2017 IL App (3d) 160208WC

NO. 3-16-0208WC

Order filed April 18, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

RON KNEZEVICH,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Will County.
	)	
v.	)	No. 15-MR-2058
	)	15-MR-2306
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	John Anderson,
(Martin Cement Company, Inc., 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*: The Commission's decision to award the claimant permanent partial disability (PPD) benefits, rather than permanent total disability (PTD) benefits or a wage differential, and setting the date the claimant was at maximum medical improvement (MMI) and no longer entitled to medical expenses, is not against the manifest weight of the evidence.

¶ 2 The claimant, Ron Knezevich, appeals the judgment of the circuit court of Will County which confirmed the decision of the Workers' Compensation Commission (Commission) that awarded him, *inter alia*, permanent partial disability (PPD) benefits, rather than permanent total disability (PTD) benefits or a wage differential, as a result of his August 14, 2006, injury on the job site of the employer, Martin Cement. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 FACTS

¶ 4 On October 30, 2006, the claimant filed an application for adjustment of claim with the Commission pursuant to the Illinois Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq*. (West 2006)), alleging serious and permanent injury to the body as a whole as a result of an accident occurring while working for the employer on August 14, 2006. On June 11, 2007, this claim was consolidated before the Commission with an application for adjustment of claim that the claimant filed alleging injury to his left thumb while working for the same employer on June 14, 2006. The claimant's consolidated applications came before the arbitrator beginning on July 17, 2013, where the following relevant evidence was adduced.

¶ 5 The claimant testified that he became an ironworker through the Local 444, based in Joliet, in 1968. His duties included lifting from 30 to 100 pounds, climbing, and wearing a tool belt weighing anywhere from 20 to 45 pounds. The claimant testified that between the years 2003 and 2006, he worked full duty as an ironworker for a total of 2,985 hours with no physical restrictions. A "Participant Work History Detail Report," generated by Mid America Funds and reflecting ironworking jobs the claimant worked

between 2000 and 2006, was admitted into evidence. The exhibit reflects that the claimant was off work but received some disability payments in 2000 and 2001. There is no data for 2002. Year-to-date totals for 2003 through 2006 are listed as follows: 2003- 628 hours; 2004- 1185.88 hours; 2005- 735.5 hours; 2006- 436.5 hours. A month-by-month analysis of the exhibit reflects that the claimant did not work at all for the following months of each of these years: 2003- September and December; 2004- February; 2005- January through April, August, and December; 2006- January through April.[1]

¶ 6 The claimant testified that he began working for the employer in June 2006. On June 14, 2006, he sustained an injury to his left thumb, which is the subject of the consolidated application. Following that injury, he returned to work on light duty on August 4, 2006. When he returned to work, he was under a 20 pound lifting restriction as to his left hand, with no climbing, and had a splint on his left thumb. He attempted to work within those restrictions for a week and a half, setting and placing rebar. He

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[1]Contrary to the claimant's exhibit, the employer introduced a Pension Credit Statement from the Ironworkers Mid-America Pension Fund, purporting to show that the claimant worked the following number of hours during this timeframe: 2003- 577.5; 2004- 352.5; 2005- not stated; 2006- not stated. The claimant testified that there were errors at the time this statement was generated that he was working with the Fund to correct.

testified that on August 14, 2006, he was attempting to grab a bundle of short pieces of rebar with his right hand and "it kind of got stuck in there and I pulled again and that's when I … my back went out on me."

¶ 7 The claimant testified that he sought treatment for his back injury at Adventist Midwest Health on August 15, 2006, and approximately a week later came under the care of Dr. Mukund Komanduri. Dr. Komanduri ordered an MRI which was performed on August 26, 2006, as well as physical therapy. The MRI, which was admitted into evidence, revealed degenerative disc bulging with tiny annulus fibrosis tears at L3-4 and L4-5, as well as tiny left-sided disc herniation superimposed on degenerative bulging at L5-S1. In November 2006, the claimant commenced epidural steroid injections in his lower back by Dr. James Wilson. Physical therapy and epidural injections continued in December 2006. Medical records from Dr. Komanduri that were admitted into evidence corroborate the claimant's testimony regarding this treatment history.

¶ 8 The claimant testified regarding an incident on October 21, 2006, which occurred when he returned to Dr. Cohen, the treating doctor for his left thumb injury, for a follow-up. We detail this testimony because it is referenced by the Commission in its decision. The claimant testified that he was angry with Dr. Cohen for releasing him to light duty for his left thumb injury, resulting in his lower back injury. The claimant also felt that on prior visits, Dr. Cohen "kind of had an attitude." With regard to his visit to Dr. Cohen on October 21, 2006, the claimant testified that "he walked into the room and said well, are we about done with this. I stood up, and when I stood up, the chair flipped out from behind me and hit the wall. I explained to him I wasn't too happy with the way he was

treating me." The claimant testified that was the last time he saw Dr. Cohen, as he transferred his care for his left thumb injury to a different hand surgeon.

¶ 9 Dr. Cohen's records, which were admitted into evidence, indicate that this altercation occurred on September 21, 2006. In his treatment note, Dr. Cohen states the following:

> "Today when [the claimant] presented he seemed quite angry. *** After the exam when I had recommended a cortisone injection and possibly some more therapy he exploded yelling at me, using profanity, even throwing a chair at me. Several times during his tirade his index finger was within inches of my face. This was a quite physically threatening experience for me and was an assault. Eventually I was able to get him calmed down enough to be able to communicate with him at which time I informed him that he would need to find a new physician, and he instantly stated that he wanted to see Dr. Bednar at Loyola, almost as if this was pre-planned. [2] His anger seemed to be based on the fact that he is blaming me for a back injury he sustained when we returned him to light duty, ie., 10 to 15 pound weight restriction, stating that he should have been off for the entire time until his thumb was 100 percent better. Clearly, this doesn't make any sense. In fact, he stated, 'I know I can't prove that it is related but I know it is.'"

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[2] The record indicates that the claimant did not transfer his hand injury treatment to a Dr. Bednar, but rather finished his treatment with Dr. Urbanosky at Hinsdale Orthopedics.

¶ 10 The claimant testified that in January 2007 the employer sent him to Dr. Edward Goldberg for an independent medical examination (IME) on the claimant's lower back injury.[3] Dr. Komanduri then referred him to Dr. Hersonskey at the University of Chicago regarding his left thumb injury as well as his lower back. Dr. Hersonskey ordered continued epidural injections for the claimant's lower back. Records admitted into evidence indicate that although Dr. Komanduri opined that there was no surgical recourse for the claimant's continued lumbar spine complaints, he did refer the claimant to Dr. Hersonskey, who is a neurosurgeon, in early 2007. Dr. Hersonskey's records indicate that he opined that the claimant's small disk herniation could potentially be putting pressure on the claimant's nerve roots, causing his pain symptoms, but there was no neural compression for which there was surgical recourse. He recommended another series of trigger point injections and another course of physical therapy, which claimant underwent throughout 2007. He also ordered another MRI later in 2007 which he interpreted as reflecting a small foraminal at L5-S1 that "would not perfectly explain" the claimant's pain. Dr. Hersonskey again opined that surgery was not warranted.

¶ 11 The claimant again saw Dr. Goldberg on March 1, 2008, at employer's request, who placed the claimant on a 20 pound lifting restriction for his lower back injury. In the

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[3] The arbitrator requested clarification of Dr. Goldberg's role as an independent medical examiner. Counsel for the employer explained that Dr. Goldberg is one of the doctors that saw the claimant at the employer's request but that the claimant, not the employer, actually solicited Dr. Goldberg's testimony for the hearing.

meantime, he continued treating for his left thumb injury and, in 2009, was placed under permanent restrictions for that injury of lifting no more than 50 pounds occasionally, with minimal twisting, and no ladder climbing.

¶ 12 Medical records admitted into evidence confirm that Dr. Urbansky found the claimant to be at maximum medical improvement (MMI) with regard to his thumb on December 18, 2008. A functional capacity evaluation (FCE), which was completed on January 30, 2009, by Hand Therapy Specialists, was admitted into evidence. According to the FCE report, the claimant demonstrated competitive effort throughout the testing day within his pain tolerance. He was cooperative in attempting increases in effort required until his left thumb and/or low back flared up preventing further testing on the items. The FCE concluded that the claimant's job as ironworker does not provide for light duty and he did not meet the critical job demands of his position as ironworker. His maximum one time lift capability was determined to be 60 pounds and his frequent lift capacity was 50 pounds and he was unable to sustain a ladder climb or attempt push/pull test items due to back and thumb pain. The FCE recommended the claimant for a position that is limited to his safe physical level of medium demand work.

¶ 13 With regard to his lower back injury, the claimant testified that by 2009 he was still having a lot of pain in his lower back much of the time. He had to be very careful with sudden jerky, twisty movements, and be cognizant of bending his knees. The employer sent him to see Dr. Goldberg a third time on June 12, 2009, and requested that he see Dr. Avi Bernstein on January 27, 2011.

¶ 14 The claimant testified that he attempted to look for work following his 2009 FCE. He testified that he looked for "[e]verything from jewelry stores to shoe stores, places at the mall, strip malls. I started going through the Yellow Pages alphabetically to get ideas, car places, car dealerships. Just every time I would be out I just checked to see if they needed help." The claimant further testified that he found no jobs within his restrictions in 2009. In 2010, he began keeping job search logs. All in all, the claimant testified that he contacted 1181 employers between June 21, 2010, and October 5, 2011, but received no interviews or job offers. He met once with a vocational counselor at the employer's request on August 5, 2010, but never received an offer for follow up or vocational support services after that date. He testified his job search was entirely self-directed. If he were currently employed in full performance of his duties as an ironworker, he would currently make $41 per hour. On cross-examination, the claimant testified that of the approximately 1100 employers the claimant "presented to," none of them were actually hiring. The claimant testified that no employer denied him a job based upon any physical restrictions.

¶ 15 On redirect, which occurred on the second day of the arbitration hearing, which was held over a year later, the claimant retracted his testimony on cross-examination that none of the employers to which he applied during his job search were hiring. The claimant testified that he reviewed his job search logs in relation to that question following the prior hearing, and found that he had made notations as to who was not hiring and who was taking applications. From these notations, he determined that he submitted applications to close to 280 employers that were hiring during his job search.

¶ 16 The claimant's job search logs were admitted into evidence. This court has reviewed the logs in detail and makes the following observations. Of the almost 1200 jobs reflected in these logs, none indicate they were generated in response to an employer's ad or otherwise solicited by the employer. Rather, the overwhelming majority of jobs appear to be copied from the phone book, first from the Yellow Pages and later from the White Pages, which is consistent with the claimant's testimony. These entries indicate they were phone contacts and the entries are grouped first by subject and later in alphabetical order, and the result of almost all of them is "not hiring." In all other cases, it appears that the claimant made "cold contacts" with employers in various malls and shopping centers, wherein he filled out applications where the employer may have or may have not been hiring. On one date in particular, the claimant purports to have filled out 12 of these in-person applications and made 21 calls to furniture stores from the Yellow Pages in which none were hiring. In a couple of cases, it appears the claimant revisited the same malls on different dates.

¶ 17 The claimant testified that on March 1, 2010, he met with Susan Entenberg, a vocational rehabilitation counselor, at the request of his attorney. He met with her again on August 5, 2010, and spoke to her in 2011. Ms. Entenberg's deposition was admitted into evidence on behalf of the claimant. Ms. Entenberg testified that she has been a vocational counselor since 1975. After first meeting with the claimant, she generated a report dated June 20, 2010. Based on the information she gathered, Ms. Entenberg testified that the claimant graduated high school and then attended Joliet Junior College on and off over a 20-year period, just taking classes with no degree or certificate, but

obtaining about 50 credit hours over the years. He's been an ironworker and member of Local 444 since 1968 and that is the only work he has ever done. Ironworking is heavy work in which a person must place and raise structural steel members to form frameworks and requires a great deal of climbing scaffolds, carrying material at heights, and using both hands for tools.

¶ 18 Ms. Entenberg testified that she based her report on the claimant's 2009 FCE. Accordingly, her report indicated that the claimant was an appropriate candidate for a job placement to determine if a stable labor market existed for him. She felt at that time that although he could not go back to work as an ironworker, he did maintain enough physical capacity to do other jobs, with wages between $10 to $15 per hour. However, on October 30, 2010, Ms. Entenberg generated a follow-up report regarding the claimant after viewing the claimant's job search logs, and opined that there is not a stable labor market for him. Ms. Entenberg testified that the claimant did a very diligent job search and did not successfully locate a position. If the claimant were able to find a job, she continued to believe his wages would be between $10 and $15 per hour. On cross-examination, Ms. Entenberg testified that there were absolutely no ironworker jobs based on the claimant's restrictions because supervisors and foremen do the same amount of work as the ironworker laborers. She also testified that she had no information regarding any prior injuries, prior FCEs, or prior restrictions pre-dating this accident.

¶ 19 The claimant testified that, as of the time of the hearing, he still had problems with mobility and pain in his low back. He still does the exercises that he was taught in therapy to keep up his core strength and prevent his disks from "going out of whack." He

takes Ibuprofen a lot, and uses a TENS unit as well as Lidocaine patches for pain. The claimant was asked whether he ever told Dr. Bernstein when he saw him in January 2011 that he was unable to perform his duties as an ironworker at the time of the exam due to shoulder and knee problems. The claimant testified that this did not occur and if Dr. Bernstein testified to this in his deposition he was incorrect. The claimant reiterated that in the three years he did ironwork between 2003 and 2006, he had no difficulty with his lower back.

¶ 20 The claimant was examined and cross-examined regarding his receipt of Social Security Disability benefits between 1991 and 1996. After an *in camera* review of a group of documents, the arbitrator stated on the record that the parties stipulated that on or about May of 1991 the claimant was eligible for Social Security Disability as evidenced by an award some time later. The arbitrator ruled that the reasons for the disability were irrelevant and that the documents would not be admitted into evidence. However, a judgment of dissolution of the claimant's marriage, which was dated August 15, 1996, was admitted into evidence over claimant's objection. In the judgment, the circuit court of Will County found that the claimant was then unemployed and receiving Social Security Disability benefits.

¶ 21 The claimant's application for a trial work program dated September 21, 1996, was also admitted into evidence. This document states that the claimant had applied for participation in said program under the Iron Workers Mid-America Pension Fund. The claimant certified that he was receiving Social Security Disability benefits at that time and that he understood he could participate in the Trial Work Program for up to one year

while continuing to receive Social Security Disability payments. The claimant testified that through this program, he was able to go back to full duty iron work and off of Social Security Disability until 2011. The claimant testified that his disability at that time was not related to his lower back or his left hand.

¶ 22 The claimant testified that, to the best of his knowledge, he worked from 1996 through 1999 with no restrictions. On October 21, 1999, he had an accident while working as an ironworker for a different employer. When asked what happened that the day, the claimant testified, "I can't remember. I think I tripped, fell on the rebar. I really can't remember all the details." The claimant identified a disputed settlement contract with the Illinois Industrial Commission, dated April 6, 2003, as representing the settlement that he entered into as a result of the 1999 work accident. The claimant admitted that the contract indicates on its face that he represented to the Commission that he was unable to return to work as an ironworker at that time. The claimant testified that he returned to work as an ironworker within a month or two of entering into the settlement. He testified that he could not remember whether he received any medical treatment from the time he entered into that contract until he returned to work.

¶ 23 The lump sum settlement contract regarding the claimant's 1999 work injuries was admitted into evidence. This contract indicates that the claimant alleged a work-related accident while in the employ of Mega Steel Corporation on October 21, 1999, in which he tripped over rebar and fell. The nature of his injury was described as "right knee- torn medial meniscus, degenerative condition; left knee- degenerative condition; left shoulder- complete tear rotator cuff; right shoulder- rotator cuff tear." The contract indicates that

the claimant was alleging that he could not return to work as an ironworker as a result of the 1999 accident. Finally, the contract contains the following language:

> "This settlement represents a lump sum of $194,826.60 as full, final and complete settlement of all claims under [the Act] for known or unknown injuries arising out of the described accident. [Mega Steel Corporation] already paid $1942.50 as an advancement. Therefore, once settlement is approved, [Mega Steel Corporation] will only issue a check totaling $192,885. After fees and expenses, [the claimant]'s net $157,500.00 equates to a payout of $508.72 per month over [the claimant]'s 25.8 life expectancy. This settlement represents a disputed payout pursuant to [section] 8(f) of the Act."[4]

¶ 24 The claimant testified that between his 1999 work accident and the date of his 2003 settlement, he was off of work and had a substantial amount of medical treatment. As part of that case he underwent a functional capacity evaluation (FCE) in November of 2000. The FCE report was admitted into evidence over the claimant's objection. This FCE indicates a date of injury of October 17, 1999, and that at the time of this FCE, the claimant had been recovering from a left rotator cuff and labrum repair and had a bilateral knee injury. The description of his injury is as follows:

> "Reports he fell while walking on rebar. He states he tried to break his fall with

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[4] Section 8(f) of the Act provides for payment of compensation in cases of complete disability, which renders the employee wholly and permanently incapable of work. See 305 ILCS 8(f) (West 2002).

his left arm and landed on his knees. He continued working light duty until put on [w]ork[ers'] [c]ompensation in November. Subsequently has had two surgical procedures to his left shoulder, and therapy. Surgical repair to knees is pending."

¶ 25 The FCE indicates that "[r]eturning to work as an [i]ronworker has been ruled out," and continues "[the claimant] has been counseled to seek alternative employment. His goal is to obtain a job that does not have any lifting requirements." The FCE observed that during the assessment, the claimant performed essentially in the medium physical demand level with his reported discomfort level progressively worsening. The FCE concluded that he would not be able to sustain a work shift at that level and recommended that any job considerations should remain in the Light-Medium physical demand level defined as lifting/carrying up to 35 pounds occasionally. The FCE also stated that the claimant should not have to handle weighted objects below knee level or above chest level.

¶ 26 On further redirect, the claimant testified that his 2000 FCE was for injuries he sustained to his shoulder[5] and that he had worked full duty as an ironworker from 2003 until the accident relating to his left thumb on June 14, 2006. He testified that he had some prior injuries in his life and some periods of disability, but when asked why he returned to work following these periods, he stated:

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[5] As evidenced by the aforementioned lump sum settlement contract and the 2000 FCE itself, the claimant actually claimed bilateral shoulder and knee injuries as a result of the 1999 accident.

"I guess it goes back into the Marine Corps. I mean you get banged up, you don't give up, you just keep plugging along. You patch yourself up and get back in the game. I didn't want to become a burden on society. That's one reason I went through the nine-month job trial, to go back and make a productive life for myself, instead of staying on the dole. I wanted to work."

¶ 27 The claimant explained that he went back to ironwork after the previous workers compensation case settled by completing extensive therapy and exercises that built his shoulders back up to where he could possibly handle the work. As a result, he was able to return to ironwork.

¶ 28 With regard to his back, the claimant testified on cross-examination that he injured his back two to three times prior to the 2006 work accident at issue. To the best of his recollection, these injuries occurred in the late 1980s, 1991, and 1997 or 1998. He does not have a recollection of his treating physicians from these injuries. He testified that 1998 was the last time he was treated with respect to his back and he was completely asymptomatic between 1998 and 2006. Because the employer had no medical opinion evidence relating these prior injuries to the claimant's 2006 condition, the claimant's objection to further questioning in this regard was sustained.

¶ 29 Randall Starck, superintendent for the employer, testified at the behest of the employer. He testified that he has worked for the employer for 45 years. He testified that he does not know the claimant, other than his name. Mr. Starck testified that he had a telephone conversation with the claimant in approximately August of 2006, after the claimant had injured his left thumb in June, asking him if he wanted to go to work within

his restrictions at that time. Mr. Starck testified as follows regarding his conversation with the claimant:

> "I told [the claimant] I got a job for him to go to. He said he didn't want to go to work. He didn't feel he could. I said: Well, I got a note. The doctor says you can. And he said something like: I know how this works. You get me back to work, and then they give me a small settlement. It's not going to be like that. I said: Ron, do you want to go to work or not? And then he said he would go."

¶ 30 After being recalled as a witness, the claimant gave his version of the conversation between himself and Mr. Starck. He testified that Mr. Starck told him that the employer wanted him to come back out to the job site on light duty, and if he needed any assistance, the laborers would help with moving anything around. The claimant testified that he never said anything to Mr. Starck regarding receiving a settlement.

¶ 31 Dennis Martin, the employer's CEO, testified that he has occupied that position since 1986. He does not know the claimant personally, but rather as an employee who was allegedly injured on one of the employer's job sites. He testified that the claimant was sent to the job site by the union local at the request of the employer. At that time, the employer had no way of knowing if an ironworker that was sent over by union local had physical limitations that would prevent the ironworker from safely carrying out job duties.

¶ 32 The report and deposition of Dr. Komanduri were admitted into evidence on behalf of the claimant. Dr. Komanduri's report, dated May 2, 2012, stated the Dr. Komanduri's treatment of the claimant prior to 2006 involved a right knee arthroscopy

and a right shoulder surgery, neither of which is relevant to his low back injury. Dr. Komanduri testified that he released the claimant back to full ironworker duties prior to 2006 without restriction.[6] Dr. Komanduri opined that the claimant's work accident constituted a "new aggravation" of the claimant's pre-existing chronic degenerative disc disease which has involved multiple levels of prior disc collapse. Dr. Komanduri agreed with Dr. Urbanoski's assessment that the claimant had reached MMI and could be released to work at a medium level per the FCE, and as such, cannot return to work as an ironworker.

¶ 33 During his deposition, Dr. Komanduri testified that he is a board certified orthopedic surgeon. Dr. Komanduri testified that he first treated the claimant in 2002 for injuries to his right knee and shoulder. Dr. Komanduri testified that the claimant had "an uneventful recovery" from these injuries and he released the claimant in April 2003 with "full range of motion, good strength, [and] good mobility." Dr. Komanduri testified that with this release, the intention was that the claimant could return to work without restrictions at that time. However, in November 2003, Dr. Komanduri also treated

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[6] We note that there is no treatment note, work status report, or other medical record in evidence that states that Dr. Komanduri actually released the claimant to work. It is further noted that the 1999 workers' compensation claim alleged the claimant sustained bilateral knee and bilateral shoulder injuries. However, Dr. Komanduri only references his treatment of injuries to the claimant's right knee and shoulder.

claimant for a neck strain that resulted from an automobile accident. This injury resolved with physical therapy, and the claimant was again released to full activity in 2004.

¶ 34 On direct examination, Dr. Komanduri testified consistent with his May 2012 report regarding his treatment of the claimant following his low back injury on August 14, 2006. He reiterated his opinion that this accident aggravated pre-existing degenerative disc disease in the claimant's low back, that the claimant was appropriately treated conservatively, and that based on the 2009 FCE, the claimant is left with permanent restrictions preventing him from returning to work as an ironworker.

¶ 35 On cross-examination, Dr. Komanduri admitted that his April 9, 2003, office note "releasing" the claimant did not specifically say the claimant could go back to work as an ironworker and did not specify whether the claimant had restrictions. Rather, this note, which was admitted into evidence stated:

> "[The claimant] is done with his right shoulder rehabilitation. He has met all long-term goals for his right shoulder. He has full range of motion, good strength and good mobility. No pain complaints in the right shoulder. He is released from my care. No further intervention is planned."

¶ 36 Dr. Komanduri also admitted that his September 2002 office note set forth permanent restrictions from ironworking. This note was admitted into evidence, and reads as follows:

> "[The claimant] is here for evaluation of his right knee. In my opinion, he has essentially reached maximum medical improvement. He has some minimal low grade discomfort but he is able to tolerate this. He has a shoulder rotator cuff tear

which will continue to restrict his function. There are some permanent restrictions from his left shoulder stabilization. Overall, no further care is necessary for the knee. He is at maximum medical improvement for the knee. No further follow-up is necessary for either knee complaint or his left shoulder."

¶ 37 In addition, Dr. Komanduri admitted that he was privy to the 2000 FCE which contained permanent restrictions for the claimant. Dr. Komanduri was not aware that after his April 9, 2003, release of the claimant, the claimant entered into a lump sum settlement agreement with the Commission in which he indicated that he was incapable of returning to work as an ironworker. Dr. Komanduri also did not realize that the ironworkers union has a trial work program for people coming off of disability. As to whether the claimant was or was not working "full duty" prior to 2006 based on these facts, Dr. Komanduri responded, "[w]ell – you know, I only know what he told me – that he was back at work full duty. I don't know –. "

¶ 38 Dr. Komanduri was also confronted with his November 7, 2003, office note regarding the claimant's neck following an automobile accident in which the claimant was rear-ended at a stop sign. Dr. Komanduri testified consistent with this record, which was admitted into evidence. According to that note, the claimant was at that time "working light duty with minimal lifting and carrying and basically in a supervisory role." The note concluded that based on this description the claimant gave him regarding his work duties and his symptoms, Dr. Komanduri didn't "see any reason why he can't continue at this time."

¶ 39 Over counsel's objection[7], Dr. Komanduri agreed that the following colloquy by counsel for the employer is a possible scenario:

> "And if [minimal lifting and carrying and playing a supervisory role] was what [the claimant] was doing on a regular basis, he could be doing that right now even with – because basically what I'm seeing with this latest FCE – and I don't doubt it. The problem is I can't sort out what's new and what's old. It seems to me he was at medium duty potentially before this most recent accident and he is at medium duty now; and possibly he may be doing some things that aren't in his best interest but he's not physically obviously incapable of doing them."

¶ 40 Dr. Komanduri testified that he could not say with any certainty whether the claimant would have passed a FCE for ironworking prior to the 2006 accidents. However, on re-direct, he testified that his opinions have not changed based on the medical information he has and his review of the claimant's records do not contain any information that he knows of indicating that the claimant was not working at full duty between 2003 and 2006.

¶ 41 Dr. Edward Goldberg's deposition was next admitted into evidence. He is an orthopedic surgeon with a specialty in the spine. He routinely conducts IMEs on behalf of employers. On January 22, 2007, he conducted an IME of the claimant as requested by the employer. In his report of that date, Dr. Goldberg concluded that the claimant had

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[7] There is no indication from the record whether the arbitrator ruled on the claimant's objection.

aggravated his pre-existing degenerative disc disease at L5-S1. At that time, Dr. Goldberg felt that the claimant could return to work with a 10 pound lifting restriction and potentially needed work conditioning.

¶ 42 On April 25, 2007, Dr. Goldberg generated a letter to the employer further clarifying his opinion. He reiterated that he felt there was an aggravation of a pre-existing degenerative disc. He opined that the claimant's recovery had been good, treatment had been appropriate to date, and surgery was not required. He recommended a six week work-hardening program followed by placement at MMI. Again, Dr. Goldberg imposed a 10 pound lifting restriction.

¶ 43 On May 31, 2008, Dr. Goldberg again conducted an IME of the claimant. He again found that the claimant aggravated a degenerative disc in his lumbar spine lifting rebar on August 14, 2006. He recommended a work capacity evaluation. He did not feel further injections or surgery were required to treat the claimant's condition. On May 18, 2009, Dr. Goldberg generated a report in response to a letter from the employer, reiterating his opinion that there had been an aggravation of degenerative disc disease on the date of the accident.

¶ 44 On June 12, 2009, Dr. Goldberg conducted a third IME of the claimant at the behest of the employer. He reviewed the claimant's FCE at that time and indicated that it appeared to be valid. Based upon the claimant's lifting restrictions and inability to sustain a ladder climb, Dr. Goldberg agreed that the report indicated the claimant could not be an ironworker. In his report of that date, Dr. Goldberg reiterated to the employer that the

work-related accident on August 14, 2006, aggravated the claimant's degenerative disc. Following this IME, the claimant requested Dr. Goldberg's deposition on his own behalf.

¶ 45 On October 7, 2011, following a meeting with the employer's counsel, Dr. Goldberg issued a letter, changing his causation opinion. During this meeting, the employer's counsel provided Dr. Goldberg with the statement from the Social Security Administration from January 4, 1992, indicating that the claimant had been declared totally disabled, as well as his application for the trial work program dated October 5, 1996, whereby the claimant indicated he wished to attempt to return to his original employment. In addition, the employer's attorney provided Dr. Goldberg with the lump sum settlement contract dated April 16, 2003, referring to a work-related accident on October 22, 1999, whereby the claimant injured his knees and shoulders. Finally, the employer's attorney provided Dr. Goldberg with the 2000 FCE, which restricted the claimant to work at the light/medium level with a 35 pound lifting restriction.

¶ 46 Dr. Goldberg testified that based upon the aforementioned documentation provided by the employer's counsel, and especially based on the 2000 FCE, he changed his opinion regarding causation, finding that the August 14, 2006, accident did not cause the claimant to be unable to return to ironworking. Rather, Dr. Goldberg opined that the claimant was restricted from performing ironwork prior to his returning to ironwork following his 1999 accident. Dr. Goldberg testified that he had not been provided any documentation that the claimant had been released to perform ironwork following the 2000 FCE.

¶ 47 During Dr. Goldberg's deposition, the claimant's counsel showed Dr. Goldberg several records in an attempt to demonstrate the claimant's lack of physical restrictions between 2003 and 2006. First, counsel presented the April 9, 2003, note from Dr. Komanduri, stating "[h]e's done with his right shoulder rehabilitation. He's met all long-term goals for his right shoulder. He has full range of motion, good strength and mobility; no pain complaints in the right shoulder. He is released from my care. No further intervention." Dr. Goldberg acknowledged the absence of physical restrictions in this record.

¶ 48 The claimant's counsel also showed Dr. Goldberg records from two doctors that did not relate to any work-related injuries. First, counsel presented Dr. Goldberg with a general physical examination record of the claimant performed by a Dr. Sarcu on May 6, 2003, noting that this exam made no mention of low back complaints or any significant complaints or restrictions. Second, the claimant's counsel presented Dr. Goldberg with a record of a follow-up neurological examination of the claimant performed by a Dr. Nitin Nadkarni on August 29, 2003. This record noted that the claimant presented with complaints of lightheadedness and dizziness after playing a video game, and indicates the findings of the exam were normal and did not indicate any restrictions on the claimant.

¶ 49 The claimant's counsel then provided Dr. Goldberg with Dr. Komanduri's records following treatment of the claimant's cervical spine following an automobile accident dated November 2003, indicating that his cervical strain had resolved, he is released from care, with no restrictions imposed. Finally, claimant's counsel presented records to Dr. Goldberg that the claimant was indeed employed as an ironworker from 2003 to 2006,

working 628 hours in 2003, 1,185.88 hours in 2004, 735.5 hours in 2005, and 436.5 hours in 2006.

¶ 50 After presenting the aforementioned documents, the claimant's counsel asked Dr. Goldberg if he would agree to go back to his original opinion that the August 14, 2006, accident caused an aggravation of the claimant's degenerative disc disease which prevented him from returning to work as an ironworker. Dr. Goldberg responded in the affirmative, stating "[w]ell he apparently was working as an ironworker throughout."

¶ 51 On cross-examination, counsel for the employer pointed out, and Dr. Goldberg agreed, that the Social Security trial work program document indicated that the claimant applied for participation in a trial work program under the Ironworkers MidAmerica Pension Fund. In addition, Dr. Goldberg acknowledged that the workers' compensation settlement contract from 2003 indicated that the claimant alleged at that time that he could not return to work as an ironworker. Dr. Goldberg also acknowledged that Dr. Komanduri's November 2003 note, which released the claimant following his automobile accident and cervical injury, indicates that the claimant indicated to Dr. Komanduri at that time that he was working as an ironworker in a supervisory capacity with minimal lifting and carrying. Dr. Goldberg acknowledged that assuming that the claimant continued in that capacity up until the accident at issue, his opinion would be consistent with his 2011 report. Dr. Goldberg also admitted that there are no records he has seen that ever released the claimant to full duty as an ironworker with regard to his knee injuries after his 2003 workers' compensation settlement. After this line of inquiry, Dr. Goldberg testified as follows:

> "My opinion is he had – he apparently, as of 2000, had restrictions in terms of returning to full duty as an ironworker. [Claimant's counsel] did point out a log, if you will, that he was working in some capacity during the ensuing three years. I don't know in what capacity, but it appeared, based upon 2000, he did not have the physical capabilities of returning to unrestricted ironworking."

¶ 52 On re-direct, Dr. Goldberg agreed that the key factor in his opinion is whether the claimant returned to full ironworker duties from 2003 to 2006. Dr. Goldberg concluded that he had not been given information sufficient for him to make a determination in that regard.

Finally, the evidence deposition of Avi J. Bernstein, dated July 14, 2011, was admitted into evidence on behalf of the employer. Dr. Bernstein is an orthopedic surgeon who performed an IME of the claimant on January 27, 2011. Dr. Bernstein testified extensively regarding the history he received from the claimant. According to Dr. Bernstein, the claimant told him that he worked as an ironworker throughout his life and suffered a variety of back injuries throughout the years. By way of other orthopedic injuries, the claimant told him that he had bilateral rotator cuff repairs in the past, including a left labral repair, and bilateral knee arthroscopies and had completed a FCE.[8] With regard to the low back, the claimant told Dr. Bernstein he had seen multiple doctors and was told that he had a degenerative disc condition of the lumbar spine. His main

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[8] It is unclear whether the claimant was describing the 2000 FCE or the 2009 FCE at this point in the history Dr. Bernstein testified the claimant provided to him.

complaint was low back pain, which was aggravated with exercise. He found that prolonged sitting, standing, walking, and bending can all cause an increase in his subjective complaints of pain.

¶ 53 Dr. Bernstein testified his physical exam of the claimant revealed that he was able to get up to a standing position without any difficulty. He demonstrated a normal, brisk gait, and good power in the lower extremities by walking on his toes and his heels with good balance. He had full range of motion of the lumbar spine and did not demonstrate any pain guarding or difficulty in rising from a bent position. He did not have any tenderness or evidence of spasm. In addition, Dr. Bernstein's neurologic examination was normal with regard to strength, sensation, reflexes, and straight leg raise.

¶ 54 Dr. Bernstein reviewed the claimant's November 14, 2008, MRI films, and testified it showed typical degenerative changes consistent with the claimant's age. There was fairly good disc preservation throughout the claimant's low back, with more degenerative involvement at L5-S1. There was also a central protrusion but no disc herniation and no nerve root compression. Dr. Bernstein's review of the claimant's 2009 FCE revealed that the claimant was functioning at the medium demand level. Based on the claimant's history, physical examination, and a review of the claimant's records, Dr. Bernstein concluded that the claimant has a routine degenerative condition of his lumbar spine and did not require further treatment.

¶ 55 Although Dr. Bernstein agreed that the claimant could function within the paramaters of the Janaury 30, 2009, FCE, he testified that he was unable to attribute those limitations directly to the August 14, 2006, work accident. Dr. Bernstein opined that the

claimant's degenerative condition of the lower back, along with arthritic conditions in the claimant's other joints, taken as a whole, contribute to his functional limitations. With respect to his low back condition alone, Dr. Bernstein testified that he would not expect him to be limited in pursuing any type of employment whatsoever.

¶ 56 On cross-examination, Dr. Bernstein testified that he conducts 100 to 200 IMEs per year, 80 percent of which he conducts on behalf of employers. Dr. Bernstein admitted that he did not include the claimant's alleged statements to him about his prior injuries affecting him and restricting him in the history section of his report. In addition, he admitted that he had no independent recollection of the claimant stating that these prior injuries were disabling him from ironwork. However, he testified that it is his belief that the conclusion in his report that "the claimant has diffuse subjective complaints involving multiple joints that taken as a whole prevent him from returning to work as an ironworker and laborer" is based on this history provided by the claimant. He also admitted that in reviewing the 2009 FCE, the claimant's lower back was a major factor in the report's conclusion that the claimant's activities must be restricted to medium duty. Based on this, Dr. Bernstein opined that there does exist a causal relationship between the August 14, 2006, lower back injury and the physical restrictions imposed in January 2009.

¶ 57 On re-direct, Dr. Bernstein was shown the document indicating that the claimant was on Social Security disability in 1991 and the lump sum settlement contract from 2003. Dr. Bernstein agreed that if someone is totally disabled that they are unable to return to heavy work as an ironworker and testified that he is aware of no doctor that ever

released the claimant to full duty following either of these disabling events. Dr. Bernstein reiterated that his opinion remained that the claimant is not restricted, as far as returning to ironwork, as a result of the 2006 accident and is unable to relate the restrictions from the 2009 FCE to the 2006 accident.

¶ 58 The arbitrator issued a decision on the consolidated cases on October 9, 2014, and a corrected decision on the claimant's hand injury on October 22, 2014. With regard to the hand injury, the arbitrator awarded the claimant temporary total disability (TTD) and PPD benefits and stated that "[f]urther periods of TTD, maintenance and permanent total benefits are contained in consolidated case number 06 WC 47052," which is the low back injury that is the subject of this appeal. In the decision that is the subject of this appeal, the arbitrator found that the claimant was injured in the course and scope of his employment as an ironworker on August 14, 2006, when he was picking up bundles of rebar with his right hand, and felt a snapping sensation in his lower back with pain into the legs. The arbitrator further found that the claimant's current condition of ill-being in his lumbar spine, including the aggravation of degenerative disc disease, disc herniation and permanent restrictions related thereto, are causally related to his August 14, 2006, work accident.

¶ 59 The arbitrator ordered the employer to pay for all unpaid medical services, totaling $17,497.25, TTD benefits from August 15, 2006, through February 12, 2009, and maintenance benefits from February 13, 2009, through April 7, 2011, the date the claimant's vocational rehabilitation expert testified that there is no stable labor market for the claimant. The arbitrator found that the claimant cannot return to work due to both of

his injuries, that no stable labor market exists for the claimant as of April 7, 2011, and that the claimant was unable to find work after a diligent but unsuccessful job search. Accordingly, the arbitrator found that the claimant is permanently and totally disabled as of April 8, 2011, and ordered the employer to pay PTD benefits to the claimant as of that date in the amount of $1,032.20 per week for life. The arbitrator denied the claimant's motion for penalties and attorney fees.

¶ 60 The Commission, on appeal, substantially modified the award of the arbitrator in a unanimous decision. The Commission noted that it was troubled by the record, finding it to be replete with evidence demonstrating actions inconsistent with the intent of the Act, disingenuous, and representing an intentional effort on the part of the claimant to mislead the doctors and vocational experts. Based on these actions, the Commission found that the claimant was not credible, and outlined several items of evidence in the record which it viewed as negatively impacting the claimant's credibility. The Commission found, after performing "an extensive review," that the job search records submitted by the claimant "evidence a job search that is nothing more than farcical," and on this basis, gave no weight to Susan Entenberg's opinions nor any credence to the claimant's contentions as to loss of trade. As a factual matter, the Commission found that the claimant had reached MMI as to his lower back as of July 11, 2011, the date of Dr. Bernstein's deposition. The Commission also adopted Dr. Bernstein's opinion that the limitations in the claimant's 2009 FCE and the claimant's inability to return to full capacity ironworking were not caused by the accidents of 2006, but were rather a culmination of past injuries sustained by the claimant over time. The Commission also

gave no weight to Dr. Komanduri's opinions because Dr. Komanduri relied on information provided by the claimant, who did not give a complete history, in forming those opinions.

¶ 61 Based on the foregoing, the Commission found that the claimant is not entitled to PTD benefits, as he is qualified for and capable of obtaining gainful employment without endangering his health or life. Similarly, based on its conclusions regarding the claimant's credibility, the Commission gave no credence to the claimant's "loss of trade argument," and found that a wage differential award would be improper. The Commission limited the claimant's award of unpaid medical expenses to those incurred through July 14, 2011, and awarded TTD benefits through July 14, 2011, as well, with no maintenance benefits. In lieu of PTD benefits or a wage differential, the Commission awarded the claimant permanent partial disability (PPD) benefits at 25% loss of man-as-a-whole. The circuit court of Will County confirmed the Commission's award, and the claimant appealed to this court.

¶ 62 ANALYSIS

¶ 63 The claimant raises five issues on appeal, which we address in turn. As the claimant recognizes in his brief, the applicable standard of review as to all issues he has raised is whether the Commission's findings are against the manifest weight of the evidence. See *Shafer v. Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶35. "It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, determine the weight that their testimony is to be given, and resolve conflicts in the evidence." *Id.* (citing *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.

2d 193, 206 (2003)). "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Id.* As such, "[i]f there is sufficient factual evidence in the record to support the Commission's determination, it will not be set aside on appeal." *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 257 (2008). " 'We will affirm the * * * Commission's decision if there is any legal basis in the record which would sustain that decision, regardless of whether the particular reasons or findings contained in the decision are correct or sound.' " *Comfort Masters v. Workers' Compensation Comm'n*, 382 Ill. App. 3d 1043, 1044 (2008) (quoting *Butler Manufacturing Co. v. Industrial Comm'n*, 140 Ill. App. 3d 729, 734 (1986)).

¶ 64 The first issue on appeal is whether the Commission's award of PPD benefits pursuant to section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2014)), rather than a PTD award pursuant to section 8(f) (820 ILCS 305/8(f) (West 2014)), is against the manifest weight of the evidence. "[A] PTD award is proper when [an] employee can make no contribution to industry sufficient to earn a wage." *Lenhart v. Workers' Compensation Comm'n*, 2015 IL App (3d) 130743WC, ¶32. "A person is not entitled to PTD benefits if he is qualified for and capable of obtaining gainful employment without seriously endangering his health or life." *Id.* Here, the claimant argues that he has established that he falls into the "odd lot" category. "The odd-lot category for purposes of a PTD award arises when a 'claimant's disability is limited in nature so that he is obviously unemployable, or if there is no medical evidence to support a claim of total disability.' " *Id.* at ¶33 (quoting *Valley Mould & Iron Co. v. Industrial Comm'n*, 84 Ill. 2d

538, 546-47 (1981)). "In these situations, the claimant can establish that he is entitled to PTD benefits under the 'odd lot' category by proving the unavailability of employment to persons in his circumstances." *Id.*

¶ 65 " 'The claimant ordinarily satisfies his burden of proving that he falls into the odd lot category in one of two ways: (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market.' " *Id.* at ¶34 (quoting *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 544 (2007)). "If the claimant establishes that he fits into the odd-lot category, the burden shifts to the employer to prove that the claimant is employable in a stable labor market and that such a market exists." *Id.* Here, the claimant argues that he met his burden to prove he falls within the "odd-lot" category in both of these ways, and the Commission's determination to the contrary is against the manifest weight of the evidence. First, he argues that he has proven a diligent but unsuccessful attempt to find work through his testimony and his job search logs, as well as the opinion of vocational rehabilitation expert Susan Entenberg. Second, he argues that he has proven that no stable labor market exists for him through the unrebutted testimony of Entenberg. We address each of these arguments in turn.

¶ 66 With regard to the claimant's job search logs, which purport to show that he diligently attempted to find work but was unsuccessful, the Commission found, after an "extensive review" of the claimant's job search logs, that it questioned the sincerity of the claimant's efforts. In fact, the Commission found, based on these logs, that the claimant's job search "was nothing more than farcical." The Commission outlined, in detail, the

characteristics of the job search logs that it found to be suspect. Our review of these logs confirms that these characteristics are present in the logs. For example, as the Commission noted, the logs reveal that the claimant contacted numerous employers multiple times. An overwhelming majority of the entries appear to be copied from the Yellow Pages or White Pages of a phone book, and even if we assume that the claimant called each one of these employers, we cannot say that a conclusion opposite of that made by the Commission, that this job search method is not reasonably calculated to lead to available employment, is readily apparent. As noted in our review of these logs, it appears that at no time during the claimant's job search, did he attempt to locate an employer soliciting applications for employment. Rather, it appears that any contacts with potential employers were made "cold," mostly by phone but sometimes in person. The in-person contacts are mostly where the claimant marked on the logs that he completed applications, but it is unclear what portion of these employers were even hiring. It appears that these in-person contacts were cold contacts as the claimant walked through malls and shopping centers. He first testified that none of these employers were hiring, but at the second part of the hearing a year later retracted this testimony, which could be considered suspect. In addition, on one date in particular, the claimant purports to have filled out 12 in-person applications and made 21 calls, which could be considered somewhat unbelievable for one day of a serious job search. Susan Entenberg's opinion, that no stable labor market existed for the claimant, was formed based solely on these job search logs. As previously set forth, it is the Commission's province to determine the weight to give this evidence (see *Shafer* at ¶35 (citing *Sisbro*, 207 Ill. 2d at 206)), and it

was within its province to give no weight to Entenberg's opinion based on its own review of the logs. Accordingly, we decline to disturb its determination that the claimant failed to make a diligent attempt to find work, and therefore, the Commission's determination that the claimant was not entitled to a PTD award, is not against the manifest weight of the evidence.

¶ 67 The second issue on appeal is whether the Commission's failure to award the claimant a wage differential pursuant to section 8(d)(1) of the Act (820 ILCS 305/8(d)(1) (West 2014)) is against the manifest weight of the evidence. A wage differential is appropriate when, after the accidental injury has been sustained, the claimant as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment. *Id*. In this case, the Commission determined this standard was not met, finding the claimant was not credible, and discrediting Dr. Komanduri's opinion regarding the cause of the claimant's loss of trade per the 2009 FCE because his opinion was based on information provided by the claimant. In addition, the Commission adopted the opinion of Dr. Bernstein that the FCE limitations from 2009 were not related to the accident at issue.

¶ 68 We find that an opposite conclusion is not clearly apparent. Dr. Bernstein testified that the claimant himself provided him a history that included his prior injuries involving multiple joints, and attributed these injuries, taken as a whole, to his inability to return to ironworking. Although the claimant testified that he made no such statements to Dr. Bernstein, the Commission resolved this conflict in favor of Dr. Bernstein and adopted Dr. Bernstein's opinion. Given this evidence, and the Commission's finding that the

claimant was not credible, it was within the province of the Commission as the finder of fact to reject the claimant's loss of trade argument. Accordingly, the Commission's determination that the claimant was not entitled to a wage differential is not against the manifest weight of the evidence.

¶ 69 The third issue on appeal is whether the Commission's determination that the claimant reached MMI as of July 14, 2011, was against the manifest weight of the evidence. We first note that in his brief, the claimant cites no authority whatsoever in support of this argument. Accordingly, the claimant has forfeited this issue for purposes of appeal. Ill. Sup. Ct. Rule 341(h)(7) (eff. Jan. 1, 2016); *TTC Illinois, Inc./Tom Via Trucking v. Workers' Compensation Comm'n*, 396 Ill. App. 3d 344, 355 (2009). Forfeiture aside, we find that the claimant's argument lacks merit.

¶ 70 A claimant reaches MMI when he is as far recovered or rested as the permanent character of his injury will permit. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (citing *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990)). "In determining whether the claimant has reached MMI, a court may consider such factors as a release to return to work, and medical testimony or evidence concerning the claimant's injury, the extent thereof, and most importantly, whether the injury has stabilized." *Id.* Here, the claimant was released to work with permanent restrictions as of 2009. On July 14, 2011, Dr. Bernstein testified, based on the claimant's history, physical examination, and a review of the claimant's records, that the claimant has a routine degenerative condition of his lumbar spine, consistent with his age, and that the claimant did not require further treatment for any aggravation of that condition arising

from his accident on August 14, 2006. Dr. Bernstein testified that his physical examination of the claimant revealed he was able to get up to a standing position without any difficulty. He demonstrated a normal, brisk gait, and good power in the lower extremities by walking on his toes and his heels with good balance. He had full range of motion of the lumbar spine and did not demonstrate any pain guarding or difficulty in rising from a bent position. He did not have any tenderness or evidence of spasm. In addition, Dr. Bernstein's neurologic examination was normal with regard to strength, sensation, reflexes, and straight leg raise. Although Dr. Komanduri did not release the claimant from his care until 2012, it was within the province of the Commission to find Dr. Bernstein's opinion to be more credible and to resolve any conflict in the medical evidence in favor of Dr. Bernstein. See *Shafer* at ¶35 (citing *Sisbro*, 207 Ill. 2d at 206). Accordingly, we decline to disturb the Commission's finding that the claimant reached MMI as of July 14, 2011.

¶ 71 The fourth issue on appeal is whether the Commission's award of TTD benefits only through July 14, 2011, was against the manifest weight of the evidence. Again, the claimant failed to cite any authority whatsoever in support of his argument, resulting in forfeiture. Ill. Sup. Ct. Rule 341(h)(7) (eff. Jan. 1, 2016); *TTC Illinois, Inc./Tom Via Trucking v. Workers' Compensation Comm'n*, 396 Ill. App. 3d at 355. Forfeiture aside, once a claimant has reached MMI, an injury has become permanent and he is no longer eligible for TTD benefits. *Nascote Industries*, 353 Ill. App. 3d at 1072 (citing *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990)). Here, for the reasons set forth above, the Commission's determination that the claimant reached MMI

on July 14, 2011, is not against the manifest weight of the evidence. As such, the Commission's award of TTD through that date is also not against the manifest weight of the evidence.[9]

¶ 72 The fifth and final issue raised on appeal is whether the Commission's award of medical expenses only through July 14, 2011, was against the manifest weight of the evidence. Yet again, the claimant does not cite a single authority in support of this argument and makes no citation to the record on appeal to reference the medical expenses to which he is referring. Thus, the claimant has forfeited the argument on appeal. Ill. Sup. Ct. Rule 341(h)(7) (eff. Jan. 1, 2016); *TTC Illinois, Inc./Tom Via Trucking v. Workers' Compensation Comm'n*, 396 Ill. App. 3d at 355. Forfeiture aside, under section 8(a) of the Act (820 ILCS 305(a) (West 2012)), the claimant is entitled to cover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, treat, relieve, or cure the effects of the claimant's injury. *F&B Manufacturing Co.*, 325 Ill. App. 3d 527, 534 (2001). On July 14, 2011, Dr. Bernstein opined that no further treatment was necessary as to the aggravation of the

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[9] In the section of his argument regarding the TTD award, the claimant devotes one line of his brief to arguing that he is due maintenance benefits from February 13, 2009, through April 6, 2011. Again, the claimant cites no authority to this court in support of this argument. Accordingly, we find this issue forfeited. Ill. Sup. Ct. Rule 341(h)(7) (eff. Jan. 1, 2016); *TTC Illinois, Inc./Tom Via Trucking v. Workers' Compensation Comm'n*, 396 Ill. App. 3d at 355.

degenerative condition in the claimant's lower back. The Commission was entitled to give this opinion deference over that of Dr. Komanduri, who the Commission found to be under the effect of incomplete and inaccurate information from the claimant. Again, this is a credibility determination that was the Commission's function to resolve. See *Shafer* at ¶35 (citing *Sisbro*, 207 Ill. 2d at 206). For these reasons, we find that the Commission's award of medical expenses was not against the manifest weight of the evidence.

¶ 73 CONCLUSION

¶ 74 For the aforementioned reasons, the judgment of the circuit court of Will County, which confirmed the decision of the Commission, is affirmed.

¶ 75 Affirmed.