*2010 Ill. Wrk. Comp. LEXIS 376, **

PEDRO **FLORES,** PETITIONER, v. **NEW BEGINNINGS** LANDSCAPE, INC., RESPONDENT.

NO: 00WC 63694

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

2010 Ill. Wrk. Comp. LEXIS 376

April 28, 2010

CORE TERMS: pain, causally, radiating, leg, material change, arbitration, disability, herniated, cross examination, failed to prove, right leg, connected, lumbar, trauma, doctor, contacted, symptoms, patient, causal connection, medical care, generalized, complain, trouble, energy, nurse, mild

JUDGES: Barbara A. Sherman; Kevin W. Lamborn; Yolaine Dauphin

OPINION: [*1]

DECISION AND OPINION ON REVIEW UNDER SECTIONS 8(a) AND 19(h)

This cause comes before the Commission on Petitioner's Sections 8(a) and 19(h) Petition, filed on March 31, 2005. A hearing on Petitioner's petition was held by Commissioner Sherman on May 7, 2009. The issues under Petitioner's petition is whether Petitioner has established a material increase in his condition of ill being that is causally related to the work accident, whether Petitioner is entitled to permanent total disability benefits as a result of the alleged material increase, and whether Petitioner's medical care obtained after arbitration was necessary and reasonably required. The Commission, after having considered the record, hereby finds that Petitioner has failed to prove a material change that is causally connected to the work accident he sustained on September 18, 2000. Petitioner's Sections 8(a) and 19(h) Petition is hereby denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the hearing on Petitioner's Sections 8(a) and 19(h) Petition held on May 7, 2009, Petitioner testified about his treatment obtained after the arbitration hearing, which was held before

Arbitrator Akemann on December 11, 2001, and January **[*2]** 11, 2002. Petitioner testified that he saw Dr. Younger at Barrington Orthopedic on June 24, 2002, and that Dr. Younger ordered x-rays for his back and right leg and prescribed physical therapy and Naprosyn. Petitioner testified that he returned to see Dr. Younger on July 22, 2002, and made complaints of pain in his leg and in his back. Petitioner stated that he returned to Dr. Younger on August 1, 2002, and made the same complaints. Petitioner testified that Dr. Younger, on August 1, 2002, indicated that he could not work and ordered an MRI.

Petitioner stated that Dr. Younger referred him to Dr. Rabinowitz at Barrington Orthopedics in May 2006 and to the Rehabilitation Institute of Chicago ("RIC") in June 2006.

Petitioner testified that he met with Susan Entenberg, a vocational rehabilitation specialist, in October 2007. Petitioner stated that there was a point in time when he contacted various prospective employers searching for work. Petitioner stated further that his attorney asked him to maintain a list of the employers he contacted; this list is found in Petitioner's Exhibit 1. Petitioner testified that none of the employers he contacted had a job for him.

Petitioner described **[*3]** his current condition as follows: "I feel very bad" and "The worst is my back." Petitioner stated that he has difficulty walking, and that when he tries to walk, he feels as follows: "I feel like my body becomes very tired and I feel weak and pain." He also explained that he has difficulty standing and elaborated as follows: "When I try to stand up or when I, you know, when I am standing up, I cannot be in one position for a long time because I feel pain."

On cross examination, Petitioner testified that after his visit with Dr. Younger on September 21, 2006, he saw Dr. Younger once in July 2007, and that, other than that visit in July 2007, he has not sought medical care with any other doctor for his back or his leg.

Petitioner also testified during cross examination that he did not apply for jobs in 2002, 2003, 2004, 2005, or 2006. Petitioner stated that contacts to prospective employers were made after September 2007 and were by telephone only. Petitioner stated further that he never submitted an application for any of the contacts he listed.

Also on cross examination, Petitioner testified that the complaints that he described today are the same complaints that he testified to in **[*4]** front of the Arbitrator. At arbitration, Petitioner testified that he had trouble lifting objects, trouble squatting down, and that he could not lie on his side or bend his right leg all the way back. When asked if the symptoms that he experiences today are essentially the same as the ones he had when he last testified in 2001, Petitioner said, "Yes, and even worse. I feel very bad."

The Commission hereby denies Petitioner's Sections 8(a) and 19(h) Petition. We find that Petitioner failed to prove that there is a material change in his disability that is causally connected to the accident. It appears that Petitioner is not arguing that there has been a material increase in his disability with respect to his leg; rather, Petitioner seeks to prove that there has been a material increase in his disability with respect to his lumbar condition that is causally connected to the work related accident. In any event, the Commission finds that there has not been a material change in Petitioner's right leg.

Concerning Petitioner's lumbar condition, we find that he failed to prove a material change in his low back that is causally connected to the work accident. In the Arbitrator's decision, **[*5]** the Arbitrator merely mentioned Petitioner's lumbar complaint as one of the complaints that Petitioner initially made following the accident, but no award was given for his lumbar spine. The application indicated that the body parts affected were, "Man-as whole; and Right leg." The nature of the injury indicated in the application was, "Multiple trauma, w/ORIF surgery to R leg." It does appear that Petitioner was asking for a permanency award for his back, and that Petitioner tried to causally connect his back to the accident, but the Arbitrator did not find causal connection and did not provide an award for his back complaints.

Petitioner's medical records were submitted at Arbitration. On September 18, 2000, the emergency room doctor, Dr. Lynch, indicated that Petitioner denied back pain. On examination, the doctor found that the back was "atraumatic, nontender." No diagnosis was given for Petitioner's back. But, in the nurse's handwritten notes from September 18, 2000, the nurse noted that Petitioner had "pain to lower and upper back." The chart notes during his hospitalization also mentions low back pain. Dr. Scafuri saw Petitioner on September 18, 2000, for consultation and indicated **[*6]** that Petitioner "also complains of some mild back discomfort." The rest of Dr. Scafuri's notes post-surgery were solely related to Petitioner's right leg.

Petitioner's subsequent medical records continue to document generalized back pain with no mention of any radiating pain. Dr. Zoellick indicated in his December 1, 2000 report, that Petitioner continued to complain of low back pain which is described as a "constant dull ache." When Petitioner saw Dr. Younger for the first time on August 30, 2001, Petitioner completed a patient questionnaire and indicated that the area of injury was his right knee. In Dr. Younger's Section 12 report dated August 30, 2001, Dr. Younger documented that Petitioner complained of "mild pain" in his back.

We find that Petitioner's back pain prior to June 24, 2002, when Petitioner saw Dr. Younger, was more of a generalized pain. None of the doctors characterized Petitioner's back pain as radiating. The first time back pain with radiating pain was mentioned was on June 24, 2002, when Petitioner saw Dr. Younger. In his records from June 24, 2002, Dr. Younger indicated that Petitioner has "now" noted back pain as well as pain doing down into the right thigh **[*7]** and leg, which have been present for several months. Dr. Younger's record from this date seems to imply that Petitioner's back and radiating complaints occurred sometime after he last saw Petitioner on August 30, 2001.

Dr. Younger opined that Petitioner has a herniated disc, and that Petitioner's herniated disc is related to the accident. More specifically, Dr. Younger's causal connection opinion was expressed as follows: "This patient sustained back trauma, it was a high level of trauma, high degree of energy; and that trauma has resulted in a condition of his back which has continued to give him pain during the period of time that I treated him. ... The high energy injury that this patient had was the -- the cause of this back injury, which resulted in a herniated disk at L5-S1 level." The Commission does not adopt Dr. Younger's opinions. We find it doubtful that if Petitioner had a herniated disc, which caused symptoms, that there would be no mention of radiating pain in Petitioner's medical records from September 18, 2000, the date of the accident, to June 24, 2002, when radiating pain was first mentioned in the medical records. The back pain that was described prior to June 24, **[*8]** 2002, was characterized as more of an achy type of pain rather than a condition that produced symptoms consistent with a herniated disc.

The Commission also finds that Petitioner's testimony comparing his back condition at the time of arbitration with his present condition is insufficient to support a material change in his disability. Petitioner's testimony is vague; he made general statements of feeling very bad. Petitioner acknowledged on cross examination that his present complaints are the same complaints that he described at arbitration, only that he is now "even worse."

The Commission concludes that Petitioner has failed to prove that there has been a material increase in his disability that is causally related to the work related accident of September 18, 2000. Based on this conclusion, Petitioner's Sections 8(a) and 19(h) Petition is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition under Section 8(a) and Section 19(h) is hereby denied.

The probable cost of the record to be filed as return to Summons is the sum of $ 35.00, payable to the Industrial Commission of Illinois in the form of cash, check or money order

therefor and deposited with the Office **[*9]** of the Secretary of the Commission.

DATED: APR 28 2010

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDI > Administrative Proceedings > Alternative Dispute Resolution

Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

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In

2012 IL App (1st) 110552WC-U

No. 1-11-0552WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

PEDRO FLORES, Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (New Beginnings Landscape, Inc., Appellee).	) Appeal from the) Circuit Court of) Cook County.))) No. 10-L-50812)))) Honorable) Sanjay Tailor) Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice McCullough, and Justices Hoffman, Hudson, and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's decision to deny additional benefits under section 19(h) of the Workers' Compensation Act is not against the manifest weight of the evidence. The Commission's decision to deny additional benefits under section 8(a) of the Workers' Compensation Act is not against the manifest weight of the evidence

¶ 2 The claimant, Pedro Flores, appeals from a judgment of the circuit court that confirmed a decision of the Illinois Workers' Compensation Commission (the Commission) that denied him additional benefits under section 19(h) of the Workers' Compensation Act (the Act) (820 ILCS 305/19(h) (West 2008)) relating to conditions of his low back. The Commission also denied his request for additional benefits for continued medical care under section 8(a) (820 ILCS 305/8(a) (West 2008)).

¶ 3 BACKGROUND

¶ 4 The claimant does not speak or read the English language and testified at the arbitration hearing and review hearing through an interpreter. The claimant began working as a landscaping laborer for the employer, New Beginnings Landscape, Inc., in March 1999. The claimant performed mostly maintenance work and landscaping tasks, including mowing yards. On September 18, 2000, the claimant rode in the passenger seat of the employer's truck and was traveling from one job site to another when the truck collided with another vehicle.

¶ 5 The claimant testified that prior to the work-accident, he did not have any problems

with his right leg or back. Immediately after the accident, an ambulance took him to the emergency room, and he noticed a lot of pain in his right leg. X-rays taken of the claimant's right leg revealed a right femoral shaft fracture. Records of the claimant's emergency room treatments indicate that the claimant also complained of some mild back discomfort and mild pain in the right side of his neck. Dr. Scafuri performed surgery on the claimant's right leg, placing a rod in the claimant's right femur. He was hospitalized for five days.

¶ 6 After the surgery, the claimant was on crutches for three months and began physical therapy. Dr. Scafuri continued to treat the claimant through September 2001.

¶ 7 On December 1, 2000, at the request of the employer, the claimant submitted to an independent medical examination (IME) conducted by Dr. David Zoellick. In his report dated December 1, 2000, Dr. Zoellick noted that the claimant "claims he suffered injuries to his right femur, his head, left shoulder and lower back." Dr. Zoellick described the claimant's back pain as "a constant dull ache." The doctor's examination of the claimant's lumbar spine "demonstrated mild tenderness in the right lumbar paraspinal musculature." X-rays of the claimant's lumbar spine, however, "demonstrate[d] normal alignment" with "no evidence of spondylolysis or spondylolisthesis." In addition, Dr. Zoellick reported that "[d]isk height appears well maintained." The doctor also noted that he reviewed the claimant's physical therapy records and found that there was "no mention of the back or shoulder in these records."

¶ 8 With respect to the claimant's right leg, the doctor noted that the claimant had full

extension of his knee, but flexion was limited to 90 degrees. The claimant was able to stand up on his toes and on his heels and had "good hip range of motion" with no complaints of pain in the hip with motion. X-rays of the claimant's right femur "demonstrate[d] excellent position of the intramedullary nail and screw." Dr. Zoellick reported that the alignment of the claimant's femur was excellent, with some calcification near the fracture site consistent with healing.

¶ 9 Dr. Zoellick concluded from his examination that the claimant's "prognosis for recovery is very good." With respect to the claimant's low back, Dr. Zoellick noted that the claimant "did have some initial discomfort in the low back but there was no further mention of the lumbar spine and therefore it is my opinion that the patient has had sufficient time for a lumbar strain to resolve." He recommended that the claimant continue "with physical therapy for the right lower extremity," working on the right knee range of motion. At the time of the December 1, 2000, examination, Dr. Zoellick believed that the claimant was capable of only a sedentary type of work because, at that time, he had not yet reached full weight-bearing on the lower extremity. He anticipated that the claimant would be able to return to full duty and would be at maximum medical improvement (MMI) in six months post-surgery.

¶ 10 The claimant continued to undergo physical therapy until March 2001. The claimant's physical therapy concerned the condition of his right lower extremity, not his back. On March 5, 2001, Dr. Scafuri released the claimant to return to work. In the spring of 2001,

the claimant returned to the employer in an attempt to return to work. The employer's former general manager, however, informed the claimant that the employer had ceased operations in January 2001 and, therefore, it had no work for him. Other than trying to resume work for the employer, claimant did not pursue any other job opportunities.

¶ 11 The claimant was examined by Dr. Terry Younger on August 30, 2001. Dr. Younger's impression was that the claimant had a healed right femoral shaft fracture with quadriceps atrophy and weakness. He recommended four weeks of physical therapy and four weeks of work hardening followed by a functional capacity evaluation (FCE).

¶ 12 On November 2, 2001, prior to the arbitration hearing, Dr. Zoellick reexamined the claimant. The claimant reported that he did not feel well enough to go back to work. He complained of "pain in his right leg from his knee to his anterior thigh and to his right groin and lower back." In addition, the claimant reported low back pain that was constant. An x-ray of the claimant's right leg showed that the fracture had healed and that "[a]lignment appeared satisfactory." Dr. Zoellick reported that his examination of the claimant's lumbar spine demonstrated "no tenderness." He wrote: "Sitting straight leg raise is negative for leg pain bilaterally." Dr. Zoellick also reviewed records from Dr. Scafuri's office in which Dr. Scafuri had released the claimant to return to work in March 2001, with "no mention of the patient's neck or back in that note."

¶ 13 Dr. Zoellick concluded that the claimant's "right femoral shaft fracture ha[d] healed." He recommended that the claimant undergo a course of work hardening to work on

strengthening and stabilizing the right lower extremity. In his report, the doctor wrote: "Following work hardening, it would not be unreasonable to obtain a Functional Capacity Evaluation to determine the [claimant]'s work capabilities." Nonetheless, he believed that the claimant was capable of performing some activities of landscaping labor, as the claimant could walk and lift up to 20 pounds.

¶ 14 On December 11, 2001, the parties appeared before the arbitrator for a hearing (arbitration hearing) on the claimant's workers' compensation claim. At the time of the hearing, the claimant had not worked since the accident, and he claimed that he still had a hard time lifting. He testified that his leg hurt constantly and that he experienced difficulty in laying, squatting, or lifting anything heavy. He could not bend his leg all the way back. He experienced pain when he sat down for a long time. He testified that when he laid down, his side and back hurt.

¶ 15 On January 25, 2002, the arbitrator filed his decision which included temporary total disability, permanent partial disability, and medical expense benefits. With respect to the nature and extent of the claimant's injury, the arbitrator concluded that the claimant suffered a "comminuted fracture of the right femur necessitating an open reduction and internal fixation followed by a period of non-weight bearing and physical therapy." The arbitrator wrote: "When released to return to work by the treating/operative physician, there was no evidence of tenderness at the fracture site, x-rays of the femur 'looked great,' and [the claimant] was not in need of work hardening." In addition, the arbitrator noted that the

claimant had "no discernible complaints in the cervical or lumbar region." The arbitrator wrote that he relied "on the findings of Dr. Scafuri and Zoellick, as well as [the claimant's] subjective complaints in rendering this disability assessment." The arbitrator awarded the claimant $229.99 per week for 100 weeks for injuries that caused a 50% loss of use of the claimant's right leg. On January 30, 2003, the Commission affirmed and adopted the arbitrator's decision. Neither party sought further review of the Commission's decision.

¶ 16 On March 31, 2005, the claimant filed a petition for review pursuant to sections 19(h) and 8(a) of the Act, alleging that he had sustained a material increase in his disability to the extent that he was permanently totally disabled and that he had incurred additional medical expenses. Specifically, the claimant complained of radiating back and leg pain.

¶ 17 On May 7, 2009, the Commission conducted a hearing (review hearing) on the claimant's 19(h) and 8(a) petition for review. The claimant testified that, on June 24, 2002, after the arbitration hearing, he again saw Dr. Younger. Dr. Younger took x-rays of the claimant's back and right leg and prescribed physical therapy and Naprosyn. He testified that he continued to treat with Dr. Younger through May 2005 with continuing complaints of leg and back pain. Dr. Younger told the claimant that he could not return to work. He testified that at the time of the hearing, he felt "very bad" and felt the worst in his back. He had difficulty walking, standing, and sitting.

¶ 18 Dr. Younger testified at the review hearing by way of an evidence deposition. He testified about first seeing the claimant in August 2001, for an IME to address the sequela

of the claimant's leg fracture. He testified that in August 2001, the claimant complained of pain in his back, right sided neck pain, and was following up for the femur fracture. His impression at that time was that the claimant had a healed right femoral shaft fracture and residual quadriceps atrophy and weakness. His recommendation was physical therapy, followed by work hardening, and then an FCE.

¶ 19 Dr. Younger testified that he next saw the claimant on June 24, 2002, after the arbitration hearing. During that visit, the claimant complained of back pain and radiating pain to the right thigh and leg. After conducting the August 24, 2002, examination, Dr. Younger opined for the first time that the claimant sustained a high level of back trauma as a result of the accident in September 2000. The doctor believed that the trauma resulted in a condition in the claimant's back which has continued to give him pain. Dr. Younger diagnosed the claimant as having "radiating back pain with back strain" and "healed right femur fracture." At that time, Dr. Younger recommended physical therapy and Naprosyn for pain and inflamation.

¶ 20 Dr. Younger ordered an MRI of the claimant's lumbar area, and the MRI of the claimant's "lumbosacral spine showed a herniated disk at L5-S1." Dr. Younger opined that the "high energy injury" that the claimant sustained caused a back injury that resulted in the herniated disk at L5-S1. He recommended that the claimant "get an epidural."

¶ 21 The next time Dr. Younger saw the claimant was over two years later on January 27, 2005. Dr. Younger noted in his records that his recommended epidural had not been

approved by the employer. The claimant reported that he continued to have radiating leg pain.

¶ 22 Dr. Younger prepared a report dated August 29, 2005. In the report, he wrote that his final diagnosis of the claimant was "persistent radiating back pain and right lower extremity pain with L5-S1 herniated disk and persistent right hip and thigh pain status post intramedullary rodding of the right femur." Dr. Younger also wrote in his report that it was possible that the claimant would require surgical treatment for his consistent back pain. During his deposition, Dr. Younger opined that the claimant was unable to work because of his condition, and he had a "guarded prognosis due to the long time course of his problem."

¶ 23 Dr. Younger referred the claimant to Dr. Flores for an epidural injection that occurred in September 2005. Dr. Younger saw the claimant one week after the epidural injection, and the claimant reported no change in his symptoms. The claimant also complained about right knee plain and reported that he was not working because of the pain. The claimant had pain in his right sacroiliac joint, and Dr. Younger believed that this pain was related to the work accident. Dr. Younger recommended an evaluation by a spine surgeon to assess for the possibility of surgical treatment since the claimant did not get any relief from the epidural injections. In May 2006, he referred the claimant to Dr. Rabinowitz, an orthopedic doctor who specializes in back and spine problems.

¶ 24 The claimant saw Dr. Rabinowitz on May 11, 2006. Dr. Rabinowitz's impression was that the claimant suffered from cervical, thoracic, and lumbar myofacial pain. According to

Dr. Younger, Dr. Rabinowitz's recommendation was "that nonsurgical treatment should be pursued involving physical medicine and rehabilitation." Dr. Younger saw the claimant again on June 5, 2006, and the claimant continued to report the same problems. The claimant's treatment plan at that time involved physical therapy, a work conditioning program, and consultation with a psychiatrist.

¶ 25 Dr. Younger saw the claimant again on June 22, 2006, and his physical examination of the claimant revealed a mild spasm of the lumbosacral spine. He believed that the spasm was related to the claimant's herniated disc and lumbar strain. The doctor explained that the claimant was still having spasms in his back six years after the accident. He testified: "This was a high energy injury with continued pathology that was being addressed with treatment modalities that had not given him complete resolution of his condition or relief from his symptoms."

¶ 26 The last time Dr. Younger saw the claimant was on September 21, 2006. Dr. Younger opined at that time that the claimant was at MMI and that the claimant was permanently disabled. He believed that there needed to be permanent restrictions on the level of work duties and activities that the claimant could perform and that he did not expect those restrictions to change in the foreseeable future or with any intervention. Although an FCE had not been performed, Dr. Younger believed that the claimant was able to work only at a sedentary or light duty level.

¶ 27 According to Dr. Younger, the claimant would be restricted to lifting less than 10 to

15 pounds and would be restricted from pushing, pulling, climbing, bending, or stooping. He believed that the claimant was partially incapacitated from performing the duties of a landscape laborer.

¶ 28 Susan Entenberg, a vocational rehabilitation counselor, testified at the hearing by way of an evidence deposition. At the request of the claimant's attorney, Entenberg reviewed some of the claimant's medical records and Dr. Younger's deposition. In addition, Entenberg interviewed the claimant. With respect to his functional capacities, the claimant reported to Entenberg that he could sit for about 10 to 15 minutes, could stand for about the same amount of time, and could walk for about 20 minutes. He said he could occasionally lift about a gallon of milk and that bending and twisting were painful. He could not bend, twist, squat, or kneel, and he could climb stairs only at a very slow pace. Reaching overhead hurt his neck, and he could drive only 5 to 10 minutes.

¶ 29 Entenberg testified that a landscape laborer was considered a job with heavy physical requirements and no transferable skills to other jobs or occupations. In addition, Entenberg believed that the claimant was not a good candidate for vocational rehabilitation. She based this opinion on his physician's restrictions, her interview of the claimant, and her review of his medical records.

¶ 30 She testified that the biggest issues she faced in finding him employment were the physical restrictions that the doctor had placed him under and the level of his functional abilities. She believed that these issues would reduce him to less than a sedentary level of

functioning because of his inability to sit for any length of time throughout an eight-hour day.

¶ 31 The employer countered Dr Younger's testimony with the evidence deposition testimony of Dr. Zoellick that was taken on June 20, 2007. Dr. Zoellick testified about examinations he conducted of the claimant, after the arbitration hearing, in November 2003 and in September 2006.

¶ 32 When Dr. Zoellick saw the claimant in November 2003, the claimant reported that an MRI scan in October 2003 showed a disc herniation at L5-S1. The claimant complained of right leg pain on the inside of his right thigh and burning into his right testicle. In addition, he complained of numbness in both legs after sitting for long periods of time.

¶ 33 Dr. Zoellick's examination of the claimant's lumbar region revealed some minor tenderness but the claimant could bend forward and reach to the level of his ankles. He was able to stand up on his toes and his heels. His major muscle groups of both lower extremities showed normal motor function. A straight right leg raise caused mild low back discomfort. The claimant showed some numbness in his right lower extremity, and Dr. Zoellick testified that one disc herniation at L5-S1 would not cause the entire leg to go numb.

¶ 34 The claimant's reflexes of his knees and ankles were symmetric and normal. In explaining the significance of the findings regarding the claimant's reflexes, the doctor testified: "[F]or the L5-S1 disk space typically we'd get the S-1 nerve root and you'd have decreased ankle jerks, and in this case they were normal."

¶ 35 Dr. Zoellick examined x-rays of the claimant's lumbar spine and noted that there was

no fracture or evidence of instability. He noticed a little lumbar scoliosis which he found unrelated to the workplace accident. According to Dr. Zoellick, the x-rays of the claimant's lumbar spine did not reveal any findings that would have caused any of the claimant's subjective complaints in November 2003.

¶ 36 Dr. Zoellick also reviewed the October 2003 MRI scans of the claimant's right leg and lumbar spine. He testified that the MRI scan of the claimant's lumbar spine revealed a small central disc protrusion at L5-S1. To Dr. Zoellick, the protrusion did not appear to be something that would cause any right-sided pain. He testified that it was a "small area of the dis[c] that was pushing out but not an extruded fragment that's free into the canal." He did not see anything on the MRI films of the lumbar spine that would cause the claimant's right lower extremity complaints. From his review of the MRI, he determined that there was no compression on the nerve roots or spinal cord at L5-S1.

¶ 37 In November 2003, Dr. Zoellick felt that the claimant's femur fracture had healed and that he should have been able to return to unrestricted employment. The claimant's femur had healed and his subjective complaints of back pain were not explained by the MRI scan of the low back. In addition, he noted that the claimant was 33 years old at the time. He believed that the claimant was at MMI.

¶ 38 Dr. Zoellick did not believe that the claimant's lower extremity complaints were caused by the disc protrusion at the L5-S1 level. In addition, he did not believe that the disc protrusion at L5-S1 was caused by the September 18, 2000, work accident. He explained

that, when the claimant was first treated after the accident, he had some complaints of back pain initially in the emergency room. They took x-rays of his low back, but after that, he did not receive any treatment for his back. In addition, the claimant did not have many complaints about his back. Dr. Zoellick noted that, even when the claimant first saw Dr. Younger, he focused on the claimant's right leg, not his back.

¶ 39 Dr. Zoellick examined the claimant again in September 2006. At that time, the claimant was taking medication for pain and for depression. He complained of pain and tingling in both of his legs, left shoulder pain that radiated to the left side of his neck, and numbness and tingling going toward his left arm and into his elbow. The claimant complained of pain in his right leg at the surgical site and of bilateral groin pain.

¶ 40 Dr. Zoellick's examination of the claimant's lumbar spine in September 2006 revealed mild tenderness. The claimant could bend forward and reach only to the level of his thighs, but was able to stand up on his toes and heels. Dr. Zoellick noted that the claimant's sensation in both lower extremities had improved since the previous November 2003 examination. Straight leg raises on the right and left both produced reports of back pain. The claimant had some tenderness over the left trapezius, but had no pain reaching behind his back or above his shoulder.

¶ 41 Dr. Zoellick testified that additional x-rays of the claimant's right femur, pelvis, and lumbar spine did not reveal any changes other than more calcification at the piriformis fossa where the rod was inserted in the claimant's femur. According to Dr. Zoellick, the x-rays did

not reveal any findings that would explain or cause the claimant's subjective complaints of pain. After conducting his examination, Dr. Zoellick still believed that the claimant could return to work as a landscaper and that he was still at MMI. In addition, he still believed that the claimant's back condition was unrelated to the work accident.

¶ 42 The employer also presented the evidence deposition of Mary DeArcos, a job development specialist. DeArcos conducted a labor market survey for the claimant at the employer's request in May 2007. DeArcos's labor market data reports were for the job goals of lawn care worker, building maintenance, cashier counter, Spanish-speaking waiter, or cook in a Mexican restaurant in the geographical areas of Palatine, Crystal Lake, Wheaton, and Batavia, Illinois.

¶ 43 Twenty-four employers participated in her initial labor market survey, and ten of those employers were hiring. She concluded that the positions available in the labor market included lawn care worker, janitor, light industrial worker, and restaurant worker. The average hourly rate for such employment was $8.34.

¶ 44 DeArcos updated her labor market survey in September 2007. Thirteen employers participated in her updated survey, and all were hiring. The updated survey revealed that positions for a lawn care worker, janitor, light industrial worker, and restaurant worker were available. The average hourly wage for these positions was $8.56.

¶ 45 On April 28, 2010, the Commission filed its decision and opinion on review. The Commission defined the issues before it as follows: "The issues under [the claimant]'s

petition is whether [the claimant] has established a material increase in his condition of ill being that is causally related to the work accident, whether [the claimant] is entitled to permanent total disability benefits as a result of the alleged material increase, and whether [the claimant]'s medical care obtained after arbitration was necessary and reasonably required."

¶ 46 The Commission concluded that the claimant failed to prove a material change that is causally connected to the work accident he sustained on September 18, 2000. The Commission noted that the claimant did not argue that there was a material increase in his disability with respect to his leg. Instead, the claimant maintained that there has been a material increase in his disability with respect to his lumbar condition. In the original arbitrator's decision, the arbitrator mentioned the claimant's lumbar spine as one of the claimant's complaints following the accident. Although the claimant tried to causally connect his back to the accident, the arbitrator did not find a causal connection and gave no award for the claimant's lumbar spine.

¶ 47 The Commission found that the claimant's "back pain prior to June 24, 2002, when [the claimant] saw Dr. Younger, was more of a generalized pain" because none "of the doctors characterized [the claimant]'s back pain as radiating." The first time the claimant's medical records mention back pain with radiating pain was in Dr. Younger's June 24, 2002, records. Although Dr. Younger opined that the claimant had a herniated disc that was related to the accident, the Commission did not "adopt Dr. Younger's opinions." Instead, the

Commission found as follows:

> "We find it doubtful that if [the claimant] had a herniated disc, which caused symptoms, that there would be no mention of radiating pain in [the claimant]'s medical records from September 18, 2000, the date of the accident, to June 24, 2002, when radiating pain was first mentioned in the medical records. The back pain that was described prior to June 24, 2002, was characterized as more of an achy type pain rather than a condition that produced symptoms consistent with a herniated disc."

¶ 48 The Commission also found that the claimant's testimony comparing his back condition at the time of arbitration with his condition at the review hearing was too vague to support a material change in his disability. The Commission, therefore, denied the claimant's petition for review.

¶ 49 On January 21, 2011, the circuit court entered a judgment that confirmed the Commission's decision. The claimant timely filed a notice of appeal from the circuit court's judgment.

¶ 50 ANALYSIS

¶ 51 Section 19(h) of the Act provides that the Commission may, within certain time limits, review an award under the Act at the request of either party on the ground that the claimant's disability has subsequently recurred, increased, diminished, or ended. 820 ILCS 305/19(h) (West 2008); *Eschbaugh v. Industrial Comm'n*, 286 Ill. App. 3d 963, 967, 677 N.E.2d 438, 441 (1996). Section 19(h) is one of only two provisions (see also section 19(f)) in the Act

that grants the Commission the power to reopen or modify a final decision. *Alvarado v. Industrial Comm'n*, 347 Ill. App. 3d 352, 355–56, 807 N.E.2d 494, 497–98 (2004).

¶ 52 "In reviewing a section 19(h) petition, the evidence presented in the original proceeding must be considered to determine if the petitioner's position has changed materially since the time of the Commission's first decision." *Brooks v. Industrial Comm'n*, 263 Ill. App. 3d 884, 890, 637 N.E.2d 114, 117 (1993). "Whether there has been a material change in a petitioner's disability is an issue of fact, and the Commission's determination will not be overturned unless it is contrary to the manifest weight of the evidence." *Id.*

¶ 53 Since the claimant brought the section 19(h) petition, it was the claimant's burden to show a material change in his condition. See *Sammon v. Industrial Comm'n*, 123 Ill. App. 3d 182, 184, 462 N.E.2d 788, 790 (1984). In the present case, we cannot find that the Commission's finding that the claimant failed to carry his burden is against the manifest weight of the evidence.

¶ 54 The Commission properly found that the claimant's medical records did not present any objective findings to establish a material change in his disability caused by the work-accident. The claimant's medical records admitted at the arbitration hearing showed that the emergency room doctor who first attended to the claimant after the accident reported that the claimant denied any back pain. The doctor found that the claimant's back was "atraumatic, nontender." Dr. Scafuri's notes from September 2000 indicate that the claimant did complain of low back pain and mild back discomfort, but all of Dr. Scafuri's notes after the leg surgery

related to the claimant's right leg, not the claimant's back. At the original arbitration hearing, Dr. Zoellick noted that Dr. Scafuri had released the claimant to return to work in March 2001, with "no mention of the patient's neck or back in that note." In addition, Dr. Zoellick's review of the claimant's physical therapy records prior to December 1, 2000, revealed "no mention of the back or shoulder in these records."

¶ 55 Some of the claimant's medical records after the surgery document generalized back pain or a "constant dull ache," but none mention any radiating pain. When the claimant submitted to an IME on August 30, 2001, with Dr. Younger, the claimant completed a patient questionnaire that indicated that the area of the injury was his right knee, and Dr. Younger's report noted that the claimant complained of "mild pain" in his back. However, Dr. Younger's impression at that time concerned only the claimant's right femur fracture.

¶ 56 After reviewing the evidence presented in the original proceeding, the Commission determined that the claimant's pain after the accident was inconsistent with a herniated disc caused by the work-accident. Instead, it was "more of a generalized pain." Dr. Zoellick opined that the pain was a lumbar strain that had sufficient time to resolve. None of the doctors who examined and/or treated the claimant before the arbitration hearing characterized the pain as radiating or provided him with any treatments for a back injury. As noted by the Commission, the first time the claimant's medical records indicated that the pain was a radiating type of pain was in Dr. Younger's record of his June 24, 2002, examination. The Commission emphasized that Dr. Younger noted in his June 24, 2002, records that the

claimant "now" complained of back pain going down into his right thigh and leg. The Commission stated: "Dr. Younger's record from this date seems to imply that [the claimant]'s back and radiating complaints occurred sometime after he last saw [the claimant] on August 30, 2001."

¶ 57 At the review hearing, Dr. Younger opined that the claimant had a herniated disc that was related to the work-accident. Dr. Younger based his opinion on the fact that the claimant sustained a high energy trauma and that the trauma resulted in a herniated disc at L5-S1 which had bothered the claimant since the accident. The Commission rejected Dr. Younger's opinion.

¶ 58 In contrast to Dr. Younger's opinions, the employer presented the testimony of Dr. Zoellick who conducted an IME of the claimant on December 1, 2000, and reexamined the claimant in November 2003 and in September 2006. Dr. Zoellick did not believe that the claimant's back condition was related to the work-accident and believed that the claimant could return to work as a landscaping laborer. Based on his review of the October 2003 MRI of the claimant's lumbar spine, he did not believe that there was any compression on the nerve roots or spinal cord at L5-S1. In addition, his review of the x-rays of the claimant's lumbar spine did not reveal any findings that would cause the claimant's subjective complaints of pain.

¶ 59 The MRI scan of the claimant's lumbar spine revealed a small central disc protrusion at L5-S1. However, Dr. Zoellick opined that the protrusion did not appear to be something

which would cause any right-sided pain. He testified that it was a "small area of the dis[c] that was pushing out but not an extruded fragment that's free into the canal." Furthermore, he did not believe that the disc protrusion at L5-S1 was caused by the September 18, 2000, work accident because when the claimant was first treated after the accident, he had some complaints of back pain initially and they took x-rays of his low back, but after that, he did not receive any treatments for his back.

¶ 60 Based on the record before us, we cannot find that the Commission's findings are against the manifest weight of the evidence. Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954, 958 (1984). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894, 896 (1992).

¶ 61 In the present case, the Commission reviewed the evidence presented in the original proceeding and determined that the claimant's healed right leg fracture had not changed materially since the time of its first decision. With respect to the claimant's complaints of radiating pain, the Commission determined that they were not related to the right leg fracture or otherwise causally related to the workplace accident.

¶ 62 The Commission was faced with conflicting medical opinions on the issue of whether the claimant's radiating pain was causally related to the work-accident and whether the pain

was the result of a material change in the claimant's work-related disability. The Commission considered the conflicting medical opinions in light of the claimant's medical records and the claimant's testimony. The Commission rejected Dr. Younger's opinions and made findings consistent with Dr. Zoellick's opinions. We cannot find that a conclusion opposite the Commission's is clearly apparent. The medical evidence presented at the review hearing is sufficient to sustain the Commission's finding that the claimant's workplace accident is unrelated to the claimant's herniated disc at L5-S1 and his subjective complaints of radiating pain.

¶ 63 The claimant also takes issue with the Commission's failure to award him section 8(a) expenses, arguing that there is no restriction on section 8(a) expenses as long as they are reasonably required to relieve the effects of the injury.

¶ 64 At all times relevant to this case, section 8(a) of the Act obligated employers to "provide and pay * * * for all the necessary first aid, medical and surgical services, and all necessary medical, surgical, and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2008). The claimant's burden of proof includes the burden of proving that 8(a) expenses were necessary to diagnose, relieve, or cure the effects of the claimant's work-related injury. *City of Chicago v. Illinois Workers Compensation Comm'n*, 409 Ill. App. 3d 258, 266-67, 947 N.E.2d 863, 870 (2011). The Commission's determination with respect to an award of expenses under section 8(a) is a question of fact that will not be

overturned unless it is against the manifest weight of the evidence. *Id.*

¶ 65 In the present case, we agree with the employer that the claimant failed to prove that the post-arbitration expenses that he submitted at the review hearing were necessary to relieve or cure the effects of the accidental injury. None of the post-arbitration medical treatments concerned the claimant's fractured femur, but instead concerned his subjective complaints of radiating pain. As noted above, however, Dr. Zoellick's opinions support the Commission's finding that these subjective complaint's of pain were not causally related to the work accident. Dr. Zoellick's examination of the claimant and the x-rays and MRIs of the claimant's back and leg did not reveal any findings consistent with his complaints or that the complaints were the result of the accident. Dr. Zoellick opined that the claimant was at MMI and could return to work as a landscaping laborer, and the employer presented a labor market study showing that employment was available for the claimant. Accordingly, we cannot reverse the Commission and make our own factual finding that the claimant's post-arbitration medical care was necessary to relieve or cure the effects of the work-related accident. We must affirm the circuit court's judgment which confirmed the Commission's decision.

¶ 66 CONCLUSION

¶ 67 For the foregoing reasons, we affirm the judgment of the circuit court that confirmed the Commission's decision.

¶ 68 Affirmed.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tony L. Curtis,
Petitioner,

vs. NO. 02 WC 5894

Village of Lansing,
Respondent.

ORDER

This matter comes before the Commission on Petitioner's §8(a) Petition and Petition for Penalties and Attorneys' Fees. After due consideration, the Commission denies Petitioner's §8(a) Petition and Petition for Penalties and Attorneys' Fees for the reasons set forth below.

1. Petitioner filed an Application for Adjustment of Claim on February 4, 2002 alleging he sustained accidental injuries to his right hand and wrist when he tripped and fell while chasing a suspect on September 1, 2000. The claim was assigned to Arbitrator Williams.

2. Arbitration hearing was held on June 23, 2003. In his July 22, 2003 §19(b) Decision, Arbitrator Williams found Petitioner sustained accidental injuries arising out of and in the course of his employment on September 1, 2000 and that his condition of ill-being is causally related to that accident. The Arbitrator awarded TTD benefits for a period of 55 weeks at $634.13 per week and noted that Respondent had paid $34,877.33 in TTD benefits and $8,349.04 in §8(j) benefits. The Arbitrator awarded $14,383.92 in medical expenses and gave Respondent §8(j) credit for what had been paid. The Arbitrator denied Petitioner's claim for penalties and attorneys' fees.

Respondent filed a timely Review. In its Decision and Opinion on Review dated April 30, 2004, the Commission affirmed and adopted the Arbitrator's Decision and remanded the case to the Arbitrator for further proceedings. No appeals were taken.

3. Arbitration hearing was held before Arbitrator Williams on December 8, 2004. In his January 25, 2005 Decision, Arbitrator Williams noted that Respondent agreed that the outstanding medical bill is $8,349.04 and he ordered Respondent to pay this amount as provided in §8(a). The Arbitrator further found Petitioner has permanently lost 40% of the use of his right hand, 76 weeks at $516.15 per week. The Arbitrator gave Respondent credit for any amount

paid toward medical bills, including any amount paid under §8(j) and ordered Respondent to hold Petitioner harmless for all the medical bills paid by group health insurance. Neither party filed for review.

4. On January 21, 2010, Petitioner's attorney filed a Petition for Hearing pursuant to §8(a). In his Petition, Petitioner's attorney noted the above and that Petitioner was entitled to open medical rights. Petitioner's attorney indicated that pursuant to his open medical rights, Petitioner underwent a causally connected surgery on October 5, 2009, which Respondent paid for. Petitioner's attorney indicated that since that surgery, Petitioner has been authorized to remain off work by his treating physician. Petitioner's attorney indicated he has provided Respondent with supporting documents and a letter demanding Respondent pay TTD benefits resulting from the surgery, which had not been paid to date. Petitioner's attorney requested Respondent be ordered to immediately begin paying TTD benefits pursuant to §8(a) of the Act.

Also on January 21, 2010, Petitioner's attorney filed a Petition for Penalties and Attorneys' Fees. In this Petition, Petitioner's attorney noted the above and argued that it was unreasonable and vexatious for Respondent to refuse to pay the above requested TTD benefits. Petitioner's attorney requested that the Commission award penalties under §19(k) and §19(l) and attorneys' fees pursuant to §16 of the Act. Attached to the Petition was a January 11, 2010 letter from Petitioner's attorney to Respondent's adjuster informing her of the above.

5. Hearing was held before Commissioner Sherman on February 11, 2010. During this hearing, Petitioner's attorney presented the above Petitions. Petitioner's attorney requested TTD benefits for lost time from work due to the October 5, 2009 surgery through his return to work on February 8, 2010. Respondent's attorney argued that the only provision left open is §8(a) medical rights. The parties were allowed to file briefs. Petitioner's attorney declined oral arguments.

Petitioner's attorney filed a brief on February 26, 2010. Respondent's attorney filed a brief on March 11, 2010.

The Commission, after considering the entire record, denies Petitioner's §8(a) Petition and Petition for Penalties and Attorneys' Fees. All the cases cited by Petitioner's attorney in his brief involve §19(h) petitions. Here, no §19(h) petition was filed, presumably because the 30 month period from the last Decision dated January 25, 2005 had expired. In essence, Petitioner is requesting TTD and penalties and attorneys' fees on claimed unpaid TTD under §8(a) of the Act. Section 8(a) deals with medical, not TTD. Maintenance under a vocational rehabilitation situation is provided under §8(a), but that is not the same as TTD, although the amount of the benefit rate for TTD and maintenance is the same. There is no provision in §8(a) that provides the relief sought by Petitioner. Therefore, the Commission denies Petitioner's §8(a) Petition and Petition for Penalties and Attorneys' Fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's §8(a) Petition and Petition for Penalties and Attorneys' Fees are hereby denied.

There is no bond as there is no award. The probable cost of the record to be filed as return to Summons is the sum of $35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefore and deposited with the Office of the Secretary of the Commission.

DATED: JAN 1 3 2011

Mario Basurto

James J. DeMunno

David L. Gore

MAW
r02-11-10
43

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
TAX & MISCELLANEOUS REMEDIES

TONY L. CURTIS,	)	
	)	
Plaintiff,	)	**Case No. 11 L 50114**
	)	
v.	)	
	)	
VILLAGE OF LANSING,	)	**Judge Daniel T. Gillespie**
	)	
Defendant.	)	

Memorandum Opinion and Judgment Order

This matter comes before the Court on appeal from a decision of the Workers' Compensation Commission, which denied Plaintiff an award of temporary total disability benefits under Section 8(b) of the Workers' Compensation Act. The Court now finds that Plaintiff's petition for review of a prior award was not timely under Section 19(h) of the Act, and affirms the decision of the Commission.

Facts: The following facts are not disputed by the parties. Plaintiff Tony L. Curtis (Curtis) was injured through his employment with Defendant Village of Lansing (Lansing) on September 1, 2000. On January 25, 2005, a Commission arbitrator awarded Curtis permanent partial disability benefits to compensate him for a 40 percent loss in the use of his right hand. No appeals were taken.

By October of 2009, Curtis' condition had destabilized. On October 5, 2009, he underwent surgery to remove hardware from his wrist. On January 21, 2010, Curtis filed a motion under Section 8(a) of the Act with the Workers' Compensation Commission. Before the Commission, both parties acknowledged that Curtis' 2009 surgery was causally necessitated by his 2000 workplace injury, and Lansing paid all medical expenses for treatment relating to the surgery.

In addition to reimbursement for medical expenses, Curtis sought from the Commission an award of Temporary Total Disability (TTD) benefits for the eighteen-week period between October 5, 2009 and February 8, 2010, arguing that Curtis was undergoing treatment for his injury during that time and was unable to work. Lansing refused to pay Curtis' TTD benefits under the theory that such benefits must be sought under Section 19(h) of the Workers' Compensation Act, and that the thirty-month statutory time limit in which to seek benefits under that provision had expired. The Workers' Compensation Commission agreed with Lansing and denied Curtis a TTD benefit award, finding that no provision of Section 8 permitted relief for Curtis. Curtis now appeals the Commission's denial of TTD benefits.

Analysis: This case hinges entirely on the legal question of whether Section 19(h) of the Workers' Compensation Act (the Act) bars a claimant from seeking an award of TTD benefits more than thirty months after the date the Commission's initial award for the same injury. This Court finds that Section 19(h) does bar such a claimant from petitioning for a new award after thirty months, and therefore affirms the decision of the Workers' Compensation Commission (the Commission) in denying Curtis benefits under Section 8(a) of the Act.

The legal determinations of the Workers' Compensation Commission are reviewed de novo. *See Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 141 (2010). The interpretation of a statute is a question of law subject to de novo review. *Alvarez v. Pappas*, 229 Ill. 2d 217, 220 (2008). In construing a statute, the primary objective of the courts is to ascertain and give effect to the intent of the legislature. *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 461 (2010). The plain language of a statute is the most reliable indication of legislative intent, and courts should, wherever possible, interpret a statute according

to its plain meaning. *Id.*; *People v. Conick*, 232 Ill. 2d 132, 138 (2008) (citing *Orlak v. Loyola Univ. Health Sys.*, 228 Ill. 2d 1, 8 (2007)).

Section 8(a) of the Workers' Compensation Act empowers the Commission to grant an award of TTD benefits to an employee whose workplace injury temporarily prevents him from earning as much as he would absent the injury. *See* 820 Ill. Comp. Stat. Ann. 305/8(a) (LexisNexis 2011). As Plaintiff observes, Section 8(a) places no time limitation on an injured worker's ability to seek or renew TTD benefits. *See id.* However, Section 19(h) of the Act provides, in part:

> [A]s to accidents occurring subsequent to July 1, 1955, which are covered by any agreement or award under this Act providing for compensation in installments made as a result of such accident, such agreement or award may at any time within 30 months . . . after such agreement or award be reviewed by the Commission at the request of either the employer or the employee on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended.
> . . . .

Id. § 19(h). The language of Section 19(h) is unambiguous. The recipient of "any agreement or award" may seek review of the agreement or award within thirty months of its review by the Commission. Were this Court to permit the recipient of "any award" to seek a Commission modification of the award more than thirty months after the Commission's initial review, it would directly contradict the plain meaning of Section 19(h).

Curtis' arguments to the contrary do not dissuade the Court from this conclusion. Curtis asserts that Section 8 of the Act contains no time limitation on the availability of TTD benefits, and that it was amended in 1975 to abolish a sixty-four week time limit on TTD benefits that had theretofore been in force. He points to the history of amendments to the Workers' Compensation Act, noting that although the Act has been amended many times, the General Assembly never saw fit attach a new TTD benefits time limit to Section 8. What Curtis fails to adequately

address, however, is that while Section 8 does not contain a time limit for petitioning for review, Section 19(h) unambiguously does. His argument fails because the subsequent amendatory history of the Act will not support an inference that runs contrary to the plain meaning its text. *People ex rel. Ryan v. Agpro, Inc.*, 214 Ill. 2d 222, 231 (2005). The General Assembly's failure to provide a time limit in Section 8 does not write Section 19(h) out of the Workers' Compensation Act.

Curtis next points to the case of *Ruff v. Industrial Commission* for the proposition that Section 8(a) awards do not fall under the time limitation of Section 19(h). 149 Ill. App. 3d 73, 77–78 (1st Dist. 1986). But *Ruff* cannot be stretched to accommodate that argument. The relevant issue in *Ruff* was whether the claimant had properly filed a Section 19(h) petition before the Commission, or whether he had failed to raise his 19(h) petition before reaching the circuit court level. *Id.* at 78. Upon appellate review, the *Ruff* court found that the claimant had properly filed a Section 19(h) petition with the Commission well within thirty months after the Commission's initial review. *Id.* It was therefore unnecessary for the court to decide whether a Section 8 TTD benefits award was reviewable by the Commission more than thirty months after the Commission's initial review. In short, *Ruff* does not advance the proposition that Section 8 awards are not within the ambit of Section 19(h)'s thirty month filing time limit.

Finally, Curtis entreats the Court to interpret Section 8 as broadly as possible, given that it is a provision of a remedial statute. But again, interpretive canons are inappropriate where, as here, the text of the statute is unambiguous.

Accordingly, the decision of the Commission denying Curtis TTD benefits is affirmed.

Associate Judge
Daniel T. Gillespie

Date: March 1, 2012

Enter: MAR - 1 2012

Judge Daniel T. Gillespie
Circuit Court – 1507