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

LABOR NETWORK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 18-L-050001
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION and AMELIA RAMIREZ)	
DE TREJO,)	
)	Honorable
)	Alexander P. White,
Defendants-Appellees.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The circuit court's judgment to confirm the Commission's decision was not against the manifest weight of the evidence where the evidence demonstrated the claimant's injuries were causally related to the work-related accident; the medical care received in connection to the accident was reasonable and necessary; the claimant was entitled to prospective

medical treatment and was TTD; and the claimant's medical services were within the permissible chain of referrals.

¶ 2 The plaintiff-appellant, Labor Network, appeals a decision of the circuit court of Cook County confirming a decision of the Illinois Workers' Compensation Commission (Commission) finding the claimant, Amelia Ramirez de Trejo, temporarily and totally disabled (TTD) and entitled to 133 weeks of TTD and prospective medical treatment benefits for injuries sustained on July 19, 2013.

¶ 3 I. Background

¶ 4 On October 16, 2013, the claimant filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)), seeking workers' compensation benefits for injuries sustained on July 19, 2013, when she "got caught in the pallets *** lifting materials" while working for Labor Network. The claimant indicated that her back, feet, legs and neck were injured following the accident.¹ The matter proceeded to an arbitration hearing on February 11, 2016. The following factual recitation was taken from the evidence adduced at the arbitration hearing and the record on appeal.

¶ 5 The claimant testified to the following. On July 19, 2013, the claimant was 67 years old and employed as a laborer by Labor Network. During her employment, Labor Network had instructed her to work at different job sites performing various duties. On

¹ Labor Network includes an argument that the Commission's decision was against the manifest weight of the evidence in concluding that the claimant's feet condition was causally connected to the work-related injury. We note, however, that, although the claimant listed "feet" as an injured body part on the application of adjustment of claim, the Commission did not make a finding regarding her feet.

the date of the accident, the claimant was instructed to work in a warehouse packing promotional papers for a cigarette company. At approximately 11:45 a.m., the claimant, confined in a small space with three wooden containers, reached into a container to grab materials. The container, however, was “too deep to grab, so [she] bent, and then [her] feet went underneath it” and “got stuck.” Although she was successful in removing one foot from under the container, her left knee “popped.” As the claimant attempted to remove other foot from under the container, she hit her chest against the container, which caused her body to fall backwards and hit the container behind her. The claimant sustained injuries to her neck and upper back at that time. After the claimant successfully removed her other foot from under the container, she fell to the ground on both knees. The claimant was unable to kneel down after the July 19, 2013, accident.

¶ 6 Following the accident, the claimant informed a supervisor that she had injured herself and was escorted to a cafeteria by a secretary and coworker. Although the supervisor asked the claimant if she needed an ambulance, and the claimant responded affirmatively, an ambulance never arrived. The claimant later informed Leticia, a Labor Network employee who assigned job placements, that she had injured herself at work. Even though Leticia visited the claimant following the accident, she did not take the claimant to the hospital. Later that day, the claimant’s son transported her to St. Alexius Medical Center where she received treatment from Dr. Bassam Kawadry.

¶ 7 The claimant’s medical records from St. Alexius Medical Center revealed that she “fell down at work from [a] standing position and injured her RLE. She has bruising and swelling and pain to bilat knees, back, neck.” The physical exam revealed “Pt. has diffuse

mild bilat neck discomfort, no spine tenderness. Diffuse L hip discomfort, bilat knee discomfort, no effusion or laxity. Moderate bruise and hematoma over R knee area of RLE. No open wound.” Additionally, the claimant had “[n]ormal ROM in all four extremities.” X-rays of the claimant's cervical spine, chest, lumbar spine, knees, legs and pelvis did not demonstrate fractured bones. The x-ray of the claimant’s left knee showed “no appreciable degenerative joint changes,” and the x-ray of her right knee demonstrated “mild osteoarthritic changes involving the medial femoral-tibial and patellofemoral compartments.” The claimant was diagnosed with a right lower extremity contusion and lumbar strain, provided crutches and ordered to remain off of work until July 23, 2013. If and when she returned to work, a five-pound pushing/pulling restriction was recommended.

¶ 8 Prior to her employment with Labor Network, the claimant worked at a race track in Arlington Heights where she vacuumed and cleaned bathrooms. The claimant often kneeled on the floor to perform her job duties. Before the accident, the claimant never experienced injury to her right shoulder, bilateral knees or low back. In fact, she often took long walks, ranging from 45 minutes to over one hour, without knee pain and was very active gardening and cleaning her own home.

¶ 9 On cross-examination, the claimant acknowledged that she did not list her left knee and right shoulder as injuries on the application for adjustment of claim. The claimant indicated that her right shoulder “did not hurt in the beginning” but “[b]oth knees hurt.” The claimant had a difficult time remembering specifics of her medical treatment following the accident. She indicated that she never went back to work after the

July 19, 2013, accident. On re-direct examination, the claimant clarified that no one saw the accident, however, coworkers assisted her to the cafeteria after she had injured herself.

¶ 10 On July 25, 2013, six days following the accident, the claimant presented to Dr. Paul Marsiglia, a pain management specialist at Innovative Pain Specialists. Dr. Marsiglia's treatment notes indicated that the claimant had reported general pain in her "[n]eck (right sided, radiating to right shoulder and right humerus to elbow); Lower Back (bilateral to right leg laterally and over antero-lateral right calf into the ankle); Lower Extremity (bilateral knee pain anteriorly and posterior right knee as well)." The notes also revealed the claimant had tenderness on palpation to her right lumbar paraspinals, lower extremity (over right leg from hip to ankle with tenderness over dorsal right foot), and medial and lateral knee compartments bilaterally.

¶ 11 Moreover, Dr. Marsiglia's physical examination revealed "tenderness on palpation (over right cervical paraspinals, right trapezius, right proximal arm over humerus and distally to her elbow, and Spurlings Sign positive right (for reproduction of pain to her right shoulder)." Dr. Marsiglia noted that the claimant had suffered work-related injuries to her lumbar spine, cervical spine, and bilateral knees that were causally connected to the July 19, 2013, accident. The claimant was directed to remain off of work and attend physical therapy.

¶ 12 On August 5, 2013, the claimant underwent MRIs of the cervical spine, lumbar spine and both knees. The MRI of the claimant's lumbar spine revealed lumbar scoliosis and advanced multilevel neural foraminal narrowing at C4-C5 and C5-C6. The MRI of

the cervical spine revealed degenerative changes and facet hypertrophy with no evidence of either cervical spine stenosis or spinal cord distortion. The MRI of her left knee revealed a degenerative signal change in the anterior horn of the lateral meniscus with no definite evidence of a meniscal or ligamentous tear. The MRI of the right knee demonstrated mild osteoarthritic changes and an extensive tear involving the medial meniscus.

¶ 13 On August 19, 2013, Dr. Marsiglia diagnosed the claimant with thoracic or lumbosacral neuritis or radiculitis, lumbosacral spondylosis without myelopathy, brachial neuritis or radiculitis, cervical spondylosis without myelopathy, lower leg pain, and derangement of the posterior horn of the medial meniscus of the right knee. According to Dr. Marsiglia, the claimant continued to have significant right knee pain caused by a tear at the posterior horn of the medial meniscus. Next, Dr. Marsiglia indicated that the claimant had degenerative changes throughout the lumbar spine, but had been asymptomatic up until the date of injury. In Dr. Marsiglia's opinion, the claimant's injuries were causally connected to the July 19, 2013, accident. The claimant was to remain off of work, attend physical therapy and receive steroid injections, which the claimant received on August 22, 2013, and September 19, 2013. The claimant reported, on two separate occasions, that she experienced minimal relief following the injections. Instead, she gained some relief from a back brace. Dr. Marsiglia referred the claimant to Dr. Ronald Silver, an orthopedic doctor.

¶ 14 On September 24, 2013, the claimant presented to Dr. Silver complaining of injuries to her bilateral knees and right shoulder following a work-related accident on

July 19, 2013. Following Dr. Silver's physical examination, he noted crepitation, medial joint line tenderness, mild effusions and limited range of motion beyond 90-degree flexion in her knees. The MRI of the claimant's bilateral knees revealed a large tear of her medial meniscus in the left knee and articular cartilage damage in both knees. Dr. Silver attributed the articular cartilage damage in her right knee in the patellofemoral articulation "to her fall on the anterior aspect of the right knee." Dr. Silver recommended arthroscopic surgery, first, on the claimant's left knee, because it was more symptomatic and caused her to ambulate with a cane, and then on her right knee. Lastly, Dr. Silver noted that the claimant's right shoulder had positive impingement, anterior tenderness with some degree of inflammation of her rotator cuff. Dr. Silver opined that the claimant was temporarily disabled. The claimant subsequently ceased medical treatment with Dr. Silver because of financial issues and transportation concerns.

¶ 15 On October 28, 2013, the claimant presented to Dr. Chhadia, an orthopedic surgeon, of Suburban Orthopedics complaining of pain in her neck, back, left shoulder and bilateral knees. The claimant did not receive a physician referral to Dr. Chhadia but presented to her appointment following her husband's recommendation.

¶ 16 On December 14, 2015, the evidence deposition of Dr. Chhadia was taken. Dr. Chhadia indicated that the claimant had stated a history of accident that occurred on July 19, 2013, when she became "trapped between the pulleys," causing her to fall forward, hit her abdomen and then "hit herself in the back doing a whiplash motion." After the claimant freed her feet, her knees popped.

¶ 17 Dr. Chhadia's treatment focused primarily on the claimant's right shoulder and bilateral knees. When Dr. Chhadia first evaluated the claimant, her right shoulder was tender to palpation and had limited range of motion. An MRI of the claimant's right shoulder from December 24, 2013, demonstrated a "large, full thickness tear of the supraspinatus tendon," thus, surgery was recommended and later performed, on August 7, 2013. Dr. Chhadia testified that, following arthroscopic rotator cuff repair surgery, the claimant was doing "fair, not good and not excellent," due to insurance issues that hindered her ability to attend regular physical therapy.

¶ 18 According to Dr. Chhadia, the claimant's full thickness tear in her right shoulder was not a degenerative tear, but the result of "a traumatic mechanism of injury that was consistent and forceful enough to cause tearing of her rotator cuff." Specifically, Dr. Chhadia's finding was based on the fact that the claimant did not have prior shoulder symptoms of pain, weakness, or prior injuries, treatment or prodromal symptoms of rotator cuff problems. Dr. Chhadia also indicated that the "arthroscopic findings were consistent with a clean, full thickness tear." Thus, although it was possible that the claimant had degenerative changes in her right shoulder, Dr. Chhadia opined that the traumatic injury had a causal connection to the July 19, 2013, work accident.

¶ 19 Dr. Chhadia also stated that the claimant had tenderness in both knees upon physical exam, and the x-rays revealed moderate joint space narrowing and moderate degenerative knee arthritis. As such, Dr. Chhadia diagnosed the claimant with bilateral knee arthritis. Because the claimant had experienced only temporary relief from prior treatments, including physical therapy, knee braces, medications, work restrictions and

injections, left knee replacement surgery was recommended. Dr. Chhadia believed the claimant would also need right knee replacement surgery. Although it was likely the claimant had some preexisting structural arthritic changes in her knees before the July 19, 2013, injury, Dr. Chhadia opined that her arthritis in her knees was “not symptomatic to the point where she needed treatment or sought out a doctor or complained of treatment ***.”

¶ 20 On cross examination, Dr. Chhadia was not positive if the claimant hit her shoulder during the accident. Regardless, it was his opinion that “the trauma caused her to have the symptoms to require treatment for the shoulder,” given that pulling a fixed object with force, such as a box of paper, can cause a rotator cuff tear. With regard to the claimant’s delay in reporting her right shoulder injury, Dr. Chhadia indicated that, in his experience, a delay in reporting certain symptoms often occurred when a patient presented with multiple body injuries. In that scenario, the patient would “tend to focus on the *** initial most painful areas *** first.” Moreover, Dr. Chhadia indicated on that it was possible the claimant’s arthritis was attributable to age and not necessarily the alleged work accident.

¶ 21 On re-direct examination, however, Dr. Chhadia testified that a “popping” sound, as the claimant had heard and reported, “typically means there’s some sort of traumatic force that’s been applied, and typically it’s associated with a suspicion for something tearing or getting stressed or strained or sprained.” Dr. Chhadia also stated that the popping sound could have been associated with an aggravation of an arthritic condition.

Dr. Chhadia referred the claimant to a pain management specialist, Dr. Dmitry Novoseletsky of Suburban Orthopedics.

¶ 22 On November 8, 2013, the claimant presented to Dr. Novoseletsky for treatment to her lumbar and cervical spine. Dr. Novoseletsky opined that the claimant had “mild degenerative disease throughout the cervical spine” with “several levels of neuroforaminal narrowing.” Subsequently, the claimant received cervical spine injections, and an MRI of the right shoulder revealed a large full thickness tear of the supraspinatus tendon with retraction of the tendon to the level of the medial aspect of the humeral head.

¶ 23 On December 19, 2013, the claimant underwent a section 12 independent medical examination (IME) with Dr. Jay Levin. According to Dr. Levin, the claimant did not sustain an injury to her bilateral knees, right shoulder or back on July 19, 2013, given a “lack of correlation between the reports of her complaints following the injury, the lack of correlation of physical findings, and the MRI findings.” With regard to her right knee, Dr. Levin believed the cause of her complaints was degenerative in nature, given that the “medial meniscal tear [was] at the same location as degenerative changes and [there were] non-operative findings on physical examination ***.” With regard to her left knee, neck and right shoulder, Dr. Levin opined there was no injury, thus, “[n]o medical care/treatment for those body parts was required.” Because Dr. Levin believed the claimant’s only injury was a lumbar contusion, he cleared the claimant to work full-duty without restrictions.

¶ 24 On October 20, 2014, following the claimant’s section 12 IME and a review of additional records, Dr. Levin issued further findings. Dr. Levin stated that an MRI of the claimant’s right shoulder showed a chronic rotator cuff tear, although he believed it was due to chronic degenerative changes. Dr. Levin opined that, had the claimant “sustained a massive acute rotator cuff tear from” the July 19, 2013, accident, she would have had “acute complaints referable to her right shoulder following” the injury.

¶ 25 On May 27, 2016, the arbitrator granted the claimant compensation after finding the claimant sustained accidental injuries on July 19, 2013, that arose out of and in the course of her employment with Labor Network, and that the claimant’s condition of ill-being was causally related to the accidental injuries. Labor Network sought review of the arbitrator’s decision before the Commission.

¶ 26 On December 18, 2017, the Commission affirmed and adopted the arbitrator’s decision. First, the Commission determined that the claimant had sustained accidental injuries that arose out of and in the course of her employment with Labor Network. Specifically, the Commission based its decision on evidence that the claimant, a laborer her entire life, had never sought medical treatment for any injury to her neck, shoulders, lower back or knees before the accident at issue. The Commission also indicated that the claimant had consistently described her injuries and the mechanism of injury to multiple healthcare professionals throughout treatment.

¶ 27 Second, the Commission determined that the claimant’s condition of ill-being was causally related to the injury because the claimant had no prior treatment or complaints regarding her neck, shoulders, knees or lower back before July 19, 2013. Also, the

Commission considered it important that the claimant had never taken time off of work before the accident due to pain or injury to any body part listed above. Third, the Commission determined that the claimant had provided timely notice of her injuries to Labor Network.

¶ 28 Next, the Commission found the claimant entitled to 133 weeks of TTD benefits because the evidence established that the claimant was restricted from work by her treating physicians from July 26, 2013, through February 11, 2016, the date of the arbitration hearing. Moreover, the Commission determined the claimant's medical services for her right shoulder, bilateral knees and lumber and cervical spine reasonable and necessary, thus, Labor Network was responsible for the cost of services to date. Lastly, Labor Network was ordered to pay for the claimant's prospective medical care for a left knee replacement surgery and continuing right shoulder care.

¶ 29 The claimant sought judicial review of the Commission's decision in the Circuit Court of Cook County. On July 11, 2018, the circuit court confirmed the Commission's decision. The claimant filed a timely notice of appeal.

¶ 30 II. Analysis

¶ 31 On appeal, Labor Network argues that the Commission's decision was against the manifest weight of the evidence in concluding that (1) the claimant's injury was causally related to the July 19, 2013, accident; (2) the claimant's medical care received in connection to the work accident was reasonable and necessary; (3) the claimant was entitled to prospective medical treatment for a left knee replacement surgery and

continued right shoulder care; (4) the claimant was TTD; and (5) medical services should have been awarded. We address each contention in turn.

¶ 32 To obtain compensation under the Act, the claimant bears the burden of establishing, by a preponderance of the evidence, that her injury arose out of and in the course of her employment. *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). “In the course of employment” refers to the time, place and circumstances surrounding the injury. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67 (1977). That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment. *Sisbro Inc.*, 207 Ill. 2d at 203 (citing 1 A. Larson, Worker’s Compensation Law section 12.01 (2011)). The injury must also “arise out of employment.” *Sisbro*, 207 Ill. 2d at 203.

¶ 33 An injury “arises out of” employment if the injury had its “origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.” *Id.* at 203. “Typically, an injury arises out of one’s employment if, at the time of the occurrence, the employee was performing acts she was instructed to perform by the employer, acts which she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his or her assigned duties.” *Brais v. Illinois Workers’ Compensation Comm’n*, 2014 IL App (3d) 120820WC, ¶ 18.

¶ 34 Here, the Commission found the claimant’s act of bending over and reaching into a container for packaging material, which caused her to lose her balance and fall to the ground on her knees after her feet got stuck under the container, arose out of and in the

course of her employment. Labor Network does not dispute this finding. Rather, Labor Network argues that the claimant's accidental injuries, specifically right shoulder, neck, feet and bilateral knees, were not causally related to her employment with Labor Network. Instead, Labor Network asserts that the claimant's only causally related injury was a lumbar contusion.

¶ 35 A. Causation

¶ 36 The employee must establish that his or her condition of ill-being was causally connected to a work-related injury. *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 948-49 (2011). Causation presents an issue of fact. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 597 (2005). In resolving factual matters, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Sisbro*, 207 Ill. 2d at 193; *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009).

¶ 37 It is axiomatic that employers take their employees as they find them. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 199 (2002). It has long been recognized that, 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. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36-37 (1982).

¶ 38 Even though an employee has a preexisting condition which may make her more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co.*, 92 Ill. 2d at 36. Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. (Emphasis in original.) *Rock Road Construction Co. v. Industrial Comm'n*, 37 Ill. 2d 123, 127 (1967).

¶ 39 Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the Commission. *Roberts v. Industrial Comm'n*, 93 Ill. 2d 532, 537 (1983). A reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence. *Roberts*, 93 Ill. 2d at 537. "[T]o the extent that the medical testimony might be construed as conflicting, it is well established that resolution of such conflicts fall within the province of the Commission, and its findings will not be reversed unless contrary to the manifest weight of the evidence." *Caterpillar Tractor Co.*, 92 Ill. 2d at 37.

¶ 40 Applying these standards, we cannot say that the Commission’s determination that the claimant’s current condition of ill-being was causally related to the accident was against the manifest weight of the evidence.

¶ 41 As stated above, Labor Network argues that there was no causal connection between the claimant’s injuries from July 19, 2013, aside from a lumbar contusion, and her condition of ill-being. Labor Network’s position, as set forth by Dr. Levin, was that the claimant did not sustain injuries to her bilateral knees, neck or right shoulder on July 19, 2013. With regard to her right knee, Dr. Levin believed the cause of her complaints was degenerative in nature, given that the “medial meniscal tear [was] at the same location as degenerative changes and non-operative findings on physical examination ***.” With regard to her left knee, neck and right shoulder, Dr. Levin opined there was no injury, thus, he believed “[n]o medical care/treatment for those body parts was required.” Dr. Levin stated that an MRI of the claimant’s right shoulder showed a chronic rotator cuff tear. Although he acknowledged that a full thickness rotator cuff tear was present, he believed it was due to chronic degenerative changes. Dr. Levin based his opinion on the fact that the claimant would have had “acute complaints referable to her right shoulder following the July 19, 2013[,] if she [had] sustained a massive acute rotator cuff tear from that event.” As such, Dr. Levin believed the claimant’s only injury was a lumbar contusion.

¶ 42 As noted above, the arbitrator rejected Labor Network’s argument, clearly finding Dr. Chhadia’s testimony credible. In particular, Dr. Chhadia’s focus had been primarily on the claimant’s right shoulder and bilateral knees. Although Dr. Chhadia believed it

was possible the claimant had some degenerative changes in her shoulder before July 19, 2013, he opined that the traumatic injury sustained on July 19, 2013, caused the rotator cuff tear. Moreover, although it was likely the claimant had some preexisting structural arthritic changes in her knees before the July 19, 2013, injury, the arthritis in her knees, according to Dr. Chhadia, was “not symptomatic to the point where she needed treatment or sought out a doctor or complained of treatment ***.”

¶ 43 Although the claimant’s treating physicians acknowledged that some of her current condition of ill-being was more likely than not present before the July 19, 2013, accident, the Commission found it important that the claimant “had no prior treatment or complaints regarding her neck, shoulders, knees or lower back before that date.” Moreover, the Commission noted that the claimant did not lose time at work due to pain or injury to the above-mentioned body parts prior to July 19, 2013.

¶ 44 Furthermore, judging the credibility of the claimant, the Commission determined that the claimant had consistently described her injuries and mechanism of injury to medical professionals throughout treatment, which included her treating physicians and Dr. Levin. Although the claimant did not list her right shoulder on the application of adjustment of claim, the record supports a finding that the claimant complained of general pain six days after the accident on July 25, 2013, to her “[n]eck (right sided, radiating to right shoulder and right humerus to elbow).” Moreover, Dr. Marsiglia’s physical examination revealed tenderness on palpation to that area. Furthermore, Dr. Chhadia testified that a delay in reporting certain symptoms can occur when a patient

presents with multiple body injuries. When that occurs, patients “tend to focus on the *** initial most painful areas *** first.”

¶ 45 We cannot say that the Commission’s determination of a causal relationship between the claimant’s work-related injuries and her condition of ill-being is against the manifest weight of the evidence. There is support in the record for the Commission’s finding that the work-related accidental injuries aggravated or accelerated the claimant’s preexisting conditions.

¶ 46 B. Reasonable and Necessary Medical Care

¶ 47 Under section 8(a) of the Act (820 ILCS 305/8(a) (West 2012)), a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of her employment and which are necessary to diagnose, or cure the effects of the claimant’s injury. *Absolute Cleaning/SVMBL v. Illinois Workers’ Compensation Com’n*, 409 Ill. App. 3d 463, 470 (2011) (citing *University of Illinois v. Industrial Comm’n*, 232 Ill. App. 3d 154, 164 (1992)). Whether a medical expense is either reasonable or necessary is a question of fact to be resolved by the Commission, and its determination will not be overturned on review unless it is against the manifest weight of the evidence. *Absolute Cleaning/SVMBL*, 409 Ill. App. 3d at 470 (citing *F&B Manufacturing Co. v. Industrial Comm’n*, 325 Ill. App. 3d 527, 534 (2001)).

¶ 48 Labor Network argues that the Commission’s determination was against the manifest weight of the evidence in finding that the medical services provided to the claimant were reasonable and necessary. We disagree.

¶ 49 Specifically, the Commission determined that the claimant's right shoulder, bilateral knees and lumbar and cervical spine treatments were reasonable and necessary. First, it is undisputed that the claimant's treating physicians, including Drs. Chhadia and Novoseletsky, determined the claimant had a full thickness rotator cuff tear, which ultimately necessitated surgery after physical therapy and steroid injections provided only temporary relief. Moreover, as the Commission noted, the utilization review performed by Rising Medical Solutions for Labor Network certified the right shoulder arthroscopic rotator cuff repair and subacromial decompression as reasonable and necessary. In fact, the explanation for assessment indicated that the claimant had a rotator cuff tear documented by imaging, thus, "[t]he guidelines support surgery when the patient has failed conservative care, as this patient has."

¶ 50 Second, the Commission determined that, because the claimant had experienced only temporary relief from prior treatments, which included physical therapy, knee braces, medications, work restrictions and steroid injections, Dr. Chhadia recommended left knee replacement surgery followed by right knee replacement surgery. Since conservative treatment had failed to alleviate the claimant's symptoms and pain, the Commission concluded that bilateral knee surgery was reasonable and necessary. Moreover, as the Commission noted, the utilization review performed by Rising Medical Solutions for Labor Network certified bilateral knee surgery, left prior to right, as reasonable and necessary.

¶ 51 Lastly, because the pain in the claimant's lumbar spine persisted, despite a trial of conservative treatment, including physical therapy, Dr. Marsiglia prescribed

interventional therapy. Moreover, Dr. Chhadia referred the claimant to Dr. Novoseletsky for pain management treatment to her cervical spine with epidural steroid injections because the claimant had a “mild degenerative disease throughout the cervical spine.” When the claimant presented to Dr. Novoseletsky, the medical records indicated that “[s]he states her lower back gets aggravated at times and always is wearing a lower back brace.” Although the utilization review from July 14, 2014, denied steroid injections to the claimant’s cervical spine on December 3, 2013,² we note that a utilization review is not definitive and, instead, must be considered “in the same manner as all other evidence, and must be addressed along with all other evidence in the determination of the reasonableness and necessity of the medical bills and treatment.” See 820 ILCS 305/8.7(i) (West 2012). Because the Commission’s findings have an evidentiary basis in the record, we will not disturb its determination on appeal.

¶ 52 C. Prospective Medical Benefits

¶ 53 Questions regarding entitlement to prospective medical care under section 8(a) of the Act are factual inquiries for the Commission to resolve. *Max Shepard, Inc. v. Industrial Comm'n.*, 348 Ill. App. 3d 893, 903 (2004). Section 8(a) of the Act entitles claimant to compensation for all necessary medical, surgical and hospital services “thereafter incurred” that are reasonably required to cure or relieve the effect of injury (820 ILCS 305/8(a) (West 2012)). Prescribed services not yet performed or paid for are considered to have been “ ‘incurred’ ” within the meaning of the statute. *Homebrite Ace*

² We note that the July 14, 2014, utilization review states the date of service was “12/03/12.” Given the date of injury, the referenced procedure and the chronological order of services listed, this is incorrect and should have stated 12/03/13.

Hardware v. Industrial Comm'n, 351 Ill. App. 3d 333, 341(2004). As is the case with any element of a workers' compensation claim, claimant bears the burden of proving, by a preponderance of the evidence, her entitlement to an award of medical expenses under section 8(a) of the Act. *Max Shepard, Inc.*, 348 Ill. App. 3d at 903 (citing *Jewel Cos., Inc. v. Industrial Comm'n*, 125 Ill. App. 3d 92, 94 (1984)).

¶ 54 Here, the Commission, in affirming and adopting the arbitrator's decision, awarded prospective medical treatment for the claimant's left knee replacement surgery and continued right shoulder care. As determined above, ample evidence supports the Commission's determination that treatment of the claimant's work-related injuries was reasonable and necessary. Specifically, the June 26, 2014, utilization review certified that the MRI of the claimant's left knee showed degenerative changes with associated pain, and that the claimant had failed to improve with prior conservative forms of treatment, including physical therapy and medications. Thus, left knee surgery was certified as reasonable and necessary. Moreover, although medical notes reveal that the claimant most likely had some preexisting structural arthritic change in her knees before the July 19, 2013, injury, Dr. Chhadia's testimony indicated that the claimant's bilateral knee arthritis was "not symptomatic to the point where she needed treatment or sought out a doctor or complained of treatment ***."

¶ 55 Furthermore, the Commission concluded the claimant was entitled to prospective medical care for continued right shoulder care. In particular, the Commission relied on the fact that the claimant had not yet reached maximum medical improvement (MMI) for her right shoulder care because further recovery was needed. Specifically, according to

Dr. Chhadia, the claimant was doing “fair, not good and not excellent,” following surgery, due to insurance denial issues that hindered her from regularly attending physical therapy. Given the causal connection, we cannot conclude that the Commission’s finding in this regard is against the manifest weight of the evidence.

¶ 56 D. Temporary Total Disability – 133 Weeks

¶ 57 Next, Labor Network contends that the Commission’s decision was against the manifest weight of the evidence in finding that the claimant was entitled to 133 weeks of TTD benefits. We disagree.

¶ 58 An employee is TTD from the time an injury incapacitates her from work until such time as he is recovered or restored, or the time the injury is stabilized. *Westin Hotel v. Industrial Comm’n*, 372 Ill. App. 3d 527, 542 (2007). 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 MMI. *Westin Hotel*, 372 Ill. App. 3d at 542. The period during which a claimant is TTD is a question of fact to be resolved by the Commission, whose determination will not be disturbed unless it is against the manifest weight of the evidence. *Interstate Scaffolding, Inc. v. Illinois Workers’ Compensation Comm’n*, 236 Ill. 2d 132, 142-43 (2010).

¶ 59 Here, the Commission, in affirming and adopting the arbitrator’s decision, determined that the claimant was entitled to 133 weeks of TTD benefits at \$253/week. In making this determination, the Commission found that the claimant’s treating physicians had restricted her from performing any work during periods in which she was under care, specifically, July 26, 2013, through February 11, 2016, the date of the arbitration hearing.

As reiterated above, Labor Network asserts that the weight of the evidence demonstrates that the claimant sustained only a lumbar contusion as a result of the July 19, 2013, work accident. As such, Labor Network contends that the claimant was only entitled to two weeks of TTD benefits, per Dr. Levin's section 12 IME and accompanying report. Because this court upholds the Commission's finding that the injuries to the claimant's bilateral knees, right shoulder and cervical and lumbar spine were causally connected to the July 19, 2013, accident, Labor Network's argument fails. Thus, we cannot say the Commission's determination regarding TTD benefits is against the manifest weight of the evidence where documentation showed the claimant was instructed to remain off of work by her treating physicians for the above-mentioned dates.

¶ 60 E. Permissible Referrals

¶ 61 Section 8(a) of the Act provides that the employer's liability to pay for medical services selected by an employee shall be limited to emergency medical and surgical as well as hospital, medical, and surgical services provided by the physician initially chosen by the employee or by any other provider of service recommended by the initial service provider or any subsequent provider of medical services in the chain of referrals from said initial service provider. 820 ILCS 305/8(a)(1); (a)(2) (West 2012) The statute also provides that the employer will pay for the same medical services or referrals of the claimant's second-choice physician. 820 ILCS 305/8(a)(3) (West 2012). These provisions embody the so-called "two-physician rule." Whether an employee's physician falls within one of the two chains of referrals allowed under section 8(a) of the Act is a question of fact for the Commission. *Absolute Cleaning/SVMBL*, 409 Ill. App. 3d at 468.

We will reverse the Commission’s factual findings only if they are against the manifest weight of the evidence. *Id.* at 468.

¶ 62 Here, the claimant sustained an injury to her bilateral knees, right shoulder and lumbar and cervical spine as a result of the accident on July 19, 2013. The Commission, in finding in favor of the claimant, determined that the claimant’s emergency treatment at St. Alexius Medical Center on July 19, 2013, where her son drove her to the emergency room, was not affected by the “two-physician rule.” In relying on *Wolfe v. Industrial Comm’n*, 138 Ill. App. 3d 680, 689 (1985), Labor Network asserts that the claimant’s July 19, 2013, visit to St. Alexius Medical Center did not constitute a medical emergency, thus, her first-choice provider was St. Alexius Medical Center. According to Labor Network, the claimant’s second-choice provider was Dr. Marsiglia, and her third-choice provider, which would be outside the chain of referral, was Dr. Chhadia. As such, the subsequent referrals by Dr. Chhadia to Dr. Novoseletsky and Skypoint Medical Center for physical therapy were outside the chain of referral. We disagree with Labor Network, and find its reliance on *Wolfe* misplaced.

¶ 63 In *Wolfe*, petitioner’s visit to St. Vincent’s emergency room constituted his second-choice provider, thus subsequent treatment was not within the chain of referral, because evidence demonstrated that petitioner’s need for emergency services was belied by the record. 138 Ill. App. 3d at 689. Specifically, evidence demonstrated that petitioner arrived at his doctor’s office within 10 minutes after leaving the emergency room, despite his contention that his doctor was “unavailable.” *Id.* at 689. Moreover, the record failed to show that petitioner had made any effort to contact his doctor before visiting the

emergency room, and the medical records demonstrated petitioner was admitted for minor complaints, including pain in his right shoulder and numbness in his right arm and hand. *Id.*

¶ 64 Here, immediately following her injury, the claimant was unable to walk on her own, and received assistance to the cafeteria by fellow employees. The record demonstrates that the claimant requested an ambulance following her accident, however, an ambulance never arrived. Subsequently, the claimant's son transported her to the emergency room later that day. Although the claimant did not arrive to the emergency room via ambulance, she arrived at St. Alexius Medical Center on the date of the accident and was subsequently diagnosed with a right lower extremity contusion and lumbar strain. Upon discharge, she was provided crutches and ordered to remain off of work until July 23, 2013. Accordingly, based on the record, we cannot say the Commission's determination is against the manifest weight of the evidence in concluding that the claimant's visit to St. Alexius Medical Center did not affect the "two-physician rule."

¶ 65 Next, based on the above, we cannot say the Commission's decision is against the manifest weight in finding that the claimant's first and second choice physicians were Drs. Marsiglia and Chhadia. On July 25, 2013, the claimant, without a referral, presented to Dr. Marsiglia, who determined that the claimant had suffered work-related injuries to her lumbar spine, cervical spine, and bilateral knees—all injuries that were causally connected to the July 19, 2013, accident. Following treatment and injections with Dr. Marsiglia, the claimant reported minimal relief from her symptoms. Accordingly, Dr.

Marsiglia referred the claimant to Dr. Silver, an orthopedic doctor, on August 22, 2013. Dr. Marsiglia's referral, as the Commission noted, is documented in the record.

¶ 66 Next, On October 28, 2013, the claimant presented to Dr. Chhadia, an orthopedic surgeon, with chief complaints of pain in her neck, back, left shoulder and bilateral knees. The claimant did not receive a referral to Dr. Chhadia but presented to her appointment following her husband's recommendation. Subsequently, Dr. Chhadia referred the claimant to Dr. Novoseletsky for treatment to her lumbar and cervical spine, and then to Skypoint Medical Center for physical therapy starting on November 5, 2013. As such, the above medical visits were within the "two-physician rule," as set forth by section 8(a) of the Act. Accordingly, the Commission's decision is not against the manifest weight of the evidence in determining that Labor Network was responsible for all of the claimant's medical bills.

¶ 67 **III. Conclusion**

¶ 68 We affirm the order of the circuit court of Cook County, confirming the Commission's decision to award the claimant benefits under the Act.

¶ 69 Affirmed.