2016 IL App (1st) 160143WC-U

Workers' Compensation
Commission Division
Order Filed: December 30, 2016

No. 1-16-0143WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JAMES STANLEY, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Fresh Express, Inc., a subsidiary of Chiquita Fresh North, LLC and Specialty Risk Services, LLC, Appellee).	)	Appeal from the Circuit Court of Cook County No. 15 L 50458 Honorable Kay M. Hanlon, Judge, Presiding.

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

ORDER

¶ 1 *Held:* We affirmed the judgment of the circuit court which confirmed three decisions of the Illinois Workers' Compensation Commission, awarding the claimant benefits pursuant to the Workers' Compensation Act (820 ILCS 305/1 *et seq*. (West 2010)) for injuries he sustained while working for Fresh Express, Inc., on September 12, 2010, and denying him benefits for injuries he is alleged to have sustained on October 12, 2011, and February 25, 2012.

¶ 2 The claimant, James Stanley, appeals from an order of the circuit court of Cook County which confirmed three separate decisions of the Illinois Workers' Compensation Commission

(Commission). In one decision, the Commission awarded him benefits pursuant to the Workers Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)) for injuries which he sustained while in the employ of Fresh Express, Inc. (Fresh Express) on September 12, 2010. In the other two decisions, the Commission found that he failed to prove that he sustained an accident while working on either October 12, 2011, or February 25, 2012, and denied him benefits under the Act for his alleged injuries. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 At the outset, we note that the claimant filed three applications for adjustment of claim alleging that he sustained injuries to both legs on three different dates while working for Fresh Express. The claimant's application relating to an accident occurring on September 12, 2010, was the subject of Commission case number 10 WC 42768, while his applications relating to accidents occurring on October 12, 2011, and February 25, 2012, were the subject of Commission case numbers 12 WC 34588 and 13 WC 7262, respectively.

¶ 4 The three claims were consolidated for hearing. The following factual recitation is taken from the evidence which was presented at the arbitration hearings held on July 17, 2013, and August 16, 2013.

¶ 5 On September 12, 2010, the claimant was employed by Fresh Express as a forklift operator. While working on that date, the claimant was standing in front of a pallet, "picking" an order, when another forklift backed into him, pinning his legs between the pallet and the forklift. The claimant testified that he yelled, "Ow," and immediately felt pain in his knees. When the forklift operator pulled forward, the claimant took one step away from the pallet and fell to the ground. The claimant's supervisor called 911 and an ambulance transported him to Gottlieb Hospital.

¶ 6 According to Gottlieb Hospital's emergency room records, the claimant had a horizontal laceration across the left popliteal fossa that was approximately 12 centimeters in length. X-rays taken of the claimant's left leg were consistent with a laceration in the posterior-medial aspect of the distal thigh. The doctor placed 18 sutures to close the laceration, gave the claimant a knee immobilizer, and instructed him to see an orthopedic surgeon.

¶ 7 On September 13, 2010, the claimant sought treatment from Dr. Priti Khanna at Advanced Occupational Medicine Specialists. Dr. Khanna's notes from that visit state that the claimant complained of pain in both thighs. Physical examination revealed bruising over the medial aspect of the claimant's right thigh, negative Lachman's test, and no medial or lateral joint line pain on the right knee. With regard to the left lower extremity, Dr. Khanna noted bruising over the posterior aspect of the left thigh, with a laceration over the left popliteal fossa with 18 sutures in place. Examination of the left knee was deferred due to the laceration. Dr. Khanna diagnosed the claimant with "bilateral leg contusions," "left posterior knee laceration," and "bilateral leg pains," and placed the claimant on sitting-only work restrictions.

¶ 8 On September 14, 2010, the claimant presented to Dr. Mirela Savcic, his primary care physician, with complaints of left knee pain. Dr. Savcic's examination revealed full range of motion and no pain, edema, or erythema in the right knee. As to the left knee, she observed mild erythema and edema, and a mild decrease in range of motion due to pain. She took the claimant off work and instructed him to return for a follow-up in one month.

¶ 9 On September 16, 2010, the claimant sought emergency treatment from Mercy Hospital as a result of swelling in his left leg and ankle. A Doppler ultrasound was negative for left lower extremity deep vein thrombosis (DVT) from the left common femoral to the distal left superficial

femoral veins. The claimant was diagnosed with dependent edema with lower extremity swelling.

¶ 10 The claimant returned to Dr. Khanna at Advanced Occupational Medicine Specialists on September 20, 2010, complaining of increased pain since September 14, 2010, and increased swelling in the left foot since September 15, 2010. Dr. Khanna noted positive ecchymosis to the left posterior thigh and right popliteal fossa. The doctor recorded the following clinical impression: (1) a bilateral leg crush injury; (2) left post-knee laceration; (3) bilateral thigh contusions; and (4) bilateral leg pain. She continued the claimant's seated-work-only restriction, advised him to elevate his legs whenever possible, and ordered an MRI of his left knee.

¶ 11 The MRI, performed September 20, 2010, was interpreted by the radiologist as showing: (1) anterolateral and poster medial soft tissue edema; (2) bony contusions anterolaterally and anterior and posteromedially; (3) nondisplaced horizontal tear of the posterior horn and posterior body segment of the medial meniscus; (4) bipartite patella with lateral patellofemoral chondromalacia and chondral assuring; (5) joint effusion, synovitis and medial Baker's cyst; and (6) tibial insertion of the patellar tendinosis.

¶ 12 On September 27, 2010, the claimant followed up with Dr. Khanna with continued complaints of bilateral knee pain. Dr. Khanna reviewed the MRI, diagnosed the claimant with a medial meniscus tear of the left knee, and referred the claimant to Dr. Christos Giannoulias, an orthopedic surgeon at G&T Orthopedics, to evaluate the medial meniscus tear.

¶ 13 The claimant was seen by Dr. Giannoulias on September 28, 2010. He presented with a chief complaint of "catching," pain, and swelling. Physical examination revealed pitting edema in the left leg, tenderness over the medial joint line of the knee, pain with circumduction and McMurray's maneuver. Dr. Giannoulias's records also note that the MRI, performed September

20, 2012, disclosed evidence of a medial meniscus tear in the left knee. Dr. Giannoulias recommended physical therapy to increase range of motion and control swelling. The doctor also stated that the claimant would ultimately need arthroscopy on the left knee because it was symptomatic and painful with circumduction.

¶ 14 On October 1, 2010, the claimant returned to Dr. Khanna for a follow-up. Dr. Khanna noted a negative Lachman's on the right knee and recommended an MRI of the right knee. (The report of the MRI of the right knee was not presented at the hearing and is not in the record.)

¶ 15 On October 5, 2010, the claimant saw Dr. Khanna, reporting worsening bilateral lower extremity swelling and pain. Although Dr. Khanna's notes of that visit indicate that she reviewed the right knee MRI, she did not comment about what the scan showed. She referred the claimant to Westlake Hospital's emergency department for an immediate left lower extremity venous Doppler ultrasound. The claimant was discharged from Westlake Hospital in good condition with no apparent findings of DVT.

¶ 16 The claimant underwent a course of physical therapy as prescribed by Dr. Giannoulias from October 6, 2010, through October 15, 2010, but made minimal improvement and continued to experience pain.

¶ 17 The claimant saw Dr. Khanna on October 8, 2010, complaining of significant pain. Dr. Khanna diagnosed the claimant with a left medial meniscus tear and ACL sprain and administered a corticosteroid injection into the right knee.

¶ 18 On November 2, 2010, the claimant sought treatment from Dr. Telly Psaradellis, an orthopedic surgeon at Midland Orthopedic Associates. Dr. Psaradellis's report of that visit states that the claimant presented with a chief complaint of bilateral knee pain, left greater than right, lower extremity swelling, and numbness in the left lower extremity. On examination, Dr.

Psaradellis found good range of motion in both knees, mild edema in the left lower extremity compared to the right, and "hypersensitivity to touch involving both lower legs." Dr. Psaradellis reviewed the MRI taken of the claimant's right knee, and noted bone contusions involving the tibial plateau. The MRI report also suggested intrasubstance edema of the ACL, but in Dr. Psaradellis's view, it appeared the ACL was intact. Dr. Psaradellis also reviewed the MRI taken of the claimant's left knee, and noted that it demonstrated a non-displaced tear involving the posterior horn of the medial meniscus as well as bony contusions involving the femur and tibia. Dr. Psaradellis's impression was that the claimant sustained a bilateral crush injury to the lower extremities. However, the doctor was not convinced that the meniscal tear was the cause of the claimant's left knee symptoms; rather, he believed the claimant's symptoms were neurogenic in nature. He took the claimant off of work and prescribed Lyrica, a bilateral TED hose, and physical therapy. The record discloses that the claimant participated in 31 sessions of physical therapy at Athletico from November 8, 2010, through February 4, 2011.

¶ 19 The claimant continued treatment with Dr. Psaradellis on November 30, 2010. The doctor observed some pitting edema on the claimant's left leg and noted that his hypersensitivity was improved. He prescribed Lyrica, physical therapy, and kept the claimant off work.

¶ 20 When the claimant returned to Dr. Psaradellis on January 4, 2011, he reported some improvement but his swelling remained the same. Dr. Psaradellis wrote in his notes that the claimant likely sustained venous injuries as a result of his crush injuries and that the swelling in his legs might be permanent. He recommended that the claimant return to work in one week.

¶ 21 On February 8, 2011, the claimant advised Dr. Psaradellis that he had returned to work and was doing well for the most part. The claimant saw Dr. Psaradellis again on March 8, 2011,

and April 5, 2011, reporting that he was tolerating work, but continued to have stiffness and swelling in his knees, particularly in the left knee.

¶ 22 On October 12, 2011, the claimant was at work "picking" layers of product to build a pallet when he felt and heard a "pop" on the outside of his right knee. When asked what he was doing at the time his knee popped, the claimant stated that he was stepping off the forklift platform, which was 10 inches off the ground. On cross-examination, however, he testified that he was just standing on the lift when he felt his knee pop. The claimant reported the incident to his supervisor and was told to go home.

¶ 23 The following day, on October 13, 2011, the claimant went to the emergency room at Mercy Hospital, complaining of pain in his left knee. The records from Mercy Hospital stated that the claimant first injured his knee in September 2010 and that he "presents with worsening knee pain after repetitive climbing in/out of forklift at work." According to the hospital's records, the claimant reported "no new trauma, no twisting, [and] no injury to suggest dislocation." The attending physician gave the claimant "wraps" to support his knee, recommended the use of a knee immobilizer, and instructed him to follow up with his orthopedic doctor.

¶ 24 Later that same day, the claimant sought treatment from Dr. Anita Carani at Clearing Clinic. The claimant complained of pain in his left knee and told the doctor it had been one day since the onset of pain. Physical examination of the left knee was essentially normal with a negative Lachman's test with pain. Dr. Carani placed the claimant on a restriction of no stair-climbing and discharged him to his orthopedic surgeon.

¶ 25 On October 18, 2011, the claimant presented to Dr. Psaradellis, with complaints of "severe, sharp pain in left knee" after lifting something at work. The claimant told the doctor

that the incident occurred one week ago and he had since improved. Dr. Psaradellis's physical examination was unremarkable. He diagnosed the claimant with a "flare up" of his knee problem and released him to return to work.

¶ 26 On February 15, 2012, Dr. G. Klaud Miller, a board-certified orthopedic surgeon, examined the claimant at Fresh Express's request. In his report of that examination, Dr. Miller noted that the claimant complained of constant bilateral knee pain following a workplace accident on September 12, 2010, in which he was crushed between a pallet and a forklift. The claimant told Dr. Miller that there is no pattern to his pain and that walks with a limp on a daily basis. On physical examination, Dr. Miller observed no effusion in either knee, limited range of motion, and "diffuse cutaneous hypersensitivity in a circumferential manner bilaterally in a band around the knee on both sides of the entire knees." The claimant had a stiff knee gait, but was able to walk up and down a single step five times without difficulty and also performed a "90% squat without difficulty." Dr. Miller diagnosed the claimant with a non-physiologic pain syndrome and concluded that the claimant could have returned to work with restrictions within two or three weeks of the September 12, 2010, accident. As to causation, Dr. Miller opined that, to a reasonable degree of orthopedic surgical certainty, "absolutely none of his current condition can be related to the accident in question."

¶ 27 In his deposition, Dr. Miller testified that the claimant suffered a left knee laceration and a contusion, possibly a sprain, but those symptoms had long resolved. Dr. Miller further noted that, as of February 15, 2012, the claimant's presentation could not be related to any other accident. On cross-examination, Dr. Miller testified that the claimant's age predisposed him to a meniscal tear, which can be degenerative in nature, but that he found no objective evidence that the claimant had, in fact, suffered a torn meniscus. He explained that the MRI, taken on

September 20, 2010, showed a grade II signal of the medial meniscus, which was not consistent with a tear, as it did not touch the articular surface. Likewise, the October 1, 2010, MRI of the right knee showed a grade I signal in the medial and lateral menisci. Dr. Miller testified that a grade I signal is not a tear at all, a grade II signal correlates with a true tear only 10-20% of the time, and a grade III signal correlates with a true tear 80-90% of the time. Regarding the swelling in the claimant's legs, Dr. Miller testified that the claimant had no swelling on examination and he therefore opined that the claimant had no permanent venous injury. Although Dr. Miller did not necessarily think that Dr. Psaradellis was wrong, he stated that the swelling Dr. Psaradellis observed on January 4, 2011, may have been due to a sprain.

¶ 28 On February 25, 2012, the claimant testified that he was at work operating a forklift when he felt pain in his left knee. Although he did not testify as to any specific mechanism of injury on direct-examination, he testified on cross-examination that: "I think I was picking my cases and I twisted, and my right knee didn't twist with me."

¶ 29 Later that same day, he went to the emergency department at Mercy Hospital, complaining of right knee pain. He told the triage nurse that he was standing on a forklift when he shifted his weight and experienced sudden sharp pain and mild swelling. He denied any new falls or trauma. The attending emergency room physician noted a history of "turning to the side with knee giving way." She examined the claimant and found a negative McMurray test. X-rays of the claimant's right knee showed bipartite patella, but no acute fracture. The doctor recommended a reevaluation with Dr. Psaradellis and a possible repeat MRI.

¶ 30 On February 28, 2012, the claimant treated with his primary care physician, Dr. Savcic, who ordered an MRI of the claimant's right knee. The MRI, performed on March 5, 2012, was interpreted by the radiologist as showing: (1) fragmentation of the patella laterally, thinning of

the patellofemoral cartilage, and a small amount of edema in the posterior aspect of the patella; (2) medial compartment narrowing with a tear of the medial meniscus; (3) edema at the medial collateral ligament; and (4) small joint effusion and prepatellar soft tissue edema.

¶ 31 The claimant saw Dr. Psaradellis on March 6, 2012. Dr. Psaradellis reviewed the MRI and observed a possible subtle medial meniscus tear that was not overly impressive, but found significant patellofemoral and medial compartment arthrosis. The doctor also noted that the claimant was exacerbating his preexisting right knee arthritis, which was occurring from time to time due to the strenuous nature of his work. Dr. Psaradellis ordered the claimant off work for a week. On March 13, 2012, Dr. Psaradellis administered a cortisone injection into the claimant's right knee and released him to return to work.

¶ 32 On March 12, 2013, nearly a year after his last visit, the claimant returned to Dr. Psaradellis complaining of bilateral knee pain. X-rays of the knees showed moderate arthritic involvement of the patellofemoral compartment bilaterally. Dr. Psaradellis diagnosed the claimant with patellofemoral arthritis and stated that there was no good surgical treatment for the condition. The doctor administered bilateral cortisone injections, which relieved the claimant's pain.

¶ 33 During the course of the arbitration hearing, Milton Vicenteno, an Environmental Health and Safety Manager at Fresh Express, testified that he was notified of the claimant's accident of September 12, 2010, and that he visited the claimant at the hospital. Vicenteno acknowledged that, from time to time, the claimant complained about his knee but he could not recall whether the claimant complained following the second and third accidents, in 2011 and 2012. On cross-examination, Vicenteno stated that the claimant's complaints about his knees were not documented or put into Fresh Express's database.

¶ 34 Kevin Bak, a workers' compensation claims adjuster at Sedgwick Claims Management Services, testified that he becomes aware of workers' compensation claims involving Fresh Express through its risk manager, Vicenteno. Bak explained that he was aware of one claim that had been opened for the claimant, though he later admitted that he was given two other applications for adjustment of claim. Bak stated that he forwarded those applications to Vicenteno, but Vicenteno had no record of any loss for either of those two claims. Bak stated that since the claimant already had an attorney on file, he forwarded the applications for adjustment of claim to the claimant's attorney. According to Bak, he was never contacted by the claimant or the claimant's attorney and never received any medical bills pertaining to the second or third claims.

¶ 35 The claimant testified that he continues to experience pain and discomfort in his knees, especially after walking more than two or three blocks or climbing "lots" of stairs. On cross-examination, he testified that the swelling in his knees comes and goes. The claimant denied previously injuring his knees other than the three separate claims at issue, but admitted to breaking his right foot when he fell off a ladder seven years ago.

¶ 36 Following the consolidated hearings, the arbitrator issued separate decisions for each of the claims. With respect to the September 12, 2010, accident date, the arbitrator concluded that the claimant sustained injuries to both legs, which arose out of and in the course of his employment with Fresh Express. The arbitrator specifically found that the claimant sustained a medial meniscus tear in the left leg and permanent swelling in both legs. The arbitrator awarded the claimant permanent partial disability (PPD) benefits in the amount of $336 per week for 32.25 weeks, representing a 15% loss of the left leg, and $336 per week for 10.75 weeks, representing a 5% loss of the right leg. The arbitrator also ordered Fresh Express to pay the

reasonable and necessary medical expenses incurred by the claimant for treatment of his bilateral leg injury.

¶ 37 As to the accident of October 12, 2011, the arbitrator found that the claimant sustained an injury to his left knee which arose out of and in the course of his employment with Fresh Express. The arbitrator awarded the claimant one week of temporary total disability (TTD) benefits in the amount of $373.33 per week for the period from October 13, 2011, through October 19, 2011; PPD benefits in the amount of $336 per week for 4.3 weeks, representing 2% loss of use of the left leg, and ordered Fresh Express to pay the reasonable and necessary medical expenses incurred by the claimant from October 13, 2011, through October 18, 2011.

¶ 38 Regarding the claimant's third claim, the arbitrator concluded that the claimant sustained an injury to his right knee on February 25, 2012, which arose out of and in the course of his employment. Specifically, the arbitrator determined that the accident of February 25, 2012, aggravated the claimant's preexisting right knee condition. The arbitrator awarded the claimant two weeks of TTD benefits in the amount of $373.33 per week from March 6, 2012, through March 19, 2012; PPD benefits in the amount of $336 per week for 13.975 weeks, representing a 6.5% loss of use of the right leg; and ordered Fresh Express to pay the reasonable and necessary medical benefits incurred by the claimant from February 25, 2012, through March 13, 2012.

¶ 39 In all three decisions, the arbitrator denied the claimant's request for an award of penalties under sections 19(k) and 19(*l*) of the Act (820 ILCS 305/19(k), (*l*) (West 2010)) and attorney fees under section 16 of the Act (820 ILCS 305/16 (West 2010)).

¶ 40 Fresh Express filed a petition for review of the arbitrator's decisions before the Commission. The Commission issued three separate, unanimous decisions. As to the first claim, relating to the September 12, 2010, accident, the Commission modified the arbitrator's decision

in part and affirmed and adopted it in part. In that portion of the decision modified, the Commission determined that the claimant's left knee meniscal tear was not causally related to the September 12, 2010, workplace accident. As a consequence, the Commission reduced the arbitrator's award of PPD benefits from 15% to 10% loss of use of the left leg. The Commission otherwise affirmed and adopted the arbitrator's decision regarding the first application for adjustment of claim.

¶ 41 With respect to the second and third claims, the Commission reversed the arbitrator's decisions, finding that the claimant failed to prove that he sustained an accident on October 12, 2011, or February 25, 2012. Accordingly, it denied the claimant benefits under the Act for these claims.

¶ 42 The claimant sought a judicial review of the Commission's decisions in the circuit court of Cook County. On January 6, 2016, the circuit court entered a single written order confirming all three of the Commission's decisions. The claimant now appeals.

¶ 43 The claimant first challenges the Commission's finding that he failed to prove a causal connection between his left knee meniscal tear and his work-related accident of September 12, 2010. In support of his argument, the claimant relies chiefly upon a chain-of-events theory.

¶ 44 Initially, we note that the parties disagree regarding our standard of review. The claimant asserts that we should apply *de novo* review because the facts are undisputed and our only question is whether these facts establish a causal connection. Fresh Express, on the other hand, argues that we should employ the manifest weight of the evidence standard of review because factual disputes exist and conflicting inferences can be drawn from the facts. We agree with Fresh Express.

¶ 45 The question of whether a causal relationship exists between a work accident and the claimant's current condition of ill-being is one of fact to be determined by the Commission. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). The Commission's resolution of a factual issue will not be set aside on review unless it is against the manifest weight of the evidence. *Id.* Even in cases where the facts are undisputed, this court must apply the manifest-weight standard if more than one reasonable inference might be drawn from the facts. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 549 (1991). It is only in those cases where the undisputed facts are susceptible to but a single inference that the inquiry becomes one of law and subject to *de novo* review. *Uphold v. Illinois Workers' Compensation Comm'n*, 385 Ill. App. 3d 567, 571-72 (2008). In this case, the facts surrounding the question of whether the claimant's left knee meniscal tear is causally related to the September 12, 2010, workplace accident are clearly in dispute. Accordingly, we apply the manifest weight of the evidence standard.

¶ 46 Turning to the merits, in order to obtain compensation under the Act, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Included within that burden is proof that his current condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). A causal connection between an accident and a claimant's condition may be established by a chain of events, including the fact that the claimant was able to perform manual duties prior to the date of an accident and then had a decreased ability to perform such duties immediately following that date. *Zion-Benton Township High School Dist. 126 v. Industrial Comm'n*, 242 Ill. App. 3d 109, 114 (1993) (citing *Pulliam Masonry v. Industrial Comm'n*, 77 Ill. 2d 469, 471 (1979)).

¶ 47 As noted above, whether a causal relationship exists is a question of fact to be resolved by the Commission, and its determination of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). For a finding of fact to be against the manifest weight of the evidence, a conclusion opposite to the one reached by the Commission must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether a reviewing court might have reached the same conclusion is not the test of whether the Commission's determination on a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 48 In this case, the Commission found that the claimant "clearly" and "unquestionably" sustained a crush injury to both legs on September 12, 2010, and that the injury resulted in a posterior left knee laceration, bilateral knee strains, and "permanent venous damage to the legs." The claimant does not challenge the Commission's finding in this regard. Rather, the claimant challenges the Commission's determination that his left knee meniscal tear is not causally related to the September 12, 2010, accident. In support of his argument, he maintains that Drs. Khanna, Giannoulias, and Psaradellis all agreed that the MRI of September 20, 2010, showed a meniscal tear in his left knee and, based upon the "chain of events," he established a causal connection. We disagree.

¶ 49 Here, while the medical records of Drs. Khanna, Giannoulias, and Psaradellis state that the MRI of September 20, 2010, showed a medial meniscus tear in the claimant's left knee, the Commission noted that none of these doctors offered an opinion as to whether the meniscal tear was causally connected to the September 12, 2010, workplace accident. Moreover, while it is

true that Drs. Khanna, Giannoulias, and Psaradellis agreed that the claimant's MRI disclosed a meniscal tear, Dr. Psaradellis wrote in his medical records that he was "not convinced" that the claimant's symptoms were related to a meniscal tear, believing instead that his symptoms were neurogenic in nature. And, the record also contains the medical opinion of Dr. Miller who disputed whether the MRI scan even depicted a meniscal tear. He explained that the MRI showed a grade II signal, which correlates with a true tear only 10 to 20% of the time.

¶ 50 As noted above, it is the duty of the Commission to determine factual questions, including the resolution of conflicting medical testimony. *Johns-Manville Corp. v. Industrial Comm'n,* 60 Ill. 2d 221, 228-29 (1975). Thus, it was the Commission's prerogative to decide which of the conflicting medical opinions to accept, and we will not disturb its decision on that matter. See *id*. While Drs. Khanna, Giannoulias, and Psaradellis agreed that the claimant's MRI showed a meniscal tear, Dr. Psaradellis expressed doubt as to whether the claimant's symptoms were related to the meniscal tear. Additionally, Dr. Miller offered a contrary opinion—namely that, the claimant did not suffer meniscal tear. The Commission ultimately credited Dr. Miller's opinion and resolved the conflicts in the evidence in favor of Fresh Express. Based upon the record before us, we are unable to conclude that the Commission's finding that the claimant failed to prove that the meniscal tear in his left knee was causally connected to his September 12, 2010, workplace accident is against the manifest weight of the evidence.

¶ 51 Next, the claimant challenges the Commission's finding that he failed to prove that he sustained work-related accidents on October 12, 2011, and February 25, 2012.

¶ 52 To obtain compensation under the Act, a claimant bears the burden of showing that he suffered an accident arising out of and in the course of his employment. *Baggett v. Industrial Comm'n,* 201 Ill. 2d 187, 194 (2002). Whether a work-related accident occurred is a question of

fact, and the Commission's resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Pryor v. Industrial Comm'n*, 201 Ill. App. 3d 1, 5 (1990). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal. *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005).

¶ 53 Applying these standards, we cannot conclude that the Commission's finding that the claimant failed to prove he sustained work-related accidents on October 12, 2011, or February 25, 2012, is against the manifest weight of the evidence. Here, the Commission specifically found that the claimant's testimony that he injured his right knee while stepping off a forklift on October 12, 2011, was not credible. In assessing his credibility, it noted that the claimant testified inconsistently and admitted on cross-examination that he was just standing on the forklift when he felt and heard his knee pop. The Commission also noted that the claimant testified that he injured his *right* knee, but medical records from Mercy Hospital and Dr. Psaradellis, dated October 13 and 18, 2011, respectively, state that the claimant had worsening pain in his *left* knee. The Commission's finding that the claimant's credibility was questionable is also supported by the fact that when he presented to the emergency department at Mercy Hospital, he did not reference any work-related injury and denied any "new trauma, twisting or injury." Given the contradictions in the claimant's testimony, and in light of the fact that the medical records from Mercy Hospital reflect that the claimant did not report any accident or new injury, we cannot say that the Commission's determination that the claimant failed to sustain his burden of proving an accident on October 12, 2011, is against the manifest weight of the evidence.

¶ 54 As to the alleged accident of February 25, 2012, the Commission noted that the claimant did not testify on direct examination as to any specific mechanism of injury. On cross-examination, he testified that he "think[s]" he was "picking cases" when he twisted and his right knee did not twist with him. The Commission noted, however, that the medical records from Mercy Hospital state that the claimant complained of aggravating his right knee when he transferred his weight and suddenly experienced pain. In the Commission's view, "all [the claimant] really testifies to is that he somehow shifted his weight, resulting in a twist to the knee." The Commission acknowledged that, while the claimant stated he was on a forklift at the time, he did not testify about whether the forklift or the forklift's motion caused his weight to shift. Absent such evidence, the Commission concluded that the claimant failed to prove that he sustained an accident on February 25, 2012. Based upon our review of the record, we cannot say that the Commission's finding in this regard is against the manifest weight of the evidence as an opposite conclusion is not clearly apparent.

¶ 55 Having determined that the Commission's finding that the claimant failed to prove that he sustained an accident on October 12, 2011, or February 25, 2012, is not against the manifest weight of the evidence, we need not address his argument that he is entitled to TTD benefits for the time he was unable to work following those alleged injuries.

¶ 56 The final issue to be addressed is the Commission's denial of the claimant's petition for penalties and attorneys' fees. The claimant argues that he is entitled to penalties and attorneys' fees under sections 19(*l*), 19(k), and 16 of the Act, based upon Fresh Express's delay in paying medical expenses.

¶ 57 We note, in his brief on appeal, the claimant has not identified the medical bills or provided any citation to the record indicating which bills he contends were not timely paid. Nor

has he identified the date on which the bills were tendered to Fresh Express for payment or the date the bills were paid. Pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. Jan 1, 2016), points not argued are forfeited and the " 'failure to properly develop an argument and support it with citation to relevant authority results in forfeiture of that argument.' [Citation.]" *Compass Group v. Illinois Workers' Comp. Comm'n*, 2014 IL App (2d) 121283WC, ¶ 33. Forfeiture aside, the claimant's argument lacks merit.

¶ 58 Penalties under section 19(*l*) of the Act are in the nature of a fee for a late payment. *Jacobo v. Illinois Workers' Compensation Commission*, 2011 IL App (3d) 100807WC, ¶ 20. Assessment of a penalty under section 19(*l*) is mandatory if the payment is late and the employer is unable to show adequate justification for the delay. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515 (1998). The employer has the burden of justifying the delay, and the standard to be applied is reasonableness. *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 20. That is to say, whether a reasonable person in the employer's position would have believed that the delay is justified. *Id.* Whether an employer's justification for the delay was reasonable is a question of fact to be resolved by the Commission, and its determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Id*.

¶ 59 In denying the claimant's petition for penalties, the arbitrator specifically found the testimony of Bak, the claims adjuster at Sedgwick Claims Management Services, persuasive. Bak testified that he was aware that the claimant filed three applications for adjustment of claim, but never received any medical bills relating to the second or third claims and that Vicenteno, the risk manager at Fresh Express, had no record of any loss for either of those two claims. The arbitrator also noted that the unpaid medical bills, with the exception of bills from Midland Orthopedic and EMP of Chicago, did not list Sedgwick Claims Management Services as a

responsible party, and that Fresh Express's delay in payment was the result of its not knowing the balances owed. The arbitrator found the claimant's claim for penalties to be "disingenuous" and concluded that Fresh Express paid the balances owed once they became known and was not guilty of any intentional delay or bad faith. The arbitrator's determination that Fresh Express acted reasonably under the circumstances and, based upon the record before us, we cannot say that an opposite conclusion is clearly apparent. Consequently, we hold that the arbitrator's denial of section 19(*l*) penalties, as adopted by the Commission, is not against the manifest weight of the evidence.

¶ 60 Section 19(k) of the Act provides that, when there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, the Commission may award additional compensation equal to 50% of the amount payable at the time of such an award. 820 ILCS 305/19(k) (West 2012). Additionally, section 16 of the Act provides that the Commission may assess attorneys' fees against an employer where penalties under section 19(k) are appropriate. 820 ILCS 305/16 (West 2012). The standard for awarding penalties under section 19(k) and fees under section 16 is higher than the standard for awarding penalties under section 19(*l*). See *Jacobo*, 2011 IL App (3d) 100807WC, ¶¶ 21-24. For section 19(k) penalties and section 16 fees to be imposed, it must be established that the employer's delay or nonpayment was deliberate or the result of bad faith or an improper purpose. *McMahan*, 183 Ill. 2d at 515. Even when the facts support an award of penalties under section 19(k) and fees under section 16, the decision to award the penalties or fees is left to the discretion of the Commission. *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 44. Our review of the Commission's denial of section 19(k) penalties and fees under section 16 involves a two-step inquiry. *Id.* ¶ 25. First, we determine whether the Commission's factual findings are against the manifest weight of the

evidence, and then we determine whether the Commission's refusal to award penalties was an abuse of discretion. *Id.*

¶ 61 For the same reasons which we gave in our analysis of the Commission's denial of section 19(*l*) penalties, we also find that the reasons given for the Commission's denial of section 19(k) penalties and section 16 fees are not against the manifest weight of the evidence. Accordingly, the Commission did not abuse its discretion in the denial of penalties or fees.

¶ 62 In summary, we conclude that: the Commission's finding that the claimant failed to prove that his left knee torn meniscus is causally related to the September 12, 2010, work accident is not against the manifest weight of the evidence; the Commission's finding that the claimant failed to prove that he sustained work accidents on October 12, 2011, and February 25, 2012, is not against the manifest weight of the evidence; the Commission's denial of section 19(*l*) penalties is not against the manifest weight of the evidence; and the Commission did not abuse its discretion in denying the claimant's petition for an award of section 19(*l*) penalties and section 16 attorneys' fees. Consequently, we affirm the judgment of the circuit court which confirmed the decisions of the Commission.

¶ 63 Affirmed.