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Carla Bender
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Court, IL

2017 IL App (4th) 151002WC-U

Workers' Compensation
Commission Division
Order Filed: May 31, 2017

No. 4-15-1002WC

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

ROBERT E. TODD,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Sangamon County
	)	
v.	)	No. 14 MR 1229
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*,	)	Honorable
	)	Leslie J. Graves,
(City Water Light & Power, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The decision of the Illinois Workers' Compensation Commission (Commission) finding that the injuries suffered by the claimant to his cervical and lumbar spine, left ankle and his depression are not causally related to his work accident is not against the manifest weight of the evidence. The Commission's denial of medical expenses for treatment of the claimant's cervical and lumbar spine, left ankle and depression is not against the manifest weight of the evidence. The Commission's denial of maintenance benefits after December 22, 2012, is not against the manifest weight of the evidence.

¶ 2 The claimant, Robert E. Todd, appeals from that portion of an order of the circuit court confirming the Illinois Workers' Compensation Commission's (Commission) denial of benefits

under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)) for: injuries to his cervical and lumbar spine, left ankle and depression; medical expenses for treatment of injuries to his lumbar and cervical spine, left ankle and depression; and maintenance benefits after December 22, 2012. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on October 17, 2013.

¶ 1 Prior to his work accident of December 22, 2009, which gave rise to the instant litigation, the claimant sustained work-related injuries on July 28, 2003, and December 19, 2007 while working as a carpenter for City Water Light & Power (CWLP). We begin by setting forth the facts regarding these earlier injuries and the medical treatment the claimant received to the extent this information is relevant to the instant appeal.

¶ 2 On July 28, 2003, the claimant was working when he suffered an accident causing injuries to his left shoulder, neck and low back. The claimant testified that he suffered ongoing depression following that accident. The claimant was initially diagnosed with a left shoulder contusion, a cervical strain, and a lumbar contusion. An MRI of the claimant's left shoulder and cervical spine revealed a full thickness tear of the left supraspinatus tendon while an MRI of the cervical spine disclosed "some spinal stenosis." On December 10, 2003, Dr. Tomasz Borowiecki performed arthroscopic surgery on the claimant's left shoulder. The claimant continued to treat with Dr. Borowiecki through June 23, 2004. During that period, the claimant underwent physical therapy and consistently complained of feeling depressed and experiencing pain in his left shoulder, cervical spine, and low back. Dr. Borowiecki's treatment notes from June 23, 2004, state that the claimant's shoulder continues to improve and that he was released to work

with restrictions of no lifting more than 55 pounds, no overhead lifting of more than 30 pounds, and no carrying more than 50 pounds.

¶ 3 On July 11, 2005, the claimant presented to Dr. Terrence L. Pencek of Springfield Neurosurgical Associates, for evaluation of his neck and low back. Dr. Pencek assessed the claimant as having degenerative changes in the lower lumbar spine and "some central canal stenosis, particularly at C3-4 with degenerative changes more diffusely in the cervical spine."

¶ 4 Two years later, on May 2, 2007, the claimant underwent a C3-4 and C4-5 anterior cervical discectomy and fusion. Dr. Pencek's notes from that surgery state that the claimant had "[m]arked disc degeneration at C3-C4 and C4-C5, with softened disc material." Postoperatively, Dr. Pencek diagnosed the claimant with cervical stenosis with discogenic pain. On July 10, 2007, Dr. Pencek discharged the claimant from care and authorized him to return to work subject to restrictions of no lifting over 30 pounds and limited overhead work. CWLP accommodated the claimant's restrictions and the claimant returned to work.

¶ 5 On December 19, 2007, the claimant sustained a second work-related injury to his right shoulder as he was attempting to lift a concrete form. The claimant was seen by Dr. Borowiecki who determined that he suffered a superior labral tear and full thickness tear of the interior and mid-portion of the supraspinatus. On May 21, 2008, Dr. Borowiecki performed a right shoulder arthroscopy, arthroscopic subacromial decompression, mini open Mumford procedure, and mini open rotator cuff repair.

¶ 6 Although the claimant continued under Dr. Borowiecki's care, he was referred to Dr. David Fletcher for overall management of the claimant's conditions of ill-being, including his ongoing depression. Eventually, the claimant returned to work with permanent restrictions of no lifting over 40 pounds, no overhead lifting, no repetitive motions, and no awkward positions.

¶ 7 On November 23, 2009, the claimant followed up with Dr. Fletcher, complaining of daily pain. Dr. Fletcher's notes of that visit state that the claimant's lumbar radiculopathy and cervical radiculopathy is stable, but he needs to monitor the claimant's ongoing depression. Dr. Fletcher testified that, because the claimant's condition was stable, his plan was "to get case closure" with permanent work restrictions. The doctor refilled the claimant's anti-depression medication, prescribed home exercises, and recommended a reevaluation in three months.

¶ 8 The claimant testified that, at the time of the accident at issue, on December 22, 2009, he was carrying a four-by-eight foot concrete form to build a retaining wall when he slipped and fell, landing on his back. He slipped and fell a second time as he attempted to stand up. The claimant testified that he had considerable pain in his neck, right shoulder, and low back, but he was able to continue working.

¶ 9 On January 11, 2010, the claimant saw Dr. Fletcher. He reported a history of having "constant aching pain" in his neck and "sharp" pain in his shoulder blade after slipping in the mud at work. The claimant stated, however, that his low back pain "has eased up." Dr. Fletcher wrote in his medical records that, "[f]ollowing this injury there is no substantial change in his condition other than increase of subjective complaints." Dr. Fletcher noted that his "biggest concern" is the claimant's underlying depression because his "affect seems worse." The doctor ordered physical therapy for "pain control," refilled the claimant's medication, and continued his work restrictions. He did not recommend "further diagnostic testing" as a result of the December 22, 2009, injury.

¶ 10 The claimant underwent a course of three physical therapy sessions on February 8, 10, and 19, 2010. According to the physical therapist's progress notes, the claimant tolerated therapy "fairly well," but continued to experience discomfort along the left midscapular area.

¶ 11 The claimant returned to Dr. Fletcher on February 22, 2010, reporting no improvement in his left shoulder, neck, and low back. On examination, Dr. Fletcher noted that the claimant was limping, had restricted lumbar range of motion, reduced range of motion in the right shoulder, and positive straight leg raising in the right leg. Examination of the claimant's cervical spine exam was "basically unchanged." He also noted that the claimant "appears to be more depressed." Dr. Fletcher administered a steroid injection in the claimant's right shoulder and recommended an MRI of the lumbar spine. Dr. Fletcher's notes of that visit state that the claimant's injury of December 22, 2009, "aggravated his pre-existing conditions that our office [has] treated for the last 2 years." The doctor continued the claimant's medications, physical therapy, and work restrictions.

¶ 12 At CWLP's request, the claimant was evaluated by Dr. Gunnar Anderson, a board certified orthopedic surgeon, on April 22, 2010. Dr. Anderson testified that the claimant reported pain in the neck and low back, with pain radiating into the shoulders, left buttocks, thigh and calf. The claimant also indicated that he had left side thigh and calf numbness. According to Dr. Anderson's report, examination of the claimant's neck and back revealed "near normal range of motion," no tenderness, and negative straight leg raises and Spurling's tests. Examination of the claimant's arm and knee reflexes were unremarkable and his overall physical condition was "quite benign." He diagnosed the claimant with lumbar and cervical strains and opined that the work accident of December 22, 2009, temporarily aggravated his preexisting shoulder, neck and low back condition. In support of his opinion, Dr. Anderson explained that the claimant has a long history of cervical and lumbar symptoms and that Dr. Fletcher's medical records dated November 22, 2009, and January, 11, 2010, taken before and after the claimant's work accident, show no significant change in the claimant's condition. Dr. Anderson concluded

that the claimant's "current symptomatology" is not related to the December 22, 2009, accident since the claimant's condition was temporarily aggravated.

¶ 13 On April 26, 2010, at CWLP's request, the claimant saw Dr. Christopher R. Rothrock, an orthopedic surgeon, for an independent medical examination (IME) of his right shoulder. According to Dr. Rothrock's report, the claimant complained of continued pain and weakness in his right shoulder since his surgery on May 22, 2008, but that his pain has increased since his work accident of December 22, 2009. Dr. Rothrock's physical examination revealed deficits in the claimant's strength and range of motion. X-rays of the claimant's shoulder disclosed a "high riding humerus, [and] a sclerotic border about a bioabsorbable anchor in the greater tuberosity," which suggests an acute or chronic injury. Dr. Rothrock opined that the claimant's work-related injury on December 22, 2009, aggravated the preexisting condition of his right shoulder girdle. He recommended cortisone injections to relieve pain and inflammation, four weeks of physical therapy and work hardening, and increased the claimant's work restrictions to no lifting more than 10 pounds and no overhead activity with the right arm.

¶ 14 On June 14, 2010, the claimant was seen by Dr. Fletcher. Pursuant to the recommendations in Dr. Rothrock's IME report, Dr. Fletcher prescribed a course of physical therapy, steroid injections, and continued the work restrictions issued by Dr. Rothrock. The record discloses that the claimant attended 12 sessions of physical therapy at Midwest Rehabilitation from June 30, 2010, through July 30, 2010.

¶ 15 The claimant returned to Dr. Fletcher on August 2, 2010, reporting no improvement and rating his shoulder pain at an intensity level of 7 out of 10. Dr. Fletcher referred the claimant to Dr. Borowiecki and recommended case closure.

¶ 16 Pursuant to Dr. Fletcher's referral, the claimant was seen by Dr. Borowiecki on August 5, 2010, complaining of pain in the right shoulder. Physical examination revealed pain with internal rotation behind his back and pain with abducted internal rotation between the scapula. External rotation causes "a lot" of discomfort and the claimant's strength is 4+/5 as compared to 5/5 on the left side. According to Dr. Borowiecki's clinical notes, his impression was that the claimant suffered a recurrent impingement-type symptom and possibly a re-tear of the rotator cuff. He ordered a repeat MRI to evaluate whether the claimant has a rotator cuff tear.

¶ 17 On August 31, 2010, Dr. Borowiecki reviewed the MRI scan, taken August 26, 2010, and confirmed that the claimant had re-torn his rotator cuff. Dr. Borowiecki recommended a repeat shoulder arthroscopy and repeat subacromial decompression and debridement, followed by a mini rotator cuff repair, if feasible.

¶ 18 At the direction of CWLP, the claimant underwent a second examination by Dr. Rothrock on October 4, 2010. Dr. Rothrock reviewed the claimant's MRI of August 26, 2010, and agreed with Dr. Borowiecki that he has a full thickness supraspinatus tendon tear and agreed with Dr. Borowiecki's recommendation for surgical treatment. Dr. Rothrock also opined that the claimant's work-related injury of December 22, 2009, aggravated his preexisting right shoulder condition.

¶ 19 On November 24, 2010, the claimant underwent a right shoulder arthroscopy, arthroscopic debridement of degenerative labral tearing followed by arthroscopic subacromial decompression and bursectomy and mini open rotator cuff repair, as well as biceps tenodesis. The operative report recorded a postoperative diagnosis of "re-tear of the supraspinatus tendon with chronic biceps rupture and return impingement syndrome with some degenerative fraying of the glenoid labrum."

¶ 20 Following his surgery, the claimant began physical therapy. In a progress note dated March 31, 2011, Jessica Blackburn, the physical therapist, noted that the claimant's shoulder range and strength had improved, and his shoulder felt limber after therapeutic sessions. The claimant also continued to treat with Drs. Borowiecki and Fletcher, post-operatively.

¶ 21 In his notes of February 14, 2011, Dr. Fletcher noted that physical examination revealed "gained strength in [the claimant's] right shoulder and improved [range of motion]." He also stated that the claimant still has some secondary depression for which he is taking medication. Dr. Fletcher released the claimant to work with restrictions of no lifting over 5 to 10 pounds and no constant overhead work.

¶ 22 In a "chart note" dated February 17, 2011, Dr. Borowiecki noted that Dr. Fletcher released the claimant to light-duty work. Dr. Borowiecki agreed with Dr. Fletcher that the prognosis for the claimant's return to unrestricted carpentry-type work is "guarded at best." On April 5, 2011, Dr. Borowiecki noted that the claimant is "starting to plateau in physical therapy" and continues to experience "some symptoms" in the shoulder. The claimant also reported that CWLP has not offered him work within his restrictions. Dr. Borowiecki discharged the claimant from care, noting that there is nothing else he can do from a surgical standpoint to improve the claimant's symptoms.

¶ 23 On April 8, 2011, the claimant saw Dr. Fletcher, complaining of "on-going cervical and lumbar spine issues." Dr. Fletcher stated that he has "repeatedly told the [claimant] that [he] does not plan to address these with any further workup," but recommends that he "live with the conditions." Since CWLP had not offered the claimant work within his restriction, Dr. Fletcher ordered a functional capacity evaluation (FCE) to determine whether the claimant's work restrictions should be changed.

¶ 24 On June 5, 2011, the claimant underwent an FCE at Memorial Industrial Rehab. According to the FCE report, the claimant reported pain in both shoulders, mid lower back, left thigh, and left knee. The evaluator determined that the claimant fully participated, demonstrated cooperative behavior, and was willing to work to maximum abilities in all test items. The evaluator concluded that the claimant's performance demonstrated "material handling abilities in the medium physical demand level (lift and carry up to 50 pounds up to 33% of the work day)." Although the FCE report states that the claimant reported increased shoulder pain during waist to crown lifts, the report says nothing about the claimant sustaining any injuries to his left ankle.

¶ 25 The claimant testified that, during the FCE, he felt a pop in the arch of his left foot towards the heel while performing "deep knee bends," per the therapist's instructions. He testified that his left foot has "been hurting ever since."

¶ 26 On June 7, 2011, the claimant followed up with Dr. Fletcher for a final time. Dr. Fletcher's notes of that visit state that the claimant's pain is unchanged from his last visit and that he injured his left foot and ankle during the FCE. Physical examination revealed that the claimant is "exquisitely tender at the base of Achilles tendon." Dr. Fletcher recommended an MRI of the left ankle. Based upon the FCE, Dr. Fletcher changed the claimant's work restrictions to no lifting more than 50 pounds floor to waist, 25 pound frequent lift, overhead occasional 10 pound lift, and 5 pound frequent overhead lift.

¶ 27 In a letter dated January 10, 2012, CWLP informed the claimant that light-duty work is not available and it requested a settlement demand to settle all issues relating to the claimant's claim.

¶ 28 On February 14, 2012, Dr. Borowiecki recommended a repeat FCE to determine whether the claimant is able to return to work. The doctor reiterated, however, the claimant's shoulder is at maximum medical improvement (MMI) and he has been discharged from care.

¶ 29 Also on February 14, 2012, CWLP sent a letter to the claimant advising him that Drs. Fletcher and Borowiecki have stated that he has reached MMI and, as a result, it will be terminating his temporary total disability (TTD) benefits effective March 1, 2012.

¶ 30 On March 7, 2012, at the claimant's request, CWLP initiated vocational rehabilitation. Liala Slaise, of Triune Health Group, was assigned to assist the claimant in finding suitable employment. She reviewed the medical records of Drs. Anderson, Fletcher, and Borowiecki, reviewed the FCE dated May 5, 2011, and scheduled a vocational assessment with the claimant for March 28, 2012. In her report of that visit, dated March 30, 2012, Slaise recommended job seeking skills training to help the claimant develop a resume, cover letter, reference list, fill out applications, and strengthen his interview skills.

¶ 31 Slaise testified that, on April 11, 2012, the claimant's attorney informed her that the claimant believed he still had a job at CWLP and wanted to secure employment with CWLP before he proceeded with vocational services. Slaise explained that she contacted CWLP and inquired whether any work opportunities were available for the claimant. Slaise testified that CWLP told her to put the claimant's file on "hold" while it looked for work within the claimant's restrictions.

¶ 32 Although Slaise placed the claimant's file on "hold," she conducted a labor market survey on April 20, 2012. In her report, Slaise identified 15 positions within the claimant's functional guidelines with the pay ranging from $10 to $22.56 per hour. Based upon the information she

obtained from potential employers, Slaise opined that a fair labor market exists for the claimant and that he can secure employment should he put forth diligent job search efforts.

¶ 33 The claimant followed-up with Dr. Borowiecki on June 28, 2012. The doctor's notes of that visit state that the claimant underwent a repeat FCE on June 4, 2012, which indicates that he can do medium physical demand level work relatively safely. Dr. Borowiecki noted that the claimant will probably continue to have chronic problems with some shoulder discomfort as well as back discomfort.

¶ 34 In a letter dated June 28, 2012, CWLP informed the claimant that, based upon his permanent work restrictions, it believed he cannot perform the essential functions of his position and that it cannot authorize him to return to work.

¶ 35 On October 1, 2012, the claimant presented to his primary care physician, Dr. Robert Juranek, with complaints of low back pain and numbness, radiating down both legs. Dr. Juranek assessed the claimant as having lumbar radiculopathy and ordered an MRI. An MRI of the claimant's lumbar spine was taken October 5, 2012, and interpreted by the radiologist as showing multilevel lumbar spine degenerative disc disease/spondylosis.

¶ 36 Slaise testified that, on October 8, 2012, CWLP told her to re-open the claimant's file and to proceed with assisting the claimant to find alternative employment, as there was no work available at CWLP. Slaise scheduled a meeting at the claimant's attorney's office on November 16, 2012. The claimant and his attorney communicated that the claimant was still medically treating and was not yet released to work. Slaise testified that it was her impression that, at that time, the claimant was unsure if he could return to work as he was still treating with a doctor (Dr. Juranek), but they agreed to let her proceed with job seeking skills training, which involved preliminary work (*e.g.*, drafting a resume and building interviewing skills).

¶ 37 On October 9, 2012, the claimant followed up with Dr. Juranek. After reviewing the MRI of October 5, 2012, the doctor ordered epidural steroid injections for back pain and referred the claimant to an orthopedic surgeon for "consult only."

¶ 38 On October 11, 2012, the claimant presented to Dr. Paul Smucker at the Orthopedic Center of Illinois. Dr. Smucker conducted a physical examination of the claimant and found that he was in no acute distress, ambulated around the office without a limp, and that he stood erect. Visual inspection revealed no gross lumbosacral deformity, and hip ranging was free and painless bilaterally. Dr. Smucker reviewed the MRI of October 5, 2011, and noted that the claimant has a disc protrusion at L4-5 with a left posterior pedunculation of possibly fragment migrating inferiorly in contact with the left S1 root. Dr. Smucker recorded a clinical impression of: (1) chronic low back pain greater than leg pain; (2) lumbar degenerative disc disease; and (3) lumbar radiculopathy. The doctor ordered an EMG to look for evidence of neuropathy or confirmed radiculopathy. The record reveals that the claimant continued to follow-up with Drs. Juranek and Smucker, pending approval from the workers' compensation carrier to perform EMG testing.

¶ 39 On November 16, 2012, the claimant returned to Slaise, the vocational rehabilitation specialist. In her report of that visit, dated November 20, 2012, Slaise noted that the claimant had not looked for work because he believes CWLP has work for him and he is interested in returning to work for CWLP. On November 30, 2012, the claimant cancelled his follow-up appointment with Slaise because his attorney advised him not to attend. The claimant reiterated his belief that jobs within his restrictions were available at CWLP. In a report dated November 30, 2012, Slaise stated that the claimant has demonstrated a lack of interest in vocational

rehabilitation services. She testified that she put the claimant's file back on "hold," though she remained available to assist him.

¶ 40 On August 17, 2013, Dr. Fletcher wrote a letter to the claimant's attorney stating that he reviewed Dr. Anderson's IME report and deposition testimony. Dr. Fletcher stated that he disagreed with Dr. Anderson's opinion that the December 22, 2009, accident did not aggravate the claimant's condition. He also stated that Dr. Anderson "misinterpreted my records indicating that there was no change in [the claimant's] condition after the [December 22, 2009] accident. Obviously, [the claimant] has a long course of treatment for the injuries he sustained in his 2009 work accident, including [a November 23, 2010,] biceps tendon and rotator cuff tear repair of the right shoulder." Dr. Fletcher concluded his letter by stating that, "[b]ased upon a reasonable degree of medical and surgical certainty, it is my opinion that [the claimant's] accident of December 22, 2009[,] aggravated permanently his pre-existing conditions."

¶ 41 On October 3, 2013, Dr. Fletcher testified in his deposition that the claimant's condition worsened a "little bit" following the December 22, 2009, accident. He explained that the claimant was suffering from depression throughout his care and his symptoms "would wax and wane." He clarified that the claimant's depression worsened following the December 22, 2009, accident because work was important to the claimant's self-esteem and his injuries prevented him from working. Dr. Fletcher opined that the accident of December 22, 2009, permanently aggravated the claimant's preexisting cervical and lumbar spine, and right shoulder conditions.

¶ 42 On cross-examination, Dr. Fletcher acknowledged that, during his examination of the claimant on November 22, 2009, one month prior to the accident at issue, the claimant's lumbar and cervical radiculopathy was stable. He also recognized that his office notes of January 11, 2012, taken three weeks after the claimant's work accident, stated that he examined the claimant

and found no substantial change in his condition other than an increase in subjective complaints. He also admitted that he was hesitant to recommend aggressive care for the claimant's lumbar spine condition since the claimant is not going to have a good outcome.

¶ 43 The claimant testified at the arbitration hearing that, in the months leading up to December 22, 2009, he had some neck and shoulder pain, but it was "getting better." After the December 22, 2009, accident, however, "everything just flared up." His right shoulder became "progressively worse" and, by June 2011, his low back pain radiated down both legs and he was still experiencing pain and restricted motion in his neck. He also testified that his depression worsened since CWLP's refusal to offer him work within his restrictions "just destroyed" him. The claimant continues to experience low back pain and currently sees Dr. Smucker, who is waiting for approval to perform an EMG study. The claimant also disputed Slaise's testimony that he was uncooperative during vocational rehabilitation.

¶ 44 On cross-examination, however, the claimant admitted that if he can't return to work for CWLP, he does not want to work for any other employer. He also admitted that, following the alleged ankle injury sustained during the FCE, he did not seek care from a foot specialist or any other doctor regarding his left foot or ankle.

¶ 45 Following a hearing held on October 17, 2013, pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2012)), the arbitrator found that the claimant suffered an injury to his right shoulder, which arose out of and in the course of his employment with CWLP on December 22, 2009. The arbitrator awarded the claimant 66 1/7 weeks of TTD benefits for the period from November 24, 2010, through February 29, 2012, and maintenance benefits for 42 3/7 weeks, commencing March 1, 2012, through December 22, 2012. The arbitrator also ordered CWLP to pay reasonable and necessary medical expenses incurred by the claimant pertaining to the

treatment he received for his right shoulder condition. The arbitrator, however, found that the claimant failed to prove that his current condition of ill-being in his cervical and lumbar spine, left ankle, and depression are causally connected to his work injury of December 22, 2009. Consequently, the arbitrator denied the claimant any award for additional medical expenses or prospective medical care. The arbitrator found Dr. Anderson's testimony as to causation to be more credible than Dr. Fletcher. In particular, the arbitrator found Dr. Anderson's opinion that the claimant sustained a temporary aggravation of his preexisting cervical and lumbar spine conditions to be consistent with the medical evidence, particularly Dr. Fletcher's treatment notes showing no change in the claimant's condition. The arbitrator also found that, based upon a lack of credible evidence, the claimant's left ankle condition and depression are not causally related to the December 22, 2009, accident. The arbitrator also denied the claimant maintenance benefits after December 22, 2012, finding that he was not engaged in a vocational rehabilitation program. The arbitrator dismissed as not credible the claimant's testimony that he cooperated with the vocational rehabilitation specialist and instead credited the testimony of Slaise.

¶ 46 The claimant filed a petition for review of the arbitrator's decision before the Illinois Commission. On September 9, 2014, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision and remanding the matter pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 47 The claimant sought judicial review of the Commission's decision in the circuit court of Sangamon County. On November 18, 2015, the circuit court entered a written order confirming the Commission's decision. The claimant now appeals.

¶ 48 We first address the claimant's argument that the Commission's determination that his current condition of ill-being in his cervical and lumbar spine is unrelated to his work accident of

December 22, 2009, is contrary to the manifest weight of the evidence. In support of this argument, he challenges several of the factual findings underlying the Commission's decision. Primarily, he disputes the Commission's reliance upon the opinion of Dr. Anderson over that of Dr. Fletcher, who opined that the claimant's lumbar spine symptoms were attributable to his work-related fall of December 22, 2009.

¶ 49 To obtain compensation under the Act, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (*O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between his employment and his injury (*Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989)).

¶ 50 In cases such as this one, where the claimant suffers from a preexisting condition, "recovery will depend on [his] ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that [his] current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 204-05 (2003). Whether a claimant's condition of ill-being is attributable solely to a degenerative process of his preexisting condition or to an aggravation or acceleration of that preexisting condition, because of a work-related accident, is a factual determination to be decided by the Commission. *Id*. at 205.

¶ 51 The Commission's finding on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315 (2009). Whether a reviewing court might

have reached the same conclusion is not the test of whether the Commission's determination on a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 52 In this case, the medical evidence of record establishes that the claimant suffers from multilevel degenerative disc disease in his cervical and lumbar spine. However, the Commission found that, although the claimant sustained an accident on December 22, 2009, which arose out of and in the course of his employment with CWLP, he did not sustain an injury to his cervical or lumbar spine as a result of that accident, or at most, he sustained a temporary strain which did not permanently aggravate or accelerate his preexisting cervical and lumbar spine conditions. The Commission's determination in that regard is supported by the opinions of Dr. Anderson.

¶ 53 Dr. Anderson opined that the claimant's work accident on December 22, 2009, did not aggravate, accelerate or otherwise exacerbate his preexisting cervical and lumbar spine conditions. In his IME report, Dr. Anderson noted that the claimant had a long history of cervical and lumbar symptoms and underwent a cervical fusion in May 2007. Postoperatively, the claimant remained symptomatic and continued to seek medical care for his cervical and lumbar spine. Dr. Anderson compared Dr. Fletcher's medical notes of November 23, 2009, one month before the workplace accident, with the notes taken January 11, 2010, weeks after the accident, and observed that the claimant's condition had remained the same. Dr. Anderson concluded that the claimant's current cervical and lumbar spine conditions of ill-being are not related to his work accident, but rather to his preexisting degenerative disc condition.

¶ 54 In contrast, Dr. Fletcher opined that the claimant's work accident of December 22, 2009, "aggravated permanently his preexisting conditions." In a letter to the claimant's attorney, Dr.

Fletcher stated that Dr. Anderson "misinterpreted my records indicating that there was no change in [the claimant's] condition after the [December 22, 2009,] accident." Dr. Fletcher also stated that he reviewed Dr. Anderson's deposition and that the claimant's attorney correctly pointed out a number of conditions that worsened as a result of the accident.

¶ 55 In its decision, the Commission found the causation opinion of Dr. Anderson to be more persuasive than the opinion of Dr. Fletcher and gave greater evidentiary weight to his testimony. The Commission relied upon the opinions of Dr. Anderson in making its finding that the claimant, at most, sustained a temporary cervical and lumbar strain as a result of his December 22, 2009, work accident, and that the accident did not permanently aggravate or accelerate his preexisting cervical or lumbar spine conditions.

¶ 56 It was the function of the Commission to judge the credibility of the witnesses, determine the weight to be accorded their testimony, and to resolve the conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. According to the required deference to the Commission's resolution of the conflict in medical opinions and the weight it attached to the testimony of Dr. Anderson, we are unable to find that the Commission's decision was against the manifest weight of the evidence.

¶ 57 In a related argument, the claimant contends that the Commission's finding that he failed to prove a causal connection between his depression and workplace accident is against the manifest weight of the evidence. He argues that the only opinion on the issue of causation is that of Dr. Fletcher who opined that a causal connection exists between his increased depression and the work accident. Therefore, the claimant argues, the Commission's finding of a lack of causation "is without any support in the record" and "must be reversed." We disagree.

¶ 58 In *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999), the Commission struck the causal-connection portion of the employer's medical expert's testimony, leaving only the claimant's experts' medical opinions on the issue of causation. Nonetheless, the court held that the Commission's finding that the claimant failed to carry his burden of proof on the issue of causation was not against the manifest weight of the evidence. *Id*. at 1042. The court rejected the claimant's argument that the Commission was required to accept the claimant's medical testimony since it was the sole medical testimony on the causation issue. *Id*. Instead, the court held that the Commission in its discretion is not bound by unrebutted medical testimony. *Id*. While the sole medical opinion may not be arbitrarily rejected, it is not binding on the Commission merely because it is the sole medical opinion. *Id*.

¶ 59 In this case, the Commission was within its discretion when it rejected Dr. Fletcher's opinion on the issue of causation. The claimant's testimony and medical records demonstrate that he began experiencing depression at least since June 28, 2003, nearly six years before the work accident at issue, and his depression continued through the date of the arbitration hearing. Dr. Fletcher testified that the claimant's depression "was always there" and "would wax and wane." The doctor explained that the claimant's depression worsened following the December 2009 accident because "work was important to [the claimant's] self-esteem and his injuries prevented him from working." We note, however, the record reveals that the claimant continued working following his accident and it was not until November 23, 2010, when he underwent right shoulder surgery, that Dr. Borowiecki took the claimant off work. Based on the discrepancy in Dr. Fletcher's testimony and the circumstances surrounding the claimant's long history of depression, the Commission did not have to accept Dr. Fletcher's opinion as true that the claimant's depression increased as a result of his December 2009 accident. Rather, the

Commission could have concluded that any increase in the claimant's depression was a result of the natural, waxing-and-waning, cycle of his depression. The Commission was within its discretion to reject Dr. Fletcher's opinion on the issue of causation. See *Freeman United Coal Mining Co. v. Industrial Comm'n*, 286 Ill. App. 3d 1098, 1103 (1997) (the interpretation of medical testimony is particularly the function of the Commission).

¶ 60 The claimant also challenges the Commission's finding that his current condition of ill-being in his left ankle, resulting from the FCE, was not causally related to the work accident. Specifically, he asserts that his own testimony and the medical records of Dr. Fletcher establish that he sustained an injury to his left ankle while undergoing the FCE.

¶ 61 We initially note the claimant fails to properly develop his argument and cites no legal authority as to why the Commission's determination is contrary to the manifest weight of the evidence. The claimant's failure to properly develop an argument and cite to relevant authority constitutes a forfeiture of the argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Forfeiture aside, the claimant's argument must fail.

¶ 62 Here, the claimant testified that he felt a pop in the arch of his left foot during the June 5, 2011, FCE. Although the claimant reported the injury to Dr. Fletcher on June 7, 2011, the FCE report does not document the incident but instead shows that the claimant was able to complete the FCE with maximum effort. While it is true that Dr. Fletcher's treatment notes from June 7, 2011, state that the claimant reported injuring his "left foot/ankle" during the FCE, our review of the record reveals that the claimant did not seek further treatment of his left ankle nor did he complain of continued left ankle pain. And, nowhere in Dr. Fletcher's medical records or testimony does he opine that the claimant's alleged left ankle injury was causally related to the FCE incident.

¶ 63 The Commission specifically found that the claimant failed to present "credible evidence" that his "claimed ankle injury" is causally related to the FCE incident. As noted above, the claimant had the burden of proving causation, and we cannot say that the claimant's testimony and Dr. Fletcher's medical record of June 7, 2011, was so compelling that it bound the Commission to find in the claimant's favor. Based upon the evidence, we cannot find that the Commission's determination that the claimant failed to prove that his alleged left ankle injury was causally related to the FCE incident was against the manifest weight of the evidence.

¶ 64 Next, the claimant contends that the Commission's finding that he is not entitled to reasonable and prospective medical expenses relating to his cervical and lumbar spine condition, left ankle condition, and depression, are against the manifest weight of the evidence. His argument in this regard rests entirely upon his argument addressing the Commission's causation finding. For the same reasons that we rejected the claimant's argument addressed to the Commission's finding as to causation, we also reject his argument addressed to the Commission's award of reasonable and prospective medical expenses without further analysis.

¶ 65 Finally, the claimant argues that the Commission's denial of maintenance benefits after December 22, 2012, is against the manifest weight of the evidence. According to the claimant, "there is absolutely nothing in the record that would support the Commission's finding that [he] was uncooperative with vocational rehabilitation efforts."

¶ 66 Section 8(a) of the Act provides that an employer "shall *** pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto." 820 ILCS 305/8(a) (West 2012). By its terms, the statute permits an award of maintenance benefits while a claimant is engaged in a prescribed vocational-rehabilitation program. *Greaney v. Industrial Comm'n*, 358

Ill. App. 3d 1002, 1019 (2005). If the claimant is not engaging in some type of "rehabilitation," whether it be physical rehabilitation, formal job training, or a self-directed job search, the employer's obligation to provide maintenance is not triggered. The determination of whether a claimant is entitled to maintenance benefits is a question of fact to be decided by the Commission, and its finding will not be reversed unless it is against the manifest weight of the evidence. *W.B. Olson, Inc. v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 113129WC, ¶ 39; *Stone v. Industrial Comm'n*, 286 Ill. App. 3d 174, 179 (1997) ("the specific question of whether claimant reasonably cooperated with rehabilitation efforts is generally a question of fact"). Thus, the Commission's decision will not be reversed on review unless an opposite conclusion is clearly apparent. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006). Where the Commission's decision is supported by competent evidence, its finding is not against the manifest weight of the evidence. *Benson*, 91 Ill. 2d at 450.

¶ 67 In this case, the Commission found that the claimant was not entitled to maintenance benefits beyond December 22, 2012, because he did not cooperate with the vocational rehabilitation efforts. The record shows that Drs. Fletcher and Borowiecki determined that the claimant had reached MMI by February 17, 2011, and they released him to work with permanent restrictions. After that, the claimant received vocational rehabilitation services from Slaise who considered his skills, experience, and background. In her labor market report, Slaise determined that the claimant was capable of returning to the work force, noting several positions which fell within his work restrictions and experience. Specifically, Slaise found 15 positions at various employers that did not require any additional education or training. Slaise testified, however, that the claimant expressed no interest in these positions, did not follow through with her recommendations, and cancelled their November 2012 meeting. Although Slaise remained

willing to assist the claimant, the claimant never followed-up with her or rescheduled his appointment. The claimant admitted that he was only interested in returning to work for CWLP and was not interested in working for another employer. Although CWLP informed the claimant on several occasions that it did not have work within his restrictions, the claimant did not look for work because he persisted in his belief that CWLP could accommodate his light-duty work restrictions. From these facts, the Commission could reasonably infer that the claimant was not engaged in rehabilitation and we cannot say that it failure to award maintenance benefits beyond December 22, 2012, is against the manifest weight of the evidence.

¶ 68 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision and remand for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 69 Affirmed.