

NOTICE

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2011 IL App (1st) 1101163WC-U

Workers' Compensation
Commission Division
Filed: October 31, 2011

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

1-10-1163WC

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ROXANNE TIDEMANN,)	Appeal from the Circuit Court
)	of Cook County, Illinois
Appellant,)	
)	Appeal No. 1-10-1163
v.)	Circuit No. 09-L-50491
)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Homes By Hemphill,)	Sanjay T. Tailor,
Appellee).)	Judge, Presiding.

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

ORDER

1. Held: The Commission's finding that the claimant failed to prove that the current condition of ill-being of her left hip, right and left feet, rheumatoid arthritis and nose were causally related to a work-related accident was not against the manifest weight of the evidence. In addition, the Commission did not err in its award of TTD and PPD benefits.

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2. The claimant, Roxanne Tidemann, filed an application for adjustment of claim against her employer, Homes By Hemphill, pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/19(b) (West 1988)). The claimant sought benefits for injuries to her nose, left hip, right and left feet, and rheumatoid arthritis of the back and legs alleged to have occurred on July 14, 1989. Following a hearing before the arbitrator, conducted on July 13, 1999, April 14, 2006, July 14, 2006, August 29, 2006, and September 15, 2006, the arbitrator issued a decision finding that the claimant sustained accidental injuries arising out of and in the course of her employment and awarding temporary total disability (TTD) benefits for a period of 541 5/7th weeks (July 14, 1989, through December 13, 1999), and reasonable medical expenses of \$310,035.14. The arbitrator also found that the claimant was entitled to permanent total disability (PTD) benefits effective December 14, 1999, pursuant to section 8(f) of the Act. 820 ILCS 305/8(f) (West 1988). The employer filed a petition for review with the Illinois Workers' Compensation Commission (Commission). The Commission modified the arbitrator's decision, finding that the claimant suffered injuries arising out of and in the course of her employment on July 14, 1989, only as to her right shoulder, right wrist, and fracture of the nose. The Commission awarded TTD benefits for a period of 27 4/7th weeks (July 15, 1989, to January 22, 1990), and medical expenses of \$135,185.28. The Commission vacated the PTD award and entered an award of permanent partial disability (PPD) benefits equal to 20% of the person as a whole under section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 1988)), and 20% loss of use of the right hand, and 50% loss of use of the right arm under section 8(e) of the Act. 820 ILCS 305/8(e) (West 1988). The claimant appealed to the Cook County circuit court, which confirmed the Commission's decision. The claimant now brings this appeal, claiming that the Commission erred in failing to adopt the arbitrator's decision in total and seeking reinstatement of the arbitrator's award.

3.

FACTS

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4. On July 14, 1989, the claimant was working for the employer as an area sales manager. She had worked for the employer in that capacity since only since June 1, 1989. Prior to that time, the claimant worked in real estate since 1984 when she went to work for Laukka Development. She then worked as an area sales manager for Healy-Ramme from 1985 through 1986. After Healy-Ramme, she went to work for Hemphill Northern until February 1988. She then worked for Lundgren Brothers, again as a sales manager until November 1988. From January 1989 until May 1989, she worked for Homex. All these jobs took place in Minnesota. After accepting employment with the employer, the claimant moved to the Chicago area.

5. In order to show prospective buyers the model homes, the employer provided the claimant with a golf cart. According to the claimant's testimony, on July 14, 1989, around 3 p.m., she got into the golf cart, started the motor, and put the gearshift into reverse. The cart would not move, so she put the gearshift back into neutral. At that time, the cart crashed into a garage door. The claimant testified that, after hitting the garage door, everything went black. The next thing she remembered was that her right shoulder was next to her right cheek, and she was in incredible pain with blood was running down her face. The record showed that the claimant was taken by ambulance to Sherman Hospital, where she was given intravenous pain medication. The immediate diagnosis was a dislocated shoulder.

6. The claimant's orthopedic surgeon, Dr. Bruce Sundberg, was contacted in Minneapolis. The claimant had been treating with Dr. Sundberg since 1981. The claimant had also had been treating with a rheumatologist, Dr. Walter Dorman, since she was 19 years old and had been diagnosed with rheumatoid arthritis of the hips in February 1971. Because of the deterioration of her hips, the claimant had undergone bilateral hip replacement by Dr. Sundberg in 1981. She had a revision of the right hip in December 1985. The claimant also testified that she was involved in a prior automobile accident in August 1988. As a result of that accident, she suffered left neck injuries, right hip bursa, low back pain, and headaches. She was treated by Dr.

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Joseph Engel and Dr. Walter Dorman. After seeing Dr. Goldstein, the claimant returned home to treat with Drs. Sundberg and Dorman.

7. The claimant further testified that prior to working in real estate, she had received Social Security disability benefits from 1975 until 1995. The Social Security benefits were eventually reinstated. The claimant was sent a letter where she was informed that if she did not return to work, she would be terminated. She testified that Dr. Sundberg never issued a return to work order. Instead she returned to see Dr. Walter Dorman on August 22, 1989, who continued to treat her arthritic condition. Dr. Sundberg later referred the claimant to Dr. Susan Minette, a neurologist, for her right shoulder. At the time of the hearing, the claimant was still receiving treatment from all three doctors.

8. The claimant also testified that she noticed pain and numbness in her right hand and right foot after the golf cart accident. In addition, she also began experiencing flare-ups from her rheumatoid arthritis immediately after the accident. She also noticed pain and numbness in her right hand and right foot. She also was experiencing flare-ups from her rheumatoid arthritis since the July 14, 1989, injury. She was taken off work by Dr. Minette.

9. On April 3, 1990, the claimant had an MRI of the right shoulder. The record indicated that the shoulder was weak and was making grinding noises. The claimant reported pain radiating down her arm with numbness in three fingers. At the time, she was receiving injections and attending physical therapy. The claimant testified that she began physical therapy in the fall of 1989, under orders of Dr. Walter Dorman, who was her main physician and was coordinating her care at that time.

10. On December 6, 1990, Dr. Sundberg discussed surgery to her right shoulder. The claimant also reported difficulty standing on her right leg. She continued to treat with Dr. Dorman and Sundberg throughout 1990 and 1991.

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11. In early 1991, the claimant applied for work and received a job offer from Brando and Pasquinelli. The claimant attempted to work but became extremely fatigued, and her arthritis problems increased. She also testified that she was awaiting shoulder surgery at that time. She then returned to Dr. Dorman on April 1, 1991. Dr. Dorman later testified that he believed the claimant had been unable to work since this July 14, 1989, injury.

12. In early 1992, the claimant began experiencing severe pain in her right hip. She underwent a total right hip replacement on May 15, 1992. On February 26, 1993, Dr. Sundberg prescribed surgery to her right shoulder and referred her to Dr. Gary Pattee.

13. On March 18, 1993, the claimant underwent an arthroscopic debridement of ligament tears, rotator cuff tears, and subachromial decompression. Following that surgical procedure, the claimant began a new course of physical therapy.

14. On September 8, 1993, Dr. Sundberg performed surgery on the claimant's right foot. On October 5, 1993, Dr. Pattee prescribed a follow-up surgery to the claimant's right shoulder, which was performed on January 10, 1994. At approximately the same time, the claimant also received an injection to her right wrist. After the second surgery to her shoulder, the claimant again began physical therapy.

15. On May 2, 1995, the claimant had a third surgery to her right arm. However, following this surgery, the right arm continued to be weak, and she reported experiencing radiating pain.

16. On June 30, 1995, the claimant was walking down stairs at a shopping mall. She experienced a shot of pain in her arm, tried to grab hold of something, and fell down a few stairs, landing on her hands and knees. She reported pain in her left foot, left knee, low back and right shoulder. She then sought treatment from Dr. Sundberg, who discussed surgery to her left hip. On January 9, 1996, Dr. Sundberg performed surgery on the claimant's left hip. On April 3, 1996, a surgical procedure was performed on her right foot. On February 5, 1997, a follow-up

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surgery was performed on her left hip. In April 1996, Dr. Sundberg retired, and his colleague, Dr. Rodney Peterson, took over the claimant's care.

17. In February 1997, Dr. Dorman prescribed silver ring splints for the claimant's right hand. At the time, the claimant was also treating with Dr. Gryskiewicz for the injury to her nose. The claimant testified that she continued to treat with Dr. Dorman.

18. Dr. McGarvey performed right foot surgery on April 13, 2000, with a follow-up repair on June 21, 2000. After falling down the stairs on June 30, 2005, the claimant continued to experience back pain. Throughout 2001 and 2002, the claimant continued to treat with Drs. Peterson and Dorman.

19. On July 5, 2002, Dr. Dorman noted increased pain and swelling in the claimant's hands, joints, and wrists. He discussed with the claimant a new course of treatment known as Remicade infusions. On October 21, 2002, the claimant had an extensive discussion with Dr. Peterson, who prescribed additional surgery to the right wrist and right distal ulnar.

20. On January 29, 2003, Dr. Dorman instructed the claimant to apply for Remicade infusions. The claimant began the infusions and received one approximately every five weeks. The claimant continued to complain of bilateral hip pain during this treatment.

21. On January 15, 2004, the claimant was referred by Dr. Peterson to Dr. Jay Johnson at Capital Orthopedics. She was examined by Dr. Johnson on February 27, 2004. The claimant testified that she was treating with Dr. Johnson for increased bilateral hip pain and increased back pain. Dr. Johnson ordered an MRI of the lumbar region, which was performed on August 19, 2004.

22. At this time, the claimant was also being treated by Dr. Miles Belgrade for her chronic pain. Dr. Susan Minette had referred the claimant to Dr. Belgrade for pain management. The claimant was initially examined by Dr. Belgrade on April 24, 2002, who noted a history of pain

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that commenced with the injury on July 14, 1989. Dr. Belgrade administered trigger point injections that continued through the last hearing date. At the time of hearing, the claimant also continued to treat with Drs. Minette, Johnson, and Dorman.

23. The claimant testified at length as to the effects of the injury at work on July 14, 1989. Prior to the accident, she claimed to be independent and self-reliant. She was not only able to work full time in a real estate sales position which required extensive hours, physical activity, and energy; but she also had a full and active life after work hours. Since the accident, she testified that she experiences debilitating pain on a constant basis, not only throughout the day but also at night. Prior to this injury, she claimed, it was not unusual for her to work six to seven days a week. Since the accident, she is in constant pain and always has a fear of falling, which causes her to move slowly and in a very measured pace. Prior to the injury, she maintained a full work schedule and was able to maintain a home. She testified that she is unable to do that since the accident. She experiences pain throughout her whole body on a daily basis.

24. Her fiancée, Carter Hanson, testified at length as to the effect this injury has had on the claimant. Hanson, who knew the claimant for years prior to this injury and has remained with the claimant since the injury, testified to the claimant's debilitating condition since the accident.

25. Dr. Dorman testified by way of deposition. He stated that he was board certified in rheumatology and internal medicine, that he is in private practice, and his practice consists of treating patients with arthritis. Dr. Dorman testified that he had been treating the claimant for rheumatoid arthritis in August 1978. During the course of this treatment, the claimant underwent bilateral hip replacement in 1981 and a revision of her right hip in December 1985. Dr. Dorman further testified that the claimant came to his office on August 22, 1989, and gave a history of being injured while driving a golf cart on July 14, 1989, when she drove through a garage door. She sustained a broken nose and dislocated right shoulder. At that time, she was

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under the care of Dr. Bruce Sundberg and was receiving therapy two times a week. She was also on several medications to suppress her rheumatoid arthritis. She was having pain in her shoulder, her hand, and her foot.

26. The claimant also reported to Dr. Dorman that she was experiencing flare-ups of her arthritis with a fluctuation of the level of pain and swelling in the individual joints. She also reported treating with a neurologist, Dr. Susan Minette. The claimant further reported to Dr. Dorman complaints of chronic postnasal discharge and production of large amounts of phlegm since the accident. Dr. Dorman also testified that on May 16, 1990, the claimant was still experiencing a marked flare-up of rheumatoid arthritis and swelling from the hand and wrist. She reported difficulty flexing and extending the fingers on both hands and was having difficulty driving and doing her normal activities of daily living.

27. Dr. Dorman testified that the claimant had reported no pain in her right shoulder prior to the work-related injury in Chicago; and he opined, therefore, that her current reports of right shoulder pain were causally related to the accident. He further reported that, on July 2, 1990, the claimant was still reporting flare-ups of her arthritis, particularly in her right wrist, which had been damaged in the accident. He ordered her arthritis medication increased. He also testified that the claimant reported that, for many days at a time, she would be housebound due to her pain and stiffness. On August 14, 1990, Dr. Dorman switched the claimant to Methotrexate which is a cancer chemotherapy that is used in small to medium doses once a week to treat patients with rheumatoid arthritis. Methotrexate is indicated, according to Dr. Dorman, when the arthritis is active and not responding to other agents that have been previously used.

28. Dr. Dorman opined that the accident on July 14, 1989, aggravated and accelerated the claimant's rheumatoid arthritis. This opinion was based primarily upon the observation that the level of arthritic symptoms increased dramatically following the incident. It was also Dr.

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Dorman's opinion that the claimant was totally disabled as a result of the accident and she would be unable to work at all in the future.

29. Dr. Rodney Peterson also testified by way of deposition. Dr. Peterson is an orthopedic surgeon who is also an assistant clinical professor at the University of Minnesota. His practice consists of diagnoses and treatment of injuries of the low back and upper and lower extremities. Dr. Peterson took over the claimant's care on September 17, 1996, following the retirement of Dr. Sundberg. When Dr. Peterson took over the claimant's care, he was aware of her prior treatments and surgeries. He initially treated the claimant for difficulties with her left hip. He prescribed surgery to her left hip which took place on February 5, 1997. The claimant reported continued complaints of pain in her back, and Dr. Peterson prescribed a repeat lumbar MRI because of possible disc herniation.

30. In January 1998, the claimant's main problems reported to Dr. Peterson were back pain and pain in her left leg, right ankle, and right shoulder. An MRI revealed an annular tear at L5-S1 interspace on the left with no disc herniation. Dr. Peterson testified that he was familiar with the records that had been generated through his orthopedic group concerning the care and treatment of the claimant. Besides being familiar with the claimant's records, Dr. Peterson also testified by way of an extensive hypothetical.

31. Dr. Peterson diagnosed the claimant with ongoing rheumatoid arthritis aggravation of the shoulder secondary to the injury she sustained on July 14, 1989. He further noted that the shoulder surgeries performed to the right shoulder were related to the injury of July 14, 1989, and that she has permanent limitations regarding her right shoulder. He also opined that the claimant was capable of no more than sedentary work as a result of the injury. He further opined that the work injury had aggravated her left hip. Additionally, Dr. Peterson also opined

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that the claimant's fall at the shopping center on June 30, 1995, was a result of her shoulder surgery on May 2, 1995, which caused her to lose her grip.

32. The neurologist, Dr. Susan Minette, also testified by way of deposition. Dr. Minette's treatment commenced on October 18, 1989. The claimant was referred by Dr. Sundberg. Dr. Minette ordered a work-up and physical therapy because the claimant continued to have right arm pain and right arm weakness. Dr. Minette testified that, as a result of her injury, the claimant suffered a right brachial plexus injury. Dr. Minette further testified that the claimant's condition was a chronic problem that would be ongoing. According to Dr. Minette, the claimant would also have permanent restrictions and would not be able to do any heavy lifting or reaching with the right arm and that this condition is permanent.

33. Dr. Joseph Gryskiewicz, who is a board certified plastic surgeon, also testified by way of deposition. Dr. Gryskiewicz testified that the claimant sustained a broken nose when a golf cart ran into a garage door. This broken nose was repaired by Dr. Thomas Christensen. After the accident, she developed drainage in the back of her throat and tenderness over the bridge of her nose. Dr. Gryskiewicz then recommended a rhinoplasty. He testified that, as a result of the claimant's work injury, she had a nasal fracture, septal deviation, and nasal contour deformity which were a result of her work injury. He further found that she had a septal perforation which was aggravated by the accident.

34. The arbitrator, relying primarily upon the testimony of the claimant and the medical opinion testimony of the treating physicians, determined that the claimant's current condition of ill-being at the time of the hearing was causally related to the July 14, 1998, accident.

35. The Commission did not agree with the arbitrator. The Commission, after considering the entire record, reversed the arbitrator's decision and found that the claimant sustained accidental injuries arising out of and in the course of her employment with the employer, failing,

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however, to prove a causal connection between her work-related injuries of July 14, 1989, and her current condition of ill-being with respect to her nose, left hip, right and left feet, and rheumatoid arthritis.

36. The Commission noted that the initial medical records document injuries to the claimant's nose, right shoulder, and right wrist/hand following the accident. On the date of injury, initial medical care was rendered at Sherman Hospital, at which time the claimant reported that, while driving a golf cart at work, she hit a garage door and, in the process, hit the bridge of her nose and the top of her right shoulder. The Commission noted that the claimant's immediate complaints were of marked pain in her right shoulder, slight numbness in her right hand, and a laceration on the bridge of her nose. X-rays of her nasal bone indicated a non-displaced fracture through the nasal bone and cartilage, which was subsequently reset. X-rays of the right shoulder revealed a dislocation of the shoulder and avulsion fracture of the humeral head. The Commission noted that the claimant's treatment in the months following the accident were limited to her right shoulder, right wrist, and right hand.

37. The Commission further noted that there was no dispute that the claimant suffered from a longstanding history of rheumatoid arthritis dating back to August 1978. The medical records documented that the claimant suffered from frequent flare-ups of symptoms and that she underwent bilateral hip replacements in 1981 following her diagnosis of bilateral hip rheumatoid degenerative disease. The Commission also noted Dr. Peterson's opinion that the golf cart accident may have aggravated the left hip, as he mentioned the claimant reporting during her first or second office visit that something felt different in her left hip following the accident. However, the Commission also noted that he admitted his causality statement was based upon a single entry by Dr. Sundberg, on July 19, 1989, as to the claimant feeling something different with her left hip. Dr. Peterson further admitted, in offering this causal connection opinion regarding the claimant's left hip, that: (1) he did not review the initial treating records from the

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emergency room; (2) the claimant had minimal treatment between 1989 and 1997; (3) the first treatment to her left hip after 1989 was a diagnostic bone scan performed on August 17, 1995; (4) the bone scan findings could be attributed solely to the claimant's rheumatoid arthritis; and (5) the claimant did not have any surgery to her left hip until 1997.

38. The Commission also noted that Dr. Peterson had initially opined that the claimant's May 2, 1995, right shoulder surgery may have been the cause of the pain she reported feeling on June 30, 2005, which, in turn, was reported to have caused her fall down the stairs. Further, the June 30, 2005, fall the claimant had down the stairs could have caused some irritation in her left hip. However, Dr. Peterson admitted the office notes from July 6, 1995, and July 9, 1995, the two office visits immediately following the fall, only mentioned the claimant tripped, resulting in injury to her foot/ankle and did not contain any mention of right arm pain causing her to fall down the stairs. The Commission also pointed out that Dr. Peterson admitted that his opinions rendered in July 1999 were related primarily to the claimant's fall down the stairs at the shopping mall.

39. The Commission also noted that although Dr. Dorman, the treating rheumatologist, testified at his deposition that the claimant's rheumatoid arthritis had been reasonably under control and the July 14, 1989, golf cart incident caused a flare-up of her condition, Dr. Dorman's medical records failed to support his testimony. The Commission noted that on July 5, 1989, nine days prior to golf cart incident, Dr. Dorman documented a marked flare-up in the claimant's rheumatoid arthritis symptoms and the need for injections, an increase in the claimant's medication, and physical therapy with respect to symptoms in her hips. The Commission also pointed out that Dr. Dorman's testimony, as provided in the December 14, 1999, deposition that the golf cart incident on July 14, 1989, aggravated or accelerated the rheumatoid arthritis, was contradicted by his testimony on March 8, 1994, in the claimant's civil suit against the golf cart manufacturer. There, Dr. Dorman stated he could attribute the right wrist and shoulder flare-ups

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to the accident but could not attribute flare-ups in any other body parts. Additionally, the Commission discounted Dr. Dorman's opinion because he admitted, in offering his causal connection opinion, that: (1) he did not view the emergency room records; (2) he did not know the mechanism of injury; and (3) he did not know the claimant's complaints immediately following the injury.

40. The Commission also pointed to Dr. Peterson's opinion with regard to the claimant's low back and right hip conditions. Dr. Peterson opined neither of these conditions was related to the golf cart accident. He further opined that the claimant's right hip irritation was secondary to the rheumatoid arthritis and that, relying upon the opinion of prior treating orthopedic surgeon, Dr. Sundberg, he found no causal connection between her work injury and right hip condition.

41. With regard to the claimant's septum perforation and need for surgery, the Commission noted that, while Dr. Gryskiewicz opined that the septum perforation may have been aggravated by the July 14, 1989, accident, he also further opined his causal connection opinion would change if there was evidence of the same, persistent complaints prior to the date of the golf cart accident. The Commission then pointed out that the medical records clearly indicated that as early as 1981, the claimant had been diagnosed with chronic mild postnasal discharge, frequent epistaxis, chronic nasal ulceration and perforation of the nasal septum. Based upon the record, the Commission found that the claimant had failed to prove a causal connection between her work injury of July 14, 1989, and her current condition of ill-being with respect to her septum.

42. Moreover, based upon the Commission's finding that the claimant failed to prove a causal connection between any medical condition other than her right shoulder dislocation, right carpal tunnel syndrome, and the initial nasal fracture, the Commission determined that the claimant was only entitled to temporary total disability benefits from July 14, 1989, through January 22, 1990, a period of 27-4/7 weeks. The Commission noted that on January 22, 1990, Dr. Minette had

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released the claimant to return to light-duty work; however, she made no attempt to return to work at that time. The Commission further noted that, while the claimant might also be entitled to benefits for a period after each of her subsequent three right shoulder surgeries, the medical records contain no authorizations for the claimant to be off work and failed to indicate the exact periods of lost time for these three injury-related procedures.

43. With regard to the nature and extent of the claimant's injuries, the Commission found that the claimant was entitled to 255.5 weeks of permanent partial disability benefits under sections 8(d)(2) and 8(e) of the Act, representing a 20% loss of use to the person as a whole, 20% loss of use of the right hand, and 50% loss of use of the right arm.

44. The Commission further determined, based upon its finding that the claimant failed to prove a causal connection between her work-related injury and any aggravation or acceleration of her rheumatoid arthritis or any condition with her left hip, feet, or low back, that the claimant was entitled only to those medical expenses related to her right shoulder, right hand, and initial nasal fracture injuries. Accordingly, the Commission reduced the award for medical expenses to \$135,185.28.

45. The claimant sought review of the Commission's decision in the circuit court of Cook County which confirmed the order of the Commission. The claimant then appealed to this court. The claimant raises three issues on appeal: (1) whether the Commission erred in finding that she failed to establish a causal connection between the accident on July 14, 1998, and the current condition of ill-being of her left hip, right and left feet, rheumatoid arthritis, and nose; (2) whether the Commission erred in finding that she was entitled to TTD benefits only between July 14, 1998, and January 22, 1990; and (3) whether the Commission erred in finding that she was entitled to PPD benefits rather than the PTD benefits awarded by the arbitrator.

46.

ANALYSIS

47.

1. Causal Connection

48. At issue is whether the Commission's finding that the claimant failed to establish that her current condition of ill-being regarding her left hip, right and left feet, rheumatoid arthritis, and nose were compensable injuries was against the manifest weight of the evidence. A claimant must prove each of the essential elements of her claim by a preponderance of the evidence. *Corn Products v. Industrial Comm'n*, 6 Ill. 2d 439, 444 (1955). To be compensable, an injury must both "arise out of" and "in the course of" one's employment. *Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1226 (2001). The "in the course of" element refers to time, place, and circumstance under which the accident occurred. *Dodson v. Industrial Comm'n*, 308 Ill. App. 3d 572, 575 (1999). The "arising out of" element requires a causal connection between the employment and the injury, such that the injury was the result of, or incidental to, the claimant's assigned duties. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). Whether a causal connection exists between a claimant's current condition of ill-being and an industrial accident is a question of fact, and the Commission's factual determinations will not be overturned on appeal unless they are against the manifest weight of the evidence. *Vogel v. Industrial Comm'n*, 353 Ill. App. 3d 780, 786 (2005). It is within the exclusive province of the Commission to resolve conflicts in medical testimony, to determine the weight to be accorded the evidence, and to judge credibility of witnesses. *Boyd v. Industrial Comm'n*, 356 Ill. App. 3d 851, 869-61 (2005).

49. Here, the question was whether the claimant's current condition of ill-being with regard to several specific maladies could be causally connected to the golf cart accident on July 14, 1998. The Commission engaged in a detailed examination of the medical evidence and determined that the record lacked sufficient evidence to support the arbitrator's causation findings as to the claimant's left hip, right and left feet, rheumatoid arthritis, and nose. To the extent that the claimant's current conditions of ill-being (rheumatoid arthritis and septum)

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predated the accident, the record supported a finding that those conditions were either present prior to the accident date or did not manifest new symptoms until well after the accident date. There was also sufficient medical evidence to support a conclusion that the hip and lower extremity symptoms were directly related to the rheumatoid arthritis and not to the golf cart incident. Moreover, while some medical opinion testimony was proffered to establish the causal link for each condition, the Commission found sufficient reasons in the record to qualify or refute those opinions.

50. Additionally, the evidence was conflicting as to whether the fall down the steps in 1995 was causally related to the claimant's work accident. There was medical opinion testimony which supported a conclusion that the fall was related solely to the claimant's rheumatoid arthritis, a condition which the Commission determined had no causal connection to the claimant's employment. Given the equivocal nature of the evidence supporting the requisite causal connections, we cannot say that the Commission finding as to causation was against the manifest weight of the evidence.

51. We also must reject the claimant's attempt to characterize the causation question as a matter of law subject to *de novo* review. The claimant is incorrect in maintaining that the Commission's decision was an erroneous rejection of the arbitrator's decision. It is well settled that the Commission is in no way bound by the decision of the arbitrator. *Durand v. Industrial Comm'n*, 224 Ill. App. 3d 53, 63 (2006). This court conducts a review of the Commission's decision independent of the arbitrator's decision. *Airborne Express, Inc. v. Illinois Workers' Compensation Comm'n*, 372 Ill. App. 3d 549, 555 (2007).

52. Moreover, the cases cited by the claimant to justify *de novo* review of the Commission's causation determination do not support her position. *Franklin v. Industrial Comm'n*, 211 Ill. 2d 272 (2004), concerned whether the claimant's status as an aggressor in an altercation with a co-

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worker precluded a finding that an injury arose out of the claimant's employment. Another case cited by the claimant, *Freeman United Coal Mining Co. v. Industrial Comm'n*, 188 Ill. 2d 243 (1999), concerned whether a claimant was exposed to an occupational disease hazard as defined by statute. Finally, *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187 (2002), concerned whether a claimant had established a compensable mental injury under the Act. None of these cases are applicable to the question of causation addressed in the instant matter.

53. 2. TTD Benefits

54. The claimant next maintains that the Commission erred in determining her eligibility for TTD benefits. The duration of TTD benefits is a question of fact. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118-19 (1990). The Commission's determination of the duration of TTD benefits will not be set aside on review unless it is contrary to the manifest weight of the evidence. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 832-33 (2002). The test for determining whether a factual finding of the Commission is against the manifest weight of the evidence is whether there exists sufficient factual evidence in the record to support the Commission's determination. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 40 (1995).

55. To establish entitlement to TTD benefits, a claimant must demonstrate not only that she did not work, but also that she was unable to work. *City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (1996). TTD benefits are awarded for the period from when an employee is injured until he or she has recovered as much as the character of the injury will permit. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (2003).

56. Here, the Commission determined that Dr. Minette issued a return to work order for the claimant which was effective January 22, 1990. Although Dr. Minette permitted the claimant to return to light-duty work rather than unrestricted duty, the Commission found that this was the date upon which the claimant had reached maximum medical improvement (MMI) and was no

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longer entitled to TTD benefits. The Commission also noted that the claimant made no effort to seek employment within Dr. Minette's work restrictions; and when the claimant's condition worsened subsequently, no order was ever entered by any of her treating physicians to change her availability for work. More importantly, there is nothing in the record, including Dr. Dorman's medical records, to indicate that any treating physician had issued a work restriction subsequent to Dr. Minette's release of the claimant to work with restrictions. Also, regarding Dr. Dorman's treatment of the claimant, the Commission determined that the area of primary concern of that treatment was the rheumatoid arthritis, a condition which was not related to the claimant's industrial accident. Given the record, it cannot be said that the Commission's finding that the claimant had reached MMI and was no longer entitled to TTD benefits was against the manifest weight of the evidence.

57.

3. PPD benefits

58. The claimant lastly maintains that the Commission erred in awarding her PPD benefits rather than the PTD benefits ordered by the arbitrator. The Commission's determination on the issue of permanency is a question of fact, and the Commission's findings will not be set aside on appeal unless it is against the manifest weight of the evidence. *Esposito v. Industrial Comm'n*, 186 Ill. App. 3d 728m 737 (1989). A review of the evidence supports a conclusion that the Commission determined the permanent disability caused by the industrial accident rather than by the claimant's non-work-related conditions. The Commission noted that the claimant's bilateral hip replacement and right hip revision all predated the accident and further found that there was no post-accident aggravation of her condition. It then sought to determine what effect the work-related conditions of ill-being permanently impacted the claimant's ability to work. Given the record before the Commission, we cannot say that the Commission's determination as to the nature and extent of the claimant's permanent condition was against the manifest weight of the evidence.

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59. Additionally, it is the responsibility of the claimant to establish that he or she is entitled to permanent total disability benefits. *Federal Marine Terminals, Inc. v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 1117, 1129 (2007). In order to establish entitlement to PTD benefits, a claimant must establish that she is incapable of performing services except for those for which there is no reasonable stable market. *Id.* A claimant can establish permanent total disability by a preponderance of the medical evidence by showing a diligent, but unsuccessful, job search or by demonstrating that, due to her age, training, education, experience and physical condition, there are no jobs available for a person in her circumstances. *Id.*

60. Here, the medical evidence did not convince the Commission that the claimant was incapable of employment, and the record contained little, if any, evidence of a diligent but unsuccessful job search or that there were no jobs available for an individual in the claimant's circumstances. Given the record, it cannot be said that the Commission's decision not to award PTD benefits was against the manifest weight of the evidence.

61. Lastly, the claimant makes an argument that the Commission erred as a matter of law in "apportioning" her permanency between employment-related and non-employment-related components. Relying upon *Fitts v. Industrial Comm'n*, 172 Ill. 2d 303 (1966), the claimant maintains that the Commission erred as a matter of law in apportioning the claimant's current condition of ill-being between those conditions that were causally related to her industrial accident and those conditions which were independent of her employment. Quoting *Fitts*, the claimant states the argument as follows:

"Once the propriety of an award is established, however, the size of the award is not affected by whether the occupational disease is employment caused or employment aggravated. Rather, once causation is found, a claimant is entitled to an award for the full

nature and extent of his disability. See *Quality Wood Products Corp. v. Industrial Comm'n*, 97 Ill. 2d 417, 420 (1983) (for workers' compensation purposes, an employer takes the employee as he finds him). Thus, any reduction of the award because of apportionment between employment and nonemployment causes of the disability is improper and contrary to law." *Fitts*, 172 Ill. 2d at 309.

62. We find that *Fitts* is not applicable in the instant matter. First, *Fitts* concerns the interplay of occupationally-caused and occupationally-aggravated diseases under the Illinois Workers' Occupational Diseases Act (820 ILCS 310/1 *et seq.* (West 1994)), and further notes that "with either type of occupational disease, an award is proper only if the disability has a causal connection to the employment exposure." *Id.* Clearly, the prohibition against apportionment between occupationally-caused and occupationally-aggravated conditions has no applicability to the instant matter. Second, the *Fitts* court specifically warned the prohibition against apportionment has nothing to do with causality. Immediately after the portion of the opinion quoted above, the court noted the following:

"It does not, however, necessarily follow that claimant is entitled to a total and permanent disability award. As noted above, claimant is entitled to a disability award only for the nature and extent of his disability that was caused by employment exposure." *Fitts*, 172 Ill. 2d at 309-10.

63. The Commission did not err in awarding the claimant benefits based only upon the current conditions of ill-being found to be causally related to her industrial accident.

64. CONCLUSION

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65. For the foregoing reasons, the judgment the judgment of the Cook County circuit court confirming the Commission's decision is affirmed.

66. Affirmed.