2022 IL App (1st) 210928WC

No. 1-21-0928WC

Filed: June 24, 2022

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION DIVISION

McDONALD'S,	)	Appeal from the Circuit Court of Cook County
Appellant,	)	
v.	)	Nos. 20L050332
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.*,	)	Honorable John J. Curry Jr.,
(Evangelina Bedoy, Appellee).	)	Judge Presiding.

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

OPINION

¶ 1 On October 23, 2012, Evangelina Bedoy, claimant, filed an application for adjustment of claim for injuries to her lower back and shoulder suffered while working for respondent employer McDonald's on October 3, 2012. An arbitrator conducted a hearing on October 16, 2018, and issued a decision on January 5, 2019, (1) finding claimant suffered an accident arising out of and in the course of claimant's employment, that claimant gave timely notice to McDonald's, and that claimant's current condition of ill-being is causally related to the

accident; (2) awarding claimant her medical expenses and permanent partial disability benefits; and (3) ordering McDonald's to pay penalties pursuant to section 19(k) of the Workers' Compensation Act (Act) (820 ILCS 305/19(k) (West 2012)) and attorney fees pursuant to section 16 of the Act (*id.* § 16).

¶ 2 On August 21, 2020, the Illinois Workers' Compensation Commission (Commission) issued a unanimous decision affirming the decision of the arbitrator, though it corrected the arbitrator's average weekly wage calculation and deducted travel expenses from some physical therapy services. McDonald's sought judicial review in the circuit court of Cook County, which court confirmed the Commission's decision in a written order on July 14, 2021.

¶ 3 For the reasons that follow, we affirm the circuit court.

¶ 4 I. BACKGROUND

¶ 5 Following is a recitation of the facts relevant to this appeal taken from the evidence adduced at the arbitration hearing on October 16, 2018.

¶ 6 As of October 2012, claimant had worked for McDonald's approximately 21 years performing tasks such as making hamburgers, cleaning, and supplying the kitchen from the refrigerator. On October 3, 2012, claimant went to the refrigerator to obtain a box of meat. Claimant grabbed a box from the top shelf, which was above the height of claimant's eyes and forehead. As she retrieved the box, she placed it on her left shoulder and the box began to fall, twisting her lower back. As the box was falling, claimant tried to stop it with her right hand and felt pain in her right shoulder. She took the meat to the kitchen and told two supervisors what occurred. Claimant continued working that day until the store manager arrived and advised her to stop working. The store manager called an ambulance, but claimant did not use the ambulance because she thought she would have to pay for it. Claimant did however go to Trinity Hospital on

her own.

¶ 7 The same day, October 3, 2012, one of claimant's supervisors testified he completed a form 45 report of injury, and faxed it to McDonald's main franchise office. The form bears a handwritten date of October 3, 2012, and, what appears to be, a fax-machine-generated notation matching that date and time. The form as well contains notations which suggest it was received by McDonald's insurance company on October 4, 2012, and a "set up" date of October 8, 2012. The form discloses claimant suffered a back injury while handling a box of meat. The office administrator at the main franchise office testified she received the form 45 from the store.

¶ 8 The Trinity Hospital emergency room records reflect claimant complained of low back pain from lifting heavy boxes of meat at work, and was diagnosed with a back strain. Upon discharge, claimant was prescribed a pain killer and Flexeril for muscle spasms, and directed to follow up with her primary care physician in one to two days.

¶ 9 On October 8, 2012, McDonald's insurer sent a letter to claimant advising it had received notice of her "work related injury" and identifying her employer as McDonald's. This insurer is the same entity identified on the form 45 mentioned above.

¶ 10 Two days after the accident, claimant returned to work, but she was still experiencing pain. On October 16, 2012, claimant saw Dr. Demetrios Louis of the Chicago Pain and Orthopedic Institute (Institute), complaining of lower back and right shoulder pain since the injury. Dr. Louis diagnosed her with a lumbar strain and right shoulder pain, *inter alia*, and prescribed a muscle relaxer, pain killer, and physical therapy. Dr. Louis excused claimant from work, and recommended magnetic resonance imaging (MRI) exams of her shoulder and lumbar spine if claimant did not show significant improvement in two weeks.

¶ 11 Claimant filed her application for adjustment of claim on October 23, 2012, and

notice was provided to McDonald's the next day.

¶ 12 On November 8, 2012, claimant followed up with another physician at the Institute, again complaining of lower back and right shoulder pain. This physician suggested claimant continue with the previously prescribed medications, and that she undergoes an MRI exam of both areas, which she did that same day.

¶ 13 On November 26, 2012, claimant saw Dr. Neeraj Jain with the Institute, who examined her and reviewed the results of the MRI exams. Dr. Jain recommended claimant continue a course of physical therapy, continue taking the medications, and undergo epidural injections to her lumbar spine. Dr. Jain opined claimant's shoulder and back symptoms were "directly related to the injury" and the treatment provided to date was reasonable and "of necessary frequency and duration." Jain also recommended referral for orthopedic evaluation of claimant's shoulder.

¶ 14 Sometime in December 2012, claimant returned to work with some restrictions. On January 3, 2013, claimant saw Dr. Gregory Markarian, an orthopedic surgeon, at the Institute for evaluation and consultation regarding her right shoulder. After examining claimant and reviewing the MRI of her right shoulder, Dr. Markarian recommended (1) continuing physical therapy, (2) excusing claimant from work, and (3) a follow-up appointment with him in four weeks. If there was no improvement in four weeks, he recommended considering an injection. At the follow-up appointment on January 31, 2013, because claimant reported improvement, Dr. Markarian recommended she continue with physical therapy, but delay any injection.

¶ 15 On April 20, 2013, Dr. Jain administered injections of a steroid with a selective nerve-root-blocking agent to claimant's lower back. On May 3, 2013, claimant saw Dr. Jain for a follow-up appointment, and reported 30% to 40% improvement of her back pain. Dr. Jain recommended another type of injection to claimant's lumbar spine, that she continues with

physical therapy, and that she remains excused from work. Dr. Jain again opined claimant's symptoms were related to her work injury, and that the treatment received was reasonable and necessary.

¶ 16 On June 20, 2013, Dr. Markarian administered an injection to claimant's shoulder, and recommended continued physical therapy and a follow-up appointment in four weeks. At the July 18, 2013, follow-up appointment, claimant reported an 80% improvement of her shoulder pain, and Dr. Markarian recommended another appointment in four weeks and continued physical therapy.

¶ 17 On June 28, 2013, claimant saw an anesthesiologist, Dr. Axel Vargas, at the Institute. Dr. Vargas examined claimant, and recommended, consistent with a prior recommendation, that claimant undergo facet joint injections to help determine the involvement of the facets in her back pain, and to direct pain management. Dr. Vargas recommended a functional capacity evaluation (FCE) and that claimant remain off work. Dr. Vargas opined claimant's back and shoulder symptoms were directly related to her work injury based on (1) a review of her clinical history and progression, (2) a physical examination, (3) imaging, and (4) her medical records. Dr. Vargas also noted the medical treatment claimant had received, and that which was proposed, was reasonable and necessary.

¶ 18 On August 19, 2013, Rehab Dynamics discharged claimant from the course of physical therapy, noting some improvement to the shoulder. On September 3, 2013, claimant underwent the FCE pursuant to the recommendations of Dr. Vargas, which placed claimant's capabilities at a sedentary to light level and suggested certain restrictions. On October 10, 2013, Dr. Markarian recommended another course of physical therapy for claimant.

¶ 19 On November 12, 2013, Dr. Vargas administered facet joint injections to claimant's

lower back. On December 6, 2013, claimant saw Dr. Vargas for a follow-up appointment, at which time claimant reported an approximately 70% improvement of her low back pain after the injections, which lasted somewhere between 8 and 10 days. However, as of this visit, claimant's pain had returned to the prior level. Dr. Vargas recommended two different types of nerve block injections having different effective periods. Dr. Vargas also recommended that claimant continue with her medications, and return to work with duties as restricted by the FCE.

¶ 20 Dr. Vargas recognized claimant had an underlying degenerative back condition, but noted, prior to the injury, it was asymptomatic. Dr. Vargas opined the work injury caused claimant's back condition to become symptomatic, and thus required treatment.

¶ 21 On November 27, 2013, claimant saw Dr. Markarian for another follow-up appointment relative to her shoulder. He recommended shoulder surgery.

¶ 22 On March 18 and April 1, 2014, Dr. Vargas administered nerve-block injections to claimant's lower back. On May 9, 2014, Dr. Vargas saw claimant for a follow up and, based on the improvement claimant experienced after the injections, confirmed the source of most of her back pain was her facets. Dr. Vargas opined that such results indicated that claimant would respond well to radiofrequency ablation of certain nerves and, thus, recommended such procedure.

¶ 23 At the recommendation of Dr. Markarian, claimant underwent another course of physical therapy from July 2 to September 12, 2014, for her shoulder. On discharge, claimant was experiencing improved shoulder movement.

¶ 24 Claimant did not have the surgery recommended by Dr. Markarian or the ablation recommended by Dr. Vargas.

¶ 25 Claimant continued working for McDonald's in a light duty capacity cleaning tables. However, claimant now works only 10 hours per week due to the medically recommended

work restrictions, instead of the 38 hours per week she worked prior to the injury. Claimant still experiences pain, for which she takes ibuprofen on days she works. One of claimant's supervisors testified claimant is not working as much due to the work restrictions, and the only task they could find for her was to clean tables.

¶ 26 The owner of the McDonald's franchise (identified by the Commission only as "the owner") acknowledged claimant suffered an accident working for McDonald's on October 3, 2012, and that he was never contacted by an insurance company about the incident. The office administrator at the main franchise office testified as well that, prior to the arbitration hearing, no one had asked her about claimant's accident or notice of it.

¶ 27 McDonald's had Dr. Steven Mather conduct a record review of claimant's medical records. He concluded she suffered a lumbar strain from the initial injury. Dr. Mather thought the MRI results were normal for someone of claimant's age, and that her complaints were out of proportion to the objective findings. He acknowledged one can have subjective complaints without objective findings. Dr. Mather thought the injections were not necessary, though he does not perform injections. He disagreed with Dr. Vargas that claimant was suffering from facet syndrome, and thought the FCE was not valid. Dr. Mather opined claimant needed no treatment beyond two weeks after her injury, and that she should have no work restrictions. He believed claimant's physicians deviated from certain treatment guidelines, but he would not offer an opinion on whether they deviated from the standard of care.

¶ 28 Dr. Craig Phillips examined claimant's shoulder and arm for McDonald's, and concluded her conditions were caused by the work accident. Dr. Phillips suggested another three months of physical therapy for the shoulder condition, and that claimant might benefit from pain medication. Dr. Phillips believed the physical therapy, medication other than topical creams, and

other treatment claimant received for her shoulder were reasonable. He also thought claimant should be restricted to lifting no more than 10 pounds, and refrain from any overhead activities. On re-evaluation five months after the first examination, Dr. Phillips opined claimant's complaints were subjective and not supported by objective findings. He rated her impairment at 4% but did not consider claimant's limited range of motion, though acknowledged he could have.

¶ 29 On January 5, 2019, the arbitrator issued a written decision in favor of claimant on all disputed issues, including that a work-related accident occurred, that claimant gave timely and appropriate notice to McDonald's, and that claimant's current condition of ill-being was causally related to the accident. The arbitrator found claimant was entitled to her past medical expenses, and that the nature and extent of her injuries amounted to 17.5% loss of her person as a whole. As well, the arbitrator awarded claimant attorney fees and penalties, pursuant to section 19(k) and 16 of the Act, respectively. The arbitrator based the latter awards on the fact that McDonald's disputed notice and accident—issues that presented no real controversy and were merely vexatious. McDonald's sought review of the arbitrator's decision before the Commission.

¶ 30 On July 7, 2020, the Commission issued its decision, which corrected a clerical error by adjusting the average weekly wage, and deducted travel expenses billed by a physical therapy provider. In other respects, the Commission affirmed and adopted the decision of the arbitrator. McDonald's pursued an appeal of the Commission's decision to the circuit court of Cook County.

¶ 31 On July 14, 2021, the circuit court confirmed the Commission's decision after hearing oral arguments. McDonald's now appeals.

¶ 32 II. ANALYSIS

¶ 33 A. Standard of Review

¶ 34 The first five issues relate to the Commission's factual findings. We will not reverse these determinations unless they are against the manifest weight of the evidence. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). Further, we do not "reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Id.* The Commission's factual findings "are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the agency." *Id.* It is the province of the Commission "to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009).

¶ 35 B. Whether a Work-Related Accident Occurred

¶ 36 McDonald's argues the Commission's finding claimant suffered an accident while working is against the manifest weight of the evidence due to inconsistencies in the evidence and credibility concerns. These are determinations left to the Commission.

¶ 37 Claimant testified how the accident occurred in some detail, but McDonald's offered no material evidence to rebut her testimony. Claimant reported the accident immediately to a supervisor, who completed an accident report form, and provided the form the same day to the franchise office. When a manager arrived at the store, the manager called for an ambulance for claimant, though claimant declined to take it due to the anticipated cost. Nevertheless, on the day of the accident, claimant went to the hospital emergency room where she reported the accident and sought treatment. Claimant continued to advise her medical providers of the work injury. And, though not necessarily dispositive, the owner of the McDonald's franchise acknowledged claimant suffered an accident at work.

¶ 38 Therefore, concluding a work-related accident did not occur is not clearly apparent. In fact, the opposite is true. We will not revisit the inferences drawn and credibility determinations made by the Commission given the foregoing. The Commission's finding claimant suffered an accident at work is not against the manifest weight of the evidence.

¶ 39 C. Whether Claimant Provided Appropriate Notice of the Accident

¶ 40 McDonald's concedes that, if we find claimant suffered a work-related accident, she gave appropriate notice of the accident. McDonald's claims it only contested notice below because it contested whether an accident occurred. As discussed above and below, timely and proper notice of the accident was given on the day of its occurrence. Therefore, we find the Commission's finding as to notice is not against the manifest weight of the evidence.

¶ 41 D. Causal Connection to Back and Shoulder Injuries

¶ 42 McDonald's contests the Commission's finding of a causal connection between the accident and claimant's current condition of ill-being, because the finding is based on claimant's statements she was injured, which it asserts are not credible.

¶ 43 The Commission's finding relative to the question of the existence of a causal connection will not be reversed unless it is against the manifest weight of the evidence. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 538 (2007). Resolving conflicts in medical opinion evidence is particularly within the purview of the Commission. *Id.* There are a number of helpful similarities between the facts in *Westin* and this matter. For example, there were the opinions of several physicians supporting the causal connection to a back injury. *Id.* at 539. The claimant sought medical attention shortly after the accident though; instead of the day of the accident, it was the day after. *Id.* at 539. The claimant had no back pain prior to the accident but did postaccident. *Id.* at 539-40. Based on the temporal connection and the imaging, there was a

causal connection according to medical opinion. *Id.* at 540. As well, the claimant had some degenerative conditions, which were aggravated by the accident according to the medical evidence. *Id.* The Commission's finding of a causal connection to the back injury was not against the manifest weight given the foregoing. *Id.*

¶ 44 Another similarity is that, in *Westin*, the claimant did not report a knee injury on initial report to his employer, or in his initial doctor visit. *Id.* at 541. Days later, the claimant did complain about a knee injury. *Id.* Nevertheless, the foregoing, in addition to the medical opinions of causal connection, "overwhelmingly" supported the Commission's finding of a causal connection between the accident and the knee injury. *Id.* at 542.

¶ 45 Here, McDonald's own Dr. Phillips opined claimant's shoulder and arm injuries were caused by her work accident. McDonald's attempts to discredit its own expert because his opinion was based on claimant's description of an accident. But, we have already found, as the Commission did, that its finding of a work-related injury is appropriate. We reach the same result here.

¶ 46 Further, claimant reported she did not experience back or shoulder pain prior to the accident. Her description of the mechanism of injury certainly could result in injury to the back and shoulder, and she noted experiencing pain in her shoulder and back at the time of the injury. Though claimant reported back pain initially, she began complaining of shoulder pain within two weeks of the injury. From that point, claimant complained of and received treatment for both back and shoulder injuries. Most significantly, however, it is the Commission's province to judge the credibility of the medical evidence, weigh that evidence, and draw inferences from the evidence.

¶ 47 Dr. Jain opined claimant's shoulder and back injuries were directly related to the accident based on examination and imaging. Dr. Vargas also thought the back and shoulder

conditions were related to the work injury, based on his physical examination, the medical records, and imaging. Dr. Vargas recognized claimant had degenerative back conditions, but noted her back was asymptotic prior to the accident and symptomatic afterward.

¶ 48 Even Dr. Mather, McDonald's expert, believed claimant suffered a lumbar strain, though he had vastly different opinions about the severity of the injury and reasonableness of treatment. Significantly, he acknowledged a patient can have subjective symptoms with no objective findings, and would not say that claimant's physicians deviated from the standard of care.

¶ 49 McDonald's other expert, Dr. Phillips, opined the physical therapy received and medications prescribed for claimant's shoulder, other than some topical creams, were appropriate. He also recommended restrictions limiting claimant to lifting no more than 10 pounds, and performing no overhead work.

¶ 50 Thus, an opposite conclusion from that of the Commission as to causation is not clearly evident. A rational trier of fact certainly could agree with its conclusion. Therefore, the Commission's finding of a causal connection between the accident claimant suffered at work, and the current condition of claimant's shoulder and back ill-being is not against the manifest weight of the evidence.

¶ 51 E. Reasonableness and Necessity of Medical Care

¶ 52 We review the Commission's findings related to the necessity and reasonableness of medical care to determine whether they are against the manifest weight of the evidence. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 51.

¶ 53 Claimant demonstrated gradual and vacillating improvement in both injured areas with physical therapy, medications, and injections. She continued working with restrictions. Dr.

Jain believed the treatment claimant received for her back symptoms were reasonable and necessary. Dr. Vargas opined the various modalities of treatment used relative to claimant's back and shoulder were reasonable and necessary. And McDonald's expert, Dr. Phillips, thought the treatment for claimant's shoulder was reasonable and necessary, except for some topical creams.

¶ 54 It is the Commission's province to evaluate the credibility of the witnesses, to weigh the evidence, and to draw inferences. We will not disturb the Commission's conclusions related to these simply because we could reach a different result. To support reversal, we must find the opposite conclusion is clearly apparent. We do not so find. The Commission's finding the medical care was necessary and reasonable is not against the manifest weight of the evidence.

¶ 55 F. Nature and Extent of Disability

¶ 56 McDonald's claims there is insufficient credible evidence to support the Commission's award of 17.5% loss of use of person as a whole. We will not reverse this finding unless it is against the manifest weight of the evidence. *Village of Deerfield v. Illinois Workers' Compensation Comm'n,* 2014 IL App (2d) 131202WC, ¶ 44.

¶ 57 The FCE recommended a sedentary-to-light-duty position, with some restrictions for claimant. Dr. Vargas opined claimant should work within the limits suggested by the FCE. Claimant testified she works with pain, and takes ibuprofen to address that on the days she works. Those days are fewer however, as claimant was working less due to restrictions, according to one of her supervisors. Dr. Phillips suggested a 10-pound lifting limit, and that claimant should perform no work above her head. Dr. Phillips, however, rated claimant's disability at 4%, though he did not account for any limit in range of motion.

¶ 58 We will not redraw inferences made by the Commission, or reweigh the evidence it considered, relative to the extent of disability. We cannot find a rational trier of fact could not

have concluded as the Commission did. Therefore, we do not find its conclusions as to the extent and nature of claimant's disability are against the manifest weight of the evidence.

¶ 59 G. Authority to Award Penalties and Attorney Fees

¶ 60 McDonald's argues the Commission was without statutory authority to award penalties and attorney fees, and that the matter does not present an issue of delay or refusal to pay benefits.

¶ 61 As to the former issue, the Commission awarded fees explicitly referencing sections 19(k) and 16 of the Act. Section 19(k) of the Act provides in pertinent part:

> "In case [*sic*] where *** proceedings have been instituted or carried on by the one liable to pay the 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." (Emphasis added.) 820 ILCS 305/19(k) (West 2012).

Section 16 of the Act provides:

> "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 under-payment 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." (Emphasis added.) *Id.* § 16.

¶ 62 The Commission awarded additional compensation and attorney fees because McDonald's disputed the issues of accident and notice, and not because of delay or refusal to pay benefits as McDonald's suggests. Specifically, the Commission found that McDonald's did not act "reasonably," as contesting these issues "presented no real controversy and was merely vexatious." In short, the Commission invoked the appropriate statutory provision, and found the facts (explored below) supported the Act's application to award additional compensation and attorney fees. It therefore acted with statutory authority. See *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 504-05, 511 (1998).

¶ 63 H. The Award of Penalties and Attorney Fees

¶ 64 The findings of fact underlying the award of penalties and attorney fees we review to determine if they are against the manifest weight of the evidence. *Id.* at 516. The actual award we review for an abuse of discretion. *Id.* The Commission has abused its discretion in this regard if no reasonable person could agree with it, or if it is fanciful, arbitrary, or unreasonable. *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, ¶ 43.

¶ 65 Sections 19(k) and 16, in pertinent part, both refer to instances where the position taken "do[es] not present a real controversy" and is "frivolous." 820 ILCS 305/16, 19(k) (West 2012). Section 16 refers to this language found in section 19(k) as well. Since these sections describe the same situations, our discussion is intended to cover application of both. As for decisions specifically discussing the application of the pertinent language of these sections, we find none. However, the terms are plain and commonly utilized, and we can glean instructive insight into their meaning from decisions discussing other language from these sections.

¶ 66 For example, in a decision related to a delay in payments, we note generally a reasonable and good faith defense tactic does not subject an employer in most cases to liability for penalties under the Act. *Residential Carpentry, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 975, 983 (2009). We assess such a challenge to determine if it is objectively reasonable. *Id.* If an employer possesses facts that would justify its position, fees and penalties are usually inappropriate. *Id.* The corollary is that if an employer possesses facts supporting but one finding, which facts are contrary to the position taken by the employer, penalties and fees are appropriate.

¶ 67 In *Residential Carpentry*, the employer asserted the employee should have rotator cuff repair surgery, but did not need clavicle surgery at the same time when both issues could be addressed with the same surgery. *Id.* at 984. We found it was not reasonable for the employer to suggest subdividing the employee's body when that would not be the normal course of medical practice. *Id.* Thus, we found the Commission's award of penalties and fees, pursuant to other language in sections 16 and 19(k), was proper. *Id.*

¶ 68 In another matter relating to notice, albeit in a different manner, an employer refused to accept the employee's notice of the accident and denied the claim because it was not given on the day of the accident. *Oliver v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 143836WC, ¶ 41. We found the employer's conduct unreasonable, as it had no legitimate basis to deny benefits based on lack of notice. *Id.* Specifically, the employer had no factual or medical basis to deny the claim. It simply did so because the employee reported the claim six days after the injury. *Id.*

¶ 69 We noted penalties and fees under sections 16 and 19(k) are intended to address deliberate conduct, or that which is undertaken in bad faith or for an improper purpose. *Id.* ¶ 49.

We concluded the employer's actions were inconsistent with the Act, were not the result of "simple inadvertence or neglect," and demonstrated more than a simple lack of "good and just cause." *Id.* ¶ 51. Therefore, we held the Commission abused its discretion by refusing to award penalties and attorney fees, given the foregoing. *Id.*

¶ 70 Recognizing neither of the foregoing presents our precise issue, both are instructive as to the types of conduct sections 16 and 19(k) are meant to discourage. We can also look generally to the rules of our supreme court for guidance. Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) provides in pertinent part:

> "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and *belief formed after reasonable inquiry* it is *well grounded in fact* and is warranted by existing law or a *good-faith argument for the extension*, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." (Emphases added.)

¶ 71 Thus, the supreme court has also sought to discourage parties from taking positions that are not undertaken in good faith, or are not well grounded in fact. In short, the court seeks to discourage the same type of conduct the legislature does in sections 16 and 19(k) of the Act.

¶ 72 The bottom line is that the terms used by the Act are commonly understood and utilized. This gist of the foregoing is that, in our context, an employer must have a reasonable basis to take a position. In other words, there must be some legitimate purpose served by an employer's litigation tactics. A position is not legitimate or reasonable simply because the Act permits it. McDonald's had no such purpose to contest the notice of the accident, because there was evidence

the employee gave appropriate and timely notice and that it was received by McDonald's shortly thereafter. Further, McDonald's itself possessed ample evidence of proper notice. Therefore, McDonald's contest of the employee's notice meets none of the above criteria, and its conduct is of the type for which the Act permits the award of penalties and attorney fees.

¶ 73 Specifically, the facts the Commission found to support the award of penalties and attorney fees start with McDonald's contest of notice of the accident at arbitration. McDonald's then, however, failed to produce any evidence challenging claimant's report and notice given of the accident. Further, the form 45 was McDonald's own form, which is dated the day of the accident, signed by one of claimant's supervisors, and contains a description of the mechanism of the accident and injury. One of claimant's supervisors testified he completed the form and sent it to McDonald's franchise office, and the office administrator there testified she received the notice. Some days later, claimant received a letter from the insurer acknowledging receipt of the report of accident. We note the form 45 also contains a fax-machine-generated notation showing it was sent October 3, 2012, indicia McDonald's insurer received it on October 4, 2012, and a suggestion that the insurer "set up" the claim on October 8, 2012, which is the date on the aforementioned letter received by claimant. Further, McDonald's franchise owner testified an accident occurred, though neither he nor the office administrator were ever contacted by the insurance company to ask about the accident or notice thereof.

¶ 74 Thus, McDonald's conduct was not reasonable given the facts and presented no real controversy. It presented no evidence in support of its position, and it possessed evidence proper notice was given. McDonald's contesting the issue of notice served only to introduce delay in the proceeding, and increase the time and cost required by the parties, the arbitrator, and the Commission. This is the type of conduct the Act seeks to discourage.

¶ 75 Therefore, we agree with the Commission. The Commission's findings are supported by the record, and not against the manifest weight of the evidence. Given these facts, we do not find the award of penalties and attorney fees is arbitrary, fanciful, or unreasonable. Certainly, a reasonable person could agree with the Commission. The Commission's award of additional compensation and attorney fees did not constitute an abuse of discretion and was not in error.

¶ 76 III. CONCLUSION

¶ 77 The Commission's decision does not constitute error. For all the foregoing reasons, we affirm the circuit court's judgment, which confirmed the Commission's decision.

¶ 78 Affirmed.

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 20-L-50332; the Hon. John J. Curry Jr., Judge, presiding.
Attorneys for Appellant:	Dana T. Benedetti, of Quintairos, Prieto, Wood & Boyer, P.A., of Chicago, for appellant.
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