No. 2-10-0147WC

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

BALL AEROSOL & SPECIALTY CONTAINER, INC., F/K/A UNITED STATES CAN CO.,	)	Appeal from the Circuit Court of Winnebago County.
Appellant,	)	
v.	)	No. 09-MR-25
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Dawn Daily,	)	Honorable Ronald L. Pirrello,
Appellee).	)	Judge, presiding.

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

RULE 23 ORDER

Held: The Commission's decision awarding claimant benefits pursuant to the Occupational Diseases Act is not against manifest weight of the evidence. However, the Commission's award of a specific monthly amount for the future purchase of specialized skin care and household products is vacated.

Ball Aerosol & Specialty Container, Inc. (the employer), appeals from a decision of the circuit court of Winnebago County which confirmed a decision of the Illinois Workers' Compensation Commission (the Commission) awarding benefits pursuant to the Workers' Occupational Diseases Act (Occupational Diseases Act) (820 ILCS 310/1 *et seq*. (West 2008)) to Dawn Daily (the claimant). We affirm.

BACKGROUND

On June 24, 2002, the claimant filed an application for adjustment of claim in which she alleged that she had been exposed to various cleaning agents which had caused severe allergic reactions. She brought the application under only the Workers' Compensation Act (Compensation Act) (820 ILCS 305/1 *et seq.* (West 2008)). Subsequently, the claimant filed a motion to amend her application to indicate that her claim arose under the Occupational Diseases Act and to insert March 13, 2002, as her last date of exposure. On July 7, 2007, the arbitrator granted the claimant's motion to amend the application.

At the arbitration hearing, on July 11, 2007, the claimant testified that she began working for the employer on July 12, 1994, doing various jobs. In 1996, she began working as an aerosol press machine operator, the duties of which included loading metal into the machine, counting the can ends that the machine produced, weighing and documenting the spoilage, sorting the tops and the bottoms of the cans, detecting various defects in the products, housekeeping responsibilities, following safety guidelines, and reporting all injuries to a supervisor. The aerosol press machine was located in a room with at least 17 machines, and there was oil, WD40, metal shavings, and metal pieces all over the room, including on the ceiling. There was metal dust everywhere in the plant.

The claimant also worked for the employer as a janitor intermittently from 1996 to 2000, about one week to one month each time. As a janitor, she was required to clean the cafeteria and all of the washrooms, locker rooms, and offices. She vacuumed carpets and swept, mopped, waxed, buffed, and polished tile floors. She emptied trash cans, washed windows, and shoveled snow as needed. In October 2001, she began working full-time as a janitor, after which, she began to develop a red, itchy rash around her eyes. She had not

experienced any kind of skin problems earlier. The rash got a little better over the weekends when she did not work. She submitted and identified photographs of herself taken before and after the occurrence of the rash and a list of the cleaning supplies she used, together with the material safety data sheet (MSDS) information for those supplies, including the fragrance of each product. She stated that many of the cleaning supplies she used had "really strong smells." In November 2001, she told her supervisor, Tom Panfil, about her condition, and he observed the rash on her face several times.

The claimant went to Dr. Karen Maloney, a dermatologist, beginning November 13, 2001. The claimant testified that the rash became progressively worse over time despite Dr. Maloney's treatments. The rash spread to the area around her mouth, and it made the skin around her eyes puffy, red, and swollen. The rash spread to her neck and arms and then to all areas of her skin not covered by clothing. She described the rash as "red, itchy, bumpy, blotchy, swollen, even painful from scratching so much." Eventually, Dr. Maloney sent her to a specialist, Dr. Andrew J. Scheman, of the North Shore Center for Medical Aesthetics.

On March 13, 2002, Dr. Maloney sent a letter to the employer indicating that she had seen the claimant for eczema that had persisted over the past five to six months, that she was concerned that the condition was secondary to contact dermatitis, and that she had referred her to Dr. Scheman. Pending Dr. Scheman's diagnosis, Dr. Maloney recommended that the claimant "avoid any exposure to chemicals while at work." The claimant testified that, on March 13, 2002, the employer assigned her to work on the aerosol press machine. She did that job for as long as she could, about four hours, but it was hot and sweaty, and the fans blew in her face and hair, causing her to itch. She described it as "just unbearable." She talked to her boss, Mike Childers, and he let her leave to see Dr. Maloney. On March 14, 2002, Dr. Maloney sent another letter to the employer indicating that she had seen the

claimant on that date and that she had "very severe eczema on her face." Dr. Maloney recommended that the claimant "not return to work" until Dr. Scheman determined if she had allergies to her work environment.

Dr. Scheman's office notes from his examination of the claimant on April 1, 2002, indicate that she had begun experiencing dermatitis six months earlier and that she continued to have erythema around her eyes despite being off work for three weeks. He recommended that she bring in the MSDS information for the products she used at work in order to facilitate allergy testing. He noted that she also had contact at home with routine household and standard skin care products. On April 5, 2002, he concluded that she had definite contact allergies that were partially work-related or work-aggravated. He ordered her to remain off work indefinitely until the employer could provide an environment that did not expose her to any allergens. He recommended that she use only fragrance-free products and gave her an extensive list of guidelines for the types of products she could and could not use.

In a letter dated May 8, 2002, to Dr. Maloney, Dr. Scheman indicated that he had determined that the claimant had strong allergic reactions to "nickel sulfate, cobalt chloride, and gold sodium thiosulphate indicating contact allergy to several metals." He noted that it was "likely given the distribution of her rash (i.e. limited to sites exposed at work) that nickel particles encountered when cleaning at work" were a significant part of her problem. He opined that "she should be permanently restricted from metal working with steel or cleaning such environments" and that exposure to particulate steel was "certainly" a factor contributing to her problem. He determined that she had contact allergies to formaldehyde-releasing preservatives found in skin, hair, and cosmetic products and that exposure to those products, mostly at home, also contributed to her condition. He found that she was somewhat allergic to fragrances in home products and the cleaning agents she used at work. He opined

that "she should be restricted from any type of janitorial work" unless provided with fragrance-free cleaning materials. He determined that this was a "second exposure at work" which was probably contributing to her condition. Finally, he concluded that "she should not return to janitorial work in an environment where steel metal working is done under any circumstances" and that "[a]side from the restriction on working with steel and with fragranced cleaning agents, she should be able to return to productive work in any other environment without restrictions." Dr. Scheman's restrictions were communicated to the employer who did not attempt to provide employment within the restrictions at that time. Rather, the claimant began receiving "sick pay."

In June of 2003, the claimant was contacted by Mary Tanner who worked in the employer's human resources department. Tanner told her that she had to return to work because her sick pay had ended. After hearing from Tanner, the claimant returned to Dr. Scheman. After seeing her, Dr. Scheman released her to return to work, but provided more complete restrictions. On June 24, 2003, Dr. Scheman notified the employer of the following work restriction clarifications applicable to the claimant:

> "(1) [She] should not work in any job requiring her to directly handle metal parts or fragranced products.
>
> (2) [She] should not work in any environment where metal dust may be present and should probably not even enter such areas.
>
> (3) The painting of the building should not be a problem unless the surfaces are covered with metal dust.
>
> (4) Office exposure would not be expected to be a problem unless areas are exposed to signif[icant] metal dust." [Emphasis in original.]

On July 1, 2003, Dr. Scheman further refined the claimant's work restrictions indicating that

she could use only water-based paint and that she could not use any solvents on her skin.

The claimant returned to work on June 30, 2003. When she returned to work, she was not supposed to work inside the building where the machinery was located. Instead, she was assigned to work in the inside perimeter of the building, washing and painting the cafeteria walls and, outside the building, sweeping the parking lot. She still developed a rash that became progressively worse the longer she worked. She worked a total of eight days and then began receiving sick pay benefits again. Her last day of work was July 10, 2003. She received a total of 104 weeks of sick pay benefits, ending March 24, 2004. Her hourly wage for the employer ranged between $16.87 and $17.48 per hour at the end of her employment.

After ending her work for the employer, the claimant participated in a job search, and began working at Christian Life School as a cafeteria worker on September 30, 2004, earning $6.50 per hour for 20 to 30 hours per week. Beginning in September 2005, she worked as a nanny, earning $225 per week. On April 16, 2006, she was hired by the United States Postal Service (Postal Service) as a part-time rural route mail carrier earning $17.50 per hour, but guaranteed only one day per week.

After ending her employment with the employer, she did not experience any skin rashes or similar problems until January 2006. On that occasion, she wore a clean shirt she had borrowed from a friend which had evidently been laundered with a cleaning agent to which she was allergic. The rash cleared shortly after she treated it with prescribed medication. She testified that she had to change the skin care and cleansing products that she used in order to avoid products to which she was allergic. The arbitrator admitted copies of the information about the types and prices of the products she currently used. The claimant testified about the increased cost of the products she was required to use at the time of the hearing, none of which required a prescription. She understood that she was highly allergic

to products containing formaldehyde and that many home and personal use products contained formaldehyde.

At the time of the hearing, the claimant worked part-time as a rural route mail carrier, was enrolled in college full-time, and was about to receive her associate's degree in accounting. She had plans to continue her education in order to receive a bachelor's degree in accounting, after which she hoped to work full-time for the Postal Service in the accounting department. She submitted copies of rejection letters she received from potential employers stating that they could not hire her due to her work restrictions.

Both parties submitted a letter from John J. Blum, the employer's technical services director, in which he stated that, from 1994 to 2007, none of the materials used in the construction of containers at the facility where the claimant had worked contained cobalt, nickel, or gold, that nickel was present in the substrate of the tinplate used in the aerosol can press she used "at a level not to exceed 0.15%," and that the tinplate used on that material consisted of "tin coated steel."

The employer submitted two letters from its retained expert witness, Dr. Terrence C. Moisan, to its attorney. In a letter dated April 9, 2007, Dr. Moisan indicated that he had "evaluated the patient" and had concluded that the claimant was free of contact dermatitis and "had only one significant flair since leaving her employment." He concurred with Dr. Scheman that her dermatitis likely had both occupational and non-occupational triggers. He determined that her exposure to metals was a less probable trigger than her exposure to fragrances in the cleaning materials she used as a janitor. He opined that she should be able to "work in most occupations where not around metal dusts or fragrance-containing items or items known to contain one of her listed sensitizers." In a letter dated June 11, 2007, Dr. Moisan opined that the rash the claimant developed "after wearing a shirt *** was not related

to the prior episode of occupational dermatitis." He stated that he had reviewed pictures of the claimant's facial dermatitis but could not determine the source of the rash and could not "exclude a non-occupational exposure ***, particularly given noted positive reactions to fragrance." He acknowledged that "metals also can cause a facial contact dermatitis because of the propensity of that area to react to allergens." He determined, however, that it was unlikely that she had substantial exposure to nickel, cobalt, or gold but acknowledged that determining whether the source of the allergy was occupational or non-occupational was "indeed difficult." He concluded that there had "never been more than a possible association between her exposures at work and the development of her dermatitis" and that the mainstay of her therapy should include avoiding "both occupational and non[-]occupational settings."

The arbitrator concluded that, while working for the employer, the claimant had been exposed to an occupational hazard within the meaning of section 1(d) of the Occupational Diseases Act (820 ILCS 310/1(d) (West 2006)) in that she had been exposed to metal and metal dust, specifically nickel, and to fragrances in cleaning supplies. The arbitrator found that the claimant's contact dermatitis was causally connected to her exposure, based upon the opinion of Dr. Scheman, the pattern of her reaction becoming worse the longer she was exposed but easing when she was off work on weekends, and the employer's expert's acknowledgment that it was a reasonable possibility that her contact dermatitis was work-related.

The arbitrator found that the claimant was entitled to temporary total disability benefits of $449.89 per week for 67 5/7 weeks, from March 13, 2002, through June 29, 2003. The arbitrator based this part of the award on Dr. Scheman's imposition of permanent restrictions on March 13, 2002, and her finding that, when the claimant returned to work on June 30, 2003, her condition had reached permanency. She also awarded the claimant

maintenance benefits of $449.89 per week for 63 5/7 weeks, from July 11, 2003, through September 29, 2004.

In addition, she awarded the claimant $404.88 per week for 250 weeks based upon her finding that the claimant had sustained 50% impairment of the person as a whole, pursuant to section 8(d)(2) of the Compensation Act. 820 ILCS 305/8(d)(2) (West 2006). The arbitrator based the award upon the claimant's unrebutted testimony that her symptoms were aggravated by the conditions at work upon her return and Dr. Scheman's permanent restriction from any handling of metal or exposure to metal or metal dust. The arbitrator found that, as a result of her disablement, the claimant was "unable to continue working at a relatively high wage job," and despite a thorough search, she was unable to find a job that paid a third of what she earned when working for the employer.

Finally, the arbitrator awarded the claimant the sum of $33.29 per month, "representing the increased cost of specialized skin care products and detergent" pursuant to section 8(a) of the Compensation Act. 820 ILCS 305/8(a) (West 2006). The arbitrator found that the claimant was "required to use special products as a result of the sensitization due to her occupational contact dermatitis. Although all are available without a prescription, they are necessary if [she] is to avoid a recurrence of her rash." The arbitrator determined that these special products were more expensive than similar products the claimant had been using before developing contact dermatitis.

The arbitrator found that the claimant gave the employer timely notice of her condition by speaking to her supervisor about her skin condition in the Fall of 2001 and by Dr. Maloney's letter to the employer stating that she was referring the claimant to Dr. Scheman for evaluation of possible occupational contact dermatitis. Additionally, the arbitrator noted that, while the claimant was at Dr. Scheman's office, the employer faxed the MSDS

information to him to use in that evaluation.

The Commission affirmed and adopted the arbitrator's decision, with one commissioner dissenting. The dissenting commissioner disagreed that the claimant was entitled to maintenance benefits from July 11, 2003, through September 29, 2004, because the employer had accommodated her restrictions when she returned to work in June 2003, and since then, the claimant had not sought any medical treatment or attempted to discuss any alleged difficulties with the employer. The dissenter determined that the claimant's decision to stop working for the employer was "purely voluntary." The dissenter found that the award of 50% loss of use of the person as a whole was excessive because the claimant had no recurrence of her skin rash after she stopped working for the employer except for one instance when she wore a friend's shirt. The dissenting commissioner found that the claimant had permanent restrictions and was required to use special products as a result of her sensitive skin but determined that an award of 20% loss of use of the person as a whole was sufficient. Finally, she would have vacated the award of costs for future fragrance-free products as inappropriate under the Compensation Act. She noted that the claimant's rights under section 8(a) allowed her to seek reimbursement for these costs at a later time.

The circuit court confirmed the Commission's decision, finding that its decision was not against the manifest weight of the evidence and that it did not misapply the law. This appeal followed.

ANALYSIS

(A)

Exposure to the Hazards of an Occupational Disease Arising out of Employment

The employer argues that the Commission's decision that the claimant's occupational disease arose out of and in the course of her employment is contrary to law because that

finding "does not faithfully apply or reflect upon the terms of the statute," specifically, section 1(d) of the Occupational Diseases Act. 820 ILCS 310/1(d) (West 2006). The relevant provisions of that section provide:

> "(d) In this Act the term 'Occupational Disease' means a disease arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result of the exposure of the employment. Such aggravation shall arise out of a risk peculiar to or increased by the employment and not common to the general public.
>
> A disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence. An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when, for any length of time however short, he or she is employed in an occupation or process in which the hazard of the disease exists." 820 ILCS 310/1(d) (West 2006).

The employer focuses upon the term "origin" in the above statute, claiming that it "requires the decision maker to decide on the 'origin' or 'aggravation' of the allegedly occupational disease, not whether the work 'contributed.'" Apparently, the employer posits that since the "origin" of the claimant's contact dermatitis is a "genetically predetermined predisposition" to an allergic reaction to certain substances, she cannot meet the requirements of the Occupational Diseases Act. The employer argues that the Commission's decision

merely found that the claimant's work environment contributed to her condition, and that this finding is not enough to satisfy the statute's requirements.

We disagree. First, the employer does not cite any case law in support of this interpretation of the statute. Second, the terms of the statute do not support the employer's suggested interpretation. Because this is an issue of law, our review is *de novo*. *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 232, 756 N.E.2d 822, 827 (2001). The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature, and the words of the statute itself are the best indicators of that intent. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 479, 639 N.E.2d 1282, 1287 (1994). "When the drafters' intent can be ascertained from the statutory language, it must be given effect without resort to other aids for construction." *Id*. When construing statutes, it is never proper to depart from the plain language by reading into the statutes exceptions, limitations, or conditions which conflict with the clearly expressed statutory intent. *Id*.

The terms of the statute are clear. The claimant was required to show that the origin of her disease could be found in some risk associated with her employment, and the issue is whether the Commission had evidence from which it could determine that there was a causal connection between the conditions of the claimant's employment and the contact dermatitis she developed. To recover compensation under the Occupational Diseases Act, the claimant must prove, by a preponderance of the evidence, that she suffers from an occupational disease and that there is a causal connection between that disease and her employment. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 596, 840 N.E.2d 300, 312 (2006). "An occupational activity need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Bernardoni*, 362 Ill. App. 3d at 596, 840 N.E.2d at 312. Acceptable proof of a hazardous exposure can come from the

personal observations of employees about the types of substances to which they have been exposed and how that exposure occurred. *H & H Plumbing Co. v. Industrial Comm'n*, 170 Ill. App. 3d 706, 713, 525 N.E.2d 155, 159 (1988). Exposure may also be proved by the admission of labels or other evidence showing the types of hazardous substances the claimant came into contact with. *Service Adhesive Co. v. Industrial Comm'n*, 226 Ill. App. 3d 356, 366, 589 N.E.2d 766, 772 (1992). Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn that decision only if it is against the manifest weight of the evidence. *Bernardoni*, 362 Ill. App. 3d at 597, 840 N.E.2d at 312. It is the Commission's responsibility to resolve conflicts in the evidence, particularly the medical evidence. *Id*.

In the case at bar, the claimant testified in detail about her work environment and the substances she was exposed to, both as a press machine operator and as a janitor, as well as in the miscellaneous jobs she did after being recalled to work. The substances that Dr. Scheman found she was most allergic to are the same substances that she testified she was exposed to at work, metal and metal dust when working as a press machine operator and numerous fragranced cleaning products when working as a janitor. She testified that her symptoms began after being exposed to these substances at work and that they were worse during the work week and better during the weekends when she was off work.

Dr. Scheman opined that the claimant had definite contact allergies that were partially work-related or, "at [the] very least," work-aggravated. He determined that the claimant had strong allergic reactions to several metals, including nickel, cobalt, and gold, and that exposure to nickel particles when cleaning at work was a significant part of her problem. He opined that "she should be permanently restricted from metal working with steel or cleaning such environments" and that exposure to particulate steel was "certainly" a factor

contributing to her problem. He found that she was somewhat allergic to the cleaning agents she used at work and concluded that "she should be restricted from any type of janitorial work" unless she was provided with fragrance-free cleaning materials. He determined that her contact with cleaning products was a "second exposure at work" which probably contributed to her condition. Therefore, the Commission had evidence from which it could find a causal connection between the claimant's work environment and her exposure to the substances to which she was allergic and which caused her condition of contact dermatitis.

The employer argues that the evidence shows that it supplied the claimant with safety equipment, such as gloves and masks, which rebutted the evidence that it was her exposure to the substances that caused her condition of ill-being. The employer also points out that Dr. Moisan questioned whether the claimant's condition could have been caused by exposure to any substance in the employer's workplace and that Dr. Blum reported that the products used in the employer's plant included very low amounts of the substances to which the claimant was allergic. It was the Commission's duty to resolve all conflicts in the evidence. *Bernardoni*, 362 Ill. App. 3d at 597, 840 N.E.2d at 312. It does not matter if there is another possible cause of her occupational disease if the exposure at work is a causative factor in her condition of ill-being. *Freeman United Coal Mining Co. v. Workers' Compensation Comm'n*, 386 Ill. App. 3d 779, 784, 901 N.E.2d 906, 912 (2008). The Commission's decision that the claimant was exposed to an occupational hazard within the meaning of section 1(d) of the Occupational Diseases Act while working for the employer and that her condition of contact dermatitis was causally connected to that exposure is not against the manifest weight of the evidence.

(B)

Notice

We next consider whether the claimant provided sufficient notice of her occupational exposure and disablement to the employer. The Occupational Diseases Act requires that a claimant provide notice of disablement from an occupational disease "as soon as practicable after the date of the disablement." 820 ILCS 310/6(c) (West 2006). Failure to give such notice will not bar the claim unless the Commission determines that the employer has been substantially prejudiced by the lack of timely notice. 820 ILCS 310/6(c) (West 2006). There is "no definite time or prescribed form for giving notice, and the key phrase in the statute is that notice is to be given 'as soon as practicable after the date of disablement.'" *Service Adhesive Co.*, 226 Ill. App. 3d at 368, 589 N.E.2d at 773.

In this case, the claimant testified that, in November 2001, she told her supervisor about her condition, and he observed her in that condition. On March 13, 2002, Dr. Maloney notified the employer that she had been treating the claimant for a skin condition that began five to six months earlier. Dr. Maloney informed the employer that she suspected the condition was contact dermatitis, that she had referred the claimant to a specialist, Dr. Scheman, and that the claimant should avoid any exposure to chemicals at work pending the outcome of Dr. Scheman's testing. One day later, Dr. Maloney notified the employer that she recommended the claimant not return to work until Dr. Scheman determined the cause of her skin rash due to "very severe eczema on her face." The claimant initially filed her claim against the employer on June 24, 2002, alleging that she had been exposed to various cleaning agents that had caused severe allergic reactions.

The employer argues that the claimant did not provide notice sufficient to meet the requirements of section 6(c) of the Occupational Diseases Act or the precedent of *Service Adhesive Co*. That argument fails. The employer had notice before the claimant filed her application for adjustment of claim that she had suffered skin rashes, had been treated by a

physician for contact dermatitis, and was undergoing testing for work-related allergies. She filed her claim within the limitation period of the statute. 820 ILCS 310/6(c) (West 2006) (applications for compensation must be filed within three years after disablement, where no compensation has been paid, or within two years after the date of last payment of compensation, whichever is later). The notice given met the statutory requirements. Even if the claimant had failed to provide the employer with notice before filing her claim, that would not bar her claim unless the employer was unduly prejudiced by the lack of notice. *Service Adhesive Co.*, 226 Ill. App. 3d at 368, 589 N.E.2d at 773. We find that the Commission's decision that the claimant provided the employer with timely notice is not against the manifest weight of the evidence.

(C)

Whether the Claimant's Current Condition is Related to Her Workplace Exposure

The employer next argues that the Commission's finding that the claimant's current condition is related to a workplace exposure is unsupported by the evidence. The employer maintains that the evidence showed no causal connection between a past occurrence of contact dermatitis and any condition of ill-being she suffered at the time of the arbitration hearing because her genetic propensity to allergic skin reactions is the cause of her condition of ill-being. The employer bases this argument upon the evidence that Dr. Scheman's testing showed that the claimant was strongly allergic to substances containing formaldehyde, which is most commonly found in personal skin care products and is not an ingredient in the commercial cleaning products the claimant used when working as a janitor for the employer.

The evidence that the claimant was genetically predisposed to allergic reactions does not preclude a finding that her exposure to hazardous substances at work contributed to the condition of ill-being she suffered at the time of the arbitration hearing. Section 1(d) of the

Occupational Diseases Act provides compensation for the aggravation of preexisting conditions. 820 ILCS 310/1(d) (West 2006). "Employers take their employees as they find them." *Bernardoni*, 362 Ill. App. 3d at 596, 840 N.E.2d at 312. Thus, even if an employee has a preexisting condition that makes her more vulnerable to injury, "recovery will not be denied where the employee can show that a work-related condition aggravated or accelerated a preexisting disease such that the employee's current condition of ill-being can be said to be causally related to conditions in the workplace and not merely the result of a normal degenerative process of the preexisting condition." *Bernardoni*, 362 Ill. App. 3d at 596-97, 840 N.E.2d at 312. "Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence." *Bernardoni*, 362 Ill. App. 3d at 597, 840 N.E.2d at 312. Accordingly, we must consider whether there was evidence to show that the claimant's condition at the time of the arbitration hearing was causally related to her earlier exposure to hazardous substances at work.

The evidence showed a progression of the claimant's symptoms the longer she was exposed at work to substances to which she was allergic. By March 2002, the allergic reactions had become severe enough that Dr. Maloney restricted her from all work until testing for allergies could be completed. Not only was the rash more severe over time, it spread from her face to all other areas of her body not covered by clothing. Dr. Scheman permanently restricted the claimant from working in environments with metal or fragranced products. When the claimant returned to work at the end of June 2003, she was able to work only eight days before the rash returned and she could no longer enter the plant. This occurred despite the employer's attempt to provide her with jobs within Dr. Scheman's permanent work restrictions.

After the claimant's last day of work for the employer, she had only one serious rash when she wore a shirt she borrowed from a friend without first washing it. She testified that she also had less serious rashes appear after shaving with a metal razor blade, but those rashes stopped after she switched to a special razor for sensitive skin. She is permanently restricted from contact with any skin care or cleaning products that are not fragrance-free, she cannot wear jewelry or cosmetics, and she cannot work or be present in any environment with metal dust. These job restrictions have permanently decreased the number and types of jobs she can perform and activities in which she can participate.

The Commission adopted the arbitrator's findings that the claimant's condition of ill-being was causally connected to her work exposure for the employer and we find support in the record for the Commission's ruling. The evidence supports a finding that the claimant's condition of contact dermatitis was triggered by her workplace exposure and has resulted in permanent work restrictions which affect her employability. The Commission could reasonably infer that the claimant's allergies began when she worked for the employer, that they became progressively more severe during her tenure with the employer, and that, by the time of the arbitration hearing, they were under control only because she no longer worked in an environment where she was exposed to those hazards. The decision of the Commission on this issue is not against the manifest weight of the evidence.

(D)

Maintenance Benefits

We next consider whether the Commission's award of maintenance benefits is against the manifest weight of the evidence. The Commission awarded the claimant temporary total disability benefits of $449.89 per week for 67 5/7 weeks, from March 13, 2002, through June 29, 2003, based upon the finding that her condition had reached permanency when she

returned to work on June 30, 2003. The employer does not challenge that finding. "Temporary total disability compensation is to be awarded for the period of time between the injury and the date the employee's condition has stabilized." *Caterpillar Tractor Co. v. Industrial Comm'n*, 97 Ill. 2d 35, 44, 454 N.E.2d 252, 257 (1983).

The claimant was awarded maintenance benefits of $449.89 per week for 63 5/7 weeks, from July 11, 2003, through September 29, 2004, pursuant to section 8(a) of the Compensation Act. 820 ILCS 305/8(a) (West 2006). The relevant portions of section 8(a) are as follows:

> "The employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto. ***
>
> * * *
>
> *** Vocational rehabilitation may include, but is not limited to, counseling for job searches, supervising a job search program, and vocational retraining including education at an accredited learning institution. ***
>
> The maintenance benefit shall not be less than the temporary total disability rate determined for the employee. In addition, maintenance shall include costs and expenses incidental to the vocational rehabilitation program." 820 ILCS 305/8(a) (West 2006).

"A claimant is generally entitled to vocational rehabilitation where he sustains a work-related injury which causes a reduction in his earning power and there is evidence that rehabilitation will increase his earning capacity." *Roper Contracting v. Industrial Comm'n.*, 349 Ill. App. 3d 500, 506, 812 N.E.2d 65, 71 (2004). "[A] claimant is not required to request vocational rehabilitation before being entitled to an award of maintenance, and there is no rule

prohibiting claimant-created and directed vocational rehabilitation programs." *Greaney v. Industrial Comm'n.*, 358 Ill. App. 3d 1002, 1019, 832 N.E.2d 331, 347 (2005). Thus, a claimant's self-created and directed job search designed to increase her earning capacity is sufficient to support an award of maintenance. *Roper Contracting*, 349 Ill. App. 3d at 506, 812 N.E.2d at 71.

On June 30, 2003, the claimant attempted to return to work for the employer, but she was able to work only eight days before the exposure to the substances to which she was allergic became unbearable. From July 11, 2003, through September 29, 2004, she had reached maximum medical improvement, could no longer work for the employer, and could not find alternate employment. During these weeks, the employer could not provide her with a job that met the permanent medical restrictions imposed by Dr. Scheman and, although she conducted an extensive, informal job search, she could not find a job due to the severity of those work restrictions. On September 30, 2004, she began working for Christian Life School, earning far less than she had for the employer.

The employer argues that the evidence does not support a finding that the claimant was unable to return to work for the employer and claims that it accommodated the claimant's work restrictions. The employer asserts that when the claimant returned to work from June 30, 2003 to July 10, 2003, she sustained no "observed" rash, but only testified that she was developing itching around the eyes and mouth similar to past episodes. Further, the employer notes that on that occasion Dr. Scheman did not order her off work, but simply prescribed a salve. Finally, the employer argues that the evidence does not support a finding that the claimant conducted an extensive job search because there are periods of time during which she was awarded maintenance that she completed no job applications.

It is the function of the Commission to decide questions of fact, judge the credibility

of witnesses and resolve conflicting evidence. *O'Dette v. Industrial Comm'n.*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 223-24 (1980). "Though a court might draw different inferences from the evidence, it is axiomatic that findings of the [Commission] will not be reversed unless they are against the manifest weight of the evidence." *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 224.

Here, the Commission awarded the claimant maintenance based upon "her unrebutted testimony that her symptoms were aggravated by the conditions at work upon her return." Additionally, the Commission found that the claimant engaged in a self-directed job search which ultimately led to her employment at a substantially lower wage than she earned with the employer. The Commission's finding that the claimant is entitled to maintenance is not against the manifest weight of the evidence.

(E)

Section 8(d)(2) Award for 50% Loss of Use of Person as a Whole

The employer argues that there is no reasonable basis in the record to conclude that the claimant suffers from a disability equivalent to 50% loss of use of a person as a whole and suggests that the award should be reduced to 10%. Section 8(d)(2) of the Compensation Act provides that if an employee suffers serious and permanent injuries which reduce her earning capacity and she elects to waive a wage differential award under section 8(d)(1), she may receive a permanent partial disability award at the appropriate rate per week "for that percentage of 500 weeks that the partial disability resulting from the injuries *** bears to total disability." 820 ILCS 305/8(d)(2)(West 2006). "[A]n employee cannot recover both a wage-differential award and percentage-of-the-person-as-a-whole award but must choose between the two." *Freeman United Coal Mining Co. v. Industrial Comm'n.*, 283 Ill. App. 3d 785, 790-91, 670 N.E.2d 1122, 1126 (1996). Here, the claimant affirmatively waived

recovery of a wage differential award under section 8(d)(1) and sought recovery for permanent partial disability under section 8(d)(2) based upon a reduction in earning capacity.

The Commission affirmed and adopted the following findings of the arbitrator as to permanent disability:

> "[The claimant] is permanently disabled to the extent of 50% of the whole person. This is based on her permanent restriction from any handling of metal or exposure to fragrance or to metal dust. As a result of her disablement, she was unable to continue working at her relatively high wage job with [the employer]. Despite a thorough search, the only job she was hired for earns her less than a third of what she earnd with [the employer]."

"Because of [the Commission's] expertise in the area of workers' compensation, its finding on the question of the nature and extent of permanent disability should be given substantial deference." *Freeman United Coal Mining Co.*, 283 Ill. App. 3d at 793-94, 670 N.E.2d at 1127 quoting *Grischow v. Industrial Comm'n.*, 228 Ill. App. 3d 551, 559, 593 N.E.2d 720 (1992). It is within the province of the Commission to decide questions of fact, judge the credibility of witnesses and resolve conflicting evidence. *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 223-24. A factual finding of the Commission should not be reversed by a court of review unless it is against the manifest weight of the evidence, which means an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n.*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894, 896 (1992).

The employer argues that the evidence shows that the claimant voluntarily left her employment after the employer had accommodated her restrictions, failed to conduct a thorough job search and had the potential for employment with the Postal Service at an hourly rate equivalent to her earnings with the employer. Thus, the employer concludes, the

evidence does not support a reduction in earning capacity which would justify a permanent partial disability award of 50% of the person as a whole. However, there was evidence to support the Commission's finding that the 44-year-old claimant had engaged in an extensive job search, had been rejected by several potential employers due to her permanent work restrictions, and had only found employment that paid substantially less than she earned for the employer. Although she hoped to gain full time employment with the Postal Service, no such employment had been offered.

The Commission's decision is not against the manifest weight of the evidence if there is sufficient factual evidence in the record to support it. *Freeman United Coal Mining Co.*, 283 Ill. App. 3d at 793, 670 N.E.2d at 1127. We find that the evidence supports the Commission's decision on the nature and extent of the claimant's injury. The Commission's award of permanent partial disability benefits of 50% loss of use of a person as a whole is not against the manifest weight of the evidence.

(F)

Award for Special Products

Finally, we consider whether the Commission properly awarded the claimant $33.29 per month for the increased cost of specialized skin care products and detergent pursuant to section 8(a). 820 ILCS 305/8(a) (West 2006). It appears that it was the intent of the Commission to award the claimant this specific amount per month for life. The employer argues that the products in question are sold without a prescription and are not reasonable medical expenses under the Compensation Act. Further, the employer asserts that, even if it is proper to compensate the claimant for these types of expenses, the Commission does not have the authority to make a prospective future award for these expenses at a specified rate per month.

Section 8(a) provides that the employer must pay "for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2006). While we have found no case in which compensation was awarded for these specific types of products, compensation under section 8(a) has not been strictly limited to traditional medical services or prescribed medication. See *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 381-84, 909 N.E.2d 818, 828-30 (2009) (Cost of home computer system and additional cost of auto insurance attributable to van modifications due to claimant's disability awarded as reasonable medical expenses).

Here, there was medical evidence which supports the claimant's need to use specialized skin care products to avoid recurrence of her contact dermatitis. Thus, an award for the increased cost of the special products the claimant is required to use as a result of her work-related disability is not precluded by the language of section 8(a) simply because they are personal and household products purchased without a prescription. In our view, such an award comports with the statute's general purpose of fully compensating the claimant for her work-related injury. The Commission's finding that the claimant should be compensated for the increased cost of such products is not against the manifest weight of the evidence.

However, we agree with the employer that a prospective future award in a specific amount per month, under the circumstances of this case, is inappropriate. As the employer argues, "[t]here is no evidence on which to predict the future needs or future prices of these items, nor how long the claimant will continue to need or continue to use these kinds of items." Accordingly, we find that we must vacate the Commission's award of $33.29 per month for the increased cost of specialized skin care products. In doing so, however, we note

that the claimant is not prevented from seeking reimbursement for such expenses when they have actually been incurred.

CONCLUSION

The decision of the circuit court confirming the decision of the Commission is affirmed, except the award of $33.29 per month for the increased cost for special products is vacated.

Affirmed; vacated in part.