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2019 IL App (5th) 180415WC-U

Order filed June 27, 2019

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

JEFFREY GROTE,)	Appeal from the Circuit Court
)	of the Third Judicial Circuit,
)	Madison County, Illinois
Appellant,)	
)	
v.)	Appeal No. 5-18-0415WC
)	Circuit No. 17-MR-271
)	
ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION, <i>et al.</i> , (Granite City)	David Dugan,
Police Department, Appellees).)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's determination during a previous section 19(b) proceeding that the claimant's cervical condition was not causally related to the April 28, 2011, work accident and that the claimant was not entitled to prospective medical benefits for that condition was law of the case, and therefore the Commission did not err by refusing to consider additional evidence and argument on those issues during a subsequent Commission proceeding.

¶ 2 The claimant, Jeffrey Grote, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), seeking benefits for

injuries which he claimed to have sustained on April 28, 2011, while he was working for respondent Granite City Police Department (employer). After conducting a 19(b) hearing, an arbitrator found that the claimant had sustained work-related injuries to his left shoulder and left elbow and awarded temporary total disability (TTD) benefits and medical expenses related to those injuries. However, the arbitrator found that the claimant had failed to prove that the current condition of ill-being in his cervical spine was causally related to the April 28, 2011, work accident. Based upon that determination, the arbitrator ruled that the claimant was not entitled to receive prospective medical care or any other benefits with respect to the current condition of the claimant's cervical spine. Specifically, the arbitrator denied the claimant's request to order the employer to approve surgery to repair an alleged disc herniation at C5-C6, as recommended by the claimant's treating orthopedic surgeon.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission unanimously affirmed and adopted the arbitrator's decision. Neither party sought judicial review of the Commission's decision.

¶ 4 While the claimant's claim was pending before the Commission, the claimant underwent cervical surgery. The claimant's condition improved after the surgery, and the claimant's orthopedic surgeon opined that the intraoperative findings and postoperative results confirmed that all of the claimant's symptoms (including his left shoulder and left elbow complaints) were the result of a disc herniation at C5-C6 that was caused by the April 28, 2011, work accident.

¶ 5 During a second arbitration proceeding addressing the nature and extent of the claimant's injuries, the claimant argued that his cervical condition was causally related to the April 28, 2011, work accident and that he was entitled to recover medical expenses associated with the treatment of that condition, including the cervical disc surgery. The arbitrator found that the

current conditions of ill-being in the claimant's left shoulder and left elbow were causally related to the April 28, 2011, work accident. The arbitrator concluded that the claimant had sustained a 15% loss of use of his left arm and awarded the claimant permanent partial disability (PPD) benefits for that condition pursuant to Section 8(e) of the Act (820 ILCS 305/8(e) (West 2010)). However, the arbitrator ruled that the Commission's prior findings that the claimant's cervical condition was not causally related to the April 28, 2011, work accident and that the claimant was not entitled to prospective medical treatment or other benefits related to that condition was law of the case, and the claimant was therefore barred from relitigating those issues. Based on that ruling, the arbitrator refused to consider new evidence relating to the claimant's cervical condition, its diagnosis or treatment, its relationship to the work accident, or its connection to the claimant's left neck and shoulder conditions.

¶ 6 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Madison County. The circuit court confirmed the Commission's decision.

¶ 7 The claimant appeals the circuit court's decision.

¶ 8 **FACTS**

¶ 9 The claimant, a Granite City police officer, was injured while performing his job duties on April 28, 2011. On that date, the claimant performed a well-being check on an elderly woman. When the claimant arrived at the woman's residence, he and his partner knocked on the door, but no one answered. In order to enter the residence, the claimant had to crawl through a window with help from his partner, who boosted him up to the window. As he came through the window into the house, the claimant fell onto his extended left arm and then landed on his upper

chest, head and neck. He testified that most of his weight was on his left arm, and that when his left arm hit the floor, it slid out in front of him and he heard a “pop.” He felt immediate pain in his left hand, arm and shoulder, including the top of his shoulder in an area between the shoulder joint and the base of his neck. The claimant described the pain as sharp and stabbing. A few days after the accident, the pain began radiating down the claimant’s left arm. The claimant reported the injury to his Lieutenant.

¶ 10 Shortly after the accident, the claimant sought medical treatment from Dr. Mark Eavenson, a chiropractor. Initially, the claimant complained primarily of pain in his left shoulder and upper arm, but by May 3, 2011, he also reported experiencing pain in his neck. Dr. Eavenson ordered x-rays of the claimant’s left shoulder and MRIs of the claimant’s left shoulder and cervical spine. The left shoulder MRI was performed on April 29, 2011, and the cervical MRI was performed on May 4, 2011.

¶ 11 Dr. Eavenson referred the claimant to Dr. George Paletta, an orthopedic surgeon. The claimant saw Dr. Paletta on May 11, 2011. Dr. Paletta opined that the claimant’s cervical spine MRI was “relatively unimpressive” for lateralizing disc pathology. The claimant’s principal complaints at that time were of numbness to the left hand, elbow and shoulder. Dr. Paletta believed that the claimant’s complaints about his elbow and the symptoms of numbness and tingling in the last two fingers of his left hand appeared likely to be cubital tunnel syndrome. However, during his subsequent evidence deposition, Dr. Paletta acknowledged that the numbness in the claimant’s fingers could also be caused by cervical radiculopathy. He recommended nerve conduction/EMG studies, which were performed by Dr. Daniel Phillips on May 11, 2011. The results were consistent with cubital tunnel syndrome. There was no component of cervical radiculopathy.

¶ 12 On June 23, 2011, Dr. Paletta performed arthroscopic rotator cuff surgery and cubital tunnel surgery, which provided only limited relief of the claimant's left shoulder and arm pain. Dr. Paletta found the claimant to be at maximum medical improvement (MMI) for his left shoulder and left elbow conditions as of August 17, 2011.

¶ 13 On August 15, 2011, the claimant saw Dr. Matthew Gornet, an orthopedic surgeon who specializes in disorders of the spine. The claimant complained of pain in his neck and upper left shoulder radiating into his left arm and hand. After reviewing the May 4, 2011, cervical MRI, Dr. Gornet concluded that the claimant had sustained a herniated cervical disc at C5-C6 and possibly also at C4-C5. Injections to the affected areas provided no lasting relief. Dr. Gornet opined that the pain and numbness that the claimant was experiencing in his left arm was due to radiculopathy from his cervical spine injury. In October 2011, Dr. Gornet recommended surgery to repair the claimant's herniated cervical disc, and he released the claimant to work light duty with restrictions.

¶ 14 On October 3, 2011, the claimant saw Dr. Michael C. Chabot, an orthopedic spine specialist, for an examination pursuant to Section 12 of the Act. Dr. Chabot obtained a history from the claimant, examined him, and reviewed the claimant's x-rays, MRI images, and nerve conduction study results. Dr. Chabot determined that it was unknown whether the claimant's persisting complaints were related to disc pathology. Dr. Chabot found it "inconsistent" that the claimant was complaining of pain that he described as an 8 or 9 out of 10 but was not taking any pain medication. In addition, Dr. Chabot opined that the claimant's medical records did not suggest that he had developed an active radiculopathy following the accident, and Dr. Chabot did not discern evidence of cervical spine or disc pathology which could explain the claimant's ongoing complaints. He recommended a cervical discogram for further study. In Dr. Chabot's

opinion, there were insufficient objective findings to support surgical intervention, and the claimant did not need to be on light duty or have any work restrictions.

¶ 15 On December 5, 2011, the claimant underwent a cervical myelogram and a post-myelogram CT scan. According to Dr. Chabot, the myelogram showed evidence of well-preserved disc space in the cervical spine, minimal broad based bulging at C5-6, very minimal degenerative changes at the C4-5 and C5-6, and no evidence of focal disc herniation. Dr. Chabot testified that, based upon these test results, it was still his opinion that the claimant did not need surgery at that time. Dr. Chabot also reviewed the films that Dr. Gornet had provided from the May 4, 2011, cervical MRI. Dr. Chabot testified that he did not see any evidence of disc herniation at either the C4-5 or C5-6 levels. He testified that he correlated the MRI images with the myelogram CT study, which he felt corroborated his findings.

¶ 16 Dr. Gornet was deposed on February 9, 2012. The transcript of Dr. Gornet's deposition was entered into evidence during the arbitration proceeding. During his deposition, Dr. Gornet disagreed with Dr. Chabot's analysis. Dr. Gornet opined that the films showed disc herniation at the C5-6 level. In Dr. Gornet's opinion, the films clearly showed a nerve channel with a dark rounded mass of disc extruding into the nerve on the left side, which correlated essentially identically with the claimant's symptoms. He attributed Dr. Chabot's differing interpretation to the possibility that Dr. Chabot had looked only at the sagittal views and not the foraminal views, because the significant problem shown on the foraminal views would be obvious to anyone trained in spinal anatomy. Dr. Gornet recommended disc replacement surgery at C5-6 and possibly also at C4-5. Dr. Gornet testified that it was his opinion within a reasonable degree of medical certainty that the herniated disc at C5-6 and possibly C4-5 was caused by the work accident described by the claimant.

¶ 17 The employer did not approve the surgery recommended by Dr. Gornet. As a result, the claimant filed a petition for immediate hearing under section 19(b) of the Act seeking authorization of the cervical spinal surgery recommended by Dr. Gornet and related medical expenses, among other relief. The “Request for Hearing” form indicates that the disputed issues included “causation, past medical and prospective medical for the cervical spine.”

¶ 18 A hearing on the claimant’s section 19(b) petition was conducted on April 18, 2012. During the hearing, the claimant testified that he was still experiencing pain in his neck, shoulders, arms, elbows, and hands. He stated that the pain in his neck did not start until a few weeks after the April 28, 2011, work accident. He acknowledged that he never reported the neck pain to anyone at the police department. He noted that his neck pain radiated from his jaw to his shoulder and arm. The claimant testified that he wanted the employer to authorize the surgery that Dr. Gornet proposed, and he hoped the surgery would resolve the pain in his neck, shoulders, arms, elbows, and hands.

¶ 19 While the matter was pending before the arbitrator, the claimant continued to treat with Dr. Gornet for his cervical spine condition. On August 28, 2012, Dr. Gornet performed a surgical disc replacement at C5-C6.

¶ 20 The arbitrator issued her decision on November 6, 2012. The arbitrator found that the claimant had sustained work-related injuries to his left shoulder and elbow on April 28, 2011, and she awarded the claimant TTD benefits and medical expenses related to the diagnosis and treatment of those injuries. However, the arbitrator found that the claimant had failed to prove that the current condition of ill-being in his cervical spine was causally related to the April 28, 2011, work-related accident. In support of this finding, the arbitrator noted that, when the claimant initially reported the April 28, 2011, work accident, he complained of pain in his left

shoulder and left elbow but he did not report any neck pain until he began treating with Dr. Gornet three and one-half months after the accident. The arbitrator further noted that the claimant's medical records did "not support a diagnosis of a neck injury occurring" at the time of the work accident. To the contrary, the arbitrator found that "[t]he tests that were done rule[d] out any cervical spine involvement." Specifically, the arbitrator found that the May 4, 2011, MRI "was determined to exhibit some mild disc bulging at upper cervical levels but no *** obvious herniation or significant acute disc injury," and that the May 11, 2011, nerve conduction studies conducted by Dr. Phillips "demonstrated findings consistent with ulnar neuropathy across the left elbow" but "no evidence of cervical radiculopathy." The arbitrator also relied upon the fact that "[i]njury to the neck was ruled out by every doctor except Dr. Gornet" who did not see the claimant until several months after the work accident. The arbitrator concluded that the claimant had "not established by a preponderance of the evidence that the current condition of ill being with respect to his cervical spine is causally related to the [work-related] injury he suffered on April 28, 2011."

¶ 21 Based on this determination (and on the arbitrator's finding that the claimant had reached MMI with respect to his left shoulder and left elbow injuries), the arbitrator found that the claimant was "not entitled to any prospective medical care" as a result of the April 28, 2011, work accident. Accordingly, the arbitrator denied the claimant's request for the cervical spine surgery recommended by Dr. Gornet. In the "Order of the Arbitrator" section of its written decision, the arbitrator stated that "[the claimant] did not prove a compensable accident with respect to the current condition of his cervical spine, therefore, no benefits will be awarded with respect to the current condition of the [claimant's] cervical spine." The arbitrator's decision also provided that "[i]n no instance shall this award be a bar to subsequent hearing and determination

of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.”

¶ 22 The claimant appealed the arbitrator’s decision to the Commission. On July 5, 2013, the Commission filed a decision which unanimously affirmed and adopted the arbitrator’s decision. Neither party sought judicial review of the Commission’s decision.

¶ 23 Dr. Gornet was deposed a second time on October 23, 2014. During that deposition, Dr. Gornet testified that his intraoperative findings confirmed the presence of a herniated disc at C5-C6, which was “consistent” with the claimant’s May 4, 2011, cervical MRI. Dr. Gornet further noted that the claimant’s symptoms of shoulder pain, arm pain, neck pain, and headaches were relieved by the surgery and the claimant was able to return to work full duty. He noted that the claimant had reported dramatic improvement and had made excellent progress after the surgery. In his October 23, 2014, deposition, Dr. Gornet opined that: (1) the August 28, 2012, cervical spine surgery cured the effects of the claimant’s April 28, 2011, work-related injury (*i.e.*, his shoulder pain, arm pain, neck pain, and headaches); and (2) the claimant’s shoulder and arm symptoms that were present since the time of the accident “were related to a cervical pathology,” and when that cervical pathology was removed, the claimant’s symptoms “went away.” Dr. Gornet also found that the claimant had reached MMI on August 29, 2013.

¶ 24 On September 30, 2016, a second arbitration hearing was held before a different arbitrator to determine the nature and extent of the claimant’s injuries at that time, among other issues. The arbitrator identified the disputed issues as causation, medical bills, nature and extent of the claimant’s injuries, and whether the law of the case doctrine precluded the claimant’s claims relating to his cervical spine. The parties stipulated that the claimant had sustained an accident that arose out of and in the course of his employment with the employer on April 28,

2011. The claimant introduced various medical records, including Dr. Gornet's records relating to the August 28, 2012, surgery and his treatment of the claimant postoperatively through August 29, 2013. The transcript of Dr. Gornet's October 23, 2014, deposition was also entered into evidence, along with transcripts of depositions of Drs. Paletta and Eavenson that were taken in 2015. The transcript of the testimony presented at the prior arbitration hearing and the Commission's decision in that prior proceeding were also presented into evidence.

¶ 25 During the second arbitration hearing, the claimant testified that, after Dr. Gornet performed surgery on his cervical spine on August 28, 2012, the claimant experienced immediate results. For example, the pain radiating from his neck down his left arm was resolved. The claimant stated that he had been on light duty prior to the surgery and was released to work full duty shortly after the surgery (in September 2012). He testified that he still experienced occasional numbness and tingling in his pinky and ring fingers while performing certain activities. Before the surgery, these fingers were numb all the time. On cross-examination, the claimant acknowledged that he had not seen any doctor for his left elbow or left shoulder since he last saw Dr. Paletta on August 17, 2011.

¶ 26 Based upon the evidence presented at the second arbitration hearing (including Dr. Gornet's October 23, 2014, deposition testimony), the claimant argued that his cervical condition and the surgery that Dr. Gornet performed to repair that condition was causally related to the April 28, 2011, work accident, and he sought medical expenses for the treatment of his cervical condition, including surgical expenses. The claimant also sought PPD benefits for loss of use of his left arm.

¶ 27 The arbitrator found that the current conditions of ill-being in the claimant's left shoulder and left elbow were causally related to the April 28, 2011, work accident. The arbitrator

concluded that the claimant had sustained a 15% loss of use of his left arm and awarded the claimant PPD benefits for that condition pursuant to Section 8(e) of the Act (820 ILCS 305/8(e) (West 2010)).

¶ 28 However, the arbitrator ruled that the Commission's decision in the prior section 19(b) proceeding was law of the case as to whether the condition of ill-being in the claimant's cervical spine was causally related to the April 28, 2011, work accident. The arbitrator noted that, in his February 9, 2012, deposition testimony, which was entered into evidence during the prior arbitration proceeding, Dr. Gornet opined that the claimant suffered from a C5-6 disc herniation that was causally connected to the April 28, 2011, work accident, and he recommended surgery to correct that cervical condition. The arbitrator further observed that, during the prior arbitration hearing, the claimant asked the arbitrator to approve the C5-6 disc replacement surgery recommended by Dr. Gornet, and the employer submitted contrary evidence from Dr. Chabot, who opined that the claimant's current cervical condition was unrelated to the work accident and that surgery for the cervical spine was neither reasonable nor necessary. The arbitrator further noted that the "Request for Hearing" form presented in the prior arbitration proceeding and the review of issues "clearly state that causal relationship for the cervical spine and the reasonableness and necessity of the treatment recommended by Dr. Gornet for the cervical spine were at issue at the time of the 19(b) hearing on April 18, 2012."

¶ 29 The arbitrator further noted that the Commission had affirmed and adopted the arbitrator's decision in the prior 19(b) decision finding that the claimant's cervical condition and his need for the C5-6 disc replacement recommended by Dr. Gornet "was neither reasonable, necessary nor causally related to the work accident of April 28, 2011." The Commission also affirmed the arbitrator's denial of all prospective medical care for injuries related to the April 28,

2011, work accident. The arbitrator found that, because neither party appealed the arbitrator's decision, the Commission's decision became a final order.

¶ 30 The arbitrator noted that, in the second arbitration proceeding, the claimant sought a finding that his cervical condition and the surgery performed by Dr. Gornet after the 19(b) hearing was reasonable, necessary and causally related to the work accident. The arbitrator found that these were the "identical factual and legal issues raised at the prior 19(b) hearing and, as such, the Decision and Opinion on Review is final and the Law of the Case." Accordingly, the arbitrator sustained the employer's objection to Dr. Gornet's deposition testimony regarding the claimant's cervical condition because that issue had been litigated and decided in the prior 19(b) proceeding. The arbitrator excluded all such testimony and refused to consider it.

¶ 31 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision.

¶ 32 The claimant then sought judicial review of the Commission's decision in the circuit court of Madison County. The claimant argued that the Commission erred when it found that the law of the case doctrine prevented him from establishing a causal connection between his cervical injury and the April 28, 2011, work accident. The circuit court confirmed the Commission's decision. The circuit court noted that the issue of causal connection presented at the prior section 19(b) hearing was "the same issue of causal connection" presented at the subsequent arbitration hearing. In both cases, the arbitrator was asked to decide whether the claimant's cervical condition was causally connected to the April 28, 2011, work accident. In both proceedings, Dr. Gornet opined that such a causal connection existed. Although the claimant suggested that Dr. Gornet's October 23, 2014, deposition provided additional evidence of the causal connection between the claimant's cervical condition and the work accident, the

circuit court noted that this evidence was “directed at the same issue that was determined” in the prior section 19(b) proceeding. Citing our decision in *Help at Home v. Illinois Workers’ Compensation Comm’n*, 405 Ill. App. 3d 1150 (2010), the circuit court ruled that “where no appeal is taken from a denial of benefits following a section 19(b) hearing, a Petitioner’s efforts to supplement the record with additional evidence is properly barred on relevancy grounds because the finding necessary for the denial became the law of the case.” The circuit court held that, because the claimant did not appeal the Commission’s order affirming the arbitrator’s section 19(b) decision, “the basis for the denial of benefits—lack of causal connection with the cervical condition—became law of the case.” For that reason, the circuit court found that the arbitrator’s decision to exclude Dr. Gornet’s October 23, 2014, deposition testimony regarding the cervical condition “as having been previously litigated,” and the Commission’s decision affirming the arbitrator, were proper.

¶ 33 The circuit court rejected the claimant’s reliance on our decision in *Weyer v. Illinois Workers’ Compensation Comm’n*, 387 Ill. App. 3d 297 (2008), in which we held that the law of the case doctrine did not prohibit the relitigation of legal and factual issues at a second section 19(b) hearing where those issues were different from the issues decided at a prior section 19(b) hearing. The court found that, unlike the claimant in *Weyer*, the claimant in this case was attempting to introduce additional evidence relevant to the same issue that was decided in the prior section 19(b) proceeding.

¶ 34 The circuit court also rejected the claimant’s argument that the law of the case doctrine should not apply because the November 7, 2012, arbitration decision stated that “[i]n no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability.” The court noted that

this language was “nearly identical” to language contained in section 19(b) of the Act and was “consistent with the scheme of section 19(b), which is to provide for interim and more immediate relief in terms of medical benefits.” The court noted that benefits awarded under section 19(b) “are often ongoing such that subsequent hearings on *additional* benefits might be expected.” (Emphasis in original.) However, the court noted that “[i]t is not additional benefits that the [claimant] here seeks but, rather, a second attempt at establishing causation relative to the cervical injury.” Citing *Help at Home*, the court held this claim barred under the law of the case doctrine.

¶ 35 This appeal followed.

¶ 36 ANALYSIS

¶ 37 On appeal, the claimant argues that the Commission erred by concluding that its prior affirmance of the arbitrator’s section 19(b) decision was law of the case on the issue of the “diagnosis” and “medical cause” of the claimant’s cervical condition.

¶ 38 Under the law-of-the-case doctrine, a court’s unreversed decision on an issue of law or fact that has been litigated and decided settles the question for all subsequent stages of the action. *Help at Home*, 405 Ill. App. 3d at 1151; *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm’n*, 387 Ill. App. 3d 244, 252 (2008); *Irizarry v. Industrial Comm’n*, 337 Ill. App. 3d 598, 606 (2003). The principles underlying the doctrine apply to matters resolved in proceedings before the Commission. *Help at Home*, 405 Ill. App. 3d at 1151; *Weyer*, 387 Ill. App. 3d at 307; *Irizarry*, 337 Ill. App. 3d at 606-07. We review the application of the law of the case doctrine *de novo*. *In re Christopher K.*, 217 Ill. 2d 348, 363-64 (2005).

¶ 39 In the initial 19(b) proceeding conducted in this case, the arbitrator specifically found that the claimant had failed to establish that the condition of ill-being in his cervical spine was

causally related to the April 28, 2011, work-related accident. The arbitrator considered conflicting evidence on this issue, including Dr. Gornet's opinion that the claimant's cervical condition was related to the work accident and the contrary opinions of other doctors, and ultimately resolved the issue against the claimant. Based on this determination, the arbitrator found that the claimant was "not entitled to any prospective medical care" as a result of the April 28, 2011, work accident, including the cervical spine surgery recommended by Dr. Gornet. In sum, the arbitrator found that "[the claimant] did not prove a compensable accident with respect to the current condition of his cervical spine, therefore, no benefits will be awarded with respect to the current condition of the [claimant's] cervical spine." Accordingly, the law of the case doctrine barred the claimant from relitigating whether there was a causal connection between the April 28, 2011, work accident and his cervical condition and need for cervical spine surgery.

¶ 40 Our decision in *Help at Home*, 405 Ill. App. 3d at 1151, is instructive in this case. In *Help at Home*, an arbitrator found after a 19(b) hearing that the claimant had sustained injuries to her low back and right shoulder that arose out of and in the course of her employment. *Id.* On review, the Commission found that the claimant failed to prove a causal connection with respect to her right shoulder injury, but affirmed and adopted all other aspects of the arbitrator's decision. *Id.* The Commission remanded the matter to the arbitrator with directions that the arbitrator "may consider any additional evidence with respect to the causal connection of the right shoulder to the accident." *Id.*

¶ 41 The employer appealed the Commission's decision, arguing that the law of the case doctrine precluded the Commission from remanding the matter to the arbitrator for further evidence with respect to the issue of causation as it related to the claimant's shoulder injury. We agreed. *Id.* We noted that the Commission found that the claimant failed to prove causation with

respect to the shoulder injury, and the claimant did not seek judicial review of that finding. *Id.* at 1151-52. We concluded, therefore, that this determination “became the law of the case, and the claimant is barred from raising the issue of a causal connection between her right shoulder injury and the accident *** during any further proceedings on remand.” *Id.* at 1152. We held that, as a matter of law, the Commission had no authority to allow the arbitrator on remand following the 19(b) hearing to consider further evidence relating to a causal connection between the work accident and the conditions of ill-being in the claimant’s right shoulder. *Id.*

¶ 42 The same conclusion applies here. During the section 19(b) proceeding, the Commission specifically found that the claimant had failed to establish a causal connection between the condition of his cervical spine and the work accident. Based on that finding, the Commission denied the claimant’s request for the cervical surgery recommended by Dr. Gornet. The Commission’s decision on these issues was not appealed, and therefore became final. Accordingly, the claimant could not introduce additional evidence during a subsequent arbitration purporting to establish a causal connection between his cervical condition and the work injury. Nor could he relitigate his entitlement to the cervical spine surgery recommended (and subsequently performed) by Dr. Gornet. The Commission has no statutory authority (and no inherent authority) to reconsider the evidentiary basis or factual findings underlying a prior award that has become final. *Ming Auto Body*, 387 Ill. App. 3d at 255.

¶ 43 The claimant contends that, because the Commission had previously found that the claimant’s left arm and left shoulder pain and numbness were causally related to the April 28, 2011, work accident, the Commission should have considered additional evidence of the “medical reason” for those symptoms when determining the “nature and extent” of the claimant’s work-related injury during the second arbitration proceeding. Specifically, the

claimant maintains that the Commission should have considered Dr. Gornet's October 2014 deposition testimony and other evidence that the claimant's left shoulder and left elbow symptoms resulted from a cervical disc herniation rather than from cubital tunnel syndrome or some other condition of the claimant's left arm. According to the claimant, the law of the case doctrine did not preclude the Commission from considering such evidence in this case, because the evidence merely provided a medical explanation of conditions that the Commission had previously found to be causally related to the work accident. The claimant contends that this fact distinguishes the instant case from *Help at Home*, wherein we barred the Commission from considering evidence of a causal connection between the work accident and a shoulder injury that the Commission had previously found to be unconnected to the work accident.

¶ 44 We disagree. Contrary to the claimant's suggestion, the arbitrator in the prior 19(b) proceeding explicitly determined both that the claimant had failed to establish any causal connection between his cervical condition and the April 28, 2011, work accident and that the work injuries that the claimant had established (*i.e.*, the conditions of ill-being in the claimant's left shoulder and elbow) were not connected to a cervical injury. The arbitrator noted that, when the claimant initially reported the April 28, 2011, work accident, he complained of pain in his left shoulder and left elbow but he did not report any neck pain until he began treating with Dr. Gornet three and one-half months later. The arbitrator further noted that the claimant's medical records did "not support a diagnosis of a neck injury occurring" at the time of the work accident. To the contrary, the arbitrator found that "[t]he tests that were done *rule[d] out any cervical spine involvement.*" (Emphasis added.) Specifically, the arbitrator found that the May 4, 2011, MRI "was determined to exhibit some mild disc bulging at upper cervical levels but no *** obvious herniation or significant acute disc injury," and that the May 11, 2011, nerve conduction

studies conducted by Dr. Phillips “demonstrated findings consistent with ulnar neuropathy across the left elbow” but “*no evidence of cervical radiculopathy.*” (Emphasis added.) The arbitrator also relied upon the fact that “[i]njury to the neck was ruled out by every doctor except Dr. Gornet” who did not see the claimant until several months after the work accident. The arbitrator concluded that the claimant had “not established by a preponderance of the evidence that the current condition of ill being with respect to his cervical spine is causally related to the [work-related] injury he suffered on April 28, 2011.” The arbitrator therefore denied the cervical surgery recommended by Dr. Gornet. These findings became final when the Commission’s affirmance of the arbitrator’s decision was not appealed, and the claimant was barred from relitigating these issues thereafter.

¶ 45 The claimant relies upon our decision in *Weyer*, but that case is distinguishable. In *Weyer*, the claimant injured his left shoulder in a workplace accident. Following a section 19(b) hearing, the arbitrator found that the claimant’s left shoulder condition from the time of injury until July 24, 2003 (the date of the section 19(b) hearing), was causally connected to the work accident and awarded TTD benefits up until that date. At the time of the arbitrator’s decision, the claimant had not undergone an MRI on his left shoulder and no doctor had recommended shoulder surgery. The Commission affirmed the arbitrator’s decision. The Commission’s decision became final because neither party appealed it. Thereafter an MRI of the claimant’s left shoulder revealed a labral tear, and the employer’s examining doctor opined that there was no causal relationship between the labral tear and the work accident. During a subsequent section 19(b) proceeding, the Commission found that the work-related injury to the claimant’s left shoulder that was the subject of the prior section 19(b) proceeding had resolved and that the claimant’s need for left shoulder surgery to repair the labral tear was unrelated to the work

accident.

¶ 46 The claimant appealed the Commission's decision, arguing that the Commission's second decision was barred by the law of the case. We disagreed and affirmed the Commission. We held that the two 19(b) proceedings involved different factual and legal issues, and the law of the case doctrine did not prohibit the parties from litigating whether a left shoulder condition that was not discovered until after the first 19(b) decision and the claimant's need for surgery to correct that condition was work-related.

¶ 47 This case is distinguishable. Here, Dr. Gornet diagnosed the claimant with a herniated disc at C5-C6 and recommended surgery to repair that cervical condition during the initial section 19(b) proceeding. After considering conflicting evidence on the issue, the Commission found that the claimant's cervical condition was unrelated to the April 28, 2011, work accident and denied prospective medical care for the cervical spine. After the first 19(b) hearing, the claimant underwent the exact surgical treatment that he had requested approval for and that the Commission had previously denied. Unlike the circumstances presented in *Weyer*, here the legal and factual issues presented in the first arbitration hearing were identical to those presented in the second arbitration hearing. Thus, the Commission properly applied the law of the case doctrine.

¶ 48 The claimant also suggests that the law of the case doctrine should not apply here because the arbitrator's initial section 19(b) decision stated that "[i]n no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any." He also cites *R.D. Masonry, Inc. v. Industrial Comm'n*, 215 Ill. 2d 397 (2005), in which our supreme court noted that "[e]ach section 19(b) proceeding is a separate proceeding, limited to a determination of [TTD] up to the

date of the hearing, and each 19(b) decision is a separate and appealable order.” *Id.* at 407-08. However, both *R.D. Masonry, Inc.* and the language the claimant cites in the initial section 19(b) order are inapposite. Here, the claimant is not seeking additional TTD benefits for time periods not addressed in the initial order. Nor is he seeking any additional benefits for injuries or conditions that were not previously diagnosed or litigated during the prior section 19(b) proceeding. Rather, as the circuit court correctly noted, the claimant is seeking a second attempt at establishing causation relative to the cervical injury. Because that issue has been previously decided by a final decision of the Commission, the Commission’s prior decision is law of the case and the issue may not be relitigated.

¶ 49 CONCLUSION

¶ 50 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County, which confirmed the Commission’s decision.

¶ 51 Affirmed.