2011 IL App (1st) 103390WC-U

Workers' Compensation
Commission Division
Filed: October 31, 2011

No. 1-10-3390WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DHL, Plaintiff-Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION and ANDRE GOLSTON, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 09-L-51339 Honorable Elmer James Tolmaire, III, Judge, Presiding

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JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice McCullough and Justices Hoffman, Holdridge, and Stewart concurred in the judgement.

ORDER

Held: (1) Commission's decision that claimant's injury to his left knee on June 27, 2007, arose out of and in the course of his employment is not against the manifest weight of the evidence where evidence showed that claimant was exposed to a common risk more frequently than the general public; (2) Medical evidence supported Commission's finding that claimant's accident of June 27, 2007, aggravated claimant's underlying left-knee condition of ill-being and accelerated his need for knee-replacement surgery; (3) Commission's award of medical expenses is not against the manifest weight of the evidence; and (4) Commission's award of temporary total disability benefits is not against the manifest weight of the evidence.

¶ 1 Claimant, Andre Golston, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2006)) alleging that he sustained an employment-related injury to his left knee on June 27, 2007, while working for respondent, DHL. Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2006)), the arbitrator denied compensation on the basis that claimant failed to establish that his accident arose out of and in the course of his employment with respondent. The Illinois Workers' Compensation Commission (Commission) reversed, finding that claimant sustained a compensable accident on June 27, 2007, and that the accident aggravated claimant's underlying condition of ill-being and accelerated his need for knee-replacement surgery. The Commission awarded claimant 38-2/7 weeks of temporary total disability (TTD) benefits and $10,220.06 in medical expenses. The circuit court of Cook County confirmed the decision of the Commission. On appeal, respondent challenges the Commission's findings with respect to accident, causal connection, medical expenses, and TTD benefits.

¶ 2 I. BACKGROUND

¶ 3 Claimant testified that he began working for respondent 14 or 15 years prior to the arbitration hearing of October 23, 2008. Claimant's position was full time and required him to deliver packages to homes and buildings. Claimant testified that after he clocks in each morning, he grabs his scanner and loads his truck with packages weighing from 1 to 150 pounds. Once his truck has been loaded, he downloads his scanner and begins making deliveries. Claimant estimated that he typically makes between 85 and 115 stops each workday, depending on how many packages there are to deliver. Claimant uses stairs and elevators inside the buildings to which he delivers packages. He stated that between 75 and 80 percent of his deliveries are residential.

¶ 4 Claimant testified that he has a history of knee problems. In 1999, while working for respondent, claimant suffered an injury to his left knee for which he underwent an arthroscopic meniscal repair by Dr. Leonard Smith. After claimant recovered from the surgery, his knee "felt

fine," and he resumed full duty. Claimant reinjured his left knee at work in September 2003, while stepping into his truck. Claimant initially underwent care at MercyWorks, the company clinic, where he saw Dr. Joan Veits. Dr. Veits referred claimant to Dr. Craig Westin, an orthopaedic surgeon. Dr. Westin treated the injury conservatively, and claimant eventually resumed full duty. After claimant returned to work, his knee felt good most of the time, although he experienced minimal pain on occasion. Claimant did not use a knee brace or take any pain medication at that time. On April 20, 2006, claimant again injured his left knee at work when he stepped off a dock while carrying a weighted box with both hands.[1] Claimant was again directed to MercyWorks, where he was referred to Dr. Westin. Dr. Westin provided conservative care. Claimant testified that Dr. Westin never recommended conventional knee surgery or a knee replacement while he was under his care in 2006. Upon returning to work, claimant still felt occasional pain but was able to perform his regular work duties and did not require pain medication.

¶ 5 According to claimant, the injury at issue occurred on June 27, 2007, when he stepped out of his truck while carrying a package. Claimant explained that the last step of his truck was approximately 12 to 18 inches higher than the curb. As claimant stepped down from the last step, he was looking at the address on the package he was holding to make sure that he was at the correct location. Claimant testified that he "short stepped" the curb and "jammed" his left knee. Claimant described the pain as "more intense" than what he had previously experienced. At the time of the accident, claimant was 45 years old.

¶ 6 Following the accident, claimant sought treatment at MercyWorks and then from Dr. Westin. Dr. Westin drained the knee, administered a cortisone injection, provided crutches, and

[1] The April 2006 accident is the subject of a separate claim (07 WC 39985). That claim was consolidated with the present claim (07 WC 39143) for purposes of hearing before the arbitrator, but is not a subject of this appeal.

prescribed therapy. Claimant acknowledged that Dr. Westin had given him crutches after the 2006 injury also, but stated that he did not need them at that time. Dr. Westin had also injected claimant's knee after the 2006 injury. Claimant testified that the injection administered in 2006 helped, but the one he received after the 2007 injury did not.

¶ 7 After seeing Dr. Westin, claimant underwent a course of physical therapy. Subsequently, Dr. Westin replaced the medial compartment of his left knee. Claimant's group carrier paid for this procedure because after claimant was examined at respondent's request by Dr. Kevin Walsh, his TTD benefits were discontinued and the workers' compensation carrier would not authorize the surgery. Claimant testified that he underwent additional therapy following the knee replacement surgery and that, eventually, Dr. Westin discharged him from treatment.

¶ 8 Claimant's attorney then inquired about Dr. Westin's office note of March 2008, which describes claimant acting as an umpire at baseball games. Claimant stated that he umpires games "from peewee league to high school." Claimant explained that when he umpires games, he either squats behind the catcher or officiates the bases. He does not crawl, kneel repetitively, or lift over 40 pounds when umpiring. Claimant umpired games because he has three children and had no other source of income. He is paid $55 for each game. He umpired two or three times a week, and never umpired more than 10 hours per week. Claimant umpired from late March 2008 through the end of July 2008. He did not umpire in June or July of 2007 but believed he did so from March through July of 2006.

¶ 9 Claimant testified that Dr. Westin eventually released him to full duty. Claimant attempted to resume working for respondent, but his knee hurt and he had difficulty finishing each work week. Claimant believed he last worked on August 11, 2008. As of the date of the arbitration hearing, claimant was still employed by respondent, but was no longer working. Claimant stated that his left knee feels stiff, sore, and painful. Claimant further testified that respondent's examiner, Dr. Walsh, spent only eight minutes examining him.

¶ 10 On cross-examination, claimant testified that he filed a workers' compensation claim

after his 1999 left knee injury and received a settlement. Claimant further testified that he fell down some stairs at home in October 2003, causing him to fracture a bone in his left knee. The fall took place a couple of days before claimant underwent an MRI that had been scheduled as a result of his September 2003 work injury. After he reinjured his left knee in 2003, Dr. Westin told him that he would experience pain in that knee for the rest of his life. With respect to the June 2007 injury, claimant related that his foot hit the curb after he stepped down from his truck. The package he was carrying at the time weighed four pounds. Once his foot hit the curb, his knee "jammed," and he felt pain.

¶ 11 Claimant's pre-accident treatement records reflect that he underwent a left knee medial meniscectomy in February of 1999, following a work injury. Claimant came under Dr. Westin's care (upon a referral from MercyWorks) after he reinjured the left knee at work on September 25, 2003. Dr. Westin's report of October 9, 2003, indicates that claimant's left knee buckled at home on October 4, 2003, causing him to fall, and that an MRI performed on October 6, 2003, demonstrated an attenuated medial meniscus consistent with the prior meniscectomy and a probable small peripheral lateral tibial plateau fracture under the lateral meniscus. When Dr. Westin saw claimant on October 9, 2003, he aspirated blood from the knee, placed claimant on crutches, and prescribed therapy. By December 8, 2003, claimant had plateaued at therapy. He underwent an FCE the next day and was found to be capable of medium to medium-heavy duty. Dr. Westin provided claimant with a "mini-unloader" brace and recommended that he resume working within the parameters of the evaluation.

¶ 12 Following his April 20, 2006, accident, claimant saw Dr. Jayant Sheth at MercyWorks and was diagnosed with a left knee sprain. Dr. Sheth prescribed ibuprofen and a cane and imposed light duty. On May 2, 2006, the doctor noted effusion and recommended an MRI. The MRI, performed on May 10, 2006, demonstrated a large tear through the body of the medial meniscus with a probable displaced fragment anteriorly and marked erosion of articular cartilage in the medial compartment. Dr. Sheth took claimant off work on May 16, 2006, and noted that

claimant was planning to return to Dr. Westin. On May 26, 2006, Dr. Westin drained claimant's knee, administered an injection, gave claimant a knee sleeve, and prescribed therapy. He restricted claimant to seated work if available. On June 16, 2006, Dr. Westin described the knee as having "settled down significantly." He noted arthrosis but attributed most of the changes on the MRI to the prior meniscectomy years earlier. He released claimant to full duty but told him to "exercise caution."

¶ 13 On June 28, 2007, claimant saw Dr. Sheth at MercyWorks and complained of swelling and pain in his left knee. Upon examination, Dr. Sheth noted suprapatellar and patellar swelling along with joint effusion. He diagnosed a left knee sprain, took claimant off work, and prescribed naproxen along with a brace and a cane. On July 5, 2007, Dr. Sheth instructed claimant to remain off work and sent him to Dr. Westin.

¶ 14 Dr. Westin's note of July 18, 2007, reflects that claimant missed the curb while getting out of his truck on June 27, 2007, and "jammed his knee in full extension." Dr. Westin also noted that claimant told him the knee had been "a little sore" before this incident. On examination, Dr. Westin noted "three plus" effusion, tenderness maximal at the medial tibiofemoral joint, and no cruciate or collateral instability. Weightbearing X rays showed narrowing of the medial tibiofemoral space which had "progressed since the last films of May 2006." Dr. Westin did not believe that an MRI would be helpful, given the prior surgery. He aspirated fluid from the knee, administered a cortisone injection, and prescribed naproxen, an unloader brace, and therapy. Dr. Westin commented that the knee "will ultimately progress to some type of arthroplasty given its current appearance." Dr. Westin again instructed claimant to remain off work unless seated work was available. Claimant told Dr. Westin that no such work was available.

¶ 15 Claimant returned to Dr. Westin on August 6, 2007, at which time he noted that claimant still had painful "two plus" effusion. Based on the results of the weightbearing X rays, Dr. Westin did not feel that a repeat arthroscopy would be useful. He recommended a medial

compartment left knee replacement and ordered an MRI to evaluate the lateral and patellofemoral compartments. The MRI, performed on August 10, 2007, demonstrated a large tear of the body of the medial meniscus unchanged from the prior examination; extensive cartilaginous loss of the medial compartment of the knee, stable from the prior examination; a large effusion; and increased signal in the anterior cruciate ligament, which remained intact. On August 17, 2007, Dr. Westin informed Dr. Sheth of the results of the MRI. He described claimant as a "good candidate for a medial compartment arthroplasty" and indicated he would like to operate as soon as possible, pending clearance from claimant's primary care physician. He also indicated he was keeping claimant off work "since there is no light duty available at his employer."

¶ 16 Dr. Westin performed a left knee medial compartment replacement on October 25, 2007. Postoperatively, claimant underwent a venous duplex scan to rule out a deep vein thrombosis and then started therapy. On February 8, 2008, Dr. Westin noted that claimant had been discharged from therapy but still had some knee swelling. Although Dr. Westin felt that claimant could work a primarily sedentary job with no bending, kneeling, crawling, or ladders and a 10-pound lifting limit, Dr. Westin did not want claimant to return to his job with respondent. Dr. Westin anticipated maximum medical improvement by April 1, 2008. On March 21, 2008, claimant informed Dr. Westin that he had been umpiring baseball games, including a doubleheader, without aggravation to his knee. At the request of his attorney, claimant also inquired about an FCE, but Dr. Westin felt that a maximal stress test could put claimant's knee at risk. He also felt that claimant should have permanent restrictions "because of the knee arthroplasty, not because claimant is not capable of doing higher levels of activity." Dr. Westin told claimant to maintain low-impact exercise for weight control and imposed long-term work restrictions of 40 pound maximum lifting; no bending, kneeling, or crawling; and seated work at least two hours out of an eight-hour shift. Dr. Westin explained that the restrictions were "for further preservation of [claimant's] artificial joint, as well as the remaining

normal parts of both knees." Dr. Westin instructed claimant to return around the one-year anniversary date of his operation. On July 11, 2008, Dr. Westin completed a "work status report" releasing claimant to "conditional full duty" as of July 14, 2008.

¶ 17 Claimant also offered Dr. Westin's report and deposition testimony. In his report, dated January 4, 2008, Dr. Westin opined that the accident of June 27, 2007, aggravated claimant's pre-existing left knee condition and caused a flare-up that could not be controlled by treatments that had been effective in the past. He also opined that while the knee may have progressed to medial compartment arthritis without the injury, the accident accelerated the deterioration of claimant's knee.

¶ 18 Dr. Westin was deposed on April 21, 2008. At his deposition, Dr. Westin testified that claimant's arthritis was not very advanced when he saw him in October 2003 and that when he discharged claimant from care in June 2006, his arthritic condition was "fairly comparable" to his condition in 2003. When Dr. Westin next saw claimant on July 18, 2007, X rays demonstrated that the joint space in his knee had narrowed significantly. The mechanism of injury that claimant described, *i.e.*, jamming a fully extended knee, could have aggravated or accelerated the underlying arthritic process. The mechanism claimant described was an "impact injury" that caused two bones that were already showing wear and tear to strike one another. This was likely to cause a fracture of the surface cartilage or other deterioration of the knee. Although Dr. Westin opined that the June 2007 accident significantly contributed to the deterioration of the knee, he could not determine the percentage of contribution because of claimant's past history. Dr. Westin testified that the statement in his July 18, 2007, office note that claimant's knee "will ultimately progress to some type of arthroplasty given its current appearance" meant that claimant was "not going to make it the rest of his life without something being done because the bones are encroaching bone on bone." Dr. Westin last treated claimant on March 21, 2008.

¶ 19 On cross-examination, Dr. Westin agreed that, given the "drastic condition" of claimant's

knee when he first treated claimant in October 2003, it was "fairly inevitable" that claimant would require a knee replacement at some point. He stated that when he first saw claimant, he thought claimant "was certainly at risk [for arthroplasty] and it was a matter of luck." Dr. Westin conceded that the arthritis evident on the 2007 X rays was not caused by the June 27, 2007, accident, but he felt that the accident aggravated the arthritis. In his opinion, the aggravation was permanent rather than temporary. Dr. Westin based his opinion on the persistent symptoms that claimant experienced after the June 27, 2007, accident, claimant's inability to resume working, and the X rays. Although Dr. Westin recommended surgery only 45 days after the accident, he believed he had waited a sufficient period of time to see whether claimant would improve with conservative care. Dr. Westin acknowledged that claimant showed "very slight" improvement between his July 18, 2007, and August 6, 2007, visits in that his effusion level had decreased. However, Dr. Westin noted that claimant did not resolve the fluid or experience a good result with cortisone as he had before. Dr. Westin also acknowledged that the radiologist who read the 2007 MRI did not see significant progression since 2006, but explained that weightbearing X rays are more reliable than MRIs in assessing joint space. Dr. Westin agreed that claimant could probably perform full duty, but he would not recommend this because it would shorten the life span of the plastic prosthesis. Dr. Westin would rather restrict claimant's activities than subject him to further knee replacements.

¶ 20 On redirect, Dr. Westin testified that a misstep landing with a knee held straight could be a significant trauma, even if the step was just a few inches in height.

¶ 21 Respondent offered into evidence a written job description and Dr. Walsh's evidence deposition of August 11, 2008. The job description reflects that a delivery driver's job entails frequent (three to six hours a day) sitting, standing, bending, twisting, reaching, and walking, and occasional (up to three hours per day) squatting, climbing, pushing/pulling, and lifting/carrying up to 75 pounds.

¶ 22 Dr. Walsh testified that he examined claimant on September 4, 2007, at the request of

respondent's insurance carrier. Claimant told him that on June 27, 2007, while stepping out of his truck onto a curb, he came down hard on his leg and felt pain shooting through his leg and knee. Claimant described this pain as worse than the pain he had previously experienced. Claimant also indicated that he had undergone a partial medial meniscectomy in 2001.

¶ 23 Dr. Walsh interpreted claimant's August 10, 2007, MRI as showing osteoarthritis in the medial compartment and a medial meniscus tear, unchanged from a previous exam, along with edema, a large joint effusion, and extensive loss of cartilage in the medial compartment. The only evidence of an acute injury was perhaps the edema. All of the other conditions shown on the MRI predated the June 2007 accident. Claimant told him that Dr. Westin had diagnosed him with medial and lateral joint erosions. Claimant's earlier MRIs also showed these erosions. Upon examination, Dr. Walsh noted "two plus," or moderate, effusion in the left knee along with swelling, medial joint line tenderness and a report of pain past 120 degrees of flexion. In Dr. Walsh's view, cartilage erosion does not improve on its own and is more likely to increase than to remain stable. Dr. Walsh also noted that patients who are overweight are more prone to osteoarthritis, and claimant, at 6' 2", weighed 268 pounds.

¶ 24 Dr. Walsh diagnosed claimant as having symptomatic osteoarthritis. He noted that osteoarthritis is progressive and incurable. In his opinion, the accident of June 27, 2007, did not cause the osteoarthritis and was not likely to have aggravated or accelerated the osteoarthritis. The accident merely temporarily rendered the osteoarthritis symptomatic. The treatement that claimant had undergone to date was reasonable and appropriate. A unicompartmental knee replacement would help claimant's osteoarthritis but was not at all related to the accident of June 27, 2007. It was reasonable to limit claimant's work activities based on his effusion and pain but any work restrictions would be related to his degenerative osteoarthritis and not to the accident. If claimant underwent a unicompartmental knee replacement, it would not impact claimant's ability to walk or lift the weights listed in the job description.

¶ 25 On cross-examination, Dr. Walsh testified that he reviewed about 15 pages of medical

records after he examined claimant. He received those records from an adjuster. He acknowledged that he did not review the report of claimant's meniscectomy surgery or any of Dr. Westin's records. He was able to form his opinions without these records because he had the film of the most recent MRI and a report from the earlier MRI. He did believe that claimant's July 5, 2007, and July 18, 2007, visits to MercyWorks were causally related to the incident of June 27, 2007, and that the knee sprain diagnosed at MercyWorks could certainly be related to that incident.

¶ 26 Dr. Walsh stated that his report does not reflect that claimant jammed his left knee on June 27, 2007. He agreed that jamming the knee would be a more significant trauma than simply walking. He did not agree that stepping down from a truck, even from a height of 18 inches, would be more traumatic than walking. Stepping down a distance of 18 inches would not impact the knee joint any more than stepping up or down conventional stairs. Dr. Walsh also testified that while effusion can be a sign of trauma, he sees "hundreds of individuals" each year with osteoarthritis that have swelling in their knees without any trauma. Moreover, Dr. Walsh stated that he did not find any evidence in the medical records he reviewed that claimant actually sustained an "anatomical defect" as a result of stepping out of his truck at work on June 27, 2007. Since he did not take X rays or see the X rays that Dr. Westin took in 2006, Dr. Walsh could not refute the statement that the July 2007 X rays evidenced decreased joint space compared with the ones taken in 2006.

¶ 27 Dr. Walsh testified that while permanent restrictions are reasonable following a medial compartment replacement, the limitations imposed by Dr. Westin were too restrictive. He would not prohibit kneeling or crawling, and he would not impose a weight limit on lifting. He would instruct a patient who had undergone such a replacement to avoid jarring activities. Such activities would probably lead to premature wear.

¶ 28 The arbitrator acknowledged that claimant was in the process of delivering a package at the time of his June 27, 2007, accident. Nevertheless, he found that the accident did not occur in

the course of, or arise out of, claimant's employment with respondent. The arbitrator found that claimant was "simply stepping down from a step 12 to 18 inches, as everyone does every day," that it was "not unusual for anyone to step down 70 times in the course of a day," and that there was no evidence that the package distracted claimant or caused him to lose his balance or that there was a defect in the step or the curb.

¶ 29 The Commission reversed the decision of the arbitrator.[2] Applying a "time and place" analysis, the Commission found that claimant was clearly in the course of his employment at the time of the June 27, 2007, accident. Moreover, the Commission concluded that the accident arose out of claimant's employment because claimant was performing a task that was of benefit to respondent when the accident occurred. In addition, the Commission found that claimant was at an increased risk for injury by virtue of his employment because of the number of deliveries he made each day and the height of the bottom step of his truck. The Commission pointed out that members of the general public neither make 85 to 100 deliveries per work day nor step on and off a truck all day. The Commission also offered the "street risk doctrine" as an alternative basis for finding claimant's accident compensable, noting that, as a delivery driver, claimant is exposed to the risks of the street to a greater extent than other individuals. The Commission also found that the accident of June 27, 2007, aggravated claimant's underlying left knee condition of ill-being and accelerated the need for knee replacement surgery. In making this finding, the Commission assigned more weight to the opinion of Dr. Westin than that of Dr. Walsh. The

[2] As noted elsewhere, the present claim (07 WC 39143) was consolidated with another claim (07 WC 39985). The arbitrator issued separate decisions for each claim. When the arbitrator issued his decision in 07 WC 39143, he inadvertently used the docket number belonging to the other claim (07 WC 39985). The Commission, on its own motion, corrected the decision of the arbitrator to reflect the correct docket number.

Commission awarded claimant TTD benefits from June 28, 2007, through March 21, 2008, and medical expenses in the amount of $10,220.06. The Commission remanded the matter to the arbitrator pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). On judicial review, the circuit court of Cook County confirmed the decision of the Commission. This appeal ensued.

¶ 30 II. ANALYSIS

¶ 31 A. Accident

¶ 32 We first address respondent's claim that the Commission erred in finding that claimant sustained a compensable accident. The purpose of the Act is to protect employees against risks and hazards which are peculiar to the nature of the work they are employed to do. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989). As such, an injury is compensable under the Act only if it "arises out of" and "in the course of" one's employment. 820 ILCS 305/2 (West 2006); *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 194 (2002). Both elements must be present at the time of the employee's injury in order to justify compensation, and it is the employee's burden to establish these elements by a preponderance of the evidence. *Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1226 (2000).

¶ 33 The "in the course of" element refers to the time, place, and circumstances under which the accident occurred. *Dodson v. Industrial Comm'n*, 308 Ill. App. 3d 572, 575 (1999). Thus, injuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his or her duties, and while claimant is at work, are generally considered to have been received "in the course of" the employment. *Metropolitan Water Reclamation District of Greater Chicago v. Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013-14 (2011). An injury is said to "arise out of" one's employment if it originates from a risk connected with, or incidental to, the employment and involves a causal connection between the employment and the accidental injury. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1056, 1060 (2004). A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his or her duties. *Tinley Park Hotel*

& Convention Center v. Industrial Comm'n, 356 Ill. App. 3d 833, 839 (2004).

¶ 34 The determination of whether an injury arose out of and in the course of one's employment is generally a question of fact. *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 847 (1996). In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Ghere*, 278 Ill. App. 3d at 847. We will not overturn the determination of the Commission on a factual matter unless the Commission's decision is found to be contrary to the manifest weight of the evidence. *Jensen v. Industrial Comm'n*, 305 Ill. App. 3d 274, 277-78 (1999). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007).

¶ 35 In this case, the Commission concluded that claimant established that the June 27, 2007, injury to his left knee arose out of and in the course of his employment with respondent. We agree. First, we note that the injury occurred at a place where claimant might reasonably have been while performing his duties. Claimant testified that while delivering a four-pound package, he descended the bottom step of his truck and "jammed" his left knee. Since claimant was delivering a package on his route when the injury occurred, the injury occurred "in the course of" claimant's employment. See *Metropolitan Water Reclamation District of Greater Chicago*, 407 Ill. App. 3d at 1014.

¶ 36 In addition, claimant's injury "arose out of" his employment because the injury happened as claimant was engaged in an activity he was required to do to fulfill his duties, *i.e.*, stepping out of his truck to deliver a package. Respondent argues, however, because there was no evidence that claimant slipped or tripped upon exiting the truck or that there was anything wrong with the truck step or the curb, the injury did not "arise out of" claimant's employment. Respondent reasons that "[t]he step from the truck to the curb that [claimant] described was no different than the distance one must step in descending a stairway which is an activity that the

general public is exposed [*sic*]." It is true that the act of entering or exiting a vehicle or walking up or down stairs is an activity to which the general public is exposed. See *Nascote Industries*, 353 Ill. App. 3d at 1061. However, where, by virtue of his or her employment, an employee is exposed to a common risk to a greater degree than the general public, an injury is also considered to have arisen out of the employment. *Nascote Industries*, 353 Ill. App. 3d at 1061. Here, claimant worked as a full-time deliver driver. Claimant testified that he typically made between 85 and 115 stops each workday. Each stop required claimant to exit his truck to make the delivery. Based on this evidence, the Commission could reasonably have found that claimant was at an increased risk for injury by virtue of his employment given the number of stops he made each day and the frequency with which he was required to exit his truck. As such, we cannot say that the Commission's finding that claimant's injury arose out of his employment is against the manifest weight of the evidence.

¶ 37 We reject respondent's reliance on *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52 (1989) and *Builder's Square, Inc. v. Industrial Comm'n*, 339 Ill. App. 3d 1006 (2003). In *Caterpillar Tractor Co.*, the supreme court denied benefits to an employee who injured himself while stepping off a curb in the employer's parking lot. *Caterpillar Tractor Co.*, 129 Ill. 2d at 57-64. However, the employee in *Caterpillar* was not required as a part of his job duties to continuously traverse the curb. See *Nascote Industries*, 353 Ill. App. 3d at 1061 (distinguishing *Caterpillar*). As noted above, in this case, claimant had to repeatedly exit his truck in order to fulfill his job duties. In *Builders Square, Inc.*, this court affirmed the Commission's finding that the employee's fall did not arise out of her employment on the basis that it was the result of an idiopathic condition. *Builder's Square, Inc.*, 339 Ill. App. 3d at 1010-12. An idiopathic condition is a disease of an unknown origin. Stedman's Medical Dictionary 873 (27th ed. 2000). In this case, there was no evidence that claimant's injury was the result of an idiopathic condition.

¶ 38 B. Causation

¶ 39 Next, respondent challenges the Commission's finding that claimant's accident of June 27, 2007, aggravated claimant's underlying left-knee condition of ill-being and accelerated the need for knee-replacement surgery. According to respondent, the evidence of record demonstrates that claimant's need for knee-replacement surgery was causally connected to his preexisting condition—the continued degeneration of claimant's left medial compartment following the left medial menisectomy claimant underwent in 1999—and not the accident of June 27, 2007.

¶ 40 The mere fact that an employee suffers from a preexisting condition does not preclude recovery under the Act. *Palmer House v. Industrial Comm'n*, 200 Ill. App. 3d 558, 563 (1990). "In cases involving a preexisting condition, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to be causally connected to the work-related injury." *Elgin Board of Education School District U-46 v. Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 949 (2011). One's employment need not be the sole cause or even the primary cause of the condition of ill-being—it need only be *a* causative factor. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003); *Tower Automotive v. Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434 (2011). Whether an employee's condition of ill-being is attributable to a work-related accident that aggravated or accelerated a preexisting condition or whether the condition is attributable to some other cause is a question of fact for the Commission to decide. *Elgin Board of Education School District U-46*, 409 Ill. App. 3d at 949. Factual issues, including matters of witness credibility and the resolution of conflicts in medical testimony, are reviewed under the manifest-weight-of-the-evidence standard. *Elgin Board of Education School District U-46*, 409 Ill. App. 3d at 949. A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *City of Chicago v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 1080, 1093 (2007).

¶ 41 Here it is undisputed that claimant's prior left-knee pathology evinced a preexisting

condition. However, the Commission was presented with conflicting evidence regarding whether the June 27, 2007, accident aggravated claimant's preexisting condition and accelerated the need for his knee-replacement surgery. Although Dr. Walsh testified that the treatment that claimant had undergone was reasonable and appropriate and that knee-replacement surgery would be helpful, he did not feel that the need for surgery was causally connected to the June 27, 2007, accident. When Dr. Walsh examined claimant early in September 2007, he diagnosed symptomatic osteoarthritis. It was Dr. Walsh's opinion that the osteoarthritis predated the accident of June 27, 2007, and that the accident was not likely to have aggravated or accelerated the preexisting condition. Rather, according to Dr. Walsh, the accident of June 27, 2007, merely temporarily rendered the preexisting osteoarthritis symptomatic. Dr. Walsh's opinions were based primarily on his comparison of claimant's 2007 MRI and a report from an earlier MRI.

¶ 42 In contrast to the view of Dr. Walsh, Dr. Westin, claimant's treating physician, opined that the accident of June 27, 2007, aggravated claimant's pre-existing left-knee condition and caused a flare-up that could not be controlled by treatments that had been effective in the past. He also opined that while the knee may have progressed to medial compartment arthritis without the injury, the accident accelerated the deterioration of claimant's knee. Dr. Westin explained that claimant's arthritis was not very advanced when he treated him in October 2003 and that, when he discharged claimant from his care following treatment in June 2006, claimant's arthritis was "fairly comparable" to his condition in 2003. However, when Dr. Westin next saw claimant in July 2007, X rays showed that the joint space in claimant's left knee had narrowed significantly. Dr. Westin opined that although the mechanism of injury claimant described occurring on June 27, 2007, *i.e.*, jamming a fully-extended knee, did not cause claimant's arthritis, it could have aggravated or accelerated the underlying arthritic process. Further, Dr. Westin felt that that the aggravation was permanent as opposed to temporary. Dr. Westin acknowledged that the radiologist who read claimant's 2007 MRI did not see significant progression since 2006. However, Dr. Westin explained that weightbearing X rays are more

reliable than MRIs in assessing joint space. Ultimately, Dr. Westin based his opinion on the results of the X rays along with the persistent symptoms that claimant experienced following the June 27, 2007, incident, and claimant's inability to resume working.

¶ 43 Based on the foregoing evidence, the Commission adopted the causation opinion of Dr. Westin over that of Dr. Walsh and determined that claimant's accident of June 27, 2007, aggravated claimant's preexisting condition and accelerated the need for knee-replacement surgery. It was reasonable for the Commission to find the opinion of Dr. Westin more persuasive given that Dr. Westin was claimant's long-time treating physician, claimant testified that Dr. Walsh spent just eight minutes examining him, and Dr. Walsh admitted that, despite claimant's extensive medical history, he reviewed only 15 pages of medical records in formulating his opinion. We point out that among the records that Dr. Walsh did not examine were those of Dr. Westin, who, as noted above, was claimant's principal treating physician. As set forth above, to the extent that medical evidence on causation is conflicting, the resolution of such conflicts falls within the province of the Commission. *Elgin Board of Education School District U-46*, 409 Ill. App. 3d at 949. Given the conflicting evidence in this case, the Commission's decision is not against the manifest weight of the evidence, as an opposite conclusion is not clearly apparent.

¶ 44 Despite the foregoing, respondent maintains that claimant failed to establish causation. Respondent emphasizes testimony from Dr. Westin that a knee replacement was inevitable given the "drastic condition" of claimant's left knee as early as October 2003. Respondent compares this case to *Greater Peoria Mass Transit District v. Industrial Comm'n*, 81 Ill. 2d 38 (1980). We note initially that respondent's reliance on *Greater Peoria Mass Transit District* for the proposition that claimant in this case failed to establish that his June 27 accident aggravated his underlying condition of ill-being and accelerated his need for knee-replacement surgery is misplaced. The principal issue in *Greater Peoria Mass Transit District* was whether the claimant sustained her burden of proving that her injury arose out of and in the course of her

employment. *Greater Peoria Mass Transit District*, 81 Ill. 2d at 43-44.

¶ 45 To the extent that *Greater Peoria Mass Transit District* is relevant to respondent's causation argument, it is distinguishable on its facts. There, the employee, a 32-year-old bus driver, lost her balance, fell, and dislocated her shoulder after bending over to retrieve bus schedules that she had dropped onto the floor. The employee had experienced previous episodes of shoulder dislocation. The employee's treating physician indicated that any episode of minor trauma, including reaching for a cigarette, combing her hair, or turning over in bed while asleep, could have caused her shoulder to dislocate and that her shoulder was a "time bomb" which would go off at an unpredictable time. The supreme court denied compensation, finding that the employee failed to establish that her injury "arose out of" her employment. *Greater Peoria Mass Transit District*, 81 Ill. 2d at 43-44. The court explained that there was no evidence that the employee's job further deteriorated her shoulder, aggravated it, precipitated its dislocation, or accelerated the occasion for its dislocation. *Greater Peoria Mass Transit District*, 81 Ill. 2d at 43. The court also determined that no risks to the employee were be shown to be greater as a result of her employment. *Greater Peoria Mass Transit District*, 81 Ill. 2d at 43. In this case, Dr. Westin testified that claimant's accident of June 27, 2007, aggravated claimant's preexisting condition and accelerated the need for knee replacement surgery. Moreover, as noted above, the evidence supports the Commission's finding that claimant was exposed to a common risk greater than the general public. Accordingly, we reject respondent's reliance on *Greater Peoria Mass Transit District*.

¶ 46 C. Medical Expenses

¶ 47 Respondent next contends that the Commission erred in awarding medical benefits. This argument is based solely on the premise that the Commission's findings of accident and causation were erroneous. Having already found these arguments unpersuasive, we reject this contention as well.

¶ 48 D. TTD Benefits

¶ 49 In its final assignment of error, respondent challenges the Commission's award of TTD benefits on two separate grounds. First, respondent urges us to overturn the TTD award on the basis that the Commission's findings of accident and causation were erroneous. We reject this contention for the reasons stated previously.

¶ 50 Second, respondent maintains that claimant failed to prove the period of TTD that he claims. A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). A claimant seeking TTD benefits must prove not only that he did not work, but that he was unable to work. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 832 (2002). The dispositive inquiry is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005). The factors to consider in assessing whether a claimant has reached MMI include a release to return to work, medical testimony or evidence concerning the claimant's injury, and the extent of the injury. *Freeman United Coal Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 178 (2000). Once an injured claimant has reached MMI, the disabling condition has become permanent and he is no longer eligible for TTD benefits. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118. The period during which a claimant is temporarily totally disabled is a question of fact for the Commission, and its determination will not be disturbed on review unless contrary to the manifest weight of the evidence. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118-19.

¶ 51 Here, the Commission awarded claimant 38-2/7 weeks of TTD benefits, representing the period from June 28, 2007, through March 21, 2008. The medical evidence supports the Commission's award of TTD benefits for this period of time. Claimant was injured on June 27, 2007. The following day, claimant treated with Dr. Sheth, who took him off work. Claimant continued to treat with Dr. Sheth into July, when Dr. Sheth referred claimant to Dr. Westin. Claimant first saw Dr. Westin on July 18, 2007. At that time, no light-duty work was available,

so Dr. Westin continued to authorize claimant off work. Claimant remained off duty through the date of surgery on October 25, 2007. Following surgery, Dr. Westin anticipated claimant would be off work for about four months. By early in February, Dr. Westin noted that claimant had been discharged from therapy but still had some knee swelling. At that time, Dr. Westin felt that claimant could work a primarily sedentary job with no bending, kneeling, crawling, or ladders and a 10-pound lifting limit. However, Dr. Westin did not want claimant to return to his job with respondent. Dr. Westin anticipated that claimant would reach MMI by April 1, 2008. As of the arbitration hearing, claimant's last treatment with Dr. Westin was on March 21, 2008. At that visit, Dr. Westin released claimant from his care on a regular basis and imposed long-term work restrictions. Based on this evidence, we cannot say that the Commission's award of TTD benefits from June 28, 2007, through March 21, 2008, was against the manifest weight of the evidence.

¶ 52 III. CONCLUSION

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

¶ 54 Affirmed and remanded.