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

KROESCHELL, INC.,)	Appeal from the Circuit Court
)	of Cook County
Defendant-Appellant,)	
)	
v.)	No. 11-L-51448
)	
ILLINOIS WORKERS COMPENSATION)	
COMMISSION and BRUCE PITTMAN,)	Honorable
)	Robert Lopez-Cepero,
Plaintiff-Appellee.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's determination that claimant's need for surgery was not causally related to his employment is contrary to both law and the manifest weight of the evidence where Commission did not consider whether claimant's at-work accident accelerated his condition of ill-being and where Commission's findings of fact were unsupported by the record.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Kroeschell, Inc., appeals an order of the circuit court of Cook County reversing the decision of the Illinois Workers' Compensation Commission (Commission) denying certain benefits to claimant, Bruce Pittman. The trial court determined that the Commission's decision that claimant's need for a knee replacement was unrelated to his employment was against the manifest weight of the evidence. We agree with the trial court. Under the present circumstances, we deem it the best course to vacate both the decisions of the Commission and the trial court and remand to the Commission to consider the case under the proper legal theory.

¶ 4 **II. BACKGROUND**

¶ 5 It is undisputed that claimant suffered a work-related injury when he fell at work on January 25, 2010. Claimant tripped on the tongue of a wagon and landed on his knees. Claimant had a preexisting history of knee problems, specifically osteoarthritis. At issue is the severity of his injury. In addition to claimant's medical records (which will be referenced, as necessary, in our analysis of this appeal), the following testimony was presented to the arbitrator.

¶ 6 Claimant testified that his boss, Ed Rasmussen, witnessed the injury. Rasmussen stated, "[M]an you took a bad fall."¹ Rasmussen helped claimant to his feet. Rasmussen offered to take claimant to a medic. Claimant declined, stating that he "might" be okay. Claimant completed the final hour and a half of his shift; however, he did not actually do anything. At the end of his shift, claimant turned in a task-assignment card, which stated he completed all of his tasks and did not suffer any injuries (claimant testified that it was a mistake to not indicate he suffered an injury, but he had believed the injury was not a "big deal at the time"). Claimant went home. At

¹ The arbitrator overruled respondent's contemporaneous objection contending that this statement was hearsay; we will address this issue subsequently.

about 6 or 7 p.m., his right knee began to swell. The next day, he reported the accident to respondent and he went to see Dr. Petrucci, an orthopedic doctor. Petrucci took claimant off work and sent him for an MRI. After the MRI, claimant returned to see Petrucci. He was using assistive devices to ambulate at this time.

¶ 7 Claimant testified that, on February 8, 2010, he saw Dr. Steven Chudik. Chudik kept claimant off work and sent him for therapy. Ultimately, Chudik performed right-knee replacement surgery on claimant on May 25, 2010. On July 7, 2010, Chudik released claimant to light-duty work, with a lifting restriction of 30 pounds and no kneeling, bending, squatting, or using ladders. Respondent did not accommodate these restrictions. Respondent also sent claimant a letter, dated July 12, 2010, stating that claimant's employment was terminated. Claimant has continued to follow up with Chudik, and, at the time of the arbitration hearing (October 8, 2010), he had not been released to full duty and was not employed. He no longer experienced pain in his right leg. Prior to the accident, claimant testified, he never missed a day of work and his ability to work was never restricted.

¶ 8 On cross-examination, claimant acknowledged that he reported to Petrucci in 2005 that he experienced pain when walking. Petrucci's records from this period also document chronic swelling in both knees. Claimant underwent physical therapy in 2006. Petrucci's records from that year state claimant's knees are getting progressively worse. Claimant testified that his knees continued to worsen until Petrucci began administering Euflexxa injections. Prior to the accident, claimant had received "well over a dozen" such injections. In 2006, an MRI revealed "near bone on bone" contact in claimant's knees. Petrucci stated a knee replacement was in claimant's future. Claimant testified that during this period, the condition of his knees would vary depending on his activities, but they did not prevent him from performing everyday

activities. Claimant wore a knee brace for a period in 2006, but it provided little relief. Claimant had six Supartz injections in 2007 (subsequently, he experienced greater relief from Euflexxa, and required the injections less frequently). In 2008, Petrucci told claimant that, though conservative methods were working, he would still need knee replacement surgery someday. Following the accident, both Petrucci and Chudik recommended claimant discontinue injections and undergo surgery. At one point during cross examination, claimant stated that Ed Rasmussen, who witnessed the fall, commented, “Man, you fell really hard.” Respondent objected, citing hearsay. The arbitrator overruled the objection.

¶ 9 Respondent asked claimant if he told Chudik that he did not have any prior problems with his right knee (Chudik’s records state, “He denies any previous problems or pain to the right knee prior to the fall.”). Claimant explained that Chudik knew claimant was receiving injections and, as a result, he was not experiencing any symptoms prior to the accident.

¶ 10 Respondent called John Pollock, who supervised its “vent crew.” Pollock testified that he saw claimant on a daily basis prior to the accident. Pollock identified a card that employees filled out daily documenting that they performed their assignments. The card contained a place to indicate if an employee suffered an accident or injury on the day in question. The card claimant turned in for January 25, 2010, did not indicate that he experienced an accident or injury. Further, Pollock did not recall claimant being in any pain or limping on that day when he turned in his card. Claimant did not mention a slip and fall. The next day, Pollock received a message from claimant stating the claimant had injured himself the day before but it did not bother him so he had continued working. Pollock then completed an accident report.

¶ 11 During cross-examination, Pollock testified that claimant passed a physical before commencing employment with respondent. He never noticed claimant having any problems

with his knees before January 25, 2010. Pollock agreed that some employees fill out the task cards when they first arrive for the day and claimant could have done so on the day of his accident. Pollock admitted he could not recall if he was present at his desk when claimant turned in his card on that day. Pollock first heard of the accident from Rasmussen. On redirect, he clarified some sections of the card should not be filled out until the end of the day. Claimant was later recalled and testified that he filled the card out at the start of his shift.

¶ 12 Dr. Chudik testified via evidence deposition. Chudik testified that he is a board-certified orthopedic surgeon specializing in knees and shoulders. He first examined claimant on February 8, 2010. Claimant reported that he tripped over the tongue of a trailer and landed first on his right knee and then on his left knee. Claimant was using a cane. Claimant further reported a history of left knee pain and osteoarthritis in both knees. Chudik used a template to take notes during his interview of claimant. These notes document a history of Euflexxa and Synvisc injections. Chudik performed a physical examination, which revealed pain in the right knee on flexion and extension and tenderness over the lateral joint line. A “posterior sag sign” indicated “a PCL insufficiency or tear.” X rays showed arthritis in both knees, and this was confirmed by an MRI. Chudik’s initial diagnosis was “a right knee osteoarthritis exacerbation with an acute PCL and grade 2 MCL tear and left knee osteoarthritis.” The PCL tear was visible in the MRI, as was “an acute effusion, so it was clearly a new injury consistent with the mechanism of him falling directly on his knee.”

¶ 13 Chudik explained that the PCL tear was significant because it changed the structure of the knee. Moreover, “It’s also significant that he’s a gentleman who has had arthritis for some time and has done injections but was managing.” Chudik continued, “[W]hen you structurally change the knee ***, sometimes that can push the knee over the edge forcing it from something that was

able to be treated conservatively to then requiring surgery.” Chudik stated that this was the case with claimant. Chudik opined that, to a reasonable degree of medical certainty, the tears to claimant’s PCL and MCL were caused by his fall at work on January 25, 2010. Counsel asked if the need for knee replacement surgery was related to that accident. Chudik replied: “I would agree. Definitely this patient has had arthritis and preexisting arthritis. But a significant event like this clearly accelerated his need to have surgery.” When Chudik performed the knee replacement, he observed “end stage osteoarthritis.”

¶ 14 During cross-examination, Chudik stated that he was not sure if he had all of claimant’s past medical records at his disposal. Chudik agreed that claimant likely had significant osteoarthritis in 2006; however, he explained that the need for surgery, or lack thereof, is based on the symptoms claimant was experiencing and how he was functioning at that time. In 2006, conservative treatment was successful. Chudik agreed that claimant was experiencing pain, but he declined to characterize claimant’s condition as worsening. When asked whether he had seen Petrucci’s records prior to the deposition, Chudik responded that he might have, but he was not sure. Chudik was aware that claimant had been diagnosed with lymphedema, which causes swelling in the lower leg and knee. Chudik stated that he had no independent recollection of which, if any, of claimant’s past medical records he had seen, though he acknowledged that none were in his charts.

¶ 15 When asked whether he was aware of the specific number of Supartz and Euflexxa injection claimant had, Chudik responded negatively. He then stated that this information would not change his opinion, as it merely confirms claimant had preexisting arthritis, which was clear from the X ray Chudik ordered. Chudik disagreed that claimant was a candidate for total knee

replacement prior to the accident because claimant was successfully managing his condition with injections.

¶ 16 Dr. Ira Kornblatt, who examined claimant on respondent's behalf, also testified via evidence deposition. Kornblatt is a practicing orthopedic surgeon specializing in shoulders and knees. He has been practicing since 1976. He examined claimant on March 31, 2010. Claimant told Kornblatt that he tripped over the tongue of a wagon and fell predominantly on his right knee. He finished his shift and did not notice any pain until after he got home. Kornblatt reviewed claimant's medical records, which revealed a significant history of knee problems, with the right knee being a bigger problem than the left. According to Kornblatt, claimant "claim[ed] that both knees were functional prior to the injury."

¶ 17 Kornblatt performed a physical examination. He noted that claimant was using a cane and was walking slowly. His right knee was not swollen and had full range of motion. There was no evidence of instability. Kornblatt reviewed X rays, which showed advanced osteoarthritis. There were no objective findings that would indicate claimant suffered a significant injury on January 25, 2010. Kornblatt did not review the MRI scan itself, because he felt that the X rays showed such advanced osteoarthritis that the MRI would not "add anything." He did review the MRI reports though. If the incident of January 25, 2010, resulted in an injury, it would have been nothing more than a minor contusion. Claimant already had "end-stage arthritis," "for which he was told that he required total knee replacement prior to the injury." A record dated December 29, 2006, indicated that claimant was interested in proceeding with a total knee replacement. However, Petrucci believed that it was advisable for claimant to delay surgery in light of claimant's age and weight. Kornblatt opined that claimant has been a

candidate for total knee replacement since “at least 2006.” Such surgery, according to Kornblatt, is the only thing that will cure claimant.

¶ 18 Kornblatt further opined that claimant’s need for a total knee replacement was completely unrelated to his at-work accident. If claimant did suffer an injury, he is now at maximum medical improvement (MMI). The swelling claimant experienced on the night of the accident was due to his osteoarthritis. Kornblatt stated that he held all his opinions to a reasonable degree of medical certainty.

¶ 19 During cross-examination, Kornblatt acknowledged that he performed over 100 independent medical evaluations over the past year, resulting in \$90,000 worth of income. He performs these services for “far more employers” than employees.

¶ 20 Kornblatt described the mechanism of injury as follows: “When you have a problem with a joint, and you are heavy, you have more pressure across that joint per square inch, and the increased pressure breaks down the cartilage.” Claimant’s counsel asked, “So the more time that he is standing there putting weight across the joint, the quicker the joint is going to break down?” Kornblatt answered affirmatively. Claimant’s counsel then asked, “Would standing for prolonged periods during a workday be a contributory factor towards the accelerated degeneration of the knee joint?” Kornblatt stated, “I don’t think that’s ever been shown scientifically.” Kornblatt then explained he meant “pounding” movements like walking; subsequently, he admitted that claimant probably walks during the course of his workday.

¶ 21 Kornblatt did not believe claimant had a PCL or ACL² tear. He stated that the radiologist who read the MRI could have mistaken inflammation for a tear. Kornblatt doubted that the sort

² Here, the second tear is described as an ACL tear, earlier, the second tear is identified as an MCL tear.

of fall experienced by claimant could tear ligaments. He further explained that he noted no instability when he examined claimant. Kornblatt agreed that osteoarthritis makes ligaments more brittle and susceptible to injury such that they might tear with less force.

¶ 22 Claimant's attorney asked Kornblatt whether, "as long as he is getting sufficient relief from the hyaluronic acid injections,³ there is no need to perform a total knee replacement, correct?" Kornblatt replied, "At that particular time." However, Kornblatt questioned "how much relief [claimant] really had," adding, "I suspect he was quite disabled prior to his alleged injury." Kornblatt believed claimant was wearing braces on both knees. The following colloquy then took place between Kornblatt and claimant's attorney:

"Q. [by claimant's attorney] Okay. Did you look at him reporting that he had significant good relief *** from Euflexxa injection, more notable than the Supartz that he had in the past?"

A. [by Kornblatt] What's your point?

Q. The point is that the hyaluronic acid injections were working.

A. Okay.

Q Okay? And that after this fall in January of 2010, he wasn't getting any relief from the hyaluronic acid therapy?

A. Correct.

Q. Right?

A. Right.

Q. And at that point, because his pain is not uncontrollable, he is in need of a total knee replacement?

³ This term refers to both Supartz and Euflexxa.

A. I see.

Q. Right.

A. Yes.”

Nevertheless, Kornblatt then disagreed when asked if claimant’s fall could have aggravated the condition of his knee. Kornblatt stated that a proposition had to be 80% or 90% true before he would say that he held it to a reasonable degree of medical certainty.

¶ 23 During redirect, Kornblatt testified that a 2006 MRI showed a tear of the meniscus. He reiterated that claimant was a candidate for a total knee replacement since the time he had bone-on-bone contact in his knee. A PCL tear would have manifested itself immediately after the fall.

¶ 24 The arbitrator found claimant’s condition of ill being was “causally connected to his undisputed accident,” finding the accident accelerated claimant’s need for a total knee replacement. Dr. Petrucci’s records document an extensive history of treatment for pre-existing osteoarthritis. Surgical options were discussed, but claimant elected to rely on conservative measures, specifically the injections. He was able to continue working. In June 2008, claimant underwent a pre-employment physical and was cleared for his job with respondent. The arbitrator then noted that there was no evidence that the condition of claimant’s knees interfered with his ability to work for the next two-and-one-half years. Moreover, it was undisputed that claimant fell on January 25, 2010. While respondent questions the severity of the fall, Ed Rasmussen, who witnessed it, remarked that it was a bad fall. Claimant initially believed that “the fall was not a big deal” and therefore did not report it immediately. The next day, claimant saw Petrucci and was taken off work. Claimant was sent for an MRI, which showed acute changes including a PCL tear. Chudik opined that there was a causal relationship between claimant’s need for surgery and his fall at work. The arbitrator expressly found Chudik more

credible than Kornblatt. She noted that while Chudik did not initially review Petrucci's records, "when he was provided with excerpts from the records he based his testimony on the records themselves." The arbitrator also noted that Kornblatt had not reviewed all the records either, notably the MRI taken following the accident on January 27, 2010. Moreover, Kornblatt's testimony was not based on the evidence. She found that Kornblatt's opinion that claimant "was functionally disabled prior to the accident has no basis in the record." Further, she added, "His opinion that [claimant's] fall was not very significant is speculative." Accordingly, she awarded claimant temporary total disability (TTD) and medical expenses, but she declined to impose penalties and fees against respondent.

¶ 25 After acknowledging that the arbitrator's ruling was based on the fall accelerating claimant's need for surgery, the Commission found "that [claimant's] need for total right knee replacement predated the January 25, 2010 fall." On this basis, it reversed that portion of the arbitrator's decision. It first criticized the arbitrator's reliance on Chudik's opinion. Its sole reason for doing so was that claimant purportedly "misled Dr. Chudik with his claim that he did not have any problems with his right knee prior to January 25, 2010." The Commission then observed that claimant had bone-on-bone contact in his knee. Surgery had been discussed, and claimant indicated that he wanted to proceed with it in December 2006. Petrucci advised that claimant wait. The Commission then noted the success of the injections claimant received:

"After postponing the surgery, [claimant] then treated his right knee pain with a series of Supartz and Euflexxa injections. His medical records reveal that he was able to live with the pain and discomfort that was brought on by the severe medial compartment osteoarthritis and bone-on-bone condition in his right knee until January 25, 2010, because of the aforementioned injections.

The Commission finds that these injections only postponed [claimant's] total right knee replacement surgery but did nothing to ameliorate his need for surgery.”

The Commission then discussed and relied on one of its own cases, which is not material here. See *S & H Floor Coverings v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 266 (2007). The Commission then concluded, “Although the Commission does not find [claimant's] total right knee replacement surgery to be causally connected [to] his January 25, 2010, fall, the Commission does find that said fall caused a temporary aggravation of [his] pre-existing osteoarthritic condition in his right knee that left [him] temporarily totally disabled from January 26, 2010 through May 25, 2010” (the date of the surgery). Accordingly, it awarded TTD and ordered respondent to pay medical expenses from the time of the accident up to, but not including, claimant's surgery.

¶ 26 The trial court found the Commission's decision to be contrary to the manifest weight of the evidence. It first criticized the Commission's finding that claimant had misled Chudik, noting that the record reveal that Chudik was well aware of claimant's pre-existing condition. Chudik's own notes document claimant's osteoarthritis and the injections he received for it. Moreover, Chudik reviewed X rays and an MRI which showed the osteoarthritis. In his deposition, when asked whether claimant was “doing fine” before the accident, Chudik responded negatively. Elsewhere in his deposition, Chudik stated that the accident “took him from a point where he was managing, although with some difficulty, and pushed him over the limit.” The trial court then concluded, “There is absolutely no evidence to suggest that Dr. Chudik's pro-causation opinions were somehow impaired by a misunderstanding about [claimant's] pre-accident knee.”

¶ 27 The trial court then found the Commission's determination that claimant's need for surgery was entirely the result of a pre-existing degenerative condition was against the manifest weight of the evidence. It noted that prior to the accident, nonsurgical treatment was successful—the injections were working. It was undisputed that claimant passed a pre-employment physical and never missed a day of work. Claimant's supervisor, who saw claimant on a daily basis before the accident, never observed anything wrong with claimant's gait. Further, imaging tests taken after the accident showed acute changes. Both Chudik and Kornblatt testified that surgery was not needed if the injections were working, and both testified that the injections were, in fact, working.

¶ 28 The trial court next found that the medical evidence did not support the Commission's denial of an award for the surgery. While the need for a knee replacement sometime in the future had been discussed, injections were successfully managing claimant's condition. Moreover, Petrucci was of the opinion that due to claimant's age and weight, it was medically prudent to delay surgery for as long as possible. The injections were providing "increasing periods of relief as treatment progressed." The trial court observed that none of this evidence was contested. Even Kornblatt agreed that the injections postponed the need for surgery. Further, the Commission ignored the change in claimant's ability to function following the accident. While he had never missed a day of work prior to January 25, 2010, after the accident, "[h]e was no longer able to perform work for respondent." Claimant was using assistive devices to ambulate, and he walked with an antalgic gait. Objective findings on imaging tests confirmed claimant's injury and that it was acute. Chudik opined that claimant's need for surgery was causally related to his accident.

¶ 29 The trial court next observed that, while the Commission agreed that claimant was totally disabled from his injury to his surgery, it terminated TTD on the day of the surgery. In other words, the trial court explained, the Commission determined claimant reached MMI “on the day that [claimant] was immobilized in a hospital bed, his leg had been cut open and parts of his joints removed.” The trial court noted that nothing in the record suggests that claimant’s condition stabilized on this day. Finally, the trial court noted the absence in the Commission’s decision of relevant principles of law, such as that an employer takes an employee as he finds him (*Baggett v. Industrial Comm’n*, 201 Ill. 2d 187, 199 (2002)) and that employment need only be a cause of an injury for it to be compensable under the Act (*Sisbro, Inc. v. Industrial Comm’n*, 207 Ill. 2d 123, 127 (2003)). As such, the trial court held the Commission’s decision to be against the manifest weight of the evidence.

¶ 30

III. ANALYSIS

¶ 31 Respondent now appeals, arguing that the trial court simply substituted its judgment for that of the Commission.⁴ While we find the trial court’s decision well reasoned, we remain cognizant of the substantial deference we owe the Commission on factual matters. See *Long v. Industrial Comm’n* 76 Ill. 2d 561, 566 (1979). Generally, resolving conflicts in the evidence and weighing the credibility and testimony of witnesses is a matter for the Commission. *Illinois*

⁴ Respondent’s third argument relies almost entirely on decisions of the Commission. We have previously explained that “[d]ecisions of the Commission in unrelated cases have no precedential impact on cases before this court.” *S & H Floor Coverings Inc.*, 373 Ill. App. 3d at 266. Thus, respondent’s third argument is not supported by any meaningful authority. As such, this argument is forfeited. See *Vilardo v. Barrington Community School District No. 220*, 406 Ill. App. 3d 713, 720 (2010).

Mutual Insurance Co. v. Industrial Comm'n, 201 Ill. App. 3d 1018, 1038 (1990). Nevertheless, “[c]omplete deference is not required.” *Alexander v. Industrial Comm'n*, 314 Ill. App. 3d 909, 918 (2000). Our review is not a mere formality, and it is our duty to reverse a decision of the Commission if it is contrary to the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence if an opposite conclusion is clearly apparent. *Chicago Messenger Service v. Industrial Comm'n*, 356 Ill. App. 3d 843, 849 (2005). Questions of law, of course, are reviewed *de novo*. *United Airlines, Inc. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 121136WC, ¶ 19.

¶ 32 Initially, we note that the Commission committed an error of law. It is axiomatic that to be compensable, a claimant's condition of ill being must be caused by a work-related accident. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434 (2011). However, employment need not be the sole cause of the injury; to be compensable, it is sufficient if it is *a* cause. *Id.* Moreover, an employer takes his employees as he finds them. *Bagget*, 201 Ill. App. 3d at 199. Even where a pre-existing condition makes an employee more vulnerable to an injury, compensation may be awarded if employment is a causal factor in the resulting injury. *Sisbro, Inc.*, 207 Ill. 2d at 205. Finally, a claimant may recover where an underlying condition has been accelerated by employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982). All of these principles are well established in the law of this State and apply in this case.

¶ 33 A review of the Commission's decision clearly indicates that it did not consider whether the *acceleration* of claimant's condition provided a causal link between claimant's need for surgery and the accident of January 25, 2010. Outside of noting the arbitrator's finding, the

Commission never mentions this principle of law. Its absence is particularly glaring in light of the following factual findings by the Commission:

“After postponing the surgery, [claimant] then treated his right knee pain with a series of Supartz and Euflexxa injections. His medical records reveal that he was able to live with the pain and discomfort that was brought on by the severe medial compartment osteoarthritis and bone-on-bone condition in his right knee until January 25, 2010, [the date of the accident,] because of the aforementioned injections.

The Commission finds that these injections only postponed [claimant’s] total right knee replacement surgery but did nothing to ameliorate his need for surgery.”

Quite simply, *if* the injections postponed the need for surgery before the accident, and they were unable to do so after the accident, the accident caused claimant to need surgery sooner than he would have but-for the accident.

¶ 34 Moreover, the reasons cited by the Commission for its finding of no causal relationship between the need for surgery and the accident are dubious. Its rejection of Chudik’s opinion was based on its belief that claimant somehow misled Chudik into believing that claimant had never had a prior problem with his right knee. The Commission did not specify on what it based this finding. Apparently, the Commission was relying on a notation in the record of claimant’s first visit with Chudik, which states, “He denies any previous problems or pain to the right knee prior to the fall.” On the same page of this record, the following statement appears, “osteoarthritis of the knees previously diagnosed.” On the next page, in a section headed “impression,” it states, “Right knee osteoarthritis exacerbation, PCL tear and grade 2 MCL tear.” Clearly, claimant related to Chudik that he suffered from osteoarthritis of the right knee during this initial visit. Nothing in the record indicates that claimant had some other problem with his knee. Hence, we

cannot conceive of what it was the Commission believed claimant was misleading Chudik about. Read in the context of the balance of the record and given the fact the Chudik was obviously aware of claimant's right-knee osteoarthritis, the only reasonable interpretation of the statement that claimant had no previous problems with his right knee prior to the surgery is that he was successfully managing his condition and continuing to work. While we express no ultimate opinion as to Chudik's credibility, the Commission's paltry reason for discounting his testimony, without more, is dubious.

¶ 35 Respondent argues that Chudik did not have access to claimant's prior medical records, and we agree that his testimony is equivocal on this subject. However, records generated by Chudik during the course of his treatment of claimant reveal that Chudik understood claimant's prior condition. As noted above, Chudik was aware of claimant's osteoarthritis from the time of the first visit. In progress notes generated following a visit on March 8, 2010, Chudik notes that claimant received a Euflexxa injection in his right knee in November 2009. He reviewed X rays and an MRI, which showed claimant's osteoarthritis. His notes document Euflexxa and Synvisc injections. At several times during his deposition, Chudik referred to claimant's osteoarthritis as pre-existing. Respondent has not identified any material knowledge that Chudik was lacking.

¶ 36 We also note that there was evidence that claimant was able to work full-time prior to the accident, that his supervisor never observed claimant having any problems with his knees before January 25, 2010, and that claimant passed a pre-employment physical. We further note the similarly undisputed evidence that following the accident, claimant was taken off-work by Petrucci and used a cane to ambulate. A change in an employee's medical condition immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d

1197, 1205 (2000). Here, the immediate degeneration in claimant's condition following the accident provides evidence of a causal connection.

¶ 37 Respondent also contends that the arbitrator and the trial court ignored claimant's extensive pre-existing history of osteoarthritis. The trial court expressly referenced claimant's osteoarthritis in its decision. Moreover, osteoarthritis is the condition that was exacerbated. The trial court observed that even Kronblatt agreed that claimant's accident accelerated the deterioration of his condition:

“[Claimant's counsel:] Okay? And that after this fall in January of 2010, he wasn't getting any relief from the hyaluronic acid therapy?

[Kornblatt:] Correct.”

Plainly, the trial court did not ignore claimant's pre-existing osteoarthritis.

¶ 38 Respondent contends that claimant's purported admission on the task-assignment card he turned in on January 25, 2010, stating he did not experience an injury provides a sufficient basis for the Commission's findings on causation. However, claimant testified that he filled out the card at the beginning of his shift, before the accident, and he further explained that he did not believe the fall was “a big deal” when it initially occurred. Moreover, it is undisputed that claimant experienced a fall on that date, and his supervisor expressly characterized the fall as “bad.” Respondent contends the supervisor's statement is hearsay, and it interposed a timely objection before the arbitrator. The arbitrator overruled the objection, without specifying a basis for the admission of the statement. Claimant contends that the statement is admissible, *inter alia*, as a spontaneous declaration. See Illinois Rule of Evidence 803(2) (eff. Jan. 1, 2011). An excited utterance or spontaneous declaration is admissible when: (1) an occurrence is sufficiently startling to produce a spontaneous and unreflecting statement; (2) there is an absence of time for

the declarant to fabricate the statement; and (3) the statement relates to the circumstances of the occurrence. *People v. Dobbey*, 2011 IL App (1st) 091518, ¶ 44. As all three criteria apply to the supervisor's statement, we could not find that that arbitrator abused her discretion in allowing this testimony (*Coriell v. Industrial Comm'n*, 83 Ill. 2d 105, 110 (1980) (holding evidentiary ruling are reviewed using the abuse-of-discretion standard)). Thus, despite claimant's failure to report the fall on the task-assignment card, there is competent evidence in the record that he suffered a bad fall. In light of the totality of the evidence in the record, we cannot say that the initial assessment of the severity of the fall made by claimant—a lay person—provides such compelling support for the Commission's decision that it can stand.

¶ 39

IV. CONCLUSION

¶ 40 In light of the foregoing, we vacate the decision of the trial court and the Commission. We remand this cause to the Commission to allow it to consider whether claimant's condition was accelerated by, and thus caused by, the accident.

¶ 41 Vacated and remanded, with directions.

¶ 42 JUSTICE HOFFMAN, specially concurring:

¶ 43 I concur with the judgment of the majority vacating the circuit court's judgment, vacating the Commission's decision, and remanding this matter to the Commission with directions to consider whether the claimant's condition was accelerated by his work-related accident. I also join in the majority's analysis from paragraph 3 through, and inclusive of, the second sentence in paragraph 33. I do not, however, join in the remainder of the majority's analysis.

¶ 44 Distilled to its finest, this court has vacated the Commission's decision and remanded the matter back with directions to analyze causation under an acceleration theory. Having done so, the Commission's original decision no longer exists. Consequently, I am at a loss as to

understand why the majority has devoted six paragraphs of text covering more than 3 ½ pages discussing issues of manifest weight and credibility as they relate to a decision which has been vacated by reason of a legal error.

¶ 45 *Obiter dictum* is defined as: "A judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential." Black's Law Dictionary 1100 (7th ed. 1999). Once having determined that the Commission made an error of law by failing to consider whether the claimant's condition was accelerated by his work accident and, as a consequence, vacating the Commission's decision, any discussion of the Commission's factual findings and credibility determinations addressing the issue of causation in its original decision as being contrary to the manifest weight of the evidence is pure *obiter dictum*. If, by including an analysis of these matters in its order, the majority intends to advise the Commission how it will rule should the Commission make the same findings in its decision post-remand, the discussion is purely advisory. In either case, I believe that the analysis is inappropriate, and I decline to join.

¶ 46 Presiding Justice Holdridge joins in this special concurrence.