

Order filed February 9, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT  
WORKERS' COMPENSATION COMMISSION DIVISION

MANUEL BEJARANO,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Kane County.
	)	
v.	)	No. 14 MR 1347
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, <i>et al.</i> (John Henry Homes,	)	David R. Akemann,
Appellee).	)	Judge, presiding.

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

ORDER

¶ 1 *Held:* Commission's decision affirmed where its determinations that the claimant reached MMI on March 30, 2009, that his current condition of ill-being was not causally connected to his workplace accident, that he was not due any unpaid medical benefits

after March 30, 2009, and that he was not entitled to TTD benefits from March 30, 2009 through August 13, 2013, were not against the manifest weight of the evidence.

¶ 2

## FACTS

¶ 3 The claimant, Manuel Bejarano, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) against his employer, John Henry Homes, seeking benefits for a back injury arising from a work accident on June 14, 2007. The claim proceeded to an arbitration hearing under section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)). The following factual recitation is taken from the evidence presented at the August 13, 2013, arbitration hearing. The claimant testified in Spanish through an interpreter. He cannot read or write English and speaks "just a little bit" of English. He testified that the last grade he completed was 4th or 5th grade in Mexico. He described his ability to read and write in Spanish as "so so."

¶ 4 The claimant stated that he had worked as a laborer for the employer for 16 years. His job duties included plumbing, electrical, carpentry, cleaning, mowing grass, and caring for his boss' pets when his boss was out of town. He regularly lifted 100 to 150 pounds.

¶ 5 The claimant testified that on June 14, 2007, he and three co-workers were lifting a 400 to 500 pound rock. His co-workers let it go slightly, and he had to bear more weight. He fell and could not get up. He experienced terrible pain in his back. His boss,

John Henry Simbriski, arrived around the time of the accident, noticed that he was in pain, and told him to go home and take Motrin.

¶ 6 The claimant testified that he continued to work with pain, and Simbriski eventually sent him to Dr. William Hestrup, a chiropractor. He underwent physical therapy, massage, and ultrasound with Dr. Hestrup.

¶ 7 On July 27, 2007, Dr. Hestrup examined the claimant. He diagnosed the claimant with lumbosacral sprain/strain, lumbosacral radiculopathy, left sciatica, and lumbar subluxation.

¶ 8 On August 10, 2007, the claimant had X-rays of the lumbar spine. Dr. Kenneth Sullivan wrote in his report that there were no degenerative changes or destructive lesions and that the sacroiliac joints were normal.

¶ 9 On August 13, 2007, the claimant had an MRI of his lumbar spine. Dr. Sullivan diagnosed the claimant with degenerative disc changes at L5-S1 associated with broad-based central disc bulging and an annular tear, as well as mild facet arthropathy on the right at L3-L4.

¶ 10 In a progress note dated August 31, 2007, Dr. Hestrup noted that the claimant's progress had improved from guarded to fair and that if he continued to improve while doing light work, his progress would be upgraded to good. Dr. Hestrup anticipated releasing the claimant from care in four to six weeks barring any complications.

¶ 11 The claimant testified that Dr. Hestrup referred him to Dr. John Mazur. Dr. Mazur examined the claimant on October 11, 2007, for complaints of low back pain radiating

into both buttocks and both legs. In his patient notes, Dr. Mazur wrote that the claimant denied having low back pain prior to June 14, 2007, when he hurt his back unloading a huge stone with co-workers. Dr. Mazur wrote that the claimant reported that he was referred by his employer. Dr. Mazur reviewed the claimant's X-rays taken on August 10, 2007, and his lumbar MRI scan performed on August 13, 2007. Dr. Mazur wrote that, based on his review of the claimant's records, the claimant had facet joint arthropathy on the right side at L3-L4 and minor degenerative changes at L5-S1 with no impingement upon any nerve roots or on the dural sac. Dr. Mazur noted that the claimant had diabetes and stated that he drank vinegar for it but took no medication. Dr. Mazur reported that there were no localizing neurological findings and that the area of diminished scratch sensation could not be explained on an anatomical basis. He concluded that there was no evidence of an injury on the claimant's MRI scan or during his examination. He encouraged the claimant to resume his usual activities and released him to return to work without restrictions.

¶ 12 The claimant testified that he then went to his primary care physician, Dr. Jose Trevino, who referred him to Dr. Daniel Laich, a neurosurgeon.

¶ 13 Dr. Daniel Laich testified by evidence deposition. He stated that he first examined the claimant on October 22, 2007, for low back and leg pain that started in June 2007, while lifting a 450 pound rock with three other people. In his patient notes, Dr. Laich wrote that the claimant was working full time with restrictions on lifting more than 20 pounds. The claimant reported that, after working one to two hours during a regular

work day, his pain symptoms flared. He described his pain as "pulsating pain pressure injecting pain, much pain, legs fall asleep, tingling feeling start in back and goes down torso then legs." Dr. Laich testified that he examined the claimant and found that he was in no acute distress; he had a normal affect and normal gait to ambulation; he could hop on the left and right foot comfortably; his range of motion in his cervical spine was appropriate; and his lumbar spine was limited in flexion. Dr. Laich reviewed the claimant's August 10, 2007, X-rays and his August 13, 2007, MRI scan. Dr. Laich diagnosed him with low back pain, bilateral lower extremity pain radiating from his back to buttock posterior lateral to the plantar aspect to his left greater than right lower extremity, and degenerative disc disease at L5-S1 with dehydration and hyperintensity zone. Dr. Laich recommended a rigorous course of physical therapy and weight loss and authorized the claimant to continue working with restrictions.

¶ 14 Dr. Laich testified that he examined the claimant on December 13, 2007. In his patient notes, Dr. Laich noted that the claimant did not have a focal neurologic deficit. Dr. Laich wrote that the claimant reported that his work activities now included snow plowing, which had caused an increase in his back pain. Dr. Laich diagnosed the claimant with degenerative disease of the lumbar spine greatest at L5-S1. Dr. Laich recommended that the claimant continue with conservative measures because he was improving and recommended that he discontinue work for one month.

¶ 15 Dr. Laich testified that he examined the claimant on January 17, 2008, for low back pain and left lower extremity pain that radiated distally traveling into the heel and

the plantar aspect of his left foot with associated numbness and tingling. The claimant reported that he felt that he was not progressing with physical therapy and that he was unable to participate in all that he desired to do in life including work. In his patient notes, Dr. Laich noted that the claimant had increased pain with forward flexion and with lumbar extension that had changed from his prior visit. There was no sacroiliac notch tenderness. Dr. Laich diagnosed the claimant with dysfunction motion segment instability secondary to degenerative disc disease primarily at L5-S1. Dr. Laich suggested facet injections.

¶ 16 On February 13, 2008, Dr. Yuan Chen gave the claimant a lumbar facet injection bilaterally. On February 27, 2008, Dr. Chen performed a lumbar discogram at L3-L4 and L4-L5 and a functional anesthetic discogram at L5-S1, which showed that L5-S1 was most likely the source of the claimant's pain. On February 27, 2008, the claimant had a CT scan of his lumbar spine.

¶ 17 Dr. Laich testified that he examined the claimant on February 29, 2008. He found the claimant neurologically stable to the lower extremity. Forward flexion caused the claimant significant pain. The claimant had no sacroiliac pain, and extension of the lumbar spine did not promote pain but only caused tightness. In his patient notes, Dr. Laich wrote that the claimant had the recommended testing with Dr. Chen including multi-level facet injections, which provided no benefit. The provocative and functional discography revealed L3-L4 to be negative both to concordant pain and radiographic finding and L5-S1 to be positive to concordant pain and radiographic finding with some

relief with anesthetic discography. He noted that L3-L4 showed some vacuum phenomenon very slight on the right. There was degenerative disease. He diagnosed the claimant with low back pain and bilateral lower extremity pain, which radiated down from the low back into the buttocks progressing into the plantar aspect of the feet, left greater than right. He further diagnosed the claimant with dysfunctional motion segment instability at L5-S1 and degenerative facet disease at L3-L4, which was not currently a pain generator. He recommended an anterior decompression of L5-S1 with reconstruction. Dr. Laich testified that the claimant's back problems related to his June 14, 2007, work accident.

¶ 18 On May 28, 2008, Dr. Laich performed an L5-S1 anterior discectomy, an L5-S1 placement of Stalif cage with bone morphogenetic protein arthrodesis, and an L5-S1 stabilization on the claimant.

¶ 19 On June 27, 2008, the claimant had a CT scan of the lumbar spine. Dr. Laich testified that, at the claimant's postoperative examination on June 27, 2008, the claimant reported less pain and that he was doing well. He reported some pain in the lumbar area and some sporadic bilateral lower extremity weakness. He reported being happy with his improvement. In his patient notes, Dr. Laich wrote that the CT scan showed bilateral sacroiliac vacuum phenomenon, which he testified is a sign of sacroiliac disease and shows a degeneration of the area where it is found. Dr. Laich noted that the claimant was without neurologic deficits.

¶ 20 Dr. Laich testified that he examined the claimant on September 8, and October 13, 2008, for left leg pain and unchanged low back pain. In both examinations, sacroiliac joint tenderness was noted. In his October 13 patient notes, Dr. Laich wrote that the claimant was without focal neurologic deficit to motor testing of the lower extremities. He opined that the claimant had sacroiliac dysfunction and slow to resolve low back and lower extremity radiculitis. He recommended sacroiliac and epidural injections.

¶ 21 On October 28, 2008, Dr. Chen gave the claimant transforaminal epidural steroid injections at the L4-L5 and L5-S1 levels. He noted that the claimant exhibited significant tenderness over the lumbar paraspinal region but otherwise had no focal neurological deficits.

¶ 22 Dr. Laich testified that he examined the claimant on November 10, 2008, for complaints of worsening symptoms. The claimant reported that the injections had provided low back pain relief for two or three days but no left foot pain relief. In his patient notes, Dr. Laich wrote that the claimant was depressed. An examination revealed sacroiliac notch tenderness, and Dr. Laich recommended a sacroiliac injection, a CT scan, and an MRI scan. On November 13, 2008, the claimant had X-rays and an MRI scan of his lumbar spine. On November 24, 2008, he had bilateral sacroiliac joint injections.

¶ 23 Dr. Laich testified that he examined the claimant on December 5, 2008, for complaints of left lower extremity pain emanating from his low back. The claimant reported that the sacroiliac injection on November 24, 2008, provided two days of relief of his left lower extremity pain as well as a significant decrease in his back pain. Dr.

Laich testified that he felt this indicated that the claimant's sacroiliac disease was treated with the injection. In his patient notes, Dr. Laich wrote that there was no conclusive pathoanatomy reflective of the claimant's significant complaints. He discussed the possibility of a rhizotomy or further facet injections. He also discussed a dorsal column stimulator with the claimant but hoped that it would not be necessary.

¶ 24 Dr. Laich testified that he examined the claimant on January 9, 2009. The claimant reported that he had improved overall but that he now experienced whole-body pain and tingling into both arms. He expressed that the physical therapy and the increased dosage of Lyrica had helped him. Dr. Laich recommended that he have a psychological or psychiatric consultation to treat his chronic pattern of pain and to deal with depression and anxiety resulting from his change in circumstances. Dr. Laich also recommended physical therapy, facet injections, sacroiliac rhizotomy, diet, and a CT myelogram. He continued Lyrica and started a trial of Cymbalta.

¶ 25 On January 26, 2009, the claimant had facet joint injections bilaterally at L4-L5 and L5-S1.

¶ 26 Dr. Laich testified that he examined the claimant on February 6, 2009, for complaints of increased low back pain with some burning sensations in his left lower extremity. The claimant told Dr. Laich that he felt the increase in the left lower extremity pain was caused or aggravated by the injection. He related that the Cymbalta was providing some benefits as was the physical therapy. In his patient notes, Dr. Laich noted sacroiliac notch tenderness bilaterally but that the claimant was intact to motor and

sensory. There were some non-dermatomal changes. He recommended continuing physical therapy and discussed tapering off narcotics.

¶ 27 On February 9, 2009, Dr. Chen administered lumbar transforaminal epidural steroid injections bilaterally at L5-S1.

¶ 28 Dr. Laich testified that he treated the claimant on March 12, and April 23, 2009, for complaints of bilateral leg pain with low back pain that seemed to be increasing as well as left testicular pain.

¶ 29 At the employer's request, Dr. Babak Lami performed an independent medical examination (IME) of the claimant on March 30, 2009. The claimant reported that on June 14, 2007, he was lifting a 400 to 500 pound boulder with co-workers when one co-worker loosened his grip, causing the claimant to bear a heavier load and injure his back. He stated that he had surgery on May 28, 2008, but that the surgery had not helped him. He complained of stabbing pain in his lumbar spine and numbness in both hands and in both extremities. Dr. Lami opined that, based on his review of the claimant's medical records, the extent of the claimant's injury was low back sprain. He noted that there were no fractures, dislocations, or obvious objective findings. He stated that the claimant's treatment appeared to have been reasonable. He reviewed the report of the August 13, 2007, MRI scan but not the actual films. He wrote that he would have to review the films to determine whether the claimant was actually a candidate for the spinal fusion. He noted that the claimant's diagnostic testing demonstrated degenerative changes at multiple levels.

¶ 30 Dr. Lami's examination revealed no neurologic deficit. He opined that the diffuse numbness the claimant felt in his four extremities could be attributed to his diabetes. In Dr. Lami's opinion, the claimant had reached MMI as of the date of the examination. Dr. Lami averred that the claimant was not a candidate for further injections or surgery as he had reached MMI. Dr. Lami opined that the claimant should be able to return to work with a 30 pound lifting restriction.

¶ 31 Dr. Laich testified that he examined the claimant again on July 23, 2009, for complaints of burning left foot, left leg pain, low back pain, and secondary right leg pain. The claimant expressed that he felt his condition was worsening and that he was experiencing leg weakness. In his patient notes, Dr. Laich wrote that he reviewed a July 1, 2009, CT myelogram of the lumbar spine and noted bilateral vacuum phenomena at the sacroiliac joints. He diagnosed the claimant with lumbar degenerative disc disease and facet disease, sacroiliac dysfunction, and a psychological overlay. Dr. Laich noted that the claimant was at MMI although his facet fusion would likely progress over the next year. Dr. Laich prescribed Lyrica, Cymbalta, and Norco.

¶ 32 On February 15, 2010, Dr. Lami performed a second IME of the claimant. The claimant complained of pain in the base of his neck, his left shoulder blade, his left thoracolumbar junction, and his entire lumbar area as well as of burning in his entire left lower extremity in a stocking distribution starting from his foot up to his upper thigh area. Dr. Lami described the claimant's pain complaints as involving his neck, thoracic spine, and lower back and his numbness as involving the entire left lower extremity in a non-

anatomical distribution. Dr. Lami wrote that the claimant's examination demonstrated no neurological deficit. He noted that he watched a surveillance tape of the claimant. Dr. Lami felt that a comparison of the claimant's description of his disabilities and his physical examination to the surveillance tape demonstrated symptom magnification. Dr. Lami stated that the claimant had a work related lower back injury at L5-S1, for which he underwent a spinal fusion. Dr. Lami opined that the claimant's symptoms involving his neck and upper back were not related to his work accident. Dr. Lami reiterated his opinion that the claimant had reached MMI on March 30, 2009. He recommended a lifting restriction of 50 pounds because of the L5-S1 fusion.

¶ 33 Dr. Laich testified that he examined the claimant numerous times in 2010 for continued low back and left leg pain with numbness and tingling. He found that the claimant was neurologically intact. He diagnosed the claimant with lumbar degenerative disease post surgery, known degenerative disease at L3-L4 and L4-L5 (primarily facet), sacroiliac dysfunction, and depression. He recommended that the claimant have a CT scan of his pelvis, and a left sacroiliac joint stabilization/fusion and discussed a trial of a dorsal column stimulator. He testified that the vacuum phenomena in the claimant's diagnostic films indicated that there was a problem in the sacroiliac joint, which is why he recommended the sacroiliac stabilization procedure. He prescribed Narco, Cymbalta, and Lyrica.

¶ 34 On January 3, 2011, Dr. Lami performed a third IME of the claimant. The claimant complained of pain in his lower back, left leg, and left testicle. Dr. Lami wrote

in his report that the examination of the claimant did not alter his previous opinions. Dr. Lami noted that the claimant reported taking Cymbalta, which is a depression medication, and Lyrica, which the Federal Drug Administration approved for the treatment of diabetic neuropathy and fibromyalgia, but was not taking any pain medication. He opined that the claimant was not a candidate for further procedures, such as a spinal cord stimulator or sacroiliac joint injections. He felt that, because the claimant was not on pain medication, a spinal cord stimulator was not warranted.

¶ 35 Dr. Laich testified that he treated the claimant numerous times in 2011 for complaints of low back pain and left leg pain. He noted that the claimant appeared intact neurologically. The claimant exhibited positive sacroiliac signs. Dr. Laich diagnosed the claimant with sacroiliac dysfunction. Dr. Laich testified that, in March, the claimant told him that no further treatment was being approved. In his patient notes, he wrote that, if no further treatment was allowed, the claimant was at MMI. He continued the claimant's prescriptions for Lyrica and Cymbalta. He recommended facet and sacroiliac injections and sacroiliac left stabilization or "living with it" if that was the claimant's preference.

¶ 36 On June 3, 2011, after receiving additional medical records for the claimant, Dr. Lami completed another report. He wrote that the review of the additional records did not alter his previous opinions. During his examination of the claimant on January 3, 2011, the claimant reported only taking Cymbalta and Lyrica, neither of which is considered a pain medication. Prior to that, the claimant had been prescribed a very limited amount of Norco. Dr. Lami noted that it was not until his January 2011

examination of the claimant that the claimant was prescribed 90 tablets of Norco. Dr. Lami wrote that Dr. Laich never said how sacroiliac joint dysfunction could explain the subjective numbness radiating to the claimant's foot. He believed that the numbness did not make anatomical sense. He reiterated that the claimant was not a candidate for sacroiliac stabilization or a dorsal column stimulator and that Dr. Laich did not provide any justification for these procedures.

¶ 37 Dr. Laich testified that he treated the claimant numerous times in 2012 for continued complaints. On September 5, 2012, the claimant had new complaints of left arm pain with numbness and tingling. Dr. Laich opined that the claimant had sacroiliac dysfunction and that he had cervical versus upper extremity neurovascular entrapment. Dr. Laich recommended a sacroiliac fixation and possibly a dorsal column stimulation.

¶ 38 Dr. Laich testified that the claimant's low back and leg conditions, including the sacroiliac condition, were connected to his June 14, 2007, work injury. Dr. Laich stated that the accident caused the claimant's complaints. Dr. Laich stated that lumbar degenerative disease, lumbar fusion, and reconstruction are associated with sacroiliac disease. Dr. Laich opined that the claimant's cervical complaints do not relate to his June 14, 2007, lifting injury. Dr. Laich also testified that although the claimant had some bilateral sacroiliac problems, it was "not exactly clear where [the] right lower extremity complaint comes from." He noted that the sacroiliac disease was present on the claimant's studies but did not become an issue until "quite a bit after the fusion." He testified that sacroiliac disease is "absolutely an aging process disease." Dr. Laich stated

there was no way to tell if the worsening of the claimant's condition was due to the fact that it is a degenerative-type disease or if it was due to his work accident. Dr. Laich testified that the claimant's diabetes played a role in his tingling and numbness.

¶ 39 Dr. Laich testified that at times he had concern that the claimant had symptom magnification. He stated that, in people with chronic pain, life becomes so bad that the pain becomes their focus. He stated that the claimant is a strong man who cannot work anymore so "things start hurting more and more." Dr. Laich hoped the sacroiliac stabilization procedure would allow the claimant to get back to a life he finds acceptable where he returns to work, has a purpose, and is happier. Dr. Laich feared that the claimant may not get back to a heavy laborer position because he had been off work too long. Dr. Laich stated that he had repeatedly told the claimant to choose something he wanted to do, start learning, and get training.

¶ 40 The claimant testified that he was off work from August 15, through September 4, 2007, and worked light duty from September 5, through December 15, 2007. He was off work again beginning on December 16, 2007, and had not returned to work as of the August 13, 2013, arbitration hearing.

¶ 41 The claimant testified that, prior to the accident, he had never injured his low back and that he had not injured his low back or legs since the accident. He stated that he experiences pain in his low back, tingling in his legs, and pain in his testicle. He testified that he spends his days at home doing a little exercise, walking, and watering the plants with a watering can. He cannot take out the garbage or lift his daughter.

¶ 42 The arbitrator found that the claimant did sustain an accident that arose out of and in the course of his employment. The arbitrator found that the claimant reached MMI on March 30, 2009, and that his current condition of ill-being was not causally related to his work accident. He awarded the claimant TTD benefits of \$508.89 per week for 67 weeks, from December 17, 2007, through March 30, 2009. The arbitrator gave the employer a credit of \$107,375.79 for TTD benefits it had paid the claimant. The arbitrator found that the employer had paid all reasonable and necessary charges for all reasonable and necessary medical services.

¶ 43 The claimant sought review of the arbitrator's decision before the Commission, which affirmed and adopted the arbitrator's decision, with one Commissioner dissenting. The claimant sought judicial review of the Commission's decision in the circuit court, which confirmed the Commission's decision. The claimant appeals.

¶ 44 ANALYSIS

¶ 45 The claimant argues that the Commission's decision that he had reached MMI as of March 30, 2009, and that his current condition of ill-being is not causally connected to his workplace accident is against the manifest weight of the evidence.

¶ 46 To obtain compensation under the Act, the claimant must show by a preponderance of the evidence that he suffered a disabling injury that arose out of and in the course of his employment. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 591-92, 834 N.E.2d 583, 591 (2005). "Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the

Commission's decision only if it is against the manifest weight of the evidence." *Id.* at 592, 834 N.E.2d at 592. For the Commission's decision to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 39, 11 N.E.3d 453. The test for determining whether the Commission's factual finding is against the manifest weight of the evidence is not whether this or any other tribunal might reach an opposite conclusion but whether the record contained sufficient evidence to support the Commission's determination. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 173, 741 N.E.2d 1144, 1147 (2000).

¶ 47 Whether a claimant has reached MMI is a question of fact for the Commission, and its decision will not be disturbed on review unless it is against the manifest weight of the evidence. *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1088-89, 804 N.E.2d 135, 139-40 (2004).

¶ 48 It is undisputed that the claimant injured his back in a work-related accident on June 14, 2007. On May 28, 2008, the claimant underwent a L5-S1 stabilization. The Commission found that the claimant's current condition of ill-being was not causally related to his June 14, 2007, work accident and that he had reached MMI as of March 30, 2009. In reaching this decision, the Commission relied on Dr. Lami's opinions, finding that Dr. Laich's opinions were not persuasive and that the claimant's testimony lacked credibility.

¶ 49 The claimant argues that the Commission erred in placing greater weight on the opinions of Dr. Lami, who merely performed IMEs, and ignoring the opinions of his treating physician, Dr. Laich. It is the province of the Commission to determine which medical opinion is to be accepted, and it may attach greater weight to the treating physician's opinion. *Piasa Motor Fuels v. Industrial Comm'n*, 368 Ill. App. 3d 1197, 1206, 858 N.E.2d 946, 954 (2006). However, there is no requirement that the testimony of a treating physician be given greater weight than the testimony of a physician who has examined the claimant for the sole purpose of testifying. *Pollard v. Industrial Comm'n*, 91 Ill. 2d 266, 277, 437 N.E.2d 612, 617 (1982). Thus, the Commission was free to place greater weight on Dr. Lami's opinions.

¶ 50 The claimant argues that Dr. Lami did not have the information needed to accurately assess his condition. The claimant argues that Dr. Lami stated that he needed to review the MRI films and the CT films to determine whether the claimant was a candidate for spinal fusion and whether the fusion was solid. In his March 30, 2009, report, Dr. Lami indicated that he had reviewed the report of the claimant's MRI scan and felt that the claimant's treatment had been reasonable. He stated that he would have to review the actual MRI film to determine whether the claimant had been a true candidate for the spinal fusion. In his February 15, 2010, report, Dr. Lami stated that the radiologist report indicates that the claimant's L5-S1 fusion had healed. He then stated that "[i]t would be useful to personally review the actual CT scan of the lumbar spine to confirm that his L5-S1 fusion has healed." He never stated that a review of the

radiologists' reports was insufficient to determine the claimant's condition; he merely indicated that looking at the films would provide confirmation of the reports. His reliance on the reports was not misplaced because there is no indication in the record that the claimant's L5-S1 fusion had not healed. The fact that Dr. Lami did not review the actual films did not impact his opinion that the claimant had reached MMI as of March 30, 2009. He had all the information he needed to form an accurate opinion. In determining that the claimant had reached MMI, Dr. Lami relied on the radiologists' reports, the medical records, and his examination of the claimant.

¶ 51 The claimant argues that Dr. Lami based his opinion on the surveillance video and that he mischaracterized the claimant's actions on the video. Dr. Lami did not base his opinion that the claimant had reached MMI on the surveillance video. He opined that the claimant had reached MMI on March 30, 2009, before he had seen the video. In his January 3, 2011, report, Dr. Lami indicated that he had reviewed the surveillance video of the claimant and felt that the claimant had exaggerated his symptoms, and he raised the claimant's lifting restriction from 30 to 50 pounds.

¶ 52 A claimant has reached MMI when his condition has stabilized. *Land & Lakes Co.*, 359 Ill. App. 3d at 594, 834 N.E.2d at 594. The factors to consider in deciding whether a claimant's condition has stabilized include (1) a release to return to work; (2) the medical testimony about the injury; (3) the extent of the injury; and (4) the prognosis. *Freeman United Coal Mining Co.*, 318 Ill. App. 3d at 178, 741 N.E.2d at 1150. Dr. Lami determined that the claimant had reached MMI as of March 30, 2009. He released the

claimant to return to work as of that date with lifting restrictions relating to his L5-S1 fusion. He based his decision on a review of the claimant's medical records and his examination of the claimant. Although Dr. Laich believed that the claimant would benefit from further treatment, Dr. Lami felt that the claimant would not benefit from the dorsal column stimulator and the sacroiliac stabilization. The Commission weighed the opinions of the two physicians and found Dr. Lami's opinion more convincing. It is the province of the Commission to weigh and resolve conflicts in the evidence and to evaluate witnesses. *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 18, 28 N.E.3d 181. A reviewing court will defer to the Commission's findings regarding medical issues, as its expertise in this area is well recognized. *Id.*

¶ 53 Dr. Lami performed an IME of the claimant on March 30, 2009. The claimant complained of stabbing pain in his lumbar spine and numbness in both hands and in both lower extremities. Dr. Lami reviewed the claimant's medical records and determined that the extent of the claimant's June 14, 2007, injury was a low back sprain. Dr. Hestrup, who had first examined the claimant, had originally diagnosed him with a lumbosacral sprain/strain. Dr. Lami wrote in his report that an examination of the claimant revealed no neurologic deficit. Dr. Lami felt that the claimant's symptoms were subjective and that the diffuse numbness the claimant felt in his extremities could be attributed to his diabetes. Dr. Lami opined that the claimant had reached MMI as of the date of the examination.

¶ 54 The Commission found that Dr. Lami's opinion was supported by Dr. Laich's opinion. Dr. Laich examined the claimant on June 27, 2008, for a follow-up to his surgery and noted that he was without neurologic deficits. In his patient notes dated October 13, 2008, Dr. Laich wrote that the claimant was without focal neurologic deficit to motor testing of the lower extremities. On December 5, 2008, Dr. Laich examined the claimant and noted that there was no conclusive pathoanatomy reflective of the claimant's significant complaints. In his patient notes dated July 23, 2009, Dr. Laich wrote that the claimant was at MMI "although facet fusion will likely progress over next year." Dr. Laich found the claimant neurologically intact when he examined him in 2010.

¶ 55 The Commission found that Dr. Lami's opinion that the claimant's complaints of pain involving his neck, upper back, and right leg were not related to his June 14, 2007, work injury to be credible. In his report of the IME dated February 15, 2010, Dr. Lami wrote that "[t]he symptoms involving [the claimant's] neck and upper back are not related to his work related accident. He had a work related lower back injury for which he underwent a spinal fusion." Dr. Lami noted that the numbness the claimant described in his left lower extremity was in a non-anatomical distribution and that his examination of the claimant demonstrated no neurological deficit. In his March 30, 2009, report, Dr. Lami noted that the claimant's diffuse numbness in his extremities could be attributed to his diabetes. Dr. Lami noted that his examination demonstrated no neurologic deficit. In both reports, he opined that the claimant's symptoms were based on subjective complaints. In his report dated June 3, 2011, Dr. Lami wrote that it did not make sense

anatomically that sacroiliac joint dysfunction could cause the claimant's subjective numbness radiating to his foot.

¶ 56 The Commission found that Dr. Laich's opinion supported Dr. Lami's opinion that the claimant's complaints of neck, upper back, and right leg pain were not related to his June 14, 2007, work-related accident. When asked whether the claimant's cervical complaints related in any way to his June 14, 2007, work-related injury, Dr. Laich testified "[t]hey really don't." When asked if the claimant's right leg pain related to his June 14, 2007, injury, Dr. Laich testified that "it's not exactly clear where that right lower extremity complaint comes from." He stated that it could be loosely associated with the injury. Dr. Laich testified that the claimant's diabetes played a role in his tingling and numbness.

¶ 57 Dr. Laich testified that the claimant's testicular pain could not be related to the June 14, 2007, accident. The Commission found that the claimant's complaints of testicular pain were not related to his June 14, 2007, work-related accident.

¶ 58 The Commission noted that, in his February 10, 2010, IME report, Dr. Lami found that the claimant's description of his disabilities and his physical examination findings compared to the activities the claimant performed on the surveillance video clearly demonstrated symptom magnification. The Commission also found the claimant's testimony as to his complaints of pain and the restrictions on his daily activities to be inconsistent with the physical capabilities he demonstrated on the surveillance video.

¶ 59 The Commission noted that Dr. Laich had concerns about symptom magnification on the claimant's part. In his patient notes dated November 10, 2008, Dr. Laich noted that the claimant was depressed. On January 9, 2009, Dr. Laich recommended that the claimant have a psychological or psychiatric consultation to treat his chronic pain pattern and to deal with his depression and anxiety. Dr. Laich prescribed Cymbalta, which is a medication for depression. On July 23, 2009, Dr. Laich noted that the claimant had a "psychologic overlay." Dr. Laich testified that, with chronic pain, life gets so bad that the pain becomes the focus, and the patient gets caught up in it and spirals in the wrong direction. He stated that he had concern that the claimant was "caught in that chronic pain." Dr. Laich testified that he hoped the claimant could get back to a life he was satisfied with, but Dr. Laich was suspicious that, because the claimant was caught up in his chronic pain, he may not have the desire.

¶ 60 The Commission was not persuaded by Dr. Laich's opinions that the claimant's current condition of ill-being was causally related to his June 14, 2007, work accident. Dr. Laich testified that the claimant's lumbar disease at L5-S1 and his sacroiliac disease were aging process diseases. He stated that there was no way to ascertain whether the worsening of the claimant's condition over time could be attributed to the fact that he has degenerative type diseases or if it was due to his work accident. Dr. Laich testified that, although the claimant had some sacroiliac tenderness early on, it did not become an issue for him until "quite a bit after the fusion." Dr. Sullivan reviewed the claimant's August 10, 2007, X-rays and found that his sacroiliac joints were normal.

¶ 61 The Commission found that the claimant had reached MMI as of March 30, 2009. In reaching this conclusion, it relied on the opinions of Dr. Lami, was not persuaded by the opinions of Dr. Laich, and found that the claimant's testimony lacked credibility. "When faced with conflicting medical testimony as to causation, it is the province of the Commission to evaluate that testimony." *Freeman United Coal Mining Co.*, 318 Ill. App. 3d at 174, 741 N.E.2d at 1147. It is the function of the Commission to assess witness credibility, resolve conflicts in the evidence, assign weight to be given the evidence, and draw reasonable inferences from the evidence. *Tolbert*, 2014 IL App (4th) 130523WC, ¶ 40, 11 N.E.3d 453. This court will not reject or disregard permissible inferences drawn by the Commission just because different or conflicting inferences may be drawn from the same facts; nor can we substitute our judgment for that of the Commission on such matters unless its findings are contrary to the manifest weight of the evidence. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473.

¶ 62 After examining the claimant and reviewing his medical records, Dr. Lami found that he had reached MMI on March 30, 2009. Although Dr. Laich felt that the claimant could benefit from further medical treatment, some of his opinions supported Dr. Lami's opinions. When reviewing a decision of the Commission, the relevant test is whether there is sufficient evidence in the record to support the decision. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 143, 923 N.E.2d 266, 272 (2010). There is sufficient evidence in the record to support the Commission's

finding that the claimant had reached MMI on March 30, 2009, and that his current condition of ill-being is not causally connected to his work related accident.

¶ 63 The claimant next argues that the Commission's determination that he was not due any unpaid medical benefits for treatment incurred after March 30, 2009, is against the manifest weight of the evidence. As discussed above, the Commission's determination that the claimant had reached MMI as of March 30, 2009, and that his current condition of ill-being is not causally connected to his work-related accident is not against the manifest weight of the evidence. As a result, medical expenses incurred after that date were not related to his work injury.

¶ 64 Finally, the claimant argues that the Commission's determination that he was not entitled to TTD benefits from March 30, 2009, through August 13, 2013, is against the manifest weight of the evidence. Because the claimant had reached MMI as of March 30, 2009, and his current condition of ill-being is not causally connected to his workplace accident he was not entitled to TTD benefits beyond that date.

¶ 65 CONCLUSION

¶ 66 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed and the cause is remanded to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).