2018 IL App (1st) 170440WC-U

FILED: January 5, 2018

NO. 1-17-0440WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JOHN PIKOR,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 16-L-50286
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Ann Collins-Dole,
(Rosemont Exposition Services, Inc., Appellee).	)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The Illinois Workers' Compensation Commission's finding that conditions of ill being in the claimant's left shoulder and neck were not related to a workplace accident was not against the manifest weight of the evidence; the Commission's finding that the claimant had reached maximum medical improvement and no longer suffered from conditions of ill being from a workplace accident was not against the manifest weight of the evidence; and the Commission did not err in denying the claimant's request for additional compensation and attorney fees pursuant to sections 16, 19(k), and 19(*l*) of the Act.

¶ 2 The claimant, John Pikor, was involved in a workplace accident on November 9, 2012, in which he suffered injuries to his left wrist, right shoulder, teeth, and mouth. The claimant also maintained that he suffered conditions of ill-being in his left shoulder and neck as a result of the accident. The employer, Rosemont Exposition Services, Inc., disputed that there was a causal connection between the workplace accident and any conditions of ill-being in the claimant's left shoulder and neck. The claimant filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2012)). After an arbitration hearing, an arbitrator found that the claimant suffered injuries to his left wrist, right shoulder, teeth, and mouth as a result of the accident, that the claimant had reached maximum medical improvement (MMI) as of May 20, 2013, and that the claimant's current conditions of ill-being, including conditions in the claimant's right shoulder and neck, were not causally related to the workplace accident.

¶ 3 The arbitrator awarded the claimant temporary total disability (TTD) benefits of $1,106.66 per week for 27-3/7 weeks, from November 10, 2012, through May 20, 2013. She denied the claimant's request for additional compensation for medical treatments rendered after May 2013 and denied the claimant's request for prospective medical treatment. In addition, she denied the claimant's request for penalties and fees pursuant to sections 16, 19(k), and 19(*l*) of the Act (820 ILCS 305/16, 19(k), and 19(*l*) (West 2012)), finding that the employer's reliance on the opinions and recommendations of three physicians was reasonable.

¶ 4 The claimant sought review of the arbitrator's decision before the Commission. On January 28, 2016, the Commission unanimously affirmed and adopted the arbitrator's decision without modification. The claimant sought review in the circuit court of Cook County. On January 23, 2017, the circuit court confirmed the decision of the Commission. The claimant now timely appeals.

¶ 5 BACKGROUND

¶ 6 At the hearing, the claimant testified that on November 9, 2012, he was assembling a trade-show booth for an exhibitor, using a six-foot ladder. He testified that he "was up by the top of the ladder assembling a wall on top of an eight-foot wall structure" when the ladder "fractured" and he "went flying through the air and sort of in like a horizontal to maybe downwards angle." He testified, "I guess I was knocked cold" and that he was "sort of stunned." He described feeling "excruciating pain," and testified that his left arm was "twisted into a pretzel shape." The claimant testified that he landed on both arms and also hit his face. At the hospital, his "most glaring pain" was his broken left arm, but he also noticed that he had contusions on his face and that his right shoulder, right elbow, and right wrist "were hurting as well." He was asked if at the hospital he felt pain in both shoulders. He testified, "I did not mention my left shoulder because I hadn't noticed – I was clutching my arm, trying to remain as still as I possibly could because any kind of movement was really just causing me extreme pain."

¶ 7 The claimant testified to continuing pain over the next several days, as well as dissatisfaction with the care he received at the emergency room. During the approximately three days between his emergency room treatment and his follow up with

Dr. McCall, the claimant realized that two of his teeth had been knocked out in the fall as well, and he felt pain in his right shoulder, right elbow, right wrist, and his neck and face. He had not experienced any of these problems prior to his fall, nor had he suffered any injuries to those parts of his body since the fall. He testified that he had "concerns" about the care he received from Dr. McCall, because whereas the claimant thought "it would just be a regular type of setting the bones and whatever," Dr. McCall "explained that there would have to be plates and pins installed." The claimant testified that he did not believe he discussed his other injuries with Dr. McCall prior to the surgery on his broken left wrist, but testified he "certainly did" discuss injuries to his right shoulder, elbow, and wrist after the surgery. He testified that Dr. McCall told him he would "look into that later" after giving the left wrist the opportunity to heal. He identified a letter he sent to Dr. McCall about the other injuries, and testified that he and Dr. McCall later discussed the other injuries, with Dr. McCall saying he would look into them after the left wrist healed.

¶ 8 The claimant testified with regard to physical therapy he received from ATI Physical Therapy (ATI) on approximately 19 occasions from December 17, 2012, through January 31, 2013. He testified that the therapy initially seemed to help his right shoulder, but that he "didn't really seem to be getting any better" and that when he tried to do exercises with both arms, he could not. The claimant testified that this "showed" him that he also had a problem with his left shoulder, which he testified was "extremely painful as well." During his therapy at ATI, he also noticed that his neck "was hurting as

well," testifying: "Anytime I moved my shoulder, it was creating some pain in my neck." Overall, he did not feel like he was improving while at ATI.

¶ 9 The claimant testified that, at the direction of Dr. McCall, he attended physical therapy at Athletico on 12 occasions from March 18, 2013, through May 2, 2013. He testified that although his "doctor's note" indicated "both upper extremities," the therapy he received was for only his right shoulder and left forearm. On a questionnaire given him by Athletico, he indicated that his neck, right shoulder, right elbow, right wrist, left shoulder, and left wrist were "affected areas." The claimant testified that this led to "some contention with them" when he asked why he wasn't being treated for all of those areas and was told he'd have to get treatment prescribed for them. He testified that Dr. McCall was on vacation at the time and therefore unable to authorize a new prescription. The claimant testified he "got into some argumentiveness" [*sic*] with the therapist, but ultimately "went along with it the best" he could, although he "was definitely not happy with it." He testified that even after eventually speaking with Dr. McCall about the issue, he didn't feel his injuries were being addressed, and therefore "decided to seek other care."

¶ 10 The claimant testified that he was referred by friends to Dr. Rene Vasquez at Thorek Hospital, who examined the claimant and, *inter alia*, prescribed an MRI for the claimant's left shoulder. The MRI was conducted on June 13, 2013. At the direction of Dr. Vasquez, the claimant visited "an orthopedist doctor," Dr. Levi, approximately six times from August 6, 2013 through November 5, 2013. The claimant testified he received "[a] lot of x-rays and some exams," as well as a cortisone injection in his left shoulder

and "like less than three" physical therapy sessions at Dr. Levi's office. He did not believe that overall he was benefiting from his treatment from Dr. Levi. He testified that Dr. Levi suggested he undergo a functional capacity evaluation (FCE), but that he "declined it" because he "really didn't care to be screened." He testified that he was already "experiencing pain" when his arms were manipulated and that he "really didn't see any point to be doing an additional stress test." He testified that Dr. Levi "seemed really angry" that the claimant wouldn't undergo the FCE, and after telling the claimant he could "do nothing more" for him, Dr. Levi dismissed him, also ending the claimant's physical therapy and prescriptions for medication.

¶ 11 The claimant testified that he then returned to Dr. Vasquez, then eventually to another orthopedist, Dr. Ellis Nam. He testified that on June 5, 2014, Dr. Nam examined his arms and neck and referred him to a neurosurgeon, but the claimant's insurance would not pay for the neurosurgeon, so the claimant did not visit the neurosurgeon. The claimant agreed that in October of 2013, at the direction of the employer, he visited Dr. Tonino at Loyola University Medical Center. He also agreed that he treated at Midwest College of Oriental Medicine on approximately 26 occasions from February 3, 2014, through July 10, 2014, where he received "[a]cupuncture, acupressure, massage, [and] other types of pain-relieving Oriental medicine" for "neck and shoulder pain, for wrist pain, for knee and ankle pain" and where he continued to treat as of the date of the hearing. He testified that he underwent an MRI of his neck on July 22, 2014, at Dr. Nam's direction, and he testified, in general, as to anxiety, loss of sleep, and depression that began after his accident. The claimant testified that on September 18, 2014, his neck

was examined by Dr. Daniel Laich, who recommended surgery on his neck. He testified in general about his continued impairment in everyday activities such as getting dressed, walking, working on his car, and cleaning.

¶ 12 On cross-examination, the claimant testified in more detail about his dissatisfaction with his initial post-accident care from both the emergency room and, later, Dr. McCall, and agreed that he also became dissatisfied with ATI. He was asked if he had been asked at ATI to undergo an FCE, and he testified that he thought so; he was asked if he told either the therapist at ATI or Dr. McCall that he wouldn't undergo an FCE until he spoke with his attorney, and he testified that he did not recall saying that. He testified that after he left ATI because of his dissatisfaction there, and subsequently underwent therapy at Athletico, he also became dissatisfied with the care he received from Athletico.

¶ 13 The claimant was asked if, in "about April to early May of 2013," he had flooding in his home and had been moving boxes and soggy carpet around in the home thereafter. He testified, "Probably." The claimant conceded that Dr. McCall also asked him to undergo an FCE in May 2013, and that he refused to do so, and agreed that on November 13, 2013, Dr. Levi asked him to undergo an FCE, and that he refused that as well. He conceded that thereafter Dr. Levi released him to return to work with no restrictions. He testified that he'd been happy with Dr. Vasquez, although he denied that this was because Dr. Vasquez kept him "off work." A heated exchange between the employer's counsel and the claimant followed, and the arbitrator recessed the hearing and advised the

claimant's counsel to speak with the claimant, stating the claimant needed "to answer the questions."

¶ 14 Following the recess, cross-examination continued. Shortly thereafter, the arbitrator felt compelled to tell the claimant, "Let her finish her question, and then you answer." The claimant's counsel then asked for the claimant to have time "to finish his answer as well before the next question is shot at him." When counsel for the claimant then characterized the questions as "very rapid fire," the arbitrator disagreed, stating, "I don't find counsel's conduct to be onerous. She's standing a respectful distance. She's not rude about it. She's not mean about it." The arbitrator continued that, "[t]he problem really the way I see it is that [the claimant] needs to answer the questions that are asked." She noted that the claimant "seems to want to argue and be upset at the questions," and told the claimant, "[i]t's not a personal thing, sir. She's asking her questions which she has a right to ask. Just try to answer the questions. I will give you plenty of time to give your explanations. Your attorney will cover that." The arbitrator then asked the employer's counsel to "slow down a little bit without cramping your style, which is not my intention."

¶ 15 In addition to the claimant's live testimony, substantial medical evidence was introduced. Of relevance to this appeal, that evidence included ATI's physical therapy treatment progress notes that documented concerns with both the "self-limited behaviors/attitudes" of the claimant, and the extent to which the claimant was complying with the instructions given him regarding his home exercise program exercises. On multiple occasions, the notes indicated that the claimant could not correctly demonstrate

the exercises he was supposed to be doing at home. The notes also documented concerns that the claimant "was very argumentative," that he refused to have an FCE, and included the observation, by a therapist, that on one occasion the claimant was able to reach to above shoulder height to get coffee for himself, while allegedly unable to do his exercises because of his claimed pain. The note discharging the claimant from therapy at ATI cited "non-compliance with attendance in therapy" and "decreased participation in therapy without maximum encouragement."

¶ 16 The medical evidence also documented Dr. McCall's February 6, 2013, concern that the claimant's complaints of "extreme pain" in his right shoulder seemed "to be out of proportion to the previous physical findings and radiographic findings," and included the treatment notes from the claimant's physical therapy at Athletico. Dr. McCall's notes from the claimant's May 8, 2013, six-month follow up appointment indicated that the claimant "had difficulty complying with physical therapy" at both ATI and Athletico, and indicated that the therapists at Athletico noted that the claimant sometimes went "long periods of time between therapy sessions" and the therapists recommended an FCE because of "clinical inconsistencies in his exams" as well as "discord between subjective reports and clinical observations." Dr. McCall conducted both a physical examination of the claimant on May 8, 2013, and an examination of x-rays taken that day that included "AP and lateral views of the cervical spine." Dr. McCall concluded that there was a "paucity of findings on physical exam and imaging," and that six months post-injury "we would expect much greater function and fewer complaints of discomfort." He wrote, "I don't think any further interventions with injections or consideration for shoulder

arthroscopies would be warranted." He stated that he discussed with the claimant "that the pathology within his cervical spine is degenerative and not likely related to his fall." He recommended an FCE "to get a bearing on his capacity to consider future work." The medical evidence also includes the May 20, 2013, therapy discharge report from Athletico, which indicates that the claimant arrived at Athletico's facility that day, with a prescription for an FCE, but would not complete the FCE because he did not believe it would "benefit" him in any way.

¶ 17 On March 16, 2015, the arbitrator issued an amended decision, in which she found, *inter alia*, that the claimant sustained injuries on November 9, 2012, that arose out of and in the course of his employment with the employer, but that the claimant's current condition of ill-being was not causally related to the accident. The arbitrator further found that on the date of accident, the claimant was 51 years of age and had been working for the employer for 9 years. She noted that the employer did not "contest" the fracture to the claimant's left wrist or the sprain to his right shoulder, and she found that the injury to the claimant's "teeth and mouth is also noted and supported by the medical documentation." She noted, however, that the employer did dispute the causal connection between the work accident and the claimant's purported injuries to his left shoulder and neck (the disputed injuries), which the claimant contended were "either due to aggravation of pre-existing condition or due to favoring the left wrist and right shoulder during the recovery." Ultimately, the arbitrator found no causal connection between the disputed injuries and the work accident, and concluded that the claimant was entitled to temporary total disability (TTD) benefits of $1,106.66 per week for 27-3/7 weeks, from November

10, 2012, through May 20, 2013, the date upon which the claimant "refused to undergo" an FCE. She also concluded that the claimant was "not entitled to additional compensation for treatment rendered after May 2013, or for reasonable and necessary medical expenses incurred prior thereto which are over and above the fee schedule," and she denied the claimant's request for prospective medical treatment. In addition, she denied the claimant's request for penalties and fees, finding that the employer's reliance on the opinions and recommendations of three physicians was reasonable.

¶ 18 In support of her position with regard to the disputed injuries, the arbitrator pointed to "significant inconsistencies" between the testimony of the claimant and his medical records, as well as a "lack of objective medical findings to support causal connection," a "large gap in time between" the date of injury and the claimant's "complaints relating to these body parts," and her own "credibility assessment" of the claimant. She noted that the "first recorded mention of complaints regarding" the disputed injuries was from physical therapy notes from January 2013 (2 months after the work accident), and the next mention was from Dr. McCall's notes from February 2013 (3 months after the work accident). She also noted Dr. McCall's May 2013 diagnosis that found no causal connection between the disputed injuries and the work accident and that suggested an FCE, as well as the claimant's refusal to complete an FCE. She further noted that another treating physician, Dr. Levi, and the physician who conducted an independent medical examination (IME), Dr. Peitro, both also found the claimant was at maximum medical improvement (MMI) for the non-disputed injuries, and recommended an FCE.

¶ 19 The arbitrator concluded that to infer causation for the disputed injuries "from the nature and/or severity of the fall in spite of the well-reasoned, credible findings of Dr. McCall and Dr. Levi is speculative." She ruled that the evidence before her did not support a finding of causation because of the "long gap between the accident and the reporting of the injuries," and because the "MRI and films all point to long degenerative changes in the cervical spine," which rendered "speculative" the claimant's "argument of the left shoulder injury being caused by favoring the right shoulder." The arbitrator also concluded that the claimant had "failed to show sufficient support for" a finding that the work accident aggravated or accelerated a pre-existing condition.

¶ 20 The arbitrator noted in particular Dr. McCall's finding that, six months after the work accident, the claimant should have been "capable of much greater function" and should have been "less pain focused." She concluded that the claimant was "focused on disability," based upon the evidence adduced at the hearing about his lack of effort in physical therapy, his problems getting along with the therapists and physicians trying to help him recover, and his ability to engage in other physical activities while at the same time claiming to be unable to do physical therapy exercises. She concluded that the evidence established that the claimant reached MMI for the non-disputed injuries "and was discharged from care as of May 20, 2013, when he refused to participate in the FCE," and that the claimant "failed to meet his burden that he continues to suffer a disability from his work accident or that this accident required further medical treatment after May 20, 2013." She then specifically noted that she found "the opinions and

recommendations of Dr. McCall, Dr. Tonino, and Dr. Levi more credible than those of Dr. Vazquez, Dr. Nam, and Dr. Laich."

¶ 21 The arbitrator concluded that treatment sought by the claimant "after May 20, 2013, was not medically necessary, reasonable, or causally connected to the work accident," and that therefore the claimant was "not entitled to additional compensation for treatment rendered after May 2013, or for reasonable and necessary medical expenses incurred prior thereto which are over and above the fee schedule." She likewise found he was not entitled to prospective medical treatment, and denied the claimant's request that penalties and fees be imposed upon the employer, concluding that the employer's denial of liability for the disputed injuries was based upon reasonable reliance on the opinions and recommendations of Dr. McCall, Dr. Levi, and Dr. Tonino, all of whose opinions she found to be "credible, well-reasoned and supported by objective medical findings."

¶ 22 The claimant sought review of the arbitrator's decision before the Commission. On January 28, 2016, the Commission issued its unanimous decision and opinion on review, in which it summarily affirmed and adopted, without modification, the arbitrator's decision. The claimant sought review in the circuit court of Cook County. On January 23, 2017, the circuit court issued a 10-page typewritten order in which it set out the procedural history of the case in detail, including the findings of the arbitrator and the Commission, and in which ultimately it confirmed the unanimous decision of the Commission. The claimant now timely appeals.

¶ 23 ANALYSIS

¶ 24 On appeal, the claimant's contentions of error, as re-ordered, are that: (1) the Commission's finding of no causal connection between the work accident and "all claimed injuries" was contrary to the manifest weight of the evidence; (2) the Commission's finding that the claimant reached MMI "due to his refusal to undergo certain tests and treatment, and its denial of benefits on that basis, is contrary to law;" (3) "all medical services" received by the claimant were reasonable and necessary, and therefore compensable; and (4) the Commission's denial of "additional compensation" is contrary to law. The employer raises the following additional issue in its brief on appeal: whether the admission of the medical records and opinions of Dr. Laich was error.

¶ 25 With regard to the first issue raised by the claimant—that the Commission erred in finding of no causal connection between the work accident and "all claimed injuries"—we begin with our standard of review. "It is well settled that in workers' compensation cases it is the function of the Commission to decide questions of fact and causation, to judge the credibility of witnesses and to resolve conflicting medical evidence." *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741 (1994). A reviewing court will not overturn findings of the Commission unless the findings are against the manifest weight of the evidence. *Id.* Findings are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Id.* at 742. A reviewing court considers "whether there is sufficient evidence in the record to support the Commission's finding, not whether [the reviewing court] might have reached the same conclusion." *Metropolitan Water Reclamation Dist. of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011).

¶ 26 In this case, there was conflicting testimony and medical evidence, which is described in detail above, about the causal connection, or lack thereof, between the work accident and the disputed injuries. As the employer aptly notes, the Commission had the right to resolve the conflicts in the manner it did, which ultimately included finding "the opinions and recommendations of Dr. McCall, Dr. Tonino, and Dr. Levi more credible than those of Dr. Vazquez, Dr. Nam, and Dr. Laich," and accordingly finding no causal connection between the disputed injuries and the work accident. The Commission also had the right to find the claimant less than credible, based upon the evidence before it and described at length above. Of particular importance are the findings that there were "significant inconsistencies" between the testimony of the claimant and his medical records, as well as a "lack of objective medical findings to support causal connection," a "large gap in time between" the date of injury and the claimant's "complaints relating to these body parts," and the credibility assessment of the claimant. Moreover, Dr. McCall's May 2013 diagnosis found no causal connection between the disputed injuries and the work accident, and the Commission adopted the arbitrator's conclusion that to infer causation for the disputed injuries "from the nature and/or severity of the fall in spite of the well-reasoned, credible findings of Dr. McCall and Dr. Levi is speculative." Other significant findings related to the disputed injuries include the finding that the "MRI and films all point to long degenerative changes in the cervical spine," which renders "speculative" the claimant's "argument of the left shoulder injury being caused by favoring the right shoulder," as well as the finding that the claimant had "failed to show

sufficient support for" a finding that the work accident aggravated or accelerated a pre-existing condition.

¶ 27 Accordingly, we conclude that the Commission did not err. The claimant's arguments to the contrary on appeal amount to nothing more than an invitation for us to usurp the role of the Commission, reweigh the evidence about the disputed injuries in the light most favorable to him, and change the outcome. We have thoroughly reviewed the record on appeal in light of our well-established standard of review, and we simply cannot say in this case that a conclusion opposite to that reached by the Commission is clearly apparent with regard to the causal connection between the disputed injuries and the work accident. Nor, indeed, does the claimant put forward a coherent argument that a conclusion opposite to that reached by the Commission is clearly apparent – instead, he merely claims that the evidence relied upon by the Commission was "insufficient." To the contrary, we find sufficient evidence in the record, described in detail above, to support the Commission's finding. See, *e.g.*, *Metropolitan Water Reclamation Dist. of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011) (reviewing court considers "whether there is sufficient evidence in the record to support the Commission's finding, not whether [the reviewing court] might have reached the same conclusion"). Therefore, the Commission's decision with regard to the disputed injuries is not against the manifest weight of the evidence and we decline to disturb it.

¶ 28 With regard to the second issue raised on appeal by the claimant—that the Commission's finding that the claimant reached MMI "due to his refusal to undergo

certain tests and treatment, and its denial of benefits on that basis, is contrary to law"—the claimant contends that no physician ever found that he had reached MMI, and that accordingly there has been no finding that could serve as support for cessation of his temporary total disability (TTD) benefits, and that there is no other "reasonable basis" for the Commission's decision to end his TTD benefits after his refusal to submit to an FCE. The claimant contends that even if the Commission's finding of no causal connection between the work accident and the disputed injuries stands, there is still "no cogent evidence" that he attained MMI on May 20, 2013. He posits that because an employer cannot compel an injured worker to submit to an FCE, his refusal to submit "cannot serve as justification for denial of TTD" or as support for a finding he reached MMI. In support of his argument that the Commission erred, the claimant contends that the Commission's statement that the evidence established that the claimant reached MMI "and was discharged from care as of May 20, 2013, when he refused to participate in the FCE recommended by both the Athletico therapist and his treating physician, Dr. McCall" effectively "thwarted" the claimant's right to refuse an FCE.

¶ 29 We begin our analysis by noting that we do not accept the claimant's premise that the Commission's finding that the claimant reached MMI on May 20, 2013, was "due to his refusal to undergo certain tests and treatment," namely, an FCE. At no point in its decision does the Commission make such a statement, or otherwise imply that its finding is meant as a "punishment" of the claimant for refusing the FCE. To the contrary, the plain language of the decision "recognizes and agrees that [the claimant] had wide latitude in directing his own medical treatment, including refusing treatment," and

otherwise makes it clear that the Commission understood that on May 8, 2013, Dr. McCall recommended the claimant for an FCE *because* Dr. McCall believed the claimant had reached MMI. The claimant's May 20, 2013, refusal to participate in the FCE did not *cause* Dr. McCall's finding – it came after it. As the employer notes, although the claimant certainly had the right to refuse the FCE, "the period of disability can reasonably be terminated by relying on the reasons Dr. McCall recommended the [FCE]," and the date selected for termination—May 20, 2013—represented a reasonable inference for the point at which the claimant reached MMI and his disability terminated.

¶ 30 Accordingly, there is no merit to the claimant's contention that the Commission's finding that he had reached MMI was in fact a "punishment" for the claimant's refusal to participate in the FCE. With regard to the claimant's contention that no physician ever found he had reached MMI, and that accordingly there has been no finding that could serve as support for cessation of his TTD benefits, and that there is no other "reasonable basis" for the Commission's decision to end his TTD benefits after his refusal to submit to an FCE, we begin our analysis by noting the long-recognized general proposition that "TTD is awarded for the period from the date on which the employee is incapacitated by injury to the date that his condition stabilizes or he has recovered as far as the character of the injury will permit." *Freeman United Coal v. Industrial Comm'n*, 318 Ill. App. 3d 170, 177 (2000). Regardless of whether the claimant may or may not be entitled to permanent disability (PD) benefits under the Act, "once the injured employee's physical condition has stabilized, he is no longer eligible for TTD benefits because the disabling condition has reached a permanent condition." *Id.* As we noted in *Freeman*, one of the

dispositive questions with regard to the termination of TTD benefits is whether the claimant's condition has stabilized. *Id*. at 178. Once the condition has stabilized, the claimant has reached MMI, and is no longer eligible for TTD benefits. *Id*; see also, *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004).

¶ 31 "The factors to be considered in determining whether a claimant has reached [MMI] include a release to return to work, with restrictions or otherwise, and medical testimony or evidence concerning claimant's injury, the extent thereof, the prognosis, and whether the injury has stabilized." *Freeman*, 318 Ill. App. 3d at 178. The questions of relevance when determining the duration of TTD "are whether the claimant has yet reached [MMI] and, if so, when." *Id*. "The time period of TTD is a question of fact for the Commission, and its decision should not be disturbed unless it is against the manifest weight of the evidence." *Ming Auto Body v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256-257 (2008). As explained above, "[i]t is well settled that in workers' compensation cases it is the function of the Commission to decide questions of fact and causation, to judge the credibility of witnesses and to resolve conflicting medical evidence." *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741 (1994). Also as explained above, findings are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent (*Id*. at 742), and a reviewing court considers "whether there is sufficient evidence in the record to support the Commission's finding, not whether [the reviewing court] might have reached the same conclusion." *Metropolitan Water Reclamation Dist. of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011).

¶ 32 In this case it is true, as the claimant contends, that Dr. McCall's notes of May 8, 2013, contain no explicit reference to the claimant having reached MMI. However, the claimant was discharged from care on May 20, 2013, after he refused to participate in the FCE that Dr. McCall had recommended and prescribed on May 8, 2013, which of course meant that Dr. McCall would not be receiving any new information, in the form of the results of the FCE, from which Dr. McCall could have further evaluated the claimant's condition. This is significant because, as explained above, on May 8, 2013, Dr. McCall specifically indicated in his notes that the claimant "had difficulty complying with physical therapy" at both ATI and Athletico, and indicated that the therapists at Athletico noted that the claimant sometimes went "long periods of time between therapy sessions" and the therapists recommended an FCE because of "clinical inconsistencies in his exams" as well as "discord between subjective reports and clinical observations." Dr. McCall conducted both a physical examination of the claimant on May 8, 2013, and an examination of x-rays taken that day that included "AP and lateral views of the cervical spine." Dr. McCall concluded that there was a "paucity of findings on physical exam and imaging," and that six months post-injury "we would expect much greater function and fewer complaints of discomfort." He wrote, "I don't think any further interventions with injections or consideration for shoulder arthroscopies would be warranted." He stated that he discussed with the claimant "that the pathology within his cervical spine is degenerative and not likely related to his fall." He recommended an FCE specifically "to get a bearing on his capacity to consider future work."

¶ 33 Moreover, other medical records from the months leading up to Dr. McCall's May 8, 2013, decision to prescribe an FCE support Dr. McCall's decision, and support the finding of the Commission that the claimant had reached MMI by the time he refused to participate in the FCE on May 20, 2013. For example, ATI's physical therapy treatment progress notes documented concerns with both the "self-limited behaviors/attitudes" of the claimant, and the extent to which the claimant was complying with the instructions given him regarding his home exercise program exercises. On multiple occasions, the notes indicated that the claimant could not correctly demonstrate the exercises he was supposed to be doing at home. The notes also documented concerns that the claimant "was very argumentative," that he refused to have an FCE, and included the observation, by a therapist, that on one occasion the claimant was able to reach to above shoulder height to get coffee for himself, while allegedly unable to do his exercises because of his claimed pain. The note discharging the claimant from therapy at ATI cited "non-compliance with attendance in therapy" and "decreased participation in therapy without maximum encouragement."

¶ 34 The medical evidence also documented Dr. McCall's February 6, 2013, concern that the claimant's complaints of "extreme pain" in his right shoulder seemed "to be out of proportion to the previous physical findings and radiographic findings," and included the treatment notes from the claimant's physical therapy at Athletico. As noted above, the May 20, 2013, therapy discharge report from Athletico indicated that the claimant arrived at Athletico's facility that day, with a prescription for an FCE, but would not complete the FCE because he did not believe it would "benefit" him in any way. We note again

that the Commission also had the right to find the claimant less than credible, based upon the evidence before it and described at length above.

¶ 35 We reiterate that "[t]he time period of TTD is a question of fact for the Commission, and its decision should not be disturbed unless it is against the manifest weight of the evidence." *Ming Auto Body v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256-257 (2008). We note as well that the Commission had before it evidence related to the factors to be considered in determining whether the claimant had reached MMI. See *Freeman United Coal v. Industrial Comm'n*, 318 Ill. App. 3d 170, 178 (2000) (factors to be considered in determining whether a claimant has reached MMI include a release to return to work, with restrictions or otherwise, and medical testimony or evidence concerning claimant's injury, the extent thereof, the prognosis, and whether the injury has stabilized). We conclude that the above evidence provides sufficient support for the Commission's finding that as of May 20, 2013, the claimant's condition had stabilized, he had reached MMI, and he was no longer eligible for TTD benefits. See *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004); see also *Metropolitan Water Reclamation Dist. of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011) (reviewing court considers "whether there is sufficient evidence in the record to support the Commission's finding, not whether [the reviewing court] might have reached the same conclusion").

¶ 36 We turn to the third issue raised on appeal by the claimant, that "all medical services" received by the claimant were reasonable and necessary, and therefore compensable. The claimant's brief on appeal makes it clear that his argument with regard

to this issue is based upon his assertion that the Commission erred in finding: (1) no causal connection between the work accident and the disputed injuries; (2) that the claimant reached MMI on May 20, 2013; and (3) that the claimant "failed to meet his burden that he continues to suffer a disability from his work accident or that this accident required further medical treatment after May 20, 2013." Having found the Commission did not err in these findings, we conclude there is no merit to the claimant's third issue on appeal.

¶ 37 The claimant's fourth and final issue raised on appeal concerns the Commission's denial of "additional compensation" and attorney fees pursuant to sections 16, 19(k), 19(*l*) of the Act. 820 ILCS 305/16, 19(k), and 19(*l*) (West 2012). The claimant argues that the employer's failure to pay TTD benefits was unreasonable pursuant to section 19(k) of the Act and that "compensation under Sections 19(*l*) and 16 would follow as well." He concludes that the Commission's decision to deny additional compensation and fees was "against the manifest weight of the evidence." The claimant's argument is incorrect.

¶ 38 As we have previously stated, the standard for granting penalties pursuant to 19(*l*) is different from the standard for granting penalties and fees pursuant to sections 19(k) and 16. *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, ¶ 19. A penalty under section 19(*l*) is in the nature of a late fee and is mandatory under the Act if an employer is late with the payment of benefits and cannot show an adequate justification for the delay. *Jacobo*, 2011 IL App (3d) 100808, ¶ 20. The standard for determining whether an employer has good and just cause for a delay in

payment is defined in terms of reasonableness. *Id*. "The Commission's evaluation of the reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence." *Id*.

¶ 39 The standard for awarding penalties under section 19(k) is higher than the standard for 19(*l*) penalties. Section 19(k) penalties are intended to address payment delays that are deliberate or the result of bad faith or improper purpose. *Jacobo*, 2011 IL App (3d) 100808, ¶ 24. In addition, the decision to award section 19(k) penalties is discretionary rather than mandatory. *Jacobo*, 2011 IL App (3d) 100808, ¶ 21. Specifically, section 19(k) provides that the Commission "may" award additional compensation when there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation. 820 ILCS 305/19(k) (West 2012). Under section 16 of the Act, the Commission may also award attorney fees along with an award of section 19(k) penalties. *Jacobo*, 2011 IL App (3d) 100808, ¶ 21.

¶ 40 A review of the Commission's decision to deny penalties and attorney fees pursuant to sections 16 and 19(k) involves a two-part analysis. First, we must determine whether the Commission's finding that the facts do not justify section 19(k) penalties and section 16 attorney fees is "contrary to the manifest weight of the evidence." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 516 (1998). Second, we must determine whether "it would be an abuse of discretion to refuse to award such penalties and fees under the facts present here." *Id.*

¶ 41 In the present case, the Commission found the employer's denial of benefits was reasonable, concluding that the employer's denial of liability was based upon reasonable

reliance on the opinions and recommendations of Dr. McCall, Dr. Levi, and Dr. Tonino, all of whose opinions were "credible, well-reasoned and supported by objective medical findings." For the reasons explained above, in light of the evidence described in detail above, we affirm the Commission's denial of additional compensation and attorney fees under sections 16, 19(k), and 19(*l*) of the Act.

¶ 42 We likewise decline to address the issue raised by the employer in its brief on appeal: whether the admission of the medical records and opinions of Dr. Laich was error. We conclude that even if the admission of the medical records and opinions of Dr. Laich did constitute error, the employer has suffered no prejudice therefrom, in light of the fact that the employer has prevailed in this appeal.

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, we affirm the judgment of the circuit court, which confirmed the Commission's unanimous decision, and remand this matter to the Commission pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 337 (1980).