2017 IL App (1st) 161651WC-U

Workers' Compensation
Commission Division
Order Filed: June 30, 2017

No. 1-16-1651WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PETRA FLORES, Plaintiff-Appellant/Cross-Appellee, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.*, (Executive Mailing Services, Inc., Defendant-Appellee/Cross-Appellant).	)	Appeal from the Circuit Court of Cook County No. 15 L 50579 Honorable Kay M. Hanlon, Judge, Presiding.

EXECUTIVE MAILING SERVICES, INC., Counterplaintiff-Appellee/Cross-Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (Petra Flores, Counterdefendant-Appellant/Cross-Appellee).	)	Appeal from the Circuit Court of Cook County No. 15 L 50598 Honorable Kay M. Hanlon, Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hudson, Harris, and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: We concluded that: (1) the Commission's finding that the claimant's work accident did not cause her current condition of ill-being is not against the manifest weight of the evidence; (2) the Commission's refusal to order the claimant's employer to pay for certain contested medical bills is not against the manifest weight of the evidence; (3) the Commission did not err in declining to admit certain medical "fee schedule calculations" and assignment agreements into evidence; (4) the Commission's award of permanent partial disability benefits based upon a finding that the claimant's injuries resulted in a 5% loss of use of the person as a whole is not against the manifest weight of the evidence; (5) the Commission's denial of temporary total disability benefits is not against the manifest weight of the evidence; (6) the Commission did not err in denying the claimant's request for penalties and attorney fees; and (7) the portion of the Commission's decision which required the claimant's employer pay for her post-operative physical therapy and functional capacity evaluation is against the manifest weight of the evidence.

¶ 2 The circuit court entered an order confirming a decision of the Illinois Workers' Compensation Commission (Commission) which resolved a claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) brought by the claimant, Petra Flores, against her employer, Executive Mailing Services, Inc. (EMS), for injuries she sustained while working on April 9, 2008. The claimant has appealed, arguing that: (1) the Commission's finding that there is no causal connection between her work accident and her current condition of ill-being is against the manifest weight of the evidence; (2) the Commission's refusal to order EMS to pay certain of her medical bills is against the manifest weight of the evidence; (3) the Commission abused its discretion in refusing to admit certain documents relating to the payment medical bills into evidence; (4) the Commission's award of permanent partial disability (PPD) benefits is against the manifest weight of the evidence; (5) the Commission's denial of temporary total disability (TTD) benefits is against the manifest weight of the evidence; and (6) the Commission erred in failing to award her additional compensation in the form of penalties and

attorneys fees. EMS has filed a cross appeal, arguing that the Commission erred in ordering it to pay for the claimant's post-operative medical care and a functional capacity evaluation (FCE). For the reasons which follow, we: reverse that portion of the Commission's decision requiring EMS to pay for the claimant's post-operative therapy and FCE; reverse that portion of the circuit court's judgment which confirmed that portion of the Commission's decision; and affirm the circuit court's judgment in all other respects.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing held on August 20, 2014.

¶ 4 The claimant testified that, on April 9, 2008, she was employed by EMS as a mailing machine operator. While working that day, she bent down, lifted a box of mail weighing 25 to 30 pounds, and, as she set the box on a mailing machine, felt a "crack" and pain in her back. Ten minutes later, she took a break but did not inform her supervisor about the incident and continued working. On April 17, 2008, the claimant woke up with severe pain and arrived at EMS unable to walk. That morning, her supervisor sent her to Concentra Medical Center (Concentra).

¶ 5 Dr. Cindy Ross examined the claimant at Concentra. Dr. Ross's notes state that the claimant reported non-radiating bilateral lumbar pain, tenderness in her right paraspinous muscle between L4 and S1, and decreased range of motion. Bilateral leg raises were negative, and the claimant denied a history of back pain. Dr. Ross diagnosed a lumbar strain, prescribed pain medication, and prohibited the claimant from: lifting more than 10 pounds; bending more than 5 times per hour; and pushing or pulling more than 20 pounds. When the claimant presented on April 21, 2008, Dr. Ross observed Waddell signs for "overreaction" and "distraction," but

ordered a home exercise program and restricted her from lifting more than 5 pounds and pushing or pulling more than 10 pounds.

¶ 6 The claimant testified that, due to difficulty standing, she did not work on May 6, 2008, and treated with Dr. Fernando Perez, a chiropractor, on May 9. Dr. Perez's notes state that the claimant reported pain in her mid and lower back and numbness in her lower left leg. Bilateral leg raises were positive. Dr. Perez diagnosed a thoracic sprain and strain, lumbar sprain and strain, and muscle spasm. He removed the claimant from work for two weeks and directed her to attend physical therapy.

¶ 7 Joel Bollero, a manager at EMS, testified that, in a letter dated May 13, 2008, EMS offered the claimant light-duty work that involved lifting no more than 10 pounds. According to Bollero, the claimant did not respond to the letter.

¶ 8 Per Dr. Perez's orders, the claimant underwent an MRI and EMG on May 15 and 16, 2008. The MRI, as interpreted by the radiologist, revealed: a two-millimeter left paracentral disc protrusion at L3-L4; a four-millimeter broad-based central herniation at L4-L5; and a seven-millimeter central herniation at L5-S1. The EMG, as interpreted by the electrodiagnostic examiner, indicated acute denervation of the left L5-S1 nerve roots.

¶ 9 On May 20, 2008, the claimant presented to Dr. Francisco Espinosa, a neurosurgeon. In a letter, Dr. Espinosa noted that the claimant exhibited positive bilateral leg raises and reported spinal process tenderness and numbness in her left leg and foot. Dr. Espinosa did not observe any "[i]nconsistent behavior responses." Based upon the MRI and EMG, he opined that the claimant's work accident caused an annular tear that herniated one week later, and that the L5-S1 hernia caused the numbness in her left leg and foot. Dr. Espinosa kept the claimant off work,

recommended three more weeks of physical therapy, and advised her regarding steroid injections and surgery.

¶ 10 On June 11, 2008, at EMS's request, the claimant presented for examination to Dr. Julie Wehner, a neurosurgeon. In her evidence deposition, Dr. Wehner testified that she examined the claimant and reviewed her MRI, EMG, and medical records. Dr. Wehner diagnosed the claimant with lower-back pain, but opined that her work injury neither caused nor aggravated her disc herniations.

¶ 11 Dr. Wehner stated that she based her opinion on several factors. First, Dr. Wehner testified that the claimant's leg raise—the most accurate means for testing whether her herniated discs were symptomatic—was negative. Second, the claimant's disc herniation at L5-S1 did not significantly impinge on her nerve root and would not cause the type of leg numbness that she reported. Third, the claimant exhibited moderate lower-back pain with axial compression and axial rotation, which is a Waddell sign indicating symptom magnification. Fourth, the claimant reported no sensation to light touch "in a nonanatomic distribution, which varied over the course of the exam in the entire left leg." Fifth, Dr. Wehner found no medical etiology to explain pain that the claimant reported in her foot and ankle when she moved her hip. Sixth, the claimant's neurological tests were normal.

¶ 12 Based upon her examination, Dr. Wehner found that the claimant's "subjective complaint of numbness in the entire [left] leg and *** low-back pain did not correlate" with her MRI. Therefore, she believed that the claimant's symptoms were "nonanatomic." Dr. Wehner concluded that the claimant could immediately resume light-duty work, lifting no more than 10 pounds the first week, 20 pounds the second week, and afterwards, resume full duty, *i.e.*, lifting 25 to 35 pounds. Dr. Wehner directed the claimant to attend 6 to 10 sessions of either physical

therapy or chiropractic care, and did not believe that any other treatment was reasonable or necessary. She opined that the claimant would reach maximum medical improvement (MMI) in three weeks.

¶ 13 In July and August 2008, per Dr. Espinosa's letters, the claimant presented with increased lower-back pain, leg pain, and positive bilateral leg raises. Dr. Espinosa recommended that she undergo steroid injections, attend physical therapy for five more weeks, and remain off work. Additionally, Dr. Espinosa ordered a discogram "to determine the exact source" of the claimant's pain in preparation for possible fusion surgery.

¶ 14 Dr. Wehner testified that she reviewed Dr. Espinosa's notes from August 2008 and opined that fusion surgery would be premature.

¶ 15 The claimant next treated with Dr. Krishna Chunduri, who administered an L5-S1 epidural steroid injection on September 15, 2008, and a bilateral L4-L5 and L5-S1 transforaminal epidural steroid injection on October 6. On October 24, Dr. Espinosa noted that the claimant exhibited no significant improvement from the injections or physical therapy.

¶ 16 On October 29, 2008, the claimant underwent a discogram and CT scan. As interpreted by the administering physicians, the discogram indicated concordant pain at L4-L5 and L5-S1, and the CT scan indicated annular tears at L4-L5 and L5-S1 with mild central canal stenosis due to disc bulges.

¶ 17 On November 5, 2008, Dr. Chunduri gave the claimant an L3-L4, L4-L5, and L5-S1 transforaminal epidural steroid injection and bilateral SI joint injection. An office note from November 25 indicated that the claimant still reported lower-back pain and occasional numbness and tingling in her legs.

¶ 18 Dr. Mark Lorenz, an orthopedic surgeon, examined the claimant on December 4, 2008. In his evidence deposition, Dr. Lorenz testified that the claimant did not display Waddell signs, which, due to "social differences," apply only to English speakers and not to the "Hispanic or immigrant population."

¶ 19 Dr. Lorenz further testified that he reviewed the claimant's EMG, discogram, and MRI report from May 15, 2008. During Dr. Lorenz's examination, the claimant exhibited back and leg pain, decreased reflexes in her left ankle, a positive left leg raise, and difficulty bending forward. Dr. Lorenz opined that her symptoms suggested an L5-S1 nerve root change and were consistent with her MRI. Dr. Lorenz diagnosed disc herniations at L4-L5 and L5-S1, radiculitis predominantly on the left side, and signs of segmental instability with axial back pain; he acknowledged, however, that herniated discs are not always symptomatic. Dr. Lorenz kept the claimant off work and advised her that she could "live with [pain] and remain in a dysfunctional state" or undergo surgery "since nothing else has worked."

¶ 20 Bollero testified that EMS terminated the claimant in December 2008, after the company stopped receiving doctors' notes and the claimant still did not report to work.

¶ 21 Dr. Wehner testified that, in January 2009, she reviewed a DVD prepared by EMS, which showed a worker purportedly performing the claimant's job duties. Dr. Wehner opined that the DVD depicted a "light-medium duty type job" and that there was "no reason why [the claimant] could not do" the tasks depicted. The claimant, in her testimony, stated that she also viewed the video and denied that it accurately depicted her job duties.

¶ 22 Dr. Stanley Fronczak, an orthopedic surgeon, examined the claimant on February 5, 2009. On that date, in a letter to Dr. Lorenz, Dr. Fronczak agreed with his findings and opined that the claimant had failed "conservative management."

¶ 23 Drs. Lorenz and Fronczak operated on the claimant on February 20, 2009. The doctors performed a discectomy and root decompression at L4-L5 and L5-S1, a double fusion at L4-L5 and L5-S1, and segmental fixation. During the surgery, per his operative report, Dr. Lorenz observed central disc herniations at L4-L5 and L5-S1.

¶ 24 Dr. Lorenz testified that, in March and April 2009, he examined the claimant and found that her back pain decreased, her leg pain ceased, and her left leg raise was negative. Post-operative x-rays and a CT scan were both normal. Dr. Lorenz opined that the claimant's herniated discs were causally related to the work accident because she was asymptomatic prior to the accident and her pain began after the accident. According to Dr. Lorenz, the motion she described causes stress to spinal discs, and, in his experience, could cause disc herniations, back pain, and leg pain. Dr. Lorenz stated that the MRI, discogram, CT scan, EMG, and the fact that the claimant's condition improved following surgery, all supported his opinion.

¶ 25 Dr. Lorenz also testified in detail regarding why various treatments that the claimant underwent both before and after her surgery were reasonable and necessary. EMS introduced into evidence numerous utilization reviews in which other physicians evaluated the treatments provided to the claimant and, frequently, refused to certify the treatments as reasonable and necessary.

¶ 26 Dr. Wehner testified that she examined the claimant a second time on April 8, 2009. According to Dr. Wehner, the claimant presented in moderate distress, moved slowly, and reported that her legs were painful and fell asleep. Her back was tender to palpitation from L1 to L5 and her leg raise caused pain in her lower back. The claimant told Dr. Wehner that she could walk one block with a cane, but was mostly sedentary and had not attempted to resume working. Dr. Wehner opined that, although the claimant's discogram indicated concordant pain at L4-L5

and L5-S1, her operation would not permanently improve her condition; therefore, the failure of conservative treatment did not justify surgery and the procedure was neither reasonable nor necessary.

¶ 27 Dr. Lorenz instructed the claimant to undergo physical therapy as part of her post-operative rehabilitation, which she attended for 27 sessions between May 13 and July 17, 2009. On July 22, 2009, per Dr. Lorenz's orders, she underwent a FCE. In a report, the therapist stated that the claimant could work at a light physical demand level and "occasionally" lift 19 pounds from the floor or above her shoulders, but could not perform her job at EMS, which required lifting of 25 to 35 pounds. The therapist opined that the claimant demonstrated gradual progress during two months of therapy and would benefit from a work hardening program.

¶ 28 Dr. Lorenz testified that the claimant reached MMI on August 31, 2009. On that date, he released her to work "based on the limitations" of the FCE. The claimant did not undergo work hardening, but Dr. Lorenz opined that it could have improved her functionality and allowed her to return to work at a medium physical demand level.

¶ 29 The claimant testified that, following her surgery, her condition improved and she did not feel pain in her legs for approximately one and a half years. During the first week of September 2009, she returned to EMS but was not offered a job. Three months later, she took similar work at another company but left after two months due to back pain from frequent bending. Afterwards, she worked placing coffee bags into boxes but quit after two or three days because the fast pace of work increased her pain.

¶ 30 From November 2013 through May 2014, the claimant periodically visited her family physician and reported back pain that radiated to her left leg and foot. The claimant testified that, due to ongoing pain, she cannot clean her house, walk down stairs, or walk, sit, or stand for

more than one hour. She stated that her left leg is painful, numb, and weak, she requires assistance to go in and out of a bathtub, and she feels discomfort during marital relations.

¶ 31 The claimant also presented testimony from Brad Carder, corporate counsel for MedFinance, a company that purchased accounts receivable from several of the claimant's medical providers. Through Carder's testimony, the claimant attempted to introduce into evidence "fee schedule calculations" prepared by MedFinance and assignment agreements between the claimant's medical providers and MedFinance. The arbitrator rejected these exhibits as irrelevant, although the bills for various treatments were admitted into evidence.

¶ 32 Following the hearing, the arbitrator found that the claimant sustained accidental injuries arising out of and in the course of her employment, but that her current condition of ill-being with her lumbar spine was not causally related to her work accident. The arbitrator awarded the claimant PPD benefits of $300 per week for 25 weeks under section 8(d)2 of the Act (820 ILCS 305/8(d)2 (West 2008)) because her injury, a "lumbar strain/sprain," resulted in a 5% loss of use of the person as a whole. Additionally, the arbitrator ordered EMS to pay the claimant's reasonable and necessary medical bills, including: six physical therapy sessions that followed the work accident; the EMG on May 16, 2008; the L5-S1 epidural steroid injection on September 15, 2008; the left-sided L4-L5 and L5-S1 transforanimal epidural steroid injections on October 6, 2008; the bilateral SI joint injections on November 5, 2008; the post-operative physical therapy sessions from May 13, 2009, through July 17, 2009; and the post-operative FCE. However, the arbitrator denied the claimant's bills for 40 physical therapy sessions from August 28, 2008, through January 2, 2009, finding that they were not reasonable or necessary because they "provided very limited benefit and were not certified per utilization reviews." Additionally, the arbitrator denied the following medical services because they were not certified per utilization

reviews: the MRI from May 15, 2008; a chest X-ray on September 19, 2008; right-sided L4-5 and L5-S1 transforaminal epidural steroid injections on October 6, 2008; the lumbar discogram and CT scan on October 29, 2008; L3-L4, L4-5, and L5-S1 bilateral transforaminal steroid injections on November 5, 2008; lumbar fusion surgery on February 20, 2009; and a lumbar CT scan on March 27, 2009. The arbitrator also denied the claimant's request for TTD benefits, penalties, and attorney fees.

¶ 33 In his findings, the arbitrator noted that: the claimant's work duties only involved light lifting, bending, and twisting; she reported only non-radiating back pain when she first presented for treatment more than one week after the work accident; and, during her early medical examinations, she exhibited Waddell signs and negative bilateral leg raises. The arbitrator found that it was "not believable that the [claimant] sustained more than a lumbar strain/sprain," and concluded that she "magnified her symptoms" and "over-treated for her injuries." Additionally, the arbitrator stated that the opinions of the claimant's medical providers were "not consistent with the evidence and are not given any weight."

¶ 34 Both the claimant and EMS filed for a review of the arbitrator's decision before the Commission. On July 23, 2015, the Commission unanimously affirmed and adopted the arbitrator's decision.

¶ 35 The claimant and EMS both sought a judicial review of the Commission's decision in the circuit court of Cook County. The cases were consolidated and, on June 6, 2016, the circuit court confirmed the Commission's decision. The claimant appealed and EMS filed a cross-appeal.

¶ 36 For her first assignment of error, the claimant contends that the Commission's finding that her work accident did not cause her current condition of ill-being is against the manifest weight of the evidence. We disagree.

¶ 37 The claimant has the burden of establishing by a preponderance of the evidence the elements of her claim, including "some causal relation between the employment and the injury." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989). Whether a causal relationship exists between a claimant's employment and her injury is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence; rather, the appropriate test is "whether there [is] sufficient factual evidence in the record to support the Commission's decision." *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 38 In this case, the claimant submits that causation may be established by a chain of events. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982). Other factors relevant to demonstrating a chain of events include: whether the claimant was previously in good health; the claimant's work record; a definite accident date; a resulting disability; and the claimant's inability to perform the

same work duties after that date. *Kawa v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120469WC, ¶ 93 (citing *Darling v. Industrial Comm'n*, 176 Ill. App. 3d 186, 193 (1988)).

¶ 39 Under a chain-of-events theory, the claimant argues that a causal nexus exists between her work accident and her current condition of ill-being. More specifically, she submits that: prior to the accident, she had no history of back pain; after the accident, diagnostic testing and surgery established that she had two disc herniations; several doctors opined that the work accident caused the disc herniations; and, following the accident, her doctors placed her on light duty and eventually removed her from work.

¶ 40 The claimant observes, correctly, that the record contains some evidence suggesting that her work accident caused her current condition of ill-being. However, the record also contains evidence that supports the Commission's finding that her current condition of ill-being is not causally related to her work injury. Dr. Wehner testified that the claimant's work accident neither caused nor aggravated her disc herniations because the symptoms that she reported did not comport with the results of her MRI. According to Dr. Wehner, the claimant's L5-S1 disc herniation did not significantly impinge on her nerve root and would not cause the type of leg numbness that she reported. Drs. Ross and Wehner both testified that the claimant exhibited negative leg raises and displayed multiple symptom-magnification behaviors, including Waddell signs for "overreaction" and "distraction," non-anatomic sensitivity to touch, and non-etiological complaints of foot and ankle pain. However, Dr. Lorenz acknowledged that herniated discs are not always symptomatic. After considering all the evidence, the Commission rejected the opinions of the claimant's medical providers and determined that she failed to prove a causal connection between her work accident and her current condition of ill-being.

¶ 41 Based on the record before us, we cannot say that the Commission's finding is against the manifest weight of the evidence. Moreover, this is not a case like *Edgcomb v. Industrial Comm'n*, 181 Ill. App. 3d 398, 404-05 (1989), relied on by the claimant, where the Commission determined the question of causality by relying on one physician's cursory examination of an injured worker. To the contrary, the record before us is replete with conflicting medical evidence regarding the causal nexus between the claimant's work accident, disc herniations, and current condition of ill-being. The Commission's duty was to resolve these conflicts, and we will not substitute our judgment "merely because it is possible to draw a different inference from the evidence." *Doyle v. Industrial Comm'n*, 96 Ill. 2d 364, 370 (1983).

¶ 42 In a related argument, the claimant contends that the Commission disregarded the manifest weight of the evidence in finding that certain medical expenses were not compensable. In support of her argument, the claimant notes that she proffered evidence regarding why those treatments were reasonable and necessary. Dr. Lorenz, in particular, testified in relevant part that: (1) the MRI from May 2008 was needed to determine whether the claimant sustained disc herniations; (2) the steroid injections were needed because nonsteroidal medication and physical therapy had not resolved the claimant's condition; (3) the discogram was needed to identify which discs caused the claimant's pain; (4) the claimant's surgery was required because conservative care had failed and the standard of care required surgical intervention; and (5) the post-operative CT scan was needed to determine whether any complications from the surgery had occurred.

¶ 43 EMS introduced numerous utilization reviews in which other physicians evaluated the treatments provided to the claimant and, frequently, refused to certify those treatments as reasonable and necessary. Under section 8.7(i) of the Act, the Commission could consider the

utilization reviews "along with all other evidence in the determination of the reasonableness and necessity of the medical bills or treatment." 820 ILCS 305/8.7(i) (West 2008).

¶ 44 The utilization reviews, in relevant part, stated that: (1) the MRI from May 2008 was unmerited because the claimant had not yet undergone one month of conservative treatment or displayed a progressive neurological deficit; (2) a chest x-ray on September 19, 2008, was unmerited because the claimant lacked a history of cardiopulmonary problems; (3) L4-5 and L5-S1 transforaminal epidural steroid injections on October 6, 2008, and L3-L4, L4-5, and L5-S1 bilateral transforaminal steroid injections on November 5, 2008, were unmerited because no evidence showed that an earlier injection in September 2008 resulted in a 50% pain reduction for at least two weeks; (4) the discogram and post-discogram CT scan were unmerited because neither procedure was necessary for determining whether the claimant required disc fusion surgery; (5) surgery was unmerited because no evidence indicated spinal instability or a neural compressive lesion; (6) the post-operative CT scan was unnecessary because the claimant's x-rays indicated that she was healing without abnormality; and (7) 40 sessions of physical therapy were unmerited because there was "no clear documentation of objective improvement." Notably, Dr. Wehner opined that the claimant required only 6 to 10 sessions of physical therapy or chiropractic care before reaching MMI, and found that her surgery was neither reasonable nor necessary.

¶ 45 The reasonableness of the claimant's medical expenses presented a factual issue and, in this case, the utilization reviews and Dr. Wehner's testimony provided ample basis for the Commission's findings regarding which expenses were compensable and which were not. See *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463,

470 (2011). Consequently, we cannot say that the Commission's finding in this regard was against the manifest weight of the evidence.

¶ 46 The claimant next argues that the Commission erred in refusing to admit the "fee schedule calculations" prepared by MedFinance and the assignment agreements between the claimant, her medical providers, and MedFinance into evidence. According to the claimant, these exhibits should have been admitted in order to establish that, although MedFinance purchased the accounts receivable for her medical bills at a discounted price, EMS was nonetheless liable for the full amount allowed under fee schedules implemented by the Commission pursuant to section 8.2 of the Act. See 820 ILCS 305/8.2 (West 2008).

¶ 47 Evidentiary rulings made during a workers' compensation proceeding will not be disturbed on review absent an abuse of discretion. *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 947 (2006). An abuse of discretion occurs when no reasonable person would adopt the view taken by the Commission. *Id*. Based upon the record before us, we find no abuse of discretion in the Commission's evidentiary ruling, denying admission of either MedFinance's "fee schedule calculations" or the assignment agreements.

¶ 48 The claimant's actual medical bills were admitted into evidence and, therefore, were available for the Commission to use as a basis for determining the amount for which EMS was liable on compensable medical expenses. See 820 ILCS 305/8(a) (West 2008) (providing that, when the Commission finds that medical bills expenses are compensable, "[t]he employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule ***."). The claimant observes, correctly, that the current version of section 8(a) of the Act specifies that an employer remains liable for these charges even if a health care provider "sells, transfers, or otherwise assigns an account receivable

for procedures, treatments, or services covered under this Act." 820 ILCS 305/8(a) (West 2016) (amended by Pub. Act 97-18, § 15 (eff. June 28, 2011)). However, the claimant does not argue how MedFinance's "fee schedule calculations," or the fact that MedFinance purchased the accounts receivable for her medical bills at a discounted price, would have caused the Commission to calculate EMS's liability for compensable medical expenses any differently. See *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 33 (noting that the failure to develop an argument and support it with relevant authority results in forfeiture of that argument). Under these circumstances, we cannot say that no reasonable person would have adopted the Commission's view that the rejected exhibits are irrelevant.

¶ 49 The claimant also argues that the Commission's award of PPD benefits representing a 5% loss of use of the person as a whole is against the manifest weight of the evidence because, "[a]s a result of the accident," she sustained disc herniations that resulted in her current condition of ill-being. Having previously rejected the claimant's argument that the Commission erred in not finding that the work accident caused her current condition of ill-being, we decline to disturb the award of PPD benefits on this basis. Moreover, we observe that in awarding PPD benefits, the Commission found that it was "not believable that the [claimant] sustained more than a lumbar strain/sprain," and concluded that she "magnified her symptoms" and "over-treated for her injuries." It is well-established that "[t]he extent or permanency of a claimant's disability is a question of fact to be determined by the Commission, and its decision will not be set aside unless contrary to the manifest weight of the evidence." *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 506-07 (2004); see also *Pemble v. Industrial Comm'n*, 181 Ill. App. 3d 409, 417 (1989) (noting that the Commission's findings regarding the nature and extent of a disability are

granted "substantial deference" on review). Based upon the totality of the record, we cannot say that the Commission's finding on PPD was against the manifest weight of the evidence.

¶ 50 The claimant next contends that the Commission's denial of TTD benefits is against the manifest weight of the evidence. Again, we disagree.

¶ 51 An employee is temporarily and totally disabled from the time that an injury incapacitates her from work until such time as she is as far recovered or restored as the permanent character of her injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). "Once an injured claimant has reached MMI, the disabling condition has become permanent and [s]he is no longer eligible for TTD benefits." *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542 (2007). The determination of the period of time during which a claimant is temporarily and totally disabled is a question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer*, 138 Ill. 2d at 118-19.

¶ 52 In this case, the claimant sought TTD benefits from May 6, 2008, the last day she worked at EMS, through August 31, 2009, when Dr. Lorenz found her to be at MMI (excluding TTD benefits that EMS paid from May 9, 2008, through June 29, 2008). The Commission, however, was presented with conflicting evidence as to when the claimant reached MMI and whether she was ever temporarily and totally disabled as a result of her work accident. Although Drs. Perez, Espinosa, and Lorenz all removed the claimant from work, Dr. Wehner opined that she could work on light duty immediately following the accident and would reach MMI by July 2008. Moreover, the light-duty work that EMS offered to the claimant in the letter dated May 13, 2008, was well within the work restrictions that Dr. Wehner imposed when she instructed the claimant to return to work the following month. The Commission was charged with resolving these

conflicts in the evidence. Based upon this record, we cannot say that the Commission's decision to deny TTD benefits was contrary to the manifest weight of the evidence.

¶ 53 Finally, the claimant argues that the Commission's denial of penalties and fees under sections 16, 19(k), and 19(*l*) of the Act was against the manifest weight of the evidence. 820 ILCS 305/16, 19(k), 19(*l*) (West 2008). We find that the Commission's denial is neither against the manifest weight nor an abuse of discretion.

¶ 54 Penalties under section 19(*l*) are in the nature of a late fee, and the assessment of a penalty is mandatory if a payment is late and the employer cannot show an adequate justification for the delay. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 763 (2003). "In determining whether an employer has 'good and just cause' in failing to pay or delaying payment of benefits, the standard is reasonableness." *Id.* (quoting *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515 (1998)). When the employer acts in reliance upon a reasonable medical opinion or when the record presents conflicting medical opinions, section 19(*l*) penalties ordinarily are not imposed. *Matlock v. Industrial Comm'n*, 321 Ill. App. 3d 167, 173 (2001). The Commission's evaluation of the reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence. *Crockett v. Industrial Comm'n*, 218 Ill. App. 3d 116, 121-22 (1991).

¶ 55 In contrast to section 19(*l*) of the Act, section 19(k) allows penalties for "any unreasonable or vexatious delay of payment or intentional underpayment of compensation." 820 ILCS 305/19(k) (West 2008). Penalties under Section 19(k) are "intended to address situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose." *McMahan*, 183 Ill. 2d at 515. Section 16 of the Act, in turn, provides for an award of attorney fees when an award of additional compensation under section 19(k) is appropriate. 820

ICLS 305/16 (West 2008). The imposition of penalties and attorney fees under sections 16 and 19(k) is discretionary and will not be disturbed on appeal unless the circuit court has abused that discretion. *McMahan*, 183 Ill. 2d at 515.

¶ 56 The claimant maintains that EMS unreasonably relied on Dr. Wehner's opinion as a basis for not paying TTD benefits and various medical bills. The record in this case, however, contains numerous conflicting medical opinions, and, as we have established, the Commission's reliance on Dr. Wehner's testimony was not unreasonable. Under these circumstances, the Commission could reasonably conclude that EMS's conduct did not meet the standard for unreasonable delay under section 19(*l*), or the higher standard of bad faith for awarding penalties and fees under sections 16 and 19(k). See *id*. Accordingly, the Commission properly denied the claimant's request for penalties and fees.

¶ 57 Having disposed of the claimant's arguments on appeal, we turn to the sole issue raised by EMS in its cross-appeal. Specifically, EMS contends that the Commission's finding that the claimant's post-operative physical therapy and FCE were reasonable and necessary is against the manifest weight of the evidence because, per the Commission's determination, the surgery itself was not reasonable and necessary. The claimant has not squarely addressed this issue in either her brief on appeal or her reply brief. Based upon the record before us, however, we agree with EMS's position. The Commission determined that the claimant's reasonable and necessary treatment did not include her surgery. Dr. Lorenz, notably, ordered that the claimant undergo post-operative therapy and an FCE for purposes of rehabilitating from her surgery and not from her work accident. Moreover, as we have previously explained, the manifest weight of the evidence supports the Commission's separate determination that the claimant's current condition of ill-being, which she treated with surgery, was not causally related to the work accident.

Consequently, we find that the Commission erred in awarding the claimant's post-operative physical therapy and FCE.

¶ 58 In summary, we conclude that: (1) the Commission's finding that the claimant's work accident did not cause her current condition of ill-being is not against the manifest weight of the evidence; (2) the Commission's denial of the contested medical bills is not against the manifest weight of the evidence; (3) the Commission did not err in declining to admit certain medical "fee schedules calculations" and assignment agreements into evidence; (4) the Commission's award of PPD benefits based upon a finding that the claimant's injuries resulted in a 5% loss of use of the person as a whole is not against the manifest weight of the evidence; (5) the Commission's denial of TTD benefits is not against the manifest weight of the evidence; (6) the Commission did not err in denying the claimant's request for penalties and attorney fees; and (7) the Commission's finding that the claimant's post-operative physical therapy and FCE were reasonable and necessary is against the manifest weight of the evidence. We, therefore, reverse that portion of the Commission's decision requiring EMS to pay for the claimant's post-operative therapy and FCE; reverse that portion of the circuit court's judgment which confirmed that portion of the Commission's order requiring EMS to pay for the Claimant's post-operative therapy and FCE; and affirm the circuit court's judgment in all other respects.

¶ 59 Circuit court affirmed in part and reversed in part; Commission reversed in part.