2019 IL App (1st) 182387WC-U

Workers' Compensation
Commission Division
Order Filed: June, 28, 2019

No. 1-18-2387WC



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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| CITY OF CHICAGO HEIGHTS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Appellant, | ) | Cook County |
| | ) | |
| v. | ) | No. 18 L 050119 |
| | ) | |
| THE ILLINOIS WORKERS' COMPENSATION | ) | |
| COMMISSION *et al.*, | ) | Honorable |
| | ) | James M. McGing, |
| (Alberto Davila, Appellee). | ) | Judge, Presiding. |

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

**ORDER**

¶ 1 *Held:* We affirm the circuit court's judgment confirming the Workers' Compensation Commission's (Commission) decision awarding the claimant benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)), over the employer's argument that the Commission's finding that the claimant required a total knee replacement as the result of his work accident and that it was

entitled to a credit of $56,282.20 against the temporary total disability benefits awarded to the claimant.

¶ 2 The City of Chicago Heights (Chicago Heights) appeals from a judgment of the circuit court of Cook County, confirming the decision of the Illinois Workers' Compensation Commission (Commission) which awarded the claimant, Alberto Davila, benefits pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)) for injuries he sustained on September 25, 2015. Chicago Heights argues that: (1) the Commission's finding that the claimant requires a total right knee replacement as a proximate result of his work accident is against the manifest weight of the evidence; and (2) the Commission erred as a matter of law in awarding it a credit of $49,429.12 against the temporary total disability (TTD) benefit awarded to the claimant as opposed to a credit of $56,282,20. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following recitation of the facts relevant to a disposition of this appeal is taken from the evidence adduced at the arbitration hearing held on April 12, 2017.

¶ 4 The claimant has a medical history that is relevant to this appeal. On January 10, 2014, he underwent surgery for a torn meniscus on his right knee. On June 2, 2014, he returned to full duty work. Between June 2, 2014, and September 22, 2015, he did not seek medical treatment from a doctor for his right knee, did not miss work because of his right knee, did not take any medication for his right knee, and was working full duty, as a police officer, without problems aside from occasional aching.

¶ 5 The claimant testified that he was employed as a Chicago Heights police officer for over 19 years. On September 22, 2015, the claimant responded to a "shots fired emergency call" and, while chasing a suspect across a field, stepped into a one-foot deep ditch, twisted his right leg,

and fell. The claimant stated that he felt a "pop" in his right knee and immediately experienced significant pain.

¶ 6 The claimant reported the accident, and Chicago Heights immediately sent him to Ingalls Memorial Hospital (Ingalls). From September 22, 2015, until December 2, 2015, the claimant received medical treatment at Ingalls, which included medication, physical therapy, and a right knee MRI on October 12, 2015. The MRI showed "blunting of the apex of the posterior horn medial meniscus," which was "suggestive of tearing." Ingalls referred the claimant to Dr. Ram Aribindi, whom he saw on October 23, 2015. Dr. Aribindi reviewed the October 12, 2015 MRI and determined that that the claimant had a torn medial meniscus of his right knee, gave him a steroid injection for the pain, recommended physical therapy, and suggested a right knee arthroscopy.

¶ 7 On November 12, 2015, the claimant sought treatment from Dr. Matthew Jimenez at the Illinois Bone & Joint Institute. The claimant presented with the following complaints: "significant right knee pain;" clicking, popping, and swelling in his right knee; problems rising from a chair; and difficulty walking any great distances or going up and down stairs. The claimant stated that the pain interfered with daily living, work, and recreation and that, although he underwent a prior partial lateral meniscectomy in 2014, it has been completely asymptomatic and rehabilitated. Dr. Jimenez determined that the new medial meniscal tear shown in the October 12, 2015 MRI was caused by the claimant's September 22, 2015 work accident because he was completely asymptomatic prior to the work accident. Dr. Jimenez opined that:

> "The [claimant] does have some preexisting degenerative changes in his knee and therefore he is at the higher risk for exacerbation or worsening of his preexisting arthritis as a function of [the]

> meniscal tear. Therefore, these changes likely change the natural course of history of his knee arthritis as a function of this new meniscal damage from 9/2015."

Based on the claimant's medical history, physical examination, and the October 12, 2015 MRI revealing the new meniscal tear, Dr. Jimenez recommended a right knee partial medial meniscectomy.

¶ 8 On December 11, 2015, after previous treatments failed, the claimant reported to Dr. Jimenez for the recommended right knee partial medial meniscectomy. Dr. Jimenez's preoperative diagnosis of the claimant was a right knee complex multidirectional medial meniscal tear with grade 1, 2, and 3 chondromalacia of the patellofemoral joint. Dr. Jimenez performed an arthroscopic partial medial meniscectomy as well as "right knee arthroscopic microfracture technique chondroplasty of the patellofemoral joint." He noted that the claimant had some degenerative changes in all three compartments of his right knee: patellofemoral compartment, lateral joint compartment, and medial joint compartment. According to Dr. Jimenez, the claimant had preexisting degenerative changes in his knee and that the new meniscal tear predisposed him to more aggressive loss of cartilage, faster loss of cartilage, faster progression of the arthritic changes, and ultimately, aggravated his arthritis. Dr. Jimenez's postoperative diagnosis of the claimant was the same as his preoperative diagnosis, and he also noted that the claimant had "bone-on-bone" in the medial joint line. On December 22, 2015, the claimant was seen by Dr. Jimenez, who determined that the claimant had considerable cartilage damage with "exposed bone-on-bone" in the medial compartment, as well as a "significant medial meniscus tear and osteophyte along the patella articulating with the patellofemoral joint."

¶ 9 On January 19, 2016, the claimant returned to Dr. Jimenez, complaining of clicking, popping, and swelling in his right knee, as well as problems rising from a chair, and difficulty walking any great distances or going up and down stairs. Dr. Jimenez noted that the claimant had some pre-existing degenerative changes in his right knee and that the documented acute trauma to his meniscus and the cartilage damage from his September 22, 2015 work accident exacerbated his pre-existing condition. Dr. Jimenez opined that, as a result of the work accident, the claimant's arthritis in his right knee will increase and noted that the claimant would likely require continued physical therapy, knee injections, and right knee arthroplasty (knee replacement surgery).

¶ 10 On February 16, 2016, the claimant was seen by Dr. Jimenez for a follow-up evaluation and treatment. Dr. Jimenez noted mild varus alignment and recommended that the claimant stay off work and continue physical therapy. The claimant returned to Dr. Jimenez on March 15, 2016, with similar symptoms as on January 19, 2016, and Dr. Jimenez recommended that he stay off work and continue physical therapy.

¶ 11 On April 14, 2016, the claimant was seen by Dr. Jimenez who noted that the claimant's right knee x-rays showed medial joint space wear with subchondral sclerosis, subchondral cysts, osteophytes, joint space narrowing, "fairly significant wear," cartilage damage, and arthritic changes, that are posttraumatic in nature and exacerbated by his work accident. Dr. Jimenez recommended a series of lidocaine, Marcaine, and Depo-Medrol injections and stated that, as a result of the work accident, arthroplasty was required. On April 28, 2016, the claimant returned to Dr. Jimenez who treated him with physical therapy, lidocaine, Marcaine and Depo-Medrol injections, and recommended that he remain off work.

¶ 12 On May 5, 2016, the claimant was treated by Dr. Jimenez, receiving an Orthovisc injection and instructions to remain off work. On May 12, 2016, the claimant presented to Dr. Jimenez with complaints "consistent with Achilles tendonitis." Dr. Jimenez administered an Orthovisc injection in the claimant's right knee and recommended that he take an anti-inflammatory and apply ice and compression for his tendonitis. Dr. Jimenez also recommended that the claimant remain off work. On May 19, 2016, the claimant returned to Dr. Jimenez continuing to complain of clicking, popping, and swelling in his right knee, problems rising from a chair, and difficulty walking any great distances or going down stairs. Dr. Jimenez administered another Orthovisc injection in his right knee and recommended that he begin work conditioning in a week. On June 2, 2016, the claimant presented to Dr. Jimenez with the same complaints as on May 19, 2016, and Dr. Jimenez recommended that the claimant remain off work and continue work conditioning.

¶ 13 The claimant returned to Dr. Jimenez on June 16, 2016, and he noted that the claimant's x-rays showed "medial joint space wear, bone-on-bone," and recommended that he continue work conditioning three to five hours a day. Dr. Jimenez also ordered a functional capacity evaluation (FCE). On July 12, 2016, the claimant underwent an FCE with ATI Physical Therapy (ATI), exhibiting a medium "Demonstrated Physical Demand Level," meeting the level stated by the Dictionary of Occupational Titles.

¶ 14 On July 14, 2016, Dr. Jimenez reviewed the FCE and opined that a heavy duty demand level is necessary for a police officer, that a medium demand level capacity is insufficient, and that medium work may be a permanent restriction for the claimant. Dr. Jimenez recommended that the claimant not return to work. On August 11, 2016, the claimant returned to Dr. Jimenez,

who again recommended a right knee arthroplasty, noting that the "need for [a] knee replacement is clearly work-related."

¶ 15 On August 12, 2016, the claimant underwent an independent medical examination (IME) with Dr. Troy Karlsson. In the "Record Review" section of Dr. Karlsson's report, he noted that he reviewed the claimant's treatment notes from September 22, 2015, through July 12, 2016[1], two x-ray films of the claimant's right knee, dated September 25, 2015, and the October 12, 2015 MRI. Dr. Karlsson noted that the x-ray films showed "significant loss of cartilage clear space in all 3 compartments, medial, lateral, and patellofemoral" and opined that the x-rays revealed "significant tricompartmental osteoarthritis of the right knee." Upon review of the October 12, 2015 MRI, Dr. Karlsson noted that the lateral meniscus was intact, there was blunting of the medial meniscus consistent with prior resection of the posterior horn, "some high signal with the posterior horn" consistent with either degenerative changes or possible re-tearing, and significant tricompartmental osteoarthritic changes. Dr. Karlsson also noted that the findings in the October 12, 2015 MRI were most consistent with "prior medial meniscal excision with possible retear or degeneration in the remnant" and "significant tricompartmental arthritic changes."

¶ 16 Dr. Karlsson opined that the claimant had a torn medial meniscus, noting that the claimant "gave a history of having part of his lateral meniscus taken out in the past [2014], but by the images on the MRI, it looks as though he had the posterior horn of his medial meniscus taken out." Dr. Karlsson also noted that he did not have the records from the claimant's 2014 surgery. Dr. Karlsson further opined that the claimant has severe osteoarthritis, which is "bone-on-bone" and is "clearly preexisting as there were no loose bodies of osteocartilaginous fragments found on [the] MRI or arthroscopically to explain his bone-on-bone arthritis that is

[1] In his deposition, Dr. Karlsson testified that he did not review any notes after May 12, 2016; however, he references the FCE exam in his IME, which was conducted on July 12, 2016.

described by Dr. Jimenez." Dr. Karlsson noted that the claimant "will likely require a total knee arthroplasty," has a poor chance of returning to full duty work, but is capable of restricted duty or desk work. Lastly, Dr. Karlsson opined that all further care for the claimant's right knee condition is related to his pre-existing arthritis.

¶ 17 On September 8, 2016, the claimant returned to Dr. Jimenez. Dr. Jimenez noted that the claimant met all "clinical and radiographic criteria for surgical management, knee arthroplasty." He recommended right knee arthroplasty as a result of the claimant's work accident, and a knee injection to be completed on November 11, 2016.

¶ 18 On October 6, 2016, Dr. Jimenez noted, during a follow-up visit, that the claimant had varus alignment, continued pain and swelling in his right knee, pain on range of motion, and joint line tenderness. Dr. Jimenez also noted that he disagreed with Dr. Karlsson's opinion, in Dr. Karlsson's IME report, that "any future care and treatment that the patient will require is not related to [the] work related event." Dr. Jimenez noted that the claimant was pain-free prior to his September 22, 2015 work accident, but since that time has been highly symptomatic in his right knee with his December 11, 2015 arthroscopic surgery revealing evidence of acute damage of cartilage that has worsened and exacerbated pre-existing issues in the knee. Based on the claimant's medical history following his September 22, 2015 work accident, Dr. Jimenez, once again, recommended a right knee arthroplasty and opined that it was necessary as a result of his work accident. Dr. Jimenez treated the claimant on November 8, 2016, December 6, 2016, and January 10, 2017, and continued to recommend right knee replacement surgery.

¶ 19 In his deposition, Dr. Karlsson testified consistently with his IME report that he did not believe that the claimant's need for right knee arthroplasty was caused by his work accident, but was instead the result of the progression of the claimant's pre-existing degenerative or arthritic

changes. Dr. Karlsson admitted that he did not receive or review any of the claimant's medical records from before September 22, 2015, and had no medical records after May 12, 2016. Further, Dr. Karlsson had no records of whether the claimant was experiencing clicking, popping or swelling in his right knee or having difficulty getting up from a chair or walking long distances before the work accident. Dr. Karlsson agreed that trauma can aggravate pre-existing asymptomatic degenerative changes depending on the level of trauma and structural change. He also stated that tearing a meniscus while running and stepping into a ditch could be a traumatic event significant enough to aggravate pre-existing degenerative changes in the long term. Additionally, Dr. Karlsson admitted that, while "bone-on-bone" is one of the "indications" for knee replacement surgery, a person would not have to be "bone-on-bone" to indicate a need for knee replacement surgery when there is a "significant level of arthritis and pain [that is] not responding to other treatments." Upon his review of the November 12, 2015 x-rays, Dr. Karlsson stated that the scans were ambiguous as to whether there were "bone-on-bone" changes. After reviewing the claimant's December 6, 2016 x-rays, Dr. Karlsson observed "bone-on-bone" in both knees. Dr. Karlsson concluded that, based on his comparison of the November 12, 2015 x-rays to the December 6, 2016 x-rays, there were arthritic degenerative changes that had progressed.

¶ 20 In his deposition testimony, Dr. Jimenez testified that he disagreed with Dr. Karlsson's causation opinion and stated that the claimant's need for total right knee replacement surgery was caused by his work accident. Dr. Jimenez stated that finding loose bodies of osteocartilaginous fragments in the claimant's MRI or x-rays is irrelevant as to whether the work-related injury exacerbated his pre-existing condition. Dr. Jimenez stated that, when he first examined the claimant, he noted pre-existing degenerative changes, but did not believe his right

knee was "bone-on-bone." The November 12, 2015 x-rays noted early mild tri-compartmental degenerative changes. Dr. Jimenez testified that up to and including the date of the claimant's partial medial meniscectomy on December 11, 2015, there was no evidence of "bone-on-bone" arthritic changes and that those changes appeared later. Dr. Jimenez stated that because of the claimant's multidirectional meniscal tear, the December 11, 2015 surgery was necessary to halt the progression of his arthritis. According to Dr. Jimenez, his physician assistant dictated the note on December 22, 2015, and indicated "bone-on-bone" changes, but at that time, there was no "bone-on-bone" in the medial compartment; rather, Dr. Jimenez noticed a gap, reflecting mild to moderate arthritis in the claimant's right knee. Dr. Jimenez stated that these findings were consistent with his intra-operative findings. Dr. Jimenez testified that the claimant's December 6, 2016 x-rays, revealed "bone-on-bone."

¶ 21 The claimant confirmed that he received Public Employee Disability Act (PEDA) payments until September 22, 2016, when the payments stopped because he was not released to work full duty. The claimant stated that, after the payments stopped, he applied for an early pension, despite his original plans to wait until he was fully vested. The claimant testified that, at the time of the hearing, he was able to walk but that he planned to prepare for surgery as his right knee was "in bad shape," preventing him from running or moving laterally.

¶ 22 Following a hearing, the arbitrator found that the claimant sustained an accidental injury arising out of and in the course of his employment with Chicago Heights PD, and that his current condition of ill-being, requiring total right knee replacement surgery, is causally related to his work accident. The arbitrator determined that the claimant's medical services were reasonable and necessary and ordered the Chicago Heights to pay for both his total right knee replacement surgery and "any and all incidental care thereto." The arbitrator awarded the claimant 81 1/7

weeks of TTD benefits for the right knee condition, under section 8(b) of the Act (820 ILCS 305/8(b) (West 2014)), for the period from September 23, 2015, through April 12, 2017. Additionally, the arbitrator awarded Chicago Heights a credit against the TTD benefits award, in the amount of $49,429.12, under section 1(d) of the PEDA (5 ILCS 345/1(d) (West 2014)). Lastly, the arbitrator found Chicago Heights liable for the claimant's outstanding ATI Physical Therapy (ATI) medical bill in the amount of $4,618.23 under sections 8(a) and 8.2 of the Act (820 ILCS 305/8(a), 8.2 (West 2014)).

¶ 23 Chicago Heights sought review of the arbitrator's decision before the Commission. The Commission affirmed and adopted the arbitrator's decision, striking, without prejudice, the award of $4,618.23 for a purported medical bill from ATI that was not entered into evidence, granting the claimant leave to submit a "properly itemized medical bill from ATI" into evidence, and remanding the cause back to the arbitrator, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980), for further proceedings to determine additional TTD benefits, medical benefits, or compensation for permanent disability, if any.

¶ 24 Chicago Heights sought judicial review of the Commission's decision in the circuit court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 25 Chicago Heights argues that the Commission's finding that the claimant's need for total right knee replacement surgery is causally related to his work accident of September 22, 2015, is against the manifest weight of the evidence. In support of this argument, Chicago Heights primarily relies on the testimony of Dr. Karlsson that the claimant's need for arthroplasty is related to his pre-existing arthritis.

¶ 26 The claimant has the burden of establishing by a preponderance of the evidence the elements of his claim, including "some causal relation between the employment and the injury." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989). Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence; rather, the appropriate test is "whether there was sufficient factual evidence in the record to support the Commission's decision." *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982). We will affirm a decision of the Commission if there is any basis in the record to do so, regardless of whether the Commission's reasoning is correct or sound. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 283 Ill. App. 3d. 785, 793 (1996).

¶ 27 Employers take their employees as they find them, and even though an employee has a pre-existing condition that makes him more vulnerable to injury, recovery for an accidental work injury will not be denied as long as it can be shown that the employment was a causative factor. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Recovery in such a case will depend upon the claimant's ability to show that his work-related accident aggravated or accelerated the condition such that the current condition of ill-being can be said to have been causally connected to the work

accident and not simply the result of a normal degenerative process of the pre-existing condition. *Id.* at 204-05.

¶ 28 Applying these standards, we cannot conclude that the Commission's finding, that the claimant's need for total right knee replacement is causally related to his work accident of September 22, 2015, is against the manifest weight of the evidence. The claimant testified that, on January 10, 2014, he underwent a right knee surgery but was without symptoms, treatment, or restrictions from June 2, 2014, until September 22, 2015. Moreover, the claimant's right knee surgery in 2014 was to the lateral meniscus, and after the September 22, 2015 work accident, he received a medial meniscal repair surgery.

¶ 29 Dr. Jimenez and Dr. Karlsson agreed that total right knee replacement surgery is necessary; however, they disagreed on causation. Dr. Jimenez opined that the claimant's September 22, 2015 work accident exacerbated his pre-existing arthritic degeneration in his right knee, relying on the fact that: (1) he was asymptomatic prior to September 22, 2015, but afterwards his records demonstrated that his knee condition was progressing; and (2) he continued to complain of pain, as well as clicking, popping, and swelling of the right knee, despite months of attempts at surgical repair, physical therapy, and injections. Dr. Karlsson opined that the claimant's need for total right knee replacement surgery was not exacerbated by his September 22, 2015 work accident, but was instead related to his pre-existing degenerative knee condition. He relied on the fact that the claimant has "severe osteoarthritis" that is "bone-on-bone" and "clearly preexisting as there are no loose bodies of osteocartilaginous fragments found on [the] [October 12, 2015] MRI or arthroscopically to explain his bone-on-bone arthritis that is described by Dr. Jimenez." Dr. Jimenez opined that finding loose bodies of

osteocartilaginous fragments in the claimant's MRI or x-rays is irrelevant as to whether the work-related injury exacerbated his pre-existing condition.

¶ 30 The Commission found the claimant to be credible with respect to his testimony "concerning the mechanism of injury, his course of treatment before and after the accident and his current complaints." The Commission gave greater weight to the testimony of Dr. Jimenez than that of Dr. Karlsson and concluded that the claimant's need for total right knee replacement surgery was the result of a pre-existing right knee condition that was "aggravated, accelerated or exacerbated" by the work accident. The Commission also found that regardless of when the claimant was "bone-on-bone," the record supported that his pre-existing degenerative knee condition was "aggravated, accelerated or exacerbated" by the September 22, 2015 work accident.

¶ 31 It was the function of the Commission to resolve the conflict in medical testimony (*O'Dette*, 79 Ill. 2d at 253), and we will not substitute our judgment or reweigh the evidence because a different inference could be drawn from the evidence. The causation opinion of Dr. Jimenez coupled with the medical records are more than sufficient to support the conclusions reached by the Commission in making its causation determination. Based on the foregoing, we find that that the Commission's causation determination is not against the manifest weight of the evidence.

¶ 32 Next, Chicago Heights maintains that the Commission erred as a matter of law in awarding a credit of $49,429.12 against the TTD benefits award, rather than the $56,282.20 that the parties stipulated was paid to the claimant. Review of this issue presents a matter of statutory construction, which is a question of law that we review *de novo*. *Cassens Transport Co. v. Industrial Comm'n*, 218 Ill. 2d 519, 524 (2006).

¶ 33 The fundamental rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. *Hamilton v. Industrial Comm'n*, 203 Ill. 2d 250, 255 (2003). "In determining legislative intent, we first look to the statutory language." *Airborne Express, Inc. v. Illinois Workers' Compensation Comm'n*, 372 Ill. App. 3d 549, 553 (2007). When the language is clear and unambiguous, we must apply it as written without reading into it exceptions, limitations, or conditions not expressed by the legislature. *Mahoney v. Industrial Comm'n*, 218 Ill. 2d 358, 363-64 (2006).

¶ 34 The PEDA is designed to protect an injured employee's income for a period of one year. 5 ILCS 345/1(b) (West 2014). The clear and unambiguous language of section 1(d) of the PEDA provides: "Any salary compensation *due* the injured person from workers' compensation or any salary due him from any type of insurance which may be carried by the employing public entity shall revert to that entity during the time for which continuing compensation is paid to him under this Act." (Emphasis added.) 5 ILCS 345/1(d) (West 2014). The claimant was paid a total of $56, 282.20 when his PEDA benefits expired on September 22, 2016. Following the plain language of the statute, the amount that should be credited to Chicago Heights is the equivalent of the claimant's TTD benefit award of $49,429.12 (the compensation due him from worker's compensation). Although the claimant was paid a total of $56,282.20 in PEDA benefits, representing his full salary for one year, the plain language of section 1(d) of the PEDA provides for a credit equal to the TTD benefit Chicago Heights would have paid (the salary due the claimant) rather than the salary actually paid through PEDA. In this case, Chicago Heights would have paid $49,429.12 in TTD benefits, as awarded by the arbitrator, based on Dr. Jimenez's medical opinion, that as of September 22, 2016, that the claimant had not recovered enough to return to work.

¶ 35 Therefore, based on the plain language of section 1(d) of PEDA and the undisputed facts, Chicago Heights was entitled to a credit of $49,429.12, and the Commission's grant of that credit was not contrary to law.

¶ 36 For the reasons stated, we affirm the judgment of the circuit court of Cook County, which confirmed the decision of the Commission. This matter is remanded to the Commission for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 37 Affirmed and remanded.