

September 5, 2008, while working for the employer, R.A. Shavitz, Inc. Following a long procedural history, the Illinois Worker's Compensation Commission (Commission) determined that the claimant did not sustain his burden of proving that his current condition of ill-being to his lumbar spine resulted from the accident on September 5, 2008. The circuit court of Cook County later confirmed this decision and this appeal followed.

¶ 3 I. Background

¶ 4 The background facts and procedural history concerning this case are set forth in detail in this court's prior order in *Triplett v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 142747WC-U. Given the nature of the issues raised on appeal, we will repeat those facts and procedural history, and supplement as needed, to fully understand and consider the current appeal.

¶ 5 On October 27, 2008, the claimant filed an application for adjustment of claim under the Act seeking benefits for injuries to his lumbar spine that he allegedly sustained on September 5, 2008, while working for the employer. On May 22, 2009, and June 22, 2009, the claim proceeded to an expedited arbitration hearing under section 19(b) of the Act. The evidence presented at the arbitration hearing is summarized as follows.

¶ 6 The claimant testified that he was performing roofing work for the employer on Friday, September 5, 2008. While hoisting a "roll of tar," which weighed approximately 75 pounds, from the ground to a three to four story high roof, he felt "a little strain in [his] back but [he] paid nothing of it." The claimant explained that he finished hoisting the roll to the roof and kept working because the roof needed to be completed and only one other

worker was there. He stated that he was in bed all weekend because of back pain and denied any prior back injury.

¶ 7 On Monday, September 8, 2008, the claimant returned to work and reported his injury to his supervisor. According to the claimant, at his supervisor's request, he presented to Wrigleyville Chiropractic & Massage, Ltd., for treatment but continued working through September 12, 2009, on light duty.

¶ 8 At Wrigleyville Chiropractic & Massage, Ltd., the claimant presented to Dr. Andrea Butt, a chiropractor, complaining of sharp low back pain radiating down his left thigh with tingling radiating into his left foot. He was diagnosed with lumbago, myalgia, myositis, sciatica, and thoracic spine pain and treated with ice packs. During follow-up visits on September 9, 10, and 12, 2008, he was treated with ice packs, chiropractic manipulation, electrical stimulation and therapeutic exercise. The claimant was also referred to Dr. Bruce Doblin, a medical doctor, who he saw on multiple occasions in September 2008. Dr. Doblin recommended an MRI of the lumbar spine.

¶ 9 On October 2, 2008, the claimant underwent the recommended MRI. The MRI showed mild disc degeneration at L4–L5 and L5–S1, a minimal disc bulge at L5–S1, and a mild bulge with a small central protrusion at L4–L5 with a mild narrowing of the central spinal canal. Dr. Doblin recommended the claimant undergo epidural steroid injections to his back.

¶ 10 The claimant was referred and then presented to Dr. Daniel Newman at Midwest Orthopedics Illinois Bone & Joint Institute (Midwest Orthopedics) on October 21, 2008, complaining of low back pain radiating into his left buttocks and down to his left calf,

which had grown much worse after four chiropractic treatments. He reported his work injury as occurring on September 12, 2008, and further reported that he had helped lift an airplane engine later that same day. Dr. Newman noted that the claimant did not bring any medical records or diagnostic studies to this exam and denied any prior low back injury. The claimant was diagnosed with a herniated disk with left-sided sciatica, and Dr. Newman opined that his condition was causally related to the September 2008 work injury, he was unable to return to his regular work duties at that time and he should be evaluated and treated for pain management.

¶ 11 Dr. Newman referred the claimant for to Dr. Rizwan Arayan of Health Benefits Pain Management Services and physical therapy at Advanced Rehabilitation Clinics. On October 23, 2008, the claimant presented to Dr. Arayan complaining of low back pain radiating into his left lower extremity. He reported his September 2008 work injury and denied any prior low back injury. Dr. Arayan diagnosed him with lumbar disc degeneration, bulging discs at L4–L5 and L5–S1, and radiculitis. Dr. Arayan recommended medication, lumbar epidural steroid injections, physical therapy and instructed him to remain off work.

¶ 12 On October 31, 2008, the claimant saw Dr. Anthony Rivera at Health Benefits Pain Management Services, who diagnosed him with lumbar radiculopathy, lumbar disc degeneration, lumbar disc bulges and lumbar spinal stenosis. Dr. Rivera performed transforaminal epidural steroid injections on October 31, 2008, and November 14, 2008.

¶ 13 The claimant saw Dr. Arayan again on November 20, 2008. Dr. Arayan ordered an EMG and nerve conduction study of the lower extremities. The EMG, conducted on

December 4, 2008, showed an abnormal test with evidence of a left L4–L5 and L5–S1 radiculopathy.

¶ 14 On December 22, 2008, at the employer’s request, the claimant underwent an independent medical examination by Dr. Kern Singh. The claimant testified that he answered Dr. Singh’s questions truthfully and honestly. Dr. Singh diagnosed him with degenerative disc disease at L5–S1 and a lumbar muscular strain. Dr. Singh noted that the MRI scan showed minimal evidence of central or foraminal stenosis, minimal loss of disc height, and minimal signal intensity change. Dr. Singh thought that the EMG was a false positive and that it did not correlate with the claimant’s symptoms. Dr. Singh also noted that the claimant’s subjective complaints did not correlate with the objective findings and that he exhibited symptom exaggeration and positive Waddell signs. Dr. Singh opined that (1) his current condition of ill-being was not causally related to his workplace injury, (2) he was at maximum medical improvement (MMI), (3) he did not need additional treatment, and (4) he was capable of full-duty work without restrictions.

¶ 15 On January 13, 2009, the claimant presented Dr. David Rosania, who took over for Dr. Arayan. Dr. Rosania recommended a third injection, which he performed on January 22, 2009, and his summary notes, dated January 14, 2009, reflected that the claimant’s EMG/nerve conduction study was suggestive but not definitive for a left lumbosacral radiculopathy. The summary further indicated that the claimant presented with “a copy of his MRI films of his low back which correlated with his clinical presentation—the images reflect a pronounced L4-L5 disc bulge.”

¶ 16 The claimant returned to Dr. Rosania on February 3, 2009, complaining of low back pain radiating down his left leg. Dr. Rosania advised him to continue using the Lidocaine patch, portable interferential spine stimulator, prescribed medications and to undergo physical therapy, which he started on February 9, 2009.

¶ 17 On February 11, 2009, following referrals from Drs. Rosania and Newman, the claimant presented to Dr. Theodore Fisher, a spine surgeon at Midwest Orthopedics. The claimant, once again, reported an accident date of September 12, 2008, and that he had helped lift an airplane engine that same day. Dr. Fisher reviewed the claimant's EMG and nerve conduction studies, noting that they showed left L4–L5 and L5–S1 radiculopathy.

¶ 18 On March 27, 2009, the claimant returned to Dr. Fisher, and was diagnosed with L4–L5 broad based disc bulge and bilateral foraminal stenosis, L5–S1 degenerative disc disease with bilateral foraminal stenosis, and left L4–L5 and L5–S1 radiculopathy. Dr. Fisher recommended surgery, a laminotomy and foraminotomy at L4–L5 and L5–S1, but provided no opinion relating to the issue of causation.

¶ 19 The claimant testified that conservative treatment did not alleviate his back pain, which he rated as an 8 on a scale of 0 to 10. The claimant wore a spine stimulator any time he was outside his house, and he denied experiencing any back pain before September 5, 2008, although he testified that he had pain every day after. The claimant wanted to have the surgery, following Dr. Fisher's recommendation and that he would schedule it immediately if it was awarded compensation. On cross-examination, he again denied any back injuries or pain before September 5, 2008. When asked if he had filed a prior workers'

compensation claim, he responded, “I don’t think so” and “[n]ot to my knowledge I haven’t.” The employer’s counsel did not follow up with any other questions.

¶ 20 The employer introduced a computer printout that showed the claimant had filed workers’ compensation claim, in August 2002, against Phoenix Charter Transport, Inc., alleging a low back injury sustained on July 18, 2002, during a motor vehicle accident. The printout further showed that the claim was subsequently dismissed. The employer also noted that, on his application for adjustment of claim in this case, the claimant did not list any prior application for workers’ compensation benefits, even though the application requests such information.

¶ 21 On September 17, 2009, the arbitrator denied the claimant’s claim, finding that his current condition of ill-being was not causally related to the September 5, 2008, work accident. The arbitrator found that the claimant was “not credible based on his untruthful testimony.” The arbitrator specifically noted that the claimant denied any prior back injuries, even though he “filed a workers’ compensation case *** on August 28, 2002, alleging an accident date of July 18, 2002, *** [in which he] alleged injury to the lower back.” The arbitrator found the claimant’s testimony “directly contradicted” the fact that he had previously filed a workers’ compensation case, “which involved the lower back,” the same body part at issue. The arbitrator also noted the claimant testified “that he never filed a workers’ compensation case in the State of Illinois,” which was “[o]bviously *** not the case” because he “did file an Illinois Workers’ Compensation claim in August 2002.”

¶ 22 In addition, the arbitrator noted that the claimant gave inconsistent histories to his treating physicians, denying any prior back injuries. The arbitrator found that, because the claimant was not truthful with his treating physicians, their opinions were based on erroneous information and were, thus, of no evidentiary weight. The arbitrator found Dr. Singh's opinions to be more credible because "he was not operating on incorrect information." Based on the arbitrator's finding of no causal connection between the claimant's current condition of ill-being and the September 5, 2008, work accident, all other issues were deemed moot. The claimant appealed the arbitrator's decision to the Commission.

¶ 23 On April 14, 2010, the Commission affirmed and adopted the arbitrator's decision but corrected a scrivener's error. The claimant filed a timely petition for judicial review.

¶ 24 On December 1, 2010, the circuit court entered an order, finding that the claimant had been improperly impeached regarding his prior workers' compensation claim and that "[t]he Commission's credibility determination was in error." The court noted that the claimant had denied a prior back injury on both direct and cross-examination, but the employer did not ask any further questions regarding the prior back injury and its connection with his current condition of ill-being, nor did the employer confront him with the Commission's record to explain the apparent inconsistency. The court retained jurisdiction of the matter but remanded "for such proceedings before the Commission as it deems are appropriate under the Act." In doing so, the court stated: "If on remand, the Commission confirms its findings on the conflicting medical evidence, this Court will confirm the Commission's decision which denies benefits to [the claimant]."

¶ 25 On November 21, 2011, the Commission issued its decision on remand, stating that the circuit court, on December 1, 2010, entered its decision “reversing” the Commission’s decision and remanding the case to the Commission “with directions to enter an award for [the claimant] in accordance with its Order.” Later in its decision, the Commission stated that, on remand, it “ha[d] been instructed to revisit the issue of causal connection.” “After carefully reviewing the evidence,” the Commission found a causal connection between the claimant’s current condition of ill-being and his September 5, 2008, work accident under a chain of events analysis. Based upon Dr. Fisher’s opinion that the claimant needed surgery, the Commission found he had not yet reached MMI. The Commission awarded him TTD benefits and past medical expenses but denied his request for prospective medical care because he did not identify it as an issue at the time of trial or on the request for hearing form. Both parties filed timely petitions for judicial review.

¶ 26 On May 15, 2012, the circuit court confirmed the Commission’s decision on accident, causation, TTD benefits and medical expenses but remanded to the Commission for a decision regarding prospective medical care. The court stated that its initial “remand order did not instruct the Commission to enter an award for [the claimant] but that [the Commission’s] analysis and award [were] correct.”

¶ 27 On December 5, 2013, the Commission issued its decision on remand, awarding the claimant prospective medical care that had been recommended by Drs. Fisher and Rosania because it was reasonable and necessary, and it believed the opinions of Drs. Fisher and Rosania were more persuasive than Dr. Singh. The employer filed a petition for

judicial review. The circuit court subsequently confirmed the Commission's decision on July 31, 2014. The employer appealed.

¶ 28 On October 9, 2015, we issued a decision finding the Commission had misunderstood, and, therefore, failed to comply with the circuit court's initial remand order. We vacated the Commission's initial decision on remand, reversed the court's order confirming, in part, the Commission's initial decision on remand, vacated all subsequent decisions of the Commission and the court and remanded to the Commission with directions to comply with the court's initial remand order. See *Triplett v. Illinois Workers' Comp. Comm'n*, 2015 IL App (1st) 142747WC-U.

¶ 29 On March 6, 2018, the Commission, with one commissioner dissenting, found that the claimant did not sustain his burden of proving that his current condition of ill-being of his lumbar spine resulted from the accident on September 5, 2008. Therefore, the Commission affirmed the arbitrator's denial of compensation. The Commission summarized the procedural history, ultimately concluding that "on the instant remand we appear to be back to square one and we have to analyze the original Decision of the Arbitrator and transcript." The Commission also stated that the circuit court's remand order directed it to decide the case based on the conflicting medical evidence.

¶ 30 In resolving the conflicting medical evidence, the Commission found the opinions of Dr. Singh more persuasive than those of the claimant's treating doctors. The Commission described the conflicting medical evidence as follows:

“[O]n one side there is what appears to be relatively benign MRI findings, and the findings of Dr. Singh of symptom magnification positive Waddell signs. On

the other side, there is the subjective complaints of [the claimant] and the diagnosis of [the claimant's] treating doctors that [the claimant] had a disc 'herniation' which caused mild-to-moderate foraminal stenosis."

Consistent with Dr. Singh's reasoned medical opinion, the Commission agreed that positive EMG findings can be incorrect and stressed that Dr. Singh had opined that the EMG results represented a false positive based on the MRI results and his findings of symptom magnification and positive Waddell signs. Moreover, the Commission noted that the claimant alleged an accident date of September 5, 2008, but he continued to perform a physically demanding construction job until September 12, 2008. The Commission expressed that "[the claimant] began to allege an accident date of September 12 to various doctors, perhaps to coincide with the last day he worked."

¶ 31 The dissenting commissioner concluded that the MRI and EMG findings supported the claimant's consistent pain complaints. Specifically, the dissenting commissioner noted that the majority's reliance on Dr. Singh opinions over the claimant's treating physicians was misplaced because Dr. Singh reported observing symptom magnification and positive Waddell signs and stated that the EMG represented a false positive "but provided no bases or explanation for those opinions."

¶ 32 Thereafter, the claimant filed for judicial review. On March 12, 2019, the circuit court confirmed the Commission's March 6, 2018, decision. This appeal followed.

¶ 33 **II. Analysis**

¶ 34 On appeal, the claimant challenges the Commission's March 6, 2018, decision denying benefits, arguing that the Commission erred in finding that he did not sustain his

burden of proving his current condition of ill-being of his lumbar spine resulted from the accident on September 5, 2008. The claimant also contends that the Commission failed to obey this court's October 9, 2015, remand order, which the claimant argues implied that the Commission should remand the matter for further arbitration proceedings. Lastly, the claimant argues that the Commission failed to properly apply the preponderance of the evidence standard in rendering its March 6, 2018, decision because that decision is against the manifest weight of the evidence. We will address these issues in turn.

¶ 35 The claimant first asserts the Commission's finding that he failed to prove his current condition of ill-being is causally related to his work accident is against the manifest weight of the evidence. We disagree.

¶ 36 The claimant has the burden of establishing by a preponderance of the evidence the elements of his claim, including "some causal relation between the employment and the injury." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989); see also *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 469 (2011) ("A prerequisite to the right to recover benefits under the Act is some causal relationship between the claimant's employment and the injury suffered."). Whether a causal connection exists between an industrial accident and the claimant's subsequent condition of ill-being is a question of fact which will only be reversed if it is against the manifest weight of the evidence. *Caterpillar Tractor Co.*, 129 Ill. 2d at 58.

¶ 37 Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence; 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). In resolving any questions of fact, it is the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence and assign weight to be accorded the evidence. *Modern Drop Forge v. Industrial Comm'n*, 284 Ill. App. 3d 259, 267 (1996). A reviewing court may not disregard or reject permissible inferences drawn by the Commission merely because the court would have drawn other inferences. *Greene v. Industrial Comm'n*, 87 Ill. 2d 1, 5 (1981). A factual decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent from the record. *D.J. Masonry Co. v. Industrial Comm'n*, 295 Ill. App. 3d 924, 930 (1998).

¶ 38 In finding that there was no causal connection between the claimant's employment and his current condition of ill-being, the Commission gave considerably less weight to the medical opinions of Drs. Newman, Fisher, Rosania and the other treating physicians. The Commission, instead, credited the medical opinion of Dr. Singh, who conducted an independent medical examination at the employer's request. The Commission described the conflicting medical evidence as follows:

“[O]n one side there is what appears to be relatively benign MRI findings, and the findings of Dr. Singh of symptom magnification positive Waddell signs. On the other side, there is the subjective complaints of [the claimant] and the diagnosis of [the claimant's] treating doctors that [the claimant] had a disc ‘herniation’ which caused mild-to-moderate foraminal stenosis.”

¶ 39 The Commission had before it extensive records from the claimant's various treating physicians. Only Drs. Newman and Singh provided specific expert opinions as to causation. The claimant presented to Dr. Newman for consultation following an October 8, 2008 MRI of the lumbar spine but brought no medical records or diagnostic studies, including the most recent MRI, with him to the consultation. Despite this, Dr. Newman opined that the claimant's condition of ill-being was causally related to the claimant's reported mechanisms of injury, which included lifting a 70 pound roll of tar and an airplane engine in the same day. The Commission noted that Dr. Newman's consultation was hindered by the claimant's failure to provide the MRI and other medical documentation and that his opinion regarding causation was based entirely on the history gathered from the claimant, which misstated the alleged injury date. Again, the other medical providers, including Dr. Fisher, who recommended surgery, did not present an opinion as to causal connection for the Commission to consider. The Commission concluded that the claimant's medical providers relied extensively on the claimant's subjective complaints and the December 4, 2008, abnormal EMG, which was suggestive but not definitive for a left lumbosacral radiculopathy.

¶ 40 In contrast, a review of the record reveals that Dr. Singh noted the details underlying his medical opinions. Dr. Singh reviewed the October 8, 2008, MRI, which revealed a slight loss of disc signal intensity at L5-S1 with slight loss of disc height and minimal evidence of central or foraminal stenosis and minimal signal intensity change. Dr. Singh performed a physical examination of the claimant followed by diagnostic studies. Dr. Singh noted his objective findings on both the examination and diagnostic studies did not

correlate with the claimant's reported symptoms. Dr. Singh further observed that the claimant exhibited several positive Waddell findings with hyper-exaggeration of symptoms. Dr. Singh diagnosed the claimant with degenerative disc disease at L5–S1 and a lumbar muscular strain. Dr. Singh cleared the claimant to work without restrictions.

¶ 41 Considering Dr. Singh's opinion is based on his examination of the claimant, the MRI and the objective diagnostic testing, it is apparent there is a sufficient factual basis to support the Commission's resolution of the conflicting medical evidence against the claimant. As noted, we are not the fact-finder, and the issue is not whether we would have found a causal connection to the claimant's condition of ill-being and his accident, but the question is whether the Commission's decision is against the manifest weight of the evidence. Here, the Commission provided its reasoning in giving greater weight to Dr. Singh's opinion over that of the other medical professionals. Based on our review of the record, in its entirety, we cannot say that the opposite conclusion is clearly apparent.

¶ 42 The claimant next contends that the Commission failed to obey this court's October 9, 2015, remand order (*Triplett v. Illinois Workers' Comp. Comm'n*, 2015 IL App (1st) 142747WC-U), which directed the Commission to comply with the circuit court's initial remand order. In support, the claimant argues that both orders implied that the Commission should remand the matter for further arbitration proceedings. The claimant further argues that the claimant has yet to receive a "full and fair" hearing. We disagree.

¶ 43 As recounted above, on November 21, 2011, the Commission issued its decision following the December 1, 2010 remand order. In its decision, the Commission stated that the circuit court entered its decision "reversing" the Commission's decision and remanding

the case to the Commission “with directions to enter an award for [the claimant] in accordance with its Order” (Emphasis added.). Our ruling in *Triplett*, 2015 IL App (1st) 142747WC-U, followed. In *Triplet*, this court specifically stated that “[b]ecause the Commission misunderstood, and, therefore, failed to comply with, the court's initial remand order, we vacate the Commission's initial decision on remand ***.” 2015 IL App (1st) 142747WC-U ¶ 40. Our directions on remand to the Commission were as follows:

“[T]o comply with the circuit court's initial remand order by conducting ‘such proceedings before the Commission as it deems are appropriate under the Act’ without considering the impeachment of the claimant based on his prior workers' compensation claim and back injury, which the circuit court found to be improper.” *Id.* at ¶ 40, (quoting the circuit court of Cook County, December 1, 2010, remand order (10L50724)).

We did not express an opinion as to what conclusions the Commission should reach on remand. *Id.* at ¶ 41.

¶ 44 The circuit court’s December 1, 2010, remand order found that the claimant was improperly impeached regarding a prior workers’ compensation claim and back injury, and that the Commission’s credibility determination was in error. Thus, as highlighted above, the court retained jurisdiction but remanded “for such proceedings before the Commission as it deems are appropriate under the Act.” In doing so, the court stated:

“If on remand, the Commission confirms its findings on the conflicting medical evidence, this Court will confirm the Commission's decision which denies benefits to [the claimant]. [Citation.] ‘The law is clear; it is the Commission's

province to determine what weight to give testimony and to resolve conflicts in testimony. This includes medical testimony and evidence.’ ”

¶ 45 Based on the foregoing, neither our *Triplett* decision, nor the underlying December 1, 2010, remand order, can be reasonably construed as directing the Commission to remand to the arbitrator for further fact finding. In addition, the record demonstrates that the Commission, in compliance with the circuit court’s remand order, resolved the conflicting medical evidence without any consideration of the improper impeachment evidence. The Commission correctly summarized the procedural history, ultimately concluding that “on the instant remand we appear to be back to square one and we have to analyze the original Decision of the Arbitrator and transcript.” Accordingly, we are of the opinion that the claimant received a full and fair hearing under the Act, and this contention of error is meritless.

¶ 46 Lastly, the claimant argues that the Commission failed to properly apply the preponderance of the evidence standard in rendering its March 6, 2018, decision. Given that this issue is predicated on the claimant’s contention that the Commission’s decision is against the manifest weight of the evidence, which we have rejected, we need not address this issue.

¶ 47 **III. Conclusion**

¶ 48 Based on the foregoing, we affirm the circuit court’s judgment confirming the Commission’s decision to deny benefits based on the claimant’s failure to prove a causal connection between the alleged accident and his current condition of ill-being.

¶ 49 Affirmed.