

2019 IL App (2nd) 180956WC-U

Workers' Compensation
Commission Division
Order Filed: December 20, 2019

No. 2-18-0956WC

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
FIRST DISTRICT

RAMONA SERNA,)	Appeal from the
)	Circuit Court of
Appellant,)	DuPage County
)	
v.)	No. 18 MR 751
)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> ,)	
)	
(FedEx Ground, Appellee).)	Honorable
)	Paul M. Fullerton,
)	Judge, presiding.

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

ORDER

¶ 1 *Held:* We affirmed the circuit court's judgment confirming the Workers' Compensation Commission's decision awarding the claimant temporary total disability benefits

for the period from November 14, 2011, through June 19, 2013, under section 8(b) of the Illinois Workers' Compensation Act (820 ILCS 305/8(b) (West 2010)).

¶ 2 The claimant, Ramona Serna, appeals from an order of the circuit court of DuPage County which confirmed a decision of the Illinois Worker's Compensation Commission (Commission) awarding her, in addition to other relief, temporary total disability benefits for the period from November 14, 2011, through June 19, 2013, under section 8(b) of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/8(b) (West 2010)). For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing held on July 13, 2016.

¶ 4 The claimant was employed by FedEx as a package handler. The claimant testified she moved packages weighing between 5 and 45 pounds, sometimes up to 100 pounds. She was on her feet seven to eight hours per day, and "constantly" kneeling or stooping. On October 5, 2011, she was unloading a truck. There was a space between the trailer and the floor, and her foot got caught. She fell backwards landing on the left side of her body. Her left knee began to swell and "bother" her when she walked. She also noticed an injury to her left arm and notified her supervisor.

¶ 5 On October 11, 2011, the claimant sought treatment at Concerta Medical Center. The record of her treatment indicates "Patient states: 'I was taking boxes down the trailer when my foot got stuck and I fell back and hurt my left shoulder.' " The claimant was diagnosed with a sprain and restricted from lifting more than 10 pounds, no pushing or pulling more than 10 pounds, and no reaching above shoulder height with her left arm.

¶ 6 On October 13, 2011, the claimant was seen by Dr. Christos Giannoulis at G & T Orthopaedics and Sports Medicine. The report of that treatment indicates: “[The claimant] injured herself at work when she slipped in a crack between [a] truck and the dock. She fell landing on her left arm.” Dr. Giannoulis examined the claimant and ordered an MRI of the claimant’s shoulder. Dr. Giannoulis also ordered no use of her left arm.

¶ 7 An MRI taken of the claimant’s left shoulder on October 21, 2011 revealed a “High-grade partial tearing of the supraspinatus tendon. Only a few intact tendon fibers remain along the articular surface of the tendon.” The MRI also revealed subdeltoid and subacromial bursitis.

¶ 8 On October 31, 2011, Dr. Giannoulis examined the claimant and reviewed the MRI. He diagnosed her with a complete full-thickness tear of supraspinatus. The claimant was taken off work on November 14, 2011, in anticipation of surgery on November 16, 2011.

¶ 9 The claimant underwent arthroscopic surgery on November 16, 2011. The postoperative diagnoses were left rotator cuff tear and left shoulder subacromial impingement.

¶ 10 Dr. Giannoulis saw the claimant again on November 28, 2011 and December 27, 2011. Dr. Giannoulis ordered physical therapy for the claimant, which she received at ATI Physical Therapy (ATI). Dr. Giannoulis ordered that the claimant stay off work.

¶ 11 On April 9, 2012, Dr. Giannoulis noted that the physical therapist was recommending transition to a work conditioning program. Dr. Giannoulis agreed but recommended that range of motion be the first priority followed by a transition to work conditioning. He also noted that the claimant was unable to return to work.

¶ 12 On May 7, 2012, Dr. Giannoulis saw the claimant. The claimant was 50-60% improved but still having pain with overhead activity. He gave the claimant a subacromial injection with

Depo-Medrol and lidocaine to alleviate inflammation, and recommended a repeat MRI if she continued to have difficulty.

¶ 13 The claimant began a work conditioning program at ATI on May 21, 2012. According to the therapist's first report dated June 4, 2012, the claimant had bilateral knee pain when performing lifts from the floor. The report for the period ending June 3, 2012, dated June 8, 2012, reported "increased bilateral knee pain when performing repeated squats." The report for the period ending June 10, 2012, noted "clicking in the left knee" with repeated lifting.

¶ 14 At the hearing, the claimant testified that her knee started bothering her during therapy, "[w]hen they had me leaning over to lift something heavy and I was running on the treadmill and when they gave me weights [which she lifted by extending her legs.]" The claimant noticed her leg was swollen and it hurt.

¶ 15 When Dr. Giannoulis saw the claimant On June 11, 2012, she reported that the previous injection only gave a little bit of relief. Dr. Giannoulis gave her an injection of Depo-Medrol and lidocaine in the AC (acromioclavicular) joint and ordered another MRI.

¶ 16 On June 23, 2012, the claimant underwent an MRI of her left shoulder which revealed subdeltoid and subacromial bursitis, mild grade 1 separation of the AC joint with a small joint effusion, and small erosions on the articular surface of the left clavicle, possibly posttraumatic osteolysis.

¶ 17 On July 9, 2012, the claimant saw Dr. Giannoulis. He reviewed the MRI, found marked edema in the AC joint and diagnosed her with AC joint pain. Dr. Giannoulis recommended surgery, an AC joint resection. He also excused the claimant from work until the next visit.

¶ 18 On August 14, 2012, Dr. Giannoulis performed arthroscopic surgery on the claimant's shoulder. He performed a subacromial decompression and distal clavicle excision.

¶ 19 When Dr. Giannoulis saw the claimant on August 20, 2012, he found that she had AC joint arthrosis and gave her a prescription for Mobic. He also noted that the claimant had complained of knee pain and that the Mobic might help with that as well. Dr. Giannoulis observed patellofemoral crepitation. He excused the claimant from work until her next visit.

¶ 20 On September 17, 2012, Dr. Giannoulis recommended the claimant continue with physical therapy, along with the use of ice and ibuprofen. He continued to excuse her from work. On October 22, 2012, Dr. Giannoulis recommended continued physical therapy and kept the claimant off work.

¶ 21 On November 19, 2012, the claimant saw Dr. Giannoulis and reported that she had plateaued a bit with physical therapy. Dr. Giannoulis noted that the claimant was a little stiff, ordered x-rays, and ordered continued physical therapy and pain medication. He excused her from work until the next visit.

¶ 22 When the claimant was seen by Dr. Giannoulis on December 17, 2012, he noted that the x-ray of her shoulder looked "good." He also noted that the claimant was still having pain but that he could not "figure out" the source of the pain. He recommended that she proceed with a conditioning program to establish what she could and could not do at work. He excused her from work until their next visit.

¶ 23 The claimant began a new work conditioning program at ATI on December 24, 2012. She continued to report left shoulder and left knee pain.

¶ 24 On January 8, 2013, the claimant underwent an MRI of her left knee on the referral of Dr. Fernando Streidinger¹. The MRI revealed chondromalacia patellae, mucoid degeneration in the posterior horn of the medial meniscus, mucoid degeneration in the posterior horn of the lateral meniscus, a geode in the posterolateral aspect of the patella, minimal knee joint effusion, and minimal soft tissue edema on the anterior aspect of the knee.

¶ 25 In an evidence deposition, Dr. Giannoulis testified he saw the claimant and reviewed her MRI on January 17, 2013. The MRI revealed patellar chondromalacia, a thinning of the cartilage of the kneecap, and the possibility of a meniscus tear. The MRI showed a signal indicative of a tear, and this was supported by Dr. Giannoulis's physical exam of the claimant including medial joint line pain with McMurray's test. He opined that the claimant's symptoms and physical examination were not consistent with chondromalacia alone, but there was likely a meniscus problem as well. Dr. Giannoulis began a series of injections for the claimant's knee including cortisone and Hyalgan.

¶ 26 On January 17, 2013, the claimant saw Dr. Giannoulis complaining of left shoulder and left knee pain. He observed positive McMurray's signs. Dr. Giannoulis diagnosed the claimant with a left shoulder rotator cuff tear and a left knee chondromalacia and meniscus tear. Dr. Giannoulis injected the claimant's knee with Depo-Medrol and lidocaine, and recommended that she complete work conditioning over the next two weeks and then undergo a functional capacity evaluation (FCE).

¹ Dr. Streidinger did not testify and appears nowhere else in the record. The claimant asserts in her brief that he was her primary care physician.

¶ 27 The claimant had an FCE on January 31, 2013. The report of the FCE indicated that the claimant could perform at the light physical demand level. She demonstrated the ability to lift 10.4 pounds above the shoulders, 25.8 pounds from desk to chair, 30.2 pounds from floor to chair. During unilateral lifts, claimant had the ability to lift 21.8 pounds above the shoulder with her right hand and 5.6 pounds above her shoulder with her left hand. She also demonstrated the ability to lift 15.2 pounds with her left arm and 43.8 pounds with her right arm from chair to desk. The report noted that the claimant's abilities fell below the medium level demanded of warehouse workers according to the dictionary of occupational titles.

¶ 28 Dr. Giannoulis testified that after reviewing the January 31, 2013 FCE, he recommended that the claimant return to work with permanent restrictions with regard to her shoulder. The claimant was able to lift 10 pounds over her shoulders, 25 pounds from desk to chair, and 30 pounds from chair to floor, placing her in the light to medium level of work.

¶ 29 On February 25, 2013, Dr. Giannoulis saw the claimant and injected her knee with Hyalgan. He allowed her to return to work with permanent restrictions of lifting and carrying 15 pounds, overhead work 10 pounds, and no squatting or climbing. Dr. Giannoulis indicated that the claimant could sit, drive, stand and walk, bend, and push and pull five to eight hours per day.

¶ 30 Dr. Giannoulis injected the claimant's knee with Hyalgan again on March 4, 2013, and March 11, 2013. On March 11, 2013, he indicated: "I do not think that she is going to be able to return to her occupation given the fact that she has both knee and shoulder problem and that the type of work she is [*sic*] does is repetitive by definition." He recommended that she stay off work.

¶ 31 On March 25, 2103, Dr. Giannoulis saw the claimant and recommended that she undergo arthroscopy on her knee because the conservative care had failed to alleviate her symptoms. Dr.

Giannoulas testified that as of March 2013, he did not recommend any further treatment for the claimant's left shoulder.

¶ 32 At the request of FedEx, Dr. Ira B. Kornblatt saw the claimant on June 19, 2013, for an independent medical exam (IME). He noted: "Claimant presents with an exaggerated pain behavior pattern." Dr. Kornblatt diagnosed the claimant with "pre-existing chondromalacia patella with symptomatic exacerbation." Dr. Kornblatt observed a negative meniscal sign. He opined that her condition of ill-being was causally related to the pre-existing chondromalacia of her patella and not causally related to her work injury or the work conditioning she underwent for her shoulder. He also opined, that the claimant needed further treatment for her knee in the form of arthroscopic surgery. Finally, he opined that she was unable to return to her regular job as a package handler.

¶ 33 On March 10, 2014, Dr. Giannoulas prepared a report on the claimant's treatment. The report recounted the history of her treatment consistent with the medical records previously summarized. With regard to her left shoulder, Dr. Giannoulas diagnosed the claimant with a rotator cuff tear, AC joint arthrosis, and adhesive capsulitis. With regard to her left knee, he diagnosed the claimant with patellar chondromalacia and a medial meniscus tear. Dr. Giannoulas opined that a work incident on October 5, 2012 was directly related to her shoulder condition. He further opined that her knee condition was related to the work conditioning that she underwent for her shoulder. Dr. Giannoulas explained:

"She does have patellar chondromalacia, which in my opinion is pre-existing; however, she does have medial meniscus pathology on her physical exam as well as her MRI. It is certainly probable with a greater degree of 50% certainty medically and surgically that the

symptoms that she is experiencing on her left knee are related to the work conditioning she experienced for her shoulder.”

He opined that no further treatment was necessary for the claimant’s shoulder as she had reached the end of her healing. However, he recommended that she undergo arthroscopy to evaluate her left knee, and opined that the knee pain was aggravated from work conditioning. Dr. Giannoulis disagreed with Dr. Kornblatt’s conclusion that the current condition of the claimant’s left knee was caused solely by the pre-existing chondromalacia within her left patella.

¶ 34 On June 16, 2014, Dr. Giannoulis testified that when he first saw the claimant on October 13, 2011, she told him that she slipped in a crack between a truck and a dock. She fell on her left arm and had shoulder pain. He tried conservative treatments, and when they failed, he performed a second shoulder surgery to resect her A-C joint, her collarbone joint. Between the two surgeries the claimant underwent physical therapy, and also did a course of work conditioning. Beginning with the May 11, 2012, notes, the reports from the physical therapist indicated that the claimant had knee pain and clicking when lifting weights and performing squats.

¶ 35 Dr. Giannoulis stated that, in December 2012, he recommended that the claimant undergo an MRI of her knee. When asked about the condition of her knee, he responded:

“I believe that at the very least she had some sort of an aggravations of her left knee, whether it was in work conditioning, as she started complaining of left knee pain when she was doing to the work conditioning, or it occurred during the injury when she slipped and fell.

I do feel that she does have chondromalacia, which I believe is pre-existing. The main issue that I have is that prior to this there's not been any complaints of knee problems or knee pain.

She also has findings on her physical exam, multiple times through my examination, that was consistent with a medial meniscus tear, which usually means tears, meniscus tears are not related to just age and wear and tear in someone who does not have significant arthritis.

So I believe that something caused this meniscus tear and any absence of any other records that I had reviewed or in the absence of [the claimant] telling me that she had a separate injury or she was an avid athlete doing something differently, I believe the work injury was related to that.”

¶ 36 He also testified that he disagreed with the conclusions in Dr. Kornblatt's report that the knee problems the claimant was having were caused solely by her pre-existing chondromalacia. Stating:

“I agree partly in the sense that part of the problem that she has was a patellar chondromalacia, which I would agree that's more of an pre-existing issue, and that's probably just wear and tear age related. But she, on multiple physical examinations, on my exam, she has had medial joint line pain, positive McMurray's tests, pain with circumduction. Those are tests that indicate more of a meniscus problem. And so that's where the disagreement would be between Dr. Kornblatt's opinion and my opinion.”

¶ 37 On cross-examination, Dr. Giannoulis acknowledged that Dr. Kornblatt observed that the meniscus signs were negative, and acknowledged that that indicated there was no meniscus tear.

He admitted that this was the opposite of his own observations and opinion. He admitted that he never observed instability in the claimant's knee, localized swelling, or exaggerated pain behavior. He also acknowledged that the claimant's first complaint about knee pain was ten months after her accident, and agreed that the fall did not cause the chondromalacia. Dr. Giannoulas admitted that the knee pain the claimant experienced could have been caused by the activity of daily life, but explained that was why he talked about the probability of it being related to the work conditioning. He admitted that, at five foot two inches tall and 220 pounds, the claimant was overweight.

¶ 38 On October 22, 2014, Dr. Kornblatt gave an evidence deposition. He testified he examined the claimant on June 19, 2013 at the request of FedEx. She presented with an exaggerated pain behavior pattern and walked with a marked left-sided limp. She was five feet two inches tall and weighed 210 pounds. There was no local swelling in her left knee. The claimant "complained bitterly" upon palpation of the knee. Her range of motion was self-limited from full extension to 90 degrees flexion. On re-examination, flexion was possible to 125 degrees. Meniscal signs appeared to be negative. The claimant had soft patellofemoral crepitus. Dr. Kornblatt reviewed the MRI and opined that it was consistent with chondromalacia patella and degenerative changes in the posterior horn of the medial meniscus in addition to the degenerative changes in the anterior and posterior horns of the lateral meniscus, with minimal joint effusion, minimal soft tissue edema on the anterior aspect of the knee, and abnormality of posterior lateral aspect of the patella.

¶ 39 When asked about Dr. Giannoulas's opinion that the meniscal injury resulted from work hardening or physical therapy, Dr. Kornblatt opined that there may be a degenerative meniscal tear. He further opined that he could not say with certainty that there was not a small meniscal tear, but that if there was, "it's a degenerative process similar to the chondromalacia that she has." Dr.

Kornblatt performed a McMurray test, and it was negative for a meniscal tear. Dr. Kornblatt stated he calculated the claimant's body mass index (BMI) at 38 and noted that any BMI over 30 is considered obese.

¶ 40 Dr. Kornblatt testified that he generally agreed with Dr. Giannoulis's opinions, except for his opinion that work conditioning or physical therapy was the cause of the claimant's knee pain.

He explained:

“Well first of all, there was a very long period of time between the fall and her complaining of symptoms, a year and a half or something like that. There was no documented injury during the course of her work conditioning. During her work conditioning she said that her knee began to hurt. I saw no evidence of an injury, and I find it—I really doubt that she was doing anything that would have caused her to tear a meniscus, and, in addition, she was going to work conditioning, what, for or five days a week for a couple of hours a day where she had been living on that knee, you know, carrying on normal daily activities and everything else, for a period of two years, and, again, to point a finger and say, well, this came on during work conditioning, it's very easy to claim that. I don't believe it.”

Dr. Kornblatt further opined, that it was unlikely that the activity she was performing during work hardening/physical therapy could have aggravated her pre-existing knee problems and caused a meniscal tear. He opined that her knee pain was a pre-existing problem not related to her work activities. Dr. Kornblatt further opined that the claimant “deserves” to have arthroscopy done on her knee. He opined that surgery would be appropriate, but related to her degenerative process not to physical therapy and work conditioning.

¶ 41 On March 20, 2015, Dr. Giannoulis again saw the claimant. He diagnosed her with left knee chondromalacia and meniscus tear. He recommended arthroscopy.

¶ 42 On November 18, 2015, Dr. Kornblatt conducted a second IME of the claimant. He diagnosed the claimant with pre-existing chondromalacia of the patella. Dr. Kornblatt opined, consistent with his first IME, that there was no evidence of a work injury to the claimant's knee. He further opined that, although he believed additional treatment was appropriate, ongoing treatment was not related to her injury on the job or the physical therapy she obtained. He did not opine that the claimant was capable of returning to work; noting, to the contrary, that she was walking with a limp and had an exaggerated pain behavior pattern, and noting "As such, I am unable to determine her present capabilities with respect to her left knee."

¶ 43 On January 11, 2016, the claimant saw Dr. Giannoulis for a follow up visit. She reported pain in her left shoulder and knee. With regard to the shoulder, Dr. Giannoulis opined that there was nothing more he could do and recommended a referral to pain management. With regard to the knee, he also recommended that the claimant undergo arthroscopic surgery. Dr. Giannoulis noted that he and Dr. Kornblatt disagreed about the cause of the injury, and opined that her work injury aggravated the symptoms.

¶ 44 At the arbitration hearing, the claimant testified that she fell while unloading a truck for FedEx on October 5, 2011. She sought treatment on October 11, 2011 at Concentra Medical Center. They placed her on light duty work restrictions. She took those restrictions to FedEx and they gave her work within those restrictions. She began seeing Dr. Giannoulis on October 13, 2011. He recommended that she could work without using her left arm. FedEx gave her work within that restriction.

¶ 45 She further testified she was unable to perform her normal activities. She notices pain and inflammation in her knee and her arm. She testified that she has pain “when I bend the knee and when I go up the stairs and also if I’m standing up for a long time and when I’m walking.” The claimant takes ibuprofen and uses Voltaren cream for her knee. Simple activity causes pain in her shoulder and she tries to stay within the limits imposed by Dr. Giannoulis.

¶ 46 On cross-examination, the claimant testified that she hurt her knee when she fell on October 5, 2011. However, she admitted that, when she sought treatment on October 11, 2011, she did not mention pain in her knee. She explained that she was focused more on her arm “because that was what was mostly injured.” She acknowledged that the FCE she completed in 2013 indicated she could work at a light duty level. The claimant testified that after Dr. Giannoulis released her to light duty in 2013, she did not look for work and never applied for jobs anywhere.

¶ 47 Following the arbitration hearing on July 13, 2016, the arbitrator found that the claimant sustained accidental injuries on October 5, 2011 including a rotator cuff tear to her left shoulder after she caught her left foot between a dock and a truck, twisting her left knee and falling on her left side. The arbitrator also found that, during subsequent work conditioning, the claimant developed pain in her left knee, related to an aggravation of pre-existing patellar chondromalacia and a possible meniscal tear. The arbitrator found the injuries to the claimant’s shoulder arose out of and in the course of her employment with FedEx and that the injuries to her knee were caused by her work conditioning. The arbitrator concluded that her current condition of ill-being in her left knee and left shoulder was causally related to the accident. The arbitrator awarded the claimant 243 2/7 weeks of temporary total disability (TTD) benefits from November 14, 2011 through July 13, 2016 under section 8(b) of the Act (820 ILCS 305/8(b) (West 2016)). In addition the arbitrator

ordered FedEx to pay for reasonable and necessary medical services previously rendered to the claimant, and approve and pay for arthroscopic examination and repair of the claimant's left knee.

¶ 48 FedEx sought a review of the arbitrator's decision before the Illinois Worker's Compensation Commission (Commission). In a unanimous decision, the Commission affirmed, in part, and modified, in part, the arbitrator's decision. The Commission found that the claimant was entitled to TTD benefits from November 14, 2011 through June 19, 2013, the date of Dr. Kornblatt's Section 12 (820 ILCS 305/12 (West 2016)) examination. The commission noted that a functional capacity evaluation (FCE) indicated that the claimant could tolerate sitting during a workday. The commission criticized the claimant's treating physician, Dr. Giannoulis, for failing to attempt a sedentary or seated-work restriction, and inferred from FedEx's ability to accommodate the claimant's earlier work restrictions that an accommodated position would have been provided. The commission concluded:

“In light of the valid FCE from six weeks prior which established [the claimant] remained capable of light work and had an eight-hour workday sitting tolerance, the Commission finds Dr. Giannoulis' conclusion [the claimant] was totally incapable of any work is contrary to the objective evidence and not persuasive.”

The commission ultimately found that the claimant was not entitled to TTD benefits after the date of Dr. Kornblatt's examination and vacated that portion of the arbitrator's award.

¶ 49 The claimant sought a judicial review of the Commission's decision in the circuit court of Cook County. FedEx filed a motion to transfer venue to the circuit court of DuPage County, which the circuit court of Cook County granted. The circuit court of DuPage County confirmed the Commission's decision, and this appeal followed.

¶ 50 The sole dispute between the parties in this case is the duration of TTD benefits to which the claimant is entitled. The claimant contends that the Commission's decision is against the manifest weight of the evidence and contrary to law. The claimant argues that the record contains no evidence of light duty work offered by FedEx between November 14, 2011 and July 30, 2016. The claimant further argues that the inference that light duty would have been available in 2013 is impermissible. FedEx responds that the commission's decision was supported by sufficient factual evidence in the record.

¶ 51 An employee is temporarily totally disabled from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). "It is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement." *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill. 2d 132, 142 (2010).

¶ 52 The time during which a worker is temporarily totally disabled presents a question of fact to be determined by the Commission and the Commission's decision will not be disturbed unless the decision is against the manifest weight of the evidence. *Archer Daniels Midland, Co.*, 138 Ill. 2d at 118-19. For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App 3d 244, 257 (2008). If there is sufficient factual evidence in the record to support the Commission's determination, it will not be set aside on appeal. *Id.*

¶ 53 Here, the Commission determined that the claimant's period of TTD ended on June 19, 2013, the date of Dr. Kornblatt's examination. In reaching this determination, the Commission was faced with two competing medical opinions. Dr. Giannoulis, on one hand, opined that the claimant's knee pain was caused by or exacerbated by the work conditioning activities she underwent at ATI. Dr., Kornblatt on the other hand, opined that her knee pain was solely the result of degenerative changes and daily life activity. Ultimately, the Commission accepted the Dr. Giannoulis's opinion regarding the cause of the injury and granted the claimant's request for medical expenses related to the treatment of her knee.

¶ 54 However, the Commission viewed the doctors' opinions differently when it came to the issue of the claimant's ability to work. The commission had before it evidence of the FCE conducted on January 31, 2013, which found that the claimant could perform at a light physical demand level. The commission also had evidence that, when the claimant was ordered to restrict her work activities following shoulder surgery, FedEx was capable of accommodating her restrictions. Although Dr. Giannoulis and Dr. Kornblatt both opined that the claimant could not work as a package handler, the FCE revealed that she could tolerate sedentary work. Neither doctor gave a contrary opinion regarding sedentary work. Therefore, the commission's determination that the claimant was capable of returning to work was not against the manifest weight of the evidence.

¶ 55 Although both Dr. Giannoulis and Dr. Kornblatt opined that the claimant could not return to her prior position as a package handler, those opinions are irrelevant to the question of whether the claimant is entitled to TTD benefits. Rather, the test is "whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force." *Interstate Scaffolding*, 236 Ill. 2d at 146. Here, the

Commission had before it evidence that the claimant was capable of returning to work, albeit with restrictions, and that she had failed to even look for work meeting those restrictions with FedEx or elsewhere. Accordingly, the Commission's decision awarding TTD benefits from November 14, 2011 to June 19, 2013 was not against the manifest weight of the evidence.

¶ 56 Finally, claimant argues that the Commission erred as a matter of law because it considered the representations of FedEx's counsel at oral arguments that FedEx has a comprehensive accommodated duty program when determining that work was available for the claimant meeting her restrictions. However, even where the Commission considers improper evidence or factors, its decision is not subject to reversal where it is supported by other evidence in the record or where the improper evidence did not result in prejudice. *Ming Auto Body*, 387 Ill. App. 3d at 257-58. To establish entitlement to TTD benefits, an injured employee must prove not only that she did not work, but also that she was unable to work. *Sharwarko v. Illinois Worker's Compensation Comm'n*, 2015 IL App (1st) 131733WC, ¶ 49. Here, it was the claimant's burden to prove that she was unable to work. The commission found that the claimant had not met this burden based, in part, on the inference that light-duty work would have been available. This inference was supported by the claimant's testimony that she had not sought work consistent with Dr. Giannoulis's restrictions, and that when she had previously sought work with restrictions FedEx has provided it to her. Therefore, we conclude that the Commission's decision was based not on counsel's representations during argument, but, instead, was based on evidence contained in the record. Accordingly, we reject the claimant's argument that the Commission's decision was contrary to law.

No. 2-18-0956WC

¶ 57 For the reasons above, we affirm the judgment of the circuit court which confirmed the Commission's decision.

¶ 58 Affirmed.