

2012 IL App (2d) 110852WC-U
No. 2-11-0852WC
Order filed June 18, 2012

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

HARMONY'S CORNER,)	Appeal from the Circuit Court
)	of Kane County.
Plaintiff-Appellant,)	
)	
v.)	No. 11-MR-122
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION and KATHY CRUMPTON,)	Honorable
)	Thomas R. Mueller,
Defendants-Appellees.)	Judge, Presiding.

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

ORDER

Held: (1) Commission could reasonably infer that "manifestation date" of claimant's repetitive-trauma condition was March 17, 2009; even though evidence suggests that claimant was aware of the nature of her injury and its relationship to her employment well before then, that was the date she first sought medical attention for her bilateral wrist symptoms, it was the first date a diagnosis was made, and it was the first date treatment was prescribed; (2) Commission's finding that claimant provided timely notice of accident to employer is not against the manifest weight of the evidence where claimant testified that she informed respondent that she sought medical care for her condition and had previously inquired about filing a workers' compensation claim and where respondent was aware that claimant was experiencing problems with

her wrist and acknowledged that claimant's position involved repetitive activities; (3) Commission's finding that claimant's condition is causally related to her employment is not against the manifest weight of the evidence in light of conflicting evidence on the matter; and (4) Commission properly considered tip income in calculating claimant's average weekly wage.

¶ 1 Claimant, Kathy Crumpton, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) alleging that she sustained injuries to both hands and arms while employed as a bartender by respondent, Harmony's Corner. Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)), the arbitrator determined that claimant sustained a compensable accident, specifically bilateral carpal tunnel syndrome, and that claimant provided timely notice of the accident. The arbitrator further determined that claimant's condition is causally connected to her work as a bartender and set claimant's average weekly wage at \$532 per week. The arbitrator also awarded claimant medical expenses and ordered respondent to authorize surgery for claimant's condition. See 820 ILCS 305/8(a), 8.2 (West 2008). The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator and remanded the matter for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). The circuit court of Kane County confirmed the decision of the Commission. On appeal, respondent challenges the Commission's findings with respect to accident, notice, causation, and average weekly wage.

¶ 2 I. BACKGROUND

¶ 3 Claimant filed an application for adjustment of claim on July 7, 2009, alleging an accident on March 17, 2009, to both hands and arms as a result of her employment as a bartender for respondent. A hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)) was held on February 11, 2010, at which the following evidence was presented.

¶ 4 Claimant testified that she has worked as a bartender for Harmony's Corner for about 13 years and continues to do so. Claimant works four seven-hour shifts per week. Claimant related that her duties include preparing mixed drinks, using a "pop gun," pouring shots, serving beverages from bottles and cans, cleaning glasses, and maintaining the bar area. Claimant described in detail what each of these duties entails. For instance, claimant testified that preparing a mixed drink requires her to reach for a glass, turn the glass upside down, scoop ice, place the ice in the glass, grab a 1.75-liter bottle of alcohol, turn the bottle upside down to pour the alcohol into the glass, mix the alcohol with another beverage from a can or the "pop gun," place a straw in the glass, and give the drink to the patron. Claimant testified that when a patron finishes a drink, she scrubs each glass with soap by twisting it three or four times on a bottle brush, rinsing the glass, sanitizing the glass, and then placing the glass upside down next to the sink.

¶ 5 With respect to some of her other duties, claimant testified that the "pop gun" is used to dispense various beverages, including juice, cola, and water. This task requires claimant to press a button with a thumb. Claimant testified that she operates the "pop gun" with both hands, but uses the right more than the left. Claimant further testified that most of the beer served at the bar comes in bottles with twist-off caps, so she uses her hands to open them. Claimant estimated that for each shift that she works, she sees between 30 and 70 patrons and serves between 30 and 40 mixed drinks, 80 shots, and 20 cans of pop. In addition, she estimated that, using the "pop gun," she serves between 70 and 80 glasses of water per shift and about 4 or 5 servings of pop. Claimant testified that when the bar is busy, she would ring up between \$600 and \$900 in sales per shift. Claimant acknowledged that business at the bar has declined in the past 12 to 18 months and that the foregoing figures were from when the bar was busier.

¶ 6 Claimant testified that about seven years ago, she began noticing numbness and tingling in her palm, wrist, and fingers on the right side. At that time, she began to use her left hand more often. Soon thereafter, claimant began experiencing the same symptoms in her left hand. Claimant testified that her symptoms increase the busier the bar gets. Claimant testified that the activity of twisting caps off of the beer bottles results in “a lot of pain” and a “pulling sensation, burning.” She also noted that opening the bottles sometimes causes her hands to bleed or calluses to form on her fingers. Claimant testified that her symptoms affect her ability to do certain tasks and occasionally cause her to drop bottles. Claimant acknowledged a slight improvement in her symptoms since business at the bar has declined. Claimant denied engaging in any hobbies or activities outside of work that involve twisting the hands.

¶ 7 Claimant also testified that she began wearing braces on her hands about the same time her symptoms began. Claimant testified that the brace for her right hand is shorter because the pain only shoots up to just past her elbow on that side. Claimant testified that on the left side, the pain radiates all the way up to her shoulder and neck. At first, claimant would only wear the braces when she had pain. However, about two years ago, she began wearing the braces for her entire shift. Claimant stated that because of wear and tear, she had been replacing the braces every three or four months, although she can no longer afford to do so. Claimant stated that while wearing the braces, she only notices pain, tingling, and numbness “every once in awhile.” Claimant testified that initially customers at the bar advised her to wear the braces and then “the doctor” recommended that she do so.

¶ 8 Claimant testified that she spoke to Donna Beale, the owner of Harmony’s Corner, about her hands seven years prior to the arbitration hearing. At that time, claimant, who noted that she has a

hard time finding a doctor to see her because she does not have health insurance, asked Beale if she could buy insurance through the company. According to claimant, Beale told her that she (claimant) could not afford it. Two years later, claimant asked Beale if she could file a workers' compensation case to determine what was wrong with her wrist and hands, but Beale told her that she could not. Claimant testified that the pain eventually became unbearable. She began waking up at night with her hands "on fire," and she was unable to do chores such as laundry, dusting, and sweeping. As a result, claimant sought treatment at the Visiting Nurse Association (VNA) clinic on March 17, 2009. Claimant testified that after her appointment with the VNA, she spoke to Beale about it, telling her that she had been referred to a specialist for carpal-tunnel syndrome. According to claimant, Beale did not say anything in response.

¶ 9 Claimant testified that despite the diagnosis, she has been able to keep working and earns nine dollars per hour plus tips. Claimant added that in the year preceding her accident, Beale was also giving her \$40 per week in cash as a supplement. According to claimant, the cash supplement was in lieu of an increase in her hourly rate of pay. Claimant estimated that she collects between \$400 and \$500 per week in tips.

¶ 10 Beale was called by claimant as an adverse witness. Beale testified that she has owned Harmony's Corner for 18 or 19 years. Beale noted that prior to purchasing Harmony's Corner, she worked in the bar industry as a bartender and manager. Beale testified that her duties at Harmony's Corner include working as a bartender, preparing paperwork, paying bills, doing payroll, and hiring. Beale described Harmony's Corner as a "neighborhood bar" and testified that the establishment has the capacity to hold 70 customers. Beale testified that business at the bar has declined "dramatically" over the previous year.

¶ 11 Beale testified that claimant has been employed as a bartender at Harmony's Corner for 13 years. Claimant works four days a week (Wednesday through Saturday), seven hours per day. Beale noted that the shifts that claimant worked varied over time, but that when she filed her application for compensation, claimant was working the day shift from 11 a.m. to 6 p.m. According to Beale, during this shift there is a "lull" of about four hours when there are no patrons in the bar. Beale noted that at one time claimant worked the closing shift. According to Beale, the only difference between the two shifts was that the closing shift required the bartender to put up the stools at night. Beale testified that claimant earns nine dollars an hour plus tips. Although Beale did not know how much in tips claimant collected each week, Beale recounted that when she (Beale) works as a bartender at Harmony's Corner, she collects tips totaling about 10% of her sales. Beale added that a "good day" for the day shift was between \$600 and \$700 in sales. Beale acknowledged that there were days that the bar would have sales up to \$900 a day, but stated that they numbered only about three per year. Beale denied providing a cash supplement to claimant's salary.

¶ 12 Beale testified that she first learned of claimant's application for benefits in a letter dated July 3, 2009, from her workers' compensation carrier. Beale admitted that she was aware there was "something wrong" with claimant's arm when she first started working for the bar because claimant wore a "wrist band." She also stated that she was aware that claimant was having trouble with her hand prior to July 3, 2009, "from hearsay in the bar" by some customers. However, Beale denied speaking to claimant before July 3, 2009, about her hands. Beale did acknowledge that claimant wore a brace on one of her hands for almost the entire time that she worked at Harmony's Corner. Nevertheless, Beale did not observe claimant having any difficulty using her hands, she stated that claimant did not wear the brace every day that she worked, and she noted that claimant had no job

restrictions when she was hired. Beale completed a “job demands” form for the insurance company describing claimant’s duties.

¶ 13 The progress note from the VNA indicates that when claimant presented on March 17, 2009, she reported bilateral wrist pain for 12 years, worse since five years. Symptoms included a burning sensation with associated numbness in the hands and first three fingers. The progress note informs that claimant “works as a bartender, worse with use, has weak grip.” Examination revealed tenderness of the wrists and positive Phalen’s and Tinel’s signs, but no swelling or redness. The diagnosis was carpal-tunnel syndrome. Claimant was prescribed pain medication, referred to a neurologist, and instructed to continue wearing braces.

¶ 14 On July 1, 2009, claimant saw Dr. Kenneth Schiffman, a board-certified orthopaedic surgeon. Dr. Schiffman testified by deposition, and his progress notes were admitted into evidence. Claimant provided Dr. Schiffman with a history of working as a bartender for 12 years. Claimant reported that she continued to work in this position, but had difficulty because of persistent and worsening numbness, tingling, and pain in both hands. Claimant related that her symptoms are exacerbated when she has to lift, pour or open bottles. Claimant told Dr. Schiffman that as her right hand has worsened, she has had to use her left hand more. Claimant felt that this has provoked symptoms on the left side so that her left and right hands experience symptoms equally. Claimant noted that splints helped to some degree, but she is awakened frequently with numbness, tingling, and pain during the night. Examination revealed positive median nerve compression tests bilaterally and positive CMC grind test bilaterally. Dr. Schiffman noted that the former finding is indicative of carpal-tunnel syndrome while the latter finding is indicative of arthritic changes at the base of the thumb. Dr. Schiffman diagnosed probable bilateral carpal-tunnel syndrome, moderate to severe.

Dr. Schiffman's diagnosis was confirmed by an EMG. Dr. Schiffman recommended surgery with the left hand being done first because it was the more bothersome extremity.

¶ 15 Dr. Schiffman opined that claimant's work tasks over 12 years, including frequent gripping, lifting, and opening bottles, which required the constant use of her hands, "caused or at least aggravated this condition" so as to require surgery. Dr. Schiffman explained that these activities result in the firing or contracting of the flexor tendons, which run in the carpal canal, and thus squeeze or displace the medial nerve. On the day of his deposition, Dr. Schiffman reviewed the "job demands" form prepared by Beale. Dr. Schiffman testified that the information on the form supported his causation opinion. Dr. Schiffman noted that although claimant was a smoker, smoking is not a causative mechanism for the development of carpal-tunnel syndrome. Moreover, Dr. Schiffman testified that his finding with respect to claimant's thumbs was a separate diagnosis for which he offered no causal relationship opinion.

¶ 16 Dr. John Fernandez, an orthopaedic surgeon, saw claimant on September 1, 2009, for an independent medical examination. See 820 ILCS 305/12 (West 2008). In conjunction with the examination, Dr. Fernandez reviewed the EMG report, Dr. Schiffman's progress notes, and the "job demands" form completed by Beale. Dr. Fernandez then prepared a report of his findings and testified by evidence deposition. Claimant provided Dr. Fernandez with a history of pain and discomfort in her hands within six months prior to her visit. Claimant described pain at the base of the thumbs as well as numbness and tingling primarily affecting the index, middle, and ring fingers. Claimant reported that her symptoms worsened with activities and were worse on the left side than on the right side. Dr. Fernandez's examination revealed numbness and tingling in the medial nerve distribution bilaterally, irritability of the median nerve of the wrist, positive Tinel's sign, and

possible positive Phalen's sign. Dr. Fernandez testified that these findings were all indicative of carpal-tunnel syndrome. Dr. Fernandez also noted significant pain at the base of claimant's thumbs with crepitus, which is indicative of early arthritis. X rays of both hands revealed "fairly advanced" arthritis at the base of the thumbs. Dr. Fernandez diagnosed bilateral carpal-tunnel syndrome and bilateral arthritis at the base of the thumbs.

¶ 17 Dr. Fernandez did not believe that there was a causal relationship between claimant's job activities as a bartender and the two diagnoses. Dr. Fernandez explained that carpal-tunnel syndrome is a "relatively prevalent" condition and that claimant's age and gender were two "major risk factor[s]" for the disease. Dr. Fernandez also noted that while claimant does not have any other significant risk factors, the facts that she is slightly overweight and that she smokes also contribute to her condition. Dr. Fernandez acknowledged that claimant's activities as a bartender could "theoretically" be described as "repetitive." However, he preferred the term "variable," meaning that, like most people, claimant uses her hands throughout the course of the day for varying activities. In particular, he pointed out that claimant does not perform the same duty constantly throughout her shift. He explained that the fact that claimant may be stocking bottles in a cooler at one moment and opening those bottles the next "has a protective effect on the development of carpal tunnel syndrome." Dr. Fernandez also concluded that, even with her disease, claimant was capable of working without restrictions as long as her position remained light duty. Dr. Fernandez stated that claimant was at maximum medical improvement if she chooses not to undergo further treatment, although he agreed that she could benefit from surgery.

¶ 18 Also admitted into evidence were a wage statement prepared by Beale, claimant's W-2 forms for 2003 and 2004, and some of claimant's paycheck stubs for 2009. On the wage statement, Beale

wrote that claimant's "pay for past 6 yrs or more has been \$9.00 hr. 56 hr per every 2 wks. Total earned for biweekly 522.00 gross." The 2003 W-2 form reflects yearly wages, tips, and other income of \$10,966.50. The 2004 W-2 form reflects yearly wages, tips, and other income of \$9,727. The 2009 check stubs reflect gross wages of between \$504 and \$522 for between 56 and 58 hours of work.

¶ 19 Based on the foregoing evidence, the arbitrator determined that claimant sustained a compensable injury while in respondent's employ with a manifestation date of March 17, 2009. The arbitrator further found that claimant's condition is causally related to her employment as a bartender and that notice, though defective, was timely. The arbitrator, considering claimant's hourly wage and tips (but not the cash supplement), set claimant's average-weekly wage at \$532. In addition, the arbitrator awarded claimant medical expenses and ordered respondent to authorize the surgery recommended by Dr. Schiffman. The Commission affirmed and adopted the decision of the arbitrator in its entirety and remanded the matter for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327. The circuit court of Kane County confirmed. This appeal followed.

¶ 20

III. ANALYSIS

¶ 21 On appeal, respondent raises four issues: (1) whether the Commission's finding that claimant's accident manifested itself on March 17, 2009, is against the manifest weight of the evidence; (2) whether the Commission's finding that claimant provided timely notice of her accident is against the manifest weight of the evidence; (3) whether the Commission's finding that claimant's carpal tunnel injury is causally related to her employment is against the manifest weight of the evidence; and (4) whether the Commission's calculation of claimant's average weekly wage is against the manifest weight of the evidence. We address each contention in the order raised by

respondent. However, prior to doing so we note that our resolution of this case has been hampered by respondent's failure to prepare a brief in accordance with the provisions of Illinois Supreme Court Rule 341 (eff. July 1, 2008). Notably, the argument section of respondent's brief contains no references to the pages of the record relied upon (Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008)) and respondent does not provide pinpoint cites to legal authority (Illinois Supreme Court Rule 6 (eff. July 1, 2011); Illinois Supreme Court Rule 341(g) (eff. July 1, 2008)). Failure to abide by our supreme court rules may result in waiver of an issue on appeal (see *Putnam v. Village of Bensenville*, 337 Ill. App. 3d 197, 201-02 (2003)) or even dismissal of the appeal itself (*Fender v. Town of Cicero*, 347 Ill. App. 3d 46, 51-52 (2004)). Although we opt not to take such drastic action in this case, we nevertheless remind counsel for respondent that the supreme court rules are not advisory. Having been warned, we trust that counsel will comply with all such rules in the future.

¶ 22

A. ACCIDENT

¶ 23 Respondent first challenges the Commission's finding that claimant's accident manifested itself on March 17, 2009. Respondent insists that the evidence presented at the arbitration hearing establishes that claimant's carpal-tunnel syndrome was "plainly apparent" to her seven years prior to the manifestation date set by the Commission. Claimant contends that respondent has forfeited this issue by failing to dispute the date of accident at the arbitration hearing. Alternatively, claimant maintains that the Commission properly found March 17, 2009, to be the manifestation date of the accident because that was the date that she first sought treatment for her bilateral wrist symptoms, that the diagnosis was made, and that treatment was first prescribed.

¶ 24 Initially, we reject claimant's contention that respondent forfeited review of this issue. "Accident" is clearly listed as one of the issues in dispute on the request for hearing form submitted

by the parties at the arbitration hearing. Moreover, claimant's attorney acknowledged at the arbitration hearing that "virtually everything" was in dispute. We also point out that during claimant's direct examination by her attorney, counsel for respondent objected to one of the questions, advising that "one of the issues in the case is when an accident occurred or condition started." As such, we find that the manifestation date was at issue before the arbitrator and we will address the merits of respondent's claim in this regard.

¶ 25 An employee seeking benefits for a repetitive-trauma injury must meet the same standard of proof as an employee alleging a single, definable accident. *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 47 (1989). Where the employee alleges a repetitive-trauma injury, the date of the accident is generally considered to be the date on which the injury "manifests itself." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 65 (2006); *Peoria Belwood County Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 531 (1987). A repetitive-trauma injury is said to manifest itself on "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Peoria Belwood County Nursing Home*, 115 Ill. 2d at 531. However, this court has recognized that a rule based purely on discovery "would penalize those employees who continue to work without significant medical complications when the eventual breakdown of the physical structure occurs beyond the statute of limitations period." *Zion-Benton High School District 126 v. Industrial Comm'n*, 242 Ill. App. 3d 109, 114 (1993). Thus, the date of accident in a repetitive-trauma injury has on occasion been found to be when the employee can no longer perform his job (*Zion-Benton Township High School District 126*, 242 Ill. App. 3d at 114) or when the onset of pain necessitates medical attention (*Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill. App. 3d 607, 612 (1988)) even

if the employee was aware of the nature of his injury and its relationship to his employment prior to that date. The determination of the accident date is a factual inquiry to be resolved by the Commission. *Oscar Mayer & Co.*, 176 Ill. App. 3d at 610-11. We will not overturn the Commission's finding on a factual matter unless it is against the manifest weight of the evidence. *Durand*, 224 Ill. 2d at 64. A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *Bassgar, Inc. v. Workers' Compensation Comm'n*, 394 Ill. App. 3d 1079, 1085 (2009).

¶ 26 In this case, the arbitrator set the manifestation date as March 17, 2009. This was the date that claimant first sought medical attention for her bilateral wrist symptoms, the first date a diagnosis was made, and the first date treatment was prescribed. The arbitrator acknowledged that claimant had bilateral carpal-tunnel syndrome symptoms years prior to March 17, 2009, and that she had been treating herself with wrist braces because she had no health insurance. However, the arbitrator found that a lay person's suspicion of a condition has never been found to constitute a manifestation date for repetitive trauma. The Commission affirmed and adopted the arbitrator's finding.

¶ 27 We conclude that the Commission could have reasonably set the accident date as March 17, 2009, even if claimant was aware of the nature of her injury and its relationship to her employment. Although claimant had inquired about medical treatment prior to March 17, 2009, she did not actually consult with a medical professional for various reasons. Claimant testified, for instance, that she had a hard time finding a doctor to see her because she had no health insurance. Further, she claimed that Beale had rejected her initial request to seek workers' compensation benefits. During this time, claimant, in accordance with advice from patrons at the bar, began wearing braces. Although the braces provided some relief and claimant was able to work, she continued to

experience difficulty because of persistent and worsening numbness, tingling, and pain in both hands. Claimant's pain reached the stage where she eventually sought treatment at the VNA clinic on March 17, 2009. There, she was diagnosed with carpal-tunnel syndrome, referred to a neurologist, and instructed to continue wearing braces. The VNA progress note, which provides in relevant part that claimant "works as bartender, worse with use, has weak grip," could be reasonably interpreted as relating claimant's condition to her employment. Based on this evidence, the Commission could have reasonably concluded that March 17, 2009, was the date that claimant's pain had progressed to the point that she necessitated medical treatment. See *Oscar Mayer & Co.*, 176 Ill. App. 3d at 612. As such, we cannot say that the Commission's decision to set March 17, 2009, as the accident date is against the manifest weight of the evidence.

¶ 28

B. NOTICE

¶ 29 Next, respondent challenges the Commission's finding on the issue of notice. According to respondent, it had no knowledge that claimant sustained a work-related accident until July 3, 2009, when it received a letter from its workers' compensation carrier. Thus, respondent asserts, claimant failed to provide notice of any work accident within 45 days after its occurrence on March 17, 2009, as required by section 6(c) of the Act. 820 ILCS 305/6(c) (West 2008).

¶ 30 The purpose of the notice requirement is to enable an employer to investigate an alleged accident. *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill. App. 3d 915, 921 (2005). Under the Act, an employee must give notice to the employer as soon as practicable, but no later than 45 days after the accident. 820 ILCS 305/6(c) (West 2008). While notice may be given orally or in writing (820 ILCS 305/6(c) (West 2008)), mere notice to an employer of some type of injury is insufficient to satisfy the notice requirement (*White v. Industrial Comm'n*, 374 Ill. App. 3d 907, 911

(2007)). Rather, it is necessary that the employer be advised that the injury is in some way work related. *White*, 374 Ill. App. 3d at 911. However, formal notice is not necessary (*Armour & Co. v. Industrial Comm'n*, 367 Ill. 471, 474 (1937)), and the notice requirement is met if the employer possesses known facts related to the accident within 45 days (*Kishwaukee Community Hospital*, 356 Ill. App. 3d at 921).

¶ 31 The notice required by section 6(c) is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act. *Ristow v. Industrial Comm'n*, 39 Ill. 2d 410, 413 (1968); *S&H Floor Covering, Inc. v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 265 (2007). Nevertheless, since the legislature has mandated a liberal construction of the notice requirement, a claim will not be barred unless no notice has been given at all. *Kishwaukee Community Hospital*, 356 Ill. App. 3d at 921-22. Thus, where some notice has been given, even if inaccurate or defective, the claim will be barred only where the employer demonstrates that it has been unduly prejudiced. 820 ILCS 305/6(c) (West 2008); *Kishwaukee Community Hospital*, 356 Ill. App. 3d at 921-22. The sufficiency of notice is an issue of fact, and the Commission's findings regarding the credibility of witnesses on this point are entitled to deference. *AC & S v. Industrial Comm'n*, 304 Ill. App. 3d 875, 883 (1999). We will reverse the Commission's finding on the issue of notice only if it is against the manifest weight of the evidence, *i.e.*, where an opposite conclusion is clearly apparent. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 95 (1994).

¶ 32 Here, the arbitrator found that claimant provided timely, though defective, notice of her injury to Beale. The arbitrator cited claimant's testimony that in March 2009 she told Beale about her visit to the VNA and the VNA's diagnosis, the fact that claimant wore braces on her wrists while working, and Beale's admission that she knew claimant had problems with her hands and wrists.

The Commission affirmed and adopted the arbitrator's finding. The evidence supports the Commission's determination.

¶ 33 Claimant testified that after she went to the VNA on March 17, 2009, she told Beale that she was diagnosed with carpal-tunnel syndrome and that she was referred to a specialist. Although Beale denied that this conversation took place, the resolution of this factual dispute was for the Commission to decide. *Moore Electric Co. v. Industrial Comm'n*, 83 Ill. 2d 43, 47-48 (1980); *Thrall Car Manufacturing Co. v. Industrial Comm'n*, 64 Ill. 2d 459, 466 (1976). Further, while claimant did not indicate whether she informed Beale that her diagnosis was work related, Beale was familiar with the duties of a bartender, having worked both as a bartender and a bar manager. Additionally, in completing the "job demands" form, Beale acknowledged that claimant's position involved repetitive tasks such as pouring 1.75-liter bottles of alcohol and using the "pop gun." More important, Beale was aware that claimant had problems with her hands and wrists prior to her visit with the VNA on March 17, 2009. Beale noted for instance that claimant wore a "wrist band" when she first started working at the bar and subsequently began wearing braces. She also overheard bar patrons speak about claimant's hand problems. Furthermore, claimant testified that she had previously asked Beale about filing a workers' compensation claim to determine what was wrong with her hands, but Beale told her that she could not. Based on this evidence, it was reasonable for the Commission to infer that by March 17, 2009, respondent had in its possession known facts related to the accident. Sitting as a court of review, we are not to disregard or reject permissible inferences drawn by the Commission merely because other inferences might also be drawn from the evidence. *Gano Electric Contracting*, 260 Ill. App. 3d at 95. Moreover, to the extent that the notice claimant provided was defective or inaccurate, it was incumbent upon respondent to show that it was

unduly prejudiced. 820 ILCS 305/6(c) (West 2008); *S&H Floor Covering*, 373 Ill. App. 3d at 266. Respondent makes no such argument here. Accordingly, we cannot say that a decision opposite to the one reached by the Commission is clearly apparent.

¶ 34

C. CAUSATION

¶ 35 Next, respondent challenges the Commission's causation finding. The employee has the burden of establishing a causal relationship between her injury and employment. *Levkovitz v. Industrial Comm'n*, 256 Ill. App. 3d 1075, 1082 (1993). A gradual injury stemming from repeated trauma is compensable under the Act as long as the employee establishes that the injury is work related and not the result of a normal degenerative process. *Zion-Benton Township High School District 126*, 242 Ill. App. 3d at 113. The employee need only prove that some act or phase of employment was a causative factor of the resulting injury. *Three "D" Discount Store*, 198 Ill. App. 3d at 49. Issues of causation present questions of fact. *Global Products v. Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 411 (2009). It is the function of the Commission to resolve disputed questions of fact, including those related to causal connection, to draw permissible inferences from the evidence, and to decide which of conflicting medical views to adopt. *Levkovitz*, 256 Ill. App. 3d at 1082. We review the Commission's finding on causation under the manifest-weight-of-the-evidence standard of review. *Global Products*, 392 Ill. App. 3d at 411. As noted above, a decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *Bassgar, Inc.*, 394 Ill. App. 3d at 1085.

¶ 36 In this case, there was conflicting evidence regarding whether claimant's bilateral carpal-tunnel syndrome was related to her employment. Dr. Schiffman opined that claimant's work tasks over many years "caused or at least aggravated" claimant's condition. Dr. Fernandez reached the

opposite conclusion. Ultimately, the Commission, in adopting the decision of the arbitrator, concluded that claimant's bilateral carpal-tunnel syndrome is causally connected to her work as a bartender. The Commission found the opinion of Dr. Schiffman more credible than the opinion of Dr. Fernandez. We cannot say that the Commission's finding in this regard is against the manifest weight of the evidence. The Commission noted that Dr. Fernandez did not dispute that the use of one's hands and wrists could contribute to a diagnosis of bilateral carpal-tunnel syndrome. Nevertheless, he discounted any link between claimant's condition and her employment because claimant had other risk factors and, in his opinion, she did not perform repetitive work tasks frequently enough to contribute to the condition. The Commission found the opinion of Dr. Schiffman more persuasive than that of Dr. Fernandez because Dr. Schiffman is claimant's treating physician and he cogently explained how opening bottles of liquor and cans of pop could, over a number of years, cause or aggravate bilateral carpal-tunnel syndrome.

¶ 37 Respondent insists that the Commission's reliance on Dr. Schiffman's opinion is flawed because Dr. Schiffman had no knowledge of claimant's work duties at Harmony's Corner whereas Dr. Fernandez was in possession of the "job demands" form prepared by Beale for the insurance company. Although Dr. Schiffman did not have the "job demands" form when he initially examined claimant, a review of his records and deposition testimony clearly demonstrates that claimant informed Dr. Schiffman that she worked as a bartender for many years and that Dr. Schiffman was aware of the principal duties involved in this type of work. He noted, for instance, that the position involved the constant use of claimant's hands to lift, grip, open, and pour bottles. Moreover, Dr. Schiffman was presented with a copy of the "job demands" form during his deposition testimony. He reviewed the document at that time and concluded that it supported his causation opinion. In

sum, given the conflicting opinion testimony, we cannot say that a conclusion opposite the one reached by the Commission is clearly apparent. Accordingly, we affirm the Commission's finding that claimant's bilateral carpal-tunnel syndrome is causally related to her employment as a bartender.

¶ 38

D. AVERAGE WEEKLY WAGE

¶ 39 Lastly, respondent argues that the evidence does not support the Commission's calculation of claimant's average weekly wage. Wage calculation is governed by section 10 of the Act (820 ILCS 305/10 (West 2008)), which provides in relevant part:

“The compensation shall be computed on the basis of the ‘Average weekly wage’ which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury, illness or disablement excluding overtime[] and bonus[,] divided by 52.” 820 ILCS 305/10 (West 2008).

The average weekly wage includes “ ‘anything of value received as consideration for the work,’ ” including tips. *Swearingen v. Industrial Comm'n*, 298 Ill. App. 3d 666, 668 (1998), quoting 5 Larson, *Larson's Workers' Compensation* § 60-12(a), at 10-648 through 10-655 (1993). The employee bears the burden of establishing his average weekly wage. *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1015 (2005). The determination of an employee's average weekly wage is a question of fact for the Commission which will not be overturned on appeal unless it is against the manifest weight of the evidence. *United Airlines, Inc. v. Workers' Compensation Comm'n*, 382 Ill. App. 3d 437, 440 (2008). As noted above, a decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *Bassgar, Inc.*, 394 Ill. App. 3d at 1085.

¶ 40 In this case, claimant's average weekly wage was set at \$532. Included in this figure is claimant's hourly wages and an amount for tips, but not the "cash supplement" claimant testified to receiving from Beale. The arbitrator noted that based on claimant's typical work week of 28 hours and her hourly salary of \$9, she earned \$252 per week. The arbitrator further noted that there was conflicting testimony regarding the tip income claimant earned and that neither party had documentation to support its position. Beale estimated that tips would have been 10% of what claimant rang up each shift. Beale further testified that a "good" day of sales for the day shift would be between \$600 and \$700 in sales. Claimant testified that she earned between \$400 and \$500 per week in tips. Claimant estimated that during a busy shift she would ring up between \$600 and \$900 in sales. Based on this evidence, the arbitrator used "the highest amount both witnesses agreed on, \$700.00 per shift, and multiplied that by 10%, to conclude [claimant] earned \$70.00 in tips per shift or \$280.00 per week." The arbitrator added the amount claimant earned in hourly wages to this calculation of tip income to arrive at the \$532 figure. The Commission affirmed and adopted the arbitrator's calculation.

¶ 41 Respondent does not challenge the Commission's calculation of claimant's hourly wage. However, it disputes the Commission's calculation of claimant's tip income. The Commission was presented with conflicting evidence regarding not only the amount of tip income claimant received each week, but also the amount of sales claimant would ring up during each shift. Accordingly, in calculating claimant's tip income, the Commission compromised. It considered Beale's testimony that patrons at the bar typically tipped at a rate of 10%. It also considered that both parties offered testimony that \$700 in sales per shift constituted a "good" day for claimant's shift. Although the tip earnings ultimately settled upon by the Commission are well below the amount claimant testified

to receiving each week, respondent insists that the Commission's calculation regarding claimant's tip income is inaccurate. According to respondent, the bar only earned \$700 per shift on a "good night," these "good nights" occurred infrequently, and this evidence reflected sales prior to the economic downturn. However, respondent did not present any conclusive evidence regarding the amount of sales on an average day or the precise impact of the economic downturn on sales at the bar. In fact, when Beale was asked the amount of the average "ring up," she responded, "not very much." Thus, we do not find the Commission erred in basing its calculations on the amount the bar took in on a "good" day.

¶42 Alternatively, respondent asserts that claimant failed to meet her burden of proof because she did not report the tips she received on her income tax return. Tips are considered income under the Internal Revenue Code. See 26 U.S.C.A. § 61(a); 26 C.F.R. § 1.61-2(a)(1); *Cracchiola v. Commissioner of Internal Revenue*, 643 F.2d 1383, 1384 (9th Cir. 1981). However, the evidence respondent cites in support of its argument that claimant did not report tip income is equivocal at best. None of claimant's income tax returns were admitted at the arbitration hearing. Moreover, claimant did offer some testimony on the matter. Claimant testified that she has her taxes prepared by a retail income tax company. Claimant related that while she was unsure what the tax preparer did, she notified him that she works as a bartender. Claimant further related that when she asked whether her tips should be reported on her income tax return, she was informed that when the preparer designates her occupation as a bartender, the tax preparation software "automatically does something." Based on this testimony, and the fact that respondent presented no testimony to the contrary, it was reasonable for the Commission to infer that claimant included any tip income she received on her income tax return. In sum, we cannot say that a conclusion opposite to the one

reached by the Commission is clearly apparent. Accordingly, we are compelled to affirm the Commission's calculation of claimant's average weekly wage.

¶ 43

IV. CONCLUSION

¶ 44 For the reasons set forth above, we affirm the judgment of the circuit court of Kane County, which confirmed the decision of the Commission. This cause is remanded for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327 (1980).

¶ 45 Affirmed and remanded.