

2019 IL App (2d) 190012WC-U
No. 2-19-0012WC
Order filed December 20, 2019

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

RICHARD HENDERSON,)	Appeal from the Circuit Court
)	of McHenry County
Plaintiff-Appellant,)	
)	
v.)	No. 17-MR-211
)	
THE ILLINOIS WORKERS')	
COMPENSATION COMMISSION,)	
)	Honorable
(Vroom Vroom, LLC, Defendant-)	Thomas A. Meyer,
Appellee).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's finding that claimant had reached maximum medical improvement from his work-related injuries by September 10, 2013, was not against the manifest weight of the evidence where conflicting medical evidence was presented.

¶ 2

I. INTRODUCTION

¶ 3 Claimant, Richard Henderson, filed an application for adjustment of claim seeking benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)) for injuries he allegedly sustained on May 11, 2013, while working for respondent, Vroom Vroom, LLC. Following a hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2012)), the arbitrator determined that the work injury aggravated or made symptomatic underlying preexisting conditions relative to claimant's bilateral knees, lumbar spine, and cervical spine. As such, the arbitrator found that these conditions of ill-being were causally related to the industrial accident. Nevertheless, the arbitrator declined to make any findings as to claimant's entitlement to temporary total disability (TTD) benefits, the payment of past medical expenses, or an award of future medical expenses, on the basis that claimant waived these issues by failing to argue them in his brief. Claimant appealed the matter to the Illinois Workers' Compensation Commission (Commission). The Commission, noting that claimant sought TTD benefits and medical expenses on the request for hearing form, rejected the arbitrator's finding that claimant waived these issues. On the merits, the Commission concluded that claimant had reached maximum medical improvement (MMI) from his industrial accident by September 10, 2013. As such, the Commission awarded claimant TTD benefits from May 23, 2013 (the date claimant's treating physician took him off work), through September 10, 2013, a period of 15-6/7 weeks. The Commission also awarded claimant medical expenses incurred from May 11, 2013 (the date of the work accident), through September 10, 2013. Claimant thereafter sought judicial review of the Commission's decision. The circuit court of McHenry County confirmed the decision of the

Commission. On appeal, claimant argues that the Commission's finding that he reached MMI by September 10, 2013, was against the manifest weight of the evidence. We affirm.

¶ 4

II. BACKGROUND

¶ 5 On August 16, 2013, claimant filed an application for adjustment of claim alleging that he sustained injuries to his back, neck, bilateral knees, and left shoulder on May 11, 2013, while working for respondent. The matter proceeded to an arbitration hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2012)) before arbitrator Robert Falcioni. The following evidence is taken from the evidence presented at that hearing, which was held on July 23, 2015, and April 8, 2016.

¶ 6 Respondent operates a Harley-Davidson motorcycle dealership in Woodstock, Illinois. In February 2013, claimant, then 52 years old, began working for respondent as a parts clerk and sales associate. Claimant testified that on May 11, 2013, a motorcycle fell on him at work and knocked him into another row of motorcycles, causing him to fall backwards onto those motorcycles. Claimant testified that the motorcycle that fell on him struck his knees. Claimant's lower back, neck, and shoulders struck the motorcycles behind him. The parties stipulated to the accident, but disputed causal connection.

¶ 7 The records admitted at the arbitration hearing demonstrated that claimant had a long history of medical interventions and chronic pain that preceded the May 11, 2013, work accident. Claimant acknowledged that prior to this accident, he had "many problems" with his back, knees, shoulder, and neck. Claimant began treating with Dr. Bryan Waxman, an orthopaedic physician, in or about 2004. During his treatment with Dr. Waxman, claimant underwent multiple surgeries to his left knee and an operation on his left shoulder. In addition, Dr. Waxman ordered an MRI of

claimant's right knee in 2006, diagnosed him in 2012 with chronic low back pain and cervical pain, and discussed an arthroplasty of the left knee. Claimant also had complaints of left shoulder pain in 2012. Claimant recounted that he had treated with Dr. Waxman as recently as one year prior to the accident for "minor bruising" to his back after he fell down some stairs. Dr. Waxman's notes reflect that by August 21, 2012, the bruising had resolved. At that time, Dr. Waxman wrote that claimant was "back to his baseline" with residual soreness in his lower back and that claimant's "knees feel back to their normal discomfort as does his shoulder."

¶ 8 Claimant testified that he initially felt sore after the work accident on May 11, 2013, but gradually felt fine. He refused medical treatment, finished his shift, and went home. In the days following the accident, claimant began to experience pain in his lower back, neck, shoulders, and knees. Claimant rented a motorcycle on May 13, 2013, but was only able to drive it home from the dealership and back. He testified that even driving this short distance caused him more pain than ever.

¶ 9 On May 15, 2013, claimant presented to the office of North Sheridan Family Medicine, where he saw Dr. Bhavani Coca. Claimant complained of bilateral knee pain and back pain. Dr. Coca ordered a series of X rays of claimant's back and bilateral knees and referred him to an orthopaedic physician.

¶ 10 On May 23, 2013, claimant presented to Dr. Waxman. During that visit, Dr. Waxman evaluated claimant for "several injuries related to the incident at work where a 900-pound motorcycle fell and landed on him." Claimant reported that the "main issue" was pain in the lower back, although he also related pain of the knees bilaterally and the left shoulder. Claimant denied any neck pain or pain radiating down his legs. Dr. Waxman diagnosed a thoracolumbar injury,

left shoulder strain, and bilateral knee strain, all related to the reported work accident. Dr. Waxman opted to treat claimant symptomatically. According to claimant, Dr. Waxman advised him not to work.

¶ 11 When claimant returned to Dr. Waxman on June 5, 2013, he reported pain in his neck, thoracic spine, lower back, knees, and shoulder. Dr. Waxman noted that claimant also reported radicular complaints. On June 12, 2013, Dr. Waxman noted that claimant continued to experience pain in his neck, lower back, and left shoulder. Dr. Waxman administered a cortisone injection to claimant's left shoulder and recommended MRIs of both the lumbar and cervical spine. The lumbar MRI revealed disc bulges at L4-L5 and L5-S1. The cervical MRI revealed neural foraminal and canal stenosis. Dr. Waxman recommended a course of physical therapy and referred claimant to Dr. Jonathan Erulkar to treat his spine problems.

¶ 12 Claimant presented to Dr. Erulkar on June 25, 2013. Dr. Erulkar's impression was "[c]ervical stenosis without myelopathy with mild radicular symptoms" and "[d]egenerative disc disease of the cervical and lumbar spine with axial back pain." Dr. Erulkar referred claimant to Dr. Richard Noren, a pain specialist, for a series of cervical and lumbar epidural injections. On September 6, 2013, in light of persistent neck pain, Dr. Erulkar and claimant discussed the necessity of cervical fusion surgery.

¶ 13 Meanwhile, on July 10, 2013, claimant saw Dr. Waxman for a recheck of his knees. Dr. Waxman noted that claimant's left knee "had significant problems and underlying arthritis" while his right knee "was really never much of a problem prior to this." Dr. Waxman's impression was an exacerbation of underlying arthritis in the left knee as well as mild arthritis and a possible internal derangement of the right knee. Dr. Waxman administered a cortisone injection to each

knee. Subsequently, Dr. Waxman treated claimant's left shoulder with cortisone injections and ordered MRIs of the right knee and left shoulder.

¶ 14 On September 10, 2013, Dr. Michael Gear conducted an independent medical examination of claimant and authored a report of his findings. See 820 ILCS 305/12 (West 2012). Dr. Gear took a history from claimant, reviewed his medical records, and conducted a physical examination. Dr. Gear noted that claimant had a long history of medical interventions prior to the May 11, 2013, work accident, including six surgical procedures on his left knee (among them the reconstruction of his left anterior cruciate ligament), an "extensive discussion" about total knee arthroplasty on the left side in January 2012, and multiple surgical procedures on his left shoulder (among them an arthroscopic debridement and open debridement of the shoulder). Dr. Gear further noted that as recently as August 2012, claimant fell down a flight of stairs at work and sustained pain to his back and knees.

¶ 15 At the time of Dr. Gear's examination, claimant complained of significant discomfort and pain in his cervical and lumbar spine, bilateral knees, and left shoulder. Dr. Gear observed that claimant had "exaggerated motions as he move[d] from standing to sitting." Upon examination of claimant's cervical spine, Dr. Gear noted that claimant was reluctant to move his head left or right or perform any motion with forward flexion or extension even though there was no evidence of any paraspinal muscle spasm. In addition, claimant demonstrated avoidance response with any effort of light palpation over the cervical and thoracic spine. With respect to the lumbar spine, Dr. Gear noted no paraspinal muscle spasm as well as resistance with any effort of forward flexion, hyperextension, or lateral motion. Dr. Gear's examination of claimant's left knee revealed multiple scars, all well healed, with no evidence of any effusion. Claimant's ligaments were intact,

but he had a marked crepitation with range of motion and a positive compression test of the patella on the left knee. Claimant's left shoulder had well-healed surgical scars over the anterior portion. There was no swelling or atrophy. Claimant's intrinsic motor function was normal, and his reflexes were symmetrical at the biceps, triceps, and brachioradialis. Dr. Grear reviewed an MRI film of claimant's cervical spine from June 2013, noting mild degenerative changes with mild central stenosis, but no significant encroachment on the nerve roots.

¶ 16 Dr. Grear's impression was status post contusions of the cervical and lumbar spine, left shoulder, and left knee. He found that claimant demonstrated symptom magnification relative to his subjective complaints. Dr. Grear opined that the industrial accident of May 11, 2013, resulted in a "minor aggravation" to the "significant preexisting conditions" involving his knees and shoulder as well as a "minor irritation" of his recurrent back problems "in view of the fact that *** claimant did not even see his orthopaedic surgeon for 12 days following the incident and was able to finish his work without problems significant enough to justify being seen immediately following the incident." Dr. Grear further opined that claimant would have reached MMI within six weeks of the industrial accident and that no future treatment was reasonable and necessary with respect to claimant's current condition. Finally, Dr. Grear felt that there was no reason claimant would be unable to perform his regular job responsibilities for respondent without restrictions.

¶ 17 In the weeks and months that followed Dr. Grear's examination, claimant continued to treat with Dr. Waxman and Dr. Erulkar. On January 30, 2014, claimant underwent an MRI of the cervical spine, which revealed: (1) central disc protrusions at C2-C3, C3-C4, and C4-C5, which had progressed when compared to a prior study and led to moderate central spinal stenosis; and (2) a disc bulge with mild bilateral foraminal stenosis at C5-C6. In light of persistent radiating

symptoms, claimant was sent for an EMG. The EMG revealed a mild generalized axonal sensorimotor polyneuropathy, a likely moderate to severe chronic left C5-C6 cervical radiculopathy with electrical features of ongoing denervation, and a possible mild left L5-S1 radiculopathy without ongoing denervation. Dr. Erulkar recommended claimant undergo a three-level anterior cervical discectomy and fusion.

¶ 18 Meanwhile, Dr. Waxman noted that the MRI of claimant's right knee revealed a complex medial meniscal tear. Dr. Waxman related the meniscal tear to the work accident and recommended surgical intervention. The MRI of claimant's left shoulder revealed a partial rotator cuff tear, for which Dr. Waxman recommended physical therapy and cortisone injections. On September 18, 2014, Dr. Waxman noted that a repeat MRI of claimant's left shoulder revealed a 50% partial-thickness tear of the supraspinatus tendon. Dr. Waxman recommended that claimant address his cervical issue first and ordered physical therapy for his left shoulder.

¶ 19 Dr. Erulkar testified on September 18, 2014, via evidence deposition, that he is a board-certified orthopaedic surgeon. Dr. Erulkar testified that his treatment was directed mainly to the spine. Dr. Erulkar's diagnosis was cervical stenosis and degenerative disc disease with radicular symptoms. Dr. Erulkar opined that claimant's complaints were consistent with the injury he reported. In September 2013, given the failure of conservative treatment, Dr. Erulkar recommended an anterior cervical discectomy and fusion at C4-C5, C5-C6, and C6-C7. The basis for his opinion was claimant's history and the progression of his symptoms, including pain, numbness, tingling, and weakness. Dr. Erulkar further testified that an EMG taken in July 2014 was consistent with a compressive neuropathy (a pinched nerve at the cervical spine). Given the findings on the EMG as well as the results of other diagnostic testing, Dr. Erulkar's impression

remained cervical stenosis with radiculopathy and he continued to recommend a three-level anterior cervical discectomy with fusion. Dr. Erulkar found no indication that the surgery would have been necessary in the absence of the work accident. He opined that although claimant had a preexisting, underlying degenerative condition, it was exacerbated by the work injury. Thus, both claimant's underlying degenerative condition and the work accident were contributing factors in the need for the recommended surgery. Dr. Erulkar restricted claimant from returning to work pending the approval of the surgical procedure.

¶ 20 On cross-examination, Dr. Erulkar acknowledged that claimant had "some issues" with his cervical spine since at least 2004. Dr. Erulkar was unaware that claimant did not relate any neck complaints until several weeks after the work accident. He testified, however, that the lack of complaints involving neck pain would not change his opinion unless there was some other injury about which he was not aware. Dr. Erulkar opined that the failure of claimant to report neck problems was attributable to his other conditions, which Dr. Erulkar described as "distracting injuries." Dr. Erulkar also agreed that claimant suffers from other maladies, including diabetes, which could be a factor with respect to his neuropathy. On redirect examination, Dr. Erulkar testified that the initial notes by Dr. Waxman indicated claimant reported shoulder pain, which was likely referred from the neck and resulted in weakness and tingling in the upper extremities.

¶ 21 Dr. Waxman testified by evidence deposition on November 14, 2014, that he is a board-certified orthopaedic surgeon. Prior to the accident at issue, Dr. Waxman last saw claimant on August 21, 2012, for injuries he sustained after a fall on some stairs a couple of weeks earlier. Claimant had returned to baseline, which Dr. Waxman described as "some shoulder, back and knee

issues.” Dr. Waxman’s impression was “[r]esolving sprains and contusions.” He imposed no work restrictions and had no treatment recommendations other than a prescription for Percocet.

¶ 22 Dr. Waxman next saw claimant on May 23, 2013, relative to injuries sustained at work when a motorcycle fell on him. Dr. Waxman referred claimant to Dr. Erulkar for the lumbar and cervical spine problems and initially administered conservative treatment for the remainder of claimant’s complaints. Dr. Waxman diagnosed an exacerbation of underlying arthritis with respect to claimant’s left knee and some mild arthritis and possible internal derangement of the right knee. Dr. Waxman opined that the condition of claimant’s right knee, which was ultimately diagnosed as a medial meniscal tear, was the result of the work accident. The basis for his opinion was that, until the accident at issue, claimant had not sought treatment for the right knee for about 10 years. Dr. Waxman recommended arthroscopic surgery for the right meniscal tear. Dr. Waxman further opined that the work accident aggravated preexisting arthritis in claimant’s left knee. He recommended either cortisone injections, visco supplementations, or a knee replacement for the left knee. Dr. Waxman opined that if claimant should need a replacement of the left knee, the accident accelerated the need for the procedure. The basis for this opinion was that, prior to the work accident, claimant had not had left knee symptoms for almost one year, but subsequent to the accident, he reported increasing pain. With respect to the left shoulder, Dr. Waxman diagnosed a full thickness tear for which he recommended arthroscopic surgery. He opined that the accident was the cause of the left shoulder issues based on the chronology of the symptoms in relation to the work accident. Dr. Waxman recommended that claimant not work.

¶ 23 On cross-examination, Dr. Waxman acknowledged that he has treated claimant since the early 2000s for a variety of maladies. In addition, Dr. Waxman acknowledged that, prior to the

accident at issue, claimant had multiple surgeries involving his left knee and a procedure involving his left shoulder. Dr. Waxman was not aware that claimant saw his family physician prior to seeking treatment with him. Dr. Waxman acknowledged that an MRI of claimant's left shoulder from September 2014 demonstrated a tear whereas an "earlier" MRI of the left shoulder did not. Dr. Waxman testified that he would have to look at the films to determine how the tear materialized. Dr. Waxman acknowledged that he could have recommended a replacement of the left knee as early as 2012.

¶ 24 Dr. Michael Gear testified via evidence deposition on December 5, 2014, that he is a board-certified orthopaedic surgeon. Dr. Gear practices general orthopaedics. He ceased operating on spinal patients in 1981, but still performs other surgical procedures, including knee and hip replacements, arthroscopic surgery, and trauma surgery. Dr. Gear saw claimant at the request of respondent's insurance carrier on September 10, 2013, and spent 30 minutes with claimant. (Claimant disputed this at the arbitration hearing, testifying that he spent less than 10 minutes in Dr. Gear's office, including the examination.) Dr. Gear's deposition testimony was consistent with his report of September 10, 2013. He noted that claimant had a long history of previous industrial accidents dating back to 2002, including multiple operations involving the left knee and left shoulder. During the examination, claimant complained of discomfort and pain in both his cervical and lumbar spine as well as his bilateral knees and left shoulder. Dr. Gear indicated that none of claimant's subjective complaints were justified by any objective evidence either on X ray or physical examination. Dr. Gear opined that the work accident of May 11, 2013, resulted in a "minor aggravation" of significant preexisting conditions involving claimant's knee, shoulder, and back that was temporary in nature. Dr. Gear felt that while continued

conservative management was appropriate, the treatment was in no way directly related to the incident in question. Dr. Gear further testified that relative to the incident of May 11, 2013, claimant had returned to his preinjury state, reached MMI, and could return to his position as a sales representative at respondent's motorcycle dealership without any restrictions. Dr. Gear agreed that the treatment administered to the left knee and left shoulder were appropriate but concluded that it was attributable to claimant's preexisting conditions, not the work accident. Moreover, he did not believe that spinal surgery would be of any significant clinical benefit to claimant. In short, Dr. Gear testified that neither claimant's current condition of ill-being relative to the cervical region, the bilateral knees, or the left shoulder nor his current treatment regimen were directly related to the work accident of May 11, 2013.

¶ 25 Dr. Gear further testified that following his initial report, he authored three follow-up reports dated October 11, 2013, December 5, 2013, and December 23, 2013, after being provided with additional medical documentation, including a lumbar study that was not available at the first examination and MRIs of the right knee and left shoulder. Dr. Gear testified that none of the additional medical records changed his opinions.

¶ 26 On cross-examination, Dr. Gear acknowledged that, as a general orthopedist, he does not concentrate in treating any specific area of the body. Dr. Gear was unable to specify which medical records he reviewed, but he did recall that he reviewed the records of Dr. Waxman that went back 12 years. The last medical record he reviewed was from December 2013. Dr. Gear acknowledged that he noted multiple positive findings upon examination of claimant, including a positive compression test of the left patella and a positive impingement test of the left shoulder (consisting of diffuse discomfort with any motion). Moreover, he agreed that an MRI is an

objective test and that he did not dispute or have any criticism of the objective findings, radiological interpretation or diagnoses of any treating doctor. Dr. Grear also acknowledged that the last time claimant had any orthopaedic treatment was in August 2012, at which time claimant was at a baseline and had sprains and contusions that had resolved. He could not identify any intervening trauma or accident after the May 11, 2013, incident.

¶ 27 Based on the foregoing evidence, the arbitrator concluded that the conditions of ill-being of claimant's left knee, right knee, lumbar spine, and cervical spine were causally related to the May 11, 2013, industrial accident in that the accident "most likely aggravated or made symptomatic underlying pre existing conditions [of] said bodyparts." In so concluding, the arbitrator found the opinions of Dr. Waxman and Dr. Erulkar more persuasive than the opinion of Dr. Grear. The arbitrator found that while claimant indicated on his request for hearing form that he was seeking TTD benefits, payment of past medical expenses, and an award of future medical treatment, his brief did not include any argument regarding these issues. As a result, the arbitrator deemed waived the issues of TTD benefits and past and future medical expenses.

¶ 28 Claimant filed a petition for review of the arbitrator's decision with the Commission. The Commission modified the decision of the arbitrator in part but otherwise affirmed and adopted the decision of the arbitrator. Specifically, the Commission found that the arbitrator erred in finding that the issues of TTD benefits, payment of past medical expenses, and an award of future medical expenses had been waived where claimant sought such benefits on his request for hearing form. On the merits, the Commission adopted the opinions of Dr. Grear, respondent's section 12 examiner, and found that claimant had reached MMI from his work-related injuries by September 10, 2013, the date of Dr. Grear's examination. Accordingly, the Commission awarded claimant

TTD benefits of \$335.39 per week for a period of 15-6/7 weeks, representing the period from May 23, 2013 (the date claimant's treating physician took him off work), through September 10, 2013. In addition, the Commission awarded claimant \$678.24 for medical expenses incurred from the date of the accident through September 10, 2013. Finally, the Commission remanded the matter to the arbitrator for further proceedings in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). Claimant thereafter sought judicial review of the Commission's decision. The circuit court of McHenry County confirmed the decision of the Commission. This appeal by claimant followed.

¶ 29

III. ANALYSIS

¶ 30 Claimant argues on appeal that the Commission erred in finding that he had reached MMI by September 10, 2013, thus terminating his right to TTD benefits and medical expenses after that date. We disagree.

¶ 31 An employee is temporarily totally disabled from the time an injury incapacitates him until such time as he is as far recovered as the permanent character of the injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990); *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542 (2007). To be entitled to TTD benefits, the employee must establish not only that he did not work, but also that he was unable to work and the duration of that inability to work. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 832 (2002); see also *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 146 (2010) (“[W]hen determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force.”). Once an injured employee has reached

MMI, the disabling condition has become permanent and he or she is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). The factors to consider in determining whether an employee has reached MMI include a release to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005). The issue of whether an employee is entitled to TTD benefits and the period during which the employee is temporarily totally disabled is a question of fact for the Commission. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118-19. As the trier of fact, the Commission is responsible for resolving conflicts in the evidence, assigning weight to the evidence, assessing the credibility of the witnesses, and drawing inferences from the record. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). Further, we owe heightened deference to the Commission with respect to medical questions, given its well-recognized expertise in that realm. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 565-66 (1979). The Commission's decision on a factual matter will not be set aside on review unless it is contrary to the manifest weight of the evidence. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118-19. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Accolade v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120588WC, ¶ 17.

¶ 32 Claimant insists that the medical records presented at the arbitration hearing coupled with his "unrebutted testimony" clearly demonstrate that he had not reached MMI as of September 10, 2013. However, the medical evidence in this case was conflicting. And while claimant can undoubtedly point to some evidence that supports his position, applying the standards set forth above, we cannot say that the Commission's finding that claimant reached MMI by September 10,

2013, was against the manifest weight of the evidence. That is, there is sufficient evidence in the record to support the Commission's decision that claimant had reached MMI by September 10, 2013. Specifically, it was on that date that Dr. Gear examined claimant and concluded that although the accident of May 11, 2013, resulted in a "minor aggravation" to the "significant preexisting conditions" involving his knees and shoulder as well as a "minor irritation" of his recurrent back problems, the aggravation was only temporary, claimant would have reached full MMI within six weeks of the industrial accident, and he would have been able to perform his regular duties as a salesperson without restrictions. Dr. Gear based his opinion in part on the facts that claimant was able to finish his shift on the day of the accident and he did not see Dr. Waxman until 12 days after the accident. And while Dr. Waxman and Dr. Erulkar recommended additional treatment which they attributed to claimant's work accident, the Commission was not required to accept their opinions given the contrary opinion of Dr. Gear.

¶ 33 Claimant points out that that Dr. Gear acknowledged multiple positive findings when he examined claimant in September 2013. He observes, for instance, that Dr. Gear admitted there was a positive finding when performing an impingement test of claimant's left shoulder and a positive compression test of the left patella. Claimant also notes that Dr. Gear did not dispute or offer any criticism of the objective findings, radiological interpretations, or diagnoses of any of his treating doctors, that Dr. Gear agreed an MRI is an objective test, and that Dr. Gear indicated that claimant sustained an aggravation to a preexisting condition. According to claimant, Dr. Gear's opinion is inconsistent because he does not disagree with the treating physicians' recommendations for additional treatment, yet he concluded that claimant had reached MMI from his work injuries. Claimant asserts that, by definition, an injury that can be improved with surgery

has not yet reached MMI. Claimant's argument ignores the fact that Dr. Gear opined that the industrial accident resulted in only a "mild aggravation" or a "mild irritation" to his "significant preexisting conditions," that claimant returned to his baseline within six weeks of the industrial accident, and that any need for further medical treatment was attributable to claimant's significant preexisting conditions, not his industrial accident.

¶ 34 Claimant further insists that Dr. Gear was unaware that claimant had a partial supraspinatus tear and had no opinion as to whether the condition could be further improved through arthroscopic medical treatment. As such, claimant insists that Dr. Gear's opinion "definitionally lacked any evidentiary basis for finding that [claimant] was at maximum medical improvement." We disagree. Dr. Waxman acknowledged that while the MRI of claimant's left shoulder from September 2014 demonstrated a tear, an "earlier" MRI of the left shoulder did not, and that he would have to examine the MRIs to determine how the tear materialized. Thus, the relationship, if any, between the supraspinatus tear and the work accident is unclear. More significantly, claimant's position ignores that the Commission, in relying on Dr. Gear's opinion, found that, as a result of his May 11, 2013, accident, claimant sustained a temporary aggravation of his preexisting conditions, and, therefore, the accident did not result in a permanent aggravation or an acceleration of any condition in his neck, back, bilateral knees, or left shoulder. In other words, the Commission concluded that claimant's continued complaints and medical treatment were related to the natural progression of his preexisting degenerative condition, not his work accident. This was a reasonable conclusion based on the evidence of record. Accordingly, we cannot find that the Commission's determination that claimant reached MMI by September 10, 2013, the date he was examined by Dr. Gear, was against the manifest weight of the evidence.

¶ 35 Claimant analogizes this case to *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563 (1993). We find *Montgomery* distinguishable. In that case, the claimant sustained a work-related injury in 1978, following which he underwent back surgery, specifically a partial laminectomy at L3. Although the claimant was never completely pain free after the 1978 incident, he continued to work regularly. The claimant sustained another work-related injury in September 1987 while unloading 260-pound crates of glass using a lift truck. The claimant reported the accident to his employer and was sent to a medical clinic. After being off work for two days, the claimant returned to his position. He continued to work, but, in May 1989, after noticing numbness in his feet, he consulted a physician. The claimant explained that he delayed seeing a physician because he feared another back operation. The claimant was diagnosed with a ruptured disc at L3-L4 and was treated conservatively until February 1990, when the pain spread to his groin. At that time, Dr. Honda, claimant's treating physician, removed the affected disc. Dr. Honda opined that claimant's symptoms were related to the 1987 accident, not the injury from 1978. At the employer's request, the claimant was examined by Dr. Subbiah. Dr. Subbiah found it "difficult to believe that [the claimant] could have gone on with [a herniated disc] for 21 months" prior to obtaining medical advice, but acknowledged that it was "difficult to tell" whether the need for surgery was related to the September 1987 incident and that it was "possible that [the claimant] was concerned about surgery and hence postponed any kind of medical attention." Based on this record, the arbitrator denied benefits and the Commission affirmed. On judicial review, the trial court set aside the decision of the Commission, finding it to be against the manifest weight of the evidence.

¶ 36 On appeal before this court, the sole issue was whether there was a causal connection between the injury for which the claimant sought surgery and the September 1987 work accident. *Montgomery Elevator Co.*, 244 Ill. App. 3d at 564. Ultimately, we affirmed the ruling of the trial court. *Montgomery Elevator Co.*, 244 Ill. App. 3d at 564. In so holding, we initially observed that the evidence was consistent regarding the details of the 1987 accident and that the evidence was undisputed that claimant suffered a new injury subsequent to the 1978 incident. *Montgomery Elevator Co.*, 244 Ill. App. 3d at 567-68. We also concluded that there was no dispute that a causal connection existed between the September 1987 injury and the ruptured disc at L3-L4. *Montgomery Elevator Co.*, 244 Ill. App. 3d at 568. In this regard, we noted that Dr. Honda expressly concluded that the September 1987 injury caused the disc to rupture. *Montgomery Elevator Co.*, 244 Ill. App. 3d at 568. Moreover, Dr. Subbiah did not rule out a causal connection between the ruptured disc and the September 1987 incident. *Montgomery Elevator Co.*, 244 Ill. App. 3d at 568. Rather, he stated that it was “difficult to tell” and further opined that it was difficult to believe that claimant could go 21 months with such a significant and severe lesion prior to obtaining medical advice. *Montgomery Elevator Co.*, 244 Ill. App. 3d at 568. More significant, Dr. Subbiah allowed that the claimant could have postponed any kind of medical attention because he was concerned about the surgery. *Montgomery Elevator Co.*, 244 Ill. App. 3d at 568. As we noted, this in fact was the claimant’s testimony. *Montgomery Elevator Co.*, 244 Ill. App. 3d at 568.

¶ 37 In the present case, unlike *Montgomery Elevator Co.*, the Commission had before it *conflicting* opinions regarding whether the May 10, 2013, accident resulted in a temporary aggravation of his preexisting conditions or whether it resulted in a permanent aggravation or an

acceleration of any condition in his neck, back, bilateral knees, or left shoulder. The Commission adopted the former position and, as noted above, this was a reasonable position to take based on the evidence of record. Since there was conflicting medical testimony as to whether claimant had reached MMI, claimant's reliance on *Montgomery Elevator Co.* is misplaced. See *Montgomery Elevator Co.*, 244 Ill. App. 3d at 568-69 (distinguishing case in which there was conflicting medical testimony as to the cause of the claimant's injury, citing *Martin v. Industrial Comm'n*, 91 Ill. 2d 288 (1982)).

¶ 38 In short, the evidence regarding whether claimant reached MMI from his undisputed industrial accident of May 11, 2013, was conflicting. Resolving such conflicts in the evidence is a matter for the Commission in the first instance. *Hosteny*, 397 Ill. App. 3d at 674. Here, where the issue is medical in nature, we must give particular deference to the Commission's resolution of the matter. *Long*, 76 Ill. 2d at 565-66 (noting that cases involving the aggravation of a preexisting condition concern primarily medical questions for which the Commission's fact findings are entitled to substantial deference). Based on the evidence presented, we cannot say that the Commission's finding that claimant had reached MMI from the injuries attributable to his industrial accident was against the manifest weight of the evidence.

¶ 39

IV. CONCLUSION

¶ 40 For the reasons set forth above, we affirm the judgment of the circuit court of McHenry County, which confirmed the decision of the Commission, and remand the matter to the Commission for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 41 Affirmed and remanded.