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2013 IL App (1st) 122399WC-U

Order filed: December 23, 2012

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MARK A. DONAHUE,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 1-12-2399WC
	)	Circuit No. 11-L5-0884
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al*. (Rosemont Theatre,	)	Margaret Brennan,
Appellee).	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris and Stewart concurred in Judgement

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ORDER

¶ 1 *Held*: The Commission's finding that the claimant failed to establish that he was entitled to a wage differential award under section 8(d)(1) of the Act was not contrary to law or against the manifest weight of the evidence.

¶ 2 The claimant, Mark Donahue, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2002)) seeking benefits for

back injuries which he sustained while working for the employer, Rosemont Theatre (employer). After conducting a hearing, the arbitrator found that the claimant had proven a work-related injury and awarded him 175 weeks' permanent partial disability (PPD) benefits for a 25% loss of the person as a whole under section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2002)). However, the arbitrator found that the claimant was not entitled to wage differential benefits under section 8(d)(1) of the Act (820 ILCS 305/8(d)(1) (West 2002)) because the claimant failed to prove either an incapacity that prevented him from pursuing his usual and customary line of employment or an impairment of his earnings.

¶ 3 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 then sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling. This appeal followed.

¶ 4 FACTS

¶ 5 The claimant works as a journeyman stagehand. At all relevant times, he was a unionized employee who worked out of Local 2 of the International Alliance of Theatrical Stage Employees. Local 2 stagehands work at various entertainment venues throughout the greater Chicago area, including the employer (Rosemont Theatre), Ravinia, and other stage and concert venues. Stagehands are hired to unload, assemble, erect, move, dismantle, and remove equipment essential to musical and theatrical productions. Such equipment can include sound equipment (such as amplifiers), lighting fixtures, electrical cables, towers, scenery, and other staging.

¶ 6 On February 13, 2002, while he was working at the Rosemont Theatre, the claimant injured his lower back while pushing a large box of sound equipment over a cable ramp. The following day, the claimant saw Dr. Mark Tucci, his primary care physician. Dr. Tucci assessed an acute lumbosacral strain. He ordered an MRI and took the claimant off work. An MRI scan taken on February 20, 2002 showed a right-sided disc herniation at L4-L5. Dr. Tucci referred the claimant to Dr. James Adamson.

¶ 7 Dr. Adamson administered epidural steroid injections, prescribed physical therapy, and ordered the claimant to undergo a functional capacity examination (FCE), which was performed in April 2002. The claimant reported the parameters of his job to the FCE evaluators. He was deemed able to return to work at his current job. Dr. Adamson recommended a physiatry consultation.

¶ 8 In May 2002, the claimant was evaluated by Dr. Hongs, a physiatrist. After the claimant underwent a period of physical rehabilitation, Dr. Hongs released the claimant to return to work on May 28, 2002, with recommendations that claimant avoid, for a period of three weeks, repetitive bending or lifting over 70 pounds. The claimant returned to work as a journeyman stagehand May 31, 2002. The employer paid him TTD benefits.

¶ 9 At his attorney's recommendation, the claimant saw Dr. E. Thomas Marquardt, an orthopedic surgeon, on August 8, 2002, for an independent medical examination. Based on his review of the claimant's medical records and the history provided by the claimant, Dr. Marquardt opined that the claimant's current condition was a "direct result" of his February 2002 work accident. The doctor concluded that the claimant's prognosis was "guarded" and noted that a surgical decompression may be necessary at some point. He opined that the claimant could

continue to work in the interim but cautioned that the claimant "should limit any heavy pushing, pulling or lifting greater than 25 [pounds] to avoid re-aggravation of his symptom complex."

¶ 10 The claimant testified that his pain waxed and waned thereafter. He worked at various venues as a Stagehand and would experience occasional flare ups.[1] When he returned to see Dr. Adamson in March 2004, the claimant told the doctor that he had "suffered a re-injury" in December 2003 when he "stooped down and thereafter rotated his lumbar spine." Dr. Adamson recommended against surgery. He referred claimant for epidural steroid injections. The claimant continued to work as a stagehand.

¶ 11 On July 18, 2005, the claimant saw Dr. John Shea, a professor of neurosurgery at Loyola University Medical Center. Dr. Shea noted that the claimant's objective examination was relatively normal. After reviewing the claimant's MRI scans, Dr. Shea concluded that the claimant's treatment up to that point had been appropriate and that claimant could continue to work at full duty.

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[1] As a result of these periodic flare ups, the claimant underwent additional MRI scans in 2003, 2004, and 2005. A February 2, 2004, MRI scan revealed degenerative disc disease, a disc bulge, and a mild right parasagittal disc herniation at L4-L5. In January 2005, after the claimant returned to Dr. Adamson complaining of persistent right gluteal and right lower extremity pain, Dr. Adamson ordered another MRI. Dr. Adamson interpreted a May 2005 MRI scan as showing a new, tiny, right-sided herniated disc at L3-L4. The doctor opined that the previous herniation at L4-L5 had resolved at that point. The claimant continued to work.

¶ 12 Between May and August 2005, the claimant worked at a variety of venues as a stagehand. He did not work at the Rosemont Theatre during that period. The claimant testified that he worked at Ravinia in August 2005.

¶ 13 On August 23, 2005, the claimant returned to Dr. Adamson complaining of new pain symptoms that he had "recently developed" in his left lower extremity. Dr. Adamson's note of that visit reflects that the claimant was experiencing pain in his left gluteal region radiating down his left posterior thigh, calf, and foot. Dr. Adamson noted that these symptoms were different from the pain symptoms the claimant had reported in May 2005 (*i.e.*, right gluteal pain and localized, non-radiating pain in the left gluteal region). Dr. Adamson's note states that, on August 21, 2005, the claimant's new pain symptoms became severe enough to require a visit to the emergency room. Dr. Adamson ordered a repeat MRI, which the claimant underwent on September 14, 2005. The new MRI scan revealed disc desiccation at L4-L5 with a central and right paracentral small disc protrusion. There were otherwise no changes compared to previous MRI scans. Dr. Adamson took claimant off work pending a complete workup. The employer initiated payment of TTD benefits.

¶ 14 Subsequent electrodiagnostic testing showed chronic neurogenic changes in the L5-S1 nerve root. In November 2005, Dr. Adamson noted that the claimant was experiencing "significant" lower back pain as well as symptoms in the left leg. Dr. Adamson reviewed options for the claimant, including physiatry, epidural steroid injections, or evaluation by a spinal orthopedic surgeon.

¶ 15 Thereafter, the claimant continued to see Dr. Tucci on an occasional basis. Dr. Tucci kept the claimant off work and ordered another MRI scan of the claimant's lower back, which

was performed on February 9, 2006. This new MRI demonstrated that a central disc protrusion, remaining from previous studies, extended to the right side and narrowed the foramen.

¶ 16 Claimant went through a course of therapy at Condell Medical Center and then began treatment with Dr. Jonathan Citow, a neurosurgeon. On June 1, 2006, Dr. Citow performed surgery on the claimant's lower back, including right-sided L4 and L5 hemilaminectomies[2] with fasciectomy[3] and foraminotomy,[4] and a partial discectomy[5] at L4-L5. After surgery, the claimant underwent physical therapy. Dr. Tucci imposed interim restrictions of no lifting greater than 35 pounds for 60 days, no overhead work, no bending or twisting or no climbing on rope ladders for 60 days, no pulling or pushing of greater than 500 pounds for 60 days. Dr. Tucci scheduled claimant to return for evaluation in one month's time.

¶ 17 On September 20, 2006, Dr. Citow allowed claimant to return to work full time, but recommended restrictions of no lifting greater than 35 to 50 pounds, and no excessive bending, stooping or lifting. The doctor also wrote that he recommended no pulling and pushing of excessive weights of equipment, unless accompanied by help, and no climbing of rope ladders, no rigging, no hanging of spotlights or sound equipment from grips or catwalks.

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[2] A "hemilaminectomy" is surgery to help alleviate the symptoms of an impinged or irritated nerve root in the spine. During this procedure, surgeons remove part of a vertebra called a lamina. This creates more space in the spinal canal, thereby decreasing pressure on the associated nerve tissue.

[3] A "fasciectomy" os the removal of bands of fibrous connective tissue.

[4] A "foraminotomy" is the removal of the roof of the intervertebral foramen.

[5] A "discectomy" is the partial or complete excision of an intervertebral disk.

¶ 18 On September 22, 2006, the claimant returned to work as a journeyman stagehand. The employer again paid him TTD benefits. The claimant did not see a doctor for low back care after September 2006.

¶ 19 On October 4, 2007, the claimant underwent another functional capacity evaluation. The FCE report concluded that the claimant "demonstrates the physical capabilities and tolerances to function at the **Heavy category of work**, (as defined by the U.S. Department of Labor), which is indicative of a two-hand frequent lift of 53# 9" -waist." However, the report noted that the claimant "does not demonstrate the physical capabilities and tolerances to meet all the essential physical demands of [his] job." Specifically, it stated that the claimant's "deficits" include the "[i]nability to perform 2-hand frequent pushing of 38# force X 50 ft >12 repetitions." The report recommended that the claimant should be "placed in a position respectful of the[] physical capabilities and tolerances" outlined in the FCE report, if such a position is available.

¶ 20 On October 15, 2007, Dr. Avi Bernstein, the employer's independent medical examiner, evaluated the claimant at the employer's request. After examining the claimant and reviewing the FCE report and the claimant's medical records (including the restrictions placed upon the claimant by Dr. Citow), Dr. Bernstein concluded that the claimant suffered a low back injury and an aggravation of a degenerative disc condition resulting in chronic low back pain related to his work activity. However, Dr. Bernstein noted that the claimant "has had an excellent result" following his lower back surgery and found that he was "currently asymptomatic." Dr. Bernstein opined that:

> "[o]utside of his subjective fear of re-injury, I do believe that [the claimant] is capable of performing his prior work in an unrestricted

> fashion. He is healthy, fit and cured as a result of his decompressive surgery. He is at maximum medical improvement . No further therapeutic modalities or diagnostic workup are indicated or necessary."

However, when discussing the FCE report, Dr. Bernstein acknowledged that the claimant "did not demonstrate the ability to meet all of the essential demands of his job and this is outlined in his FCE report."

¶ 21 The claimant continued working as a journeyman stagehand throughout 2007 and 2008. In October 2008, Dr. Tucci wrote a "to whom it may concern" note stating that the claimant "continues to have pain and weakness" and "has permanent restrictions." Dr. Tucci's note also stated that the claimant's condition is "permanent and irreversible" and that, although his operation was successful, the claimant "is unable to perform all components of his job, and requires some kind of modification of duties indefinitely."

¶ 22 On October 29, 2008, the claimant returned to Dr. Marquardt for further evaluation. At that time, the claimant complained of "constant pain across the low back, rated at 2/10, which increases to 6/10 at the end of his workday." Although the claimant reported that he was "much improved" and that his symptoms were tolerable, he noted that he could not lift more than 40 to 45 pounds without help, he had difficulty climbing ladders, and he had to sleep in a recliner rather than a bed. Dr. Marquardt opined that the claimant's residual symptoms and the degenerative changes in his lower lumbar disc spaces were related to the February 2002 work accident. The doctor concluded that the claimant "should not be involved in repetitive bending at the waist or climbing," and he "wholeheartedly agree[d] with a permanent restriction of no lifting

more than 45 to 50 pounds." The doctor concluded that no further medical or surgical treatment was required.

¶ 23 During the arbitration hearing, the claimant testified that, from October 2008 through the date of the arbitration hearing, he continued to work as a journeyman stagehand (the same job title he held in February 2002). The claimant worked at various venues, including indoor theater settings like the Rosemont Theatre, arena settings like Chicago's United Center or the Sears Center, and seasonal outdoor venues such as Ravinia or Chicago's Grant Park. The claimant worked at multiple venues per month before his work accident, and this work pattern continued at the time of the arbitration hearing.[6]

¶ 24 The claimant described the job of a stagehand as physically demanding. His job duties included unloading trucks, moving stage equipment of all types, assembling equipment for a show, working at a show performance, and then taking down equipment after a show. Stagehands have to move equipment weighing from "15 pounds to 2,000 or 5,000 pounds." Although assistance was available from other stagehands, the set-up and the removal of equipment involved bending, pushing and carrying of equipment of widely varying weights. Stagehands also climb ladders (sometimes rope ladders) and walk catwalks to set up, focus, and fix lights.[7]

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[6] The claimant would call the Union Hall to learn what jobs were available. The union records show a pattern of claimant working at multiple venues in any given month, from the late 1990s into 2009. The claimant testified that this pattern continued as of arbitration.

[7] The claimant testified that he often worked with lighting, and that this continued until the time of arbitration.

¶ 25 The claimant testified that his specific work duties varied according to the type of performance involved (*e.g.*, rock concerts, orchestral concerts, ballet, and performances by comedians). Moreover, certain shows at different venues would involved different work tasks. For example, a rock concert at an arena would involve laying out multiple sections of heavy feeder cable. Such concerts can entail work that is five times heavier than concerts at smaller facilities. More demanding still (by another factor of five, according to the claimant) are concerts at outdoor venues. These concerts involve more work, more equipment, and longer hours, and they require stagehands to move equipment greater distances, often across grassy fields which impede the movement of materials. Further, because certain outside venues lack permanent staging, stagehands must construct and dismantle such staging in addition to all peripheral structures and equipment. In addition, some venues, such as Ravinia, do not have a traditional dock for truck unloading. Consequently, ramps were used more at Ravinia.

¶ 26 The claimant testified that, before his February 2002 work accident, he had pursued the most physically demanding jobs within his trade, seeking those that provided the most hours of work in the fewest days in order to maximize his earnings. For example, for years he had been part of the "core group" at Ravinia, a group of 10 full-time stagehands who were on call at Ravinia every season and who worked that venue all season (from late May through early or mid-September). The claimant testified that working at Ravinia demands exceptional exertions from stagehands. Limited space and limited manpower mean more physical work for each individual stagehand. Every stagehand within the "core group" had to do very heavy work, often unassisted. Although everyone pitched in to get the job done, stagehands sometimes had to work by themselves without waiting for help because the crew was small. All stagehands in the "core

group" were "expected to take and jump in on anything and everything," including heavy lifting. The claimant stated that, while working at Ravinia before his back surgery, he would unload semis, lift speakers to waist level, remove 75-pound lamps form their boxes and lift them to shoulder height, and take down consoles, sound equipment, and band gear—much of which weighed more than 50 pounds. Moreover, he would often have to climb a rope ladder 10 to 15 times per day and he was often engaged in lifting, bending, climbing, and stooping. The claimant worked 12 to 16 hours per day at Ravinia.

¶ 27 Ed Dolik, the head of Ravinia's stagehand department, testified that each member of Ravinia's "core group" had to be able to lift, carry, or push objects weighing up to 75 or 80 pounds. For certain shows, stagehands had to climb wire ladders on a daily basis. Dolik testified that, if an individual was unable to perform the duties required by the job "it would be hard for him to be maintained in the core [group]."

¶ 28 The claimant testified that, after he returned to work in September 2006 following his back surgery, he worked at Ravinia on only occasion because "it was just way too much for [him]." The claimant stated that he is no longer in the "core group" because of the restrictions that he has. He testified that he experienced increased pain in his back when he worked longer hours, and he felt pain with bending, lifting, and driving long distances. After September 2006, the claimant would call in to the Union Hall to find out what jobs were available. Based on his own experience of what he felt was required of him at certain venues, the claimant would voluntarily choose the venues where he would work. The claimant refused jobs at Ravinia and other outdoor venues, as well as the most strenuous jobs at larger indoor venues such as the United Center and

the Allstate Arena. However, the claimant did not advise his Union of any work restrictions.[8] As of the time of arbitration, the claimant was holding himself out as a journeyman stagehand.

¶ 29 According to the claimant, working at Ravinia was a coveted job because it allowed stagehands to "make a good portion of money in a short period of time." In 2002, the claimant earned more than $25,000 in just 10 weeks while working at Ravinia. The claimant testified that, by not working at Ravinia, he has lost more than $30,000 per year for from 2007-2009.

¶ 30 Ronald Stern, General Manager of the Rosemont Theatre, testified that the claimant was continuing to work at respondent's theatre as of arbitration. According to Stern, the claimant was treated like any other stagehand, *i.e.*, he was paid union scale and assigned tasks just like any other stagehand. Rosemont Theatre made no special work accommodations for the claimant. Stem testified that he was not aware claimant had any restrictions until he came to the Commission in late 2009 for trial in the instant case. Stern testified that traveling performances maintained a consistency from venue to venue in how they put on a show, and how the show would be set up. While Stern admitted that venues would differ slightly, he claimed they were essentially the same in terms of what was required of a stagehand during a given performance. He noted that several performances that were scheduled at Ravinia in 2009 had also played at the Rosemont Theatre. Stern testified that stagehands at Rosemont Theatre and elsewhere performed a variety of tasks, that stagehands worked as teams, and that the weights lifted and activities performed by stagehands could vary widely.

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[8] The subpoenaed records of the Union do not include any medical notes or records of activity limitations on claimant. Further, the Union records include no reprimands of claimant for turning work away.

¶ 31 The arbitrator found that the claimant's condition of ill-being at the time of arbitration was causally related to the February 13, 2002 work accident.[9] The arbitrator awarded the claimant 175 weeks' permanent partial disability (PPD) benefits for a 35% loss of the person as a whole pursuant to section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2002)).

¶ 32 However, the arbitrator found that the claimant was not entitled to wage differential benefits under section 8(d)(1) of the Act (820 ILCS 305/8(d)(1) (West 2002)). The arbitrator noted that, to qualify for such benefits, a claimant must prove: (1) an incapacity that prevented him from pursuing his usual and customary line of employment; and (2) a resulting impairment of his earnings. The arbitrator found that the claimant had failed to establish either of these elements.

¶ 33 Regarding the first element, the arbitrator concluded that "the medical evidence showed claimant was not incapacitated." In support of this conclusion, the arbitrator relied upon: (1) the October 2007 FCE (which determined that the claimant was able to perform "heavy" work); (2) Dr. Bernstein's opinion that there was no objective reason that claimant could not return to full duty; and (3) the claimant's testimony that he did not receive any treatment for his lower back after September 2006.

¶ 34 Moreover, the arbitrator noted that, after September 22, 2006, the claimant held himself out as a stagehand and continued to perform the demands of his customary line of employment while receiving the same rate of pay as other union journeyman stagehands. Although the claimant testified that he had medical restrictions that would limit his choice of venues, he never advised his Union of any restriction on his ability to work in the full capacity as a stagehand.

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[9] The parties stipulated that the claimant sustained accidental injuries arising out of and occurring in the course of his employment on that date.

Rather, the claimant testified that, when he would call the Union to find out about available work, he would make a personal choice of which venue assignment to accept. The arbitrator noted that an employee's personal choice of where to work and how many hours to work can not be determinative of an incapacity or a diminishment of earnings under the law.

¶ 35 Further, the arbitrator found it significant that the claimant "did not look for work, at any point, outside the Stagehand's Union." The arbitrator noted that the parties did not present any evidence from a vocational services professional and there was no evidence that a vocational services demand was made.

¶ 36 For these reasons, the arbitrator concluded that the claimant had shown neither an incapacity to work as a stagehand nor a resulting impairment of earnings, and denied wage differential benefits.

¶ 37 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 then sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling. This appeal followed.

¶ 38 ANALYSIS

¶ 39 The claimant challenges the Commission's determination that he was not entitled to a wage differential award under section 8(d)(1) of the Act. The determination of the extent or permanency of an employee's disability is a question of fact for the Commission, and its decision will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Will County Forest Preserve District v. Illinois Workers' Compensation Comm'n,* 2012 IL App (3d)

110077WC, ¶ 15. To qualify for a wage differential award under section 8(d)(1), an injured worker must prove: (1) that he is partially incapacitated from pursuing his usual and customary line of employment; and (2) that he has suffered an impairment in the wages he earns or is able to earn. 820 ILCS 305/8(d)(1) (West 2002); *Cassens Transport Co. v. Industrial Comm'n*, 218 Ill. 2d 519, 530-31 (2006); *United Airlines, Inc. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 121136WC, ¶ 25. "Whether a claimant has introduced sufficient evidence to establish each element is a question of fact for the Commission to determine, and its decision in the matter will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Dawson v. Workers' Compensation Comm'n*, 382 Ill. App. 3d 581, 586 (2008); see also *First Assist, Inc. v. Industrial Comm'n*, 371 Ill. App. 3d 488, 494 (2007). A factual finding is contrary to the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Durand v. Industrial Comm'n*, 224 Ill.2d 53, 64 (2006).

¶ 40 The claimant seeks to avoid the application of this deferential standard of review by framing the issue on appeal as a pure question of law. Specifically, he argues that the Commission "misconstrued" the legal standards governing the recovery of a wage differential award by holding that "the [claimant's] mere ability to earn union wages precludes wage-loss benefits under section 8(d)(1)" and that "only a diminution in hourly earnings could trigger entitlement to benefits under that [s]ection." We disagree. Contrary to the claimant's assertion, the Commission did not base its decision to deny a wage differential award entirely the claimant's ability to earn union wages after his back surgery. Rather, it based its decision on a broad consideration of the evidence as a whole, including: (1) the medical evidence (particularly the FCE results and Dr. Bernstein's medical opinion); (2) the fact that the claimant continued working

the same job for three and one-half years after his back surgery without informing his Union of any work restrictions; (3) the fact that the claimant "held himself out as a stagehand" and "continued to perform the demands of his customary line of employment" during that time period; (4) the fact that the claimant never sought alternative employment; and (5) the lack of testimony from a vocational expert. The fact that the claimant was able to continue earning union scale hourly wages after his back surgery was but one factor among many weighed by the Commission. Moreover, contrary to the claimant's argument, the Commission did not suggest that the ability to earn such wages precludes a wage differential award as a matter of law.

¶ 41 Thus, the dispositive question is whether the Commission's decision was against the manifest weight of the evidence. As noted, to obtain a wage differential award, a claimant must prove that he is "partially incapacitated from pursuing his or her usual and customary line of employment" and that he has experienced an impairment in earnings. 820 ILCS 305/8(d)(1) (West 2002). The claimant argues that he presented sufficient evidence to prove both elements and that the Commission's conclusion to the contrary was against the manifest weight of the evidence.

¶ 42 We disagree. Although the claimant presented some evidence suggesting that he was unable to perform some of the job functions required of a stagehand at the most demanding venues (such as Ravinia), the Commission could have reasonably concluded that he failed to present evidence sufficient to prove that he was "partially incapacitated from pursuing his usual and customary line of employment." After his injury, the claimant continued to work as a Union stagehand performing the same primary job functions at the same hourly pay rate. He was not prevented from returning to his former position as a unionized stagehand or disqualified by any

employer from accepting any jobs that he had previously performed as a stagehand. He did not report any job restrictions to the Union or to any of the venues that employed him. Nor did he request any accommodations from the Union or from any of his employers. Instead, he simply continued to work much as he had done before his back surgery.[10] Thus, even assuming *arguendo* that the claimant was incapacitated from performing a small subset of the job duties of a stagehand, he was able to perform enough of those duties to keep his job as a union stagehand without accommodations or restrictions.

¶ 43 Moreover, the evidence that the claimant presented to support his claim of partial incapacity was far from overwhelming. The claimant presented no testimony from a vocational expert suggesting that he was unable to perform any of the essential requirements of his job. No physician offered testimony on the claimant's behalf, either in person or by way of an evidence deposition. The only evidence that the claimant offered on this issue was: (1) his own testimony that he could not longer work at Ravinia or at other demanding venues after his work injury; (2) Dolik's testimony that each member of Ravinia's "core group" had to be able to lift, carry, or push objects weighing up to 75 or 80 pounds without assistance (and, for certain shows, to climb wire ladders on a daily basis); (3) medical records showing that Drs. Citow and Marquardt placed certain work restrictions on the claimant after his injury; (4) the October 2007 FCE report, which concluded that the claimant was not able to perform 1 of 10 essential job functions; and (5) the Union's description of a stagehand's job duties, which noted that stagehands had to move various objects ranging in weight from 25 to 2000 pounds.

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[10] Although the claimant voluntarily avoided accepting certain jobs that might be difficult for him to perform, he was never reprimanded for refusing to accept any such jobs.

¶ 44 The Commission could have reasonably concluded that this evidence was insufficient to establish the claimant's entitlement to wage differential benefits. Dolik's and the claimant's testimony was contradicted (at least in part) by Stern, who testified that stagehands work as teams and perform similar functions at all venues. The Union's description of a stagehand's duties does not indicate that a stagehand must be able to push or lift any particular amount of weight *without assistance*. In addition, no doctor testified that any of the claimant's work restrictions precluded him from performing an essential function of his job as a stagehand, with or without assistance.

¶ 45 Moreover, the October 2007 FCE report actually suggests that the claimant was *not* incapacitated, at least not in any meaningful sense. The therapist who administered that FCE noted that "[b]ased on the information contained in the [claimant's] job description and additional information obtained from the [claimant], the [claimant] needs to function at the **Heavy category of work**," as defined by a list of 10 specific physical actions that the claimant was required to perform as part of his job. The therapist concluded that the claimant was able to perform 9 out of 10 of these physical requirements. The only one that he could not perform was "2-hand frequent pushing of 38# force X 50 ft >12 repetitions." The therapist therefore concluded that the claimant was able to perform at the heavy category of work. Although the therapist found that the claimant was unable to perform "2-hand frequent pushing of 38# force X 50 ft >12 repetitions," no witness testified that this rendered the claimant partially unable to perform his usual job as a stagehand at any venue.

¶ 46 In arguing that he is entitled to wage differential benefits, the claimant relies heavily on *First Assist, Inc.*, 371 Ill. App. 3d 488. In that case, we affirmed the Commission's award of wage differential benefits to a nurse who was injured while lifting patients. The claimant had formerly

worked as an operating room nurse, which required her to frequently lift patients on and off the operating table. After her injury, she was restricted from lifting more than 25 pounds, and she was forced to take less lucrative positions as an office nurse and a staff nurse, neither of which required any lifting of more than 25 pounds. Three doctors restricted the claimant from performing functions which were part of her regular duties as an operating room nurse, and an FCE report concluded that she could not tolerate her previous position as an operating room nurse. A vocational rehabilitative consultant also testified that the claimant's weight restrictions prevented her from working as an operating room nurse. Nevertheless, the employer argued that the claimant failed to demonstrate that she was incapacitated from pursuing her "usual and customary line of employment" because she continued to work as a nurse.

¶ 47 The Commission rejected this argument and determined that the claimant's usual and customary line of employment at the time of her injury was that of an *operating room nurse*, not merely a nurse. In affirming the Commission's decision, we found that the evidence had established that, "although all registered nurses might be members of the same profession, they do not all perform the same functions." *Id.* at 1070.

¶ 48 In this case, the claimant argues that, like the nurse in *First Assist*, the claimant's medical restrictions precluded him from performing some of the job functions of his position even though he remained able to perform other functions of the position.

¶ 49 The claimant's reliance on *Fist Assist* is misplaced. *First Assist* is distinguishable from the instant case in several material respects. Unlike the nurse in *First Assist, Inc.*, the claimant in this case continued to work in the *exact same job* after his injury. He continued to work as a union stagehand performing the same primary job functions at the same hourly pay rate. He did

not switch to another position after his injury, as did the nurse in *First Assist.* Instead, he continued to perform his former job without reporting any work restrictions and without requesting any accommodations from the Union or from any of his employers. Moreover, in *First Assist*, a vocational rehabilitative consultant testified that the claimant's weight restrictions prevented her from working her previous job. The claimant presented no such testimony here. Further, in *First Assist*, an FCE report concluded that the claimant could not tolerate her previous position as an operating room nurse. The FCE report in this case, by contrast, concluded that the claimant was able to perform 9 out of 10 of his essential job functions, and Dr. Bernstein opined that the claimant is capable of performing his prior work without restrictions.

¶ 50 In sum, although the claimant had medical restrictions that might have precluded him from performing some of the most physically demanding tasks at certain venues without assistance, the evidence in this case supports a reasonable inference that the claimant was not "partially incapacitated from performing his usual and customary line of employment." It is the Commission's province to draw reasonable inferences and conclusions from the evidence, and this court may not disregard or reject those inferences merely because other inferences might be drawn. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206 (2003); see also *Pietrzak*, 329 Ill. App. 3d at 833 (when reviewing Commission's decision under manifest weight of the evidence standard, "[t]he test is whether there is sufficient factual evidence in the record to support the Commission's determination, not whether this court, or any other tribunal, might reach an opposite conclusion."). Accordingly, we affirm.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, which confirmed the Commission's decision.

¶ 53 Affirmed.