2021 IL App (3d) 200161WC-U
No. 3-20-0161WC
Order filed February 5, 2021

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

KOAMI AGBEZOUHLON,	)	Appeal from the Circuit Court
	)	of Rock Island County.
Appellant,	)	
	)	
v.	)	No. 18-MR-937
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, *et al*.	)	Honorable
	)	Kathleen Ellen Mesich,
(Tyson Foods, Inc., Appellee).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: Those portions of the circuit court's judgment confirming (1) the Commission's finding that claimant reached maximum medical improvement as of June 19, 2008, (2) the Commission's denial of an award of temporary total disability benefits, and (3) the Commission's award of medical expenses through June 19, 2008, are reversed. The circuit court's judgment is affirmed in all other respects. Those portions of the Commission's decision finding that claimant reached maximum medical improvement as of June 19, 2008, and vacating the arbitrator's award of temporary total disability benefits, are reversed. The Commission's decision is modified to reflect that claimant is entitled to reasonable and necessary medical expenses incurred through September 3, 2008. The Commission's decision is

affirmed in all other respects. The matter is remanded to the Commission with directions to (1) enter a finding that claimant reached maximum medical improvement as of September 3, 2008, (2) award claimant temporary total disability benefits from July 1, 2008, through September 3, 2008, (3) order respondent to pay related medical bills incurred by claimant through September 3, 2008, and (4) conduct further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Koami Agbezouhlon, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2008)) seeking benefits for injuries he allegedly sustained on January 29, 2008, while in the employ of respondent, Tyson Foods, Inc. Following a hearing, the arbitrator found that claimant sustained an accident that arose out of and in the course of his employment with respondent and that claimant's current condition of ill-being is causally related to the accident. The arbitrator awarded claimant 457 weeks of temporary total disability (TTD) benefits (820 ILCS 305/8(b) (West 2008)), reasonable and necessary medical expenses (820 ILCS 305/8(a), 305/8.2 (West 2008)), and prospective medical care (820 ILCS 305/8(a), 305/8.2 (West 2008)). With one commissioner dissenting, the Illinois Workers' Compensation Commission (Commission) modified the decision of the arbitrator in part but otherwise affirmed. Notably, the Commission found that claimant reached maximum medical improvement from his work injury by June 19, 2008, and therefore his condition of ill-being after that date was not causally related to his work accident. As a result, the Commission vacated the award of TTD benefits, determined that respondent was not liable for medical expenses incurred by claimant after June 19, 2008, or prospective medical care, and remanded the matter to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). On judicial review, the circuit court of Rock Island County confirmed the decision of the

Commission. Claimant filed a timely notice of appeal to this court, and now challenges the findings with respect to causal connection, medical expenses, TTD benefits, and prospective medical care. We affirm in part as modified, reverse in part, and remand this matter to the Commission.

¶ 4 II. BACKGROUND

¶ 5 Claimant filed an application for adjustment of claim on April 9, 2008, alleging injuries to his neck, back, and right leg on January 29, 2008, as a result of "[r]epetitive shoveling" while working for respondent. An arbitration hearing on claimant's application was held on April 4, 2017, before arbitrator Michael Nowak. The issues in dispute included causal connection, TTD benefits, medical expenses, and prospective medical care. The following factual recitation is taken from the evidence adduced at the arbitration hearing.

¶ 6 Claimant, who was 47 years of age at the time of the arbitration hearing, testified that he was an immigrant from Togo, a French-speaking country in West Africa. Claimant began working for respondent in 2004, shortly after he arrived in the United States. During his first year with respondent, claimant's job was to gut carcasses. During his second year with respondent, claimant's job was to push a car with carcasses. In 2006, claimant was transferred to rendering, where his position involved "shovel[ing] meat and grease," placing it into a barrel, lifting the barrel, and "dump[ing]" the contents of the barrel into a bin. Claimant testified that a full barrel weighed between 90 and 100 pounds.

¶ 7 Claimant worked in rendering at the time of the accident. Claimant testified that on January 29, 2008, he was shoveling grease outside in the snow when he felt a sharp pain in his low back and "couldn't walk." Claimant reported the accident to his supervisor and received medication and ice packs from the company nurse. That night, claimant continued to experience pain. The

following day, claimant reported for work and advised his supervisor that his pain had not subsided. The company nurse gave him an ice pack and Tylenol, and sent him back to work. Claimant stated that he shoveled meat and grease all day while in pain. During the weeks that followed, the company nurse continued to prescribe medication and ice packs until one day respondent sent him to a doctor. Claimant did not remember how many weeks he worked through the pain before respondent sent him for outside treatment. Claimant denied experiencing back pain prior to the January 29, 2008, event.

¶ 8 Claimant initially sought treatment from Dr. Rhea Allen in February 2008. Dr. Allen prescribed conservative treatment, including medication and physical therapy, and eventually referred claimant to Dr. Michael Dolphin. In June 2008, claimant attempted to return to his job in rendering. Claimant testified that he felt dizzy, could not stand, and had constant pain in the low back with radiation down the right leg. Claimant further stated that the back pain he developed in January 2008 spread to his neck. Claimant reported his symptoms to the company nurse. In response, claimant was instructed to go home and seek treatment. He was told that he could return to work if he felt better. Claimant did not work for respondent after June 30, 2008.

¶ 9 Thereafter, claimant sought further treatment from various physicians, including Dr. Purnendu Gupta, Dr. Rogelio Riera, Dr. Ronald Michael, Dr. Srinivasan Purighalla, Dr. Lakshmi Alapati, Dr. John Lanciloti, Dr. Amanda Motto, Dr. Brian Anseeuw, and Dr. David Segal. At some point, claimant was granted Social Security disability benefits and Medicare. Regarding his current condition, claimant testified that he has suffered from constant low-back pain since 2008. The pain "spreads" to his groin area and neck and has not improved. Claimant receives medication from Dr. Motto or the emergency room.

¶ 10 The medical records placed in evidence establish the following. Claimant saw Dr. Allen on February 11, 2008. A patient history questionnaire completed that day notes:

> "1/29/08, shoveling + dumping barrels (meat/guts)—all day long; c/o pain cervical area + low back area. 0 NTT into legs/arms; 0 pain into legs/arms—has been having pain almost 1 yr—medical dept gave Ibup + ice."

Upon physical examination, Dr. Allen noted tenderness in the paraspinals and trapezius bilaterally, but with a "relatively well preserved" range of motion. Claimant was also tender over the lower lumbar spine. X rays of the cervical spine were unremarkable. Dr. Allen had difficulty interpreting the X rays of the lumbar spine, but noted that there appeared to be "sort of a rotary scoliosis of the lower lumbar area." Dr. Allen's diagnosis was neck and back pain. She prescribed ibuprofen and Skelaxin, ordered additional imaging studies of the lumbosacral spine, and imposed work restrictions.

¶ 11 Claimant followed up with Dr. Allen on February 19, 2008. At that time, claimant reported "a fair amount of pain" and was concerned because "he gets a 'warm' sensation in the cervical area through his back and into his right leg." Claimant also reported constant pain in his right knee and headaches from the neck pain. Claimant did not feel that the medications Dr. Allen prescribed provided much relief. Physical examination was notable for tenderness in the paraspinals of the neck and back. Straight leg raise test was negative for radicular symptoms. Dr. Allen prescribed physical therapy, discontinued the Skelaxin, ordered an MRI, and kept claimant on restricted duty. An MRI report of the lumbar spine dated February 25, 2008, showed: (1) mild to moderate levoconvex lumbar scoliosis; (2) a mild to borderline degree of canal stenosis at L3-L4; (3) evidence of a left foraminal shallow disc protrusion at L3-L4 resulting in some mild impingement

upon the exiting left L3 nerve root; and (4) a shallow annular disc bulge encroaching upon the right exit foramina without associated nerve-root compression at L3-L4.

¶ 12 On February 29, 2008, claimant saw Dr. Allen with continued complaints of lumbar, neck, and right-knee pain, but denied any work injury to the right knee. Dr. Allen noted the MRI findings. Physical examination was unchanged. Dr. Allen prescribed epidural steroid injections and physical therapy and kept claimant on restricted duty. On March 5, 2008, Dr. Timothy Miller performed an epidural steroid injection at L3-L4.

¶ 13 On March 14, 2008, claimant returned to Dr. Allen's office with complaints of increasing pain in the low back. He stated that the epidural injection did not help. Claimant attributed the worsening pain to physical therapy. The physical therapy notes show claimant missed the first three scheduled therapy sessions, finally attending an initial evaluation on March 10, 2008. At the evaluation, claimant described "constant pain," aggravated by stair ambulation or sitting for more than 20 minutes. The physical therapist noted the following history: "He reports the onset of symptoms occurring initially one year ago, secondary to a shoveling incident while at work. He describes exacerbation of symptoms occurring 2/29/08 [*sic*], while again shoveling product at work." Claimant rated the pain a 9/10, but stated that it was 5/10 prior to the 2008 event. On March 12, 2008, claimant again told the physical therapist his pain was a 9/10. Dr. Allen suspended claimant's physical therapy. She also refilled a Vicodin prescription previously prescribed by Dr. Miller, kept claimant on restricted duty, and referred him to Dr. Dolphin, a spine surgeon.

¶ 14 On March 27, 2008, claimant was examined by Dr. Dolphin. Dr. Dolphin recorded a history of right-sided low-back pain and right-leg pain which began while shoveling at work on January 29, 2008. Claimant rated the pain at 6-8/10, but reported that it worsened with traversing stairs,

coughing, lifting, and forward bending. Claimant denied any previous injuries. On physical examination, claimant appeared in mild distress, complaining of generalized fatigue, right-sided low-back pain, and right-thigh pain. Dr. Dolphin observed that claimant "ambulates with a marked antalgic gait favoring the right lower extremity," "does not stand erect," and "list[s] to the left." Dr. Dolphin noted "subjective weakness and achiness throughout the entire right thigh extending distally throughout the anterior knee terminating at the proximal tibia," as well as "localized tenderness throughout the right lumbosacral junction that extends laterally throughout the paraspinal musculature extending over the iliac crest." X rays showed "minimal degenerative disc disease at the L5-S1 level without evidence of sclerosis, spondylolysis, or spondylolisthesis" and "significant lumbar scoliosis with approximately 3+ rotation." Dr. Dolphin interpreted the MRI of February 25, 2008, as showing levoscoliosis of the lumbar spine, degenerative disc disease at L3-L4 with some foraminal narrowing, and asymmetry of the right pedicle and right vertebral body of L5 and along the superior end plate of S1. Dr. Dolphin's assessment was (1) low-back pain, (2) degenerative disc disease with mild spinal stenosis at L3-L4 with a right-sided herniation, and (3) right-sided vertebral body and pedicle asymmetry of L5. Dr. Dolphin recommended a right-sided transforaminal epidural steroid injection at L3-L4 and a CT myelogram to evaluate potential bony abnormalities at the L5-S1 disc space. He kept claimant on light duty. The lumbar myelogram showed bulging discs at L3-L4 and L4-L5. The CT of the lumbar spine showed lower lumbar bulging disc and ligamentum hypertrophic changes with mild to moderate spinal stenosis at L3-L4 and L4-L5. No focal disc herniation, no compression fracture, and no gross abnormalities of the visualized nerve roots were present.

¶ 15 On April 8, 2008, Dr. Miller performed a second epidural steroid injection. On April 18, 2008, claimant followed up with Dr. Dolphin. He reported continued low-back pain and severe pain throughout the right leg and thigh, worse with standing and walking and slightly improved with sitting or lying down. Claimant also complained of dizziness, lightheadedness, and severe headaches. Claimant told Dr. Dolphin that the injection administered by Dr. Miller did not provide an "appreciable improvement" in his symptoms. Dr. Dolphin noted that the CT myelogram showed "minimal foraminal stenosis at L3-4, moderate spinal stenosis with foraminal narrowing at L4-5, and no significant neural pathology at L5-S1." Dr. Dolphin recommended an epidural steroid injection at L4-L5, discussed a decompression laminectomy at that level, and kept claimant on light duty.

¶ 16 On June 10, 2008, Dr. Miller performed a third epidural steroid injection. On June 19, 2008, claimant followed up with Dr. Dolphin. Claimant reported continued right-sided back pain and no significant improvement after the injection. Claimant also told Dr. Dolphin that his right leg continues to give him pain with cramping occasionally into the calf. Further, claimant complained of neck pain, resulting in difficulty with activities that required his head to be in an upright position for more than 20 to 30 minutes, such as reading a book or looking at a computer, and of persistent pain in the right knee. Physical examination of the spine was benign. Dr. Dolphin administered a cortisone injection to claimant's right knee. He thought claimant's neck complaints could be related to muscular fatigue and tension headache. With respect to claimant's low back, Dr. Dolphin stated that he had "nothing further to offer [claimant]." Dr. Dolphin explained that because claimant did not get much relief from the epidural steroid injections, surgical intervention

was unlikely to help. Dr. Dolphin kept claimant on light duty and referred him back to Dr. Allen, adding that "[p]erhaps he should be placed at maximum medical improvement."

¶ 17 On July 7, 2008, claimant saw Dr. Alapati with complaints of severe low-back pain after a work injury. Dr. Alapati referred claimant to Dr. Purighalla, a neurosurgeon. On July 31, 2008, claimant was treated in the emergency room for complaints of back pain, headache, and weakness with severe dizziness. A CT scan of the head was negative for abnormalities of the brain.

¶ 18 On August 8, 2008, claimant saw Dr. Purighalla. Dr. Purighalla documented a history of "back pain radiating into the lower extremities, more so on the right than the left for several months, gradually getting worse." Claimant reported that he injured himself while working for respondent. Physical examination was notable for decreased lumbar range of motion due to pain. Dr. Purighalla also noted the MRI findings. Dr. Purighalla's diagnoses were cervicalgia, limb pain, and "[b]ack pain radiating to both lower extremities, the right more than the left, possibly secondary to mild to moderate degree of lumbar spinal stenosis at L3-4 level and also some degenerative changes in the disc at that level." Dr. Purighalla recommended conservative treatment, explaining that he did not see "anything structurally abnormal to consider any surgical options."

¶ 19 On August 14, 2008, claimant saw Dr. Jeffrey Jauron, reporting poorly controlled back pain despite being on various medications. Dr. Jauron prescribed Tizanidine and hydrocodone-acetaminophen and ordered an orthopedic consult. On August 21, 2008, claimant followed up with Dr. Jauron, rating his pain an 8-9/10 on the medications. Dr. Jauron prescribed prednisone.

¶ 20 On September 3, 2008, claimant returned to Dr. Dolphin. Claimant reported the absence of light-duty work from respondent and significant difficulty with minimal activities of daily living.

Dr. Dolphin reiterated that he did not have any treatment to offer claimant from a surgical standpoint. He further noted that conservative treatment measures, *i.e.*, physical therapy, epidural steroid injections, and activity modification, had been exhausted. Dr. Dolphin concluded:

> "At this point my only recommendation perhaps would be to consider a functional capacity evaluation to put him at permanent restrictions. From my standpoint at this point he is at maximum medical improvement starting today. Should a functional capacity evaluation be ordered, he can follow-up with the occupational medicine physician (Dr. Rhea Allen) for further restrictions."

¶ 21 On December 29, 2008, claimant consulted Dr. Anseeuw about low-back pain with numbness in the right leg. Claimant told Dr. Anseeuw that he was injured on the job in January 2008 while "shuttling and dumping heavy objects when he felt an immediate pain in his low back which radiated into the right leg and the knee." Claimant reported that despite conservative treatment, his pain "has essentially been unchanged from the time of the injury." Claimant stated that he has difficulty sitting as well as doing his normal activities of daily living and has developed neck pain and headaches. Dr. Anseeuw recommended electrodiagnostic studies. Claimant followed up with Dr. Anseeuw on January 15, 2009. Dr. Anseeuw noted the electrodiagnostic studies were normal. He reviewed an MRI and reexamined claimant. Dr. Anseeuw wrote that his workup of claimant "has been nonconclusive" and "has shown no significant abnormalities." Dr. Anseeuw discharged claimant, concluding that his "problem is not neurological" and that he "may benefit from a pain clinic."

¶ 22 On February 18, 2009, claimant consulted Dr. Gupta, a scoliosis and spine surgeon at the University of Chicago, with complaints of "back pain, leg pain, neck pain and arm pain." Claimant

told Dr. Gupta that his back pain is "sharp" with a "maximum intensity of 9/10" and that his activities are limited by the pain. Upon physical examination, Dr. Gupta noted that claimant walks with an antalgic gait. Claimant localized the pain in his lumbar spine to the lumbosacral region. Dr. Gupta noted a significant genu varum of the right lower extremity and a pelvic obliquity with the right hemipelvis being elevated and an evident lumbar curve. Physical examination was otherwise benign. X rays of the thoracolumbar spine showed "a significant pelvic obliquity and a large lumbar scoliosis." Dr. Gupta diagnosed a pelvic obliquity and lumbar scoliosis. He ordered MRI studies of the cervical and lumbar spine, noting that "[t]here is a significant incidence of congenital abnormalities as well as spinal axis abnormalities with congenital malformations." The MRI of the lumbar spine showed degenerative disc disease and lumbar scoliosis. The MRI of the cervical spine showed mild central and right paracentral disc protrusion at C5-C6 without significant narrowing of the central canal or neuroforamina and mild disc protrusion at T2-T3 without significant central canal stenosis.

¶ 23 Claimant returned to Dr. Gupta's office on March 4, 2009. At that time, claimant continued to complain of severe back pain. He also complained of severe headaches. Claimant's physical examination was notable for "kyphosis at the lumbosacral junction on ambulation with significant pelvic obliquity." Dr. Gupta reviewed a CT scan, which showed "a hemivertebra in the posterior lumbar spine." Dr. Gupta recommended a lumbar decompression and excision of the hemivertebra, and kept claimant off work. Claimant subsequently underwent further imaging studies. Of significance is a report of a CT scan of the lumbar spine dated March 24, 2009, showing a "[r]ight hemivertebra at S1 with associated degenerative changes and vertebral compression" and "[m]ild levoscoliosis of the lumbar spine *** secondary to right S1 hemivertebra."

¶ 24 In June and July 2009, claimant underwent additional sessions of physical therapy. During this time, claimant presented in distress and reported significant disability, rating the pain at 9/10. A chart note dated July 6, 2009, states claimant denied any decrease in the pain after using a TENS unit for three days. The physical therapist stated: "This was essentially a last effort as interventions to this point have not yielded any kind of change in his symptoms [and] therefore his functional level. He scored a 13 on the Back Outcome Scale. Oswestry [was] quite high [at] a 77%. Pain rating is very high at 9/10. Fear Avoidance Belief Questionnaire high on both scales."

¶ 25 In 2009 and 2010, Dr. Miller performed cervical and additional lumbar epidural steroid injections. Claimant reported no long-term improvement from the injections. Meanwhile, on November 19, 2009, claimant was treated in the emergency room for complaints of back pain. A CT scan of the lumbar spine performed that day showed "[m]ild degenerative changes without acute osseous injury."

¶ 26 On May 12, 2010, claimant consulted Dr. Riera. Dr. Riera noted that claimant had an accident at work in 2008. Claimant's main complaint was low-back pain with radiation to the right leg and numbness and tingling in the right leg. Claimant also reported pain along the cervical thoracic area with limitation and numbness of the left upper extremity. Dr. Riera noted that claimant walked with an antalgic gait. On physical examination, claimant complained of tenderness and pain with palpation and diagnostic maneuvers. Dr. Riera noted claimant's scoliosis and reviewed medical records from Dr. Gupta. A cervical spine MRI performed May 12, 2010, showed a small central herniation at C5-C6. A lumbar MRI, also performed May 12, 2010, was interpreted by the radiologist as showing (1) bulging of the L2-L3 through L4-L5 discs, (2) narrowing of the foramina L2-L3 through L5-S1, (3) mild-moderate spinal stenosis, partly

congenital, and (4) an S1 vertebral anomaly. Dr. Riera diagnosed scoliosis of the thoracic spine with spinal stenosis and a bulging, herniated disc of the cervical and thoracic spine. Dr. Riera agreed that claimant needed surgery. Dr. Riera referred claimant to Dr. Michael, a neurosurgeon, and restricted him from working.

¶ 27 On May 24, 2010, claimant saw Dr. Michael. Dr. Michael documented that claimant suffered a work-related injury on January 28, 2008, while shoveling and lifting heavy buckets of meat and grease, weighing between 80 and 100 pounds each. Claimant complained of severe low-back pain and right-leg pain and reported that his condition had worsened steadily since the date of the accident. Dr. Michael noted that an MRI of the lumbosacral spine showed "L3-4 worse than L4-5 disc protrusions and herniations," an "S1 right vertebral," "possible right L5 spondylosis," and "associated scoliosis." Dr. Michael recommended a lumbar discogram "to determine the nature of his pain generator" and kept claimant off work.

¶ 28 Claimant returned to Dr. Michael's office on June 29, 2010. At that time, he continued to complain of severe low-back pain and right-leg pain. He also reported neck pain, "which he had at the time of the injury," right arm pain, right upper extremity numbness and tingling, and weakness in the right upper extremity. Dr. Michael noted that the "[l]umbar discogram demonstrated L3-4 pathology per Dr. Glaser." A review of Dr. Glaser's discography report shows a "greater than 7/10 concordant right lower back pain radiating into the buttock" at L3-L4. Dr. Glaser therefore believed there was moderate degeneration and a posterior annular tear. However, the post-discogram CT scan showed the L3-L4 disc to be "intact and unremarkable" with "[n]o obvious disk bulges, protrusions, or herniations." The post-discogram CT scan report did note "significant scoliosis with spina bifida occulta deformity of the posterior elements, especially on

the left" at L5-S1, as well as a developmental anomaly of the left transverse process, suspicion of partial hemivertebra in the right sacrum, and a "broad-based posterior disk bulge/protrusion" at L4-L5. Dr. Michael offered claimant two choices—to learn to live with the pain or undergo a "posterior lumbar fusion." Dr. Michael opined that claimant's current condition of ill-being was causally related to the work accident of January 2008.

¶ 29 Respondent obtained a utilization review. See 820 ILCS 305/8.7 (West 2008). A utilization review report dated September 2, 2010, denied the posterior lumbar fusion recommended by Dr. Michael, summarizing the reasons as follows:

> "The claimant is a 40-year old male diagnosed with chronic back and leg pain, which have been reported to be resistant to non-operative treatment. The neurological exam and electrical studies have been noted to be normal. An MRI on 05/12/10, revealed multi-level disc protrusions and facet arthrosis with some areas of stenosis. A discogram reportedly showed pathology at L3-4. Based on the ODG [Official Disability Guidelines], there has been no x-ray criteria (flexion-extension) revealing segmental instability, and there has been no evidence of a psychosocial screen. Without these being evident, the medical necessities of the proposed procedures have not been established at this time."

A retrospective utilization review report dated September 15, 2010, denied the discography as being generally unreliable in identifying pain generators.

¶ 30 On September 21, 2010, claimant complained to Dr. Michael of worsening low-back pain. Dr. Michael was awaiting approval for the surgery. On November 2, 2010, claimant voiced neck and right arm complaints to Dr. Michael, in addition to the low-back and right-leg complaints. Dr. Michael's assessment was L3-L4 herniated nucleus pulposus, L3-L4 discogenic pain, and possible

L5 spondylolysis. Dr. Michael continued to await approval for surgery and prescribed lumbar epidural steroid injections in the interim.

¶ 31 On March 9, 2011, claimant returned to Dr. Miller with complaints of persistent right leg pain. Dr. Miller did not think any further conservative treatment would help. He recommended a repeat MRI and another opinion from a Dr. Timothy Millea, a Dr. Michael Chapman, or Dr. Segal. Contemporaneously, Dr. Miller wrote to claimant's attorney, stating, among other things, that while the previous MRI "did not suggest a strong case for surgery," things could have changed in the interim.

¶ 32 In a letter dated June 15, 2011, to claimant's attorney, Dr. Miller noted that he had "never really assessed [claimant's] ability to work," but it was his "general opinion" that claimant has "persistent pain." Dr. Miller wrote that he would "normally look at somebody who has modest disc herniation at L3-4 with some right leg sciatic pain as typically having a lifting restriction of 30 to 40 pounds with perhaps some limitation of bending and stooping." Dr. Miller added that while claimant was not "completely debilitated," if the orthopedic surgeon who worked with him previously felt claimant was incapable of work for some reason, it would be reasonable to impose some work restrictions.

¶ 33 On February 16, 2012, claimant presented to Dr. Motto with complaints of upper-back pain between his shoulders with an onset five days earlier. Claimant reported that he received treatment from an urgent-care clinic the day before and noticed "significant improvement." Upon examination, Dr. Motto noted some spasm of the left-sided paraspinal muscles around T7-T8. Dr. Motto diagnosed a backache and instructed claimant to continue with medications he received from the urgent-care clinic.

¶ 34 Claimant returned to Dr. Motto's office on March 13, 2012, with complaints of low-back pain with radiation to his legs. Claimant attributed the condition to a back injury at work in 2008. Upon examination, claimant was tender to palpation along the lumbar spine with spasm of the left-sided paraspinal muscles around T7-T8. Dr. Motto prescribed Gabapentin and physical therapy.

¶ 35 On September 18, 2012, claimant returned to Dr. Riera. Dr. Riera ordered a repeat MRI and kept claimant off work. On November 13, 2012, claimant saw Dr. Segal, a brain and spine surgeon, on a referral from Dr. Riera. Dr. Segal noted a history of sudden onset of low-back pain with injury while lifting a heavy object four years earlier. Dr. Segal noted that associated symptoms include decreased mobility, joint pain, limping, numbness in the right thigh, sexual dysfunction, spasms, tingling in the legs, weakness in the right leg and arm, and numbness and tingling in the right foot. Claimant localized his low-back pain to L3-L4 on the right side, radiating down the right leg. Dr. Segal noted that claimant ambulated with an antalgic gait and was unable to toe-walk on the right due to pain. Dr. Segal reviewed an MRI from September 2012, stating, "[t]he primary finding is at L3-L4, which is very degenerative and has a herniation toward the right." Dr. Segal further noted that the MRI showed a "moderate levoscoliosis of the lower lumbar spine and lumbosacral junction." Dr. Segal's impression was "[d]iscogenic pain and right L3 radiculopathy from L3-L4 disc, by patient's history related to the work injury." Dr. Segal recommended fusion surgery at L3-L4, noting that (1) claimant's pain has been ongoing for four years and is getting worse; (2) conservative treatment has failed; (3) the findings on the MRI at L3-L4 match his pain; and (4) the discogram was positive for concordant pain at L3-L4. Dr. Segal restricted claimant from working until after surgery.

¶ 36 Emergency room records from Genesis Health System show that in March 2012, June 2012, February 2013, September 2013, and May 2014, claimant received emergency treatment for complaints of worsening back pain which was not responding to medication. His health insurance each time was noted to be Medicare and Medicaid.

¶ 37 On September 9, 2013, claimant saw Dr. Motto, reporting a flare-up of back pain during a recent trip to Africa. On May 19, 2014, claimant followed up with Dr. Motto after being seen in the emergency room for low-back pain, neck pain, and headache and being prescribed Ultram and Robaxin. Dr. Motto altered claimant's pain medication and ordered a pain-management consultation. On June 9, 2014, claimant presented to Dr. Motto for an annual physical examination. Claimant's list of active problems included abnormal electrocardiogram, backache, chest pain, cough, dermatitis, fatigue, folliculitis, headache, herniated nucleus pulposus, hyperlipidemia, lower back pain, lumbar radiculopathy, lump of skin, acute mid-back pain, and neck pain. Claimant appeared healthy and in no acute distress. Physical examination was normal.

¶ 38 Dr. Purighalla testified by evidence deposition on April 30, 2012, that he examined claimant on August 8, 2008. At the time of the examination, Dr. Purighalla did not think claimant required surgery.

¶ 39 Dr. Dolphin testified by evidence deposition on April 15, 2016. Dr. Dolphin testified that he is an orthopedic surgeon specializing in spine surgery. Dr. Dolphin became board certified in March 2007. Dr. Dolphin testified that when he initially saw claimant in March 2008, he diagnosed low-back pain, degenerative disc disease with mild spinal stenosis between L3 and L4 with a right-sided disc herniation, and right-sided vertebral body and pedicle asymmetry of L5. Dr. Dolphin thought claimant's low-back pain and possibly the right-sided disc herniation at L3-L4 "would

have been related to the injury" of January 2008, but the vertebral body, pedicle asymmetry, and degenerative disc disease were not related to the work accident. After obtaining a CT myelogram, which showed "stenosis primarily between L3 and L4 and L4 and L5," but no herniation, Dr. Dolphin opined "none of those findings were acute so I would not attribute any of those findings directly to the work injury." Dr. Dolphin then recommended additional epidural steroid injections at the L4-L5 level, because claimant told him that he experienced no improvement from the first injection he received at the L3-L4 level. Dr. Dolphin affirmed that he did not think surgery would help since claimant did not get much relief from the epidural steroid injections. Dr. Dolphin testified that, from a spinal surgery standpoint, he had nothing further to offer claimant as of June 19, 2008, leaving Dr. Allen to make a final determination regarding maximum medical improvement from an occupational medicine standpoint.

¶ 40 When asked to comment on the medical records from Dr. Anseeuw and Dr. Gupta, Dr. Dolphin explained that a hemivertebra is a congenital defect where one of the vertebrae does not form completely. A hemivertebra can become symptomatic with performance of activities of daily living or no activity at all. Dr. Dolphin did not diagnose claimant's right S1 hemivertebra as being the source of his complaints related to the work accident. Dr. Dolphin also questioned whether the L3-L4 or L4-L5 level was the pain generator, stating "[w]e did not really find a pain source." Regarding claimant's subsequent complaints, Dr. Dolphin opined that "any complaints in 2010 would be unrelated to 2008," explaining "in 2008 we did not determine the source of his discomfort to be specifically related to any particular nerve injury or nerve compression or nerve source. My evaluation and treatment didn't help him, Dr. Anseeuw's evaluation didn't determine a nerve source for his complaints."

¶ 41 Dr. Gupta testified by evidence deposition on December 8, 2016. Dr. Gupta testified that he is a board-certified spine surgeon specializing in "major spinal reconstructions whether cervical, thoracic, or thoracolumbar." Dr. Gupta did not obtain a history of how claimant was injured because he focused on the etiology of the problem. Dr. Gupta explained that a hemivertebra is a congenital abnormality that usually causes scoliosis and pelvic obliquity. After reviewing medical records from Dr. Dolphin and Dr. Anseeuw, which he did not have during his evaluation of claimant, Dr. Gupta testified that it is possible for a previously asymptomatic hemivertebra and pelvic obliquity to become symptomatic as a result of repeatedly lifting and shoveling heavy loads of meat and grease. Dr. Gupta explained that a hemivertebra "also leads to this development of a curvature with a concavity, in this case on the right side, convexity on the left; and then over time, those areas are subject to increased stress and strain when bending and lifting activities are performed." Dr. Gupta opined the accident on January 29, 2008, as claimant described it to Dr. Dolphin and Dr. Anseeuw, "was the inciting event, the precipitating event," as claimant "was repetitively bending, lifting, and shoveling and whatnot; and that is the repetitive stress and strain on the lumbar spine, especially those heavy loads." Elaborating, Dr. Gupta added, "[t]he twisting, bending, lifting activities are [a] known cause of stress and strain on the lumbar spine. In this particular instance, whatever load he was shoveling at that time is when he was injured and became symptomatic." Dr. Gupta also believed the strain of repetitive lifting, bending, and carrying heavy loads of meat for a period of two years could have accelerated the wear and tear on the spine, in addition to causing the hemivertebra and pelvic obliquity to become symptomatic and painful. The surgery Dr. Gupta recommended was a resection of the hemivertebra to help correct the scoliosis and pelvic obliquity and to decompress a significant spinal canal stenosis. Dr. Gupta believed the

proposed surgery could address claimant's leg pain, which he thought was due to significant spinal and foraminal stenosis.

¶ 42 Dr. Gupta disagreed that claimant was at maximum medical improvement at the time of his evaluation, explaining "when I met the [patient] in 2009 he still had pain, so it is hard to believe that he was at MMI as he was still having pain when I met him, and this MRI [obtained by Dr. Allen] demonstrates findings which are consistent with the MRI from the University of Chicago indicating nerve compression." Dr. Gupta continued, "So the [patient] can have leg pain due to nerve compression from the L3-4 and L4-5 area which would be in his right leg as he described to me in his posterior thigh, posterior calf, and ankle. So the stenosis is consistent with his symptoms and presentation." Dr. Gupta thought claimant's repeated visits to the emergency room for complaints of pain evidenced the pain was ongoing.

¶ 43 On cross- and redirect- examinations, Dr. Gupta testified that his causation opinions were based on claimant being asymptomatic before January 29, 2008. Dr. Gupta acknowledged a hemivertebra could become symptomatic with activities of daily living or no activity at all.

¶ 44 Dr. Michael testified by evidence deposition on February 21, 2017. Dr. Michael is a board-certified in neurological surgery and specializes in the care of spine patients. Dr. Michael initially saw claimant on May 24, 2010. Claimant told Dr. Michael that on January 28, 2008, he was shoveling and lifting heavy buckets of meat and grease weighing between 80 and 100 pounds each when he felt a sharp pain in his low back. Claimant was initially treated conservatively, with little success. Claimant's physical examination was normal. Dr. Michael diagnosed a disc protrusion (which encompasses a herniation and bulge) with discogenic pain at L3-L4. He also noted a disc protrusion at L4-L5 and a hemivertebra at right S1 with associated scoliosis.

¶ 45 Dr. Michael next saw claimant on June 29, 2010. At that time, claimant complained of severe low back pain, right leg pain, neck pain, and right arm pain. He also had right upper-extremity numbness and tingling and weakness in the right upper extremity. Physical examination was normal. Dr. Michael noted that claimant underwent a discogram which demonstrated L3-L4 pathology. Dr. Michael's diagnosis was an L3-L4 disc protrusion with discogenic pain at the same level. Dr. Michael next saw claimant on September 21, 2010. Claimant reported that his condition had worsened. Dr. Michael's diagnosis remained unchanged. He discussed surgical options with claimant, namely a posterior lumbar fusion. Claimant indicated that he wanted to pursue the surgery.

¶ 46 Dr. Michael did not think claimant's hemivertebra, scoliosis, and pelvic obliquity caused his pain. Dr. Michael did not think claimant was suffering from a neurological problem. Rather, he testified that claimant had a "a mechanical problem *** a problem of a mechanical structure, the disc having been damaged, and therefore, losing its functional and structural integrity." Dr. Michael maintained, "it's internal disc disruption and discogenic pain that's causing the pain." Dr. Michael explained that by saying that claimant's injury was non-neurologic, he means, "it's not the typical radiculopathy where there's a huge disc herniation that's pinching the nerve." Dr. Michael recommended a posterior lumbar fusion (presumably at L3-L4). Dr. Michael did not believe the hemivertebra, scoliosis, and pelvic obliquity needed to be treated, stating that people with these conditions could live their entire lives pain free.

¶ 47 Regarding causation, Dr. Michael opined the work activities described by claimant could cause a back injury. When asked whether "it [was] the weight [claimant] was carrying for his employer that caused this pain," Dr. Michael answered in the affirmative. Dr. Michael opined the

L3-L4 disc was damaged as a result of the work activities claimant performed on January 29, 2008. Claimant's counsel then asked Dr. Michael's causation opinion based on a hypothetical that until January 29, 2008, claimant "had worked all his life without pain. And before January 29, 2008, [claimant] has a preexisting hemivertebra, scoliosis and pelvic obliquity. But despite these preexisting conditions, [claimant] worked for [respondent] without pain. *** [B]efore his injury *** on January 29, 2008, [claimant] had worked at least two years preceding that date, loading and shoveling between 80 to 100 pounds of grease and meat for [respondent]. I want you to assume that for the first time on January 29, 2008 while [claimant] was lifting 80 to 100 pounds of meat and shoveling grease, he felt sharp pain in his back. Ever since that date of January 29, 2008, [claimant] has not had total relief from pain except temporarily by medication, epidural injection and therapy." Dr. Michael opined "that the injury caused all of his symptoms. The mechanism is sufficient. The level, namely, L3-4, being a higher level than we typically see with, say, long-standing conditions is usually considered traumatic. In other words, the degenerative levels, the long-standing levels are lower." Dr. Michael continued, "And so absent any other knowledge of trauma, this is the only trauma I know—this is the only trauma that I have to conclude caused the symptomatology." Dr. Michael maintained the specific accident claimant's attorney described caused damage to the disc at L3-L4, namely, the disc "was torn—there were annular tears in the capsule as evidenced by the discogram." When asked again for his causation opinion, Dr. Michael stated, "I believe that if one looks at the history, he's fine one day; then has this work injury, and he's no longer fine. In other words, he's symptomatic. *** Commonsense tells us that the work injury caused the symptomatology." Dr. Michael further testified that he did not believe that the pelvic obliquity, hemivertebra, or scoliosis were the cause of his pain.

¶ 48 Dr. Michael was critical of respondent's utilization review, stating it did not comport with the standard of care. He opined that the report was "a poor report having nothing to do with this parent [*sic*]." Dr. Michael explained that the author of the report "was referring to negatives that had nothing to do with this case, referring to negatives about condition [*sic*] that no one ever raised." For instance, Dr. Michael stated that the report suggested that claimant had "gross instability," but no one ever diagnosed claimant with that condition. Dr. Michael also stated that a psychosocial screening of claimant, as suggested by the author of the utilization report, is not necessary on "normal people."

¶ 49 On cross-examination, Dr. Michael testified his causal connection opinions were based on the accuracy of claimant's history and the hypothetical posed by claimant's attorney. Dr. Michael acknowledged that he first examined claimant about 2½ years after claimant's injury. Nevertheless, he stated that he would not "defer" to the physical examination results, diagnostic conclusions, and observations of the physicians that saw claimant before him. Dr. Michael stated that the board certification for a doctor of osteopathic medicine (D.O.), such as Dr. Dolphin, is "nowhere near as rigorous" as the board certification for a doctor of medicine (M.D.).

¶ 50 Based on the foregoing, the arbitrator found that claimant sustained an accident that arose out of and in the course of his employment with respondent. The arbitrator further found claimant's condition of ill-being to be causally related to the accident. The basis for the arbitrator's causation finding was that claimant had no symptoms prior to the accident, but they have been "present and progressing since the accident." The arbitrator awarded claimant 457 weeks of TTD benefits (see 820 ILCS 305/8(b) (West 2008)), encompassing the period from July 1, 2008, through April 3, 2017, at a rate of $314.67 per week. The arbitrator also awarded claimant reasonable and necessary

medical expenses and ordered respondent to authorize and pay for prospective medical treatment recommended by Dr. Segal.

¶ 51 A majority of the Commission affirmed the decision of the arbitrator as modified and remanded the matter for further proceedings pursuant to *Thomas*. Regarding the issue of causation, the Commission determined that "the many conflicting medical opinions fail to establish causation by a preponderance of the evidence." The Commission noted that over a period of nine years, claimant complained to his treaters of severe pain, usually at a level of 8 or 9 on a 10-point scale. However, the electrodiagnostic studies were negative and Drs. Dolphin, Purighalla, and Anseeuw were never able to find a pain generator. The Commission acknowledged that there were causation opinions in claimant's favor, but they were based on claimant being asymptomatic until January 29, 2008, which was contrary to the early medical records. Moreover, the Commission found that the causation opinions in claimant's favor assumed that claimant was "truthful and did not magnify his symptoms." The Commission, however, found that the medical records showed "significant symptom magnification" and evidence of doctor shopping. Ultimately, the Commission, relying on the testimony of Dr. Dolphin, concluded that claimant had reached maximum medical improvement by June 19, 2008. As a result, the Commission vacated the arbitrator's awards of TTD benefits, medical benefits after June 19, 2008, and prospective medical care. The Commission remanded the matter to the arbitrator for further proceedings pursuant to *Thomas*, 78 Ill. 2d 32 (1980). Commissioner Gore dissented and would have affirmed the arbitrator's "well reasoned decision in its entirety."

¶ 52 On judicial review, the circuit court of Rock Island County confirmed the decision of the Commission. This appeal by claimant ensued.

¶ 53 II. ANALYSIS

¶ 54 On appeal, claimant argues that the circuit court's decision to affirm the Commission with respect to the issues of causal connection, medical expenses, TTD benefits, and prospective medical care is against the manifest weight of the evidence.

¶ 55 As an initial matter, we observe that claimant improperly directs his assignments of error against the order of the circuit court. Contrary to claimant's assertion, 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, "it is the decision of the Commission *** which is under consideration." *Farris v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130767WC, ¶ 72. Stated differently, we review the decision of the Commission, not the judgment of the circuit court. *S&C Electric Co. v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 141057WC, ¶ 30; *Travelers Insurance v. Precision Cabinets, Inc.*, 2012 IL App (2d) 110258WC, ¶ 33; *Dodaro v. Illinois Workers' Compensation Comm'n*, 403 Ill. App. 3d 538, 543 (2010). Then, based on our review of the Commission's decision, we either affirm or reverse the judgment of the circuit court. Nevertheless, as the assignments of error which claimant asserts would also apply to the Commission's decision, we will address them in that context.

¶ 56 A. Causal Connection

¶ 57 For his first assignment of error, claimant asserts that the finding that he failed to establish that the current condition of ill-being of his low back is not causally connected to his January 28, 2008, work accident is against the manifest weight of the evidence.

¶ 58 At the outset, we note that claimant devotes many pages of his brief to arguing that he sustained an accidental injury that arose out of and in the course of his employment with

respondent. However, as reflected at the request-for-hearing form submitted at the arbitration hearing, respondent conceded that claimant sustained an accidental injury that arose out of and in the course of his employment on January 29, 2008. Respondent disputed, however, whether claimant's current condition of ill-being was causally connected to the January 29, 2008, injury. The issue of accident having been conceded at the arbitration hearing, we confine our analysis to whether claimant's current condition of ill-being is causally connected to his work injury.

¶ 59 The purpose of the Act is to protect an employee from any risk or hazard which is peculiar to the nature of the work he or she is employed to do. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). To recover compensation under the Act, an employee must prove by a preponderance of the evidence all elements of his or her claim, including that a causal connection exists between the injury and his or her employment. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860 (2005). An occupational activity need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003); *Freeman United Coal Mining Co. v. Industrial Comm'n*, 308 Ill. App. 3d 578, 586 (1999). Whether a causal relationship exists between a claimant's employment and his or her condition of ill-being is a question of fact. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984); *Bolingbrook Police Department v. Illinois Workers' Compensation Comm'n*, 2015 IL App (3d) 130869WC, ¶ 52. It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicts in the evidence. *Hosteny*, 397 Ill. App. 3d at 674. This is especially true with respect to medical issues, to which we owe heightened deference to the Commission because of the expertise it possesses in the medical arena. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). As a

reviewing court, we cannot reject or disregard permissible inferences drawn by the Commission simply because different or conflicting inferences may also reasonably be drawn from the same facts, nor can we substitute our judgment for that of the Commission on such matters unless the Commission's findings are against the manifest weight of the evidence. *Zion-Benton Township High School District 126 v. Industrial Comm'n*, 242 Ill. App. 3d 109, 113 (1993). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent, *i.e.*, no rational trier of fact would have agreed with the Commission. *Ravenswood Disposal Services v. Illinois Workers' Compensation Comm'n*, 2019 IL App (1st) 181449WC, ¶ 15.

¶ 60 Applying the foregoing standards, we find ample evidence to support the Commission's finding that claimant failed to prove that his current condition of ill-being is causally related to the work accident of January 29, 2008. In concluding that claimant failed to meet his burden of establishing that his current condition of ill-being was causally related to the work accident, the Commission cited the "many conflicting medical opinions." Indeed, we observe that claimant's treating physicians presented no less than three different conclusions regarding the etiology of claimant's ongoing complaints. These included that (1) claimant has no underlying issues requiring surgical intervention, (2) claimant sustained a compensable work injury that caused an aggravation to a preexisting, congenital hemivertebra at the S1 level which is the cause of claimant's complaints and requires surgery, and (3) claimant sustained a compensable work injury that caused a disc injury at L3-L4 which is the cause of claimant's complaints and requires surgical repair. The Commission adopted the first conclusion, *i.e.*, that there are no underlying work-related issues requiring surgical intervention. Based on our review of the record, we cannot say that an opposite conclusion is clearly apparent.

¶ 61 In this regard, we observe that although claimant complained of severe pain over the nine-year period between the work incident and the arbitration hearing, the electrodiagnostic studies were negative and Dr. Dolphin and Dr. Anseeuw were never able to find a pain generator. Dr. Dolphin diagnosed low-back pain, degenerative disc disease with mild spinal stenosis between L3 and L4 with a right-sided disc herniation, and right-sided vertebral body and pedicle asymmetry at L5. Dr. Dolphin initially thought that claimant's low-back pain and right-sided disc herniation at L3-L4 "would have been related to the injury" of January 2008. However, he later obtained a CT myelogram which showed "stenosis primarily between L3 and L4 and L4 and L5," but no herniation. Observing that none of the findings on the CT myelogram were acute, Dr. Dolphin ultimately stated that he "would not attribute any of those findings directly to the work injury." Dr. Dolphin also testified that any complaints claimant voiced in 2010 would be unrelated to the work incident in 2008, explaining that in 2008, there was no finding that the source of claimant's discomfort was specifically related to any particular nerve source. Similarly, Dr. Anseeuw's examination did not show any significant abnormalities.

¶ 62 Further, neither Dr. Dolphin, Dr. Purighalla, nor Dr. Anseeuw believed that surgery would help claimant. In this regard, Dr. Dolphin explained that because claimant did not get much relief from the epidural steroid injections, surgical intervention was unlikely to provide help. Dr. Purighalla stated that he did not see "anything structurally abnormal to consider any surgical options." Noting that the electrodiagnostic studies administered to claimant were normal, Dr. Anseeuw determined that claimant's problem was not neurological and that he may benefit from a pain clinic.

¶ 63 In contrast, Dr. Gupta diagnosed claimant with a right S1 hemivertebra, pelvic obliquity, and lumbar scoliosis. Dr. Gupta testified that a hemivertebra is a congenital abnormality that usually causes scoliosis and pelvic obliquity. Dr. Gupta testified that it is possible for a previously asymptomatic hemivertebra and pelvic obliquity to become symptomatic as a result of repeatedly lifting and shoveling heavy objects. Further, he opined that the accident in January 2008 "was the inciting event, the precipitating event" which caused claimant's hemivertebra and pelvic obliquity to become symptomatic and painful. He also thought spinal stenosis and foraminal stenosis was the source of claimant's leg pain. Dr. Gupta recommended a resection of the hemivertebra to help correct the scoliosis and pelvic obliquity and to decompress the spinal stenosis. Dr. Gupta testified that his causation opinion was based on claimant being asymptomatic until January 29, 2008. As the Commission noted, however, this is contrary to the evidence of record. Notably, claimant's application for adjustment of claim references an accident resulting from "repetitive shoveling." Further, the patient questionnaire completed when claimant first saw Dr. Allen on February 11, 2008, indicates that claimant had been having pain for almost one year. Similarly, the notes from the physical-therapy evaluation on March 10, 2008, documented "the onset of symptoms occurring initially one year ago, secondary to a shoveling incident while at work" and an "exacerbation of symptoms occurring 2/29/08 [*sic*], while again shoveling *** at work."

¶ 64 Additionally, the record establishes that, based on the discogram performed by Dr. Glaser, Dr. Michael and Dr. Segal opined that claimant's pain came from the L3-L4 level. Both Dr. Michael and Dr. Segal causally connected this condition to the work accident and recommended fusion surgery at L3-L4. Dr. Michael's causation opinion was based on a hypothetical advanced by claimant's attorney of a specific accident on January 29, 2008, and no prior spinal pain.

Similarly, Dr. Segal's diagnosis was premised on a history of sudden onset of low-back pain while lifting a heavy object at work. However, as noted above, this is contrary to claimant's application for adjustment of claim and the histories claimant provided to both Dr. Allen and the physical therapist. Moreover, Dr. Michael opined the specific accident claimant's attorney described caused damage to the disc at L3-L4, namely that the disc "was torn—there were annular tears in the capsule as evidence by the discogram." Yet, the post-discogram CT scan showed the L3-L4 disc to be "intact and unremarkable" with "[n]o obvious disk bulges, protrusions, or herniations." Dr. Michael rejected other sources of claimant's pain such as nerve impingement, hemivertebra, scoliosis, or pelvic obliquity. Indeed, he did not think the hemivertebra, scoliosis, or pelvic obliquity needed to be treated, stating that individuals with such conditions could live their entire lives pain free.

¶ 65 In short, to receive benefits under the Act, claimant was required to prove that his current condition of ill-being is causally related to the work injury. Here, there was conflicting evidence regarding whether claimant's current condition of ill-being was causally related to his work accident. The record establishes that the Commission considered the relevant evidence and had a sufficient basis to find that claimant failed to meet his burden of proof by a preponderance of the credible evidence. Given the presence of conflicting medical opinions, we owe substantial deference to the decision of the Commission. We therefore find that the Commission's conclusion that claimant's current condition of ill-being is not causally related to his work accident of January 29, 2008, is not against the manifest weight of the evidence, *i.e.*, an opposite conclusion is not clearly apparent.

¶ 66 B. Temporary Total Disability

¶ 67 Next, we address claimant's argument that the finding that he was not entitled to TTD benefits is against the manifest weight of the evidence.

¶ 68 An employee is temporarily totally disabled from the time an injury incapacitates him until such time as he is as far recovered as the permanent character of the injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990); *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542 (2007). To be entitled to TTD benefits, the employee must establish not only that he did not work, but also that he is unable to work and the duration of that inability to work. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 832 (2002); see also *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 146 (2010) ("[W]hen determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force."). Once an injured employee has reached maximum medical improvement (MMI), the disabling condition has become permanent and he or she is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). The factors to consider in determining whether an employee has reached MMI include a release to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005). The issue of whether an employee is entitled to TTD benefits and the period of time during which the employee is temporarily totally disabled are questions of fact for the Commission, and the Commission's decision on such matters will not be set aside on review unless it is contrary to the manifest weight of the evidence. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118-19. A decision

is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Ravenswood Disposal Services*, 2019 IL App (1st) 181449WC, ¶ 15.

¶ 69 In this case, the arbitrator awarded claimant 457 weeks of TTD benefits (see 820 ILCS 305/8(b) (West 2008)), encompassing the period from July 1, 2008, through April 3, 2017. The Commission, however, vacated the arbitrator's award of TTD benefits in its entirety. Relying on the testimony and medical records of Dr. Dolphin, the Commission found that claimant had reached maximum medical improvement as of June 19, 2008, prior to his last day of work for respondent. Based on the record before us, we conclude that Dr. Dolphin did determine that claimant had reached maximum medical improvement. Contrary to the Commission's finding, however, it was not as of June 19, 2008.

¶ 70 In this regard, we note that Dr. Dolphin's progress note of June 19, 2008, indicates that he had no further treatment options to offer claimant and placed him on light duty. However, he did not definitively place claimant at maximum medical improvement at that time, writing, "I recommend that he follow up with Dr. *** Allen. *Perhaps* he should be placed at maximum medical improvement." (Emphasis added.) At his deposition, Dr. Dolphin initially stated on direct examination that he indicated on June 19, 2008, that claimant "should be placed at maximum medical improvement." He later stated that he recommended that claimant follow up with Dr. Allen "and leave the final conclusion on placing him at maximum medical improvement to her." On cross-examination, however, Dr. Dolphin was asked directly whether he had placed claimant on maximum medical improvement on June 19, 2008. Dr. Dolphin responded, "I don't think so," reiterating that it was his recommendation for claimant to "follow back up with Dr. *** Allen for her to place him at maximum medical improvement." There is no indication in the record that

claimant ever returned to Dr. Allen to obtain such a determination. But claimant did return to Dr. Dolphin on September 3, 2008. At that time, claimant reported that there was no light-duty work available for him at his job. Dr. Dolphin, noting that several modalities of conservative treatment were tried, stated that he had nothing from a surgical standpoint to offer claimant. Dr. Dolphin concluded:

> "At this point my only recommendation perhaps would be to consider a functional capacity evaluation to put him at permanent restrictions. *From my standpoint at this point he is at maximum medical improvement starting today*. Should a functional capacity evaluation be ordered, he can follow-up with the occupational medicine physician (Dr. Rhea Allen)." (Emphasis added.) [C760]

There is no indication in the record that claimant followed up with Dr. Allen. Thus, based on the foregoing record, we conclude that the Commission, relying on Dr. Dolphin's testimony, properly determined that claimant had reached maximum medical improvement. We disagree, however, that the date of maximum medical improvement was June 19, 2008. Rather, we conclude that Dr. Dolphin found claimant at maximum medical improvement as of September 3, 2008.

¶ 71 In short, we conclude that claimant reached maximum medical improvement as of September 3, 2008, and is therefore entitled to TTD benefits from July 1, 2008, through September 3, 2008, or a period of 9-1/7 weeks. Accordingly, we reverse that portion of the Commission decision vacating the arbitrator's award of TTD benefits and remand the matter to the Commission to enter a finding that claimant reached maximum medical improvement as of September 3, 2008, and to award claimant TTD benefits from July 1, 2008, through September 3, 2008.

¶ 72 C. Medical Expenses

¶ 73 Next, we address claimant's argument that the finding that he was not entitled to medical expenses incurred after June 19, 2008, is against the manifest weight of the evidence.

¶ 74 Section 8(a) of the Act (820 ILCS 305/8(a) (West 2008)) governs the payment of medical expenses. That provision states in relevant part:

> "The employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2 [(820 ILCS 305/8.2 (West 2008))], in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2008).

A claimant bears the burden of proving, by a preponderance of the evidence, his entitlement to an award of medical expenses under section 8(a) of the Act. *Westin Hotel*, 372 Ill. App. 3d at 546. Questions as to the reasonableness of medical charges, the necessity of the medical services provided, and the causal relationship between the medical services and the work-related injury are questions of fact to be resolved by the Commission. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 51; *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill. App. 3d 893, 903 (2004). A court of review will not disturb the Commission's decision on a factual matter unless it is against the manifest weight of the evidence. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10. As noted above, a decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. ***Ravenswood Disposal Services***, 2019 IL App (1st) 181449WC, ¶ 15.

¶ 75 In this case, the Commission ordered respondent to pay all related medical expenses incurred through June 19, 2008. This decision was based on the Commission's finding that because claimant had reached maximum medical improvement as of June 19, 2008, his condition of ill-being after that date was not causally related to his work accident. Given our conclusion that the Commission erred in finding that claimant reached maximum medical improvement by June 19, 2008, and our subsequent determination that claimant reached maximum medical improvement as of September 3, 2008, we modify the award of medical expenses to reflect that respondent shall pay related medical bills incurred by claimant through September 3, 2008, and we remand the matter to the Commission to enter an award in accordance herewith.

¶ 76 D. Prospective Medical Care

¶ 77 Finally, we address claimant's argument that the finding that he was not entitled to prospective medical care is against the manifest weight of the evidence. Claimant's argument is based on the assertion that his current condition of ill-being is causally related to his work accident of January 29, 2008. As discussed, however, the Commission's finding that claimant failed to prove a causal connection between his current condition of ill-being and his work accident was not against the manifest weight of the evidence. Accordingly, for the same reasons that we rejected claimant's arguments addressed to the causal connection finding, we conclude that the Commission did not err in denying prospective medical care. See *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011) (holding that arguments based upon the rejected premise that the Commission's causation finding is erroneous may be rejected without further analysis).

¶ 78 V. CONCLUSION

¶ 79 For the reasons set forth above, we (1) reverse that portion of the judgment of the circuit court of Rock Island County confirming the Commission's finding that claimant reached maximum medical improvement as of June 19, 2008; (2) reverse that portion of the circuit court judgment confirming the Commission's denial of an award of TTD benefits; (3) reverse that portion of the circuit court judgment affirming the Commission's award of medical expenses through June 19, 2008; (4) affirm the circuit court's judgment in all other respects; (4) reverse that portion of the Commission's decision finding that claimant reached maximum medical improvement as of June 19, 2008; (5) reverse that portion of the Commission's decision vacating the arbitrator's award of TTD benefits; (6) modify the Commission's decision to reflect that claimant is entitled to reasonable and necessary medical expenses incurred through September 3, 2008; (7) affirm the Commission's decision in all other respects; and (8) remand this cause to the Commission with directions to: (a) enter a finding that claimant reached maximum medical improvement as of September 3, 2008; (b) award claimant TTD benefits from July 1, 2008, through September 3, 2008, and (c) order respondent to pay related medical bills incurred by claimant through September 3, 2008. This cause is also remanded to the Commission for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 80 Circuit court judgment affirmed in part and reversed in part.

¶ 81 Commission decision affirmed in part as modified and reversed in part.

¶ 82 Cause remanded to the Commission with directions.