Illinois Official Reports

Appellate Court

Haepp v. Illinois Workers' Compensation Comm'n, 2022 IL App (1st) 210634WC

Appellate Court Caption	DONALD HAEPP, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (City of Chicago, Appellee).
District & No.	First District, Workers' Compensation Commission Division No. 1-21-0634WC
Filed	December 9, 2022
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 2019-L-50612; the Hon. John J. Curry Jr., Judge, presiding.
Judgment	Circuit court order affirmed in part and vacated in part. Commission decision affirmed in part and vacated in part; cause remanded with instructions.
Counsel on Appeal	Kevin T. Veugeler and Neil Schelhammer, of Healy Scanlon, of Chicago, for appellant. Jack M. Shanahan, of Inman & Fitzgibbons, Ltd., of Chicago, for appellee.

Panel	JUSTICE BARBERIS delivered the judgment of the court, with opinion. Presiding Justice Holdridge and Justices Hoffman, Hudson, and Cavanagh concurred in the judgment and opinion.

OPINION

¶ 1 Claimant, Donald Haepp, appeals the order of the circuit court of Cook County, confirming the decisions of the Illinois Workers' Compensation Commission (Commission), which awarded claimant benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) for four separate injuries he sustained while working for respondent, the City of Chicago, on May 4, 2010 (10 WC 25879), January 26, 2011 (11 WC 17266), June 27, 2014 (14 WC 24735), and December 15, 2014 (15 WC 1963). On appeal, claimant argues that the Commission erred by (1) declining to award wage-differential benefits under section 8(d)(1) of the Act (*id.* § 8(d)(1)), (2) declining to award penalties and fees under sections 19(k), 19(*l*), and 16 of the Act (*id.* §§ 19(k), 19(*l*), 16), and (3) awarding respondent credits under section 8(j) of the Act (*id.* § 8(j)).

¶ 2 I. BACKGROUND

¶ 3 On July 7, 2010, claimant filed an application for adjustment of claim, seeking benefits for an injury he sustained to his left knee while working for respondent as a carpenter on May 4, 2010 (10 WC 25879). Claimant filed a second application for adjustment of claim on May 3, 2011, seeking benefits for a separate injury he sustained to his left knee while working for respondent as a carpenter on January 26, 2011 (11 WC 17266). The cases were consolidated for a hearing before an arbitrator pursuant to section 19(b) of the Act (*id.* § 19(b)).

¶ 4 Following the hearing, the arbitrator found that claimant sustained compensable injuries on each of the alleged dates and awarded him temporary total disability (TTD) benefits under section 8(b) of the Act (*id.* § 8(b)), as well as reasonable and necessary medical expenses under sections 8(a) and 8.2 of the Act (*id.* §§ 8(a), 8.2). With regard to claim 10 WC 25879, the arbitrator also ordered respondent to pay penalties under sections 19(k) and 19(*l*) of the Act (*id.* §§ 19(k), (*l*)) and attorney fees under section 16 of the Act (*id.* § 16). The arbitrator did not order respondent to pay penalties or fees in claim 11 WC 17266. Respondent sought review of the arbitrator's decision before the Commission in claim 10 WC 25879, and both parties sought review of the arbitrator's decision before the Commission in claim 11 WC 17266.

¶ 5 On review, the Commission affirmed and adopted the arbitrator's decision in claim 10 WC 25879, including the award of penalties and fees. The Commission modified the arbitrator's decision in claim 11 WC 17266 to include an award of penalties and fees under sections 19(k), 19(*l*), and 16. The Commission remanded both matters back to the arbitrator for further determination on additional amounts of temporary or permanent disability benefits, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). Neither party sought judicial review of the Commission's decisions.

¶ 6 On July 23, 2014, claimant filed a third application for adjustment of claim, seeking benefits for an umbilical hernia he sustained while working for respondent on June 27, 2014 (14 WC 24735). Claimant filed a fourth application for adjustment of claim on January 21,

2015, seeking benefits for an injury he sustained to his right shoulder on December 15, 2014 (15 WC 1963). All four claims (10 WC 25879, 11 WC 17266, 14 WC 24735, and 15 WC 1963) were consolidated for a hearing before an arbitrator on March 26, 2018.

¶ 7 A. Arbitration Hearing

¶ 8 At the arbitration hearing held on March 26, 2018, the parties disputed the following issues in all four claims: causal connection, medical expenses, nature and extent of the injuries, penalties and fees, and respondent's entitlement to credit. In claims 10 WC 25879 and 11 WC 17266, the parties disputed the additional issue of claimant's entitlement to a wage-differential award.

¶ 9 During opening statements, claimant's attorney argued, *inter alia*, that the imposition of penalties and fees was warranted based on respondent's failure to timely pay various medical bills. Claimant's attorney expressed an intention to submit the medical bills, along with corresponding cover sheets, into evidence at the hearing. In response, respondent's attorney maintained that the imposition of penalties and fees was unwarranted because many of the medical bills were paid by claimant's group health insurance plan and respondent was entitled to credit for such payments. Respondent's attorney further asserted that claimant listed incorrect balances for the medical bills on the cover sheets. When claimant's attorney sought to admit the medical bills and corresponding cover sheets into evidence at the hearing, respondent's attorney asked that the arbitrator "scrutinize the documents themselves and the payment listings themselves and not accept the face value of the charges listed on the cover sheets." In support of respondent's request for credit, respondent's attorney sought to admit payment listings that itemized the medical bills paid by claimant's group health insurance in each claim. Claimant's attorney objected on the grounds of form, foundation, and hearsay. The arbitrator reserved ruling on the objection.

¶ 10 The following factual recitation was taken from the evidence adduced at the arbitration hearing. Claimant testified that he became a union carpenter in 1985 and began working for respondent as a carpenter in 1999. Prior to the events giving rise to the present claims, claimant sustained an injury to his left knee while working for respondent on October 27, 2000. Respondent submitted into evidence a settlement agreement, wherein claimant agreed to settle the claim arising from his October 27, 2000, knee injury and was awarded 22.5% loss of use of the leg. Thereafter, claimant sustained four additional injuries while working for respondent as a carpenter from 2010 to 2014.

¶ 11 1. 10 WC 25879

¶ 12 Claimant testified that he sustained an injury to his left knee when he stepped in a hole while carrying a ladder at work on May 4, 2010. Claimant was 55 years old at the time of his injury, and his average weekly wage (AWW) was $1620.40. Claimant first sought medical treatment at MercyWorks, respondent's occupational clinic. Claimant submitted into evidence his medical records from MercyWorks, which revealed that he was initially seen by Dr. J.R. Mejia on May 11, 2010, and that X-rays were taken of his left knee on that date. Claimant also submitted into evidence a medical bill from Radiological Physicians for the X-rays taken on May 11, 2010, along with a corresponding cover sheet that indicated the medical bill totaled $46. The medical bill listed a $46 charge but indicated no balance was due after various adjustments, including an adjustment described as "Collection-Bad Debt."

¶ 13 Claimant followed up with Dr. Homer Diadula at MercyWorks on May 18, 2010, and May 24, 2010. After magnetic resonance imaging (MRI) of claimant's left knee revealed a lateral meniscus tear on May 27, 2010, Dr. Diadula referred claimant to Dr. Michael Maday at Midland Orthopedics for further treatment. Dr. Maday performed a left knee arthroscopic surgery to repair claimant's lateral meniscus tear on September 20, 2010. Following surgery, claimant began physical therapy and remained off work. Dr. Maday recommended that claimant begin a work hardening program on December 8, 2010. Claimant completed the recommended program and returned to work for respondent as a full-duty carpenter without restrictions on January 10, 2011.

¶ 14 2. 11 WC 17266

¶ 15 Claimant testified that he sustained a subsequent injury to his left knee when he tripped over an uneven floor while carrying tools at work on January 26, 2011. At the time of his injury, claimant was 56 years old, and his AWW was $1630.80. Claimant believed he reinjured his left knee and returned to Dr. Maday for further treatment on February 9, 2011. Claimant underwent a second MRI of his left knee on March 19, 2011, which revealed a moderate-sized, radial free-edge tear of his lateral meniscus. After comparing the March 19, 2011, MRI to prior imaging of claimant's left knee, Dr. Maday concluded that claimant sustained a new tear as a result of his January 26, 2011, work accident and recommended another left knee arthroscopic surgery. Dr. Maday performed the recommended surgery on September 8, 2011. Following surgery, claimant began a new course of physical therapy and remained off work.

¶ 16 Claimant's physical therapist reevaluated claimant on November 23, 2011, after he completed 25 physical therapy sessions. During the evaluation, claimant reported ongoing pain and limited range of motion in his left knee. The therapist directed claimant to "avoid kneeling activities and excessive squatting" when he returned to work. Shortly thereafter, Dr. Maday released claimant to return to work with a restriction of no kneeling. At respondent's request, a physician at Advocate Occupational Clinic evaluated claimant, who agreed with Dr. Maday's recommended work restriction and recommended additional physical therapy.

¶ 17 Claimant testified that he returned to work for respondent as a carpenter on December 1, 2011, and that respondent accommodated his restriction by assigning him work that required no kneeling. Claimant experienced ongoing difficulties with his knee, but he was able to "do the job, the ceilings and the stand-up work and that." He sought further treatment with Dr. Maday on January 25, 2012, and underwent a third MRI on February 7, 2012, which revealed joint effusion of the left knee. After reviewing the MRI, Dr. Maday referred claimant to Dr. Robert Strugala, who administered two injections to claimant's left knee. The injections failed to alleviate claimant's symptoms. Dr. Strugala recommended a home exercise program and an additional injection, but respondent did not provide authorization for further treatment. Claimant continued working full duty and did not seek additional treatment for his left knee until July 2014.

¶ 18 On July 14, 2014, claimant presented to Dr. Mark Bowen at North Shore Orthopedic Institute, complaining of ongoing pain and difficulty with his left knee. Claimant reported a prior work-related knee injury and three prior knee surgeries. Dr. Bowen's physical examination of claimant's left knee revealed slight valgus alignment, palpable osteophytes and crepitation, advanced lateral compartment degenerative arthritis, and patellofemoral

degenerative joint disease. Dr. Bowen referred claimant to Dr. Raju Ghate for consideration of a total knee replacement.

¶ 19 On November 20, 2014, claimant presented to Dr. Brian Cole at Midwest Orthopedics for an independent medical evaluation (IME) at respondent's request. Claimant provided Dr. Cole with a consistent history of his left knee injuries. Dr. Cole's examination revealed advanced osteoarthritis in the left knee and unresolved aggravation of a preexisting condition. Dr. Cole opined that claimant's current symptoms related to his January 26, 2011, knee injury. Dr. Cole recommended that claimant undergo a total knee replacement and, in the meantime, work with restrictions of limited squatting, kneeling, climbing, bending, and stooping. Dr. Cole further opined that all of claimant's treatment leading to the IME was reasonable and necessary to alleviate his January 26, 2011, injury.

¶ 20 Claimant presented for an initial evaluation with Dr. Ghate on January 27, 2015. Dr. Ghate administered a cortisone injection to claimant's left knee and recommended a total knee replacement. Dr. Ghate performed the recommended knee replacement surgery on June 1, 2015, after receiving authorization from respondent. Claimant submitted into evidence a medical bill from Northshore Health for services related to the surgery, along with a cover sheet that indicated respondent paid the service charges totaling $65,303.09 in full on January 10, 2017. Claimant also submitted into evidence documentation of his out-of-pocket expenses totaling $282.01 for parking and prescriptions related to the surgery. Claimant testified that respondent did not reimburse him for his out-of-pocket expenses.

¶ 21 Claimant testified that he returned to work for respondent as a carpenter with permanent restrictions of no kneeling or squatting in February 2016. Respondent accommodated his restrictions by assigning him work that required no kneeling or squatting. Claimant worked for respondent on an accommodated basis at the time of the hearing. On cross-examination, claimant testified that he typically performs the following assignments within his restrictions: door replacements; door closer, hinge, and lock installations; drywall patching; and construction of wooden structures, platforms, and decks for trailers.

¶ 22 Claimant testified that he experienced ongoing pain and numbness in his left knee at the time of the hearing. He takes prescription pain medication to alleviate the pain. Claimant currently earns $46.35 per hour, a higher hourly wage than he earned at the time of his January 26, 2011, injury, but the same hourly wage as other union carpenters. On cross-examination, claimant confirmed that he was 63 years old at the time of the hearing but had no plans for retirement.

¶ 23 Edmund Sexton, a business representative for the Carpenter's Union, testified to the following on claimant's behalf. According to Sexton, restrictions of no kneeling or squatting impact most of a carpenter's job duties. Sexton agreed, however, that some duties could be performed without kneeling or squatting. While respondent accommodated claimant's permanent restrictions, Sexton believed it would be difficult for claimant to obtain another carpenter position with his restrictions. On cross-examination, Sexton admitted that he never observed claimant performing his job duties as a carpenter.

¶ 24 Elgin Swanigan, a foreman employed by respondent, testified to the following on behalf of respondent. Swanigan observed claimant performing his job duties as carpenter for respondent two to three times per week. According to Swanigan, carpenters perform many job duties that require no kneeling or squatting. Swanigan observed claimant perform such duties consistently and competently since claimant's return to work in February 2016. Swanigan

testified that claimant performed valuable work for respondent and worked the same schedule as the other carpenters employed by respondent.

¶ 25 Steven Blumenthal, a certified vocational rehabilitation counselor at Blumenthal Associates, testified to the following on claimant's behalf. Blumenthal conducted a vocational rehabilitation interview with claimant on April 17, 2017. He prepared a report setting forth his findings and opinions, which was admitted into evidence at the hearing. Blumenthal used computer software to complete a transferable skills and aptitude analysis, which determined the types of occupational titles claimant could perform based on his education, aptitudes, and current physical and intellectual abilities. Blumenthal explained that individuals like claimant, who have been employed in one primary occupation for their entire career, have innate aptitudes to perform the job duties for that specific occupation but lack other types of aptitudes needed for other occupations.

¶ 26 Blumenthal reviewed claimant's medical records and confirmed that claimant received work restrictions of no kneeling or squatting. Blumenthal reviewed respondent's job description for carpenters, which listed physical requirements of quick bending, stretching, twisting, and reaching. The job description indicated that carpenters must possess "the ability to access difficult to enter spaces," including roofs, basements, and other cramped quarters. Blumenthal concluded that claimant's restrictions affected his ability to perform the essential job duties listed for carpenters. On cross-examination, Blumenthal agreed that, although claimant could not perform two duties required of carpenters, claimant could perform the remaining five duties to the extent those duties did not involve squatting or kneeling.

¶ 27 In addition to respondent's job description for carpenters, Blumenthal reviewed the Dictionary of Occupational Titles, published by the United States Department of Labor, which indicated that carpenters "need to be able to occasionally by their definition spend at least two-and-a-half hours a day kneeling and squatting." Given claimant's restrictions, Blumenthal opined that claimant would not meet the job requirements of a carpenter. Blumenthal testified that he "could never recommend that somebody with those work restrictions go into the carpentry field."

¶ 28 Blumenthal testified that claimant was only able to perform his job duties as carpenter at the time of the hearing because respondent accommodated his physical restrictions. Blumenthal testified that respondent made "an accommodation that other employers would not be able to make if he was expected to perform the full range of job duties that a carpenter is expected to perform in terms of physical requirements." Blumenthal agreed that claimant's current wages did not accurately reflect the wages he would earn in a competitive labor market. Blumenthal identified two occupations claimant could perform that existed in a stable labor market in the Chicago area. Specifically, Blumenthal found that claimant could work as a retail salesperson earning $11 per hour or an unarmed security guard earning $11 to $12 per hour. Blumenthal testified that "based on [claimant's] overall aptitude profile, even though he has never performed these specific jobs in the past, he has the physical ability[,] and he has the aptitude profile to be able to perform these jobs." Thus, Blumenthal opined that claimant would sustain a loss in earnings if he sought new employment in the competitive labor market.

¶ 29 In his report, Blumenthal recognized that claimant's work history included carpentry and building maintenance, but he concluded that claimant could no longer perform such work with his current restrictions. Blumenthal noted that claimant, if "given on-the-job training or job specific training, would be able to perform the job duties of a retail sales attendant or unarmed

security guard." Blumenthal also noted in his report that claimant could only obtain an unarmed security guard position if he passed a background check with fingerprinting, completed a 20-hour class costing $250, and filed an application with the State of Illinois for a Permanent Employee Registration Card (PERC).

¶ 30 3. 14 WC 24735

¶ 31 Claimant testified that he sustained an umbilical hernia while lifting materials at work on June 27, 2014, when he was 59 years old. He reported the injury to respondent and sought immediate medical treatment with Dr. Diadula at MercyWorks. Dr. Diadula diagnosed claimant with an umbilical hernia and placed him off work. Dr. Diadula referred claimant to Dr. Daniel Kacey for further treatment. Claimant presented to Mercy Hospital and Medical Center for an initial consultation with Dr. Kacey on July 1, 2014. Claimant submitted into evidence an outstanding medical bill in the amount of $327 from Dr. Kacey for the consultation.

¶ 32 Dr. Michael Fiorucci ultimately performed an umbilical hernia repair surgery on claimant on July 24, 2014. Following surgery, the hospital discharged claimant with the restriction of no lifting over 15 pounds. Claimant was hospitalized from July 26, 2014, to July 28, 2014, due to complications from the surgery. Claimant presented into evidence a medical bill in the amount of $11,685.69, from Little Company of Mary Hospital, for services related to the two-day hospital stay, along with a cover sheet that indicated respondent paid the bill in full on November 9, 2015. Claimant also presented into evidence outstanding medical bills totaling $1226 from Evergreen Emergency Services for the emergency care and scans he received due to complications from the surgery.

¶ 33 Claimant returned to full-duty work as a carpenter with no restrictions related to his umbilical hernia on August 26, 2014. Claimant testified that he continued to experience occasional "twinges" and discomfort at the time of the hearing. Thus, he avoided heavy lifting.

¶ 34 4. 15 WC 1963

¶ 35 Claimant testified that he sustained an injury to his right shoulder while hanging drywall at work on December 15, 2014, when he was 60 years old. The following day, on December 16, 2014, he reported the injury to respondent and sought treatment with Dr. Diadula at MercyWorks. Dr. Diadula initially diagnosed claimant with a right shoulder sprain and right cervical sprain. Claimant experienced ongoing pain and returned to MercyWorks on December 22, 2014, at which time he was prescribed medication and physical therapy. Claimant underwent a right shoulder MRI and was advised to remain off work. Claimant submitted into evidence an outstanding medical bill in the amount of $1468 from Advanced Medical Imaging Center for the MRI.

¶ 36 On January 19, 2015, claimant sought further treatment with Dr. Bowen. Dr. Bowen reviewed the MRI of claimant's right shoulder and noted some strain pattern in the muscle with slight tendinopathy but found no evidence of a full-thickness tear. Based on his physical examination and review of the MRI, Dr. Bowen opined that claimant sustained a rotator cuff strain and recommended a course of physical therapy.

¶ 37 From January 20, 2015, to November 23, 2015, claimant underwent Dr. Bowen's recommended course of physical therapy at Athletico. Claimant submitted into evidence a

medical bill in the amount of $57,802 from Athletico for the physical therapy services, along with a cover sheet that indicated respondent made payments for the physical therapy services and the outstanding balance totaled $8995.32.

¶ 38 On January 6, 2016, claimant returned to Dr. Bowen for further evaluation. Dr. Bowen authorized claimant to return to work without restrictions concerning his right shoulder, effective January 7, 2016. Claimant testified that he returned to work for respondent as a carpenter on January 6, 2016, but he experienced difficulty performing overhead work upon his return. At the time of the hearing, he continued to experience ongoing pain, soreness, numbness, and limited range of motion in his right shoulder. He alleviated the pain by taking breaks and pain medication.

¶ 39 B. Decisions of the Arbitrator and Commission

¶ 40 On August 7, 2018, following the hearing, the arbitrator issued separate decisions in each claim. In each decision, the arbitrator found that claimant sustained compensable injuries and awarded him benefits under the Act, including permanent partial disability (PPD) benefits and medical expenses. The arbitrator also sustained claimant's objection to the admission of the payment listings and found that respondent failed to prove entitlement to a section 8(j) credit in each decision. The arbitrator awarded penalties and fees in claims 11 WC 17266 and 15 WC 1963. Claimant sought review of the arbitrator's decisions on the issues of PPD benefits, penalties, and fees before the Commission.

¶ 41 On September 16, 2019, the Commission issued four separate decisions, which either modified or affirmed the arbitrator's decisions in each claim. For clarity, the decisions issued by the arbitrator and Commission in each claim are set forth separately below.

¶ 42 1. 10 WC 25879

¶ 43 In claim 10 WC 25879, the arbitrator awarded claimant the $46 medical bill from Radiological Physicians but declined to impose penalties and fees based on respondent's failure to pay the medical bill. The arbitrator also found that respondent failed to prove entitlement to a section 8(j) credit for benefits paid under claimant's health insurance plan. In addressing the nature and extent of claimant's injury, the arbitrator found that claimant reinjured his left knee and filed a subsequent, consolidated claim (11 WC 17266). As a result, the arbitrator "merged" the permanency awards for both claims relating to claimant's left knee and addressed the issue of permanency in the decision issued in claim 11 WC 17266.

¶ 44 On review, the Commission modified the arbitrator's decision, finding that the arbitrator erred by merging the permanency awards for claimant's left knee injuries. The Commission concluded that claimant was entitled to separate PPD awards because claimant sustained two separate injuries. The Commission found there was no evidence showing that claimant was partially incapacitated from his usual line of employment or that he suffered an impairment of earning capacity following the May 4, 2010, knee injury. Accordingly, the Commission agreed with the arbitrator's determination that claimant failed to prove entitlement to a wage-differential award but disagreed with the arbitrator's award of PPD benefits under section 8(d)(2). The Commission awarded claimant 25% loss of use of the left leg under section 8(e), subject to a credit of 22.5% loss of use of the left leg for the previous settlement award. Despite indicating that it affirmed the remainder of the arbitrator's decision, the Commission, contrary to the arbitrator's decision, ordered that respondent receive an unspecified amount of credit for

all medical bills paid through its group medical plan as provided in section 8(j).

¶ 45 2. 11 WC 17266

¶ 46 In claim 11 WC 17266, the arbitrator awarded additional medical expenses, totaling $282.01, for the out-of-pocket expenses claimant paid relating to his total knee replacement surgery. The arbitrator also found that respondent did not pay the medical bill from Northshore Health for services relating to claimant's June 1, 2015, knee replacement surgery until January 10, 2017. As a result, the arbitrator ordered respondent to pay $10,000 in penalties, pursuant to section 19(*l*), finding that respondent failed to rebut the presumption that the delay in payment was unreasonable. The arbitrator additionally found that respondent failed to prove entitlement to a section 8(j) credit for benefits extended under claimant's health insurance plan. In addressing the nature and extent of claimant's left knee injuries, the arbitrator found that claimant returned to the same carpenter position after each injury. The arbitrator noted, however, that claimant had permanent restrictions following the January 26, 2011, injury, which partially incapacitated him from pursuing the duties of his usual and customary line of employment but did not result in an impairment of earning capacity. Accordingly, the arbitrator declined claimant's request for a wage-differential award under section 8(d)(1) and, instead, awarded claimant PPD benefits in the amount of $669.64 per week for 100 weeks, representing 20% loss of the use of the person as a whole, pursuant to section 8(d)(2).

¶ 47 On review, the Commission affirmed and adopted the arbitrator's decision with changes, indicating that it wrote separately to provide additional analysis on the issue of permanency. The Commission agreed with the arbitrator's determination that claimant was partially incapacitated from pursuing his usual line of employment but did not suffer an impairment of earning capacity following the January 26, 2011, injury. The Commission specifically found that claimant continued working as a carpenter and earned the same wages as other carpenters following the January 26, 2011, injury. The Commission also found that claimant was not similarly situated to the claimant in *Jackson Park Hospital v. Illinois Workers Compensation Comm'n*, 2016 IL App (1st) 142431WC, given that there was no evidence showing respondent offered claimant a "sham" position. Thus, the Commission affirmed the arbitrator's award of PPD benefits under section 8(d)(2). The Commission also affirmed the arbitrator's award of section 19(*l*) penalties. Despite indicating that it affirmed the arbitrator's decision in all other respects, the Commission, contrary to the arbitrator's decision, ordered that respondent receive credit for all medical bills paid through its group medical plan as provided in section 8(j).

¶ 48 3. 14 WC 24735

¶ 49 In claim 14 WC 24735, the arbitrator awarded claimant medical expenses totaling $1553 but declined to impose penalties and fees pursuant to sections 19(k), 19(*l*), and 16 based on respondent's failure to timely pay certain medical bills. The arbitrator found that respondent failed to prove entitlement to a section 8(j) credit for benefits extended under claimant's health insurance plan. The arbitrator also awarded claimant PPD benefits in the amount of $721.66 per week for 15 weeks, representing a 3% loss of the use of the person as a whole, pursuant to section 8(d)(2). On review, the Commission affirmed and adopted the arbitrator's decision with no changes.

¶ 50 4. 15 WC 1963

¶ 51 In claim 15 WC 1963, the arbitrator awarded claimant medical expenses totaling $10,463.32, comprised of the outstanding balances owed on Athletico's medical bill for physical therapy services ($8995.32) and Advanced Medical Imaging Center's bill for a December 16, 2015, MRI ($1468). The arbitrator also ordered respondent to pay $5231.66 in penalties, pursuant to section 19(k); $10,000 in penalties, pursuant to section 19(*l*); and $2092.66 in attorney fees, pursuant to section 16, finding respondent's failure to pay the medical bills vexatious and unreasonable. The arbitrator further found that respondent failed to prove entitlement to a section 8(j) credit for benefits extended under claimant's health insurance plan. In addition, the arbitrator awarded claimant PPD benefits in the amount of $735.37 per week for 37½ weeks, representing 7.5% loss of use of the person as a whole, pursuant to section 8(d)(2).

¶ 52 On review, the Commission modified the arbitrator's decision pertaining to penalties and fees but affirmed the arbitrator's award of PPD benefits under section 8(d)(2). The Commission agreed with the arbitrator's determination that respondent failed to rebut the presumption that its delay in payment of certain medical bills was unreasonable, but the Commission found there was no evidence showing that respondent acted in a vexatious manner. Accordingly, the Commission, with one commissioner dissenting, affirmed the arbitrator's award of penalties under section 19(*l*) but vacated the arbitrator's award of section 19(k) penalties and section 16 attorney fees. The dissenting commissioner disagreed with the majority's decision to affirm the award of section 19(*l*) penalties, finding that section 19(*l*) did not allow for multiple awards of penalties. Despite indicating that it affirmed the arbitrator's decision in all other respects, the Commission, contrary to the arbitrator's decision, ordered that respondent receive credit for all medical bills paid through its group medical plan as provided in section 8(j).

¶ 53 Claimant filed a petition for judicial review of the Commission's decisions in the circuit court of Cook County. The court subsequently confirmed the Commission's decisions, and this appeal followed.

¶ 54 II. ANALYSIS

¶ 55 On appeal, claimant argues that the Commission erred by (1) declining to award wage-differential benefits under section 8(d)(1) of the Act; (2) declining to award penalties and fees under sections 19(k), 19(*l*), and 16; and (3) awarding respondent section 8(j) credits. Prior to addressing claimant's arguments on appeal, we find it necessary to comment on several notable deficiencies in claimant's brief.

¶ 56 Claimant's brief fails to comply with certain requirements set forth in Illinois Supreme Court Rule 341(h) (eff. July 1, 2017). Illinois Supreme Court Rule 341(h)(3) requires an appellant to "include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument." Ill. S. Ct. R. 341(h)(3) (eff. July 1, 2017). Here, claimant elected to include the standards of review in a separate section before his argument. Claimant's "standard of review" section is comprised of a single paragraph that sets forth, in general terms, the standards of manifest weight and *de novo* review, but claimant never relates these standards to the specific issues raised in his brief. Claimant does not set forth his position as to which standard of review applies to each of the

three issues he raises. Regarding the first issue he raises, claimant generally asserts that the Commission "erred as a matter of law in failing to award wage differential benefits" without further explanation. Regarding the second and third issues, claimant merely asserts that the court "erred" by failing to award penalties and fees and by awarding respondent a section 8(j) credit, leaving this court to guess which standard he contends is applicable. We also note that claimant completely omitted the standard of review applicable to the Commission's decision to deny penalties and fees pursuant to sections 19(k), 19(*l*), and 16 of the Act—an issue we will discuss in greater detail below. For these reasons, we find claimant failed to comply with the requirements of Rule 341(h)(3).

¶ 57 In addition, Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2017) requires an appellant to include argument that contains "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Rule 341(h)(7) further provides that "[e]vidence shall not be copied at length, but reference shall be made to the pages of the record on appeal where evidence may be found." *Id.* Here, claimant's argument in support of his first contention on appeal includes only five citations to the record, a general citation to the statute addressing wage-differential awards, and citation to one case. Claimant's argument in support of his second contention includes a short paragraph with citations to two cases, but claimant fails to adequately apply the law to the specific facts of the present case. Claimant's argument in support of his third contention is set forth in two short paragraphs, which are mostly comprised of citation to the statute addressing section 8(j) credit and citation to one case. Claimant does not include any citations to the record in support of his third contention. For these reasons, we find that claimant failed to comply with Rule 341(h)(7).

¶ 58 We note that the mandates set forth in Rule 341 are compulsory and "[w]here an appellant's brief contains numerous Rule 341 violations and, in particular, impedes our review of the case at hand because of them, it is our right to strike that brief and dismiss the appeal." *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 18; see also *Menard v. Illinois Workers' Compensation Comm'n*, 405 Ill. App. 3d 235, 238 (2010) (appellate review is hindered when a party fails to comply with Rule 341 and may result in waiver). Because the facts of the instant appeal are somewhat complicated and the record is voluminous, we address claimant's arguments only to the extent the deficiencies in his brief do not hinder our review. We will further address several specific deficiencies in detail, below.

¶ 59 A. Permanency Award

¶ 60 Claimant first argues that the Commission erred as a matter of law when it declined to award him wage-differential benefits under section 8(d)(1) of the Act. Respondent argues that the Commission's decision to award PPD benefits based on a percentage-of-a-whole under section 8(d)(2) in lieu of an award of wage-differential benefits under section 8(d)(1) was not against the manifest weight of the evidence.

¶ 61 Under section 8(d) of the Act, a claimant who suffers a permanent partial disability may receive a wage-differential award (*id.* § 8(d)(1)) or a percentage-of-the-person-as-a-whole award (*id.* § 8(d)(2)). To prove entitlement to a wage-differential award under section 8(d)(1), a claimant must show that (1) he is "partially incapacitated from pursuing his usual and customary line of employment" and (2) there is a

> "difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the

accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident." *Id.* § 8(d)(1).

In contrast, a claimant is entitled to a PPD award based on a percentage-of-a-whole under three circumstances: (1) when his injuries do not prevent him from pursuing the duties of his employment but he is disabled from pursuing other occupations or is otherwise physically impaired, (2) when his "injuries partially incapacitate him from pursuing the duties of his usual and customary line of employment but do not result in an impairment of earning capacity," or (3) when he suffers an "impairment of earning capacity" but he "elects to waive his right to recover under [8(d)(1)]." *Id.* § 8(d)(2).

¶ 62 Our supreme court has expressed a preference for wage-differential awards and "where a claimant proves that he is entitled to a wage-differential award, the Commission is without discretion to award a section 8(d)(2) award in its stead." *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721, 727-29 (2000) (citing *General Electric Co. v. Industrial Comm'n*, 89 Ill. 2d 432, 438 (1982)). "The purpose of a wage-differential award is 'to compensate an injured claimant for his reduced earning capacity, and if the injury does not reduce his earning capacity, he is not entitled to such compensation.' " *Lenhart v. Illinois Workers' Compensation Comm'n*, 2015 IL App (3d) 130743WC, ¶ 44 (quoting *Dawson v. Illinois Workers' Compensation Comm'n*, 382 Ill. App. 3d 581, 586 (2008)).

¶ 63 "Because the determination of whether the claimant is entitled to an award of benefits under section 8(d)(1) or 8(d)(2) requires resolution of factual matters, the manifest weight of the evidence standard is the proper standard of review." *Village of Deerfield v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 131202WC, ¶ 44. A finding of fact is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id.*

¶ 64 In the present case, the Commission affirmed and adopted the arbitrator's award of PPD benefits for 20% loss of use of the person as a whole under section 8(d)(2) in claim 11 WC 17266, finding that claimant proved he was partially incapacitated from pursuing the duties of his usual and customary line of employment but failed to prove he suffered an impairment of earning capacity. Claimant challenges the Commission's finding that he failed to prove an impairment of earning capacity, arguing both that the uncontroverted evidence established an impairment of his earning capacity and that the Commission "failed to apply the proper legal standard in failing to award wage[-]differential benefits." In doing so, claimant attempts to avoid application of the deferential manifest-weight-of-the-evidence standard by arguing that the Commission "erred as a matter of law" when it declined to award wage-differential benefits.

¶ 65 In support, claimant appears to assert that the Commission misapplied this court's decision in *Jackson Park Hospital v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 142431WC. In *Jackson Park Hospital*, the claimant sustained an injury while working for her employer as a stationary engineer. *Id.* ¶ 14. Following her injury, the claimant received permanent restrictions that prevented her from returning to work as a stationary engineer, so her employer transferred her to a lower-paying safety officer position but continued to pay her the same wage she would have earned as a stationary engineer. *Id.* ¶¶ 19-21. The safety officer position was within the claimant's restrictions, but she did not meet the job requirements for the position. *Id.* ¶ 21. The arbitrator denied the claimant a wage-differential award, finding that the claimant was unable to perform the physical requirements of a stationary engineer following the work injury but that the claimant failed to prove an impairment of earning

capacity resulting from her injury because she was earning the same wage she earned as a stationary engineer. *Id.* ¶ 29. The arbitrator, instead, awarded the claimant PPD benefits, representing 40% loss of use of the person as a whole, under section 8(d)(2). *Id.* Both parties sought review of the arbitrator's decision before the Commission. *Id.* ¶ 30.

¶ 66 The claimant's employer terminated her employment while the matter was pending before the Commission, and the claimant's attorney moved to continue oral arguments and to reopen proofs before the arbitrator in order to present evidence of the claimant's termination in support of claimant's request for a wage-differential award. *Id.* ¶ 31. The Commission denied the claimant's request to reopen proofs, finding that the claimant failed to prove entitlement to a wage-differential award at the time of the hearing. *Id.* ¶ 32. The Commission later affirmed and adopted the arbitrator's decision without further comment. *Id.* ¶ 33. The claimant sought judicial review of the Commission's decision in the circuit court, arguing that "the Commission abused its discretion by refusing to grant her motion to remand the case to the arbitrator to reopen the proofs and in limiting the purpose for the submission of the parties' factual stipulation concerning the wages earned by the employer's public safety officers." *Id.* ¶ 34. The court found that the Commission's award of section 8(d)(2) benefits was against the manifest weight of the evidence and remanded the matter to the Commission for a determination of a wage-differential award under section 8(d)(1). *Id.* ¶ 35.

¶ 67 On appeal, this court vacated the Commission's award of PPD benefits under section 8(d)(2) and remanded for a hearing on claimant's request for a wage-differential award under section 8(d)(1) "because the Commission did not conduct the proper analysis and limited the admission of relevant evidence" of claimant's true earning capacity in a competitive job market. *Id.* ¶ 51. In doing so, this court held that the issue of whether a "claimant has sustained an impairment of earning capacity cannot be determined by simply comparing pre- and post-injury income" and that "[t]he analysis requires consideration of other factors, including the nature of the post-injury employment in comparison to wages the claimant can earn in a competitive job market." *Id.* ¶ 45.

¶ 68 Unlike *Jackson Park Hospital*, here, the Commission did not preclude claimant from presenting evidence of his current earning capacity and did not focus exclusively on a comparison of claimant's pre- and post-injury income in finding that claimant failed to prove an impairment in earning capacity. A review of the Commission's decision reveals that it considered claimant's post-injury income, along with evidence pertaining to other factors, in reaching its decision. Accordingly, we consider whether the Commission's finding on this factual issue was against the manifest weight of the evidence. See *Dawson*, 382 Ill. App. 3d at 586 ("Whether a claimant has introduced sufficient evidence to establish each element is a question of fact for the Commission to determine, and its decision in the matter will not be disturbed on appeal unless it is against the manifest weight of the evidence.").

¶ 69 "To establish a diminished earning capacity, a claimant 'must prove his actual earnings for a substantial period before his accident and after he returns to work, or in the event he is unable to return to work, he must prove what he is able to earn in some suitable employment.' " *Chlada v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 150122WC, ¶ 32 (quoting *Smith v. Industrial Comm'n*, 308 Ill. App. 3d 260, 266 (1999)). "[L]iability under the Act cannot be premised on speculation or conjecture but must be based solely on the facts contained in the record." *Deichmiller v. Industrial Comm'n*, 147 Ill. App. 3d 66, 74 (1986)

(holding "an earnings loss award cannot be based on speculation as to the particular employment level or job classification which a claimant might eventually attain").

¶ 70 Here, the Commission agreed with the arbitrator's determination that claimant failed to prove an impairment of earning capacity, finding the present case distinguishable from *Jackson Park Hospital*. In doing so, the Commission first considered the nature of claimant's post-injury employment. The Commission found that claimant had permanent work restrictions of no kneeling or squatting following his January 26, 2011, knee injury, but continued working for respondent as a union carpenter, earning the same wage as the other union carpenters. Claimant testified that his restrictions precluded him from performing certain work assignments when he returned to work in February 2016, but respondent accommodated his restrictions by assigning him work that required no kneeling or squatting. Swanigan testified that carpenters perform many tasks without kneeling or squatting and that claimant competently performed such tasks on a consistent basis when he returned to work for respondent. Claimant testified that he worked for respondent on an accommodated basis at the time of the hearing and that he performed a wide range of assignments within his restrictions, including replacing doors, putting on door closers and hinges, working on locks and ceilings, patching holes in drywall, and constructing various structures. It was undisputed that claimant earned $46.35 per hour when he returned to work in February 2016. When asked if he felt that he earned the hourly wage at which he was paid for his work, claimant replied, "Yes." Thus, as the Commission correctly noted, the evidence showed that respondent was neither paying claimant to perform job duties he was unqualified to perform nor paying him a wage above what is normally paid for such services, as was the case in *Jackson Park Hospital*.

¶ 71 Moreover, unlike *Jackson Park Hospital*, here, the Commission considered the evidence claimant presented to show he suffered a loss in earning capacity following the January 26, 2011, injury. Specifically, the Commission considered the testimony and report of Blumenthal, claimant's vocational expert, who opined that claimant could perform the job duties of a retail sales attendant or an unarmed security guard with his current restrictions. According to Blumenthal, both jobs would be available to claimant in a stable labor market and would pay approximately $11 to $12 per hour, or minimum wage. After considering the evidence, the Commission discounted Blumenthal's testimony and report, finding Blumenthal's opinions speculative. In applying the deferential standard set forth above, we cannot say that the Commission's determination in this regard was unreasonable.

¶ 72 Blumenthal indicated in his report that claimant's ability to obtain both jobs depended on other factors. Specifically, Blumenthal noted that claimant, if "given on-the-job training or job specific training, would be able to perform the job duties of a retail sales attendant or unarmed security guard." In other words, Blumenthal's opinion that claimant could perform both jobs was conditional upon claimant receiving additional job training. Blumenthal also noted that claimant's ability to obtain a job as an unarmed security guard was conditional upon claimant passing a background check with fingerprinting, completing a 20-hour class and filing an application with the State of Illinois for a PERC card. Claimant provided no testimony at the hearing regarding his ability to perform two jobs identified by Blumenthal. Claimant also provided no testimony or evidence demonstrating his ability to meet the additional requirements for the unarmed security guard position. Because claimant's ability to obtain both jobs was dependent on other factors, the Commission could have reasonably concluded that

Blumenthal's opinions were speculative and, thus, did not sufficiently establish jobs claimant was able or qualified to perform.

¶ 73 Blumenthal also noted in his report that the two job titles he identified were "representative, but not all inclusive of job titles [claimant] [could] perform." Blumenthal did not identify any of the other jobs he felt claimant could perform, nor did he explain his reasoning for only selecting the positions of retail salesperson and unarmed security guard. Blumenthal testified that in cases where, as here, an individual was employed in one primary occupation for his or her entire career, the individual has the innate aptitudes to perform the job duties for that specific occupation but lacks other types of aptitudes needed for other occupations. Despite this, Blumenthal identified two jobs that required an entirely different skill set than claimant's chosen line of work and, thus, required an employer to provide additional training before hiring claimant. Blumenthal failed to identify any alternative jobs in the carpentry industry, or a similar field, that would offer claimant the greatest potential based on his skills, knowledge, and work history. Claimant informed Blumenthal that he worked as a union carpenter since 1985, except for a four-to-six-year period when he performed building maintenance. Blumenthal completely discounted claimant's prior work experience, finding him unable to perform such work with his current restrictions. On cross-examination, however, Blumenthal acknowledged that claimant could perform most of the physical requirements for his current carpenter position, despite his restrictions, and that claimant performed the duties of a carpenter on an accommodated basis since he returned to work for respondent. Claimant testified that he performed multiple specialized tasks within his restrictions in his current carpenter position with respondent. Given that Blumenthal failed to identify any jobs similar to claimant's chosen field of work, the Commission could have reasonably found that the two jobs Blumenthal identified did not constitute "suitable employment" under the wage-differential provision of the Act.

¶ 74 For these reasons, we will not disturb the Commission's decision to discount Blumenthal's vocational opinion. See *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 35 ("It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, determine the weight that their testimony is to be given, and resolve conflicts in the evidence."). In our view, the Commission's finding that claimant failed to establish an impairment of earning capacity was a reasonable determination based on the evidence presented at the arbitration hearing. Therefore, we cannot say that the Commission's decision to award PPD benefits under section 8(d)(2) in lieu of an award of wage-differential benefits under section 8(d)(1) was against the manifest weight of the evidence.

¶ 75 B. Penalties and Attorney Fees

¶ 76 Claimant next argues that the Commission erred when it declined to impose penalties and fees pursuant to sections 16, 19(k), and 19(*l*). Specifically, claimant argues that the Commission erred when it declined to impose any penalties and fees in claims 10 WC 25879 and 14 WC 24735, and when it declined to impose section 19(k) penalties and section 16 attorney fees in claim 15 WC 1963. Respondent argues that the Commission's decisions were not against the manifest weight of the evidence.

¶ 77 As previously noted, "the appellant must include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument." Ill.

S. Ct. R. 341(h)(3) (eff. July 1, 2017). Here, again, the standard of review section in claimant's brief set forth, in general terms, the manifest weight and *de novo* standards of review without relating these standards to the specific issues raised in his brief. In the argument section of his brief, claimant merely asserts that the court "erred" by failing to award penalties and fees, leaving this court to guess his position as to which standard of review applies to this specific issue. Claimant does not set forth the specific standards of review, with citation to authority, that apply to the Commission's decisions to deny penalties and fees under sections 19(k), 19(*l*), and 16. In fact, claimant completely omitted from his brief the abuse of discretion standard of review, which is applicable to our review of the Commission's decision to deny section 19(k) penalties and section 16 attorney fees.

¶ 78 Claimant's brief also fails to comply with Rule 341(h)(7), which requires an appellant to include an argument section that sets forth "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2017). Here, claimant's argument in support of this specific issue begins with a review of the medical bills respondent allegedly failed to pay in claims 10 WC 25879, 14 WC 24735, and 15 WC 1963. With regard to claim 10 WC 25879, claimant asserts that he submitted into evidence a medical bill in the amount of $46 from Radiological Physicians for X-rays taken on May 11, 2010. While claimant includes a citation to the record in support of this assertion, we note that the page cited by claimant leads to the medical records detailing the treatment claimant received on May 11, 2010, not the medical bill that was introduced into evidence at the hearing. With regard to claim 14 WC 24735, claimant asserts that he submitted into evidence a medical bill in the amount of $11,685.69 from Little Company of Mary Hospital for services he received from July 26, 2014, to July 28, 2014, but he fails to support this assertion with a citation to the record. Claimant does include citations to several other bills at issue in claim 14 WC 24735, as well as the bills submitted in claim 15 WC 1963.

¶ 79 After reviewing the medical bills at issue, claimant includes a short paragraph with citations to two cases. Claimant cites one case in support of the assertion that respondent has the burden of justifying a delay in payment. Claimant cites another case in support of the following propositions: section 19(*l*) penalties are essentially a late fee, section 19(*l*) penalties are mandatory when the employer is unable to show adequate justification for the delay, and section 19(k) penalties and section 16 attorney fees provide for substantial penalties and are intended to address delays that are deliberate or the result of bad faith or an improper purpose. Claimant fails to cite legal authority that sets forth the standard for determining whether an employer has just cause for a delay. See *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, ¶ 19 ("The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness."). Claimant fails to cite legal authority that sets forth the standard under which we review the Commission's evaluation of the reasonableness of the delay. See *id.* ("The Commission's evaluation of the reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence."). Claimant also fails to point out that, unlike our review of the Commission's decision to deny section 19(*l*) penalties, our review of the Commission's decision to deny section 19(k) penalties and section 16 attorney fees requires a two-part analysis. See *id.* ¶ 25 (this court must consider (1) whether the Commission's finding that the facts do not justify section 19(k) penalties and section 16 attorney fees is against the

manifest weight of the evidence and (2) whether the Commission's refusal to award such penalties and fees constitutes an abuse of discretion under the facts presented in the case).

¶ 80 Claimant's argument section next sets forth two short paragraphs that discuss the facts of the present case. Claimant asserts that respondent failed to present any evidence to justify its failure to pay the medical bills. Claimant then asserts that "[i]n the third claim involving the hernia surgery, the Arbitrator found the failure to provide benefits under the Act to be vexatious and unreasonable and awarded penalties pursuant to § 19(k) and § 19(l) and § 16 fees." We note, however, that the arbitrator did not award any penalties or fees in the "third claim" relating to claimant's hernia. The arbitrator awarded penalties and fees in claim 15 WC 1963, which related to his right shoulder injury. Claimant challenges the Commission's decision to vacate the arbitrator's award of section 19(k) penalties and section 16 attorney fees, taking issue with the Commission's finding that the delay in payment was caused by the complex administration of claimant's multiple claims. Claimant does not argue that the Commission's finding was against the manifest weight of the evidence, nor does he argue that the Commission abused its discretion by failing to impose penalties and fees.

¶ 81 In our view, claimant's argument pertaining to the issue of penalties and fees is not clearly defined, nor is it supported by sufficient authority to warrant consideration by this court.

> "A reviewing court is entitled to have the issues clearly defined and supported by pertinent authority and cohesive arguments; it is not merely a repository into which the appellant may 'dump the burden of argument and research' nor is it the obligation of this court to act as an advocate or seek error in the record." *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009) (quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993)).

For the reasons outlined above, we find claimant forfeited review of the issue of penalties and fees. See *People v. Nere*, 2018 IL 122566, ¶ 25 (finding argument forfeited by defendant's failure to comply with Rule 341(h)(7)); see also *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010) ("An issue that is merely listed or included in a vague allegation of error is not 'argued' and will not satisfy the requirements of the rule.").

¶ 82 C. 8(j) Credit

¶ 83 Lastly, claimant argues that the Commission erred by awarding respondent a section 8(j) credit for medical expenses paid by claimant's group health insurance. Respondent argues that the Commission's decision to award section 8(j) credit was not against the manifest weight of the evidence.

¶ 84 Section 8(j) provides, in pertinent part, as follows:

> "In the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under this Act, then such amounts so paid to the employee from any such group plan as shall be consistent with, and limited to, the provisions of paragraph 2 hereof, shall be credited to or against any compensation payment for temporary total incapacity for work or any medical, surgical or hospital benefits made or to be made under this Act." 820 ILCS 305/8(j)(1) (West 2018).

"The right to credits, which operates as an exception to liability created under the Act, is narrowly construed." *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 953 (2011) (citing *World Color Press v. Industrial Comm'n*, 125 Ill. App. 3d 469, 471 (1984)). "[I]t is the burden of the employer to establish its entitlement to a credit under section 8(j) of the Act." *Id.* (citing *Hill Freight Lines, Inc. v. Industrial Comm'n*, 36 Ill. 2d 419, 424 (1967)).

¶ 85 In the present case, it is unclear from the record whether the Commission intended to award respondent credit pursuant to section 8(j). Respondent's entitlement to a section 8(j) credit was a disputed issue in all four claims at the arbitration hearing. At the hearing, claimant submitted into evidence multiple cover sheets with corresponding medical bills, which listed charges for services provided to claimant and various adjustments for payments made by claimant's group health insurance plan. Respondent disputed the amounts listed on claimant's cover sheets and requested that the arbitrator carefully review the bills submitted by claimant to determine the amounts owed for each bill. Respondent also sought to admit a document that itemized the benefits and payments made by respondent's group health insurance from July 2, 2013, to May 21, 2016, but claimant objected to the admission of the document based on a lack of foundation. The arbitrator reserved ruling on claimant's objection at the hearing but sustained the objection in its written decisions in each claim, indicating that the document submitted by respondent received no consideration. Consequently, the arbitrator found that respondent failed to prove entitlement to a section 8(j) credit in each claim.

¶ 86 The Commission's decisions and opinions on review in each claim indicate that the only issues before the Commission were PPD benefits, penalties, and attorney fees. Contrary to the parties' assertion that the Commission awarded respondent a section 8(j) credit in each claim, a careful review of the Commission's decisions reveals that respondent was only awarded a section 8(j) credit in claims 10 WC 25879, 11 WC 17266, and 15 WC 1963, but not in claim 14 WC 24735. In claim 14 WC 24735, the Commission affirmed and adopted the arbitrator's decision without changes and without reference to respondent's entitlement to a section 8(j) credit. In claims 10 WC 25879, 11 WC 17266, and 15 WC 1963, the Commission—after considering specific issues relating to the arbitrator's awards of PPD benefits, penalties, and attorney fees—either affirmed the arbitrator's decision with changes or modified the arbitrator's decision with respect to those specific issues but otherwise affirmed and adopted the arbitrator's decision. The Commission did not directly address the issue of section 8(j) credit in its decisions, other than stating that respondent "shall receive credit for medical bills paid through its group medical plan as provided in Section 8(j) of the Act." The Commission did not specifically address the arbitrator's evidentiary ruling or the arbitrator's determination that respondent failed to prove entitlement to a section 8(j) credit. Under these circumstances, we find it necessary to remand the matter back to the Commission to clarify its decision on the issue of respondent's entitlement to a section 8(j) credit. See *Fermi National Accelerator Laboratory v. Industrial Comm'n*, 224 Ill. App. 3d 899, 911 (1992) (concluding that the Commission did not err by remanding the matter to an arbitrator for the purpose of clarifying credits when the record with respect to credits was not clear).

¶ 87 III. CONCLUSION

¶ 88 For the reasons stated, we affirm the portion of the circuit court's judgment confirming the Commission's decisions with respect to the permanency award and the imposition of penalties and fees, but we vacate the portion of the circuit court's judgment confirming the Commission's decisions with respect to section 8(j) credits. We also affirm the Commission's decisions with respect to the permanency award and imposition of penalties and fees, but we vacate the Commission's decisions with respect to section 8(j) credits and remand the matter back to the Commission for clarification with respect to section 8(j) credits.

¶ 89 Circuit court order affirmed in part and vacated in part.

¶ 90 Commission decision affirmed in part and vacated in part; cause remanded with instructions.