2017 IL App (1st) 160142WC-U

FILED: February 17, 2017

NO. 1-16-0142WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CARLOS MALDONADO, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (Organics/LaGrange, Inc., Appellee).	)))))))))	Appeal from Circuit Court of Cook County No. 14L50911 Honorable Kay M. Hanlon, Judge Presiding.

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

ORDER

¶ 1 *Held*: The Commission's finding that claimant's condition of ill-being after October 24, 2005, was not casually related to his work accident was supported by the record and not against the manifest weight of the evidence.

¶ 2 On April 28, 2005, claimant, Carlos Maldonado, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2004)), seeking benefits from the employer, Organics/LaGrange, Inc. Following a hearing, the arbitrator determined claimant sustained an accident on April 15, 2005, which arose out of and in the course of his employment, but that his current condition of ill-being was not causally related

to that accident. The arbitrator awarded claimant temporary total disability (TTD) benefits and medical expenses from April 15, 2005, to October 24, 2005.

¶ 3 On review, the Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. It also remanded the matter for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). On judicial review, the circuit court of Cook County confirmed the Commission's decision. Claimant appeals, arguing the Commission's finding that his condition of ill-being after October 24, 2005, was not causally related to his April 2005 work accident was against the manifest weight of the evidence. We affirm and remand.

¶ 4 I. BACKGROUND

¶ 5 At arbitration, the parties stipulated that claimant suffered a work-related accident on April 15, 2005, while working for the employer, a pharmaceutical manufacturer. At the time of the accident, claimant was 49 years old and had worked for the employer for approximately nine years. Claimant testified he held the position of "chemical operator" and his job duties included mixing chemicals, cleaning, performing preventative maintenance, unloading trucks, and lifting 50-pound bags of chemicals. On the day of his accident, claimant was cleaning a containment room and slipped while descending a ladder. He testified he fell on his back and buttocks and felt "a lot of sharp pain in [his] back right away."

¶ 6 Claimant acknowledged that he had "a long-standing back problem," which began on February 5, 1992, when he attempted to roll a 450-pound drum at work. Following that accident, claimant sought medical treatment from Dr. Charles Slack, an orthopedic surgeon. On July 13, 1993, Dr. Slack performed surgery on claimant in the form of a lumbar laminectomy at the L5-S1 level of claimant's spine.

¶ 7 Claimant testified, in May 2004, he injured his back while playing softball. He returned to Dr. Slack for treatment and reported "severe lower back pain and radiating right posterior leg pain to his calf." On July 28, 2004, Dr. Slack recommended a lumbar magnetic resonance imaging (MRI) scan, which claimant underwent on August 26, 2004. The impression from the MRI report was as follows:

> "1. A broad based left paracentral disc herniation at L5-S1 with possible early compression of left S1 nerve root. Facet degenerative changes are noted with compression of the right L5 nerve root.
>
> 2. Degenerative disc disease of lumbar spine specifically at L4-L5."

Dr. Slack's records show he reviewed claimant's MRI and found it showed claimant had "a large broad-based left herniation" at L5-S1 "and facet degenerative changes on the right." He recommended a lumbar epidural steroid injection and three to four weeks of physical therapy.

¶ 8 On November 3, 2004, claimant followed up with Dr. Slack. He reported having persistent lower back pain and pain in the right leg "more so than the left leg." Dr. Slack assessed claimant as having "a persistent right-sided radiculopathy with L4-5 facet hypertrophy and bilateral root compression and L5-S1 left central disc herniation and facet hypertrophy." He recommended a further epidural steroid injection and light-duty work with a 15-pound lifting restriction and no climbing.

¶ 9 At arbitration, claimant denied missing any work as a result of his May 2004 back injury. Although he acknowledged Dr. Slack recommended light-duty work for a period of time, claimant asserted he continued to perform his regular, full-duty work for the employer. Claimant

further testified he followed up with Dr. Slack in January 2005; however, he denied that he saw any doctor for back-related problems between January 2005 and April 15, 2005. Claimant also testified that he did not miss any work due to back problems during that January 2005 to April 2005 time frame.

¶ 10 We note Dr. Slack's medical records, which were submitted at arbitration, reflect that his last visit with claimant prior to the alleged April 2005 work accident was the November 3, 2004, follow-up appointment. They do not document a January 2005 visit with claimant or that he released claimant from his work restrictions.

¶ 11 Claimant testified, after his April 2005 accident, he experienced symptoms that were different from the symptoms he previously experienced. Specifically, he stated he had "sharp pains in both legs going into the bottom of [his] heels." Claimant stated the employer sent him to St. Francis Occupational Health Clinic for treatment (St. Francis). Medical records reflect claimant was seen at St. Francis on the day of his accident and reported that he hurt his lower back when he slipped while descending a step ladder and "fell to [the] ground (forward—back against ladder)." He was diagnosed with a low back contusion and strain, prescribed medication, and given lifting restrictions.

¶ 12 On April 18 and 25, 2005, claimant followed up at St. Francis and reported symptoms in his lower back and right leg. An MRI was recommended and claimant testified he was referred to Dr. Edward Sclamberg. On April 26, 2005, Dr. Sclamberg evaluated claimant. His records reflect claimant provided a history of his work accident and complained of persistent pain in his lower back with radiation into his right leg down to his ankle. Claimant acknowledged having lower back surgery in 1993 but reported he "had no problems until the present illness." Dr. Sclamberg noted claimant's straight-leg-raising test was positive at 45 degrees on the

right. His impression was that claimant "had a lumbosacral disc syndrome with possible herniated nucleus pulposus on the right." He recommended an MRI, medication, and that claimant continue work with restrictions. Claimant testified Dr. Sclamberg also recommended epidural steroid injections, which claimant underwent in May and June 2005. He stated the injections did not help his condition.

¶ 13 On May 2, 2005, claimant saw Dr. Keith Knapp, his family physician. Dr. Knapp recommended an MRI and referred claimant back to Dr. Slack. On May 3, 2005, claimant's MRI was performed. The MRI report states as follows:

> "At L5-S1, the left foramen is normal. The right appears open, it may be narrowed. There is no central canal stenosis. There is a suggestion of a right-sided herniated disc extending caudad to the disc space. I am uncertain if this is a true disc or possibly volume averaging. The patient will need to return for further imaging through the L5-S1 disc space extending caudad."

¶ 14 On June 8, 2005, claimant returned to see Dr. Slack. He provided a history of his work accident and asserted he "developed severe pain in his tailbone area and gradually pain through his right leg." Claimant complained that he had "persistent sharp pain in his lower back radiating down his right leg to his heel, especially with sitting, standing, bending[,] or twisting." Dr. Slack reviewed claimant's May 2005, MRI report, which he stated indicated claimant had "some degenerative changes at the facet joints and bilateral narrowing with a question of some swollen nerve root on the right." However, claimant's MRI was not performed with contrast to assess scar tissue versus disc pathology. Dr. Slack assessed claimant as having persistent severe right lumbar radiculopathy and recommended a lumbar MRI with and without contrast. He also

stated claimant was temporarily totally disabled and should remain so until he had better control of his pain. On June 25, 2005, claimant's MRI was performed. The impression from the MRI report was that claimant had "[a] small broad-based rightward disc protrusion or asymmetric disc bulging" that was in contact with "the right S1 nerve root at the L5-S1 disc level."

¶ 15 On July 6, 2005, claimant followed up with Dr. Slack and complained of "persistent pain through his right buttocks and posterior leg into his lower leg." Dr. Slack noted the findings on the June 2005 MRI report. He diagnosed claimant with persistent right-sided radiculopathy due to a recurrent herniated lumbar disc at L5-S1 on the right. Dr. Slack recommended a lumbar disc excision.

¶ 16 On August 22, 2005, claimant was examined by Dr. Andrew Zelby, a neurosurgeon, at the employer's request. Claimant provided a history of his April 2005 work accident and complained of constant pain in his low back and right leg. Dr. Zelby reviewed claimant's June 2005 MRI films, August 2004 MRI report, and Dr. Slack's records from 2004 and 2005. He found claimant had complaints consistent with a right S1 radiculopathy, which appeared to be related to claimant's April 2005 work accident and right herniated L5-S1 disc. However, Dr. Zelby found claimant's medical records contradicted a report by claimant that he did not experience recurrent leg symptoms until after his work injury. Specifically, he stated medical records showed claimant had radicular right leg pain prior to his work injury.

¶ 17 Nevertheless, Dr. Zelby stated that comparison of claimant's August 2004 MRI report and June 2005 MRI films suggested an interval change in claimant's condition, in that claimant developed "a right-sided disc protrusion at L5-S1 that by report was not present in August 2004." He recommended claimant attempt a couple of weeks of physical therapy and then surgery if physical therapy failed to provide claimant with relief. Further, he opined that, if

comparison of claimant's actual MRI films confirmed an interval change, then claimant's work accident resulted in his need for surgery. If no interval change could be confirmed, he would then relate claimant's condition of ill-being "to symptoms that began in 2004 while playing softball" and not his work accident.

¶ 18 On October 24, 2005, Dr. Zelby authored an addendum report following his review of claimant's August 2004 MRI films. He stated as follows:

> "Looking specifically at the L5-S1 level, there is degenerative disc disease at L5-S1. There is a broad-based bulging disc at this level, and superimposed on this is a modest paracentral left disc protrusion. In addition, looking at the axial T1 contrast images series 7 numbers 11 and 12, and the sagittal T1 contrast image series 6 number 7, there is a focal disc protrusion in the right lateral recess. As seen in the June 2005 MRI studies, this abuts the right S1 nerve root and causes slight poster to medial displacement on the right S1 nerve root.
>
> [Claimant] has a right S1 radiculopathy from a herniated L5-S1 disc. However, he had both radicular symptoms and the same herniated disc on his August 2004 MRI, and this disk herniation and those radicular symptoms were related to the herniation that appears to have occurred while playing softball in June 2004. His current complaints are related to that same disk herniation that has undergone no interval change. His need for surgery is related

> to a disk herniation that occurred as a result of his softball activities, and not his work injury."

¶ 19 The record reflects claimant followed up with Dr. Slack in October and November 2005. On November 9, 2005, he reported ongoing symptoms of right leg radiating pain with sustained activity. Dr. Slack noted claimant also "clarified the situation of the flare-up of pain that he had last year after a softball game." He stated as follows:

> "[Claimant] had undergone a lumbar MRI scan at that time in August 2004[,] and the reading of that MRI scan indicated that [claimant] had a broad-based left paracentral disk herniation at L5-S1 with some facet degenerative changes and post-surgical changes on the right side. [Claimant] had undergone two epidural steroid injections last year. He was on light-duty from August to January and then returned to his full-duty without restrictions as of January. He worked full-duty without missing any time from work until his injury this year on April 15, 2005. The new MRI scan *** indicated that there was right-sided disk herniation at this point in time which the radiologist had not described previously."

Dr. Slack opined claimant's ongoing symptoms were related to his April 2005 work accident rather than his May 2004 softball injury. He noted that, in January 2005, following the softball incident, claimant returned to full-duty work without restrictions and he "was not having any leg symptoms prior to his April 2005 injury." On December 21, 2005, Dr. Slack performed surgery on claimant in the form of "L5-S1 re-exploration with neurolysis and excision of recurrent disk herniation."

¶ 20 After surgery, claimant continued to follow up with Dr. Slack. On January 12, 2006, Dr. Slack stated claimant's condition was improving, noting that, although he still had some pain, it had decreased in intensity. He recommended physical therapy and stated claimant remained temporarily totally disabled. On February 15, 2006, Dr. Slack stated claimant continued to progress but had ongoing symptoms. He recommended continued physical therapy and that claimant remain off work. On March 15, 2006, Dr. Slack noted claimant was mainly having back pain and not much leg pain. He determined claimant was progressing satisfactorily and recommended four additional weeks of physical therapy followed by a functional capacity evaluation (FCE) to determine his physical abilities.

¶ 21 On April 25, 2006, claimant underwent an FCE. The FCE report stated claimant demonstrated physical capabilities in the light to medium categories of work. On April 26, 2006, claimant returned to Dr. Slack. After reviewing the results of claimant's FCE, Dr. Slack opined claimant was unable to perform his normal work duties. He stated the FCE indicated claimant had lifting abilities of an occasional lift of 35 pounds and a frequent lift of 20 pounds, while his work for the employer required frequent lifting of 50 pounds. Dr. Slack recommended claimant return to work with permanent lifting restrictions as set forth in claimant's FCE. He also stated claimant was at maximum medical improvement (MMI).

¶ 22 At arbitration, claimant testified that the employer was unable to accommodate his work restrictions and he was terminated from his employment. He stated he looked for employment elsewhere. On cross-examination, claimant acknowledged that he was offered a job with DSM Nutritional Products (DSM) in February 2006 but he turned it down. The employer submitted an exhibit containing records from DSM, which reflect that, in June 2006, claimant turned down an offer of employment because of unexpected "family medical problems."

¶ 23 The record shows claimant followed up with Dr. Slack on September 6, 2006; February 7, 2007; and November 20, 2007. On September 6, 2006, he reported ongoing pain in his back, which was "knife-like" on the right side of his low back. Dr. Slack recommended claimant continue his home exercise program. On February 7, 2007, Dr. Slack noted claimant had good days and bad days and increased pain with any sustained activity. Claimant reported his pain was in his lower back and down his right leg. Dr. Slack recommended work restrictions as identified in the FCE and directed him to follow up in four months if necessary. On November 20, 2007, Dr. Slack noted claimant "had been doing reasonably well" but experienced a severe flare-up of back pain after sneezing three weeks earlier. Claimant denied having any leg pain and Dr. Slack recommended a lumbar MRI.

¶ 24 At arbitration, claimant submitted Dr. Slack's deposition, taken February 2, 2007. Dr. Slack described his treatment of claimant and noted differences he found in claimant's August 2004 and June 2005 MRI scans. He stated as follows:

> "The difference is the MRI from August [2004] showed a left-sided disc protrusion but only some degenerative changes on the right. The MRI scan from June [2005] actually showed a right-sided disc protrusion, which was not present in the August [2004] study, and this was at the L5-S1 level."

When questioned as to whether he reviewed claimant's August 2004 MRI films himself, Dr. Slack testified as follows: "Usually I try to do that. The films are kept over at the hospital, and I try to review them there."

¶ 25 Dr. Slack opined claimant's low back condition of ill-being was either caused or aggravated by his April 2005 work accident and that he considered the work restrictions he rec-

ommended in April 2006 to be permanent restrictions. His causation opinion was based on the fact that, after receiving treatment in 2004, claimant's condition improved to the point that he returned to regular duty work "for at least four months" before his April 2005 accident. Dr. Slack noted claimant did not seek any medical treatment during that time frame but, following his April 2005 work accident, claimant experienced symptoms "and had a new MRI scan that was different in its findings [when] compared to the prior [August 2004] study." Additionally, Dr. Slack noted that evidence of a right-sided disc herniation was found after claimant's work accident and had not been present on claimant's prior MRI scan.

¶ 26 On cross-examination, Dr. Slack agreed that claimant had straight leg raising tests that were positive on the right at 45 degrees following his injury in 1992, his 2004 softball injury, and his April 2015 work accident. Further, he testified that his records did not reflect that he released claimant to full-duty work in January 2005. Rather, claimant reported to him that he returned to full-duty work at that time.

¶ 27 The record shows the employer submitted Dr. Zelby's deposition, taken August 27, 2007. Dr. Zelby testified that when reviewing claimant's actual MRI films from August 2004 and June 2005, he detected no differences. He reiterated his opinion, as reflected in his October 2005 addendum report, that claimant's condition of ill-being was unrelated to his April 2005 work accident. Dr. Zelby testified there was no interval change in claimant's condition after his work accident. He determined claimant's condition of ill-being and need for surgery was causally related to claimant's 2004 softball activities and not his employment.

¶ 28 Claimant testified, on June 29, 2008, he began working for DSM as a "production operator." He described his new job as "[a]lmost the same" as his work for the employer; however, his new employer agreed to his physical limitations. On January 26, 2009, claimant took a

voluntary leave of absence from DSM and, on March 30, 2009, he resigned from his employment. Claimant testified he could no longer perform his job duties. He testified his work required a lot of walking and he was "having too much back pain."

¶ 29 On February 5, 2009, claimant returned to see Dr. Slack, who noted his last visit with claimant had been in November 2007. Dr. Slack stated, at that time, he recommended a lumbar MRI, which was never performed. He further stated that, since that time, claimant had been having ongoing back symptoms and pain. Claimant reported that, while working for DSM, he developed increased pain in his lower back and radiating pain into his left leg with numbness into his foot. Dr. Slack's impression was "persistent left lumbar radiculopathy status post lumbar disk surgery in 2005 for [a] recurrent disk herniation at the L5-S1 level." He recommended a lumbar MRI, which was performed on February 24, 2009. The impression on the MRI report was that claimant had a small recurrent disc protrusion at L5-S1 on the right and evidence of fibrosis in the right lateral recess and right neural foramina at L5-S1.

¶ 30 Dr. Slack's records show, on March 19, 2009, claimant complained of left leg numbness down to the bottom of his foot in addition to his lower back and right leg pain symptoms. Dr. Slack stated he was concerned claimant's left-sided symptoms could be the result of claimant trying to accommodate his right side by altering his gait pattern. Dr. Slack recommended medication and then further evaluation.

¶ 31 Claimant followed up with Dr. Slack on August 20, 2009, and reported persistent left leg symptoms. Dr. Slack reviewed claimant's February 2009 MRI and stated it showed "evidence of post surgical changes at the L5-S1 level on the right with what appear[ed] to be a small recurrent disk herniation" as well as "some diffuse disk bulging across toward the left side" at the same level. He recommended an electromyography (EMG) study of claimant's lower extremi-

ties. On February 1, 2010, claimant followed up with Dr. Slack, who noted claimant had persistent left lumbar radicular symptoms and continued to recommend an EMG study. On February 28, 2010, Dr. Slack prepared a report in which he opined claimant was in need of further evaluation and that claimant's ongoing symptoms were causally related to his April 2005 work accident. Dr. Slack stated claimant "had been having ongoing symptoms since [his work accident] with no pain free interval."

¶ 32 On May 7, 2010, Dr. Zelby reevaluated claimant at the employer's request. He continued to find that claimant's condition of ill-being was not causally related to his work accident. Dr. Zelby stated as follows:

> "[Claimant] reported that he sustained an injury at work in April 2005, with resultant right leg pain. However, he had both the same symptoms before and after his April 2005 reported injury, and the same findings on his diagnostic studies before and after his reported April 2005 injury. Dr. Slack's office notes from before and after April 2005 also contain the same diagnosis of a recurrent right lumbar radiculopathy. With the exception of a transient mention of left leg pain, all of the records in 2004, 2005, 2006[,] and 2007[,] described right leg symptoms and Dr. Slack's diagnosis of a recurrent right lumbar radiculopathy. Dr. Slack's previous suggestion that [claimant's] symptoms in 2005 were the result of a work injury is a direct contradiction of his own office notes. His suggestion now that [claimant's] more recent complaints are a recurrence of the same problem are also a direct contradiction of his

> own office notes, since the previous notes describe right leg pain. *** [Claimant's left leg symptoms] are new, and are unrelated to a work injury it [*sic*] was reported to have occurred four years prior to the onset of those symptoms. Irrespective of cause, the right sided herniated disc that he was found to have in 2004 and 2005 is a competent cause for right leg pain. It is not a cause for left leg pain. His more recent MRI also shows no evidence for any neural impingement and [*sic*] the left that would result in left leg pain."

Dr. Zelby further opined an EMG study was unnecessary and claimant was not a candidate for surgical intervention. He stated claimant could pursue all of the same activities he pursued prior to April 2005, without any restrictions, noting claimant's "medical records clearly document[ed] that he had the same symptoms prior to April 2005 but worked without restrictions."

¶ 33 On January 6, 2011, claimant slipped in the parking lot of a Baker's Square restaurant and fell on his back. He stated he "knew [he] hurt [himself] again." Claimant sought medical treatment from Advocate Christ Medical Center (Advocate) and provided a history of his slip and fall. He reported landing on his back and right hand.

¶ 34 On January 12, 2011, an MRI was performed on claimant's lumbar spine. The MRI report stated claimant had "a right posterolateral/lateral protruded herniated disc/osteophyte complex along with right facet hypertrophy at [the] L5-S1 level on the right side" causing "severe right foraminal stenosis with associated compression of [the] exiting right L5 nerve root and dorsal root ganglion within the right foramen."

¶ 35 Claimant testified that following his January 2011 fall, he received treatment from Dr. Caleb Lippman. Medical records reflect Dr. Lippmann recommended epidural steroid injec-

tions and referred claimant to Advocate's pain management center. On February 21, 2011, claimant was seen at the pain management center by Dr. Ravi Kumar. He provided a history of experiencing lower back and right lower extremity pain since January 2011. Claimant reported undergoing back surgery in 1993 and 2005, and "doing well with occasional pain on and off" that he managed with over-the-counter medication. Dr. Kumar recommended a lumbar epidural steroid injection, which he performed on February 25, 2011.

¶ 36 On March 7, 2011, claimant followed up with Dr. Slack and provided a history of his January 2011 slip and fall. Dr. Slack noted claimant fractured his right hand in the fall and had a severe flareup of his lower back and right leg pain. His impression was "recurrent right-sided L5-S1 disk herniation with severe lumbar radiculopathy." Further, Dr. Slack stated claimant "may require a lumbar disk excision on the right" for his recurrent herniation. On April 4, 2011, Dr. Slack noted claimant had undergone a second lumbar epidural steroid injection and was undergoing physical therapy but his symptoms persisted with no significant improvement. He recommended a lumbar disk excision.

¶ 37 On May 19, 2011, Dr. Lippman performed surgery on claimant's back in the form of a "[r]ight-sided L5-S1 facetectomy, foraminotomy." Claimant testified his condition did not change after surgery and he continued to experience pain in his back and pain to the bottom of his feet and heels.

¶ 38 On August 15, 2011, claimant followed up with Dr. Slack and reported continued symptoms in his lower back and "down his leg." Dr. Slack noted he discussed treatment options with claimant. He recommended medication and consideration of a fusion procedure if claimant's symptoms continued. On November 16, 2011, Dr. Lippman performed lumbar fusion surgery on claimant. From December 2011 to March 2012, claimant followed up with Dr. Kumar,

who diagnosed him with postlaminectomy syndrome and recommended managing claimant's pain with long-acting opiate medications.

¶ 39 On March 29, 2012, claimant followed up with Dr. Slack and reported feeling better but that he experienced severe pain in the mornings. Dr. Slack recommended claimant continue working with his surgeon and found that claimant remained disabled from work. On March 30, 2012, Dr. Kumar performed a caudal epidural steroid injection on claimant and, on May 10, 2012, he performed a lumbar epidural steroid injection.

¶ 40 On October 3, 2012, Dr. Slack authored a report in which he opined claimant's current condition of ill-being was causally related to his April 2005 work accident. He noted claimant had continued symptoms and had "not had any pain-free interval [of] time." Dr. Slack also opined that claimant's January 2011 fall in a restaurant parking lot may have aggravated claimant's condition and hastened the need for additional surgery. However, he stated that, had it not been for claimant's April 2005 accident, he would not have required additional surgical intervention.

¶ 41 On February 20, 2013, Dr. Zelby authored an addendum report after reviewing additional medical records. He stated his previous opinions remained unchanged and that "[b]ased on [claimant's] apparent hiatus in treatment between 2008 and 2011[,] after a fall on ice, his treatment in 2011 and 2012 [was] the result of this fall in January 2011." Dr. Zelby opined there was "no medical evidence to suggest that [claimant's] condition is in any way related to any work injury or work activities, and there [was] medical evidence that document[ed] that his condition [was] not related to such an injury or activity."

¶ 42 Claimant testified he last saw Dr. Lippman in March 2013, shortly prior to arbitration. He testified that, currently, he was "way better," stating his fusion surgery "really

helped." However, claimant asserted his back would stiffen up as a result of his surgery and he experienced a lot of pain in the morning.

¶ 43 On May 20, 2013, the arbitrator issued her decision. She found claimant sustained accidental work-related injuries on April 15, 2005, in the form of a lumbar strain and a temporary aggravation of claimant's pre-existing degenerative disc disease. However, the arbitrator determined claimant's work-related injury "resolved on or about October 24, 2005," and his condition of ill-being after that date was not causally related to his employment. In so holding, the arbitrator found Dr. Zelby's opinions more persuasive than those provided by Dr. Slack, noting Dr. Zelby found claimant's "pre-existing L5-S1 disc herniation had undergone no interval change" following his work accident. She further stated as follows:

> "The [a]rbitrator further notes that [claimant] worked 40 hours a week for over seven months for a new employer, [DSM], from June 29, 2008[,] to January 26, 2009[,] with no documented complaints of pain. Additionally, [claimant] received no active medical care during that period. [Citation.] The Arbitrator additionally notes that [claimant] sustained an intervening accident to his lumbar spine on January 6, 2011, when he slipped on black ice in a restaurant parking lot. Before that slip and fall, he had not received medical treatment for his back since August 20, 2009. After that January 2011, intervening injury, [claimant] underwent significant medical treatment to his lumbar spine[,] including a May 19, 2011, L5-S1 facetectomy and a November 16, 2011, lumbar fusion surgery."

¶ 44 On October 31, 2014, the Commission affirmed and adopted the arbitrator's decision without further comment. It also remanded the matter to the arbitrator for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322. On December 18, 2015, the circuit court of Cook County confirmed the Commission's decision.

¶ 45 This appeal followed.

¶ 46 II. ANALYSIS

¶ 47 On appeal, claimant argues the Commission erred in finding no causal connection between his April 2005 work accident and his current condition of ill-being. He maintains the evidence presented at arbitration supports his contention, showing that he did not miss any work in 2004 after his softball injury and was asymptomatic in the months prior to his April 2005 accident, while after his work accident, the state of his health changed, he was unable to perform full-duty work, and he required extensive medical care.

¶ 48 In workers' compensation proceedings, the claimant has the burden of establishing a causal connection between his employment and his condition of ill-being. *ABF Freight System v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19, 45 N.E.3d 757. When an employee has a preexisting condition, he must "show 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 have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 204-05, 797 N.E.2d 665, 672 (2003). "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." (Emphasis in original). *Id*. at 205, 797 N.E.2d at 673.

¶ 49 Whether a causal connection exists is a question of fact for the Commission. *ABF Freight System*, 2015 IL App (1st) 141306WC, ¶ 19, 45 N.E.3d 757. On review, the Commission's factual findings will not be disturbed unless they are against the manifest weight of the evidence. *Bolingbrook Police Department v. Illinois Workers' Compensation Comm'n*, 2015 IL App (3d) 130869WC, ¶ 38, 48 N.E.3d 679. "A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent." *Id.*

¶ 50 Additionally, "[a]s the trier of fact, the Commission is primarily responsible for resolving conflicts in the evidence, assessing the credibility of witnesses, assigning weight to evidence, and drawing reasonable inferences from the record." *ABF Freight System*, 2015 IL App (1st) 141306WC, ¶ 19, 45 N.E.3d 757. "This is especially true regarding medical matters, where we owe great deference to the Commission due to its long-recognized expertise with such issues." *Id.* On review, the appropriate test is whether the record contains sufficient evidence to support the Commission's decision, not whether this court might reach the same conclusion. *Dig Right In Landscaping v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739.

¶ 51 Initially, we note claimant suggests a *de novo* standard of review applies because relevant facts in the case are undisputed and susceptible to only a single inference. See *Johnson v. Illinois Workers' Compensation Comm'n*, 2011 IL App (2d) 100418WC, ¶ 17, 956 N.E.2d 543 (stating this court will apply a *de novo* standard of review "when the facts essential to our analysis are undisputed and susceptible to but a single inference, and our review only involves an application of the law to those undisputed facts"). We disagree and find essential facts are in dispute, most notably, the precise nature of claimant's condition of ill-being at the time of his August 2004 MRI and whether his June 2005 MRI reflected any significant change in that condi-

tion. Thus, we decline to accept claimant's suggestion that a *de novo* standard applies and, instead, consider whether the Commission's causation decision is against the manifest weight of the evidence.

¶ 52 In this case, claimant sustained an undisputed work-related accident on April 15, 2005. As stated, the Commission determined his work accident caused only a lumbar strain and a temporary aggravation of his preexisting lower back condition. It determined claimant's work-related condition "resolved on or about October 24, 2005," the date of Dr. Zelby's first addendum report. After reviewing the record, we find it contains sufficient support for the Commission's decision and it is not against the manifest weight of the evidence.

¶ 53 In reaching its decision, the Commission relied on Dr. Zelby's medical opinions. The record shows that, after reviewing the actual films from claimant's pre- and post-accident MRIs, Dr. Zelby determined the same disc herniation was present on both tests and had "undergone no interval change" between the time of the two scans. He stated that claimant's pre-accident, August 2004 MRI, showed "a broad-based bulging disc" at the L5-S1 level with a "modest paracentral left disc protrusion." However, he also described "a focal disc protrusion in the right lateral recess" that "[a]s seen in the [post-accident,] June 2005 MRI studies, *** abuts the right S1 nerve root and causes slight poster to medial displacement on the right S1 nerve root." Dr. Zelby found claimant had a right S1 radiculopathy from his herniated L5-S1 disc that was present in 2004 and causally related to claimant's softball injury.

¶ 54 Although Dr. Slack offered a contrary medical opinion, finding claimant's pre-and post-accident MRIs showed a change in his condition, the Commission expressly found Dr. Zelby more persuasive. As discussed, it is particularly within the province of the Commission to resolve conflicts in the medical evidence. Under the circumstances presented, we find no error

in the Commission's reliance on Dr. Zelby's opinions over those offered by Dr. Slack. As pointed out by the employer on appeal, it is unclear from the record whether Dr. Slack reviewed claimant's actual MRI films from August 2004, or simply relied on the MRI report. At his deposition, Dr. Slack could only state that reviewing the actual films at the hospital was his "usual" practice. Moreover, we note Dr. Zelby's opinions are supported by claimant's medical records, which show that both before and after his work accident he complained of radicular symptoms in his right leg and was diagnosed by Dr. Slack with persistent right-sided radiculopathy.

¶ 55 To support his arguments on appeal, claimant maintains his softball injury did not cause him to miss any work in 2004 and he was asymptomatic immediately prior to April 2005. However, the record shows claimant acknowledged having long-standing lower back problems that began in 1992. He underwent surgery in 1993 and, in May 2004, less than a year prior to his work accident, he sustained injuries to his lower back while playing softball. Claimant reported similar symptoms to those he reported after his work accident and received the same diagnosis. As of November 2004, he reported persistent lower back and right leg pain and was given light-duty work restrictions by Dr. Slack. Dr. Slack's records fail to reflect claimant was ever released from those restrictions.

¶ 56 At arbitration, claimant asserted that he did not follow Dr. Slack's work restrictions and continued to perform full-duty work for the employer. However, Dr. Slack's records and testimony show otherwise. In particular, Dr. Slack's records from November 2005, indicate claimant reported that he began performing light-duty work in August 2004, and then returned to full-duty work in January 2005. Similarly, at his deposition, Dr. Slack testified claimant reported that he returned to full-duty work for the employer in January 2005. Thus, contrary to claimant's contention on appeal that his 2004 softball injury did not significantly affect his

ability to perform work, the record contains evidence indicating his injury did require the performance of light-duty work for several months in 2004.

¶ 57 Given the evidence presented, we cannot say an opposite conclusion from that reached by the Commission was clearly apparent. The Commission's determination that claimant's condition of ill-being after October 24, 2005 was not casually related to his work accident was supported by Dr. Zelby's opinions and claimant's medical records, which demonstrated similar pre- and post-accident symptoms and diagnoses. Given our resolution of this issue, we find it unnecessary to address issues related to claimant's January 2011 fall in a restaurant parking lot and whether it constituted an intervening accident.

¶ 58 III. CONCLUSION

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

¶ 60 Affirmed and remanded.