2020 IL App (2d) 2180577WC-U
No. 2-18-0577WC
Order filed January 30, 2020

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IN THE APPELLATE COURT

OF ILLINOIS

SECOND DISTRICT

Workers' Compensation Commission Division

DANIEL MILLER,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Appellant,	)	
	)	
v.	)	No. 17MR898
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION *et al.*	)	
	)	
	)	Honorable
(Illinois State Treasurer, Custodian of Injured	)	Edward J. Prochaska,
Workers Benefit Fund, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* By denying a petition for benefits under sections 8(a) and 19(h) of the Workers' Compensation Act (820 ILCS 305/8(a), 19(h) (West 2016)), the Illinois Workers' Compensation Commission did not violate the law of the case or make a finding that was against the manifest weight of the evidence.

¶ 2 The Illinois Workers' Compensation Commission (Commission) denied a petition by Daniel Miller for relief under sections 8(a) and 19(h) of the Workers' Compensation Act (Act)

(820 ILCS 305/8(a), 19(h) (West 2016)). Miller sought judicial review, and the circuit court of Winnebago County confirmed the Commission's decision. Miller appeals, arguing that the Commission's decision violates the law of the case and goes against the manifest weight of the evidence.

¶ 3 We conclude that by denying Miller's petition for benefits under sections 8(a) and 19(h) of the Act (*id.* §§ 8(a), 19(h)), the Commission did not violate the law of the case or make a finding that was against the manifest weight of the evidence. Therefore, we affirm the judgment.

¶ 4 I. BACKGROUND

¶ 5 A. Miller's Preexisting Spine Condition

¶ 6 Miller has a degenerative condition of his spine, at both the lumbar and cervical levels. In 2004, he underwent a cervical fusion at C3-C4.

¶ 7 In addition, in 2007, Miller underwent a lumbar microdiscectomy at L4-L5 due to a work-related injury at Fastrak Technologies, Inc. (Fastrak).

¶ 8 On February 5, 2008, Miller was examined by an occupational medicine specialist, Dr. Jeffrey E. Coe, who at that time noted no complaints regarding the neck. Miller complained only of his lower back and of a little numbness in his right leg and foot:

> "There were tender 'trigger points' bilaterally in the paralumbar musculature and the residual tenderness over the right sciatic notch. There was associated decreased range of motion of the lumbar spine in the extension and the right lateral bending. There was a residual sensory deficit in the right lower leg and foot consistent with a right lumbar nerve root irritation."

¶ 9 B. The Work-Related Accident of February 25, 2008

¶ 10 On February 25, 2008, while he was still working for Fastrak, Miller climbed a ladder to do some electrical wiring. The ladder came in contact with a live wire, electrocuting him and tipping over the ladder. He clung to the ladder as it fell to the ground, and he landed on his lower back, left shoulder, and neck. The next day, he went to the emergency room.

¶ 11 On April 6, 2011, Dr. Coe reevaluated Miller. He reviewed the extensive conservative treatment Miller had been receiving since February 25, 2008, not only for his back but also for his neck, including imaging studies, epidural steroid injections, and physical therapy. Dr. Coe diagnosed degenerative disc disease and degenerative arthritis in Miller's neck and lower back. He believed that Miller was suffering from chronic pain.

¶ 12 Dr. Coe opined that the accident of February 25, 2008, had aggravated Miller's preexisting spine conditions:

> "It is my opinion that the fall that Mr. Miller had at work on February 25, 2008, aggravated pre-existing conditions in his neck and back. Those pre-existing conditions are his post-operative status with his old cervical fusion at C3-4 and his known disc breakdown at L4-5 where he had undergone surgery, his degenerative disc disease at multiple levels in his cervical spine and lumbar spines, and his conditions of surrounding soft tissue pain, that all of those were aggravated by the accident of February 25, 2008 causing him to experience both acute pain, pain in his neck and lower back and his right leg, and then also chronic pain in spite of years of medical treatment."

¶ 13 C. The Award of Workers' Compensation Benefits for the Work-Related Injury of February 25, 2008, and Miller's Subsequent Petition for Additional Benefits

¶ 14 On June 25, 2012, in case No. 13-IWCC-0552, there was an arbitration hearing on the accident of February 25, 2008. The Illinois State Treasurer, as the *ex officio* custodian of the

Injured Workers' Benefit Fund, appeared as a co-respondent. Fastrak, having dissolved, did not appear.

¶ 15 The arbitration decision, issued on July 17, 2012, awarded respondent no temporary total disability benefits. The arbitrator decided that the evidence would not support a finding of total disability:

> "[Miller] testified that he continued to work up until the time he was laid off in March 2008. He also testified that he did receive unemployment compensation benefits after he was let go by Fastrak ***. He further testified that after a period of receiving unemployment compensation he did find employment and went back to work."

Also, the arbitrator noted, even though Dr. Coe had advised Miller to try to avoid repetitive bending and flexing of his neck and lower back, Dr. Coe had imposed no specific lifting restriction. Therefore, on the basis of the medical records, Miller's testimony, and Dr. Coe's assessment of Miller's physical abilities, the arbitrator denied Miller's claim for temporary total disability benefits.

¶ 16 The arbitrator found, however, that in the accident of February 25, 2008, Miller sustained a work-related injury that entitled him to medical payments of $13,590.36 (see *id.* §§ 8(a), 8.2) and permanent partial disability benefits of $480 per week for 37.5 weeks for 7.5% loss of the person as a whole (see *id.* § 8(d)(2)). The arbitrator's rationale for those awards was that in Dr. Coe's examination of February 5, 2008, which was only 20 days *before* the accident, Miller's degenerative spine condition was not giving him much of a problem whereas, *after* the accident, Miller was seriously symptomatic:

> "There is no dispute that [Miller] had a degenerative condition of his lumbar and cervical spines on the date of injury. The results are clear from Dr. Coe's February 5, 2008

examination that he was relatively symptom free except for some slight limitation of motion and right lumbar nerve irritation.

After the February 25, 2008 accident, [Miller] has received regular and continuing aggressive but conservative care of his lumbar and cervical spines. He has undergone a number of epidural injections and other pain management treatment. He has had a number of [magnetic resonance imaging (MRI) studies] of both his neck and his low back which have documented the degenerative changes. It is clear that the electrocution and fall aggravated and accelerated the degenerative condition.

In comparing Dr. Coe's April 2011 report to his February 2008 report, it is clear that [Miller] has a greater loss of motion of the lumbar spine. In addition, there is limitation of motion of the cervical spine as well. There is also an increase in subjective complaints. ***

***

Based upon [Miller's] testimony, the extensive medical treatment that [Miller] has undertaken in an attempt to relieve his symptomatology, and the opinions expressed by Dr. Jeffrey Coe, the Arbitrator finds that [Miller] has sustained a permanent 7.5% loss under Section 8(d)(2) of the Act [(*id.*)]."

¶ 17 Miller continued receiving medical treatment for his spine. On September 25, 2012, some two months after the arbitration decision, he underwent a discectomy at L5-S1. He then underwent several months of physical therapy.

¶ 18 On November 28, 2012, Miller petitioned for additional medical payments. See *id.* § 8(a).

¶ 19 On May 23, 2013, the Commission affirmed and adopted the arbitrator's decision in case No. 13-IWCC-0552. None of the parties sought judicial review.

¶ 20 On October 30, 2014, Miller amended his petition so as to include a claim pursuant to section 19(h) (*id.* § 19(h)) that his disability had increased since the arbitration decision of July 12, 2012.

¶ 21 That same month, October 2014, Miller received an epidural from a physical rehabilitation and spine specialist, Dr. Sarah C. Holz, at the University of Wisconsin.

¶ 22 C. Medical Treatment While the Petition for Additional Benefits Was Pending

¶ 23 On December 16, 2013, Miller returned to Dr. Holz and received another epidural. Dr. Holz noted lumbar pain and muscle spasms.

¶ 24 On April 24, 2014, Dr. Holz recommended a right sacroiliac joint injection and, in the event that the injection proved ineffectual, a spinal cord stimulator. Miller's health insurance refused to approve the recommended injection. So, Dr. Holz referred Miller to Dr. Nalini Sehgal, a pain management physician at the University of Wisconsin.

¶ 25 On July 10, 2014, Dr. Sehgal evaluated Miller for possible implantation of a spinal cord stimulator. She suggested that Miller undergo an additional evaluation, for a sacroiliac joint dysfunction, and she recommended cervical facet joint injections and deep parasinous trigger point injections at the cervicothoracic level.

¶ 26 On August 6, 2014, Miller saw Dr. Frederick J. Gahl, a pain management specialist at Rockford Pain Center, in Rockford, Illinois. He diagnosed intractable right lumbar radiopathy, neck pain, and myofascial back spasm. He referred Miller to Dr. Marie Walker, a physiatrist at Rockford Pain Center.

¶ 27 Dr. Walker administered a right iliac spine trigger point injection and recommended an electromyography (EMG) of the cervical spine. The cervical EMG revealed no neuropathy or radiculopathy. After the cervical EMG, Dr. Walker administered a trigger point injection on the

left side and recommended another EMG, this time of the back and the legs. On September 30, 2014, an EMG of the back and the legs showed mild chronic S1 radiculopathy. On October 22, 2014, on the basis of those diagnostic results, Dr. Walker prescribed anti-inflammatory medication and a return to physical therapy.

¶ 28 On October 29, 2014, Miller resumed physical therapy at SwedishAmerican Hospital, in Rockford. He kept up the physical therapy for nine months.

¶ 29 On January 22, 2015, Miller returned to Dr. Holz, at the University of Wisconsin. She gave him some more injections, on February 13, March 16, and May 12, 2015. These injections helped. She also recommended that Miller wear a sacroiliac stabilization belt to help relieve his back pain.

¶ 30 Throughout the rest of 2015 and 2016, Miller received treatment from Dr. Holz and Dr. Andrew N. Vo (not to be confused with Dr. Coe) at Rockford Pain Center. Dr. Holz administered more injections, including a facet injection, a lumbar epidural, and a sacroiliac injection.

¶ 31 In March 2016, Miller resumed physical therapy.

¶ 32 On May 5, 2016, a cervical MRI did not reveal any significant changes when it was compared with the MRI from 2011.

¶ 33 On August 19, 2016, an MRI of the lumbar spine revealed degenerative changes at L4-L5-S1. The disc bulge at L5-S1 had decreased in size but was still in contact with the traversing left sacroiliac nerve root.

¶ 34 D. Dr. Coe's Third and Most Recent Examination of Miller

¶ 35 On April 7, 2015, Dr. Coe evaluated Miller's condition a third time, reviewing the medical treatment Miller had received in the previous several years. Specifically, Dr. Coe noted the following in Miller's medical records. On October 13, 2011, Dr. Vo diagnosed an L5-S1 disc herniation. On January 3, 2012, Dr. Christopher D. Sliva, an orthopedic spine surgeon at Rockford

Spine Center, diagnosed an L5-S1 disc herniation that was greater on the left side than on the right. A repeated lumbar MRI on September 6, 2012, showed central and left lateral disc protrusion at L5-S1 with lumbar facet joint hypertrophy, causing neuroforaminal narrowing. Dr. Nathaniel P. Brooks, a neurosurgeon at the University of Wisconsin, had reviewed this most recent MRI and interpreted it as showing a new disc herniation at L5-S1, primarily to the left (although Dr. Vo had diagnosed the L5-S1 herniation years ago). In September 2012, Dr. Brooks did a discectomy at L5-S1, but the surgery gave Miller little relief.

¶ 36 Dr. Coe concluded, in April 2015, that Miller's symptomology and need for medical treatment were still causally related to the work-related accident of February 25, 2008. He opined that Miller had suffered permanent disability to his person as a whole and would need ongoing medical treatment, including pain management therapies, such as block injections and maybe a spinal cord stimulator. Dr. Coe imposed a work restriction of 10 pounds or less and a ban on repetitive bending or twisting of the neck or back.

¶ 37 E. Entenberg's Evaluation

¶ 38 On June 12, 2015, Susan Entenberg, a vocational rehabilitation counselor, evaluated Miller via videoconference. In the videoconference, Miller told Entenberg he could walk and climb stairs without difficulty, stand for two hours at a time, bend from the waist, and sit for a half-hour. In Entenberg's opinion, Miller no longer was able to perform work as a welder-fitter, he was a good candidate for vocational rehabilitation, and he could earn only $9 to $12 an hour at an entry-level light-duty job such as packing or assembling, compared to the $18 or $20 an hour a welder-fitter would earn.

¶ 39 Entenberg admitted that, in formulating these opinions, she had not reviewed any of Miller's medical records dating from after the accident. She agreed that she had not been informed

regarding any restrictions that Miller's treating physicians had imposed. She was unaware that on March 28, 2013, Dr. Brooks released Miller for a trial return to full work duties. Entenberg acknowledged that Miller, by his own account, occasionally lifted weight greater than that to which Dr. Coe (she now was informed) had limited him. She also acknowledged that it was Miller who, on his own initiative, had decided to stop looking for work. Entenberg ultimately agreed that Miller did not need a training program and that he currently was employable.

¶ 40 F. The Commission's Denial of Miller's Petition for Additional Workers' Compensation Benefits Under Sections 8(a) and 19(h)

¶ 41 In its decision denying Miller's petition for additional workers' compensation benefits under sections 8(a) and 19(h), the Commission discussed what it perceived as contradictions in Dr. Coe's opinions, such as the "reversal" of his opinion, given in his September 2011 deposition, that Miller " 'had long reached maximum medical improvement.' "

¶ 42 Also, the Commission found it be "significant" that none of Miller's other numerous treating physicians—some of whom, unlike Dr. Coe, were orthopedic surgeons or neurosurgeons—had been called to opine that Miller's post-arbitration treatment was causally related to his work accident of February 25, 2008.

¶ 43 Those were not the Commission's only concerns. The Commission found Miller himself to be a less than credible witness. Since the accident, he had remodeled his bathroom, which entailed putting up drywall, doing some painting, and installing plumbing. Also, he admitted that shortly before the hearing of January 11, 2017, he worked on his roof to repair a leak. Not only that, but for over a year and a half after the accident, Miller worked as a welder, up to 12 hours a day and 6 days a week—further supporting a conclusion that he reached maximum medical improvement and "returned to his pre-accident baseline prior to the June 25, 2012[,] arbitration hearing." Although Miller testified he had been given a 10-pound lifting restriction, Dr. Brooks, a

treating neurosurgeon, released Miller with a 25-pound weight restriction in November 2012 and then released him to full duty in March 2013.

¶ 44 This was not to deny that Miller had neck and back problems, but the Commission was unconvinced they had materially increased since the workers' compensation award. "His current restrictions, need for pain management treatment, and complaints of back and leg pain," the Commission wrote, "were all present at [the] time of arbitration. None of those factors ha[d] materially changed." To drive that point home, the Commission made the following observations from years of medical records:

> "[Miller] told Dr. Gahl on August 6, 2014 that he had neck pain since 2004. [Miller] told Dr. Walker that his back pain and numbness began after his 2007 lifting accident, not after the subject 2008 accident. He told Dr. Vo on August 1, 2012 that his pains were exacerbated in the past few weeks. he reported to Dr. [Marconi] Deladisma [of Rockford Health System] on February 8, 2016 that his neck pain was a new problem which started between one and four weeks earlier. In November 2016 [Miller] told Drs. [Paul] Schroeder and Lou that he strained his right calf muscle and right Achilles tendon in October 2016 while doing work on a roof. he told his physical therapist at a February 19, 2013 evaluation that his right leg pain and numbness dated back to his 2007 microdiscectomy surgery."

¶ 45 In short, the Commission found that (1) Miller's disability had not materially increased and (2) his "post-arbitration treatment and symptoms were not related to his accident, but rather, to his congenitally narrowed lumbar spinal canal and the new L5-S1 disc findings first demonstrated [i]n the September 2012 MRI, some [four] years after his work accident." Accordingly, in case No. 17-IWCC-0561, the Commission denied Miller's petition for additional workers' compensation benefits under sections 8(a) and 19(h).

¶ 46 G. The Circuit Court's Decision

¶ 47 Miller sought administrative review. The circuit court found the Commission's decision to be "fully supported by the record and *** not against the manifest weight of the evidence." Therefore, the court denied Miller's petition for administrative review.

¶ 48 This appeal followed.

¶ 49 II. ANALYSIS

¶ 50 A. The Law of the Case

¶ 51 Miller argues that the Commission violated the law of the case by resurrecting issues of causation that were laid to rest in 2013. He reasons along these lines. When the Commission makes a decision on a workers' compensation claim and the parties thereafter refrain from seeking judicial review, the decision becomes conclusive, and the law-of-the-case doctrine forbids a redetermination of any issues that the decision resolved. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 253 (2008). The arbitrator's decision of 2012, adopted by the Commission in 2013, is the unassailable law of the case because none of the parties sought judicial review. See 820 ILCS 305/19(f) (West 2018); *Ming*, 387 Ill. App. 3d at 253. Issues of causation that the arbitrator resolved in 2012 cannot be litigated again. On July 17, 2012, the arbitrator found a causal relationship between the work-related accident of February 25, 2008, and the condition of ill-being in Miller's lumbar and cervical spine. In so finding, the arbitrator acknowledged that Miller had a preexisting degenerative condition of his spine, but the arbitrator decided "[i]t [was] clear that the electrocution and fall aggravated and accelerated the degenerative condition." On May 23, 2013, the Commission affirmed and adopted the arbitrator's decision. There was no appeal, no request for judicial review. Hence, the Commission's decision is conclusive. See 820 ILCS 305/19(f) (West 2018).

¶ 52 In Miller's view, when the Commission denied his petition for benefits under sections 8(a) and 19(h), the Commission violated the law of the case by reviewing "prior evidence"—that is, "times and events" predating the 2012 arbitration decision—to "redecide causation." What the Commission should have done instead, Miller maintains, is "confine its causal relation analysis to determining whether there had been a break in the causal chain." Surely, he argues, "[t]here was not a break in the causal chain in the three months between the arbitrator's decision and Miller's L5-S1 surgery."

¶ 53 But the only causation that the arbitrator found in 2012 was this: "It is clear that the electrocution and fall [in February 2008] aggravated and accelerated the degenerative condition [of Miller's lumbar and cervical spine]." As to causation, then, the only way the Commission could have violated the law of the case was by contradicting that quoted language from the arbitrator's decision. We are unaware the Commission has done so. We do not see where the Commission says, in its current decision: "The electrocution and fall in February 2008 did *not* aggravate and accelerate the degenerative condition of Miller's lumbar and cervical spine." In other words, to establish a violation of the law of the case, Miller must set down, side by side, some language from the arbitrator's decision and some language from the Commission's decision and then explain how the two passages are irreconcilable. The arbitrator never found that Dr. Coe was credible in everything he ever said about Miller. He just found Dr. Coe to be credible in his opinion that the workplace accident of February 2008 aggravated the preexisting degenerative condition of Miller's spine. Therefore, contrary to what Miller appears at times to be suggesting, the law of the case did not require the Commission to implicitly accept every statement Dr. Coe had ever made about Miller's medical condition.

¶ 54 Nor did the law of the case require the Commission to assume, absent "a break in the causal chain," that any further breakdown of L5-S1 was causally related to the workplace accident of February 2008. The arbitrator's decision was not a prophecy. Because the arbitrator's decision had nothing to say about Miller's *future* medical condition, the law of the case is inapplicable to issues arising after July 17, 2012, the date when the arbitrator issued his decision. Miller, after all, had a preexisting degenerative condition of the spine. It was only to be expected that, in the natural course of things, his spine would become worse over time. The arbitrator's decision did not lock the Commission into the default position that every spinal deterioration that Miller suffered years after the accident of February 2008 was causally related to that accident. Therefore, we conclude, *de novo*, that there was no violation of the law of the case. See *Ming*, 387 Ill. App. 3d at 252.

¶ 55 B. The Materiality of the Change

¶ 56 The Commission found the alleged causal relationship between the discectomy of September 2012 and the accident of February 2008 to be unproven. Not only that, but the Commission found it to be unproven that Miller's disability had materially changed since the arbitration decision of July 2012:

> "Although [Miller] has undergone lumbar surgery since arbitration, he has neither proven that surgery was related to the injury at issue, nor that he sustained a material change in his disability. [Miller] is as physically active now as he was at arbitration: he drives a car, remodels his house, and even climbs onto his roof to do repairs. His current restrictions, need for pain management treatment, and complaints of back and leg pain were all present at time of arbitration. None of those factors have materially changed."

"To warrant a change in benefits, the change in a petitioner's disability must be material." *Gay v. Industrial Comm'n*, 178 Ill. App. 3d 129, 132 (1989). The disability must have "changed materially since the time of the Industrial Commission's first decision." *Id.*

¶ 57 Logically, the question of material change should precede the question of causation. We first should ask whether the claimant's disability has materially changed since the award. See *id.* Only if the claimant's condition has materially changed would there be any occasion to discuss causation. To illustrate this point, suppose a worker develops numbness in one of his legs several years after injuring his back at work. In a section 19(h) proceeding, the initial question would be whether the onset of numbness qualifies as a material change in his back condition. If the answer is yes, only then would it be necessary to address any controversy over causation—whether the numbness had anything to do with the workplace accident or whether it was entirely owing to a congenital degenerative condition, for example, or a fall down a ravine during a recreational hike in the mountains. The threshold condition for receiving section 19(h) benefits is that the claimant's disability has materially increased since the award (*Motor Wheel Corp. v. Industrial Comm'n*, 75 Ill. 2d 230, 236 (1979)), and until that threshold condition is met, a discussion of causation would be premature.

¶ 58 Thus, Miller had the burden of proving that, since the arbitration award of July 2012, his disability "substantially and materially" increased. *Murff v. Illinois Workers' Compensation Comm'n*, 2017 IL App (1st) 160005WC, ¶ 23. The Commission found he had failed to carry that burden. "Whether there has been a material change in a claimant's disability is an issue of fact, and the Commission's determination will not be overturned unless it is contrary to the manifest weight of the evidence." *Id.* ¶ 22. "For a finding of fact to be contrary to the weight of the evidence, an opposite conclusion must be clearly apparent." *Id.* It is not "clearly apparent" that Miller proved

"a material change in [his] disability." *Id.* A "disability" is "a physical, mental, cognitive, or developmental condition that impairs, interferes with, or limits a person's ability to engage in certain tasks or actions or participate in typical daily activities and interactions." https://www.merriam-webster.com/dictionary/disability. Dr. Brooks, the treating neurosurgeon, must not have thought that Miller's disability had materially increased since July 2012, for in November 2012 he released Miller with a 25-pound lifting restriction and in March 2013 he released Miller to full work duties.

¶ 59 In a hearing before Commissioner Joshua Luskin on January 11, 2017, the commissioner asked Miller if there were "things that [he was] doing at the time of the first trial that [he was] not doing now." Miller answered yes, but the only example he could give was "[h]elping other people with their house chores and stuff," such as helping an elderly woman "sweep leaves off her deck." This purported limitation did not square with what Dr. Brooks had said. And, besides, despite Miller's purported loss of ability to do household chores, he admitted that he mowed his own lawn with a gas-powered push mower and bagged his clippings. He also admitted that, with help from his father and brothers, he had been remodeling his house. When Miller was asked what work he himself did in the remodeling, he answered that he "drywall[ed] and paint[ed]"—with help from his brothers, who "handle[d] sheet drywall for [him] and heavier stuff." Miller also was asked whether, "[s]ince his last trial in 2012," he "had any other injuries to [his] body." He answered that on "October 31st [he] tore [his] calf muscle." This happened, he testified, when his roof sprang a leak and he "went up to fix it because the roofers wanted a large amount of money to come out and fix it and [he] couldn't afford it."

¶ 60 Considering that, after the arbitration, Miller, by his own admission, could push a lawn mower, bag the grass clippings, sand drywall mud, paint walls, and climb onto a roof to repair a

leak, the Commission could reasonably disbelieve his testimony that, since the arbitration, he had lost the physical ability to do household chores, such as sweeping leaves. And, consequently, the Commission could disbelieve him that his disability had materially increased since the July 2012 arbitration decision. Apparently, he still could do the one thing—light household chores—that he claimed to have lost the ability to do. Therefore, by finding a material increase in disability to be unproven, the Commission did not make a finding that was against the manifest weight of the evidence. See *id.*

¶ 61 C. Whether the Discectomy of September 2012 Was Necessary to Cure or Relieve the Effects of the Workplace Injury

¶ 62 Under section 8(a) of the Act, "[t]he employer shall provide and pay *** for all necessary first aid, medical[,] and surgical services, and all necessary medical, surgical[,] and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2018).

¶ 63 Before the July 2012 arbitration decision, it was apparent from Miller's medical records that he had a disc herniation at L5-S1. An MRI in May 2009 showed the disc protrusion. Dr. Sliva, after reviewing the 2009 MRI, diagnosed a broad-based disc bulging at L5-S1. He recommended conservative treatment. In February and March 2011, Dr. Sturm reviewed a lumbar MRI, diagnosed a disc protrusion at L5-S1, and recommended diagnostic right lumbar facet blocks. In October 2011, Dr. Khan reviewed another lumbar MRI, which showed interval change with increased breakdown at L5-S1, where moderately severe central disc herniation was causing moderate to severe central stenosis. Also in October 2011, Dr. Vo made the same diagnosis of L5-S1 herniation. In January 2012, Dr. Sliva diagnosed an L5-S1 disc herniation, with protrusion on the left side but radiculopathy primarily on the right side. Sliva recommended conservative treatment instead of surgery.

¶ 64 In September 2012, a couple of months after the arbitration decision, Miller underwent another lumbar spine MRI, which Dr. Brooks interpreted as showing a "new disc herniation" at L5-S1—although, as Miller admits in his brief, "the L5-S1 disc herniation was not in fact new in September 2012." Dr. Brooks recommended surgery—a decompressive laminectomy and discectomy at L5-S1—which Miller underwent on September 25, 2012. The question for the Commission was whether the September 2012 surgery on L5-S1 and the other post-arbitration medical treatment were "reasonably required to cure or relieve from the effects of the accidental injury" of February 2008. *Id.*

¶ 65 On April 7, 2015, Dr. Coe wrote in his third report: "In my opinion, based on this reexamination, Mr. Miller continues to be in need of medical treatment for injuries suffered in the accident of February 25, 2008, and later breakdown and degeneration." The Commission did not have to find Dr. Coe to be believable in his opinion that, in 2015, Miller still was suffering the effects from the accident of February 25, 2008.

¶ 66 Granted, in challenging the Commission's current unfavorable assessment of Dr. Coe's credibility, Miller identifies some factual errors the Commission made in its decision. For example, according to the Commission, Dr. Coe "acknowledged [Miller] was being treated for a 'new onset' of post-traumatic neck, left arm, low back, and leg pain, *after his September 2012 discectomy*." (Emphasis added.) This statement, Miller observes, is factually incorrect. Instead, Dr. Coe wrote in his report of April 2015 that "because of the new onset of posttraumatic neck, left arm, low back, and right leg pain, Miller underwent additional treatment *in 2008* from multiple physicians and medical centers." (Emphasis added.) Thus, Dr. Coe did not attribute the condition of ill-being that Miller had in 2015 to a new onset that postdated the arbitration hearing of 2012.

¶ 67 To take another instance where the Commission appears to have misread the record, the Commission wrote that Dr. Coe, in his deposition of September 23, 2011, "expressly denied performing an examination of [Miller's] neck or lower extremity on February 5, 2008," but that in his deposition of March 28, 2016, "he claimed that he did examine [Miller's] neck and lower extremity at the February 2008 visit." As far as we can see, nowhere in his deposition of September 23, 2011, does Dr. Coe expressly deny performing an examination of Miller's neck or lower extremity. So, Miller appears to be correct that this is another factual error in the Commission's decision denying his petition.

¶ 68 It is always fair and legitimate to point out such inaccuracies, but they need not be fatal to the Commission's decision. We may affirm the Commission's decision on any basis that appears in the record, regardless of the Commission's findings or reasoning. *Dukich v. Illinois Workers' Compensation Comm'n*, 2017 IL App (2d) 160351WC, ¶ 43 n.6. Affirmance is justified in this case because the current causation opinion by Dr. Coe appears to be nothing more than a bald assertion. "An expert opinion is only as valid as the reasons for the opinion." (Internal quotation marks omitted.) *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 24.

¶ 69 Dr. Coe testified, in his deposition of March 28, 2016, that he based his causation opinion on his examinations of Miller and his review of Miller's medical records. But Dr. Coe did not explain how those examinations and medical records led him to his causation opinion. Instead, he testified rather formulaically as follows:

> "A. *** It's my opinion to a reasonable degree of medical certainty that the condition of Mr. Miller as I found him in April of 2015 was causally related to his prior

accidents at work and the treatments that were carried out, and that includes the L4-5 fusion that had been performed.

Q. What is the basis of that opinion?

A. All the information that I have had in this matter, including my three examinations of Mr. Miller in 2008, 2011, and 2015 and the years of treatment records that I have had in this matter, my three visits with him, including his report to me of ongoing symptoms consistent with his reports to his treating physicians."

That explained nothing. It is unclear how Dr. Coe could have discerned, from examining Miller and from reviewing his medical records, that any worsening of symptoms that Miller experienced after the arbitration decision of July 17, 2012, was owing to the accident of February 25, 2008, as opposed to merely the natural degenerative condition that preexisted the accident. It is, after all, in the nature of a degenerative condition to continue to degenerate. Dr. Coe offered no reasoned explanation of how, from his examinations of Miller and his review of the medical records, he was able to distinguish, in the post-arbitration period, between natural degeneration and degeneration aggravated by an accident that happened years earlier.

¶ 70 In the previous case, by contrast, there was a cogent, understandable basis for opining that, in the pre-arbitration period, Miller was suffering from more than natural spinal degeneration. On February 5, 2008, he underwent an examination that showed he was "relatively symptom free except for some slight limitation of motion and right lumbar nerve irritation," to quote the arbitrator's decision. By contrast, after the accident of February 25, 2008, Miller "received regular and continuing aggressive but conservative care of his lumbar and cervical spines," including epidural injections and other pain management.

¶ 71 This conservative medical care that Miller received for his February 25, 2008, injury brought him to maximum medical improvement early on. He "returned to his pre-accident baseline prior to the June 25, 2012, arbitration hearing." He "worked as a welder for a year and a half after his accident, up to 12 hours a day, 6 days a week." Consequently, Dr. Coe had some explaining to do, such as how the aggravating and disabling effect of the workplace injury could have retreated "to the pre-accident baseline" only to materially advance years later—and how he could know that this is what really happened. "Because Dr. Coe said so" could be unsatisfying to a reasonable mind. See *Gross*, 2011 IL App (4th) 100615WC, ¶ 24.

¶ 72 Another unearned assertion is that, absent an intervening injury, there necessarily was a causal relationship between the accident of February 2008 and Miller's condition years later. Maybe that assertion would have been less problematic if Miller did not have a preexisting degenerative disease of the spine. Given that complicating factor, one cannot simply begin with the assumption of causation and then look around for an intervening accident. The real issue in this case was not whether an intervening accident broke the causal chain between Miller's fall from the ladder and his current condition of ill-being. See *Dunteman v. Illinois Workers' Compensation Comm'n*, 2016 IL App (4th) 150543WC, ¶ 42. The issue, instead, was whether there was such a causal chain to begin with. See *Par Electric v. Illinois Workers' Compensation Comm'n*, 2018 IL App (3d) 170656WC, ¶ 63 ("As long as there is a 'but for' relationship between the work-related injury and subsequent condition of ill-being, the first employer remains liable."). Just because, sometime during the period of February 2008 (the date of injury) to July 2012 (the date of the arbitration decision), Miller's fall from the ladder aggravated his preexisting degenerative spinal condition, it does not necessarily follow that his fall from the ladder continued to have that aggravating effect more than four years after the fall. Accepting the former proposition

did not logically require the Commission to accept the latter proposition. If, as the Commission found, Miller had a degenerative spinal condition that predated his fall, any worsening of his spinal condition some four years after his fall could have been the natural course of the degenerative condition, having nothing to do with the fall. Dr. Coe rejected that possibility without explaining why.

¶ 73 III. CONCLUSION

¶ 74 For the foregoing reasons, we affirm the circuit court's judgment, which confirmed the Commission's decision.

¶ 75 Affirmed.