STATE OF ILLINOIS)
) SS.
COUNTY OF MCHENRY)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID ADCOCK,

Petitioner,

12IWCC1221

vs.

NO: 10 WC 27158

KNAACK MANUFACTURING,

Respondent.

DECISION AND OPINION ON REVIEW

The Respondent appeals the Decision of Arbitrator Lee finding that the Petitioner's left knee injury arose out of his employment on May 10, 2010; that the Petitioner's left knee condition is causally related to his accident; that the treatment was reasonable and necessary; that the Petitioner is entitled to temporary total disability (TTD) benefits from July 12, 2010 through January 5, 2011; and, that the Petitioner is entitled to a permanent partial disability (PPD) award of 20% loss of use of the leg.

The Commission after hearing oral arguments, reviewing the record on appeal, and being advised of the applicable law, hereby **reverses** the Decision of the Arbitrator and finds that the Petitioner failed to prove that he sustained a work-related injury arising out of and in the course of his employment on May 10, 2010. Petitioner's claim for compensation is therefore denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission makes the following findings:

1. The Petitioner testified that he worked for the Respondent for 8 years welding lock systems. T.9. He would weld 70 lock systems per day to satisfy his quota. T.12. As the result of a prior right leg injury that resulted in permanent restrictions, the

Petitioner performed his duties while seated in a swivel chair which had 5 wheels. T.10. The chair wheels were replaced two months prior to the accident. T.13. The Petitioner described the floor as concrete that had chips out it and welding BBs on the floor.

2. The Petitioner reviewed a DVD of his job and testified that there were differences between the video and his actual job duties. He testified that he does not use his right leg to swivel and he pushes with his left leg.

3. On May 10, 2010, the Petitioner testified that he was welding while sitting in his swivel chair when he rotated to his right causing his left knee to pop. Immediately afterwards, the Petitioner felt a burning sensation inside his left knee. T.16. He reported his injury to his supervisor who advised him to rest for an hour and ice his left knee. T.17. The Petitioner testified that he worked the next two days, May 11, 2010 and May 12, 2010 and was off May 13, 2010 and then went on a fishing trip from May 14, 2010 to May 17, 2010.

4. The Petitioner testified, on cross-examination, that at the time of his injury, he was not pushing his chair rather he was just turning his body. T.40.

5. The Petitioner returned from his fishing trip and was sent to Dr. Alexander Jablonowski of Centegra Occupational Health on May 18, 2010. The Petitioner complained of left knee pain after he internally rotated his left leg and knee when he went to perform a weld to his right. He was diagnosed with a sprain of the left knee and given light duty work restrictions. PX.1. Dr. Janlonowski referred the Petitioner to Dr. Steven Rochell.

6. The Petitioner underwent an MRI of the left knee on June 10, 2010 which was suspicious for a vertical tear of the medial meniscus and partially discoid lateral meniscus. No discrete lateral meniscal tear was identified. PX.1.

7. The Petitioner was seen by Dr. Rochell on June 16, 2010 with continued left knee pain. Dr. Rochell opined that the Petitioner had a tear of the medial meniscus as a result of a work injury. PX.1. He was given light duty work restrictions but was taken off work completely on July 12, 2010. Dr. Rochell recommended surgery.

8. The Petitioner underwent an IME with Dr. Preston Wolin on August 10, 2010. Dr. Wolin opined that the activities demonstrated in the DVD did not depict sufficient loading and torque necessary to cause a medial meniscus tear and the mechanics or environment was not sufficient to cause or aggravate a tear. He noted that a partially discoid lateral meniscus is a congenital condition and was not contributing to his symptoms. He further noted that if the Petitioner had meniscal pathology, it is likely

unrelated to his May 10, 2010 injury. RX.5. He returned the Petitioner back to work. However, the Petitioner filed for short-term disability.

9. On September 30, 2010, the Petitioner underwent arthroscopy and surgical arthroscopic medial and lateral meniscectomies of the left knee. PX.3.

10. The Petitioner was released to full-duty work on January 5, 2011; however, the Petitioner was advised there was no work for him. T.32.

11. The Petitioner testified that his left knee feels "pretty good" and that it was pretty much back to normal. T.33.

12. The Petitioner testified that his job did not require him to kneel or squat, so it was within his restrictions. T.38. After August 30, 2010, the Petitioner was offered light duty work, but chose to go on short-term disability. *Id.*

13. The evidence deposition of Dr. Steven Rochell was taken October 27, 2010. Dr. Rochell is a licensed orthopedic surgeon and first saw the Petitioner on June 16, 2010. PX.4. pg.6. During the initial visit, the Petitioner complained of an injury to his left knee on May 10, 2010 after feeling a pop in his left knee followed by severe pain and burning. PX.4. pg.7. He stated that the cause of the Petitioner's left knee injury was a twisting and turning which resulted in a tear of the medial meniscus. PX.4. pg.10. He recommended anti-inflammatory medication, continued light duty and to avoid activities that could aggravate his condition. PX.4. pg.11.

14. Dr. Rochell next saw the Petitioner on July 12, 2010 and recommended arthroscopic surgery that was performed on September 30, 2010. PX.4. pg.11.

15. Dr. Rochell testified, on cross-examination, that a similar injury could have occurred while exiting his car or getting up from a table, and there was nothing specific in the workplace that increased the risk of a left knee injury as it could have happened anywhere. PX.4. pg.28.

16. The evidence deposition of Dr. Wolin was taken February 4, 2011. Dr. Wolin is a board certified orthopedic surgeon and performed an IME on August 10, 2010. The Petitioner reported that on May 10, 2010, he planted his left foot and turned to weld in the direction of his right when he felt an immediate pop and burning sensation in the medial to the patella of his left knee. RX.6. pg.11. He noted that the Petitioner did not indicate that he was carrying or holding anything at the time of the injury nor did he indicate whether he was welding at the time of the injury. RX.6. pg.12. He noted that the Petitioner was 5'6" tall and weighed 330 pounds. RX.6. pg.14. His examination revealed normal flexion and a non-antalgic gait. There was no increased anterior-posterior medial lateral laxity of the knee and the McMurray test was

negative. RX.6. pg.16. X-rays of the left knee revealed narrowing of the medial compartment which demonstrated arthritic change. RX.6. pg.17.

17. Dr. Wolin opined that the activities depicted in the video did not show a sufficient loading and torque to cause a medial meniscus tear. RX.6. pg.21. His action of moving to the left and right had little, if any, torque as a result. He further stated that the mechanics or the environment in which the Petitioner was working would not be sufficient to cause or aggravate a meniscus tear. RX.6. pg.24. He further testified that any surgery would result in lack of improvement and the Petitioner would have been able to perform regular welding duties.

18. Dr. Wolin testified, on cross-examination, that the Petitioner had medial joint space narrowing on both knees that meant he had a problem with his left knee, which would have taken more than the three months between May 10, 2010 and August 10, 2010 to manifest on the x-ray. RX.6. pg.30. He noted that the Petitioner had not received any medical treatment prior to May 10, 2010 for his left knee and that the post-operative diagnosis was a tear to the medial and lateral meniscus of the left knee. RX.6. pg.32.

19. Dr. Wolin testified that internal rotation while placing weight on it can cause a meniscus tear. RX.6. pg.41. He stated that a person cannot suffer a tear of the medial meniscus with internal rotation because of a screw hole mechanism of the knee. With internal rotation, if there is torque then it is going to be applied to the lateral, not the medial meniscus. RX.6. pg.43.

To obtain compensation under the Act, a petitioner bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 266 Ill. Dec. 836, 775 N.E.2d 908 (2002). "In the course of employment" refers to the time, place and circumstances surrounding the injury. *Lee v. Industrial Comm'n*, 167 Ill. 2d 77, 81, 212 Ill. Dec. 250, 656 N.E.2d 1084 (1995). It is not enough, however, to simply show that an injury occurred during work hours or at the place of employment. The injury must also "arise out of" the employment. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393, 212 Ill. Dec. 537, 657 N.E.2d 882 (1995) (the occurrence of an accident at the claimant's workplace does not automatically establish that the injury arose out of the person's employment); *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 62, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989).

The "arising out of" component of establishing entitlement to benefits is primarily concerned with causal connection such that it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). If the petitioner is exposed to a risk to a greater degree than the general public, the injury is considered to have arisen out of the employment. *O'Fallon School District v. Industrial Comm'n*, 313 Ill. App. 3d 413, 416, 729

N.E.2d 523, 246 Ill. Dec. 150 (2000). If, on the other hand, the petitioner's exposure to risk is equal to that of the general public, the injury is not compensable. *Id.* In order to find that a petitioner's employment exposes him to a risk greater than that to which the general public is exposed, the hazards, dangers, or risks must be distinctive to the employment. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 153, 731 N.E.2d 795, 247 Ill. Dec. 22 (2000).

The Commission is not bound by the arbitrator's findings, and may properly determine the credibility of witnesses, weigh their testimony and assess the weight to be given to the evidence. *R.A. Cullinan & Sons v. Industrial Comm'n*, 216 Ill. App. 3d 1048, 1054, 575 N.E.2d 1240, 159 Ill. Dec. 180 (1991). It is the province of the Commission to weigh the evidence and draw reasonable inferences therefrom. *Niles Police Department v. Industrial Comm'n*, 83 Ill. 2d 528, 533-34, 416 N.E.2d 243, 245, 48 Ill. Dec. 212 (1981). Interpretation of medical testimony is particularly within the province of the Commission. *A. O. Smith Corp. v. Industrial Comm'n*, 51 Ill. 2d 533, 536-37, 283 N.E.2d 875, 877 (1972).

The evidence establishes that the Petitioner did sustain a left knee injury. The Petitioner testified that he was sitting on his swivel chair and turning when he felt a pop in his knee. The Petitioner testified specifically that at the time of his injury, he was not pushing his chair, rather he was turning his body. Furthermore, Dr. Rochell testified that there was nothing specific at Petitioner's workplace that increased the risk of a left knee injury as it could have happened anywhere.

The act of turning, even in a chair, is an activity of everyday life and does not constitute a compensable injury under the Illinois Workers' Compensation Act. *Bailey v. Cook Co. Dept. of Corrections*, 12 I.W.C.C. 0399; *Ikerman v. Residential Marketing*, 06 I.W.C.C. 1133; *Wright v. Chicago Youth Centers*, 03 I.I.C. 0465; *Moreland v. Midstate Core*, 01 I.I.C. 0702. The State of Illinois does not recognize the positional risk doctrine. *Brady v. Louis Ruffolo & Sons Const.*, 143 Ill.2d 542, 578 N.E.2d 921 (1991). The injury does not arise out of the employment, however, if it results from a hazard to which the employee would have been equally exposed apart from the employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52, 57, 541 N.E.2d 665, 667, 133 Ill.Dec. 454, 456 (Ill., 1989). The act of turning, whether standing or in a chair, is not a hazard greater than that faced by the general public. *Nabisco Brands, Inc. v. Industrial Comm'n*, 266 Ill.App.3d 1103, 1107, 204 Ill.Dec. 354, 641 N.E.2d 578 (1994).

The Commission finds no evidence that the injury was caused by an increased risk connected with the Petitioner's work duties, or a defect in the chair or floor. The Petitioner's act of turning in his swivel chair did not expose him to a risk greater than that to which the general public is exposed, and it was not a risk distinctive to his employment.

Therefore, the Commission reverses the Decision of the Arbitrator and finds that the Petitioner failed to prove that his injury arose out of and in the course of his employment. The Petitioner's claim for compensation is therefore denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that since the Petitioner failed to prove that his injury arose out of and in the course of his employment on May 10, 2010, his claim for compensation is hereby denied.

The probable cost of the record to be filed as return to Summons is the sum of $35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: NOV - 2 2012

MPL/tdm
O: 10/18/2012
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