

**FILED**

April 22, 2019  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2019 IL App (4th) 180242WC-U

Workers' Compensation  
Commission Division  
Order Filed: April 22, 2019

No. 4-18-0242WC

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FOURTH DISTRICT

JASON FILBRUN,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Sangamon County
	)	
v.	)	No. 2017 MR 627
	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION <i>et al.</i> ,	)	Honorable
	)	Jeffrey E. Tobin,
(Sangamon County Sheriff, Appellee).	)	Judge, Presiding.

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

**ORDER**

- ¶ 1 *Held:* That portion of the circuit court's judgment affirming the Workers' Compensation's (Commission) denial of medical expenses incurred by the claimant after June 12, 2012, is vacated and the circuit court's judgment is affirmed in all other respects; that portion of the Commission's decision which denied the claimant payment for medical expenses incurred after June 12, 2012, is reverses; and the matter is remanded to the Commission with directions.
- ¶ 2 The claimant, Jason Filbrun, appeals from a judgment of the circuit court of Sangamon County, confirming the decision of the Illinois Workers' Compensation Commission

(Commission) which found that he failed to prove that his current condition of spinal ill-being is causally related to his work accident of April 25, 2011, limited his award of permanent partial disability benefits to 7.5% of a man as a whole, and denied his claim for maintenance benefits, vocational rehabilitation, and medical expenses incurred after June 12, 2012. For the reasons which follow, we: vacate that portion of the circuit court's judgment which confirmed Compensation's denial of medical expenses incurred by the claimant after June 12, 2012; affirm the circuit court's judgment in all other respects; reverse that portion of the Commission's decision which denied the claimant payment for medical expenses incurred after June 12, 2012; and remand the matter to the Commission with directions.

¶ 3 The following recitation of the facts relevant to a disposition of this appeal is taken from the evidence adduced at the arbitration hearing held on May 23, 2016.

¶ 4 Prior to the events giving rise to this claim, the plaintiff underwent medical treatment for back problems. From March 2010 through March 2011, the claimant came under the care of Dr. Dana Oliver, a chiropractor. Dr. Oliver's records reflect that she treated the claimant for mid-back pain. She initially diagnosed intersegmental joint dysfunction and provided chiropractic treatments. In April 2010, x-rays of the claimant's spine and left ribs were taken. Dr. Oliver recorded an impression of a fractured vertebra at T9 with anterior wedging of the vertebral body. In April 2010, Dr. Oliver advised Dr. Nicole Florence, the claimant's primary care physician, that she had been treating the claimant for mid-back pain with no improvement.

¶ 5 On May 5, 2010, the claimant was seen by Dr. Joseph Williams, a spine specialist, on referral from Dr. Florence. At that time, the claimant complained of back pain. According to Dr. Williams's records the claimant had mild tenderness of the thoracic spine. X-rays were taken of the claimant's thoracic spine which Dr. Williams interpreted as revealing a compression

fracture at T9 with mild kyphosis along with some sclerosing of the endplate, consistent with a chronic fracture. Dr. Williams diagnosed a T9 compression fracture and chronic neck axial pain. He ordered an MRI scan of the claimant's cervical and thoracic spines.

¶ 6 On May 13, 2010, the claimant underwent the MRI scans as ordered by Dr. Williams. The MRI of the claimant's thoracic spine revealed a Schmorl's node formation at T6-T7 through T12-L1 with anterior wedging of the T8, T9, and T10 vertebra, which might relate to a sequelae of Scheuermann's disease. The scan also revealed mild disc bulges with near ventral cord abutment at T8-T9. The scan of the claimant's cervical spine disclosed disc protrusions at C4-C5 and C5-C6.

¶ 7 When the claimant saw Dr. Williams on July 21, 2010, he complained of pain in his thoracic spine. Dr. Williams noted that the claimant's pain complaints were consistent with intercostal radiculopathy and Scheuermann's disease which had become symptomatic.

¶ 8 The claimant saw Dr. Williams on August 24, 2010, and reported that he had not received any significant relief from chiropractic manipulations. On examination, the claimant exhibited tenderness to palpation of the thoracic spine. Dr. Williams diagnosed chronic thoracic back pain, a compression fracture at T9, and degenerative disc disease. Dr. Williams recommended a physical therapy evaluation and referred the claimant to Dr. Paul Smucker for a consultation.

¶ 9 The claimant presented to Dr. Smucker on October 1, 2010, complaining of persistent thoracic spine pain. He reported experiencing pain after sustaining a blow to his back in March 2010. Dr. Smucker noted that the claimant showed tenderness to palpation of the thoracic spine. He reviewed the MRI of the claimant's thoracic spine and noted that it revealed a significant compression fracture at T9, mid-level disc disease with thinning throughout most of the thoracic discs, and some anterior angulation at T8-T9 with a small disc protrusion abutting the ventral

cord at T8-T9. No T2 changes suggestive of edema were noted. Dr. Smucker diagnosed thoracolumbar pain and multi-level vertebral compressions which might be secondary to Scheuermann's disease. Dr. Smucker recommended an updated MRI

¶ 10 The claimant had the recommended MRI on October 6, 2010, which, according to the radiologist's report, revealed: moderate chronic wedge compression deformity of T9, mild to moderate spinal canal stenosis, mid to lower thoracic degenerative endplate irregularity with degenerative disc loss height, and kyphosis. No evidence of a recent fracture was noted.

¶ 11 In February 2011, Dr. Oliver lifted the claimant's work restrictions which she had imposed.

¶ 12 The claimant testified that, on April 25, 2011, he was employed by the Sheriff of Sangamon County (Sheriff) as a correctional officer working at the Sangamon County Jail when he sustained the accident giving rise to the instant claim. According to the claimant, an inmate pushed him, causing him to hit the center of his back on a steel door frame. The claimant fell to the ground; after which he got up and restrained the inmate. He stated that, later that same day, his back started to hurt, and he sought treatment at the St. John's Hospital emergency room. The records of that visit reflect that the claimant complained of mid-back and right knee pain and reported a past medical history of fractures at the T8, T9, and T10 levels of the thoracic spine. X-rays were taken which revealed old compression fractures at T8, T9, and T10. No evidence of a new fracture was noted. The emergency room physician diagnosed contusions of the right knee and thoracic spine. The claimant was advised to rest, apply ice and heat to the areas where he was experiencing pain, and see his family doctor for follow-up treatment. The claimant was released to return to work.

¶ 13 The claimant saw Dr. Florence in April and May of 2011. The claimant complained of

knee and back pain and gave a history of being injured while working on April 25, 2011. Dr. Florence diagnosed thoracic strain and referred the claimant to Dr. Williams. Dr. Florence advised the claimant to remain off of work until he could be seen by Dr. Williams.

¶ 14 On May 11, 2011, the claimant presented to Dr. Williams. Dr. Williams noted that the claimant had significant muscle spasms and diagnosed an acute thoracic strain, chronic thoracic compression fractures, and a possible new thoracic compression fracture. Dr. Williams ordered an MRI scan which the claimant underwent on May 6, 2011. The scan revealed chronic compression deformities with no edema within the compressed vertebrae. No spinal stenosis or thoracic disc herniations were detected.

¶ 15 During the claimant's next visit, Dr. Williams prescribed pain medication and a course of physical therapy. The claimant began physical therapy on May 31, 2011. During his initial evaluation, the claimant gave a history of being slammed into a door while working on April 25, 2011. He also reported a previous back injury one year earlier which he stated resolved with rest and medication. The claimant complained of pain and exhibited pain behavior.

¶ 16 The claimant underwent physical therapy treatments in June 2011, during which he complained of mid-back pain. His last secession was on June 17, 2011.

¶ 17 When the claimant saw Dr. Williams on June 21, 2011, he complained of continuing pain and reported no improvement with physical therapy. Dr. Williams ordered a muscular bone scan which was performed on July 12, 2011. The scan showed no abnormal radicular uptake associated with compression deformities in the thoracic spine.

¶ 18 On July 22, 2011, the claimant had a physical therapy re-evaluation at Midwest Rehab, during which he reported ongoing pain in his thoracic spine extending into his lower back. He denied any radicular symptoms. The claimant was taken off of work as of that date.

¶ 19 The claimant continued with physical therapy in July and August 2011. During those sessions, the claimant reported continuing back pain. On August 17, 2011, he reported that he lost his balance and fell on his right side while showering on August 16, 2011. He told the therapist that, when he slipped, he felt something catch in his back and his muscles “seized up.” According to the claimant, he was experiencing a pain level of 8 on a scale of 10. Dr. Williams’s office was contacted, and the claimant was advised to stop physical therapy until he could be seen by the doctor.

¶ 20 When the claimant saw Dr. Williams on August 19, 2011, he again reported having slipped while showering on August 16, 2011. He stated that his pain was “slightly worse.” X-rays of the claimant’s back were taken with no acute findings. Dr. Williams prescribed medication, referred the claimant to Dr. Keith Bridwell for a second opinion, and took the plaintiff off of work.

¶ 21 The claimant was examined by Dr. Buchowski at Washington University on September 27, 2011. The claimant complained of moderate to severe pain in his thoracic spine. He reported that his symptoms initially began in September or October 2010 when he struck his back on the underside of a desk, but his pain worsened when he was shoved into a steel door frame while working. In addition to examining the claimant, Dr. Buchowski reviewed the MRI of the claimant’s spine taken in October 2010. Dr. Buchowski recorded an impression of thoracic back pain secondary to an injury in October 2010 and a work injury in April 2011. He noted: “I believe that the Patient’s current symptoms are causally and directly related to his work related injury. He does appear to have Scheuermann’s Disease, which almost certainly predated his existing symptoms; however, I believe that the work related injury exacerbated the underlying condition.” Dr. Buchowski recommended non-operative treatment in the form of an

evaluation by a physiatrist and a new MRI scan. He also indicated that the claimant could work with certain specified lifting restrictions, no bending, no twisting, and frequent standing and walking breaks. Dr. Buchowski noted that the claimant should be allowed to take pain medication as needed.

¶ 22 On October 14, 2011, the claimant returned to see Dr. Smucker, the physiatrist who treated him in October 2010. The claimant reported pounding, aching pain in the midline of his back that amplified with any significant activity. Following his examination of the claimant, Dr. Smucker again diagnosed thoracolumbar pain and multi-level vertebral compression fractures which were chronic in nature. He had no further recommendations for care. Dr. Smucker was of the opinion that surgery should be explored. He opined that the claimant could not perform even light duty work and, as a consequence, took him off of work completely.

¶ 23 At the request of the Sheriff, the claimant was examined by Dr. Patricia Hurford on November 8, 2011. In her report of that examination, Dr. Hurford noted that the claimant complained of constant pain. The claimant reported that, after his March 2010 injury, he was able to resume his duties as a correctional officer, but to a lesser extent, and required more frequent breaks. After that injury, he was no longer able to play softball and was only able to run up to 3 miles as compared to the 5 miles he could run prior to that injury. The claimant stated that, after his work injury on April 25, 2011, he had “significant difficulty dealing with pain” and was primarily sedentary or bedridden. On examination, Dr. Hurford found that the claimant had increased thoracic kyphosis with extension. She noted that there were no acute deformities identified on the claimant’s diagnostic studies. However, those studies did reflect moderate thoracic kyphosis; compression deformity at T8; and disc space narrowing, particularly between T9-T10. Following her examination, Dr. Hurford recommended that the claimant stop smoking

and decrease his reliance on bed rest and narcotic medication. After reviewing the claimant's medical records, Dr. Hurford issued an addendum report dated November 21, 2011, in which she wrote that, assuming the claimant's history was accurate that he was pain free and active prior to his work accident of April 25, 2011, and did not require pain medication or other treatment for his thoracic spine, it is reasonable to assume that his work accident resulted in an exacerbation of his pain symptoms. She made clear, however, that the underlying condition of the claimant's spine was not the result of his April 25, 2011 work accident. Dr. Hurford opined that the claimant's inactivity would lead to more chronic and severe pain complaints and that his excessive use of tobacco and pain medication was aggravating his condition. She found a pattern of pain and dysfunction that was developing in 2010 and extending into his April 25, 2011 injury and subsequent treatment. Dr. Hurford was of the belief that cognitive behavioral techniques would likely result in maximum benefit to the claimant.

¶ 24 On December 13, 2011, the claimant was examined—at the request of the Sheriff's insurance carrier—by Dr. Salvacion at the Spineworks Pain Center. As the result of that examination, Dr. Salvacion noted: spasms; tilted posture; and limited range of motion in the thoracic and lumbar spine, secondary to pain. Dr. Salvacion diagnosed thoracic compression fractures, myofascial pain, and thoracic degenerative disc disease. The claimant was scheduled for a trial of thoracic epidural steroid injections and prescribed medication. He was taken off of work for 30 days.

¶ 25 When the claimant saw Dr. Florence on December 14, 2011, for a routine follow-up examination, he requested pain medication. The claimant reported that, although he was able to perform daily living activities without limitation, he was unable to work. Dr. Florence diagnosed chronic pain due to trauma and a closed fracture of the thoracic vertebra with spinal cord injury.



She prescribed a Fentanyl patch.

¶ 26 On January 17, 2012, the claimant received a thoracic epidural steroid injection administered by Dr. Salvacion.

¶ 27 On February 8, 2012, the claimant returned to work for the Sheriff in a light duty capacity. The parties stipulated that the plaintiff was temporarily totally disabled from April 26, 2011, through February 7, 2012.

¶ 28 When the claimant saw Dr. Williams on February 27, 2012, he complained of thoracic spine pain. Dr. Williams documented his opinion that the claimant could ultimately return to full activity without surgery, but would still require pain medication. Dr. Williams again recommended that the claimant undergo physical therapy.

¶ 29 The claimant was seen at Midwest Rehab on March 6, 2012, for a physical therapy evaluation. He described intermittent pain in his mid-back, but no symptoms in his upper or lower extremities. He reported no difficulty standing or walking, but did state that his pain increased if he sat for more than an hour or mopped his kitchen floor. On March 9, 2012, the claimant reported having walked three miles. He continued physical therapy throughout March, April, and May of 2012. During those sessions, the claimant reported walking as much as six miles and initiating aquatic exercises.

¶ 30 On March 21, 2012, the claimant was again examined by Dr. Florence. Although the claimant continued to complain of pain, the doctor noted that the claimant reported a “huge” improvement in his symptoms. Following her examination of the claimant and her discussions with him, Dr. Florence diagnosed depression, chronic pain due to trauma, allergic rhinitis, a closed fracture of the thoracic spine, mid-back pain, nicotine dependence, and a thoracic sprain.

¶ 31 When the claimant saw Dr. Williams on March 27, 2012, he reported feeling better and

making progress with physical therapy. He also reported using less pain medication. Dr. Williams imposed work restrictions of no lifting, pushing, or pulling more than 25 pounds; no repetitive bending, twisting, or stooping; and no climbing ladders, crawling, or squatting.

¶ 32 On April 10, 2012, the claimant began taking on-line classes with Argosy University.

¶ 33 Throughout May of 2012, the claimant was seen by Drs. Florence and Williams. He reported improvement in his symptoms with physical therapy. However, Dr. Williams noted his concern over the amount of pain medication that the claimant was using.

¶ 34 The claimant had progressed to work hardening in May 2012. He completed the program on June 12, 2012, and it was noted that he was functioning between a light and medium physical demand level.

¶ 35 Although the claimant denied any worsening symptoms when he saw Dr. Williams on June 12, 2012, he stated that he still required a significant amount of narcotic pain medication. Dr. Williams noted that his examination of the claimant revealed that he had good strength in his upper and lower extremities bilaterally, normal gait, and that his lumbar and thoracic spines were soft and supple. Dr. Williams diagnosed thoracic kyphosis secondary to Scheuermann's Disease, thoracic degenerative disc disease, and chronic thoracic back pain. Dr. Williams noted that the claimant requested that he issue a restriction stating that he not have any interaction with inmates. Dr. Williams issued the restriction requested. He found the claimant to be at maximum medical improvement (MMI) and released him from care.

¶ 36 On June 25, 2012, the Sheriff notified the claimant that his light duty position would be terminating on August 8, 2012, and he would need to return to full duty following that date. The claimant did not return to full duty work, and as a consequence, his employment with the Sheriff was terminated on August 9, 2012.

¶ 37 When the claimant saw Dr. Florence on September 4, 2012, he complained of cramping in his right hand and moderate pain in his lower extremities bilaterally. According to Dr. Florence's notes, the claimant was unable to attribute his symptoms to any known event.

¶ 38 Dr. Florence met with the claimant on November 19, 2012, to review his medication. The claimant reported worsening symptoms, arthralgia, joint stiffness, and myalgia.

¶ 39 On February 19, 2013, Dr. Florence completed a temporary disability claim form indicating that the claimant was unable to work as the result of his work accident and stating that she did not know when he would be able to return to work.

¶ 40 The claimant saw Dr. Florence on May 24, 2013, complaining of constant moderate pain in his lower and mid-back. Dr. Florence noted that the claimant had limited range of motion due to pain.

¶ 41 On July 31, 2013, Dr. Hurford again examined the claimant at the request of the Sheriff. In her report of that examination, Dr. Hurford found that the claimant's symptoms did not lead to any acute fractures in his thoracic spine; and although he was in need of ongoing pain management, the claimant's need for further treatment is not the result of his work injury. According to Dr. Hurford, the claimant had a pre-existing pattern of pain and dysfunction that developed as early as 2010 and his need for additional treatment was for his pre-existing thoracic symptoms and Scheuermann's Disease. She was of the belief that Dr. Williams's restriction that the claimant avoid inmate contact was based solely on the claimant's inability to deal with pain symptoms which pre-existed his April 25, 2011 work injury. Dr. Hurford found the claimant to be at MMI and that he did not require any restrictions as the result of the April 25, 2011 accident. In a subsequent report dated August 12, 2013, Dr. Hurford opined that there are no limitations on the claimant's ability to return to his previous position as a correctional officer.

¶ 42 In her notes of the claimant's visits on August 26, 2013, September 3, 2013, and December 2, 2013, Dr. Florence noted that the claimant was gaining weight and that he remained temporarily disabled as a result of his April 25, 2011 work accident.

¶ 43 On February 19, 2014, the claimant had a functional capacity evaluation (FCE). The report of that evaluation states that the claimant's participation was self-limited before objective signs of maximum effort could be observed, and inconsistencies were observed between the claimant's performance and his physical movements. The claimant testified that, although he was in pain and nauseous during the exam, the therapist refused to allow him to participate in the evaluation on another day.

¶ 44 When the claimant saw Dr. Florence on March 3, 2014, he continued to complain of back pain. The claimant reported that, although he was able to perform activities of daily living without limitation, he was limited in his ability to do housework, engage in sports, or work. Dr. Florence was of the opinion that the claimant was able to do sedentary work.

¶ 45 On March 12, 2014, Dr. Florence completed a Social Security Medical Assessment for the claimant. She described his current symptoms as chronic pain and limited his lifting, sitting, and walking. She described the claimant's prognosis as "poor." Dr. Florence found the claimant capable of performing low-stress sedentary work, but did not think that he could engage in heavy lifting, pushing, or pulling.

¶ 46 When deposed on May 20, 2014, Dr. Williams testified to his treatment of the claimant and the results of the claimant's diagnostic tests which revealed a compression deformity at T6, a possible compression deformity at T9, and mild compression deformities at T8 and T10. He stated that the claimant has Scheuermann's Disease which probably developed during adolescence. Dr. Williams opined that the claimant's work accident of April 25, 2011,

aggravated and exacerbated the preexisting condition of his thoracic spine, causing more pain. However, given the mechanism of the work injury and the previous condition of the claimant's spine, he did not expect that the exacerbation would be permanent. Dr. Williams stated that, based upon the claimant's description of his work accident, he would have expected the claimant's symptoms to have resolved in several months. Dr. Williams was of the opinion that the claimant's work accident did not result in any objective changes in his spine. He testified that he never thought that the claimant was malingering and found his pain complaints to be legitimate. Dr. Williams testified that the claimant's fall while showering in August 2011 could have caused an aggravation of his underlying condition. However, the only way to determine whether the claimant's symptoms were from his fall while showering or from his work accident would be from the claimant's reported history. According to Dr. Williams, the claimant told him that his pain never improved after the April 25, 2011 incident. Dr. Williams stated that, due to the claimant's spinal condition, the only restriction on his work was to avoid inmate interaction because his job as a correctional officer posed the possibility of frequent altercations. He admitted, however, that the restriction would be in place regardless of the April 25, 2011 work accident. Dr. Williams believed that the claimant should also avoid work as a laborer.

¶ 47 Following her examination of the claimant on June 3, 2014, Dr. Florence was still of the opinion that he was temporarily totally disabled and completed a form stating as such. On September 5, 2014, Dr. Florence diagnosed the claimant as suffering from a Vitamin D deficiency, thoracic sprain, myofascial pain syndrome, and depression. Dr. Florence referred the claimant to Dr. Schenkelberg for evaluation of his anger, anxiety, and depression and to Dr. Smucker for pain control.

¶ 48 On September 12, 2014, the claimant saw Mary Conklen, a nurse practitioner in Dr.

Schenkelberg's office. During that visit, the claimant gave a history of his work accident, the treatment he had received, and the medication he had taken. He described his moods, inability to concentrate, difficulty sleeping, and anxiety. The claimant denied experiencing depression or anxiety prior to his work accident.

¶ 49 The claimant presented to Dr. Smucker on September 15, 2014, complaining of mid-back pain, pain in his shoulders bilaterally, numbness, tingling, and pain radiating down both extremities. He denied experiencing cervical pain. According to the claimant, his pain had been ongoing and unchanged for three years. Following his examination of the claimant, Dr. Smucker noted an impression that the claimant suffered from Scheuermann's Disease, chronic thoracic pain, bilateral upper extremity diffuse paresthesia and numbness, possible cervical radiculopathy, and peripheral neuropathy or polyneuropathy. Dr. Smucker recommended that the claimant undergo EMG testing and have cervical and thoracic MRI's.

¶ 50 When the claimant next saw Dr. Smucker on October 10, 2014, the doctor reviewed the results of the EMG and MRI's which he had ordered. In his notes of that visit, Dr. Smucker recorded that the claimant's EMG showed bilateral carpal tunnel syndrome, his cervical MRI revealed mild cervical disc disease with mild spondylosis at C5-C6 without canal or neural foraminal stenosis, and his thoracic MRI revealed stable chronic wedge deformities at T8-T9 and T10. Dr. Smucker diagnosed bilateral carpal tunnel syndrome and mild cervical degenerative disc disease.

¶ 51 The claimant returned to see Dr. Williams on November 24, 2014, complaining of cervical pain along with pain in his neck and hands. On examination, Dr. Williams found the claimant's cervical range of motion to be within normal limits for flexion, extension, lateral flexion, and rotation bilaterally. His assessment was numbness, neck pain, and carpal tunnel

syndrome.

¶ 52 The claimant underwent a left carpal tunnel release on January 2, 2015, and received post-operative care in January and February 2015.

¶ 53 The claimant saw Dr. Florence on March 6, 2015, complaining of dull, aching pain. He denied difficulty concentrating, sleeping, or eating. He did complain of depression. Dr. Florence diagnosed chronic pain due to trauma and prescribed a Fentanyl patch.

¶ 54 Dr. Williams examined the claimant on March 13, 2015, and March 30, 2015, at which time, the claimant reported no problems and expressed being pleased with his progress. Dr. Williams noted that the claimant was going to attend physical therapy.

¶ 55 The claimant was seen by Conklen on several occasions from June 2015 through March 2016. He reported being unhappy and frustrated due to his job loss, lack of income, and having to stay home with his children. The claimant was diagnosed with Major Depressive Disorder and non-specific anxiety.

¶ 56 On May 15, 2016, a video of the claimant was taken which showed him using a push lawn mower without difficulty and using a leaf blower. He was also filmed dragging a bag of yard waste, jumping to remove Christmas lights from a tree, carrying a ladder, and climbing the ladder to remove Christmas lights from the tree.

¶ 57 The claimant testified to his work accident on April 25, 2011, when he was pushed into a steel door frame by an inmate and the medical treatment which he received thereafter. He acknowledged receiving medical treatment in 2010 for a back injury he sustained when he struck the underside of a desk. He stated that prior to April 25, 2011, he was able to play softball, bowl, and play volleyball, but after his work accident he was unable to participate in sports due to back pain. On cross-examination, however, the claimant admitted that he had not attempted any of

those activities since his work accident. The claimant stated that his pain symptoms vary; some days are better than others. The claimant admitted that he had not searched for other employment after being terminated by the Sheriff in August 2012.

¶ 58 Following the arbitration hearing held on May 23, 2016, in accordance with the provision of the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* West 2010) the arbitrator issued a written decision on July 19, 2016, finding that the claimant sustained an accident on April 25, 2011, which arose out of and in the course of his employment with the Sheriff. However, the arbitrator found that the claimant failed to prove that his current condition of ill-being is causally related to this employment accident. The arbitrator noted that the evidence established that the claimant did not sustain any objective changes to his thoracic spine as a result of his work accident as revealed in the MRI's taken both before and after April 25, 2011, and the testimony of his treating physician, Dr. Williams. The arbitrator found that the Sheriff had paid for all reasonable and necessary medical expenses incurred by the claimant prior to June 12, 2012, the date that he reached MMI. The arbitrator awarded the claimant 41 1/7 weeks of temporary total disability (TTD) benefits pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2014)), for the period from April 26, 2011, through February 7, 2012, and 37.5 weeks of permanent partial disability (PPD) benefits pursuant to section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2014)), for a 7.5% loss of the person as a whole. The arbitrator denied the claimant's request for an award of either maintenance benefits or vocational rehabilitation expenses.

¶ 59 The claimant filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On June 30, 2017, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision.



¶ 60 The claimant sought a judicial review of the Commission's decision in the circuit court of Sangamon County. On March 7, 2018, the circuit court confirmed the Commission's decision, and this appeal followed.

¶ 61 It is undisputed that the claimant suffered an accident on April 25, 2011, which arose out of and in the course of his employment with the Sheriff, and the parties stipulated that he was temporary totally disabled from April 26, 2011, through February 7, 2012.

¶ 62 For the claimant's first assignment of error, he argues that the Commission's finding that he failed to prove that his current condition of spinal ill-being is causally related to his work accident of April 25, 2011, is against the manifest weight of the evidence. He contends that the Commission: placed "too much emphasis on [his] pre-existing medical condition;" disregarded the findings and opinions of his treating physicians; and "wrongfully refused to apply the chain of events analysis." We disagree.

¶ 63 Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). When, as in this case, a claimant suffers from a pre-existing condition, recovery will depend upon the claimant's ability to show that his work related accident aggravated or accelerated the condition such that his current condition of ill-being can be said to have been causally connected to the work accident and not simply the result of a normal degenerative process of the pre-existing condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 204-05 (2003). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, determine the weight to be accorded to their testimony, and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79

Ill. 2d 249, 253 (1980). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence; rather, the appropriate test is "whether there [is] sufficient factual evidence in the record to support the Commission's decision." *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 64 Prior to the work accident giving rise to this claim, the claimant suffered from spinal problems. The claimant underwent MRI scans of his thoracic and cervical spines on May 13, 2010. As to his thoracic spine, the scan revealed a Schmorl's node formation at T6-T7 through T12-L1, anterior wedging of the T8, T9, and T10 vertebra related to Scheuermann's Disease, and mild disc bulges with near ventral cord abutment at T8-T9. The scan of the claimant's cervical spine disclosed disc protrusions at C4-C5 and C5-C6. Dr. Williams, one of the claimant's treating physicians, testified that the claimant's work accident of April 25, 2011, did not result in any objective changes to his spine. In her addendum report of November 21, 2011, Dr. Hurford wrote that, although it is reasonable to assume that the claimant's work accident exacerbated his pain symptoms, the underlying condition of the claimant's spine is not the result of his work accident. In the report of her July 31, 2012 examination of the claimant, Dr. Hurford wrote that the claimant's need for any future treatment is not the result of his work injury; any need for additional treatment is for his pre-existing thoracic symptoms and Scheuermann's Disease. The Commission found that "[b]ased upon a complete lack of any change in the diagnostic studies and the overwhelming evidence that [the claimant] did not sustain an acute injury to his spine, along with significant credibility issues, the preponderance of the evidence supports the conclusion that [the claimant] suffered a thoracic strain or exacerbation of his underlying chronic thoracic spine condition as a result of the April 25, 2011 work accident." Crediting the opinions

of Drs. Williams and Hurford, the Commission concluded that the claimant failed to prove that his current condition of ill-being is causally related to his work accident. As noted earlier, it was the function of the Commission to decide questions of fact, judge the credibility of witnesses, determine the weight to be accorded to their testimony, and resolve conflicting medical evidence. The Commission relied upon the opinions of Drs. Williams and Hurford in determining that the claimant failed to prove that his current condition of ill-being is causally related to his work accident of April 25, 2011, and we are unable to find that an opposite conclusion to that reached by the Commission in this regard is readily apparent.

¶ 65 The claimant asserts that the Commission wrongfully refused to apply a chain of events analysis. We find, as did the Commission, that a chain of events analysis is not applicable under the circumstances of this case.

¶ 66 “A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee’s injury.” *International Harvester v. Industrial Comm’n*, 93 Ill. 2d 59, 63-64 (1982). In this case, the claimant’s MRI of May 13, 2010, and the opinions of Drs. Williams and Hurford establish that the claimant was not in good health prior to his work accident of April 25, 2011. He suffered from conditions of spinal ill-being, and his work accident of April 25, 2011, did not result in any objective changes to his spine.

¶ 67 Although Dr. Florence held causation opinions opposite to those of Drs. Williams and Hurford, it was the function of the Commission to resolve the conflict. It credited the opinions of Drs. Williams and Hurford and we are unable to find that an opposite determination is clearly apparent.

¶ 68 As for the claimant's depression, the Commission correctly found that there are no medical opinions establishing a causal relationship between the claimant's depression and his work accident.

¶ 69 Based upon the foregoing analysis, we conclude that the Commission's finding that the claimant failed to prove that his current condition of ill-being is causally related to his work accident of April 25, 2011, is not against the manifest weight of the evidence.

¶ 70 Next, the claimant argues that the Commission erred in limiting his medical expenses to those incurred prior to June 12, 2012, the date upon which Dr. Williams found him to have reached MMI. He contends that the Sheriff is responsible for the payment of expenses incurred after June 12, 2012, for pain management, including Dr. Florence's charges, the epidural steroid injections administered by Dr. Salvacion, and pain medication.

¶ 71 Under section 8(a) of the Act (820 ILCS 305/8(a) (West 2014)), a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of his employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *University of Illinois v. Industrial Comm'n*, 232 Ill. App. 3d 154, 164 (1992). Whether a medical expense is either reasonable or necessary is a question of fact to be resolved by the Commission, and its determination will not be overturned on review unless it is against the manifest weight of the evidence. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534 (2001).

¶ 72 Dr. Williams found that the claimant had reached MMI as of June 12, 2012, and discharged him from care on that date. It was not until July 31, 2013, however, that Dr. Hurford found that the claimant was not in need of any further medical treatment as a result of his work

accident. It appears from the decision of the arbitrator, which the Commission adopted, that the determination that the claimant's recoverable medical expenses were limited to those incurred prior to June 12, 2012, was based solely on the fact that the claimant had reached MMI on that date. However, medical expenses to help alleviate pain from a condition causally related to the claimant's employment incurred after he has reached MMI are compensable. *Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill. App. 3d 758, 765 (2001).

¶ 73 We believe that the Commission erred in denying the claimant recovery for medical expenses incurred after June 12, 2012, merely because he had reached MMI on that date. Consequently, we vacate that portion of the Commission's decision denying the claimant recovery for medical expenses incurred after June 12, 2012, and remand this matter to the Commission to determine what, if any, medical expenses were incurred by the claimant after June 12, 2012, to alleviate pain resulting from his work accident and to make an appropriate award based on that determination.

¶ 74 The claimant also argues that the Commission erred in refusing to award him maintenance benefits and vocational rehabilitation expenses. His argument in this regard is centered on the expenses which he incurred in participating in on-line courses with Argosy University. He contends that his enrollment in those online courses was done to qualify him for employment which could accommodate his ongoing pain.

¶ 75 Section 8(a) of the Act (820 ILCS 305/8(a) (West 2014)) authorizes awards for vocational rehabilitation. The section provides that the employer shall pay for "vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto." 820 ILCS 305/8(a) (West 2014); *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067,

1075 (2004). “Vocational rehabilitation may include, but is not limited to, counseling for job searches, supervising a job search program, and vocational retraining including education at an accredited learning institution.” 820 ILCS 305/8(a) (West 2014). “A claimant is generally entitled to vocational rehabilitation when he sustains a work-related injury which causes a reduction in his earning power and there is evidence that rehabilitation will increase his earning capacity.” *Greaney v. Industrial Comm’n*, 358 Ill. App. 3d 1002, 1019 (2005) (quoting *National Tea Co. v. Industrial Comm’n*, 97 Ill. 2d 424, 432 (1983)). Whether a claimant is entitled to vocational rehabilitation is a question of fact to be resolved by the Commission, and its determination of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *W.B. Olson, Inc. v. Illinois Worker’s Compensation Comm’n*, 2012 IL App (1st) 113129WC, ¶ 31.

¶ 76 The claimant admitted that he had not attempted to find employment after being terminated by the Sheriff on August 9, 2012. The Commission found that the claimant’s only employment restriction was the one imposed by Dr. Williams; namely, that he avoid inmate contact. However, Dr. Williams testified that the restriction would have been imposed regardless of the claimant’s work accident of April 25, 2011. After finding that the claimant had reached MMI on June 12, 2012, Dr. Williams did not impose any physical restrictions on the claimant’s ability to work. Dr. Hurford opined that the claimant did not require any restrictions as result of his work accident and that there are no limitations on his ability to return to his previous position as a correctional officer. Based upon those opinions, the Commission found that the claimant failed to establish that he suffered a decreased earning capacity. Having failed to establish a reduction in his earning power as a result of his work accident, the claimant failed to prove his entitlement to vocation rehabilitation expenses. We conclude, therefore that the Commission’s

refusal to award the claimant vocational rehabilitation expenses is not against the manifest weight of the evidence.

¶ 77 On a related topic, the claimant argues that the Commission erred in refusing to award him maintenance benefits. Again, we disagree.

¶ 78 Section 8(a) of the Act (820 ILCS 305/8(a) (West 2014)) authorizes an award of maintenance benefits only when a claimant is engaged in a prescribed vocational or physical rehabilitation program. If the claimant is not engaged in some type of physical rehabilitation program, formal job training, or a self-directed job search, there is no obligation to provide maintenance. *Greaney*, 358 Ill. App. 3d at 1019. Whether a claimant is entitled to maintenance benefits is a question of fact to be resolved by the Commission, and its determination of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *W.B. Olson, Inc.*, 2012 IL App (1st) 113129WC, ¶ 39.

¶ 79 In this case, the claimant admitted that he had not attempted to find employment after being terminated by the Sheriff on August 9, 2012; he completed his regimen of physical therapy and work hardening on June 12, 2012, the date upon which Dr. Williams found him to be at MMI, and the Commission found that the claimant failed to establish that he suffered a reduction in earning power as a result of his work accident. We conclude, therefore, that the Commission's refusal to award the claimant maintenance is not against the manifest weight of the evidence.

¶ 80 Finally, the claimant argues that the Commission's PPD award for 7.5% loss of the person as a whole is inadequate and that "a significantly higher amount of permanent partial disability is appropriate." He contends that, as a result of his work accident, he suffered the loss of his job and permanent restrictions.

¶ 81 Drs. Williams and Hurford agreed that the claimant's work accident aggravated and exacerbated his pre-existing condition of spinal ill-being. According to Dr. Williams, however, the claimant's work injury did not result in any objective changes to his spine, and the employment restriction he imposed would have been imposed regardless of the claimant's work accident. Dr. Hurford opined that there are no limitations on the claimant's ability to return to his previous position as a correctional officer. The Commission found these opinions persuasive in supporting its finding that, as the result of his work accident, the claimant sustained a thoracic strain and a temporary exacerbation of his pre-existing thoracic degenerative disc disease. The Commission also found the claimant's subjective pain complaints to be "suspect" in light of the surveillance video and the report of his FCE.

¶ 82 The nature and extent of an injured employee's disability is a factual question, the resolution of which is peculiarly in the province of the Commission's expertise, and its determination of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Illinois Forge, Inc. v. Industrial Comm'n*, 95 Ill. 2d 337, 343 (1983); *Shockley v. Industrial Comm'n*, 75 Ill. 2d 189, 193 (1979). Based upon its factual findings as to the extent of the claimant's injury and its credibility finding, we are unable to conclude that the Commission's PPD award for 7.5% loss of the person as a whole is against the manifest weight of the evidence.

¶ 83 For the reasons stated, we: vacate that portion of the circuit court's judgment that confirmed the Commission's finding that the claimant was not entitled to medical expenses incurred after June 12, 2012, and affirm the circuit court's judgment in all other respects; reverse that portion of the Commission's decision finding that the claimant was not entitled to medical expenses incurred after June 12, 2012; and remand the matter to the Commission to determine what medical expenses, if any, incurred by the claimant after June 12, 2012, to alleviate pain are



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causally related to his work accident of April 25, 2011, and to make an appropriate award based upon that determination.

¶ 84 Circuit court affirmed in part and vacated in part;  
Commission reversed in part and remanded with directions.