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

BARBARA NADOR,)	Appeal from the Circuit Court
)	of Washington County.
Appellant,)	
)	
v.)	No. 09-MR-9
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i>)	
)	Honorable
(Hoyleton Youth and Family Services,)	Dennis G. Hatch,
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

- ¶ 1 *Held:* Commission's award of permanent partial disability benefits in lieu of permanent total disability benefits is not against the manifest weight of the evidence. Claimant failed to establish that a reasonably stable labor market was not available to her where she turned down at least one legitimate job offer and she failed to diligently pursue other employment.
- ¶ 2 Claimant, Barbara Nador, appeals an order of the circuit court of Washington County which

confirmed a decision of the Illinois Workers' Compensation Commission (Commission) awarding her permanent partial disability (PPD) benefits under section 8(d)(2) of the Workers' Compensation Act (Act) (820 ILCS 305/8(d)(2) (West 2004)) in lieu of a permanent total disability (PTD) award under section 8(f) of the Act (820 ILCS 305/8(f) (West 2004)). Claimant maintains she should have been found totally and permanently disabled because (1) she established that a reasonably stable labor market does not exist for her and (2) the only job offer she received was not legitimate. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Respondent, Hoyleton Youth & Family Services, operates a resident home for troubled youth. Claimant was employed by respondent as a youth care coordinator. On October 15, 2005, claimant, then 43 years old, was playing basketball with a resident when she tripped and fell with both knees striking the floor. Claimant sought medical treatment for complaints of bilateral knee pain and was eventually diagnosed by Dr. Kevin Baumer with chondromalacia, a medial meniscal tear of the right knee, and contusions to both knees. By January 2006, following a course of conservative treatment, claimant's left knee was markedly better, but the right knee had not improved.

¶ 5 Thereafter, claimant sought a second opinion from Dr. George Paletta. Dr. Paletta diagnosed post-traumatic patellofemoral pain in both knees and a lateral collateral ligament strain in claimant's right knee. Dr. Paletta did not believe that surgery would benefit claimant, and he recommended continued conservative treatment. In March 2006, Dr. Paletta ordered a functional capacity examination (FCE). The FCE showed that claimant was capable of working at a sedentary physical-demand level. This was outside the parameters of the minimum work-demand level required of

claimant's position as a youth care coordinator. In April 2006, Dr. Paletta concluded that claimant was at maximum medical improvement. He opined that claimant's work accident aggravated preexisting arthritic complaints of the knees and reiterated that surgery was unlikely to relieve claimant's symptoms. Dr. Paletta recommended weight loss, activity modification, non-impact exercise, and anti-inflammatory medication. He also indicated that claimant's condition was likely to wax and wane. Dr. Paletta imposed various permanent work restrictions, including sedentary work with no climbing, kneeling, or squatting and walking no more than 15 minutes out of every hour.

¶ 6 Respondent initially accommodated claimant's restrictions. Further, late in May 2006, respondent referred claimant to William Newman for a vocational evaluation. In his report, Newman noted that claimant has two bachelor degrees, one in psychology and one in sociology. Newman's report also indicated that in addition to claimant's work for respondent, her employment history included stints as a cook and as a case manager for disabled children and adults with the Cerebral Palsy Foundation. On or about June 12, 2006, respondent informed claimant that it did not have a position available within her permanent restrictions. In the meantime, claimant continued to work with Newman, who opined that given claimant's education and experience, she was employable. Early in 2007, respondent instructed Newman to close claimant's file. Respondent subsequently retained Liala Slaise of Blaine Rehabilitation Management to provide claimant with vocational services. Claimant first met with Slaise on January 18, 2007, just weeks before a hearing was held on claimant's application for adjustment of claim.

¶ 7 At the arbitration hearing, which was held on February 6, 2007, Slaise testified that she only

met with claimant twice prior to testifying. At the first meeting, Slaise interviewed claimant to develop a return-to-work plan. During the second meeting, Slaise modified claimant's resume and updated her profile with the Illinois Skills Match program. In addition, Slaise testified that she provided claimant with some job leads. Slaise opined that claimant was employable and that she could potentially find a job for claimant within three months. Slaise also indicated that claimant's job search efforts from June 2006 through January 2007 were consistent with the advice and vocational direction provided by Newman. Slaise testified that her next meeting with claimant was scheduled for February 8, 2007.

¶8 Claimant initially testified about her education and work history. She then testified regarding her job search efforts. Claimant related that between June 2006 and January 2007, she spent approximately 30 to 35 hours per week searching for a job. During that time, claimant obtained leads from Newman, local newspapers, and the internet. She also registered with the Illinois Skills Match program. Claimant maintained a detailed job log which revealed that she made a total of 789 "new" job contacts and 469 "old" job contacts. Claimant explained that a "new" contact consisted of an initial communication with a potential employer, *i.e.*, claimant sent out a resume or inquired about a position. Claimant categorized an "old" contact as a response from a potential employer she had previously contacted or a follow-up call or email to a potential employer from her. Claimant testified that of these contacts she received 14 face-to-face interviews, but no job offers. She further testified that her next meeting with Slaise was scheduled for February 8, 2007, and that she planned to continue looking for work.

¶9 Based on the foregoing testimony, the arbitrator determined that claimant's current condition

of ill-being is causally related to the accident at work on October 15, 2005. The arbitrator awarded claimant 46-3/7 weeks of temporary total disability benefits and reasonable and necessary medical expenses. Further, the arbitrator found that claimant proved by a preponderance of the evidence that she fell into the “odd lot” category and that respondent failed to establish the availability of work to someone in claimant’s position. As such, the arbitrator found claimant was entitled to PTD benefits for life under section 8(f) of the Act (820 ILCS 305/8(f) (West 2004)).

¶ 10 Respondent sought review of the arbitrator’s decision, and the Commission affirmed on all issues except for nature and extent. The Commission concluded that the arbitrator’s finding that claimant was permanently and totally disabled was “premature.” The Commission was not convinced that a person of claimant’s age, credentials, and experience could not find a job. The Commission acknowledged that claimant had been cooperative with her vocational experts. However, it noted that when the job market is soft, it is not unreasonable for someone to spend more than six months searching for employment. As such, the Commission remanded the case to the arbitrator so that claimant could continue her employment search with Slaise’s assistance.

¶ 11 Following remand, a second arbitration hearing was held on August 29, 2008. Claimant testified that since the first arbitration hearing, she had not received any additional medical treatment and that her education, work experience, and restrictions remained unchanged. Claimant further testified that following remand, she began additional vocational rehabilitation on February 25, 2008, and spent an average of between 8 and 10 hours per day on her job search. Claimant testified that she worked with Slaise until June 12, 2008, when Slaise went on maternity leave. Thereafter, claimant worked with June Blaine. Claimant stated that she had face-to-face contact with a

vocational expert every two weeks plus phone and internet contact an additional one to five times per week. Claimant's job search log reflected that between February 25, 2008, and August 29, 2008, she had 1,127 "new" contacts with potential employers and 660 "old" contacts. These contacts resulted in nine in-person interviews.

¶ 12 Claimant testified that at some point, Blaine presented her with six jobs from respondent. Claimant and Blaine determined that two of the positions were possibly within claimant's restrictions—a transitional housing case manager and a foster care case manager. Blaine later received information for a quality improvement assistance (QIA) position with respondent. Claimant did not recall seeing the QIA position advertised in any newspaper or on the internet. Claimant stated that the position paid more than her previous position with respondent. Gayle Fisher and Jeremy Vasquez interviewed claimant for the QIA position on July 17, 2008. According to claimant, neither her physical restrictions, her vocational rehabilitation, nor her accommodations were mentioned during the interview until claimant brought them up. Claimant stated that she was offered the job, but rejected it. Claimant thought the QIA position was a "sham" job and that the decision to hire her was made prior to the interview. Since turning down the QIA position, claimant has continued to search for work, but has not been extended any other offers. According to claimant, the QIA position was the only job ever offered to her.

¶ 13 On cross-examination, claimant admitted that at the first arbitration hearing she indicated that she intended to keep searching for work following the end of the hearing. Claimant stated that she did in fact look for jobs in the newspaper between the end of the first arbitration hearing and January 2008, but she did not apply for any positions. She also testified that except for the nine interviews,

none of the other job contacts she made after the first arbitration hearing were face to face.

¶ 14 Fisher testified that the respondent's protocol for hiring initially involves advertising a position internally. If an individual is hired internally, the position is not advertised externally. Fisher also testified that the QIA position was created in September 2007 and is a permanent position. The primary responsibilities of the QIA position are to take care of the foster care files and ensure that the files are kept in order. Fisher stated that the position is located at respondent's East St. Louis facility. Although the East St. Louis facility is a two-story building, the QIA position is confined to the first floor. Fisher stated that the individual who was initially hired for the QIA position resigned in April 2008. The position was then filled after being advertised internally. The second person to hold the position resigned in early to mid-July 2008. At that time, the position was again posted internally and the only internal application respondent received was from claimant. Following an interview, a job offer was made to claimant. After claimant declined the offer, the position was advertised externally in various newspapers. Interviews were conducted, and an individual was hired. Fisher denied that the decision to hire claimant was made prior to the interview.

¶ 15 Fisher also testified that she previously worked with claimant in 2005, when claimant was on light duty. Fisher recalled that during that time, claimant's tasks involved computer work, including working with spreadsheets. Fisher testified that this involved keyboarding. Fisher described the quality of claimant's work as "fine."

¶ 16 Vasquez testified that he works for respondent as the director of administrative services and that he is familiar with the QIA position. Vasquez stated that the QIA position is "indirectly" under

his authority in that the position reports to Fisher and Fisher reports to him. Vasquez verified that when respondent has a job opening, the position is posted internally first. He stated that if there are not enough applicants after five days, the position is posted externally. Vasquez testified that the QIA position was posted internally and claimant was the only applicant. He and Fisher interviewed claimant and offered her the job the following day. After claimant turned down the position, it was advertised externally. Vasquez testified that the QIA position is a permanent, full-time job, and he also denied that the decision to hire claimant was made prior to the interview.

¶ 17 Slaise testified that shortly after the first arbitration hearing, claimant informed her that she would not be continuing with vocational rehabilitation. Slaise testified that the next time she had contact with claimant was on February 25, 2008, about one year later. At that time, Slaise inquired what steps, if any, claimant had taken to find work during the intervening year. Claimant responded that she had not looked for work at all during that time. Slaise opined that a one-year gap in a job search would raise flags with potential employers regarding one's motivation and interest in working and it would make it more difficult to find work. Slaise worked with claimant between February 25, 2008, and June 12, 2008, when she went on maternity leave. During that time, Slaise and claimant met face to face on a biweekly basis and kept weekly contact by phone or email. Slaise recalled that it was sometimes difficult to reach claimant by telephone.

¶ 18 Slaise then testified regarding some of claimant's contacts with potential employers. She recalled that claimant interviewed for a position with Allsup, but was not offered the position. When Slaise asked claimant about the interview, claimant indicated that she was not interested in the position anyway because it involved telemarketing. Slaise told claimant she was mistaken as the

position involved informing individuals about their Social Security options. Slaise also recalled that claimant was contacted by the American Red Cross. Claimant stated that she was not interested in that position because it was temporary. Slaise contacted the American Red Cross and was told that although the position was not temporary, it was part time. Slaise further recounted that claimant interviewed for a social services manager position with the Salvation Army. Although the position was outside of her restrictions, claimant was asked to interview for a volunteer position. Claimant declined because the position was unpaid. Slaise believed that the volunteer position would have been beneficial to claimant as it involved writing grants, a skill that would have helped claimant find a job. Slaise also testified that claimant was eligible to work as a substitute teacher. As such, in May 2008, she and claimant discussed this possibility. Initially, claimant indicated that she was not interested. However, after speaking with her attorney, claimant agreed to pursue this avenue.

¶ 19 Slaise questioned the quality of the jobs for which claimant applied. She testified that claimant was not realistic in that she applied to positions for which she was not qualified. Moreover, Slaise stated that claimant was only somewhat cooperative regarding the instructions and suggestions Slaise provided to her. For instance, claimant did not always keep Slaise abreast of her interviews. Further, Slaise opined that presenting oneself in person more often to potential employers makes a better impression. Yet, claimant did not heed this advice. In addition, Slaise testified that she corrected some errors on claimant's resume and cover letters, yet claimant continued to use the uncorrected documents. Ultimately, Slaise opined that given claimant's educational and work background, she is employable even with her restrictions. Nevertheless, Slaise was unsure whether further job searches would be fruitful given claimant's lack of motivation and her failure to focus

on realistic opportunities.

¶ 20 Blaine testified that after Slaise went on maternity leave, claimant began working with her. Blaine met with claimant in person every two weeks. At other times, she had contact with claimant by telephone and email. Blaine noted that it was difficult to reach claimant in the afternoon, so she would try to contact her in the morning.

¶ 21 Blaine testified that while she was working with claimant, she became aware of potential openings with respondent. Blaine reviewed the positions to determine whether they were within claimant's physical restrictions and her educational and work backgrounds. Blaine testified that when she learned of the QIA position, claimant's attorney asked her to obtain more information regarding the location of the position, the duties of the job, and whether any climbing was involved. Blaine did so, and claimant interviewed for the position. Claimant's attorney later told Blaine that claimant would be turning down the job. Subsequently, Blaine had several meetings with claimant, but other than indicating that the QIA position was not "legitimate," claimant refused to discuss her reasons for not accepting the position. Blaine opined that based on her work as a vocational counselor, the QIA job was legitimate.

¶ 22 Blaine also testified about other job opportunities presented to claimant. Claimant told Blaine that she wanted to utilize her degrees and that she wanted to help people. To this end, Blaine provided claimant with a lead for a position as an advocacy specialist with the State of Missouri. Blaine stated that the position required a typing test. Claimant followed up and told Blaine that there was a 50-words-per-minute requirement for the position, although Blaine was never able to verify this information. Blaine stated that claimant took the typing test and told her that she had scored

zero words per minute. Blaine testified that prior to the typing test, she was not aware that claimant was unable to use a keyboard, especially since claimant's resume indicated that she had some computer skills, including working with spreadsheets. Blaine also testified that claimant applied for a qualified mental retardation professional (QMRP) position with the Epilepsy Foundation of Southwestern Illinois. According to Blaine, claimant was qualified for the position and it was within her physical restrictions. The organization tried to contact claimant numerous times to schedule an interview, but was unable to reach claimant. Blaine encouraged claimant to call the organization, but that was never done. As a result, claimant was never considered for the position.

¶ 23 Blaine also testified that she reviewed the list of prospective job leads that claimant prepared. Blaine noted that all of claimant's job logs were typed. Blaine did not believe that claimant was eligible for a lot of the jobs because they were clerical-related, receptionist-type positions and claimant had verified that her keyboarding speed was zero words per minute. Blaine informed claimant not to spend time applying for jobs that require typing unless she intended to improve her typing skills. Blaine also told claimant that when she applied for a position that has been posted on the internet to pull the job description to determine if she was qualified for the position. Ultimately, Blaine opined that claimant was employable given her educational and work background and her restrictions. Blaine further opined that claimant had yet to find a position because she was not "focusing on the right things." In particular, Blaine stressed that claimant was applying for inappropriate jobs and failing to adequately follow up.

¶ 24 Claimant testified in rebuttal that the American Red Cross contacted her about a position that was temporary and part time. Claimant testified that she declined to go any further with the process

because she thought she was supposed to be looking for full-time employment. Claimant further testified that the position with the Salvation Army was a “dual” position involving office management and social work. Claimant testified that the position involved grant writing, with which she had no experience. In addition, claimant testified that she did not have much in the way of office skills and the position involved carrying groceries up and down stairs. Claimant admitted that she was asked to volunteer in the future. However, she denied that a stint as a volunteer would allow her to learn how to write grants. Finally, claimant testified that she followed up with the Epilepsy Foundation, but was unable to reach anyone.

¶ 25 Based on the foregoing testimony, the arbitrator concluded that claimant did not fall into the category of odd-lot permanent total disability. The arbitrator questioned the legitimacy and diligence of claimant’s job search and found that the evidence showed that claimant does not want to work. She noted that Slaise and Blaine testified that claimant was difficult to contact and that claimant failed to promptly respond to at least one prospective job. The arbitrator further noted that despite the fact that claimant had two college degrees and computer skills, she was unable to type. The arbitrator found that claimant’s alleged inability to type was contradicted by the voluminous typed job search logs that were introduced into evidence and which were prepared by claimant. The arbitrator credited the testimony of Slaise and Blaine that claimant was employable. The arbitrator concluded that claimant was “resistant” to vocational assistance and that she had been conducting a “misdirected” job search. The arbitrator found that claimant created obstacles that made pursuing certain jobs difficult, if not impossible. In addition, the arbitrator pointed out that claimant turned down a job offer from respondent for a position that paid more than her former position. The

arbitrator determined that other than claimant's personal belief that the QIA position was not legitimate, there was no evidence to support that notion. The arbitrator awarded claimant 150 weeks of PPD benefits, representing 30% of the person as a whole. The Commission affirmed and adopted the decision of the arbitrator and the circuit court of Washington County confirmed. This appeal ensued.

¶ 26

II. ANALYSIS

¶ 27 On appeal, respondent argues that the Commission should have awarded her PTD benefits under section 8(f) of the Act (820 ILCS 305/8(f) (West 2004)) instead of PPD benefits under section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2004)). An employee is permanently and totally disabled when he is unable to make some contribution to industry sufficient to justify payment of wages. *Interlake Steel Corp. v. Industrial Comm'n*, 60 Ill. 2d 255, 259 (1975). However, the employee need not be reduced to total physical incapacity before an award of PTD benefits may be granted. *Ceco Corp. v. Industrial Comm'n*, 95 Ill. 2d 278, 286 (1983). Rather, the employee must show that he is, for all practical purposes, unemployable, *i.e.*, he is unable to perform any services except those that are so limited in quantity, dependability, or quality that there is no reasonably stable labor market for them. *Alano v. Industrial Comm'n*, 282 Ill. App. 3d 531, 534 (1996). "The focus of the Commission's analysis must be upon the degree to which the claimant's medical disability impairs his employability, and 'if an employee is qualified for and capable of obtaining gainful employment without seriously endangering [his] health or life, such employee is not totally and permanently disabled.'" *Alano*, 282 Ill. App. 3d at 534 (quoting *E.R. Moore Co. v. Industrial Comm'n*, 71 Ill. 2d 353, 362 (1978)).

¶ 28 If the employee's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is on the employee to establish by a preponderance of the evidence that he falls into the "odd lot" category, that is, one who, although not altogether incapacitated to work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 544 (2007). An employee satisfies this burden by showing either (1) a diligent but unsuccessful attempt to find work or (2) that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market. *Westin Hotel*, 372 Ill. App. 3d at 544. Once the employee establishes that he falls into the odd-lot category, the burden shifts to the employer to prove that some type of regular and continuous employment is available to the employee. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 1080, 1091 (2007). Whether the employee has met his burden of establishing that he falls into the odd-lot category and whether the employer has shown that some type of regular and consistent employment is available to the employee are questions of fact for the Commission, and its decisions on these issues will not be disturbed on appeal unless they are against the manifest weight of the evidence. *City of Chicago*, 373 Ill. App. 3d at 1092-93; *Alano*, 282 Ill. App. 3d at 538 (Colwell, J., specially concurring). "Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence." *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 203 (2009). Rather, a decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397

Ill. App. 3d 665, 675 (2009).

¶ 29 In this case, there was no evidence that claimant's disability was so limiting in nature to render her obviously unemployable. Similarly, we find no medical evidence to support a claim of total disability. See *Hallenbeck v. Industrial Comm'n*, 232 Ill. App. 3d 562, 569 (1992) (noting that the ability to perform sedentary work has been considered as a factor militating against a finding that one is permanently and totally disabled). As such, claimant attempted to satisfy her burden of proving that she fell into the "odd lot" category by presenting evidence of a diligent but unsuccessful job search. To this end, claimant testified that between June 2006 and January 2007, she initiated 789 job contacts, which resulted in 14 face-to-face interviews, but no job offers. In addition, claimant testified that between February 2008 and August 2008, she initiated 1,127 job contacts, resulting in nine in-person interviews, and one job offer from respondent. Claimant insists that when the only job offer over 14 months and 1,916 contacts is a position with respondent, a reasonably stable labor market does not exist for her. Claimant further insists that respondent only offered her a job to avoid a section 8(f) award and therefore the QIA position was not legitimate. We disagree.

¶ 30 The Commission, in adopting the decision of the arbitrator, rejected claimant's request for PTD benefits. The Commission questioned the legitimacy and diligence of claimant's job search, ultimately finding that claimant was "resistant" to vocational assistance and that she had been conducting a "misdirected" job search. The evidence of record supports these findings. All three vocational experts who worked with claimant testified that despite her physical restrictions, claimant was employable given her education and work experience. On remand, both Slaise's and Blaine's testimony suggest that claimant's job search was unsuccessful because claimant was not motivated

and did not focus on realistic opportunities. Slaise testified, for instance, that claimant did not heed advice to present herself in person more often to potential employers, as this makes a better impression. Slaise also noted that she corrected errors on claimant's resume and cover letters, yet claimant continued to use the uncorrected documents when inquiring about jobs. In addition, there was evidence that claimant often sent her resume to positions for which she was not qualified. We also note that shortly after the first arbitration hearing, claimant informed Slaise that she was not going to continue with vocational rehabilitation despite her testimony to the contrary at the initial hearing. Slaise noted that a one-year gap in a job search would raise flags with potential employers regarding one's motivation and interest in working and that it would make it more difficult to find a job.

¶ 31 Moreover, the evidence also supports the Commission's finding that when claimant was interviewed or an employer requested more information from her, she often created obstacles that made pursuing those jobs more difficult. For instance, Slaise and Blaine indicated that claimant was not easy to reach and that, as a result, claimant was not considered for a position with the Epilepsy Foundation. Further, claimant was required to take a typing test for a position as an advocacy specialist with the State of Missouri. Claimant scored zero words per minute on the typing test despite the fact that she typed her job search logs and possesses two college degrees and computer skills. Claimant also expressed disinterest in many of the jobs for which she interviewed. Claimant indicated that she would not have accepted the Allsup position because, she opined, it involved telemarketing. Claimant stated that she was not interested in a position with the American Red Cross because it was supposedly temporary and part time. Claimant declined an offer to volunteer

for the Salvation Army despite Slaise's opinion that the position would have improved claimant's job skills.

¶ 32 The Commission further noted that claimant's job search bore fruit in that she was in fact offered a job—the QIA position with respondent. The Commission rejected the notion that the QIA position was a sham to avoid a section 8(f) award, noting that there was no evidence to support this contention other than claimant's personal beliefs. Indeed, Blaine opined that based on her work as a vocational counselor, she believed the QIA position was legitimate. Further, respondent presented evidence that the QIA position was a permanent, full-time position originally created in September 2007 and that prior to the job being offered to claimant, it had been held by two other employees. Respondent also presented evidence that after claimant turned down respondent's job offer, the QIA position was advertised externally and an individual was hired for the position.

¶ 33 Claimant now questions whether the QIA position fell within her permanent restrictions. However, there is no indication that claimant turned down the position because it was outside of her physical capabilities. In fact, claimant refused to tell Blaine why she rejected the position, other than her belief that it was not legitimate. Moreover, Blaine testified that she reviewed the job openings offered by respondent to determine whether they were within claimant's physical restrictions and her educational and work backgrounds. Blaine also testified that when she learned of the QIA position, claimant's attorney asked her to obtain more information regarding the location of the position, the duties of the job, and whether any climbing was involved. Blaine complied with this request, and claimant interviewed for the position.

¶ 34 Claimant also insists that the QIA position was not legitimate as it was offered only 19 days

before her case was originally scheduled to be heard on remand, she was not extended an opportunity to interview for the QIA position when it opened up in April 2008, and she was the only person interviewed for the position. The timing of the job offer is certainly relevant to a determination of the legitimacy of the job offer as are the other factors cited by claimant. See *Reliance Elevator Co. v. Industrial Comm'n*, 309 Ill. App. 3d 987, 993 (1999) (holding that job offer was a sham designed to avoid liability where it was not made until after the initial arbitration hearing, the rate of compensation was far higher than was economically justifiable, and prior to job offer at issue the respondent repeatedly refused to offer the claimant a position despite the claimant's repeated requests for work). However, the Commission was certainly aware of the timing of the job offer and the other factors cited by claimant, but did not find them determinative of the legitimacy of the QIA position. We are mindful that it is within the province of the Commission to determine the credibility of the evidence and determine the weight to assign thereto. *Reliance Elevator Co.*, 309 Ill. App. 3d at 993. Given the other testimony suggesting that the QIA position was legitimate, we decline to overturn the Commission's finding on this basis.

¶ 35

III. CONCLUSION

¶ 36 In sum, we cannot say that a conclusion opposite to the one reached by the Commission is clearly apparent. Accordingly, we affirm the judgment of the circuit court of Washington County, which confirmed the decision of the Commission awarding claimant PPD benefits.

¶ 37 Affirmed.