2016 IL App (1st) 153487WC-U

Order filed: December 30, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

HAROLD MAYS,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 1-15-3487WC
	)	Circuit No. 15-L-50117
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (Material Science Corporation, Appellees).	)	Honorable Carl Anthony Walker, Judge, Presiding.

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

ORDER

¶ 1 *Held*: (1) The Commission did not erroneously reverse the parties' stipulation of causation as to a work accident the claimant sustained on December 21, 2009; (2) the Commission's finding that the claimant was not unable to fully perform his job duties as a result of his work-related injuries was not against the manifest weight of the evidence; (3) the Commission properly declined to award the claimant wage differential benefits; (4) the Commission did not err in denying a program of vocational rehabilitation consistent with the recommendations of the claimant's vocational expert; and (5) the Commission's denial of penalties and attorney's fees for the employer's nonpayment of certain benefits following some of the claimant's work-related injuries was not against the manifest weight of the evidence.

¶ 2 The claimant, Harold Mays, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for injuries which he allegedly sustained while working for respondent Material Sciences Corporation (employer) on three separate occasions: December 21, 2009, February 13, 2012, and March 13, 2012. The employer stipulated to accident and causation as to the December 21, 2009, and February 13, 2012, incidents but contested the alleged work accident of March 13, 2012. The three claims were consolidated for hearing before an arbitrator. After conducting a hearing, the arbitrator found that the claimant had sustained work-related accidents on all three occasions and awarded him temporary total disability (TTD) benefits for periods following each accident. The arbitrator also awarded the claimant medical expenses, maintenance benefits from the date the claimant began a self-directed job search (after his third work-related injury) until the date he began working for another employer, and temporary partial disability (TPD) benefits during the period the claimant worked in the latter position. However, the arbitrator declined to award maintenance benefits for the period after the claimant stopped working for the other employer because it found that the claimant had voluntarily "removed himself from the labor market" at that point in order to care for his grandchildren. Because the claimant was not seeking work at the time of the hearing, the arbitrator found that vocational rehabilitation would be "premature." However, the arbitrator ordered the employer to prepare a written vocational assessment and to periodically update that assessment pursuant to Commission Rule 7110.10 (50 Ill. Adm. Code 7110.10 (2008)). In addition, the arbitrator denied the claimant's claim for penalties and attorney fees under the Act (820 ILCS 305/19(k), (l) (West 2008); 820 ILCS 305/16 (West 2008)).

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission stated that it "reverse[d] the Decision of the Arbitrator as stated below on the issue of causal connection." However, the Commission upheld the arbitrator's award of TTD benefits for periods following each of the three work-related accidents, and it did not address the issue of causal connection at any other point in its written decision. The Commission reversed the arbitrator's finding that the claimant was unable to fully perform his work duties with the employer as a result of the work accidents. The Commission found that the claimant had not attempted to perform "heat taping" (an essential function of his job) in good faith, and that he had "effectively abandoned his employment [with employer] on June 4, 2012." Accordingly, the Commission concluded that the claimant was not entitled to TPD benefits, maintenance benefits, or vocational rehabilitation. The Commission remanded the matter to the arbitrator "for further proceedings for a determination of permanent disability," pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

¶ 4 The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling.

¶ 5 This appeal followed.

¶ 6 FACTS

¶ 7 The claimant worked for the employer for 31 years performing a variety of jobs. At the time of his first work-related injury in December 2009, the claimant was working as a "slitter helper." His job duties included packaging, lifting skids, and operating a Jeep and a forklift. It is undisputed that the claimant suffered a work-related accident on December 31, 2009. On that date, one of his coworkers backed a forklift into a tilter machine, which was bolted to the ground by two large safety plates. The force from the forklift caused one of the machine's safety plates

to break loose and "swing out," hitting the back of the claimant's feet and propelling the claimant backward through the air. As he flew backwards, the claimant's back and right elbow struck the tilter. As he began falling downward, the claimant tried to grab a bar with his left hand but his hand slipped off the bar. The claimant landed on concrete, striking his right elbow and the right side of his wrist. The claimant testified that he felt pain in his back, right wrist, and right arm immediately after the accident, and he noticed that his right elbow was bleeding.

¶ 8 That same day, the employer sent the claimant to Alexian Brothers Corporate Health Services (Alexian), where he was treated by a Dr. McAndrew. Dr. McAndrew diagnosed contusions of the right wrist, right elbow and back. He released the claimant to light duty with no lifting over 10 pounds with the right hand, limited gripping/grasping/pinching with the right hand and overall lifting/pushing/pulling limited to 20 pounds. Thereafter, the claimant began performing light duty. He wore a splint constantly and “went to work in pain.” His wrist “kept getting worse and worse.”

¶ 9 On January 5, 2010, the claimant returned to Dr. McAndrew, complaining of right wrist pain, numbness in his fingers, and continued soreness in his back and right elbow. X-rays showed mild degenerative type subchondral cysts but no definite evidence of acute fracture or dislocation. The radiologist indicated that an MRI should be given consideration “given the history of persistent pain.” Dr. McAndrew continued the claimant on light duty. Eight days later, the claimant reported worsening pain that increased with activity. Dr. McAndrew referred the claimant to Dr. Prasant Atluri, an orthopedic hand surgeon.

¶ 10 The claimant first saw Dr. Atluri on January 20, 2010. After examining the claimant and taking x-rays, Dr. Atluri's initial impression was "right wrist derangement." He prescribed a splint, and placed the claimant on light duty with lifting/carrying/pushing/pulling limited to 5

pounds, limited gripping/grasping with the right hand, and splint usage. In March 2010, the claimant was still experiencing wrist and thumb pain and increasing numbness in his thumb, index, and middle fingers. Dr. Atluri recommended an EMG, which was performed on April 1, 2010. After reviewing the EMG results, Dr. Atluri diagnosed carpel tunnel syndrome, right wrist derangement, and Wartenberg syndrome. He recommended surgery to treat these conditions.

¶ 11 On May 3, 2010, Dr. Atluri operated on the claimant's right wrist. The surgery consisted of a right wrist arthroscopy with debridement of a TFCC tear, an open carpal tunnel release, a dorsal radial sensory nerve neurolysis and an open radial tunnel release. Dr. Atluri prescribed physical therapy (beginning one week after surgery), took the claimant off work and instructed him to avoid using his right hand. The employer began paying the claimant TTD benefits on May 3, 2010.

¶ 12 On June 23, 2010, Dr. Atluri noted that the claimant's forearm pain had diminished but that he was still experiencing pain in the wrist. He prescribed additional therapy and continued the previous work restriction. On August 4, 2010, Dr. Atluri noted that the claimant had plateaued in therapy and reported being unable to progress past three pounds due to wrist pain. Dr. Atluri discussed additional surgical options with the claimant, but he noted that the surgery he recommended might not eliminate all of the claimant's symptoms and that claimant might require permanent restrictions with his right hand even with surgery.

¶ 13 At the employer's request, the claimant saw Dr. Paul Papierski, the employer's independent medical examiner (IME) for a Section 12 examination on September 30, 2010. Dr. Papierski is a board certified orthopedic surgeon with added qualification in hand surgery. Dr. Papierski testified that he viewed Dr. Atluri's various surgical recommendations as reasonable.

¶ 14 On November 19, 2010, Dr. Atluri performed a right wrist proximal row carpectomy and

a right wrist posterior interosseous neurectomy. Post-operative X-rays revealed "good carpal alignment with post-surgical changes." Following the surgery, Dr. Atluri instructed the claimant to stay off work and avoid using his right hand and arm.

¶ 15 The claimant testified that, at some point after the November 19, 2010 surgery, he noticed he was still experiencing pain in his right thumb and wrist. During a physical therapy session on November 30, 2010, the claimant experienced a popping in his right wrist and thumb and noted immediate pain and swelling.

¶ 16 On December 29, 2010, the claimant returned to Dr. Atluri. On examination, Dr. Atluri noted significantly less swelling but reduced grip strength. The claimant could flex his fingers to mid-palm but could not make a fist. Dr. Atluri instructed the claimant to wean off the splint, avoid using his right hand, and continue therapy. He continued the claimant's previous work restrictions.

¶ 17 On January 26, 2011, the claimant reported continued pain in the base of his thumb. Dr. Atluri administered a cortisone injection, which did not help. Dr. Atluri subsequently prescribed continued physical therapy and work hardening, which the claimant underwent from April 7, 2011, through May 11, 2011. On May 3, 2011, Dr. Atluri noted that the claimant was making good progress in work conditioning, and he released the claimant to part-time work with a 25-pound lifting restriction. Dr. Atluri indicated that the claimant could resume working full duty after undergoing work conditioning for two additional weeks. The claimant testified that, although the work conditioning helped to increase his overall activity level, he continued experiencing swelling and pain in his wrist and thumb.

¶ 18 The employer underwent economic restructuring in 2010. While the claimant was off work, his job was eliminated. Due to his seniority, the claimant was allowed to choose a new

position to which he could return when released by his doctor. The claimant chose the "quality assurance" position, a higher paying position which was already familiar to him (although it would require some retraining).

¶ 19 On May 23, 2011, the claimant reported to work in his new position. He began training on the job with a coworker. At some point, the job required the claimant to affix a piece of "heat tape" to the bottom of a metal strip that was moving through a line towards heating ovens at a speed of 100 to 265 feet per minute. The heat tape was used to read the temperature of the metal as it moved through the ovens. The metal strip ran approximately 4 to 4 1/2 feet off the floor. The claimant testified that he had duck down to get under the line and apply the heat tape to the bottom of the metal strip using his thumb and index finger. He testified that he had to use as much force as he could with his thumb to affix the heat tape to the metal strip. On his first attempt, the right wrist "popped" and he felt pain in his wrist and thumb area. On his second attempt, his wrist popped again, worse than the first time. The claimant immediate told the foreman, who instructed him to sit down. Immediately thereafter, the claimant experienced swelling and extreme pain in his right wrist, and he did not work the rest of the day. Following this incident, the claimant remained off work from May 24, 2011, through January 17, 2012.

¶ 20 On May 26, 2011, the claimant returned to Dr. Atluri complaining of increasing pain in his thumb which was aggravated by certain work activities (including pinching and applying pressure with his thumb). Dr. Atluri took the claimant off work from May 24, 2011, through January 15, 2012. He referred the claimant to Dr. Thomas Wiedrich, a board-certified hand surgeon.

¶ 21 The claimant saw Dr. Wiedrich on July 13, 2011. Dr. Wiedrich noted that the claimant was unable to work due to thumb pain. After examining the claimant and performing additional

x-rays, Dr. Wiedrich recommended further surgery. On August 19, 2011, Dr. Wiedrich performed a right radial styloidectomy and release of the first dorsal compartment. The claimant did not notice much improvement after the surgery. Dr. Wiedrich restricted the claimant from using his right hand and prescribed physical therapy. After the claimant completed seven weeks of therapy, Dr. Wiedrich noted marginal improvement. By November 2011, Dr. Wiedrich put the claimant at maximum medical improvement (MMI) and recommended a functional capacity examination (FCE).

¶ 22 The FCE was performed on November 3, 2011. Therapist Ron Iglesias performed the evaluation and prepared a summary report. In his report, Iglesias indicated that the claimant exhibited variable levels of physical effort during testing, and he noted "minor inconsistency to the reliability and accuracy of [the claimant's] reports of pain and disability." Iglesias determined that the claimant was capable of performing the required job demands of a quality assurance analyst, which Iglesias considered to fall within the light physical demand level as defined by the Dictionary of Occupational Titles. He noted, however, that the claimant reported that his "biggest concern" with the quality assurance position was the application of heat tape, which "required use of his affected right thumb/hand." Iglesias was "unable to test specific work tasks related to application of heat tape" during the FCE. However, he noted that the claimant was able to participate in "workflow simulation" of the quality assurance position two times. During those simulations, the claimant reported right wrist fatigue and demonstrated signs of discomfort, including massaging and shaking of the right hand, wincing, and grimacing. Iglesias concluded that the claimant appeared capable of returning to his job as a quality assurance analyst, but noted that the claimant "may benefit from avoiding work related tasks such as the application of 'Heat Tape' which per patient report involves use of his affected right thumb/hand

that results in physical discomfort."

¶ 23 On November 9, 2011, the claimant returned to Dr. Wiedrich. Dr. Wiedrich noted that the claimant recently underwent a FCE which caused significant pain and swelling for several days. Upon examination, Dr. Wiedrich noted diffuse wrist tenderness, tenderness over the radial ulnar wrist, and a positive Tinel's sign down the length of the claimant's entire superficial radial nerve. The doctor imposed work restrictions of no lifting over 20 pounds, no heat taping, frequent breaks, and limited use of the right hand.

¶ 24 On December 27, 2011, Dr. Papierski reexamined the claimant at the employer's request. After examining the claimant and reviewing the FCE report, the medical evidence (including Dr. Wiedrich's records through November 9, 2011), and a job description of the quality assurance analyst position, Dr. Papierski opined that the claimant was capable of returning to full duty work as a quality assurance analyst. Dr. Papierski noted that although "there may be ongoing symptoms," there was "nothing that would prevent [the claimant] from returning to this type of work." Dr. Papierski further opined that the claimant would reach MMI sometime in January 2012.

¶ 25 Pursuant to Dr. Wiedrich's work release, the employer put the claimant back on its work schedule and asked the claimant to return to work on January 16, 2012. However, the claimant called in sick on January 16 because he was unable to sleep the night before. He reported to work the following day. Jared Warrick, the plant manager, testified that, on the day the claimant returned to work, the claimant presented Warrick with a doctor's note indicating that he was not to do any heat taping. According to Warrick, the doctor's note was "old." Due to the note, Warrick prevented the claimant from working that day and allowed him to do safety training instead. He asked the claimant to obtain a more recent doctor's note. The claimant contacted Dr.

Wiedrich, who faxed a note to the employer indicating that the claimant was currently under the following restrictions: "lift less than 20 lbs. No heat taping. Frequent breaks." Dr. Wiedrich's note further stated that "[i]f the [claimant's] restrictions cannot be met, the [claimant] should be considered off work." The claimant advised his employer that he could not do the quality assurance job because he could not do the heat taping, and he was placed on short term disability.

¶ 26 The claimant returned to work and resumed observation and retraining on February 7, 2012. The following day, the claimant called in sick again because he had not been able to sleep. On February 9, 2012, the claimant completed observation and safety training. He was scheduled to work regular duty on February 13, 2012.

¶ 27 On February 13, 2012, the claimant clocked in at 7:00 a.m. and began working on the quality assurance line. Within a few hours, the claimant stopped working and reported that he felt a pop in his right wrist while heat taping. The claimant reported this occurrence as a new accident.

¶ 28 Later that morning, the claimant treated with Dr. Adrienne Baksinski at Alexian. The claimant complained of throbbing pain radiating to his right thumb. Dr. Baksinski diagnosed a sprain or strain of the right wrist and thumb. X-rays showed no change from the claimant's previous studies on December 1, 2010. Dr. Baksinski told the claimant to wear a splint and restricted him from using his right hand.

¶ 29 On February 20, 2012, the claimant saw Dr. Wiedrich and gave a history of a new wrist injury that occurred as he attempted heat taping. Dr. Wiedrich suspected that the claimant "likely had a sudden shift of his capitate on the radius resulting in the stretching or tearing of some scar tissue." He prescribed anti-inflammatory medications and a splint, and restricted the claimant

from using his right hand. Dr. Wiedrich noted that he expected the claimant to be at MMI in one week.

¶ 30 At the employer's request, the claimant was reexamined by Dr. Papierski on February 27, 2012. Dr. Papierski opined that the claimant had sustained a sprain or strain of his right wrist, probably with some scar tissue popping loose, but no structural damage. He recommended that the claimant return to normal duties within three to four weeks after the "temporary aggravation" he suffered on February 13, 2012. He further opined that the claimant would be at MMI six to eight weeks from the February 13, 2012, incident. Pursuant to Dr. Papierski's assessment, the employer paid the respondent TTD benefits from February 13, 2012, through March 12, 2012, and invited him to return to work on March 13, 2012.

¶ 31 On March 5, 2012, the claimant returned to Dr. Wiedrich. Although Dr. Wiedrich noted no radiographic changes, he opined that the claimant had aggravated his wrist injury on the job. Dr. Wiedrich noted that he would like to see a video of the heat taping activity to determine whether it was something the claimant could perform. During his subsequent deposition, Dr. Wiedrich admitted that he did not have any objective knowledge of what heat taping physically entailed and he never saw a video. He relied on the claimant's statements. The claimant reported to him that heat taping caused pain and popping in his right wrist. Dr. Wiedrich noted that the FCE report also indicated that the claimant was concerned about applying heat tape. Dr. Wiedrich testified that most likely the particular wrist movement involved in heat taping could cause a sudden shift of the capitate bone of the palm on the radius, causing a popping sensation that is uncomfortable for the claimant. On March 5, 2012, Dr. Wiedrich released the claimant to work with restrictions of no lifting more than 20 pounds and no heat taping.

¶ 32 On March 13, 2012, the claimant returned to work and immediately claimed to have

reinjured his right wrist. The claimant testified that, as he attempted to do the heat taping, he felt a pop in his wrist and noticed swelling and pain. Warrick (the claimant's supervisor), testified that he watched the claimant closely on the morning of March 13, 2012, and saw no sign of injury. Warrick also stated that the claimant complained that his hand was tingling and swelling even before he performed any work activities that day. The employer disputed the claimant's claim that he sustained a work-related accident on March 13, 2012.

¶ 33 The claimant saw Dr. Wiedrich again on March 19, 2012. Dr. Wiedrich did not believe that the claimant sustained any additional injury to his wrist on March 13, 2012, and he recommended that the claimant return to work within his prior restrictions (*i.e.*, no lifting over 20 pounds and no heat taping).

¶ 34 On May 1, 2012, Dr. Papierski issued an addendum report specifically addressing the heat taping activity. Dr. Papierski reviewed a job analysis report of the quality assurance analyst position and a video of someone performing the job duties of that position. This evidence showed that heat taping involves peeling a pre-cut piece of tape from its backing and placing it on an item in order to later measure the temperature. Dr. Papierski opined that this activity did not pose a risk of injury to the claimant's right wrist. Although he acknowledged that the claimant could experience symptoms while heat taping (as with any right-hand activity), Dr. Papierski opined that there was no medical reason to restrict the claimant from heat taping.

¶ 35 During pre-trial discussions before the arbitrator, the arbitrator suggested that the claimant try to apply the heat tape with his left hand rather than his right hand. The claimant agreed. He was scheduled to return to work as a quality assurance analyst on May 14, 2012. However, the claimant called in sick May 14, 2012 and May 15, 2012. On May 16, 2012, the claimant reported to work but left within a few hours due to illness. The claimant also reported

illness on May 17, 2012 and May 18, 2012. He then went on short term disability from May 22, 2012 through May 30, 2012.

¶ 36 On May 31, 2012, the claimant returned to work at the quality assurance position. The claimant testified that he tried to apply heat tape with his left hand that day, but he did not have the strength or the coordination to put the heat tape on properly. Accordingly, he resumed using his right hand, which began to swell and became painful. On June 4, 2012, the claimant attempted to work for two hours, and then told his supervisor that he could not due to the heat taping or any tasks involving “T-Bends." Management informed the claimant that, if he could not do the job, he would need to follow up with his attorney.

¶ 37 On June 6, 2012, the claimant returned to Alexian where he was treated by a Dr. Reese. The claimant complained of pain and burning in his wrist which was aggravated by twisting, gripping, and grasping. Dr. Reese noticed weakness, tingling, and swelling in the wrist. He prescribed Naproxen and recommended a wrist splint. He released the claimant to work with restrictions of no use of the right hand and no lifting over 5 pounds with that hand until cleared by a hand specialist.

¶ 38 The claimant forwarded these restrictions to the employer's counsel and asked the employer to provide work for him within these restrictions. He demanded TTD in the interim, and informed the employer that he would begin a self-directed job search if the employer did not accommodate his new work restrictions.

¶ 39 On July 21, 2012, the employer's counsel responded to the claimant's demands. The employer's counsel stated that the employer disputed the claimant's entitlement to accumulated and ongoing TTD benefits. The employer's counsel confirmed the employer's continued willingness to take the claimant back as a quality assurance analyst, which was a permanent

light-duty position. However, counsel noted that the employer disputed the validity of the claimant's previous attempts to return to that position.

¶ 40 The claimant testified that, because the employer did not accommodate his work restrictions, he performed a self-directed job search between July 21, 2012 and May 11, 2013. He eventually found a seasonal job through a friend at Sunset Pool & Spa (Sunset). From May 12, 2013, through October 18, 2013, the claimant worked for Sunset cleaning swimming pools. The claimant testified that the job did not require him to lift more than 20 pounds. While cleaning pools, the claimant used a retractable skim pole made of fiberglass and aluminum that was 8 to 16 feet long. The claimant testified that he used both hands when wielding the pole and that it took little wrist movement because he pulled it straight back. The claimant also used a vacuum that weighed approximately 10 to 15 pounds, and he used the pole to push the vacuum though the water. He would clean 8 to 10 pools per day, 5 to 6 days per week. The claimant did not receive wage differential benefits or temporary partial disability benefits from the employer while he worked for Sunset.

¶ 41 The claimant testified that, after the seasonal pool cleaning work ended, he could not seek a new job because he needed to care for his grandchildren at home. He stated that that he intended to return to the workforce when he is no longer needed to care for his grandchildren. A labor market survey was prepared. On October 19, 2013, the claimant met with Edward Pagella, a vocational consultant and certified rehabilitation counselor retained by the claimant's counsel. Pagella reviewed the labor market study and performed an employability study for the claimant. Pagella concluded that the claimant could earn an average of $12.50 per hour. Pagella also completed a rehabilitation plan in which he recommended that the claimant undergo a pain treatment program, vocational assessment, vocational rehabilitation job placement services, and

a career assessment inventory, and that the claimant receive assistance in obtaining full-time employment. The claimant asked the arbitrator to order this form of vocational program.

¶ 42 Dr. Wiedrich testified by way of evidence deposition. During his deposition, Dr. Wiedrich opined that the claimant's current condition of ill-being and his work restrictions were causally related to the December 31, 2009, work accident and the subsequent treatment the claimant received before seeing Dr. Wiedrich in July 2011.[1] Dr. Wiedrich stated that the work restrictions he imposed were permanent and were based on the FCE. In particular, the restriction of no heat taping was based on the FCE therapist's notation that the claimant had expressed a concern about applying heat tape. Dr. Wiedrich acknowledged that the FCE therapist's notation regarding heat taping came from the claimant. Dr. Wiedrich had no personal knowledge of what the heat taping task involved. He testified that what he knew about heat taping he learned from the claimant. Dr. Wiedrich was not aware of what type of tape was used, the frequency at which the task might be performed, or the object or surface on which the tape would be placed. He only knew from the claimant's account that the application of heat tape involved the claimant reaching in an overhead motion.

¶ 43 Dr. Wiedrich further testified that, when the claimant returned for a follow-up visit after the February 13, 2012, work accident, Dr. Wiedrich saw no objective change or worsening claimant's condition at that time. Newly obtained x-rays were no different from previous x-rays. When the claimant reported a popping sensation with accompanying pain while applying heat tape on February 13, 2012, Dr. Wiedrich presumed that the claimant likely had a sudden shift of

[1] Dr. Wiedrich confirmed that all of the work restrictions he imposed related to the claimant's right hand. He never imposed any restrictions relating to the claimant's left hand.

his capitate on the radius resulting in stretching or tearing of some scar tissue. That was Dr. Wiedrich's best estimation as to what might have occurred. When the claimant alleged that he reinjured his wrist on March 13, 2012, Dr. Wiedrich found the claimant's hand to be unchanged from his prior visits. However, Dr. Wiedrich maintained the restriction of no heat taping because the claimant had reported attempting heat taping twice without success and, rather than have him repeatedly return with the same complaint, Dr. Wiedrich simply advised him to avoid that activity.

¶ 44 Dr. Papierski also testified by way of evidence deposition. He opined that the claimant could perform all aspects of the assurance position, including heat taping. However, during cross-examination, Dr. Papierski acknowledged that it was "potentially" reasonable for Dr. Wiedrich to have restricted the claimant from performing a task that correlated with the claimant's wrist symptoms. He agreed that it was appropriate to restrict the claimant to some degree from what would be considered full and normal activities. Dr. Papierski also conceded that the popping in the claimant's wrist was due to scar tissue, and noted that this could be a recurrent event.

¶ 45 Warrick, the plant manager and the claimant's supervisor in 2012, testified on behalf of the employer during the arbitration hearing. Warrick stated that he was familiar with the quality assurance position. Warrick himself had performed the job duties of the quality assurance position (including heat taping) while "filling in" for other workers. According to Warrick, the heat tape was more sticky than regular tape, and it required only mild force with light finger pressure to apply a piece of heat tape onto the metal. Warrick disagreed with the claimant's testimony that he needed to use as much force as he could while applying the heat tape. Moreover, Warrick stated that the application of the tape did not require any particular skill or

dexterity. It could be applied imprecisely or in a skewed manner without compromising the accuracy of the readings. Warrick opined that heat tape could be applied with the left hand, although he himself had only applied it with his right hand. A video depicting the performance of the job duties of the quality assurance position (including heat taping) was presented into evidence. Warrick testified that he was present when the video was made.

¶ 46 Warrick also testified as to how often a quality assurance analyst was required to apply heat tape. Warrick stated that heat tape had to be applied twice during each production run, and there were usually four to five production runs per shift. Thus, during a typical shift, a quality assurance analyst would be required to apply heat tape between 8 and 10 times. However, although heat taping was an infrequent part of the job, Warrick testified that it was an essential function of the quality assurance position. If the claimant could not do heat taping, he was not fully qualified for the position. The claimant could not have someone else do the heat taping for him. Warrick also stated that a quality assurance analyst must be able to do the "T-bend" (which was depicted on the video). He acknowledged the claimant told him that he had difficulty doing that job.

¶ 47 The claimant testified that the portion of the video depicted heat taping was very misleading. He stated that, while some tapes were easy to apply, the thicker tapes (which were orange-colored and two to three times thicker than the ordinary tape) were much harder to apply. The claimant claimed that he usually used the orange heat tape when he worked. He also testified that there was usually a light powder or water on the passing metal strip, which made the heat tape more difficult to apply. Moreover, the claimant stated that the video depicted heat taping in the "finish coater," which had approximately 5 to 6 feet of space in which to work. The

"prime coater," by contrast, was narrower; it had only 2 feet of work space, approximately.[2] When working in the prime coater, the claimant had to bend down further and push his wrist back more in order to apply the heat tape. He was instructed to try to get the heat tape in the center of the coil. When he tried to use his left hand, he had to get further into the coater and had difficulty maintaining his balance. He also had difficulty getting back out from under the line. For this reason, he resumed using his right hand to apply the heat tape. The claimant also testified that the T-bend activity sometimes required so much force and pressure on his thumb that he had to stand up to push down with all his weight.

¶ 48 The arbitrator found that the claimant had sustained work-related accidents on December 21, 2009, February 13, 2012, and March 13, 2012, and awarded him TTD benefits and medical expenses for periods following each accident. Moreover, the arbitrator found that the claimant proved he was not able to fully perform the quality assurance job as a result of the work accidents. Specifically, the arbitrator found that the second and third work accidents on February 13, 2012, and March 13, 2012, showed that the claimant was unable to perform the heat taping task, and therefore could not fulfill the requirements of the quality assurance position. Accordingly, the arbitrator awarded the claimant maintenance benefits from the date the claimant began a self-directed job search until the date he began working for Sunset, and TPD benefits during the period the claimant worked for Sunset. However, the arbitrator declined to award maintenance benefits for the period after the claimant stopped working for the other employer

[2] On cross-examination, Warrick agreed that the video depicted an employee applying heat tape in the finisher coater, but not the prime coater. He also agreed that the prime coater provided less room to apply the heat tape than did the finisher coater.

because it found that the claimant had voluntarily "removed himself from the labor market" at that point in order to care for his grandchildren. Because the claimant was not seeking work at the time of the hearing, the arbitrator found that vocational rehabilitation would be "premature." However, the arbitrator ordered the employer to prepare a written vocational assessment and to periodically update that assessment pursuant to Commission Rule 7110.10 (50 Ill. Adm. Code 7110.10 (2008)). In addition, the arbitrator denied the claimant's claim for penalties and attorney fees under the Act (820 ILCS 305/19(k), (l) (West 2008); 820 ILCS 305/16 (West 2008)).

¶ 49 The claimant appealed the arbitrator's decision to the Commission. The Commission stated that it "reverse[d] the Decision of the Arbitrator as stated below on the issue of causal connection." However, the Commission upheld the arbitrator's award of TTD benefits for periods following each of the three work-related accidents, and it did not address the issue of causal connection at any other point in its written decision.

¶ 50 The Commission reversed the arbitrator's finding that the claimant was unable to fully perform his work duties with the employer as a result of the work accidents. The Commission noted that it was undisputed that the physical demands of the job fall within the claimant's functional capacity "other than the additional restriction against heat taping that was imposed as a direct response to [the claimant's] statements." The Commission observed that "[n]o doctor has opined that heat taping could actually injure [the claimant's] right wrist, even if it could reasonably cause a popping sensation and discomfort." Moreover, the Commission noted that the job video did "not appear to show any strenuous activity on the part of the Quality Assurance worker." It is undisputed that heat taping is a non-repetitive activity that is performed by a quality assurance analyst "no more than a few times per day," and the heat taping tasks depicted in the video were "completed in a matter of seconds." The Commission acknowledged the

claimant's testimony that the video did not show the thicker, tackier pieces of tape that are sometimes used and that required greater force to apply. However, the Commission noted that the claimant agreed that these thicker tapes were rarely used. Based on its review of all of the evidence, the Commission concluded that "the medical necessity of the restriction against heat taping [was] not supported by the preponderance of the evidence and that [the] claimant failed to prove he [was] unable to fulfill the requirements of the Quality Assurance position."

¶ 51 The Commission also found that the claimant "failed to act in good faith," because he (1) "had not attempted to perform heat taping in good faith"; (2) "refus[ed] to return to employment despite repeated requests and all reasonable accommodations on the part of [the employer]"; (3) "made only a pretense of performing his job duties" when he briefly returned to work on March 13, 2012";[3] and (4) " resisted every subsequent direction to return to work by either calling in sick or refusing to perform his job." Moreover, the Commission found that there was "no evidence that [the claimant] made a good faith effort to attempt heat taping with his uninjured left hand." "He merely testified that he could not do it."

¶ 52 Further, the Commission found that that the claimant "effectively abandoned his employment [with the employer] on June 4, 2012 and subsequently obtained employment as a pool cleaner, "using a sixteen foot long retractable aluminum or fiberglass skimmer to lift and remove debris from swimming pools for several months during the summer of 2013." The Commission was "not persuaded by [the claimant's] testimony that using pool cleaning equipment is not a wrist-intensive activity and did not cause him to experience any symptoms."

[3] The Commission found that the claimant had "arrived at work on that day claiming his wrist was already hurting, and then immediately claimed a new injury."

The Commission found the claimant's testimony on this issue to be "self-serving and lacking believability."

¶ 53 Based on all of the evidence and its conclusion that the claimant was not precluded from performing the quality assurance position as a result of the December 21, 2009, accident, the Commission concluded that the claimant was not entitled to TPD benefits, maintenance benefits, or vocational rehabilitation. In addition, the Commission noted that, because Dr. Wiedrich found the claimant to be at MMI on March 19, 2012, and released him from care, the claimant's right wrist was stabilized as of that date, and the claimant was not entitled to TTD benefits or medical expenses thereafter. The Commission remanded the matter to the arbitrator "for further proceedings for a determination of permanent disability," pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

¶ 54 The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling.

¶ 55 This appeal followed.

¶ 56 ANALYSIS

¶ 57 1. Whether the Commission Reversed the Parties' Stipulation as to Causation

¶ 58 The claimant argues that the Commission improperly reversed a causation issue that was stipulated by the parties, thereby rendering its decision void and without legal effect. We do not find this argument persuasive.

¶ 59 The Commission's Order states that the Commission: (1) "reverse[d] the Decision of the Arbitrator as stated below on the issue of causal connection"; and (2) found that the claimant "was not precluded from performing the Quality Assurance position for [the employer] as a result of the December 21, 2009 accident." From this, the claimant concludes that the

Commission reversed the parties' stipulation of accident and causation as to the December 21, 2009 accident. Because the Commission only has jurisdiction to settle "disputed" issues of law or fact pertaining to claims brought under the Act (820 ILCS 305/19 (West 2008)), the claimant maintains that the portion of the Commission's order reversing the undisputed causation issue is void and must be vacated, along with all subsequent findings based on that finding (including the Commission's denial of maintenance, TPD benefits, and vocational rehabilitation).

¶ 60 The claimant's argument is based on a mistaken premise. Contrary to the claimant's suggestion, the Commission did not reverse the parties' stipulation that the claimant's current and former conditions of ill-being are causally related to his December 21, 2009, work accident. Although the Commission stated at one point that it "reverse[d] the Decision of the Arbitrator as stated below on the issue of causal connection," it did not address causation at any other point in its Order. Moreover, the Commission upheld the 91 and 4/7 weeks of TTD benefits that the arbitrator awarded the claimant in connection with the December 21, 2009, accident. That ruling is entirely inconsistent with a finding of no causation as to the December 21, 2009, accident. When the Commission's order is read in its entirety, it is clear that the Commission reversed the arbitrator's finding regarding the *claimant's ability to perform his job duties*, not causation. Specifically, the Commission found that the claimant had failed to prove that he was unable to fully perform the job duties of the quality assurance position which the employer had made available to him following his work injuries. For that reason, it found that the claimant was not entitled to maintenance, TPD benefits, or vocational rehabilitation. The Commission's finding on this issue, which was disputed by the parties, was within the Commission's jurisdiction and is not void. The Commission's passing statement about causation appears to have been nothing more than a scrivener's error.

¶ 61 2. The Claimant's Ability to Perform His Job Duties

¶ 62 The claimant argues that the Commission's finding that he failed to prove he was unable to fully perform the job duties of the quality assurance position as a result of his work-related injuries was against the manifest weight of the evidence.

¶ 63 This presents a close question. It is undisputed that applying heat tape is an essential function of the quality assurance position. As the claimant notes, the claimant attempted to perform heat taping on four separate occasions, and each attempt resulted in injury. On May 23, 2011, when the claimant first tried to apply heat tape with his right hand, he was subsequently off work for seven months and underwent an additional surgery. The employer paid TTD and other benefits thereafter until the claimant briefly returned to work in January 2012. On February 13, 2012, the claimant experienced popping, pain, and swelling in his right wrist while trying to apply heat tape. The employer stipulated that the claimant had suffered a work-related accident on that date and that he was entitled to additional TTD benefits as a result of that accident. The Commission affirmed the arbitrator's award of TTD benefits and medical expenses associated with both the May 2011 and the February 2012 accidents. On March 13, 2012, the claimant alleged that he again experienced popping and pain while attempting to apply heat tape. Although the claimant contested that accident, the Commission found that the claimant had sustained a compensable work-related accident on that date. It seems incongruous for the Commission to find that the claimant was physically capable of applying heat tape while also finding that the claimant suffered a compensable work injury every time he tried to perform that task.

¶ 64 On the other hand, however, there was evidence in the record supporting the Commission's finding. After reviewing a video depicting the job duties of the quality assurance

position, Dr. Papierski testified that heat taping did not pose a risk of injury to the claimant's right wrist. Although he acknowledged that the claimant might experience symptoms while heat taping, as with any right-hand activity, Dr. Papierski opined that there was no medical reason to restrict the claimant from performing heat taping. Dr. Wiedrich restricted the claimant from applying heat tape, but he admitted that he imposed that restriction based upon a statement in the FCE therapist's report, which, in turn, was based on the claimant's statement that he had concerns about heat taping. Dr. Wiedrich did not view the video, and he had no independent knowledge of what heat taping entailed. Nor did he rebut Dr. Papierski's opinion that heat taping would not cause injury to the claimant. It is the Commission's province to weigh competing medical opinions, to determine the weight to be accorded to evidence, and to draw reasonable inferences from the evidence. *Berry v. Industrial Comm'n*, 99 Ill.2d 401, 411 (1984). Here, the Commission could have reasonably credited Dr. Papierski's opinion over Dr. Wiedrich's because only Dr. Papierski's opinion was based on an independent consideration of the claimant's actual job duties. In addition, the FCE report on which Dr. Wiedrich based his work restriction did not conclude that the claimant was *unable* to perform heat taping. Rather, it concluded that the claimant appeared able to perform the job functions of the quality assurance position. The report merely suggested that the claimant "might benefit" from avoiding heat taping, which the claimant alleged was causing him to experience symptoms. Nothing in the FCE report suggests that the claimant was physically incapable of applying heat tape without suffering injury.

¶ 65 Moreover, Warrick, who had personally performed the job duties of the quality assurance position, testified that the heat tape was more sticky than regular tape and that applying a piece of heat tape required only mild force with light finger pressure. Warrick disputed the claimant's testimony that he needed to use as much force as he could while applying the heat tape. The

Commission could have reasonably decided to credit Warrick's testimony over the claimant's.

¶ 66 Accordingly, there was evidence in the record supporting the Commission's factual finding that the claimant was able to apply heat tape with his right hand, particularly if he performed the task properly (*i.e.*, if he applied only the mild degree of force that was necessary).

¶ 67 In addition, there was also evidence suggesting that the claimant could have applied the heat tape with his left (non-dominant) hand. Warrick testified that the application of the tape did not require any particular skill or dexterity, and the tape could be applied imprecisely or in a skewed manner without compromising the accuracy of the readings. Warrick therefore opined that heat tape could be applied with the left hand. Although the claimant testified that he lacked the strength and coordination to apply the tape with his left hand, the Commission was not required to credit this testimony, especially given the evidence suggesting that strength and dexterity were not required to complete the task.

¶ 68 We will overturn the Commission's factual findings only when they are against the manifest weight of the evidence. A factual finding is against the manifest weight of the evidence if the opposite conclusion is "clearly apparent." *Swartz v. 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 at 828, 833 (2002). Although this case presents a close question, there is evidence supporting the Commission's finding that the claimant failed to prove that he was unable to perform the required duties of the quality assurance position, and the opposite conclusion is not clearly apparent.[4] Thus, I recommend that we uphold the

[4] Although there is evidence in the record suggesting that the claimant had difficulty performing

Commission's decision on this issue.

¶ 69 3. Wage Differential Benefits

¶ 70 The claimant asks us to award him wage differential benefits under section 8(d)(1) of the Act (820 ILCS 8(d)(1) (West 2008)). He argues that he is entitled to such benefits because both his vocational expert (Edward Pagella) and vocational consultant hired by the employer (Ed Rascati) concluded that the claimant was capable of earning substantially less in the labor market than he earned working for the employer as a quality assurance analyst.

¶ 71 We disagree. As an initial matter, this case was tried before the arbitrator under sections 19(b) and 8(a) of the Act. Accordingly, only interim benefits (*i.e*. temporary or previously accrued benefits) were at issue. The Request for Hearing form indicates that the issues in dispute were TTD benefits, medical expenses, TPD benefits, vocational rehabilitation, and penalties/fees. Issues of permanent disability and associated future benefits (such as loss of earnings under section 8(d)(1)), were not presented. Such benefits may not be raised in a remedial interim hearing brought under section 19(b), like the hearing at issue in this case. See *Thomas* 78 Ill. 2d 327. For that reason, the Commission remanded the matter to the arbitrator "for further proceedings for a determination of permanent disability," pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

¶ 72 In any event, even if wage differential benefits were at issue, the evidence in this case

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the "T-bend," which was another essential requirement of the quality assurance position, the claimant does not raise this issue in the argument sections of his briefs. His argument focuses entirely on his alleged inability to apply heating tape. Thus, any issue regarding the claimant's alleged inability to do a T-bend has been forfeited.

does not establish that the claimant was entitled to such benefits. To qualify for a wage differential award under section 8(d)(1), a claimant must prove: (1) partial incapacity which prevents him from pursuing his usual and customary line of employment; and (2) an impairment of earnings. 820 ILCS 305/8(d)(1) (West 2008); *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721, 730 (2000). The claimant can prove neither of these elements. As noted above, the Commission properly found that the claimant was able to fully perform the job requirements of the quality assurance position. That position paid more than the claimant earned in his pre-accident position, and substantially more than he could have earned in the labor market (according to both vocational experts). Thus, the claimant can demonstrate neither a partial incapacity nor an impairment of earnings as a result of a work related accident, as required by section 8(d)(1).

¶ 73 4. Vocational Rehabilitation

¶ 74 In the alternative to wage differential benefits, the claimant asks this court to order the employer to provide vocational rehabilitation based on the rehabilitation plan outlined by Pagella. A claimant is entitled to vocational rehabilitation when he sustains a work-related injury which causes a reduction in earning power and there is evidence rehabilitation will increase his earning capacity. *National Tea Co. v. Industrial Comm'n*, 97 Ill. 2d 424, 432 (1983); see also *Greaney v. Industrial Comm'n*, 358 Ill.App.3d 1002, 1019 (2005). "[T]he primary goal of rehabilitation is to return the injured employee to work." *Schoon v. Industrial Comm'n*, 259 Ill. App. 3d 587, 594 (1994) (quoting *Hartlein v. Illinois Power Co.*, 151 Ill.2d 142, 165 (1992)). Thus, if the injured employee has sufficient skills to obtain employment without further training or education, that is a factor that weighs against an award of vocational rehabilitation. *National Tea Co.*, 97 Ill. 2d at 432; *Connell v. Industrial Comm'n*, 170 Ill. App. 3d 49, 53–54 (1988).

Moreover, an injured employee is not entitled to vocational rehabilitation if the evidence shows that he does not intend to return to work (*i.e.*, if he voluntarily remains out of the workforce even though he is able to work). *Schoon*, 259 Ill. App. 3d at 594. Whether a claimant is entitled to vocational rehabilitation is a question to be decided by the Commission, and its finding will not be reversed unless it is against the manifest weight of the evidence. *W.B. Olson, Inc.*, 2012 IL App (1st) 113129WC at ¶ 39.

¶ 75 In this case, the claimant did not establish that his work injury reduced his earning power. As noted above, the Commission properly found that the claimant was fully capable of performing the quality assurance job, which paid more than his pre-accident position. Moreover, as the arbitrator noted, the claimant had voluntarily taken himself out of the labor market and was not looking for work because he had to stay home and take care of his grandchildren. Accordingly, the Commission correctly found that the claimant was not entitled to vocational rehabilitation.

¶ 76 5. Penalties and Attorney Fees

¶ 77 The claimant argues that that the Commission erred in denying him penalties under sections 19(l) and 19(k) of the Act (820 ILCS 305/19(k),(l) (West 2008)) and attorney fees under section 16 of the Act (820 ILCS 305/16 (West 2008)). The claimant maintains that the claimant acted unreasonably and vexatiously in refusing to accommodate Dr. Wiedrich's restrictions of no heat taping and in declining to pay TTD benefits from January 18, 2012, through February 6, TTD benefits after March 13, 2012, TPD benefits, and maintenance benefits.

¶ 78 A section 19(l) penalty is similar to a late fee. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 15. An award under this section is mandatory if the payment of benefits is late and an employer does not show an adequate justification for the

delay. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515 (1998); *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 38. The burden is on the employer to justify the delay. *Compass Group*, 2014 IL App (2d) 121283WC, ¶ 38; *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, ¶ 19. The employer has the burden of proving that its delay was "reasonable"; "[i]t is not good enough merely to assert an 'honest belief' that a claim is invalid or that an award is not supported by the evidence to avoid sanctions." *R.D. Masonry, Inc. v. Industrial Comm'n*, 215 Ill. 2d 397, 409 (2005); see also *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 30. In order to avoid penalties under section 19(l), the employer's proffered reasons for its delay must establish a legitimate justification under an objective reasonableness standard. *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 30. The employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. *Board of Education of the City of Chicago v. Industrial Comm'n*, 93 Ill. 2d 1, 9–10 (1982); *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 20.

¶ 79 The Commission's evaluation of the reasonableness of the employer's delay is a question 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(l) 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).

¶ 80 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.

¶ 81 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 (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.

¶ 82 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.

¶ 83 Here, the employer's denial of all the benefits at issue (TPD, maintenance, TTD benefits from January 18, 2012, through February 6, 2012, and TTD benefits after March 13, 2012) was predicated on the employer's belief that the claimant was capable of performing the job duties of the quality assurance position. Although Dr. Wiedrich's work restriction suggested otherwise, there was evidence in the record suggesting that the employer's belief was not unreasonable. After examining the claimant and reviewing the FCE report, the medical evidence (including Dr. Wiedrich's records through November 9, 2011), and a job description of the quality assurance analyst position, Dr. Papierski opined on December 27, 2011, that the claimant was capable of returning the fully duty work as a quality assurance analyst. Dr. Papierski noted that although "there may be ongoing symptoms," there was "nothing that would prevent [the claimant] from returning to this type of work." Moreover, the FCE report stated that the claimant appeared able to perform the duties of the quality assurance position, even if he "might benefit" from avoiding heat taping in order to avoid experiencing symptoms. Based on this opinion, the respondent could have reasonably believed that the claimant was capable of fully performing all of the job duties of the quality assurance position (including heat taping) as of January 17, 2012, notwithstanding the work restriction imposed by Dr. Wiedrich.

¶ 84 For the same reason, the employer acted reasonably in denying TTD benefits after the March 13, 2012 accident. That decision (and the employer's decision to contest the occurrence of an alleged work accident on that date) was further supported by Warrick's testimony that he watched the claimant closely on the morning of March 13, 2012, and saw no sign of injury.

¶ 85 The Commission's denial of maintenance and TPD benefits was also based on a

reasonable belief that the claimant was fully capable of performing the job duties of the quality assurance position. On May 1, 2012, Dr. Papierski issued an addendum report specifically addressing the heat taping activity. After reviewing a job analysis report of the quality assurance analyst position and a video of someone performing the job duties of that position, Dr. Papierski opined that heat taping did not pose a risk of injury to the claimant's right wrist. Although he acknowledged that the claimant could experience symptoms while heat taping (as with any right-hand activity), Dr. Papierski opined that there was no medical reason to restrict the claimant from heat taping. The claimant did not clearly assert his entitlement to maintenance and TPD benefits or produce evidence of a self-directed job search until the eve of trial in May 2014, long after Dr. Papierski had issued his opinions that the claimant was capable of heat taping. Moreover, Drs. Papierski and Wiedrich had both declared the claimant to be at MMI by March 19, 2012, which eliminated any further entitlement to TPD benefits after that date. Further, the Commission specifically found that the claimant was not entitled to TPD or maintenance benefits. Accordingly, the employer's refusal to pay these benefits was reasonable, and the Commission's denial of penalties and attorney's fees was not against the manifest weight of the evidence.

¶ 86 CONCLUSION

¶ 87 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, which confirmed the Commission's decision, and we remand the matter to the Commission for further proceedings.

¶ 88 Affirmed; cause remanded.