2014 IL App (2d)
121286WC-U

NO. 2-12-1286WC

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ROCKFORD PARK DISTRICT, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.,* (Brad Hobson, Appellee).	) Appeal from the) Circuit County) Winnebago County.)) No. 12 MR 182)) Honorable) Eugene G. Doherty) Judge, presiding.

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

ORDER

¶ 1 *Held*: The Commission's finding that the claimant sustained accidental injuries that arose out of and in the course of his employment was not against the manifest weight of the evidence where there was medical testimony that the claimant's work duties were the single most contributing factor to the worsening of his preexisting condition.

¶ 2 The claimant, Brad Hobson, filed an application for adjustment of claim against his employer, Rockford Park District, seeking workers' compensation

benefits for an injury to his back caused by repetitive trauma that manifested itself on January 18, 2010. The claim proceeded to an expedited arbitration hearing under section 19(b) of the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq*. (West 2010)). The arbitrator found that the claimant's condition did arise out of his employment and was causally related to his repetitive job duties for the employer. The employer was ordered to pay temporary total disability (TTD) benefits in the amount of $463.97 per week for 70 weeks, beginning January 19, 2010, through May 23, 2011. It was ordered to provide the claimant with vocational rehabilitation because it was unable to accommodate his permanent restrictions. The employer was ordered to pay the claimant maintenance benefits of $463.97 per week beginning May 24, 2011, until such time as the employer's liability for such payments is terminated. The employer was also ordered to pay all reasonably related medical bills.

¶ 3 The employer appealed to the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the decision of the arbitrator. The employer filed a timely petition for review in the circuit court of Winnebago County. The circuit court confirmed the Commission's decision, and the employer appealed.

¶ 4 BACKGROUND

¶ 5 The claimant started working for the employer in 1975 as a seasonal scorekeeper. In 1986 he was promoted to full-time general maintenance. The claimant worked five to seven days per week averaging 45-50 hours per week. He was often on call when he was not at work. There is no dispute as to what the claimant's job duties entailed. The employer provided a written job description which was consistent with the claimant's testimony. The claimant's job duties

included maintaining the athletic fields, keeping the park clean including cleaning the bathrooms and emptying the garbage cans, performing simple repairs to the park equipment, machinery, and vehicles, ground care of the grass, flowers, shrubs, and trees, and general maintenance including painting, repairing fences, erecting and disassembling tents, and hauling bleachers. The physical demands of the job were classified as very heavy work that required exerting in excess of 100 pounds of force occasionally, exerting in excess of 50 pounds of force frequently, and exerting in excess of 20 pounds of force constantly. The physical demands of the job also included climbing, stooping, crawling, pushing, lifting, repetitive motions, and balancing when walking, crouching, or standing on narrow, slippery, or erratically moving surfaces.

¶ 6 The claimant testified that in 2009 his back became irritated. He took time off in December believing his back would improve. His condition progressively worsened until January 2010 when he sought medical attention from his primary care physician Dr. Trent Barnhart.

¶ 7 The claimant had suffered from a prior back injury. On March 15, 2004, the claimant had a left L5-S1 microscopic hemilaminotomy and diskectomy performed by Dr. Soriano. The claimant testified that following his 2004 surgery he was able to return to his regular full duty job and perform all the essential duties of the job. In 2006, he was involved in an accident in the company truck and had some cervical spine pain. He had a magnetic resonance imaging (MRI) scan and was released from care with no restrictions.

¶ 8 Medical records from Dr. Barnhart were admitted into evidence. On January 18, 2010, Dr. Barnhart examined the claimant for low back and hip pain.

He placed a two week restriction on the claimant from heavy lifting and bending, walking, or standing for long periods of time. He ordered an MRI.

¶ 9 The claimant had an MRI on January 19, 2010. The MRI was compared to the MRI taken on December 1, 2006. The MRI findings were disc dessication at all levels of the lumbar spine with moderate to severe L2-L3 and L4-L5 disc space narrowing. At L2-L3 and L3-L4 there were mild broad-based disc bulges. At L4-L5 there was a small left paracentral disc protrusion on top of a broad-based disc bulge. At L5-S1 there was a slight retrolisthesis of L5 on S1. There was also a slight increase in the previously identified left paracentral disc herniation on top of a broad-based disc bulge. The impression from the MRI was chronic disc disease with facet arthropathy throughout the lumbar spine. It was further noted in the report that except for a slight increase in the left paracentral disc protrusion at L5-S1 causing new moderate left lateral recess stenosis, the lumbar spine was stable compared to the prior study.

¶ 10 On January 21, 2010, Dr. Barnhart ordered the claimant off work until further notice. Dr. Barnhart referred the claimant to Dr. Mark Kellen at the Center for Pain Management.

¶ 11 On January 29, 2010, Dr. Kellen examined the claimant at Dr. Barnhart's request for assistance in evaluation and management of the claimant's back and leg pain. Dr. Kellen wrote in his patient notes that the claimant suffered from low back and hip pain that radiated down the outer side of the left leg. Dr. Kellen assessed the claimant with degenerative lumbar disc disease with disc herniation. On January 29, 2010, and February 12, 2010, Dr. Kellen gave the claimant L5-S1 transforaminal epidural injections

¶ 12 On March 1, 2010, neurosurgeon Dr. Allan Gocio examined the claimant on referral from Dr. Kellen. In his patient notes, Dr. Gocio wrote that the claimant presented with low back, hip, and leg pain. He noted that the claimant had back problems in the past and had surgery approximately 10 years prior. Dr. Gocio wrote that the claimant denied a specific injury or accident and claimed that his pain had been gradually worsening. Dr. Gocio's impression was degenerative disc disease, lumbar stenosis, lumbar disc herniation at L5-S1 with mild disc protrusion. Surgical and non-surgical treatment options were discussed, and the claimant indicated that he wanted to explore surgical intervention.

¶ 13 Dr. James Sturm examined the claimant on March 8, 2010. Dr. Sturm's impression was L4-L5 and L5-S1 degenerative disc disease. He prescribed physical therapy. He encouraged the claimant to have a discography to determine the number of painful discs and whether the discs above and below the painful discs would support fusion.

¶ 14 On March 22, 2010, Dr. Sturm performed a L3-L4, L4-L5, L5-S1 discography on the claimant. Dr. Sturm found that there was no significant worsening of pain with discography performed at the L3-L4, L4-L5, and L5-S1 disc levels.

¶ 15 Dr. Gocio testified by evidence deposition. Dr. Gocio testified that he examined the claimant on March 29, 2010, and based on the discogram and the claimant's widespread degenerative disk disease at multiple levels, he felt that spinal fusion surgery would not be of significant benefit to the claimant and might make him worse. Dr. Gocio opined that the claimant's best option would be medical and physical measures which would include permanent restrictions of work activity that he believed was aggravating the claimant's condition and the

possibility of vocational rehabilitation or work modification to improve the claimant's ability to function in the work force.

¶ 16 On March 29, 2010, Dr. Gocio wrote a letter to Dr. Barnhart. He wrote that the claimant had symptomatic mutlilevel degenerative disc disease that was not likely to improve with surgical intervention. He recommended that the claimant return to work with permanent restrictions. If the claimant failed at a trial return to work, he recommended that the claimant seek vocational rehabilitation or that he seek medical disability. Dr. Gocio wrote that he believed "that [the claimant's] work activity is aggravating his spinal condition and that changes in his work activity would be beneficial to him for this reason."

¶ 17 Dr. Gocio testified that the employer provided him with a job description for the claimant and that it was his opinion that the work activity that the claimant performed was the main factor aggravating his back condition and causing his current condition. Dr. Gocio stated that there are a number of things that can aggravate degenerative disk disease, and the claimants' condition could have progressed to its current state without any heavy physical work activities. However, he averred that the claimant's work activities were the main factor aggravating his back condition because the type of work activities the claimant performed would typically aggravate degenerative disk disease and the claimant reported increased symptoms with work activities.

¶ 18 On April 26, 2010, Dr. Gocio wrote a letter to Debbie Gass, deputy director of human resources for the employer, addressing the claimant's work restrictions. He delineated the amount of time the claimant could sit or stand, the surfaces on which the claimant could operate heavy equipment, and the number of times per

hour the claimant could stoop, bend, and twist at the waist. Dr. Gocio stressed that the claimant would require breaks as needed. He wrote that:

> "I believe that [the claimant's] degenerative disc disease, while being a preexistent problem and a problem related to the natural aging process of the spine, that in [the claimant's] particular case, that his work activity at the [employer] is the single most contributing factor to the worsening of his condition, that his injury in addition to his activities on a regular basis related to his job description have caused the premature deterioration and degeneration of the patient's spine and that his work activity has been the most aggravating factor in his back condition as it is today."

Dr. Gocio opined that the claimant's back condition was permanent and would not improve significantly with the passage of time or further treatment. He averred that further treatment would help his symptoms, but would not significantly improve his ability to function in the workplace. He stated that all his opinions were expressed within a reasonable degree of medical certainty.

¶ 19 On May 8, 2010, Dr. Gocio wrote a letter to Debbie Gass, in reply to some questions she posed. In his letter, Dr. Gocio wrote that it would be difficult for the claimant to perform most of his job duties due to his restrictions. He wrote that his opinion was within a reasonable degree of medical certainty. He also opined that the claimant's condition was permanent and not likely to improve or change significantly with the passage of time or further treatment. He noted that further treatment would be directed to relieving the claimant's symptoms, but was unlikely to significantly improve his ability to function in the work place. He averred that the claimant's "condition as it is today has been significantly related to the work activities that he has performed for the [employer] and that the work at

the [employer] is the single most contributing factor to the worsening of his condition."

¶ 20 Dr. Kellen examined the claimant on May 28, 2010. He noted that Dr. Gocio evaluated the claimant and found that a spinal fusion would likely make him worse and not better. The claimant expressed a desire to have a second opinion. Dr. Kellen referred him to the Rockford Spine Center for an opinion on the benefits and risks of surgical intervention.

¶ 21 On June 15, 2010, the employer terminated the claimant's employment because it had no position compatible with his restrictions.

¶ 22 Dr. Michael S. Roh examined the claimant on September 16, 2010, as a referral from Dr. Kellen for mechanical axial lumbar pain. Dr. Roh did not recommend any kind of surgical intervention because he felt it would not improve the claimant's condition and may actually worsen it. He recommended physical therapy to improve his overall body health and conditioning.

¶ 23 The claimant continued to treat with Dr. Kellen. Dr. Kellen saw the claimant on January 14, 2011, for severe pain in his back. Dr. Kellen noted in his assessment of the claimant that he likely would never work again and would be pursuing disability benefits. Dr. Kellen felt that this was a reasonable option given that his nerve conduction study showed chronic disease changes and two neurosurgeons stated there was no operative way to improve his condition.

¶ 24 The claimant testified that he continues to treat with Dr. Kellen once every other month for pain control. He stated that he still had back pain and he had pain in his calves and difficulty walking.

¶ 25 Dr. Michael Bryan Neal, an orthopedic surgeon, testified by evidence deposition. At the employer's request, Dr. Neal performed an independent medical

examination of the claimant on August 12, 2010. He reviewed the claimant's medical records and performed a physical examination. He opined that the claimant had a significant degree of symptomatic lumbar spinal stenosis which is an atraumatic progressive condition. He further felt that because the claimant had not worked since January 2010 and his symptoms had worsened, his condition was the function of the progressive degenerative process of the lumbar spine and was completely independent of the presence or absence of work activities.

¶ 26 Dr. Neal wrote in his report that the claimant's "occupational activities and job duties did not cause his lumbar spinal stenosis, did not accelerate any condition, and did not aggravate any condition such that anything different would be required even if he had not been working." He testified that lumbar spinal stenosis is a progressive condition and will deteriorate over time. Dr. Neal based his opinion on the fact that the claimant did not have a specific injury or event with regard to his spine condition and working, that he had a prior surgery in 2004, that scarring from the procedure can contribute to the stenosis process, and that he had treated with his primary care physician and had a gradual worsening of his back condition between the original surgery and 2010. Dr. Neal admitted that the January 19, 2010, MRI did not reveal any postoperative scarring or changes at the L5-S1 level. He stated that while the MRI report did not note any scarring that was error because there is always scarring after surgery. Dr. Neal admitted that if a person had spinal surgery, went for approximately six years with no symptoms and no treatment, and then had a recurrence of back pain, the activity or events which may have occurred around the time the back pain arose may have been a contributing factor to the development of the symptoms.

¶ 27 Dr. Neal stated that the claimant would not be able to return to his job without surgery. He opined that the claimant may receive significant relief of symptoms if he had a simple spinal decompression without fusion or instrumentation. He felt that with surgery the claimant might be able to return to his regular job.

¶ 28 The arbitrator found that the claimant sustained an accident that arose out of and in the course of his employment on January 18, 2010. He further found that the claimant's current condition of ill-being in his lumbar spine was causally related to his repetitive job duties for the employer. He noted that the parties stipulated at trial that should liability be found, the employer would satisfy all reasonable and related medical bills. The arbitrator noted that the parties also stipulated that should liability be found, the claimant would be entitled to an award of TTD in the amount of $463.96 per week from January 19, 2010 to May 24, 2011, and that the claimant would be entitled to ongoing maintenance while undergoing vocational rehabilitation.

¶ 29 The arbitrator noted that there were two conflicting opinions about accident and causation submitted into evidence. The arbitrator adopted Dr. Gocio's opinion.

¶ 30 The employer sought review of the arbitrator's decision. The Commission unanimously affirmed and adopted the arbitrator's decision. The employer appealed the Commission's decision to the circuit court. The circuit court confirmed the Commission. The employer filed a timely notice of appeal.

¶ 31 ANALYSIS

¶ 32 The employer argues that the Commission's determination that the claimant sustained accidental injuries that arose out of and in the course of his employment

was against the manifest weight of the evidence. A reviewing court will set aside the Commission's decision only if its decision is contrary to law or its fact determinations are against the manifest weight of the evidence. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Id*. The Commission's decision is not against the manifest weight of the evidence when there is sufficient evidence in the record to support the Commission's determination. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010).

¶ 33 "To obtain compensation under the Act, [a] claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). An employee who suffers from a repetitive-trauma injury must meet the same standard of proof as an employee who suffers from a sudden injury. *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. If the claimant had health problems prior to a work-related injury, he bears the burden of showing that the preexisting condition was aggravated by the employment and that the aggravation occurred as a result of an accident which arose out of and in the course of his employment. *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 476, 510 N.E.2d 502, 505 (1987). The Commission determines whether a preexisting condition has been aggravated, and its decision will not be disturbed unless it is against the manifest weight of the evidence. *Id*. Cases involving aggravation of a preexisting condition, especially

repetitive-trauma cases, primarily concern medical and not legal questions. *Id*. at 478, 501 N.E.2d at 506.

¶ 34 The employer argues that the Commission erred in determining that the manifestation date of the claimant's injuries was January 18, 2010. It contends that the claimant's condition worsened in December 2009, when he was on vacation; therefore, it was impossible to find that the claimant's repetitive work activities aggravated, accelerated, or exacerbated his condition. The employer argues that the Commission selected a manifestation date of January 18, 2010, because it was the date the claimant sought medical treatment, but "assigning significance to January 18, 2010 is an indulgence in creative fiction and ignores the uncontroverted facts in the Record." It argues that the claimant had treatment for his low back after the surgery of 2004 and obtained medication for his low back condition in 2009. The employer asserts that the only significance of January 18, 2010, was that the claimant returned to see a doctor for what was an established and ongoing, chronic, low back condition.

¶ 35 "In repetitive-trauma cases, the manifestation date is significant in fixing the legal relationships between the parties." *A.C. & S. v. Industrial Comm'n*, 304 Ill. App. 3d 875, 880, 710 N.E.2d 837, 841 (1999). "The categorization of an injury as due to repetitive trauma and the corresponding establishment of an injury date are necessary to fulfill the purpose of the Act to compensate workers who have been injured as a result of their employment." *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773, 780 (2005). A claimant suffering from a repetitive-trauma injury must point to a date within the limitations period on which both the injury and its causal link to his employment became plainly apparent to a reasonable person. *Durand*, 224 Ill. 2d

at 65, 862 N.E.2d at 924-25. Setting the manifestation date is a fact determination for the Commission. *Id.* at 65, 862 N.E.2d at 925.

¶ 36 The recognition of a manifestation date allows an employee to be compensated for injuries that develop gradually, without requiring the employee to push his body to a precise moment of collapse. *Edward Hines Precision Components*, 356 Ill. App. 3d at 194, 825 N.E.2d at 780. "The manifestation date is not the date on which the injury and its causal link to work became plainly apparent to a reasonable physician, but the date on which it became plainly apparent to a reasonable employee." *Durand*, 224 Ill. 2d at 72, 862 N.E.2d at 929. Because repetitive-trauma injuries are progressive, the employee's medical treatment, the severity of the injury, and how the injury affects the employee's performance are all relevant in determining objectively when a reasonable person would have plainly recognized that injury and its relation to work. *Id*. The court will not penalize an employee who diligently worked through progressive pain until it affected his ability to work and required medical treatment. *Id*. at 73, 862 N.E.2d at 930.

¶ 37 In the instant case, the Commission determined that the claimant's manifestation date was January 18, 2010. This was the date that the claimant saw Dr. Barnhart for low back and hip pain and Dr. Barnhart restricted him from heavy lifting, bending, walking, or standing for long periods of time. The claimant testified that his back became irritated in 2009. He took time off in December 2009, but when he returned to work, his back continued to get progressively worse. The claimant testified that following his 2004 back surgery, he was able to return to his regular full duty job and perform all his job duties. It was not until January 2010 that his back pain affected his ability to work and required medical treatment.

There is sufficient evidence in the record to support the Commission's determination that January 18, 2010, was the manifestation date of the claimant's injury.

¶ 38 The employer argues that the Commission erred in finding that there was a causal connection between the claimant's work activities and his current condition of ill-being. It argues that the claimant had degenerative lumbar spinal stenosis and that his symptoms would have progressed even if he had not been working. The employer argues that the claimant's back problems occurred while he was on vacation and not working. The employer asserts that Dr. Neal conducted an independent medical examination and found that the claimant's occupational activities and job duties did not cause, accelerate, or aggravate his lumbar spinal stenosis.

¶ 39 To be compensable under the Act, the injury complained of must be one arising out of and in the course of the employment. 820 ILCS 305/2 (West 2010). "An injury 'arises out of' one's employment if it originates from a risk connected with, or incidental to, the employment, involving a causal connection between the employment and the accidental injury." *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 194, 775 N.E.2d 908, 912 (2002). If the claimant has a preexisting condition, recovery will depend on the claimant's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that his current condition of ill-being can be said to have been causally related to the work-related injury and not the result of a normal degenerative process of the preexisitng condition. *Sisbro, Inc.*, 207 Ill. 2d at 204-05, 797 N.E.2d at 672.

¶ 40 Employers take their employees as they find them. *Id.* at 205, 797 N.E.2d at 672. Even if an employee has a preexisting condition that makes him more

vulnerable to injury, he may recover for an accidental injury as long as it can be shown that the employment was also a causative factor. *Id*. at 205, 797 N.E.2d at 672-73. "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.) *Id*. at 205, 797 N.E.2d at 673. Recovery will be denied only where an employee's health is so deteriorated that typical daily activity constitutes overexertion. *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888, 864 N.E.2d 266, 272 (2007).

¶ 41 "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." *Sisbro, Inc.*, 207 Ill. 2d at 205, 797 N.E.2d at 673. It is the role of the Commission to resolve conflicts in the evidence, especially medical opinion evidence, to assess the credibility of the witnesses, and to assign weight to their testimony. *St. Elizabeth's Hospital,* 371 Ill. App. 3d at 887, 864 N.E.2d at 271-72.

¶ 42 The claimant's job involved heavy labor. The employer classified the physical demands of the claimant's work as very heavy work involving exerting in excess of 100 pounds of force occasionally, exerting in excess of 50 pounds of force frequently, and exerting in excess of 20 pounds of force constantly. The employer argues that the claimant's complaints of back pain which led him to seek medical treatment in 2010 began while he was at home on vacation in December 2009. The employer also argues that the claimant was never free from back problems since his 2004 surgery. There was no dispute that the claimant performed his regular full duty job and all his job duties from 2004 until January

2010. Between 2004 and 2010, the claimant did not see a neurosurgeon, a spine surgeon, a pain management specialist, or an orthopedic doctor for his back. During this six year period, he did see Dr. Barnhart once for low back pain. The claimant testified that in 2009 his back became irritated. He took some time off in December hoping it would improve, but it became progressively worse. In January he "couldn't take it anymore" and he sought medical treatment. In Dr. Gocio's March 1, 2010, patient notes, he wrote that the claimant informed him that his low back, hip, and leg pain were not the result of a specific accident, but developed gradually. He testified that the claimant reported increased symptoms with work activities.

¶ 43 The claimant had a prior back surgery in 2004. Conflicting medical evidence was presented regarding the cause of his current condition. Dr. Neal testified that the claimant suffered from lumbar spinal stenosis which is an atraumatic progressive condition. He opined that the claimant's occupational activities and job duties did not cause his lumbar spinal stenosis and did not accelerate or aggravate his condition. Dr. Gocio testified that the employer provided him with the claimant's job description and that it was his opinion that the claimant's work activities were the main factor aggravating his back condition and causing his current condition. On March 29, 2010, Dr. Gocio wrote a letter to Dr. Barnhart in which he averred that the claimant's work activity was aggravating his spinal condition. On April 26, 2010, Dr. Gocio wrote a letter to the employer in which he stated that the claimant had preexisting disc disease, but that his work activity was "the single most contributing factor to the worsening of his condition." He further averred that the claimant's job duties performed on a regular basis caused the premature degeneration of the claimant's spine and was

the most aggravating factor in his current condition. On May 8, 2010, Dr. Gocio wrote another letter to the employer in which he stated that the claimant's back condition was "significantly related to the work activities that he has performed" for the employer and that his work was the "single most contributing factor to the worsening of his condition." The Commission assessed the credibility of the witnesses, weighed the conflicting medical evidence, and found Dr. Gocio to be credible.

¶ 44 The Commission did not err in finding a causal connection between the claimant's employment and his condition of ill-being. There was no dispute that the claimant's job involved heavy labor. He testified that his back gradually became worse until he had to seek treatment in January 2010. Dr. Gocio's patient notes indicate that the claimant stated that his back pain developed gradually. Dr. Gocio testified that the claimant reported that his back symptoms increased with work activities. The claimant's accidental injury did not have to be the sole or primary cause of his condition, it only needed to be a cause. *Sisbro, Inc.*, 207 Ill. 2d at 205, 797 N.E.2d at 673. Dr. Gocio opined that the claimant's work duties were the single most contributing factor to the worsening of his preexisting back condition. There is sufficient evidence in the record to support the Commission's determination that the claimant's condition of ill-being arose out of and in the course of his employment.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the judgment of the circuit court confirming the decision of the Commission is affirmed and the cause is remanded to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 47 Affirmed and remanded.