

No. 1-21-0172WC & 1-21-0556WC (cons.)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

JOLEN ELECTRIC AND COMMUNICATIONS, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> ,)	
)	
(Kenneth Maddox, Jr., Defendant-Appellee).)	
)	Nos. 19 L 50446
)	19 L 50461
KENNETH MADDOX, JR.,)	
)	
Plaintiff-Appellant,)	
)	
v.)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> ,)	
)	
(Jolen Electric and Communications, Inc. Defendant-)	Honorable
Appellee).)	Anthony C. Kyriakopoulos,
)	Judge, presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* We: affirmed the circuit court’s order in part; reversed the circuit court’s order in part; vacated the Commission’s decision in part; reversed the Commission’s decision in part; reinstated the arbitrator’s decision in part; and remanded the matter to the Commission with directions.

¶ 2 The claimant, Kenneth Maddox, Jr., filed an application for adjustment of claim pursuant to the Workers’ Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), seeking benefits for injuries he sustained while working for Jolen Electric and Communications, Inc. (Jolen) on June 1, 2012. On July 12, 2019, the Illinois Workers’ Compensation Commission (Commission), with one Commissioner dissenting, issued a written decision in the matter. Both Jolen and the claimant sought a judicial review of the Commission’s decision in the circuit court of Cook County. The actions were consolidated, and on February 4, 2021, the circuit court issued an order, reversing the Commission’s award of temporary total disability (TTD) benefits to the claimant, remanding the matter back to the Commission with directions to “correct” its award of TTD benefits to reflect 181 4/7 weeks of benefits, and confirming the Commission’s decision in all other respects. Jolen and the claimant both filed timely notices of appeal, which this court consolidated on June 9, 2021. For the reasons which follow, we: affirm the circuit court’s order in part; reverse the circuit court’s order in part; vacate the Commission’s decision in part; reverse the Commission’s decision in part; reinstate the arbitrator’s decision in part; and remand the matter to the Commission with directions.

¶ 3 The following recitation of facts relevant to our disposition of these consolidated appeals

is taken from the evidence adduced at the arbitration hearings held on November 23, 2013, and April 18, 2016.

¶ 4 On June 1, 2012, the claimant was employed by Jolen as a journeyman electrician. It was undisputed that, on that date, the claimant suffered a work-related accident while attempting to move an electrical meter embankment down a flight of stairs with a coworker. According to the claimant, he experienced immediate pain in his back and felt his left shoulder pop.

¶ 5 The claimant sought medical attention at the emergency room of Roseland Community Hospital on June 1, 2012. The emergency room physician prescribed medication and recommended that the claimant return for a follow-up appointment.

¶ 6 On June 2, 2012, the claimant was evaluated at Rush Oak Park Hospital where he received a Morphine injection. He was advised to continue to use prescribed medication and undergo an orthopedic evaluation.

¶ 7 On June 7, 2012, the claimant was seen by Dr. Mark Cavalenes at Westgate Orthopedics who ordered an MRI of the claimant's left shoulder and lumbar spine. Dr. Cavalenes recommended that the claimant begin physical therapy and remain off from work. The claimant had the recommended MRI on June 19, 2012, that revealed he had disc protrusions at L4-L5 and L5-S1. On September 7, 2012, the claimant also had an MRI of his left shoulder that revealed no evidence of rotator cuff tendon tears and that the labrum was intact. Dr. Cavalenes opined that the MRI showed a tear of the glenoid rim and recommended that the claimant undergo arthroscopic repair surgery on his left shoulder.

¶ 8 On October 29, 2012, the claimant was examined by Dr. John Cherf at the request of Jolen. In his report of that date, Dr. Cherf found that the claimant had reached maximum medical improvement (MMI) and could return to full-duty work in regard to his low back condition. With

respect to the claimant's left shoulder condition, Dr. Cherf placed restrictions on the claimant lifting over 25 pounds. Although Dr. Cherf opined that the claimant's left shoulder condition was causally related to his June 1, 2012 work-related accident, he wrote that there was "no evidence of acute pathology of the left shoulder based on the MRI from 09/07/2012 and there are no significant objective findings on my physical exam today." Dr. Cherf recommended that the claimant have an MR Arthrogram of his left shoulder.

¶ 9 The claimant was seen by Dr. Calavenes on November 9, 2012. The notes of that visit state that Dr. Calavenes disagreed with Dr. Cherf's assessment of the claimant's left shoulder, but he agreed that the claimant should undergo an MR Arthrogram of his left shoulder.

¶ 10 An MR Arthrogram of the claimant's left shoulder was done at West Suburban Medical Center on November 14, 2012. On that same day, the claimant had an MRI of his left shoulder at River Forest Advanced Imaging Center.

¶ 11 When the claimant saw Dr. Cavalenes on November 16, 2012, the doctor again recommended that the claimant have surgery on his left shoulder.

¶ 12 In an addendum to his report dated December 2, 2012, Dr. Cherf wrote that he had reviewed the results of the November 14, 2012 MR Arthrogram, found no labrum or biceps injury, and diagnosed a left shoulder strain/sprain that resulted from the claimant's June 1, 2012 accident. According to Dr. Cherf's addendum report, the claimant did not require any additional medical treatment for his left shoulder.

¶ 13 On December 27, 2012, the claimant was seen at Rush Oak Park Hospital for chronic back pain. At that time, he gave a history of having pulled his back when he got out of the shower on December 24, 2012. While at the hospital, the claimant had an MRI of his lumbar spine that revealed disc protrusions at L4-L5 and L5-S1, which slightly deformed the anterior surface of the

thecal sac.

¶ 14 The claimant continued under the care of Dr. Cavalenes from January through June 2013. On August 7, 2013, Dr. Cavalenes performed arthroscopic surgery on the claimant's left shoulder. Dr. Cavalenes's operative report states that the pre-operative diagnosis was of a left slap tear. The postoperative diagnosis was shoulder instability. According to the report, the tissue of the claimant's left shoulder joint was lax anteriorly and there was fraying of the anterior glenoid rim. The claimant's shoulder had shifted 80% off of the anterior glenoid rim. The glenoid and bicep tendons were intact, as was the rotator cuff. Dr. Cavalenes "roughened up" the anterior aspect of the glenoid, placed four juggernaut sutures bringing the tissue up from inferior to superior, and made a buttress with the capsule anteriorly. The claimant continued to treat with Dr. Cavalenes postoperatively.

¶ 15 On November 2, 2013, Dr. Cherf authored a second addendum to his examination report of the claimant in which he again opined that the claimant likely suffered only a sprain/strain of the left shoulder resulting from his June 1, 2012 accident.

¶ 16 Dr. Cavalenes treated the claimant from June 7, 2012, through the date of the first section 19(b) proceeding on November 23, 2013, and never released the claimant to return to work during that period.

¶ 17 Following an arbitration hearing held on November 23, 2013, pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2012)), the arbitrator issued a written decision, finding that the claimant sustained an accident on June 1, 2012, which arose out of and in the course of his employment with Jolen and that his then current conditions of lumbar spine and left shoulder ill-being were causally related to that work accident. The arbitrator found the claimant credible when he testified that he had no injuries or medical treatment for his left shoulder prior to June 1, 2012.

The arbitrator also noted that he relied upon the medical records and opinions of Dr. Cavalenes, rejecting as meritless Dr. Cherf's opinions concerning the claimant's left shoulder surgery. The arbitrator awarded the claimant 77 4/7 weeks of TTD benefits for the period from June 2, 2012, through November 26, 2013, and Jolen was ordered to pay \$58,672.80 for reasonable and necessary medical services rendered to the claimant, which sum included \$4,744.24 owed to ATI physical Therapy (ATI). Jolen was ordered to hold the claimant harmless from any claims made by his group insurance carrier or medical providers for the payment of medical expenses related to his work injuries. Jolen was also ordered to authorize and pay for lumbar injections recommended for the treatment of the claimant's left shoulder injury and for an evaluation of the claimant's lumbar spine by a specialist. In addition, Jolen was ordered to reimburse the claimant for out-of-pocket expenses in the amount of \$200. Neither the claimant nor Jolen sought a review by the Commission of the arbitrator's decision. As a consequence, the arbitrator's decision became the decision of the Commission. 820 ILCS 305/19(b) (West 2012)).

¶ 18 The claimant was seen by Dr. Cavalenes on December 5, 2013, complaining of a popping and catching feeling in his left shoulder. Dr. Cavalenes recommended that the claimant continue physical therapy, undergo left shoulder manipulation with a possible capsulotomy, and remain off from work. On December 18, 2013, the claimant underwent the recommended manipulation of his left shoulder and received a cortisone injection in his left shoulder.

¶ 19 On December 28, 2013, the claimant complained to Dr. Cavalenes of clicking in his left shoulder. The doctor recommended that the claimant continue with physical therapy.

¶ 20 The claimant had follow-up appointments with Dr. Cavalenes in January and February 2014. Dr. Cavalenes noted that the claimant was still experiencing back pain that prevented him from walking more than several blocks and that he has occasional discomfort in his left shoulder.

¶ 21 When he saw Dr. Cavalenes on April 11, 2014, the claimant reported that his left arm “caught” several times since his last examination. Dr. Cavalenes authorized the claimant to return to work with a 10-pound lifting restriction and no overhead activity with his left arm. The claimant testified that he did not return to work.

¶ 22 On June 6, 2014, Dr. Cavalenes noted that the claimant reported that that he was still experiencing a painful click in his left shoulder once a week. Dr. Cavalenes recommended that the claimant exercise with light free weights and return for a follow-up examination in 3 months.

¶ 23 The claimant presented to Dr. Cavalenes on September 5, 2014, and reported that he experienced “a little ache” in his left arm once a week but had not experienced a clicking. The claimant testified that Dr. Cavalenes told him: “You can do whatever you want in terms of work.” However, Dr. Cavalenes’s records contain a copy of a note signed by him and dated September 5, 2014, which states that the claimant is to “[c]ontinue no work.” The notes of that visit also reflect that the claimant was “not working, no work” and that the “patient to see Dr. Sokolowski.” The claimant testified that he was to see Dr. Sokolowski regarding his lumbar spine condition.

¶ 24 Following his examination of the claimant on September 9, 2014, Dr. Sokolowski diagnosed lumbar pain and lumbar radiculopathy. Dr. Sokolowski reviewed the MRI of the claimant’s lumbar spine and noted very small disc protrusions at L4-L5 and L5-S1. He also noted a disc herniation at L4-L5 with associated neural impingement and impression on the thecal sac. Dr. Sokolowski opined that the claimant’s injuries were causally related to his work injury. Dr. Sokolowski recommended that the claimant have a repeat MRI of his lumbar spine, receive epidural steroid injections, and remain off work. He also prescribed pain medication for the claimant.

¶ 25 When the claimant was seen by Dr. Sokolowski in October and November 2014, his

symptoms remained unchanged. Dr. Sokolowski continued to recommend that the claimant have an MRI of his lumbar spine, take prescription pain medication, and remain off work.

¶ 26 The claimant had an MRI of his lumbar spine on December 5, 2014, and he returned to see Dr. Sokolowski on December 19, 2014. Dr. Sokolowski noted that the MRI revealed a disc herniation at L4-L5 with associated left lateral recess and foraminal impingement. He again recommended that the claimant receive epidural steroid injections, take prescription pain medication, and remain off of work. Dr. Sokolowski also recommended that the claimant consider a short-term physical therapy program.

¶ 27 The claimant saw Dr. Sokolowski on January 5, 2015, and he continued to complain of radicular pain. Dr. Sokolowski again recommend that the claimant receive epidural steroid injections, take prescription pain medication, and remain off work. As of that visit, Dr. Sokolowski noted that the claimant's MRI and clinical examination corroborate his subjective complaints of lumbar radiculopathy. On January 30, 2015, the claimant received an epidural steroid injection at the Belmont Harlem Surgery Center.

¶ 28 When the claimant saw Dr. Sokolowski on February 19, 2015, he reported relief for 3 days following the epidural steroid injection but that the effects of the injection were wearing off and his symptoms were returning. Dr. Sokolowski was of the opinion that the claimant's options were pain management, epidural steroid injections, or surgery. According to the claimant, he told Dr. Sokolowski that he was apprehensive about having surgery. Dr. Sokolowski recommended that the claimant undergo a functional capacity evaluation (FCE) and remain off work. Dr. Sokolowski again opined that the claimant's lumbar condition was causally related to his work accident.

¶ 29 The claimant had the recommended FCE on March 3, 2015. The report of that evaluation reflects that the claimant was able to perform at a medium work level with a maximum lift of 30

pounds to shoulder height and 10 pounds overhead. According to the report, the claimant is not able to perform at the heavy work level of an electrician.

¶ 30 The claimant was seen by Dr. Sokolowski on April 9, 2015. At that time, the claimant reported that he continued to experience back pain and pain in both of his lower extremities. After reviewing the report of the claimant's FCE, Dr. Sokolowski opined that the claimant was not capable of returning to the duties of an electrician and that the results of the FCE would be the claimant's permanent restrictions. Dr. Sokolowski released the claimant to return to work with the FCE restrictions. He also opined that the claimant would require pain management indefinitely.

¶ 31 At the request of Jolen, the claimant was examined by Dr. Soriano on June 23, 2015. Following his examination of the claimant, Dr. Soriano noted that his leg raises were normal and Waddell's testing was negative. After reviewing the claimant's medical records, including his previous MRI's and FCE, Dr. Soriano opined that the claimant's current condition of lumbar ill-being was status post lumbar strain as of June 1, 2012. According to Dr. Soriano, the claimant did not require any further medical treatment for his lumbar spine, and he was at MMI for his spinal injury. Dr. Soriano opined that the claimant required no work restrictions as there was "no obvious medical-based evidence as to why the *** [claimant] would not be able to return to his regular job as an electrician." Dr. Soriano rendered no opinions regarding the claimant's left shoulder condition.

¶ 32 The claimant testified that, in June or July, he was turning the steering wheel of his car with his left hand and his shoulder "went out." He stated that his shoulder was weak and began popping again.

¶ 33 When the claimant was seen by Dr. Sokolowski on August 3, 2015, he complained of persistent symptoms and increased pain in his left shoulder. Dr. Sokolowski opined that the

claimant would require ongoing pain management treatment. He recommended that the claimant follow up with Dr. Cavallenes for re-evaluation of his left shoulder. The claimant testified that he was unable to schedule an appointment with Dr. Cavallenes due to lack of authorization by Jolen's workers' compensation insurance carrier.

¶ 34 At Jolen's request, the claimant was examined by Dr. Atluri on October 28, 2015. Dr. Atluri's report of that examination states that the claimant reported the clicking in his shoulder resolved postoperatively and that he had not experienced any shoulder symptoms until several months earlier when, as he was turning the steering wheel of his car with his left hand, his shoulder "went out." According to the report, the claimant stated that his shoulder is weak and popping and pops when he is in bed or drives. Dr. Atluri had x-rays taken of the claimant's left shoulder that revealed an irregularity at the acromioclavicular joint, which Dr. Atluri believed might be postoperative in nature or some degree of osteolysis. The x-ray also revealed lucency at the inferior glenoid consistent with the claimant's prior surgery. Following his examination of the claimant and review of his medical records, Dr. Atluri recorded an impression that the claimant suffered from left shoulder instability and was status post left shoulder arthroscopy with inferior capsular shift. Dr. Atluri opined that "based upon the history as related to me by the patient, his physical findings, the x-rays and records available for my review, *** [the claimant] has some recurrent complaints of clicking and pain in his left shoulder following surgical treatment for shoulder instability." According to Dr. Atluri, shoulder instability associated with ligamentous laxity is associated with poor surgical outcomes. He opined that the claimant would require non-surgical care, consisting of a home exercise program, and lifetime conditioning. Dr. Atluri also stated that he was unable to identify any deficits that would require work restrictions.

¶ 35 The claimant next saw Dr. Sokolowski on November 6, 2015, reporting persistent lumbar

symptoms. Dr. Sokolowski prescribed pain medication and recommended that the claimant follow-up with Dr. Cavalenes for his left shoulder. He released the claimant to return to work with the restrictions indicated in his FCE but stated that the claimant could only be released to return to work once he was cleared for work by his shoulder surgeon, Dr. Cavalenes.

¶ 36 The claimant returned to see Dr. Sokolowski on February 9, 2016. Dr. Sokolowski again authorized the claimant's return to work from a lumbar condition standpoint with the restrictions noted in the FCE once he was cleared by Dr. Cavalenes. Dr. Sokolowski recommended that the claimant have indefinite pain management care for his lumbar condition.

¶ 37 The claimant testified that, between August 3, 2015, and February 9, 2016, he was unable to see Dr. Cavalenes because Jolen's workers' compensation insurance carrier would not authorize the visits. He also testified that, between his visit with Dr. Cavalenes on September 5, 2014, and his February 9, 2016, appointment with Dr. Sokolowski, he did not suffer any new injuries or have any accident involving either his left shoulder or lumbar spine. According to the claimant, when he reduced his pain medication, he experienced more clicking, pain, and sticking of his left arm. The claimant stated that he was able to see Dr. Cavalenes on March 17, 2016, but in order to do so he incurred a \$450 out-of-pocket expenditure. The bill for Dr. Cavalenes's services on that date states: "diag torn rotator cuff." The claimant testified that, following his March 17, 2016 examination, Dr. Cavalenes recommended that he have an updated MRI of his left shoulder, that he remain off work for three weeks, and return for a follow-up visit on March 31, 2016. According to the claimant, he was unable to get the recommended MRI or return to see Dr. Cavalenes for the scheduled follow-up visit because neither was authorized by Jolen's workers' compensation insurance carrier. Dr. Cavalenes never released the claimant to work from September 5, 2014, through March 17, 2016.

¶ 38 The claimant testified that, following his examination by Dr. Soriano, his TTD benefits were stopped on July 6, 2015. Thereafter, his attorney sent a written request to Jolen on August 12, 2015, stating that the claimant was not receiving TTD benefits but never received any notification of the basis for the termination of the TTD benefits. On August 31, 2015, the claimant's counsel received a letter stating that the claimant's TTD benefits had been terminated based upon the opinions of Dr. Cherf as to the claimant's left shoulder and Dr. Soriano as to his back. The letter stated: "For that reason, no TTD or additional medical care and treatment is authorized." Following subsequent correspondence from the claimant's attorney, Jolen reinstated the claimant's TTD benefits on October 5, 2015. The claimant testified that he received a check on that date for TTD benefits for the period of July 6, 2015, through October 11, 2015. The claimant stated that he continued to receive TTD benefits until December 27, 2015, when his TTD benefits were again suspended.

¶ 39 The claimant testified that he never returned to work following his work-related accident on June 1, 2012. He admitted that he had not looked for work during that period and had not requested vocational rehabilitation services in an effort to find work.

¶ 40 The claimant entered into evidence various medical bills that remained unpaid, including \$1,156.70 owed to Westgate Orthopaedics, \$585 owed to Dr. Sokolowski, and \$22,202.42 owed to ATI.

¶ 41 Following the arbitration hearing held on April 18, 2016, pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2014)), the arbitrator issued a corrected decision on July 21, 2016, finding that the claimant suffered an accident on June 1, 2011, which arose out of and in the course of his employment with Jolen and that the claimant's current condition of ill-being, including the condition of his left shoulder, is causally connected to that work accident. The arbitrator awarded

the claimant 179 5/7 weeks of temporary total disability (TTD) benefits for the periods of June 2, 2012, through April 11, 2014, and from September 5, 2014, through April 18, 2016. The arbitrator ordered Jolen to do the following: pay \$23,944.12 for reasonable and necessary medical expenses incurred by the claimant; authorize and pay for an MRI of the claimant's left shoulder; and reimburse the claimant for out-of-pocket expenses in the amount of \$450. In addition, the arbitrator awarded the claimant \$7,704.91 for penalties pursuant to section 19(k) of the Act (820 ILCS 305/19(k) (West 2014)), \$10,000.00 for penalties pursuant to section 19(l) of the Act (820 ILCS 305/19(l) (West 2014)), and 3,081.97 for attorney fees pursuant to section 16 of the Act (820 ILCS 305/16 (West 2014)).

¶ 42 The claimant and Jolen each filed petitions for review of the arbitrator's decision before the Commission. On July 12, 2019, the Commission, with one Commissioner dissenting, issued a decision reversing the arbitrator's award of section 19(k) penalties and Section 16 attorney fees and otherwise affirming and adopting the arbitrator's decision. In that decision, the Commission specifically found that the claimant's current conditions of back and left shoulder ill-being are causally connected to his work-related accident on June 1, 2021, and that \$4,744.22 of the \$23,994.12 medical expenses that Jolen was ordered to pay represented amounts due ATI that Jolen had been ordered to pay following the 2013 section 19(b) proceeding. The Commission remanded the matter to the arbitrator pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 43 Both Jolen and the claimant sought a judicial review of the Commission's decision in the circuit court of Cook County. Their actions were consolidated, and on February 4, 2021, the circuit court issued an order reversing the Commission's TTD award and remanding the matter back to the Commission with directions to "correct" its award of TTD benefits to reflect 181 4/7 weeks of

benefits for the 97-week period from June 2, 2012, through April 11, 2014, and the 84 4/7-week period from September 5, 2014, through April 18, 2016. The circuit court confirmed the Commission's decision in all other respects. Jolen and the claimant each filed timely notices of appeal, which this court consolidated on June 9, 2021.

¶ 44 Before addressing the issues raised by the parties, we first address the question of our jurisdiction.

¶ 45 It is well settled that the jurisdiction of the appellate court is limited to the review of final judgments unless an exception is provided by statute or Supreme Court Rule. *Trunek v. Industrial Comm'n*, 345 Ill. App. 3d 126, 127 (2003). When the circuit court reverses a decision of the Commission and remands the matter back to the Commission for further proceedings involving disputed questions of law or fact, the order is interlocutory and not appealable. *A.O. Smith Corp. v. Industrial Comm'n*, 109 Ill. 2d 52, 54 (1985); *Stockton v. Industrial Comm'n*, 69 Ill. 2d 120, 124 (1977). If, however, the circuit court's instructions on remand require only that the Commission conduct proceedings on uncontroverted incidental matters or perform a mathematical calculation, the order is final for purposes of appeal. *Williams v. Industrial Comm'n*, 336 Ill. App. 3d 513, 516 (2003) (citing *A.O. Smith Corp.*, 109 Ill. 2d at 54-55).

¶ 46 In this case, the circuit court reversed the Commission's TTD award and remanded the matter back to the Commission with directions to "correct" its award of TTD benefits to reflect 181 4/7 weeks of benefits. In all other respects, the circuit court confirmed the Commission's decision. On remand, there was nothing for the Commission to do other than to amend its TTD award as directed. The Commission was not required to resolve any disputed issue of fact or law. Pursuant to the circuit court's order, the Commission's function on remand is just as ministerial as making a mathematical calculation. We find, therefore, that the circuit court's order is final for

purposes of appeal and this court has jurisdiction to entertain these consolidated appeals. See *Edmonds v. Illinois Workers' Compensation Comm'n*, 2012 IL App (5th) 110118WC; *Williams*, 336 Ill. App. 3d at 516.

¶ 47 For its first issue on appeal, Jolen argues that the Commission's finding that the claimant's current condition of left shoulder ill-being is causally connected to his June 1, 2012 work-related accident is against the manifest weight of the evidence. Jolen admits that the claimant suffered an injury to his left shoulder on June 1, 2012. It contends, however, that: (1) his current left shoulder condition is not an injury but rather ligamentous laxity, a physiological variant; and (2) that the claimant's current condition is the result of an intervening cause that broke the causal relationship between the claimant's current condition and his June 1, 2012 work-related accident. According to Jolen, the event in which the claimant's shoulder "went out" as he was turning the steering wheel of his car was an intervening cause of his current left shoulder condition of ill-being. Jolen also contends that the Commission based its causation finding on Dr. Cavalenes's March 17, 2016 note that states the claimant had a torn rotator cuff, a condition that was not present when the claimant had left shoulder surgery on August 7, 2013. Jolen also notes the absence of any documented complaints by the claimant relating to his left shoulder made to Dr. Sokolowski during the almost one-year period from September 9, 2014, through August 3, 2015.

¶ 48 In support of the Commission's left shoulder causation finding, the claimant notes that his unrebutted testimony at the arbitration hearing was that he had not sustained any new accidents or injury to his left shoulder since his June 1, 2012 work-related accident, and that the Commission found him credible. The claimant also notes that Dr. Atluri, Jolen's own expert witness, was of the opinion that he was suffering from shoulder instability associated with ligamentous laxity, a condition associated with poor surgical outcomes. He argues that, contrary to Jolen's arguments,

his un rebutted testimony, his medical records, and the causation opinions of Dr. Cavalenes support the Commission's finding that his current condition of left shoulder ill-being is causally related to his June 1, 2012 accident. He also notes that there is no medical opinion or testimony in the record supporting the proposition that his current condition of left shoulder ill-being is the result of some intervening event that broke the causal chain between his condition and the June 1, 2012 accident. We agree with the claimant.

¶ 49 To obtain compensation under the Act, a claimant must establish by a preponderance of the evidence that he suffered a disabling injury that arose out of and in the course of his employment. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 591-92 (2005). Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). It is the function of the Commission 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; its resolution of such matters will not be disturbed on review unless they are against the manifest weight of the evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980); *ABBF Freight System v. Illinois Workers' Compensation Commission*, 2015 IL App (1st) 141306WC, ¶ 19. For the Commission's resolution of a fact question to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 39. Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's resolution of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether

there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 50 When an employee's condition is weakened by a work-related accident, a subsequent accident, whether work related or not, that aggravates the condition does not break the causal chain. *Par Electric v. Illinois Workers' Compensation Comm'n*, 2018 IL App (3d) 170656WC, ¶ 63. Whether an event is an independent, intervening cause breaking the causal relationship between a claimant's condition of ill-being and his preceding work accident is a question of fact to be decided by the Commission, and its determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Bell & Gossett Co. v. Industrial Comm'n*, 53 Ill. 2d 144, 148 (1972).

¶ 51 Contrary to Jolen's assertion, we find no reference in the Commission's decision that it rested its left shoulder causation finding on Dr. Cavalenes's March 17, 2016 note stating that the claimant had a torn rotator cuff. The Commission's decision references a visit to Dr. Cavalenes on March 17, 2016, but it made no reference to any finding by the doctor that the claimant had a torn rotator cuff or that it based its causation determination on such a finding. We find Jolen's reliance on the absence of any documentation that the claimant complained to Dr. Sokolowski about left shoulder pain or symptoms during the period from September 9, 2014, through August 3, 2015, in support of its left-shoulder causation argument to be specious. The claimant reported that the clicking in his shoulder resolved postoperatively and that he had not experienced any shoulder symptoms until June or July 2015 when his shoulder "went out" as he turned the steering wheel of his car with his left hand. Dr. Sokolowski was treating the claimant for his low back pain, not for his left shoulder symptoms, but the claimant did, nevertheless, report increased pain in his left shoulder to Dr. Sokolowski on August 3, 2015, and Dr. Sokolowski recommended that he see Dr.

Cavalenes.

¶ 52 It cannot be disputed that the claimant sustained a work-related injury to his left shoulder on June 1, 2012. Such a causal connection was found following the first section 19(b) hearing held on November 23, 2013, and the finding was supported by the opinions of both Dr. Cavalenes, the claimant's treating physician, and Dr. Cherf, Jolen's own expert witness. On August 7, 2013, Dr. Cavalenes performed arthroscopic surgery on the claimant's left shoulder and continued to treat the claimant for left shoulder symptoms from the time of that operation through September 2014. The claimant did not see Dr. Cavalenes again from September 2014 through February 2016 because, according to the claimant's testimony, Jolen's workers' compensation insurance carrier would not authorize the visits. He did testify that he was seen by Dr. Cavalenes on March 17, 2016, but he was required to pay for the visit himself. At the section 19(b) arbitration hearing held on April 18, 2016, the claimant testified he had not sustained any new accident or injury to his left shoulder since his June 1, 2012 work-related accident. The testimony was not rebutted, and the Commission found the claimant to be credible. Further, there is no evidence in the record supporting the proposition that the claimant's current condition of left shoulder ill-being is the result of some intervening event that broke the causal connection between his current condition and his work-related accident of June 1, 2012. Dr. Atluri was aware of the event in June or July of 2015 when the claimant's shoulder "went out" as he was turning the steering wheel of his car but offered no opinion that the event was the cause of the claimant's condition of left shoulder ill-being. The Commission found that the wheel turning event was merely an activity of daily living and not an intervening accident that broke the causal connection between the claimant's left shoulder condition and his June 1, 2012 work accident.

¶ 53 Based upon the evidence in the record, we are unable to conclude that the Commission's

finding of a causal connection between the claimant's current condition of left shoulder ill-being and his work-related accident of June 1, 2012, is against the manifest weight of the evidence, as a conclusion opposite to that reached by the Commission is not clearly apparent.

¶ 54 Next, we address the Commission's award of TTD benefits and the circuit court's reversal of that award with a direction to the Commission to award the claimant 181 $\frac{4}{7}$ weeks of TTD benefits on remand. The Commission affirmed and adopted the arbitrator's award of 179 $\frac{5}{7}$ weeks of TTD benefits for the periods of June 2, 2012, through April 11, 2014, and from September 5, 2014, through April 18, 2016. The circuit court reversed that award and remanded the matter to the Commission with directions to award the claimant 181 $\frac{4}{7}$ weeks of TTD benefits. It is clear, however, that the circuit court did not disagree with the Commission as to the periods for which the claimant was entitled to TTD benefits, only the number of weeks contained within those periods. The Commission awarded the claimant TTD benefits for the periods of June 2, 2012, through April 11, 2014, and from September 5, 2014, through April 18, 2016, which it calculated as 179 $\frac{5}{7}$ weeks. The circuit court found that the claimant was entitled to TTD benefits for the same periods, June 2, 2012, through April 11, 2014, and September 5, 2014, through April 18, 2016, but it calculated those periods as containing 181 $\frac{4}{7}$ weeks. Jolen never addressed which calculation is correct. The claimant argues that the circuit court correctly determined that the relevant periods totaled 181 $\frac{4}{7}$ weeks. Nevertheless, both Jolen and the claimant argue that the periods for which TTD benefits were awarded, whether by the Commission or as ordered by the circuit court, is against the manifest weight of the evidence.

¶ 55 Jolen has not contested the claimant's entitlement to TTD benefits for the periods from June 2, 2012, through April 11, 2014, and from September 5, 2014, through April 8, 2015. It argues, however, that the Commission's award of TTD benefits for the period from April 9, 2015,

through April 18, 2016, is against the manifest weight of the evidence. According to Jolen, “[t]he claimant reached MMI as to (1) his left shoulder on September 5, 2014, when he was released to full activity and to return on a PRN basis by Dr. Cavallenes; and (2) his lumbar spine on April 9, 2015, when he was released to work with restrictions by Dr. Sokolowski and his medical care stabilized. It concludes, therefore, that the claimant was only entitled to 127 ³/₇ weeks of TTD benefits for the periods from June 2, 2012, through April 11, 2014, and from September 9, 2014, through April 8, 2015. We disagree.

¶ 56 In order to prove his entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. *Sharwarko v. Illinois Workers’ Compensation Comm’n*, 2015 IL App (1st) 131733WC, ¶ 49. 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. *Archer Daniels Midland Co. v. Industrial Comm’n*, 138 Ill. 2d 107, 118 (1990). Once an injured employee’s physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. *Nascote Industries v. Industrial Comm’n*, 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence, testimony concerning the claimant’s injury, the extent of his injury, and whether the injury has stabilized. *Nascote Industries*, 353 Ill. App. 3d at 1072. The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20.

¶ 57 In this case, the Commission affirmed and adopted the arbitrator's TTD award and supporting findings. In that regard, the Commission found that from September 5, 2014, through the date of the arbitration hearing on April 18, 2016, Dr. Cavalenes never released the claimant to work, even with restrictions. And although Dr. Sokolowski released the claimant to work with restrictions reflected in his FCE, he did so only as to the claimant's lumbar condition. Based upon the record, we are unable to conclude that the Commission's findings in that regard are against the manifest weight of the evidence.

¶ 58 During the period from April 9, 2015, through April 18, 2016, Dr. Cavalenes, who treated the claimant's left shoulder condition, never released the claimant to return to work. When he saw the claimant on September 5, 2014, Dr. Cavalenes authored a note stating that the claimant was to "Continue no work." On August 3, 2015, the claimant reported to Dr. Sokolowski that he had been experiencing pain in his left shoulder that, according to the claimant, began in June or July 2015 when he turned the steering wheel of his car with his left hand. Dr. Sokolowski advised the claimant to see Dr. Cavalenes for a re-evaluation of his left shoulder. The claimant testified that he was unable to see Dr. Cavalenes as recommended due to Jolen's workers' compensation insurance carrier having declined to authorize the visit. When the claimant was able to see Dr. Cavalenes at his own expense on March 17, 2016, the doctor again recommended that he remain off of work. And although Dr. Sokolowski released the claimant to resume working within his FCE restrictions on April 9, 2015, it is clear from the doctor's notes of November 6, 2015, and February 9, 2016, that he released the claimant to restricted work only with respect to his lumbar condition, not as to his left shoulder condition. Dr. Sokolowski's notes reflect that the claimant could only be released to work when he was cleared by Dr. Cavalenes.

¶ 59 The record supports the Commission's finding that the claimant was never released to work

by Dr. Cavalenes. In addition, the Commission found the opinions of Drs. Soriano and Atluri regarding the claimant's ability to work to be unpersuasive and not supported by the medical evidence. Dr. Soriano found that the claimant sustained only a lumbar strain and was at MMI. However, Dr. Sokolowski's records reflect that: the claimant consistently complained of lumbar pain; the MRIs of the claimant's lumbar spine revealed disc protrusions at L4-L5 and L5-S1 and a disc herniation at L4-L5 with associated neural impingement and impression on the thecal sac; and the claimant was being prescribed medication for back pain. Further, Dr. Sokolowski opined that the claimant was in need of pain management care for his lumbar condition indefinitely. Dr. Atluri was of the opinion that the claimant suffered from no left shoulder deficits that would require work restrictions, but he also reported that the claimant had recurrent pain and left shoulder instability associated with poor surgical outcomes. Finally, the claimant testified that he had not worked from the time of his work-related injury on June 1, 2012, until the date of the arbitration hearing on April 18, 2018.

¶ 60 The foregoing facts contained within the record support the conclusion that the claimant not only did not work during the period from April 9, 2015, through April 18, 2016, he had not been released to work, even with restrictions, by Dr. Cavalenes, the physician treating his left shoulder condition. Further, Dr. Sokolowski's records establish that the claimant was being continuously treated for a condition of lumbar spine ill-being during the period from April 9, 2015, through February 9, 2016, and the doctor was recommending that the claimant have indefinite pain management care for his lumbar condition. We conclude, therefore, that the Commission's award of TTD benefits to the claimant for the period from April 9, 2015, through April 18, 2016, is not against the manifest weight of the evidence and reject Jolen's argument on that issue.

¶ 61 The claimant contends that he is entitled to 202 3/7 weeks of TTD benefits for the period

from June 2, 2012, through April 18, 2016, the date of the arbitration hearing. He argues that the Commission's failure to award TTD benefits for the period from April 12, 2014, through September 4, 2014, is against the manifest weight of the evidence. In support of the argument, the claimant relies upon his testimony and the medical records, which he contends establish that his condition of ill being had not stabilized during that period, he had not reached MMI, and he had not been discharged from care. We find, however, that the Commission's denial of TTD benefits for the period from April 12, 2014, through September 4, 2014, finds support in the record.

¶ 62 Dr. Cavalenes's records establish that, on April 11, 2014, he authorized the claimant to return to work with a 10-pound lifting restriction and no overhead activity with his left arm. As of that date, no other physician had maintained the claimant on no-work status. It was not until September 5, 2014, that Dr. Cavalenes issued a note stating that the claimant was to "Continue no work." The claimant testified that he never returned to work from the date of his work-related accident on June 1, 2012, through the date of the arbitration hearing on April 16, 2016. He admitted that he had not looked for work during that period and had not requested vocational rehabilitation services in an effort to find work.

¶ 63 It was the claimant's burden to establish not only that he did not work from April 12, 2014, through September 4, 2014, but also that he was unable to work during that period. *Sharwarko*, 2015 IL App (1st) 131733WC, ¶ 49. As of April 11, 2014, the claimant was authorized to return to work with specified restrictions. There is no evidence in the record that there was no work available to the claimant within his restrictions from April 12, 2014, through September 4, 2014, and he admitted that he never looked for work during that period or requested any assistance in finding work. We conclude, therefore, that the claimant failed to meet his burden to prove that he was unable to work during the period from April 12, 2014, through September 4, 2014; and as a

consequence, the Commission's failure to award the claimant TTD benefits for that period is not against the manifest weight of the evidence.

¶ 64 Next, Jolen argues that the Commission's award of medical expenses and prospective medical care is against the manifest weight of the evidence. Specifically, Jolen asserts that the Commission erred in ordering it to: (1) pay \$1,156.70 for medical services rendered by Westgate Orthopedics; (2) pay \$585 for medical services rendered by Dr. Sokolowski; (3) reimburse the claimant \$450 for the sums he expended in payment for Dr. Cavalenes's bill for his March 17, 2016 visit; and (4) authorize and pay for prospective medical care in the form of an MRI of the claimant's left shoulder as recommended by Dr. Cavalenes. We note, however, that Jolen failed to cite any authority in support of its arguments on these issues. As a consequence, Jolen has forfeited the issues for purposes of appeal. Ill. Sup. Ct. Rule 341(h)(7) (eff. May 25, 2018); *TTC Illinois, Inc./Tom Via Trucking v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 344, 355 (2009). However, forfeiture is a limitation on the parties, not on the court, and we may ignore a forfeiture in order to achieve a just result. *In re Janet S.*, 305 Ill. App. 3d 318, 320 (1999). In this case, we elect to address the forfeited issues on the merits.

¶ 65 Jolen contends that the \$1,156.70 in medical expenses awarded by the Commission for services rendered to the claimant by Westgate Orthopaedics (Westgate) had been paid prior to the arbitration hearing on April 18, 2016. In support of the contention, Jolen relies upon its payment log, which was introduced in evidence at the arbitration hearing as Jolen's exhibit No. 1. It has identified \$1,119.16 of payments made for services rendered to the claimant by Westgate from August 7, 2013, through September 5, 2014. We have examined both Jolen's payment log and Westgate's patient ledger that is contained within the claimant's exhibit 1. From that comparison, we were able to identify \$475 billed by Westgate that corresponds to \$307.46 of payments made

by Jolen after \$167.54 in adjustments, presumably pursuant to the fee schedule. Due to the failure of Jolen's payment log to identify Westgate's specific service billings that are represented by its payment of \$811.70 on September 10, 2015, we were unable to determine if that payment was for a portion of the \$1,156.70 that Jolen was ordered to pay to Westgate. It is clear, however, that the \$1,156.70 that Jolen was ordered to pay to Westgate contains amounts that had been paid before the date of the arbitration hearing. Prior to ordering Jolen to pay \$1156.70 to Westgate, a comparison should have been made between Westgate's patient ledger and Jolen's payment log to determine the actual outstanding balance due to Westgate on April 18, 2016. Having determined that at least a portion of the \$1,156.70 that Jolen was ordered to pay to Westgate had been paid prior to the date of the arbitration hearing, we vacate \$1,156.70 of the \$23,944.12 in medical expenses that Jolen was ordered to pay and direct the Commission on remand to conduct the comparison of Westgate's patient ledger with Jolen's payment log, both of which are contained in the record, and determine the actual amount, if any, that was due Westgate on April 18, 2016, and order Jolen to pay that sum.

¶ 66 Jolen also argues that the Commission erroneously ordered it to pay \$585 to Dr. Sokolowski for medical services rendered to the claimant. In support of the argument, Jolen contends that the exhibit supporting the award does not contain an itemization setting forth the services rendered and the amounts charged for each service. However, contrary to Jolen's assertion, received in evidence at arbitration was the claimant's Exhibit No. 2, which contains a 3-page billing statement summary that sets forth Dr. Sokolowski's diagnoses, service dates, charges, payments made, and the outstanding balance of \$585. Jolen also contends that its payment log reflects that it paid Dr. Sokolowski's bill for medical services rendered through January 19, 2016, but the record also reflects that the claimant was treated by Dr. Sokolowski subsequent to January

19, 2016, and prior to the arbitration hearing on April 18, 2016; specifically, he saw the claimant on February 9, 2016. Again, we are unable, therefore, to conclude that any portion of the \$585 awarded for medical services rendered to the claimant by Dr. Sokolowski had been paid prior to the arbitration hearing.

¶ 67 On the issue of the propriety of its having been ordered to reimburse the claimant \$450 for his payment to Dr. Cavalenes's for the March 17, 2016 office visit, Jolen asserts that "[t]he manifest weight of the evidence is to the effect that no further medical treatment costs are owed for the left shoulder following September 5, 2014[,] the last time that the claimant was treated by Dr. Cavalenes prior to Dr. Atluri's examination on October 28, 2015. According to Jolen, Dr. Atluri's opinions established that the claimant's left shoulder condition as of the date of his examination was a physiological variant, not an injury. Jolen neglects to acknowledge both that Dr. Atluri also opined that the claimant suffered from left shoulder instability associated with poor surgical outcomes and that its counsel stated at the arbitration hearing that Jolen did not dispute the necessity of the medical services rendered to the claimant. Jolen also relies upon the fact that Dr. Cavalenes's bill for his services on March 17, 2016, states "diag torn rotator cuff," a condition, which if present, would be a new and different diagnosis of a condition that Dr. Cavalenes ruled out when he performed arthroscopic surgery on the claimant's left shoulder in 2013. However, the claimant testified that, from the time of his work-related accident on June 1, 2012, until the arbitration hearing on April 18, 2016, he had not sustained any new accidents or injury to his left shoulder. His testimony was not rebutted, and the Commission found him credible. The claimant admitted to Dr. Atluri that the clicking in his shoulder resolved postoperatively and that he had not experienced any shoulder symptoms until June or July 2015 when, as he was turning the steering wheel of his car with his left hand, his shoulder "went out." The claimant reported increased pain

in his left shoulder to Dr. Sokolowski on August 3, 2015, and he was advised to follow up with Dr. Cavalenes for a re-evaluation of his left shoulder. The claimant also testified that he was unable to see Dr. Cavalenes as recommended because of Jolen's workers' compensation insurance carrier's refusal to authorize the visit. It was not until March 17, 2016, that the claimant was able to see Dr. Cavalenes by paying for the visit himself. The claimant testified that, following that examination, Dr. Cavalenes recommended that he have an updated MRI of his left shoulder.

¶ 68 Questions as to the reasonableness of medical charges or their causal relationship to a work-related injury are questions of fact to be resolved by the Commission, and its resolution of such matters will not be disturbed on review unless against the manifest weight of the evidence. *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill. App. 3d 893, 903 (2004). We have already found that the Commission's finding of a causal connection between the claimant's work-related accident of June 1, 2016, and his current condition of left shoulder ill-being is not against the manifest weight of the evidence. It follows, therefore, based on that finding and the analysis set forth in the preceding paragraph, that the Commission's order that Jolen reimburse the claimant for the \$450 that he paid to see Dr. Cavalenes on March 17, 2016, is not against the manifest weight of the evidence.

¶ 69 Jolen argues that the Commission's order that it authorize and pay for prospective medical care in the form of an MRI of the claimant's left shoulder as recommended by Dr. Cavalenes is against the manifest weight of the evidence for the same reasons that it asserted in relation to the \$450 reimbursement of the claimant's out-of-pocket expenditure for his March 17, 2016, visit to Dr. Cavalenes. Having rejected its argument relating to the \$450 reimbursement, we also reject Jolen's argument addressed to prospective medical care for the same reasons.

¶ 70 For its final argument, Jolen argues that the Commission erred in awarding the claimant

\$10,000 in penalties pursuant to section 19(l) of the Act. The Commission found that the arbitrator's award of section 19(l) penalties was not "totally contrary to the manifest weight of the evidence" and affirmed the award. The arbitrator based the award of section 19(l) penalties on the following facts: \$4,744.24 owed by Jolen to ATI that it was ordered to pay following the original section 19(b) arbitration hearing remained unpaid at the time of the hearing on the instant petition; Jolen failed to pay TTD benefits for the period July 6, 2015, through October 11, 2015; and Jolen's failure to pay TTD benefits after December 27, 2015. Although the Commission found that Jolen had a reasonable basis for denying payment of certain medical bills and in failing to pay TTD benefits, it made no such finding in relation to Jolen's failure to pay ATI's bill.

¶ 71 In support of its claim of error in the award of section 19(l) penalties, Jolen contends that ATI's bills that it received contained two separate addresses, and as a consequence, it was unable to calculate the amount due pursuant to the statutory fee schedule. It claims that the ATI bills that it received failed to comply with the data elements required by section 8.2(d) of the Act (820 ILCS 305/8.2(d) (West 2014)). The claimant argues that Jolen has forfeited its section 8.2(d) objection to ATI's bill as justification for failing to pay the bill. It asserts that: Jolen never raised its section 8.2(d) objection to ATI's bills before the Commission; Jolen's counsel stipulated to the necessity of ATI's services; and Jolen's counsel did not object when ATI's bill was admitted into evidence at the arbitration hearing. We agree with the claimant. Failure to present an issue to the Commission constitutes a forfeiture of that issue and the issue may not be raised before the circuit court on judicial review or before this court on appeal. *Service Adhesive Co. V. Industrial Comm'n*, 226 Ill. App. 3d 356, 370 (1992). In its reply brief, Jolen seems to suggest that its argument based upon section 8.2(d) of the Act was presented to the arbitrator and the circuit court and references two pages in the record. We have examined the referenced pages and find no argument or objection

based on section 8.2(d). Forfeiture aside, we find no merit in Jolen's argument based upon section 8.2(d).

¶ 72 According to Jolen, ATI's bills contained in claimant's exhibit No. 12 have an address of 790 Remington Blvd., Bloomington, IL; whereas, the same bills contained in claimant's exhibit No. 13 contain a Wicker, PA address. It asserts, therefore, that "the bills did not establish where the services were provided" and, therefore, failed to contain the data necessary to adjudicate the bills pursuant to the fee schedule outlined in section 8.2 of the Act (820 ILCS 305/8.2(d) (West 2014)). The flaw in the argument is that the section 19(l) penalties were not awarded based on a mere failure to pay a medical expense timely. The penalties were awarded by reason of Jolen's failure to pay a medical bill that it was specifically ordered to pay following the 2013 section 19(b) proceeding. If Jolen had a section 8.2 objection to the payment of ATI's \$4,744,24 bill, it should have raised that objection in the 2013 proceeding, not on appeal from the section 19(l) penalties awarded in the instant proceeding.

¶ 73 Section 19(1) of the Act provides that:

"If the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d). In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the arbitrator or the Commission shall allow to the employee additional compensation in the sum of \$30 per day for each day that the benefits under Section 8(a) or Section 8(b) have

been so withheld or refused, not to exceed \$10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.” 820 ILCS 305/19(1) (West 2014).

The additional compensation authorized by section 19(1) is in the nature of a late fee. The statute applies whenever the employer or its insurance carrier simply fails, neglects, or refuses to make payment or unreasonably delays payment “without good and just cause.” If the payment is late for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of the statutorily specified additional compensation is mandatory. *McMahan v. Industrial Comm’n*, 183 Ill. 2d 499, 514-15 (1998).

¶ 74 Following the first 19(b) hearing on November 23, 2013, Jolen was ordered to pay \$4,744.24 to ATI for physical therapy services rendered to the claimant. As of April 18, 2016, the date of the arbitration hearing that led to the Commission’s decision which is the subject of the instant appeals, the sums due ATI had not been paid. Jolen did not, and has not, offered any credible reason for having failed to pay the sums due to ATI. We find, therefore, that the Commission’s award of \$10,000 in penalties pursuant to section 19(1) of the Act is not against the manifest weight of the evidence.

¶ 75 The final issue for our review in these consolidated appeals is the claimant’s argument that the Commission erred when it reversed and vacated the arbitrator’s award of \$7,704.91 for penalties pursuant to section 19(k) of the Act and \$3,081.97 for attorney fees pursuant to section 16. The arbitrator had computed the award of section 19(k) penalties and section 16 attorney fees as follows: \$2,372.11 in section 19(k) penalties and \$948.85 in section 16 attorney fees for Jolen’s failure to pay ATI’s outstanding bill of \$4,744.24; and \$5,332.80 in section 19(k) penalties and \$2,133.12 in section 16 attorney fees for Jolen’s failure to pay TTD benefits for the period from

July 6, 2015, through October 11, 2015. The Commission found that Jolen had “some reasonable basis” for its delay in payment and that its actions in that regard did “not rise to be unreasonable or vexatious to warrant Section 19(k) penalties and Section 16 attorneys fees.” Based upon those findings, the Commission “reversed and denied” the section 19(k) penalties and section 16 attorneys fees awarded by the arbitrator in their entirety.

¶ 76 The claimant argues that the basis for the Commission’s reversal of the arbitrator’s award of section 19(k) penalties and section 16 attorney fees is against the manifest weight of the evidence. We agree with the claimant as it relates to Jolen’s failure to pay ATI’s bill, but we disagree as it relates to Jolen’s delay in paying TTD benefits for the periods from July 6, 2015, through October 11, 2015.

¶ 77 Section 19(k) of the Act provides that:

“In case [*sic*] where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay.” 820 ILCS 305/19(k) (West 2014).

¶ 78 Section 16 of the Act provides that:

“Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of

unreasonable or vexatious delay, intentional underpayment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier." 820 ILCS 305/19 (1) (West 2014).

¶ 79 Sections 19(k) and 16 are intended to address situations where the actions of an employer are deliberate or the result of bad faith or an improper purpose. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 514-15 (1998). A review of the Commission's decision to deny penalties and attorney fees pursuant to sections 19(k) and 16 involves a two-part analysis. First, we must determine whether the Commission's finding that the facts do not justify section 19(k) penalties and section 16 attorney fees is "contrary to the manifest weight of the evidence." *Id.* at 516. Second, we must determine whether "it would be an abuse of discretion to refuse to award such penalties and fees under the facts present here." *Id.* As mentioned, a factual finding of the Commission is against the manifest weight of the evidence when an opposite conclusion is clearly apparent. *Tolbert*, 2014 IL App (4th) 130253, ¶ 39. The Commission abuses its discretion when no reasonable person would agree with the position it adopted. *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 947 (2006).

¶ 80 The \$4,744.24 due ATI was ordered paid following the first 19(b) hearing on November 23, 2013. As of April 18, 2016, the date of the arbitration hearing that led to the Commission's decision, the sums due ATI had not been paid. Jolen did not, and has not, offered any credible reason for having failed to pay the sums due to ATI. Jolen's failure to pay the bill for over 2 1/2 years after having been ordered to do so was clearly deliberate, and it has not offered any reasonable excuse. We conclude, therefore, that the Commission's reversal of the \$2,372.11 in

section 19(k) penalties and \$948.85 in section 16 attorney fees that the arbitrator awarded for Jolen's failure to pay ATI's outstanding bill is both against the manifest weight of the evidence and an abuse of discretion. As a consequence, we: reverse that portion of the circuit court's order that confirmed the Commission's denial of \$2,372.11 in section 19(k) penalties and \$948.85 in section 16 attorney fees for Jolen's failure to pay ATI's outstanding bill; reverse that portion of the Commission's decision reversing the arbitrator's award of \$2,372.11 in section 19(k) penalties and \$948.85 in section 16 attorney fees for Jolen's failure to pay ATI's outstanding bill; and reinstate the arbitrator's award of \$2,372.11 in section 19(k) penalties and \$948.85 in section 16 attorney fees for Jolen's failure to pay ATI's outstanding bill.

¶ 81 Lastly, we address the propriety of the Commission's reversal of the arbitrator's award of \$5,332.80 in section 19(k) penalties and \$2,133.12 in section 16 attorney fees for Jolen's failure to pay TTD benefits for the period from July 6, 2015, through October 11, 2015. As a basis for its decision in that regard, the Commission found that Jolen's delay in paying TTD benefits "does not rise to be unreasonable and vexatious to warrant Section 19(k) penalties and Section 16 attorneys fees." In its decision, however, the Commission did not set forth any facts upon which that finding was based. Nevertheless, we will affirm a decision of the Commission if there is any basis in the record to do so. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 283 Ill. App. 3d 785, 793 (1996).

¶ 82 Following Dr. Soriano's examination, Jolen suspended the claimant's TTD benefits on July 6, 2015. There is no evidence in the record that Jolen notified the claimant or his attorney of the reason for the suspension. On August 12, 2015, the claimant's attorney sent correspondence to Jolen stating that the claimant was not receiving TTD payments and that no basis for the suspension had ever been received. On August 31, 2015, a letter was received by the claimant's attorney

stating that the claimant's TTD benefits had been suspended based upon the opinions of Drs. Cherf and Soriano. On October 5, 2015, Jolen reinstated the claimant's TTD payments and paid the claimant the TTD benefits that were due for the period from July 6, 2015, through October 11, 2015. Thereafter, Jolen continued to pay TTD benefits until they were again suspended on December 27, 2015. In addition to its reliance upon the opinions of Drs. Cherf and Soriano, Jolen argued at arbitration that the claimant had suffered an intervening accident to his left shoulder that broke the causal connection between his left shoulder condition and his June 1, 2012 work accident and was, therefore, not entitled to TTD benefits. The arbitrator awarded the claimant \$5,332.80 in section 19(k) penalties and \$2,133.12 in section 16 attorney fees for Jolen's failure to pay TTD benefits for the period from July 6, 2015, through October 11, 2015. The Commission reversed the awards, finding that Jolen had "some reasonable basis" for its delay in payment and that its actions did "not rise to be unreasonable or vexatious to warrant Section 19(k) penalties and Section 16 attorneys fees."

¶ 83 The reasonableness of an employer's delay in the payment of benefits is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on review unless contrary to the manifest weight of the evidence. *Crockett v. Industrial Comm'n*, 218 Ill. App. 3d 116, 121 (1991). The standard for determining whether an employer has good and just cause for a delay in payment of benefits is defined in terms of reasonableness. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 763 (2003). That is, if a reasonable person in the employer's position would have believed that the delay was justified. *Board of Education of the City of Chicago v. Industrial Comm'n*, 93 Ill. 2d 1, 9-10 (1982).

¶ 84 We believe that Jolen's reliance upon Dr. Cherf's opinions as to the claimant's left shoulder condition and ability to work with a 25-pound lifting restriction in electing to suspend the

claimant's TTD benefits on July 6, 2015, was patently unreasonable. In the decision following the November 23, 2013, section 19(b) arbitration hearing, the arbitrator found Dr. Cherif's opinions concerning the claimant's left shoulder surgery to be meritless. The arbitrator awarded the claimant TTD benefits from the date of his work-related accident through the date of the arbitration hearing, thus rejecting Dr. Cherf's opinions that the claimant had reached MMI or was capable of working. It is true, however, that according to Dr. Cavalenes's notes of the claimant's September 5, 2014 visit, the claimant reported a "little ache" in his left arm once a week and that he had not experienced clicking in the shoulder. From September 5, 2014, through August 3, 2015, there is no record of the claimant having complained of any symptoms or pain in his left shoulder or of the claimant having sought any medical treatment for his left shoulder during that 11-month period. Following his examination of the claimant on June 23, 2015, Dr. Soriano found that the claimant had reached MMI for his lumbar spine condition and found that, as to the claimant's lumbar spine, there was "no obvious medical-based evidence as to why the *** [claimant] would not be able to return to his regular job as an electrician." Whether, based upon these facts, Jolen acted reasonably in suspending the claimant's TTD benefits on July 6, 2015, was a question of fact for the Commission to decide. The Commission decided that there was "some reasonable basis" for Jolen's delay in paying TTD benefits. Additionally, we note that, following correspondence from the claimant's attorney, Jolen voluntarily reinstated the claimant's TTD benefits on October 5, 2015, and paid him on that date for the TTD benefits that accrued for the period from July 6, 2015, through October 11, 2015. The Commission found that Jolen's delay in paying TTD benefits during that 13-week period did "not rise to be unreasonable or vexatious to warrant Section 19(k) penalties and Section 16 attorneys fees." On the issue of whether Jolen acted reasonably under the circumstances, we are unable to conclude that the Commission's determination is against the

manifest weight of the evidence. It follows, therefore, that the Commission's reversal of the arbitrator's award of \$5,332.80 in section 19(k) penalties and \$2,133.12 in section 16 attorney fees for Jolen's failure to pay TTD benefits for the period from July 6, 2015, through October 11, 2015, and its denial of those penalties and attorney fees was not an abuse of discretion.

¶ 85 For the reasons stated, we:

- a. Reverse that portion of the circuit court's order that confirmed: (1) the Commission's order that Jolen pay Westgate \$1,156.70; and (2) the Commission's reversal of the arbitrator's award of \$2,372.11 in section 19(k) penalties and \$948.85 in section 16 attorney fees for Jolen's failure to pay ATI's outstanding bill of \$4,744.24;
- b. Affirm the circuit court's judgment in all other respects;
- c. Vacate that portion of the Commission's decision that ordered Jolen to pay Westgate \$1,156.70;
- d. Reverse that portion of the Commission's decision that: (1) reversed of the arbitrator's award of \$2,372.11 in section 19(k) penalties and \$948.85 in section 16 attorney fees for Jolen's failure to pay ATI's outstanding bill of \$4,744.24, (2) and denied those penalties and attorney fees;
- e. Reinstate the arbitrator's award of \$2,372.11 in section 19(k) penalties and \$948.85 in section 16 attorney fees for Jolen's failure to pay ATI's outstanding bill of \$4,744.24; and,
- f. Remand the matter back to the Commission with directions to (1) conduct a comparison of Westgate's patient ledger with Jolen's payment log and determine the actual amount, if any, that was due Westgate on April 18, 2016, and order Jolen to pay that sum; and (2) comply with the circuit court's order to correct its decision to reflect that the

claimant is awarded 181 4/7 weeks of TTD benefits; and for further proceedings.

- ¶ 86 Circuit court affirmed in part and reversed in part. Commission's decision vacated in part, reversed in part; arbitrator's decision reinstated in part, and remanded to the Commission with directions.