

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).

2011 IL App (5th) 100540WC-U

Order filed October 28, 2011

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

RONNIE RIGGS,)	Appeal from the Circuit Court
)	of the 3rd Judicial Circuit,
Appellant,)	Madison County, Illinois.
)	
v.)	Appeal No. 5-10-0540WC
)	Circuit No. 10-MR-63
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Korte Luitjohan)	Clarence W. Harrison II,
Contractors, Inc., Appellee).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McCullough and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's finding that the claimant failed to prove that his back and hip injuries were causally related to a work-related accident was not against the manifest weight of the evidence. The claimant forfeited his argument that the Commission miscalculated his average weekly wage for purposes of determining his entitlement to TTD benefits because he failed to cite legal authority in support of this argument. Moreover, the Commission's method for calculating the claimant's average weekly wage was not contrary to law or against the manifest weight of the evidence.

¶ 2 The claimant, Ronnie Riggs, filed an application for adjustment of claim under the Workers'

Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)) seeking benefits for back, neck, and shoulder injuries he claimed to have sustained while working as an employee of respondent Korte Luitjohan Contractors, Inc. (employer). Following a hearing, an arbitrator awarded the claimant temporary total disability (TTD) benefits for a left shoulder injury that the employer stipulated was related to a work-related accident. However, the arbitrator found the claimant had failed to prove that his back and hip injuries were causally related to his work accident and denied benefits relating to that injury. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission unanimously affirmed and adopted the arbitrator's decision. The claimant sought judicial review of the Commission's decision in the circuit court of Madison County, which confirmed the Commission's decision. This appeal followed.

¶ 3

FACTS

¶ 4 The claimant was employed by employer as a truck driver. His job responsibilities included driving loads of materials to various job sites. On July 16, 2007, the claimant was sitting in the cab of his truck, which was dumping a load of rock, when the truck turned over on its passenger side. The claimant testified that he fell to the floor of the cab in a twisted position, struck his left shoulder and head, and lost consciousness. The claimant testified that, when he regained consciousness, he felt pain in his left shoulder, back, and hip.

¶ 5 The claimant was taken to St. Joseph's Hospital. The hospital records note that the claimant had abrasions on his chin, shoulder, and right flank. His left shoulder was painful and "deformed," and the claimant also reported pain in his neck. The hospital records do not document any complaints of thoracic pain, low back pain, or radicular symptoms in the lower extremities. A CT of the cervical spine showed prior fusion at multiple levels and degenerative changes at C3-C4 and C6-C7. No other pathology was noted. The discharge diagnosis was closed head trauma, cervical

sprain, and contusion of the left shoulder/arm. The claimant was placed in a cervical collar and left arm sling, prescribed a painkiller and a muscle relaxant, and excused from work. The written discharge instructions that the claimant was given referenced head injury, cervical strain, and contusions. No instructions were given with regard to the claimant's back.¹

¶ 6 On July 18, 2007, the claimant saw physician's assistant Jeff Davis at St. Joseph's Family Practice. Davis diagnosed closed head trauma, cervical sprain, and contusions to the back of the head, right upper back, left shoulder, and left arm. No complaints of thoracic or lumbar pain or radicular symptoms in the lower extremities were noted.

¶ 7 The claimant returned to St. Joseph's Family Practice on July 24, 2007, complaining of continuing pain and what Davis described as "paresthesias" in his left hand.² He also complained of low back pain. Davis referred the claimant to Dr. Rafet Nashed, an orthopedic surgeon.

¶ 8 The claimant saw Dr. Nashed on August 16, 2007. Dr. Nashed's medical records from that date note that the claimant complained of pain and decreased range of motion in the left shoulder, as well as numbness in the left hand and fourth and fifth fingers. Dr. Nashed's August 16, 2007, records do not document any complaints of pain or other symptoms in the thoracic spine, lumbar spine, or lower extremities. Dr. Nashed diagnosed a rotator cuff tear in the left shoulder and ordered an MRI of the shoulder.

¶ 9 On September 10, 2007, the claimant returned to Dr. Nashed, complaining of low back pain. The claimant told Dr. Nashed that, while his lower back did not bother him initially, "it has been a

¹ Although the discharge instruction form listed several possible symptoms including "back pain," the box corresponding to "back pain" was left unmarked.

² "Paresthesia" is a burning or prickling sensation that is usually felt in the hands, arms, legs, or feet, but can also occur in other parts of the body. The sensation is often described as tingling or numbness, skin crawling, or itching.

consistent problem *** since the motor vehicle accident." A clinical examination of the claimant's back revealed no significant area of tenderness. An X-ray of the claimant's lumbar spine showed only degenerative disc disease at T12-L1.³ Similarly, an MRI of the claimant's lumbar spine performed on September 17, 2007, showed only degenerative disc disease. Dr. Nashed did not recommend treatment for the claimant's lower back.

¶ 10 On October 25, 2007, the claimant returned to Davis. Davis adjusted the claimant's medications to address his chronic back pain. Davis's assessment was chronic neck and back pain with muscle spasm. Davis did not document any radicular symptoms in the lower extremities.

¶ 11 On November 14, 2007, Dr. Nashed operated on the claimant's left shoulder to repair the rotator cuff tear. From December 12, 2007, through June 24, 2008, the claimant underwent physical therapy at St. Joseph's Hospital. The therapy records reflect 63 visits during this period. Although the June 2, 2008, record reflects that the claimant complained on one occasion of pain in his right hip, none of the records document any complaints by the claimant regarding any pain or radicular symptoms in his lower back or legs.

¶ 12 The claimant visited Dr. Nashed four more times between January 24, 2008, and May 1, 2008. He did not complain of pain or other symptoms in his thoracic spine, lumbar spine, or lower extremities during this period. However, in February and March of 2008, the claimant complained of ongoing hip pain and difficulty walking. X-rays showed severe degenerative joint disease in the right hip. Dr. Nashed concluded that the claimant had severe arthritis of the right hip and suggested a total right hip replacement, which the claimant declined. Dr. Nashed referred the claimant to Dr. El Shun Lin for hip injections. On May 22, 2008, Mr. Davis noted that the claimant had severe osteoarthritis at multiple sites.

³ The claimant told the radiologist that he had "[l]ow back pain radiating down both legs."

¶ 13 The claimant returned to Dr. Nashed on two occasions in June of 2008. Although he reported hip pain on both occasions, he did not report any pain in his lower back or radicular symptoms in his legs. Dr. Nashed again encouraged the claimant to see Dr. Lin.

¶ 14 The claimant began work hardening with regard to his left shoulder on June 30, 2008. The physical therapy records indicate that the claimant complained of pain in his left shoulder and lower back, and aching and "pins and needles" sensations in his right hip, right thigh, and right knee. The claimant told the physical therapists that he experienced pain in his left shoulder and translumbar pain immediately following the July 16, 2007, accident. The therapists' notes indicate that the claimant's participation was limited on multiple occasions due to bilateral hip/low back pain.

¶ 15 The claimant treated with Dr. Lin on July 8, 2008. The claimant reported "terrible arthritis in both hips," difficulty walking and standing for long periods, and bilateral weakness in his legs. Dr. Lin ordered X-rays of the claimant's hip and an MRI of his cervical spine to determine whether there was any cervical spinal cord compression caused by the claimant's June 16, 2007, work accident. A cervical MRI was performed on July 23, 2008. The MRI revealed prior fusion from C4-C7 and mild protrusions at C3-C4 and C6-C7 but no canal impingement or spinal cord compression.

¶ 16 On July 28, 2008, the claimant underwent a functional capacity evaluation. The claimant demonstrated no overt limiting factors with regard to his left shoulder that would prevent a return to work. The claimant's subjective complaints of pain in the right hip, low back, right lower leg, and bilateral upper extremities were the primary factors limiting his return to work.

¶ 17 On July 29, 2008, Dr. Lin noted that the claimant was experiencing weakness in both of his legs and referred him to Dr. Sayed Ali, a neurologist, for further evaluation. The claimant was evaluated by Dr. Ali on July 30, 2008. The claimant complained of leg weakness, low back pain, cervical pain, and bilateral hip pain. Dr. Ali ordered a thoracic MRI and electrodiagnostic testing.

Both were performed on August 11, 2008. The electrodiagnostic testing revealed probable lumbar radiculopathy at L5, bilateral carpal tunnel syndrome, and peripheral neuropathy involving the ulnar nerves bilaterally. Dr. Terry Burk, a radiologist, interpreted the thoracic MRI as showing mild to moderate multi-level degenerative disc disease most prominent at T12-L1 and T3-4 and a right paracentric disc herniation at T3-T4 which mildly effaced the thecal sac anteriolaterally with mild right foraminal narrowing (*i.e.*, narrowing of the spaces between the vertebrae). Dr. Burk also noted a moderate annular bulge at T12-L1 causing mild central canal stenosis.⁴ Mild annular bulges were noted at T7-T8 and T8-T9 with no associated spinal stenosis. Dr. Ali diagnosed herniated discs at T3-T4 and T12-L1. He opined that the claimant's physical examination findings were consistent with the thoracic MRI. Dr. Ali recommended neurological and neurosurgical evaluation and opined that the claimant's condition and the need for further evaluation resulted from the work accident.

¶ 18 On August 4, 2008, the claimant underwent a section 12 examination performed by Dr. Christopher Rothrock, an orthopedic surgeon. Dr. Rothrock opined that the claimant had reached maximum medical improvement with regard to his left shoulder and could return to work full duty. The employer stopped paying the claimant TTD benefits on that date.

¶ 19 On September 15, 2008, Mr. Davis noted that the claimant suffered from severe degenerative joint disease in his back which necessitated back surgery.

¶ 20 The claimant underwent a section 12 evaluation by David Robson, a board-certified orthopedic surgeon, on December 17, 2008. In addition to reviewing the claimant's medical records, Dr. Robson reviewed a number of imaging studies, including the lumbar MRI from September 17, 2007, and the thoracic MRI from August 11, 2008. He interpreted the August 11, 2008, thoracic MRI as showing mild degenerative changes at T12-L1 and T3-T4 with no significant spinal cord

⁴ Spinal canal stenosis is a narrowing of one or more areas of the spine which can put pressure on the spinal cord or spinal nerves.

impingement. His neurologic examination of the claimant revealed nothing abnormal. Dr. Robson noted that plain film X-rays taken in conjunction with his examination revealed "severe end-stage arthritis of both hips" with complete loss of joint space, cyst formation, and the possibility of avascular necrosis.⁵ He opined that virtually all of the claimant's symptoms and complaints were related to his "degenerative and chronic" hip disease which preexisted the July 16, 2007, work accident and had no relationship to that accident. He disagreed with Dr. Ali's diagnosis of paraparesis secondary to a herniated disc at T3-T4. He opined that the thoracic spine lesions would not produce paraparesis and concluded that the claimant's gait problems were "secondary to his hip pathology." He opined that if the claimant received bilateral hip replacements, he could function at his previous level of activity as a truck driver.

¶ 21 In a February 11, 2009, letter to the claimant's attorneys, Dr. Ali disagreed with Dr. Robson's opinions and clinical findings. Dr. Ali stated that his clinical examination of the claimant revealed several abnormalities, including "weakness and atrophy" (primarily in the lower extremities), hyperreflexia,⁶ and abnormal gait. He also cited Dr. Burk's conclusion that the August 11, 2008, MRI showed disc herniations at T3-T4 and T12-L1. Dr. Ali opined that these problems were "clearly related" to the claimant's July 16, 2007, work accident.

¶ 22 During the arbitration hearing, the claimant testified that he felt pain in his left shoulder, back, and "hip area" immediately after the July 16, 2007, accident.⁷ He claimed that his left shoulder symptoms improved significantly after the surgery, but his low back and hip pain continued.

⁵ Avascular necrosis is the death of bone tissue due to a lack of blood supply.

⁶ Hyperreflexia is an exaggerated response of the deep tendon reflexes, usually resulting from injury to the central nervous system or metabolic disease.

⁷ On cross-examination, however, the claimant stated that he did not develop back and hip pain until approximately two months after the accident.

Although the claimant denied any significant low back pain prior to the accident, he admitted that he had been seen by a doctor several years ago with regard to low back pain. Although he initially denied that he had any hip pain prior to the accident, he later admitted that he limped and had right hip pain prior to the accident. He testified that "within two or so months after the accident," he began to have problems with his hip and lower back that he had never had before. However, he admitted that he did not report any right hip pain to Dr. Nashed until March 20, 2008—approximately seven months after the accident. Although the claimant underwent a right hip replacement in December 2008, he claimed that it did not improve his back pain.

¶ 23 The arbitrator concluded that, except for the claimant's left shoulder condition (which the employer stipulated was related to the accident), all of the claimant's alleged conditions of ill-being—including his hip and back conditions—were unrelated to the July 16, 2007, accident. Although the arbitrator noted that some complaints of low back pain were documented shortly after the accident, he found it significant that Dr. Nashed did not note any lumbar, thoracic, or lower extremity complaints between September 27, 2007, and March 20, 2008, when the claimant first complained of right hip pain. Moreover, the arbitrator noted that, in the visits that followed, Dr. Nashed consistently noted right hip complaints but did not note any complaints involving the thoracic spine, lumbar spine, or radicular symptoms into the lower extremities. The arbitrator concluded that the medical record clearly indicates that the claimant suffered from severe degenerative arthritis of the right hip.

¶ 24 In addition, the arbitrator found that Dr. Robson's explanation regarding the relationship of the claimant's complaints to the severely degenerated right hip was more plausible than Dr. Ali's opinion that the claimant's symptoms are attributable to thoracic disc pathology.⁸ Consequently, the

⁸ In support of this conclusion, the arbitrator noted that Dr. Ali's report indicates that he did not review the thoracic MRI film but rather relied on the interpretation of the radiologist.

arbitrator found Dr. Robson's interpretation of the August 11, 2008, thoracic MRI film more persuasive than Dr. Ali's and found Dr. Robson's causation opinion more persuasive than Dr. Ali's.

¶ 25 Accordingly, the arbitrator found that the claimant was entitled to receive TTD from the date of the July 17, 2008, work accident through August 4, 2008, the date that he reached MMI as to his shoulder condition. The arbitrator found that any lost time claimed after August 4, 2008, was unrelated to the claimant's work injury. Thus, the arbitrator denied TTD benefits after that date, found that the employer was not responsible for the prospective medical treatment recommended by Dr. Ali, and declined to order the employer to authorize further medical evaluation of the claimant's thoracic or lumbar spine.

¶ 26 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision without further analysis. The claimant sought judicial review of the Commission's decision in the circuit court of Madison County, which confirmed the Commission's decision. The circuit court noted that "[t]he Commission was called upon to parse complex issues of causation involving multiple areas of medical treatment by multiple health care professionals over an extended period of time." It concluded that the Commission properly weighed this complex evidence and reached a decision that was not contrary to the manifest weight of the evidence. This appeal followed.

¶ 27 ANALYSIS

¶ 28 To obtain compensation under the Act, a claimant must show by a preponderance of the evidence that he has suffered a disabling injury arising out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The "arising out of" component addresses the causal connection between a work-related injury and the claimant's condition of ill-being. *Sisbro*, 207 Ill. 2d at 203. A claimant need prove only that some act or phase of his

Conversely, Dr. Robson reviewed the actual film.

employment was a causative factor in his ensuing injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). An accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro*, 207 Ill. 2d at 205.

¶ 29 Thus, even if an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that the employment was also a causative factor. *Sisbro*, 207 Ill. 2d at 205; *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). A claimant may establish a causal connection if he can show that a work-related injury played a role in aggravating or accelerating his preexisting condition 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. *Sisbro*, 207 Ill. 2d at 204-05; *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983).

¶ 30 Whether a claimant's disability is attributable solely to the degenerative process of a preexisting condition rather than an aggravation or acceleration of the preexisting condition by a work-related accident is a factual determination to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 206. In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence. A factual finding is against the manifest weight of the evidence if the opposite conclusion is "clearly apparent." *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). The

test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

¶ 31 Applying these standards, we cannot say that the Commission's conclusion that the claimant failed to prove that his back and hip conditions are causally related to the July 16, 2007, work accident was against the manifest weight of the evidence. Dr. Robson concluded that the claimant's current back and hip problems were caused by a degenerative hip condition rather than the accident. He reached this conclusion after examining the claimant and after reviewing the September 17, 2007, lumbar MRI, the August 11, 2008, thoracic spine MRI, and other pertinent medical records. The September 17, 2007, MRI showed only degenerative changes and revealed no evidence of disc herniation, stenosis, or other pathology in the T12-L1 region. This supports Dr. Robson's conclusion that the pathology in the T12-L1 region that showed up in the August 11, 2008, MRI was caused by degenerative changes rather than the July 16, 2007, accident. Although Dr. Ali reached a different conclusion, it is the Commission's province to judge the credibility of medical experts and to resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980); *Hosteny*, 397 Ill. App. 3d at 675. Dr. Robson based his conclusions on several factors, including his review of records documenting the claimant's medical condition shortly after the July 16, 2007, accident. By contrast, Dr. Ali relied exclusively on his clinical examination of the claimant (which occurred more than a year after the accident), the history provided by the claimant, and the radiologist's interpretation of the August 11, 2008, MRI. Under these circumstances, the Commission's finding that Dr. Robson's medical opinion was more credible and more persuasive than Dr. Ali's was not against the manifest weight of the evidence.

¶ 32 Moreover, Dr. Robson's conclusion that the claimant's back and hip conditions were unrelated to the July 16, 2007, accident is supported by the medial records. Although a few

complaints of back pain were documented shortly after the accident, the medical records reveal no complaints of back pain between October 2007 and June 2008. Records of the 63 physical therapy sessions that the claimant attended from December 12, 2007, through June 24, 2008, contain no references to back pain and only a single reference to hip pain. The claimant first began to complain regularly of hip pain in March 2008. Two months later, he started to complain regularly of back pain. This suggests that the claimant's back pain was caused by the worsening of his preexisting degenerative hip condition and that any aggravation of that condition (and any back or hip pain) caused by the July 2007 accident was temporary and had resolved within a few months of the accident. For these additional reasons, the Commission's conclusion that the claimant's back and hip conditions were not causally related to the July 2007 accident was not against the manifest weight of the evidence.

¶ 33 The claimant argues that the Commission improperly disregarded his testimony that he did not suffer from back or hip pain before the July 16, 2007, accident and that he suffered from "regular and consistent" back and hip pain back after the accident. However, the claimant's testimony on these matters was inconsistent. On direct examination, the claimant testified that he experienced back and hip pain immediately after the accident. However, he admitted during cross-examination that, immediately after the accident, he complained to the emergency room personnel of "shoulder, head and neck" symptoms only and that he did not develop back and hip pain until approximately two months after the accident. The claimant's testimony regarding his condition prior to the accident was also equivocal. On direct examination, he claimed that he had no back or hip pain prior to the accident. On cross-examination, however, he admitted that he had reported back pain to a doctor nine months before the accident. He also admitted that he had right hip pain and walked with a limp prior to the accident. Thus, the Commission was not required to credit the claimant's testimony that he had back and hip pain immediately after (but not before) the accident.

¶ 34 In any event, even if the claimant's testimony on these matters had been consistent, it would not require a finding of causation. It is true that "a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability *may be sufficient* circumstantial evidence to prove a causal nexus between the accident and the employee's injury." (Emphasis added.) *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982); see also *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 851 (4th Dist. 1996). However, such testimony is not always dispositive, particularly where there is persuasive medical opinion testimony or other evidence suggesting that the claimant's injury is not related to the accident. See, e.g., *Sorenson v. Industrial Comm'n*, 281 Ill. App. 3d 373, 382 (1996) (affirming Commission's finding that work-related accident did not cause or aggravate claimant's bone spur based upon medical testimony despite undisputed evidence that claimant's back symptoms began after the accident); *Williams v. Industrial Comm'n*, 216 Ill. App. 3d 536, 539 (1991) (affirming Commission's finding that claimant's injury was unrelated to the alleged accident notwithstanding claimant's testimony that he had no symptoms before the accident where other evidence suggested that the accident would not have caused the injury). In this case, Dr. Robson opined that the claimant's back and hip conditions were not causally related to the July 2007 work accident. As noted above, Dr. Robson's opinion is persuasive and amply supported by the medical records. Thus, even if the claimant's "chain of events" testimony had been consistent, the Commission would have been entitled to credit Dr. Robson's opinion and find no causal relationship between the work accident and the claimant's current back and hip conditions.⁹

⁹ None of the cases cited by the claimant require a different conclusion. The claimant relies on *O'Fallon School District No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413 (2000), *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill. App. 3d 650 (1999), and *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848 (1996). In each of those cases, we affirmed the Commission's finding of causation

¶ 35 The claimant also argues that the Commission miscalculated his average weekly wage for purposes of determining his entitlement to TTD benefits. However, he cites no legal authority in support of this argument. Nor does he explain why he believes that the Commission's method for calculating his average weekly wage was contrary to law or against the manifest weight of the evidence. Supreme Court Rule 341(h)(7) requires a party to provide citations to relevant authority supporting arguments advanced on appeal. 210 Ill. 2d R. 341(h)(7). Because the claimant failed to support his argument with citations to authority, the argument has been forfeited for purposes of this appeal. *Vallis Wyngroff Business Forms, Inc. v. Illinois Workers' Compensation Comm'n*, 402 Ill. App. 3d 91, 94 (2010).

¶ 36 Regardless, the claimant's argument fails on the merits because the methodology employed by the Commission was proper. In a workers' compensation case, the claimant has the burden of establishing his average weekly wage. *United Airlines, Inc. v. Illinois Workers' Compensation Comm'n*, 382 Ill. App. 3d 437, 440 (2008); *Cook v. Industrial Comm'n*, 231 Ill. App. 3d 729, 731 (1992). The determination of an employee's average weekly wage is a question of fact for the Commission, which will not be disturbed on review unless it against the manifest weight of the evidence. *United Airlines*, 382 Ill. App. 3d at 440; *Ogle v. Industrial Comm'n*, 284 Ill. App. 3d 1093, 1096 (1996). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *United Airlines*, 382 Ill. App. 3d at 440.

¶ 37 Section 10 of the Act explicitly states that overtime is to be excluded in calculating an employee's average weekly wage. 820 ILCS 305/10 (West 2008). However, the statute fails to define "overtime." Our appellate court has consistently interpreted the statutory term "overtime"

where that finding was not against the manifest weight of the evidence. Here, by contrast, the claimant asks us to *reverse* the Commission's finding on causation despite the fact that the Commission's finding was supported by the record.

to mean hours "in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week." *Airborne Express, Inc. v. Illinois Workers' Compensation Comm'n*, 372 Ill. App. 3d 549, 554 (2007). Thus, any hours that an employee is required to work each week as a condition of his employment may be included in the calculation of his average weekly wage under the Act, even if the employer labels some of these hours "overtime." See, e.g., *Freesen, Inc. v. Industrial Comm'n*, 348 Ill. App. 3d 1035, 1042 (2004); *Ogle*, 284 Ill. App. 3d at 1097; *Edward Hines Lumber Co. v. Industrial Comm'n*, 215 Ill. App. 3d 659, 666-67 (1990). However, although such mandatory, regular overtime hours may be counted in determining the average number of hours that an employee worked per week, the employee's average weekly wage should be calculated at his regular pay rate, not his overtime pay rate. See, e.g., *Ogle*, 284 Ill. App. 3d at 1097 (holding that "overtime hours should be included in the [average weekly wage] calculation at straight time, so as not to reflect overtime earnings"); *Edward Hines Lumber Co. v. Industrial Comm'n*, 215 Ill. App. 3d 659, 666 (1990) (holding "as a matter of law" that the Commission "properly calculated the petitioner's average hourly wage based on the hours he regularly worked [including regular mandatory overtime], *but at his straight-time rate*" (emphasis added)).

¶ 38 That is exactly what the Commission did in this case. The parties appear to concede that the claimant worked mandatory, regular overtime. Thus, in calculating the claimant's average weekly wage, the Commission properly added the claimant's annual straight-time earnings to his annual overtime earnings, reduced to the straight-time rate, and divided by 52. The Commission employed the correct methodology and its calculation of the claimant's average weekly wage was neither contrary to law nor against the manifest weight of the evidence.

¶ 39

CONCLUSION

¶ 40 For the foregoing reasons, the judgment the judgment of the Madison County circuit court confirming the Commission's decision is affirmed and this cause is remanded to the Commission for further proceedings.

¶ 41 Affirmed and remanded.