2011 IL App (5th) 100221WC-U
NO. 5-10-0221WC
Order filed November 17, 2011

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

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| CONTINENTAL TIRE NORTH AMERICA, INC., | ) | Appeal from the Circuit Court of Jefferson County, Illinois. |
| Appellant, | ) | |
| | ) | Appeal No. 5-10-0221WC |
| v. | ) | Circuit No. 09-MR-34 |
| THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (Bryan Simpson, Appellee). | ) | Honorable David K. Overstreet, Judge, Presiding. |

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McCullough and Justices Hoffman, Hudson, and Wexstten concurred in the judgment.

## ORDER

¶ 1 *Held*: The Commission's findings as to whether the claimant sustained injuries arising out of and in the course of his employment, causation of his current condition of ill-being, medical expenses, travel expenses, and TTD benefits were not against the manifest weight of the evidence. Likewise, the Commission's finding that the claimant's treating physician was within the statutorily permitted two physician choices was not against the manifest weight of the evidence.

¶ 2 The claimant, Bryan Simpson, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2004)) seeking benefits for

injuries he claimed to have sustained on June 30, 2006, while working as an employee of Continental Tire North America (the employer). Following a hearing, an arbitrator issued a decision finding that the claimant sustained accidental injuries arising out of and in the course of his employment and that his current conditions of ill-being were causally related to his employment. The arbitrator ordered the employer to pay temporary total disability (TTD) benefits from July 19, 2006, through September 21, 2006, and from September 27, 2006, through April 9, 2008, along with medical expenses of $233,577.72 pursuant to section 8(a) of the Act. 820 ILCS 305/8(a) (West 2004). The arbitrator also ordered the employer to pay $2,759.03 for travel expenses incurred by the claimant while seeking medical treatment.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision. The employer then sought judicial review of the Commission's decision in the circuit court of Jefferson County which confirmed the decision of the Commission. The employer then appealed to this court.

¶ 4 The employer raises five issues on appeal: (1) whether the Commission's finding that the claimant sustained accidental injuries arising out of and in the course of his employment and that his current condition of ill-being is causally related to his employment was against the manifest weight of the evidence; (2) whether the Commission's finding that Dr. Gornet was within the claimant's two choices of physicians was against the manifest weight of the evidence; (3) whether the Commission's award of $233,577.72 in medical expenses was against the manifest weight of the evidence; (4) whether the Commission's award of $2,759.03 in travel expenses was against the manifest weight of the evidence; and (5) whether the Commission's award of TTD benefits was against the manifest weight of the evidence.

¶ 5 FACTS

¶ 6 The claimant, a 45-year-old JV tread line operator, worked for the employer continuously since December 17, 1990. He testified that the physical demands of his employment involved removing a dye and pre-former, which included putting one hand on the extruder and using the other hand to pull hard on the dye. He described a dye as being made of solid steel, approximately two feet in length and four inches in width, and weighing approximately 30 pounds.

¶ 7 On June 30, 2006, at approximately 5 a.m., the claimant was performing a change of a dye. As he started to remove one, it became stuck. He pulled hard and felt a pop in his neck and experienced an immediate pain shooting down his right shoulder into his right hand. He described the pain as a burning, electrical shock type of pain that he had never experienced before. He further testified that he hoped the pain would go away, so he did not immediately report the incident.

¶ 8 The claimant testified that the plant was scheduled for shutdown from July 2, 2006, through July 9, 2006. He testified that, during the time the plant was shut down, he remained at home, lying on a couch with a heating pad due to the pain. The claimant's wife testified that during the plant shutdown the claimant complained to her of pain and numbness and remained on the couch with a heating pad.

¶ 9 The claimant returned to work on July 9, 2006, at 11 p.m. and continued to work through July 12, 2006. On July 13, 2006, the claimant sought treatment at Good Samaritan Hospital. The claimant underwent cervical MRI which was read to reveal a disc herniation at C5-C6. The claimant was treated with pain relief injections.

¶ 10 Following treatment at the hospital, the claimant called the plant nurse to report his injury. He was advised to complete an accident report. On July 16, 2006, the claimant reported

to work at 11 p.m. and attempted to complete an accident report. He was advised to complete the report the next day. On July 17, 2006, the claimant completed the report.

¶ 11 On July 18, 2006, the claimant consulted his family physician, Dr. H. Goff Thompson. Dr. Thompson diagnosed head and neck pain with radiculitis into the right arm and spondylosis of the spine secondary to an injury at work.

¶ 12 The claimant then sought treatment at the Orthopaedic Center of Southern Illinois where he was examined by Dr. Ben Houle. Dr. Houle noted neck pain radiating into the right shoulder and the right hand. He prescribed Prednisone (a steroid similar to Cortisone) and ordered the claimant off work. Dr. Houle referred the claimant to his partner, Dr. Donald Kovalsky.

¶ 13 On August 16, 2006, Dr. Kovalsky examined the claimant and diagnosed acute symptomatic C6-C7 disc herniation. Dr. Kovalsky prescribed physical therapy and further steroid injections and continued the order that the claimant remain off work.

¶ 14 On August 21, 2006, at the employer's request and pursuant to section 12 of the Act, the claimant was examined by Dr. Tom Reinsel at his office in St. Louis. The claimant completed a written report regarding his condition which included a statement that the pain began at work while pulling on the pre-former which caused pain in his neck and back. He told Dr. Reinsel that his back pain was getting progressively worse. The claimant testified that he also gave Dr. Reinsel a history of a prior prostate infection and a surgical procedure involving a cyst.

¶ 15 Dr. Reinsel's report, dated August 21, 2006, noted complaints of right side neck pain radiating into the right arm. He reported reviewing the prior diagnostic test results. He further noted decreased range of motion in the neck. Dr. Reinsel diagnosed multilevel degenerative disc disease with specific disc abnormality at C6-C7. Dr. Reinsel stated in the report, "I think his current complaints are related to the work incident." He recommended a lifting restriction of no

more than 10 pounds and observed that the claimant was a candidate for fusion surgery if his symptoms did not improve.

¶ 16 On August 22, 2006, the claimant began physical therapy at the Orthopaedic Center of Southern Illinois as recommended by Dr. Kovalsky. On August 24, 2006, the claimant reported to the emergency department at Good Samaritan Hospital with reports of back pain, constipation, and numbness in the right leg.

¶ 17 At some point shortly thereafter, the claimant decided that he did not wish to undergo fusion surgery. He and his wife researched alternatives to fusion surgery on the internet and found that disc replacement surgery was an alternative. They also located Dr. Matthew D. Gornet, a surgeon with offices in St. Louis who performed disc replacement surgery. At arbitration, the claimant entered into evidence a written referral from Dr. Thompson to Dr. Gornet, dated September 21, 2006.

¶ 18 Dr. Gornet's patient records regarding the claimant were entered into evidence. Among Dr. Gornet's records was the written referral letter from Dr. Thompson to Dr. Gornet, which had been faxed to Dr. Gornet on September 21, 2006, from the claimant's counsel's office.

¶ 19 The claimant attempted to return to work on September 22, 25, and 26, 2006, under Dr. Reinsel's restrictions. The claimant was assigned a clerical position which required him to walk up and down stairs, causing his back pain to increase.

¶ 20 The claimant was taken off work by Dr. Kovalsky. The claimant received a cervical epidural steroid injection on September 28, 2006.

¶ 21 Prior to his initial visit with Dr. Gornet, the claimant completed an intake form on which he noted that "friends" had referred him to Dr. Gornet. The claimant's wife assisted the claimant in completing the form due to his pain. She testified that they discussed the referral question and

circled "friends" on the form because they thought the doctor was inquiring who should be thanked for the referral. Because they had spoken with friends who had undergone treatment with Dr. Gornet and spoke highly of him, they believed that he would like to know that.

¶ 22 On October 30, 2006, claimant reported to Dr. Gornet with neck pain, headaches, and right shoulder pain radiating into his right arm. Dr. Gornet diagnosed a lumbar spine injury but recommended placing that treatment on hold until the neck pain was resolved. Dr. Gornet further diagnosed a disc herniation at C4-C5 and recommended an MRI of the right shoulder. Additionally, Dr. Gornet referred the claimant to Dr. Mark Miller for further evaluation of the right shoulder. Dr. Gornet continued the claimant's no-work restriction.

¶ 23 In his October 30, 2006, written report, Dr. Gornet stated, "I do believe his current symptoms are causally connected to his work-related injury of June 2006."

¶ 24 On November 13, 2006, the claimant was examined by Dr. Mark Miller, who diagnosed a partial tear of the rotator cuff and shoulder area. Dr. Miller recommended physical therapy and that any further treatment of the rotator and shoulder be delayed until the outcome of the treatment of the neck.

¶ 25 Also on November 13, 2006, Dr. Gornet noted continued neck pain despite conservative treatment. He then recommended surgical intervention, noting "I do believe my recommendation for surgery as well as his current symptoms are directly causally connected to his work-related injury."

¶ 26 On November 29, 2006, Dr. Gornet performed a partial corpectomy at C5 with micro dissection and disc replacement at C5-C6. The surgery was performed at Barnes-Jewish Hospital in St. Louis, Missouri.

¶ 27 On January 15, Dr. Gornet noted that the claimant reported back and leg pain, but the

pain had diminished since the surgery. The claimant's range of motion, however, was still poor. Dr. Gornet recommended further treatment.

¶ 28 On April 12, 2007, the claimant was again examined by Dr. Miller, who stated in his written report that the claimant continued to experience right shoulder pain resulting from the work injury. Dr. Miller recommended further surgical intervention.

¶ 29 Also on April 12, 2007, an MRI of the lumbar spine was performed which revealed a posterior annular tear with mild left paracentral disc herniation at L5-S1. Following the testing, Dr. Gornet examined the claimant and noted improvement in the cervical range of motion. However, the claimant continued to experience right arm symptoms for which Dr. Miller was treating and Dr. Gornet reported that "it was also felt to be part of his original work-related injury." With regard to the low back, Dr. Gornet found the annular tear on the scan which correlated with his right-sided annular thigh pain. He prescribed epidural steroid injections which were performed by Dr. Steven Granberg on April 19, 2007, May 2, 2007, and May 14, 2007.

¶ 30 On July 3, 2007, a discogram of the lumbar spine was performed at Barnes-Jewish Hospital revealing a provocative disc with posterior annular tear at L5-S1 and annular tears at L3-L4 and L4-L5.

¶ 31 On July 16, 2007, Dr. Gornet noted the claimant's complaints of low back pain dating back to his initial emergency room visit after his injury, as well as in subsequent other treatment notes. He concluded this condition to be part of the original treatment process and recommended an anterior disc replacement at L5-S1. Once that area was addressed, Dr. Gornet suggested that the claimant would be able to continue with treatment for the shoulder with Dr. Miller.

¶ 32 On August 21, 2007, Dr. Gornet performed an anterior decompression at L5-S1 with disc replacement at Barnes-Jewish Hospital. The procedure included the placement of a prosthesis.

¶ 33 On September 10, 2007, the claimant returned to Dr. Gornet and reported minimal pain. Dr. Gornet recommended that the claimant continue to remain off work. On November 26, 2007, Dr. Gornet noted minimal symptoms in the back and mild flare-ups in the neck. In addition, Dr. Gornet noted some migration of the L5 portion of the L5-S1 prosthesis anteriorly. Dr. Gornet recommended postoperative physical therapy.

¶ 34 On November 29, 2007, Dr. Miller reviewed the MRI film and diagnosed a SLAP tear with partial thickness rotator cuff tear in the right shoulder. On December 14, 2007, Dr. Miller performed a right shoulder arthroscopy with labral debridement, subacromial decompression, and installed a transcutaneous pain pump.

¶ 35 On December 31, 2007, Dr. Miller reported the surgical incisions to be healing properly, the claimant's range of motion to be improved, but he was still unable to raise his right arm. Dr. Miller prescribed pain medications and continued the claimant's off-work restriction.

¶ 36 On March 10, 2008, the claimant was examined by Dr. Miller and Dr. Gornet. He was released to return to work with a four-hour-per-day restriction. The employer stipulated that no work was available for the claimant within those restrictions at that time. On April 10, 2008, the claimant was released to return to work with restrictions and was able to work eight hours per day. The employer was able to accommodate those restrictions, and claimant was, at the time of the arbitration hearing, working in a light-duty capacity changing batteries.

¶ 37 Dr. Thompson testified at the hearing. He stated that he was, and continued to be, the claimant's family physician. He limits his practice to that area and geriatrics. Dr. Thompson

brought his entire file on the claimant and referred to it during his testimony. Dr. Thompson acknowledged that he did provide the claimant with the written referral to Dr. Gornet on September 21, 2006. He testified that the claimant was seeking treatment for his injuries and he was attempting to assist him. He testified that he did not know Dr. Gornet by name; however, he routinely refers patients to Barnes-Jewish Hospital. Dr. Thompson obtained promotional material from Dr. Gornet and Dr. Miller, and after reviewing those materials, came to the conclusion that the claimant could benefit from treatment by Dr. Gornet and Dr. Miller. Dr. Thompson testified that he did not refer the claimant to Dr. Miller, Dr. Kovalsky, or Dr. Houle, but would have if the opportunity had come up.

¶ 38 Dr. Thompson was questioned regarding a referral for petitioner to see Dr. Alan Gocio. Dr. Thompson testified that he was attempting to help the claimant obtain treatment. However, it was his understanding that Dr. Gocio performed fusions and not disc replacements. Therefore, the appointment was not kept. Dr. Thompson was also questioned as to the claimant's low back complaints. He testified that he noted spondylosis while examining the claimant, which he described as encompassing the low back. Dr. Thompson also testified that it was his understanding that the neck was the main area of focus, and the low back was to be addressed at a later date.

¶ 39 Dr. Gornet testified that the claimant's condition of ill-being affecting his neck was causally related to the injury he sustained on June 30, 2006. Dr. Gornet further testified that there was a causal relationship between the claimant's low back condition and his injury on June 30, 2006. Dr. Gornet also testified that the treatments he recommended and provided for the claimant were reasonable and necessary.

¶ 40 Dr. Miller testified that there was a causal relationship between the claimant's right

shoulder symptoms and the injury that took place on June 30, 2006.

¶ 41 The claimant testified that he was kept completely off work by Drs. Thompson, Houle, Kovalsky, Gornet, and Miller from July 18, 2006, through April 9, 2008, with the exception of September 22, 25, and 26, 2006, when he attempted light duty.

¶ 42 The claimant further testified that the medical bills he submitted at arbitration were related to the care and treatment he received for his neck, low back, and right shoulder. The claimant also testified that the miles he recorded on a mileage log were incurred while seeking treatment for his neck, right shoulder, and low back. The claimant testified that he was not aware of any local physicians who could have performed the disc replacement surgeries.

¶ 43 The claimant then testified that, prior to his low back surgery, he could hardly walk due to severe low back pain. In addition, he had less shoulder pain following his shoulder surgery. He further testified that he had no prior neck injuries, right shoulder injuries, or low back injuries prior to June 30, 2006. He had never received a CT scan or an MRI prior to June 30, 2006. He testified that, prior to the injury, he had worked a substantial amount of overtime and had not missed a day of work due to injury or illness during his entire employment. This testimony was unrebutted.

¶ 44 The arbitrator determined that the claimant had sustained an accident on June 30, 2006, arising out of and in the course of his employment and that the claimant's conditions of ill-being affecting his low back, neck, and right shoulder were causally related to that accident. The arbitrator based his conclusion on both the claimant's description of the chain of events and the medical opinion testimony of the claimant's treating physicians, Drs. Gornet and Miller. The arbitrator also determined that Dr. Thompson had referred the claimant to Dr. Gornet even though the claimant and his wife first obtained information about Dr. Gornet from the internet

and from friends. In addition to TTD and medical expenses, the arbitrator also awarded the claimant mileage for 5,902 miles traveled to receive medical treatment in St. Louis.

¶ 45 The employer appealed the arbitrator's award to the Commission, which affirmed and adopted the award in total. The employer then sought judicial review of the Commission's decision in the circuit court of Jefferson County, which confirmed the decision of the Commission. The employer then appealed to this court.

¶ 46 ANALYSIS

¶ 47 1. Accidental Injury and Causation

¶ 48 The employer disputes the Commission's finding that the claimant sustained an accidental injury and that his current condition of ill-being was causally related to his employment. As to the occurrence of the accident, the employer maintains that the only evidence supporting a work-related occurrence was the claimant's own testimony. The employer suggests that where the sole support for an award rests upon the claimant's own testimony, and the claimant's actual behavior or conduct is inconsistent with that testimony, the award cannot stand. *McDonald v. Industrial Comm'n*, 39 Ill. 2d 396, 405 (1968). However, the *McDonald* court noted that, ultimately, questions of credibility are for the Commission to determine and that the Commission's findings as to the claimant's credibility will only be rejected on appeal if they are against the manifest weight of the evidence. *McDonald*, 39 Ill. 2d at 405. Moreover, it is well settled that a claimant's testimony standing alone may be sufficient to support an award of benefits under the Act. *Seiber v. Industrial Comm'n*, 82 Ill. 2d 87, 97 (1980); *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 912 (2006).

¶ 49 Here, the employer maintains that the claimant's testimony as to the occurrence of the

accident is not credible because he did not seek medical treatment until July 13, 2006, and did not report the June 30, 2006, accident until July 17, 2006. Additionally, the employer notes that the claimant's initial report when he sought treatment at the emergency department did not contain a description of an accident on June 30, 2006. While this time line for reporting the accident is not disputed, the Commission found that claimant's testimony regarding the events of June 30, 2006, was credible and further determined that the claimant consistently reported the facts of the accident to Drs. Houle, Kovalsky, Thompson, Reinsel, Gornet, and Miller.

¶ 50 Where the undisputed facts can support more than a single inference, the drawing of such inferences is properly within the province of the Commission. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). The appropriate standard of review in such matters is whether the Commission's inferences from the undisputed facts are against the manifest weight of the evidence. *Id.* The manifest weight of the evidence is "that which is the clearly evident, plain and indisputable weight of the evidence. In order for a finding to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992).

¶ 51 Here, given the circumstantial nature of the evidence regarding the occurrence of the accident on June 30, 2006, and the fact that multiple inferences can be taken from those facts, as well as the need to weigh the credibility of the claimant, we cannot say that the opposite conclusion to that reached by the Commission is clearly apparent.

¶ 52 In addition to challenging the Commission's finding that an industrial accident occurred on June 30, 2006, the employer also challenges the Commission's determination that the claimant's current condition of ill-being is causally connected to the accident. Whether a causal connection exists between a claimant's condition of ill-being and a work-related accident is a

question of fact to be resolved by the Commission, and its resolution of the matter will not be disturbed upon review unless it is against the manifest weight of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205-06 (2003). In this case, the claimant's own testimony that he was symptom-free prior to the accident on June 30, 2006, and exhibited symptoms after the accident, is sufficient, if believed, to establish a causal connection between the claimant's work-related accident and his subsequent condition of ill-being. *Certi-Serve, Inc.*, 101 Ill. 2d at 244 ("[a] chain of events which demonstrates a previous condition of good health, an accident, and subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury").

¶ 53 Here, in addition to the chain of events which suggested a causal connection, medical opinion testimony from Drs. Gornet and Miller and the section 12 report from Dr. Reinsel support a finding that the claimant's current condition of ill-being was causally related to the June 30, 2006, accident. While the employer is correct in pointing out that Dr. Reinsel opined that the claimants low back condition was not causally related to his employment, nevertheless, the record contained sufficient evidence from which the Commission could conclude that the claimant's low back pain was causally related to his employment. Consequently, we cannot find that the Commission's determination as to causation was against the manifest weight of the evidence.

¶ 54 2. Choice of Physician

¶ 55 The employer next maintains that the Commission erred in finding that Dr. Gornet was within the chain of referral such as to make the employer responsible for the cost of his medical services. The Act provides that an injured worker is entitled to two choices of physicians and

any other medical provider in the chain of referrals from those two physicians. 820 ILCS 305/8(a) (West 2008). The Commission determined that Dr. Gornet was within the chain of referral, finding that the claimant had been referred to Dr. Gornet by Dr. Thompson.

¶ 56 The determination as to whether a claimant obtained medical treatment as a result of a valid referral is a question of fact for the Commission to determine and that determination will not be reversed on appeal unless it is against the manifest weight of the evidence. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 468 (2011); *Nabisco Brands, Inc. v. Industrial Comm'n*, 266 Ill. App. 3d 1103, 1108 (1994). In order for a finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Elmhurst-Chicago Stone Co. v. Industrial Comm'n*, 269 Ill. App. 3d 902, 906 (1995).

¶ 57 According to the employer, the claimant chose Dr. Gornet on his own after he and his wife researched the internet, found out that Dr. Gornet performed disc replacement surgery, and after consulting friends who had sought treatment from Dr. Gornet. While these facts are not disputed, the record also contained testimony from Dr. Thompson and other evidence indicating that the claimant and his wife procured a referral to Dr. Gornet from Dr. Thompson, albeit after suggesting Dr. Gornet's name to Dr. Thompson. The record also contained Dr. Thompson's testimony that, while he had not previously referred patients to Dr. Gornet, he had referred to other physicians who practiced at Barnes-Jewish Hospital, the same hospital where Dr. Gornet performed surgery.

¶ 58 The law is clear that where the claimant, or even the claimant's attorney, is involved in the patient referral process, any referral from one of the claimant's two physician choices is sufficient to satisfy the chain of referral requirement of section 8 of the Act. *Absolute Cleaning/SVMBL*, 409 Ill. App. 3d at 469 ("the genesis of the referral has no bearing on the issue

so long as the claimant's treating doctor ultimately made the referral"). See *Elmhurst-Chicago Stone Co.*, 269 Ill. App. 3d at 907 ("No matter how Dr. Bartucci's name initially came up, claimant's treating doctor still referred him to Dr. Bartucci. Accordingly, *** Dr. Bartucci was in the chain of referral ***.").

¶ 59 Here, the record contains Dr. Thompson's testimony that he supplied a written referral to Dr. Gornet. A copy of that written referral is contained in the record. Dr. Thompson also testified that, while he did not know Dr. Gornet prior to the claimant and his wife bringing Dr. Gornet's name to his attention, he did not refer the claimant to Dr. Gornet until after he had obtained and reviewed promotional material from Dr. Gornet and his partner, Dr. Miller. Dr. Thompson further testified that he referred the claimant to Dr. Gornet after determining for himself that the claimant could benefit from Dr. Gornet's services. Dr. Thompson's testimony is sufficient to provide a basis for the Commission's finding that his referral to Dr. Gornet was valid and, thus, its determination that the claimant did not exceed the two-physician limitation was not against the manifest weight of the evidence.

¶ 60 Additionally, the employer maintains that the claimant's visit to the emergency room on July 13, 2006, constituted a physician choice. See *Wolfe v. Industrial Comm'n*, 138 Ill. App. 3d 680, 688-89 (1985) (non *bona fide* visit to emergency room can constitute physician choice). Here, the record contained credible evidence that the claimant's visit to the emergency room was a *bona fide* emergency. The record indicates that the claimant sought emergency treatment because his radiating arm pain suggested to his wife, a registered nurse, that he may have been suffering a cardiac event. Given this record, it cannot be said that the Commission's decision not to hold the July 13, 2006, emergency room visit to be a physician choice was against the manifest weight of the evidence.

¶ 61 3. Medical Expenses

¶ 62 The employer next maintains that the Commission erred in finding that $233,577.72 in medical expenses was reasonable and necessary. The Commission's award of reasonable and necessary medical expenses will not be overturned on appeal unless the award is against the manifest weight of the evidence. *Ingalls Memorial Hospital v. Industrial Comm'n*, 241 Ill. App. 3d 710, 717 (1993).

¶ 63 The employer maintains that medical expenses attributable to the claimant's low back and shoulder injury should not be allowed as the claimant failed to prove that these injuries were causally related to the June 30, 2006, accident. Additionally, the employer maintains that medical expenses incurred as a result of the claimant's referral to Dr. Gornet are not reasonable and necessary as Dr. Gornet was outside the chain of referral. As previously noted, the Commission's finding that the claimant's condition of ill-being after June 30, 2006, was causally related to the accident on that date, as well as our finding that Dr. Gornet was within the chain of referral, renders these arguments moot. See *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011).

¶ 64 The employer also maintains that the Commission's award of medical expenses was contrary to law in that the Commission failed to address the utilization reviews as required under section 8.7(j) of Act. 820 ILCS 305/8.7(j) (West 2006). Our review of the record indicates that this argument was not raised before the Commission. (See Statement of Exceptions and Supporting Brief of Respondent at TR 1749-1784). Issues not raised before the Commission are waived on review. *Service Adhesive Co. v. Industrial Comm'n*, 226 Ill. App. 3d 356, 370 (1992) (failure to raise an issue before the Commission waives the issue).

¶ 65 4. Travel Expenses

¶ 66 The employer next maintains that the Commission erred in awarding $2,759.03 in mileage expenses for travel between his home in Jefferson County, Illinois, and treatment in St. Louis. Travel expenses to cover the cost of transportation to and from treatment can be awarded under the same standard of reasonableness and necessity as medical expenses. *General Tire & Rubber Co. v. Industrial Comm'n*, 221 Ill. App. 3d 641, 651 (1991). The Commission's award of mileage expenses will not be overturned on appeal unless it is against the manifest weight of the evidence. *Id.*

¶ 67 Here, it cannot be said that the Commission's award of travel expenses to seek treatment from Dr. Gornet was against the manifest weight of the evidence. The Commission determined that Dr. Gornet's treatment was reasonable and necessary. An inference can be made from the record that the disc replacement surgery performed by Dr. Gornet was medically necessary but unavailable in the local area. We also note that the employer sent the claimant to St. Louis to be examined by Dr. Reinsel; thus, a further inference could be made that travel to St. Louis for medical services was generally reasonable and necessary.

¶ 68 5. TTD

¶ 69 The employer lastly maintains that the Commission erred in awarding TTD benefits. The period during which a claimant is eligible for TTD benefits is a factual determination, and the Commission's finding in that regard will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542 (2007).

¶ 70 Here, the employer maintains that the award of TTD benefits should not have been awarded as the claimant failed to establish an industrial accident and failed to establish that all of his

postaccident conditions of ill-being were causally related to an industrial accident. As we have previously addressed both arguments, we find that the challenge to the award of TTD benefits is moot. See *Tower Automotive*, 407 Ill. App. 3d at 436.

¶ 71 CONCLUSION

¶ 72 The judgment of the Jefferson County circuit court, which confirmed the the decision of the Commission, is affirmed. The cause is remanded to the Commission for further proceedings.

¶ 73 Affirmed and remanded.