

NOTICE

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NOTICE

Decision filed 12/03/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (2nd) 111266WC-U

No. 2-11-1266WC

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

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HONORINA NAVA,

Appellant,

v.

ILLINOIS WORKERS' COMPENSATION  
COMMISSION, *et al.*, (Rochelle Travel Plaza, Inc.,

Appellee).

) Appeal from the

) Circuit Court of

) Kane County.

)

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) No. 11-MR-16

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) Honorable

) Michael T. Mallon,

) Judge, presiding.

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JUSTICE STEWART delivered the judgment of the court.

Justices Hoffman, Hudson, and Appleton concurred in the judgment.

Justice Holdridge dissented.

**ORDER**

*Held:* The appellate court has jurisdiction to hear the employer's appeal from the circuit court's judgment that reversed the Commission's decision. The Commission's finding that the claimant failed to carry her burden of proving causation is not against the manifest weight of the evidence.

¶ 1 This appeal concerns the Commission's finding that the claimant, Honorina Nava, failed to prove that a rotator cuff tear in her right shoulder was causally related to her workplace duties. The claimant performed janitorial work for the employer, Rochelle Travel Plaza, Inc., at a truck stop in Rochelle, Illinois. The claimant filed a claim under the Illinois Workers' Compensation Act (the Act), 820 ILCS 305/1 to 30 (West 2010), alleging that the rotator cuff tear in her right shoulder was caused by repetitive trauma stemming from her daily job duties that included cleaning, drying, and mopping shower stalls. The arbitrator found that the condition of the claimant's right shoulder was causally related to her job duties and awarded her benefits under the Act. The Commission, however, found that the claimant failed to carry her burden on the issue of causation and denied her claim. On appeal, the circuit court entered a judgment that reversed the Commission. The employer appeals the circuit court's judgment.

¶ 2 **BACKGROUND**

¶ 3 The claimant does not speak English and testified at the arbitration hearing with the aid of a translator. In May 1999, the claimant began working for the employer as a janitor at the employer's truck stop. Her job duties involved various cleaning tasks, including cleaning, drying, and mopping the showers. This task required her to clean the walls over

her head for 16 shower stalls, sometimes multiple times per day. She also cleaned furniture, mopped and vacuumed floors, and took out trash. The claimant's supervisor testified that cleaning the showers constitutes about one-third of her workday. When a shower is used, the claimant spends five to ten minutes spraying, wiping, and drying the shower walls. On each shift, there were two employees cleaning the showers. On a very busy day, the claimant might have to clean the showers 30 times. On an average day, she would have to clean the showers 10 to 15 times.

¶ 4 The claimant testified that she is right hand dominant and that for approximately two years prior to December 2005, her right shoulder would "give up" on her when there was a lot of work. Her right shoulder would be "tired" after work, but she continued working without seeking any medical attention.

¶ 5 On December 20, 2005, the claimant slipped on some ice at home and fell, injuring her right shoulder. The claimant was scheduled to work that day, and she went to work and informed her supervisor of the accident and that she could not work. The claimant's supervisor testified that prior to December 20, 2005, the claimant never complained of shoulder pain and never requested time off because of shoulder pain.

¶ 6 The claimant went to the emergency room that afternoon. At the emergency room, the claimant complained of right shoulder pain. Records from her emergency room visit indicate that she rated the pain "3/10" and that she had not experienced the pain prior to the fall. X-rays of the claimant's shoulder were negative. The staff at the emergency room gave

the claimant pain medication and told her to follow up with her family doctor, Dr. Basith Osmani.

¶ 7 Dr. Osmani saw the claimant on December 29, 2005, when the claimant came to see him complaining of right shoulder pain following the slip and fall. Dr. Osmani ordered a magnetic resonance imaging scan (MRI) of the claimant's right shoulder. The MRI showed a full thickness rotator cuff tear.

¶ 8 On January 4, 2006, the claimant reported to the employer's human resources manager that she believed that her shoulder injury was work-related and wanted to fill out a workers' compensation claim. Prior to that time, the claimant had never complained of shoulder pain at work.

¶ 9 Dr. Osmani referred the claimant to Dr. Gabriel, and on April 21, 2006, Dr. Gabriel performed an open repair of the claimant's right rotator cuff. Dr. Osmani assisted with the surgery. Dr. Gabriel's pre-operation notes dated February 7, 2006, stated as follows:

"[The claimant] injured her shoulder with a fall on the ice recently. She had great difficulty moving her shoulder. After that, MRI was done which demonstrates an obvious rotator cuff tear. She also states that she had shoulder pain on the right side while at work and does a lot of work with her right arm above shoulder level. This had been painful, so the question came up if there is any component of this workman's compensation or related to the fall that did not happen at work."

¶ 10 Dr. Gabriel's operative report dated April 21, 2006, describes the tear as follows:

"This was an obviously chronic tear as the edges were well rounded off." Dr. Gabriel did not testify at the arbitration hearing and did not offer any opinion concerning whether the rotator cuff tear was causally related to the claimant's job duties.

¶ 11 In support of her claim that the shoulder injury was work related, the claimant presented the testimony of Dr. Osmani. The doctor testified that he believed that the tear was chronic in nature and caused by repetitive strain. The tear was not the kind of tear that he would expect to see from a fall because there were no broken bones. He testified that when a person falls on ice and onto her shoulder, there would be a fracture. He did not believe that a person could suffer a tear similar to the claimant's just by falling on the shoulder.

¶ 12 He testified that the claimant's rotator cuff tear was consistent with "[m]ild and chronic recurrent trauma." In reaching this conclusion, Dr. Osmani found it significant that the emergency room physician did not immediately order an MRI. Also, the claimant's medical records from the emergency room visit indicate that there were no signs of bruising or swelling which, according to Dr. Osmani, is a finding inconsistent with a shoulder injury caused by a fall. When he examined the claimant on December 28, 2005, he also noted that there was no bruising or swelling in the claimant's right shoulder area.

¶ 13 When asked whether the injury was related to the claimant's job duties, he testified that he did not know what the claimant's job duties involved. When asked whether the claimant's rotator cuff tear pre-existed her December 20, 2005, fall, Dr. Osmani testified, "I can't give you a clear answer yes or no. It probably was a chronic thing going on before the

injury."

¶ 14 On October 23, 2007, the claimant underwent an independent medical examination (IME) conducted by an orthopaedic surgeon, Dr. Troy Karlsson. The employer presented Dr. Karlsson's testimony in support of its position that the claimant's shoulder injury was not causally related to her work duties.

¶ 15 Dr. Karlsson testified that when he conducted his IME, the claimant told him about her slip and fall on December 20, 2005, and told him that she did not have any trouble with her shoulder prior to the fall. She told Dr. Karlsson that her primary care physician told her that the injury to her shoulder was not from her fall but from her work duties.

¶ 16 Dr. Karlsson reviewed the claimant's medical records and noted that there were records that indicated that the claimant had no prior history of problems with her shoulder before her fall. Dr. Karlsson concluded that the fall on December 20, 2005, caused the claimant's rotator cuff tear, and he based his opinion on several factors. He believed that it was unusual for someone of the claimant's age to have a degenerative tear and that it was much more likely to be an acute tear after an injury. In addition, Dr. Karlsson found it significant that the claimant had no problems with her shoulder prior to the accident. He believed that a person of the claimant's age with a rotator cuff tear would likely complain of pain. He also found it significant that the claimant's "MRI showed that there was not any retraction of the rotator cuff and there was not any muscular atrophy." Dr. Karlsson believed that these findings were contrary to a "longstanding condition."

¶ 17 With respect to Dr. Gabriel's statement in his operative report that the tear appeared to be chronic, Dr. Karlsson testified that it was usually very hard to tell whether a rotator cuff tear is degenerative or acute based on the tear's appearance during surgery. He explained that it was rare to perform a shoulder surgery within a couple of weeks after an acute injury because conservative treatments are usually tried first. After a couple of months, an acute tear caused by a "definite injury will look very much like the chronic tears because the frayed edges will have rounded off, any bleeding that may have occurred at the injury site is reabsorbed, and there's really no way of telling several months out whether there was a single acute injury or if it's a more chronic tear."

¶ 18 Contrary to Dr. Osmani's testimony, Dr. Karlsson believed that there was no significance to the fact that the claimant did not sustain a fracture to her shoulder during the fall. He believed that most rotator cuff tears, whether acute or chronic, are not related to any fractures. He testified, "It's very rare that people get both a fracture and a rotator cuff tear. It's less than one percent of the rotator cuff tears that we see. Less than one percent of the acute fall injury of rotator cuff tears also have any fracture."

¶ 19 Dr. Karlsson further contradicted Dr. Osmani by testifying that the finding of no bruising or swelling around the claimant's shoulder was an insignificant finding. The doctor explained that most rotator cuff tears from an injury are not from a direct blow to the shoulder but involve an outstretched arm or an elbow landing with the force of the arm shoved into the shoulder. He also found it insignificant that the emergency room doctor did

not order an MRI. He testified that even if an emergency room physician suspects an acute ligamentous injury, they typically do not order an MRI. Instead, they usually have the patient follow up with an orthopaedic physician who will order an MRI if it is needed.

¶ 20 Dr. Karlsson did not believe that the claimant performed repetitive work that would put her at risk for shoulder injuries. She was not constantly working above head level and lifting weights above head level. Instead, her work was general janitorial work, including cleaning and emptying trash cans, as opposed to repetitive tasks. Finally, Dr. Karlsson believed it was significant that the claimant did not seek treatment for her shoulder until December 29, 2005. He testified that someone who is 45, active, and has a rotator cuff tear generally will seek treatment fairly early because of weakness, difficulty raising arms overhead, difficulty sleeping, pain, and disuse of the arm.

¶ 21 After considering the testimony and evidence, the arbitrator found in favor of the claimant on the issue of causation and awarded her benefits under the Act. The arbitrator noted that several of the claimant's medical records referenced ongoing chronic repetitive trauma to the claimant's right shoulder. The arbitrator also noted Dr. Gabriel's statement in his operative report that the doctor believed that the tear was obviously chronic because the tear's edges were well rounded off. The arbitrator was persuaded by the opinions of Dr. Gabriel and Dr. Osmani and discredited the opinions of Dr. Karlsson because he did not treat the claimant, did not review the MRI, and was not present during the claimant's surgery. The arbitrator found that the claimant's fall at home on December 20, 2005, was insufficient to



have caused the rotator cuff tear and did not break the causal connection. The arbitrator found that the claimant's rotator cuff tear was causally related to her repetitive work activities. The arbitrator awarded the claimant medical expenses, temporary total disability (TTD) benefits, and partial permanent disability (PPD) benefits.

¶ 22 The employer appealed the arbitrator's decision to the Commission, and the Commission reversed the arbitrator, finding that the petitioner failed to prove that she sustained a repetitive trauma injury arising out of and in the course of her employment. Instead, the Commission found that the claimant's injury stemmed from her fall at home on December 20, 2005. In making its finding, the Commission noted that the claimant testified to weakness in her right shoulder prior to the accident, but not pain. In addition, the claimant's supervisor testified that the claimant never complained of shoulder pain prior to December 20, 2005.

¶ 23 The Commission discredited the opinion of Dr. Osmani because the claimant never told the doctor what her job duties were, and he testified that he did not otherwise know what her job duties were. In addition, the Commission noted that the claimant's surgeon, Dr. Gabriel, did not offer any theory with respect to causation even though his notes reflected that he was aware that the claimant maintained that her condition was work-related.

¶ 24 The Commission relied on the testimony of Dr. Karlsson, who noted that the claimant had no history of shoulder problems prior to her fall. The doctor further noted that the claimant's MRI showed no retraction of the rotator cuff or any muscular atrophy and that

these findings lead him to believe that the tear was not a long standing condition. The Commission weighed the conflicting medical testimonies from Dr. Osmani and Dr. Karlsson and found "Dr. Karlsson to be more credible than Dr. Osmani." Accordingly, the Commission vacated the arbitrator's decision and denied the claimant's claim.

¶ 25 The claimant appealed the Commission's decision to the circuit court. The circuit court entered a judgment that reversed the Commission's decision "on all issues." The employer now appeals the circuit court's judgment.

¶ 26 DISCUSSION

¶ 27 Before we proceed to the merits of the employer's appeal, we must address this court's jurisdiction to hear this appeal. The parties did not raise any issues concerning this court's jurisdiction in their briefs. At oral argument, however, the claimant raised an issue concerning whether the circuit court's order that reversed the Commission is a final and appealable judgment. We believe that it is a final judgment.

¶ 28 "Subject to exceptions created by statute or set forth in the Rules of our Supreme Court, the jurisdiction of the appellate court is limited to reviewing appeals from final judgments." *Pace Bus Co. (South Division) v. Industrial Comm'n*, 337 Ill. App. 3d 1066, 1068, 787 N.E.2d 234, 236 (2003). "A judgment is final for appeal purposes if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment." *In re Marriage of Verdung*, 126 Ill. 2d 542, 553, 535 N.E.2d 818, 823 (1989).

¶ 29 More specifically with respect to appeals under the Act, "[t]he Supreme Court has repeatedly held that, when a circuit court reverses a decision of the Commission and remands the matter for further proceedings involving the resolution of questions of law or fact, the order is interlocutory and not appealable." *Trunek v. Industrial Comm'n*, 345 Ill. App. 3d 126, 127, 802 N.E.2d 1268, 1269 (2003). "However, if, on remand, the agency has only to act in accordance with the directions of the court and conduct proceedings on uncontroverted incidental matters or merely make a mathematical calculation, then the order is final for purposes of appeal." *Edmonds v. Illinois Workers' Compensation Comm'n*, 2012 IL App (5th) 110118WC, ¶ 19, 968 N.E.2d 775.

¶ 30 In the present case, we believe that the circuit court's judgment that reversed the Commission is a final and appealable judgment because the judgment does not require any further hearings before the Commission to resolve disputed questions of law or fact.

¶ 31 As noted above, the employer initially appealed the arbitrator's decision to the Commission, taking issue with the arbitrator's finding the claimant's conditions in her right shoulder were causally related to her workplace duties as opposed to a slip-and-fall accident at her home. In her response to the employer's brief, the claimant argued that the Commission should affirm the arbitrator's award. However, the Commission agreed with the employer, vacated the arbitrator's award, and denied the claimant's claim. The claimant then appealed the Commission's decision to the circuit court.

¶ 32 In her brief on appeal to the circuit court, the claimant argued that the Commission's

finding with respect to causation was against the manifest weight of the evidence. The claimant did not request, upon reversal, any additional hearing before the Commission on her claim. Instead, the claimant argued that the arbitrator's awards were correctly decided. The claimant requested the circuit court to "reverse the Commission on all issues - - accident, notice, causal connection, medical expenses, TTD and PPD." The circuit court agreed with the claimant's argument and entered the following order:

"This matter comes before the court for oral argument, both parties being represented by counsel, the court being fully advised in the matter, it is hereby ordered:

The decision of the [Commission] is hereby reversed on all issues including accident, notice, medical expenses, TTD & PPD. This is a final judgment."

¶ 33 With respect to the circuit court's authority in appeals from decisions of the Commission, section 19(f) of the Act states as follows: "The court may confirm or set aside the decision of the Commission. If the decision is set aside and the facts found in the proceedings before the Commission are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the Commission for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper." 820 ILCS 305/19(f) (West 2010).

¶ 34 The circuit court's order in the present case did not remand the cause to the Commission for further proceedings. Although the circuit court could have used clearer

language, the substance and effect of the circuit court's judgment is to set aside the Commission's decision and reinstate the arbitrator's awards. Implicit in the circuit court's judgment is a finding that the facts before the Commission established that the arbitrator's awards were justified by law. Therefore, the circuit court's order did not require the Commission to conduct any further hearings on disputed factual or legal issues on the claimant's claim; it required the Commission to enter a decision consistent with the arbitrator's awards. Under these circumstances, the circuit court's judgment setting aside the Commission's decision is a final and appealable order, and we have jurisdiction to consider the merits of the employer's appeal. *Edmonds v. Illinois Workers' Compensation Comm'n*, 2012 IL App (5th) 11018WC, ¶ 19, 968 N.E.2d 775 ("we find that the trial court's order was final for purposes of appeal as the Commission has only to act in accordance with the directions of the court and conduct proceedings on uncontroverted incidental matters").

¶ 35 Next, turning to the merits, as noted above, the arbitrator found in favor of the claimant on the issue of causation, but the Commission found that the claimant failed to meet her burden of proof.

¶ 36 "In workers' compensation cases, the \*\*\* Commission is the ultimate decisionmaker." *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). "The Commission must weigh the evidence presented at the arbitration hearing and determine where the preponderance of that evidence lies." *Roberson*, 225 Ill. 2d at 173, 866 N.E.2d at 199. "Regardless of whether or not the Commission hears testimony in addition to that heard

by the arbitrator, it exercises original jurisdiction and is in no way bound by the arbitrator's findings." *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 405, 459 N.E.2d 963, 965 (1984). "The Commission has original, not appellate, jurisdiction to review evidence taken before the arbitrator and to consider the evidence properly presented to it." *National Biscuit, Inc. v. Industrial Comm'n*, 129 Ill. App. 3d 118, 120, 472 N.E.2d 91, 92 (1984). "While the arbitrator's findings are not without legal significance, and are entitled to some consideration, the Commission must resolve disputed questions of fact and draw reasonable inferences from them." *National Biscuit, Inc.*, 129 Ill. App. 3d at 120, 472 N.E.2d at 92.

¶ 37 Accordingly, in the present case, we must review the Commission's decision, not the arbitrator's decision.

¶ 38 A workers' compensation claimant has the burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her employment. 820 ILCS 305/2 (West 2010). Whether an injury arises out of a claimant's employment is a question of fact to be resolved by the Commission, and its decision in this regard will not be disturbed unless it is against the manifest weight of the evidence. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 164, 731 N.E.2d 795, 808 (2000). "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009). The appropriate test is not whether this court might have reached the same

conclusion, but whether the record contains sufficient evidence to support the Commission's determination. *R & D Thiel v. Illinois Workers' Compensation Commission*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010). "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). Resolution of conflicts in medical testimony is also within the province of the Commission. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003).

¶ 39 Applying these standards in the present case, we cannot conclude that the Commission's findings with respect to causation of the claimant's rotator cuff tear are against the manifest weight of the evidence.

¶ 40 The claimant maintained that her rotator cuff tear was the result of repetitive trauma from job-related activities, including reaching overhead to clean shower stalls. In a repetitive trauma case, a claimant may recover if "the claimant can show that a bodily structure has eroded over time to the point of uselessness as a result of employment." *Butler Manufacturing Co. v. Industrial Comm'n*, 140 Ill. App. 3d 729, 733-34, 489 N.E.2d 374, 378 (1986). "In cases relying on the repetitive-trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209, 614 N.E.2d

177, 180 (1993)

¶ 41 In *Williams*, the claimant worked as a crane operator and as a millwright for the employer for over 20 years. *Williams*, 244 Ill. App. 3d at 205, 614 N.E.2d at 178. The claimant's employment required him to lift machine parts weighing between 30 to 70 pounds during 30% of his time at work. *Williams*, 244 Ill. App. 3d at 205-06, 614 N.E.2d at 178. He also climbed on top of a crane five or six times per day, crawled under certain machinery two to three hours per day, and used sledge hammers, various tools, and a hydraulic air hammer on a regular basis. *Williams*, 244 Ill. App. 3d at 206, 614 N.E.2d at 178. The claimant sought workers' compensation benefits due to repetitive injury trauma. *Williams*, 244 Ill. App. 3d at 209, 614 N.E.2d at 180.

¶ 42 In affirming the Commission's denial of the claimant's claim, the *Williams* court noted that there was conflicting medical evidence as to the cause of the claimant's condition. The court stated, "Claimant's expert testified it was from his employment activities, while respondent's expert testified claimant's injury could be degenerative in nature because of his diabetes and alcoholism." *Williams*, 244 Ill. App. 3d at 211, 614 N.E.2d at 181. The court stated that the "Commission determined the credibility of witnesses, and it chose to find respondent's medical expert more credible than claimant's medical expert." *Williams*, 244 Ill. App. 3d at 211, 614 N.E.2d at 182. Therefore, the court concluded that the "Commission's decision finding that claimant failed to establish accidental injuries arising out of his employment under a theory of repetitive trauma was not against the manifest



weight of the evidence." *Williams*, 244 Ill. App. 3d at 211, 614 N.E.2d at 182.

¶ 43 Likewise, in the present case, the Commission was faced with conflicting medical evidence concerning whether the claimant's rotator cuff tear was a chronic tear that was causally related to her workplace duties or was an acute tear caused by her slip and fall at home on December 20, 2005.

¶ 44 To carry her burden of proof on the issue of causation, the claimant presented the testimony of Dr. Osmani. The Commission, however, discredited his opinions because of his lack of knowledge of the claimant's job duties. In addition, the Commission noted that the surgeon who repaired the rotator cuff tear did not offer any theory with respect to causation even though his notes reflected that he was aware that the claimant maintained that her condition was work-related.

¶ 45 The Commission found the testimony and opinions of Dr. Karlsson to be convincing. Dr. Karlsson noted that the claimant had no history of shoulder problems prior to her fall and that the claimant's MRI showed no retraction of the rotator cuff or any muscular atrophy. These findings lead Dr. Karlsson to believe that the rotator cuff tear was not a long standing condition. The Commission weighed the conflicting medical testimonies and found "Dr. Karlsson to be more credible than Dr. Osmani." Based on the record before us, we cannot say that the Commission's finding was against the manifest weight of the evidence.

¶ 46 CONCLUSION

¶ 47 For the foregoing reasons, we reverse the judgment of the circuit court and reinstate

the Commission's decision.

¶ 48 Reversed; Commission decision reinstated.

¶ 49 JUSTICE HOLDRIDGE, dissenting:

¶ 50 I respectfully dissent. I would dismiss the appeal as the judgment of the circuit court is an interlocutory nonfinal order. As the majority points out, when a circuit court reverses a decision of the Commission and remands the matter for further proceedings involving the resolution of questions of law or fact, the order is interlocutory and not appealable. *Trunek v. Industrial Comm'n*, 345 Ill. App. 3d 126, 127 (2003). Only where the remand is for the purpose of conducting proceedings on uncontroverted incidental matters or merely to make a mathematical calculation is the order to be considered final for purposes of an appeal to this court. *Edmonds v. Illinois Workers' Compensation Comm'n*, 2012 IL App (5th) 110118WC, ¶ 19.

¶ 51 In the instant matter, I disagree with the majority's conclusion that the circuit court's judgment that reversed the Commission is a final and appealable judgment. Although the court's order reversing the Commission "on all issues including accident, notice, medical expenses, TTD & PPD" is less than a model of clarity, the order rejected the Commission's determination that no causal connection existed between the claimant's current condition of ill-being and her employment. The court found that the opposite conclusion, *i.e.*, that a causal connection did exist, was clearly apparent. The purpose of the remand, therefore, was not merely to proceed on uncontroverted incidental matters or to make a mathematical calculation but, rather, the purpose of the remand was for the

Commission to make determinations on the issues left unresolved by the Commission's finding of no causation, *i.e.*, the payment of TTD benefits, medical benefits, and the nature and extent of the claimant's injuries, none of which had yet been addressed by the Commission.

¶ 52 The majority opines that the Commission was merely required by the remand to enter a decision consistent with the arbitrator's award. Thus, the majority finds the remand was ministerial in nature. I disagree. Just as there is no requirement under the Act that the Commission must adopt the arbitrator's decision on a petition for review (*S & H Floor Covering, Inc. v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 268 (2007)), there is nothing in the Act that would require it to adopt the arbitrator's decision upon remand from the circuit court. Upon remand, the Commission is free to accept or reject the arbitrator's award. See *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 63 (2006) (the Commission is the ultimate decision maker in workers' compensation cases, and it is not bound by any decision made by the arbitrator). Following remand, it would be up to the Commission to independently weigh the facts in the record to determine whether the claimant was entitled to compensation and benefits. *Id.*

¶ 53 The majority cites *Edmonds* in support of its holding that this court has jurisdiction over this appeal. I would find that *Edmonds* is clearly distinguishable. Unlike the instant matter where the circuit court reversed the Commission's finding that the claimant was not entitled to compensation, the court in *Edmonds* reversed the Commission's award of compensation. *Edmonds* at ¶ 17. In other words, in *Edmonds*, the purpose of the remand was for the Commission to enter a finding of no compensation consistent with the circuit court's ruling. Here, on the other hand, the purpose of the remand was so the Commission could enter a finding that the claimant's injuries were compensable

and then resolve the remaining issues regarding compensability.

¶ 54 Because the circuit court's remand to the Commission was for the resolution by the Commission of outstanding issues of law and fact, I would hold that the circuit court's order was interlocutory. I would, therefore, dismiss the appeal.