*9 IWCC 210; 2009 Ill. Wrk. Comp. LEXIS 135, **

ROBERT J. **NAWROT,** PETITIONER, v. **TOWER** AUTOMOTIVE, INC., RESPONDENT.

NO: 06WC 25132

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

9 IWCC 210; 2009 Ill. Wrk. Comp. LEXIS 135

February 27, 2009

CORE TERMS: arbitrator, cervical, fusion, doctor, temporary total disability, causally, instrumentation, aggravation, anterior, forklift, surgery, spine, overtime, credible, carpal tunnel syndrome, average weekly wage, accidental injury, causal connection, return to work, accomplished, acceleration, repetitive, constantly, underwent, allograft, backwards, stenosis, numbness, symptoms, earnings

JUDGES: Yolaine Dauphin

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, permanent disability, wages, rate, §19(k), §19(1) penalties and §16 fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 5, 2008 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 75,000.00. 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 **[*2]** or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: FEB 27 2009

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party.

The matter was heard by the Honorable **Joseph V. Prieto**, arbitrator of the Commission, in the city of **Chicago**, on **December 13, 2007**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES
C. Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
F. Is the petitioner's present condition of ill-being causally related to the injury?
G. What were the petitioner's earnings?
J. Were the medical services that were provided to petitioner reasonable and necessary?
K. What amount of compensation is due for temporary total disability?
L. What is the nature and extent of the injury?
M. Should penalties or fees be imposed upon the respondent?

FINDINGS

. On **6/30/2005**, the respondent **[*3] Tower Automotive *was*** operating under and subject to the provision of the Act.

. On this date, an employee-employer relationship ***did*** exist between the petitioner and respondent.

. On this date, the petitioner ***did*** sustain injuries that arose out of and in the course of employment.

. Timely notice of this accident ***was*** given to the respondent.

. In the year preceding the injury, the petitioner earned $ **41,010.32**; the average weekly wage was $ **788.66**.

. At the time of injury, the petitioner was **54** years of age, ***married*** with **0** children under 18.

. Necessary medical services ***have not*** been provided by the respondent

. To date, $ **0.00** has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

. The respondent shall pay the petitioner temporary total disability benefits of $ **525.77**/week for **74 2/7** weeks, from **12/2/2005** through **5/6/2007**, which is the period of temporary

total disability for which compensation is payable.

. The respondent shall pay the petitioner the sum of $ **473.20**/week for a further period of **175** weeks, as provided in Section **8(d)(2)** of the Act, because **[*4]** the injuries sustained caused **35% loss of man as a whole**.

. The respondent shall pay the petitioner compensation that has accrued from **6/30/2005** through **12/12/2007**, and shall pay the remainder of the award, if any, in weekly payments.

. The respondent shall pay the further sum of $ **165,289.16** for necessary medical services, as provided in Section 8(a) of the Act.

. The respondent shall pay $ **0** in penalties, as provided in Section 19(k) of the Act.

. The respondent shall pay $ **0** in penalties, as provided in Section 19(l) of the Act.

. The respondent shall pay $ **0** in attorneys' fees, as provided in Section 16 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 2.16% shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature **[*5]** of Arbitrator

2-5-08

Date

STATEMENT OF FACTS

At the rime of the injury Petitioner was a 54 year old male who was employed by Respondent since December, 2004 as a forklift operator, moving materials and filling orders in a warehouse. His job required that he be constantly on the move as he was responsible for supplying an entire end of the operation. Sixty percent of his time was spent driving backwards while carrying a load and this could be over a distance of approximately two city blocks. He was constantly rotating his head, looking backwards and from side to side to ensure that he did not come in contact with other materials or co-workers. Eventually, Petitioner developed hand numbness in May, 2005 and progressively got worse, to the point where on June 30, 2005, he went to the Ingalls Occupational Health emergency center where he gave a history of bilateral hand weakness and numbness after driving eight to 12 hours per day, the onset of which was approximately one month earlier. The doctors at this company clinic then directed that he should use ice and commence to use Ibuprofen and that he follow up at the OccuMed Center on July 5, 2005.

Petitioner continued to work after **[*6]** the initial intervention with the Occupational Health Center and returned to see the physicians there on approximately a once a week basis. He underwent an EMG on July 22, 2005 which disclosed that he had evidence of a right, mild to moderate cervical radiculopathy active in the C6-7 myotomes and into the left upper extremity. Furthermore, they recommended that an MRI be performed for the purpose of further investigation to determine whether or not the cervical spine was involved. Petitioner then returned to the Ingalls Occupational Health and was advised to see an orthopedist as well as to get an MRI. Petitioner was then placed on light duty with no overhead work with both arms, no

climbing of ladders, stairs or inclines, by the doctors at Ingalls Occupational Health. Petitioner was seen by Dr. Martin Luken on August 22, 2005. The doctor took a history which discussed the onset of the numbness and tingling down the upper extremities and he noted that Petitioner's work routine involved near continuous activity, twisting the neck as he backed his forklift and operating controls with his hands. The doctor's diagnosis showed that the symptoms and clinical findings were compatible with **[*7]** cervical radiculopathy as well as carpal tunnel. The doctor then directed Petitioner to obtain an MRI of the cervical spine but that he could continue to work unrestricted duty. Subsequent to the examination with Dr. Luken Petitioner was then directed by Respondent to see Dr. Richard D. Lim on September 20, 2005. Following his examination, Dr. Lim concluded that Petitioner did, in fact, have carpal tunnel syndrome bilaterally, right greater than left; however, Dr. Lim did note that Petitioner had a pre-existing degenerative condition in his cervical spine which was unstable and that the patient was having myelopathy related to this problem. Dr. Lim concluded that the cervical stenosis and his spondylolisthesis was not caused by the injury, however, no comment was made by the doctor that the condition was not aggravated or accelerated by his work activity. Dr. Lim also emphasized that an MRI was warranted. An MRI was finally accomplished on October 19, 2005 and it showed marked facet degeneration at C4-5, anterolisthesis, as well as severe spinal stenosis.

Petitioner was then directed by his treating physician to see Dr. Baylis at Parkview Musculoskeletal Institute. This was accomplished **[*8]** on November 1, 2005. Dr. Baylis concluded, following his examination, that the carpal tunnel was definitely work related but that the spondylosis was not. Again, there was no comment as to whether or not the question of aggravation or acceleration of the condition was addressed by Dr. Baylis Finally, Petitioner was seen, at the request of his private medical doctor, by Dr. Keith Schaible who determined that Petitioner needed to undergo surgical decompression, as well as fusion, at the C4-5 disc space and concluded that this was a consequence of his repetitive activity while at work. Dr. Schaible performed the surgery on December 2, 2005 which included an anterior cervical vertebral partial corpectomy at C4 and C5 with a C3-4 discectomy and anterior interbody fusion C3-05 with instrumentation and an allograft.

Petitioner followed up with Dr. Schaible, who concluded on January 11, 2006 that the fixation devices or screws were coming out and that the fusion needed to be revised. This revision occurred during a hospital admission of January 13, 2006 through January 16, 2006 when Petitioner underwent additional surgical intervention for a posterior cervical fusion, C3-C6 with allograft **[*9]** and posterior segmental instrumentation, removal of the anterior cervical instrumentation, a vertebral corpectomy at C5, an anterior cervical fusion, a fusion of C5-C6 with allograft and instrumentation. Petitioner continued to treat with Dr. Schaible and commenced physical therapy at the Burbank Outpatient Physical Therapy on April 4, 2006. Petitioner continued with that regimen of treatment although he continued to have difficulty and was not able to return to work during this period of time. Finally, on November 21, 2006 Dr. Schaible directed Petitioner to obtain an EMG, which was accomplished and demonstrated that no carpal tunnel syndrome was evident as first believed by the company clinic and Dr. Lim.

Thereafter, Petitioner followed up and continued to recuperate from his surgical intervention and underwent a functional capacity evaluation on March 6, 2007 which showed that Petitioner could work eight hours with occasional lifting of 55 pounds from floor to knuckle, 50 pounds knuckle to shoulder and 25 pounds shoulder to overhead. Dr. Schaible adopted the conclusions of the FCE and directed that Petitioner could return to work within those restrictions. Ultimately, Petitioner **[*10]** did return to work on May 7, 2007. Petitioner was off of work from December 2, 2005 through May 6, 2007, a period of 74 2/7 weeks.

This claim was disputed by Respondet based upon the conclusion of Dr. Lim that Petitioner's cervical condition was not causally related to his work activities. Petitioner was paid group disability benefits totaling $ 19,018.41 but received no compensation pursuant to. Section 8(a) or 8(b) of the Workers' Compensation Act

FINDINGS OF FACT AND. CONCLUSIONS OF LAW

With regard to the issue of whether an accident occurred that arose out of and in the course of the Petitioner's employment by the Respondent the Arbitrator finds the following facts:

It is well established in Illinois law that a repetitive activity and the gradual denigration and erosion of a working person's condition of ill being can be tantamount to a compensable injury. *Hunter v. G & K Services, 00IIC0252* and *Fierke v. Industrial Commission 309 Ill.App. 3d 1037.* The courts have long held that when a person is engaged in an activity that requires him to assume awkward positions or repetitively use certain parts of his body which results **[*11]** in the breakdown of that part, that is, in fact, an accidental injury which arises out of and in the course of employment. Here, Petitioner must constantly turn his head from side to side as well as look backwards as he drives his forklift with various loads and materials on his forklift. The Arbitrator finds that the Petitioner did, in fact, establish a compensable injury as occurring on June 30, 2005 as demonstrated by his symptoms contained in the medical reports of the Ingalls Occupational Health Network (Px 1).

With regard to the issue of whether or not the Petitioner's present condition of ill being is causally related to the injury, the Arbitrator fords as follows:

The Arbitrator adopts the testimony of Dr. Schaible, the surgeon who operated on Petitioner's cervical region, as well as the testimony of Petitioner himself. Dr. Schaible causally relates the rotational activity of Petitioner's head from side to side over an extended period of time as an aggravating and accelerating element to his preexisting cervical stenosis. This aggravation and acceleration resulted in the Petitioner having to undergo significant fusion surgery and the implementation of hardware. Dr. Lim **[*12]** does not comment on the acceleration or aggravation factor. Therefore, the Arbitrator concludes that the Petitioner's condition of ill being, which necessitated the surgical procedures and the extended period of lost time, is causally related to the episode of trauma on June 30, 2005.

With regard to the issue of what were the Petitioner's earnings, the Arbitrator finds as follows:

Petitioner offered into evidence wage records (Px 11) which demonstrate that he earned a gross of $ 41,010.32, which resulted in an average weekly wage of $ 788.66. Petitioner testified in a credible fashion that all overtime was mandatory, that there was no right of refusal and, in fact, stated that if a person were to refuse the overtime he could be disciplined for that action. Therefore, the Arbitrator finds, pursuant to the case of *Airborne Express vs. Industrial Commission, 372 Ill.App.3d 549 (2007)*, that the overtime hours which were mandatory and a normal element of his employment are includible and his average weekly wage calculation therefore incorporates that time, however, at the rate of the straight time earnings. *Edward Don Co. v. Industrial Commission, 344 Ill.App.3d 643, 279 Ill.Dec. 726* **[*13]**

With regard to the issue of whether or not medical services that were provided to. the Petitioner were reasonable and necessary, the Arbitrator finds the following facts:

Medical expenses totaling $ 165,289.16 were offered into evidence on behalf of Petitioner. (Px 10) Based upon the testimony of Petitioner as well as all the medical records offered on his behalf, the Arbitrator finds that Petitioner is entitled to an award of $ 165,289.16 or an amount as permitted by the medical fee schedule as promulgated pursuant to Section 8(a). No evidence was offered on behalf of Respondent to determine that these amounts were not, in fact, in keeping with the guidelines of the medical fee schedule and the Arbitrator finds that the case of *Hill Freight Lines, Inc. v. Industrial Commission, 36 Ill.2d 419 (1967)* would cover this situation and determines that the amount as stated in the exhibit is appropriate to be awarded.

With regard to the issue of the amount of compensation due for temporary total

disability the Arbitrator fords the following facts:

Petitioner testified that he continued to work subsequent to the onset of his physical problems and **[*14]** remained working until December 2, 2005. Thereafter Petitioner remained off of work through May 6, 2007, a period of 74 2/7 weeks. Petitioner returned to work on May 7, 2007 with restrictions. Petitioner did not receive any workers' compensation benefits as a result of his lost time. The Arbitrator finds that he is entitled to benefits at the rate of $ 525.77 per week for the period from December 2, 2005 through May 6, 2007. It is also recognized that the Petitioner received $ 19,018.41 in group disability benefits for which the Respondent is entitled to 8(j) credit.

With regard to the issue of what is the nature and extent of the injury, the Arbitrator finds the following:

That Petitioner sustained an accidental injury which resulted in cervical surgery on two separate occasions and at multiple levels with the implementation of hardware. The Arbitrator also determines that the opinions of Dr. Schaible with regard to the restrictions imposed upon Petitioner are credible. Therefore the Arbitrator finds that Petitioner is entitled to have and receive the sum of $ 473.20 for a period of 175 weeks as a result of suffering the permanent partial loss of 35% of a man as a whole.

M. [*15] Should penalties or fees be imposed upon the respondent?

The evidence reflects that Respondent had a good faith basis for disputing petitioner's claim. Respondent sent petitioner for treatment to Ingalls Occupational Health and paid said bills. When the prospect of a cervical problem arose, Respondent had petitioner evaluated by Dr. Richard Lim, whose primary practice is that of a treating orthopedic surgeon. Dr. Lim concluded petitioner's condition was not related to his employment by Respondent.

Dr. Baylis also concluded petitioner's cervical condition is not related to his employment by Respondent. Dr. Baylis was to have operated on petitioner's hands and wrists for carpal tunnel syndrome.

Even Dr. Schaible opined petitioner's condition of cervical myelopathy was of long standing duration. It was not until January 18, 2007 that Dr. Schaible's notes indicate the cervical condition may be work related (Px 9, p. 33); long after surgery had occurred, long after both Drs. Lim and Baylis had opined the condition is not related and just before petitioner returned to work.

Based upon the medical evidence, the Arbitrator cannot Conclude that Respondent acted in an unreasonable fashion **[*16]** in this matter. Petitioner's Petition for Penalties and Attorneys' Fees is denied.

CONCURBY: MOLLY C. MASON

CONCUR: I agree with the Arbitrator's award, as far as it goes, but would have also awarded penalties and fees. In my view, Respondent failed to meet its burden of showing that it acted in an objectively reasonable manner in denying this repetitive trauma claim. Under Illinois law, Respondent's conduct has to be evaluated in the context of all of the existing circumstances. Continental Distributing Company v. Industrial Commission, 98 Ill.2d 407, 416 (1983). Those circumstances include the fact that the company clinic physicians imposed restrictions after learning of the EMG results and in response to Petitioner's symptoms [see Ingalls Occupational Health "work status discharge sheets" dated August 16, 18, 26 and September 8, 2005, PX 1] and the fact that Respondent's own examiner, Dr. Lim, was unable, or unwilling, to completely rule out Petitioner's work as a cause of his cervical spine condition. By stating that Petitioner's condition did not "directly" result from work (RX 3), Dr. Lim clearly implied an aggravation, which is all that a claimant in Illinois need **[*17]** establish. These circumstances, combined

with the evidence offered by Petitioner, should have compelled Respondent to pay benefits.

DISSENTBY: MOLLY C. MASON, NANCY LINDSAY

DISSENT: I agree with the Arbitrator that this is not a case in which to award penalties and attorney fees. However, I respectfully disagree with the causal connection findings adopted and affirmed by the Majority herein. In finding causation, the Arbitrator adopted the testimony of Dr. Schaible. While Dr. Schaible related the rotational activity of Petitioner's head as an aggravating and accelerating factor, Dr. Schaible further testified that he based his opinion on his understanding that Petitioner had been working for Respondent eight to ten years. (PX 9, p. 20). However, Petitioner had only started working for Respondent in November of 2004, a period of time significantly less than eight to ten years. In light of this inaccuracy I would have given no weight to Dr. Schaible's opinion. In turn, I would have found the opinions of Dr. Lim and Dr. Baylis more credible and persuasive. As such, Petitioner failed to meet his burden of proof on causal connection. For this reason I dissent.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDI > Administrative Proceedings > Claims > Time Limitations > Notice Periods

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

Workers' Compensation & SSDI > Compensability > Injuries > Accidental Injuries

Source: **Legal > States Legal - U.S. > Illinois > Find Statutes, Regulations, Administrative Materials & Court Rules > IL Workers' Compensation Decisions**
Terms: **tower and nawrot** (Edit Search | Suggest Terms for My Search)
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Workers' Compensation
Commission Division
Filed: January 31, 2011

No. 1-09-3161WC

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

TOWER AUTOMOTIVE, Appellant, v. THE ILLINOIS WORKERS COMPENSATION COMMISSION, et al., (ROBERT NAWROT, Appellee).	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY No. 09 L 50296 HONORABLE ELMER TOLMAIRE III, JUDGE PRESIDING.

JUSTICE HOFFMAN delivered the judgment of the court, with opinion.

Presiding Justice McCullough and Justices Hudson and Holdridge concurred in the judgment and opinion.

Justice Stewart concurred in part and dissented in part, with opinion.

OPINION

Tower Automotive (Tower) appeals from an order of the Circuit Court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), awarding Robert Nawrot (the claimant) certain compensation pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), for injuries he allegedly received while in Tower's employ on June 30,

2005. Tower contends that the Commission's findings, that the claimant suffered an accident arising out of and in the course of his employment and that his current condition of ill-being is causally related to an accident while working, are against the manifest weight of the evidence. It argues, therefore, that the Commission's awards of benefits to the claimant for temporary total disability (TTD) and permanent partial disability (PPD) are also against the manifest weight of the evidence. In addition to claiming that the Commission's calculation of the claimant's average weekly wage and its award of $165,289.16 to the claimant for reasonable and necessary medical expenses are against the manifest weight of the evidence, Tower claims that both the wage calculation and medical expense award are contrary to law. For the reasons which follow, we reverse that portion of the circuit court's judgment which confirmed the Commission's $165,289.16 award for medical expenses, affirm the circuit court's judgment in all other respects, vacate the Commission's award to the claimant for medical expenses, and remand this matter back to the Commission with instructions to award the claimant medical expenses in an amount consistent with the holdings expressed herein.

The following facts necessary to a resolution of this appeal are taken from the evidence presented by the parties and admitted during the arbitration hearing which was held pursuant to the Act to resolve the claimant's application for adjustment of claim.

The claimant began working for Tower as a material handler in

November of 2004. The duties of that position consisted of operating a forklift, loading and unloading trucks, and delivering parts throughout Tower's facility. The claimant testified that he drove the forklift 60% of the time, requiring that he "constantly" move his head from side to side to avoid foot traffic. In May of 2005, according to the claimant, he began to experience tingling in his hands which radiated up his arms to his elbows. The claimant stated that he reported the problem to his immediate supervisor, Said Ali, and that he was told to advise Ali if the condition worsened.

On instructions from Ali, the claimant sought treatment at the Ingalls Occupational Health Center (Ingalls), Tower's company clinic, on June 30, 2005. He gave a history of operating a forklift 8 to 12 hours per day and complained of bilateral hand numbness and weakness. The claimant was diagnosed with tendinitis, given medication, instructed to return for follow-up treatment on July 5, 2005, and released to return to full-duty work, without restrictions.

The claimant returned to Ingalls on July 5, 2005. In addition to hand and wrist pain, he reported having experienced spasms in his trapezius bilaterally and numbness starting at the forearm and encompassing the entire hand. The claimant was advised to wear wrist splints at night, and his medication was adjusted. Again, however, his work duties were not restricted.

When the claimant returned to Ingalls the following week and

reported no improvement, an EMG was ordered. He underwent the EMG on July 22, 2005. The study revealed evidence of mild bilateral carpal tunnel syndrome at the wrists. There was also evidence of mild-to-moderate right cervical radiculopathy, active in the C6-C7 myotomes, and evidence of more chronic old degenerative disease in the upper left extremity. When the claimant returned to Ingalls to review the results of the EMG, a cervical MRI was suggested, and he was referred for an orthopaedic evaluation.

On August 15, 2005, the claimant returned to Ingalls, complaining of constant numbness in his hands to an extent that he was unable to feel anything. The claimant was diagnosed with cervical radiculopathy and his work duties were restricted to no overhead work with either arm, and no climbing of ladders, stairs, or inclines. Three days later, the claimant returned to Ingalls and reported that his symptoms were getting worse. His work restrictions were increased to include limitations on driving. An MRI was ordered, and the claimant was referred to Dr. Martin Luken at the Chicago Institute of Neurosurgery and Neuroresearch.

When the claimant saw Dr. Luken on August 22, 2005, he reported that, two or three months earlier, he began to experience "troublesome numbness" in the palms of his hands, thumbs, and index fingers, right greater than left, which occasionally radiated into his forearms. Although the claimant was unable to attribute his symptoms to any specific injury or activity, he did report that he worked 12 hours per day and performed duties which required him to

twist his neck as he operated a forklift. He stated that his symptoms worsened as the workday progressed. Dr. Luken concluded that, while the claimant's symptoms and clinical findings were compatible with a combination of cervical radiculopathy and carpal tunnel syndrome, his clinical examination of the claimant also suggested the possibility of cervical compression myelopathy. Dr. Luken suggested that the claimant undergo a cervical MRI.

The claimant returned to Dr. Luken for follow-up treatments in August and September 2005, and continued to report numbness and tingling in his upper extremities along with a burning sensation across his shoulder blades. Dr. Luken continued the claimant's work restrictions.

On September 20, 2005, the claimant was examined by Dr. Richard Lim. At that time, the claimant complained of numbness in both hands and neck pain which began in June 2005. After examining the claimant and reviewing the claimant's EMG and the x-rays of his cervical spine, Dr. Lim diagnosed bilateral carpal tunnel syndrome, cervical spondylolisthesis, and cervical spondylitis myelopathy, and he opined that the carpal tunnel syndrome was work related; whereas, the claimant's cervical condition was "most likely *** a degenerative condition and pre-existing his current level of symptoms." Dr. Lim did not believe that the claimant had reached maximum medical improvement (MMI). He too recommended that the claimant undergo a cervical MRI and, because of the severe numbness and clumsiness in his hands, Dr. Lim had reservations about the

claimant operating a vehicle and restricted the use of his upper extremities for any type of repetitive motion.

On October 17, 2005, the claimant sought treatment from his family physician, Dr. Eleazer Calero. Dr. Calero diagnosed bilateral carpal tunnel syndrome and cervical radiculopathy and prescribed a cervical MRI.

The claimant underwent a cervical MRI which revealed marked facet degenerative change at C4-C5 with anterolisthesis and severe spinal stenosis; degenerative disc disease at C5-C6 and C6-C7 with disc osteophyte complex causing mild stenosis, laterl recess, and neural foraminal narrowing; and a small central disc protrusion at C3-C4. After reviewing the results of the MRI, Dr. Calero referred the claimant to Dr. Keith Schaible, a neurosurgeon, for evaluation . At the request of Tower, the claimant was examined by Dr. William Baylis on November 1, 2005. The claimant reported a history of numbness, tingling and weakness in both hands, since June 2005. Dr. Baylis's notes state that the claimant was a forklift driver for "quite a long time." Following his examination of the claimant, Dr. Baylis diagnosed cervical spondylosis with myelopathy and bilateral carpal tunnel syndrome, right greater than left. He noted that the claimant had no history of an "obvious injury" to his upper extremities or his neck, and opined that the claimant's carpal tunnel syndrome "is definitely work related, but the cervical spondylosis is not." According to Dr. Baylis, the claimant's cervical spondylosis is the result of a degenerative

process.

On November 9, 2005, the claimant was examined by Dr. Schaible. At that time, the claimant complained of numbness in his arms and hands which progressed into his shoulder, accompanied by spasms, stiffness and pain in his neck and across his shoulders. He reported that his symptoms had begum six months earlier. Following his exam of the claimant and a review of the claimant's EMG, Dr. Schaible diagnosed a C4-C5 subluxation and "significant" stenosis which was probably degenerative in nature. He opined that the claimant's symptoms were secondary to myelopathy. Dr. Schaible recommended that the claimant undergo a surgical decompression and concomitant fusion at C4-C5.

The claimant had surgery on December 2, 2005, at the Advocate Christ Medical Center. The procedure consisted of a partial anterior vertebral corpectomy of C4-C5, a C3-C4 discectomy and interbody fusion at C3 to C5, with allograft and anterior cervical spinal instruments. The post-operative diagnosis was severe cervical spinal stenosis at C4-C5, secondary to spondylosis, and a C3-C4 disc herniation. Following surgery, the claimant continued to treat with Dr. Schaible.

On January 10, 2006, the claimant had an x-ray of his cervical spine which revealed that his anterior cervicl fusion had failed. As a consequence, Dr. Schaible recommended that the fusion be "revisited." Thereafter, the claimant underwent a second cervical fusion on January 13, 2006.

Following his discharge from the hospital on January 16, 2006, the claimant continued to treat with Dr. Schaible, and he underwent a course of physical therapy. Dr. Schaible's notes for the period indicate that the claimant was improving, but that he still complained of tingling in his hands.

On November 21, 2006, he claimant underwent an EMG which had been ordered by Dr. Schaible. After reviewing the results, Dr. Schaible concluded that the test failed to demonstrate evidence of carpel tunnel syndrome.

The record reflects that when the claimant saw Dr. Dr. Schaible on January 18, 2007, he inquired as to whether his work as a forklift driver contributed to his neck problems. Dr. Schaible noted that the claimant's work "involves excess neck strain in terms of his positioning, looking up, looking about, looking back to make sure he's not running into anybody, [and] the associated rapid starts and stops, [and] the bumping." He went on to state "[t]hat a patient's job or occupation can involve excess strains, neck positioning, prolonged strain, unnatural positions of the neck, associated with bumps and this and that, and certainly is associated with accelerated or increased degenerative spondylitic disease, and thus it is certainly not without reason that this type of work certainly could have aggravated his neck condition, worsened it, if you will." Dr. Schaible admitted that January 18, 2007, was the first time that he had opined that the claimant's condition might be work related or that it might have been

aggravated or accelerated by his work. However, he testified that "based upon [the claimant's] job duties, the description of his neck movements, the fact that he had accelerated degenerative disc disease, accelerated so much for such a young person, that he developed symptoms of pressure on the spinal cord from these symptoms or these changes, that again in my opinion to a reasonable degree of medical certainty *** the job duties certainly contributed, perhaps accelerated his underlying degenerative disc disease."

The claimant underwent a functional capacity evaluation (FCE) on March 6, 2007. The tests revealed that the claimant could work eight-hour days as a forklift operator or material handler provided he does not lift more than 55 pounds floor to chest, more than 50 pounds from chest to shoulder, or more than 25 pounds overhead.

On April 10, 2007, Dr. Schaible released the claimant to return to work, restricting his activity to lifting no more than 25 pounds and no overhead lifting. The claimant returned to work at Tower on May 7, 2007. He testified that, upon returning to work, he performed the same duties as before his surgery.

The claimant was again examined by Dr. Lim on October 20, 2007. The claimant reported that the numbness in his left hand was gone and the majority of the numbness in his right hand was also gone. However, he complained of intermittent numbness and tingling in the fingers of both hands and chronic neck pain. Dr. Lim opined that the claimant had a preexisting condition of degenerative disc

disease, spondylolisthesis, and myelopathy which he could not "directly correlate" to any industrial injury.

At the arbitration hearing held on December 13, 2007, the claimant testified that he experiences a stiff neck every morning and that his neck is stiff and sore at the end of each workday. He also stated that the medical expenses which he did not pay himself were paid for by the group heath insurance provided by his wife's employer. Tower asserts that of the $165,167.54 that was billed for medical services rendered to the claimant, his wife's group health insurance carrier paid $52,671.82, he paid $1,183.27, and the health care providers wrote off $111,298.35 of their charges.

With respect to his working hours prior to June 30, 2005, the claimant testified that he worked mandatory overtime. According to the claimant, "overtime was a mandatory part of the job" and an employee was subject to discipline if he refused to work overtime. He admitted, however, that the amount of overtime which he worked varied weekly.

Following the arbitration hearing, the arbitrator found that the claimant sustained injuries that arose out of and in the course of his employment with Tower and, relying upon Dr. Schaible's causation opinions, concluded that the claimant's work activities aggravated and accelerated his preexisting cervical stenosis, resulting in the claimant's need for surgery. The arbitrator awarded the claimant 74 2/7 weeks of TTD and 175 weeks of PPD for a 35% loss of his person as a whole. Both awards were calculated

based upon an average weekly wage of $788.66 that included overtime which the arbitrator found to be "mandatory and a normal element of his [the claimant's] employment." Additionally, the arbitrator ordered Tower to pay $165,289.16 for necessary medical services rendered to the claimant as provided in section 8(a) of the Act (820 ILCS 305/8(a) (West 2004)).

Both the claimant and Tower sought a review of the arbitrator's decision before the Commission. With one commissioner dissenting, the Commission affirmed and adopted the arbitrator's decision.

Tower sought a judicial review of the Commission' decision in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

Tower argues that the Commission's finding that the claimant suffered an accident arising out of and in the course of his employment and its finding that the injury to his cervical spine is causally connected to any such accident are against the manifest weight of the evidence. According to Tower, the evidence of record establishes that the claimant's condition of ill-being is degenerative in nature and is not causally related to his work.

An employee's injury is compensable under the Workers' Compensation Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (West 2004). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n,*

131 Ill. 2d 478, 483, 546 N.E.2d 603 (1989). "Arising out of the employment" refers to the origin or cause of the claimant's injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58, 541 N.E.2d 665 (1989). "In the course of the employment" refers to the time, place, and circumstances under which the claimant is injured. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366, 362 N.E.2d 325 (1977). The question of whether an employee's injury arose out of and in the course of his employment is one of fact, and the Commission's resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Johnson Outboards v. Industrial Comm'n*, 77 Ill. 2d 67, 70-71, 394 N.E.2d 1176 (1979).

Employers take their employees as they find them. *O'Fallen School District No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413, 417, 729 N.E.2d 523 (2000). To result in compensation under the Act, a claimant's employment need only be a causative factor in his condition of ill-being; it need not be the sole cause or even the primary cause. *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665 (2003). "[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment." *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36, 440 N.E.2d 861 (1982).

Whether a causal connection exists between a claimant's condition of ill-being and his employment and whether his injuries are attributable to an aggravation or acceleration of a preexisting

condition are also factual issues to be decided by the Commission, and unless contrary to the manifest weight of the evidence, the Commission's resolution of such issues will not be set aside on review. *Sisbro, Inc.*, 207 Ill. 2d at 205; *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984).

For a finding of fact made by the Commission to be found to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086, 837 N.E.2d 937 (2005). Whether this court might have reached the same conclusion is not the test of whether the Commission's determination of a question of fact is against the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90 (1982).

In this case, the claimant testified that his duties for Tower required him to constantly move his head from side to side while operating a forklift. He began to experience adverse symptoms in May or June of 2005 which included tingling and numbness in his hands and arms. Subsequently, in July of 2005, he was diagnosed with cervical radiculopathy in addition to carpal tunnel syndrome. There is no disputing the fact that the claimant suffered from a degenerative condition of the cervical spine which pre-dated his symptoms of May or June of 2005. However, Dr. Schaible, one of the claimant's treating physicians, opined that the claimant's job

duties could have aggravated or accelerated the pre-existing condition in his cervical spine.

Drs. Lim and Baylis attributed the claimant's cervical condition to a preexisting degenerative condition. Nevertheless, relying upon the testimony of the claimant and Dr. Schaible's opinions, the Commission found that the claimant's work activities aggravated and accelerated his preexisting cervical stenosis, necessitating surgical intervention. Based upon that finding, the Commission concluded that the claimant's current condition of ill-being arose out of and in the course of his employment with Tower and is causally related thereto.

Tower contends that Dr. Schaible's causation opinion should not have been relied upon because it was rendered in excess of one year after he began treating the claimant and was based upon the inaccurate assumption that the claimant had been operating a forklift for 8 to 10 years. Tower notes that the claimant had been hired less than one year prior to the onset of his symptoms. However, it neglects to acknowledge that Dr. Baylis's progress notes also reflect that the claimant had been a forklift driver "for quite a long time."

Distilled to their finest, Tower's arguments on these issues are nothing more than arguments of credibility and weight. It asserts that the causation opinions of Drs. Lim and Baylis are more persuasive than Dr. Schaible's opinion, and their opinions should have been relied upon by the Commission. However, it was the

function of the Commission to judge the credibility of the witnesses, determine the weight to be given their testimony, and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). Based upon the record before us, we are unable to conclude that the Commission's reliance upon Dr. Schaible's causation opinion and its conclusion that the claimant's current condition of ill-being arose out of and in the course of his employment are against the manifest weight of the evidence, as an opposite conclusion is not clearly apparent.

Tower further argues that the Commission's awards of TTD benefits, PPD benefits, and reimbursement for medical expenses are also against the manifest weight of the evidence. However, since these arguments are based solely upon the premise that the Commission's causation finding is erroneous, a premise we have already rejected, we also reject these contentions without further analysis.

Next, Tower argues that the Commission's calculation of the claimant's average weekly wage for purposes of computing the TTD and PPD benefits to which he is entitled is both contrary to law and against the manifest weight of the evidence as it failed, in violation of section 10 of the Act (820 ILCS 305/10 (West 2004)), to exclude compensation which the claimant received for working overtime. The Commission fixed the claimant's average weekly wage at $788.66; whereas, Tower contends that $521.32 is the appropriate

calculation after the claimant's overtime pay is excluded.

In *Airborne Express Inc. v. Workers' Comp. Com'n*, 372 Ill. App. 3d 549, 554, 865 N.E.2d 979 (2007), this court held that those hours which an employee works in excess of his regular weekly hours of employment are not considered overtime within the meaning of section 10 and are to be included in an average-weekly-wage calculation if the excess number of hours worked is consistent or if the employee is required to work the excess hours as a condition of his employment. The claimant testified that working overtime at Tower was mandatory, and if an employee refused to work overtime, he was subject to discipline, including termination. We find nothing in the record contradicting the claimant's testimony in this regard. We conclude, therefore, that the Commission's calculation of the claimant's average weekly wage is neither contrary to law nor against the manifest weight of the evidence.

Finally, we address Tower's argument that the Commission's award of $165,289.16 to the claimant under section 8(a) of the Act for reasonable and necessary medical services is erroneous as a matter of law. The amount awarded to the claimant is the total amount that he was billed for medical services, not the amount that the medical service providers were actually paid. According to Tower, the claimant's wife's group health insurance carrier paid $52,671.82 of the charges, the claimant paid $1,183.27, and the medical service providers wrote off the $111,298.35 balance of their charges. Tower contends that the maximum that it can be

required to reimburse the claimant for medical expenses is the amount that was actually paid to the service providers. We agree.

At all times relevant to this case, section 8(a) of the Act provided that "[t]he employer shall 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 necessary to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2004). As in all cases of statutory construction, our function is to ascertain and give effect to the intent of the legislature. *Airborne Express, Inc.*, 372 Ill. App. 3d at 553. When, as in this case, the language of a statute is clear, we will give it effect as written. *Airborne Express, Inc.*, 372 Ill. App. 3d at 553.

Section 8(a) requires an employer to "provide and pay" for all first aid, medical, surgical, and hospital services necessary to cure or relieve an injured employee from the effects a work-related accidental injury. By paying, or reimbursing an injured employee, for the amount actually paid to the medical service providers, the plain language of the statute is satisfied.

Nevertheless, the claimant contends that he is entitled to be reimbursed for the total amount billed by the medical service providers, regardless of the amount which they accepted in payment for their services. Relying upon the "collateral source rule," he argues that Tower is not entitled to a reduction in the amount

which it is required to pay for his medical expenses by reason of discounts or write-off's of the medical providers' charges which were secured by his wife's group health insurance carrier, as Tower did not contribute to the payment of the premiums for that group health insurance policy. However, the flaw in the claimant's argument is exposed by an understanding of the rational underlying the collateral source rule as compared to the purpose of the Act.

" 'Under the collateral source rule, benefits received by an injured party from a source wholly independent of, and collateral to, the tortfeasor will not diminish damages otherwise recoverable from the tortfeasor.' " *Arthur v. Catour*, 216 Ill. 2d 72, 78, 833 N.E.2d 847 (2005), quoting *Wilson v. The Hoffman Group, Inc.*, 131 Ill. 2d 308, 320, 546 N.E.2d 524 (1989); see also *Wills v. Foster*, 229 Ill. 2d 393, 399, 892 N.E.2d 1018 (2008). The justification for this rule is that a tortfeasor should not benefit from the expenditures made by the injured party, or for his benefit, or take advantage of contracts that may exist for the benefit of the injured party, where the tortfeasor did not contribute to the cost of the contract. *Arthur*, 216 Ill. 2d at 79; *Wilson*, 131 Ill. 2d at 320; *Peterson v. Lou Bachrodt Chevrolet Co.*, 76 Ill. 2d 353, 362,392 N.E.2d 1 (1979), overruled on other grounds by *Willis*, 229 Ill 2d at 414-15. "[A] benefit that is directed to [an] injured party should not be shifted so as to become a windfall for the tortfeasor." Restatement (Second) of Torts §920A cmt. b (1979); see also *Arthur*, 216 Ill. 2d at 78-79 (quoting the Restatement).

The Act is a remedial statute enacted to abrogate the common law rights and liabilities which previously governed an injured employee's ability to recover damages from his employer. *Sharp v. Gallagher*, 95 Ill. 2d 322, 326, 447 N.E.2d 786 (1983). It established a system of liability without fault under which injured employees gave up their common law rights to sue their employers in tort in exchange for the right to recover for injuries arising out of and in the course of their employment without regard to any fault on their part. Employers gave up their right to interpose the numerous common law defenses to an action by an injured employee, and their liability became fixed without regard to the absence of fault on their part. *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 172, 180, 384 N.E.2d 253 (1978). Unlike an action in tort, there is no wrongdoer or tortfeasor in a claim brought pursuant to the Act.

As it relates to the obligation of an employer to provide or pay for the reasonable and necessary medical care for an injured employee, the purpose of the Act is to relieve the employee and his family of the costs and burdens of such care. *Colclasure v. Industrial Comm'n*, 14 Ill. 2d 455, 458, 153 N.E.2d 33 (1958). By limiting an employer's obligation under section 8(a) of the Act to the amount actually paid to the providers of the first aid, medical, surgical, and hospital services necessary to cure or relieve an injured employee from the effects of an accidental injury, the purpose of the Act has been satisfied; that is to say,

both he and his family have been relieved of the cost and burdens of that care. It is for this reason that we now hold that the collateral source rule is not applicable to the right to recover under the Act.

Although our resolution of this issue is one of first impression, it is of limited future significance, as the legislature has seen fit to amend section 8(a) of the Act to provide that employers are obligated to provide and pay "the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered 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 necessary to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2006). This amendatory change to section 8(a) of the Act is applicable to claims for accidental injuries that occur on or after February 1, 2006. P.A. 94-0277 (eff. July 20, 2005) (amending 820 ILCS 305/8(a) (West 2004)).

For the foregoing reasons, we: reverse that portion of the circuit court's judgment which confirmed the Commission award to the claimant of $165,289.16 for reasonable and necessary medical expenses; affirm the circuit court's judgment in all other respects; vacate the Commission award to the claimant of $165,289.16 for reasonable and necessary medical expenses; and

remand this matter to the Commission with directions to award the claimant the amount actually paid to the providers of medical services rendered to him as a result of his injuries of June 30, 2005, and to require Tower to pay and hold the claimant harmless from the payment of any reasonable future medical expenses necessary to cure or relieve him from the effect of his accidental injury of June 30, 2005.

Circuit court affirmed in part and reversed in part, Commission's decision vacated in part, and cause remanded to the Commission with directions.

JUSTICE STEWART, concurring in part and dissenting in part.

I concur in all aspects of the majority decision except the determination that the collateral source rule does not apply to claims under the Workers' Compensation Act (Act). From that portion of the majority decision, I respectfully dissent.

Although the majority treats this as a matter of first impression, it is my belief that our supreme court has addressed this issue. In *Hill Freight Lines, Inc. v. Industrial Comm'n.*, 36 Ill. 2d 419, 223 N.E.2d 140 (1967), the claimant's medical bills had been paid through a Union Health and Welfare Fund which operated a medical and hospital benefit plan for its members. The employer argued that it should not be required to "reimburse an employee for medical bills which have never been tendered to him for payment and which are not shown to be his debts." *Hill Freight Lines, Inc.*, 36 Ill. 2d at 423, 223 N.E.2d at 143. The supreme

court held as follows:

> "It is our opinion that the reasonable value of the medical services rendered to an employee are recoverable against the party causing the injury, regardless of whether the employee pays for the medical services by cash, credit or some insurance or benefit plan. As he did not receive the insurance benefits gratuitously and the reasonable value of the medical and hospital services rendered herein were proven, the employer's contention is without merit." *Hill Freight Lines, Inc.*, 36 Ill. 2d at 423, 223 N.E.2d at 143.

Although the collateral source rule was not directly addressed, the principle espoused is the same. In a claim under the Act, the employee recovers "the reasonable value of the medical services rendered" regardless of whether the bills were paid through a third party insurance or benefit plan. Accordingly, this court has consistently applied a standard of reasonableness to determine the amount an employer is required to pay for medical expenses. *Nabisco Brands, Inc. v. Industrial Comm'n.*, 266 Ill. App. 3d 1103, 1108, 641 N.E.2d 578, 583 (1994). "The proper standard is that which is usual and customary for similar services in the community where the services were rendered." *Nabisco Brands, Inc.*, 266 Ill. App. 3d at 1108-09, 641 N.E.2d at 583.

As the majority notes, the version of section 8(a) of the Act in effect on the date of the claimant's industrial accident provided that "[t]he employer shall 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 necessary to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2004). I agree with the majority that it is our function to ascertain and give effect to the intent of the legislature. However, couching its decision in terms of statutory construction, the majority transforms a requirement that the employer pay its employees' medical bills incurred as a result of an industrial accident into a provision that only requires payment of whatever discounted amount the medical providers are required to accept through contractual agreements or, perhaps, government benefit plans. In my view, the majority misinterprets the statute.

The Act contains no provision which prevents the application of the collateral source rule to workers' compensation claims. Although the legislature has amended the Act on numerous occasions, it has not expressly restricted the application of the collateral source rule in claims under the Act, despite having done so in other areas. See 735 ILCS 5/2-1205 (West 2008). In determining legislative intent, "[a] court presumes that the legislature amends a statute with knowledge of judicial decisions interpreting the statute." *Hubble v. Bi-State Development Agency*, 238 Ill. 2d 262, 273, 938 N.E.2d 483, 492 (2010). Thus, the failure of the legislature to expressly restrict application of the collateral source rule, with presumptive knowledge of case law requiring that

an employer pay the reasonable value of medical services rendered to an employee in claims under the Act, indicates legislative acquiescence in the court's interpretation of the Act.

Further, as the majority points out, when section 8(a) was amended in 2005, the legislature expressly required that the employer pay the lesser of the health care provider's actual charges or the amount set forth in the fee schedule. 820 ILCS 305/8(a) (West 2006). No provision was made for a reduction of the amount billed to the amount paid to the medical provider through a third party health insurance contract. "In ascertaining legislative intent, courts may consider subsequent amendments to a statute." *City of East Peoria v. Group Five Development Co.*, 87 Ill. 2d 42, 46, 429 N.E.2d 492, 494 (1981). Finally, "in determining legislative intent, a court may properly consider not only the language of the statute, but also the purpose and necessity for the law, the evils sought to be remedied and the goals to be achieved, and the consequences that would result from construing the statute one way or the other." *Hubble*, 238 Ill. 2d at 268, 938 N.E.2d at 489. I believe the majority decision thwarts a fundamental policy consideration underlying the Act. One of the purposes of the Act is to ensure that " 'the burdens of caring for the casualties of industry should be borne by industry and not by the individual whose misfortune arises out of the industry, nor by the public.' " *Boyer-Rosene Moving Service v Industrial Comm'n.*, 48 Ill. 2d 184, 186, 268 N.E.2d 415, 417 (1971), quoting *Hoeffken*

Brothers, Inc., v. Industrial Comm'n., 31 Ill. 2d 405, 407-408, 202 N.E.2d 5, 6 (1964). In determining that the collateral source rule does not apply to workers' compensation cases, the majority allows employers to reap the benefit of bargains to which they were not parties, and thereby shift the burden of caring for the casualties of industry to others. Further, the majority provides an incentive for employers to deny claims in anticipation of receiving the benefit of a reduced charge negotiated by a third party.

Here, the employer refused to pay the claimant's medical bills, so he had no choice but to submit them for payment by his wife's group health insurance carrier. At the arbitration hearing, the employer did not object to the admission of the claimant's medical bills on the ground that they were unreasonable. Rather, the employer's objections were limited to liability, causal connection, and whether it should reap the benefits of the discounts provided the claimant's insurance carrier. I believe the Commission correctly ordered the employer to pay the full reasonable amount of the claimant's medical bills.

For the foregoing reasons, I would affirm in all respects the decision of the circuit court confirming the decision of the Commission.