2017 IL App (1st) 161474WC-U

NO. 1-16-1474WC

Order filed: June 30, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

KATHERINE DIAZ,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County.
	)	
v.	)	No. 15-L-50683
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Alexander P. White,
(Dog In Suds, Appellee).	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson, Harris, and Hoffman concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's decision regarding the amount of temporary total disability (TTD) benefits and medical expenses due the claimant, based on its finding of an intervening injury, was not against the manifest weight of the evidence.

¶ 2 The claimant, Katherine Diaz, appeals the judgment of the circuit court of Cook County, which confirmed the decision of the Illinois Workers' Compensation Commission (Commission), to limit her temporary total disability (TTD) benefits and medical expenses to that incurred from February 8, 2014, to March 15, 2014, the date on which it found an intervening accident caused her need for treatment and time off of work. For the reasons that follow, we affirm the circuit court's judgment and remand this cause to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 (1980).

¶ 3 FACTS

¶ 4 On March 11, 2014, the claimant filed an application for adjustment of claim with the Commission pursuant to the Workers' Compensation Act (the Act) (820 ILCS 310/1 *et seq.* (West 2012)), alleging injury to her person as a whole while working for Dog In Suds (the employer) on February 7, 2014. The claimant's application came before the arbitrator for a 19(b) hearing (820 ILCS 310/19(b) (West 2014)) on December 29, 2014, where the following relevant evidence was adduced.

¶ 5 The claimant testified that beginning in the summer of 2012, she worked for the employer as a dog grooming assistant, washing dogs and helping the groomers clean. She testified that she never had any problems with her back prior to February 7, 2014. The claimant testified that on that date, she was walking from the bath tubs to the kennels to clean out the mats in the kennels when she fell on a puddle "on the ground," hitting her left side and lower back on the floor. She was carrying one of the kennel mats at the time of her fall. After falling, she felt fine, finished the last one or two

hours of her shift, went home, and within a few hours, began to feel pain in her back. By the time she woke up on the morning of February 8, 2014, she felt sharp pain in her lower back and went to the emergency room at Northwest Community Hospital. In the emergency room, x-rays were taken, she was given medication, and instructed to follow-up with her primary care doctor.

¶ 6 Records from Northwest Community Hospital do reflect the claimant's emergency room visit on February 8, 2014. However, at that time, she complained of upper back and rib pain. A chest x-ray was normal and she was diagnosed with back and rib contusion, prescribed cyclobenzaprine, and instructed to follow-up with her doctor.

¶ 7 The claimant testified that she saw her primary care doctor, Dr. Katz Pham, on February 10, 2014, February 12, 2014, February 14, 2014, and February 17, 2014. Dr. Pham prescribed medication, and when the claimant continued to complain of pain on February 17, 2014, Dr. Pham recommended that she participate in physical therapy and restricted her to desk work. The claimant testified that the employer had no desk work available.

¶ 8 The claimant testified that in February and March of 2014, she returned to Dr. Pham's office on multiple occasions and was seen by her partner, Dr. Papanarker. Dr. Papanarker recommended an MRI of the claimant's lower back, which she had on March 6, 2014. The claimant testified that she returned to Dr. Papanarker on March 10, 2014, and was still having pain in her lower back on that date. Dr. Papanarker recommended that the claimant continue physical therapy two to three times per week

and attend weekly appointments with his office until she was feeling better. The claimant testified that the physical therapy caused her pain to increase.

¶ 9 The claimant testified that she returned to Dr. Pham's office for an appointment on March 17, 2014. At that appointment, she told Dr. Pham that she had an increase in pain after she picked up some of her daughter's toys. When asked to specifically describe the incident, the claimant testified that it was a box full of toys and she used her legs while lifting to help her back and she felt pain. The claimant testified that the box was approximately two to three feet wide and twenty pounds. When asked to describe the pain she felt after picking up the box, the claimant testified, "[i]t was just a sharp pain. I was achy." The claimant testified that the pain was in the same area as her pain had been after her fall on February 7, 2014. She testified that prior to her fall on February 7, 2014, she was able to pick up boxes of her children's toys on a regular basis without pain. In addition, she testified she was still in pain at the time she picked up the toys, and after picking up the toys, the pain in her lower back felt aggravated or increased.

¶ 10 The claimant testified that at her March 17, 2014, appointment with Dr. Pham, she was given more medication and told to remain off work. At the beginning of April of 2014, she followed up with Dr. Pham again, and Dr. Pham recommended that she see an orthopedic surgeon, Dr. James Hill. The employer never authorized the claimant's referral to the orthopedic surgeon. The claimant also testified that Dr. Pham went on maternity leave in the summer of 2014, so she followed up with Dr. Pham's partner, Dr. Lindahl in July of 2014. Dr. Lindahl recommended that the claimant consult with Dr.

Chebes at a pain management clinic but the employer did not authorize this referral either.

¶ 11 The claimant testified that she returned to Dr. Pham in October of 2014, who also recommended a pain specialist. The claimant consulted with Dr. Chebes at the pain management clinic on November 25, 2014, for an evaluation. Dr. Chebes recommended an epidural steroid injection in her lower back. The claimant testified that she underwent an epidural steroid injection in her lower back on December 19, 2014, but it did not provide any relief. The injection was not authorized or paid for by the employer.

¶ 12 The claimant testified that as of the time of the hearing, she continued to have pain in the middle of her lower back. She had numbness in her left leg about to her kneecap, which started a few months prior to the hearing. The claimant testified that the condition of her low back and leg had not changed since the last time she saw Dr. Pham or Dr. Chebes, and she had appointments scheduled with both doctors for January 5, 2015. To alleviate the pain, the claimant testified that she stays in bed eight to ten hours a day and takes over-the-counter medications such as Aleve and Advil. The claimant testified that the employer ceased her TTD payments on May 28, 2014.

¶ 13 On cross-examination, the claimant testified that she was not aware she had a one-pound lifting restriction at the time she lifted the toys. After her March 10, 2014, appointment, she was instructed to stop taking medication for her back. She also testified that when she went back to the doctor on March 17, 2014, she told the doctor that she was doing well in regards to her back pain and had indicated that she was

ready to go back to work prior to lifting the toys. In addition, she agreed that prior to lifting the toys she wasn't having any pain radiating into her legs but she developed radiating pain after lifting the toys. Finally, the claimant testified that Dr. Pham diagnosed her with a back strain during the course of her treatment for the work-related accident.

¶ 14 On re-direct, the claimant testified that while she indicated on cross-examination that she was "doing well in regards to [her] back pain until [she] picked up [her] daughter's toys," that did not mean her back pain had completely healed. She stated that the pain was not completely gone but had improved to the point where she felt that she was ready to attempt to get back to her regular activities. Also, the claimant was reminded that Dr. Pham's records from February 12, 2014, reflect that she was having pain radiating into her left thigh on that date and she agreed that this was so.

¶ 15 Medical records from Alexian Brothers Medical Group, where Dr. Pham practices, were admitted into evidence. The records confirm that the claimant followed up with Dr. Pham on February 10, 2014, two days after visiting the emergency room at Northwest Hospital. The claimant complained of sharp low back pain that was not radiating. An examination revealed tenderness of the paraspinal region on the left, as well as limited flexion, extension, and lateral flexion on the left. Dr. Pham diagnosed lumbago, prescribed cyclobenazprine and naprosyn, and ordered claimant off work until she returned for an assessment two days after.

¶ 16 The records from Alexian Brothers Medical Group confirm the claimant actually saw Dr. Panarker, rather than Dr. Pham, on February 12, 2014, at which time she reported muscular pain and limited motion in her low back but no numbness or tingling. On examination, Dr. Panarker noted tenderness of the paraspinal region on the left and the iliolumbar region, as well as tenderness throughout the mid and lower back. Dr. Panarker also noted limited flexion, limited lateral flexion on the left, and pain with motion. She ordered x-rays of the claimant's thoracic and lumbar spine and continued the naprosyn.

¶ 17 Records from Dr. Pham reveal that the claimant returned on February 14, 2014, complaining that the pain in her lower back was not getting better. Dr. Pham's physical examination findings were exactly the same as those of Dr. Panarker on February 12. Dr. Pham continued naprosyn and noted that the claimant should remain off of work.

¶ 18 Records from Dr. Pham reveal that the claimant returned on February 17, 2014, but again saw Dr. Panarker, and reported that the pain was not resolving at all. Dr. Panarker's physical examination findings were identical to the previous two visits. Dr. Panarker referred the claimant to physical therapy, prescribed tramadol for pain, and continued the naprosyn and cyclobenzaprine. Dr. Panarker noted that the claimant may return to work with desk work only, with no standing for more than 30 minutes, no lifting more than 1 pound, and 10 minute stretching breaks every 2 hours.

¶ 19 The records in evidence reflect that the claimant returned to Dr. Pham's office on February 24, 2014, and saw Dr. Panarker. The claimant stated that the back pain

had not gotten any better. Dr. Panarker prescribed the claimant Norco for pain. The physical examination findings are exactly the same for that date, as are the claimant's work restrictions.

¶ 20 From the records in evidence, it appears that the claimant returned to Dr Pham's office for an appointment with Dr. Panarker on March 3, 2014. The claimant reported that the pain was the same from the last visit and constant. The claimant stated that for the few days leading up to that visit the pain was a little worse. The claimant stated that the pain medication was helping. The claimant asked for an increase in her pain medication and related that physical therapy made her pain worse. Dr. Panarkcr ordered an MRI of the lumbar spine. The physical examination findings were exactly the same, as were the work restrictions. The records reflect that Dr. Panarker had a lengthy discussion with the claimant at that visit, stating that if the claimant does not attend physical therapy, it will be hard to continue to validate the need for work restrictions and narcotics. The record states that if the claimant wants to continue to have time off to recover and narcotics for pain control, she must attend three physical therapy sessions weekly for four weeks.

¶ 21 The claimant had an MRI and radiograph of her lumbar spine and a radiograph of her thoracic spine on March 6, 2014. The MRI of the claimant's lower back showed minimal spinal stenosis and the L4-L5 disc due to mild diffuse disc bulging and mild degenerative facet hypertrophy. The radiograph of the claimant's lumbar spine was unremarkable. The radiograph of the claimant's thoracic spine was also unremarkable.

¶ 22 According to the records, the claimant returned to see Dr. Panarker on March 10, 2014. This record states that the claimant reported that "pain is in lower back for the last few days." On that date, the claimant stated that she was still taking cyclobenzoprine, but had run out of naprosyn some time prior to the appointment and out of Norco about five days prior. The record states, "[p]ain is controlled without pain meds." Also on this date, physical examination findings were as follows: "exam is much improved- limited region of tenderness over L3 to L4." The physical examination findings also state "flexion limited, extension limited, lateral flexion limited on left, and pain with motion and rotation normal; improved ROM." The claimant was instructed to continue naprosyn and cyclobenzaprine and was given the same work restrictions. However, Dr. Panarker did note that the claimant had discontinued Norco and that the plan was for the claimant to attempt to return to work the following week.

¶ 23 On March 17, 2014, the claimant returned, this time with Dr. Pham, and this record states as follows: "[W]as doing well in regards to back pain and was ready to go back to work this week[;] however[,] since last [office visit] she picked up her daughter's toys (2 [days] ago) which were approximately 20 lbs – caused reflare of sharp lower back pain."

¶ 24 Dr. Pham noted that the claimant did not feel that she would be able to do her job since it requires bending/twisting and heavy lifting. She also noted that the claimant had finished her physical therapy. The physical examination findings in the record of the March 17, 2014, visit contain identical language to that of the prior

visit. However, Dr. Pham diagnosed a re-flare of the original injury, continued naprosyn and cyclobenzaprine, ordered the claimant off work for an additional week, and advised claimant "can return [to work] next Monday- but if [she] feels not ready she is to return to the office again for re-eval[uation]."

¶ 25 The records indicate the claimant did not return to Dr. Pham until April 3, 2014, with continued complaints of lower back pain "that flared up 2 d[ays] prior to last [office visit] after picking up her daughter[']s toy[s]." The claimant stated that she felt she could still not do her job, but physical examination findings were exactly the same as the previous three visits. Dr. Pham referred the claimant to an orthopedist. Dr. Pham also added degeneration of the lumbar or lumbosacral interverbral disc to the claimant's diagnosis of lumbago. There are no restrictions or work-related orders reflected in this record.

¶ 26 The claimant also saw Dr. George Atia on March 3, 2014, on a prior referral from Dr. Pham for hernia and abdominal pain. The claimant followed up with Dr. Atia, on April 28, 2014. No mention of back pain is made in these records, other than past medical history stated "back injury." In the section of the record labeled "musculoskeletal physical examination," it states that there were no abnormal findings. The records show the claimant returned to Dr. Pham's office on July 3, 2014, but saw Dr. Jeffrey Lindahl. Dr. Lindahl's physical examination indicated no tenderness, normal flexion and normal rotation. He diagnosed the claimant with "backache- unspecified" and referred the claimant to pain management.

¶ 27 Records show a visit with Dr. Pham on October 21, 2014, two months prior to the claimant's l9(b) hearing, where Dr. Pham noted that he claimant was scheduled for a first visit with a pain management specialist on November 25, 2014. Dr. Pham's notes indicate that the claimant had not been taking any prescription pain medication since she ran out a few months prior, but instead had been taking 400 milligrams of Advil several times a day. The notes indicate that the claimant complained of continued pain in her lower and mid-back, occurring daily, sometimes shooting up her spine, constant but worse with walking. She complained that the pain interfered with her sleeping, stated that she was not working, was only able to stand or sit for 1.5 hours, and had been seeing a chiropractor, but had not been under chiropractic care for several months. Dr. Pham continued to diagnose low back pain and degeneration of the lumbosacral intervertebral disc.

¶ 28 Dr. Pham testified via evidence deposition taken on November 14, 2014. She testified that she is a family medical doctor who has been out of residency since 2010. She has been the claimant's primary care physician since prior to the date of the accident at issue. She testified to her and her partner, Dr. Panarker's, care of the claimant beginning on February 10, 2014, referencing the medical records detailed above. Dr. Pham testified that Dr. Panarker diagnosed the claimant with low back pain or a back strain on February 10, 2014. By the time the claimant returned on February 12, 2014, she indicated that her upper back pain was getting better, but complained that her lower back pain continued and was beginning to manifest in her left thigh. Dr. Pham testified that this indicated there may be a disk involved. Dr.

Pham further testified that the results of the March 3, 2014, MRI were consistent with the complaints the claimant had been making.

¶ 29 Dr. Pham testified that her note on March 17, 2014, that "[the claimant] was doing well in regards to back pain and was ready to go back to work this week," prior to the incident involving her picking up the box of toys, did not mean that the claimant had fully recovered. Dr. Pham testified that the "re-flare" of the claimant's back injury after picking up the box of toys was related to the original injury of February 7, 2014, because she experienced the same type of pain that she had experienced from the original fall. Based on the claimant's visits to her practice in July and October of 2014, Dr. Pham opined that the claimant's condition of ill-being continued to be related to the February 7, 2014, accident. Dr. Pham also testified that a referral to an orthopedic surgeon and pain management was warranted, that the claimant should remain off work, and her lifting restrictions are less than 10 pounds with minimal bending and twisting.

¶ 30 On cross-examination, Dr. Pham testified that she has no certification that involves orthopedics or neurology. In addition, she testified that the claimant does not have a disk herniation, but rather a bulging disk, with no evidence on the MRI of nerve root impingement. Dr. Pham agreed that bulging disk is a common degenerative condition. Dr. Pham testified that a back strain usually takes about four to six weeks to heal. By March 17, 2014, the claimant was about five weeks from the fall and was feeling better and ready to go back to work. Dr. Pham admitted that the fact that the claimant was lifting a 20 pound box on March 17, 2014, indicated

that she probably felt better. On re-direct examination, Dr. Pham reiterated that on March 17, 2014, the claimant was not yet at maximum medical improvement (MMI) from her February 7, 2014, injury when she lifted a 20 pound box and aggravated her condition. Dr. Pham concluded that the claimant's continued back problems were caused by her fall on February 7, 2014.

¶ 31 An independent medical examination (IME) report authored by Dr. Julie Wehner of the Orthopaedic and Spine Surgery Center and dated June 16, 2014, was admitted into evidence on behalf of the employer. After examining the claimant and reviewing her medical records, Dr. Wehner opined that the claimant's accident and symptoms were consistent with a soft tissue sprain and a course of treatment for such an injury would be two to three weeks of light duty with return to work by three to four weeks at full duty. Dr. Wehner concluded there was no need for any further diagnostic or therapeutic intervention as of the date of her report and that the claimant could return to work full duty. Dr. Wehner further opined that the claimant should be placed at MMI, her ongoing subjective complaints of pain are not supported by clinical or radiographic findings, and her pain level of 7/10 was not consistent with the time of injury or the expectations as far as normal healing process. Dr. Wehner found nothing out of the ordinary that would cause a reason for the claimant to have such high subjective reports of pain.

¶ 32 On July 10, 2014, Dr. Wehner authored a supplemental IME report, which was admitted into evidence on behalf of the employer. The supplemental report addressed the incident on March 17, 2014, when the claimant lifted the box of toys. Dr. Wehner

opined that by that date, the claimant should have reached MMI and that lifting the toys caused a new episode of back pain which was no longer related to the date of injury.

¶ 33 Dr. Wehner testitied via evidence deposition taken on August 27, 2014. She is a board certified orthopedic surgeon who has been licensed to practice medicine since 1985. Approximately 90% of her practice is devoted to spinal problems. She testified in detail about her process for conducting an IME such as the one she conducted on the claimant. Dr. Wehner testified consistently with her IME report and supplemental IME report, opining, *inter alia,* that the incident on March 17, 2014, when the claimant lifted a 20 pound box of toys, constituted a new injury to the claimant's back, rather than a "re-flare" as opined by Dr. Pham.

¶ 34 On cross-examination, Dr. Wehner testified that in every case in which she has performed an IME she almost always was retained by either an employer or an insurance company. Between the IME and deposition, she charged $2800 in this case. The claimant's counsel also pointed out that Dr. Wehner's original report did not address the March 17, 2014, lifting incident despite the employer asking for an opinion on that subject. Dr. Wehner admitted that she received no new information between the time she issued her original and supplemental reports.

¶ 35 On January 8, 2015, the arbitrator issued a decision in which he found that the employer was liable to pay the claimant TTD benefits and medical expenses from the date of accident until March 15, 2014, a period of approximately five weeks. The arbitrator found that the injury the claimant sustained on March 15, 2014, while

lifting the box of toys, supersedes the claimant's prior strain to her lumbar spine on February 7, 2014. Accordingly, the arbitrator denied the claimant's request for prospective medical expenses.

¶ 36 The claimant appealed to the Commission, which affirmed and adopted the arbitrator's decision on September 8, 2015. The claimant then appealed to the circuit court of Cook County, which confirmed the Commission's decision on April 26, 2016. The claimant then sought review before this court.

¶ 37 ANALYSIS

¶ 38 "Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *National Freight Industries v. Illinois Workers' Compensation Comm'n,* 2013 IL App (5th) 120043WC, ¶26. "Under an independent intervening cause analysis, compensability for an ultimate injury or disability is based upon a finding that the employee's condition was caused by an event that would not have occurred 'but for' the original injury." *Id.* "For an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition." *Global Products v. Workers' Compensation Comm'n,* 392 Ill. App. 3d 408, 411 (2009). As long as there is a "but for" relationship between the work-related injury and subsequent condition of ill-being, the employer remains liable. *Id.* at 412.

¶ 39 Causation, including the existence of an independent intervening cause, is a question of fact for the Commission, and its finding in that regard will not be reversed on appeal unless it is against the manifest weight of the evidence. *Global Products v. Workers' Compensation Comm'n,* 392 Ill. App. 3d at 411. In order for a finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741-42 (1994). In addition, it is well-settled that it is the function of the Commission to decide questions of fact and causation, to judge the credibility of witnesses, and to resolve conflicting medical evidence. *Id.* at 741. Accordingly, it is irrelevant whether we might draw different inferences from this evidence than those drawn by the Commission. *Id.*

¶ 40 Here, the Commission found that the incident on March 15, 2014, wherein the claimant lifted a 20 pound box of toys, constituted an independent intervening accident which broke the chain of causation between the claimant's work-related injury on February 7, 2014, and the claimant's condition following the March 15, 2014, incident. In other words, the Commission found that the March 15, 2014, accident caused a new back strain that would have occurred regardless of the accident on February 7, 2014, and thus, no "but for" relationship existed between the two accidents. Based on the record before us, we cannot say an opposite conclusion is clearly apparent.

¶ 41 Following her February 7, 2014, work-related fall, the claimant was diagnosed with a back sprain or strain. Both the claimant's treating physician, Dr. Pham, and the employer's IME expert, Dr. Wehner, agreed on this diagnosis and agreed that a

back strain such as that experienced by the claimant should resolve within four to six weeks. Dr. Pham's records contain information from which it could be inferred that the claimant was pain-free and ready to return to full duty work, by the time of the March 15, 2014, accident. Although the claimant testified to the contrary, the Commission was within its province to determine that the claimant was not credible. See *Teska,* 266 Ill App. 3d at 741. In addition, Dr. Wehner testified that the claimant was at MMI by the date of the March 15, 2014, accident when the claimant strained her back lifting a 20 pound box of toys. While Dr. Pham testified to the contrary, it was again the Commission's province to resolve this conflict in the medical evidence. *Id*.

¶ 42 The evidence in the record can be reasonably interpreted to support the Commission's inference that there is no "but for" relationship between the claimant's injury on March 15, 2014, and her work-related fall on February 7, 2014. The deference we must give to the Commission's finding in this regard distinguishes the instant case from those cited by the claimant on appeal. See *Teska,* 266 Ill. App. 3d at 741 (claimant's work-related injury was a recurrent herniated disk that had not resolved at the time he experienced increased pain while bowling); *Dunteman v. Workers' Compensation Comm'n,* 2016 IL App (4th) 150543WC, ¶45 (claimant's work-related injury was a blister on his foot which had not resolved when he suffered an infection due to the lancing of the blister); *Vogel v. Industrial Comm'n,* 354 Ill. App. 3d 780, 788 (2005) (claimant's work-related injury resulted in the need for a spinal fusion which was not complete when the claimant was involved in an

automobile accident); *Mendota Township High School v. Industrial Comm'n,* 243 Ill. App. 3d 834, 837 (1993) (claimant's back problems were triggered by a work-related accident and continued to escalate when he suffered a sneezing episode resulting in a disk-rupture); *International Harvester Co. v. Industrial Comm'n,* 46 Ill. 2d 238, 244 (1970) (Commission resolved conflicting medical evidence in favor of the claimant regarding whether the claimant had fully recovered from the effects of his work-related brain injury when he was struck in the eye by his wife, causing an increase in his neurosis); *Harper v. Industrial Comm'n.* 24 Ill. 2d 103, 109 (1962) (the claimant's decedent would not have committed suicide "but for" his work-related back injury and Commission's decision to the contrary was due to mistake of law, rather than fact); *Lasley Construction Co. v. Industrial Comm'n,* 274 Ill. App. 3d 890, 893 (1995) (Commission found, based on medical evidence, that claimant would not have suffered a herniated disk following chiropractic adjustments and flu but for his work-related injury); *Fermi National Accelerator Lab v. Industrial Comm'n,* 224 Ill. App. 3d 899, 908 (1992) (Commission found that the claimant's subsequent fall on crutches he had to use due to a work-related accident would not have occurred "but for" the work-related accident). For these reasons, we cannot find that a conclusion opposite that reached by the Commission is clearly apparent. In addition, because we find that the Commission did not err in denying further benefits to the claimant, the claimant's argument that the Commission erred in denying the claimant's petition for penalties is moot.

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, the circuit court's judgment is affirmed, and the cause remanded to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 (1980).

¶ 45 Affirmed and remanded.