2016 IL App (4th) 140772WC-U

Order filed: January 25, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

PAUL HOUCHIN,	)	Appeal from the Circuit Court
	)	of the 11th Judicial Circuit,
	)	McLean County, Illinois
Appellant,	)	
	)	
v.	)	Appeal No. 4-14-0772WC
	)	Circuit No. 13-MR-408
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, *et al.*, (Nussbaum	)	Paul G. Lawrence,
Trucking, Appellee).	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman and Stewart concurred in the judgment.
Justice Harris dissented, joined by Justice Hudson.

ORDER

¶ 1 *Held*: The Commission's finding that the claimant failed to prove that his need for a total right knee replacement was causally related to a work-related accident was against the manifest weight of the evidence.

¶ 2 The claimant, Paul Houchin, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)), seeking medical

benefits and prospective medical treatment for an injury he sustained in a work-related accident on March 16, 2007, while he was employed by Nussbaum Trucking (employer). After conducting a hearing, Arbitrator Robert Falcioni awarded certain prospective surgical treatments in connection with the March 16, 2007, work injury, including a partial medial meniscectomy and "probably chondroplasty." The arbitrator's award was affirmed by a divided panel of the Illinois Workers' Compensation Commission (Commission) and subsequently confirmed by the circuit court of McLean County, which remanded the matter to the arbitrator for further proceedings in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). However, the surgical treatments ordered by the Commission were never performed. In 2011, more than three years after the March 2007 work accident, the claimant sought additional medical benefits and prospective medical treatments related to the March 2007 accident, including total right knee replacement surgery. After conducting a hearing on remand, Arbitrator Stephen Mathis found that the claimant had failed to prove that his current need for a total right knee replacement was causally related to the March 16, 2007, work accident.

¶ 3 The claimant appealed Arbitrator Mathis's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of McLean County, which confirmed the Commission's ruling.

¶ 4 This appeal followed.

¶ 5 FACTS

¶ 6 The claimant worked for the employer as a truck driver. On March 16, 2007, the claimant twisted his right knee and experienced a pop in that knee while moving from the sleeper part of his tractor to the driver's seat. Ten days later, the claimant saw Dr. Patrick Kersey of Methodist Sports Medicine. Dr. Kersey diagnosed a right knee medial meniscus tear and ordered

an MRI, which was performed approximately one month later. Dr. Grant Berges, a radiologist, interpreted the MRI as showing: (1) a "[s]mall meniscal tear of the free edge and undersurface of the posterior horn of the medial meniscus" in the claimant's right knee; (2) a "[f]ocal area of near full thickness cartilage loss on the lateral most surface of the medial femoral condyle";[1] and (3) "[m]oderate diffuse thinning of the articular cartilage[2] along the medial patellar facet and at the apex of the patella." Dr. Kersey ordered the claimant off work until further notice.

¶ 7 The claimant returned to Dr. Kersey on May 9, 2007. At that time, Dr. Kersey's assessment was a "small posterior medial meniscal tear" in the claimant's right knee and "focal chondral medial chondral loss." Dr. Kersey informed the claimant that his treatment options included doing nothing, undergoing aggressive physical therapy, or consulting with a knee surgeon. The claimant chose the latter option, and Dr. Kersey referred him to Dr. Mark Ritter, a board certified orthopedic surgeon who specializes in sports medicine and arthroscopic knee reconstruction.

¶ 8 On May 15, 2007, Dr. Ritter examined the claimant and took x-rays of the claimant's right knee. According to Dr. Ritter, the x-rays showed that the claimant's joint spaces were "well maintained with normal appearing alignment." However, Dr. Ritter noted that the x-rays showed "some mild changes of medial joint space narrowing." Dr. Ritter interpreted the claimant's MRI

---

[1] The "medial femoral condyle" is rounded bump on the inside of the knee that protrudes from the femur bone. It is a site of attachment for several major muscles and ligaments.

[2] "Articular cartilage" is the smooth tissue that covers the ends of bones where they come together to form joints. Healthy cartilage in a joint makes it easier to move by allowing the bones to glide over each other with very little friction. Articular cartilage can be damaged by injury or normal wear and tear.

as "demonstrat[ing] a medial meniscal tear on the undersurface of the posterior horn and a focal area of full thickness cartilage thinning on the medial femoral condyle." He diagnosed a medial meniscal tear and a "medial femoral condyle OCD lesion." Dr. Ritter discussed treatment options with the claimant, including conservative measures and surgery. Dr. Ritter's medical record reflects that the claimant "wanted to go ahead with surgical management whenever he can" and "wanted to try to get this lined up through Workers Comp," which Dr. Ritter noted would be an issue that both he and the claimant could "work on."

¶ 9 The claimant returned to Dr. Ritter on May 29, 2007, complaining of continued pain. Dr. Ritter declined the claimant's request for a cortisone injection because he felt that an injection would increase his risk for possible infection, especially if the claimant were to undergo surgery in the near future. Dr. Ritter prescribed NSAID pain medication and continued the claimant's work restrictions. Dr. Ritter noted that the claimant would follow up with his attorney regarding his workers' compensation case and would see Dr. Ritter again thereafter.

¶ 10 On June 12, 2007, the claimant was examined by Dr. Mark Levin, the employer's section 12 medical examiner. Based upon a physical examination, the history given by the claimant, and a review of the radiological findings and the claimant's other medical records, Dr. Levin diagnosed right medial knee pain which "appears to be a medial meniscal tear with underlying knee arthritis." Although Dr. Levin noted that the claimant's knee arthritis appeared to have a "preexisting component," he observed that the claimant reported being asymptomatic prior to his March 16, 2007, work accident.[3] Accordingly, Dr. Levin opined that the claimant's work injury

[3] Although Dr. Levin noted that the claimant had "morbid obesity" which "put increased stress on his knee," he stressed that the claimant experienced no pain in his right knee until the March 2007 work injury.

"could have contributed" to his current discomfort. Specifically, Dr. Levin noted that the work injury described by the claimant could have aggravated or caused a medial meniscal tear. Moreover, based on the mechanics of the claimant's March 2007 work injury and the claimant's history of having no pain prior to that injury, Dr. Levin opined that the March 2007 accident "could have at least caused if not aggravated a pre-existing condition to become symptomatic." Dr. Levin recommended that the claimant undergo an arthroscopy and that "intraoperative photographs be taken at the time of surgery to document the presence or absence of pathology."

¶ 11 An arbitration hearing was held before Arbitrator Robert Falcioni on July 11, 2007. After the hearing, Arbitrator Falcioni found that: (1) the claimant had sustained an accidental injury to his right knee on March 16, 2007; (2) the injury arose out of and in the course of his employment; and (3) the current condition of ill-being in the claimant's right knee and his need for knee surgery was causally related to the March 16, 2007, work accident. Arbitrator Falcioni awarded the knee surgery recommended by Dr. Ritter.[4] The Commission affirmed and adopted the arbitrator's decision (with one Commissioner dissenting) and remanded the case to the arbitrator for further proceedings in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). The circuit court of McLean County confirmed the Commission's decision.

¶ 12 After the July 2007 arbitration hearing, the claimant left the employer and began working for Jeff Robey Truck Line (Robey) in Indianapolis, Indiana. He worked full time at Robey as a "line haul" truck driver, meaning that he would drive a distance with a load, drop off the load,

[4] During his August 22, 2011, evidence deposition, Dr. Ritter testified that he proposed "[a] partial medial meniscectomy and probable chondroplasty." A "meniscectomy" is the surgical removal of all or part of a torn meniscus. The procedure is usually performed arthroscopically. "Chondroplasty" is surgery to repair damaged cartilage.

and return. He was not required to load or unload the trailer, except on an infrequent basis. The claimant estimated that he would get in and out of his truck five or six times per day while performing his work duties at Robey. He worked full duty without restriction from the date of the July 2007 arbitration hearing until he was laid off by Robey in 2010. During the three and 1/2 year period that he worked for Robey, the defendant did not miss any time form work. He did not seek any medical care for his knee during that period.

¶ 13 On December 14, 2010, the claimant returned to Dr. Ritter for the first time since the July 2007 arbitration hearing. Dr. Ritter examined the claimant's right knee and took x-rays. The x-rays revealed moderate tri-compartmental degenerative joint changes and severe medial compartment degenerative joint disease. Dr. Ritter reviewed the claimant's 2007 MRI and noted that his arthritis had progressively worsened since that time. Dr. Ritter did not believe that the arthroscopic surgery he had initially recommended would be warranted or helpful at that time given the current state of the claimant's knee. In his December 14, 2010, medical record, Dr. Ritter opined that: (1) the claimant's original knee injury was the direct result of the twisting injury that occurred at work in 2007; and (2) the claimant's osteoarthritis, increase in pain, and decrease in function is "directly related to that injury." Dr. Ritter recommended knee replacement surgery.

¶ 14 During his August 22, 2011, evidence deposition, Dr. Ritter opined that the meniscus tear that the claimant sustained in the March 16, 2007, work accident "significantly contributed" to the progression of the claimant's osteoarthritis. Dr. Ritter explained that the meniscus is a "cushion" between two bones that, if worn down, no longer functions properly. When the cushion is not functioning normally (for example, when there is a tear in the meniscus), the cartilage that coats the end of the bone starts to wear away quickly. That, in turn, can accelerate the development of osteoarthritis. If the patient is overweight or obese (like the claimant), it

would accelerate the process even more. Dr. Ritter analogized the situation to the loss of a shock absorber on a car which causes the tire to wear more quickly. Dr. Ritter opined that the claimant's meniscal tear and the lack of treatment for that condition during the ensuing three years accelerated the claimant's osteoarthritis, which led to his current right knee condition.

¶ 15 Dr. Ritter testified that the moderate osteoarthritis in the claimant's knee documented in 2007 had progressed to severe osteoarthritis, which is not well treated with arthroscopy. The claimant was now experiencing "unrelenting" pain which was making it difficult for him to climb stairs. According to Dr. Ritter, such pain is usually due to arthritis. Moreover, Dr. Ritter noted that some of his objective examination findings confirmed that the claimant had experienced osteoarthritic changes to the joint space. For example, Dr. Ritter noted that the claimant had less range of motion, pain with range of motion, and a "flexion contracture," meaning that he was could not "extend his knee all the way." Moreover, the claimant had an antalgic gait (*i.e.*, a limp) which he did not have on May 15, 2007. Accordingly, Dr. Ritter recommended total knee replacement surgery.

¶ 16 On January 11, 2011, the claimant was examined by Dr. Michael Nogalski, a board certified orthopedic surgeon who specializes in knee and shoulder injuries, at the employer's request. After examining the claimant and reviewing the claimant's medical records, Dr. Nogalski prepared an independent medical examiner (IME) report of his findings. In his IME report, Dr. Nogalski noted that the claimant was five feet eleven inches tall and weighed 300 pounds. He opined that the claimant was suffering from "pain due to degenerative osteoarthritis" with "[n]o clear mechanical findings." Dr. Nogalski acknowledged that the claimant "may have reasonably required surgery" for a medial meniscus tear "if that was indeed his initial problem." He also agreed that there was a "reasonable indication for a total knee replacement" given the claimant's current condition. However, Dr. Nogalski opined that it was not reasonable to

conclude that the claimant's current need for a total knee replacement was causally related to the March 2007 work injury.

¶ 17 Based on his review of the claimant's medical records, Dr. Nogalski opined that the claimant manifested some degenerative osteoarthritic symptoms in 2007 and "possibly some mechanical symptoms" that were "possibly *** related to a small meniscus tear." However, Dr. Nogalski noted that "[i]t is now the case *** that [the claimant's] medical condition is essentially that of an osteoarthritic knee and that it what is driving medical care and driving recommendations for a knee replacement." Dr. Nogalski "did not feel that [the claimant's] need for knee replacement would be related to his claimed work injury of March 2007." In support of this conclusion, Dr. Nogalski noted that: (1) the claimant "already had significant loss of articular cartilage and reactive changes around the knee" in 2007 which "would suggest that he had a significant preexisting problem"; (2) it was "not clear" in the claimant's 2007 medical records that this preexisting condition was "markedly aggravated" by the March 2007 work accident and then "consistently present afterwards"; (3) in fact, the claimant returned to work for a different employer after his March 2007 accident and "at this time has now developed symptoms of osteoarthrit[is]"; and (4) the claimant's treatment was currently being "driven by osteoarthritic issues rather than a traumatic" incident.

¶ 18 After reviewing Dr. Nogalski's IME report, Dr. Ritter testified that he was "a little confused by [Dr. Nogalski's] assumption that *** the medial knee pain that [the claimant] *** was having in 2007 was due to a degenerative osteoarthritis." Dr. Ritter noted that, in his 2007 medical records, he documented that the claimant was having mechanical symptoms (*i.e.*, knee pain when he moved, turned, or twisted the knee) which were commonly associated with a meniscus tear.

¶ 19 A second arbitration hearing was held on remand before Arbitrator Stephen Mathis on

October 12, 2011. During that hearing, the claimant testified that he had continued to work full duty without restriction since the July 2007 hearing. He stated that he worked for Robey as a line haul truck driver for 3 and 1/2 years until he was laid off in 2010. He testified that he was still capable of full-duty work and he would still be working for Robey if work was available. The claimant's job duties for Robey required him to drive approximately 500 miles per day, five days per week. He estimated that he would get in and out of his truck five or six times per day while performing his work duties. When getting in and out of his truck, he would step with his left leg and use the handrail to pull himself up with both hands. He tried to protect his right knee, but he also had to protect his left leg because he had a blood clot in his left knee.

¶ 20 The claimant testified that, during the time he worked for Robey, the pain and discomfort in his right knee became worse. His knee ached and felt like "bone rubbing against bone," and the knee would "go out" when he bent it. However, the claimant acknowledged that he sought no medical treatment for his right knee during the 3 and 1/2 years that he worked for Robey. The first treatment he sought for his right knee after the July 2007 hearing was on December 14, 2010, when he saw Dr. Ritter.

¶ 21 The claimant denied having any problems with his right knee prior to the March 2007 work accident and claimed that he had not injured that knee again after the March 2007 accident.

¶ 22 After reviewing the evidence (including the claimant's testimony and the medical opinions of Drs. Ritter and Nogalski), Arbitrator Mathis found that the claimant had failed to prove a causal relationship between his March 16, 2007, work accident and his need for a total knee replacement. In reaching this conclusion, the arbitrator relied upon Dr. Nogalski's causation opinion, which the arbitrator found "more persuasive" than Dr. Ritter's opinion. The arbitrator noted that Dr. Ritter saw the claimant on two occasions shortly after the March 2007 injury and "has only seen [the claimant] on one additional occasion, three and a half years later

on December 14, 2010." The arbitrator observed that, while there was discussion in the medical records of a need for arthroscopic surgery to repair the claimant's medial meniscus around the time of the March 2007 work injury, there was no indication that a total knee replacement was needed at that time. Moreover, the arbitrator found it significant that, after the surgery recommended by Dr. Ritter was awarded, the claimant "did not even proceed forward with additional treatment of any kind" for his knee. Instead, the claimant "continued with the significant labor associated with the demands of an over-the-road trucker, and participated in those activities for over three and a half years with another employer." The arbitrator noted that, during that time, the claimant had continuing obligations to get in and out of his truck, and he "carried out these activities while increasing his weight from 300 to 350 pounds." Based upon these facts, the arbitrator found that "Dr. Noglaski's opinions connecting the need for the total knee replacement to issues other than the work injury make more sense both from a medical and a common sense perspective." The arbitrator therefore denied the benefits sought by the claimant, including the total knee replacement surgery recommended by Dr. Ritter.

¶ 23 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of McLean County, which confirmed the Commission's ruling.

¶ 24 This appeal followed.

¶ 25 ANALYSIS

¶ 26 The claimant argues that the Commission's finding that he failed to prove that his need for a total knee replacement is causally related to the March 16, 2007, work accident is against the manifest weight of the evidence.

¶ 27 To obtain compensation under the Act, a claimant must prove that some act or phase of

his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2005). 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. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Thus, even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. *Sisbro*, 207 Ill. 2d at 205; *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). A claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983); see also *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981); *Swartz*, 359 Ill.App.3d at 108.

¶ 28 "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 (2005); see also *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 742 (1994). "That other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant." *Vogel*, 354 Ill. App. 3d at 786; see also *Lasley Construction Co. v. Industrial Comm'n*, 274 Ill. App. 3d 890, 893 (1995).

¶ 29 The issue of causal connection (including whether a work-related accident aggravated a preexisting condition) is a factual question to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 206; *Vogel*, 354 Ill. App. 3d at 786. When resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve

conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). We owe particularly "substantial deference" to the Commission's findings regarding medical issues, "as its expertise in this area is well recognized." *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 18; see also *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). A reviewing court may not substitute its judgment for that of the Commission on factual issues merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence, *i.e.*, only when the opposite conclusion is "clearly apparent." *Swartz*, 359 Ill. App. 3d at 1086. 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. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). When the evidence is sufficient to support the Commission's causation finding, we will affirm. *Id.* However, although we are reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993).

¶ 30 In this case, the Commission relied upon Dr. Nogalski's opinion that the claimant's current need for a total knee replacement was not causally related to the March 16, 2007, work accident. Dr. Ritter reached a different conclusion. It is the Commission's province to resolve conflicts between medical opinion testimony (*Compass Group*, 2014 IL App (2d) 121283WC, ¶ 18; *Fickas*, 308 Ill. App. 3d at 1041 (1999)), and "[w]e will not merely reevaluate the credibility of [conflicting medical expert] witnesses and substitute our judgment for that of the Commission." *Compass Group*, 2014 IL App (2d) 121283WC, ¶ 19. However, "[e]xpert

opinions must be supported by facts and are only as valid as the facts underlying them." *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 24; see also *Sunny Hill of Will County v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 130028WC, ¶ 36. "An expert opinion is only as valid as the reasons for the opinion." *Gross*, 2011 IL App (4th) 100615WC, ¶ 24. The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Id.*; see also *Sunny Hill of Will County*, 2014 IL App (3d) 130028WC, ¶ 36. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. *Gross*, 2011 IL App (4th) 100615WC, ¶ 24.

¶ 31 Here, the reasons that Dr. Nogalski cited in support of his causation opinions do not appear to support his opinion, and some of the "facts" that Dr. Nogalski relied upon are contradicted by the medical records and other evidence. For example, Dr. Nogalski opined that it is "not clear" that the claimant's preexisting osteoarthritis was "markedly aggravated" by the March 2007 work accident and then "consistently present afterwards." In support of this opinion, Dr. Nogalski noted that the claimant returned to work for a different employer after his March 2007 accident and suggested that the claimant first developed symptoms of osteoarthritis around the time Dr. Nogalski prepared his report (*i.e.*, in late 2010 or early 2011). There are several problems with these assertions. First, the fact that the claimant was able to work full-duty for another employer after the March 2007 accident is irrelevant. During the arbitration hearing, the claimant testified that he has worked full duty without restriction from the time of the last hearing, that he was still capable of working full duty, and that he would still be working if he had not been laid off by Robey. Regardless of his physical capabilities, however, it is undisputed that the claimant currently needs a total knee replacement. Even Dr. Nogalski agreed that there was a "reasonable indication for a total knee replacement" given the claimant’s current condition. Thus, the claimant's ability to work during the three and 1/2 years following the

March 2007 accident is immaterial. The only question is whether the claimant's undisputed need for a knee replacement is causally related to the March 2007 accident.

¶ 32 Moreover, Dr. Nogalski's assertion that the claimant experienced symptoms of osteoarthritis for the first time in late 2010 or early 2011 is not supported by the record. The claimant's medical records reflect that the claimant began experiencing pain in his right knee shortly after the March 2007 accident. Dr. Levin, the employer's initial section 12 examiner, testified that the claimant's preexisting osteoarthritis was asymptomatic prior to the March 2007 accident and opined that the claimant's work injury "could have *** caused if not aggravated a pre-existing condition to become symptomatic." Further, the claimant testified that his knee pain began after the March 2007 accident and continued and worsened during the time he worked for Robey. He denied having any problems with his right knee prior to the accident, and he testified that he did not suffer any other injuries to the knee thereafter. Thus, the evidence presented in this case suggests that the claimant began experiencing ongoing knee pain shortly after the March 2007 accident, not in 2010 or 2011.

¶ 33 Moreover, Dr. Nogalski's opinion did not squarely address (much less refute) the medical basis for Dr. Ritter's causation opinion. Dr. Ritter opined that the claimant's current pain symptoms and severe osteoarthritis were causally related to the March 2007 accident because the meniscal tear he suffered during that accident accelerated the progression of his osteoarthritis. Dr. Nogalski did not directly rebut this opinion. Nor did he explain why Dr. Ritter's opinion is medically unsound or otherwise flawed. Instead, Dr. Nogalski merely asserted that the claimant had a "significant preexisting problem" with osteoarthritis before the March 2007 accident, that the claimant's treatment in 2011 was "driven by osteoarthritic issues rather than a traumatic" incident, and that the claimant was able to work for Robey after the March 2007 accident. None of these statements rebuts Dr. Ritter's opinion that the March 2007 accident accelerated the

progression of the claimant's preexisting osteoarthritis and thereby causally contributed to his current need for knee replacement surgery.

¶ 34 In sum, although Dr. Nogalski baldly asserted that the claimant's need for a knee replacement is not causally related to the March 2007 work accident, he did not provide a sufficient foundation to establish the reliability of this opinion. The facts upon which Dr. Nogalski based his opinion are either irrelevant or contradicted by the record, and Dr. Nogalski did not even attempt to explain why the meniscal tear that the claimant suffered in the March 2007 accident did not or could not have worsened his osteoarthritis, as suggested by Dr. Ritter. Under these circumstances, we hold that the Commission erred in crediting and relying upon Dr. Nogalski's opinion.

¶ 35 In denying benefits, the Commission also stressed that the claimant sought no treatment during the 3 and 1/2 years that he worked for Robey but rather "continued with the significant labor associated with the demands of an over-the-road trucker." However, there was no evidence suggesting that the claimant's work for Robey was strenuous or that the performance of his work duties for Robey could have contributed to his need for a total knee replacement. Moreover, the claimant argues that he was not able to undergo the arthroscopic meniscal repair initially ordered by the arbitrator in July 2007 because: (1) after the claimant left the employer in July 2007, he had no workers' compensation insurance or group medical insurance; (2) the Commission did not affirm the arbitrator's July 2007 decision until two years later (on July 17, 2009); (3) the appeal of the Commission's July 2009 decision was not heard by the circuit court until May 28, 2010; (4) after the circuit court affirmed the Commission's order, the claimant could not "get back into worker's compensation medical care without the employer's authorization"; and (5) after the claimant obtained the employer's authorization, he scheduled the earliest available appointment with Dr. Ritter, which was on December 14, 2010. The employer does not dispute any of these

statements. Instead, it simply asserts that the Commission correctly rejected the claimant's argument that his delay in seeking treatment was attributable to the employer's appeal of the Commission's initial award, and suggests that the claimant delayed seeking treatment because his condition "did not warrant treatment." It is difficult to understand how the employer could suggest that the claimant's condition did not warrant treatment given the Commission's prior award of surgery to repair the claimant's torn meniscus. In any event, the employer does not argue that the claimant's delay in seeking treatment caused his need for a knee replacement, and the Commission did not clearly so hold. For all of these reasons, the claimant's employment at Robey and his purported delay in seeking medical treatment are of little relevance.

¶ 36 The Commission also noted that the claimant "increas[ed] his weight from 300 to 350 pounds" while he worked for Robey, and it appeared to suggest that the claimant's need for a knee replacement was related to his obesity rather than to his March 2007 work injury. Dr. Ritter testified that obesity would accelerate the progression of osteoarthritis, and Dr. Levin noted that the claimant's "morbid obesity" "put increased stress on his knee." Thus, at first glance, the fact that the claimant weighed 350 pounds (50 pounds more than he did in March 2007) while he worked full duty at Robey might appear to support an inference that the acceleration of the claimant's osteoarthritis was due to his obesity rather than the meniscal tear he suffered during the work accident. However, we find that such an inference is not reasonable given the medical opinion evidence presented. Dr. Levin noted that, despite the claimant's morbid obesity, the claimant became symptomatic only after the March 2007 accident. Moreover, Dr. Ritter opined that the torn meniscus the claimant suffered in the March 2007 accident played at least some contributing causal role (along with the claimant's obesity) in his subsequent need for a knee replacement. There is no medical testimony tying the need for a knee replacement *solely* to the claimant's obesity. (Further, as noted above, there is no evidence that

the claimant's work for Robey, standing alone, could have caused the claimant's need for a knee replacement.) Thus, there is insufficient evidence in the record to support the Commission's finding that the claimant's need for a knee replacement is related entirely to issues other than the March 2007 work injury. The clearly evident and indisputable weight of the evidence suggests that the March 2007 work accident played at least some contributing causal role in the claimant's need for a total knee replacement.

¶ 37 CONCLUSION

¶ 38 For the foregoing reasons, we reverse the judgment of the circuit court of McLean County confirming the Commission's decision, reverse the Commission's decision, and remand this matter to the Commission for further proceedings consistent with this opinion.

¶ 39 Circuit court judgment reversed; Commission decision reversed; cause remanded to the Commission.

¶ 40 JUSTICE HARRIS, dissenting.

¶ 41 I respectfully dissent. Bearing in mind the deference owed to the Commission regarding medical matters, (see *Long v. Industrial Commission*, 76 Ill. 2d 561, 566 (1979)), as well as the standard of review involved here, the circuit court's judgment confirming the Commission's decision should be affirmed. In this case, the Commission weighed the competing causation opinions of Dr. Ritter and Dr. Nogalski and found Dr. Nogalski's opinion more persuasive. Although the majority states Dr. Nogalski did not provide a sufficient foundation for his opinion, the Commission identified the factual bases supporting his opinion which in my view, were sufficient. Accordingly, I would affirm.

¶ 42 Justice Hudson joins this dissent.