2015 IL App (1st) 141003WC-U
No. 1-14-1003WC
Order filed: September 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

PAUL BOLE, Plaintiff-Appellant, v. OSGOOD INDUSTRIES and THE ILLINOIS WORKERS' COMPENSATION COMMISSION, Defendants-Appellees.	)))))))))))	Appeal from the Circuit Court of Cook County. No. 13-L-50736 Honorable Edward S. Harmening, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Since the Commission did not remand this matter for further proceedings pertaining to vocational rehabilitation, its first remand decision was final and appealable notwithstanding the need to later remand the matter to the arbitrator for a finding on the issue of permanency; and (2) the Commission's first remand decision, which determined that claimant's current conditions of ill-being are causally related to his work accident of April 12, 2004, is against the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Paul Bole, appeals from the judgment of the circuit court of Cook County confirming the decision and opinion on second remand of the Illinois Workers' Compensation Commission (Commission). In that decision, the Commission determined that claimant sustained an accidental injury arising out of and in the course of his employment with respondent, Osgood Industries, on April 12, 2004. However, the Commission also found that a subsequent, intervening accident on December 12, 2004, broke the causal chain between claimant's current conditions of ill-being and the April 12, 2004, occurrence. For the reasons set forth below, we affirm and remand this matter for further proceedings.

¶ 4 II. BACKGROUND

¶ 5 A. Arbitration Hearing

¶ 6 On September 26, 2005, claimant filed with the Commission two applications for adjustment of claim. In his first application, claimant alleged that on or about April 12, 2004, he sustained a right knee/leg injury "when standing from setting a machine." In his second application, claimant alleged that he injured his right knee/leg on or about December 12, 2004, "while kneeling down at work." The two applications were consolidated for review, and the matter proceeded to an arbitration hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2004)). The following factual recitation is taken from the evidence presented at the arbitration hearing, which was held over the course of three dates between February 21, 2008, and June 10, 2008.

¶ 7 Claimant, who had worked with respondent for 14 years, was a senior service technician. This position involved machining parts, building machines, installing them, and teaching others how to operate and service them. Claimant's position required him to kneel, lift items weighing

50 to 60 pounds, climb ladders, and occasionally crawl. Claimant's workdays lasted between 8 and 16 hours.

¶ 8 Claimant testified that on April 12, 2004, as he was installing a freezer, he stood up and it "felt like somebody took a razor blade and cut [his] leg in half." The next day, claimant sought treatment at Northern Illinois Medical Center. Claimant told the doctor that he stood up from a kneeling position and " 'felt a rip in the right knee.' " At that time, claimant was diagnosed with a sprain, although the doctor did not rule out the possibility of a cartilage injury.

¶ 9 On May 13, 2004, claimant presented to Dr. Robert Hall for his right-knee complaints. Claimant told Dr. Hall that his injury occurred "when getting up." Dr. Hall reviewed an MRI dated April 16, 2004, and concluded that it was negative for a meniscal tear. Dr. Hall administered a steroid injection to claimant's right knee and ordered a second MRI. The second MRI was taken on May 21, 2004, and revealed a fraying of the articulating surfaces in the free edge of the medial meniscus with mild intrasubstance intermediate signal seen with the posterior horn and body suggestive of myxoid degeneration. Dr. Hall interpreted the second MRI film to show a tear of the medial meniscus of the right knee. He scheduled surgery for July 2, 2004. On June 30, 2004, claimant was taken off work in anticipation of the procedure.

¶ 10 On July 2, 2004, Dr. Hall performed an arthroscopy, debridement of the patellofemoral joint, and medial meniscectomy of claimant's right knee. Following the operation, claimant underwent a course of physical therapy. Claimant saw Dr. Hall postoperatively, and, on August 30, 2004, Dr. Hall noted that claimant was "feeling much better" and ready to return to work. Upon examination, Dr. Hall did not note any swelling or tissue edema about the knee. Further, claimant was able to bear his full weight while walking and had no limp. On August 31, 2004, claimant was released to return to work with no restrictions noted. Claimant testified that when

he returned to work, his assignment involved "sitting and checking out the machine" and "tell[ing other employees] what to do." Claimant continued to work until February 2005.

¶ 11 Meanwhile, on September 2, 2004, claimant called Dr. Hall's office claiming that he was "working [and] bending [and] squatting," resulting in pain in his knee. Claimant requested pain medication, and Dr. Hall prescribed Vicodin. Claimant presented to Dr. Hall's office on September 20, 2004, at which time Dr. Hall noted that claimant reported that he had been doing "quite a bit of work of late and having increasing discomfort in the medial side of the knee." Dr. Hall administered a steroid injection to the right knee and instructed claimant to return in one month. Claimant returned to Dr. Hall's office on October 21, reporting that the injection into his right knee provided relief for about a month before the pain returned. At that time, Dr. Hall administered another injection, discharged claimant from his care, and instructed claimant to return on an as-needed basis.

¶ 12 On December 22, 2004, claimant saw Dr. Hall, complaining of pain on the medial side of his right knee. Dr. Hall recommended another MRI, as he believed that claimant may have re-torn his medial meniscus. The MRI was taken on January 19, 2005, and revealed an oblique tear of the posterior horn of the medial meniscus. Dr. Hall scheduled claimant for a second surgery for his right knee.

¶ 13 On February 14, 2005, claimant presented to Dr. Jay Levin for an independent medical examination. See 820 ILCS 305/12 (West 2004). Claimant told Dr. Levin that he was "99% better" six weeks after his July 2, 2004, surgery. Dr. Levin noted in his report that claimant "states he had a new injury ***. Prior to this, he was feeling well. The day before the injury he was able to do all of his basic functions. In September 2004 he was rebuilding the bottom of a machine. When he got up off his hands and knees he felt a 'rip' again in his right knee. He

finished the rest of the day and called Workman's Compensation the following day to get authorized to see Dr. Hall." Dr. Levin reviewed the MRIs from April 16, 2004, May 21, 2004, and January 19, 2005. Dr. Levin noted that the MRI from January 19, 2005, showed enlargement of the previous right medial meniscal tear and a large knee joint effusion. Dr. Levin concluded that that tear was not related to his April 12, 2004, injury, but rather to the injury occurring in September 2004. Dr. Levin further opined that claimant had reached maximum medical improvement for the injuries related to his April 12, 2004, accident, when Dr. Hall discharged him upon completion of physical therapy and that he did not sustain any permanent damage.

¶ 14 On February 25, 2005, claimant underwent an arthroscopy and medial meniscectomy of the right knee. In his hospital admission note, Dr. Hall wrote that claimant previously underwent a right knee arthroscopy with medial meniscectomy on July 2, 2004, and "his pain returned on the medial side and a recent MRI showed a re-tear of the previously subtotally resected medial meniscus." Following the surgery, claimant underwent a course of physical therapy. At his initial physical therapy visit on March 10, 2005, a history was taken and the therapist documented that claimant "had [a] previous medial meniscectomy. He reports re-injuring his knee at work while kneeling down, he felt a ripping sensation."

¶ 15 Following surgery, claimant continued to report pain and discomfort in the right knee. Claimant underwent two additional operations on his right knee—a partial replacement of the right knee on May 25, 2005, and a total right knee replacement on August 4, 2005. Subsequent to the latter procedure, claimant was released to return to work with restrictions on October 10, 2005. Claimant did return to work, but continued to complain of soreness and pain on the medial side of his right knee. Claimant continued to work until June 9, 2006. On September 7, 2006,

claimant underwent another right-knee arthroplasty because a component from the August 2005 operation had loosened.

¶ 16 Claimant testified that his left knee began to hurt in June 2006. On March 19, 2007, Dr. Levin examined claimant with respect to his left-knee complaints. Dr. Levin found that the occurrence of April 12, 2004, did not cause any direct trauma to claimant's left knee, but he felt that claimant's altered gait from his right knee could cause internal derangement of the left knee, and he recommended an MRI of the left knee. That MRI showed a tear of the posterior horn of the left medial meniscus and a mild medial collateral ligament sprain. On May 18, 2007, claimant underwent an arthroscopy, debridement of the patellofemoral joint, and medial meniscectomy of the left knee. Despite the surgery, claimant complained of progressively worsening pain in the left knee. On July 23, 2007, claimant returned to Dr. Hall complaining of bilateral knee pain. At that time, Dr. Hall remarked that he had no explanation for claimant's pain complaints.

¶ 17 On September 20, 2007, Dr. Levin re-examined both of claimant's knees. A report from that visit reiterates that claimant reported having "almost completely recovered" four months after his April 2004 injury, before sustaining a second injury. Dr. Levin asked claimant whether the second injury occurred in September or December 2004 because there was a question about the specific date in the records forwarded to him. Claimant stated that, to the best of his recollection, the second injury occurred in September 2004, although he could not say for sure, and indicated it may have occurred in December 2004. Dr. Levin's report indicates that claimant felt a " 'ripping' " in his right knee on the date of the second injury. Claimant also reported to Dr. Levin that his left-knee problems did not occur until after the use of an assistive device following the second injury. Subsequent to the examination, Dr. Levin examined the diagnostic

images and intraoperative films from claimant's left-knee surgery and concluded that a total left-knee arthroscopy was not reasonable and necessary. In the report, Dr. Levin attributed claimant's need for further medical intervention, including claimant's left knee, to the accident occurring in September or December 2004. Despite Dr. Levin's opinion, claimant underwent a total left-knee arthroplasty on October 16, 2007. In his last report of February 20, 2008, Dr. Levin reiterated that claimant expressly told him that he sustained a second accident in the latter part of 2004, although he was unsure of the exact date.

¶ 18 In his testimony at the arbitration hearing, claimant denied the occurrence of a second accident in the latter part of 2004:

"Q [claimant's attorney]. Now the issue has come up, sir, about whether or not you had an accident in September of '04.

A [claimant]. No. The only thing that ever happened—

Q. Did you or did you not have an accident in September of '04?

A. No.

Q. Okay. Did you or did you not have an accident in December of '04?

A. No.

Q. Okay. Now those two dates have been mentioned repeatedly in Dr. Levin's report as being accident dates that you told him that you had. Is that true?

A. No.

Q. Did he ever ask you?

A. No. He just kept throwing dates at me, like when I was off of work, and that was it. And at that time, I didn't know anything."

Upon the motion of the insurer for respondent at the time of the second accident, and with claimant's approval, the arbitrator dismissed the application reflecting the second alleged accident date.

¶ 19 During the arbitration hearing, claimant attempted to present a letter dated February 20, 2008, which Dr. Hall had prepared to describe claimant's condition. Respondent raised a hearsay objection, arguing that the letter was created in anticipation of litigation. The arbitrator agreed with respondent and disallowed the letter. Also during the arbitration hearing, respondent sought to introduce records from the Illinois State Police that claimant had been convicted of a felony within the last 10 years. Over claimant's objection, the arbitrator allowed the police records into evidence, but noted that he would consider them "only *** as to the issue of credibility."

¶ 20 After the parties presented their exhibits, the arbitrator asked claimant's attorney if he wished to take any depositions. Claimant's attorney responded that he wanted to depose Dr. Hall. Over respondent's objection, the arbitrator granted the request. On June 10, 2010, the arbitration hearing resumed and Dr. Hall's deposition testimony was admitted into evidence.

¶ 21 B. Arbitrator's Decision

¶ 22 In his July 30, 2008, decision, the arbitrator concluded that claimant sustained injuries arising out of and in the course of his employment with respondent. In his written findings, the arbitrator explained as follows:

> "The arbitrator adopts the opinions of Dr. Hall, as expressed in his deposition, that [claimant's] present condition [of] both his right and left knees [is] causally related to the accident on April 12, 2004. Further, the arbitrator finds that there is only one accident, and that occurred on April 12, 2004. The arbitrator concludes that [claimant's]

subsequent surgeries to his right and left knees before and after September 2007, are all causally related as a worsening progression of the original injury sustained on April 12, 2004."

The arbitrator awarded claimant temporary total disability (TTD) benefits (see 820 ILCS 305/8(b) (West 2004)) for a total of 145-4/7 weeks, encompassing three distinct periods of time. The arbitrator further ordered respondent to pay $266,076.55 in medical expenses, less $209,127.98 already paid (see 820 ILCS 305/8(a) (West 2004)).

¶ 23 C. Commission's May 1, 2009, Decision

¶ 24 Respondent filed a petition for review of the arbitrator's decision with the Commission. Among other things, respondent argued that it was improper to allow the deposition of Dr. Hall after the start of the hearing. On May 1, 2009, the Commission entered its decision and opinion on review. In the decision, a majority of the Commission corrected an internal consistency regarding one period of TTD benefits, but otherwise affirmed and adopted the arbitrator's decision.

¶ 25 Commissioner Lindsay dissented. Noting that claimant had filed two applications for adjustment of claim alleging two distinct accident dates, Commissioner Lindsay disagreed with the majority's finding that only one accident occurred. Commissioner Lindsay noted that claimant also referenced a second injury when he was examined by Dr. Levin on February 14, 2005, and September 20, 2007, and at his initial physical therapy visit on March 10, 2005. In addition, Commissioner Lindsay concluded that claimant's testimony at the arbitration hearing was not supported by the medical records. She referenced the fact that after claimant's first knee surgery, he returned to full-duty work by late August 2004. Commissioner Lindsay stated that it was clear from the subsequent MRI and claimant's admissions to Dr. Levin and his physical

therapist that a new injury occurred in September 2004. Commissioner Lindsay opined that in finding that no second accident occurred, the majority "plac[ed] more weight on the inconsistent testimony and actions of a convicted felon than the admissions found in the objective medical records." Commissioner Lindsay would have also found that claimant failed to establish good cause for taking Dr. Hall's deposition after the arbitration hearing had begun.

¶ 26 D. Circuit Court's November 5, 2009, Decision

¶ 27 Respondent filed a petition for judicial review of the Commission's decision to the circuit court of Cook County. On November 5, 2009, the circuit court entered an order confirming the decision of the Commission. Notably, the court found that the decision of the commission was not against the manifest weight of the evidence and that the arbitrator did not abuse his discretion when he allowed Dr. Hall's deposition. Subsequently, respondent appealed the matter to this court.

¶ 28 E. Appellate Court's March 31, 2011, Decision

¶ 29 On March 31, 2011, this court entered an order reversing the decision of the circuit court, vacating the decision of the Commission, and remanding the matter to the Commission for further proceedings. *Osgood Industries, Inc. v. Illinois Workers' Compensation Comm'n*, No. 1-09-3310WC (2011) (unpublished order under Supreme Court Rule 23). We determined that the Commission erred when it adopted the arbitrator's ruling permitting the taking of Dr. Hall's deposition after the date of the arbitration hearing. We remanded the matter to the Commission "for new findings that do not rely on the Hall deposition." We did not address respondent's other argument that the Commission's findings regarding claimant's purported second injury were against the manifest weight of the evidence.

¶ 30 F. Commission's First Remand Decision

¶ 31 On March 19, 2012, the Commission entered its decision and opinion on remand (First Remand Decision). Once again, the Commission affirmed and adopted the decision of the arbitrator in regards to causal connection and TTD benefits, but premised its opinion "on the *medical records* of Dr. Hall and not his deposition." (Emphasis added.) The Commission found that "both Dr. Hall's records *** as well as Dr. Levin's March 19, 2007 *** Report *** sufficiently proved that [claimant's] right knee and left knee conditions are causally connected to the accident on April 12, 2004." Therefore, the Commission modified the decision of the arbitrator "by removing all citations of the deposition of Dr. Hall," but otherwise affirmed and adopted the decision of the arbitrator and remanded the matter to the arbitrator "for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 *** (1980)."

¶ 32 Respondent filed a motion for recall of the Commission's First Remand Decision pursuant to section 19(f) of the Act (820 ILCS 305/19(f) (West 2012)). In its motion, respondent noted that the Commission's decision contained certain clerical errors. Respondent also asserted that the Commission failed to cite any specific records, dates of treatment, notations, or citations in support of its finding that Dr. Hall's medical records established that claimant's condition was causally related to the April 12, 2004, injury. On May 7, 2012, the Commission denied respondent's motion, but acknowledged the existence of clerical errors within its decision.

¶ 33 G. Circuit Court's December 21, 2012, Decision

¶ 34 Thereafter, respondent filed in the circuit court of Cook County a petition for judicial review of the Commission's First Remand Decision. On December 21, 2012, the circuit court issued a decision setting aside the Commission's decision and remanding the matter. The court

found that the Commission did not follow the mandate of this court on remand in that it did not formulate "new findings," but instead made "a simple 'edit' " of the prior decision to remove the reference to Dr. Hall's deposition. More specifically, the court found that the Commission merely stated that it based its opinion on the medical records of Dr. Hall and Dr. Levin's March 19, 2007, report, but failed to specify what portions of the record actually supported its findings.

¶ 35 The court also concluded that the Commission's decision on remand was against the manifest weight of the evidence. The court reviewed Dr. Hall's treating records, upon which the Commission based its decision, and found that they did not support a finding of a single accident of April 12, 2004, as the cause of claimant's current state of ill-being. The court noted, for instance, that Dr. Hall determined that claimant had healed from his July 2, 2004, knee surgery and then documented that claimant had "re-torn" his meniscus and that his pain had returned. The court also found that Dr. Levin's report did not support a finding that the April 12, 2004, accident was the cause of claimant's current conditions of ill-being. The court referenced the fact that Dr. Levin repeatedly noted that claimant had reported a second accident in the latter half of 2004. Dr. Levin opined that it was this secondary injury that resulted in claimant's current conditions of ill-being. The court concluded that the manifest weight of the evidence demonstrates that claimant's current conditions of ill-being was the result of a second work incident on December 12, 2004, as documented in the second application for adjustment of claim filed by claimant.

¶ 36 H. Commission's Second Remand Decision

¶ 37 On July 17, 2013, the Commission issued its decision and opinion on second remand (Second Remand Decision). That decision provides in part as follows:

> "This matter comes before the Commission from the Cook County Circuit Court's second remand. The Commission was ordered by the Circuit Court to find an accident on April 12, 2004. The Commission was also ordered to find that there is no causal connection between [claimant's] current condition of ill-being pertaining to his right and left legs and the accident of April 12, 2004. On December 12, 2004, [claimant] had an intervening subsequent accident cutting off Respondent's liability."

The Commission awarded claimant 8-6/7 weeks of TTD benefits and ordered respondent to pay for all medical bill and services involving claimant's right knee from April 12, 2004, through December 3, 2004, pursuant to the fee schedule (see 820 ILCS 305/8(a), 8.2 (West 2004)). Finally, the Commission remanded the matter to the arbitrator "for further proceedings for a determination of compensation for permanent disability to the right leg, if any, pursuant to *Thomas* ***, 78 Ill. 2d 327."

¶ 38 I. Circuit Court's March 14, 2014, Decision

¶ 39 Thereafter, claimant filed a petition for judicial review in the circuit court of Cook County of the Commission's Second Remand Decision. On March 14, 2014, the circuit court confirmed the Commission's Second Remand Decision. This appeal by claimant followed.

¶ 40 III. ANALYSIS

¶ 41 We note at the outset that claimant's arguments in support of reversal are not clearly defined and are largely undeveloped. Ultimately, we perceive claimant's brief to set forth two principal arguments: (1) the Commission's First Remand Decision was not final and appealable and, therefore, the circuit court lacked jurisdiction to review it; and (2) the Commission's Second Remand Decision, which determined that claimant sustained a second accident on December 12, 2004, thereby breaking the causal connection between claimant's current conditions of ill-being

and his work accident of April 12, 2004, is against the manifest weight of the evidence. We address each contention in turn.

¶ 42 A. Final and Appealable Order

¶ 43 Claimant first suggests that the circuit court lacked jurisdiction to review the Commission's First Remand Decision. Citing to *Supreme Catering v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 111220WC, claimant asserts that "[w]here a [section] 19(b) decision has been remanded to the Arbitrator for a determination of permanency and a determination of *** vocational rehabilitation, [Illinois] courts have consistently held that the demand [*sic*] order is not final." Claimant's argument lacks merit.

¶ 44 It is well settled that only final determinations of the Commission are appealable. *University of Illinois Hospital v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 113130WC, ¶ 9; *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶ 8; *Bechtel Group, Inc. v. Industrial Comm'n*, 305 Ill. App. 3d 769, 772 (1999); *Honda of Lisle v. Industrial Comm'n*, 269 Ill. App. 3d 412, 414 (1995); *American Insulated Structures v. Industrial Comm'n*, 256 Ill. App. 3d 171, 174-75 (1994); *F&E Erection Co. v. Industrial Comm'n*, 162 Ill. App. 3d 156, 167 (1987). "A judgment is final if it determines the litigation on the merits, and it is not final if the order leaves a case pending and undecided." *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶ 8; see also *Honda of Lisle*, 269 Ill. App. 3d at 414. To determine whether a decision of the Commission is final, the relevant inquiry is "whether administrative involvement in the case has been terminated or the Commission has ordered further administrative proceedings." *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶ 8.

¶ 45 Thus, in *Supreme Catering*, the Commission awarded TTD benefits and medical expenses and remanded the matter to the arbitrator "for a determination of the claimant's 'need

for vocational rehabilitation and/or maintenance,' as well as any need for further treatment, and a determination of the nature and extent of [the claimant's] disability pursuant to *Thomas* *** 78 Ill. 2d 327." *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶ 4. On judicial review, the circuit court confirmed the decision of the Commission. On appeal, we *sua sponte* addressed whether the circuit court had jurisdiction to consider the appeal in light of the Commission's remand order. *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶ 7. We concluded that the Commission's order was not was not final and appealable because, upon remand, further administrative involvement regarding the extent and nature of the vocational rehabilitation would be required. *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶ 18.

¶ 46 In contrast, where the Commission's remand order does not require further proceedings on the issue of vocational rehabilitation, a different result ensues. Thus, in *F&E Construction Co.*, where vocational benefits were not at issue, the Commission awarded TTD benefits and remanded the matter to the arbitrator "for further proceedings pursuant to *Thomas*." Respondent thereafter sought judicial review in the circuit court. The court determined that it lacked jurisdiction to consider the decision because the Commission remanded the case to the arbitrator. We held that that decision of the Commission was final and appealable notwithstanding the need to later remand to the arbitrator for a finding on the issue of permanency. *F&E Construction Co.*, 162 Ill. App. 3d at 167-68. This result flowed from a reading of section 19(b) of the Act in conjunction with *Thomas*, 78 Ill. 2d 327. Section 19(b) provides:

> "The Arbitrator may find that the disabling condition is temporary and has not yet reached a permanent condition and may order the payment of compensation up to the date of the hearing, *which award shall be reviewable and enforceable in the same manner as other awards*, and in no instance be a bar to a further hearing and

> determination of a further amount of temporary total compensation or of compensation for permanent disability, *but shall be conclusive as to all other questions except the nature and extent of said disability*." (Emphasis added.) 820 ILCS 305/19(b) (West 2004).

In *Thomas*, the supreme court determined that section 19(b) of the Act allows the arbitrator to consider evidence relating to temporary total disability and make a TTD award but refrain from ruling prematurely on the issue of permanency. *Thomas*, 78 Ill. 2d at 333-35. As we have since explained, in the absence of a remand for a determination of vocational rehabilitation, the fact that permanency will be considered later does not divest the Commission or the courts of jurisdiction to consider the other provisions of the award as they have been finally determined. See *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶ 10; *Bechtel Group, Inc.*, 305 Ill. App. 3d at 771.

¶ 47 In the present case, the Commission, in its First Remand Decision, awarded claimant TTD benefits and medical expenses. It then remanded the matter to the arbitrator "for further proceedings for a determination of compensation for permanent disability to the right leg, if any, pursuant to *Thomas*." The Commission's First Remand Decision also provides that the remand would take effect "only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed." We find nothing in the First Remand Decision to indicate that the Commission intended to remand the matter for further proceedings on the issue of vocational rehabilitation. Furthermore, claimant does not direct us to any language in the First Remand Decision (or any other document of record) to establish that the Commission remanded the case for such a determination.

Likewise, claimant does not explain how *Supreme Catering* applies to the scenario present here. Given this backdrop, we are unable to discern how our holding in *Supreme Catering* renders the First Remand Decision interlocutory in nature. Rather, we find that because the Commission did not remand this matter for further proceedings involving vocational rehabilitation, its First Remand Decision was properly appealed to the circuit court notwithstanding the need to later remand the matter to the arbitrator for a finding on the issue of permanency. See *Thomas*, 78 Ill. 2d at 332-35; *F&E Construction Co.*, 162 Ill. App. 3d at 167-68. Accordingly, we reject claimant's jurisdictional challenge.

¶ 48 B. Merits

¶ 49 Turning to the merits, claimant contends that the Commission's finding in the Second Remand Decision that he sustained a second accident late in 2004 which broke the causal chain between his current conditions of ill-being and his work accident of April 2004 is against the manifest weight of the evidence. According to claimant, Dr. Hall's records do not support a finding of a second accidental injury, but rather that his current conditions of ill-being are related to the unsuccessful attempts to repair the damage to and relieve the pain from his right knee, which was injured as a result of the April 12, 2004, work accident.

¶ 50 Although claimant seeks review of the Commission's Second Remand Decision, it is well settled that where, as here, the trial court reverses the Commission's initial decision and the Commission enters a new decision on remand, this court must decide whether the Commission's initial decision was proper. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 785-86 (2005); *Inter-City Products Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 185, 196 (2001). Accordingly, our analysis does not entail a review of the Commission's Second Remand Decision, but of the Commission's First Remand Decision.

¶ 51 To obtain compensation under the Act, a claimant must show by a preponderance of the evidence that he suffered a disabling injury arising out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The phrase "in the course of" refers to the time, place, and circumstances under which the accident occurred. *Lee v. Industrial Comm'n*, 167 Ill. 2d 77, 81 (1995). The "arising out of" component addresses the causal connection between a work-related injury and the claimant's condition of ill-being. *Lee*, 167 Ill. 2d at 80-81. An injury is said to "arise out of" one's employment if it "had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro, Inc.*, 207 Ill. 2d at 203. A claimant need prove only that some act or phase of his or her employment was a causative factor in the ensuing injury. *Vogel*, 354 Ill. App. 3d at 786. Stated differently, a work-related injury need not be the sole or principal cause in the resulting condition of ill-being as long as it was *a* causative factor. *Sisbro, Inc.*, 207 Ill. 2d at 205.

¶ 52 Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury. *Vogel*, 354 Ill. App. 3d at 786; *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 742 (1994). Under an independent intervening cause analysis, compensability for an ultimate injury or disability is based upon a finding that the employee's condition was caused by an event that would not have occurred "but for" the original injury. *International Harvester Co. v. Industrial Comm'n*, 46 Ill. 2d 238, 245 (1970).

¶ 53 Whether a causal connection exists between the employee's condition of ill-being and a particular work-related accident is a question of fact. *Vogel*, 354 Ill. App. 3d at 786; see also

Bell & Gossett Co. v. Industrial Comm'n, 53 Ill. 2d 144, 148 (1972) (whether an accident constitutes an independent, intervening cause is a question of fact for the Commission); *Bailey v. Industrial Comm'n*, 286 Ill. 623, 626 (1919) (same). It is within the province of the Commission to resolve disputed questions of fact, including those of causal connections, to draw permissible inferences from the evidence, and to judge the credibility of the witnesses. *Mendota Township High School v. Industrial Comm'n*, 243 Ill. App. 3d 834, 836 (1993); *Zion-Benton Township High School District 126 v. Industrial Comm'n*, 242 Ill. App. 3d 109, 113 (1993). "We cannot reject or disregard permissible inferences drawn by the Commission simply because different or conflicting inferences might also reasonably be drawn from the same facts, nor can we substitute our judgment for that of the Commission on such matters unless its findings are contrary to the manifest weight of the evidence." *Zion-Benton Township High School District 126*, 242 Ill. App. 3d at 113. For a finding to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Mendota Township High School*, 243 Ill. App. 3d at 837.

¶ 54 In its First Remand Decision, the Commission concluded that claimant's current conditions of ill-being are causally related to the original injury of April 12, 2004. In support of its decision, the Commission modified the decision of the arbitrator "by removing all citations to the deposition of Dr. Hall," but otherwise affirmed and adopted the decision of the arbitrator and remanded the matter for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327. The Commission explained that "both Dr. Hall's records *** as well as Dr. Levin's March 19, 2007 *** Report *** sufficiently proved that [claimant's] right knee and left knee conditions are causally connected to the accident on April 12, 2004." However, the Commission did not cite to any specific dates of treatment, notations, or findings in Dr. Hall's records or explain how Dr. Levin's March 19, 2007, report supported its conclusion that claimant's current conditions of ill-

being were caused by the April 12, 2004, work accident. Moreover, as we discuss below, based on our review of the records, we find that neither Dr. Hall's treatment records nor Dr. Levin's March 19, 2007, report support the Commission's conclusion.

¶ 55 Claimant's initial injury occurred on April 12, 2004. After initially treating at Northern Illinois Medical Center, claimant saw Dr. Hall in May 2004. Dr. Hall ordered an MRI, which showed a tear of the medial meniscus of the right knee. On July 2, 2004, claimant underwent surgery for this condition. Claimant treated with Dr. Hall post-operatively, and by August 30, 2004, Dr. Hall documented that claimant was "feeling much better." At that time, Dr. Hall did not note any swelling or tissue edema about the knee. Further, claimant was able to bear his full weight while walking and he had no limp. On August 31, 2004, Dr. Hall released claimant to return to work with no restrictions noted.

¶ 56 By claimant's own testimony, his duties upon returning to work involved simply sitting and directing other employees. Yet, on September 2, 2004, claimant contacted Dr. Hall complaining of pain in his knee as a result of "working [and] bending [and] squatting." Claimant returned to Dr. Hall's office on September 20, 2004, reporting that he had been doing "quite a bit of work of late" and had "increasing discomfort in the medial side of the knee." Dr. Hall injected claimant's right knee and instructed him to return in one month. On October 21, 2004, claimant reported that the injection to his right knee provided relief for about one month before the pain returned. After administering another injection, Dr. Hall discharged claimant from his care with instructions that he return on an as-needed basis.

¶ 57 Claimant did not return to Dr. Hall's office until December 22, 2004, more than two months later. Dr. Hall suspected that claimant may have re-torn his medial meniscus. An MRI confirmed Dr. Hall's suspicion, and he scheduled another operation for claimant's right knee. At

that time, Dr. Hall did not relate claimant's complaints to any particular accident. The second surgery was performed on February 25, 2005. In his hospital admission note, Dr. Hall wrote that claimant underwent a right-knee arthroscopy with medial meniscectomy on July 2, 2004, and "his pain returned on the medial side and a recent MRI showed a *re-tear* of the previously subtotally resected medial meniscus." (Emphasis added.) Dr. Hall does not indicate in the hospital admission note that the re-tear was causally related to the accident of April 12, 2004, or that claimant's physical condition was weakened as a result of the April 12, 2004, occurrence so as to contribute to the subsequent injury. See *International Harvester*, 46 Ill. 2d at 244-47 (finding that the claimant would not have been permanently disabled as a result of his wife striking him in the head but for a weakened condition caused by his prior work-related head injury); *G.H. Hammond Co. v. Industrial Comm'n*, 288 Ill. 262, 264-65 (1919) (holding that the claimant would not have died due to complications from subsequent fall but for a weakened condition caused by his prior work-related injury). Contrary to the Commission's finding, we glean nothing from Dr. Hall's records to link claimant's condition after December 2004 to the April 12, 2004, accident. Rather, the treatment records from Dr. Hall reflect that claimant sustained an accident on April 12, 2004, recovered from that accident, returned to work with no restrictions noted, and then re-injured his right knee in a separate accident occurring in December 2004.

¶ 58 Likewise, we find nothing in Dr. Levin's report of March 19, 2007, or any of his other reports to support the Commission's causation finding. Dr. Levin first examined claimant on February 14, 2005. At that time, claimant reported that he was "99% better" six weeks after the July 2004 surgery. Dr. Levin noted in his report that claimant reported a "new injury" at work in September 2004, "[w]hen he got up off his hands and knees [and] felt a 'rip' again in his right

knee." Dr. Levin reviewed claimant's January 19, 2005, MRI and confirmed that claimant sustained a tear of the medial meniscus. Dr. Levin opined, however, that the tear was not related to the initial injury of April 12, 2004, but to the injury occurring in the latter half of 2004.

¶ 59 On March 19, 2007, Dr. Levin examined claimant regarding his left-knee complaints. Dr. Levin found that the occurrence of April 12, 2004, did not cause any direct trauma to claimant's left knee. He noted, however, that claimant's altered gait from his right knee could cause internal derangement of the left knee, and he recommended an MRI of the left knee. The MRI showed a tear of the posterior horn of the medial meniscus and a mild medial collateral ligament sprain. Dr. Levin reviewed the MRI, and, in a report dated April 24, 2007, found that claimant would benefit from a left knee arthroscopy with partial medial meniscectomy.

¶ 60 In a May 11, 2007, letter to one of respondent's workers' compensation carriers, Dr. Levin wrote as follows:

> "I am in receipt of your letter dated May 4, 2007, in which you ask "Is the meniscal tear related to the altered gait caused by the work injury." The differential diagnosis of meniscal tear includes traumatic and non-traumatic etiology. It is possible for a patient to tear a meniscus absent any trauma, just from his activities of daily living, but by the same token, altered gait or trauma can cause a medial meniscal tear. It is impossible to say that his altered gait did not at least contribute to or cause his left knee medial meniscal tear in the absence of any additional trauma to his knee. Therefore, I believe that the altered gait caused by his work injury either caused the left knee medial meniscal tear or aggravated such a condition."

While the foregoing passage seems to suggest a causal link, Dr. Levin's report of September 20, 2007, dispels any notion that claimant's altered gait was caused by the April 12, 2004, work accident:

> "It is the secondary injury of September 2004 or December 2004, which resulted in the need for additional intervention and the ultimate condition [claimant] is currently in. Furthermore, as my opinions expressed in my previous report of April 24, 2007, as well as confirmed with [claimant] today *he did not sustain a left knee injury from either the April 2004 or the September/December 2004 occurrence but rather from an altered gait secondary to complication that arose from the treatment of [the] September/December 2004 occurrence.* The posterior horn medial meniscal tear, which was found on the recent MRI and as commented on in my April 24, 2007 report, is related to an altered gait that occurred following the injury of September/December 2004 and the sequelae of treatment he had thereafter. It is clear from both asking [claimant] again today and from the records that after the April 2004 occurrence he had recovered, returned to work and was basically discharged from Dr. Hall's care prior to the second injury of September/December 2004." (Emphasis added.)

Thus, based on claimant's representations, as well as his review of the medical records, it was Dr. Levin's opinion that claimant's current conditions of ill-being were related to the second accident.

¶ 61 Claimant denied the existence of a second accident at the arbitration hearing. His testimony, however, is contradicted by an abundance of other evidence. As noted above, the records of both Dr. Levin and Dr. Hall clearly document the existence of a second injury. Moreover, on March 10, 2005, claimant began physical therapy following his surgery the

previous month. At that time, the therapist noted that claimant had a previous medial meniscectomy and "re-injur[ed] his knee at work while kneeling down, he felt a popping sensation." This occurrence is consistent with the history set forth in Dr. Levin's records and supports the existence of a second accident.

¶ 62 Even more significant than the histories documented in the medical records, however, is claimant's own admission of a second accident. Claimant filed *two* applications for adjustment of claim alleging *two* separate accident dates—April 12, 2004, and December 12, 2004. In his application alleging an injury on December 12, 2004, claimant asserted that he was injured "while kneeling down at work." That application for adjustment of claim, like all such applications, stated that it was a "legal document" and warned the applicant to make sure that he or she "understand[s] the statements" set forth in the application before signing it. Claimant signed both applications while represented by counsel. See *In re Discipio*, 163 Ill. 2d 515, 525 (1994) (noting that, as a legal document, an application for adjustment of claim "require[s] legal expertise in order to ensure that clients understood the statutory and legal principles referenced in the documents"). Similarly, at the beginning of the arbitration hearing, the parties executed two "Request for Hearing" forms. In those forms, claimant cited the same two accident dates set forth in the applications for adjustment of claim. The record also contains a letter from claimant's attorney to one of respondent's workers' compensation carriers referencing a second accident date. The letter, dated October 31, 2007, informs that counsel "represent[s claimant] in a *pair of claims* before the *** Commission as a result of knee injuries he suffered while working for [respondent], on or about April 12, 2004, *and re-injured while working for [respondent] on or about December 12, 2004*." (Emphasis added.)

¶ 63 In short, our review of the record leads us to conclude that the evidence does not support the finding of the Commission in its First Remand Decision of a causal connection between claimant's current conditions of ill-being and his April 12, 2004, accident. Instead, the record establishes that claimant sustained an industrial accident on April 12, 2004, he recovered from that accident, and then sustained a second accident in December 2004. This history is documented by claimant's applications for adjustment of claim, his Request for Hearing forms, the October 31, 2007, correspondence of claimant's attorney, the reports of Dr. Levin, the physical therapy records, and the records of Dr. Hall. Thus, we hold that the circuit court did not err when it set aside the Commission's First Remand Decision and remanded the matter for further proceedings. We therefore affirm the circuit court order of March 14, 2014. That order confirmed the Second Remand Decision in which the Commission determined that claimant sustained an accidental injury arising out of and in the course of his employment with respondent on April 12, 2004, but was involved in a subsequent, intervening accident on December 12, 2004, which broke the causal chain between claimant's current conditions of ill-being and the accident of April 12, 2004.

¶ 64 IV. CONCLUSION

¶ 65 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County which confirmed the Commission's Second Remand Decision. This cause is remanded to the Commission for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 66 Affirmed and Remanded.