

2015 IL App (4th) 140422WC-U  
No. 4-14-0422WC  
Order filed May 18, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
FOURTH DISTRICT  
WORKERS' COMPENSATION COMMISSION DIVISION

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CATERING & MORE,	)	Appeal from the Circuit Court
	)	of Pike County.
Appellant,	)	
	)	
v.	)	No. 13-MR-53
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, et al.,	)	Honorable
	)	J. Frank McCartney,
(Gail D. Walston, Appellee).	)	Judge, Presiding.

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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) The Commission's finding that claimant's current condition of ill-being is causally related to her industrial accident is not against the manifest weight of the evidence; (2) the Commission's finding that claimant was entitled to temporary total disability benefits through the date of the arbitration hearing is not against the manifest weight of the evidence; and (3) the Commission's award of medical expenses and prospective medical treatment is not against the manifest weight of the evidence.

¶ 2 Claimant, Gail Walston, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) alleging that she sustained an injury to her left knee while employed by respondent, Catering & More. Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)), the arbitrator concluded that claimant established a causal relationship between her employment and the current condition of ill-being in her left knee. The arbitrator awarded claimant 67-4/7 weeks of temporary total disability (TTD) benefits and \$1,012.74 in reasonable and necessary medical expenses. The arbitrator also ordered respondent to pay the reasonable costs associated with total knee-replacement surgery recommended by claimant's physician. The Illinois Workers' Compensation Commission (Commission) affirmed, adopting the decision of the arbitrator and remanding the cause for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). On judicial review, the circuit court of Pike County confirmed the decision of the Commission. Respondent now appeals, challenging the Commission's findings with respect to causation, TTD benefits, medical expenses, and prospective medical treatment. We affirm and remand for further proceedings.

¶ 3

### I. BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing held on August 6, 2012. Respondent, a business owned by Jennifer Niebur, operates a walk-in deli and catering company in Pittsfield, Illinois. Claimant began working for respondent as a breakfast cook in April 2010. Claimant's position required her to be on her feet for most of her eight-hour shift.

¶ 5 On April 26, 2010, shortly after she began to work for respondent, claimant presented to her primary-care physician, Dr. Korhan Raif, of the Quincy Medical Group. Claimant told Dr.

Raif that she had experienced an episode of sudden pain and popping in her left knee several weeks earlier. Claimant reported that since that time, her left knee had been painful and swollen. Claimant also complained that her knee felt unstable and would give way. Dr. Raif recommended conservative treatment, including rest. Claimant reported no improvement from the initial course of care, so Dr. Raif ordered an MRI scan. The MRI, taken on May 13, 2010, showed no significant internal derangement and the menisci and ligaments intact. Claimant followed up with Dr. Raif on June 1, 2010, with ongoing pain in her left knee. Dr. Raif's notes of that visit indicate the presence of some osteoarthritis and prepatellar bursitis. Dr. Raif administered a steroid injection to claimant's left knee. After the injection, claimant's swelling and pain improved and she had only occasional aches and pains until the injury for which she sought workers' compensation benefits.

¶ 6 The injury at issue occurred on April 22, 2011. On that date, claimant was retrieving some items from a walk-in freezer that was located outside. Claimant testified that it had been raining, so her shoes were wet, and when she entered the freezer, her shoes froze to the floor. As a result, claimant lost her balance, twisted her leg, and fell onto her left side. Claimant testified that she experienced immediate pain in her left knee. Niebur and another employee helped claimant out of the freezer. Claimant was unable to walk on her left leg, so Niebur instructed her to go to the emergency room.

¶ 7 Claimant was initially treated at Illini Community Hospital, where she was diagnosed with a hip strain and a knee contusion. At that time, she was provided with a knee immobilizer and crutches. Claimant followed up on April 25, 2011, at Quincy Medical Group. The treatment notes from that visit indicate that claimant's gait was abnormal and she was unable to walk four weight-bearing steps. Claimant was diagnosed with left knee pain and was directed to continue

use of the immobilizer, avoid any weight bearing, apply ice, and elevate the extremity. She was referred to Steven DeMent, a physician's assistant in the orthopaedic department.

¶ 8 DeMent examined claimant on April 26, 2011. Upon examination, DeMent noted mild swelling and limited range of motion in claimant's left knee. X rays revealed mild-to-moderate osteoarthritic joint-space narrowing. DeMent diagnosed a sprain and strain superimposed on a preexisting meniscal derangement. DeMent authorized claimant off work and recommended physical therapy. Claimant began therapy on April 27, 2011. DeMent next saw claimant on May 6, 2011. At that time, claimant continued to have pain in her left knee and stated that that she was having trouble getting around. Upon examination, DeMent noted that the range of motion of claimant's knee remained limited and testing suggested some instability. DeMent opined that claimant was "definitely not improving." He instructed claimant to use the immobilizer as needed and weight bear only as tolerated. DeMent also ordered an MRI, which claimant underwent on May 10, 2011. The May 2011 MRI was compared to the scan taken in May 2010. The radiologist interpreted the May 2011 MRI as showing a "new moderate sized degenerative radial tear of [the] posterior horn of the medial meniscus" as well as mild tricompartmental osteoarthritis with small joint effusion.

¶ 9 When claimant returned to DeMent on May 16, 2011, she was still unable to weight bear comfortably. DeMent noted significant medial joint line tenderness and tenderness superior to the patella and through the medial collateral ligament area. Claimant's range of motion was somewhat improved. DeMent recommended arthroscopic surgery. Claimant underwent surgery on June 3, 2011. The procedure, performed by Dr. George Crickard, consisted of a left knee arthroscopy with partial medial meniscectomy and chondroplasty of the medial femoral condyle and the lateral tibial plateau.

¶ 10 Claimant followed up with Dr. Crickard's nurse on June 16, 2011, with complaints of swelling and pain. The office notes of that visit indicate that claimant had moderate swelling in her left knee and walked with a limp. The nurse felt these complaints were fairly normal at claimant's stage of recovery and instructed claimant to return in four weeks. However, claimant presented on June 24, 2011, complaining of increased pain, particularly in the posterior aspect of the left knee and the lower lateral calf. A Doppler ultrasound was negative for deep vein thrombosis. Claimant saw DeMent on July 5, 2011, with complaints of increased pain after a 30-minute shopping trip and some walking on another day. Claimant denied any new twisting injuries. Upon examination, DeMent noted good range of motion but with tenderness posteriorly. DeMent recommended restrictions on walking and the use of crutches when outside of the house.

¶ 11 Claimant followed up with Dr. Crickard on July 14, 2011, with continued complaints of left knee pain. Dr. Crickard injected the knee with Depo-Medrol. Dr. Crickard also provided claimant with a slip indicating that she could return to work with restrictions "per disability guideline 836.0" from a publication called the "Official Disability Guidelines." That guideline provides as follows:

**"836.0 Tear of medial cartilage or meniscus of knee, current**

**Capabilities & Activity Modifications for Restricted Work:**

Sedentary/modified work: Standing limited to 5-10 min/hr; walking only on a smooth surface using crutches with limited pressure on the foot; no walking on an irregular surface; no climbing stairs; no climbing ladders or hill climbing requiring frequent knee flexion; no activities requiring balance; no applying strength against bent knee (squatting,

kneeling, crouching, stooping, pedaling, etc.); elevate leg half of time; may need immobilization; limited weight bearing.”

Claimant followed up with Dr. Crickard on August 11, 2011, reporting that her pain was “worse than ever” and that she had not experienced any relief from the injection. Dr. Crickard suggested claimant seek a second opinion with Dr. Adam Derhake.

¶ 12 Dr. Derhake evaluated claimant on August 17, 2011. He noted that since surgery, claimant continued to have significant symptoms and to use crutches. Upon examination, Dr. Derhake noted that claimant had full range of motion of the left knee with pain at the extremes of extension and flexion. Dr. Derhake also noted sharp tenderness along the quadriceps tendon, patellar tendon, the anterior aspect of the tibial cortex, and the medial and lateral aspect of the joint. Dr. Derhake opined that the character of claimant’s symptoms seemed like neuropathic pain. He prescribed Lyrica, directed claimant to work on range of motion, and recommended an MRI. In addition, he kept claimant on the work restrictions imposed by Dr. Crickard.

¶ 13 When claimant returned to Dr. Derhake on August 31, 2011, he noted that the MRI showed signal changes in the medial meniscus as well as extensive chondromalacia changes. However, he did not believe that this reflected the presence of a new meniscus tear. He stated that he “continue[d] to think strongly that the majority of [claimant’s] symptoms are likely related to an aggravation of the underlying arthritic changes in her knee.” Dr. Derhake noted a suggestion from Dr. Michael Watson, the section 12 examiner (see 820 ILCS 305/12 (West 2010)), that claimant would benefit from viscosupplementation, and he agreed that this treatment was the next logical step. While awaiting approval for the injection, Dr. Derhake kept claimant on the work restrictions imposed by Dr. Crickard. The viscosupplementation injection was denied by the insurance carrier. However, Dr. Derhake obtained a free sample, which he

administered to claimant on October 31, 2011. Claimant was instructed to call in one month to report her response to the injection. On November 30, 2011, Dr. Derhake provided claimant with a “Work Ability Report” allowing her to return to work with the following restrictions: “needs to be on flat surface, no tight quarters, rest every 2 hrs, no inclines.”

¶ 14 Claimant was seen by Dr. Crickard on February 14, 2012. At that time, claimant reported daily pain in the left knee and crepitus with motion. Dr. Crickard noted that the viscosupplementation injection provided no relief. Dr. Crickard opined that claimant would benefit from a joint replacement, but advised that “since this is a workmen’s comp, she may need another opinion.” Dr. Crickard authorized claimant to return to work with restrictions of no climbing stairs or ladders, no kneeling or squatting, and no standing for long periods.

¶ 15 Claimant offered the evidence deposition of Dr. Derhake. When asked about the causal relationship between claimant’s condition and her fall at work, Dr. Derhake responded that claimant suffered an acute tear of the medial meniscus at the time of the fall. He also stated that the osteoarthritis preexisted her fall. He opined, however, that based on claimant’s history of work accident, her persistent pain complaints, and documentation from claimant’s physicians, it is more likely than not that her ongoing pain complaints are at least in part the result of an aggravation of her osteoarthritis arising from the fall at work. He also testified that since the degree of claimant’s symptoms were, in part, related to her fall, the need for the viscosupplementation was also related in part to the fall. After reviewing a copy of Dr. Crickard’s office note of February 14, 2012, Dr. Derhake agreed that joint replacement was the only remaining option that claimant had for relief of her knee pain. Dr. Derhake also testified that the need for a joint replacement at that time was causally related to claimant’s work-related accident.

¶ 16 On cross-examination, Dr. Derhake testified that he did not note any significant change in the amount of arthritis on the MRI films of May 2010, May 2011, and August 2011. He also stated that it is possible that claimant's continued complaints could simply be the result of her osteoarthritic condition. Nevertheless, he stated that he was unable to distinguish between the pain caused by the underlying condition and pain caused by the exacerbation without actually having examined claimant himself prior to the work accident. Dr. Derhake also testified that, even absent the work accident, claimant would have eventually needed a knee replacement.

¶ 17 Respondent offered the evidence deposition of Dr. Watson, the section 12 examiner (see 820 ILCS 305/12 (West 2010)). Dr. Watson examined claimant on August 22, 2011. He opined that claimant had a "less than optimal outcome" from the June 2011 operation performed by Dr. Crickard. He noted that claimant continued to complain of pain in the knee and that conservative treatment was unsuccessful. Upon examination, Dr. Watson noted that claimant used crutches to ambulate and walked with a limp when she attempted to bear weight. He further noted that claimant tended to stand with her knee flexed because of discomfort and she was tender around the knee, mostly on the medial joint line. Dr. Watson noted some crepitation and grinding in her knee with flexion and extension as well as some mild swelling. Dr. Watson testified that these findings were consistent with osteoarthritis and postoperative pain from a knee arthroscopy.

¶ 18 With respect to causation, Dr. Watson opined to a reasonable degree of medical certainty that, although the preexisting osteoarthritis made claimant more susceptible to developing a meniscus tear, it was the work accident that most likely caused the torn meniscus. When asked specifically about a causal relationship between the work accident and the osteoarthritis, Dr. Watson testified that claimant had that condition prior to the accident, adding that the injury may have aggravated the condition or made it worse. In this regard, Dr. Watson explained that a



typical recovery from a “straightforward” partial meniscectomy would be three of four months post surgery. He allowed, however, that claimant’s osteoarthritis “complicates the issue” and therefore does not present just a straightforward meniscus tear. Dr. Watson testified that due to claimant’s continued complaints, he would recommend a viscosupplementation injection.

¶ 19 Dr. Watson acknowledged on cross-examination that claimant was limited to sedentary work at the time he saw her. He also admitted that the pain claimant had when he saw her was greater than the pain she described having before the work accident. He noted that the meniscus tear claimant suffered was in the same compartment as the osteoarthritis, so the trauma claimant suffered was in that compartment. Dr. Watson testified that such a trauma can aggravate a preexisting osteoarthritis and make it more symptomatic and that the need for viscosupplementation was related to the level of her symptoms. Dr. Watson further testified that if claimant returned to the baseline level of pain that she had prior to her accident, he would say that her aggravation of the underlying arthritis was only temporary, but if her symptoms persisted for several months, he would find that the aggravation was more than temporary. Dr. Watson explained:

“[If claimant] were seven months postop and still not able to bear weight on her knee and still not able to straighten her knee out then I would tend to lean more towards the statement of accelerating or aggravating or progressing her osteoarthritis with the injury. But if she moved on to four and five and six months postop and she went back to the intermittent pain in her knee then I would say it would be more of a temporary aggravation of her pre-existing condition.”

At the time Dr. Watson examined claimant, she continued to suffer from an aggravation of her underlying osteoarthritis. However, Dr. Watson noted that he examined claimant only 2½

months after her operation. Thus, he could not say whether claimant's condition "progressed things to the point where she had symptoms that were persistent or it just aggravated a temporary state."

¶ 20 At the arbitration hearing, claimant testified that she continues to experience pain and discomfort in her left knee. She also testified that following the work accident, she has never returned to the level of only occasional pain that she was experiencing prior to April 22, 2011. Claimant added that she cannot walk far or stand on her left knee for more than 30 minutes. Claimant testified that she takes pain medications to treat her symptoms.

¶ 21 Claimant testified that she forwarded all of her work restrictions to Niebur when she received them. Upon receipt of the restrictions imposed pursuant to disability guideline 836.0, Niebur indicated that she had no work within claimant's restrictions. Claimant testified that she faxed the restrictions imposed by Dr. Crickard on February 14, 2012, to Niebur and spoke to her by telephone. According to claimant, Niebur told her that she did not know whether there was any work within those restrictions and that she would get back to her. However, Niebur never contacted claimant after that.

¶ 22 Claimant offered the evidence depositions of two of her co-workers, Monique Hyde and Jolene Smith. Hyde testified that she met claimant when they were both working for respondent. Hyde was not present at the time of the accident. Hyde testified that prior to the April 22, 2011, accident claimant would complain that her knee hurt once or twice a week. However, it never kept claimant from doing her job. Further, Hyde testified that she had never observed claimant limping, having difficulty being on her feet, or having difficulty walking before her accident. Since the accident, Hyde visits claimant at her home at least once per month. According to Hyde, claimant continues to have difficulty walking. She noted, for instance, that it took

claimant 15 minutes to move from her couch to her front door to go outside. Hyde had never noticed claimant having this type of difficulty prior to the work accident.

¶ 23 Smith testified that she was working on the date of the accident, heard claimant fall, and went to her aid. Smith testified that claimant was unable to walk after the fall and that she and others assisted claimant to a chair. Since the accident, Smith visits claimant in her home as often as once per month. Smith testified that when claimant first fell, she was hardly able to walk at all. More recently, Smith observed claimant walking with a limp. Smith testified that prior to the accident, claimant would occasionally complain about her knee. However, she was able to work on her feet the entire day, never showed any difficulty standing for prolonged periods of time, and never limped.

¶ 24 Niebur testified that claimant had previously had problems with her left leg and had taken time off work in April 2010 due to pain and swelling in her left knee. Niebur testified that claimant continued to complain “off and on” about her left knee after returning to work through the date of the accident, although “it wasn’t a consistent thing that [she] noticed or that [she] knew about.” Niebur acknowledged receiving an off-work slip in August 2011. When asked if she could accommodate those restrictions, Niebur testified, “not with the job that she needed to do at the shop, no.” Niebur denied receiving any other work restrictions until the last day of November or the first day of December 2011. Niebur testified that claimant had applied for unemployment at that time and had testified in a hearing associated with that application that she had looked for work. Niebur testified that she could “possibly” provide work to claimant “with assistance” in accordance with the restrictions outlined in the November 2011 work ability report. Niebur denied receiving the work restrictions imposed by Dr. Crickard in February 2012.

However, she stated that she could have “made arrangements” for those restrictions. Niebur acknowledged that she had never contacted claimant regarding a return to work.

¶ 25 Cindy Morrow testified that she also worked for respondent. Morrow related that during the period of time between when claimant was off work for knee pain in April 2010 and her accident on April 22, 2011, claimant would occasionally limp and complain of pain and swelling of the left knee. Nevertheless, Morrow acknowledged that, aside from occasional breaks, claimant was working on her feet for her entire shift.

¶ 26 In rebuttal, claimant acknowledged applying for unemployment. However, she testified that in looking for work in connection with her unemployment claim, she informed potential employers of her restrictions and she was not offered any employment.

¶ 27 Based on the evidence presented at the hearing, the arbitrator found that, as a result of her work accident, claimant sustained a torn meniscus and aggravated her preexisting osteoarthritis. With regard to the latter condition, the arbitrator acknowledged that claimant had earlier problems with her knee, but concluded that claimant’s condition was permanently worsened by the work accident and she never returned to her pre-accident baseline. In support of this conclusion, the arbitrator cited the “credible testimony” of claimant regarding the onset and persistence of pain and disability associated with her work-related accident as well as the testimony of claimant’s co-workers and the opinions of Dr. Derhake and Dr. Watson. Accordingly, the arbitrator concluded that claimant established a causal relationship between her current condition of ill-being and her work-related injury, including the need for knee replacement. The arbitrator awarded claimant 67-4/7 weeks of TTD benefits, representing the period from April 22, 2011, through August 6, 2012. In support of the TTD award, the arbitrator relied on the opinion of Dr. Watson that claimant had aggravated her preexisting knee condition

as a result of the work-related accident and continued to suffer an aggravation at the time he examined claimant. The arbitrator also cited claimant's "credibl[e]" testimony that she had contacted respondent regarding her work restrictions and that she had not been offered any work within those restrictions. Finally, the arbitrator determined that the reasonableness and necessity of medical treatment, including the knee replacement surgery, was established by the testimony of claimant and the physicians who treated and examined her. The Commission affirmed and adopted the decision of the arbitrator and remanded the cause for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327. On judicial review, the circuit court of Pike County confirmed. This appeal by respondent followed.

¶ 28

## II. ANALYSIS

¶ 29

### A. Causation

¶ 30 On appeal, respondent first argues that the Commission's finding that claimant's current condition of ill-being is causally related to the work accident of April 22, 2012, is against the manifest weight of the evidence. According to respondent, the record clearly shows that claimant had a preexisting arthritic condition in her left knee, which, at best, may have been temporarily aggravated by the work accident. Respondent contends, however, that claimant returned to baseline within four months of the surgery to repair her meniscus and any ongoing left knee complaints are attributable solely to claimant's preexisting condition and not the result of the accident. Claimant disagrees and maintains that the evidence as a whole clearly establishes that she suffered an aggravation of her preexisting condition that has resulted in her ongoing disability and need for additional treatment.

¶ 31 An employee seeking workers' compensation benefits has the burden of proving all elements of his or her claim. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995).

Among other things, the employee must establish a causal connection between the employment and the injury for which he or she seeks benefits. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860 (2005). In cases involving a preexisting condition, recovery will depend on the employee's ability to establish that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to be causally connected to the work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 204-05 (1993); *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 949 (2011). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc.*, 207 Ill. 2d at 205.

¶ 32 Causation presents an issue of fact. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 597 (2005); *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 293 (1992). In resolving factual matters, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). A reviewing court may not substitute its judgment for that of the Commission on such issues merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We review the Commission's factual determinations under the manifest-weight-of-the-evidence standard. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120411WC, ¶ 17. Stated another way, if there is sufficient factual evidence in the record to support the Commission's decision, we must

uphold it, regardless of whether this court, or any other tribunal, might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

¶ 33 Here, the record establishes that claimant had osteoarthritis of the left knee prior to the accident date of April 22, 2010. Thus, the Commission was tasked with deciding whether claimant's undisputed work accident aggravated or accelerated her preexisting osteoarthritis to the extent that her current condition of ill-being can be said to be causally related to the work accident and not merely the result of a normal degenerative process of the preexisting condition. The Commission, in affirming and adopting the decision of the arbitrator, concluded that claimant's preexisting condition was permanently worsened by her work related accident and that claimant never returned to her baseline. As such, the Commission determined that there was a causal relationship between claimant's current condition of ill-being and the work accident. We find ample evidence of record from which the Commission could reasonably conclude that there is a causal connection between claimant's current condition of ill-being and her work accident.

¶ 34 Significantly, the record establishes that claimant's preexisting arthritic condition worsened following the work accident of April 22, 2011, and never returned to her baseline. Claimant first sought treatment for pain and swelling involving her left knee in April 2010. At that time, Dr. Raif recommended conservative treatment, including rest and a steroid injection. Claimant missed some work while Dr. Raif treated her. However, after the injection, claimant's condition improved, and by all accounts, she experienced only occasional aches and pains from the time she returned to work until the accident at issue. Moreover, prior to the work accident, claimant's preexisting condition did not significantly interfere with her functions as a breakfast cook for respondent.

¶ 35 The record further establishes that immediately following the April 22, 2011, accident, claimant's condition deteriorated. She experienced an increase in pain and swelling of her left lower extremity. In addition, claimant's gait was abnormal, her range of motion was limited, and she was unable to bear weight comfortably. To be sure, some of these symptoms were related to the meniscus tear claimant sustained as a result of the work accident and for which she underwent surgery early in June 2011. However, as of February 2012, eight months after surgery, claimant saw Dr. Crickard complaining of daily pain and crepitus. Claimant reported that a viscosupplementation injection provided no relief. At the arbitration hearing in August 2012, claimant testified that she continues to experience pain and discomfort in her left knee. Claimant stated that she cannot walk far distances or stand on her left knee for prolonged periods of time. Moreover, she stated that she has never returned to the level of only occasional pain that she was experiencing prior to April 22, 2011.

¶ 36 In addition, the medical evidence supports a finding that claimant's work accident aggravated her preexisting osteoarthritis. The Commission was presented with causation opinions from Dr. Derhake, one of claimant's treating physicians, and Dr. Watson, the section 12 examiner (see 820 ILCS 305/12 (West 2010)). Dr. Derhake allowed that any aggravation that may have been attributable to the work accident may have resolved and that claimant's continued complaints could be solely related to the preexisting osteoarthritic condition. He explained that the only way he could "really distinguish" between pain caused by the primary condition and pain caused by an exacerbation is if he himself had examined claimant prior to the work accident. Nevertheless, based on claimant's history, her persistent pain complaints, and her medical records, Dr. Derhake ultimately opined that it was more likely than not claimant's ongoing pain claimant's were at least in part the result of an aggravation of her preexisting



osteoarthritis as a result of the accident at work. Similarly, when Dr. Watson was asked about a causal relationship between claimant's work accident and her preexisting osteoarthritis, he acknowledged that the pain claimant had when he saw her was greater than the pain she described having prior to the work accident. Further, Dr. Watson testified that claimant's injury may have aggravated the preexisting condition or made it worse. In this regard, he explained that if claimant returned to the level of pain she was experiencing prior to the work accident, he would conclude that any aggravation of the underlying arthritis was only temporary. However, if claimant's symptoms persisted more than several months beyond surgery, he would find that claimant's underlying condition was more than a temporary aggravation. As noted above, claimant is more than several months post surgery, and there is evidence from which the Commission could reasonably conclude that claimant's symptoms are qualitatively and quantitatively greater than they were prior to the work accident. Under these circumstances, we cannot say that a decision opposite that of the Commission is clearly apparent. Accordingly, we find that the Commission's causation finding is not against the manifest weight of the evidence.

¶ 37

#### B. TTD Benefits

¶ 38 Next, respondent challenges the Commission's award of TTD benefits. An employee is temporarily totally disabled from the time an injury incapacitates him or her until such time as he or she is as far recovered as the permanent character of the injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990); *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542 (2007). To be entitled to TTD benefits, the employee must establish not only that he or she did not work, but also that he or she is unable to work and the duration of that inability to work. *Pietrzak*, 329 Ill. App. 3d 828, 832 (2002). The dispositive inquiry in determining whether an award of TTD benefits is appropriate is whether the

employee's condition has stabilized, *i.e.*, whether he or she has reached maximum medical improvement (MMI). *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 148 (2010). The factors to consider in determining whether an employee has reached MMI include a release to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005). Once an injured employee has reached MMI, the disabling condition has become permanent and he or she is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). The issue of whether an employee is entitled to TTD benefits and the period of time during which the employee is temporarily totally disabled is a question of fact for the Commission, and the Commission's decision on such matters will not be set aside on review unless it is contrary to the manifest weight of the evidence. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118-19. As noted above, a decision is against the manifest weight of the evidence only if a contrary decision is clearly apparent. *Mlynarczyk*, 2013 IL App (3d) 120411WC, ¶ 17.

¶ 39 The Commission awarded claimant 67-4/7 weeks of TTD benefits, encompassing the period from April 22, 2011 (the date of claimant's accident), through August 6, 2012, (the date of the arbitration hearing). According to respondent, the Commission erred in finding that claimant was entitled to TTD benefits through the date of arbitration because she was able to work. In support of this claim, respondent cites the modifications in claimant's work restrictions throughout the course of her treatment and claimant's search for employment in conjunction with her request for unemployment benefits. Citing Dr. Watson's testimony regarding a typical recovery period for a meniscus injury, respondent asserts that claimant is entitled to TTD benefits only through October 3, 2011. Claimant responds that the Commission properly

awarded TTD benefits through the date of the arbitration hearing because she had yet to reach the point of maximum medical improvement by that time. We agree with claimant.

¶ 40 Respondent focuses its argument that claimant was able to work on the fact that claimant was released to return to work and the fact that she searched for employment in conjunction with her unemployment benefits. We are not sure how these factors support respondent's contention that claimant was able to work since respondent never offered claimant a position within her restrictions. Although Niebur denied receiving timely notice of all of claimant's work restrictions, the Commission credited claimant's testimony that she notified Niebur of her restrictions and that Niebur had not offered claimant a position within her limitations. Given the Commission's role as fact finder, we cannot say that the Commission's finding in this regard was improper. See *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). We also point out that there is no evidence that claimant was offered any jobs within her restrictions as a result of the job search conducted in conjunction with her unemployment claim or that claimant otherwise refused work falling within the most recent restrictions. In any event, a release to return to work is but one factor for the Commission to consider in assessing claimant's entitlement to TTD and the duration of those benefits. See *Sunny Hill of Will County v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 130028WC, ¶ 26.

¶ 41 Moreover, there was other evidence upon which the Commission could reasonably rely to conclude that the aggravation of claimant's preexisting osteoarthritis from the work accident had not stabilized and that claimant was therefore entitled to ongoing TTD benefits. Significantly, we find no evidence that either Dr. Derhake or Dr. Crickard, claimant's principal treating physicians, determined that claimant's current condition of ill-being had stabilized. To the contrary, both of those physicians recommended that claimant undergo joint replacement surgery

to treat her left knee. Dr. Watson's testimony also supports a finding that claimant's current condition of ill-being had not stabilized. As discussed above, as a result of the work accident of April 22, 2011, claimant sustained a tear of the meniscus in her left knee and aggravated her preexisting osteoarthritis. Claimant underwent surgery for the former condition in June 2011. Dr. Watson examined claimant late in August 2011. He testified that a typical recovery from a "straightforward" partial meniscectomy would be three or four months post surgery. Nevertheless, Dr. Watson allowed that claimant's preexisting osteoarthritis "complicates the issue" and therefore this was not a "straightforward" meniscus tear. Moreover, Dr. Watson acknowledged that when he saw claimant, she described pain greater than what she had experienced prior to the work accident. He explained that, if claimant returned to the baseline level of pain she was experiencing prior to her accident, he would classify any aggravation of her preexisting osteoarthritis as only temporary. Dr. Watson, however, suggested a continued relationship between the work accident and any aggravation of her preexisting condition if the increase in pain persisted beyond several months. When claimant saw Dr. Crickard on February 14, 2012, approximately eight months after her meniscectomy, she continued to report daily pain in the left knee and crepitus with motion. Moreover, at the arbitration hearing, which was held approximately 14 months after claimant's surgery, claimant testified that she continued to experience pain and discomfort in her left knee and she has never returned to the level of occasional pain she was experiencing prior to April 22, 2011.

¶ 42 In short, given claimant's persistent symptoms, the lack of any medical testimony that claimant had reached MMI from the aggravation of her preexisting osteoarthritic condition, and the recommendation for surgical intervention, we conclude that claimant's current condition of ill-being had not stabilized by the time of the arbitration hearing. As a result, the Commission's

award of TTD benefits through the date of the arbitration hearing was not against the manifest weight of the evidence.

¶ 43 C. Medical Expenses and Prospective Medical Treatment.

¶ 44 Finally, respondent argues that the Commission's award of medical expenses and prospective medical treatment is against the manifest weight of the evidence. Section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)) provides that the employer "shall pay for necessary medical, surgical and hospital services, limited however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." Questions regarding whether medical treatment is necessary to cure or treat an injury that is causally connected to a work-related accident and entitlement to prospective medical care under section 8(a) are factual inquiries for the Commission to resolve. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10; *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 51. The Commission's decision on a factual matter will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Dye*, 2012 IL App (3d) 110907WC, ¶ 10.

¶ 45 Initially, claimant argues that respondent forfeited any challenge to its liability to medical expenses by failing to develop this argument in its brief. Respondent counters that its challenge to the medical benefits is tied to its causation argument. We agree with respondent that this issue was not forfeited and is adequately addressed within its brief. Nevertheless, having previously rejected respondent's claim that claimant's current condition of ill-being is not causally related to her work accident, we decline to overturn the award of medical expenses on the basis advanced by respondent.

¶ 46 Respondent also challenges the Commission's award of prospective medical expenses, specifically the authorization for a total knee replacement. In support of this argument, respondent again cites principally to its claim that respondent failed to establish that her current condition of ill-being is causally related to her work accident. Given our conclusion that the Commission's finding that claimant's current condition of ill-being is causally related to her work accident, we decline to overturn the award of prospective medical care on the basis that claimant failed to establish causation.

¶ 47 Alternatively, respondent asserts that Commission's award of prospective medical treatment should be reversed because the record establishes that there are viable conservative treatment options available which have been shown to be effective in the treatment of claimant's symptoms. In support of this claim, respondent cites to the viscosupplementation injection claimant received in October 2011. Respondent notes that Dr. Derhake eased claimant's work restrictions just one month after the injection and that Dr. Crickard revised the restrictions again in February 2012. However, the medical evidence contradicts respondent's assessment of the evidence. Significantly, Dr. Crickard's office notes indicate that the viscosupplementation injection provided claimant no relief. It was for that reason, in addition to the failure of other conservative treatment, that Dr. Crickard recommended a joint replacement. Dr. Derhake agreed that joint replacement was the only remaining option that claimant had for relief of her knee pain. In light of the medical evidence recommending joint replacement, we find that the Commission's award of prospective medical care is not against the manifest weight of the evidence.

¶ 48

### III. CONCLUSION

¶ 49 For the reasons set forth above, we affirm the judgment of the circuit court of Pike County, which confirmed the decision of the Commission. This cause is remanded for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 50 Affirmed and remanded.