2024 IL App (1st) 231662WC-U
No. 1-23-1662WC
Order filed: April 19, 2024

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

SWISSPORT CARGO SERVICES, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Sejfudin Subasic, Appellee).	)	Appeal from the Circuit Court of Cook County. No. 22L50527 Honorable Daniel P. Duffy, Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Mullen, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: (1) By claiming, in his request for a hearing, that he was entitled to temporary total disability (TTD) benefits for a specified period, petitioner did not waive his entitlement to already-paid TTD benefits for a prior period.

(2) By crediting the opinions of petitioner's treating physicians that a workplace accident had caused a condition of ill-being in petitioner's left ankle and foot and that the condition necessitated future pain management treatment, the Illinois

Workers' Compensation Commission did not make findings that were against the manifest weight of the evidence.

(3) Opinions by petitioner's treating physician and an independent examining physician that, neurologically, petitioner was not yet at maximum medical improvement and that he consequently was restricted to performing sedentary work or no work at all were sufficient to support the Commission's award of TTD benefits and to make the award not against the manifest weight of the evidence.

¶ 2 Petitioner, Sejfudin Subasic, filed with the Illinois Workers' Compensation Commission (Commission) a petition for review under section 19(b) of the Workers' Compensation Act (Act) (820 ILCS 305/19(b) (West 2020)). He sought to recover temporary total disability (TTD) benefits and the payment of prospective medical expenses for an injury he sustained while working as an employee of respondent, Swissport Cargo Services. Finding that the condition of ill-being in petitioner's left ankle and foot was causally related to the workplace accident, the arbitrator awarded TTD benefits and future medical care. After modifying the arbitrator's decision by reducing the period of TTD, the Commission affirmed and adopted the arbitrator's decision as modified. Also, the Commission remanded the case to the arbitrator for a determination of whether petitioner was entitled to additional TTD benefits or to permanent disability benefits. Respondent sought review in the Cook County circuit court, and the court confirmed the Commission's decision. Respondent appeals.

¶ 3 Respondent raises two issues in this appeal. The first issue is whether, upon the Commission's remand of the case to the arbitrator, petitioner may claim TTD benefits for the period of October 13, 2016, through February 26, 2020, having failed to make that claim at the arbitration hearing that already has been held. We hold that petitioner may do so. The second issue is whether the Commission made findings that were against the manifest weight of the evidence by finding that petitioner was entitled to TTD benefits after February 26, 2020, and to future pain management treatment. Those findings, we hold, are not against the manifest weight of the

evidence. Therefore, we affirm the circuit court's judgment confirming the Commission's decision.

¶ 4 I. BACKGROUND

¶ 5 Petitioner worked for respondent as a lead transport agent. He testified that, typically, he lifted as much as 100 to 120 pounds in a workday. On October 12, 2016, he was pulling some airport dollies with a forklift. He did not see a hole behind him, and when he backed into the hole, he was thrown from the forklift. He sustained a fracture to his left ankle and a twisting injury to his left knee.

¶ 6 In January 2017, because the ankle bones were not healing together on their own, an orthopedic surgeon, Dr. David Saper, performed union surgery, implanting hardware in petitioner's left ankle. In May 2017, Dr. Saper removed some screws from the ankle so that petitioner would have greater range of motion. In July 2017, Dr. Saper performed an arthroscopy of petitioner's left knee. In April 2018, because petitioner still had pain, Dr. Saper performed a fourth surgery on the left ankle, this time to remove a plate from the now fully healed and reunited bones. The hope was that removing the plate would increase comfort in the ankle.

¶ 7 Months went by, and petitioner continued to have pain in his left foot and ankle, as well as numbness in his left leg and in the toes and sole of his left foot. Because petitioner had reached maximum medical improvement (MMI) in bone healing, Dr. Saper began to suspect that the problem was neuropathic. More specifically, he suspected that petitioner had complex regional pain syndrome (CRPS). Regarding himself as unqualified to diagnose CRPS, Dr. Saper referred petitioner to a pain management physician who worked in the same practice as Dr. Saper, Dr. Vo (whose first name appears to be unspecified in the record). In January 2018, after examining petitioner, Dr. Vo opined that petitioner did not have CRPS. Dr. Saper deferred to that

opinion, deeming himself unqualified to agree or disagree with it.

¶ 8 After CRPS was seemingly ruled out, petitioner continued to complain of left ankle symptoms. It was Dr. Saper's impression that petitioner was honest and consistent in his descriptions of his symptomology (and every doctor who examined petitioner in this case had the same impression). Because the pain was in the part of the body on which Dr. Saper had performed surgeries, he deemed himself obligated to continue doing everything he could to help. He again referred petitioner to a pain management physician, this time to Dr. Sajjad Murtaza because Dr. Vo was no longer at the same practice as Dr. Saper, whereas Dr. Murtaza was at that practice.

¶ 9 In his examination of petitioner, Dr. Murtaza found the Budapest criteria of CRPS to be present, and he diagnosed the "beginning stages of CRPS" (to quote Dr. Murtaza's letter from August 23, 2019). Dr. Murtaza recommended a selective nerve root block "for diagnostic and hopefully therapeutic purposes." If that procedure gave "temporary relief," Dr. Murtaza suggested that petitioner "likely would benefit from a [spinal cord stimulator] trial." Deferring to Dr. Murtaza's diagnosis, Dr. Saper opined, in his deposition, that the CRPS was related to the forklift accident.

¶ 10 However, two independent examining physicians—namely, an orthopedic surgeon, Dr. George Holmes, and a pain management physician, Dr. Joseph D. Belmonte—disagreed with the diagnosis of CRPS. The "spotty distribution" of petitioner's pain, Dr. Holmes explained, was uncharacteristic of a regional pain syndrome, which had a more uniform distribution, like a "stocking glove." Even so, Dr. Holmes opined that petitioner could have *neuropathic* pain, despite his being *orthopedically* at MMI. From an orthopedic point of view, petitioner needed no restrictions, Dr. Holmes testified—petitioner did not even need the cane he

was accustomed to using. Yet, Dr. Holmes testified he had no objection to the gabapentin that petitioner had been taking for chronic pain. Dr. Holmes accepted that, for a long time, petitioner had been suffering from pain in his left ankle and foot—pain that, in Dr. Holmes's opinion, was not directly related to the fibula fracture itself but possibly was related to surgical interventions for the fracture. Dr. Holmes agreed that a referral for pain management would be reasonable. He pointed out that petitioner could benefit from methods of pain management other than injections and medications, such as psychological counseling and physical therapy. Because of the apparent "neurologic issues" that petitioner still had, Dr. Holmes opined that, as of March 2019, petitioner should either not work at all or should be limited to strictly sedentary work.

¶ 11 Dr. Belmonte, on the other hand, disagreed that petitioner needed any work restrictions. Having found none of the Budapest criteria in his own examination of petitioner, Dr. Belmonte rejected Dr. Murtaza's diagnosis of CRPS. He diagnosed petitioner as having, instead, a musculoskeletal condition, specifically, Achilles tendinitis, plantar fasciitis, and calf strain. In Dr. Belmonte's opinion, the workplace injury and its repair accounted for petitioner's symptoms, but petitioner needed no further medical treatment. According to Dr. Belmonte, petitioner could alleviate his symptoms by a home exercise program, using techniques that petitioner had learned in physical therapy. At first in his deposition testimony, Dr. Belmonte said, "I don't think that pain management is indicated for his condition." Later in his testimony, however, Dr. Belmonte said he would defer to pain management ordered by the treating orthopedic physician. In Dr. Belmonte's opinion, though, the pain management treatment would be for a musculoskeletal condition, not for CRPS.

¶ 12 Dr. Saper disagreed that petitioner's problem was musculoskeletal—and he criticized the making of that diagnosis by anyone who was not a musculoskeletal expert.

According to Dr. Saper, plantar fasciitis and Achilles tendinitis would not account for the pain, paresthesia, and coolness on the dorsum of petitioner's left foot. In Dr. Saper's opinion, therefore, petitioner had neuropathic pain, not musculoskeletal pain.

¶ 13 Because of what Dr. Saper regarded as neuropathology in petitioner's left ankle, he had restricted petitioner to light duty, by which he meant lifting no more than five pounds. In his deposition, though, Dr. Saper deferred to a functional capacity evaluation concluding that petitioner could perform medium-duty work, which entailed lifting 40 pounds.

¶ 14 According to this functional capacity evaluation, however, petitioner had put forth inconsistent efforts in the test. Dr. Holmes testified that, consequently, the functional capacity evaluation was "invalid." When it was pointed out to Dr. Holmes that the functional capacity evaluation used the term "inconsistent" instead of "invalid," Dr. Holmes responded that he and his medical colleagues regarded the terms as "interchangeable." He explained:

> "So when I use the term that essentially he should be at a sedentary job, that's related to some of his neurologic issues. I believe *** I did indicate the possibility of repeating his [functional capacity evaluation] which was essentially invalid to get a better determination of his capabilities because from an orthopedic standpoint he can do more than a sedentary job."

¶ 15 In his testimony, petitioner described how the forklift accident had affected him. Before the accident, he could jog, play tennis, and ride a bicycle. After the accident, he no longer could do any of those activities. When outside the home, he walked with a cane for stability. His left foot and ankle hurt constantly—a burning pain as if he were being poked by a screwdriver. The severity of the pain was 3 out of 10, and at times the pain rose to 8.

¶ 16 An investigator, Kenya Pope, testified to surveillance videos he had taken of

petitioner. A five-minute video from June 2020 showed petitioner removing something from the trunk of his car and returning to his apartment. The video also showed him, shortly afterward, standing with another man in front of the raised hood of a parked car. A cane was nowhere in sight. Petitioner knelt on both knees as he apparently tinkered with the engine. Afterward, he reached up and closed the hood. Other video footage, from September 2020, showed petitioner carrying a cane but, according to Pope's description, "barely using it."

¶ 17 Respondent's quality and health safety environmental manager, Denise Jongleux-Trausch, testified in substance as follows. As of the date of the arbitration hearing, April 19, 2021, she had been employed by respondent for two years. Her job was to match an injured employee with positions that accommodated the employee's medical restrictions. She identified, by name, five accommodated employees in the cargo department whose job descriptions resembled petitioner's job description. Some of these employees were restricted to lifting no more than 40 pounds, and others had more severe restrictions. During the period of June 2018 to February 2020, respondent assigned them work that was within their restrictions.

¶ 18 On cross-examination, however, Jongleux-Trausch admitted she did not know if petitioner could have returned to work with a 40-pound restriction. She had never spoken with petitioner's supervisor regarding any accommodated duty that might have been available for petitioner. In February or March 2021, Jongleux-Trausch performed an investigation. She asked employees in the cargo department if they had known that petitioner had restrictions, and she tried to find out whether his restrictions could have been accommodated. No one seemed to have any relevant knowledge. The workers' compensation employee who had handled such matters and might have been able to answer these questions no longer worked for respondent. Petitioner's attorney asked Jongleux-Trausch:

"Q. In that course of conversations, was it determined whether or not [petitioner] would be able to return and be accommodated with a 40-pound weight restriction?

A. Again, no, because people didn't have that information—

Q. Okay.

A. —who don't know.

Q. And just so we're clear you never spoke with [petitioner's] supervisor with respect to any accommodated duty, correct?

A. No.

Q. That's correct?

A. Correct."

When asked, on direct examination, "What is the reason that [respondent] didn't provide to [petitioner] accommodated work?" she answered, "I'm not sure. I wasn't there at the time."

¶ 19 Petitioner testified that respondent never offered him any accommodated work and that he would go back to work if he were able to do so.

¶ 20 Arbitrator Sinnen found that the condition of ill-being in petitioner's left foot and ankle was causally related to the forklift accident. In so finding, she relied on the testimony of petitioner, whom she found to be credible. She had observed petitioner limping and walking with a cane, and it was undisputed that he had no ankle problem before the accident. The arbitrator also relied on the opinions of Dr. Saper and Dr. Holmes. Dr. Saper had opined that, because of the accident, petitioner suffered from neuropathic pain and needed pain management. Dr. Holmes had opined that petitioner suffered from chronic pain related to the workplace injury. Although Dr. Holmes disagreed that the chronic pain was from CRPS, he opined, as Dr. Saper

had opined, that petitioner needed treatment to manage the pain. Thus, the arbitrator found that petitioner was entitled to pain management treatment at respondent's expense. The arbitrator explained that although she had considered Dr. Belmonte's opinions, including his opinion that petitioner could return to work without restriction, she found that Dr. Belmonte was less credible, considering that he was alone in his opinion that petitioner's pain was musculoskeletal.

¶ 21 The arbitrator acknowledged the assertion, in Jongleux-Trausch's testimony, that accommodated work had been available for petitioner. The arbitrator noted, however, that

> "[Jongleux-Trausch] was unable to confirm whether Petitioner was offered any accommodated work. She testified that Respondent *could have* accommodated a 40-pound lifting restriction but (regardless of what Petitioner's restrictions actually were) there was no evidence that *any* job was offered to Petitioner. Petitioner testified that no one contacted him about returning to work. Petitioner has not been returned to work full duty by Dr. Saper[,] and Dr. Holmes concluded that Petitioner was limited to sedentary work." (Emphases in original.)

¶ 22 Finding that respondent's exhibit No. 3 "confirm[ed] that TTD benefits were paid through February 27, 2020," the arbitrator decided that petitioner was "entitled to an additional 61 weeks of TTD from February 27, 2020[,] through April 29, 2021." In further reliance on respondent's exhibit No. 3, the arbitrator awarded respondent a credit of $93,491.20 for TTD benefits that respondent had paid during the period of October 13, 2016, through February 27, 2020.

¶ 23 The Commission agreed with Arbitrator Sinnen that petitioner was entitled to TTD benefits. "Dr. Saper testified that Petitioner [was] not capable of performing his full-duty job," the Commission noted, and "Dr. Holmes confirmed that as of March 2019, his opinion was

Petitioner should either be off work completely or limited to sedentary duty because of his neurologic issues." The Commission was unconvinced that "conversations Ms. Jongleux-Trausch had approximately one year after benefits were terminated and which garnered no concrete information as to Petitioner [were] sufficient to establish that accommodated duty would have been provided." The Commission remarked, "Ms. Jongleux-Trausch was unable to determine whether or not Petitioner provided his restrictions to Respondent, [was] unaware whether or not there was an accommodation for Petitioner, and never spoke to Petitioner's supervisor about accommodated duty." Therefore, the Commission "[found that] Petitioner [was] entitled to TTD benefits."

¶ 24 Because the request for hearing, however, had identified the "TTD period at issue" as only February 27, 2020, through April 29, 2021, the Commission disagreed with the arbitrator that petitioner should be awarded TTD benefits for a greater period of October 13, 2016, through April 29, 2021. Accordingly, the Commission vacated the TTD award for the period of October 13, 2016, through February 26, 2020—a period unspecified in the request for hearing. The Commission decided that, instead, petitioner was "entitled to TTD benefits from February 27, 2020[,] through April 29, 2021."

¶ 25 At the same time, though, the Commission rejected respondent's argument that petitioner had effectively disclaimed TTD benefits for October 13, 2016, through February 26, 2020:

> "The Commission disagrees, however, with Respondent's assertion that Petitioner's silence as to this period is equivalent to an affirmative stipulation by Petitioner that he is not entitled to TTD benefits for that period. The Commission emphasizes that entitlement to TTD prior to February 27, 2020[,] was not raised as

> an issue at trial and as it remains un-litigated, Petitioner is not precluded from raising that benefit period at a subsequent hearing. Respondent has, however, established its credit of $93,491.20 for TTD benefits previously paid to Petitioner through February 26, 2020."

¶ 26 Thus, the Commission affirmed the arbitrator's decision as modified. Pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980), the Commission remanded the case to the arbitrator "for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any."

¶ 27 Respondent appealed to the Cook County circuit court, and the court confirmed the Commission's decision.

¶ 28 II. ANALYSIS

¶ 29 A. Petitioner's Right to Litigate, on Remand, His Entitlement to TTD Benefits for October 13, 2016, Through February 26, 2020

¶ 30 In the request for hearing, which the attorneys signed and submitted to the arbitrator, petitioner "claim[ed] to be entitled to" a "TTD period[ ]" of "February 27, 2020[,] [to the] present, representing 61 weeks." Respondent "dispute[d]" and "claim[ed] [n]o liability for this period." To further quote the request-for-hearing form, respondent "claim[ed] it paid $93,491.20 in TTD ***, for which credit may be allowed under § 8(j) of the Act" (820 ILCS 305/8(j) (West 2020)). Petitioner "dispute[d]" respondent's claim for credit, acknowledging that "TTD [was] paid through 2/27/20" but saying he was unable to "confirm [the] amount."

¶ 31 The arbitrator awarded petitioner TTD benefits "of $531.20/week for 237 weeks, commencing October 13, 2016[,] through April 29, 2021" (the date of the arbitration hearing). Also, the arbitrator allowed respondent a credit of $93,491.20 for TTD benefits that respondent

already had paid petitioner, a credit that (to further quote the arbitration decision) was "consistent with Respondent's exhibit 3 itemizing TTD payments made October 13, 2016[,] through February 27, 2020."

¶ 32 While otherwise affirming and adopting the arbitrator's decision, the Commission modified the decision by reducing the period of TTD benefits to February 20, 2020, through April 29, 2021. The Commission explained:

> "The Arbitrator awarded TTD benefits from October 13, 2016[,] through April 29, 2021. The Commission observes, however, the Request for Hearing reflects the only TTD period at issue was February 27, 2020[,] through April 29, 2021. [Citation.] As Petitioner did not allege he was temporarily and totally disabled from October 13, 2016[,] through February 26, 2020, the award of TTD benefits for that period was improper and is hereby vacated. The Commission disagrees, however, with Respondent's assertion that Petitioner's silence as to this period is equivalent to an affirmative stipulation by Petitioner that he is not entitled to TTD benefits for that period. The Commission emphasizes that entitlement to TTD prior to February 27, 2020[,] was not raised as an issue at trial and as it remains un-litigated, Petitioner is not precluded from raising that benefit period at a subsequent hearing. Respondent has, however, established its credit of $93,491.20 for TTD benefits previously paid to Petitioner through February 26, 2020."

The Commission remanded the case to the arbitrator "for further proceedings consistent with this Decision."

¶ 33 Respondent argues, first, that petitioner has "waived the issue of [TTD] for the period of October 13, 2016[,] through February 26, 2020, having failed to litigate the issue at

[the the] trial [of] April 29, 2021." Second, respondent argues that because the request for hearing was petitioner's "stipulation to TTD entitlement beginning February 27, 2020," petitioner "may not litigate that issue at a future hearing."

¶ 34 These arguments appear to seek guidance regarding a claim that has not yet been made. Respondent contends that if, in the future, petitioner seeks TTD benefits for the period of October 13, 2016, through February 26, 2020, he should not be allowed to do so. A principle of justiciability comes to mind: "The courts of Illinois do not issue advisory opinions to guide future litigation." *Golden Rule Insurance Co. v. Schwartz*, 203 Ill. 2d 456, 469 (2003). Given the Commission's remand of the case to the arbitrator, however—presumably so that petitioner can claim entitlement to TTD benefits for the period of October 13, 2016, through February 26, 2020—litigation is more than a theoretical future event; rather, it is ongoing. Also, given the award of a credit to respondent in the amount of $93,491.20, petitioner has an incentive to vigorously litigate his entitlement to TTD benefits for that period. Thus, the parties have a "personal stake in the outcome of the controversy [which serves] to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult *** questions." (Internal quotation marks omitted.) *First National Bank of Waukegan v. Kusper*, 98 Ill. 2d 226, 234 (1983). We conclude, then, that respondent raises a justiciable issue.

¶ 35 In support of its claim of waiver, respondent cites, among other authorities, section 9030.40 of the Commission's rules (50 Ill. Admin. Code 9030.40 (2016)) and *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1088 (2004). Section 9030.40 reads as follows:

> "Before a case proceeds to trial on Arbitration, the parties (or their counsel) shall complete and sign a form provided by the Workers' Compensation Commission called Request for Hearing. However, in the event a party (or counsel) fails or

> refuses to complete and sign the document, the Arbitrator, in his or her discretion, may allow the case to be heard and may impose upon that party whatever sanctions permitted by law the circumstances may warrant. The completed Request for Hearing form, signed by the parties (or counsel), shall be filed with the Arbitrator as the stipulation of the parties and a settlement of the questions in dispute in the case." 50 Ill. Admin. Code 9030.40 (2016).

¶ 36 Section 9030.40 is an administrative regulation, and "[w]e interpret administrative regulations the same way we interpret statutes." *Dusthimer v. Board of Trustees of University of Illinois*, 368 Ill. App. 3d 159, 165 (2006). "Absent a special definition, we give the words of the text their ordinary meaning." *Id.* The Commission's rules do not specially define "stipulation." Therefore, we give that word its ordinary meaning (see *id.*), which can be found in a dictionary (see *O'Neil v. Illinois Workers' Compensation Comm'n*, 2020 IL App (2d) 190427WC, ¶ 19). A "stipulation" is "[a] voluntary agreement between opposing parties concerning some relevant point; esp[ecially], an agreement relating to a proceeding, made by attorneys representing adverse parties to the proceeding." Black's Law Dictionary (11th ed. 2019) (stipulation); see *Ingrassia Interior Elements v. Illinois Workers' Compensation Comm'n*, 2012 IL App (2d) 110670WC, ¶ 15. Thus, a stipulation is an agreement. In their request for a hearing, the parties can agree on some relevant point, removing that point from controversy, and the agreement typically will be binding (see *id.*).

¶ 37 In *Walker*, for example, although the parties were not totally in agreement on the period of TTD, they were partly in agreement on that period. According to the employee, the period of TTD was 112 3/7 weeks, from February 23, 1999, up to and including the date of the arbitration hearing, April 19, 2001. *Walker*, 345 Ill. App. 3d at 1087. According to the employer,

the period of TTD was only 84 weeks, from February 23, 1999, through October 13, 2000. *Id.* Thus, in the two different periods of TTD that the parties asserted, there was an 84-week overlap (February 23, 1999, through October 13, 2000), which was their area of agreement. *Id.* Despite that agreement (or stipulation) in the request for a hearing, the Commission awarded the employee only 29 6/7 weeks of TTD benefits. *Id.* On the authority of section 9030.40 of the Commission's rules, the appellate court modified the TTD award to 84 weeks. *Id.* at 1091. The appellate court held, "[The] employer was bound by its stipulation that 84 weeks' TTD benefits were appropriate." *Id.* at 1088.

¶ 38 In the present case, by contrast, there was no stipulation on TTD. Instead of agreeing or partly agreeing on TTD, the parties totally disagreed on TTD. On the one hand, petitioner claimed that the period of TTD was 61 weeks, from February 27, 2020, to the date of the arbitration hearing, April 29, 2021. On the other hand, respondent "dispute[d]" this 61-week period and "claim[ed] [n]o liability for this period." Therefore, *Walker* is distinguishable, and the stipulation provision of section 9030.40 is inapposite.

¶ 39 In addition to *Walker* and section 9030.40, respondent cites a superabundance of cases in support of the proposition that an issue not raised before the Commission is "waived." See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) ("Citation of numerous authorities in support of the same point is not favored."). In those cases, however, an issue was raised in the circuit court that had not been raised before the Commission. See *Taylor v. Industrial Comm'n*, 301 Ill. 381, 387-88 (1922); *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721, 734 (2000); *Stephens v. Industrial Comm'n*, 284 Ill. App. 3d 269, 273 (1996); *Manis v. Industrial Comm'n*, 230 Ill. App. 3d 657, 662 (1992); *Kropp Forge v. Industrial Comm'n*, 225 Ill. App. 3d 244, 252-53 (1992). This case is different in that the Commission itself raised petitioner's right to claim TTD benefits

for a period prior to February 27, 2020. See 820 ILCS 305/19(b) (West 2020) ("The jurisdiction of the Commission to review the decision of the arbitrator shall not be limited to the exceptions stated in the Petition for Review."); *id.* § 19(e) ("[T]he Commission shall promptly review the decision of the Arbitrator and all questions of law or fact which appear from the statement of facts or transcript of evidence.").

¶ 40 As the Commission remarked, it makes no sense to construe "[p]etitioner's silence as to [the] period [before February 27, 2020,]" as "an affirmative stipulation by Petitioner that he is not entitled to TTD benefits for that period." To illustrate the unreasonableness of such a construal, suppose that an employee does two weeks of work for an employer and the employer pays the employee for only the first week. If the employee objects that he is entitled to payment for the second week, the employer cannot seriously respond, "By saying nothing about the first week, you waived any claim of entitlement to the already-paid first week's wages, and these admittedly undeserved first-week wages should be applied to the second week."

¶ 41 If there is no dispute of material fact and only one reasonable inference can be drawn, the question of waiver is one of law. *Liberty Mutual Insurance Co. v. Westfield Insurance Co.*, 301 Ill. App. 3d 49, 53 (1998). The only reasonable inference is that by asserting an entitlement to TTD benefits for February 27, 2020, to April 29, 2021, petitioner did not waive his right to already-paid TTD benefits for a prior period.

¶ 42 B. Whether the Commission's Decision Is Against the Manifest Weight of the Evidence

¶ 43 1. *Causation and Future Medical Treatment*

¶ 44 Respondent contends that by finding that petitioner was entitled to TTD benefits after February 26, 2020, and to future pain management treatment, the Commission made a

finding that was against the manifest weight of the evidence. According to respondent, the only medical expert testimony supporting these awards was that of Dr. Saper. Respondent criticizes Dr. Saper as inexperienced and, by his own admission, unqualified to diagnose CRPS—a condition that Dr. Holmes and Dr. Belmonte testified that petitioner did not have.

¶ 45 As for Dr. Saper's supposed inexperience, he testified that he performed about 500 surgeries a year and that he had treated patients with knee or ankle injuries "many times." More to the point, it is for the Commission, not for us, "to resolve conflicts in the evidence, *including medical testimony*; assess the credibility of the witnesses; assign weight to the evidence; and draw reasonable inferences from the evidence." (Emphasis added.) *Jolen Electric & Communications, Inc. v. Illinois Workers' Compensation Comm'n*, 2021 IL App (1st) 210172WC-U, ¶ 49. We defer to the Commission's findings on such factual questions unless the findings are against the manifest weight of the evidence. See *id.* A finding on a question of fact is against the manifest weight of the evidence only if the record clearly requires the opposite finding. See *id.* Our mere disagreement with a finding of fact would not make the finding against the manifest weight of the evidence. See *id.* Rather, to characterize a finding as against the manifest weight of the evidence, we would have to able to say that no one, pondering the matter fairly and reasonably, could possibly agree with that finding. See *Mizell v. Passo*, 147 Ill. 2d 420, 426 (1992).

¶ 46 We are unconvinced that it would be outside the range of reasonableness to believe Dr. Saper and Dr. Murtaza. "[I]t is for the Commission to determine which medical opinion is to be accepted, and it may attach greater weight to the treating physician's opinion." *Piasa Motor Fuels v. Industrial Comm'n*, 368 Ill. App. 3d 1197, 1206 (2006). Respondent argues that, by his own admission, Dr. Saper was unqualified to diagnose CRPS. Precisely because such

a diagnosis was outside his expertise, however, Dr. Saper referred petitioner to physicians who were qualified to determine whether petitioner had CRPS. Dr. Vo determined that petitioner did not have CRPS, and Dr. Saper deferred to that determination. Upon examining petitioner later, however, Dr. Murtaza determined that petitioner had—at that time—the "beginning stages of CRPS," and Dr. Saper deferred to that determination. Thus, Dr. Saper did what respondent argues he should have done: he deferred to expertise that was outside his specialty. According to Dr. Saper's testimony, ankles that had suffered blunt force trauma were, in his experience, susceptible to developing CRPS. He opined that the CRPS which Dr. Murtaza (not he) had diagnosed was causally related to the forklift accident and that petitioner needed pain management treatment for this condition. The Commission was entitled to believe Dr. Saper and Dr. Murtaza.

¶ 47 Even though Dr. Holmes and Dr. Belmonte disagreed that petitioner had CRPS, they agreed that he had, in his left ankle and foot, a condition of ill-being that was causally related to the forklift accident. Dr. Holmes opined that this condition was "neurologic," and Dr. Belmonte opined that it was "musculoskeletal." Dr. Holmes was asked, "And you note *** that a referral to pain management [*sic*] would be reasonable ***?" Dr. Holmes answered, "Correct." Dr. Belmonte was asked:

> "[G]iven [petitioner's] presentation of January of 2019, and given everything that we agree upon, again, pain that is objectively verified that you have verified, that he has had a bad injury to his ankle, and that it hasn't fully recovered, does it make sense for him to go to pain management for treatment, but the treatment, again, is not for CRPS? [I]t doesn't relate to CRPS.
>
> A. Yeah. Again, I would just defer, in January of 2019, which is

> approximately six, seven months before I evaluated the patient, you know, if that was the opinion of the orthopedic, then I would defer to him."

It would be difficult to characterize the Commission's decision as against the manifest weight of the evidence, given that (1) respondent's two medical experts, Dr. Holmes and Dr. Belmonte, opined that petitioner had pain that was causally related to the accident, (2) one of these experts, Dr. Holmes, opined it would be reasonable for petitioner to undergo pain management treatment, and (3) the other expert, Dr. Belmonte, deferred to orthopedic opinion that petitioner should be referred to a pain management physician.

¶ 48 2. *TTD*

¶ 49 Respondent observes that "there is no evidence [that petitioner] requested [respondent to] accommodate any level of restricted work" or that respondent "ever was made aware of [petitioner's functional capacity evaluation] results or of Dr. Saper's suggested level of restriction." Respondent argues, "[Petitioner] cannot establish entitlement to TTD due to [respondent's] failure to accommodate his work restriction when he did not disclose his medical clearance to return to work. Simply put, [petitioner] has not established [that respondent] refused to accommodate his restrictions when he never presented them to [respondent]."

¶ 50 This argument by respondent assumes that, to prove his entitlement to TTD benefits, petitioner had to prove that (1) he informed respondent of his medical restrictions and (2) respondent refused to accommodate those restrictions. Respondent does not cite any case holding that, to recover TTD benefits, an employee must prove those two propositions. Instead, case law teaches:

> "In order to prove entitlement to TTD benefits, a claimant must establish not only that she did not work, but that she was unable to work. [Citation.] An

> employee is temporarily totally disabled from the time that an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. [Citation.] Once an injured employee's physical condition stabilizes or she has reached MMI, he is no longer eligible for TTD benefits. [Citation.] A claimant reaches MMI when she is as far recovered or restored as the permanent character of his injury will permit. [Citation.] Factors to be considered in determining whether a claimant has reached MMI include whether she has been released to return to work, medical evidence, and testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. [Citation.]" *Ford Motor Co. v. Illinois Workers' Compensation Comm'n*, 2022 IL App (1st) 211218WC-U, ¶ 75.

¶ 51 Arguably, Dr. Holmes's testimony was sufficient to carry the burden of proof as described in *Ford*. According to Dr. Holmes, petitioner was at MMI orthopedically but not neurologically, and therefore he should be limited to sedentary work, or he should not work at all. See *Whitney Productions, Inc. v. Industrial Comm'n*, 274 Ill. App. 3d 28, 31 (1995) ("[T]he fact that the employee *** has the ability to do light work does not necessarily preclude a finding of temporary total disability."). On the question of entitlement to TTD, "the dispositive inquiry is whether the claimant has reached MMI." *Sharwarko v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 131733WC, ¶ 47. To be sure, "TTD benefits may be suspended or terminated before an employee reaches MMI if he *** *refuses* work falling within the physical restrictions prescribed by his doctor." (Emphasis added.) *Id.* However, we are unaware of any case holding that, to recover TTD benefits, the employee must affirmatively prove the employer's unwillingness to assign accommodated duties.

¶ 52 III. CONCLUSION

¶ 53 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 54 Affirmed.