2021 IL App (5th) 210047WC-U

No. 5-21-0047WC

Workers' Compensation
Commission Division
Order Filed: November 29, 2021

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION DIVISION

MT. VERNON SCHOOL DISTRICT #80,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Jefferson County.
	)	
v.	)	Nos. 20-MR-20
	)	20-MR-37
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	Honorable
	)	Michael J. Valentine,
(Elizabeth McAlexander, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: We affirm the circuit court's order confirming the decision of the Illinois Workers' Compensation Commission where (1) the Commission's finding that claimant's injury arose out of her employment was not against the manifest weight of the evidence; (2) the Commission did not abuse its discretion by declining to reduce or suspend claimant's award based on respondent's allegation of injurious practice; (3) and the Commission's award of permanent total disability benefits was not against the manifest weight of the evidence.

¶ 2 Respondent, Mt. Vernon School District #80, appeals an order of the circuit court of

Jefferson County which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) awarding claimant, Elizabeth McAlexander, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2012)) for a right ankle injury she sustained while working for respondent on March 13, 2012. We affirm.

¶ 3 I. Background

¶ 4 On September 13, 2012, claimant filed an application for adjustment of claim pursuant to the Act (12 WC 031793), seeking benefits for injuries she sustained to her right ankle when she tripped and fell while walking down a hallway at work on March 13, 2012. Claimant specifically alleged that she fell when she "tripped over loose carpet" and a "carpet strip" in the hallway. On June 17, 2014, claimant filed a second application for adjustment of claim pursuant to the Act (14 WC 021613), seeking benefits for an additional injury she sustained to her right ankle while working for respondent on November 12, 2012. Claimant alleged that she sustained the second injury to her right ankle when a student fell into her in a hallway. The cases were consolidated for a hearing before the arbitrator without objection by either party.

¶ 5 The following recitation is taken from the evidence adduced at the arbitration hearing held on April 6, 2018. We recite only those facts relevant to our disposition of this appeal.

¶ 6 A. Claimant's Testimony

¶ 7 Claimant testified that she was 63 years old and resided in Mt. Vernon, Illinois, at the time of the hearing. After graduating from high school in 1972 or 1973, she began attending Rend Lake College where she attained an associate's degree in arts and completed several nursing classes before dropping out of the program. Claimant's prior work history included "several waitress jobs"

at restaurants, "two different nurse's aide jobs at two different hospitals," and a job at a day care center. She then worked for respondent as an individual aide at Casey Middle School for 23 years.

¶ 8 As an individual aide, claimant worked "one-on-one with a certain student in special education." She assisted her assigned student with schoolwork and staying on task. She also helped her student get to classes throughout the school, which required her to walk up and down multiple levels of stairs. The physical requirements of her job varied depending on her assigned student's disability. If her student was severely physically disabled, her job duties included changing diapers, feeding meals, and lifting the student in and out of a chair. She occasionally used a computer to assist students with school assignments. She owned a personal computer but only used it for social media and "looking things up on the internet." Claimant denied having any training with computer programs, such as Microsoft or Excel, and did not consider herself a good typist.

¶ 9 Claimant first injured her right ankle at work on March 13, 2012, when she fell while walking down a hallway to her assigned student's classroom. She recalled that the hallway floor transitioned from carpet into linoleum tile at a slight downward slope and that there was a strip, or stripping, between the carpet and tile. Claimant explained that she was "walking kind of fast" so she "wouldn't miss anything" and "got tripped up on the stripping," causing her to fall forward onto her hands and knees with her ankles and feet turned underneath her. She felt immediate pain in her hands, wrists, knees, and ankles. She reported the injury to the school nurse, Lisa Tucker, who provided claimant with an incident report. Claimant also showed Tucker the area of loose stripping where she fell. Claimant was later permitted to review a video recording of her fall captured by a camera at the end of the hallway but was never provided with a copy of the video.

¶ 10 Claimant also sought medical treatment at Good Samaritan Hospital emergency room on March 13, 2012. She was provided crutches, prescribed pain medication, and taken off work for three days. She experienced ongoing pain and swelling in her right ankle. When she returned to work three days later, she had difficulty walking due to pain. She sought further treatment with an orthopedist, Dr. Angela Freehill, who recommended physical therapy and prescribed claimant pain medication. Claimant was unable to tolerate physical therapy due to pain but continued treatment with Dr. Freehill. She continued working throughout the remainder of the 2011-12 school year.

¶ 11 During summer break, claimant experienced ongoing issues with her right ankle. Claimant identified a photograph taken on August 2, 2012, which depicted swelling in her right ankle (Petitioner's Exhibit 15). Claimant examined and photographed the area of her fall with Terri Clark on August 9, 2012. She identified a photograph taken on August 9, 2012, which depicted loose stripping in the hallway (Petitioner's Exhibit 16). Claimant acknowledged that the photograph was taken several months after her March 13, 2012, injury. She also agreed that the area of loose stripping was fixed when she returned to work after summer break.

¶ 12 During the fall semester of the 2012-13 school year, claimant worked with the same student as the previous year. Due to ongoing pain and swelling in her right ankle, she kept her ankle propped up on a chair at work and continued treating with Dr. Freehill. Claimant testified that she sustained a second injury to her right ankle at work on November 12, 2012, when she was standing with her assigned student in a hallway and another student fell into her right ankle. She notified respondent of the second injury and sought treatment at the Good Samaritan emergency room. She followed up with Dr. Freehill, who first referred her to Dr. Craig Aubuchon and later referred her to Dr. Sandra Klein at Washington University Orthopedics. Claimant recalled that she was also

seen by Dr. Gary Schmidt on two occasions in the same time period. She also recalled that Dr. Klein ultimately recommended an ankle fusion surgery.

¶ 13 Claimant continued working with the same assigned student until the student moved away over Christmas break. Respondent then assigned claimant a new student, who was in a wheelchair and required frequent lifting. Claimant was only able to work with the new student for three days because she was physically unable to lift the student. Claimant believed she could have worked with another student, who had less physical requirements, but another individual aide had already been assigned to that student. She spoke with Superintendent Michael Green about switching students with the other individual aide but was advised "they couldn't do that because of the union rules or laws." Because no other children were available at that time, claimant had no work. Claimant later admitted on cross-examination that Green advised she could be assigned another student if one became available.

¶ 14 Claimant testified that she then went on "FMLA" without pay. She denied receiving any form of disability benefits from respondent. When her leave ran out, she called and discussed her retirement with Superintendent Green. She had not planned on retiring for another two years but felt she had to retire because she needed income and there were still no other available children. According to claimant, she advised Superintendent Green of the reasons for her retirement during their discussion. She also sent Superintendent Green an email advising of her retirement, although she admitted on cross-examination that the email did not mention a specific reason for her retirement. Claimant denied having any other employment following her retirement. She also denied receiving any job offers, including job offers from respondent. She did not apply for any other jobs because she believed there were no available jobs that she could perform.

¶ 15 Claimant had the recommended ankle fusion surgery following her retirement on April 5, 2013. She continued to experience some pain but had less pain and swelling following surgery. She disagreed with the assertion that she was noncompliant with Dr. Klein's postsurgery instructions. Claimant denied walking on her right ankle after surgery, claiming that she hopped around on her left foot using a walker and only lightly touched her right foot on the floor when she became tired. On cross-examination, claimant agreed that Dr. Klein had advised her of the importance of not bearing weight on her right ankle after surgery. Claimant also acknowledged Dr. Klein's postoperative notes indicated that claimant had put her foot down on the ground several times. While claimant admitted that she may have told Dr. Klein she had placed her foot on the ground, she did not intend to convey that the action required weight bearing. Claimant testified that she had complied with Dr. Klein's instructions, despite any notes to the contrary.

¶ 16 Claimant testified that she went to the emergency room in June 2013 after she twisted her ankle getting out of bed. On cross-examination, claimant clarified that she was allowed to walk on her right ankle with a boot at that time. In response to an inquiry made by the arbitrator, claimant further clarified that she was wearing her boot when she twisted her ankle. Claimant testified that Dr. Klein ultimately recommended a second surgery because her "ankle was not healing properly." Claimant did not have the second surgery because she did not want to go through "all that again." At her attorney's request, claimant was next evaluated by Dr. John Krause, a board-certified orthopedic surgeon, and Stephen Dolan, a certified rehabilitation counselor.

¶ 17 At the time of the hearing, claimant was experiencing ongoing issues with her right ankle, including daily pain, redness, and swelling that increased with too much activity. She alleviated these symptoms by keeping her foot propped up. She had difficulty moving her ankle and

experienced numbness in her feet, so she used a cane to walk and felt uncomfortable driving. She also had difficulty using stairs and lifting objects without losing her balance. She was unable to do any shopping but could perform limited household tasks. She enjoyed her grandchildren's activities but was only able to attend those activities with her husband's assistance.

¶ 18 Claimant also testified regarding her medical history prior to the March 13, 2012, work accident. She previously sought treatment with Dr. David Gunzel, a podiatrist, for various conditions, including numbness in her feet and arthritis in her ankles. While claimant agreed she sought prior treatment for ankle pain, she explained that she experienced different symptoms after her fall on March 13, 2012. Specifically, she recalled her ankle becoming more painful and swollen. On cross-examination, claimant admitted that the chief complaint she noted on her intake form at Dr. Gunzel's office was right ankle pain. Claimant also admitted that she received foot injections on two occasions at Dr. Gunzel's office and had been placed on restrictions of limited standing and walking due to the swelling, pain, and osteoarthritis. Claimant further admitted that she had experienced neuropathy in both feet and swelling in both ankles prior to March 13, 2012.

¶ 19 On cross-examination, claimant did not recall Dr. Krause recommending permanent restrictions. She was also unable to recall whether she was under any permanent restrictions when she was evaluated by Dolan on September 14, 2014. On redirect, claimant agreed there were restrictions in Dr. Krause's report.

¶ 20 B.Terri Clark's Testimony

¶ 21 Terri Clark testified to the following on claimant's behalf. She was the community liaison for respondent and president of claimant's union in 2012. Clark handled issues that arose between the staff and administration. Clark learned "through the grapevine" that claimant had fallen at

work. When claimant called Clark and advised that "she had tripped over the carpet," Clark suggested taking photographs of the area where claimant fell. In August 2012, Clark and claimant examined and photographed the area of claimant's fall. Clark observed that the carpet was loose where it joined with the tile. Clark also observed that "the tack strip wasn't adhered to the carpet" and, to demonstrate her observation, she easily slid a ruler under the stripping. Clark measured 18 inches of loose stripping. Claimant advised Clark the area was in the same condition when she fell on March 13, 2012.

¶ 22 C. Mary McGreer's Testimony

¶ 23 Mary McGreer testified to the following on behalf of respondent. McGreer was the principal at Casey Middle School when claimant sustained injuries to her right ankle in March and November of 2012. As principal, McGreer was charged with all safety and security issues on the school campus. Prior to becoming principal at Casey Middle School, McGreer was employed as the special education director. She first met claimant while working as the special education director.

¶ 24 McGreer testified that claimant's March 13, 2012, injury occurred in a hallway regularly used by all students, faculty, and staff at the school. McGreer learned about claimant's injury from Nurse Tucker, who advised that claimant had fallen and was going to the hospital. McGreer received an accident report from claimant, along with a separate sheet of handwritten notes, on or about March 21, 2012. McGreer then examined the area where claimant fell but did not observe any loose carpet or stripping. McGreer described the area as a hallway with an incline that transitioned from carpet to tile, which was marked by stripping. Although she did not observe the area on the date of claimant's fall, she was unaware of any prior defect in the stripping. She agreed

the pictures taken in August 2012 appeared to depict damaged stripping, but she believed it was possible the stripping had been damaged during routine summer maintenance and construction in the hallway. McGreer also identified a photograph taken on May 14, 2012, which depicted the area of claimant's fall (Respondent's Exhibit 4). McGreer observed "a smudge" but did not "see any carpet coming up" in the photograph. On cross-examination McGreer agreed that she did not know who took the photograph.

¶ 25 McGreer testified that the school had a video system in place, and that she was the only person who had access to the videos. McGreer did not utilize the videos very often because they were of poor, granular quality. She explained that the video of claimant's fall would have been saved for a couple days. McGreer claimed a substitute secretary may have showed claimant the video, but such action would have been against McGreer's instructions. Claimant did not request any accommodations for permanent restrictions after her retirement. McGreer agreed on cross-examination that claimant had no issues completing her job duties prior to the work accidents.

¶ 26 D. Superintendent Green's Testimony

¶ 27 Superintendent Green testified to the following on behalf of respondent. He was employed by respondent as the superintendent of the school district in 2012, but he retired from the position on June 30, 2015. Prior to becoming superintendent, he was the principal of Casey Middle School from 2006 through 2011. He became acquainted with claimant in his time as principal and described her as a very good, dependable employee. He further described claimant as a great individual aide, who had great relationships with the children she worked with.

¶ 28 Green was familiar with claimant's March 13, 2012, work accident, and he conducted his own investigation a day or two after claimant fell. During his investigation, he met with the head

of maintenance and examined the area of claimant's fall. Green recalled squatting down and rubbing his fingers over the strip between the carpet and the tile. However, Green observed the area to be normal with no damage or defect to the stripping. The head of maintenance confirmed that no recent work had been done to the area. Green identified the photograph depicting loose stripping (Petitioner's Exhibit 16) but claimed the stripping was not in that condition when he observed the area shortly after claimant's March 13, 2012, accident. According to Green, there was a lot of traffic in the hallway on a daily basis, as it was open to the general student, faculty, and staff population. Green also claimed there was an unusual amount of traffic in the hallway over summer break due to construction and routine maintenance.

¶ 29 Green testified that claimant called him to discuss her retirement in March 2013. He recalled discussing claimant's entitlement to certain retirement benefits but did not recall her providing a reason for her retirement. Green identified a copy of the email correspondence he received from claimant on April 10, 2013, advising that she was retiring without further explanation (Respondent's Exhibit 7). Green had no further conversations with claimant regarding her returning to work nor did she contact him about accommodating any work restrictions. He agreed that, prior to claimant's retirement and surgery, there had been conversations regarding claimant's restrictions, and he believed that those restrictions had been accommodated. On cross-examination, Green admitted that the stripping was "a little higher" than the carpet and tile. He also admitted that it would have been difficult to accommodate restrictions for an employee who had difficulty walking and traversing stairs.

¶ 30 E. Medical Evidence

¶ 31 The medical records documenting claimant's treatment prior to her work injuries reveal

the following details. Claimant presented to Southern Illinois Foot and Ankle for an initial consultation with Dr. Gunzel on February 4, 2011. Her chief complaint was "neuropathy, swelling, pain in feet, and right ankle." Dr. Gunzel noted that claimant had been diagnosed with osteoarthritis 10 years earlier but had experienced a gradual worsening of the condition over time. Dr. Gunzel's physical examination revealed swelling and pain in claimant's right ankle and foot. Dr. Gunzel diagnosed claimant with pain and osteoarthritis localized in the right ankle and foot. He prescribed claimant medication and directed her to follow up in one month.

¶ 32 At a follow-up visit on May 20, 2011, claimant reported no improvement in her condition. Dr. Gunzel diagnosed claimant with degenerative joint disease and administered an injection of corticosteroids. He placed claimant on restrictions of no walking greater than one block and no standing more than 20 minutes at a time. At claimant's next follow-up visit with Dr. Gunzel on December 9, 2011, she reported her condition had worsened and Dr. Gunzel administered a second injection at her request. Dr. Gunzel advised claimant to wear certain shoes to minimize her discomfort. Dr. Gunzel then sent claimant's medical records to Dr. Paul Juergens, a pain management specialist.

¶ 33 Claimant presented for an initial consultation with Dr. Juergens on February 29, 2012, complaining of pain in her neck, shoulders, hands, feet, and lower back. Dr. Juergens diagnosed claimant with unspecified hereditary, or idiopathic, peripheral neuropathy. He prescribed her medication and recommended that she follow up with a neurologist.

¶ 34 Claimant's medical records indicate that she next sought treatment at Good Samaritan Hospital emergency room after injuring her knees, right ankle, and foot at work on March 13, 2012. A physical examination revealed tenderness and swelling in her right foot and ankle. X-rays

of her right ankle revealed soft tissue swelling, osteochondral defect, and an impacted fracture of the talus of intermediate age and etiology. She was prescribed medication and directed to remain off work for three days.

¶ 35 Claimant followed up with Dr. Freehill at the Orthopedic Center of Southern Illinois on March 27, 2012. Claimant reported ongoing pain and swelling in her right ankle resulting from a work injury she sustained on March 13, 2012, when she "tripped over some stripping that was loose and elevated up" while walking in a hallway. Dr. Freehill observed significant swelling over claimant's right ankle ligaments. Dr. Freehill's review of the x-rays revealed an old anterior tibial fracture that had healed in a slightly displaced manner, as well as anterior lateral talar changes consistent with osteochondral injury or possibly osteonecrosis. Dr. Freehill noted no evidence of any acute fracture and diagnosed claimant with an acute ankle sprain. Dr. Freehill recommended conservative care, including the use of a boot or brace, athletic shoe, and physical therapy. Dr. Freehill placed claimant on light duty with restrictions of no prolonged standing or walking.

¶ 36 Claimant followed up with Dr. Freehill on May 1, 2012, complaining of persistent pain and swelling in her right ankle. Dr. Freehill noted concerns regarding the swelling and possible osteonecrosis of the talus. Additional imaging of claimant's right ankle was discussed but delayed due to claimant's concerns that her cervical fusion hardware would cause interference. Dr. Freehill directed claimant to begin physical therapy and continue with the light-duty restrictions.

¶ 37 Claimant began physical therapy at Physical Rehabilitation Center on May 21, 2012. Her treatment plan included physical therapy two times per week for three weeks. She complained of ongoing right ankle pain with no improvement. She was reevaluated after five visits on June 11, 2012, at which time the physical therapist recommended no additional therapy until claimant

followed up with her doctor.

¶ 38 At a follow-up visit with Dr. Freehill on June 12, 2012, claimant reported increased pain with physical therapy. After a physical examination revealed significant swelling and tenderness in claimant's right ankle, Dr. Freehill recommended that claimant discontinue physical therapy and follow up with an ankle specialist.

¶ 39 At Dr. Freehill's recommendation, MRI scans of claimant's right ankle were taken on September 17, 2012. The MRI revealed a mild collapse of the central to lateral talar articular cortex with prominent diffuse subcortical degenerative changes, a small to moderate ununited fracture, an ununited comminuted fracture with disruption of the anterior talofibular ligament, inflammation, effusion, and moderate degenerative changes in the anterior and posterior tibial plafond. Dr. Freehill documented the MRI findings during claimant's follow-up visit on September 28, 2012. Dr. Freehill, again, referred claimant to a foot and ankle specialist.

¶ 40 Claimant presented to Dr. Gary Schmidt, a board-certified orthopedic surgeon, for an independent medical evaluation (IME) at respondent's request on October 22, 2012. Dr. Schmidt prepared a report setting forth the following findings and opinions regarding claimant's condition. Claimant provided a consistent history of her March 13, 2012, work accident. She reported pain and swelling in her right ankle, which made it difficult for her to walk, stand, and drive for long time periods. Claimant indicated that she spent 85% of her day sitting or lying down. Based on his physical examination and review of the x-rays, he diagnosed claimant with osteochondral lesion, osteonecrosis of the talus, and osteoarthritis of the ankle. Dr. Schmidt believed the osteochondral lesion and osteoarthritis had been present for an extended length of time but had been accentuated by claimant's March 13, 2012, fall. Dr. Schmidt opined that claimant's current condition was

related to her March 13, 2012, injury and that she had not reached maximum medical improvement (MMI). He recommended a CT (computerized tomography) scan of claimant's right ankle and noted that she would likely need an ankle replacement. Lastly, Dr. Schmidt opined that claimant could work in a light-duty capacity (*i.e.*, seated work with standing and walking limited to 15 minutes per hour).

¶ 41 Claimant next presented to Good Samaritan Hospital emergency room after sustaining the second injury to her right ankle on November 12, 2012. An x-ray taken of her right ankle at that time revealed a new acute avulsion fracture of the distal fibula.

¶ 42 Upon referral from Dr. Freehill, claimant presented to Dr. Craig Aubuchon for an initial consultation on November 21, 2012. Claimant reported pain and swelling in her right ankle. Dr. Aubuchon's physical examination revealed significant swelling in claimant's right ankle, along with significant grinding with flexion and extension of her ankle. After reviewing the imaging of claimant's right ankle, Dr. Aubuchon diagnosed claimant with end-stage arthritis of the right ankle. He advised that her options included a replacement surgery or salvage procedure if she did not want a brace or an ankle fusion. Dr. Aubuchon recommended an ankle fusion and limited claimant to seated work only through December 1, 2012.

¶ 43 At a follow-up visit with Dr. Freehill on January 18, 2013, claimant reported ongoing pain with difficulty standing and walking for long periods of time. Dr. Freehill diagnosed claimant with ankle arthritis and talar collapse. Dr. Freehill recommended an ankle fusion and placed claimant on light-duty restrictions of no twisting, squatting, kneeling, standing, or lengthy periods of walking. Dr. Freehill also referred claimant to Dr. Klein.

¶ 44 Claimant presented for a second IME with Dr. Schmidt at respondent's request on February

4, 2013. Dr. Schmidt reviewed the x-ray from November 12, 2012, but he did not observe an avulsion fracture. He noted that his opinions remained unchanged from the initial evaluation and that the November 12, 2012, injury caused a contusion, but that claimant was at MMI for that injury. Dr. Schmidt opined, to a reasonable degree of medical certainty, that claimant was still in need of an ankle replacement due to the March 13, 2012, injury.

¶ 45 Claimant presented to Washington University Orthopedics for an initial consultation with Dr. Klein on February 12, 2013. Dr. Klein's physical examination revealed severe swelling, pain, and tenderness in claimant's right ankle. Dr. Klein also noted that claimant's gait was severely antalgic, and that claimant had difficulty bearing weight on her right foot. After reviewing the x-rays, Dr. Klein diagnosed claimant with severe right ankle arthritis, right ankle valgus deformity, and idiopathic peripheral neuropathy. Dr. Klein recommended a CT scan and advised that, if claimant had surgery, claimant would be required to wear a boot and cast following the operation. Dr. Klein specifically advised that she was unwilling to recommend surgery unless claimant agreed to comply with postoperative treatment and instructions.

¶ 46 Claimant had the CT scan at Barnes-Jewish Hospital on February 28, 2013. The CT scan revealed a large osteochondral lesion of the lateral right talar dome with articular collapse involving two-thirds of the talar articular surface, severe secondary right tibiotalar and tibiofibular joint osteoarthritis, and mild right posterior subtalar joint osteoarthritis. She followed up with Dr. Klein the same day to discuss treatment options. Dr. Klein noted concerns over claimant's surgical recovery because she had difficulty wearing a boot in the past. Dr. Klein advised claimant that she would be in a non-weight bearing cast for six weeks after surgery, followed by four weeks in a weight bearing cast. Claimant was advised that, thereafter, she would be placed in a boot allowing

for weight bearing. At a preoperative visit on March 28, 2013, Dr. Klein advised claimant to practice non-weight bearing exercises at home prior to surgery.

¶ 47 Claimant underwent the recommended surgery on April 5, 2013, and she received a postoperative diagnosis of right ankle arthritis, right ankle valgus deformity, and obesity. Dr. Klein advised claimant of the importance of bearing no weight on her ankle following the operation. At the first postoperative follow-up visit on April 16, 2013, Dr. Klein noted that claimant reported "doing her best" to keep weight off of her right foot but that it sounded as though claimant had put "it down on the ground several times." Dr. Klein noted that claimant denied putting her full weight on her right foot but stressed the importance of claimant placing no weight on her right foot. Claimant was placed in a cast and, again, directed to place no weight on her right foot.

¶ 48 At a follow-up visit on May 16, 2013, Dr. Klein noted that it sounded as though claimant had been occasionally walking on her right foot "somewhat." Dr. Klein, again, advised claimant of the importance of complying with postoperative instructions. Claimant was placed in a short leg, weight bearing cast and advised that she could place weight on the extremity of the cast. Dr. Klein noted that claimant would remain in the cast for four weeks, although she was concerned that claimant would not comply with her instructions. Dr. Klein advised claimant that noncompliance could result in a nonunion, which could lead to chronic pain.

¶ 49 At a follow-up visit on June 13, 2013, Dr. Klein noted that x-rays revealed a progressive, good fusion of the ankle joint line but that claimant reported ongoing pain. Dr. Klein advised claimant to ease into the boot and bear weight as tolerated in the boot. Dr. Klein advised claimant not to walk without the boot and to use crutches or a walker to avoid any discomfort.

¶ 50 Claimant next presented to the emergency room at Good Samaritan Hospital on June 20,

2013, reporting that she had twisted her ankle and that her cast had been removed a week earlier. X-rays of claimant's right ankle revealed a possible oblique fracture with mild displacement of the distal fibula. Claimant was prescribed pain medication but called Dr. Klein's office on June 24, 2013, requesting additional pain medication. Claimant advised Dr. Klein's office that she had gone to the emergency room and been diagnosed with a fibular fracture a week earlier. Dr. Klein denied claimant's request for pain medication and directed claimant to appear for the follow-up visit scheduled for the following day. At the follow-up visit, additional x-rays were taken of claimant's ankle, but no new fracture was noted by Dr. Klein. Claimant was denied pain medication and placed in a short leg non-weight bearing cast.

¶ 51 At a follow-up visit with Dr. Klein on July 11, 2013, claimant reported feeling better with some pain. She was placed in a short leg weight bearing cast and directed to undergo a CT scan prior to her next appointment due to concerns she was developing a nonunion. Claimant underwent the CT scan on August 1, 2013, and she was placed in a boot. Dr. Klein advised that claimant could bear weight as tolerated and progress out of the boot, depending on the results of the CT scan. The CT scan ultimately revealed a nonunion of claimant's right ankle arthrodesis, nonunion of the distal fibular osteotomy, and mild subtalar osteoarthritis. Dr. Klein called claimant with the results and ordered a bone stimulator to assist with healing.

¶ 52 Claimant next presented to the emergency room at Good Samaritan Hospital on August 23, 2013, complaining of increased pain after falling in her kitchen two weeks earlier. X-rays of claimant's right ankle revealed no change, and she was prescribed pain medication.

¶ 53 Additional x-rays were taken of claimant's right ankle at a follow-up appointment with Dr. Klein on September 26, 2013. The x-rays continued to show a nonunion and claimant was directed

to transition into a solid molded AFO at the ankle and to continue with the bone stimulator. When x-rays taken at a follow-up visit on January 16, 2014, remained unchanged, Dr. Klein advised that claimant had a nonunion and would have to decide if she wanted to continue to monitor her ankle or proceed with some sort of revision. After the nonunion was confirmed by a CT scan on April 2, 2014, Dr. Klein discussed surgical options with claimant over the phone. Claimant wanted to think over her options and advised that she would call Dr. Klein if she decided to have corrective surgery.

¶ 54 Claimant was next examined by Dr. Krause, a board-certified orthopedic surgeon, at her attorney's request on June 30, 2014. Dr. Krause prepared a report setting forth the following findings and opinions regarding claimant's condition. Claimant provided a consistent history of her injuries and reported that her pain was not severe enough to undergo another surgery. Dr. Krause, having no evidence to the contrary, did not dispute the causation opinions of Drs. Schmidt and Freehill that claimant's need for surgery was related to the March 13, 2012, accident. Although he diagnosed claimant with a nonunion of the ankle, Dr. Krause did not recommend another surgical procedure at that time. He, instead, opined that claimant was at MMI for the March 13, 2012, injury. Dr. Krause further opined that claimant was not "completely disabled from this injury" and "should be able to work at a sitting type capacity with intermittent standing." He also opined that claimant "sustained permanency as a result of" the March 13, 2012, injury. Dr. Krause later provided an addendum to his report after reviewing claimant's medical records dating back to 2010, in which he indicated that his opinions remained the same.

¶ 55 Dr. Schmidt also provided an addendum report on July 24, 2017, after reviewing claimant's earlier medical records and the medical records from subsequent treatment following his previous evaluations. Dr. Schmidt noted that claimant had difficulty with her right ankle prior to the March

13, 2012, injury and that she possibly suffered from preexisting ankle arthritis. However, Dr. Schmidt, consistent with his previous opinions, noted that claimant's March 13, 2012, injury accentuated the arthritic condition and necessitated further treatment. In other words, Dr. Schmidt opined that claimant's fall on March 13, 2012, exacerbated her preexisting arthritic condition. Based on his review of Dr. Klein's medical records, however, Dr. Schmidt opined that claimant's noncompliance with weight bearing instructions had a direct effect on her development of a nonunion in the right ankle.

¶ 56 F. Vocational Evaluation

¶ 57 Claimant presented for a vocational evaluation with Stephen Dolan, a certified rehabilitation counselor, on September 24, 2014. Dolan prepared a report setting forth his findings and opinions. Dolan interviewed and tested claimant for three hours using a peer-reviewed vocational assessment and testing format to determine whether claimant's two ankle injuries, and any other functional limitations, eroded her access to the labor market. Dolan noted that claimant used a cane and had to elevate her right leg on a chair during the evaluation. Her monthly income included $671 from the Illinois Municipal Retirement Fund and $900 from Social Security Disability. She had previously worked as a waitress, nurse's aide, and teacher's aide but presently needed work in a sedentary capacity with limited standing. Dolan noted, however, that Dr. Krause was the only doctor who had placed work restrictions on claimant.

¶ 58 Claimant told Dolan that she experienced increased pain after walking or standing for longer than 5 or 10 minutes. She also experienced increased pain with stooping and was unable to crouch or kneel. She avoided stairs and depended on handrails if she had to use stairs. She could lift a gallon of milk but would have difficulty carrying it. She also had to regularly elevate her right

foot, or it would turn red. Dolan noted that claimant's testing results revealed she had good word and sentence recognition and could spell and read above the high school level. She could also perform math at the ninth-grade level. Claimant had basic computer skills but lacked experience with spreadsheet or bookkeeping software. Dolan indicated that claimant had sufficient skills to take additional courses at a community college. Dolan noted, however, that claimant had no specific vocational skills for a sedentary job or a job that required intermittent standing.

¶ 59 Based on his evaluation, Dolan concluded that claimant had been functioning as an individual aide, despite several prior medical issues, until she sustained her ankle injuries. In addition, Dolan concluded that claimant had been unable to perform that job following "her last ankle injury, primarily because the fusion did not fuse." Given the nonfusion of her right ankle, Dolan found claimant's testimony credible where she stated that she had to frequently elevate her foot to reduce swelling and pain. Dolan further concluded that claimant had "no specific vocational skills for a sedentary job, or a sedentary job where she is able to stand intermittently," and that the limited experience she had "helping students with disabilities use word processing [was] not going to help her compete for office jobs." Based on claimant's age, academic skills, work history, and work restrictions, Dolan opined that claimant currently had no access to a reasonably stable labor market, especially where claimant would have difficulty competing against younger candidates with recent training and no physical restrictions.

¶ 60 Respondent introduced a labor market survey report that was prepared by Natasha Charleston in the fall of 2017 (Respondent's Exhibit 6). After reviewing Dolan's report and Dr. Krause's report, Charleston prepared a report setting forth her findings and opinions. Charleston opined that claimant was at MMI and could work a sedentary-type job with limited standing.

Charleston found nine jobs within claimant's work restrictions or with employers willing to make reasonable accommodations for her restrictions. Charleston indicated that all nine jobs were within 50 miles of claimant's home in Mt. Vernon, Illinois. Charleston recommended, however, that claimant obtain additional computer and typing skills training as needed.

¶ 61 G. Arbitrator's Decision

¶ 62 On July 5, 2018, the arbitrator issued written decisions in both cases. In the first decision (12 WC 031793), the arbitrator found that claimant had sustained an accidental injury arising out of and in the course of her employment with respondent on March 13, 2012. Specifically, the arbitrator found that claimant had sustained a right ankle sprain that aggravated her preexisting arthritis in her right ankle and accelerated her need for a right ankle fusion. The arbitrator also found that claimant's current condition of ill-being was causally connected to the March 13, 2012, accident but that claimant had engaged in an injurious practice and, thus, the causal connection ended on April 16, 2013, pursuant to section 19(d) of the Act (820 ILCS 305/19(d) (West 2012)). The arbitrator awarded claimant 1-5/7 weeks (April 5, 2013, to April 16, 2013) of temporary total disability (TTD) benefits (*id.* § 8(a)) and 41-3/4 weeks (June 12, 2012, to April 6, 2018) of permanent partial disability (PPD) benefits, representing 25% loss of the right ankle (*id.* § 8(e)). The arbitrator also ordered respondent to pay reasonable and necessary medical expenses (*id.* §§ 8(a), 8.2), totaling $61,052.39, for treatment that claimant received prior to April 16, 2013.

¶ 63 In the second decision (14 WC 021613), the arbitrator found that claimant had sustained an accidental injury arising out of and in the course of her employment with respondent on November 12, 2012. The arbitrator found, however, that claimant had sustained an ankle contusion that resolved the same day and, thus, the causal connection for that condition ended on November

12, 2012. Accordingly, the arbitrator ordered respondent to pay reasonable and necessary medical expenses, totaling $816, for treatment claimant received on November 12, 2012.

¶ 64 H. Decisions on Review

¶ 65 Both parties sought review of the arbitrator's first decision (12 WC 031793), which pertained to the March 13, 2012, work accident, before the Commission. The Commission, with one commissioner dissenting, issued a decision which modified the arbitrator's decision, in part, but otherwise affirmed and adopted the arbitrator's decision. The Commission first disagreed with the arbitrator's determination that claimant had engaged in an injurious practice that ended the causal connection on April 16, 2013. The Commission found that there was no evidence showing claimant deliberately attempted to impede her recovery. The Commission, instead, found that claimant's employment remained a cause of her current condition of ill-being. Thus, the Commission modified the arbitrator's award to include all reasonable and necessary medical expenses pursuant to sections 8(a) and 8.2 of the Act, including those incurred after April 16, 2013, and additional TTD benefits from April 17, 2013, to April 4, 2014. The Commission also disagreed with the arbitrator's decision to award claimant PPD benefits, representing 25% loss of use of her right ankle, finding that claimant established her entitlement to permanent total disability (PTD) benefits under the odd-lot theory. Thus, the Commission modified the arbitrator's decision by awarding claimant PTD benefits, rather than PPD benefits, in the amount of $483.36 per week for life pursuant to section 8(f) of the Act. The dissenting commissioner indicated that she would have affirmed the arbitrator's decision in its entirety, including the finding that claimant's failure to comply with treatment directives resulted in an injurious practice under section 19(d) of the Act that should have precluded a finding of causation after April 16, 2013. The Commission

subsequently issued a corrected decision on January 21, 2020.

¶ 66 Respondent sought judicial review of the Commission's decision in the circuit court of Jefferson County. Following a hearing, the court confirmed the Commission's decision. This appeal followed.

¶ 67 II. Analysis

¶ 68 On appeal, respondent contends that the Commission's decision was against the manifest weight of the evidence. Specifically, respondent argues that the Commission's findings on the issues of accident, injurious practice, and permanent disability were against the manifest weight of the evidence. We disagree.

¶ 69 A. Accident Arising Out of Employment

¶ 70 We begin by considering respondent's argument that the Commission's finding that claimant sustained an accident arising out of her employment was against the manifest weight of the evidence. In support, respondent argues, contrary to the Commission's finding, that there was no evidence showing that the stripping was defective or that claimant was in a hurry when she fell. Claimant argues that the Commission's finding was not against the manifest weight of the evidence because the evidence showed that she tripped over raised stripping in a hallway and was exposed to a greater risk of tripping over the raised stripping due to her employment.

¶ 71 It is well settled that an injury must arise out of and in the course of employment to be compensable under the Act. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006). The issue of whether an injury arose out of employment presents a question of fact to be resolved by the Commission, and a reviewing court will not overturn the Commission's determination unless it is against the manifest weight of the evidence. *Id.* "In resolving questions

of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315 (2009). The appropriate test is whether the record on appeal contains sufficient evidence to support the Commission's determination, not whether this court would have reached the same conclusion. *R&D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866 (2010).

¶ 72 "For an injury to 'arise out of' the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). "A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties." *Id.* In addition, an injury arises out of employment if the employee is exposed to a risk of harm to a greater degree than the general public is exposed. *Id*. An injury is not compensable, however, if it results from a hazard to which the employee would have been equally exposed aside from his or her employment, or it arises from a risk personal to the employee. *Id.* at 59.

¶ 73 "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." *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006). Thus, "for an injury caused by a fall to arise out of the employment, a claimant must present evidence which supports a reasonable inference

that the fall stemmed from a risk associated with her employment." *Id.* at 106. "Employment-related risks associated with injuries sustained as a consequence of a fall are those to which the general public is not exposed such as the risk of 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." *Id.*

¶ 74 Here, the Commission found that claimant's injury arose out of her employment because the hazardous condition of the stripping contributed to, or caused, her fall. Claimant testified that she tripped over the stripping while "walking kind of fast" down the hallway towards her assigned student's classroom. A medical record from Dr. Freehill's office, dated March 27, 2012, included a notation that claimant reported tripping "over some stripping that was loose and elevated up." Clark testified that claimant described tripping over loose carpeting, which led to Clark examine and photograph the area with claimant in August 2012. Clark also testified that her examination revealed a loose area of stripping. It is undisputed that the photographs taken by Clark in August 2012 depicted loose, raised stripping where claimant fell on March 13, 2012. From this evidence, the Commission could have reasonably inferred that the stripping was hazardous or defective on March 13, 2012, and that the condition of the stripping caused, or contributed to, claimant's fall.

¶ 75 We acknowledge respondent presented conflicting evidence on this issue, including the testimonies of McGreer and Green and a photograph of the stripping purportedly taken in May 2012. While we agree that different inferences could have been drawn from the evidence presented by respondent, the Commission found the evidence presented by claimant more persuasive. See *University of Illinois*, 365 Ill. App. 3d at 911 ("It is the function of the Commission to judge the credibility of witnesses and resolve conflicting evidence."). Thus, although conflicting evidence

was presented on the issue, we cannot say that that the Commission's finding that claimant sustained an accident arising out of her employment was against the manifest weight of the evidence.

¶ 76 B. Injurious Practice

¶ 77 We next consider respondent's argument that the Commission's finding that claimant did not engage in an injurious practice pursuant to section 19(d) of the Act (820 ILCS 305/19(d) (West 2012)) was against the manifest weight of the evidence. According to respondent, the medical evidence clearly showed that claimant engaged in an injurious practice by failing to comply with Dr. Klein's repeated instructions to remain non-weight bearing following surgery. Claimant argues that the Commission's finding was neither against the manifest weight of the evidence nor an abuse of discretion because the evidence showed that claimant did not intentionally bear weight on her foot to impede her recovery or to harm herself.

¶ 78 We initially note that respondent's argument is premised upon an incorrect standard of review. In support of its argument, respondent correctly cites the following provision found in section 19(d) of the Act:

> "If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical, surgical, or hospital treatment as is reasonably essential to promote his recovery, the Commission may, *in its discretion*, reduce or suspend the compensation of any such injured employee." (Emphasis added.) *Id.*

In addition, respondent, citing *Keystone Steel & Wire Co. v. Industrial Comm'n*, 72 Ill. 2d 474, 481 (1978), notes that "[t]he Commission may, *in its discretion*, reduce an award in whole or in

part if it finds that a claimant is doing things to retard his or her recovery." (Emphasis added.). Despite this, respondent maintains that the Commission's determination on this issue is against the manifest weight of the evidence. As claimant correctly notes, the plain terms of section 19(d) of the Act vest the Commission with discretion to reduce an award if a claimant engages in insanitary or injurious practices that imperil or retard his or her recovery. Because section 19(d) of the Act vests the Commission with discretion on this issue, we review the Commission's determination for an abuse of discretion. *Global Products v. Illinois Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 412 (2009). "An abuse of discretion occurs only where no reasonable person could agree with the position adopted by the Commission." *Id.*

¶ 79 Here, we cannot say that the Commission abused its discretion by declining to reduce or suspend claimant's compensation. The Commission found that there was no evidence showing claimant intentionally disregarded Dr. Klein's instructions to impede or harm her recovery, such that her conduct rose to the level of an injurious practice that would require a termination of her benefits. After considering respondent's arguments and the evidence presented, we cannot say that no reasonable person could agree with the Commission's position.

¶ 80 As respondent correctly notes, Dr. Klein's medical records document numerous instances where claimant was instructed not to bear weight on her right ankle following surgery. According to respondent, the medical records document various instances where claimant failed to comply with Dr. Klein's instructions. Claimant admitted that she placed her foot on the ground to balance herself on occasion but denied bearing weight on her foot. Respondent points out that, on May 16, 2013, Dr. Klein noted concern about claimant's compliance with her instructions because it sounded as though claimant had been walking on her right foot "somewhat." However, this

notation merely documents Dr. Klein's suspicion regarding claimant's compliance and does not conclusively show that claimant had walked on her foot against Dr. Klein's instruction. Moreover, Dr. Klein released claimant to bear weight on her foot as tolerated that same day, indicating that claimant was progressing with, rather than impeding, her recovery. Respondent additionally asserts that claimant twisted her ankle on June 20, 2013, because she had not been wearing her boot as instructed. Contrary to respondent's assertion, however, claimant testified that she had been wearing her boot at that time. Even accepting respondent's position that these instances show claimant's noncompliance with Dr. Klein's instructions, the Commission could have reasonably concluded that claimant did not intentionally disregard the instructions to impede or imperil her recovery. Thus, we cannot say that the Commission abused its discretion by declining to terminate claimant's benefits under section 19(d) of the Act.

¶ 81 C. Permanent Total Disability

¶ 82 Lastly, we consider respondent's argument that the Commission's finding that claimant was permanently and totally disabled was against the manifest weight of the evidence. Respondent specifically argues that the Commission's finding that claimant proved her entitlement to PTD benefits under the odd-lot category was against the manifest weight of the evidence because the evidence showed that claimant was accommodated prior to her voluntary retirement and that there were several available jobs for her in her present condition. Claimant argues that the Commission's finding was not against the manifest weight of the evidence because the evidence showed that, because of her age, training, education, experience, and condition, there were no jobs available to her in her present condition.

¶ 83 The issue of whether a claimant is permanently and totally disabled presents a question of

fact to be determined by the Commission, and a reviewing court will not overturn the Commission's determination unless it is against the manifest weight of the evidence. *Economy Packing Co. v. Illinois Workers' Compensation Comm'n*, 387 Ill. App. 3d 283, 293 (2008). "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny*, 397 Ill. App. 3d at 674. "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield*, 388 Ill. App. 3d at 315. The appropriate test is whether the record on appeal contains sufficient evidence to support the Commission's determination, not whether this court would have reached the same conclusion. *R&D Thiel*, 398 Ill. App. 3d at 866.

¶ 84 The claimant bears the burden of establishing, by a preponderance of the evidence, the extent and permanency of his injury or condition in a workers' compensation case. *Chicago Park District v. Industrial Comm'n*, 263 Ill. App. 3d 835, 843 (1994). It is well settled that an employee is considered permanently and totally disabled when he or she is unable to make some contribution to industry sufficient to justify the payment of wages. *Interlake Steel Corp. v. Industrial Comm'n*, 60 Ill. 2d 255, 259 (1975). However, an employee is not required to be reduced to complete physical incapacity to obtain PTD benefits under the Act. *Ceco Corp. v. Industrial Comm'n*, 95 Ill. 2d 278, 286 (1983).

> "If the claimant's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is upon the claimant to prove by a preponderance of the evidence that he fits into the odd-lot

> category—one who, though not altogether incapacitated to work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market. [Citations.] The claimant ordinarily satisfies his burden of proving that he falls into the 'odd-lot' category in one of two ways: (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market. [Citation.] Whether a claimant falls into the odd-lot category is a factual determination to be made by the Commission, and that determination will not be set aside unless it is against the manifest weight of the evidence. [Citation.] Once the claimant establishes that he falls into the 'odd-lot' category, the burden shifts to the employer to prove that the claimant is employable in a stable labor market and that such a market exists." *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 544 (2007).

¶ 85 Here, we cannot say that the Commission's finding that claimant fell into the odd-lot category was against the manifest weight of the evidence. The Commission's finding was supported by the opinions of Dolan, claimant's vocational rehabilitation counselor. The Commission found persuasive Dolan's opinion that no stable labor market existed for claimant based on her age, skills, training, and work history. It was undisputed that claimant was 57 years old at the time of her injury (currently over 65 years old), and that she had a remote educational history of attaining an associate's degree in arts. The record reveals that, prior to working for respondent for over 20 years, claimant worked as a waitress, nurse's aide, and daycare aide. Dolan acknowledged claimant had transferable personal care skills but concluded that claimant was physically unable to perform jobs requiring such skills. Although claimant had basic computer

skills, she claimed she was not a good typist and denied having any experience preparing reports or using specialized computer software. Consequently, Dolan opined that claimant lacked the computer skills required for most sedentary positions. Dolan also noted that claimant had difficulty driving, walking, and traversing stairs due to her ankle condition. Dolan further noted that claimant would have difficulty competing against younger candidates with recent training and no physical restrictions.

¶ 86 While respondent attempted to show that a stable labor market existed for claimant by introducing the labor market study prepared by Charleston, the Commission did not find Charleston's opinions persuasive. The Commission noted that Charleston did not personally meet with claimant and had not reviewed claimant's medical records, aside from Dr. Krause's report indicating that claimant could perform sedentary work with intermittent standing. The Commission also noted that claimant lacked the skills required to perform many of the jobs identified by Charleston. Because the Commission's finding was supported by the opinions of Dolan, we cannot say the Commission's decision was against the manifest weight of the evidence.

¶ 87 We acknowledge there was evidence showing that claimant retired from her position and did not seek further employment with respondent following her surgery. However, claimant testified that she was able to perform her job duties as an individual aide prior to her injury but was unable to perform her job duties due to her deteriorating physical condition following her injury. Claimant's testimony is supported by other evidence showing that she sustained an additional injury to her ankle while performing her job duties on November 12, 2012. Despite this, she continued to work until she was assigned a new student, who claimant was physically incapable of caring for due to lifting requirements. As a result, claimant went on unpaid leave when

respondent was unable to provide her with another student. Accordingly, this evidence supports the inference that respondent was unable to accommodate claimant prior to her retirement. The Commission rejected respondent's claim that it would have been able to accommodate claimant after she underwent surgery, given that Green testified it would have been difficult to accommodate claimant in her current condition. There is also nothing in the record showing that respondent offered claimant a position within her restrictions after she underwent surgery. Thus, we cannot say that the Commission's award of PTD benefits under the odd-lot theory was against the manifest weight of the evidence.

¶ 88 III. Conclusion

¶ 89 For the reasons stated, we affirm the judgment of the circuit court, which confirmed the Commission's decision awarding claimant benefits under the Act.

¶ 90 Affirmed.