

No. 1-13-2528WC

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

GERALD E. LEAHY,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	No. 12 L 51556
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <i>et al.</i> ,	)	Honorable
	)	Patrick J. Sherlock,
(DHL Express, Appellee).	)	Judge, Presiding.

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

**ORDER**

- ¶ 1 *Held:* The judgment of the circuit court was reversed in part and affirmed in part where the decision of the Commission finding that the claimant failed to prove a causal connection between his knee injuries and his workplace accident was against the manifest weight of the evidence. All other aspects of the circuit court's judgment was affirmed.
- ¶ 2 The claimant, Gerald Leahy, appeals from the circuit court order which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) denying him benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) for knee injuries that he sustained on September 9, 2009, while in the employ of DHL Express (DHL).

For the reasons that follow, we reverse that portion of the circuit court judgment which confirmed the Commission's decision that the claimant failed to prove a causal connection between his knee injuries and his workplace accident and affirm all other aspects of the circuit court's judgment, reverse that portion of the Commission's decision denying the claimant benefits for his knee injuries, and remand the matter to the Commission for further proceedings.

¶ 3 At the outset, we note that, on December 20, 2004, the claimant suffered left knee and lumbar spine injuries while in the employ of DHL. The claimant filed an application for adjustment of his claim related to those injuries which was docketed as case 05-WC-40353 (hereinafter referred to as the 2005 case). In the 2005 case, the Commission found a causal connection between the claimant's December 20, 2004, work-place accident and the injuries which he sustained to his lumbar spine and left knee. The Commission awarded the claimant temporary total disability (TTD) benefits, permanent partial disability (PPD) benefits, and medical expenses. On review, the circuit court confirmed the Commission's decision, and this court affirmed the judgment of the circuit court. *DHL Express v. Worker's Compensation Comm'n*, 2011 IL App (2d) 110088WC-U, ¶ 1 (unpublished order under Supreme Court Rule 23 (eff. July 1, 2011)). Relevant to this appeal, we note that the claimant underwent spinal surgery in May 2005 followed by a course of physical therapy. *Id.* ¶¶ 8-11. During the course of his post-operative physical therapy, the claimant reported an inability to perform a squat with his left leg because his knee felt like it was going to "give out." *Id.* ¶ 11. A subsequent MRI of the claimant's left knee revealed a tear of the lateral meniscus, a tear of the ACL, and degenerative changes in the joint. *Id.* In 2006, the claimant had arthroscopic surgery on his left knee. *Id.* ¶ 12. On July 2, 2007, he reached maximum medical improvement (MMI) and was released to work with no restrictions. *Id.* ¶ 15. However, the claimant continued complaining about left

knee pain and was advised by his treating physician, Dr. Michael Collins, that he was "headed toward" a knee replacement. *Id.* ¶ 16. Dr. Collins opined that the arthritic condition of the claimant's left knee likely predated his December 20, 2004, accident.

¶ 4 Although the medical records did not conclusively attribute the claimant's left knee condition to the 2004 workplace accident, the arbitrator in the claimant's 2005 case determined that the claimant had credibly testified that his knee complaints arose during the course of physical therapy following his lumbar spine surgery. *Id.* ¶ 19. The arbitrator concluded that the claimant's participation in the post-operative physical therapy program aggravated or accelerated the preexisting arthritic condition of his left knee. *Id.* The arbitrator in the 2005 case awarded the claimant: 105-6/7 weeks of TTD benefits; 40 weeks of PPD benefits, representing the loss of use of 20% of the left leg; and 175 weeks of PPD benefits, representing a 35% loss of a person as a whole. The Commission affirmed and adopted the arbitrator's decision, but disputed the arbitrator's conclusion that there was no evidence in the record connecting the claimant's knee injury to the workplace accident prior to his post-operative physical therapy, citing several instances in which the claimant's knee complaints were documented before the post-operative physical therapy sessions. *Id.* ¶ 20. This court affirmed the circuit court order confirming the decision of the Commission. *Id.* ¶ 34.

¶ 5 Following the resolution of the claimant's 2005 case, he continued working for DHL as a delivery driver. The parties do not dispute that, on September 9, 2009, while delivering packages, the claimant sustained a compensable injury to his lumbar spine. However, the parties dispute whether, as a result of that accident, the claimant also suffered injuries to his knees. Therefore, we will summarize the evidence adduced at the arbitration hearing in this case as it relates to the alleged injury to the claimant's knees.

¶ 6 The claimant testified that, on September 9, 2009, he was delivering four heavy boxes when he felt a "twinge" in his back and "in the right knee." He called his supervisor and informed him that he believed that he re-injured his back and that his knee was "bothering him." The claimant agreed to finish his deliveries that day. He filled out an incident report at the end of the day and called Dr. Michael Zindrick. Dr. Zindrick advised the claimant not to work until he could see him on September 16, 2009.

¶ 7 When the claimant saw Dr. Zindrick on September 16, 2009, he told the doctor that he had hurt his back and that he had "right leg" pain. The claimant admitted that he did not tell Dr. Zindrick during that visit that either of his knees had been injured. Dr. Zindrick's notes of that visit state that the claimant described his pain as being distributed "80 percent back and 20 percent right buttock." Dr. Zindrick prescribed physical therapy which the claimant began at Hinsdale Orthopedic Physical Therapy Center on September 25, 2009.

¶ 8 In the physical therapy report, dated October 1, 2009, the therapist noted that the claimant reported having "a lot of tightness in the left knee" after their previous session. On October 5, 2009, the therapist stated that the claimant was unable to bend down to retrieve 15 pounds from the floor due to left knee pain. On October 6 and October 12, 2009, the physical therapist noted that the claimant reported tightness in his lumbar spine and bilateral knee pain and that he was limited in his ability to lift heavy weight.

¶ 9 On October 13, 2009, the claimant returned to see Dr. Zindrick and reported that he was experiencing pain in his left knee while doing squats during the course of physical therapy for his lumbar spine. The claimant testified that he told Dr. Zindrick that he was unable to perform all of the exercises that his physical therapist wanted him to perform because he was experiencing pain in both knees, especially the left knee. The claimant admitted that there was no specific

incident which occurred during physical therapy that triggered the pain. Dr. Zindrick noted that the claimant had "ongoing symptoms in his right low back and also left knee pain that is bothersome when he squats, gets up, moves around and tries to do his therapy." Dr. Zindrick referred the claimant to Dr. Collins, who had previously operated on the claimant's left knee.

¶ 10 The claimant continued to attend physical therapy sessions. On October 14, 2009, the physical therapist recommended that the claimant participate in a work reconditioning program before returning to full-duty work. However, because the claimant had been referred to a knee specialist, the therapist noted that he would wait for the claimant to receive medical clearance before starting him in the program. The physical therapist also mentioned bilateral knee pain in his notes of the claimant's October 16 and October 23, 2009, physical therapy sessions.

¶ 11 The claimant saw Dr. Collins on November 2, 2009. Dr. Collins examined the claimant's knees and recommended that he have total knee replacements, beginning with the left knee as that knee was in worse condition than the right. Dr. Collins's notes of that visit state that he discussed his examination of each of the claimant's knees. Regarding the left knee, he noted that he had operated on the claimant's left knee in 2006 and that the claimant was complaining of worsening symptoms. The doctor testified that, given the nature of the claimant's employment and physical activity, he was not surprised that the claimant was reporting increased arthritic pain. He stated that, in 2008, he considered the claimant a candidate for knee replacement surgery, but he advised the claimant that, because of his age and strenuous job, it was in his best interest to delay the surgery for as long as he could possibly stand the pain. He noted that the claimant's "occupation is very strenuous" and that he believed that it "would be in [the claimant's] best interest" to retire after having the knee replacement surgery. Although Dr. Collins testified that he did not think that there was a significant change in the physical condition

of the claimant's left knee since 2008, the claimant was reporting an increase of pain. Regarding the right knee, Dr. Collins noted that the claimant reported that his right "knee has been bothering him for a number of years" and "it seems like it might give way." However, the claimant testified that he did not have pain in his right knee until the September 9, 2009, workplace incident. Dr. Collins testified that the claimant's right knee had arthritis in a different area of the joint than he had in the left knee and that the right knee was in better condition than the left knee. According to Dr. Collins, he recommended that the claimant undergo the replacement of the left knee first because x-rays showed the left knee was in worse condition than his right knee and because the claimant reported more pain symptoms in the left knee than in the right knee. However, Dr. Collins testified that a total replacement of the right knee was inevitable.

¶ 12 When asked about the September 9, 2009, accident, Dr. Collins testified that it is "very common" for a person's "bad knee" to affect the person's gait and movements in a manner which "puts more stress on their back." He opined that the September 9, 2009, accident and the ensuing course of physical therapy were factors that contributed to his recommendation that the claimant have the knee replacement surgeries now. Dr. Collins agreed that, had the claimant not returned to a physically demanding job, his knee pain likely would not have worsened.

¶ 13 The claimant was examined by Dr. Zindrick on November 16, 2009. In his notes of that visit, Dr. Zindrick wrote that the claimant's "major symptoms at this time appear to be due to his knee." Dr. Zindrick advised the claimant to return for a follow-up examination in 12 weeks and continue treating with Dr. Collins.

¶ 14 In a report, dated December 8, 2009, the claimant's physical therapist noted that the claimant's lumbar spine condition had improved, but his bilateral knee pain presented his greatest limitation at the time. The claimant was discharged from physical therapy pending knee surgery.

¶ 15 On January 4, 2010, the claimant was examined at the request of DHL by Dr. Michael Kornblatt, who opined that, as to the injury to his lumbar spine, the claimant had not yet reached MMI. Dr. Kornblatt recommended that the claimant undergo a work reconditioning therapy program. He also recommended that the claimant treat with a knee specialist to determine whether the condition of his knees impacted his ability to return to work.

¶ 16 In March 2010, DHL offered certain employees a buy-out retirement option, which the claimant accepted and voluntarily resigned.

¶ 17 On April 2, 2010, the claimant was examined by Dr. James Cohen at the request of DHL. Dr. Cohen testified that he had examined the claimant's left knee in 2008 for his 2005 case and believed at that time that the claimant would eventually need a total knee replacement. Dr. Cohen stated that, following his examination of the claimant on April 2, 2010, he was of the opinion that a total knee replacement was appropriate given the claimant's advanced arthritis. He testified that the claimant reported that his knees have progressively worsened since returning to work in 2009. When asked whether the claimant reported any additional injuries since the 2004 workplace accident, Dr. Cohen testified that he was unsure "if [he] specifically asked [the claimant], but [he] got the gist from talking to [the claimant] that there was no other injuries." Dr. Cohen explained that he would have expected the claimant to report an additional injury if he had suffered one. However, he did not document any additional injuries in the patient's history when he saw him on April 2, 2010. According to Dr. Cohen, he did not believe that the claimant's job demands would have any effect on the progress of the osteoarthritis in his knees.

However, the doctor explained that, although he did not think the claimant's job duties "would affect [the] progression," he thought it "may affect the manifestation of symptoms." Dr. Cohen stated that people with arthritis experience more pain when they "do a lot of activities."

¶ 18 The claimant stated that he received TTD benefits until June 10, 2010, when DHL stopped paying him on the basis that the condition of his knees was unrelated to his accident while working on September 9, 2009.

¶ 19 On June 29, 2010, Dr. Collins examined the claimant and noted that there was no change in his symptoms. Dr. Collins continued to recommend a total knee replacement for the claimant's left knee. He injected Synvisc into the claimant's right knee to treat the pain. On that date, Dr. Collins released the claimant to perform sedentary work with restrictions on lifting no more than 10 pounds, no bending, squatting, or kneeling, no climbing, and no driving.

¶ 20 On September 22, 2010, the claimant told Dr. Collins that he wanted to proceed with the left knee replacement surgery.

¶ 21 Upon Dr. Collins's referral, the claimant saw Dr. Steven Schmitz, his primary care physician, to obtain clearance before surgery. The claimant testified that a cardiac problem was identified, and Dr. Schmitz referred him to a cardiologist, Dr. Chris Geannopoulos. After undergoing a cardiac catheterization procedure, the claimant was cleared to proceed with the left knee replacement surgery.

¶ 22 On November 22, 2010, Dr. Collins performed a total knee replacement on the claimant's left knee. The claimant testified that, because DHL was disputing his workers' compensation claim as it related to his knees, he obtained coverage for the surgery through his group medical insurer.

¶ 23 On December 22, 2010, Dr. Collins ordered outpatient physical therapy for the claimant's knee, which was commenced on December 29, 2010. The claimant completed physical therapy on June 30, 2011. According to the claimant, Dr. Collins has recommended that he have replacement surgery on his right knee.

¶ 24 On November 8, 2011, the claimant saw Dr. Collins, reporting that he had hurt his left knee after "an episode twelve days" earlier in which he fell while "going down some stairs." The claimant voiced disappointment that he was still experiencing pain in his left knee despite the surgery. Dr. Collins ordered blood tests of the claimant to check for any signs of infection. After the lab tests showed no infection, Dr. Collins opined that the claimant's symptoms "will settle down but will take time."

¶ 25 The claimant testified that he currently experiences pain in both knees; has trouble performing daily activities, such as walking up and down stairs; and the pain in his knees disrupts his sleep. He admitted that he has not looked for employment since accepting DHL's buy-out offer, but he explained that he is not yet physically able to work.

¶ 26 Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)), the arbitrator found that the claimant sustained injuries to his lumbar spine while working for DHL on September 9, 2009, and awarded the claimant 20 5/7 weeks of TTD benefits for the period from September 10, 2009, through February 1, 2010.<sup>1</sup> However, the arbitrator found that the claimant failed to prove that the current condition of ill-being in his knees is causally connected to his September 9, 2009, work-place accident. The arbitrator reasoned that there was no evidence that the claimant suffered a knee injury on September 9,

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<sup>1</sup> The paragraph in the arbitrator's award which provides that the claimant was awarded TTD benefits from September 10, 2009, through December 19, 2011, was a clerical error. The claimant filed a motion to correct that error on April 9, 2012.

2009, or any evidence that the physical therapy for his lumbar spine injury aggravated or accelerated the condition of his knees. He noted that the claimant did not initially report any injury to his knees following the September 9, 2009, incident, but only that he injured his back and had pain down the "right leg," which had been attributed to the back injury. The arbitrator pointed out that the claimant did not report knee pain until a physical therapy session for his spine 35 days after the September 9th accident. The arbitrator stated that "[t]here is no indication that anything particular" during the therapy sessions "brought on [the claimant's] knee complaints," noting that no physical therapy report suggested a particular incident had occurred and that the claimant testified that he did not recall any specific incident that had occurred during therapy that triggered knee pain. The arbitrator also dismissed Dr. Collins' opinion that the September 9, 2009, accident could have contributed to his recommendation for the knee replacement surgery, noting that Dr. Collins did not attribute the need for surgery to the physical therapy that the claimant had for his back. The arbitrator's decision states that "Dr. Collins seems to be of the opinion that [the claimant's] condition after the incident on September 9, 2009[,] was a little worse, at least from a subjective pain complaint perspective, but that he would have required a knee replacement whether he returned to work or not." The arbitrator dismissed the opinions of Dr. Cohen entirely because he had no knowledge of, and was not questioned about, the September 9, 2009, accident. The arbitrator denied the claimant any benefits related to the condition of his knees.

¶ 27 Both parties filed for a review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission modified the arbitrator's calculation of the claimant's average weekly wage, but affirmed and adopted the remainder of the arbitrator's decision and remanded the matter pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 28 The claimant sought a judicial review of the Commission's decision in the circuit court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 29 The claimant argues that the Commission's finding that he failed to prove a causal connection between the condition of ill-being of his knees and his accident while working on September 9, 2009, and its resultant denial of benefits is against the manifest weight of the evidence. We agree.

¶ 30 The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). As part of his burden, the claimant must establish that his current condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). When an employee has a preexisting condition, "recovery will depend on [his] 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 connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Id.* at 204-05. Thus, even 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. *Id.* at 205. "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.*

¶ 31 Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its determination of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence.

*Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. For a finding of fact to be against the manifest weight of the evidence, a conclusion opposite to the one reached by the Commission must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether a reviewing court might have reached the same conclusion is not the test of whether the Commission's determination on a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 32 The record in this case leads us to conclude that, on the question of a causal connection between the accident suffered by the claimant while working on September 9, 2009, and the condition of ill-being of his knees, a conclusion opposite to the one reached by the Commission, is clearly apparent. First, Dr. Cohen's opinion that the current condition of the claimant's knees was simply the result of a normal degenerative process of his preexisting arthritic condition lacks credibility, as the arbitrator noted, because Dr. Cohen was unaware of the September 9, 2009, accident. Dr. Collins, on the other hand, offered unrebutted medical opinions that (1) the September 9, 2009, accident and the subsequent physical therapy that the claimant underwent to treat his lumbar spine were contributing factors in the claimant's need to have total knee replacement surgeries; and (2) had the claimant not returned to a physically demanding job, his knee pain likely would not have worsened as quickly.

¶ 33 Further, the claimant's medical records do not show that he continued treating with Dr. Collins, or any other knee specialist, after Dr. Collins released him to work in 2008. The first

occasion post-2008 that the claimant complained about the condition of his knees was October 1, 2009. In the physical therapy report of that date, the therapist noted that the claimant reported having "a lot of tightness in the left knee" after their previous session. Dr. Zindrick's notes of October 13, 2009, also state that the claimant reported that he was unable to perform the physical therapy exercises assigned to him because his knees were causing him pain. Likewise, the claimant testified that he began experiencing knee pain while undergoing physical therapy for his lumbar spine. Based on this record, the only reasonable conclusion which can be reached is that either the September 9, 2009, accident or the subsequent physical therapy which was required to treat the claimant's lumbar spine injury, aggravated or accelerated the preexisting arthritic condition in the claimant's knees. While neither the September 9, 2009, accident nor the subsequent physical therapy treatment was the sole causative factor, or even in all probability the primary causative factor, of the claimant's current condition of ill-being in his knees, the record establishes that these events were at least *a* causative factor.

¶ 34 Therefore, we reverse the judgment of the circuit court to the extent that it confirmed that portion of the Commission's decision which found no causal connection between the claimant's accident while working on September 9, 2009, and the condition of ill-being of his knees and the Commission's resultant denial of benefits under the Act for that condition; we affirm all other aspects of the circuit court judgment; we reverse that portion of the Commission's decision which found no causal connection between the claimant's accident while working on September 9, 2009, and the condition of ill-being of his knees and the Commission's resultant denial of benefits under the Act for that condition; and we remand this matter back to the Commission for further proceedings consistent with this decision.

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¶ 35 Circuit court judgment reversed in part and affirmed in part; Commission decision reversed in part; cause remanded to the Commission.