claimant as having a gluteal strain, he "did not attribute the gluteal strain to the August 7, 2011 work accident." Thus, the Commission found that the employer's decision not to follow Dr. Phillips' treatment recommendations was "in line with its stance that [the claimant] suffered right knee and right ankle injuries on August 7, 2011, but not a low back injury." The Commission further noted that Dr. Weber also found that the claimant's lumbar condition was not causally related to the August 7, 2011 work accident. Thus, the Commission "[did] not find [the employer's] reliance on its Section 12 examiners unreasonable or vexatious." Accordingly, the Commission vacated the arbitrator's award of penalties and attorney's fees under sections 19(k) and 16 of the Act.

¶ 50 However, the Commission affirmed the arbitrator's award of penalties under section 19(1) of the Act. The Commission noted that the employer terminated TTD benefits on December 4, 2011, and stopped authorizing additional treatment thereafter, even though neither

of its IMEs had found the claimant to be at MMI as to his right knee. Moreover, the medical records showed that the claimant continued to have right knee problems and had not been released from care regarding her right knee injury. (For example, Dr. Solman ordered a patellofemoral chondroplasty with possible lateral retinacular release and attributed the need for the surgery to the August 7, 2011, accident.) Although the employer disputed its liability for the claimant's low back condition, it stipulated to the claimant's right knee injury and "had taken responsibility for [her] right knee condition." Accordingly, the Commission found that the employer's failure to pay medical expenses and TTD benefits associated with the claimant's ongoing right knee problems after she had made numerous written demands for payment of benefits constituted a delay in payment of benefits which entitled the claimant to penalties under section 19(l).

¶ 51 The claimant and the employer each sought judicial review of the Commission's decision in the circuit court of Cook County. The employer appealed the Commission's findings on accident and causation, its award of benefits, and its imposition of penalties under section 19(l) of the Act. The claimant cross-appealed the Commission's denial of penalties under section 19(k) and attorney fees under section 16. The circuit court remanded the matter to the Commission, directing the Commission to "provide a detailed, reasoned opinion to support its opinions on the issues of accident, causal connection, TTD, past medical, prospective medical treatment, penalties and fees."

¶ 52 Pursuant to the circuit court's remand order, the Commission issued a new decision affirming and adopting its previous findings. The employer and the claimant cross-appealed the Commission's order to the circuit court of Cook County, which affirmed the Commission's decision.

¶ 53 This appeal and cross-appeal followed.

¶ 54 ANALYSIS

¶ 55 1. Causation

¶ 56 The employer argues that the Commission erred in finding that that the claimant "proved that she had sustained compensable accidents *** related to her lumbar spine and right shoulder." As a separate point of error, the claimant maintains that the Commission's finding that the claimant's current conditions of ill-being in her lumbar spine and right shoulder were causally connected to the claimant's August 7, 2011, work accident. Although the employer frames these as two separate arguments, they really amount to a single argument: *i.e.*, that the claimant's current low back and right shoulder conditions are not causally related to a work-related accident. The employer does not dispute that the claimant sustained a work related accident on August 7, 2011, when she tripped and fell on an airplane while working for the employer as a flight attendant. The employer concedes that the claimant suffered sprains to her right ankle and right knee during that work accident. However, the employer argues that those injuries had resolved by August 29, 2011, and December 12, 2011, respectively, and it denies that the current conditions of ill-being in the claimant's right ankle, right knee, low back, and right shoulder are causally connected to the August 7, 2011 work accident.

¶ 57 To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). Whether the claimant's current condition of ill-being is causally related to his or her employment is a question of fact. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 868 (2010). In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of

witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). A reviewing court may not substitute its judgment for that of the Commission on these issues merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence, *i.e.*, only when the opposite conclusion is "clearly apparent." *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (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. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). When the evidence is sufficient to support the Commission's causation finding, we will affirm. *Id.*

¶ 58 Here, the Commission's causation findings were not against the manifest weight of the evidence. As noted, the employer concedes that the claimant injured her right ankle and her right knee during the August 7, 2011, work accident, but argues that those conditions were nothing more than sprains which resolved by August 29, 2011, and December 12, 2011, respectively. With respect to the right ankle injury, the employer relies upon the claimant's statement to Dr. Kremcheck on August 29, 2011, that her ankle pain had "resolved," and also upon Dr. Weber's opinion that the claimant had reached MMI as to her ankle sprain by December 12, 2011.

¶ 59 However, there was ample evidence in the record suggesting that the claimant experienced ankle pain and other ankle symptoms continuously from the time of the August 7, 2011, work accident through the time of the arbitration hearing. Although the claimant told Dr.

Kremcheck on August 29, 2011 that the condition in her right ankle had "improved," she did not say that her ankle pain had "resolved." To the contrary, Dr. Kremcheck's August 29, 2011, medical record indicates that the claimant had pain in her right ankle. Thereafter, the claimant continued to report right ankle pain and ankle symptoms to doctors, including Dr. Bartsch on October 27, 2011, and Dr. Weber on December 12, 2011. On June 27, 2012, Dr. Solman opined that the claimant's right ankle condition was causally related to the August 7, 2011, work accident. Moreover, during the February 8, 2013, arbitration hearing, the claimant testified that she continued to experience pain and swelling as well as a popping and grinding sensation in her right ankle, and that she had a limited range of motion and a lack of strength in that ankle. The Commission was entitled to credit this testimony. Thus, there was ample evidence to support the Commission's causation finding as to the claimant's right ankle. Although there is some contrary evidence in the record, we cannot say that the opposite conclusion is clearly apparent.

¶ 60 The Commission's causation finding with respect to the claimant's right knee is also well supported. During the arbitration hearing, the claimant testified that she was still experiencing pain in her right knee, that the range of motion of the knee was limited, and she was unable to bend or squat. The claimant's testimony was corroborated by the medical records and by expert medical testimony. On August 29, 2011, Dr. Kremcheck noted continuing pain on passive and active range of motion of the right knee with significant pain on palpation (most notably over the lateral aspect of the patella) and limitation of flexion to only 90 degrees. Dr. Kremcheck's impression was that the claimant had sustained a patellofemoral injury. During her December 2011 examination of the claimant, Dr. Weber noted that the claimant complained of continued knee symptoms and that she continued to have reduced range of motion of the knee to 90 degrees. Dr. Weber agreed that the claimant's right knee complaints had been consistent since

the time of the August 2011 work accident. Although she opined that the claimant's knee condition could be related to a lumbar radiculopathy (rather than an injury to the knee itself), she acknowledged that the claimant's knee symptoms could be related to patellofemoral pathology. Moreover, on June 27, 2012, Dr. Solman noted continued knee complaints and related the current condition of ill-being in the claimant's right knee to the August 7, 2011, work accident. Given the totality of the evidence, the Commission's decision to credit Dr. Solman's causation opinion as to the claimant's current right knee condition was not against the manifest weight of the evidence.

¶ 61 The Commission's causation finding as to the claimant's low back condition is also sufficiently supported by the evidence. The claimant testified that she had a gradual onset of low back pain in the weeks following her August 2011 work accident. Because she had injured her leg during the work accident, the claimant was required to sit for extended periods of time with her leg elevated. As she did this, she began to develop soreness in her low back that increased in intensity during the ensuing weeks. On October 10, 2011, she sought treatment with Dr. Roach, a chiropractor who had previously treated her for some back issues. On examination, Dr. Roach noted that the claimant had low back pain with radiation indicative of a disc protrusion or prolapse.

¶ 62 Approximately two weeks later, the claimant saw Dr. Bartsch, complaining of severe low back pain with radiation on the right side. She related the onset of back pain as being September 14, 2011, approximately one month after her work injury. After examining the claimant, Dr. Bartsch noted that the range of motion in her lower back was limited and there was some sensation loss on the right side. Due to the severity of the claimant's pain and the progression of her symptoms, Dr. Bartsch ordered an MRI of the claimant's lumbar spine, which was performed

1-15-3126WC

on November 7, 2011. The MRI showed a central disc protrusion at L5-S1 which abutted the right S1 root, a disc bulge at L3-L4, retrolisthesis with slight involvement of the right L4 root, and mild lower lumbar facet arthropathy.

¶ 63 Dr. Gornet subsequently reviewed the November 7, 2011, MRI and opined that it revealed a large central disc herniation at L5-S1 which correlated with the claimant's symptoms. Dr. Gornet further opined that "the twisting accident" that the claimant had suffered at work on August 7, 2011, was "causally connected to her symptoms" and to her lower back injury. He indicated that, while the claimant may not have sustained an immediate disc herniation in the accident, the work injury produced a disc injury which progressed over a period of weeks and eventually led to the onset of her back symptoms. He concluded that this would explain the delay in the progression of the claimant's symptoms.

¶ 64 During his subsequent deposition, Dr. Gornet opined that there was a causal relationship between the claimant's low back injury and the August 7, 2011, work accident. He noted that the claimant currently had a disc injury at L5-S1 and that, prior to the work accident, the claimant had no history of significant low back pain, no prolonged course of treatment for back symptoms, and had no MRI studies performed on her back. He also noted that the claimant had been working full duty prior to the accident. Dr. Gornet opined that, after the August 7, 2011, work injury, the claimant developed an inflammatory disc pathology over a period of weeks and her low back became symptomatic. According to Dr. Gornet, the claimant suffered a structural injury to a spinal disc during the work accident which caused disc protein to leak out of the disc. That, in turn, caused chemical irritation, which led to further mechanical symptoms and sensitization of the nerves and annulus, causing ingrowth of further nerves and a further sensitive disc. Dr. Gornet stated that the claimant had the classic presentation of an inflammatory disc

condition becoming severe enough over a period of six to eight weeks that she required treatment. Dr. Gornet noted that the mechanics of the claimant's work injury, the chronology of her complaints, and the positive findings on the MRI all indicated that the claimant's low back problems were attributable to the work accident, even though the claimant did not experience any low back pain immediately after the accident. He opined that the claimant was not at MMI and remained in need of medical care and treatment for her low back, and was totally disabled from work.

¶ 65 In arguing that the Commission's causation finding as to the claimant's low back was against the manifest weight of the evidence, the employer argues that the medical records do not reference any low back symptoms until the claimant treated with Dr. Roach approximately two months after the accident. Moreover, the employer notes that Dr. Roach's October 10, 2011, treatment record states that the claimant was involved in a car accident and "she noticed pain going into her buttocks afterwards." The employer speculates that, when the claimant treated with Dr. Roach in October 2011, she was merely "experiencing symptoms in her lumbar spine that she had experienced since 2003." Further, the employer observes that, although the claimant told Dr. Gornet that she sustained a "twisting" mechanism of injury during the work accident (upon which Dr. Gornet heavily relied in rendering his causation opinion), she previously told Dr. Kremcheck that she could not remember the mechanism of injury. In addition, the employer relies upon Dr. Weber's opinion that the claimant's current back condition is not related to the work accident.

¶ 66 We do not find these considerations to be dispositive. Although there was evidence that the claimant had previously sought treatment for her low back from Dr. Roach and from other doctors prior to the work accident, both the claimant and Dr. Roach testified that the back

symptoms the claimant was experiencing in October 2011 were very different (and more severe) than the back symptoms she had experienced prior to the work accident. Moreover, Dr. Roach testified that the car accident he referenced in his October 10, 2011, medical record had occurred several years before 2011. Further, although the claimant places great weight on the fact that Dr. Gornet referenced a "twisting" mechanism of injury, Dr. Gornet testified that the type of back injury the claimant sustained did not have to result from a twisting motion. In addition, although Drs. Weber and Phillips opined that the claimant's current low back condition was not causally related to the work accident, the Commission was entitled to credit Dr. Gornet's contrary opinion, which was supported by the medical evidence. The Commission causation finding as to the claimant's low back was not against the manifest weight of the evidence.

¶ 67 The Commission's causation finding as to the claimant's right shoulder condition is also amply supported. The claimant testified that, sometime between November 7, 2011, and November 15, 2011, she fell when her right leg gave out while she was attempting to get in the shower. In an effort to brace her fall, the claimant extended her right arm, thereby injuring her right shoulder. When Dr. Solman examined the claimant's right shoulder in June 2012, he concluded that the claimant's right shoulder condition was causally related to the August 7, 2011, work accident. Dr. Solman's examination of the claimant's right shoulder revealed: (1) a diminished range of motion and tenderness on palpation in the area of the biceps, which suggested a pathology of the biceps; (2) deep shoulder pain at extremes of motion, indicating inflammation of the lining of the joint; (3) positive O'Brien's and SLAP tests and pain with rotational stress of the shoulder, suggesting inflammation in the biceps tendon and labral abnormalities. Dr. Solman testified that his physical examination findings were consistent with the mechanism of injury described by the claimant (*i.e.*, falling from a standing position and

bracing her fall with an extended right arm), which he noted could cause tears of the labrum or biceps.

¶ 68 Dr. Solman opined that, because the shoulder injury was due to a fall caused by the weakness in the right lower extremity, it was indirectly related to the August 7, 2011, work accident. He testified that the August 7, 2011, work accident aggravated the claimant's right knee patellofemoral condition, which caused the claimant to have instability in her knee. That, in turn, led to the fall in which she injured her right shoulder. (Dr. Solman testified that an injury to the patella commonly causes the knee to feel unstable and that, 95 percent of the time, people with knee cap problems describe problems with "giving-way" and pain.) Thus, Dr. Solman opined that the claimant's shoulder injury was an indirect result of the knee injury she suffered during the August 7, 2011, work accident. Dr. Solman also testified that that the claimant was in need of medical care and treatment for her right shoulder.

¶ 69 "Every natural consequence that flows from the injury which arose out of and in the course of the claimant's employment is compensable under the Act, unless caused by an independent intervening accident." *Teska v. Industrial Comm'n*, 266 Ill. App.3d 740, 742 (1994); see also *Central Rug & Carpet v. Industrial Comm'n*, 361 Ill. App. 3d 684, 690 (2005). Here, Dr. Solman opined that the destabilization of the claimant's knee, which caused her to fall and injure her shoulder, was caused by the claimant's August 7, 2011, work accident. There is no evidence suggesting that the shoulder injury resulted from an independent, intervening cause that broke the chain of causation from the August 2011 work accident. Accordingly, the Commission properly found that the claimant's right shoulder condition was causally related to the work accident.

¶ 70 The employer argues that the claimant's testimony that she fell and injured her shoulder

1-15-3126WC

sometime between November 7 and November 15, 2012, is not credible because the claimant was unable to identify a specific accident date and because the first reference to an alleged shoulder injury in the medical records occurs in Dr. Gornet's January 26, 2012, medical record. Although the claimant was examined by Dr. Gornet on November 29, 2011, and December 15, 2011, and by Dr. Weber on December 12, 2011, none of the corresponding medical records reference any shoulder pain or other shoulder condition.

¶ 71 Nevertheless, it is the Commission's province to assign weight to the evidence and to assess the credibility of witness testimony. *Hosteny*, 397 Ill. App. 3d at 675. We cannot conclude that the Commission's decision to credit the claimant's testimony about her shoulder injury was against the manifest weight of the evidence merely because her testimony was not corroborated by certain of the medical records, particularly where her testimony was corroborated by other medical records and by Dr. Solman's opinion.

¶ 72 2. TTD Benefits, Medical Expenses, Prospective Medical Treatment

¶ 73 The employer also maintains that the Commission erred in awarding TTD benefits for the claimant's right ankle condition after August 29, 2011, TTD benefits for the claimant's right knee condition after December 12, 2011, and medical expenses and prospective treatment for the claimant's low back and right shoulder conditions. These arguments are based entirely upon the supposition that the Commission erred in finding that the claimant's current conditions of ill-being were causally related to the August 7, 2011, work accident. As we have upheld the Commission's findings on causation, we need not address this issue further. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011). However, we note that the claimant was never declared to be at MMI with respect to all of her injuries, she continued to complain of symptoms relating to each of her injuries up to the time of arbitration,

1-15-3126WC

of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence.

Jacobo, 2011 IL App (3d) 100807WC, ¶ 20; *Crockett v. Industrial Comm'n*, 218 Ill. App. 3d 116, 121 (1991). The Commission's decision to award penalties under section 19(1) is against the manifest weight of the evidence “only if the record discloses that the opposite conclusion clearly is the proper result.” *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370 (2009).

¶ 77 In this case, the employer initially paid the claimant TTD benefits after the August 7, 2011, work accident. However, it stopped paying TTD benefits on December 4, 2011, and stopped authorizing additional medical treatment after that date. At that time, no doctor had placed the claimant at MMI for her injuries or released her from care, and the claimant continued to report symptoms related to her injuries to her doctors. The employer's IME doctors (Dr. Weber and Dr. Phillips) had not yet examined the claimant. When they did examine her, neither doctor placed the claimant at MMI for all of her injuries, and both said that the claimant needed to undergo further treatment before she could be placed at MMI. (Dr. Weber testified that she could not declare the claimant to be at MMI with respect to her knee condition under the claimant's lower back was evaluated, and Dr. Phillips testified that the claimant would not reach MMI with respect to her gluteal condition until she received further evaluation and rehabilitative treatment that Dr. Phillips recommended.) Accordingly, the employer's decision to terminate TTD benefits and to stop authorizing medical treatment on December 4, 2011, was objectively unreasonable and entirely without justification.

¶ 78 The employer argues that section 19(1) penalties were inappropriate because the employer reasonably relied upon Dr. Weber's opinions that the claimant's low back condition was not causally related to the work accident and that her current knee condition was related to her low

back condition rather than the work accident. We do not find this argument persuasive.

"Generally, an employer's reasonable and good-faith challenge to liability does not warrant the imposition of penalties" (*USF Holland, Inc. v. Industrial Comm'n*, 357 Ill. App. 3d 798, 805 (2005)), and an employer is entitled to rely in good faith on an opinion of its examining physician to dispute liability (*Continental Distributing Co. v. Industrial Comm'n*, 98 Ill. 2d 407, 415-16 (1983)). In this case, however, neither Dr. Weber's opinion nor any other evidence justified the claimant's refusal to pay TTD benefits or to authorize treatment after December 4, 2011. As noted, Dr. Weber did not examine the claimant until eight days after the employer stopped paying benefits. Moreover, after she examined the claimant on December 12, 2011, Dr. Weber did not definitively opine that the claimant's knee condition was related to her low back condition. Rather, she merely suggested that some of her knee symptoms *might* be related to lumbar radiculopathy rather than a knee issue. She recommended that the claimant undergo further evaluation of her low back to investigate this hypothesis. Dr. Weber did not examine the claimant's low back condition or purport to offer a medical opinion on the relationship between the claimant's low back condition and her knee condition. Nor did Dr. Weber definitively opine that the claimant's knee condition was not causally related to the work accident. To the contrary, she acknowledged during her deposition that the claimant's knee symptoms could be related to a patellofemoral pathology. Although she opined that the knee sprain the claimant sustained during the work accident should have resolved by December 4, 2011, Dr. Weber did not place the claimant at MMI for that injury. Rather, she stated that she could not place the claimant at MMI for her knee condition under the claimant's low back was evaluated. Moreover, Dr. Phillips opined that the claimant's gluteal pain was causally related to the August 7, 2011, work accident, and he prescribed further evaluation and treatment for that condition.

¶ 79 Thus, neither the opinions of its own IME doctors nor any other evidence supplied the employer with a good faith, reasonable basis to withhold TTD benefits and medical treatments after December 4, 2011.

¶ 80 4. Section 19(k) Penalties and Attorney Fees.

¶ 81 In her cross-appeal, the claimant argues that the Commission erred by reversing the arbitrator's award of penalties under section 19(k) of the Act (820 ILCS 305/19(k) (West 2010) and attorney fees under section 16 of the Act (820 ILCS 305/16 (West 2010)). The standard for awarding penalties under section 19(k) is higher than the standard under 19(l). *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 21. Section 19(k) of the Act provides for penalties where there has been an "unreasonable or vexatious" delay of payment or an "intentional underpayment of compensation." 820 ILCS 305/19(k) (West 2010). To obtain penalties under section 19(k), it is not enough for the claimant to show that the employer simply failed, neglected, or refused to make payment or unreasonably delayed payment without good and just cause. *McMahan*, 183 Ill. 2d at 515. Instead, section 19(k) penalties and section 16 fees are "intended to address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose." *Id.* In addition, while section 19(l) penalties are mandatory, the imposition of penalties under section 19(k) and attorney fees under section 16 is discretionary. *Id.* The calculation of a penalty award under section 19(k) is simply a mathematical computation of 50% of the amount payable at the time of the award. *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 22.

¶ 82 Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under section 19(k) is appropriate. 820 ILCS 305/16 (West 2006). "The amount of [attorney] fees to be assessed is a matter committed to the discretion of the Commission."

Williams v. Industrial Comm'n, 336 Ill. App. 3d 513, 516 (2003); see also *Jacobo*, 2011 IL App

1-15-3126WC

(3d) 100807WC, ¶ 22. An award of penalties and attorney fees pursuant to sections 19(k) and 16 are “intended to promote the prompt payment of compensation where due and to deter those occasional employers or insurance carriers who might withhold payment for other than legitimate motives.” *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 23.

¶ 83 Our review of the Commission's decision to deny penalties and attorney fees pursuant to sections 19(k) and 16 involves a two-part analysis. First, we must determine whether the Commission's finding that the facts do not justify section 19(k) penalties and section 16 attorney fees is “contrary to the manifest weight of the evidence.” *McMahan*, 183 Ill. 2d at 516; *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 25. Second, we must determine whether “it would be an abuse of discretion to refuse to award such penalties and fees under the facts” presented in this case. *McMahan*, 183 Ill. 2d at 516; *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 25.

¶ 84 In this case, the Commission's denial of penalties under section 19(k) and attorney fees under section 16 was both against the manifest weight of the evidence and an abuse of discretion. As noted above, the opinions of the employer's IME doctors did not support the employer's decision to withhold of TTD benefits and authorization for medical treatments after December 4, 2011. To the contrary, the opinions of Drs. Phillips and Weber contradicted that decision. Neither doctor placed the claimant at MMI, and both recommended further treatments for the claimant. Nevertheless, the employer refused to pay for the treatments recommended by its own IME physicians.

¶ 85 In reversing the arbitrator's award of section 19(k) penalties and section 16 attorney fees, the Commission ruled that Dr. Phillips “did not attribute the [claimant's] gluteal strain to the August 7, 2011, work accident.” That was error. In both his expert report and during his deposition testimony, Dr. Phillips unequivocally opined that the claimant gluteal pain was

causally related to the work accident. He also declined to place the claimant at MMI for that condition, and recommended further evaluation and treatment. Moreover, as noted above, Dr. Weber's suggestion that the claimant's knee condition was related to a low back condition rather than to the August 2011 work accident was speculative and equivocal, and Dr. Weber never placed the claimant at MMI for her knee condition.

¶ 86 In sum, although the employer initially paid TTD benefits and medical expenses for ankle and knee injuries the claimant sustained during the work accident, it stopped paying those benefits on December 4, 2011, before the employer's IME physicians had even examined the claimant. The employer then persisted in withholding such benefits without any good faith basis for doing so, despite the fact that its own IME doctors declined to place the claimant at MMI and recommended further treatments. Such behavior is unreasonable and vexatious, and justifies the award of section 19(k) penalties and attorney fees under section 16.

¶ 87

CONCLUSION

¶ 88 For the foregoing reasons, we reverse the circuit court of Cook County's judgment confirming the Commission's denial of penalties under section 19(k) and fees under section 16 of the Act. In all other respects, we affirm the circuit court's judgment, which confirmed the Commission's decision.

¶ 89 Affirmed in part and reversed in part; cause remanded.