

NOTICE

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2015 IL App (4th) 141075WC-U

FILED: 12/18/2015

NO. 4-14-1075WC

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

PRAIRIE MATERIAL SALES)	Appeal from
)	Circuit Court of
Appellant,)	Piatt County
)	No. 14MR1
v.)	No. 14MR22
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> (Bradford Craig, Appellee).)	
)	Honorable
)	William Hugh Finson,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Hoffman, Hudson, and Stewart concurred in the judgment.
Presiding Justice Holdridge dissented.

ORDER

¶ 1 *Held:* The Commission's determinations that claimant's left knee injury arose out of his employment and that his current condition of ill-being in his left knee was causally related to the work accident were not against the manifest weight of the evidence.

¶ 2 On March 14, 2008, claimant, Bradford Craig, filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2006)), seeking benefits from the employer, Prairie Material Sales. He alleged to have suffered injury to his "[r]ight leg/knee and left leg/knee" following a work accident on July 6, 2007 (work accident). On that date, claimant slipped on residue as he was walking to the back of his work truck, causing an injury to his right knee. The employer does not dispute the work accident is

covered by the Act. On December 19, 2007, at his first physical therapy appointment following surgery on his right knee, claimant felt a pop in his left knee followed by pain (physical therapy incident). Three and a half years later, in July 2011, claimant was diagnosed with a lateral meniscus tear in his left knee.

¶ 3 Following a hearing, the arbitrator found claimant's condition of ill-being in his left knee was causally related to the work accident and awarded claimant benefits under the Act. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator. On judicial review, the circuit court of Piatt County affirmed the Commission's decision.

¶ 4 On appeal, the employer argues the Commission erred in finding (1) the physical therapy incident involving claimant's left knee and (2) his current condition of ill-being in his left knee arose out of his employment. We affirm and remand for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980).

¶ 5 I. BACKGROUND

¶ 6 The following evidence relevant to the disposition of this appeal was elicited at the November 20, 2012, arbitration hearing.

¶ 7 On July 6, 2007, claimant, who worked for the employer as a concrete truck driver, was walking toward the rear of his work truck when he slipped on residue, causing him to twist his right knee and fall to the ground. In October 2007, as a result of this accident, claimant underwent surgery on his right knee for a meniscus tear. His orthopedic surgeon, Dr. Robert A. Gurtler, prescribed post-operative physical therapy.

¶ 8 Claimant testified that at his first physical therapy appointment on December 19, 2007, the physical therapist asked him to bend his left knee so she could measure his range of

motion. According to claimant, when he bent his left knee, "there was a pop in my knee and a severe pain, and I told her about it and did not—I didn't continue." Although the physical therapy record from that date does not document this incident, the physical therapy record from claimant's next appointment on December 26, 2007, noted claimant complained of swelling in his left lower extremity "from evaluation."

¶ 9 Claimant acknowledged he had surgery on his left knee in 2002 for a medial meniscus tear and was released from care that same year. According to claimant, his left knee had been asymptomatic following the 2002 surgery up until the physical therapy incident. Following the physical therapy incident, claimant testified he experienced "pain on the front left-hand side of my knee, and that pain will run to the center of the outside, and then it will run down my leg on the outside."

¶ 10 On December 27, 2007, claimant saw Dr. Gurtler's physician assistant, Danny McFarlin, for a post-operative follow-up appointment. McFarlin's office note from that date indicates claimant complained of "an incident with therapy in which they were checking his range of motion and doing a baseline on the opposite knee. *** During range of motion, he had pain and subsequent swelling and has had continued pain in that knee." Following a physical examination, McFarlin aspirated both of claimant's knees which had "a lot of fluid" in them. He noted clear yellow fluid was removed from claimant's right knee while serosanguineous fluid was removed from his left knee. Corticosteroids were injected into both knees. Dr. Gurtler explained during his deposition testimony that serosanguineous fluid is "regular yellow joint fluid with blood in it" and "is indicative of trauma."

¶ 11 At a February 22, 2008, follow-up appointment, claimant complained that the pain in his left knee was "more bothersome" than the pain in his right knee. McFarlin noted mild

effusion in claimant's left knee and a Baker's cyst in the popliteal fossa. McFarlin scheduled a magnetic resonance imaging (MRI) of claimant's left knee, which was completed on February 29, 2008. McFarlin was concerned that claimant's left knee pain was the result of a lateral meniscus tear.

¶ 12 On March 13, 2008, claimant saw Dr. Gurtler. Dr. Gurtler's office note from that date states as follows:

"The MRI today to me looks like he has torn his lateral meniscus and the anterior horn and he is tender all over that anterior horn of the lateral meniscus. So that sort of makes sense.

What does not make sense is persistent effusions in both knees. He had blood in his left knee, persistent effusions and progressive and unexplainable deterioration of his joint. So I want to go ahead and recommend arthroscopic exam and probable partial lateral meniscectomy in his left knee because of this injury that occurred in physical therapy, but I also want to have him see a rheumatologist to make sure we are not overlooking something related to both of his knees that could be a factor in this."

¶ 13 On March 26, 2008, claimant first saw Dr. Anastacia Maldonado, a rheumatologist. Following a series of tests and x-rays, Dr. Maldonado diagnosed claimant with, and began treating him for, rheumatoid arthritis. During her deposition, she classified claimant's rheumatoid arthritis as severe due to the persistent inflammation in his joints. Dr. Maldonado testified rheumatoid arthritis is not caused by trauma.

¶ 14 On April 24, 2008, claimant saw Dr. Gurtler for a follow-up appointment. Dr.

Gurtler's office note from that date states, "[w]e now know [claimant] has rheumatoid arthritis and it explains a lot. I did review *** the MRI of his left knee. It does not appear to show a lateral meniscus tear. What that may have been *** is the rheumatoid arthritis or [it] could be a lateral meniscus tear that we do not see." At that time, Dr. Gurtler decided to wait and see how claimant responded to treatment for his rheumatoid arthritis before proceeding further. Claimant continued to treat with Dr. Maldonado, and on August 26, 2009, she referred him back to Dr. Gurtler for "mechanical pain over the left knee, especially over the lateral aspect."

¶ 15 On September 17, 2009, claimant saw Dr. Gurtler complaining of continued pain in his left knee. Dr. Gurtler's office note from that date restates claimant "injured it in [p]hysical [t]herapy where he heard this loud pop and it swelled up, it was full of blood." Dr. Gurtler noted claimant had pain on the lateral joint line and a positive McMurray's test. Dr. Gurtler re-read claimant's MRI from the year before and noted, "it [was] questionable for a cyst behind the meniscus which is consistent with a tear." He recommended a second MRI of claimant's left knee which was completed on September 29, 2009. Dr. Gurtler's office note dated October 8, 2009, indicates, "[t]he new MRI shows fluid behind the popliteal hiatus is not a cyst, it is fluid. Certainly he is getting some degenerative change going on." However, Dr. Gurtler concluded, "[t]he lateral meniscus is not torn" and claimant would not benefit from arthroscopic surgery.

¶ 16 Claimant continued to treat with Dr. Maldonado for rheumatoid arthritis and periodically returned to Dr. Gurtler for evaluation and treatment, including treatment for an unrelated October 2009 work accident that caused injury to claimant's right flank, left thigh, and right lateral mid leg.

¶ 17 On November 15, 2010, claimant saw Dr. William Hopkinson, an orthopedic surgeon, at the request of the employer. During the evaluation, claimant complained, in part, of

pain above and on the outside of his left knee. Dr. Hopkinson noted mild effusion in both knees and discomfort in his left knee on McMurray's test. At that time, Dr. Hopkinson's diagnosis was rheumatoid arthritis. He noted claimant's "left knee treatment was necessitated by aggravation of activities in physical therapy."

¶ 18 On November 30, 2010, claimant again saw Dr. Gurtler and complained of pain in both knees. Dr. Gurtler's office note from that date again refers to the 2008 physical therapy incident.

¶ 19 On June 2, 2011, claimant saw Dr. Maldonado and complained of left knee pain. Her office report from that dated states claimant "explained since 10 days ago without being precipitated by trauma he is having pain in the left knee in the lateral aspect." She suggested a third MRI of his left knee, which was performed on July 25, 2011, to look for "mechanical derangement of meniscal ligament, anatomical damage, especially since there are no acute signs and symptoms of inflammation and there is no effusion."

¶ 20 On July 19, 2011, claimant saw Dr. Gurtler, whose office note states as follows:

"The [claimant] has a pain on the lateral side of his left knee that he says goes all the way back, he can remember this pain all the way back to right after the injury that he had in physical therapy and it is really getting to where it is driving him nuts now. His [third] MRI shows a lateral meniscus tear in the anterior horn and it has developed over time a parameniscal cyst. *** So this lateral meniscus tear in the anterior horn which I assumed occurred in physical therapy *** many years ago, more likely than not [needs to] be excised."

During his deposition, Dr. Gurtler was asked whether claimant's lateral meniscus tear and parameniscal cyst were causally related to the physical therapy incident. He responded as follows:

"It seems to me that [claimant] has continued to complain of exactly the same thing all the way back to this incident. We [suspected] a p[a]r[a]meniscal cyst back on the original MRI, the second MRI then we didn't think it was there, but now it does show up that he's got a p[a]r[a]meniscal cyst. I think that you don't get a p[a]r[a]meniscal cyst without a tear and now he has a p[a]r[a]meniscal cyst. I think the tear goes all the way back to that incident in physical therapy because the pain has not changed."

Dr. Gurtler opined claimant would benefit from arthroscopic left-knee surgery.

¶ 21 On November 18, 2011, Dr. Hopkinson evaluated claimant a second time at the request of the employer. On that date, Dr. Hopkinson noted claimant's left knee complaints consisted of pain on the anterolateral aspect of the knee with occasional locking and catching of the knee. Dr. Hopkinson found claimant's rheumatoid arthritis to be under control at that time. He opined claimant's treatment in 2008 and 2009 for his left knee "was not necessitated by a stretching injury and physical activity, but was most likely due to a progression of rheumatoid arthritis," and "[t]he need for current treatment to the left knee appears to be [claimant's] rheumatoid arthritis which is a systemic disease and not due to a stretching injury."

¶ 22 During Dr. Hopkinson's deposition, he could not recall whether he reviewed claimant's MRI films or just the MRI reports. He did not disagree with Dr. Gurtler's diagnosis of a lateral meniscus tear in claimant's left knee, and testified it was possible claimant suffered from

a lateral meniscus tear as well as rheumatoid arthritis. Dr. Hopkinson disagreed with Dr. Gurtler's surgery recommendation, stating he would not recommend arthroscopic surgery on someone with rheumatoid arthritis who has no mechanical symptoms. On recross-examination, Dr. Hopkinson testified he had no opinion as to the cause of claimant's lateral meniscus tear and agreed the tear could have been caused by the physical therapy incident.

¶ 23 On November 8, 2012, Dr. Gurtler re-reviewed claimant's May 2011 MRI and confirmed the MRI "definitely shows an anterior horn tear of the lateral meniscus and a parameniscal cyst." In his opinion, the pain in claimant's anterolateral and lateral aspects of his left knee were the result of the meniscus tear.

¶ 24 Claimant testified since the physical therapy incident, he continues to experience pain on the outside of his left knee that "comes and goes." He would like have the arthroscopic surgery recommended by Dr. Gurtler.

¶ 25 Following a hearing, the arbitrator found claimant's condition of ill-being in his left knee was causally related to the work accident "based upon a chain of events and the credible testimony of [claimant] and Dr. Gurtler" and awarded claimant benefits under the Act. On review, the Commission affirmed and adopted the decision of the arbitrator. In addition, the Commission (1) awarded benefits for temporary total and temporary partial incapacity for work under section 8(a) and (b) of the Act; (2) awarded \$190 for medical expenses under section 8(a) of the Act; (3) ordered the employer to authorize and pay for the arthroscopic surgery recommended by Dr. Gurtler; (4) noted the employer was entitled to credit for all amounts paid, if any, in regard to claimant's injury; (5) ordered the employer to pay claimant interest under section 19(n) of the Act, if applicable; and (6) remanded for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322. On judicial review, the circuit court of Piatt County

affirmed the Commission's decision. This appeal followed.

¶ 26

II. ANALYSIS

¶ 27 On appeal, the employer argues the Commission erred in finding (1) the physical therapy incident involving claimant's left knee and (2) his current condition of ill-being in his left knee arose out of his employment. The employer contends that, because the facts are undisputed and subject to only a single reasonable inference, the appropriate standard of review is *de novo*. Alternatively, it contends the Commission's findings were against the manifest weight of the evidence.

¶ 28 At the outset, we note that the Commission found claimant's current condition of ill-being in both knees to be "causally related to the undisputed accident of July 6, 2007." Implicit in this finding is the Commission's conclusion that the physical therapy incident involving claimant's left knee arose out of his employment. We will first address the issue of whether the physical therapy incident arose out of claimant's employment.

¶ 29 "To obtain compensation under the Act, an injured employee must show by a preponderance of the evidence that he suffered a disabling injury arising out of and in the course of his employment. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, 993 N.E.2d 473. "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.'" *Id.*, citing *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 672 (2003). "Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901

N.E.2d 1066, 1081 (2009). "Even in cases where the facts are undisputed, this court must apply the manifest-weight standard if more than one reasonable inference might be drawn from the facts." *Baumgardner v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 274, 279, 947 N.E.2d 856, 860 (2011).

¶ 30 Here, the material facts regarding the physical therapy incident are not in dispute. However, contrary to the employer's assertions, they are subject to more than a single inference. Under these circumstances, we review the Commission's decision to determine whether it was against the manifest weight of the evidence. "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081.

¶ 31 To be compensable under the Act, a claimant's work-related accident must be a causative factor in his condition of ill-being, but it need not be the sole or primary cause. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d at 193, 205, 797 N.E.2d 665, 673 (2003). "Every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). Where a claimant suffers a second injury due to treatment for the first work-related injury, the chain of causation is not broken. *International Harvester Company v. Industrial Comm'n*, 46 Ill. 2d 238, 245, 263 N.E.2d 49, 53 (1970). Here, the Commission found the physical therapy incident would not have occurred but for the work accident. The record contains sufficient evidence to support the Commission's decision.

¶ 32 As stated, the employer does not dispute that claimant suffered an injury to his

right knee as a result of the work accident. Claimant then underwent surgery followed by physical therapy to treat his right-knee injury. Preliminary to the first postoperative physical therapy session, and as part of her assessment of claimant, the physical therapist asked claimant to bend his left knee so she could measure his range of motion. Upon bending his left knee, claimant felt a pop followed by severe pain.

¶ 33 The employer argues that bending one's knee is an act of everyday living, and therefore, claimant's resulting injury was not the result of an "enhanced risk" created by the original injury—a factor it deems necessary to support an award for a second injury under the Act. We note, however, the cases cited by the employer in support of its contention do not stand for this proposition. Rather, in cases such as this one, the Commission should apply a "but-for" test to determine whether a subsequent injury is causally related to the initial workplace injury. This test requires the trier of fact to determine whether the subsequent injury "was caused by an [e]vent which would not have occurred had it not been for the original injury." *International Harvester*, 46 Ill. 2d at 245, 263 N.E.2d at 53. This test "extend[s] to cases where the event immediately causing the second injury was not itself caused by the first injury, yet but for the first injury, the second event would not have been injurious." *Id.* at 245, 263 N.E.2d at 53-54. The supreme court in *International Harvester* noted that "[c]lear illustrations of this chain of causation" include "cases where a second injury occurs due to treatment for the first." *Id.*

¶ 34 Both parties cite *Fermi National Accelerator Lab v. Industrial Comm'n*, 224 Ill. App. 3d 899, 586 N.E.2d 750 (1992), which was also relied on by the Commission. In *Fermi*, the employee suffered a work-related injury to his right ankle, requiring him to use crutches. *Id.* at 902, 586 N.E.2d at 752. Nine days after the accident, the employee was walking with his crutches on a wet floor when they slipped out from under him and he fell, resulting in a second

injury to his left arm. *Id.* The employer argued the second injury was not compensable because it was the result of the employee's negligence in attempting to traverse a wet floor on crutches. *Id.* at 908, 586 N.E.2d at 756. The court disagreed and concluded that "[b]ut for the first injury, claimant would not have been using crutches." The employer attempts to distinguish the facts at issue here from those in *Fermi* by pointing out the use of the crutches in *Fermi*—which was necessitated by the employee's first accident—directly caused him to fall and resulted in the second injury, whereas claimant in this case simply performed "an act of everyday living [he] had performed countless times before and after the incident."

¶ 35 In this case, claimant testified he was lying on a table at his first physical therapy session when the therapist asked him to bend his left knee so she could take a baseline measurement of his range of motion. Upon bending his left knee, claimant felt a pop followed immediately by severe pain. The Commission found although claimant "was not engaged in a therapeutic accident when his left knee popped, he had been directed by the therapist to lie down and position his knee in order to compare ranges of motion between the two knees as part of [his] therapy. This was necessitated by [claimant's] work-related accident." In other words, the Commission applied a but-for test and concluded that had claimant not sustained the injury to his right knee during the work accident, he would not have been lying on the physical therapist's table undergoing a range of motion test in December 2007. According to *International Harvester*, we find the Commission's implicit finding that the physical therapy incident arose out of claimant's employment was not against the manifest weight of the evidence where, based on the evidence, claimant's left knee injury occurred during treatment of his right knee injury.

¶ 36 Next, the employer argues the Commission erred in finding claimant's current condition of ill-being in his left knee resulting from the physical therapy incident was causally

related to work accident. Specifically, the employer asserts the medical records and testimony of claimant's treating physicians do not support the Commission's finding. We disagree.

¶ 37 As noted, "[w]hether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence." *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d 1081. "It is the Commission's duty to resolve conflicts in the evidence, particularly medical opinion evidence." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592, 834 N.E.2d 583, 592 (2005). "The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion." *Id.* "For the Commission's decision to be against the manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result." *Id.*

¶ 38 Here, claimant testified he felt a pop in his left knee and corresponding immediate pain during his initial physical therapy evaluation. Although the physical therapy records from that session do not document the incident, claimant testified he was unable to proceed with physical therapy on that date due to the incident. Claimant's physical therapy records from his next appointment reference swelling in his left lower extremity "from evaluation." At his first follow-up appointment after beginning physical therapy on December 27, 2007, claimant complained to physician assistant McFarlin of "an incident in therapy in which they were checking his range of motion *** on the opposite knee" during which "he had pain and subsequent swelling and has had continued pain in that knee." At claimant's next follow-up appointment on January 9, 2008, McFarlin noted swelling in claimant's left knee. At a January 31, 2008, follow-up appointment, McFarlin again referenced the physical therapy incident, noting claimant had hyperflexed his knee and had been having pain since.

¶ 39 Further, Dr. Gurtler interpreted claimant's February 2008 MRI as indicating he had "torn his lateral meniscus and anterior horn." After reviewing claimant's September 2009 MRI, Dr. Gurtler concluded the MRI showed fluid rather than a cyst and that the lateral meniscus was not torn. However, after reviewing claimant's July 2011 MRI, Dr. Gurtler noted it indicated a lateral meniscus tear in the anterior horn with a parameniscal cyst which he attributed to the physical therapy incident. At his deposition, Dr. Gurtler testified as follows:

"It seems to me that [claimant] has continued to complain of exactly the same thing all the way back to this incident. We [suspected] a p[a]r[a]meniscal cyst back on the original MRI, the second MRI then we didn't think it was there, but now it does show up that he's got a p[a]r[a]meniscal cyst. I think that you don't get a p[a]r[a]meniscal cyst without a tear and now he has a p[a]r[a]meniscal cyst. I think the tear goes all the way back to that incident in physical therapy because the pain has not changed."

He then opined claimant's current condition of ill-being in his left knee was causally related to the physical therapy incident despite the various interpretations of claimant's three MRIs.

¶ 40 The Commission specifically found the testimony of claimant and Dr. Gurtler to be credible and it concluded Dr. Gurtler's opinion was more persuasive than Dr. Hopkinson's. We further note that Dr. Hopkinson did not dispute a causal connection existed between the physical therapy incident and claimant's condition of ill-being. Rather, he agreed claimant could have suffered from both a torn meniscus and rheumatoid arthritis, and that the meniscus tear could have been caused by the incident in physical therapy. Based on this evidence, we cannot find the Commission's determination that claimant's current condition of ill-being in his left knee

was causally related to his work accident was against the manifest weight of the evidence.

¶ 41

III. CONCLUSION

¶ 42

For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision and remand for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322.

¶ 43

Affirmed and remanded.

¶ 44 PRESIDING JUSTICE HOLDRIDGE, dissenting.

¶ 45 I dissent. In order to recover benefits under the Act, a claimant must prove by a preponderance of the evidence that his injury "ar[ose] out of" his employment. 820 ILCS 305/2 (West 2006). "The 'arising out of' component is satisfied when the claimant has "shown that the injury 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 193, 203 (2003). There are three types of risks to which employees may be exposed: (1) risks that are distinctly associated with employment; (2) risks that are personal to the employee, such as idiopathic falls; and (3) neutral risks that do not have any particular employment or personal characteristics, such as everyday activities like walking and bending. *Adcock v. Illinois Workers' Compensation Comm'n*, 2015 IL App (2d) 130884WC, ¶¶ 31, 39; *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 116 (2007).

¶ 46 "Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public." *Adcock*, 2015 IL App (2d) 130884WC, ¶ 32, quoting *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 27. The increased risk may be either qualitative (*i.e.*, when some aspect of the employment contributes to the risk) or quantitative (such as when the employee is exposed to the risk more frequently than members of the general public by virtue of his employment). *Adcock*, 2015 IL App (2d) 130884WC, ¶ 32; *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1014 (2011). Absent some showing that the employment increased the risk of an everyday activity beyond that normally faced by the general public, a claimant may not recover for injuries

sustained while performing such an activity. See, e.g., *Adcock*, 2015 IL App (2d) 130884WC, ¶ 39 ("The Commission should not award benefits for injuries caused by everyday activities like walking, bending, or turning, even if an employee was ordered or instructed to perform those activities as part of his job duties, unless the employee's job required him to perform those activities more frequently than members of the general public or in a manner that increased the risk.")

¶ 47 In this case, the claimant was injured while bending his left knee, which is an activity of everyday life. There is no evidence that the claimant's left knee injury was caused by a risk personal to him, such as an idiopathic fall or a preexisting knee problem. Moreover, the risk of injury that the claimant confronted was not "distinctly associated with" his employment; rather, it was a neutral risk of everyday living faced by all members of the general public. Thus, the claimant's injury is compensable only if the claimant was exposed to this risk to a greater degree than the general public by virtue of his employment. *Adcock*, 2015 IL App (2d) 130884WC, ¶ 33; *Springfield Urban League*, 2013 IL App (4th) 120219WC, ¶ 27. The claimant made no such showing here. Accordingly, I would reverse the Commission's award of benefits.

¶ 48 In finding that the claimant's left knee injury was causally related to his prior work-related accident, the majority purports to apply the "but-for" causation test articulated by our supreme court in *International Harvester Co. v. Industrial Comm'n*, 46 Ill. 2d 238 (1970), and applied by our court in *Fermi National Accelerator Lab v. Industrial Commission*, 224 Ill. App. 3d 899 (1992). *Supra*, ¶¶ 33-35. However, the majority defines "but for" causation far more expansively than was contemplated in either of those cases. The majority affirms the Commission's finding that the claimant's knee injuries were causally connected because "had [the] claimant not sustained the injury to his right knee during the [July 2007] work accident, he

would not have been lying on the physical therapist's table undergoing a range of motion test in December 2007." *Supra* ¶ 35. That is not the type of "but for" causation that was at issue in *International Harvester* and *Fermi National Accelerator Lab*. Both of those cases "emphasized that the weakened physical condition of the employee resulting from the prior work-related injury was the cause of the subsequent injury." *Lee v. Industrial Comm'n*, 167 Ill. 2d 77, 87 (1995). In *International Harvester*, our supreme court held that the claimant would not have been permanently disabled but for a continuing condition of traumatic neurosis that resulted from a prior work-related accident. *International Harvester Co.*, 46 Ill. 2d at 247. Similarly, in *Fermi National Accelerator Lab*, we held that the employee would not have injured his knee and thumb in a fall "but for" his being on crutches due to a prior work-related ankle injury. *Fermi National Accelerator Lab*, 224 Ill. App. 3d at 908. In each case, the second injury (and the ensuing disability) stemmed from the preexisting disability caused by the prior work-related accident. That is not the case here. The claimant does not and cannot allege that his left knee was weakened by the prior work-related injury to his right knee. Nor did the disability caused by the first accident increase the risk of injury to the claimant's left knee. (That distinguishes this case from *Fermi National Accelerator Lab*, where the first injury required the claimant to walk on crutches, which caused the fall resulting in the second injury). In this case, the claimant's two knee injuries were entirely unrelated. Accordingly, neither *International Harvester* nor *Fermi National Accelerator Lab* supports the majority's decision.

¶ 49 Moreover, the majority's holding in this case conflicts with other governing precedents. As noted, the majority suggests that the claimant's knee injuries were causally related because "had [the] claimant not sustained the injury to his right knee during the [July 2007] work accident, he would not have been lying on the physical therapist's table undergoing a

range of motion test in December 2007." This reasoning has been rejected both by our supreme court and by our court. In *Lee*, the claimant injured his thumb in a work related accident. *Lee v. Industrial Comm'n*, 167 Ill. 2d at 79. The claimant underwent treatment for the injury at an employer-approved medical clinic and the employer paid for the treatment. *Id.* While he was leaving the clinic, the claimant was struck by a car and injured his knee. *Id.* Relying on *International Harvester* and *Fermi National Accelerator Lab*, the claimant argued that his knee injury arose out of and in the course of his employment because, "but for" his prior work-related injury to his thumb, the knee injury would not have occurred. *Id.* at 81-82. Our supreme court rejected this argument. The supreme court held that the causal relationship between the claimant's employment and the circumstance of his knee injury was "too extenuated to establish that the injury arose out of and in the course of employment." *Id.* at 88. It found *International Harvester* and *Fermi International Accelerator Lab* distinguishable and inapplicable because "[Lee's] knee injury resulted from an intervening cause, an automobile, and the collision was not the product of a weakened condition resulting from [his] prior work-related thumb injury." (Emphasis added.) *Id.* at 87. The same reasoning applies here. The claimant's left knee was not weakened or affected in any way by his prior work-related injury to his right knee, and the injury occurred during an activity of everyday living. In short, as in *Lee*, the causal mechanism of the claimant's left knee injury had nothing to do with his prior work-related injury or disability. Thus, the left knee injury was not compensable, notwithstanding the fact that it happened at the physical therapist's office where the claimant was being treated for his work-related right knee injury.

¶ 50 Moreover, the fact that the left knee injury occurred during treatment for the prior work-related injury is not dispositive. As we ruled in *Adcock*, "[t]he Commission should not

award benefits for injuries caused by everyday activities like *** bending *** *even if an employee was ordered or instructed to perform those activities as part of his job duties*, unless the employee's job required him to perform those activities more frequently than members of the general public or in a manner that increased the risk." *Adcock*, 2015 IL App (2d) 130884WC, ¶ 39. Here, during the treatment for his work-related right knee injury, the claimant was instructed to perform a "range of motion test" by bending his left knee. However, there is no evidence that he was asked to bend his left knee frequently or in an unnatural position that would increase the risk of injury beyond the risk posed by an ordinary knee bend performed by members of the general public on a daily basis. Thus, even assuming *arguendo* that the left knee bend performed by the claimant was required by or otherwise connected to his employment, the injury the claimant suffered while bending his knee did not arise out of his employment and is not compensable. See, e.g., *Adcock*, 2015 IL App (2d) 130884WC, ¶¶ 32, 33, 39; *Springfield Urban League*, 2013 IL App (4th) 120219WC, ¶ 27.

¶ 51 I would therefore reverse the circuit court's judgment and vacate the Commission's decision.