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2016 IL App (5th) 150530WC-U

FILED: September 30, 2016

NO. 5-15-0530WC

IN THE APPELLATE COURT

OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DEANGELO FRANKLIN,)	Appeal from
)	Circuit Court of
Appellant,)	St. Clair County
)	No. 15MR212
v.)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (East St. Louis Police De-)	Heinz Rudolf,
partment, Appellee).)	Judge Presiding.

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

ORDER

¶ 1 *Held:* (1) The Commission's finding that claimant exceeded his allotted choice of physicians under the Workers' Compensation Act was neither contrary to law nor against the manifest weight of the evidence.

(2) The Commission's causal connection findings with respect to claimant's two work-related accidents were not against the manifest weight of the evidence.

¶ 2 Claimant, DeAngelo Franklin, filed two applications for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2012)), seeking benefits from the employer, East St. Louis Police Department. On May 29, 2013, he filed an ap-

plication alleging he sustained work-related injuries to his back, neck, left shoulder, right arm, left knee, and body as a whole while making an arrest on March 23, 2013. On May 7, 2014, he filed his second application, alleging work-related injuries to his back, right and left hips, left knee, and body as a whole as the result of a slip and fall accident on February 15, 2014. Following a consolidated hearing, the arbitrator determined claimant sustained compensable, work-related injuries arising out of and in the course of his employment on both dates. He awarded claimant past medical expenses totaling \$52,948.14, and prospective medical expenses for the treatment recommended by claimant's doctors.

¶ 3 On review, the Illinois Workers' Compensation Commission (Commission) modified the arbitrator's decision. It concluded claimant's March 2013 accident caused only a temporary aggravation to preexisting injuries in claimant's left knee, low back, and neck and no aggravation of any preexisting condition in claimant's left hip. The Commission further found claimant exceeded his choice of medical providers; denied benefits for medical expenses outside of his first two choices; and denied prospective medical care related to claimant's low back, neck, left knee, and left hip conditions. Finally, the Commission found claimant failed to prove his entitlement to compensation in connection with his alleged February 2014 accident. It otherwise affirmed and adopted the arbitrator's decision, and remanded to the arbitrator pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 4 Claimant sought judicial review with the circuit court of St. Clair County, which confirmed the Commission's decision. Claimant appeals, arguing (1) the Commission erred in finding he exceeded his choice of physicians under the Act; (2) the Commission's findings that he failed to establish his March 2013 accident caused more than a temporary aggravation to the preexisting conditions in his left knee, low back, and neck or any aggravation of the preexisting

condition in his left hip were against the manifest weight of the evidence; and (3) the Commission's findings that he failed to prove his entitlement to compensation in connection with his February 2014 accident was against the manifest weight of the evidence. We affirm.

¶ 5

I. BACKGROUND

¶ 6

A. March 2013 Accident

¶ 7

At arbitration, claimant testified he was a police officer and worked for the employer for approximately 20 years. He asserted he was involved in a work accident on March 23, 2013, when, as he was attempting to arrest a subject, the subject began "pulling" and "jerking" away from claimant while claimant tried "to pull him back." Claimant testified: "I was holding his belt ***; and as he began to try to pull, I was trying to pull him back. He went down in a front leaning rest position, so did I while I was trying to pull him back. My knee went straight down too and [I] struck my [left] knee." According to claimant, other officers "ran over" and subdued the subject. On a first report of injury form, claimant asserted he was injured while arresting a suspect who was attempting to escape, resisting, and being combative. Claimant reported he injured his low back, arm, left shoulder, knee, and experienced "some neck pain."

¶ 8

At arbitration, the employer submitted an exhibit containing incident report forms describing the March 2013 accident. Reports prepared by other police officers noted claimant was arresting a subject who "attempted to flee" or "pulled away and tried to flee" as claimant "held on to the [subject's] clothing." Claimant completed an incident report, stating he was putting handcuffs on an individual who "then attempted to break free and flee from [him]" and "pushed and continued pulling and jerking away from [claimant,] attempting [to] get free." Claimant also reported as follows:

"The *** subject *** attempted to flee from me by pulling, jerking my arms forward multiple times before going to a leaning forward-ed [*sic*] sprint position[.] I continued to hold and pull him back in-to me to stop [the subject] from fleeing the scene until [other offic-ers] arrived to my location to assist me with the arrest."

Claimant asserted he noticed a burning sensation in his right arm muscle "within days" and also experienced "stiffness and soreness in the left shoulder and lower back." (We note the injuries to claimant's right arm are not at issue on appeal.)

¶ 9 B. Preexisting Conditions and Treatment

¶ 10 At arbitration, claimant acknowledged having injuries to his low back and left knee that preexisted his March 2013 accident, and sustaining previous work-related accidents while working for the employer. The employer submitted exhibits containing information about 12 prior workers' compensation cases involving claimant and the employer. In those cases, claimant alleged various injuries to different parts of his body, including his left knee, back, and neck from July 1999 to February 2009.

¶ 11 The employer also submitted numerous medical records setting forth claimant's medical treatment prior to March 2013. Records from Dr. Mohammed Ahmed, claimant's primary care physician, reflect injuries and complaints with respect to claimant's left knee, left hip, lower back, and neck from August 2005 to February 2013. On February 1, 2013, claimant reported experiencing "severe back pain"; "neck pain down his back" the previous week; and continued "left knee, right shoulder and left hip chronic pain." Various records from other provid-ers, dating back to July 1999, demonstrate the same or similar injuries and complaints.

¶ 12 In August 2008, claimant began seeing Dr. George Paletta with the Orthopedic

Center of St. Louis in connection with his left knee. Dr. Paletta diagnosed claimant with "[p]osttraumatic patellofemoral pain [of the] left knee status post dashboard type injury." He recommended physical therapy, which claimant received for both his left knee and left hip.

¶ 13 In February 2009, claimant underwent a magnetic resonance imaging (MRI) arthrogram of his left knee at Dr. Paletta's request. The impression from the MRI report states:

- "1. Mild signal heterogeneity within the articular cartilage of all three compartments without a focal chondral defect.
2. The ligaments of the knee are intact.
3. No evidence for meniscal tear[.]"

In May 2009, claimant followed up with Dr. Paletta, who noted a "re-aggravation" of claimant's knee injury due to a second motor vehicle accident. He stated claimant also had issues related to a disc problem in his back and complained of sharp pain, a "stabbing" sensation, and "catching" in his left hip. Dr. Paletta diagnosed claimant with a possible labral tear in his left hip.

¶ 14 Claimant continued to follow up with Dr. Paletta, who performed surgery on claimant's left knee in the form of a diagnostic arthroscopy with lateral release in January 2011. His arthroscopic findings were as follows:

"Diagnostic arthroscopy revealed the intraarticular anatomy to be entirely normal. The articular surfaces of all three compartments were intact without evidence of acute traumatic chondral or osteochondral injury, chondromalacia, osteoarthritis, or other degenerative changes. Medial and lateral meniscus were normal. Cruciate ligaments were normal. There was a lateral strike to the patella as it engage[d] the trochlea at 20-30 degrees of knee flex-

ion. This was consistent with excessive lateral patella facet compression syndrome. In addition, the lateral retinaculum was noted to be extremely thickened."

Following surgery, claimant underwent physical therapy. In April 2011, Dr. Paletta noted claimant was "[d]oing well" and could return to full-duty work with no restrictions effective May 2, 2011. Records show that, on the day of his last physical therapy session in April 2011, claimant reported continued left knee pain "in the anterior aspect of his [left] knee."

¶ 15 In August 2008, claimant also began seeing Dr. Matthew Gornet, an orthopedic surgeon, pursuant to a referral from claimant's chiropractor, Dr. Neil Munhofen. Claimant complained of "low back pain to the left buttock and hip and down the left leg to his knee with intermittent tingling in his left foot." In September 2008, Dr. Gornet noted an MRI of claimant's hip "read as normal" while a low back MRI showed an "obvious high acute intensity signal annular tear" at L5-S1. In November 2010, Dr. Gornet recommended a new MRI, which he compared with claimant's previous MRI scans. He determined claimant had "a structural problem at the first open motion segment," which Dr. Gornet believed "account[ed] for [claimant's] left groin pain, hip pain, and leg pain." Dr. Gornet also noted "subtle changes at 3-4."

¶ 16 In February 2011, Dr. Gornet recommended "a CT-Discogram of the first two open motion segments." He noted claimant's CT discogram showed "a provocative disc at the first open motion segment, nonprovocative disc at the second open motion segment." In June 2011, claimant underwent a new MRI at Dr. Gornet's recommendation, which showed a right paracentral disc herniation with annular tear at L5-S1, minimal disc bulging at L3-4 without herniation or root impingement, and a segmentation anomaly with rudimentary disc at S1-2.

¶ 17 In July 2011, Dr. Gornet performed surgery on claimant in the form of an anterior

decompression at L5-S1 and an anterior lumbar fusion at L5-S1. In May 2012, he released claimant to return to full-duty work with no restrictions. In September 2012, Dr. Gornet noted he had "checked" new MRIs of claimant's cervical and lumbar spine. He stated he "did not see anything of significance in his cervical spine that would lead him to believe [claimant had] a disc injury or other problem." Dr. Gornet found claimant's lumbar spine MRI showed "some mild changes at the L3-4 level and L4-5; but, again, nothing overly bad." He determined claimant had reached maximum medical improvement (MMI), but did "have some symptoms on occasion."

¶ 18 Claimant testified that between September 2012 and March 2013 he worked full duty as a police officer. He stated, following his September 2012 release to return to work and prior to his March 2013 accident, his neck and back were "doing great." He denied having any complaints of neck or back pain during that time and testified he did not think he sought any treatment related to his back or neck. Additionally, claimant did not believe he saw any doctors for complaints related to his left knee between the time Dr. Paletta released him in April 2011 and his March 2013 accident. He specifically denied having any knee-related complaints after returning to work.

¶ 19 C. Claimant's Medical Treatment Following His March 2013 Accident

¶ 20 Claimant first sought medical care following his March 2013 accident on April 13, 2013, with Dr. Ahmed. Dr. Ahmed set forth claimant's chief complaints as right arm pain, left knee and hip pain, and lower back pain. His records reflect claimant provided a history of "arresting someone who pulled on his right arm" and that "[h]is right arm and right forearm hurt[]." Dr. Ahmed assessed claimant as having right arm pain, back pain, and left knee pain.

¶ 21 On April 19, 2013, claimant saw Dr. Munhofen, his chiropractor. He reported being injured at work due to a "[c]ombative subject" who was "pulling and jerking away"

from him. Claimant stated he started feeling pain in his right arm, left shoulder, and lower back as a result of the incident, as well as pain in his left knee. Claimant complained of "feeling a constant moderate level of dull, sharp pain in both sides of his lower back and left side of his neck." According to Dr. Munhofen's records, claimant's past medical history revealed "no evidence of same or similar complaints." He assessed claimant as "suffering from cervical sprain/strain, lumbosacral sprain/strain, elbow sprain/strain, cervical and lumbar region muscle spasm, lumbar neuritis[,] and cervicobrachial syndrome." Dr. Munhofen recommended chiropractic treatment three times a week, which claimant underwent in April, May, and June 2013.

¶ 22 On May 9, 2013, claimant saw Dr. Gornet. He testified he was unsure whether he contacted Dr. Gornet's office or whether his appointment was made by one of his other medical providers. Dr. Gornet's records note claimant had undergone a previous lumbar spinal fusion with him. He stated claimant "had done well and had returned to work full duty" but "still had a mild degree of neck and back pain." Dr. Gornet identified claimant's "main symptoms" as "low back pain central down both legs into his anterior thighs to his knees." He stated claimant's "current problem" began at work on March 23, 2013, when claimant "was involved in an altercation with an individual." Dr. Gornet determined that, based on his knowledge of claimant, the "current accident *** aggravated any underlying condition he had." His main concern was that some of claimant's symptoms appeared to be new and different. Dr. Gornet recommended MRIs of claimant's cervical and lumbar spine.

¶ 23 On June 11, 2013, Dr. Munhofen re-assessed claimant. He noted claimant's "main complaint [was] a mild level of frequent dull pain in both sides of his lower back, left side of his neck, right hip, left hip, and right elbow." However, claimant reported he had experienced "some improvement" with his pain and was "'60% better than [he] was before [the March 2013]"

altercation.' " Dr. Munhofen recommended continued treatment, which claimant underwent through March 12, 2014.

¶ 24 On June 27, 2013, claimant followed up with Dr. Gornet, who noted claimant's "main pain" was in his "low back central to both buttocks, both legs into his thighs." Claimant reported feeling he was "as bad as he was before surgery." Dr. Gornet reviewed claimant's MRIs, stating as follows:

"I see disc pathology with may be [*sic*] a central herniation at the L3-4 level with what also may be a central herniation at L4-5. The L3-4 level appears to be increased in magnitude and severity compared to his previous films of 9/10/12. This is also true for what I believe is the previous films at the L4-5 level. *** For his neck, we believe that he has a small herniation on the left at C5-6."

Dr. Gornet recommended transforaminal and epidural steroid injections and that claimant "continue to work as before." In July and August 2013, claimant received epidural steroid injections from Dr. Steven Granberg.

¶ 25 On August 29, 2013, claimant returned to see Dr. Gornet and reported no significant relief as a result of the epidural steroid injections. Dr. Gornet stated claimant had undergone a previous discogram at L4-5, which was negative, and recommended a repeat discogram at that level, "as well as [at] the L3-4 level to determine whether [claimant had] a new disc injury as part of his [March 2013] altercation." He also referred claimant to Dr. Nathan Mall, an orthopedic surgeon.

¶ 26 At arbitration, claimant submitted Dr. Gornet's deposition, taken January 23, 2014. Dr. Gornet agreed he began treating claimant in August 2008 with respect to complaints

of low back pain, which resulted in spinal fusion surgery at L5-S1. He noted he last saw claimant prior to his March 2013 accident in September 2012. At that time, Dr. Gornet believed claimant was "doing relatively well" but continued to experience "some mild pain in his neck" and low back. He testified that, after examining claimant following his March 2013 accident, his only "significant finding *** was a mild decrease in [claimant's] biceps on the right at 4 over 5." After reviewing claimant's post-accident MRIs, Dr. Gornet believed claimant had a disc injury in his neck at C5-6 and a disc injury in his low back at L3-4 and L4-5. He opined claimant's neck and low back conditions were causally related to his March 2013 accident. With respect to claimant's low back, he believed claimant had "some preexisting disc degeneration" but his March 2013 accident resulted in "a new disc injury at L3-4" and possibly L4-5. Regarding claimant's neck, he opined claimant had some "very mild preexisting cervical degeneration" but "also a new injury at C5-C6" that was related to his accident.

¶ 27 Dr. Gornet disagreed that claimant sustained temporary aggravations of the conditions in his back and neck. He testified "temporary should be a defined short period" and found no indication claimant's symptoms were "back to their baseline." Dr. Gornet recommended further evaluation for claimant and testified he did not believe claimant had reached MMI. He also testified regarding his findings as to claimant's various MRIs, stating as follows:

"There was a disc bulge at L3-4 in the September of 2012 MRI. That disc bulge was also present on the previous scan of 2010. Was there an interval change between the two? I didn't think so. I felt the description and the mild changes, meaning disc pathology present at L3-4, was related to degeneration at that point. But subsequent to that there has been an interval change in the MRI from

September of 2012 until June of 2013, and that interval change at L3-4 I relate to the new [March 2013] altercation."

Dr. Gornet testified he also found an interval change in stenosis at the L4-5 level when comparing the September 2012 and June 2013 MRIs, which he attributed to claimant's March 2013 accident. Additionally, he agreed that it was possible the changes between the September 2012 and June 2013 MRIs were due to degeneration, but testified that was not his opinion.

¶ 28 With respect to claimant's cervical spine, Dr. Gornet agreed the June 2013 MRI report noted a finding of a "persistent annular disc bulge at C4-5 without focal herniation." However, he stated he did not feel "there was anything significant at the C4-5 level from what [he] could determine." Dr. Gornet testified he believed there was an "interval change at C5-6" that was related to claimant's March 2013 altercation, but he was "not overly impressed with the disc pathology there." Further, he testified claimant's "neck was getting better and we didn't go any further to evaluate that."

¶ 29 At arbitration, the employer submitted a report, dated August 30, 2013, from Dr. Clinton Smith, a chiropractor. Dr. Smith reviewed various records related to claimant at the employer's request, and opined claimant's lower back was strained as a result of his March 2013 accident. He found Dr. Munhofen's diagnoses were consistent with acute soft tissue strains/sprains and stated "MRI findings *** reveal[ed] preexisting degenerative changes likely *** due in part to the natural aging process, previous trauma[,] and hereditary factors." Dr. Smith found no evidence that claimant's March 2013 injury caused new or worsening spinal degeneration or stenosis. Further, he opined: "[A]ll of the care provided by Dr. Munhofen for [claimant's] soft tissue injury from April 19, 2013[,] through June 11, 2013[,] [was] documented as related to the injury. Past that point, outcomes would provide necessity for referral for strengthening via formal reha-

bilitation." Dr. Smith concluded care past June 11, 2013, was "not established as necessary."

¶ 30 On September 3, 2013, claimant began seeing Dr. Mall pursuant to Dr. Gornet's referral. Dr. Mall noted claimant's chief complaints as right elbow and left knee pain. He recorded the following accident history:

"[Claimant] was making an arrest and did not have handcuffs with him and he was holding the arm and the perpetrator[']s jeans at the same time. As he was holding him, the perpetrator was trying to get away from him and he had to resist this and actually began falling and felt a burning sensation in his right elbow as well as pain in his left knee. The perpetrator was then tackled by some of his fellow officers."

Dr. Mall diagnosed claimant with a right elbow partial thickness biceps tear and "left knee patellofemoral pain and possible medial meniscus tear." He recommended physical therapy, an MRI of the left knee, and physical restrictions.

¶ 31 The record shows claimant was evaluated by Dr. David Robson, an orthopedic spine surgeon, at the employer's request. Both Dr. Robson's report, dated September 5, 2013, and his evidence deposition, taken February 20, 2014, were admitted into evidence. According to the report, claimant asserted he sustained injuries to his neck and lower back in March 2013 "when a suspect in handcuffs began pulling away from [him] and caused him to fall forward." Dr. Robson noted claimant "reports new onset of neck pain, right arm pain, and lower back pain." He examined claimant's neck and low back and testified his findings were normal.

¶ 32 Dr. Robson also reviewed various medical records, including MRI films from both before and after claimant's March 2013 accident. He testified the September 2012 MRI of

claimant's low back showed evidence of previous fusion surgery performed at L5-S1, some loss of moisture, a little narrowing at the L3-4 disc, and a central bulge as a result of the narrowing at L3-4. Dr. Robson described the central bulge as typical of a degenerative condition and testified that both the loss of moisture and central bulge could cause an individual to experience symptoms, including an intermittent backache, occasional muscle spasm, and possibly hip soreness. He testified claimant's June 2013 MRI of the low back was "very similar" to the September 2012 MRI and found no significant differences between the two. In particular, he did not find any worsening of the L3-4 and L4-5 central canal and foraminal stenosis.

¶ 33 Dr. Robson also reviewed MRIs of claimant's neck. He found the September 2012 MRI was "relatively normal" and showed "no acute herniated disc" and no evidence of degenerative findings. A June 2013 MRI also showed no acute herniated disc and no disc bulges.

¶ 34 Dr. Robson diagnosed claimant with cervical and lumbar strains arising out of his March 2013 accident. He believed claimant suffered a temporary exacerbation of his symptoms and opined he required "only conservative care including anti[-]inflammatories and physical therapy." He did not believe claimant required any work restrictions.

¶ 35 Dr. Robson further testified claimant's report of continued symptoms in his neck did not support a finding of something other than a temporary exacerbation, stating there were "no imaging or physical exam findings to support anything else going on." He testified if claimant continued to be symptomatic a year after the accident "he may have some underlying *** muscle spasm or something, but there [was] really nothing to do for it." Additionally, he believed any ongoing lower back symptoms claimant experienced could be connected with his underlying back problems, which predated his March 2013 accident. Dr. Robson testified "anything that may have happened as a result of [the March 2013 accident] probably returned to a

baseline level by the time" Dr. Robson saw claimant.

¶ 36 On October 1, 2013, claimant followed up with Dr. Mall and reported that therapy may have increased his knee pain. The same day, claimant underwent an MRI of his left knee. The MRI report stated there was no meniscal tear and no acute fracture or bone contusion but noted findings that could represent a chronic ACL tear. On October 29, 2013, Dr. Mall diagnosed claimant with a left knee ACL tear, stating he believed claimant "had an ACL tear at the time of his injury" and noting claimant "never had any subluxation events or knee pain prior to his [March 2013,] work[-]related injury." Dr. Mall recommended an ACL reconstruction.

¶ 37 Claimant agreed he saw Dr. Christopher Rothrock, an orthopedic surgeon, at the employer's request. The employer submitted Dr. Rothrock's report, dated November 14, 2013, and deposition, taken March 5, 2014, into evidence at arbitration. According to Dr. Rothrock's report, claimant provided a history of being injured after restraining a suspect who was struggling with him and the suspect " 'went down to the ground' " and claimant fell with him. He complained of intermittent left knee pain with the activities of daily living but denied any significant instability in his left knee.

¶ 38 Dr. Rothrock noted claimant had a long and extensive history of left knee pain and dysfunction. With respect to claimant's left knee, he reviewed both claimant's October 2013 MRI and his February 2009 left knee MRI arthrogram. Dr. Rothrock found no significant difference between the two MRIs, stating the October 2013 MRI did "not demonstrate any interval changes or any change in the appearance of his ACL as compared to his prior left knee MRI." He testified that the finding on the October 2013 MRI report of an "attenuated thickness of the proximal ACL" did not demonstrate any acute findings and "could be in the bounds of normal." Dr. Rothrock further testified he reviewed various medical records. He found records predating

claimant's March 2013 accident showed claimant had patellofemoral pain in his left knee, which he described as "[a]nterior knee pain, globalized knee pain."

¶ 39 Following an examination of claimant, Dr. Rothrock found no causal relationship between claimant's March 2013 accident and the condition of his left knee. He diagnosed claimant as "struggling with patellofemoral pain," which he testified, from his review of claimant's medical records, was not a new diagnosis. Further, he stated such pain could wax and wane depending upon activity. In his report, Dr. Rothrock stated as follows:

"[Claimant] does not have signs or symptoms or physical exam findings or MRI findings indicating an acute ACL tear as a result of his work[-]related injury, and he continues to suffer with his pre-existing patellofemoral pain and dysfunction, which was temporarily exacerbated by his work[-]related injury. He has reached the point of [MMI] in regards to the work[-]related injury that he sustained to his left knee, and he has not sustained any permanent partial disability as a result of his work-related injury. He can be working full duty without any limitations[.]"

¶ 40 Dr. Rothrock did not believe claimant required an ACL reconstruction, stating claimant's ACL "felt intact" and he did not have instability on examination and only complained of knee pain. Dr. Rothrock testified "one does not need an ACL reconstruction for knee pain, you need it for knee instability, both subjectively and objectively."

¶ 41 On December 27, 2013, claimant returned to Dr. Mall, who noted he had reviewed claimant's MRI films from 2009, which he did not previously have, as well as Dr. Rothrock's evaluation report. Dr. Mall agreed that claimant's 2009 MRI did "demonstrate similar

appearance of the ACL[,] indicating an ACL rupture off of the femoral side." He continued to recommend an ACL reconstruction for claimant. Further, he stated as follows:

"To Dr. Rothrock's point that this is a chronic problem that was not related to the March 23, 2013[, accident] I would agree that he did have evidence of an ACL tear and similar appearance on this MRI during the 2009 MRI that was performed. However, often times in the situation of ACL deficiency a patient that was previously asymptomatic from this can develop instability symptoms."

¶ 42 On February 4, 2014, Dr. Mall determined the majority of claimant's left knee pain was related to "patellofemoral pain," which he stated "could very well be likely due to his ACL insufficiency and lack of confidence in the left knee." He opined claimant "would likely benefit from an ACL reconstruction to give him the confidence in the knee that he needs to be able to chase down and apprehend perpetrators as well as potentially even getting rid of some of his patellofemoral pain by allowing him to strengthen this knee and walk in a more confident fashion." Dr. Mall further opined that claimant's March 2013 work accident caused him to become symptomatic from his ACL tearing. He stated as follows:

"In terms of causation related to the left knee injury, it does appear on his prior MRI *** in 2009 *** that he did have an ACL injury ***. This was likely a partial ACL injury. His current MRI does not differ significantly from this, however, based on my research on MRIs of patients after having ACL reconstruction it was clear that MRI and physical examination do not often correlate. *** Therefore, I think it is very difficult to state on an MRI whether or

not someone is having instability symptoms and this needs to be more of an examination and clinical suspicion. Clearly, [claimant] does have symptomatic instability currently. He has a positive pivot shift which is the most specific and sensitive test for ACL insufficiency. I do not have all of his prior records to know what his pivot shift was before but clearly he has a positive pivot shift today on examination and has since his most recent injury. I believe that he had a partial injury back in 2009 *** and that in the most recent altercation he likely had additional partial tearing of the ACL and now has developed instability related to this."

¶ 43 At arbitration, claimant submitted Dr. Mall's deposition, taken February 18, 2014. Dr. Mall opined that the condition of ill-being in claimant's left knee was causally related to his March 2013 accident. He testified as follows:

"[I]n between his treatment from Dr. Paletta, who I think did operate on him in January of 2011, until the injury of [March 2013], he was working full duty and was not having any feelings of instability, not having any knee pain, not having any problems.

And then subsequent to that work-related injury [in March 2013], he did develop symptoms and is complaining of both patellofemoral pain symptoms but also knee instability where he does feel like his knee gives way or doesn't feel stable on his knee. And those are symptoms that are new following the injury.

And so therefore I do believe that those symptoms are related to his work injury and that he likely did either complete his ACL tear that was already partially torn or at least [changed] from being an asymptomatic partial-thickness ACL tear to now being a symptomatic partial-thickness ACL tear."

On cross-examination, Dr. Mall testified claimant reported being asymptomatic with respect to his left knee between the date of his knee surgery in 2011 and his March 2013 work accident. He testified his causal connection opinion would change if claimant had been experiencing symptoms of knee instability during that 2011 to 2013 time frame. Further, Dr. Mall testified he did not review claimant's previous medical records related to the treatment of his left knee outside of an MRI performed in 2009.

¶ 44 D. Claimant's February 2014 Accident and His Following Treatment

¶ 45 Claimant testified, on February 15, 2014, he had another work-related accident when he slipped and fell on ice as he exited his patrol car to retrieve his jacket from the back seat. Claimant stated he experienced "awful heart wrenching pain" and injured his knee (he did not specify which knee during his testimony), hip, and low back. Claimant testified he continued to perform his job duties, but noted he had been on light duty since August or September 2013.

¶ 46 On March 11, 2014, claimant prepared a document entitled "Notification of injury." He asserted that, on February 15, 2014, he exited his patrol car and "fell on the pavement on [his] right hip." He reported feeling pain in his hip, lower back, and knee.

¶ 47 On March 25, 2014, claimant returned to see Dr. Gornet, who noted claimant was receiving treatment from Dr. Mall and had recently undergone shoulder surgery. Dr. Gornet stated claimant could have had an injury at either L3-4 or L4-5 "from a low back and neck

standpoint." However, he recommended claimant follow up in four months, stating "we still believe [claimant] may have an active problem in his low back, but this has been placed on hold until these other issues are sorted out."

¶ 48 On April 3, 2014, claimant followed up with Dr. Ahmed. He provided a history of his February 2014 fall and Dr. Ahmed noted claimant fell on ice "on the street when [he] got out of his car." Claimant reported he "fell on [his] left side" and complained of low back pain and left hip pain. Dr. Ahmed stated claimant "most likely ha[d] a muscular injury." He recommended x-rays of claimant's left hip and lumbar spine, which showed a "stable appearance of the lumbar spine" and calcifications and mild osteoarthritis in the left hip.

¶ 49 E. Workers' Compensation Proceedings

¶ 50 On August 11, 2014, the arbitrator issued a decision, finding claimant sustained compensable, work-related injuries arising out of and in the course of his employment in both March 2013 and February 2014. He awarded claimant past medical expenses of \$52,948.14, and prospective medical expenses for the treatment recommended by claimant's doctors.

¶ 51 On June 8, 2015, the Commission issued its decision. It modified the arbitrator's award by finding claimant's March 2013 accident caused only a temporary aggravation to preexisting injuries in claimant's left knee, low back, and neck. The Commission also determined claimant failed to prove any aggravation of a preexisting condition in his left hip.

¶ 52 Further, the Commission found claimant exceeded his choice of medical providers and denied benefits for medical expenses outside of his first two choices, Dr. Ahmed and Dr. Munhofen. It concluded Dr. Gornet was claimant's third choice of medical provider and Dr. Mall and Dr. Granberg were "third choice referrals." The Commission modified the arbitrator's award of medical expenses consistent with its findings and denied claimant prospective medical

expenses related to his low back, neck, left knee, and left hip conditions. Additionally, the Commission found the employer was "not liable to pay benefits in connection with [claimant's alleged February 2014] accident," finding claimant failed to prove any injury to his neck or left knee and failed to establish a causal connection with respect to his alleged low back and left hip injuries. The Commission otherwise affirmed and adopted the arbitrator's decision, and remanded to the arbitrator pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322. On December 1, 2015, the circuit court confirmed the Commission's decision.

¶ 53 This appeal followed.

¶ 54 II. ANALYSIS

¶ 55 A. Choice of Medical Providers

¶ 56 On appeal, claimant first challenges the Commission's finding that he exceeded his choice of medical providers under the Act, arguing all of his providers were within the chain of referrals from his first two choices. Alternatively, he contends the Commission was without authority to address the issue because the employer failed to include it as a disputed issue on the parties' request for hearing form and, thus, it was not raised before the arbitrator. Additionally, claimant contends the employer acquiesced to one particular provider through the payment of medical expenses.

¶ 57 Under the Act, an employer must pay for all reasonable and necessary medical, surgical, and hospital services rendered to a claimant "to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2012). However, the Act limits an employer's liability for medical expenses to (1) all first aid and emergency treatment; (2) all medical, surgical, and hospital services provided by the claimant's first and second choices of medical services providers; and (3) all medical, surgical, and hospital services that are either recommended by the

claimant's first or second choice of provider or within the chain of referral from that first or second choice of provider. *Id.* An employee otherwise "may not select a provider of medical services at the employer's expense unless the employer agrees to such selection." 820 ILCS 305/8(a)(3) (West 2012).

¶ 58 Initially, we address claimant's contention that the Commission's determination that he exceeded his choice of physicians under the Act "was improper as a matter of law" because the employer did not preserve its right to dispute the issue on the parties' request for hearing form. Although the record supports claimant's contention as to the contents of the request for hearing form, we disagree that such circumstances prohibited the Commission from addressing the issue on review "as a matter of law."

¶ 59 Generally, "[t]he failure to raise an issue before the arbitrator *** results in its waiver." *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1020, 832 N.E.2d 331, 348 (2005). Further, the Illinois Administrative Code provides that a request for hearing form represents "the stipulation of the parties and a settlement of the questions in dispute in the case" (50 Ill. Adm. Code 7030.40, amended at 36 Ill. Reg. 17913, (eff. Dec. 4, 2012)), indicating "that the request for hearing is binding on the parties as to the claims made therein" (*Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1088, 804 N.E.2d 135, 138 (2004)).

¶ 60 However, "[a]dministrative rules which are in conflict with a statute are invalid." *Klein Construction/Illinois Insurance Guaranty Fund v. Illinois Workers' Comp. Comm'n*, 384 Ill. App. 3d 233, 237, 892 N.E.2d 112, 115 (2008). In this instance, the Act contains provisions which state that the Commission is not limited on review to considering only issues identified by the parties or addressed by the arbitrator. In particular, the Act provides that "[t]he jurisdiction of the Commission to review the decision of the arbitrator shall not be limited to the exceptions

stated in the Petition for Review." 820 ILCS 305/19(b) (West 2012). Further, it states: "If a petition for review and agreed statement of facts or transcript of evidence is filed *** the Commission shall promptly review the decision of the Arbitrator *and all questions of law or fact which appear from the statement of facts or transcript of evidence.*" (Emphasis added.) 820 ILCS 305/19(e) (West 2012).

¶ 61 Pursuant to section 19(e), "[o]nce a timely petition to review an arbitrator's decision has been filed along with an agreed statement of facts or a transcript of the evidence, the Commission is obligated to review all questions of law or fact which appear from the transcript of evidence." *Klein*, 384 Ill. App. 3d at 237, 892 N.E.2d at 115. Here, although the employer failed to specifically identify the choice-of-physicians issue as an issue in dispute on the parties' request for hearing form, the form does reflect that medical expenses were generally a disputed issue. Further, we note the absence of any evidence that the parties had reached an agreement or entered into a stipulation as to expenses. Therefore, while the choice-of-physician issue was not specifically identified by the employer, the Commission acted within its authority when addressing the issue. Finally, this court has also held "that the Commission, in furtherance of its responsibility to provide a just result, may override considerations of waiver." *Id.* at 238, 892 N.E.2d at 115. Given the circumstances, we find the Commission committed no error in electing to address the choice-of-physician issue on review.

¶ 62 We next turn to claimant's factual contentions. As stated, he argues the evidence presented showed that all of his medical providers were within the chain of referrals from his two allotted choices of physicians, Dr. Ahmed and Dr. Munhofen. "[W]hether a claimant obtained medical treatment as a result of a valid referral is a question of fact for the Commission." *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 468, 949

N.E.2d 1158, 1164 (2011). On review, "we will reverse the Commission's factual findings only if they are against the manifest weight," *i.e.*, when an opposite conclusion is "clearly apparent." *Id.* at 468-69, 949 N.E.2d at 1164.

¶ 63 In this instance, the Commission found Dr. Ahmed and Dr. Munhofen represented claimant's first and second choices of medical providers. It concluded Dr. Gornet was claimant's third choice of medical provider and Dr. Mall and Dr. Granberg were "third choice referrals." The Commission then denied claimant medical expenses for "bills outside [his] first two choices of medical providers and their referrals." On appeal, claimant points to testimony from Dr. Gornet, which he asserts establishes that Dr. Munhofen referred him to Dr. Gornet following his March 2013 accident. Specifically, during his deposition, Dr. Gornet responded to a request to describe his "prior dealings" with claimant by stating as follows:

"Sure. I have known [claimant] dating all the way back to—it appears dating all the way back to August of 2008. I saw him also referred by Dr. Munhofen at that time for a problem that started on 7/2/08 in which he was involved in a motor vehicle accident."

Later, on cross-examination, the following colloquy occurred between the employer's counsel and Dr. Gornet:

"Q. And some [patients] are referred to you by [claimant's counsel] or his law office for care and treatment of their spinal conditions?

A. You would have to ask them. This patient was referred by Dr. Munhofen and was an established patient of mine. As far as other patients, it's an individual thing."

¶ 64 Here, Dr. Gornet's testimony is ambiguous. The record reflects both Dr. Munhofen and Dr. Gornet treated claimant in connection with his preexisting conditions. It is unclear from Dr. Gornet's testimony whether he was speaking in terms of his treatment of claimant prior to March 2013, after March 2013, or both. Moreover, claimant's medical records support the finding of a referral by Dr. Munhofen to Dr. Gornet only with respect to treatment beginning in 2008, in connection with claimant's preexisting conditions. Neither Dr. Munhofen's nor Dr. Gornet's records after March 2013 indicate that a referral was made. Given such circumstances, we cannot say an opposite conclusion from that reached by the Commission was clearly apparent. Its decision that Dr. Gornet was claimant's third choice of physician and not within the chain of referrals from Dr. Munhofen was not against the manifest weight of the evidence.

¶ 65 Regarding the choice-of-physician issue, claimant additionally argues the employer "forfeited its right to dispute liability for medical bills *** with respect to any facilities to which it has made payment." He notes the Act provides that an employer may be liable for expenses incurred outside of a claimant's first and second choice of physician when the employer agrees to a claimant's selection of a provider. 820 ILCS 305/8(a)(3) (West 2012). Claimant points out the employer "paid for expenses incurred with MRI [P]artners of Chesterfield, to whom [he] was referred by Dr. Gornet." On appeal, the employer fails to respond to claimant's contention that it "acquiesced" to expenses incurred through MRI Partners of Chesterfield. Nevertheless, the payment of medical expenses by the employer is not an admission of liability by the employer to pay compensation under the Act. 820 ILCS 305/8(a) (West 2012). Thus, we find claimant's contention is without merit.

¶ 66 B. Causal Connection

¶ 67 On appeal, claimant next argues the Commission erred with respect to its causal

connection findings. "[T]o recover under the Act, an employee must show that his or her condition of ill-being is causally related to his or her employment." *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 17, 28 N.E.3d 181. Compensation may be awarded to an employee "even though the conditions of his or her employment do not constitute the sole, or even the principal, cause of injury." *Mansfield v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120909WC, ¶ 27, 999 N.E.2d 832. "In cases involving a preexisting condition, recovery will depend on the employee's ability to establish that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to be causally connected to the work-related injury." *Bolingbrook Police Department v. Illinois Workers' Compensation Comm'n*, 2015 IL App (3d) 130869WC, ¶ 50, 48 N.E.3d 679.

¶ 68 "Whether a causal connection exists between an employee's condition of ill-being and his or her employment is a question of fact for the Commission." *Id.* ¶ 52, 48 N.E.3d 679. "The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence." *Mansfield*, 2013 IL App (2d) 120909WC, ¶ 28, 999 N.E.2d 832. "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent." *Id.*

¶ 69 Additionally, "[i]t is within the province of the Commission to resolve conflicts in the evidence, especially as they relate to medical opinion evidence." *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 538, 865 N.E.2d 342, 353 (2007). On review, "[t]he relevant inquiry is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other might reach an opposite conclusion." *Id.* at 538-39, 865 N.E.2d at 353.

¶ 70

1. March 2013 Accident

¶ 71 Claimant initially contends the Commission erred in finding his March 2013 accident caused only temporary aggravations of the preexisting conditions of ill-being in his neck, low back, and left knee and no aggravation to the preexisting condition of ill-being in his left hip. In reaching its decision, the Commission relied on findings that (1) claimant provided confusing and inconsistent testimony, and was not forthright with his treating doctors; (2) claimant had significant preexisting conditions; (3) the mechanism of claimant's injury did not suggest significant injuries to claimant's low back, neck, left knee, or left hip; and (4) the opinions of Dr. Rothrock, Dr. Robson, and Dr. Smith were entitled to greater weight than those of Dr. Gornet and Dr. Mall. After reviewing the record, we find it contains sufficient support for the Commission's decision.

¶ 72 First, the Commission's decision indicates it found claimant was not credible. The record supports this finding, showing claimant's testimony was inconsistent with information contained in his medical records and that he provided histories to his treating physicians that failed to accurately describe his preexisting conditions. At arbitration, claimant initially acknowledged having preexisting injuries to his low back and left knee; however, medical records additionally reflect numerous complaints with respect to his left hip and neck. Claimant further testified that, after September 2012 and before his March 2013 accident, his neck and back were "doing great," he was not experiencing symptoms of pain, and he did not think he sought treatment relative to those conditions. He also denied having left knee related complaints after being released from Dr. Paletta in April 2011. However, Dr. Ahmed's records contradict claimant's testimony, showing numerous reports of left knee symptoms between April 2011 and March 2013, and reports of "severe back pain," neck pain, left knee pain and "left hip chronic pain" in February 2013, the month prior to claimant's work accident. Additionally, even Dr.

Gornet testified claimant continued to experience a mild degree of neck and back pain after surgery.

¶ 73 Further, both Dr. Munhofen's records and Dr. Mall's records indicate claimant failed to provide a complete and accurate history of his preexisting conditions. In April 2013, claimant sought treatment from Dr. Munhofen and reported pain in his lower back, neck, and left knee. However, despite having a long history of symptoms in each of those body parts, Dr. Munhofen noted claimant's medical history revealed "no evidence of same or similar complaints." Additionally, the record indicates Dr. Mall was unaware of claimant's significant pre-accident left knee complaints as he testified during his deposition that, between the time of claimant's surgery with Dr. Paletta in January 2011 and claimant's March 2013 accident, claimant was not having any knee-related problems.

¶ 74 Second, in reaching its decision the Commission noted claimant had "significant preexisting low back, left knee[,] and left hip problems, as well as complaints relative to the neck." It pointed out claimant "had previously undergone surgeries on his low back, left knee and left hip, and complained of persistent symptoms after the surgeries." Again, the record supports these findings and, in fact, shows claimant continued to report symptoms in the month prior to his March 2013 accident. As discussed above, the evidence presented contradicts assertions by claimant that he was asymptomatic in the months prior to his accident and that he did not seek medical treatment.

¶ 75 Third, the Commission found the mechanism of injury as described by claimant and eyewitnesses did not "suggest significant injuries to the low back, neck, left knee[,] or left hip." At arbitration, claimant testified he was attempting to make an arrest in March 2013 when the subject he was arresting attempted to break free by "pulling" and "jerking" away. He stated

that, during the altercation, he went "straight down" and struck his left knee. Incident reports prepared by both claimant and other police officers shortly following the offense fail to indicate claimant struck his knee or fell to the ground in any fashion. Rather, they reflect only that claimant was holding onto a subject who was pulling or jerking away from him. Further, the initial accident histories recorded by Dr. Ahmed and Dr. Munhofen also describe the incident as involving a suspect pulling or jerking away from claimant. They similarly do not describe claimant as falling or striking his knee. Given the evidence presented, we cannot say an opposite conclusion from that reached by the Commission was clearly apparent.

¶ 76 Fourth, the record shows the Commission relied on the medical opinions of Dr. Rothrock, Dr. Robson, and Dr. Smith over those of Dr. Gornet and Dr. Mall. It found Dr. Mall's opinions were "lacking in solid basis" and Dr. Gornet's opinions "border[ed] on speculative." The record reflects Dr. Smith opined claimant's lower back was strained as a result of his March 2013 accident and stated "MRI findings *** reveal[ed] preexisting degenerative changes likely *** due in part to the natural aging process, previous trauma[,] and hereditary factors." Dr. Smith found no evidence that claimant's March 2013 injury caused new or worsening spinal degeneration or stenosis.

¶ 77 The record further shows Dr. Robson examined claimant's neck and back and reported that his findings were normal. He reviewed claimant's MRI films from both before and after the March 2013 accident and found the MRIs of his lower back were "very similar" with no significant differences. With respect to claimant's neck, he noted a September 2012 MRI was "relatively normal" and showed "no acute herniated disc" and no evidence of degenerative findings. He stated claimant's June 2013 MRI showed no acute disc and no disc bulges. Dr. Robson diagnosed claimant with cervical and lumbar strains and stated he believed claimant suffered on-

ly a temporary exacerbation of symptoms.

¶ 78 Finally, Dr. Rothrock offered opinions with respect to claimant's left knee. He compared MRIs of the left knee from before and after the March 2013 accident and found no significant differences. He opined claimant was "struggling with patellofemoral pain," which was not a new diagnosis for claimant. Although he believed claimant's left knee condition was temporarily exacerbated by his March 2013 injury, he found claimant had reached the point of MMI. Further Dr. Rothrock did not believe claimant required ACL reconstruction, noting his ACL "felt intact" and claimant did not have instability on examination.

¶ 79 Each of the aforementioned medical opinions supports the Commission's decision. Although Dr. Gornet and Dr. Mall offered conflicting opinions, as discussed, the resolution of conflicts in the medical evidence is particularly within the province of the Commission. In this instance, we find no error in the manner in which the Commission resolved those conflicts. We note claimant argues his continued symptoms after March 2013 support a finding of more than a temporary aggravation of his preexisting condition. However, as discussed, claimant's medical records reflect a long history of similar complaints that, at times, were described as chronic and which remained present in the month before his March 2013 accident. Given this evidence, we find no error by the Commission and its decision was not against the manifest weight of the evidence.

¶ 80 *2. February 2014 Accident*

¶ 81 Finally, on appeal, claimant argues the Commission erred in finding he failed to prove that he sustained injuries to his neck, left knee, left hip, or low back as a result of his February 2014 accident. The record shows the Commission found as follows with respect to claimant's February 2014 accident:

"Regarding the accident on February 15, 2014, the Commission notes that contrary to [claimant's] claim of being in severe pain after the accident, he did not seek immediate medical care and failed to provide a history of accident to Dr. Munhofen, Dr. Gornet[,] or Dr. Mall, although he did give a history of accident to Dr. Ahmed two months later. The Commission finds that [claimant] failed to prove he sustained any injury to his neck or left knee. With respect to the low back and left hip, the Commission notes preexisting problems, questions regarding [claimant's] credibility, and lack of an expert opinion on causal connection. The Commission therefore finds that [the employer] is not liable to pay benefits in connection with the accident."

¶ 82 Initially, claimant argues that, because the employer agreed on the parties' request for hearing form that he sustained accidental injuries that arose out of and in the course of his employment on February 15, 2014, the Commission lacked authority to deviate from that stipulation. However, as discussed, the Commission has the authority on review to consider "all questions of law or fact which appear from the statement of facts or transcript of evidence." 820 ILCS 305/19(e) (West 2012). Further, it "may override considerations of waiver" in furtherance of its responsibility to provide a just result. *Klein*, 384 Ill. App. 3d at 238, 892 N.E.2d at 115. Thus, we reject claimant's contention that the Commission acted without authority. Moreover, we note issues of causal connection and whether claimant's current conditions were related to his employment rather than his preexisting conditions were hotly contested by the parties.

¶ 83 Next, we find the Commission's decision with respect to the February 2014 acci-

dent was supported by the record. As noted by the Commission, claimant testified his accident caused significant pain but he did not report it to Dr. Gornet, Dr. Munhofen, or Dr. Mall, each of whom he saw following his alleged accident. Claimant did report the accident to Dr. Ahmed but not until nearly two months later. At that time, he reported falling on his left side and experiencing low back and left hip pain. He did not report pain in either his neck or left knee. Additionally, no medical opinion evidence was presented linking the conditions of ill-being in claimant's neck, left knee, left hip, or low back, to his February 2014 accident rather than his preexisting conditions.

¶ 84 On appeal, claimant argues no medical testimony is required in this case because "[i]t is plainly apparent from the evidence to any reasonable person that a slip and fall would clearly aggravate any prior injuries and/or cause new injuries to occur." While we do not dispute that medical testimony is not always necessary to establish a causal connection, there must be some *evidence* which provides a causal link between the claimant's employment and his condition of ill-being. In this instance, the only such evidence came from claimant, whom the Commission found was not credible. We find no error in that determination. An opposite conclusion from the one reached by the Commission is not clearly apparent and its decision is not against the manifest weight of the evidence.

¶ 85 III. CONCLUSION

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

¶ 87 Affirmed and remanded.