2016 IL App (1st) 143301WC-U

Workers' Compensation
Commission Division
Order Filed: February 5, 2016

No. 1-14-3301WC



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

| | | |
|---|---|---|
| ELITE STAFFING, | ) | Appeal from the |
| | ) | Circuit Court of |
| Appellant, | ) | Cook County |
| | ) | |
| v. | ) | No. 14 L 50235 |
| | ) | |
| ILLINOIS WORKERS' COMPENSATION | ) | |
| COMMISSION, *et al.*, | ) | Honorable |
| | ) | James M. McGing, |
| (EMIGUEL GONZALEZ, Appellee). | ) | Judge, Presiding. |

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

**ORDER**

¶ 1 *Held*: The Illinois Workers' Compensation Commission's findings that the claimant's current lumbar spine condition of ill-being is causally related to his workplace accident and that he did not exceed his permitted choice of physicians under section 8(a) of the Workers' Compensation Act (820 ILCS 305/8(a) (West 2010)) are not against the manifest weight of the evidence.

¶ 2 Elite Staffing (Elite) appeals from an order of the circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), finding that claimant, Emiguel Gonzalez's, current lumbar spine condition of ill-being is causally related

to his workplace accident and that he did not exceed his permitted choice of physicians under section 8(a) of the Workers' Compensation Act (Act) (820 ILCS 305/8(a) (West 2010)) and awarding the claimant benefits pursuant to the provisions of the Act (820 ILCS 305/1 *et seq.* (West 2010)). For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing conducted on February 19, 2013. The claimant had been employed by Elite as a general laborer for about 10 months prior to the work accident. He testified that, on January 15, 2010, he was lifting and stacking boxes onto pallets, when he felt a pop and a heat sensation in the area of his right shoulder and upper back, accompanied by a stabbing or poking feeling in his lower back. He immediately gave notice of the injury to his supervisor and completed his shift for that day; however, his pain continued after leaving work. The claimant reported for work the following day, but was unable to perform his duties and was directed to Premier Occupational Health (Premier).

¶ 4 Medical records from Premier state that, on January 16, 2010, the claimant reported right shoulder and upper back pain which was radiating into the middle and lower portion of his back. During a physical examination, it was noted that the movement of the claimant's lower back caused pain and that, with regard to his lumbar spine, he had abnormal range of motion, tenderness to palpation, and spasms in the paraspinous muscles. The claimant was diagnosed with a thoracic strain/sprain as well as a lumbar sprain. He was given a back brace and medications, and ordered off work until January 18. The claimant followed up at Premier on January 18, at which time it was noted that he was still experiencing pain in the lumbar and thoracic areas of his spine. Movement of his lower back continued to produce pain, and his

range of motion was abnormal. He was ordered to continue use of the back brace and released to work with restrictions.

¶ 5 On January 19, 2010, the claimant presented to the emergency room at Silver Cross Hospital with complaints of unbearable pain, spasms, stiffness, tightness and tenderness in the right side of his upper back. He was examined and released.

¶ 6 On January 22, 2010, the claimant returned to Premier and again was diagnosed with a thoracic strain/sprain as well as a lumbar sprain. A diagnosis of right shoulder strain was added, and the claimant was taken back off of work and referred to an orthopedic surgeon, Dr. Mukund Komanduri of MK Orthopaedics Surgery & Rehabilitation (MK Orthopaedics). That same day, the claimant underwent an examination with Dr. Komanduri, who diagnosed him with a possible SLAP tear in his right shoulder and pectoralis major rupture. Dr. Komanduri recommended an MRI anthogram to rule out both conditions. However, according to a note in the record, the claimant cancelled his scheduled follow-up appointment with MK Orthopaedics because he was treating with another physician.

¶ 7 On January 25, 2010, the claimant presented to Clinica Su Red. The claimant testified that he obtained information about the clinic and sought treatment there by his own choosing. An intake sheet completed by Dr. Ryan Dorough, D.C., notes that the claimant was lifting pallets weighing 50 to 60 pounds from the ground, when he experienced immediate pain to his right shoulder and mid-back. The pain became more severe in the ensuing days, and had gotten worse as of the January 25 examination. Dr. Dorough reported, in relevant part, that the claimant described pain in his lower back resembling "pins and needles *** radiat[ing] to the right buttock." A diagram attached to the medical records designates pain from the right shoulder

down to the right lower back. The claimant was diagnosed with a suspected SLAP lesion, a lumbar strain/sprain with radiculitis and intercostals muscle strain. The notes of Clinica Su Red from January 27 state that the claimant "will see Dr. Rhode on 1/29/10" for an "ortho consult." On January 29, 2010, Dr. Dorough noted that the claimant would be consulting with Dr. Blair Rhode, of Orland Park Orthopedics, regarding his right shoulder. Thereafter, the claimant continued treating with Clinica Su Red through September of 2010, receiving conservative treatment including physical therapy.

¶ 8 On January 29, 2010, the claimant was examined by Dr. Rhode, who diagnosed him with a rotator cuff strain and cervical strain due to lifting. The doctor administered an injection into the claimant's right shoulder.

¶ 9 The claimant returned to Dr. Rhode on February 12, 2010, with complaints of continued rib cage pain as well as low back pain with radiation to his right thigh. With regard to the lower back, the doctor noted that the claimant experienced lumbar muscle pain with palpation, but that provocative maneuvers and a straight leg raise proved normal. Dr. Rhode ordered spinal and thoracic MRIs to rule out radiculopathy. On February 17, the claimant underwent an MRI of the thoracic spine, which proved to be a normal study. In a follow-up examination several days later, Dr. Rhode noted the claimant's right shoulder complaints had improved for eight hours following the injection performed on January 29, but had since returned. Dr. Rhode recommended continuing the conservative course of treatment with Clinica Su Red. On February 27, the claimant again sought treatment at the Silver Cross Hospital emergency room, where he complained of pain in his right scapular and right subscapular area, as well as radiating pain to his right leg.

¶ 10 During March of 2010, Dr. Dorough observed that the claimant was able to tolerate full-spinal traction which indicated that he was healing. On March 8, 2010, the records of Clinica Su Red, signed by Dr. Dorough, stated that the claimant was being referred to a pain specialist in an attempt to make him more comfortable. On March 10, 2010, Dr. Dorough reported that the claimant had filled out paperwork for a pain specialist he would be seeing the following day.

¶ 11 On March 11, 2010, the claimant presented to Dr. Xavier Pareja, a pain specialist at Belmar Physicians. According to Dr. Pareja's notes, the claimant had been referred by Dr. Sean Gavin, D.C. At this visit, the claimant complained of severe "aching, throbbing, sharp, stabbing" pain to his mid-back and right shoulder resulting from the January 15, 2010, work accident. According to Dr. Pareja's notes, the claimant denied neck or low back pain.

¶ 12 On March 18, 2010, the claimant underwent an EMG study of his upper and lower extremities at Professional Neurological Services. The study revealed C6-7 cervical radiculopathy, more aggressive on the right side, as well as bilateral L4 lumbar radiculopathy with right S1 peripheral neuropathy.

¶ 13 The claimant returned to Dr. Pareja on March 25, 2010, this time reporting neck and low back pain radiating down both arms and legs. After reviewing the findings of the EMG, Dr. Pareja recommended MRIs of the claimant's cervical and lumbar spine. These were performed on March 27, 2010, with the lumbar MRI revealing anterolisthesis of L5-S1 and a central protrusion associated with an annular tear at L4-5. The radiologist noted that the uncovered disc at L5-S1, combined with malalignment, resulted in moderate bilateral foraminal stenosis.

¶ 14 On April 1, 2010, the claimant followed up with Dr. Pareja, who diagnosed him with lumbar radiculopathy, paresthesia and lumbar/lumbosacral degenerative disc disease. Dr. Pareja recommended beginning a series of three bilateral L4-5 and L5-S1 injections.

¶ 15 On April 6, 2010, the claimant presented to Dr. Vargas, whose notes state that he was on referral from Dr. Gavin. The claimant reported progressively worsening cervical pain, and intermittent lower back pain with an intensity level of 7 to 9 out of 10, with radiation into the right buttock and lower extremity. Dr. Vargas reviewed the MRIs and diagnosed the claimant with L5-S1 bilateral neuroforminal stenosis, C3-4 and C4-5 degenerative disc disease, discogenic cervical radiculopathy and discogenic lumbo-sacral radiculopathy. He confirmed Dr. Pareja's recommendation for injections, and subsequently administered a bilateral L5-S1 nerve root block and a transoframinal epidural steroid injection.

¶ 16 The claimant followed up with Dr. Vargas on April 27, 2010, and reported significant improvement of his overall lower back pain and radicular symptoms. Nonetheless, the records state that the claimant continued to suffer from persistent low back pain, although the "posterior cervical 'neck pain' seem[ed] to have taken the center stage" of his complaints. The claimant continued on a series of cervical and lumbar injections with Dr. Vargas through June 15, 2010. Records from this time period contain Dr. Vargas's ongoing recommendation that, if the injections ultimately failed to provide longstanding relief, the claimant should consider a more definitive approach, such as surgical decompression. The record of June 15 states that Dr. Vargas would consult with the claimant by telephone within the next 24 to 36 hours and that the claimant should return for a follow-up visit in 4 to 6 weeks. The claimant testified that, after the

injections, he experienced temporary relief of his lower back symptoms, but the pain and radiation subsequently returned.

¶ 17 On June 22, 2010, the claimant presented to Dr. Anthony Rinella of Illinois Spine and Scoliosis Center. On examination, Dr. Rinella noted diminished sensation on the right side between L5 and S1. After reviewing the MRIs from March 27, 2010, he diagnosed the claimant with cervical and lumbar strains and possible cervical and lumbar radiculopathy. Dr. Rinella ordered an x-ray of the claimant's lumbar spine as well as an updated MRI of the thoracic spine to focus on the cause of the claimant's leg symptoms. These tests were performed on July 3, 2010. The claimant testified that Dr. Rinella advised that he continue with his physical therapy at Clinica Su Red.

¶ 18 The claimant returned to Dr. Rinella on July 19, 2010, for review of the most recent studies. The doctor reported that the lumbar x-ray showed isthmic spondylolisthesis at L5-S1 with approximately 25% anterior translation of L5-S1. Dr. Rinella believed that the condition was most likely present at the time of the work injury but that it was "definitely aggravated" by the injury. Due to the failure of aggressive conservative treatment to relieve the claimant's radiculopathy and the symptoms in his lower extremities, Dr. Rinella recommended an L5-S1 transforaminal interbody fusion.

¶ 19 Also on July 19, 2010, at Elite's request, the claimant underwent an independent medical examination (IME) pursuant to section 12 of the Act (820 ILCS 305/12 (West 2010)) with Dr. Avi Bernstein, M.D. According to Dr. Bernstein's notes, the claimant reported that he was lifting and putting away a pallet at work, when he felt pain in the right posterior shoulder region which began gradually and became worse the following day. The claimant also reported some lower

back pain. Based upon his review of the MRIs of March 27, 2010, Dr. Bernstein noted some degenerative changes to the cervical spine, but no significant pathology that would explain the claimant's subjective symptoms. He also noted that the lumbar MRI disclosed spondylolisthesis at L5-S1 and a central disc protrusion at L4-5. However, Dr. Bernstein opined that these conditions were chronic and preexisting, and that the claimant had "suffered [no] lumbar injury whatsoever." Further, Dr. Bernstein believed the claimant to be at maximum medical improvement (MMI) and capable of full-duty work.

¶ 20 The claimant returned to Dr. Rinella for follow-up treatment on September 1, 2010. Dr. Rinella reviewed the report of Dr. Bernstein and agreed that the MRIs showed degenerative changes. Dr. Rinella reaffirmed his opinion that the claimant clearly suffered from L5 radiculopathy secondary to isthmic spondylolisthesis, which, without question, was an aggravation of the preexisting phenomenon. He renewed his recommendation of the fusion at L5-S1 and ordered the claimant off work.

¶ 21 Dr. Dorough's records from September 24, 2010, state that the claimant was to consult with a spine surgeon on September 27, 2010. On September 27, the claimant was seen by Dr. Richard Kube of Prairie Spine and Pain Institute. At this visit, the claimant reported, in relevant part, pain in the buttock and right posterior thigh and at the lumbosacral junction. Dr. Kube reviewed the MRIs of March 27, 2010, and diagnosed the claimant with right sacroiliac joint pain and pain in the mid-low lumbar spine in the region of the spondylolisthesis. With regard to his work injury, Dr. Kube believed that the claimant at least had strained his back and could have also aggravated the spondylolisthesis and degenerative changes existing in that region. He

confirmed Dr. Rinella's recommendation for a fusion at L5-S1, and also recommended a discography for the L4-5 disc tear.

¶ 22 On October 12, 2010, the claimant returned to Dr. Vargas for pain treatment, reporting persistent lower back pain and stiffness with radicular symptoms that had recurred within a few weeks after his last epidural steroid injection of June 15, 2010. Dr. Vargas diagnosed the claimant with L5-S1 bilateral neuroforaminal stenosis, discogenic lumbo-sacral radiculopathy, intractable lower back pain syndrome and C3-4 and C4-5 cervical disc disease. He confirmed Dr. Kube's recommendation for a discography with CT scan of the claimant's lumbar spine. Dr. Vargas performed the discogram on November 2, 2010, and reported that the test disclosed concordant pain at the L4-5 and L5-S1 levels. The CT scan following the procedure showed grade 4 annular tears at L4-5 and L5-S1 with a grade 5 tear at L3-4, as well as grade 1 anterolisthesis of 8 mm of L5-S1 secondary to bilateral pars defects. Based upon these results, Dr. Vargas advised the claimant to follow the recommendations of his spinal surgeon.

¶ 23 On November 8, 2010, on a referral from Dr. Dorough, the claimant began treating with Dr. Mark Cohen of Physicians Plus. Dr. Cohen subsequently referred the claimant to Dr. Patrick Sweeney, of Minimally Invasive Spine Specialists, for a second opinion regarding a potential neurosurgical procedure. The claimant was examined in Dr. Sweeney's office on February 17, 2011. Records from that date state that the claimant reported intermittent hard pain in his low back radiating into his groin and down both legs, predominantly the right, with associated weakness. The claimant had attended physical therapy without relief. Dr. Sweeney reported he agreed with Dr. Rinella's recommendation that the claimant undergo a lumbar fusion.

¶ 24 On May 9, 2011, Dr. Sweeney performed a right L4-5, L5-S1 transforaminal laminotomy, facetectomy and discectomy; L4-5, L5-S1 transforaminal lumbar interbody fusion; and L4-5, L5-S1 posterior spinal fusion. The claimant continued to follow up with Dr. Sweeney after surgery, reporting an increasing return of his lower back pain. On November 10, 2011, Dr. Sweeney noted that, during the recovery from the fusion, the claimant's lower back complaints continued and worsened. He opined that the claimant may need to have the hardware associated with the fusion removed.

¶ 25 The depositions of Drs. Sweeney and Bernstein were introduced into evidence. Dr. Bernstein testified that he is a board-certified orthopedic surgeon and performs about 100 to 200 IMEs per year, about 85% of which are for employers or insurers. Dr. Bernstein testified that, when he conducted his July 19, 2010, IME of the claimant, he examined his cervical and lumbar spine because the claimant had complained of pain in those areas. The claimant appeared to be in no acute distress and sat comfortably during the examination. His gait was normal, and he had full range of motion in both his cervical spine and lower back. Although Dr. Bernstein confirmed that the MRI reports revealed L5-S1 spondylolisthesis and a central disc protrusion at L4-5, he testified that these conditions were preexisting and degenerative, and not the result of the work accident of January 15, 2010. According to Dr. Bernstein, his examination of the claimant's cervical spine and lower back were normal, and he had reached MMI. On cross-examination, Dr. Bernstein testified that the claimant reported no lower back problems during his examination; however, he admitted that he did examine the claimant's lumbar spine. He also admitted that a degenerative spinal condition could be aggravated or become symptomatic as a result of trauma.

¶ 26 Dr. Sweeney testified that, based upon a review of the claimant's MRIs, CT scans and discogram, the claimant had a preexisting condition of spondylolisthesis and disc herniation which was aggravated by his work injury of January 15, 2010. He testified that, according to his notes from the February 17, 2011, examination of the claimant, the claimant reported that he had been picking up and moving a pallet when he "felt a pop in his low back and upper back" and also a "burning pain" in his back followed by a stabbing pain the next day. On February 17, the claimant had a hard pain in his lower back that would come and go, radiating into both groins and down both legs, predominantly on the right. Dr. Sweeney testified in detail regarding the claimant's symptomology, and stated that he agreed with Dr. Rinella's recommendation that the claimant proceed with a decompression and fusion. However, he believed that it would be necessary to perform a fusion at both the L4-5 and L5-S1 levels. Dr. Sweeney also opined that, in light of the difficulty the claimant was currently experiencing, further treatment was justified in the form of spinal injections or hardware removal, and a cervical spine stimulator.

¶ 27 According to the claimant's testimony, he had no complaints of lower back pain, neck pain or right shoulder pain prior to his work injury. His May 9, 2011, surgery improved the symptoms in his right leg. According to the claimant, his pain before the surgery was such that he could not walk. At the present time, he is primarily suffering from neck and lower back pain. The claimant further testified that he had not worked since the date of the injury. Moreover, the claimant stated that he would undergo the hardware removal or injections and spinal cord stimulator if such procedures were available. With regard to his physician referrals, the claimant stated, in relevant part, that he had been referred to Drs. Rhode and Pareja by Clinica Su Red, and to Dr. Vargas by Dr. Pareja.

¶ 28 Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)), the arbitrator issued a decision finding that, on January 15, 2010, the claimant suffered an accident that arose out of and in the course of his employment with Elite, resulting in injuries to his right shoulder, cervical spine and lumbar spine. The arbitrator awarded the claimant temporary total disability (TTD) benefits from January 17, 2010, through February 19, 2013, as well as accrued and prospective medical expenses for treatment of his lumbar spine, excluding the fusion at L4-5. The arbitrator specifically found that the claimant had not exceeded his choice of physicians under section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)). With regard to the claimant's shoulder and cervical spine, he awarded the claimant medical benefits only through July 19, 2010. In finding that the claimant's lower back and shoulder conditions were causally related to his work accident, the arbitrator placed greater weight on the opinions of his treating physicians, Drs. Pareja, Vargas, Rinella, Sweeney and Kube, than that of Dr. Bernstein. The arbitrator noted that, although the claimant's complaints throughout treatment "were often bizarre and migrating," his lower back complaints were "fairly consistent."

¶ 29 Elite sought a review of the arbitrator's decision before the Commission. On February 19, 2014, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision, and remanding the matter pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 30 Elite sought judicial review of the Commission's decision in the circuit court of Cook County. On September 25, 2014, the circuit court entered an order confirming the Commission's decision. The instant appeal followed.

¶ 31 Elite first argues that the Commission's finding that the present condition of ill-being in the claimant's lumbar spine was causally related to his January 15, 2010, work accident was against the manifest weight of the evidence. Specifically, Elite contends that the Commission improperly based its decision upon the medical opinion of the claimant's surgeon, Dr. Sweeney, who lacked an accurate understanding of the claimant's complaints of pain "as related to his injury." Instead, Elite posits that Dr. Bernstein possessed a better understanding of the claimant's work injuries, and his opinions should have been afforded greater deference by the Commission.

¶ 32 The question of whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its determination of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In determining such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicts in evidence, particularly conflicting medical testimony. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 207 (2003); *Keystone Steel & Wire Co. v. Industrial Comm'n*, 71 Ill. 2d 454, 457 (1978). For a finding of fact to be against the manifest weight of the evidence, a conclusion opposite to the one reached by the Commission must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992).

¶ 33 Where there is evidence that a claimant has a preexisting condition, the burden rests with the claimant to show that a work-related accident or injury aggravated that condition, such that his current state of ill-being can be said to have resulted from the work-related injury and is not simply the result of the normal degenerative process of the preexisting condition. *Sisbro*, 207 Ill.

2d at 204-05. However, an employer takes its employees as it finds them; therefore, even if a preexisting condition is present, an employee may still recover if he shows that his employment is *a* causative factor, though not necessarily the *sole* causative factor, of his current state of ill-being. *Id.*

¶ 34 Elite argues that Dr. Sweeney's opinion was premised upon the erroneous belief that, following the work accident, the claimant suffered an "immediate onset of pain to his lower back which continued unabated." Rather, according to Elite, the medical records in the days and months after the work accident prove that the "focus" of the claimant's complaints was his upper back and right shoulder, and not his lower back.

¶ 35 We take no issue with Elite's position that, after the accident, the claimant reported debilitating symptoms originating in his right shoulder and cervical spine. However, the medical records also establish that the accident caused an acute injury affecting his lower back. The claimant testified that, in the period preceding the January 15, 2010, work accident, he had no issues with his lower back. According to records from Premier, the claimant presented on January 16, 2010, with pain radiating to the lower portion of his back. An examination revealed an abnormal range of motion in the claimant's lower back as well as muscle spasms and tenderness in his lumbar spine. He was diagnosed with a lumbar sprain requiring a back brace, and this diagnosis continued through his follow-up visit to Premier on January 22, 2010. On January 25, 2010, at Clinica Su Red, the claimant complained of worsening lower back pain resembling "pins and needles," radiating to his right buttock. Dr. Dorough confirmed his diagnosis of a lumbar strain or sprain, along with radiculitis and muscle strain. Although the claimant's reports of lower back pain appeared to subside in February, his EMG of March 18,

2010, disclosed bilateral L4 lumbar radiculopathy with right S1 peripheral neuropathy. His March 25 MRI similarly showed a central disc protrusion associated with a tear at L4-5. Beginning in April of 2010, the claimant commenced a series of lumbar spine injections; and in the ensuing months, he underwent treatment, ultimately culminating in surgery, for ongoing pain and radiating symptoms in his lower back and leg. The medical records thus support a finding that the claimant suffered a lower back injury as a result of his work accident.

¶ 36 Further, contrary to Elite's argument, Dr. Sweeney's opinion reflected an adequate understanding of the medical evidence. He noted that, on January 15, 2010, the claimant reported that he was lifting and moving a pallet when he felt a pop in his lower back followed by a stabbing pain the next day. As observed by the Commission, Dr. Sweeney conducted detailed physical examinations of the claimant, and reviewed the actual films from his MRIs and CT scans. Based upon his review of the lumbar studies, Dr. Sweeney found preexisting spondylolysis with additional injuries he determined to be directly related to the claimant's work accident. Both Dr. Vargas and Dr. Rinella made comparable findings. Dr. Bernstein also acknowledged that, although the claimant had a degenerative condition in his spine, it could be aggravated by sudden trauma. In light of the medical evidence and the findings of the claimant's treating physicians, we see no basis to disturb the Commission's decision that the current condition of ill-being in the claimant's lower back is causally related to his work accident.

¶ 37 Next, Elite argues that the Commission erred in awarding benefits covering the medical bills of Drs. Vargas and Rinella, because these doctors were beyond the two-physician chain of referral allowed under section 8(a) of the Act. We disagree.

¶ 38 An employer's liability to pay for medical services for an injured employee is governed by section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)). Section 8(a) provides, in relevant part, as follows:

> "[T]he employer's liability to pay for *** medical services selected by the employee shall be limited to:
>
> (1) all first aid and emergency treatment; plus
>
> (2) all medical, surgical and hospital services provided by the physician, surgeon or hospital initially chosen by the employee or by any other physician, consultant, expert, institution or other provider of services recommended by said initial service provider or any subsequent provider of medical services in the chain of referrals from said initial service provider; plus
>
> (3) all medical, surgical and hospital services provided by any second physician, surgeon or hospital subsequently chosen by the employee or by any other physician, consultant, expert, institution or other provider of services recommended by said second service provider or any subsequent provider of medical services in the chain of referrals from said second service provider." 820 ILCS 305/8(a) (West 2010).

¶ 39 The determination of whether a claimant obtained medical treatment as a result of a valid referral is a question of fact for the Commission. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 468-69 (2011). Such determination will be reversed on appeal only if it is against the manifest weight of the evidence. *Id.*

¶ 40 According to Elite, the claimant's first choice of physicians was Dr. Dorough with Clinica Su Red. He then treated with Dr. Rhode, whom Elite asserts constituted his second choice. Elite agrees that the claimant's subsequent treatment with Drs. Pareja, Kube, Cohen and Sweeney were based upon valid referrals from Clinica Su Red. However, Elite contends that the claimant's treatment with Drs. Vargas and Rinella fell outside of his two-physician allowance under the Act. We disagree.

¶ 41 First, we reject Elite's contention that Dr. Rhode constituted the claimant's second choice of physicians. Instead, the record supports the Commission's determination that Dr. Rhode was a valid referral from Dr. Dorough at Clinica Su Red. In his notes of January 27, 2010, Dr. Dorough stated that the claimant would be seeing Dr. Rhode for an "ortho consult." Dr. Dorough's notes of January 29, 2010, reiterate that the claimant was to consult with Dr. Rhode of Orland Park Orthopedics, regarding his right shoulder. That same day, the claimant was examined and treated by Dr. Rhode for his right shoulder. Thus, Dr. Rhode was a valid referral in the chain of referrals from Dr. Dorough and Clinica Su Red.

¶ 42 Elite also argues that Drs. Vargas and Rinella were outside of the chain of referral of any of the claimant's physicians. With regard to Dr. Vargas, Elite asserts that, although his notes state that the claimant was treating with him as a referral, the referring physician was designated as "Dr. Gavin."

¶ 43 Again, the Commission determined that Dr. Vargas was referred by Clinica Su Red, and there is no basis to disturb this finding. A review of the medical records discloses that, on more than one instance, Dr. Gavin was a signatory as a treating physician on behalf of Clinica Su Red. In fact, in one of the claimant's records, Dr. Dorough specifically stated that he was to be out of

the office for a period and that Dr. Gavin would be acting as treating physician in his stead. As Dr. Gavin was a physician at Clinica Su Red, he could make a valid referral on behalf of that practice.

¶ 44 With regard to Dr. Rinella, the Commission noted the claimant's testimony that he was referred by Clinica Su Red. We need not reach this issue, however, because even if this finding were in error, Dr. Rinella would still constitute only the claimant's second choice of physician under section 8(a) of the Act.

¶ 45 For the foregoing reasons, the Commission's determination that the claimant had not exhausted his choice of physicians under the Act is not against the manifest weight of the evidence.

¶ 46 We affirm the judgment of the circuit court which confirmed the Commission's decision, and remand the matter back to the Commission for further proceedings.

¶ 47 Affirmed and remanded.