2022 IL App (2d) 210055WC-U
No. 2-21-0055WC
Order filed June 16, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

RODNEY BUCKLEY,	)	Appeal from the Circuit Court
	)	of Lake County,
Appellant,	)	
	)	
v.	)	No. 19-MR-889
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*	)	Honorable
	)	Joseph V. Salvi,
(Grayslake Fire Protection District, Appellee).	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, and Cavanagh concurred in the judgment.
Justice Baberis dissented.

ORDER

¶ 1 *Held*: (1) The Commission did not err by analyzing the claimant's claim under a neutral risk analysis rather than an "employment risk" analysis; (2) the Commission's finding that the claimant failed to prove that he sustained a work-related accident was not against the manifest weight of the evidence.

¶ 2 The claimant, Rodney Buckley, filed a claim for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)) against the respondent, Grayslake Fire Protection District (employer), for injuries to his right knee that he allegedly sustained on August 31, 2015, while working for the employer. After conducting a hearing, an arbitrator found

that the claimant had sustained an accident that arose out of and in the course of his employment and that the claimant's right knee injury was causally related to the accident. The arbitrator awarded TTD benefits, medical benefits, and prospective medical treatment in the form of a total right knee replacement.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission), which reversed the arbitrator's decision. The Commission found that the claimant did not sustain an accident arising out of and in the course of his employment for the employer and denied benefits. The Commission further found that the claimant's condition of ill-being of the right knee was not causally related to any alleged incident at work.

¶ 4 The claimant sought judicial review of the Commission's decision in the circuit court of Lake County. The circuit court affirmed the Commission's decision. The claimant subsequently filed a motion to reconsider based on the Illinois Supreme Court's decision in *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848 (2020). The circuit court denied the claimant's motion.

¶ 5 This appeal followed.

¶ 6 I. FACTS

¶ 7 The claimant was employed as a Lieutenant at the Grayslake Fire Protection District. He had been employed as a full-time firefighter since 1996. In August of 2015, he worked as a station officer and was assigned to a particular engine or ladder depending on the day.

¶ 8 On August 31, 2015, the claimant arrived at the fire station at 6:00 a.m. Before his shift began at 7:00 a.m., he used the treadmill and showered. His knee felt stiff after being on the treadmill.

¶ 9 After the claimant's shift began, he responded to a call involving a vehicle accident. His role on that particular call was to assist medical personnel in evaluating patients. The claimant was

responsible for managing the scene, keeping the scene safe, and controlling the location of the fire engine, among other things. After he finished assisting medical personnel at the scene, the claimant guided the engine driver to back up the firetruck so it no longer blocked traffic. He then ran around the front of the engine and jumped into the engine to hurry up and get out of the way of traffic. This required him to perform a right-hand pivot on the driver's side corner and then another right-hand pivot on officer side of the engine. He then grabbed the door latch and jumped up onto the step for the seat and got into the vehicle in a fluid motion.

¶ 10 The front seat where the claimant was required to sit had little space and was barely larger than the claimant. (The claimant was 6 feet 5 inches tall and he weighed 350 pounds at the time.) While sitting in that cramped space, the claimant's knees were bent at a 90-degree angle and he was unable to extend his legs or move his legs and feet. He felt uncomfortable, but he testified that he did not initially feel any pain when he exited the engine at the scene of the vehicle accident or when he jumped into the engine as the firetruck left the scene. He denied feeling any "popping" or "snapping" in his right knee when he jumped into the engine. He did not seek any treatment for any injury at the scene of the vehicle accident or immediately after leaving the scene. When he returned to the station, the claimant did not report that he had sustained an injury at the scene of the vehicle accident.

¶ 11 Upon arriving back at the fire station, the claimant got out of the engine by putting one foot on the step and the other foot on the ground. He testified that his knee felt uncomfortable at that time and he was unable to straighten his right leg. The claimant stated that he had had no difficulty straightening his right leg before he responded to the motor vehicle accident. The claimant then went into a meeting. After the meeting, he noticed he was still unable to straighten his right knee all the way, and he walked with a limp. He testified that his discomfort was getting worse at that

time. The claimant then went to another area of the station where he conducted a verbal training session while sitting down.

¶ 12 After leaving the training session, the claimant walked down a hallway to speak to the Deputy Chief. Although his right knee was still uncomfortable and he was unable to fully extend his right leg, he was able to walk. He was walking at a normal pace. The floor was carpeted and there was no issue with the carpeting. As he walked, he tried to extend his knee. He then heard a popping sound, his knee gave way, and he fell to the ground. He got up and hobbled to his office. He had to hobble because he was unable to put weight on his leg.

¶ 13 The Deputy Chief had seen the claimant fall and came into his office. The claimant discussed his condition with the Deputy Chief and the department doctor, who recommended that the claimant go to the ER. Medical records from Grayslake ER on August 31, 2015, reflect that: (1) the claimant reported feeling stiffness in his right knee after returning from a call that did not involve crawling, lifting or climbing; (2) when the claimant stepped down from the engine, he noted right knee stiffness followed by an audible pop with acute posterior lateral right knee pain and diffuse swelling; (3) the claimant was unable to bear weight on the right leg; and (4) the claimant denied instability or a direct contusion.

¶ 14 The claimant testified that, prior to August 31, 2015, he had injured his right knee in high school. He had arthroscopic knee surgery to remove "loose pieces" at that time. The claimant denied undergoing any physical therapy after the knee surgery, and he testified that he resumed physical activities within a week. He denied undergoing any further treatment for his right knee until August 31, 2015. He also denied having any difficulties with his right knee following his high school injury. He stated that he did not miss time from work due to issues with his right knee prior to August 31, 2015.

¶ 15 The claimant also had back surgery in 2014, which was performed by Dr. Jonathan Citow. The claimant was able to return to work two and a half months later. He was able to start working out on the treadmill again in the beginning of August 2015. During his treadmill workouts, he noticed he was a little out of shape and his body was stiff and sore after the workouts.

¶ 16 On September 2, 2015, two days after injuring his right knee at the fire station, the claimant saw Dr. Christ Pavlatos at the Illinois Bone and Joint Institute. Dr. Pavlatos's records of that visit reflect that the claimant reported that he was jumping off an engine and he did not hear any pop or feel any pain at that time. Thereafter, he had been experiencing stiffness with progressive pain that required the use of crutches for ambulation.

¶ 17 The claimant underwent an MRI of his right knee on September 14, 2015. The MRI report showed moderate tricompartmental osteoarthritis and a medial meniscus tear. Dr. Pavlatos interpreted the MRI as showing some moderate arthritic changes but clear evidence of a medial meniscus tear. Dr. Pavlatos also suspected an associated lateral meniscal tear. The claimant received a cortisone shot and physical therapy. A physical therapy progress note dated November 5, 2015, reflects that the claimant had reported that, on August 30, 2015, "he was responding to an auto accident when he was walking across the pavement and felt a snap in his R knee. He was able to complete the call but the pain never went away so his division chief took him to the emergency room in [G]rayslake." The physical therapy and the cortisone shot did not improve the claimant's symptoms. Dr. Pavlatos prescribed a right knee arthroscopy and surgery to repair the claimant's torn meniscus.

¶ 18 On January 27, 2016, Dr. Pavlatos performed surgery on the claimant's right knee. The postoperative diagnosis was a right knee medial and lateral meniscus tear with degenerative arthritis.

¶ 19 In a progress note dated February 3, 2016, Dr. Pavlatos recorded that the claimant was "doing great" and was "having no complaints." Dr. Pavlatos noted that "[w]e discussed in detail the results of surgery indicating he does have also significant arthritic changes. He understands at some point, he may require knee replacement in the future, currently obviously not indicated at this time." In a work noted prescription dated February 3, 2016, Dr. Pavlatos noted that "[a]s a result of August 31, 2015 work injury to his right knee, necessitating the January 27, 2016 surgical repair, Rodney Buckley remains under my care."

¶ 20 Following surgery, the claimant underwent additional physical therapy. When he completed physical therapy, the claimant could straighten his knee, but he had limited stability and chronic pain. When he returned to work full duty on February 18, 2016, he functioned at his job but was uncomfortable. The claimant discharged himself from physical therapy on February 26, 2016.

¶ 21 During the arbitration hearing, the claimant testified that, following physical therapy, he could not do the things he could do before the August 31, 2015, work injury. For example, he stated that walking, hiking, and biking were difficult, he could not do some projects around the house and yard work that he used to do, and going up and down stairs was difficult. However, the claimant admitted that he told his physical therapist that he was at work all week with no knee issues and that it "felt great." He also told his therapist that he was independent with all activities of daily living and that he was pain free. He reported his pain level as zero out of ten.

¶ 22 The claimant returned to Dr. Pavlatos on March 9, 2016, complaining of continued discomfort. Dr. Pavlatos administered another cortisone shot. The claimant saw Dr. Pavlatos again on April 21, 2016, when he reported experiencing recurrent pain in his knee. Sometime that month, the claimant had aggravated his knee due to activities he was doing at home. Dr. Pavlatos's impression on that date was "flare up of some degenerative changes in his knee."

¶ 23 The claimant followed up with Dr. Pavlatos on May 18, 2016. Dr. Pavlatos's progress note of that date indicates that the claimant was "still having some discomfort with increased activity, although he has been active in biking in order to keep his strength up." Dr. Pavlatos administered a Monovisc injection[1] and instructed the claimant to return in three months for evaluation.

¶ 24 The claimant returned to Dr. Pavlatos on August 31, 2016. Dr. Pavlatos noted persistent pain and swelling with reduced motion. At that time, Dr. Pavlatos opined that the claimant "did have some preexisting arthritis prior to his surgery, but his Workmen's Compensation related injury has resulted in aggravation of his arthritic process as well as tearing of the meniscus which has accelerated his arthritic process to the point where he has grade IV changes currently." Dr. Pavlatos further opined that "this is a Workmen's Compensation related injury and ultimately at some point this patient will require a total knee arthroplasty to relieve his symptoms."

¶ 25 In a progress note dated November 29, 2016, Dr. Pavlatos recorded that the claimant had degenerative arthritis of the right knee "mainly as a result of his work-related injury." The claimant was given another Monovisc injection in his right knee and instructed to return in four to six weeks.

¶ 26 The claimant testified that he aggravated his knee again at home in February of 2017 and saw Dr. Pavlatos on February 23, 2017. He exercised at home and iced his knee per doctor's orders. His activities of daily living were reduced.

¶ 27 The clamant followed up with Dr. Pavlatos on October 23, 2017. At that time, he was walking with a mildly antalgic gait. He had reduced motion and pain. Dr. Pavlatos opined that the claimant's symptoms warranted a knee replacement and that his "arthritis clearly has been

[1]A "Monovisc injection" injects a fluid into the knee which gels up, creating a shock absorber. The benefits of the injection typically last less than six months and are reduced with each successive injection.

accelerated as a result of his work related injury which led to the removal of significant portions of his meniscus which led to progressive arthritis that led to the symptoms [the claimant] is currently suffering from." Dr. Pavlatos noted that the claimant was planning on proceeding with the knee replacement once it was approved by workman's compensation.

¶ 28 Deputy Chief Dan Pierre testified for the employer during the arbitration hearing. Pierre had been with Grayslake Fire Patrol District for 23 years and was one of the claimant's supervisors. Pierre stated that, pursuant to the employer's injury reporting policy, when an accident occurs at work, an employee is required to report the accident to his immediate supervisor and to fill out an incident report. The injury should be reported as soon as possible. If the injury occurs at the station, the employee will report it right away.

¶ 29 Pierre testified that, on August 31, 2015, he was in his office sitting as his desk when the claimant was walking down the hallway by Pierre's office. When the claimant passed by the window in front of Pierre's office, Pierre saw the claimant go "down" while walking. Pierre called to the claimant and asked if he was all right, and then left his chair to investigate. Pierre followed the claimant into his office. He could see that the claimant was in pain. As a paramedic, Pierre took a history of the claimant' knee. The claimant reported that he could not bear any weight on his leg. The claimant also reported that there was stiffness in his knee prior to the buckling incident. He did not report any incident of jumping in and out of the engine that morning. Pierre further testified that, while he was treating the claimant in his office, the claimant never indicated that he had had any type of incident at the fire run that morning, and he never reported a work injury after the fire run. The claimant told Pierre that he had had soreness after running on the treadmill that morning.[2]

[2]Pierre further stated that, after the claimant's fall, Pierre looked at the ground where the

¶ 30 Pierre further testified that the Department keeps an accounting of all fire runs because they are required by the State to report to a National Fire Incident Reporting System. The fire run report for the morning motor vehicle accident call on August 31, 2015, did not list any injuries. There was a run report for rescue call to take the claimant to the hospital after the claimant's knee buckled at the station.

¶ 31 Pierre further confirmed that the claimant was sitting in the "officer's seat" in the fire engine while returning to the station from the vehicle accident. Pierre confirmed that the officer's seat had very little room for mobility and that someone sitting that seat is confined to one particular position.

¶ 32 Pierre testified that the claimant was working full duty as a firefighter/paramedic at the time of the arbitration hearing. Pierre was not aware of any issues with the claimant being unable to complete his job activities. The claimant had been involved in fire suppression activities since he returned to work.

¶ 33 Dr. Joshua Alpert served as the employer's independent medical examiner. Dr. Alpert testified via evidence deposition on August 11, 2017. He stated that he is a board-certified orthopedic surgeon who specializes in sports medicine. He diagnoses and treats knee injuries, sometimes surgically.

¶ 34 On October 9, 2015, Dr. Alpert examined the claimant at the employer's request. On that date, Dr. Albert recorded the following history: "[O]n August 31st, 2015, while working as a paramedic and firefighter there was a car accident. [The claimant] was running, and his right knee felt stiff. Several hours later he was running again during a scene and it snapped. He heard the snap. He felt the snap. He could not walk on it. It swelled up *** He also told me he had a

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claimant fell and there did not appear to be anything on the ground that caused him to fall.

preexisting right knee surgery 25 years ago to remove some cartilage. He states that on the day of his injury his right knee was feeling stiff when he was on a treadmill but otherwise was feeling normal. He had not seen a doctor in 20 years regarding his right knee."

¶ 35 Dr. Alpert testified that his physical examination revealed some pain over the medial femoral condyle. Dr. Alpert's assessment upon review of the imaging studies was medial compartment arthritis, patellofemoral changes (meaning that the underneath of the kneecap had some arthritis) with a medial meniscus tear and moderate join effusion. Dr. Alpert initially opined that the claimant had preexisting patellofemoral arthritis and recommended conservative treatment prior to surgery.

¶ 36 After reviewing additional medical records, Dr. Alpert subsequently opined that: (1) the claimant had preexisting right knee osteoarthritis and a degenerative medial meniscal tear; and (2) the claimant's condition was not causally related to a work-related accident. Dr. Alpert noted that the claimant had been complaining of pain and stiffness in the knee prior to the accident, and he did not have any kind of traumatic twisting injury to the knee. Dr. Alpert opined that the claimant's running at work temporarily exacerbated the preexisting arthritic changes in his knee.

¶ 37 Dr. Alpert did not believe the claimant required any further medical treatment with respect to his August 31, 2015, work injury. In Dr. Alpert's opinion, any surgery was solely for the claimant's pre-existing condition. Dr. Alpert further testified that the claimant was at maximum medical improvement (MMI) for his August 31, 2015, work injury.

¶ 38 Dr. Alpert testified that he examined the claimant again on February 17, 2017. Dr. Alpert stated that, at that time, the claimant reported that he had to jump into the truck at the vehicle accident scene and that, when he got out of the truck, he experienced right knee pain while walking into a meeting. The claimant reported that he tried to walk and his knee gave out. Upon physical

examination, Dr. Alpert noted medial and lateral joint line tenderness and soreness. The claimant had normal stability testing and he was neurologically intact with no muscle atrophy.

¶ 39 Dr. Alpert testified that he reviewed updated medical records including Dr. Pavlatos's records, operative reports and physical therapy notes. Dr. Alpert stated that there was no indication that the claimant experienced knee pain or had any difficulty doing his job prior to the August 31, 2015, work incident. He had never felt a "pop" in his knee before that incident. There was no evidence that the claimant had experienced a meniscal tear or received treatment for his right knee in the 10 years preceding the incident. Dr. Alpert opined that a meniscal tear can be caused by cutting, pivoting, or twisting, and that feeling or hearing a pop in the knee could indicate an acute meniscal tear. Moreover, Dr. Alpert opined that a person can have arthritis that is asymptomatic and becomes symptomatic after an event, and that the removal of part of the meniscus can make it more likely that a preexisting arthritic condition will be aggravated. He agreed that the August 31, 2015, work incident temporarily aggravated the claimant's preexisting arthritic condition.

¶ 40 However, Dr. Alpert opined that the claimant's current condition of ill-being was unrelated to his August 31, 2015, work injury. He noted that the claimant's x-ray, MRI, and arthroscopic pictures of his knee all showed moderate to severe arthritis of the knee. He opined that the claimant's reported mechanism of injury of running around the truck or getting into the truck could not cause knee arthritis. Dr. Alpert believed the first six weeks of treatment were reasonable, but that any treatments after that were not reasonable, necessary, or related to the claimant's August 31, 2015 injury. In Dr. Alpert's opinion, the claimant had not gotten better post-surgery due to the degenerative arthritis in his knee. A knee replacement would be reasonable, but it would be related to the claimant's preexisting arthritis. Dr. Alpert believed the claimant was at MMI and could continue working full duty.

¶ 41 On cross-examination, Dr. Alpert noted that the claimant had reported a few different ways that his injury occurred. The claimant reported in one record that he was running and felt a snap. He gave Dr. Alpert a similar account of his injury at one point, but he later told Dr. Alpert that the injury had occurred while he was just getting out of his truck.

¶ 42 During the arbitration hearing, the claimant testified that the stiffness he felt after the vehicle accident call on August 31, 2015, was different from the stiffness he felt while using the treadmill. Before the call, he had general soreness from the workout. After the call, his knee was so stiff that he could not straighten his leg out, which forced him to limp when he walked. He stated that his knee was getting stiffer throughout the day until it gave out and he fell to the ground.

¶ 43 The claimant further testified that he was familiar with the employer's procedures for reporting a work accident. He believed the procedure required employee to report an accident within 24 hours, not as soon as practical. The claimant testified that he recalled giving a recorded statement to Kathy Johnson after the work accident. That statement was introduced at arbitration. In the statement, the claimant reported: "this was actually several stages of injury. I was in a car accident where I *** had to jump up and down out of the fire engine, at one point I had to jog a little quickly to get out of traffic to jump in the engine very quickly. I did not feel any specific injury whatsoever. After the ride back to the fire station, I went to go out and my right knee felt stiff." The claimant testified that he did not have a reason to dispute the history included in Dr. Pavlatos's records.

¶ 44 The claimant testified that, at the time of the arbitration hearing, his knee continued to hurt and his gait was not normal. He had continual pain and discomfort and he wanted to proceed with the knee replacement.

¶ 45 The arbitrator found that the claimant had sustained an accident that arose out of and in the course of his employment on August 31, 2015, and that the claimant's right knee injury was

causally related to the work accident. The arbitrator awarded TTD benefits, medical benefits, and prospective medical treatment in the form of a total right knee replacement.

¶ 46 The employer appealed the arbitrator's decision to the Commission, which unanimously reversed the arbitrator's decision. The Commission found that the claimant had failed to prove by a preponderance of the evidence that he sustained an accident arising out of and in the course of his employment with the employer.

¶ 47 In support of this conclusion, the Commission noted that the claimant "provided no [fewer] than three different accounts of his injury to various caregivers, in addition to the version of events he provided at arbitration." Specifically, the claimant informed Lake Forest Hospital emergency department personnel on the date of the accident that he had experienced right knee stiffness followed by audible "pop" with acute knee pain and swelling "[w]hen he stepped down from the engine." Two days later, the claimant saw Dr. Pavlatos complaining of right knee pain. Dr. Pavlatos's treatment record for that visit reflects that the claimant "was jumping off an engine, he did not hear any pop or any pain at that time. This happened about 3-4 days ago. Since then, he has been having stiffness with progressive pain that requires the use of crutches for ambulation." Subsequent physical therapy records indicate that the claimant reported that he "was responding to an auto accident when he was walking across the pavement and felt a snap in his [right] knee."

¶ 48 The Commission noted that, at arbitration, the claimant testified that his knee felt "uncomfortable" and that he was having difficulty straightening it after he responded to a motor vehicle accident on the morning of the incident and returned to the station. He did not testify to any twisting or turning incident involving his right knee. He did not state that he experienced a "popping" sensation or that his knee gave out at that time. Nor did he claim that he felt pain while walking at the scene of the vehicle accident or when he got back into the fire engine and returned to the station house. Instead, he testified that he continued to experience stiffness and an inability

to straighten his knee while attending two subsequent meetings, each lasting an hour and a half to two hours. He stated that it was not until he got up following the last meeting and started walking down the hall that his leg gave out and he fell to the floor.

¶ 49 The Commission found that the evidence failed to show that the claimant sustained any kind of specific accident or injury while responding to the vehicle accident or while returning to the firehouse while seated in the cramped quarters of the fire engine. The Commission noted that the claimant had admitted this when he told Kathy Johnson, as part of his recorded statement on September 2, 2015, that he did not feel he had suffered any specific injury until he was walking down the hallway back at the fire station and his right knee snapped, after which he could no longer put any weight on it. The Commission observed that the claimant had also admitted at arbitration that he had no problem with his knee at the scene of the vehicle accident "other than general soreness from working out in the morning."[3]

¶ 50 The Commission further found that, "under a neutral risk analysis, [the claimant] failed to show the incident at the stationhouse wherein his right knee gave out while he was walking down the hallway arose out of his employment." The Commission reasoned that

> "there was absolutely no evidence to suggest that [the claimant's] employment had anything to do with or somehow contributed to his knee giving out. The claimant did not claim that he tripped or otherwise fell due to any defect or hazard on the premises, and in fact simply stated that his leg just gave out. There is also no evidence to show that from a quantitative standpoint the claimant was exposed to a

[3]The Commission noted that the claimant testified that the stiffness he experienced at that time was different from the stiffness he later felt after responding to the vehicle accident.

> risk of injury to a greater extent than a member of the general public because of his employment due to the frequency with which he performed this activity."

¶ 51 The Commission therefore found that the claimant had failed to prover a compensable accident, and denied benefits on that basis.

¶ 52 The Commission also found that that the claimant had failed to prove that his current condition of ill-being is causally related to the alleged work accident. The Commission noted that, while Dr. Alpert conceded that "running at work [may have] temporarily exacerbated [the claimant's] arthritic changes in the right knee," he opined that the claimant's condition "was consistent with preexisting right knee osteoarthritis and a degenerative medial meniscus tear *** [and] [t]hat it was not causally related" to the alleged work accident. The Commission also relied upon Dr. Pavlatos's April 21, 2016, medical record, which indicated that the claimant had aggravated his knee following surgery and after performing "a significant amount of activity recently at home." The Commission concluded that, "[w]hether such an event would be considered an intervening accident or a reflection of the significant degree of degenerative arthritis present in [the claimant's] knee, as posited by Dr. Pavlatos, the fact remains that [the claimant] failed to prove that his current condition of ill-being relative to his right knee is the result of any incident that may have occurred at work on August 31, 2015."

¶ 53 The claimant sought judicial review of the Commission's decision in the circuit court of Lake County. The circuit court affirmed the Commission's decision. The claimant subsequently filed a motion to reconsider based on the Illinois Supreme Court's decision in *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848 (2020). The circuit court denied the claimant's motion.

¶ 54 This appeal followed.

¶ 55 II. ANALYSIS

¶ 56 On appeal, the claimant argues that the Commission's finding that he failed to prove a work accident arising out of and in the course of his employment was against her manifest weight of the evidence. The claimant contends that all of the statements that he gave regarding the mechanism and circumstances of his injury were consistent. He further argues that the Commission erred by reviewing his claim under a "neutral risk" analysis rather than an "employment risk" analysis.

¶ 57 To obtain benefits under the Act, a claimant must establish by a preponderance of the evidence that he sustained an accidental injury "arising out of" and "in the course of" his employment. 820 ILCS 305/1(d) (West 2014); *McAllister*, 2020 IL 124848, ¶ 32; *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003) (collecting cases). The "arising out of" component is primarily concerned with causal connection. *McAllister*, 2020 IL 124848, ¶ 36. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Id.* ¶ 36; *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). A risk is "incidental to the employment" when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *McAllister*, 2020 IL 124848, ¶ 36; *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200359WC, ¶ 18.

¶ 58 To determine whether a claimant's injury arose out of his or her employment, we must first categorize the risk to which the employee was exposed. *McAllister*, 2020 IL 124848, ¶ 36; *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 478 (2011). Illinois courts recognize three categories of risks: (1) risks distinctly associated with the employment, (2)risks personal to the employee, and (3) neutral risks. *McAllister*, 2020 IL 124848, ¶ 38; *Baldwin*, 409 Ill. App. 3d at 478.

¶ 59 The first category of risks involves risks that are distinctly associated with employment. "Employment risks include the obvious kinds of industrial injuries and occupational diseases and

are universally compensated." *McAllister*, 2020 IL 124848, ¶ 40; *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d. 149, 162 (2000). Examples of employment-related risks include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling." *McAllister*, 2020 IL 124848, ¶ 40; *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106 (2006). Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the claimant's employment and are compensable under the Act. *McAllister*, 2020 IL 124848, ¶ 40; *Steak 'n Shake v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150500WC, ¶ 35.

¶ 60 The second category of risks involves risks personal to the employee. "Personal risks include nonoccupational diseases" and "injuries caused by personal infirmities such as a trick knee." *McAllister*, 2020 IL 124848, ¶ 40; *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d. at 162-63. Injuries resulting from personal risks generally do not arise out of employment. *McAllister*, 2020 IL 124848, ¶ 40. An exception to this rule exists when the workplace conditions significantly contribute to the injury or expose the employee to an added or increased risk of injury. *Id.*; *Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1229 (2000).

¶ 61 The third category of risks involves neutral risks that have no particular employment or personal characteristics. *McAllister*, 2020 IL 124848, ¶ 44. Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Id.*; *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 27. Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. *McAllister*, 2020 IL 124848, ¶ 44; *Metropolitan Water*

Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n, 407 Ill. App. 3d 1010, 1014 (2011).

¶ 62 The claimant argues that the Commission erred by applying a neutral risk analysis to his claim. We disagree. The Commission employed a neutral risk analysis only after determining that the claimant's injury had no particular employment characteristics. Specifically, the Commission found that the evidence failed to show that the claimant sustained any kind of specific accident or injury while responding to the vehicle accident or while returning to the firehouse while seated in the cramped quarters of the fire engine. That left only the claim that the claimant had injured his knee while walking at work. Such claims are subject to a neutral risk analysis. *First Cash Financial* Services, 367 Ill. App. 3d at 105 ("By itself, the act of walking across a floor at the employer's place of business does not establish a risk greater than that faced by the general public," and is therefore a neutral risk); *Illinois Consolidated Telephone Co. v. Industrial Comm'n.*, 314 Ill. App. 3d 347, 353 (2000) (Rakowski, J., specially concurring) (walking on level ground at work is a neutral risk because it is not a risk that is distinctly associated with most workers' employment, and workers are generally not specifically paid to simply walk on level ground). Accordingly, the Commission did not err in analyzing the claimant's claim under neutral risk principles.

¶ 63 The claimant's argument that the Commission should not have applied a neutral risk analysis is premised on his assertion that he "injured his knee during and returning from the [August 31, 2015] emergency call." However, as noted above, the Commission rejected that claim before applying a neutral risk analysis.

¶ 64 The claimant argues that the Commission's finding that his right knee injury was not the result of an employment risk distinctly associated with his employment was against the manifest weight of the evidence. He maintains that his injury occurred while he was responding to the vehicle accident. He also contends that, contrary to the Commission's finding, all of the statements

he made regarding the circumstances and mechanics of his injury were consistent, other than one statement erroneously recorded in a physical therapist's note, which he urges us to disregard. We do not find this argument to be persuasive.

¶ 65 Based on its review of the medical records, including the statements the claimant had made to various treaters, therapists, and his employer, and upon its review of the claimant's testimony at arbitration, the Commission found that the claimant's statements regarding the circumstances and mechanics of his injury were inconsistent, and therefore not credible. After carefully reviewing the record, we agree with the Commission's finding. "It is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Industrial Comm'n*, 397 Ill. App. 3d 665, 674 (2009); see also *McAllister*, 2020 IL 124848, ¶ 30; *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). The Commission's factual findings are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent—that is, only when no rational trier of fact could have agreed with the Commission. *McAllister*, 2020 IL 124848, ¶ 30; *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006).

¶ 66 Applying these deferential standards, we cannot say that the Commission's finding that the claimant's statements were inconsistent and its judgment of the credibility and weight of those statements was against the manifest weight of the evidence. Accordingly, we will not disturb the Commission 's factual finding that the claimant suffered no injury at the vehicle accident or while returning from the scene.

¶ 67 Justice Barberis argues in dissent that the Commission's finding of no work-related accident is against the manifest weight of the evidence. As an initial matter, Justice Barberis maintains that the Commission erred by employing a neutral risk analysis rather than a personal risk analysis. For the reasons noted above, in our view the Commission did not err by analyzing

the claimant's claim under neutral risk principles. In any event, even under a personal risk analysis, the Commission's finding that the claimant failed to prove a work-related accident would not be against the manifest weight of the evidence. To prevail under a personal risk analysis, the claimant would have to establish by a preponderance of the evidence that the conditions of the workplace significantly contributed to his injury or exposed him to an added or increased risk of injury. *McAllister*, 2020 IL 124848, ¶ 42; *Rodin*, 316 Ill. App. 3d at 1229. The claimant failed to make that showing.

¶ 68 Justice Barberis's argument to the contrary is premised upon the assumption that the claimant's testimony that he experienced new and increasing leg symptoms shortly after returning to the fire station, before his knee bucked while he was walking down the hallway in front of Pierre's office, was credible. However, as noted above, the claimant gave several conflicting accounts of the occurrence of his injury and the onset of symptoms, and it is undisputed that he did not report any injury or leg symptoms when he first returned to the fire station after the call. Moreover, in the recorded statement that he gave to Kathy Johnson, the claimant stated that he did not feel he had suffered any specific injury until he was walking down the hallway and his knee snapped. Given this evidence, the Commission reasonably found that the claimant had not proven a work-related injury, and the same finding would have been justified under a personal risk analysis. It cannot be said that "no rational trier of fact would have agreed with the Commission." *McAllister*, 2020 IL 124848, ¶ 30; *Durand*, 224 Ill.2d at 64.[4]

[4] Contrary to Justice Barberis' statement in his dissent, the inconsistent accounts given by the claimant are not limited to whether he had "experienced a popping in his knee." The claimant also gave several inconsistent accounts of the mechanics of the injury, the time and place where the injury occurred, and the nature and timing of his symptoms.

¶ 69 Moreover, the Commission's finding that that the injury the claimant sustained while walking across the floor at the firehouse did not arise out of his employment was also sufficiently supported by the evidence. As noted, the Commission properly analyzed this claim according to neutral risk principles. Employing that analysis, the Commission reasonably found that the claimant's employment did not increase the claimant's risk of falling while walking at work, either qualitatively or quantitatively.

¶ 70 The claimant argues that the buckling of his knee while he was walking at work was the end result of accidental injuries he sustained when he ran around and jumped in the fire engine at the scene of the vehicle accident. As noted, however, the Commission properly rejected the claim that the clamant had sustained any work-related injuries prior to the "knee buckling" incident based on its reasonable interpretation of the claimant's prior statements and other evidence, and its assessment of the claimant's credibility.

¶ 71 The question of whether a claimant's injury arose out of his or her employment is a question of fact to be resolved by the Commission, whose finding will not be disturbed unless it is against the manifest weight of the evidence. *McAllister*, 2020 IL 124848, ¶ 30; *Johnson Outboards v. Industrial Comm'n*, 77 Ill. 2d 67, 71 (1979). The Commission's finding in this case that the claimant failed to prove that he sustained an accident arising out of his employment was not against the manifest weight of the evidence. A conclusion opposite to that reached by the Commission is not clearly apparent.

¶ 72 Because we affirm the Commission's finding that the claimant failed to prove a compensable work-related accident, we do not need to address the claimant's remaining arguments.

¶ 73 III. CONCLUSION

¶ 74 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County, which affirmed the Commission's decision.

¶ 75 Affirmed.

¶ 76 JUSTICE BARBERIS, dissenting:

¶ 77 I respectfully dissent from the majority's decision to affirm the judgment of the circuit court, which affirmed the Commission's decision denying the claimant benefits under the Act. In support, the Commission found that the claimant failed to prove (1) that he sustained an accident arising out of his employment and (2) that his current condition of ill-being was casually related to his alleged work accident. In my view, both of the Commission's findings were based on misapprehensions of the applicable law and against the manifest weight of the evidence.

¶ 78 With regard to the Commission's finding that the claimant failed to prove an accident arising out of his employment, I agree with the claimant that the Commission incorrectly applied a neutral-risk analysis. It is my view that the Commission should have analyzed the claimant's alleged accident under the second category of risk—risks personal to the employee. As the majority correctly notes, "[p]ersonal risks include nonoccupational diseases" and "injuries caused by personal infirmities such as a trick knee." *McAllister*, 2020 IL 124848, ¶ 40; *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d. at 162-63. While injuries resulting from personal risks generally do not arise out of employment (*McAllister*, 2020 IL 124848, ¶ 40), there is an exception when conditions of the workplace significantly contribute to the injury or expose the employee to an added or increased risk. *Id.*; *Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1229 (2000). "It is axiomatic that employers take their employees as they find them." *Sisbro v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). "When workers' physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment." *Sisbro*, 207 Ill. 2d at 205.

¶ 79 Here, the Commission's neutral-risk analysis was based on its finding that the claimant sustained his knee injury while walking in a hallway at work—a finding that was, in my view, against the manifest weight of the evidence. Despite several inconsistencies regarding the claimant having experienced a popping sensation in his knee, I find the overwhelming evidence established the following key facts: the claimant, who had a prior knee injury, experienced stiffness in his knee after using the treadmill at work before his assigned shift; the claimant responded to a vehicle accident, which required him to use his knee to run, pivot and jump, during his assigned shift; the claimant was seated in a cramped space and was unable to extend or move his legs while returning to the fire station; the claimant experienced discomfort in his knee and was unable to straighten his leg when he returned to the fire station; the claimant was still unable to straighten his leg after attending a meeting; the claimant experienced ongoing discomfort in his knee and was still unable to straighten his leg after attending a training session; and the claimant's knee buckled, causing him to fall, as he was walking down the hallway following the training session. Based on my review of the evidence, I find it clear that the claimant aggravated his prior knee condition performing his job duties and that his knee condition slowly deteriorated throughout the day until he collapsed in the hallway. Thus, it is my view that the Commission's finding that "there was absolutely no evidence to suggest that [the claimant's] employment had anything to do with or somehow contributed to his knee giving out" was against the manifest weight of the evidence.

¶ 80 The Commission also erred in finding that the claimant failed to prove his current condition of ill-being was causally related to his work accident. Even if an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Sisbro*, 207 Ill. 2d at 205. An "[a]ccidental injury need not be the sole causative factor, nor even the

primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Id*.

¶ 81 Here, the Commission relied heavily on the medical opinions of Dr. Alpert in finding that the claimant failed to prove causation. In my view, however, Dr. Alpert's medical opinions clearly supported a finding of causation from August 31, 2015, to December 28, 2015. Specifically, Dr. Alpert opined in his October 9, 2015, report that the claimant's right knee injury at work on August 31, 2015, "exacerbated" his preexisting knee arthritis and preexisting medial meniscus tear but that claimant would reach MMI in four to six weeks after undergoing conservative treatment. In the December 28, 2015, addendum to his report, Dr. Alpert clarified that the claimant did not sustain a traumatic twisting injury to his knee but, instead, temporarily exacerbated his knee arthritis while running at work on August 31, 2015. Dr. Alpert opined that the claimant had reached MMI for the August 31, 2015, injury and that his symptoms as of December 28, 2015, were related to his preexisting arthritis and medial meniscus tear, not the August 31, 2015, injury. Accordingly, Dr. Alpert concluded that no further treatment related to the August 31, 2015, knee injury was necessary, including the surgery recommended by Dr. Pavlatos. Thus, Dr. Alpert's medical opinions clearly supported a finding that the claimant's knee condition was causally related to his employment from August 31, 2015, to December 28, 2015.

¶ 82 The Commission also relied on Dr. Pavlatos's subsequent medical record from April 21, 2016, which included a notation that the claimant aggravated his knee after performing a significant amount of activity at home. However, this notation does not detract from Dr. Alpert's medical opinion that claimant's knee condition was causally related to his employment from August 31, 2015, to December 28, 2015. Accordingly, the overwhelming evidence, including the opinions of Dr. Alpert, demonstrated that the claimant's knee condition was aggravated, at least

temporarily, by his alleged work injury. Thus, the Commission should have found that the evidence was sufficient to show a causal connection from August 31, 2015, to December 28, 2015.