

2012 IL App (5th) 110276WC-U
No. 5-11-0276WC
Order filed September 24, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

WAL-MART ASSOCIATES, INC.,)	Appeal from the Circuit Court
)	of Marion County.
Appellant,)	
)	
v.)	No. 11-MR-3
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	Honorable
)	James J. Eder,
(Amy Howell, Appellee).)	Judge, Presiding.

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

ORDER

Held: Commission's findings that claimant's bilateral knee injuries arose out of and in the course of her employment with respondent, that there is a causal connection between the condition of claimant's knees and her employment, and that claimant was entitled to an award of prospective medical care are not against the manifest weight of the evidence.

¶ 1 Claimant, Amy Howell, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) alleging that she sustained injuries to her bilateral lower extremities on September 29, 2009, while employed by respondent, Wal-Mart Associates, Inc. Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)), the arbitrator determined that claimant sustained injuries arising out of and in the course of her employment with respondent and that claimant's current condition of ill-being is causally related to her employment. As such, the arbitrator ordered respondent to authorize prospective medical care. A majority of the Illinois Workers' Compensation Commission (Commission) corrected certain aspects of the arbitrator's factual findings but otherwise affirmed and adopted the arbitrator's decision and remanded the matter for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). On judicial review, the circuit court of Marion County confirmed the decision of the Commission. Respondent now appeals, challenging the findings with respect to accident, causation, and prospective medical care.

¶ 2 I. BACKGROUND

¶ 3 At the hearing on her application for adjustment of claim, claimant testified that she worked as a customer service representative at respondent's store in Centralia, Illinois. On September 29, 2009, claimant was walking to the back of the store to take a break. Claimant testified that to reach the back of the store, she had to walk past an area where tradesmen were installing a new floor. According to claimant, as she approached the area where the new floor was being installed, she slid on a grease-like substance and fell. Claimant testified that when she fell, her left knee struck the floor. Claimant further testified that she "tried to catch [herself] with [her] right knee," although she

could not remember if her right knee hit the ground. Claimant testified that, prior to the fall, she did not have any pain in her left or right knee. However, right after the fall, she experienced “a little bit of pain” and some swelling in both knees.

¶ 4 After claimant got up, she gathered some store merchandise she was holding and reported the incident to a coworker and her supervisor. Claimant finished her shift and worked the next day, expecting that she would get better. However, the pain persisted, and on October 4, 2009, claimant told her supervisor that her condition was not improving. Claimant stated that her supervisor completed some paperwork and then took her to St. Mary’s Hospital for a drug test. That same day, claimant went to the emergency room at Crossroads Community Hospital (Crossroads) to have her knees examined.

¶ 5 While being triaged at Crossroads, claimant reported bilateral knee pain at level five on a ten-point scale. Claimant informed medical personnel at the hospital that she fell on her left knee at work on September 29, 2009, and that she also injured her right knee. Claimant indicated that her symptoms came on gradually and became progressively worse. An examination of the left knee revealed audible crepitus, normal range of motion without pain, a small amount of soft tissue swelling, and mild tenderness to palpation at the medial joint line and the lateral joint line. An examination of the right knee revealed the same findings except that tenderness to palpation was limited to the medial joint line. X rays of the knees showed limited areas of arthritis, but no fractures or dislocations. Claimant was diagnosed with ligamentous sprains of both knees. Upon being discharged, claimant was given prescriptions for pain medication and an anti-inflammatory drug, a return to work note, and instructions to follow up with Dallas Lipscomb, a physician’s assistant who

served as claimant's primary medical care professional.

¶ 6 Lipscomb examined claimant on October 6, 2009. Claimant told Lipscomb that on September 29, 2009, she fell at work and injured her left and right knees. Claimant stated that she was "not sure what happened to the [right] knee" but that she fell on her left knee. Claimant told Lipscomb that she experiences pain with walking and bending. Lipscomb noted bilateral swelling of the prepatellar bursa. He diagnosed bilateral knee contusions and bilateral patellofemoral pain syndrome. Lipscomb prescribed physical therapy and authorized claimant to return to work, sedentary duty only, on October 8, 2009. Claimant reported to physical therapy beginning October 9, 2009. Claimant told the therapist that she fell on a "slick" floor while "carrying objects." Claimant stated that she landed on her left knee but could not remember how she hurt her right knee. The therapist's notes indicate that prior to the injury claimant was able to engage in activities without pain or difficulty. However, after the injury, claimant began experiencing pain with various activities, including bending her knees, ascending and descending stairs, walking, and standing.

¶ 7 On October 12, 2009, claimant saw Dr. Timothy Gray of the Bonutti Clinic. At the time of her visit, claimant completed a patient intake form in which she provided the following history of her injury: "Walking to the back [of the store] for break[,] they put new floor in[,] I found the spot that was like ice[,] fell on my left knee[,] and don't know what happened to my right knee." Claimant rated her pain at level six on a ten-point scale. Dr. Gray's notes of October 12, 2009, reflect the onset of bilateral knee pain on September 29, 2009, when claimant fell at work. Dr. Gray wrote that claimant "slipped on the floor and did the splits. She fell on the left knee and twisted the right. Both knees are bothering her. Right is worse than left over the inner aspect. No better since

her fall.” Dr. Gray’s examination revealed tenderness of the bilateral knees over the medial joint line, positive varus McMurray test, and negative valgus McMurray test.¹ Dr. Gray diagnosed bilateral knee pain, right worse than left. He recommended an MRI of the knees to check for possible meniscal pathology and kept claimant on sedentary duty.

¶ 8 Claimant followed up with Dr. Gray on October 14, 2009. At that time, Dr. Gray noted that the MRIs showed “contusion, effusion,” but no tears or loose bodies. Dr. Gray’s physical examination indicated mild tenderness of the knees bilaterally as well as some crepitus and erythema. His diagnosis was bilateral knee pain and chondromalacia. Dr. Gray recommended continued physical therapy and instructed claimant to remain on light duty at work.

¶ 9 On October 19, 2009, claimant reported to the emergency room at Crossroads with complaints of bilateral knee pain since a fall three weeks earlier. While being triaged, claimant rated the pain at level seven on a ten-point scale. A physical examination revealed full range of motion over all joints with no tenderness. Claimant was diagnosed with chronic right and left knee pain and told to follow up with Lipscomb. Claimant saw Lipscomb on October 26, 2009, with complaints of bilateral knee pain and edema of the lower extremities. At that time, Lipscomb’s assessment was bilateral knee contusion and bilateral patellofemoral pain syndrome. Lipscomb ordered additional physical therapy and instructed claimant to remain on light duty.

¶ 10 Claimant saw Dr. Gray on October 30, 2009. Claimant reported that her left knee had

¹The McMurray test is used to determine injury to meniscal structures. Stedman’s Medical Dictionary 1805 (27th ed. 2000).

improved with physical therapy, but that she still had pain over the inner aspect of the right knee. Dr. Gray noted that claimant's right knee still gave claimant difficulty ambulating and that it "still catches, pops, and grinds." An examination of the left knee revealed mild tenderness. An examination of the right knee revealed crepitus, patellofemoral tenderness, and medial joint line tenderness. Dr. Gray's diagnosis of bilateral knee pain and chondromalacia remained unchanged. Dr. Gray recommended continued therapy for the left knee. However, for the right knee, he recommended a diagnostic arthroscopy with probable lateral release.

¶ 11 Claimant continued to see Lipscomb and Dr. Gray through the end of 2009. During this time, claimant continued to complain of pain and swelling in the right lower extremity. Lipscomb noted varicose veins in the right inner leg and instructed claimant to see a vascular surgeon for this condition. Lipscomb also informed claimant that he recommended therapy over surgery. Meanwhile, Dr. Gray, noting that claimant was not responding to conservative care, continued to recommend surgical intervention for the right knee.

¶ 12 Pursuant to Lipscomb's referral, claimant saw Dr. James Robelen of the Southern Illinois Vein Center on January 23, 2010. Dr. Robelen noted a history of significant discomfort in claimant's lower extremities "over the course of many years" which had recently worsened. Claimant reported pain near the right knee and in the left calf. Claimant told Dr. Robelen that the pain was worse at the end of a long day standing. Claimant also described swelling, heaviness, and numbness in the right leg and cramping and restlessness in both legs. Dr. Robelen noted bulging varicosities on the anterior/lateral aspect of the distal left thigh and upper calf. He performed a venous duplex mapping of the lower extremity veins and found reflux in the medial mid-thigh

perforator vein. Dr. Robelen concluded that venous insufficiency was a major contributing factor of the claimant's left leg symptoms, but not her right leg symptoms. To treat the left leg, Dr. Robelen recommended a course of conservative treatment, including the use of support hose, followed by ultrasound-guided foam sclerotherapy as needed.

¶ 13 On March 12, 2010, claimant saw Dr. Gray with continued complaints of right knee pain. Dr. Gray noted that although claimant wanted to undergo surgery, her claim had been denied by respondent's workers' compensation carrier. Upon physical examination, Dr. Gray noted tenderness and crepitus of the right knee. Dr. Gray continued to recommend surgical intervention, and he authorized claimant to remain on sedentary duty at work.

¶ 14 Claimant testified that since the incident of September 29, 2009, she has had constant pain in her right leg and some swelling which "goes back and forth." Claimant testified that she is seeking approval of the surgical procedure recommended by Dr. Gray. Claimant also related that the treatment she sought with Dr. Robelen was for vein problems in her left leg which do not affect her knee. Claimant acknowledged that prior to September 29, 2009, she had problems with her left leg, particularly swelling, for which she sought treatment. She was unable to recall if she previously sought treatment for problems with her right knee, but indicated that if the medical records so indicated, they would "probably" be correct. Claimant attributed her prior knee problems to her job as a customer service representative, which required constant standing on concrete, and her high blood pressure, which Lipscomb told her causes swelling in her knees.

¶ 15 In conjunction with claimant's acknowledgment of preexisting knee problems, respondent introduced a patient intake form dated June 13, 2008, from the Bonutti Clinic and a September 3,

2009, progress note prepared by Lipscomb. The June 13, 2008, patient intake form indicates that claimant had right knee pain with an onset date in March. Claimant indicated that standing made the pain worse and that she feels better after the knee “pops.” In the progress noted dated September 3, 2009, Lipscomb noted edema of both lower extremities. Also admitted into evidence was a progress note for a visit claimant made to Lipscomb on October 1, 2009. Lipscomb’s note of October 1, 2009, indicates that the reason for the visit was a “3 [week] checkup.” The note does not reference any incident at work on September 29, 2009, indicates that claimant is “doing well,” and does not reference the presence of edema in the lower extremities.

¶ 16 The arbitrator concluded that on September 29, 2009, claimant sustained accidental injuries arising out of and in the course of her employment with respondent. The arbitrator further concluded that claimant’s condition of ill-being is causally related to the accident of September 29, 2009. The arbitrator based her findings on the chain of events, the records of claimant’s treating physician, and claimant’s testimony which the arbitrator categorized as “very credible.” The arbitrator ordered respondent to authorize and pay for the surgical procedure recommended by Dr. Gray. A majority of the Commission corrected certain aspects of the arbitrator’s factual findings but otherwise affirmed and adopted the arbitrator’s decision and remanded the matter for further proceedings pursuant to *Thomas v. Industrial Comm’n*, 78 Ill. 2d 327 (1980). Commissioner Lindsay dissented. She would have found that claimant’s right knee condition is not causally related to her employment. According to Lindsay, the Commission’s decision to the contrary “relies too much on [claimant’s] testimony—testimony that was contradictory and inconsistent as well as not being credible [*sic*].” On judicial review, the circuit court of Marion County confirmed the decision of the Commission. This

appeal followed.

¶ 17

II. ANALYSIS

¶ 18 On appeal, respondent argues that “the circuit court abused its discretion” in upholding the Commission’s findings with respect to accident, causation, and prospective medical care. At the outset, we remind respondent that the Commission, as an administrative agency, is the “ultimate decisionmaker” in workers’ compensation proceedings. *Roberson v. Industrial Comm’n*, 225 Ill. 2d 159, 173 (2007). Accordingly, when an appeal is taken to this court following entry of judgment by the circuit court on review from a decision of the Commission, we examine the ruling of the Commission, not the judgment of the circuit court. *Dodaro v. Illinois Workers’ Compensation Comm’n*, 403 Ill. App. 3d 538, 543-44 (2010).

¶ 19 Furthermore, as the trier of fact, it is primarily the role of the Commission to weigh evidence, assess the credibility of witnesses, and resolve conflicts in the record. *Shafer v. Illinois Workers’ Compensation Comm’n*, 2011 IL App (4th) 100505WC, ¶ 55. We apply the manifest-weight-of-the-evidence standard when reviewing the Commission’s factual findings. *Lenny Szarek, Inc. v. Illinois Workers’ Compensation Comm’n*, 396 Ill. App. 3d 597, 603 (2009). We also employ the manifest-weight-of-the-evidence standard where the facts are undisputed, but more than one reasonable inference may be drawn therefrom. *Federal Marine Terminals, Inc. v. Illinois Workers’ Compensation Comm’n*, 371 Ill. App. 3d 1117, 1127 (2007). In contrast, we review the Commission’s decisions on questions of law *de novo*. *Otto Baum Co. v. Illinois Workers’ Compensation Comm’n*, 2011 IL App (4th) 100959WC, ¶ 13. We also apply the *de novo* standard of review when the facts essential to our analysis are undisputed and susceptible to but a single

inference and our review therefore involves only an application of the law to those undisputed facts. *Johnson v. Illinois Workers' Compensation Comm'n*, 2011 IL App (2d) 100418WC, ¶ 17. With these principles in mind, we address the three issues raised by respondent.

¶ 20

A. Accident

¶ 21 We first address respondent's contention that claimant failed to prove a work-related accident. An injury must "arise out of" and "in the course of" one's employment to be compensable under the Act. *Warren v. Industrial Comm'n*, 61 Ill. 2d 373, 376 (1975). Both elements must be present at the time of the employee's injury to justify compensation. *Rotberg v. Industrial Comm'n*, 361 Ill. App. 3d 673, 679 (2005). "Arising out of the employment" refers to the origin or cause of the employee's injury. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434 (2011). "In the course of the employment" refers to the time, place, and circumstances under which the employee is injured. *Tower Automotive*, 407 Ill. App. 3d at 434. Whether an injury arose out of and in the course of one's employment is a question of fact to be resolved by the Commission, and we will not disturb the Commission's finding unless it is against the manifest weight of the evidence. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011). A finding is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Metropolitan Water Reclamation District of Greater Chicago*, 407 Ill. App. 3d at 1013. The appropriate test is whether there is sufficient evidence in the record to support the Commission's determination, not whether this court might have reached the same conclusion. *Metropolitan Water Reclamation District of Greater Chicago*, 407 Ill. App. 3d at 1013.

¶ 22 In this case, claimant testified that she injured her knees in a fall at work on September 29, 2009. Respondent argues, however, that claimant provided inconsistent medical histories which contradict her claim of a work-related accident on that date. Respondent cites two examples in support of this claim. Respondent first asserts that although claimant testified to experiencing swelling and pain after her fall, she made no such complaints to Lipscomb when she saw him for an examination on October 1, 2009. Second, respondent notes that claimant never provided a history of a work-related injury to Dr. Robelen when he examined her on January 23, 2010.

¶ 23 Despite the alleged discrepancies cited by respondent, the Commission found that claimant established an accident arising out of and in the course of her employment. Further, in affirming and adopting the arbitrator's decision, the Commission expressly credited claimant's testimony. We do not find the Commission's decision so irreconcilable with the evidence of record to render an opposite conclusion clearly apparent. Significantly, there was other evidence in the record to explain claimant's failure to reference the September 29, 2009, incident during these examinations. For instance, the Commission could have reasonably concluded that claimant did not report the September 29, 2009, incident to Lipscomb because claimant did not initially believe the accident was serious. Claimant testified that she only experienced "a little bit of pain" following the fall, that the swelling went "back and forth," and that she continued working expecting that her condition would improve. This testimony is corroborated by the record of claimant's October 4, 2009, visit to Crossroads, during which claimant told medical personnel that her symptoms came on gradually and became progressively worse. Similarly, the Commission could have reasonably concluded that there was no need to reference the September 29, 2009, incident when claimant saw Dr. Robelen. In this

regard, we note that Lipscomb referred claimant to a vascular surgeon for varicose veins, not for any structural problems with her knees. Further, there was no evidence that claimant's vascular problems were related to the September 29, 2009, incident.

¶ 24 Respondent also argues that claimant was unable to provide an accurate account of how she actually sustained her alleged injury. Respondent notes that at the arbitration hearing, claimant testified that she was unsure if her right knee struck the ground when she fell, explaining that she “hit [her] left knee, but [she] tried to catch [herself] with [her] right knee.” Respondent claims that this account of the accident is inconsistent with Dr. Gray's progress note of October 12, 2009, which provides that claimant slipped on the floor at work, “did the splits,” and “fell on the left knee and twisted the right [knee].” According to respondent, the discrepancies in the histories claimant provided to Dr. Gray and at arbitration are “simply irreconcilable.” We disagree. The record demonstrates that when claimant visited Dr. Gray on October 12, 2009, she completed a patient intake form. On that form, claimant provided the following description of her injury: “Walking to the back for break[,] they put new floor in[,] I found the spot that was like ice[,] fell on my left knee[,] and don't know what happened to my right knee.” This history is consistent in most respects with the history claimant testified to at arbitration as well as the history claimant provided to other treaters. While Dr. Gray's notes reflect that claimant “did the splits” when she slipped and that she “twisted the right [knee],” the Commission could have reasonably concluded that this represented Dr. Gray's interpretation of what happened based on the history provided by claimant.

¶ 25 In short, given the foregoing evidence, and in light of the Commission's role as fact finder, we cannot say that these alleged inconsistencies identified by respondent establish that the

Commission's finding that claimant sustained an accident arising out of and in the course of her employment with respondent is against the manifest weight of the evidence.

¶ 26 B. Causation

¶ 27 Respondent next argues that claimant failed to establish that her current condition of ill-being is causally related to her employment. Respondent insists that claimant's current condition of ill-being is attributable not to any accident at work, but to knee problems which predated the September 29, 2009, fall. In cases involving preexisting conditions, one's employment need not be the sole cause or even the primary cause of the condition of ill-being—it need only be *a* causative factor. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003); *Tower Automotive*, 407 Ill. App. 3d at 434. Moreover, a preexisting condition will not prevent recovery under the Act if the preexisting condition was aggravated or accelerated by employment. *Tower Automotive*, 407 Ill. App. 3d at 434. In other words, “in preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition.” *Sisbro, Inc.*, 207 Ill. 2d at 204-05.

¶ 28 Respondent urges us to resolve the issue of causation “[a]s a matter of law” because “[m]any of the facts of this case are undisputed.” We decline respondent's invitation. It is well settled that whether a causal connection exists between an employee's condition of ill-being and his employment and whether an employee's injuries are attributable to an aggravation or acceleration of a preexisting condition are factual issues to be decided by the Commission. *Tower Automotive*, 407 Ill. App. 3d

at 434; *Cassens Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 331 (1994). Thus, we will review the Commission's decision under the manifest-weight-of-the-evidence standard.

¶ 29 Respondent argues that claimant's post-accident complaints of knee pain and her level of discomfort are identical to her pre-accident complaints. In support, respondent compares the progress note from claimant's visit to Lipscomb on September 3, 2009, with the progress note from claimant's visit to Dr. Gray on October 14, 2009. We fail to see the similarities between these records. Claimant presented to Lipscomb on September 3, 2009, with complaints of lower extremity edema and requested a prescription for compression hose. Lipscomb noted "2+ edema" of the lower extremities. On October 14, 2009, claimant presented to Dr. Gray for follow-up on her bilateral knee complaints. At that time, he noted that the MRIs he ordered "show contusion, effusion," but no tears or loose bodies. Claimant still noted pain and an examination of the knees showed mild tenderness bilaterally with some crepitus and erythema. He diagnosed bilateral knee pain and chondromalacia. Notably, whereas Dr. Gray noted bilateral knee pain, Lipscomb did not, and while Lipscomb noted bilateral edema of the knees, Dr. Gray did not.

¶ 30 Respondent further purports to find support for its contention that claimant's current condition of ill-being is not causally related to her employment in the medical records. In particular, respondent reiterates its allegations that there is no explanation why claimant would have failed to report her accident or leg pain to Lipscomb on October 1, 2009, that claimant's testimony regarding the history of the accident was inconsistent with the history reported in Dr. Gray's progress notes, and that claimant did not reference the September 29, 2009, accident when she treated with Dr. Robelen. We disagree. As explained in reference to the previous issue, there were reasonable

explanations for these alleged inconsistencies.

¶ 31 Respondent also urges reversal on the basis that claimant failed to provide any expert medical testimony as to causation. However, this court has held that medical testimony is not essential to support the conclusion that an accident caused an employee's condition of ill-being. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 912 (2006). A claimant's testimony standing alone may be sufficient to support an award of benefits under the Act. *University of Illinois*, 365 Ill. App. 3d at 912. Circumstantial evidence can be sufficient to prove a causal nexus between an accident and the employee's injury. *University of Illinois*, 365 Ill. App. 3d at 912. For instance, a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury may provide sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982).

¶ 32 Respondent seems to recognize the foregoing principles, but claims that this court "has not addressed the specific issues in the case, namely whether an employer can be held liable for an employee's work injury when the employee fails to provide any expert medical opinion as to causation and employee's physical condition prior to the accident is identical to employee's physical condition following the accident." We disagree with the premise underlying respondent's claim. We find that there is sufficient evidence to support the notion that claimant's physical condition after the accident was different than her physical condition prior to the accident. Notably, claimant testified that prior to the incident of September 2009, she did not have any pain in her right or left knee and she was able to perform her duties as a customer service representative for respondent.

However, claimant testified that after the September 2009 incident, her condition gradually worsened and her right knee reached a level of “constant pain.” Further, both Lipscomb and Dr. Gray restricted claimant to sedentary duty only. While there is a documented record of right knee pain on the June 13, 2008, patient intake form from the Bonutti Clinic, respondent did not submit any evidence that this was an ongoing complaint. Further, the September 3, 2009, progress note prepared by Lipscomb, which is the only other medical record dated prior to the accident at issue, does not reference any pain complaints. Accordingly, we find that claimant’s testimony and the records of her medical treatment provide sufficient circumstantial evidence to support the Commission’s conclusion that claimant’s current condition of ill-being is causally related to her employment with respondent. Therefore, the Commission’s decision is not against the manifest weight of the evidence.

¶ 33 C. Prospective Medical Care

¶ 34 Finally, respondent argues that claimant is not entitled to an award for prospective medical care. Respondent’s only contention in this regard is that claimant failed to prove that she suffered injuries arising out of and in the course of her employment and she failed to prove her current state of ill-being is causally related to her employment. However, having rejected these arguments, we likewise reject respondent’s request that the surgery recommended by Dr. Gray is not reasonable or necessary.

¶ 35 III. CONCLUSION

¶ 36 For the reasons set forth above, we affirm the judgment of the circuit court of Marion County which confirmed the decision of the Commission. This cause is remanded to the Commission for

2012 IL App (5th) 110276WC-U

further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 37 Affirmed and remanded.