2015 IL App (2d) 141210WC-U

No. 2-14-1210WC

Order filed December 16, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

LARRY MATSON,	)	Appeal from the
	)	Circuit Court of
Appellee,	)	Lake County.
	)	
v.	)	No. 12 MR 992
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, *et al.* (City of Waukegan,	)	Christopher Starck
Appellant).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's determination that the claimant's current condition of ill-being was not related to his work accident was not against the manifest weight of the evidence because there was sufficient medical evidence in the record to support its finding. The Commission determined that the claimant suffered from a lumbar strain that resolved on December 19,

> 2005, and, therefore, its determination that he was not entitled to temporary total disability benefits beyond that date or medical expenses incurred after that date was not against the manifest weight of the evidence. The Commission's determination that the claimant's work-related injury only caused 7 ½ % loss of the person as a whole was not against the manifest weight of the evidence where he sustained a lumbar strain on October 27, 2005, and recovered and returned to full duty work on December 19, 2005.

¶ 2 The claimant, Larry Matson, filed an application for adjustment of claim against his employer, the City of Waukegan, seeking workers' compensation benefits for a low back injury arising from a work accident on October 25, 2005. The claim proceeded to an arbitration hearing under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq*. (West 2010)). The arbitrator found that the claimant sustained an injury to his low back that arose out of and in the course of his employment. He further found that the claimant was temporarily totally disabled from November 8 through December 19, 2005, and from July 6 through December 23, 2007, and ordered the employer to pay him disability payments of $779.52 per week for 31 3/7 weeks. The arbitrator found that the injuries the claimant sustained caused 30% loss of the person as a whole and ordered the employer to pay him permanent partial disability benefits of $591.77 per week for 150 weeks. The employer was given credit for $88,199.35 in medical benefits paid.

¶ 3 The employer sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (the Commission). The Commission modified the arbitrator's decision. It found that the claimant sustained a lumbar strain as a result of his work-related October 27, 2005, accident; that his condition resolved itself as of

December 19, 2005; and, therefore, that his condition as of July 2007, was not causally related to his work-related accident. The Commission found that the claimant was not entitled to payment of medical expenses after December 19, 2005. It found that he was entitled to temporary total disability benefits from November 8 through December 19, 2005. It further found that the injuries the claimant sustained only caused 7 1/2% loss of the person as a whole.

¶ 4 The claimant filed a timely petition for judicial review in the circuit court of Lake County, which reversed the Commission and reinstated the arbitrator's award The employer appeals.

¶ 5 **BACKGROUND**

¶ 6 The following factual recitation is taken from the evidence presented at the March 8, 2011, arbitration hearing.

¶ 7 The claimant testified that he began working for the employer in 1998, as the public works supervisor and safety coordinator. His job entailed administrative duties, looking for deteriorated roadways and sidewalks, and accident investigations.

¶ 8 The claimant testified that he suffered from low back problems on and off since age 20 and that they were not triggered by a specific event. In the summer of 2005, his back was in good condition. He played in a golf league, camped, canoed, played racquetball, and performed yard work. He experienced stiffness in his back when he awoke, and he was careful about how he moved. However, he did not feel that his back limited his activities.

¶ 9 The claimant testified that on October 27, 2005, he was setting up a traffic control plan and work zone for work in an intersection. As he walked along the grassy parkway, he stepped in a concealed four inch deep depression and jolted his back. He experienced immediate pain in his lower back radiating into his legs, especially his left leg. He drove himself back to his office and reported his accident to his supervisor.

¶ 10 The claimant testified that between October 27 and November 7, 2005, he was "in agony" but was able to continue working. On November 7, 2005, he sought medical attention at Corporate Health Services. Wendy Grabnick, a physician's assistant, examined him. In her patient records, she noted that he had a history of herniated disks at L4-L5, and L5-S1. She diagnosed him with a lumbar strain, placed some work restrictions on him, and recommended physical therapy.

¶ 11 The claimant underwent five sessions of physical therapy in November 2005. On November 10, 2005, the physical therapist noted that the claimant was pain free throughout the treatment. She noted that he found "his exercises pretty easy for him now especially now that the pain on his lower back doesn't bother him much." On November 11, 2005, the claimant came in reporting a pain level of 7 out of 10. He told his therapist that "prior to coming to the clinic [he] was cooking and he bent over and when he stood up he just hurt his back again." He said that prior to the incident he was "okay."

¶ 12 On November 14, 2005, Ms. Grabnick examined the claimant for complaints of continuing low back pain. She diagnosed him with a lumbar strain, told him to continue physical therapy, and referred him to an orthopedic doctor.

¶ 13 The claimant testified that Dr. Jay Levin examined him on November 17, 2005. In a letter to claims management services, Dr. Levin outlined his appointment with the claimant. The doctor noted the claimant's 20 year history of back pain, that in 1995 he could not work for one month due to low back and leg pain, and that he was diagnosed with three herniated nucleus pulposi. Dr. Levin wrote that the claimant stated that in September 2005, he had back pain daily but no leg pain. The claimant told Dr. Levin that his pain after his work-related accident was different than the chronic pain he had before. He complained of central low back and bilateral leg pain in the gluteal area to the backs of both thighs. Dr. Levin noted that x-rays of the claimant's lumbar spine showed degenerative changes at L3-L4 and L4-L5 without gross instability with flexion/extension. The doctor recommended a magnetic resonance imaging (MRI) scan, prescribed pain medication, and took the claimant off work.

¶ 14 On November 18, 2005, the claimant had an MRI of the lumbar spine. Dr. Harold Friedman wrote in his report that the claimant had "a broad based posterior disc bulge and tiny tear of the annulus fibrosis accompany[ing] degenerative and mild hypertrophic change at L4-L5, with inferomedial foraminal narrowing and mild narrowing of the thecal sac." He further noted "a shallow posterior bulging/protruding disc at L5-S1 with mild degenerative change."

¶ 15 Dr. Jay Levin examined the claimant on November 21, 2005. In a letter to claims management services he wrote that he reviewed the claimant's November 18, 2005, MRI scan, which showed degenerative disc changes at L4-L5 and L5-S1 with an annular tear at L4-L5 and a protruding disk at both L4-L5 and L5-S1. He opined that the claimant's

main complaints were "currently coming from the annular tear at L4-L5." He recommended that the claimant continue pain medication; start a course of physical therapy for soft tissue modalities, core strengthening, and flexibility; and remain off work.

¶ 16 Dr. Jay Levin examined the claimant on December 12, 2005. In a letter to claims management services, he wrote that the claimant had completed his pain medication prescription and has had "much improvement with physical therapy." He noted that the claimant suffered from residual back discomfort and occasional left leg pain. He recommended that the claimant complete physical therapy and continue exercises at home. The claimant testified that he asked to be released to return to work because he feared losing his job if he did not return. Dr. Levin released him to return to work on December 19, 2005, noting that he should return in five weeks for a reassessment. He did not return.

¶ 17 On December 16, 2005, the physical therapist wrote in the patient notes that the claimant had attended seven therapy sessions. The claimant testified that he had not recovered to his pre-accident condition and that he still had low back pain and pain radiating down his left leg. He was discharged from physical therapy.

¶ 18 The claimant returned to work on December 19, 2005. He testified that he was no longer able to enjoy the activities that he did prior to the accident. He had been on the extra-duty list at work for snowplowing and performed snowplowing in the year prior to the accident. After his release to return to work, he asked to be removed from the extra-duty roster because snowplowing involved rigorous activity that would have hurt his

back. Additionally, he no longer played racquetball or camped, and his wife had to help him in the yard.

¶ 19 Medical records dating back to December 1994 were admitted into evidence. The records show the claimant was treated numerous times for back issues.

¶ 20 On July 16, 1998, the claimant had an MRI of his lumbar spine. Dr. Joseph Alenghat wrote in the MRI report that the claimant had a history of low back pain radiating down the left leg and right leg tingling and numbness. He wrote that the claimant's "discs also show bulging of the annulus. At the L4-5 level there is some disruption of the annular fibers posteriorly and centrally suggesting minimal posterior and central subligamentous herniation/protrusion. No significant compromise of the dural sac or nerve roots is evident." He diagnosed the claimant with degenerative changes in L4-L5 and L5-S1 disks with bulging of the annulus and a very minimal posterior and central subligamentous herniation of the L4-L5 disk.

¶ 21 The claimant testified that during the winter, spring, and summer of 2006 and 2007, "[t]he health of [his] back seemed to be spiraling down." He was more uncomfortable, his gait was altered, he suspended participation in all sports, and he had to limit his other activities. The claimant admitted that in March through October 2006, his back pain was not severe enough for him to seek medical treatment.

¶ 22 The claimant's primary care physician, Dr. Karamichos, examined him on February 3, 2006. In his patient records, the doctor wrote that the claimant complained of low back pain, that he had a torn disk, and that he had been seeing an orthopedic physician. Under history, he wrote that the claimant had a history of a herniated disk

which had worsened. The claimant testified that the pain had not subsided or improved since his treatment with Dr. Jay Levin. Under assessment/plan, Dr. Karamichos wrote that the claimant had mixed hyperlipidemia, herniated disk, edema, and shoulder pain. He provided new pain prescriptions for the claimant's herniated disk. The claimant had x-rays of his left shoulder.

¶ 23 At the claimant's request, Dr. Karamichos refilled his pain prescription on July 24, 2006. The claimant testified that he made the request due to back pain.

¶ 24 Dr. Karamichos examined the claimant on November 8, 2006, for a general examination. Under the review of musculoskeletal systems, Dr. Karamichos wrote that the claimant had no restriction of motion, no atrophy or backache. Under assessment/plan, he wrote that the claimant had a herniated disk that was unchanged. Dr. Karamichos refilled his pain prescriptions.

¶ 25 The claimant did not seek treatment specifically for his back until June 25, 2007, when he went to chiropractor Dr. Leo Potetti. After several visits that provided only transitory relief, the claimant's attorney referred him to Dr. Burt Schell.

¶ 26 Board certified orthopedic surgeon Dr. Schell testified by evidence deposition. He stated that he first examined the claimant on July 2, 2007, for complaints of low back pain that had become acutely troublesome in the last week. In the present history section of the patient notes, Dr. Schell wrote that the claimant was injured in November 2005, when he stepped in a hole at work and that he suffered problems ever since. Dr. Schell noted that the claimant underwent conservative treatment and over time deteriorated until he had severe pain in his lower back and some radicular symptoms in his legs. Dr. Schell

wrote that his physical examination revealed abnormal contours of the claimant's lumbar spine secondary to spasm. He had x-rays which revealed a curvature of the lumbar spine consistent with muscular spasms and moderately severe narrowing of the L4-L5 disk space. The spasms in the muscles of his low back pulled his spine out of its natural and normal alignment. Dr. Schell diagnosed the claimant with lumbar radiculopathy. He recommended an MRI scan and prescribed a Medrol Dosepak.

¶ 27 The claimant had an MRI scan on July 5, 2007. Dr. John Pallin wrote in his report that the claimant had a right paracentral disk extrusion at L4-L5, compressing the right L5 nerve root sleeve, and a mild broad-based disk protrusion at L5-S1, without canal stenosis or nerve root sleeve compression.

¶ 28 Dr. Schell examined the claimant again on July 6, 2007. He wrote in his patient notes that the claimant experienced some relief from the Medrol Dosepak but that he was still in considerable pain. He testified that he reviewed the MRI films, which showed severe degenerative changes at the L4-L5 level with a right-sided disk herniation and spinal stenosis. The L5-S1 disk demonstrated an annular tear with a central bulge. He diagnosed the claimant with L4-L5 disk herniation, spinal stenosis, and L5-S1 bulging disk. He wrote that because the claimant has had symptoms that had been chronically troublesome since 2005 and the claimant had undergone conservative treatment, he recommended a laminectomy, diskectomy, and instrumented fusion. He placed work restrictions on the claimant and took him off work on August 29, 2007.

¶ 29 On August 30, 2007, Dr. Schell performed a decompressive laminectomy of L4-L5, a facetectomy L4-L5 and L5-S1, a transforaminal interbody fusion L4-L5 and L5-S1

with allograft, and a cage instrumented fusion L4-L5 and L5-S1 with iliac bone graft on the claimant.

¶ 30 On September 19, 2007, Dr. Schell wrote a letter to the claimant's attorney. He wrote that the claimant's original MRI scan in 2005 demonstrated an annular tear and that it was his "professional opinion that this annular tear resulted in the eventual herniation at the L4-5 disk, necessitating the surgery." He explained that an annular tear is a weakened area in the outer containing ring of the disk and opined that it was causally connected to his work-related injury. He further averred "that the surgery that was undertaken in August of 2007 is causatively connected to the original injury at work in 2005."

¶ 31 Dr. Schell provided follow up care for the claimant. He released the claimant to return to work on December 17, 2007, without restrictions. On July 25, 2008, he examined the claimant and declared him to have reached maximum medical improvement. He placed a 50 pound lifting restriction on the claimant.

¶ 32 Dr. Schell acknowledged that Dr. Jay Levin released the claimant to return to work on December 19, 2005, and that he did not have any medical treatment specifically for his back between December 19, 2005, and July 2, 2007. Dr. Schell opined that the claimant's October 27, 2005, accident caused the annular tear in his lower back, which appeared on the November 2005 MRI scan. Dr. Schell based this opinion on the history of the injury the claimant sustained and the results of the MRI scan performed after his accident. The doctor stated that the herniated disk that he operated on developed some time between the November 2005 MRI scan and the 2007 MRI scan. He stated that in order for a disk to herniate there has to be a defect in the annulus, which is the tear seen

on the MRI scan. The area of weakening led to gradual deterioration of that disk and eventual herniation causing the onset of the sciatic pain and ultimately resulting in the surgical treatment for that condition. Dr. Schell stated that the medical treatment and surgery he provided the claimant were causally related to his work-related accident. He opined that all the treatment was reasonable and necessary to cure or alleviate the claimant's symptoms.

¶ 33 The claimant testified that after his surgery the pain in his lower back and the pain radiating down his leg were mainly alleviated and his spine straightened. Dr. Schell testified that the surgery achieved a successful result.

¶ 34 Dr. Mark Levin, a board certified orthopedic surgeon, testified by evidence deposition. He stated that he performed an independent medical examination of the claimant on behalf of the employer on July 16, 2007. His evaluation included a review of medical records including records from Dr. Jay Levin, the report of the MRI study from November 18, 2005, the films from the July 5, 2007, MRI scan, and the records of Dr. Schell. He stated that when he performed his evaluation on July 17, 2007, the only MRI scan films he had were the ones from July 5, 2007. He testified that based on his review of the MRI study from July 5, 2007, the claimant had a right-sided herniation at the L4-L5 level, which impinged against the right L5 nerve root. He also noted a central disk protrusion of the L5-S1 disk. The doctor noted that when he examined the claimant, the claimant walked with an antalgic gait; complained of back pain and left leg pain; and had scoliosis of the thoracolumbar spine, which he reported began in June 2007 when his severe low back pain started. Dr. Levin stated that he asked to see the claimant's private

medical records as well as his previous MRI study to evaluate and compare the 2005 and 2007 MRI scans. He stated that he never received the claimant's personal medical records, that he did receive the MRI films from November 18, 2005, and that he did write a supplemental report.

¶ 35 Dr. Mark Levin testified that the claimant was treated in November 2005 for a lumbar myofascial strain caused by the October 27, 2005, work accident and that he recovered. He stated that the records reflect and the claimant reported acute discomfort in June 2007, when his symptoms had changed, and the clinical examinations show differences from what was reported in the 2005 records. After comparing the 2005 and 2007 MRI scans to see if there was any change in pathology of the claimant's lumbar spine, which correlated with the new acute symptoms, he concluded that there was a definite change as evidenced by the July 2007 MRI scan, which showed a right-sided disk herniation at the L4-L5 level. He averred that there was no evidence that the claimant required surgery prior to June 2007. He opined that there was no evidence that the need for surgery in August 2007 was related to the October 2005 work accident.

¶ 36 Dr. Mark Levin testified that, before his deposition, the employer's attorney showed him an MRI report dated 1998. He stated that the 1998 MRI report and the 2005 MRI scan showed similar results. They both showed the disk changes, the annular changes, and confirmed that the claimant had a new change in condition in June 2007. He testified that based on the history of the mechanism of the injury and the findings on the 2005 MRI study, the claimant sustained a lumbar strain as a result of the October 2005 accident that resolved in an appropriate fashion.

¶ 37 Dr. Mark Levin testified that the claimant told him that he was having some back pain between November 2005 and July 2007, but he did not seek treatment, and the severe pain did not develop until June 2007. In June 2007, the pain became so severe he could not walk. Dr. Levin clarified that an acute change did not mean an accident and that the claimant did not report any action or episode that caused the change.

¶ 38 On cross examination, Dr. Mark Levin was questioned about Dr. Karamichos' treatment of the claimant in 2006 and whether it showed that he was being treated for continuing back pain. The claimant's attorney showed him Dr. Karamichos' 2006 medical records on the claimant. Dr. Levin stated that on February 2, 2006, the claimant complained of low back pain and a torn disk and told Dr. Karamichos that he was seeing an orthopedic physician. Dr. Levin noted that Dr. Karamichos' physical examination of the claimant was not back related. Dr. Karamichos dispensed pain medication for a herniated disk, but the x-rays were of his shoulder, and there were limited records on the back. He opined that the claimant was having some back pain, he saw Dr. Karamichos for other issues, and Dr. Karamichos noted his back pain. He averred that back pain was not the primary reason the claimant sought medical attention. He said that this was consistent with what the claimant told him.

¶ 39 Dr. Mark Levin stated that the medical records from November 8, 2006, list a herniated disk with an unchanged status. Under the review of musculoskeletal systems, it says "[n]o restriction of motion, no atrophy or backache." Dr. Levin noted that the medical record includes no mention of back pain. He opined that the notes meant that as of November 8, 2006, Dr. Karamichos concluded that the claimant did not have back

pain. He averred that the claimant was given pain medication for the herniated disk not for a complaint of back pain. He concluded that in February 2006, the claimant had some back complaints, but six months later in November 2006, he no longer had any back pain. Dr. Levin stated that because the claimant had a chronic long-standing herniated disk, he expected a notation about the herniated disk to appear in the record.

¶ 40 Dr. Mark Levin testified that the MRI report from 1998 states there is a disruption of the annular fibers posteriorly and centrally, which is the same as a tear. He testified that he looked at the films of the November 2005 MRI scan, and the report lists a posterior bulge and a tiny tear of the annulus fibrosis. He testified that both the 2005 and 1998 MRI reports show the claimant had a small tear. He opined that the pathology of the tear probably did not progress until 2007 when there was an acute change in the nucleus pulposus progressing out. He stated that the 2007 MRI scan and the change in the claimant's symptoms including scoliosis support his opinion. He opined that the claimant's work accident resulted in a lumbar strain and that there was no evidence that the incident caused any disruption or change in the annular changes of the lumbar spine. He averred that the claimant's preexisting condition was not altered, worsened, or accelerated by the claimant's work accident.

¶ 41 The arbitrator found that the claimant did sustain an accident that arose out of and in the course of his employment. It ordered the employer to pay the claimant temporary total disability benefits of $779.52 per week for 31 3/7 weeks, commencing November 8 through December 19, 2005, and from July 6 through December 23, 2007. The employer was given a credit for $88,199.25 for medical benefits it paid. The arbitrator found that

the claimant sustained injuries that caused 30% loss of the person as a whole and ordered the employer to pay permanent partial disability benefits of $591.77 per week for 150 weeks.

¶ 42 The employer sought review of this decision before the Commission. The Commission modified the arbitrator's decision. It found that the claimant had a significant history of pre-existing low back pain that dated back to 1998 and that it was undisputed that the claimant sustained a work-related injury on October 27, 2005. It noted that the claimant did not seek medical treatment following this accident until November 7, 2005. He was diagnosed with a lumbar strain, returned to work on December 19, 2005, and worked full duty through July 6, 2007. The claimant did not seek treatment for his back from January 2006 through June 2007. The Commission found that the July 1998 and November 2005 MRI scans were similar, and Dr. Mark Levin noted that both showed an annular tear.

¶ 43 The Commission found that the claimant's condition had resolved itself as of December 19, 2005, and therefore his condition in July 2007 was not causally related to his October 27, 2005, accident. The Commission modified the award of temporary total disability benefits and found that the claimant was entitled to benefits from November 8 through December 19, 2005. It vacated the temporary total disability benefits awarded from July 6 through December 23, 2007. The Commission found that the claimant sustained a lumbar strain as a result of the October 27, 2005, work accident. It modified the arbitrator's permanent partial disability award. It found that his injury resulted in a 7 1/2% loss of the person as a whole and ordered the employer to pay him $591.77 per

week for 37 1/2 weeks. The employer was ordered to pay for all medical expenses related to the accident incurred through December 19, 2005.

¶ 44 The claimant sought judicial review of the Commission's decision in the circuit court of Lake County. The court noted that it was

> "troubled by the Commission's reliance on the testimony of Dr. Mark Levin, [the claimant's] witness. The court finds that based on the evidence in the Record, Dr. Mark Levin did not review the 1998 lumbar MRI and this fact is contrary to the doctor's testimony. [The claimant's] counsel's characterization of Dr. Levin's testimony as 'mistaken' in this regard is very charitable. The Court finds that Dr. Mark Levin never looked at the 1998 MRI film and, as a consequence, all of his opinions in this case rest on a foundation of sand and are rejected."

The court found that the Commission's reversal of the arbitrator, with modifications, constituted clear error based on the controverted, impeached, and untrue testimony of the employer's expert witness, Dr. Mark Levin. The court reversed the Commission and reinstated the arbitrator's award. The employer appealed.

¶ 45 **ANALYSIS**

¶ 46 The employer argues that the Commission's decision finding that the claimant's work-related low back injury had resolved as of December 19, 2005, and that his low back condition in July 2007 was not related to the work accident was not against the manifest weight of the evidence.

¶ 47 In workers' compensation cases, the Commission is the ultimate decisionmaker. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007).

"Accordingly, when an appeal is taken to the appellate court following entry of judgment by the circuit court on review from a decision of the Commission, we review the ruling of the Commission, not the judgment of the circuit court." *Dodaro v. Illinois Workers' Compensation Comm'n*, 403 Ill. App. 3d 538, 543, 950 N.E.2d 256, 260 (2010). The claimant has the burden of establishing by a preponderance of the evidence that his injury arose out of and in the course of his employment. *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 24, 990 N.E.2d 284. The determination of whether an injury arose out of and in the course of employment is a question of fact for the Commission to resolve, and its finding will not be set aside on review unless it is against the manifest weight of the evidence. *Id.* A finding of fact is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473.

¶ 48 It is the Commission's province to resolve disputed questions of fact, including those of causal connections, to draw permissible inferences from the evidence, and to judge the credibility of the witnesses. *Id.* This court will not reject or disregard permissible inferences drawn by the Commission just because different or conflicting inferences may be drawn from the same facts, nor can we substitute our judgment for that of the Commission on such matters unless its findings are contrary to the manifest weight of the evidence. *Id.*

¶ 49 This case involves conflicting medical opinions. Dr. Schell testified that the claimant's condition in July 2007 was causally related to his work accident while Dr.

Mark Levin testified that his condition was not causally related to the accident. It is the province of the Commission to weigh and resolve conflicts in the evidence and to evaluate witnesses. *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 18, 28 N.E.3d 181. A reviewing court will defer to the Commission's findings regarding medical issues, as its expertise in this area is well recognized. *Id*.

¶ 50 It is undisputed that the claimant injured his back in a work-related accident on October 27, 2005. He did not seek medical treatment until November 7, 2005, when Ms. Grabnick diagnosed him with a lumbar strain and recommended physical therapy. After physical therapy, the claimant treated with Dr. Jay Levin. At his first appointment with Dr. Levin on November 17, 2005, the claimant reported daily back pain in September 2005. Dr. Levin found that based on a review of the claimant's November 18, 2005, MRI scan, the claimant had an annular tear at L4-L5 and a protruding disk at both L4-L5 and L5-S1. He felt that the claimant's complaints came from the annular tear. Dr. Levin examined the claimant on December 12, 2005, and noted that he had "much improvement with physical therapy." He released the claimant to return to work on December 19, 2005, and told the claimant to return for a reassessment in five weeks, but the claimant chose not to return.

¶ 51 The claimant testified that during 2006 and 2007 the health of his back spiraled down. He also stated that between March and October 2006, his back pain was not severe enough to seek medical treatment. He claims he sought medical treatment for his back from Dr. Karamichos. On February 3, 2006, Dr. Karamichos examined the

claimant. In his patient records, he wrote that the claimant had mixed hyperlipidemia, herniated disc, edema and shoulder pain. He had x-rays of his left shoulder. He was provided with a pain prescription for his herniated disc. On July 24, 2006, the claimant requested a refill of his pain medication. On November 8, 2006, the claimant went to Dr. Karamichos for a general examination. Dr. Karamichos noted that the claimant had no backache and that his herniated disc was unchanged. He refilled the claimant's pain prescription.

¶ 52 The claimant argues that Dr. Mark Levin never saw Dr. Karamichos' medical records and that his reliance on the claimant's lack of medical attention from December 19, 2005, to June 2007 as the basis of his opinion that an acute episode occurred in the summer of 2007 ignored Dr. Karamichos' examinations confirming the existence of worsening back pain and the lengthy period of time Dr. Karamichos provided the claimant with pain medications.

¶ 53 After his first examination of the claimant, Dr. Mark Levin wrote in his report that "[i]t would be beneficial to get the records from the primary care doctor since it appears there has been an acute episode in June of 2007." He testified that he did not receive those medical records. On cross examination, the claimant's attorney showed him Dr. Karamichos' records on the claimant and questioned him extensively about them. Dr. Levin testified that the claimant had a history of a herniated disk, which accounted for the repeated notation of a herniated disk in Dr. Karamichos' records. He opined that on February 3, 2006, the claimant saw Dr. Karamichos primarily for shoulder pain and other issues. While there, he mentioned his back pain. Dr. Levin noted that the November 8,

2006, medical record shows that the claimant had no back pain. He averred that the claimant had some back complaints but, as of November 2006, he no longer had back pain.

¶ 54 The claimant did not seek treatment specifically for his back until June 25, 2007, when he saw Dr. Potetti for chiropractic care. He had several visits, but the relief was transitory. He then went to Dr. Schell on July 2, 2007. He informed Dr. Schell that his low back pain had become acutely troublesome in the last week. Dr. Schell testified that the claimant's work-related accident caused an annular tear, which appeared on the November 2005 MRI scan. He stated that the tear was a defect in the annulus, which resulted in a herniation at the L4-L5 disk. The herniation developed between the November 2005 MRI scan and the 2007 MRI scan. He opined that the medical treatment he provided and the surgery were causally related to the claimant's work-related accident.

¶ 55 Dr. Mark Levin testified that the claimant was treated in November 2005 for a lumbar myofacial strain caused by his work accident but that he recovered. Dr. Levin stated that he reviewed the MRI films from 2005 and 2007, and at the deposition he reviewed the 1998 MRI report. He testified that both the 1998 report and the 2005 MRI scan showed similar results, specifically that the claimant had an annular tear. He stated that he examined the claimant on July 16, 2007, and the claimant told him that his severe low back pain started in June 2007. This is consistent with Dr. Schell's testimony that when he examined the claimant on July 2, 2007, the claimant complained of low back pain, which had become acutely troublesome in the prior week. Dr. Levin noted that the claimant walked with an antalgic gait, complained of back and left leg pain, and had

scoliosis of the thoracolumbar spine. Dr. Levin stated that the claimant's 2007 MRI scan showed a right-sided herniation at the L4-L5 level, which impinged on the L5 nerve root. He averred that the findings on the MRI scan were consistent with the claimant's symptoms and his report that he started experiencing acute discomfort in June 2007.

¶ 56 Dr. Levin opined that the pathology of the claimant's tear did not progress until 2007 when there was an acute change in the nucleus pulposus progressing out. He stated that the 2007 MRI scan and the change in the claimant's symptoms including the scoliosis support his opinion. He opined that the claimant's work accident resulted in a lumbar strain and that there was no evidence that the incident caused any disruption in the annular changes of the lumbar spine. He averred that the claimant's preexisting condition was not altered, worsened, or accelerated by his work accident.

¶ 57 The claimant argues that the Commission was mistaken in relying on the opinion of Dr. Mark Levin. He claims that Dr. Levin could not have seen the 1998 MRI film for purposes of comparing it to the 2005 MRI film. Dr. Levin never claimed to have reviewed the MRI films from 1998. In his report dated August 3, 2007, he stated that he had received and compared the 2005 and 2007 MRI studies. He makes no mention of reviewing the 1998 MRI scan. During his deposition, he clearly stated that he did not see the 1998 MRI report until before the deposition and then, while holding the report, he testified as to its contents. In his brief, the claimant quotes parts of Dr. Levin's testimony out of context to infer that he claimed to have examined the 1998 MRI films. When read as a whole, it is evident that Dr. Levin discussed the 1998 MRI report and stated that he looked at the 2005 MRI films and report.

¶ 58 The claimant argues that he was not diagnosed with a lumbar strain following his work-related accident. He states that Dr. Jay Levin diagnosed him with an annular tear at L4-L5 and that his main complaints came from the tear. Dr. Mark Levin does not deny that the claimant had an annular tear. He opined that both the 1998 and the 2005 MRI scan showed an annular tear. Ms. Grabnick diagnosed the claimant with a lumbar strain. He was able to return to full duty work in December 2005 and continue working until July 2, 2007. This supports Dr. Mark Levin's opinion that the claimant suffered from a lumbar strain that resolved.

¶ 59 When reviewing a decision of the Commission, the relevant test is whether there is sufficient evidence in the record to support the decision. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 142-43, 923 N.E.2d 266, 272 (2010). The claimant had a history of back pain dating to at least 1994. He told Dr. Jay Levin that he had daily back pain in September 2005. On November 7, 2005, eleven days after his work accident, he was diagnosed with a lumbar strain. He returned to work on December 19, 2005. After his return to work, he opted not to return to Dr. Jay Levin for a recommended reassessment. He did not seek treatment specifically for back pain until June 2007. He worked full duty from December 19, 2005, until July 6, 2007. Dr. Schell testified that the claimant's condition of ill-being in 2007 was causally related to his work accident. He opined that the claimant’s October 2005 work accident caused the annular tear in his low back, which appeared on the November 2005 MRI scan. He averred that the annular tear resulted in the eventual herniation of the L4-L5 disk, necessitating surgery. He never viewed the 1998 MRI scan report or films. Dr. Mark

Levin testified that the claimant had a lumbar strain caused by his work accident and that he recovered. He stated that both the 1998 and 2005 MRI scan reports showed an annular tear. He testified that in 2007 the claimant's tear progressed and there was an acute change in his condition. He stated that the claimant's condition in 2007 was not related to his work accident. The Commission weighed the conflicting medical opinions and considered the evidence. There is sufficient evidence in the record to support its finding that the claimant's low back condition in 2007 was not causally related to his October 27, 2005, work accident.

¶ 60 The employer next argues that the Commission's determination that the claimant's condition of ill-being had resolved on December 19, 2005, and that he was only entitled to expenses from October 27, 2005 through December 19, 2005, was not against the manifest weight of the evidence. As discussed above, the Commission's determination that the claimant suffered from a lumbar strain that resolved on December 19, 2005, is not against the manifest weight of the evidence. As a result, medical expenses incurred after that date were not related to his work injury.

¶ 61 The employer next argues that the Commission's determination that the claimant was only entitled to temporary total disability benefits from November 8 through December 19, 2005, was not against the manifest weight of the evidence. Because his work related injury had resolved as of December 19, 2005, he was not entitled to temporary total disability benefits beyond that date.

¶ 62 Finally, the employer argues that the Commission's determination that the claimant's work-related injury only caused 7 1/2% loss of the person as a whole was not

against the manifest weight of the evidence. "The determination of the extent or permanency of an employee's disability is a question of fact for the Commission, and its decision will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Will County Forest Preserve Dist. v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110077WC, ¶ 15, 970 N.E.2d 16. The claimant sustained a lumbar strain after his October 27, 2005, work accident. He recovered from his work-related injury and returned to full duty work on December 19, 2005. There is sufficient evidence in the record to support the Commission's determination that the claimant's work related injury resulted in a 7 ½% loss of the person as a whole.

¶ 63 **CONCLUSION**

¶ 64 For the foregoing reasons, we reverse the judgment of the circuit court of Lake County and reinstate the Commission's decision.

¶ 65 Reversed and Commission's decision reinstated.