2014 IL App (2d) 2130617WC-U

Filed: November 13, 2014

NOS. 2-13-0617WC, 2-13-0779WC cons.

IN THE APPELLATE COURT

OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MICHAEL FLOYD, Appellant, v. (No. 2-13-0617WC) THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (3S Services, Inc., Appellee), _____ ILLINOIS STATE TREASURER, as *ex officio* Custodian of the Injured Worker's Benefit Fund, Appellant, and MICHAEL FLOYD, METRO CRANE SERVICES, Defendants, v. (No. 2-13-0779WC) THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (3S Services, Inc., Appellee),	)	Appeal from Circuit Court of Kendall County No. 12MR141 Honorable Robert P. Pilmer, Judge Presiding.

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

ORDER

¶ 1 *Held:* The Commission's determination that 3S was a joint employer of claimant was not against the manifest weight of the evidence. The Commission's award of section 19(l) penalties (820 ILCS 305-19(l) (West 2012) was not against the manifest weight of the evidence.

¶ 2 On February 17, 2009, claimant, Mike Floyd, filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2008)), seeking benefits from Metro Crane Service (Metro) (a crane rental company) and 3S Services, Inc. (3S) (a steel erection company) for a December 19, 2008, work accident that resulted in permanent and severe injuries (case No. 2-13-0617WC). Because 3S disputed it was Floyd's employer for purposes of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2008)), and because Metro did not have workers' compensation insurance, Floyd also named the Illinois State Treasurer (Treasurer), as *ex-officio* custodian of the Injured Workers' Benefit Fund (Fund), as respondent (case No. 2-13-0779WC). Following a September 2011 arbitration hearing, the arbitrator issued his decision finding, in relevant part, that (1) on the date of the December 2008 accident, 3S and Metro were joint employers of Floyd and were operating under and subject to the provisions of the Act; (2) Floyd sustained an accident that arose out of and in the course of his employment; (3) 3S was jointly and severally liable for the payment of Floyd's workers' compensation benefits and that the Fund need not be used; and (4) section 19(l) penalties were appropriate. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision in its entirety. It also remanded the matter to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 3 On judicial review, the circuit court of Kendall County confirmed in part and vacated in part the Commission's decision. Specifically, the court reversed the Commission's findings that 3S was a joint employer of Floyd, that the accident arose out of and in the course of

employment with 3S, and that section 19(l) penalties were appropriate. The court also reversed "[t]he decision of the Commission that 3S Services was [Floyd's] statutory employer," although this issue was never actually reached by the arbitrator or the Commission. On June 10, 2013, the court struck its remand language and granted Floyd's motion for an express written finding that he was entitled to immediate appeal pursuant to Supreme Court Rule 304 (eff. Feb. 26, 2010). Floyd filed a timely notice of appeal. This court granted the Treasurer's motion for leave to file late notice of appeal. On October 7, 2013, this court consolidated the appeals.

¶ 4 The issues on appeal include whether (1) the Commission's determination that 3S was a joint employer, or alternatively, a statutory employer, was against the manifest weight of the evidence and (2) the Commission's award of section 19(l) penalties was against the manifest weight of the evidence. For the reasons that follow, we reverse the circuit court's judgment and reinstate the Commission's decisions finding that 3S was Floyd's joint employer and that the accident arose out of his employment with 3S; reverse the circuit court's judgment and reinstate the Commission's imposition of section 19(l) penalties; affirm the circuit court's judgment on all other issues that confirmed the decision of the Commission; and remand for further proceedings.

¶ 5 I. BACKGROUND

¶ 6 The following factual evidence relevant to this appeal was elicited at an arbitration hearing which took place over the period of two days in September 2011.

¶ 7 3S is a steel erection company owned 100% by Craig Schmidt. 3S employees include Angel Schmidt (Craig's wife), Max Schmidt (Craig's son), and Joanne Slaboda. 3S owned the crane involved in this case and leased it to Metro.

¶ 8 Metro was a crane rental company that leased its only crane from 3S. At the time of the accident at issue here, Craig was Metro's president and majority owner. Max and Floyd

were minority owners. Metro's only employee was Floyd.

¶ 9 On December 19, 2008, the date of the accident at issue, Floyd was employed by Metro. Floyd had been working for Metro since March 2008 when Craig and Max approached him about forming the corporation. Floyd was a "superior crane operator" and one of only a small number of crane operators who specialized in setting steel in the Chicago area. Craig testified that the idea behind forming Metro was so he "could have the type of crane that [he] wanted and the type of operator [he] wanted for [his] 3S Services steel erection on a more regular basis instead of taking somebody of less quality or a crane that [he] didn't particularly want." However, because Floyd was a union member, he could not just start a crane company and hire Floyd. Instead, Craig incorporated Metro with Floyd and Max. To satisfy union rules, Craig initially gave Floyd a majority ownership interest in the corporation although Floyd contributed no start-up money. Craig and Max then hired Floyd, who became the only Metro employee. In May 2008, Floyd's ownership interest was reduced and Craig became the majority owner of Metro. Floyd was not compensated for the reduction in his ownership interest.

¶ 10 Floyd testified he did not know what type of corporation Metro was for tax purposes and he was not allowed to sign any checks on behalf of Metro. According to Floyd, the only document he ever signed on Metro's behalf was the agreement required by the union to be signed by all companies that employ union members. Floyd did solicit quotes from insurance carriers for general liability insurance when Metro was first formed, but he testified he "had nothing to do with the workmens' comp end." However, Craig testified that he thought Floyd was going to obtain workers' compensation insurance for Metro. Craig further testified that when Metro was formed, Floyd brought a customer list with him, got letterheads and envelopes made for the business, and found the fueling company Metro used.

¶ 11 3S purchased a 40-ton mobile hydraulic truck crane and thereafter leased it to Metro. This was the only crane in Metro's possession. Metro did not have a building and paid $400 rent to store the crane in one of Craig and Angel's buildings. Floyd operated and maintained the crane and was compensated on an hourly basis by Metro. Although Floyd was paid by Metro, his paychecks were prepared and distributed by a 3S employee.

¶ 12 The crane was rented by 3S for 3S jobs approximately 70% of the time. Floyd used the crane on non-3S jobs approximately 30% of the time. Regarding the 30% of non-3S jobs, Floyd testified that customers would call him directly. However, prior to accepting the work, Floyd stated he had to obtain approval from Craig. When Floyd was using the crane on a non-3S job site and 3S needed a crane, Craig testified that Floyd would make arrangements with his brother at Floyd Crane to send a crane and operator to 3S's job site. Floyd Crane billed Metro for its services, and in turn, Metro billed 3S. In addition to operating the crane for Metro, Floyd also performed tasks for 3S on occasion, including picking up 3S personnel and delivering material to 3S's job sites. He was compensated for this work by Metro and Metro then charged 3S. 3S directly reimbursed Floyd for expenses he incurred.

¶ 13 According to Floyd, the day-to-day operation of Metro was carried out by Craig, Max, and Angel. Floyd testified that he "check[ed] in every day" with one of these three individuals to get his orders, including days when Metro was not working a 3S job. In his dealings with Craig, Floyd testified he believed Craig was acting in his capacity as both the owner of 3S and the President of Metro, which Floyd looked at as "one and the same." Metro did not have any support staff and Floyd assumed Craig, Max, or Angel handled Metro's office work. Floyd testified he was hired by Craig and Max, and that both of them had the power to fire him.

¶ 14 On the other hand, Craig testified his role at Metro was only that of a "figurehead." Specifically, Craig stated he dealt with the lawyer and the State in filling out necessary paperwork, financed the company, and paid the bills. Craig testified 3S and Metro were separate corporations with separate bank accounts. According to Craig, 3S did not receive any price break on services rendered by Metro.

¶ 15 Craig testified that following an audit in early September 2008, he became aware that Metro did not have workers' compensation insurance and he had a meeting with Floyd and Max at a restaurant to discuss this fact. According to Craig, Floyd stated he did not want to buy workers' compensation insurance for himself in order to save money for Metro. Craig testified that Floyd told him if he was hurt, he would "have to deal with it." Craig stated after this meeting, he contacted Alliance National Insurance Agency to verify whether it was legal for Metro to decline workers' compensation insurance.

¶ 16 Floyd recalled having a meeting with Craig and Max at the restaurant in early fall 2008, but stated the meeting was to discuss how Metro was doing financially. Floyd denied having participated in any discussion regarding Metro's failure to obtain workers' compensation insurance. According to Floyd, he believed Metro had workers' compensation insurance as this was one of the requirements he had for agreeing to work for Metro. He further testified that he never waived workers' compensation insurance.

¶ 17 On September 15, 2008, 3S entered into a contract with T.A. Bowman Constructors to erect and detail structural steel at a construction project at Grant High School in Fox Lake, Illinois. The contract provided for "3 crane mobilizations" and required the customer to fax the signed acceptance back to 3S prior to the start date of the project. The general contractor on the Grant High School job required its subcontractors to submit certificates of

insurance. Craig supplied the general contractor with 3S's certificates of insurance which included workers' compensation, general liability, and an umbrella policy. 3S also supplied the general contractor with Metro's certificate of general liability insurance which covered the crane.

¶ 18 The contract between 3S and Metro for the Grant High School job provided that the crane rental was "portal to portal" which is standard in the industry. Portal to portal rental starts the moment the crane leaves the yard and ends the moment it returns to the yard. The union agreement signed by Metro also required its crane operators to be paid portal to portal.

¶ 19 On December 19, 2008, Floyd was driving the crane from the Grant High School job back to the yard where the crane was stored. Floyd was stopped at a stop light approximately one block from the yard when he was hit by an oncoming vehicle. Immediately following the accident, Floyd experienced neck pain, headaches, and shooting pains from his neck to his head but did not seek medical treatment that day because he was more concerned about the occupants of the car and returning the crane to the yard. Floyd testified that he immediately reported the accident to Craig and Max. While the damage to the crane was being repaired, Floyd did not work. He returned to work on January 23, 2009.

¶ 20 Between the date of the accident and his return to work, Floyd testified that the pain in his neck and his headaches became worse and he had shooting pains up his neck and blurred vision. On January 25, 2009, Floyd went to the emergency room. After x-rays of Floyd's cervical spine and CT scans of his cervical spine and head were taken, he was diagnosed with cephalgia (headaches). He continued to work as a crane operator "off and on" until February 8, 2009. During that time, Floyd testified his neck pains and headaches got worse, and he experienced shoulder pain and numbness and pain down his arm. According to Craig, when Floyd became unable to work, 3S never used Metro or its crane for its 3S services again. Metro

was dissolved approximately six months later.

¶ 21 On February 10, 2009, Floyd saw Dr. John Vaikutis, a primary-care physician, who ordered an MRI of his neck. On February 19, 2009, Floyd saw Dr. Taras Masnyk, a neurosurgeon, who took him off work until further notice. On April 27, 2009, Dr. Masnyk performed a three level anterior cervical discectomy and fusion with hardware. Following surgery, Floyd lost some movement in his neck and received physical therapy and "work hardening." As of the date of arbitration, Floyd was awaiting approval for additional medical treatment including a rhizotomy and was unable to perform his job as a crane operator based on his work restrictions.

¶ 22 Following Floyd's February 2009 application for workers' compensation benefits, 3S's insurance company paid Floyd temporary total disability (TTD) benefits for the period of February 19, 2009, through May 5, 2011. Floyd received the first TTD payment on approximately November 9, 2009, for the period of February 19, 2009, through September 10, 2009. The second TTD payment was dated January 8, 2010, and covered the period of September 11, 2009, through December 17, 2009. The third TTD payment was dated April 9, 2010, for the period of January 15, 2010, through March 24, 2010. (It does not appear TTD benefits were paid for the period from December 18, 2009, through January 14, 2010.) The fourth TTD payment was dated May 18, 2010, for the period of March 25, 2010, through May 12, 2010. In May 2010, 3S's insurance carrier stopped paying TTD benefits and disputed its liability.

¶ 23 At the close of evidence, both parties submitted proposed findings of fact and conclusions of law. Although these documents are not contained in the record before us, the proceedings in the circuit court indicate that it was in Floyd's proposed findings of fact and

conclusions of law that he argued for the first time that 3S and Metro were his joint employers.

¶ 24 On November 3, 2011, the arbitrator issued his decision in the matter. Relevant to this appeal, he concluded as follows: that (1) on the date of the December 2008 accident, 3S and Metro were joint employers of Floyd and were operating under and subject to the provisions of the Act; (2) Floyd sustained an accident that arose out of and in the course of his employment; (3) 3S was jointly and severally liable for the payment of Floyd's workers' compensation benefits and that the Fund need not be used; and (4) section 19(l) penalties were appropriate. Shortly after 3S had filed a petition for review with the Commission, Floyd's attorney discovered that 3S had asserted a section 5(b) lien (see 820 ILCS 305/5(b) (West 2012) in Floyd's personal injury claim against the driver of the vehicle that hit him and had already recovered money based on that lien. On November 21, 2011, Floyd's counsel filed a motion to "Correct a Clerical Error or Alternatively to Re-Open Proofs," and submitted his own petition for review. The arbitrator denied the motion, finding no clerical error had been made and that it had been divested of jurisdiction and could not reopen proofs.

¶ 25 On March 8, 2012, 3S filed a statement of exceptions with the Commission, arguing in part that, in addition to not being a joint employer—as the arbitrator concluded—neither was it a statutory employer of Floyd. On review, the Commission affirmed and adopted the arbitrator's decision in its entirety. The Commission also affirmed the arbitrator's denial of Floyd's November 2011 motion and remanded the matter to the arbitrator for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322.

¶ 26 On judicial review, the circuit court of Kendall County confirmed in part and reversed in part the Commission's decision. Specifically, the court reversed the Commission's findings that 3S was a joint employer and a statutory employer of Floyd which resulted in its

reversal of the Commission's finding that the accident arose out of and in the course of employment with 3S. We note the statutory employer issue, while briefly mentioned in the arbitrator's decision, was never actually reached by the arbitrator or the Commission. The court also reversed the Commission's finding that section 19(l) penalties were appropriate. The court remanded to the arbitrator to determine the Fund's liability to pay benefits to Floyd. On June 10, 2013, the court struck its remand language and granted Floyd's motion for an express written finding that he was entitled to immediate appeal pursuant to Supreme Court Rule 304 (eff. Feb. 26, 2010).

¶ 27 Floyd filed a timely notice of appeal. This court granted the Treasurer's motion to for leave to file late notice of appeal. On October 7, 2013, this court consolidated the appeals.

¶ 28 II. ANALYSIS

¶ 29 On appeal, Floyd frames the issues as follows: (1) the circuit court disregarded the Commission's factual findings and erred in reversing the Commission's decision that 3S was a joint employer and that the injury arose out of his employment with 3S; or (2) alternatively, the circuit court erred in concluding that 3S was not a statutory employer; and (3) the circuit court erred in disregarding the undisputed facts regarding late payment of TTD benefits and reversing the Commission's award of section 19(l) penalties. The Treasurer frames its issues on appeal as follows: (1) the Commission's determination that 3S jointly employed Floyd was not against the manifest weight of the evidence; or (2) alternatively, 3S was a statutory employer of Floyd within the meaning of section 1(a)(3) of the Act.

¶ 30 A. Standard of Review

¶ 31 On appeal, we review the Commission's decision, not the circuit court's judgment, as the Commission is the ultimate decision maker in workers' compensation cases. *Dodaro v.*

Illinois Workers' Compensation Comm'n, 403 Ill. App. 3d 538, 543, 950 N.E.2d 256, 260 (2010); *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). We will not disturb the Commission's decision unless its analysis is contrary to law or its fact determinations are against the manifest weight of the evidence. *Roberson*, 225 Ill. 2d at 173, 866 N.E.2d at 199. "Fact determinations are against the manifest weight of the evidence only when no rational trier of fact could have agreed with the agency." *Roberson*, 225 Ill. 2d at 173-74, 866 N.E.2d at 199. In other words, if there is sufficient factual evidence in the record to support the Commission's decision, we must do so, regardless of whether this court, or any other tribunal, might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n of Illinois*, 329 Ill. App. 3d 828, 833, 769 N.E.2d 66, 71 (2002).

¶ 32 It is the province of the Commission to assess the credibility of witnesses, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 207, 797 N.E.2d 665, 673 (2003). Further, this court may affirm the Commission's decision based on any legal basis in the record, regardless of the Commission's finding or reasoning. *General Motors Corp. V. Industrial Comm'n*, 179 Ill. App. 3d 683, 695, 534 N.E.2d 992, 1000 (1989).

¶ 33 B. Joint Employment

¶ 34 The first issue on appeal, relevant to both Floyd and the Treasurer, is whether the Commission's decision that 3S was a joint employer was against the manifest weight of the evidence.

¶ 35 "An employment relationship is a prerequisite for an award of benefits under the Act, and the question of whether a person is an employee remains 'one of the most vexatious *** in the law of compensation.' " *Roberson*, 225 Ill. 2d at 174, 866 N.E.2d at 200 (quoting *O'Brien*

v. Industrial Comm'n, 48 Ill. 2d 304, 307, 269 N.E.2d 471, 472 (1971)). "The difficulty arises not from the complexity of the applicable legal rules, but from the fact-specific nature of the inquiry." *Roberson*, 225 Ill. 2d at 174, 866 N.E.2d at 200. Thus, contrary to the circuit court's finding, whether an employment relationship exists is a factual question, not a question of law. See *Id*.

¶ 36 "The test for the existence of joint employers is whether ' "two or more employers exert significant control over the same employees—where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment." ' " *Village of Winfield v. Illinois State Labor Relations Board*, 176 Ill. 2d 54, 60, 678 N.E.2d 1041, 1044 (1997) (quoting *Orenic v. Illinois State Labor Relations Board*, 127 Ill. 2d 453, 474, 537 N.E.2d 784, 794 (1989), quoting *National Labor Relations Board v. Browning-Ferris Industries of Pennsylvania, Inc.*, 691 F.2d 1117, 1124 (3d Cir. 1982)). "When the control of an employee is shared by two employers and both benefit from the work, the worker is considered to be an employee of both or a joint employee." *Freeman v. Augustines Inc.*, 46 Ill. App. 3d 230, 233, 360 N.E.2d 1245, 1247 (1977). "In determining whether an employment relationship exists, Illinois courts will examine the following factors: (1) who has the right to control an individual; (2) who controls the manner in which work is performed; (3) the method of payment; (4) who has the right to discharge; and (5) who furnishes the tools, materials, and equipment." *Didline v. Hunt Transportation, Inc.*, 196 Ill. App. 3d 392, 394-95, 553 N.E.2d 801, 803 (1990). Although no single factor is dispositive, the right to control the work is the most important single factor. *Id.*, *Roberson*, 225 Ill. 2d at 175, 866 N.E.2d at 200. When two corporations are involved, the trier of fact must also consider the separate corporate existence of each of the purported joint employers. *Schmidt v. Milburn Brothers, Inc.*, 296 Ill. App. 3d 260,

266, 694 N.E.2d 624, 628 (1998).

¶ 37 In this case, after hearing all the evidence, the Commission found that 3S and Metro mutually controlled Floyd's work and mutually benefitted from his work as a crane operator. To the extent that Floyd and Craig's testimony conflicted, the Commission found Floyd more credible, which was well within its province. See *Sisbro*, 2047 Ill. 2d at 207, 797 N.E.2d at 673. Specifically, the Commission noted that Floyd was hired by Craig and Max, and that both Craig and Max had the power to fire him. Floyd received his day-to-day orders from Craig, Max, or Angel and he had to check in with them daily, even when he was working a non-3S job. Approximately 30% of Metro's work was on non-3S jobs, however, prior to accepting a non-3S job, Floyd had to obtain approval from Craig. Floyd was paid on an hourly basis by Metro, however, his paycheck was prepared and distributed by a 3S employee. All time worked by Floyd for 3S, whether operating the crane or running other errands for 3S, was billed through Metro and charged to 3S.

¶ 38 Although 3S and Metro were two separate corporations, we note that Craig's testimony regarding the reason he formed Metro lends support to the Commission's finding of a joint-employment relationship. Craig testified that the idea behind forming Metro was so he "could have the type of crane that [he] wanted and the type of operator [he] wanted for [his] 3S Services steel erection on a more regular basis instead of taking somebody of less quality or a crane that [he] didn't particularly want." However, because union rules did not allow Craig to simply hire Floyd through 3S, Craig formed Metro so he could have the operator and the crane he wanted for his 3S business. Further, on the occasions when 3S needed a crane and Metro's crane was being using on a non-3S job, Floyd made arrangements with his brother to send a crane and an operator for 3S's use. This testimony indicates that Craig did not form Metro to be

a general crane-rental business, but to be 3S's crane-rental business.

¶ 39 Here, it is clear that 3S benefitted from Floyd's work as a crane operator. In fact, as Floyd points out in his brief, he was such an integral part of the crane that 3S never used or leased the crane again after Floyd was unable to work. Metro simply stopped doing business and soon thereafter dissolved.

¶ 40 Based on the totality of the evidence, the Commission determined that 3S and Metro were joint employers of Floyd. We do not find this decision is against the manifest weight of the evidence. As a result, we find the circuit court erred in reversing the Commission's finding of joint employment and we reinstate the Commission's decision on this issue. Having reinstated the Commission's determination that 3S is Floyd's joint employer, we reverse the circuit court's reversal of the Commission's decision that the accident at issue arose out of and in the course of employment with 3S, and we reinstate the Commission's decision.

¶ 41 Because 3S was a joint employer with worker's compensation insurance and is therefore responsible for the payment of workers' compensation benefits in this case, the Fund need not be used.

¶ 42 C. Statutory Employment

¶ 43 Because we affirm the Commission's finding that 3S and Metro were Floyd's joint employers, we need not determine whether 3S was Floyd's statutory employer.

¶ 44 D. Section 19(l) Penalties

¶ 45 The last issue on appeal is whether the Commission's decision to impose section 19(l) penalties was against the manifest weight of the evidence.

¶ 46 Section 19(l) of the Act provides as follows:

"If the employee has made a written demand for payment of

> benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. *** In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits *** have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." 820 ILCS 305-19(l) (West 2012).

¶ 47 "Penalties under section 19(l) of the Act are "in the nature of a late fee." *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 Il App (3d) 100807WC, ¶ 20, 959 N.E.2d 772. "[T]he assessment of a penalty under section 19(l) is mandatory '[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show adequate justification for the delay.' " *Id*. (citing *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 552 (1998)). "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 employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified." *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*.

¶ 48 Floyd asserts that the Commission's imposition of section 19(l) penalties was not

against the manifest weight of the evidence. He contends that 3S had accepted his claim evidenced by its payment of TTD benefits but provided no justification for its repeated delays in its payment of TTD benefits. 3S points out, however, the payment of benefits in not an admission of liability. See 820 ILCS 305/8(a), (b)(7) (West 2012).

¶ 49 Here, the Commission's decision indicated that it imposed section 19(l) penalties after determining that 3S unreasonably delayed the payment of TTD benefits without good and just cause. In concluding section 19(l) penalties were appropriate, the Commission pointed to the four late TTD payments indicated above and noted 3S paid TTD benefits only after Floyd filed motions pursuant to sections 8(a) and 19b of the Act, which sought section 19(l) penalties.

¶ 50 Based on the record before us, 3S did not dispute its liability to pay TTD benefits until May 2010. At arbitration, 3S did not provide any justification for its delay in making the four initial TTD payments. Rather, the record indicates 3S simply chose not to pay TTD benefits until Floyd filed his motions under sections 9(a) and 19(b) of the Act. The fact that 3S *later* disputed its liability to pay TTD benefits is not a sufficient justification for delaying the payment of benefits during a period when it was not disputing its liability. Accordingly, we find the Commission's imposition of section 19(l) penalties is not against the manifest weight of the evidence. We reverse the circuit court's decision and reinstate the Commission's award of section 19(l) penalties.

¶ 51 III. CONCLUSION

¶ 52 For the reasons stated, we reverse the circuit court's judgment and reinstate the Commission's decisions finding that 3S was Floyd's joint employer and that the accident arose out of his employment with 3S; reverse the circuit court's judgment and reinstate the Commission's imposition of section 19(l) penalties; affirm the circuit court's judgment on all

other issues that confirmed the decision of the Commission; and remand for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322.

¶ 53 Reversed in part; affirmed in part; Commission's decision reinstated; cause remanded.