2012 IL App (3d) 110631WC-U
No. 03-11-0631WC
Order filed June 20, 2012

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).

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JOHN JACKSON,	)	Appeal from the Circuit Court
	)	of La Salle County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-MR-166
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION	)	
	)	
Defendant-Appellee,	)	Honorable
	)	R.J. Lannon, Jr.,
(Clegg-Perkins, Inc., Appellee).	)	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: The decision of the Commission that claimant lacked credibility and thus failed to prove that he sustained a work-related injury is not contrary to the manifest weight of the evidence.

¶ 1 Claimant, John Jackson, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2002)) alleging he sustained an injury to his

lower back while in the employ of respondent, Clegg-Perkins, Inc. The arbitrator agreed with claimant; however, the Illinois Workers' Compensation Commission (Commission) reversed, finding claimant had not proven he suffered an injury arising out of and in the course of his employment. The circuit court of La Salle County confirmed the decision of the Commission. The sole issue presented in this case is whether the Commission's decision is contrary to the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 2 As an initial matter, we find claimant has forfeited his sole argument by failing to comply with Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), which provides as follows:

> "The appellant's brief shall contain the following parts in the order named:
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> ***
>
> Argument, which shall contain the contentions of the appellant and the reasons therefor, *with citation of the authorities and the pages of the record relied on*. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal or abstract, if any, where evidence may be found. Citation of numerous authorities in support of the same point is not favored. Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." (Emphasis added.)

Claimant's argument contains no citations to the record. Moreover, the only authority cited sets forth the standard of review. This is wholly insufficient and results in the forfeiture of this argument. *People v. Davis*, 335 Ill. App. 3d 1, 20 (2002) (argument forfeited by failing to cite record); *McDuffee v. Industrial Comm'n*, 222 Ill. App. 3d 105, 111 (1991) (claim waived by failing to support with legal authority).

¶ 3 Moreover, even if we were to consider claimant's argument, we would find that it lacks

merit. The Commission found that claimant "did not meet his burden of proving he sustained accidental injuries arising out of and in the course of his employment with [r]espondent." In order to recover under the Act, it is necessary to make such a showing. *Stapleton v. Industrial Comm'n*, 282 Ill. App. 3d 12, 15 (1996). This issue presents a question of fact (*Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30- 36-37 (1982)) to which we apply the manifest-weight standard (*Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005)). A decision is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 1080, 1093 (2007). We owe great deference to the Commission, as trier of fact, regarding the credibility of witnesses as well as the resolution of conflicts in and the assignment of weight to the evidence. See *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406 (1984).

¶ 4 Before the Commission, the burden is upon a claimant to prove each of the essential elements of his or her claim by a preponderance of the evidence. *Caterpillar Tractor Co. v. Industrial Comm'n*, 83 Ill. 2d 213, 216 (1980); *Knox County YMCA v. Industrial Comm'n*, 311 Ill. App. 3d 880, 884 (2000). On appeal, it is the burden of the appellant—claimant, in this case—to affirmatively demonstrate error from the record. *Lenny Szarek, Inc. v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 597, 606 (2009), citing *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171-73 (2008). It has often been stated that we review the result to which a lower tribunal came rather than its reasoning. *Boaden v. Department of Law Enforcement*, 267 Ill. App. 3d 645, 652 (1994); *Reidelberger v. Bi-State Developmental Agency*, 8 Ill. 2d 121, 124 (1956); see also *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 392 (2002). Therefore, it is not enough that an appellant show that the lower body's reasoning was erroneous, the appellant must also show that the manifest weight of the evidence clearly points to a different

result than the one reached below (*Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992)).

¶ 5 In this case, claimant testified that he suffered an accident while performing his job on September 3, 2002. He was employed by respondent as a union journeyman electrician and was working at a business establishment called Kirlin's Gift Shop. This job required him to replace two-by-four fluorescent fixtures in the ceiling. The fixtures weighed between three and five pounds. Claimant was using a six-foot ladder to perform this work. At the time he was injured, according to claimant, he had replaced about 15 fixtures. Claimant explained that he "would lift the fixture up out of the ceiling, turn it and rotate it down and set it on top of the ladder." He would then disconnect the fixture and place it next to the ladder. At one point, claimant was twisting to the side, and his "lower back popped." He testified that he "instantly felt sick to his stomach and broke out in a cold sweat." Claimant testified that he called his fiancee (now wife) to pick him up. After lunch, he returned to Kirlin's, gathered his tools, and returned to respondent's shop, where, according to claimant, he had a conversation with the owner (Mike McDonald) about the accident. Claimant was the sole witness to this alleged accident, and the Commission found that he lacked credibility.

¶ 6 There are numerous reasons in the record to question claimant's credibility, including discrepancies in his testimony and medical records. The Commission expressly noted that, while claimant had undergone two back surgeries before returning to work in April 2002, claimant testified that he felt " 'one hundred percent' and was capable to perform all his job duties." In fact, claimant admitted during cross-examination that he first injured his back in a fall in the late 1980s or early 1990s and received periodic treatment for the injury. He again injured his back in 2000 while playing basketball. He underwent a lumbar microdiscectomy in February 2001 and a subsequent

procedure in January 2002. According to claimant, he felt instant relief following the 2002 surgery and remained pain free until the alleged accident of September 3, 2002.

¶ 7 The Commission also noted that claimant initially testified that the accident occurred on October 3, 2002, but "subsequently changed the date to September 3, 2002, at his counsel's prompting." Additionally, the original application for adjustment of claim alleged an accident date of October 17, 2002. It noted that such confusion over the date of the accident was consistent with the "vague histories" claimant provided to his doctors. We also observe that despite claimant's testimony that he informed respondent's owner of the accident on the day it occurred, McDonald testified that he recalled no such conversation, though he did remember the Kirlin job.

¶ 8 Moreover, the medical records of Dr. Cheatham (a chiropractor) contradict claimant's testimony that he was pain free following the January 2002 surgery until his alleged accident. Indeed, they indicate that claimant continued to complain of symptoms throughout this period. We further note the records of Dr. Fred Geisler (a neurosurgeon) state that claimant reported that he " 'had problems for 15 years' " and his condition has continued to worsen. When claimant saw Dr. Martin Herman on February 17, 2004, he reported on an intake form that he had undergone "2 surgeries [and was] still having problems." Further, while claimant testified that he told Herman that he had injured himself while working on a ladder, Herman testified that his records contained no indication that claimant's condition was work related. While Dr. Caron (another neurosurgeon and treating physician) opined that claimant suffered a herniation in September 2002, he acknowledged that his opinion was based on claimant's reported lack of complaints following the January 2002 surgery. Caron stated that if claimant saw another doctor and had a significant number of complaints, it might change his opinion.

¶ 9 Admittedly, the record contains some evidence to corroborate portions of claimant's testimony. Greg Farmer, an employee of respondent, testified that he was passing by McDonald's office on September 3, 2002. He heard claimant tell McDonald that "he was on a ladder and did something to his back." On cross-examination, Farmer acknowledge that this conversation could have occurred in 2003 or 2004. The reason he stated it took place in September 2002 was that he had heard claimant's accident had occurred at that time. Similarly, claimant's wife testified that she picked claimant up at Kirlin's on September 3, 2002, and claimant was injured. Subsequently, she testified that she picked him up at noon, that they had previously planned to have lunch together, and that they typically had lunch together when they both worked during the day. Conversely, claimant testified that he injured himself between 10 a.m. and 10:30 a.m. and immediately called his wife (then girlfriend) to pick him up. They went to lunch, but, as he was not feeling well, he asked her to take him back to Kirlin's so he could gather his tools. Claimant stated that he got back to Kirlin's between noon and 12:30 p.m. We also note that the familial relationship between claimant and his wife, in itself, would allow the Commission to attribute less weight to her testimony. See *People v. Garza*, 92 Ill. App. 3d 723, 729 (1981). If claimant could have returned to Kirlin's as early as noon, he obviously could not have been picked up at noon. Thus, though both witnesses provide some support for claimant's position, in both cases (particularly regarding Farmer), certain factors undermine the weight of their testimony.

¶ 10 In any event, in light of all of the considerations set forth above, we cannot say that claimant's testimony was so compelling—either in itself or as corroborated by Farmer and claimant's wife—that an opposite conclusion to the one drawn by the Commission regarding claimant's credibility was clearly apparent. As we may disturb a determination regarding a witness's credibility only if it is contrary to the manifest weight of the evidence (see *Max Shepard, Inc. v. Industrial*

Comm'n, 348 Ill. App. 3d 893, 901 (2004)), we would be compelled to reject this argument had claimant not waived it.

¶ 11 In light of the foregoing, we hold that claimant waived his sole argument on appeal and that, waiver notwithstanding, the argument was not sufficiently compelling to warrant reversing the Commission. Therefore, we affirm the order of the circuit court of La Salle County confirming the decision of the Commission.

¶ 12 Affirmed