

NOTICE  
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2010 IL App (2<sup>nd</sup>) 100923WC-U

No. 2-10-0923WC

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JOSEPH METALLO,

Appellant,

v.

ILLINOIS WORKERS'  
COMPENSATION COMMISSION,  
(Village of Lombard, *et al.*,

Appellees).

) Appeal from the  
) Circuit Court of  
) DuPage County.  
)  
) No. 09-MR-214  
)  
)  
) Honorable  
) Thomas C. Dudgeon,  
) Judge, presiding.

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

ORDER

¶ 1 *Held:* The Commission's decision, that the injuries the claimant received in an earlier off-duty motorcycle accident were not aggravated by a later work-related injury, is not against the manifest weight of the evidence. Additionally, the Commission's decision, that the claimant is not entitled to benefits under the Act for the medical bills he incurred as a result of his off-duty motorcycle accident, is not against the manifest weight of the evidence.

¶ 2 The claimant, Joseph Metallo, filed an application for adjustment of claim, which came before the arbitrator on a petition filed pursuant to section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/19(b) (West 2011)) for injuries to his right knee that occurred on September 13, 2006, when he worked as a police officer for the

Village of Lombard (the employer). The claimant asserted that all of the injuries to his right knee were caused or aggravated by his work-related accident, but the arbitrator determined that some of the injuries to his right knee were solely the result of a previous motorcycle accident that occurred on September 5, 2005, which the parties agree was not work-related. The Workers' Compensation Commission (the Commission) adopted and affirmed the arbitrator's decision, and the circuit court confirmed the Commission's decision. The claimant filed a timely appeal from the order of the circuit court.

¶ 3

### BACKGROUND

¶ 4 The evidence presented at the December 11, 2007, arbitration hearing is as follows. The claimant testified that he had been employed as a police officer for the Village of Lombard for about seven years, and that, for the three years before his September 13, 2006, work-related injury, he had been assigned to the DuPage County Metropolitan Enforcement Group (DuMeg) as an undercover narcotics enforcement officer. At the time of the hearing, he was working as an investigator for the Village of Lombard. Since the issues presented involve whether some of the claimant's injuries are related solely to a 2005 non-work-related motorcycle accident, we will first recount the circumstances of that accident and the medical treatment that followed.

¶ 5 On September 5, 2005, while the claimant was off-duty, he was involved in an accident while riding a motorcycle. The claimant testified that an automobile ran a stop sign and "T-boned" him, hitting him on the right side of his body and ejecting him from the motorcycle. In that accident, he received numerous injuries, including open right femur and tibia fractures, right femur and tibia wounds, and a degloving injury to the skin of his right knee. Dr. Steven Louis performed surgery to align the fractures during which he inserted metal rods into the tibia and the femur. The claimant testified that his knee felt unstable after the accident and that the instability continued after the surgery and his

return to work.

¶ 6 On January 13, 2006, Dr. Louis stated in a progress note that the claimant felt "great" and was beginning to jog. He noted that the claimant was ready to return to work even though his balance was bothering him and he needed additional physical therapy. The claimant returned to work on January 17, 2006. The claimant testified that he would not have returned to work if he had not been completely certain that he was able to do his job because he would never do anything to put himself or his team at risk. He explained that, when he returned to work after the motorcycle accident, his knee felt unstable and was painful during certain activities, but the instability and pain did not prevent him from doing his job or limit his ability to perform any of his job duties. He continued with physical therapy in order to gain more strength.

¶ 7 On April 26, 2006, the doctor who conducted the claimant's annual work physical reported that he was "currently fit to work as a police officer without restrictions."

¶ 8 On April 27, 2006, the claimant's physical therapist reported that his progress had been "limited by knee pain." Although he had achieved some of the goals of his therapy, he had not achieved the goal of reporting no limitations at work due to the injuries from his motorcycle accident.

¶ 9 On May 2, 2006, Dr. Louis examined the claimant and noted that he had "some complaints of right knee instability." Dr. Louis reported that the claimant felt that he could not trust his knee when he was working. At that time, the claimant was still in physical therapy, working to strengthen his quadriceps and hamstring. Dr. Louis stated that the physical therapist "questioned" whether the claimant "had a positive anterior drawer test" and requested Dr. Louis to check it out. On examination, Dr. Louis noted that the claimant had a "negative Lachman's but a positive anterior drawer and positive tibial sag sign." Dr. Louis stated that those results indicated a posterior cruciate ligament (PCL)

rupture but not an anterior cruciate ligament (ACL) rupture. Dr. Louis requested that the claimant continue his strengthening therapy and, if his knee still felt unstable in three months, he would order a magnetic resonance imaging (MRI) study. Dr. Louis noted that he planned to have the claimant consult with Dr. Steven Chudik "for PCL repair" along with removal of the rods in the claimant's tibia and femur. The claimant testified that, at that time, Dr. Louis suspected but did not know that his PCL was injured.

¶ 10 On August 18, 2006, the claimant returned to Dr. Louis. The progress notes from that visit indicate that the claimant's right knee was "still quite bothersome," that he felt "quite unstable" going up and down stairs and when "jumping in and out" of cars, and that he could not perform deep knee bends due to feeling unstable. The claimant testified that he felt the instability and pain had decreased and that he had improved since May 2006. Dr. Louis noted that the claimant was "working very hard on regaining his strength with physical therapy." On physical examination, Dr. Louis noted a "markedly positive posterior drawer sign" and a "positive sag sign with the tibia posterior to the femoral condyles." Dr. Louis referred the claimant to Dr. Chudik to evaluate his knee and discuss "possible surgical interventions," including PCL reconstruction.

¶ 11 The claimant testified that between his January 17, 2006, return to work and his September 13, 2006, work injury, he was able to run after fleeing suspects, jump fences, engage in physical combat with suspects, and otherwise perform all of the necessary functions of his job. Before the claimant could meet with Dr. Chudik, he was injured at work on September 13, 2006.

¶ 12 Dr. Chudik testified by evidence deposition that Dr. Louis referred the claimant to him in August 2006 but he did not actually examine the claimant until September 14, 2006, after his work-related injury. He also reviewed the claimant's records from the 2005 motorcycle accident. Dr. Chudik testified that, after Dr. Louis set the fractures, "it was

noticed" that the claimant had an injury to his PCL. From Dr. Chudik's review of Dr. Louis's notes and records, he believed the claimant injured his PCL in the 2005 motorcycle accident. The following colloquy indicates Dr. Chudik's opinion:

"Q. [Employer's attorney]: Are the causes of the tibia \*\*\* fracture and femur injuries the same causes of a PCL injury?

A. When you see a high energy – injury to the extremity like that, we see multiple fractures, some are just isolated femur fractures, sometimes it's not unusual to tear a ligament around the knee as well. So that can happen.

And it's hard to diagnose when you have – the whole leg is unstable. It's not likely to be diagnosed until later after those bones are stabilized, the patient's swelling has gone down enough, and then you can really examine the knee better. But when you – basically, you have a floating knee and breaks above and below the knee.

So the knee – to be able to – there's no way you can actually judge the stability until later like Dr. Louis did. So with the exam that he had, I would agree that probably the PCL was injured at the same time as the femur fracture and the tibia fracture."

¶ 13 Dr. Chudik specifically noted that, on May 2, 2006, Dr. Louis reported negative results on the Lachman's test but a positive anterior drawer test and a positive tibial sag. Dr. Chudik stated, "This indicates a PCL rupture, however, not an ACL rupture." Dr. Chudik noted that diagnosing a PCL rupture was not Dr. Louis's specialty, but "having examined Joseph Metallo much later, I believe he was accurate."

¶ 14 The claimant testified that, on September 13, 2006, he was working as a DuMeg agent assisting the Carol Stream police department in the execution of a high-risk search warrant. As he was running into the house, a suspect came at him from the side as if he

were trying to run out of the house. The claimant grabbed the suspect, but in doing so, his service weapon was knocked out of his hand. He struggled to control the suspect and retrieve his gun. During the struggle, his right knee hit the ceramic floor tile, and he "heard a pop." After the house was secured, the claimant was transported to the emergency room where his right leg was x-rayed and immobilized. He followed up with Dr. Chudik the next day. Dr. Chudik instructed him to remain off work, to use crutches when he walked, and to wear the knee immobilizer. He was in "a large amount of pain," and his knee was very swollen.

¶ 15 When Dr. Chudik examined the claimant on September 14, 2006, he concluded that the claimant "had experienced an acute injury to the knee." He ordered an MRI which was conducted on September 19, 2006. Dr. Chudik testified that the MRI was not very helpful due to the swelling and the rods creating "artifact." He stated that there was no evidence from the claimant's pre-September 13, 2006, medical records to indicate any medial or lateral meniscal tears. He agreed with the claimant's attorney that, when a person has a previously damaged PCL, a later injury to the menisci of the same knee is more likely to require surgery than if there had been no damage to the PCL. He agreed that the meniscal tears plus the PCL damage necessitated the claimant's later PCL reconstruction surgery.

¶ 16 However, on questioning from the employer's attorney, Dr. Chudik stated that whether the September 13, 2006, work injury caused the claimant to need PCL reconstruction surgery was a "difficult question to answer." He explained that the work injury "definitely contributed to" the need for PCL reconstruction surgery, and that his functional stability was worse after the September 13, 2006, work injury. Nevertheless, whether the claimant would have required the PCL surgery if he had not sustained the work injury was a question he could not answer. When asked again if the claimant injured his PCL in the September 2005 motorcycle accident, Dr. Chudik answered, "Yes."

¶ 17 Dr. Chudik testified that, on September 21, 2006, after reviewing the claimant's medical history and his account of the work-related accident, he concluded that the PCL injury occurred before the injuries he received on September 13, 2006, and that those injuries made the PCL instability worse. Dr. Chudik explained that, when the claimant hurt his knee on September 13, 2006, "there was damage to the secondary structures, the menisci, which play a much more important role in stability of the knee when one of the primary stabilizer ligaments of the knees are out. So whether it be the ACL or the PCL, if those are injured, and then you have further injury to your menisci and stuff, the knee usually becomes more unstable and has more troubles." He clarified that he did not believe the PCL damage was worse after the September 13, 2006, work injury but only that the function of the claimant's knee was worse because the secondary stabilization provided by the menisci was damaged.

¶ 18 On September 21, 2006, Dr. Chudik planned to try to treat all of the claimant's injuries "nonoperatively" if possible. He testified that he wanted the claimant to have physical therapy first because some people are able to achieve sufficient stability without PCL reconstruction. When Dr. Chudik examined the claimant on October 10, 2006, the claimant reported continued pain and instability. Dr. Chudik felt that the claimant's report of "some catching or popping and instability like episodes" might be due to meniscal damage. He recommended the claimant undergo right knee arthroscopy but not PCL surgery yet.

¶ 19 In a progress note dated October 10, 2006, Dr. Louis wrote, "If the [PCL] needs reconstruction down the line due to continued instability, then the femoral tibial rods need to be removed."

¶ 20 On October 30, 2006, Dr. Chudik performed a right knee arthroscopy, right knee medial and lateral meniscectomies, and a right knee arthroscopic excision of arthrofibrosis

and scarring tissue in the notch. Dr. Chudik's notes from that surgery indicate that the ACL was intact, the PCL was intact but with some abnormality, and "there was a tear of the posterior horn at the medial meniscus with partial thickness of the undersurface." He also found "tearing and damage to the lateral meniscus." During the same surgery, Dr. Louis removed the rods from the claimant's right tibia and femur. Dr. Chudik testified that it was his understanding that Dr. Louis planned to remove the metal rods before the September 13, 2006, work-related accident and that removal of the rods was not necessitated by that accident.

¶ 21 On December 28, 2006, Dr. Chudik examined the claimant and wrote that he had made good progress. Dr. Chudik planned for the claimant to continue physical therapy in order to rehabilitate his knee. Dr. Chudik would then determine if the claimant could return to work with "an isolated PCL deficiency." The claimant testified that, at that time, his knee was "very, very unstable." He was "unable to do many different types of exercises," and even with physical therapy, he could not do as much, his knee had gotten worse, and he could not return to work.

¶ 22 On February 20, 2007, Dr. Chudik wrote that the claimant had improved but continued to experience instability and weakness in his right leg. He requested that the claimant continue with physical therapy while he considered the possibility of a PCL reconstruction surgery in six weeks.

¶ 23 On March 28, 2007, at the request of the employer, Dr. Bernard R. Bach conducted an independent medical examination (IME) of the claimant. He testified in an evidence deposition that the instability in the claimant's right knee, as reported to Dr. Louis on August 18, 2006, was "more likely than not related to his PCL and/or his posterior/lateral corner injury." He also opined that he did not believe the instability that existed in the claimant's knee after the motorcycle accident was in any way exacerbated or aggravated

as a result of the September 13, 2006, work-related injury. In his written report, he stated that the claimant's complaints to Dr. Louis of instability in his knee before the work-related injury were "most likely" due to the PCL injury he sustained in the motorcycle accident. Dr. Bach wrote, "Certainly the injury to [the claimant's] right knee on 9/13/06 did not cause the PCL injury."

¶ 24 Dr. Bach testified that, in his opinion, the removal of the hardware from the claimant's tibia and femur was in no way related to the work-related damage to his menisci because he had never seen hardware causing a meniscal tear. He stated that he believed the rods were removed simply for convenience because the claimant was already under anesthesia for the meniscectomy.

¶ 25 Dr. Bach testified that the claimant's symptoms at the March 28, 2007, IME were related to the September 2005 motorcycle accident. He acknowledged, however, that traumatic injuries involving twisting which are superimposed upon a previously injured PCL can "possibly" be a competent cause of injury to a person's posterior/lateral corner. He concluded that the claimant had reached maximum medical improvement (MMI) by March 28, 2007, and could return to work but would need a functional capacity evaluation (FCE) in order to "determine what kind of restrictions he may or may not need." He admitted that, on March 28, 2007, he did not think that the claimant could return to work as a police officer. Dr. Chudik disagreed that the claimant had reached MMI by March 28, 2007. Dr. Bach testified that, on March 28, 2007, the claimant still needed to undergo a PCL reconstruction, but that surgery was unrelated, in his opinion, to the work injury. The claimant testified that the employer terminated his TTD benefits after Dr. Bach's IME.

¶ 26 On April 10, 2007, Dr. Chudik examined the claimant and wrote that he was "status post right medial partial meniscectomy on 10/30/06 and a PCL tear, which was noted prior to his work-related accident in September 2006, but it is re-aggravated as a result of the

work-related injury." Dr. Chudik found it "likely that this is worsened as a result of the injury at work." He recommended the claimant undergo PCL reconstruction surgery and stated as follows:

"HISTORY: He is status post tibia and femur fracture and a PCL injury from a motor vehicle accident with some PCL insufficiency, which was well documented by Dr. Louis. Then unfortunately he had a fall and a work-related injury and saw me subsequently. We treated him arthroscopically and then tried to treat his PCL conservatively. The patient reports that prior to this work-related injury and subsequent to the PCL injury with the fractures, he was able to function quite well. Now he is having persistent instability and giving way. He has not been able to return to running and activities, which are required for his job. He has now failed physical therapy. He has done [an] extended course of it, but he still has these complaints of instability and giving way of the knee and limitations.

PLAN: After a long discussion of the risks, benefits, goals, and alternatives, I think it is reasonable to proceed with a PCL reconstruction. From the history and the courses of action that occurred following, it appears that there was PCL injury prior to the work-related injury. However, the work-related injury seemed to exacerbate the instability of the knee. Either it may be partially injuring the PCL further or in some other way to exacerbate his instability that he has not been able to recover from. So, I think there is some significance related to that work-related injury with regards to his current state and symptoms with a definite causal relationship."

¶ 27 The claimant testified that, on April 10, 2007, he still had "many restrictions in doing all kinds of just normal activities, let alone police work." He told Dr. Chudik that he was in pain and had heightened instability. Dr. Chudik testified that it was not safe for the claimant to return to work until after his PCL reconstruction surgery. Dr. Chudik

explained that his determination, on April 10, 2007, that the claimant's work-related injury exacerbated the instability in his knee was based on "the further meniscal damage" and the fact that the claimant's "instability had worsened from before and after that injury." He clarified that the claimant's functional level was better before the work-related injury "and that was due to either stretching the PCL further or the damage to the meniscus or a combination thereof, all of which I think is hard to determine or quantify with any physical exams."

¶ 28 On June 15, 2007, Dr. Chudik performed a PCL reconstruction surgery on the claimant's right knee. Specifically, Dr. Chudik performed a "[r]ight knee arthroscopy, right knee arthroscopic assisted double bundle transtibial PCL reconstruction with an allograft anterior tib and autologous semitendinosus graft" and a "right knee open hamstring tendon harvest." The worker's compensation insurance carrier did not pay for that surgery.

¶ 29 Dr. Chudik examined the claimant on July 24, 2007. At that time, Dr. Chudik wrote that the claimant was doing well, was doing exercises at home, was wearing a brace, and was walking with crutches, but was not able to work. Dr. Chudik reported that, through September and October 2007, the claimant received physical therapy, and he was making progress until mid-November when "he started to develop this anterior medial pain and swelling." On November 27, 2007, Dr. Chudik issued a work status report that the claimant was unable to return to work and was still receiving physical therapy. The claimant testified that, on November 27, 2007, he was "struggling with running and walking fast, jogging and certain physical-therapy activities." He testified that he stopped receiving TTD benefits after March 31, 2007, and that he had an unpaid bill from the Rehabilitation Institute of Chicago for physical therapy services after the PCL reconstruction surgery totaling \$12,752.01.

¶ 30 The arbitrator awarded the claimant TTD benefits of \$876.37 per week for 29 6/7 weeks, from September 14, 2006, through April 10, 2007, "as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of [the claimant], the disabling condition is temporary and has not yet reached a permanent condition, pursuant to Section 19(b) of the Act." In support of this award, the arbitrator found that the damage to the claimant's PCL and the removal of the rods from his tibia and femur were not causally related to the September 13, 2006, work injury. The arbitrator found that, on May 2, 2006, Dr. Louis "diagnosed an indication of posterior cruciate ligament rupture," and that Dr. Chudik agreed with Dr. Louis's opinion. The arbitrator found that, "[o]n September 21, 2006, Dr. Chudik felt that [the claimant] suffered from a grade 1 posterior cruciate ligament injury which he felt was likely sustained at the time of the fractures." The arbitrator noted that Dr. Bach had opined that the need for PCL reconstructive surgery and removal of the rods in his tibia and femur were "not caused by or necessitated by the accident of September 13, 2006." The arbitrator concluded that "the meniscal damage to the right knee in the form of a repair of the medial and lateral menisci \*\*\* is causally related to the accidental injury of September 13, 2006, as evidenced by the testimony of Dr. Chudik and Dr. Bach, but that the surgical procedures performed to remove the metallic rods and for reconstruction of the posterior cruciate ligament are not related to this accidental injury."

¶ 31 Additionally, the arbitrator denied an award for the payment of the bill for \$12,752 for physical therapy at the Rehabilitation Institute of Chicago after July 2, 2007, because that therapy represented treatment for the PCL reconstruction, which the arbitrator found was not caused by or related to the claimant's work injury. The arbitrator found that the claimant's entitlement to TTD benefits ended on April 10, 2007, on the basis of Dr. Chudik's testimony that the claimant should have recovered sufficiently to return to work

on that date.

¶ 32 The Commission adopted the arbitrator's decision and affirmed it without modification. The circuit court confirmed the Commission's decision, and the claimant appealed to this court.

¶ 33

#### ANALYSIS

¶ 34 The claimant argues that he is entitled to an award of TTD benefits for the entire period of time between his September 13, 2006, work injury and the December 11, 2007, arbitration hearing, a period of 64 5/7 weeks. The Commission awarded the claimant 29 6/7 weeks of TTD benefits for the period of September 14, 2006, through April 10, 2007. The claimant argues that he is entitled to TTD benefits not only for the treatment of his injured menisci, but also for the removal of the rods in his tibia and femur and the reconstruction of his PCL. In support of this argument, the claimant asserts that "Dr. Chudik's opinions are more reliable" than those of Dr. Bach, the employer's expert.

¶ 35 Initially, we reject the claimant's argument that we should reverse the Commission's decision because Dr. Chudik's opinions are more reliable than Dr. Bach's opinions. "Interpretation of medical testimony is particularly within the province of the Commission." *Peabody Coal Co. v. Industrial Comm'n*, 355 Ill. App. 3d 879, 882, 823 N.E.2d 1107, 1111 (2005). Moreover, it is the Commission's province to judge the credibility of the witnesses, to draw reasonable inferences from the testimony, and to determine what weight to give each witness's testimony. *Setzekorn v. Industrial Comm'n*, 353 Ill. App. 3d 1049, 1055, 820 N.E.2d 586, 591 (2004). "Likewise, it is for the Commission to decide which of two conflicting opinions should be accepted." *Setzekorn*, 353 Ill. App. 3d at 1055, 820 N.E.2d at 592.

¶ 36 It is well established that, where a claimant has a preexisting condition, his recovery of worker's compensation benefits depends on his ability to show that a work-

related accidental injury aggravated or accelerated the preexisting condition such that his current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 204-05, 797 N.E.2d 665, 672 (2003). In the case at bar, the claimant suffered non-work-related injuries before he was injured at work. The Commission determined that the claimant's injuries from the motorcycle accident, the removal of the rods in his femur and tibia and the PCL reconstruction, both of which required surgical intervention after his work injury, were not causally related to the work injury but were solely the result of the earlier non-work-related motorcycle injury. In ruling out any causal connection to the work injury, the Commission had to find that it was in no way a causative factor. "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." (Emphasis in original.) *Sisbro, Inc.*, 207 Ill. 2d at 205, 797 N.E.2d at 673.

¶ 37 The evidence concerning the PCL damage and the subsequent PCL reconstruction is extensive but equivocal. The claimant argues that the Commission should have relied on Dr. Chudik's testimony in which he "explained in detail" how the meniscal tears sustained during the work injury compromised the knee's stability and worsened the preexisting instability from the earlier PCL damage to the same knee.

"Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the Industrial Commission. [Citations.] Further, a reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment

for that of the Commission unless the Commission's findings are against the manifest weight of the evidence. [Citations.] '[T]o the extent that the medical testimony might be construed as conflicting, it is well established that resolution of such conflicts falls within the province of the Commission, and its findings will not be reversed unless contrary to the manifest weight of the evidence.' " *Sisbro, Inc.*, 207 Ill. 2d at 205-06, 797 N.E.2d at 673, quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 37, 440 N.E.2d 861, 864-65 (1982).

¶ 38 In our case, Dr. Chudik testified that he thought the claimant probably injured his PCL in the motorcycle accident. He reviewed Dr. Louis's notes and agreed with his May 2, 2006, diagnosis of a PCL rupture. The evidence is undisputed that the PCL damage existed before the work injury on September 13, 2006. However, the evidence regarding how the PCL damage caused instability in the claimant's knee and whether and to what extent that instability was aggravated or made worse by the work injury is not so clear. Dr. Chudik testified that, although the claimant did not have confidence in his knee due to its instability, he was able to do his job before the September 13, 2006, work injury, but he was not able to go back to that job at any time thereafter. Dr. Chudik testified that the claimant had not reached MMI by August 24, 2007, the date of his evidence deposition, but Dr. Bach testified that he had reached MMI by March 28, 2007, for all of the injuries that occurred as a result of the 2006 work injury. Dr. Bach conceded that the claimant should have an FCE to determine the extent of his disability from the PCL reconstruction.

¶ 39 Dr. Chudik testified that the instability due to the PCL was made worse by the 2006 work injury and that the work injury "definitely contributed to" the claimant's need for PCL reconstruction surgery. He stated that the damage to the menisci and the PCL were not separate issues "when it comes to functional stability of the knee." He also testified that the damaged menisci "likely contributed" to the instability of the claimant's knee after

the meniscectomy and that the damage to the menisci, which acted as the secondary stabilizing structures, could have caused further mechanical instability of the knee. He testified that with a meniscal injury and excision, the instability of a person's knee will worsen. However, when asked if he disagreed with Dr. Bach's opinion that the PCL was not aggravated or injured as a result of the work-related incident, Dr. Chudik testified, "No. That may be true. That may be true that the PCL may not have – it itself may not have been stretched out further or not. It may have. I don't think he, nor I have any way of measuring that accurately." Dr. Chudik acknowledged that, in his office note of April 10, 2007, he wrote:

"[T]he work-related injury seemed to exacerbate the instability of the knee. Either it may be partially injuring the PCL further or in some other way such as to exacerbate his instability that he has not been able to recover from. So, I think there is some significance related to that work-related injury with regards to his current state and symptoms with a definite causal relationship."

¶ 40 Dr. Chudik testified that the increased instability "was worse and exacerbated by [the 2006 work] injury and that was due to either stretching the PCL further or the damage to the meniscus or a combination thereof, all of which I think is hard to determine or quantify with any physical exams." He testified that the claimant's decreased ability to function after the 2006 work injury could have been due to the meniscal tears. He also testified that the 2006 work injury contributed to the PCL instability by injuring the meniscus, but said that it might or might not have caused further injury to the PCL because no one can answer that question "100 percent." He agreed that whether the PCL reconstruction would have been necessary without the work-related damage to his menisci would be speculation and that the instability of the claimant's knee after the 2006 work injury was a function of both the meniscal and PCL injuries. Finally, Dr. Chudik agreed

with the claimant's attorney that the claimant's time off work after the 2006 work injury was causally related to the work injury.

¶41 Dr. Bach testified that the claimant's PCL injury was related to the 2005 motorcycle accident and unrelated to the 2006 work injury. He testified that the instability in the claimant's knee as reported on August 18, 2006, to Dr. Louis was not exacerbated or aggravated as a result of the September 13, 2006, work injury. He further testified that all of the claimant's symptoms at the time of his March 28, 2007, exam were related to the injuries sustained in the motorcycle accident.

¶42 The evidence is sufficient to support the Commission's finding that the 2006 work injury did not aggravate or exacerbate the claimant's preexisting PCL injury. Although Dr. Chudik testified that the instability the claimant experienced in his knee was made worse by the work injury, he expressed significant uncertainty in that opinion. Dr. Bach unequivocally expressed his opinion that the claimant's 2005 injuries and resulting knee instability were in no way related to or aggravated by the 2006 work injury. Since there was conflicting evidence on the issue of aggravation of the preexisting injury, the resolution of that conflict was the Commission's responsibility. *Sisbro, Inc.*, 207 Ill. 2d at 206, 797 N.E.2d at 673. An employer's liability for worker's compensation benefits cannot rest on speculation or conjecture but must arise out of facts established by a preponderance of the evidence. *Palos Electric Co. v. Industrial Comm'n*, 314 Ill. App. 3d 920, 926, 732 N.E.2d 603, 609 (2000). The Commission was not precluded from relying on Dr. Chudik's equivocal opinion. See *Piasa Motor Fuels v. Industrial Comm'n*, 368 Ill. App. 3d 1197, 1206, 858 N.E.2d 946, 954 (2006) ("even if one medical witness is equivocal about causation, it is for the Commission to determine which medical opinion is to be accepted"). Nevertheless, we cannot say that the Commission's decision is contrary to the manifest weight of the evidence because the opposite conclusion is not

clearly evident, and the plain and indisputable weight of the evidence does not compel an opposite conclusion. See *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741-42, 640 N.E.2d 1, 3 (1994).

¶ 43 The Commission also denied benefits for the removal of the metal rods by Dr. Louis during the meniscectomy performed by Dr. Chudik. The Commission granted the claimant benefits for the meniscectomy, and the employer did not challenge that decision. The evidence concerning the reason for the removal of the hardware supports the Commission's decision. On May 2, 2006, before the claimant's work injury, Dr. Louis wrote that he planned to have the claimant consult with Dr. Chudik regarding the need for PCL repair during which Dr. Louis would also remove the tibial and femoral rods. On October 10, 2006, Dr. Louis wrote that the femoral and tibial rods would need to be removed if the claimant's PCL needed reconstruction "down the road." Dr. Bach expressed the opinion that the removal of the rods was "totally unrelated" to the injury to the claimant's menisci and that "the reason for removing the hardware was basically the convenience of having a patient under an anaesthetic." The claimant cites no other evidence to show that his work injury was a causative factor in the need for the hardware to be removed. Since we find support for the Commission's denial of benefits related to the PCL reconstruction, we also affirm the denial of benefits related to the removal of the rods from the claimant's tibia and femur.

¶ 44 The claimant's next argument is related to his first argument. He argues that he is entitled to an award of \$12,752 for his treatment at the Rehabilitation Institute of Chicago after the PCL reconstruction surgery, from July 2, 2007, until the arbitration hearing, as well as for prospective medical costs which are causally connected to the PCL reconstruction. However, the claimant does not argue any basis for this award other than his arguments pertaining to the previous issue. Therefore, since we have rejected his first

argument, we likewise reject this argument.

¶ 45

## CONCLUSION

¶ 46 We affirm the decision of the circuit court confirming the decision of the Commission and remand this cause to the Commission for further proceedings in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 47 Affirmed and remanded.

¶ 48 JUSTICE HOFFMAN, concurring in part and dissenting in part.

¶ 49 I concur in that portion of the majority's order affirming the circuit court's confirmation of the Commission's refusal to award the claimant any recovery for the expenses he incurred for posterior cruciate ligament (PCL) reconstruction surgery and for physical therapy conducted at the Rehabilitation Institute of Chicago after July 2, 2007. Employees are only entitled to recover under section 8(a) of the Workers' Compensation Act (820 ILCS 305/8(a) (West 2006)) for those medical expenses which are both reasonable and causally related to an injury arising out of and in the course their employment. *Zarley v. Industrial Comm'n*, 84 Ill. 2d 380, 389, 418 N.E.2d 717 (1981); *Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill. App. 3d 758, 764, 753 N.E.2d 1132 (2001). Whether medical treatment is causally related to a compensable injury is a question of fact to be resolved by the Commission, and its finding on the issue will not be disturbed on review unless contrary to the manifest weight of the evidence. *Zarley*, 84 Ill. 2d at 389-90; *Elmhurst Memorial Hospital*, 323 Ill. App. 3d at 764-65.

¶ 50 It is the function of the Commission to decide questions of fact and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial*

*Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992). In determining whether a factual finding of the Commission is against the manifest weight of the evidence, the test is not whether this court might have reached the same result, but 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).

¶ 51 The testimony of Dr. Bach, as noted by the majority, provides more than a sufficient basis for the Commission's refusal to award the claimant any recovery for the expenses he incurred for the PCL reconstruction surgery and for the physical therapy he underwent at the Rehabilitation Institute of Chicago after July 2, 2007.

¶ 52 For the reasons which follow, however, I disagree with the majority's affirmance of that part of the circuit court's order which confirmed the Commission's refusal to award the claimant temporary total disability (TTD) benefits for the period from April 11, 2007, through the date of the arbitration hearing on December 11, 2007. The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d 107, 119-120, 561 N.E.2d 623 (1990). I believe that the Commission's resolution of the issue in this case is indeed against the manifest weight of the evidence.

¶ 53 Certain of the facts relevant to a resolution of this case are undisputed; namely that: the claimant sustained numerous injuries, including a PCL rupture to his right knee, as the result of a non-work related motorcycle accident on September 5, 2005 (motorcycle accident); following the motorcycle accident the claimant returned to work for the Village of Lombard (Lombard) as a police officer on January 17, 2006; from his return to work through September 13, 2006, the claimant was able to perform the functions of a police officer; on September 13, 2006, while attempting to apprehend a suspect, the claimant's

right knee hit a ceramic floor tile, resulting in an injury to his knee; both Dr. Bach, Lombard's examining expert, and Dr. Chudik, the claimant's treating physician, opined, and the Commission found, that, as a result of his work-related accident, the claimant suffered damage to the lateral and medial menisci of his right knee; on September 14, 2006, Dr. Chudik instructed the claimant to remain off of work; Dr. Bach opined that, as of March 27, 2007, the claimant was unable to return to work as a police officer; on November, 27, 2007, Dr. Chudik issued a note stating that the claimant was unable to return to work; and the claimant never returned to work from the time of his injury on September 13, 2006, through the date of the arbitration hearing on December 11, 2007.

¶54 Dr. Chudik opined that the claimant's work-related accident of September 13, 2006, resulted in either a stretching of the PCL in the claimant's right knee or damage to the meniscus or a combination thereof. As a consequence, according to Dr. Chudik, the instability of the claimant's right knee "worsened from before \*\*\* that injury." In contrast, Dr. Bach opined that the sole injury the claimant suffered to his right knee as a result of his work-related accident was damage to the lateral and medial menisci. He was of a belief that the instability that existed in the claimant's right knee after his motorcycle accident was not exacerbated or aggravated as a result of the claimant's work-related injury on September 13, 2006. Dr. Bach reasoned that the instability in the claimant's right knee was due to the PCL injury which was caused by the motorcycle accident, not the claimant's work-related accident of September 13, 2006.

¶55 It was the Commission's function to resolve the conflict between Dr. Bach's opinion and that of Dr. Chudik concerning the injury that the claimant sustained to his right knee as a result of his work-related accident. See *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). The Commission found that the claimant's work injury caused damage to the lateral and medial menisci of his right knee. It appears to

have adopted Dr. Bach's opinion that the claimant's PCL injury was sustained as a result of his motorcycle accident and not the claimant's work-related accident. Clearly, the Commission's determination as to the nature of the injury which the claimant sustained on September 13, 2006, is not against the manifest weight of the evidence. The Commission's finding in this regard, however, does not resolve the question of the claimant's entitlement to TTD benefits for any period subsequent to April 10, 2007.

¶ 56 A claimant is temporarily and totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d at 118. Once an injured claimant has reached maximum medical improvement (MMI), he is no longer eligible for TTD benefits. *Archer Daniels Midland*, 138 Ill. 2d at 118; *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072, 820 N.E.2d 570 (2004).

¶ 57 The Commission found that the claimant was entitled to TTD benefits for the 29 6/7 week period from September 14, 2006, through April 10, 2007, and denied him any TTD benefits for the period subsequent to April 10, 2007. Although Dr. Bach opined that the claimant had reached MMI as of March 28, 2007, the Commission obviously rejected his opinion in this regard as it awarded the claimant TTD benefits for a period of time subsequent to March 28, 2007. See *Archer Daniels Midland*, 138 Ill. 2d at 118. The Commission appears to have terminated the claimant's right to TTD benefits as of April 10, 2007, because Dr. Chudik testified that the claimant should have recovered sufficiently to return to work on that date. However, Dr. Chudik issued a note on November 27, 2007, stating that the claimant was unable to return to work, and Dr. Bach opined that, as of March 27, 2007, the claimant was unable to return to work as a police officer. In addition, the record clearly establishes that some damage caused to the claimant's right knee as a

result of his work-related accident on September 13, 2006, created a condition of instability greater than that which existed before the incident and which prevented him functioning as a police officer subsequent to that date.

¶ 58 When, as in this case, there exists a chain of events demonstrating a previous physical condition and an accident resulting in a disabling injury, an inference may be drawn that a causal nexus exists between the accident and claimant's condition of ill being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908 (1982). Prior to September 13, 2006, the claimant in this case had sustained a PCL injury to his right knee as a result of a motorcycle accident; and, although he experienced some level of instability in that knee, the claimant was, nevertheless, capable of performing his duties as a police officer. As a result of his work related accident on September 13, 2006, the claimant suffered damage to the lateral and medial menisci of his right knee. He testified that subsequent to his work-related accident his right knee was so unstable that he was unable to perform his police duties and that the instability continued to that degree through the date of the arbitration hearing. Both Dr. Bach and Dr. Chudik opined that the claimant was incapable of returning to work as a police officer. Dr. Bach opined that the instability in the claimant's right knee was due solely to the PCL injury the claimant sustained as a result of his motorcycle accident and that the knee's instability was not aggravated or exacerbated as a result of the claimant's work-related accident. However, Dr. Bach's opinion in this regard is belied by the chain of events and the point in time when the instability in the claimant's right knee rose to a level which prevented him from performing his duties as a police officer.

¶ 59 “[E]ven though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor.” *Sisbro, Inc. v.*

*Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665 (2003). The employees work-related accident need not be the sole cause, nor even the primary cause, of his condition of ill-being, so long as it is a cause. *Sisbro, Inc.*, 207 Ill. 2d at 205. In this case, I believe that the chain of events establishes without question that the instability in the claimant's right knee which prevents him from functioning as a police officer was caused, at least in part, by his work-related accident of September 13, 2006. Further, I do not believe that at any evidence in the record, save the rejected opinion of Dr. Bach, supports a conclusion that the claimant had reached MMI prior to the date of the arbitration hearing. The claimant's right knee was stable enough for him to function as a police officer prior to September 13, 2006, his pre-existing PCL injury notwithstanding, and subsequent to that date it was not. He underwent a partial meniscectomy on October 30, 2006, but following that surgery his right knee was too unstable to allow him to perform the duties of a police officer. He underwent PCL reconstruction surgery on June 15, 2007, but following that operation, the claimant's right knee still remained too unstable to allow him to perform the duties of a police officer. As late as November 27, 2007, Dr. Chudik continued the claimant on an off-work status. Finally, when he testified at the arbitration hearing on December 11, 2007, the claimant stated that the instability in his knee prevented him from functioning as a police officer.

¶ 60 For these reasons, I would reverse that part of the circuit court's order which confirmed the Commission's refusal to award the claimant TTD benefits for the period from April 11, 2007, through the date of the arbitration hearing on December 11, 2007, and remand this matter to the Commission with directions to award the claimant TTD benefits for the 64 5/7 week period from September 14, 2006, through December 11, 2007, and to conduct further proceedings in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).