2013 IL App (2d) 121210WC-U
No. 02-12-1210WC
Order filed November 7, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DAN WOLF TOYOTA OF NAPERVILLE, Plaintiff-Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION and KEVIN McGLENNON, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 12-MR-370 Honorable Bonnie M. Wheaton, Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's reliance on testimony of claimant and his treating physician was not erroneous and its decision on causation was thus not against the manifest weight of the evidence and was also sufficient to justify its decision to award temporary total disability.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Dan Wolf Toyota of Naperville, appeals an order of the circuit court of Du Page County confirming a decision of the Illinois Workers' Compensation Commission (Commission) awarding plaintiff, Kevin McGlennon, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2008)). Respondent raises a number of issues. Central to respondent's arguments is its contention that the Commission's decision on causation is contrary to the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 It is undisputed that claimant sustained an employment-related injury when he fell at work on June 25, 2009 (though there is a conflict in the record regarding the date of the accident). At issue is whether claimant's condition of ill-being, namely avascular necrosis of the femoral head of both hips, right worse than left, is causally related to claimant's at-work accident. A hearing was held on January 19, 2011, and the following evidence was presented.

¶ 6 Claimant testified that, in 2009, he was employed by respondent as an assistant service manager. His duties included "writ[ing] up customers, dispatch[ing] cars to the mechanics" and washing cars. On June 25, 2009, the dealership was very busy. Claimant pulled a car onto the wash rack. When he got out of the car, claimant "slipped on the *** guide rail for the wash rack" and "fell backwards." Claimant stated that he immediately felt pain in his right hip and right lower back. Claimant explained that he had landed on the right side of his body. He reported the incident to Michael Kratchmer, the service manager. Claimant did not seek medical treatment, as he believed the pain would subside. In July 2009, despite still experiencing pain, he took his two daughters on a trip to Florida. When he returned from vacation, claimant continued to work full time. However,

his duties were modified so that he spent more time sitting down and writing up customer orders and less time moving cars around.

¶ 7 Claimant sought care at St. Alexius Medical Center on July 20, 2009. X-rays were taken, and pain medication was prescribed. Claimant did not actually take the pain medication, as he had friends who had become addicted to it and he therefore did not like to take that sort of medication. Claimant was referred to Dr. Cameron Clark at Advanced Physical Medicine Rehabilitation.

¶ 8 Claimant first saw Clark on July 27, 2009. Clark prescribed a course of physical therapy. Claimant engaged in physical therapy from July 27 through September 9, 2009. It helped his back but not his hip. Claimant underwent an MRI of his hips on August 28, 2009. The MRI showed avascular necrosis of the femoral head of both hips, right worse than left. Clark referred claimant to Dr. Howard Freedburg at Suburban Orthopedics.

¶ 9 Freedburg first examined claimant on August 31, 2009. Claimant was still in pain. Freedburg took him off work and recommended a total hip arthroplasty (*i.e.*, replacement). As of the time of the hearing, claimant had not undergone this procedure and was still in pain. Most of the time, he walks with a cane. Prior to June 25, 2009, claimant experienced no problems with his hips, but he has had the pain he now experiences since that date.

¶ 10 On cross-examination, claimant explained that the problems he had experienced with his back were caused by the way he was forced to ambulate as a result of the condition of his right hip. Following the July 25, 2009, accident, except for the week he was on vacation, claimant continued to work in excess of 40 hours per week until the point at which he first sought medical treatment. Claimant performed his usual duties, but it was "very painful." Claimant continued working until August 31, 2009. However, he was put on light duty. Respondent allowed claimant to use a chair

more frequently (he later explained that he would have to get up from his chair to perform some tasks, but most of the time, respondent would bring him customers and he would process their orders).

¶ 11 While on vacation, claimant and his family visited Disney World. Due to his medical condition, claimant rented an electric scooter to ride. Claimant moved to Oklahoma in June 2010, He did not seek further medical treatment, but he did continue to do physical therapy exercises on his own. Claimant had not worked since being taken off work by Freedburg.

¶ 12 On redirect-examination, claimant testified that he led a very active lifestyle prior to the accident. He rode four wheelers and dirt bikes and engaged in martial arts. He rented the scooter because he believed that Disney World would involve a lot of walking. He thought it would be difficult to keep up with his children. Claimant's left hip was asymptomatic.

¶ 13 Claimant also submitted his medical records in support of his claim. In a report documenting his initial examination of claimant, Freedburg wrote that claimant was injured when he fell at work, claimant's pain went away for a few weeks, and claimant fell again on June 30, 2009. Clark had placed claimant on light duty, but respondent had none available. Freedburg noted that an MRI showed "[s]izable right hip joint effusion," "probably due to sunovitis [*sic*] either from trauma or inflammatory process." The MRI also revealed "avascular necrosis in both femoral heads, right more extensive than left with some suggestion of mild collapse of the femoral head." Freedburg explained that no "salvage procedures" existed. He discussed conservative measures and surgery, noting claimant was not a candidate for arthroscopy and that a total replacement was the only option. Claimant indicated he wished to proceed with surgery. Freedburg stated that "[a]ny trauma is a known etiology for avascular necrosis of the femoral head." He noted that it was possible that

claimant disrupted "the medial circumflex artery." He deemed it proper to keep claimant off work.

¶ 14 Respondent retained a trio of physicians to review the case on its behalf. Dr. Jeffrey Coe reviewed claimant's records and authored a report dated January 25, 2010. In it, he references an accident date of June 30, 2009,[1] at which time claimant fell on a wash rack. After recounting claimant's history of injury and treatment, Coe explained that avascular necrosis "is a condition of death of bone cells in the head of the femur due to insufficient blood supply." He stated that it may be idiopathic, result from metabolic conditions, or be caused by direct trauma. It tends to be a progressive condition. Coe opined that this condition preexisted claimant's at-work accident. He noted the "nature of the accident (primarily a lower back injury) and bilateral nature of the avascular necrosis." He thus opined that there was no causal connection between claimant's condition and the June 30, 2009, accident.

¶ 15 Respondent also had Dr. Michael S. Lewis conduct an examination of claimant on April 8, 2010. Lewis noted that claimant was injured when he fell at work on June 25, 2009. Claimant told Lewis that he had fallen on an earlier occasion, but never reported it. Lewis opined, based on the absence of significant bone edema in the MRI of the right hip, that claimant's condition preexisted his fall and that there was no evidence of "acute changes in the femoral head." Lewis also note the

[1]There is some inconsistency in the record regarding the date of the accident or, as respondent suggests in its intervening cause argument, whether there were two accidents. We will address this inconsistency below and identify the date of accident consistently with whichever witness or evidence we are discussing.

absence of evidence of an acute fracture. Finally, Lewis noted that claimant fell primarily on his back.

¶ 16 Freedburg (claimant's treating physician) reviewed the reports of Coe and Lewis. He affirmed that claimant's condition is causally related to his work injury. He criticized the opinions of Coe and Lewis in that they overlooked "effusion within the hip joint." He noted that any bony edema could have dissipated by the time of the MRI. Moreover, he found it significant that claimant's condition was more advanced on his right side than his left, and he subsequently explained that this was consistent with the history of the injury (landing on the right side of the body and immediately experiencing pain in the right hip and right lower back). Finally, if there was a preexisting condition of avascular necrosis, Freedburg opined, then claimant's injury caused an "exacerbation" of that condition due to a "loss of blood supply with subluxation of the hip that extended the avascular area."

¶ 17 Finally, Dr. Peter Thadani (the third expert retained by respondent) examined claimant's medical records on respondent's behalf and produced a report dated December 13, 2010. Thadani recorded that claimant was injured on June 30, 2009, "while stepping out of a car in a wash bay." Thadani's report states that claimant's "right foot became caught on a rail in the bar causing him to fall" and that claimant "apparently fell backward onto his buttocks." Thadani opined that had claimant "sustained an injury to the right hip joint significant enough to cause transient hip subluxation or subchondral femoral head fracture[,] it is likely that he would have been temporarily unable to ambulate and may have sought medical attention on a more urgent basis." He believed "the mechanism of injury and subsequent course did not seem consistent with significant acute intraarticular [*sic*] hip trauma." Thadani noted that "x-rays performed less than one month after the

injury demonstrated grade 3 avascular necrosis changes in the right femoral head." He opined that it was "highly unlikely" that such changes would be observed in such a short period of time following claimant's accident. Thadani explained that avascular necrosis occurs bilaterally in about 50% of cases and it was unlikely that claimant's accident would have caused significant trauma to both hips to bring about the condition. Further, effusions are seen in 90% of cases that have reached stage 3, so the presence of effusions "does not directly indicate presence of recent trauma." Finally, the absence of edema, as indicated in the MRI, in claimant's right proximal femur, would "likely speak against [the] presence of recent trauma," because "70% of the time edema pattern can persist for months after the injury." Thadani opined that claimant's condition was preexisting and that the injury did not result in the "advancement/progression of the disease."

¶ 18 The arbitrator found that claimant's condition of ill-being is causally related to his fall at work in June 2009. He credited claimant's testimony that his pain gradually worsened following the accident and that, though he worked after he returned from vacation, he was in tremendous pain and was allowed to modify his duties somewhat. When claimant first sought treatment on July 20, 2009, the arbitrator found, claimant complained of pain in his lower back radiating into his hips, with the right hip being worse than the left. After reviewing the expert testimony, the arbitrator found that claimant's "condition of bilateral avascular necrosis pre-existed the accident." However, prior to the accident, claimant had been asymptomatic. Hence, the arbitrator focused upon whether the injury aggravated claimant's preexisting condition. The arbitrator found that it did. In support of this finding, the arbitrator noted that claimant never had a problem with his hips and became symptomatic immediately following the accident, expressly finding that claimant's testimony on this subject was credible.

¶ 19 The arbitrator also expressly relied on Freedburg's opinion. He rejected the opinions of Lewis and Coe in that they focuses "solely on the question of whether any traumatic injury on the date in question could have caused [claimant's] avascular necrosis, and not whether it might have aggravated and/or [*sic*] accelerated said condition." While Thadani did address this issue, the arbitrator chose "to rely on the opinion of treating physician Dr. Freedburg to the extent that the accident exacerbated [claimant's] preexisting condition."

¶ 20 The arbitrator awarded claimant temporary total disability (TTD) in the amount of $590.11 for 43 3/7 weeks, noting that Freedburg took claimant off work on August 31, 2009, and released claimant to light duty on June 30, 2010. He ordered that respondent pay for a right hip arthroplasty, as recommended by Freedburg, as well as medical expenses that had already accrued. Respondent received a credit for $1,819.23 already paid for medical benefits.

¶ 21 The Commission affirmed and adopted the findings of the arbitrator. It also made additional findings of its own. It observed that claimant's testimony regarding the difficulties he had performing his job after returning from vacation and the manner in which his duties were modified was corroborated by the records maintained by Advanced Physical Medicine Rehabilitation. It noted that Clark's record dated July 31, 2009, indicates that claimant "was doing better in the morning, but, after a full day of work, his pain was up to a level 8 and was worse getting in and out of cars." On August 7, 2009, a physical therapist noted that claimant's back was improving but the pain in his right hip was worse, especially when getting in and out of cars. On August 14, 2009, Clark noted claimant felt worse after working a hard day. The physical therapist's record from August 17, 2009, state claimant was feeling 50% better and was taking "it easier at work." Clark's record from August 26, 2009, state that claimant experienced much pain walking at work and could not be on his feet

for more than 30 minutes. The Commission then found that, while claimant may have been working, "he was working with pain and difficulty and not working full duty as [r]espondent contends." The circuit court of Du Page County confirmed the Commission's decision, and this appeal followed.

¶ 22 III. ANALYSIS

¶ 23 On appeal, respondent chiefly challenges the Commission's decision regarding causation, and it advances a number of subarguments to this end. Respondent contests the Commission's award of medical expenses; however, that argument is wholly derivative of respondent's arguments on causation. The same is true of respondent's argument regarding prospective medical care. As we reject respondent's causation argument, we need not address its arguments regarding these medical expenses. Respondent also challenges the award of TTD. We find none of respondent's arguments well founded.

¶ 24 A. CAUSATION

¶ 25 In order to justify an award of compensation under the Act, employment must be a cause of a claimant's condition of ill-being. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434 (2011). It is well-established, however, that it need not be the sole or primary cause, so long as employment is a cause of the claimant's condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). Hence, a claimant with a preexisting condition may recover under the Act if employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982). These issues present questions of fact. *St. Elizabeth's Hospital*, 371 Ill. App. 3d at 888.

¶ 26 Questions of fact are reviewed using the manifest-weight standard of review. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786 (2005). Weighing and resolving conflicts in the evidence are matters primarily for the Commission, and this is especially true regarding medical evidence. *Navistar International Transportation Corp. v. Industrial Comm'n*, 331 Ill. App. 3d 405, 415 (2002). The Commission's expertise on medical issues is well-recognized. See *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). Moreover, assessing the credibility of witnesses and evaluating their testimony is also principally for the Commission, in its role as trier of fact. *Paganelis v. Industrial Comm'n*, 132 Ill. App. 3d 468, 483 (1989). We may not substitute our judgment for the Commission and reject permissible inferences it has drawn merely because another inference is possible. *Sisbro, Inc*, 207 Ill. 2d at 206. Rather, under the manifest-weight standard, we will disturb a decision of the Commission only if an opposite conclusion is clearly apparent. *Tinley Park Hotel & Convention Center v. Industrial Comm'n*, 356 Ill. App. 3d 833, 842 (2005).

¶ 27 In arguing that the Commission's decision on causation is contrary to the manifest weight of the evidence, respondent first asserts that Freedburg is not credible and his opinion is not supported by the evidence. Respondent first points out that Freedburg opined that if claimant "did have a right hip problem then that would be an exacerbation of a preexisting condition." Respondent then argues that "Freedburg's opinion is not supported by the evidence because there is no evidence to support [claimant's] claims that he had experienced hip pain in the past." Initially, we note that the absence of pain prior to the accident is not inconsistent with Freedburg's opinion, as Freedburg's opinion was based on claimant having "a right hip problem," not experiencing right hip pain. Having an asymptomatic condition of avascular necrosis of the femoral head surely constitutes having a problem. All of the experts retained by respondent (Coe, Lewis, and Thadani) believed that

claimant's condition preexisted the accident. That claimant's condition predated his accident is not seriously in dispute in this case.

¶ 28 Moreover, respondent's argument suffers from a more fundamental flaw. If claimant did not have a preexisting condition of avascular necrosis, then, he was in good health, with respect to his hips, prior to the accident. After the accident, his hips became symptomatic. Proof of a prior condition of good health, an ensuing injury, and a change in health following the injury is sufficient to establish causation. *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000). As we may affirm on any basis apparent in the record (*General Motors Corp. v. Illinois Workers' Compensation Comm'n*, 179 Ill. App. 3d 683, 695 (1989)), even if we were to accept the premise of this argument, we would be in no position to disturb the decision of the Commission.

¶ 29 Respondent also criticizes Freedburg's opinion to the extent it relies on claimant's uncorroborated testimony that he reported hip pain when he first sought medical care at St. Alexius Medical Center. However, respondent cites nothing to show that the Commission, as trier of fact, was not free to find claimant credible and accept this evidence. Incongruously, respondent also asserts, 'it is evident that [claimant's avascular necrosis] was pre-existing and not aggravated by the fall because if it was it would have resulted in an immediate onset of pain in which [he] *may not* have been able to finish out the day, or delay getting treatment for three weeks." (Emphasis added.) As noted, there was evidence that claimant experienced pain immediately. As for the severity of the pain, there was also evidence that claimant limited his activities while on vacation (the scooter rental) and modified his duties at work. We do not find these assertions persuasive, much less sufficient to find that an opposite conclusion to the Commission's is clearly apparent.

¶ 30 Respondent further attacks Freedburg's opinion, claiming that he "never state[d] a definite finding as to causation." Respondent asserts that his opinion is based on "two faulty notions." Respondent again raises the issue of whether claimant had previously experienced hip pain. We find this contention no more cogent in this context than we did in respondent's previous argument. Respondent also criticizes Freedburg's reliance on the presence of joint effusion, noting Thadani testified that in stage 3 avascular necrosis, effusion is present in 90% of the cases. However, Thadani also stated that this means only that the presence of such effusion "does not directly indicate presence of recent trauma." In other words, it does not indicate the absence of trauma (and, notably, it does not therefore militate against the Commission's decision). Respondent also points to Thadani's testimony that in 70% of the cases, bony edema would be present for months following a trauma, and none was shown in the MRI taken two months after the accident." While relevant, we note that on Thadani's testimony, bony edema would not be present in nearly one-third of cases such as this one. Thus, even fully crediting this testimony (which, of course, the Commission was not required to do), it is not so weighty that an an opposite conclusion to the Commission's is clearly evident.

¶ 31 Respondent places substantial reliance on *Boyd Electric v. Dee*, 356 Ill. App. 3d 851 (2005). In that case, this court affirmed a decision of the Commission finding that a claimant's condition of avascular necrosis was aggravated by a work-related injury. *Id*. at 861-62. As *Boyd Electric* involved an affirmance of the Commission, it provides limited guidance here. Assuming, *arguendo* that the evidence in that case was stronger than the evidence in this case, it does not follow that the evidence in this case is not sufficient. What would be helpful to respondent is a case where a

decision of the Commission was found to be contrary to the manifest weight of the evidence on similar facts to the instant case.

¶ 32 In any event, respondent's argument is basically that *Boyd Electric* represents a proper example of an award based on the aggravation of preexisting avascular necrosis and that this case does not rise to that level. Respondent contends that, unlike the present case, the claimant in *Boyd Electric* felt an immediate onset of pain. Respondent's contention is not borne out by the record. Claimant testified that he "[i]mmediately" felt pain to his "right hip" and "right lower back." Interestingly, the claimant in *Boyd Electric* felt pain in his foot and abdomen, but not his hip. *Id*. at 853. In this respect, at least, it would appear that the evidence in this case more strongly favors an award. It is true that the *Boyd Electric* claimant sought medical treatment the next day, while claimant waited nearly one month. Respondent points out that the claimant in *Boyd Electric* had been limping prior to the accident, while claimant had experienced no such problems. While this does distinguish the cases, respondent cannot seriously assert that claimant did not have a preexisting condition in light of the fact that respondent's three experts concurred that he did. Thus, this difference is meaningless; that claimant was not limping provides no basis to conclude that he did not have a problem with his hips. Respondent also claims that the expert testifying for the *Boyd Electric* claimant was more credible than Freedburg. Granting respondent this point for the sake of argument, there is no suggestion in *Boyd Electric* that it establishes some minimum threshold necessary to justify an award under the Act. Put differently, even if the evidence in *Boyd Electric* is stronger, it say nothing as to whether the Commission's decision in this case is against the manifest weight of the evidence. Respondent's reliance on *Boyd Electric* is misplaced.

¶ 33 Respondent complains that Freedburg expressed his opinion hypothetically, *i.e.*, Freedburg stated *if* claimant had a right hip problem, then the accident exacerbated the condition. There is nothing improper about an expert expressing an opinion in a hypothetical manner. See *Iaccino v. Anderson*, 406 Ill. App. 3d 397, 407 (2010) ("An expert witness's answers to hypothetical questions are an acceptable basis for his or her expert opinion."). This properly leaves the factual predicate upon which the opinion is based to be found by the trier of fact. See *Geers v. Brichta*, 248 Ill. App. 3d 398, 407 (1993) (A physician may testify to what might or could have caused an injury despite any objection that the testimony is inconclusive. Such testimony is but the opinion of the witness given on facts assumed to be true. It remains for the trier of fact to determine the facts and the inferences to be drawn therefrom." (Internal citations omitted)). Here, as noted above, the factual predicate upon which Freedburg's opinion rests is not seriously in dispute, namely, that claimant had a preexisting condition. As such, we fail to see the significance of the fact that Freedburg phrased his opinion hypothetically.

¶ 34 Respondent next raises a host of brief contentions, none of which we find well founded. For example, without citation to the record, respondent complains that the Commission "did not point out evidence that [claimant] may have hurt himself" between the accident and the time he first sought treatment. Without identifying this purported evidence, we cannot conduct meaningful review. Respondent contends it provided testimony from "three credible doctors." However, the Commission expressly and persuasively explained that the opinions of Lewis and Coe lacked relevance, as they did not address the salient issue in this case (aggravation of claimant's preexisting condition). That left only the competing opinions of Freedburg and Thadani. It s well-established that the Commission may give greater weight to the opinion of a treating physician. *International*

Vermiculite Co. v. Industrial Comm'n, 77 Ill. 2d 1, 4 (1979); *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 210 (1993). Given the Commission's expertise in matters medical (*Long*, 76 Ill. 2d at 566), we would be loathe to disturb its resolution of this conflict.

¶ 35 Respondent points out that there was a break in treatment when claimant did not see Freedburg from August 31, 2009, until June 10, 2010. However, respondent ignores Freedburg's report from the June 10, 2010, examination, which states that "nothing has changed since the last visit." At most, this raised a question of fact, which was properly for the Commission to resolve. *Navistar International Transportation Corp.*, 331 Ill. App. 3d at 415.

¶ 36 Respondent next contends that claimant was not credible because his testimony was allegedly inconsistent. Respondent first contends that the arbitrator "incorrectly stated that 'although [claimant] did not seek treatment for more than three (3) weeks, he credibly testified that he continued to experience pain in his low back and *hips* throughout that time.' " (Emphasis added by respondent.) Respondent then points out that claimant testified only to right hip problems. How a misstatement by the arbitrator reflects on claimant's credibility is not apparent to us, and respondent makes no attempt to explain this proposition. Respondent correctly points out that there were inconsistencies regarding whether the accident occurred on June 25 or June 30. While true, this discrepancy is not so compelling as to render an opposite conclusion clearly apparent. Respondent identifies other purported inconsistencies in the record. For example, Freedburg's records state claimant fell months ago in the office while wearing wet boots and the pain went away after a few weeks. Respondent unpersuasively attempts to argue that this must have been the June 25 fall and that another occurred on June 30, which is less than a few weeks later and thus, according to respondent, inconsistent. The Commission could have reasonably inferred that Freedburg's records

refer to an earlier incident not at issue in this case, and such an inference would have been consistent with claimant's report to Lewis that he had fallen on an earlier occasion but had not reported it. Of course, resolving such questions is for the Commission. *Navistar International Transportation Corp.*, 331 Ill. App. 3d at 415. To the extent that these so-called inconsistencies bear on the weight to which claimant's testimony was entitled, we will not substitute our judgment for that of the Commission. *Sisbro, Inc*, 207 Ill. 2d at 206.

¶ 37 Respondent next attempts to cast the purported accident of June 30 as an intervening cause that broke the causal chain from the June 25 accident. Granting, for the moment, that two such accidents occurred and that this discrepancy was not merely the result of some confusion regarding the reporting and documentation of the date of a single accident, we point out that not all subsequent accidents are sufficient to break the chain of causation. See *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 742-43 (1994) (distinguishing between intervening accidents, which break the causal chain, and subsequent accidents that contribute to a claimant's condition of ill-being, which do not). Accepting respondent's questionable view of the facts, claimant had an accident on June 25 and pain persisted for a few weeks and he also had an accident on June 30. Since, according to respondent, the pain began before and persisted through June 30, it would be caused by the June 25 accident and the purported June 30 accident would not be an intervening cause. In short, we find this argument completely unpersuasive on both the facts and the law.

¶ 38 Respondent further asserts that since claimant's pain went away after a few weeks, his condition must be the result of a normal degenerative process. See *e.g.*, *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 529-30 (1987). Plaintiff cites no expert testimony (or anything else) to substantiate the proposition that any time pain subsides, a condition

must be the result of a normal degenerative process. As such, respondent's contention lacks a foundation.

¶ 39 In sum, we find none of respondent's arguments regarding causation meritorious, and, in turn, we cannot disturb the Commission's decision on this subject.

¶ 40 B. TTD

¶ 41 It is axiomatic that to be entitled to an award of TTD, a claimant must show that he or she could not work, not just that the claimant did not work. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 832 (2002). Respondent contends claimant did not show that he could not work. Respondent points out that claimant was able to work light duty up until August 31, 2009, when Freedburg took him off work. Freedburg's records contain the statement, "Was told by Dr. Clark that he could do like [*sic*] duty, but there is none available where he works." According to respondent, "It is clear from Dr. Freedburg's notes, that he only stated that [claimant] was to *be 'kept off work*' because [claimant] told him that he was *off work* because there was not light duty at his job." Actually, Freedburg's records indicate claimant stopped working "because of the amount of walking and getting in and out of cars all day." It is far from clear to us that Freedburg's decision to take claimant off work was based on the purported lack of light-duty work with respondent. Indeed, Freedburg's report states:

> "I have reviewed the MRI in great detail. There is no question that he has avascular necrosis of the femoral head. The avascular changes include a collapse of the head and loss of normal spherical congruity of the femoral head. Therefore, there is no salvage procedure available. We have discussed potentially conservative measures which would be an injection of cortisone intra-articularly. The other option is only a total hip arthroplasty. It is not a

> candidate for arthroscopy. He wants to proceed forward with the surgery. The patient states that this occurred at work when he fell. Any trauma is a known etiology for avascular necrosis of the femoral head. It is possible that he disrupted in [*sic*] the medial circumflex artery producing avascular changes. *Therefore*, he will be kept off work and we will plan to do a total hip arthroplasty." (Emphasis added.)

Thus, Freedburg's order to take claimant off work follows an extensive discussion of his medical condition. On the other hand, the material relied on by respondent regarding the availability of light-duty work appears in an entirely different section of the report. It is hence far from "clear" that Freedburg's decision had anything to do with whether light-duty work was available for claimant. We also find unpersuasive respondent's contention that claimant's decision to pursue surgery rather than conservative options somehow showed he could have worked and rendered him ineligible for TTD. In other words, respondent has not carried its burden of demonstrating error on appeal. See *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008) (holding that the appellant "bear[s] the burden of establishing error").

Respondent also reiterates its causation argument; however we find it no more persuasive here than we did formerly. As such, we cannot disturb the Commission's award of TTD.

¶ 42 IV. CONCLUSION

¶ 43 In light of the foregoing, the decision of the circuit court of Du Page County confirming the decision of the Commission is affirmed

¶ 44 Affirmed.