2021 IL App (2d) 200662WC-U
No. 2-20-0662WC
Order filed July 28, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

Workers' Compensation Commission Division

CASSENS TRANSPORT,	)	Appeal from the Circuit Court
	)	of Winnebago County
Appellee,	)	
	)	
v.	)	No. 20-MR-117
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*	)	Honorable
	)	Donna Honzel,
(Raymond Simental, Appellant).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: (1) The Commission's finding that the claimant's current condition of ill-being was causally related to his work accident was not against the manifest weight of the evidence; (2) the Commission's award of temporary total disability benefits was not against the manifest weight of the evidence; and (3) the Commission's award of past medical expenses and prospective medical treatments recommended by the claimant's treating physician was not against the manifest weight of the evidence.

¶ 2 The claimant, Raymond Simental, filed a claim for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2016)) against the respondent, Cassens Transport (employer), for injuries that he allegedly sustained on January 12, 2017, while working

for the employer. After conducting a hearing, an arbitrator found that the claimant had sustained a work-related accident on January 12, 2017, and awarded temporary total disability (TTD) benefits and medical expenses for a period of 20 weeks, from January 13, 2017, through May 31, 2017. However, the arbitrator found that the claimant's work-related injuries, if any, had resolved by May 31, 2017, and that his current condition of ill-being was not causally related to his work accident. Accordingly, the arbitrator denied all other benefits sought by the claimant.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission), which reversed the arbitrator's decision. The Commission found that the claimant had proven that his current condition of ill-being was causally related to his January 12, 2017, work accident. The Commission awarded TTD benefits for 83 and 3/7 weeks from June 16, 2017, through July 17, 2017, and from September 7, 2017, through March 12, 2019. The Commission also awarded medical expenses and prospective medical care. Commissioner Simpson dissented and would have affirmed the arbitrator's decision.

¶ 4 The employer sought judicial review in the circuit court of Winnebago County. The circuit court reversed the Commission's decision and reinstated the arbitrator's decision.

¶ 5 This appeal followed.

¶ 6 FACTS

¶ 7 The claimant worked for the employer as a car hauler. His job duties included loading vehicles onto a semi-truck that is also called a "car hauler," driving the car hauler, and delivering the vehicles. While loading vehicles onto the car hauler truck, the claimant had to put straps over the vehicles and ratchet them down using a tie-down bar. To do so, he had to climb onto the different levels of the car hauler truck. The claimant loaded the vehicles at the BSF railyard in Elmwood and delivered and unloaded them at various car dealerships.

¶ 8 On January 12, 2017, the claimant was directed by his supervisor to load a Toyota Tundra onto the car hauler in icy conditions at the Elmwood railyard. While driving the vehicle in reverse, the claimant hung out of the door window with his ribs and elbow outside of the vehicle. He was stretched out and standing in the driver's seat with his right hand on the steering wheel, his tip-toes on the accelerator, and his head turned back and to the left so he could see the rear of the vehicle as he backed it up onto the car hauler's ramps. As he was driving the vehicle in reverse onto the truck hauler's ramps, the vehicle began to slide off the ramps to the right. At that time, the weight of the vehicle was on the "3 deck," which is the deck at the rear of the car hauler. The vehicle continued to slide on the ice, causing its back wheels to fall off the car hauler truck and slam onto the ground. The claimant testified that he felt pain in his left rib cage, low back, and hips after the accident.

¶ 9 Five days after the accident, on January 17, 2017, the claimant sought treatment with Dr. Jonathan Claud for left rib, back, and chest pain. The claimant told Dr. Claud that he was injured when he was backing up a car while leaning outside the window and the car fell about 18 inches to the ground. Dr. Claud noted that the claimant had full range of motion in his lumbar spine and a steady gait. Dr. Claud noted no pertinent prior medical history. X-rays of the claimant's chest, ribs, and thoracic and lumbar spine showed moderate spondylosis (a degenerative condition) with no acute fractures or traumatic malalignments, and mild discogenic degenerative disease and facet arthropathy, particularly within the lower lumbar spine. Dr. Claud diagnosed the claimant with acute midline low back pain without sciatica, lumbar and thoracic osteoarthritis, and chest wall pain. Dr. Claud took the claimant off work for two days.

¶ 10 Shortly thereafter, on January 23, 2017, the claimant underwent a fitness for duty evaluation that indicated that the claimant should be restricted from climbing and from lifting over

30 pounds. A subsequent fitness for duty evaluation taken on January 27, 2017, found the claimant to be entirely unfit for duty.

¶ 11 On February 1, 2017, the claimant saw Dr. Jennifer Kassir of the DuPage Medical Group complaining of left midback pain and low back pain radiating into the left hip. Dr. Kassir's diagnoses included acute left-sided low back pain without sciatica, acute midback pain, left-sided rib pain, and lower extremity weakness. She opined that the claimant's X-rays were unremarkable and referred him to physiatry.

¶ 12 On February 8, 2017, the claimant began treating with Dr. Martin Fetzer, a physiatrist. Upon examination, Dr. Fetzer found that the claimant displayed negative Waddell's findings.[1] Upon examination, Dr. Fetzer found that the claimant had full range of motion of his lumbar spine without pain, a non-antalgic gait, and normal "heel walk" and "toe walk." He read the claimant's thoracic X-rays as showing mild scoliosis and mild to moderate degeneration in the claimant's thoracic spine. He concluded that the lumbar X-rays showed a mild reduction in disc space at L4 to S1, and Grade 1 retrolisthesis (backward slippage of a vertebra) at L4-L5. Dr. Fetzer's diagnoses included low back and left lower limb pain, Grade 1 spondylolisthesis,[2] and acute left-sided low

[1] "Waddell findings" (or "Waddell signs") are the findings of clinical tests that are performed to identify patients whose back pain is not organic, *i.e.*, more likely to be of psychological origin. A negative Waddell finding indicates that the patient's reported pain is likely organic, not psychological.

[2] "Spondylolisthesis" is a spinal condition that causes lower back pain. It occurs when a vertebra slips out of place onto the vertebra below it.

back pain with sciatica. He prescribed an oral steroid, physical therapy, and work restrictions of minimal bending and stooping and no lifting more than 20 pounds.

¶ 13 On March 6, 2017, the claimant began physical therapy and reported that his left leg and foot had been falling asleep for a few weeks. While undergoing physical therapy, the claimant continued to follow up with Dr. Fetzer. On March 23, 2017, Dr. Fetzer advised the claimant to continue normal activities as tolerated and avoid any form of bedrest. He explained that recent guidelines encouraged physical activity for the improvement of functionality and overall pain.

¶ 14 On March 23, 2017, Dr. Fetzer recommended an MRI of the claimant's lumbar spine, which was performed on April 14, 2017. The MRI revealed a congenitally small bony spinal canal at L1-L5 along with spondylitic and degenerative disc changes resulting in mild central canal and bilateral foraminal stenosis at L4-L5. When Dr. Fetzer reviewed the MRI on April 24, 2017, he observed a posterior disc protrusion with an annular fissure at L5-S1.

¶ 15 The claimant returned to Dr. Fetzer on April 21, 2017. During that visit, Dr. Fetzer noted that the claimant displayed an antalgic gait. Dr. Fetzer advised the claimant to continue with his medications, physical therapy, and work restrictions.

¶ 16 On May 31, 2017, at the employer's request, the claimant was examined by Dr. Martin Lanoff, the employer's independent medical examiner (IME). Dr. Lanoff is a clinical assistant professor of medicine who is board certified in pain medicine and physical rehabilitation. After examining the claimant, Dr. Lanoff opined that the claimant had no diagnosis as a result of the January 12, 2017, work accident. Instead, he had only subjective complaints that were out of proportion to the objective findings. Upon examination, Dr. Lanoff concluded that the claimant exhibited five out of five Waddell's signs. For example, Dr. Lanoff found that the claimant exhibited nonanatomic pain symptoms and repeatedly overreacted to stimulation. In addition, the

claimant exhibited inconsistent pain behaviors. For example, in the seated position the claimant showed weakness on the left, more so than the right, with no pain, yet he could toe and heel walk (though gingerly) without any weakness at all. In the seated position he could internally rotate the femoral heads to around 30° without pain, but in the supine position even 5° on the left and 10° on the right of femoral head rotation produced a significant amount of overreactive pain behaviors in the lumbar spine. Dr. Lanoff further noted that, although the claimant could sit relatively comfortably (other than his baseline perceived pain) with his hips and knees flexed at 90°/90°, in the supine position, even passively trying to flex his knees and flex his hips at the same time created a tremendous amount of withdrawal behaviors and overreaction.

¶ 17 Dr. Lanoff stated that he was unable to examine Simental's hips at the IME due to the claimant's pain complaints. Dr. Lanoff attempted a Trendelenburg sign test,[3] which was negative on the left, yet on the right the claimant was unable to complete the test due to reported motor weakness on the right. Dr. Lanoff explained this would be the opposite one would expect with true motor weakness. Dr. Lanoff further noted that the claimant had very little discomfort in the side-lying position and very good strength in left hip abduction. Dr. Lanoff found no significant radicular pathology.

¶ 18 Dr. Lanoff concluded that the claimant had maximal nonorganic pain behaviors in his physical examination, which meant that the treating physician needed to start looking for another cause of the claimant's complaints rather than looking at his spine. Dr. Lanoff found there was no objective reason for the claimant to have functional limitations and complaints of continuing pain, especially in the absence of any objective pathology on any testing and in the presence of a

[3] A "Trendelenburg sign" is a physical examination finding associated with various hip abnormalities.

maximally nonorganic evaluation. Dr. Lanoff opined that there was some cause of the claimant's complaints other than his spine, and that there may be a psychosocial component, such as "secondary gain." Dr. Lanoff stated that "secondary gain" means a person is gaining something by "playing the sick role," which could be monetary or emotional.

¶ 19 Dr. Lanoff opined that the claimant's current condition and treatment were not related to his January 12, 2017, work accident. He concluded that the claimant merely had mild degenerative changes that were normal for his age. According to Dr. Lanoff, the claimant would have suffered, at most, no more than a back strain as a result of the January 12, 2017, work accident which should have resolved within six to eight weeks after the accident. Dr. Lanoff found that the claimant was at maximum medical improvement ("MMI") as of May 31, 2017, and required no further medical treatment after that date. He opined that the claimant was not a candidate for any epidural steroid injections.

¶ 20 The claimant returned to Dr. Fetzer on June 5, 2017. Dr. Fetzer did not perform any Waddell's testing during this appointment or during any appointment thereafter. Dr. Fetzer restricted the claimant to maximum 10-pounds lifting and minimal bending/twisting. He also prescribed work conditioning.

¶ 21 Dr. Lanoff was deposed on June 21, 2017, and October 19, 2017. During his deposition, Dr. Lanoff acknowledged that he had observed an L5-S1 annular tear on the claimant's lumbar MRI. However, he opined the MRI did not show any impingement on any of the nerve roots at any level. He further opined that the annular tear was a normal, asymptomatic part of the degenerative process within a disc. Dr. Lanoff reiterated that he did not find any physical malady in the claimant other than psychosocially-based pain behaviors. He found no objective findings of an injury in the claimant's examinations or diagnostic images. Dr. Lanoff further testified that,

although the claimant had degenerative changes and a high-intensity zone or annular tear, those findings did not hurt and were not objective pathology. He conceded that the claimant's films revealed small protrusions at L4 to SI and disc bulges at L2 to L5. Nevertheless, Dr. Lanoff testified that this was normal for a person of the claimant's age and had nothing to do with the claimant's symptoms.

¶ 22 Dr, Lanoff further testified that, during his examination of the claimant, he found nothing wrong with the claimant's hips. He noted that the claimant exhibited five out of five Waddell's findings, which clearly suggested some nonorganic source of the claimant's pain complaints. In support of this conclusion, Dr. Lanoff testified regarding what he characterized as inconsistencies in the claimant's examination. Specifically, Dr. Lanoff stated that: (1) the claimant complained of numbness of the lower extremities which Dr. Lanoff found was not consistent with any nerve root distribution; (2) there was no atrophy of the claimant's lower extremities which "one would expect to be present if [the claimant] was as limited in his activities as he claimed since January of 2017"; (3) the claimant was able to stand on his left leg without any difficulty yet he could not stand on his right leg, which Dr. Lanoff opined was not consistent with having motor weakness on the left side and, in fact, was the opposite of what one would expect with true motor weakness; (4) Dr. Lanoff was unable to examine the claimant's hips because the claimant complained of pain with almost any motion, which was inconsistent with lumbar pathology. Dr. Lanoff disagreed with Dr. Fetzer's finding of no Waddell signs in February 8, 2017, and he noted that Dr. Waddell did not perform any Waddell tests after that date.

¶ 23 Dr. Lanoff reiterated his opinion that the claimant's annular tear, disc protrusions, and degenerative changes had nothing to do with his symptoms. He disagreed with Dr. Fetzer's opinion that the annular tear was acute and symptomatic. Dr. Lanoff cited several studies in the medical

literature that allegedly established that annular tears are neither symptomatic on their own nor the result of a traumatic injury. However, he did not enter any of those studied in the record. Dr. Lanoff further testified that the L5-S1 retrolisthesis shown on the claimant's MRI was degenerative and was not a pain-causing condition. Dr. Lanoff again opined that the claimant had suffered, at most, a strained back during the January 12, 2017, work accident which should have resolved within six to eight weeks. He further opined that the claimant did not need the epidural steroid injections prescribed by Dr. Lanoff because the claimant did not suffer from any physiological condition.

¶ 24 Dr. Fetzer was deposed on September 28, 2017. Dr. Fetzer disagreed with Dr. Lanoff's opinion that the claimant had no objective pathology. He noted that the claimant's lumbar MRI showed an L5-S1 annular fissure. He stated that an annular tear is an acute pathology within a disc. Dr. Fetzer opined that the work accident that the claimant reported was causally related to his annular tear. He explained that, when a person bends and twists, the disc is put into a more stressful condition, and having a fall while in that position would be consistent with an injury to the disc. Dr. Fetzer acknowledged that he did not know the height of the vehicle when the claimant fell and that a fall from 18 inches or less may result in no injury. However, he stated that a fall from any height can cause a number of injuries.

¶ 25 Dr. Fetzer opined that the claimant's annular tear was what was causing his pain symptoms. He explained that an annular tear produces pain in the back, buttocks, and one or both legs. It can also cause a person to have difficulty bending, twisting, standing, or walking. According to Dr. Fetzer, a person who suffers an annular tear does not necessarily experience all of these symptoms, and pain complaints can fluctuate on a daily basis. Dr. Fetzer further stated that, when an annular tear is centrally located, as the claimant's is, the patient can experience back spasms on either side.

Dr. Fetzer opined that the claimant's pain symptoms, including radiating pain to his legs, were caused by the annular tear, which was an acute and symptomatic injury.

¶ 26 During cross-examination, Dr. Fetzer was asked whether he could tell whether an annular tear is acute by looking at MRI films. Although Fetzer stated that the brightness of the signal in the region of the tear on the claimant's MRI could indicate that the tear is an acute injury, he acknowledged that he was not a radiologist and that determining from the MRI whether the tear is acute was beyond the scope of his practice. Dr. Fetzer also admitted that the claimant's annular fissure at L5-SI caused "some mild neuroforaminal stenosis but no frank [nerve] impingement." He agreed that one could have the findings shown on the claimant's MRI and still be asymptomatic.

¶ 27 Because he found that the claimant's January 12, 2017, work accident caused the acute annular tear, and that the annular tear caused the claimant's symptoms, Dr. Fetzer opined that the work accident was causally related the claimant's current disability and symptoms. Dr. Fetzer testified that it was reasonable to conclude that the work accident had caused the claimant's injury because the claimant did not have any prior symptoms. Dr. Fetzer saw no evidence of psychological or secondary gain throughout his treatment of the claimant, and he did not find any Waddell's signs during the February 8, 2017 examination.

¶ 28 Dr. Fetzer further opined that the work restrictions he prescribed were causally related to the January 12, 2017, work accident. He testified that, as long as the claimant's current limitations and reports of pain remain the same, he would continue the same restrictions. Dr. Fetzer admitted that he only gave the claimant work restrictions due to his subjective complaints. Dr. Fetzer testified that, if the claimant had told him he could return to work, then Dr. Fetzer would have

allowed him to return to work without restrictions. Dr. Fetzer never restricted the claimant from driving.

¶ 29 Dr. Fetzer further stated that the claimant's need for epidural steroid injections was causally related to the work accident. He testified that the claimant's future course of treatment could involve additional epidural injections, as well as a transforaminal injection.

¶ 30 On November 17, 2017, the claimant underwent an epidural steroid injection at L5-S1. When he returned to Dr. Fetzer on December 11, 2017, the claimant reported that his symptoms persisted. The claimant received a second L5-S1 epidural steroid injection on December 28, 2017. On January 22, 2018, he reported feeling 70% better. A third lumbar epidural steroid injection was administered on February 9, 2018. Dr. Fetzer indicated that, although these injections provided some improvement, the claimant's symptoms continued to limit him. He recommended diagnostic nerve blocks in the medial branches at several locations of the claimant's lumbar spine. On March 9, 2018, the claimant underwent lumbar medial branch blocks at L3 to L5.

¶ 31 When he returned to Dr. Fetzer on March 26, 2018, the claimant's diagnoses included an L5-S1 annular fissure with mild foraminal stenosis and facet arthrosis, Grade 1 spondylolisthesis, lumbosacral spondylosis without myelopathy, and chronic bilateral low back pain with left-sided sciatica. Dr. Fetzer continued the claimant's light duty restrictions and recommended repeat medial branch blocks at L3 to L5. On April 16, 2018, Dr. Fetzer continued the claimant's work restrictions and prescribed work conditioning.

¶ 32 On June 4, 2018, Dr. Fetzer again continued the claimant's work restrictions, which included maximum 20-pounds lifting and minimal bending and stooping, until July 30, 2018. Dr. Fetzer's note of that visit is the last medical record entered into evidence regarding the claimant's work restrictions. The claimant claimed that Dr. Fetzer examined him in August of 2018, but there

is no medical record in evidence of the alleged visit. According to the medical records submitted at the arbitration hearing, the claimant did not have any medical treatment between June 5, 2018, and March 12, 2019 (the date of the arbitration hearing).

¶ 33 The employer submitted into evidence several surveillance videos taken of the claimant. The videos showed the claimant: (1) driving his car by himself on May 30, 2017; (2) driving to a Menard's store parking lot, walking into the store from a good distance away, staying in the store for more than an hour, exiting the store carrying bags through the parking lot, walking back to his car, putting the bags in the car, and then getting into the driver's seat and driving away; (3) driving his car from a medical office to a dog park on June 4, 2018, where he walks a puppy for over an hour, sits on a park bench for 45 minutes and bends down putting his hands close to the ground.

¶ 34 Thomas Zitt, a terminal manager for the employer, testified on the employer's behalf. Zitt disputed the height that the Toyota Tundra the claimant was driving could have fallen during the January 12, 2017, accident. Zitt testified that the height of the fall could not have been more than six inches. He stated that, if the front tires of the vehicle were in the location that the claimant claimed, it would be impossible for the back tires to come off the semi-trailer as he claimed they did. Zitt explained that the back axle of the semi-trailer is only three or four inches off the ground when loading the vehicles. He stated that, if the Toyota Tundra lost traction as the claimant claimed, it would have had to slide in between the ramps straddling the ramps, which meant the truck would have fallen no more than six inches. Zitt further testified that the Toyota Tundra was not damaged during the accident.

¶ 35 Zitt noted that the claimant's attorney sent the employer a letter claiming that the claimant could not pick up his TTD checks at the employer's terminal because he was unable to drive more than 10 to 15 minutes at a time due to his lumbar condition. It would take a driver approximately

22 to 24 minutes to travel from the claimant's residence to the employer's terminal. Accordingly, the employer paid for an Uber to drive the claimant to and from the terminal. However, Zitt testified that the claimant had driven himself to the terminal to pick up his checks on several occasions thereafter and that Dr. Fetzer had not restricted the claimant from driving.

¶ 36 The claimant testified that he had not worked anywhere since the January 12, 2017, work accident. At the time of the arbitration hearing, he was still on work restrictions of minimal walking and stooping and no lifting more than 20 pounds. Dr. Fetzer told him to try to do as much as he can without overextending himself. The claimant testified that he continued to have low back, hip, and left leg pain with left leg numbness. He noted ongoing functional limitations with climbing stairs, walking, camping, motorcycling, and participating in car enthusiast activities. He had to sleep in an inclined position. However, the claimant testified that he picked up his checks once every month and could drive the 11 miles from his home to the employer's terminal to get the checks.

¶ 37 The claimant further stated that he has been unable to obtain medical treatment because he has no insurance, and that the work conditioning recommended by Dr. Fetzer had not yet been authorized. The employer has not offered the claimant within his work restrictions.

¶ 38 The arbitrator found that the claimant sustained a work-related accident on January 12, 2017. However, the arbitrator found that the claimant had failed to prove that his current condition of ill-being, "if any," is causally related to the work accident. The arbitrator relied upon the testimony and opinions of Dr. Lanoff, which the arbitrator found to be "credible, reliable, and persuasive." Specifically, the arbitrator credited Dr. Lanoff's opinions that: (1) the claimant's radiographic studies showed degenerative changes that are consistent with an individual of the claimant's age; (2) the annular fissure was of no consequence clinically or objectively because it

did not impinge on the nerve roots at any level; (3) the claimant showed five out of five Waddell's findings, which represented clear findings of some nonorganic source of claimant's pain complaints; (4) the claimant complained of numbness in his legs that was not consistent with any nerve root distribution; (5) there was no atrophy of the claimant's legs, which one would expect to find if the claimant were as limited in his activities as he claimed to have been since the January 12, 2017, work accident; (6) there was no objective pathology to explain the claimant's ongoing symptoms; (7) at most, the claimant would have suffered no more than a back strain during the accident that would have resolved six to eight weeks thereafter, if he suffered any injury at all. Although the arbitrator noted Dr. Fetzer's testimony and opinions, he found Dr. Lanoff's testimony to be more reliable and persuasive.

¶ 39 Based on Dr. Lanoff's opinions and the other evidence of record, the arbitrator found that the claimant had failed to prove that his current condition of ill-being was causally related to the work accident. The arbitrator further found that the claimant had reached MMI from his injuries (if any) on May 31, 2017, the date he was examined by Dr. Lanoff. Accordingly, the arbitrator found that the claimant was not entitled to medical expenses or TTD benefits after that date, or to any prospective medical care. The arbitrator awarded the claimant TTD benefits and medical expenses from January 13, 2017, through May 31, 2017, a period of 20 weeks.

¶ 40 The claimant appealed the arbitrator's decision to the Commission. The Commission reversed the arbitrator's decision and found that the current condition of the claimant's lumbar spine is causally related to his January 12, 2017, work accident. In so ruling, the Commission relied upon Dr. Fetzer's causation opinions and found them to be more persuasive than the opinions offered by Dr. Lanoff.

¶ 41 The Commission found that Dr. Lanoff's opinion that the claimant had no physical malady or objective pathology was disproved by the MRI and radiographic studies, which showed the presence of an L5-S1 annular fissure, moderate spondylosis, Grade 1 retrolisthesis, reduction in disc space at L4 to S1, mild facet arthrosis, and degenerative changes resulting in mild central canal and bilateral foraminal stenosis. The Commission noted that Dr. Lanoff conceded that the claimants MRI showed small protrusions at L4 to SI and disc bulges at L2 to L5. The Commission also observed that, although Dr. Lanoff suggested that medical literature supported his opinion that annular tears were asymptomatic and degenerative, none of the medical studies he referenced were included in his deposition transcript. As such, the Commission was unable to evaluate those studies.

¶ 42 In further support of Dr. Fetzer's causation opinions, the Commission placed great weight on the fact that the claimant had no pre-accident lumbar problems. The Commission noted that the claimant began to complain of low back pain immediately after his accident, and there were no other preceding or intervening accidents that could have caused or contributed to his symptoms. The Commission further concluded that, even if the claimant's annular tear was a degenerative condition (as Dr. Lanoff opined), the claimant's work accident "would still have aggravated that condition, as [the claimant] only became symptomatic after his accident." The Commission noted that, when considering whether an accident aggravated a preexisting condition, the Commission may infer that "if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration" (quoting *Schroeder v. Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC). Thus, the Commission concluded that "even if the annular tear was a

degenerative condition and not an acute injury, it is inferable that the work accident aggravated that previously asymptomatic condition."

¶ 43 Further, the Commission was persuaded by Dr. Fetzer's observation that the claimant exhibited no evidence of psychological or secondary gain throughout his treatment, and no Waddell's signs during his February 8, 2017, examination. Although Dr. Lanoff found that the claimant had positive Waddell's signs and a maximally nonorganic presentation during his IME examination, the Commission found Dr. Fetzer's opinion to be more reliable because Dr. Fetzer saw the claimant numerous times throughout the course of his treatment and never doubted the authenticity of the claimant's pain complaints.

¶ 44 The Commission further found that the claimant had proven that he was entitled to TTD benefits from June 16, 2017, through July 17, 2017, and from September 7, 2017, through March 12, 2019. The arbitrator noted that the claimant testified that he had not worked anywhere since January of 2017 and was kept on work restrictions throughout his entire course of treatment. The Commission found that the treatment records corroborated that the claimant was on light duty restrictions in June of 2017, and that the claimant was never subsequently returned to full duty work by Dr. Fetzer.

¶ 45 The Commission further found that that the surveillance videos presented by the employer failed to show the claimant operating outside of his light duty restrictions. Specifically, the surveillance videos did not appear to show the claimant lifting any heavy objects over 20 pounds, nor excessively bending or stooping. Moreover, the Commission noted that, even with these light duty restrictions in place, Dr. Fetzer had counseled the claimant to continue his normal activities as tolerated, because recent medical guidelines promoted continued physical activity for the improvement of functionality and pain. Thus, the Commission found that the surveillance videos

did not prove that the claimant "was blatantly operating outside of his light duty capabilities or medical restrictions." The Commission awarded the claimant TTD benefits from June 16, 2017, through July 17, 2017, and from September 7, 2017, through March 12, 2019, a period of 83 and 3/7 weeks. The Commission also awarded past medical expenses and prospective medical care.

¶ 46 Commissioner Simpson dissented from the Commission's causation finding and would have affirmed and adopted the arbitrator's decision in its entirety. Commissioner Simpson found Dr. Lanoff's causation opinions to be more persuasive than those presented by Dr. Fetzer. She noted that Dr. Lanoff provided several detailed medical reasons to support his position that the claimant demonstrated nonorganic pain behaviors. After discussing several of Dr. Lanoff's conclusions and "thorough medical explanations," Commissioner Simpson opined that claimant's subjective complaints were out of proportion to the objective findings. She found that Dr. Fetzer "failed to provide such detailed objective evidence in support of his competing causal opinion." She further noted that Dr. Lanoff cited to medical literature to show that annular tears were not acute injuries, whereas Dr. Fetzer offered no supporting medical studies to bolster his opposing stance that annular tears were symptomatic and acute.

¶ 47 Commissioner Simpson also found it significant that the claimant "had normal range of his motion at his initial post-accident treatment visits on January 17, 2017 and February 8, 2017," and that Dr. Kassir called the claimant's lumbar and thoracic x-rays "unremarkable" on February 1, 2017. Moreover, Commissioner Simpson noted that the claimant displayed a non-antalgic gait as of February 8, 2017.

¶ 48 Commissioner Simpson concluded that the claimant had no physical malady at the time of the IME examination other than psychologically-based pain behaviors. She therefore opined that

the arbitrator's finding that the claimant's current condition was not causally related to the work accident should be affirmed.

¶ 49 The employer sought judicial review of the Commission's decision in the circuit court of Winnebago County. The circuit found the Commission's decision to be against the manifest weight of the evidence and reversed the Commission's decision without opinion. The circuit court reinstated the arbitrator's decision in its entirety.

¶ 50 This appeal followed.

¶ 51 ANALYSIS

¶ 52 As an initial matter, we note that the claimant failed to include a table of contents to the record on appeal in the appendix to his opening brief. Illinois Supreme Court Rule 342(a) requires an appellant's brief to include "as an appendix, *** a complete table of contents, with page references, of the record on appeal." Illinois S. Ct. R. 342(a) (eff. Jan. 1, 2005). "The table shall state: (1) the nature of each document, order, or exhibit, *e.g.*, complaint, judgment, notice of appeal, will, trust deed, contract, and the like; (2) in the case of pleadings, motions, notices of appeal, orders, and judgments, the date of filing or entry; and (3) the names of all witnesses and the pages on which their direct examination, cross-examination, and redirect examination begin." *Id.* The claimant's failure to include a table of contents to the record has made it difficult for the court to review some of the relevant record materials.

¶ 53 When a brief fails to follow the requirements set forth in Supreme Court Rule 342(a), we may dismiss the appeal. *Fender v. Town of Cicero*, 347 Ill. App. 3d 46, 51 (2004). Because the argument section of the claimant's brief provides references to the pages of the record on appeal that the claimant cites, as required by Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016),

we choose to exercise our discretion and address the issues on their merits. However, we caution the claimant's counsel to comply fully with all applicable supreme court rules in future cases.

¶ 54 We further note that the argument section of the claimant's opening brief contained a duplicative argument regarding TTD benefits and purported to raise an argument regarding past medical expenses that was not included in the brief. Neither "argument" was supported by any citations to authority, in violation of Rule 341(h)(7). The claimant improperly attempted to argue the issue of past medical expenses for the first time in his reply brief. Moreover, the claimant's reply brief included references to several articles from medical journals that were not included in the record and made arguments based upon those records. Upon the employer's motion, we have stricken from the claimant's reply brief all arguments regarding past medical expenses, all references to the articles from medical journals, and all arguments that the claimant raised regarding those articles. Once again, we caution the claimant's counsel to abide by our supreme court's mandatory rules.

¶ 55 1. Causation

¶ 56 Turning to the merits, the claimant argues that the Commission's finding that he failed to prove that his current condition of ill-being was causally related to the January 12, 2017, work accident was not against the manifest weight of the evidence.

¶ 57 To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Thus, even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental

injury will not be denied as long as he can show that his employment was also a causative factor. *Sisbro*, 207 Ill.2d at 205; *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). A claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983); *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981); Swartz, 359 Ill. App. 3d at 1086.

¶ 58 Whether a claimant's condition of ill-being is attributable solely to a degenerative process of her preexisting condition or to an aggravation or acceleration of that preexisting condition because of a work-related accident is a factual determination to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 205-06. In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence. A factual finding is against the manifest weight of the evidence if the opposite conclusion is "clearly apparent." *Swartz*, 359 Ill. App. 3d at 1086. The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002); see also *Lasley Construction Co. v. Industrial Comm'n*, 274 Ill. App. 3d 890, 893 (1995) ("It is not the province of this court to substitute our judgment for that of the Commission merely because other inferences from the evidence could be drawn.). Stated differently, a decision is contrary to the manifest weight of the evidence only when, after viewing

the evidence in a light most favorable to the agency, the court determines that no rational trier of fact could have agreed with the agency's decision. *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 852 (1996).

¶ 59 Applying these standards, we cannot say that the Commission's causation finding was against the manifest weight of the evidence. Dr. Fetzer, the claimant's treating physician, opined that the January 12, 2017, work accident was causally related to the claimant's annular tear and that the annular tear was the cause of the claimant's current pain symptoms and physical limitations. He further opined that the mechanics of the claimant's injury was consistent with an acute and symptomatic injury to the disc. Dr. Fetzer disagreed with Dr. Lanoff's opinion that the claimant had no physical malady or objective pathology. Dr. Fetzer noted, persuasively, that this opinion was disproved by the claimant's MRI and radiographic studies that showed the presence of an L5-S1 annular fissure, moderate spondylosis, Grade 1 retrolisthesis, reduction in disc space at L4 to S1, mild facet arthrosis, and degenerative changes resulting in mild central canal and bilateral foraminal stenosis. As the Commission noted, Dr. Lanoff conceded that the claimants MRI showed small protrusions at L4 to SI and disc bulges at L2 to L5.

¶ 60 Although Dr. Fetzer acknowledged that he could not conclusively determine from the claimant's MRI film whether the claimant's annular tear was an acute injury, he opined that an annular tear could be acute and that there was some evidence on the MRI suggested that it was acute. Similarly, although Dr. Fetzer conceded that a person could have the findings shown on the claimant's MRI and still be asymptomatic, he opined that the annular tear was symptomatic in the claimant's case based on the MRI films and his examinations and treatment of the claimant. Contrary to the employer's argument, these opinions by Dr. Fetzer are sufficient to establish causation. It is well established that a finding of a causal relationship may be based upon a medical

expert's opinion that an accident "could have" or "might have" caused an injury. *Price*, 278 Ill. App. 3d at 853; see also *Organic Waste Systems v. Industrial Comm'n*, 241 Ill. App. 3d 257, 260 (1993).

¶ 61 Moreover, even if Dr. Fetzer's causation opinion were disregarded, there would still be enough evidence to support the Commission's causation finding. "Medical evidence is not an essential ingredient to support the conclusion that an industrial accident caused the disability." *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 96 (2004); see also *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63 (1982). A finding of causal connection can be based upon direct or circumstantial evidence and the reasonable inferences which can be drawn from such evidence. *Id.* A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability can be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *Id.* at 96-97; see also *International Harvester*, 93 Ill. 2d at 63-64; *Schroeder v. Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC, ¶ 26 ("if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration").

¶ 62 Here, the medical records showed no evidence that the claimant had suffered a back injury prior to the work accident, and he was able to perform his job duties before the accident. He began to complain of low back pain immediately after the accident and was not able to work thereafter. Moreover, there were no subsequent accidents that could have caused or contributed to his symptoms. This "chain of events" evidence, standing alone, is sufficient to support the Commission's causation finding.

¶ 63 There was also evidence supporting the Commission's finding that the work accident aggravated the preexisting degenerative conditions in the claimant's lumbar spine. The employer argues that this finding was against the manifest weight of the evidence because Dr. Lanoff was the only expert who opined that the claimant had degenerative spinal conditions and there was no expert opinion that the work injury aggravated any such conditions. However, the MRI scan and x-rays showed evidence of a preexisting degenerative conditions in the claimant's lumbar spine. Moreover, a chain of events analysis may justify a finding of causation without an expert medical opinion in cases involving the aggravation of a preexisting condition. *Price*, 278 Ill. App. 3d at 853 ("The rationale justifying the use of the 'chain of events' analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury."); see also *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC. Accordingly, the Commission's finding that, even if the claimant's annular tear was a degenerative condition (as Dr. Lanoff opined), "the claimant's work accident would still have aggravated that condition, as the claimant only became symptomatic after his accident" was not against the manifest weight of the evidence.

¶ 64 The employer maintains that evidence in this case does not support a "chain of events" analysis, or any other basis for finding causation, because the only evidence of the claimant's post-accident disability and symptomatology came from the claimant, who was not credible. In support of this argument, the employer cites Dr. Lanoff's findings of five out of five Waddell signs, his thorough documentation of non-organic pain responses and inconsistent behaviors by the claimant during the IME examination, and the surveillance evidence. However, the Commission was persuaded by Dr. Fetzer's observation that the claimant exhibited no evidence of psychological or secondary gain throughout his treatment and no Waddell's signs during his February 8, 2017,

examination. Although Dr. Lanoff found that the claimant had positive Waddell's signs and a maximally nonorganic presentation during his IME examination, the Commission found Dr. Fetzer's opinion to be more reliable because Dr. Fetzer saw the claimant numerous times throughout the course of his treatment and never doubted the authenticity of the claimant's pain complaints.

¶ 65 The Commission further found that that the surveillance videos presented by the employer failed to show the claimant operating outside of his light duty restrictions. The Commission noted that the surveillance videos did not appear to show the claimant lifting any heavy objects over 20 pounds, nor excessively bending or stooping. Moreover, the Commission correctly noted that, even with the claimant's light duty restrictions in place, Dr. Fetzer had counseled the claimant to continue his normal activities as tolerated, because recent medical guidelines promoted continued physical activity for the improvement of functionality and pain. Thus, the Commission found that the surveillance videos did not prove that the claimant "was blatantly operating outside of his light duty capabilities or medical restrictions." It is the Commission's province to assess the credibility of witnesses. *Hosteny*, 397 Ill. App. 3d at 675. We cannot say that the Commission's finding that the claimant was credible was against the manifest weight of the evidence.

¶ 66 Dr. Lanoff presented opinions on causation and on the claimant's credibility which contradicted Dr. Fetzer's opinions. However, it is the Commission's province to draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny*, 397 Ill. App. 3d at 675. As noted above, Dr. Fetzer's opinions on these matters had some foundation in the evidence. Accordingly, the Commission was entitled to credit Dr. Fetzer's opinions over those of Dr. Lanoff, and we may Geno not overturn the Commission's findings merely because we would have found otherwise or

because other reasonable inferences could be drawn from the evidence. *Pietrzak*, 329 Ill. App. 3d at 833; *Lasley Construction Co.*, 274 Ill. App. 3d at 893.

¶ 67 2. TTD Benefits

¶ 68 The claimant argues that the Commission's award of TTD benefits was not against the manifest weight of the evidence. The employer contends that the claimant is not entitled to TTD benefits after May 31, 2017, 20 weeks after the work accident. The employer's argument is based upon Dr. Lanoff's opinions that the claimant had reached MMI on May 31, 2017, and that the claimant's current condition of ill-being is not causally related to the work accident. Because we have rejected those conclusions and affirmed the Commission's finding of a causal connection between the work accident and the claimant's current condition, we also reject the employer's argument on appeal.

¶ 69 The employer further contends that, even assuming that the Commission's causation opinion is correct, the claimant has presented no evidence suggesting that he is entitled to any TTD benefits after July 30, 2018, because the last medical record in evidence extended the claimant's work restrictions only through that date. We do not find this argument to be persuasive.

¶ 70 An employee is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542 (2007). An employee seeking temporary total disability benefits must prove not only that he did not work, but that he was unable to work. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 531 (2001).

¶ 71 Dr. Fetzer testified that the restrictions he placed on the claimant were the result of the January 12, 2017, work accident. Dr. Fetzer never declared the claimant to be at MMI. To the contrary, the medical records contain no evidence that the claimant's condition has stabilized, and

Dr. Fetzer has prescribed prospective medical treatments. Dr. Fetzer testified that he would maintain the same restrictions in place as long as the claimant reported the same pain and the same limitations. The claimant continued such complaints through the time of arbitration. During the arbitration hearing, the claimant testified that he continued to experience pain in his low back and left hip and that his left leg goes numb from time to time. He stated that he experienced hip and leg pain all day. His activities were limited and he had to sleep in an inclined position. The claimant had not worked since the work accident. Despite the claimant's requests, the employer had not offered him a job within his work restrictions. In sum, there is no evidence that the claimant's condition stabilized or that the claimant reached MMI prior to the arbitration hearing. Under these circumstances, the Commission's award of 83 and 3/7 weeks of TTD benefits, through the date of arbitration, was not against the manifest weight of the evidence.

¶ 72 3. Prospective Medical Care

¶ 73 The claimant argues that the Commission's award of prospective medical care was not against the manifest weight of the evidence. We agree.

¶ 74 Dr. Fetzer attempted to treat the claimant's annular tear by, *inter alia*, administering three epidural steroid injections. Dr. Fetzer testified that the epidural injections her ordered were causally related to the claimant's work accident. He also prescribed a work conditioning program. The claimant testified that the treatments rendered by Dr. Fetzer provided him with some pain relief.

¶ 75 Dr. Fetzer stated that the claimant's future course of treatment could involve additional epidural steroid injections and a transforaminal injection. If these treatments fail, Dr. Fetzer indicated that the claimant might require surgery.

¶ 76 The Commission found Dr. Fetzer's opinions to be persuasive. Although Dr. Lanoff offered conflicting opinions, the Commission was entitled to resolve the conflict between the expert opinions and to credit Dr. Fetzer's opinions over those of Dr. Lanoff. The Commission's award of prospective medical care was not against the manifest weight of the evidence.

¶ 77 CONCLUSION

¶ 78 For the foregoing reasons, we reverse the judgment of the circuit court of Winnebago County that reversed the Commission's decision, and we reinstate the Commission's decision in its entirety.

¶ 79 Circuit Court judgment reversed; Commission's decision reinstated.