

**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).

2024 IL App (1st) 230527WC-U

Order filed: May 24, 2024

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

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|--|---|---------------------------|
| ROBERT BLANKSHAIN,                                   | ) | Appeal from the Circuit   |
|  | ) | Court of Cook County,     |
| Appellant,   | ) | Illinois                  |
|  | ) |                           |
| v.   | ) | Appeal No. 1-23-0527WC    |
|  | ) | Circuit No. 2022 L 050289 |
|  | ) |                           |
| THE ILLINOIS WORKERS' COMPENSATION                   | ) |                           |
| COMMISSION, <i>et al.</i> , (Walsh Construction Co., | ) | Honorable                 |
| Appellees).  | ) | Daniel P. Duffy,          |
|  | ) | Judge, Presiding.         |

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

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**ORDER**

- ¶ 1 The Commission's denial of the claimant's Motion for Relief Under Section 8(a) was not against the manifest weight of the evidence.
- ¶ 2 The claimant, Robert Blankshain, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for shoulder injuries he sustained while working for Walsh Construction Company (employer).

¶ 3 The arbitrator denied the claimant permanent total disability benefits (PTD) and instead awarded permanent partial disability benefits (PPD) in the amount of 30% loss of use of person-as-a-whole. The arbitrator also denied wage differential benefits, certain periods of temporary total disability benefits (TTD), temporary partial disability benefits, vocational rehabilitation expense (including college tuition), maintenance benefits, prospective medical care, and penalties and attorney fees.

¶ 4 The claimant filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On July 20, 2018, the Commission issued a decision increasing the PPD award from 30% to 45% loss of person-as-a-whole. In all other respects, the Commission affirmed and adopted the arbitrator's decision.

¶ 5 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County. On July 29, 2019, the circuit court entered an order affirming the Commission's denial of PTD benefits, maintenance benefits, vocational costs for the claimant's DePaul University finance degree, and penalties, attorney fees, and costs. However, the court reversed the Commission's ruling on the issue of prospective medical care for Celebrex and follow-up physician visits and on the issue of the \$103.07 in disputed vocational rehabilitation expenses and remanded the case back to the Commission on those issues. The circuit court instructed the Commission to decide on those issues.

¶ 6 The claimant appealed the circuit court's decision, case number 1-19-1786WC, and on October 8, 2020, we found that we were without jurisdiction to consider the appeal because the circuit court's order was not final and appealable in accordance with Illinois Supreme Court Rule 23(c)(1) (eff. July 1, 2011). We noted that the circuit court reversed the Commission's decision in part, remanded to the Commission, and directed the Commission to make a factual determination

on a disputed issue of mileage reimbursement incidental to vocational expenses and prospective medical care. Therefore, we held that the Commission proceedings were not final and the claimant's petition was premature.

¶ 7 On June 18, 2021, the Commission entered an order on remand, complying with the two judicial mandates by requiring the employer to authorize and pay for a prescription for Celebrex as well as "reasonable and necessary" follow up visits with the claimant's doctor, and the Commission required the employer to reimburse the claimant \$103.07 in travel costs associated with vocational rehabilitation.

¶ 8 The claimant again sought judicial review of the Commission's decision in the circuit court of Cook County. On February 27, 2023, the circuit court confirmed the Commission's decision. The claimant appealed to this court.<sup>1</sup>

¶ 9 While that appeal was pending, the claimant filed an additional application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking additional benefits under Section 8(a) of the Act for the shoulder injuries he sustained on January 28, 2008, while working for the employer.

¶ 10 On October 6, 2021, the Illinois Workers' Compensation Commission (Commission) conducted a hearing on Claimant's Motion Under Section 8(a) of the Act. At that hearing, the claimant recounted that on August 3, 2021, at an appointment Dr. Guido Marra, the claimant's doctor, it was recommended that claimant undergo MR arthrograms on his shoulders. The claimant stated that he sent the recommendation to the employer which denied the request. The claimant

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<sup>1</sup> A detailed recitation of the procedural history and the facts relevant to that proceeding are included in *Robert Blankshain v. Illinois Workers' Compensation Comm'n*, 2024 IL App (1st) 230526WC-U.

argued that the employer's denial of prospective treatment recommended by Dr. Marra was contrary to the prior decision of the Commission and the prior mandate of the circuit court. The claimant seeks authorization for the MR arthrograms as well as temporary TTD benefits associated with any additional prospective treatment prescribed thereafter.

¶ 11 In its April 11, 2022, opinion, the Commission found the claimant's Motion Under Section 8(a) was not appropriate. The Commission found that the July 29, 2019, mandate of the circuit court and the Commission's subsequent June 18, 2021, decision on remand were very limited in scope. The circuit court mandate specified that "the Commission's decision is REVERSED on the issue of prospective medical care for Celebrex and follow-up physician visits, and the case is REMANDED for further proceedings consistent with this court's ruling \*\*\*."

¶ 12 In its April 11, 2022, opinion, the Commission found that the decision of the circuit court affirmed the prior determination of the Commission that the claimant was at maximum medical improvement (MMI), implying that generally no prospective treatment was necessary. They additionally found that the circuit court awarded only prospective prescriptions for Celebrex and associated physician visits.

¶ 13 The Commission concluded that if the claimant wished to proceed with any additional prospective medical treatment, a petition under Section 19(h) of the Act would be more appropriate than a petition under Section 8(a). The Commission noted that the claimant had not indicated that his condition had fundamentally changed or deteriorated in any way since its prior decisions. For those reasons, the Commission denied the claimant's motion for relief under Section 8(a).

¶ 14 Commissioner Deborah J. Baker dissented, stating that Dr. Marra's recommendation for bilateral shoulder MR arthrograms is causally related to the bilateral shoulder injuries the claimant sustained as a result of his workplace accident, and that it was reasonable and necessary to relieve

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the effects of the injury.

¶ 15 Claimant appealed the Commission's decision to the circuit court of Cook County, which confirmed the Commission's decision in its February 23, 2023, order.

¶ 16 This appeal followed.

¶ 17 ANALYSIS

¶ 18 The parties do not agree on the standard of review. The claimant argues that this case should be reviewed *de novo*, stating that the facts essential to this court's analysis are undisputed and that this court's review only involves an application of those undisputed facts to the law. Commission decisions on questions of law are reviewed *de novo*. *Lenny Szarek, Inc. v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 597, 603 (2009).

¶ 19 However, we find an essential fact is in dispute: Whether the Commission in its June 18, 2021, order intended to provide the claimant prospective medical treatment only for his prescription for Celebrex or for any health issue which may have stemmed from his January 28, 2008, injury while working for the employer.

¶ 20 Questions regarding a claimant's entitlement to prospective medical care are questions of fact to be decided by the Commission. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶10. On review, the test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 359 Ill. App. 3d 828, 833 (2002). A court may reverse a factual finding made by the Commission only when no rational trier of fact could have agreed with the Commission. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). We therefore find an analysis under the manifest weight of the evidence standard to be appropriate.

¶ 21 The Commission concluded that the claimant was not entitled to an award of additional

medical care under Section 8(a), specifically the MR arthrograms ordered by Dr. Marra, based on its previous determination that the claimant was at MMI. The claimant argues the Commission erred in its decision because the claimant was still experiencing shoulder pain, and that this pain was related to his January 28, 2008, workplace injury while working for the employer.

¶ 22 The claimant cites *Efengee Electrical Supply Co. v. Industrial Comm'n*, 36 Ill. 2d 450 (1967), where the Illinois Supreme Court held that the intent of Section 8(a) is to make the employer's liability continuous so long as they are required to relieve the injury.

¶ 23 The claimant goes on to argue that the present case is like *Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 IL App (3d) 758 (2001), where the court upheld an award for medical treatment even though the injured worker had been placed at MMI. In that case, the injured worker sought injection therapy pursuant to a motion under Section 8(a). *Id.* at 764. The court awarded therapy, finding it significant that there was evidence the medical treatment in dispute would "relieve the effects" of the injury even if it did nothing to cure the condition. *Id.* at 765.

¶ 24 We find *Elmhurst Memorial Hospital* to be distinguishable from the present case. The plaintiff in *Elmhurst Memorial* was not seeking an award for prospective diagnostic medical treatment, after reaching MMI, to further investigate the cause of any condition of ill-being. Rather, she was seeking payment of medical expenses for injection therapy already undergone to "relieve the effects" of her work-related injury. *Id.*

¶ 25 The claimant's treating physician, Dr. Marra, ordered MRIs to look for labral pathology, and Dr. Marra did not provide a causation opinion. The employer's independent medical examiner, Dr. Aribindi, provided his un rebutted opinion is that Dr. Marra's reason for ordering the MRIs is to look for labral pathology, which is unrelated to this case as the labrums were noted in the prior operations to be intact. Additionally, the Commission held, and the circuit court affirmed, that the

prospective medical care was only regarding the claimant's prescription for Celebrex, which they determined stemmed from the claimant's work-related injury.

¶ 26 The Commission determined that if the claimant wanted to proceed with any additional prospective medical treatment, a petition under Section 19(h) would be more appropriate than a petition under Section 8(a), and for these reasons denied the claimant's 8(a) motion. Likewise, we find that the Commission was within its discretion to deny the claimant's 8(a) motion requesting MR arthrograms and TTD benefits, and its decision was not against the manifest weight of the evidence.

¶ 27 **CONCLUSION**

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, which confirmed the Commission's decision.

¶ 23 Affirmed.