2016 IL App (1st) 160401WC-U
No. 1-16-0401WC
Order filed: December 23, 2016



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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

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| ADMIRAL HEATING & VENTILATION, INC., | ) | Appeal from the Circuit Court of Cook County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 15-L-50664 |
| THE ILLINOIS WORKERS' COMPENSATION COMMISSION and JAMES PARRA, | ) | Honorable Kay M. Hanlon, |
| Defendants-Appellants. | ) | Judge, Presiding. |

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JUSTICE HUDSON delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Harris, and Moore concurred in the judgment.

**ORDER**

¶ 1 *Held*: (1) The Commission's finding that claimant sustained an accident arising out of and in the course of his employment with respondent on November 14, 2012, was not against the manifest weight of the evidence; (2) the Commission's finding that the condition of ill-being of claimant's right elbow is causally related to claimant's work accident of November 14, 2012, was not against the manifest weight of the evidence; (3) the Commission's finding that claimant provided timely notice of his November 14, 2012, injury was not against the manifest weight of the evidence; and (4) the Commission's award of 24-1/7 weeks of

temporary total disability benefits was not against the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, James Parra, appeals the judgment of the circuit court of Cook County setting aside a decision of the Illinois Workers' Compensation Commission (Commission). The Commission awarded claimant benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) for an injury he sustained to his right elbow while working for respondent, Admiral Heating & Ventilation, Inc. For the reasons set forth below, we reverse the judgment of the circuit court, reinstate the corrected decision of the Commission on remand, and remand this matter for further proceedings.

¶ 4 II. BACKGROUND

¶ 5 Claimant filed two applications for adjustment of claim, alleging various injuries to his person while working for respondent. The first application (12 WC 43353), which was filed on December 18, 2012, alleged injuries to claimant's right arm and back on August 24, 2012.[1] The second application (13 WC 609), as amended, alleged injuries to claimant's right arm and "man as a whole" on August 17, 2011. The claims, which were consolidated, proceeded to an arbitration hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)) on May 17, 2013. The issues in dispute included accident, notice, causation, period of temporary

[1] Although the application for adjustment of claim in case 12 WC 43353 lists an accident date of August 24, 2012, the request for hearing form submitted to the arbitrator lists the accident date as November 14, 2012, and claimant testified to an accident date of November 14, 2012. Moreover, an amended application alleging an accident date of November 14, 2012, in case 12 WC 43353 was apparently filed, although we are unable to locate it in the record.

total disability (TTD), and prospective medical care. The following evidence was presented at the consolidated hearing.

¶ 6 Claimant began working for respondent as a sheet-metal worker in 2003. Claimant testified that on August 17, 2011, while installing ductwork at a grade school, he injured his right elbow and low back when he threw a 50-pound extension cord to Paul Tobin, his foreman at the time. Specifically, claimant described a pulling or burning sensation in his right arm at the elbow and a twisting injury to his low back. Although claimant had filed four previous workers' compensation claims, he testified that prior to August 17, 2011, he had not injured either his right arm or low back.

¶ 7 Following the incident on August 17, 2011, claimant drove directly to respondent's shop in Hillside and reported his injuries to Mike Crnkovich, the general superintendent. According to claimant, Crnkovich completed an accident report, but did not provide him with a copy. Claimant testified that he returned to work for respondent later the same week and continued working full duty for respondent for the remainder of 2011 and into 2012. Claimant acknowledged that he sought no treatment for the injuries he sustained on August 17, 2011. Moreover, although claimant saw his personal physician, Dr. Nick Riccardo, for a comprehensive physical on January 30, 2012, claimant could not recall telling Dr. Riccardo that he injured himself at work in August 2011, and Dr. Riccardo's progress note of that date does not reference any work injury involving claimant's low back or right elbow.

¶ 8 Regarding the second accident, claimant testified that on November 14, 2012, he and a coworker, Robert Muldoon, were working at an office building. At about 10:30 a.m., claimant felt pain in his right elbow and low back while using a pallet jack to move materials weighing between 400 and 500 pounds. Claimant testified that he continued working until the foreman,

Michael Chancellor, called Muldoon's cell phone at 12:45 p.m. Claimant spoke to Chancellor on Muldoon's phone and advised that he had aggravated his right elbow and low back while working. According to claimant, Chancellor instructed him to take a few days off and see how he felt afterward. Claimant further testified that on Sunday, November 18, 2012, at approximately 8 p.m., he called Chancellor. Claimant told Chancellor that his right arm and low back were no better with time off work and that he had scheduled a doctor's appointment. At that time, Chancellor advised claimant that he was being laid off.

¶ 9 On November 21, 2012, claimant sought treatment with Dr. Norris Hsu for complaints of low-back and right-arm pain following a work injury. Claimant provided a history of injuring his back and right arm at work in August 2011 when he threw a cable to someone above him and then reinjuring his back and right arm at the elbow on November 14, 2012. Claimant reported that he had been taking Aleve four times a day for his low-back symptoms since his prior injury in August 2011 without resolution of his symptoms. Upon examination, Dr. Hsu noted tenderness in the lumbosacral area and over the right lateral epicondyle, forearm extensor muscles, and the lateral upper arm. Claimant also reported pain with extension of the right wrist and supination. Dr. Hsu diagnosed back pain and right elbow pain/strain. He referred claimant for physical therapy. He further advised that X rays and an orthopaedic referral would be made if claimant failed to improve.

¶ 10 On November 29, 2012, claimant consulted Dr. Howard Freedberg at Suburban Orthopaedics. Claimant complained of low-back and right-arm pain due to work-related injuries occurring in August 2011 and November 2012. With respect to the first date of injury, claimant reported that he twisted his lower back as he was moving material from the ground to an attic. With respect to the second date of injury, claimant provided a history of pulling his right arm and

low back while moving material with a pallet jack. Dr. Freedberg's assessment was a lumbar sprain/strain with left sacroiliac join dysfunction, grade one spondylolisthesis at L5-S1, and right elbow lateral epicondylitis with brachialradialis strain. Dr. Freedberg recommended physical therapy and MRI scans of the lumbosacral spine and right elbow. He also authorized claimant off work.

¶ 11 On December 10, 2012, claimant was seen in follow up with Dr. Freedberg. At that time, claimant reported constant burning, numbness, and tingling in his elbow as well as constant backaches. Dr. Freedberg noted that claimant underwent MRIs of the lumbar spine and right elbow on December 3, 2012. The MRI of the lumbar spine was significant for spondylolysis at L5, a right foraminal herniation, and a diffuse bulge at L2-L3. The MRI of the right elbow was significant for a radial collateral ligament tear and partial tear of the common extensor tendon. Dr. Freedberg recommended that claimant remain off work, undergo physical therapy, and consider right elbow surgery.

¶ 12 On January 9, 2013, Dr. Freedberg performed right elbow surgery, consisting of a debridement of the extensor carpi radialis brevis and decortications of the bone, repair of the extensor mechanism, and imbrication of the posterior anterior capsule and radial collateral ligament. Claimant's post-operative diagnosis was right elbow lateral epicondylitis with mild laxity of the posterolateral corner. Claimant was seen by Dr. Freedberg in follow up early in 2013. During this time, claimant underwent a course of physical therapy, remained off work, and reported improvement in his right elbow symptoms but continuing symptoms in his low back.

¶ 13 On April 10, 2013, Dr. Freedberg referred claimant to Dr. Novoseletsky for consultation and possible lumbar injections. Claimant consulted Dr. Novoseletsky on April 17, 2012, but he

had not undergone any low-back injections as of the date of the arbitration hearing. Claimant testified that he was last seen by Dr. Freedberg on May 8, 2013. Claimant reported that he still undergoes physical therapy three times a week and that his elbow is improving. Claimant testified that he was authorized off work by Dr. Freedberg from November 29, 2012, thought the date of the arbitration hearing.

¶ 14 Tobin testified that claimant was not working with him on August 17, 2011. Tobin further testified that claimant was removed from the job site at the grade school due to insubordination on August 3, 2011. Tobin stated that claimant never advised him that he had injured himself at work on August 3. Further, claimant did not return to the job site at the grade school after being removed on August 3, 2011.

¶ 15 Crnkovich testified that claimant never reported a work-related accident occurring on August 17, 2011. Crnkovich recalled that in August 2011, he had a conversation with claimant after he was removed from the job site at the grade school. During that conversation, claimant did not mention any work-related injury. Instead, claimant complained about the working conditions, resulting in him being placed on a different job.

¶ 16 Crnkovich further testified that claimant was laid off in November 2012 because business was slow. Crnkovich noted that claimant was laid off on a Monday, and that claimant's foreman (Chancellor) gave his entire crew the prior Thursday and Friday off. Crnkovich testified that Chancellor mentioned the possibility of a lay off to claimant and that claimant told Chancellor that he would "accept the layoff" and that respondent would be doing him a favor by laying him off. When Crnkovich talked to claimant about the layoff, however, claimant acted surprised. Later that day, Crnkovich drove to the job site to present claimant with his layoff check. Claimant did not tell Crnkovich that he sustained a work injury the previous week. In addition,

Crnkovich did not complete any accident forms for claimant related to an accident in November 2012. According to Crnkovich, he was not notified that claimant was claiming a work injury until January 2013.

¶ 17 Chancellor testified that when an employee injures himself, he (Chancellor) is required to complete an injury report and forward it to the safety supervisor. Chancellor testified that claimant never told him that he suffered a work injury in November 2012 while pulling a pallet jack. Chancellor further testified regarding the circumstances surrounding claimant's layoff. He explained that the week prior to the layoff, claimant had worked Monday through Wednesday. Because business was slow, however, the entire crew was off work on Thursday and Friday. Claimant called Chancellor that Sunday to find out where he would be working the following day. At that time, Chancellor informed claimant that he was being laid off. According to Chancellor, claimant stated he was "fine" with the layoff and that Chancellor was "doing [him] a favor." Chancellor testified that claimant never mentioned that he had injured himself on the job in November 2012 while pulling a pallet jack. Chancellor first heard of claimant's alleged injury "a couple of days or a couple of weeks after [Chancellor] laid him off." Chancellor later clarified that he first heard about claimant's injury of November 2012 when claimant filed his workers' compensation claim.

¶ 18 Based on the foregoing testimony, the arbitrator determined that claimant failed to prove that he sustained a compensable accident on August 17, 2011. With respect to that accident date, the arbitrator did not find claimant's testimony credible. Instead, he relied on Tobin's testimony that on August 3, 2011, claimant was removed from the job site at the grade school due to insubordination and that claimant did not work at the grade school on August 17. The arbitrator also cited Crnkovich's testimony that he was not given notice of a work injury on August 17. In

addition, the arbitrator concluded that claimant failed to prove that he sustained a compensable accident on November 14, 2012. In support of this finding, the arbitrator relied on the circumstances surrounding claimant's layoff and Chancellor's testimony that claimant did not report a work injury on November 14, 2012. The arbitrator also rejected claimant's contention that he provided timely notice of the alleged accidents. With respect to the accident date of August 17, 2011, the arbitrator relied on Tobin's testimony that claimant did not report a work injury in August 2011. With respect to the accident date of November 2012, the arbitrator determined that both Crnkovich and Chancellor refuted claimant's testimony that he reported a work injury on November 14, 2012. Moreover, the arbitrator did not find that the filing of claimant's application for adjustment of claim constituted timely notice to respondent since the initial application incorrectly alleged an accident date of August 24, 2012, and an amended application alleging an accident date of November 14, 2012, was not filed until January 8, 2013, more than 45 days after the claimed accident date. See 820 ILCS 305/6(c) (West 2010).

¶ 19 Claimant appealed the decision of the arbitrator to the Commission. The Commission reversed the decision of the arbitrator with regard to claimant's right-elbow injury sustained on November 14, 2012, but otherwise affirmed and adopted the decision of the arbitrator. Initially, the Commission determined that claimant sustained an accidental injury to his right elbow on November 14, 2012, and that his current condition of ill-being is causally related to the accident of that date. In support of this conclusion, the Commission noted that prior to November 14, 2012, claimant did not receive any medical treatment with regard to his right elbow. Following that date, however, claimant received treatment for his right elbow from both Dr. Hsu and Dr. Freedberg. Moreover, an MRI of the right elbow taken on December 3, 2012, was significant for a radial collateral ligament tear and a partial tear of the common extensor tendon. Finally, the

Commission pointed out that respondent offered no medical opinion with regard to the issue of causal connection between claimant's right-elbow condition and the event at work on November 14, 2012. With regard to the issue of notice, the Commission found that claimant provided timely notice of his November 14, 2012, right-elbow injury based upon his credible testimony on the issue. Specifically, the Commission cited claimant's testimony that he spoke with Chancellor shortly after the injury and that he followed up with Chancellor on November 18, 2012, advising that his right elbow had not improved and that he was going to seek medical treatment. The Commission awarded claimant 24-1/7 weeks of TTD benefits, for the period from November 29, 2012 (when Dr. Freedberg took claimant off work), through May 17, 2013 (the date of the arbitration hearing). The Commission remanded the matter to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 20 Respondent then sought judicial review in the circuit court of Cook County. The court remanded the matter to the Commission for further proceedings, finding that the Commission's decision was "substantively and procedurally deficient in a number of areas—including an articulation for the bases for its Decision and the reasonableness of its Decision." The Commission issued a decision on remand, which it later corrected due to a clerical error. In its corrected decision, the Commission, employing essentially the same reasoning set forth in its original decision, again reversed the decision of the arbitrator with regard to claimant's right-elbow injury sustained on November 14, 2012. The Commission otherwise affirmed and adopted the decision of the arbitrator, awarded claimant 24-1/7 weeks of TTD benefits, and remanded the matter to the arbitrator for further proceedings. Thereafter, respondent again sought judicial review. The circuit court of Cook County set aside the Commission's finding that claimant established an accidental injury to his right elbow arising out of and in the course

of his employment on November 14, 2012. The court cited "the lack of evidence behind [the Commission's decision]." The court elaborated that while claimant sustained "some sort of injury to his right arm, corroborated by medical evidence, there is little evidence of how it was connected to [respondent]." This appeal by respondent followed.

¶ 21 III. ANALYSIS

¶ 22 On appeal, claimant argues that the trial court's decision should be reversed and the Commission's corrected decision on remand should be reinstated. In support of his position, claimant asserts that the Commission's finding that he sustained an accidental injury to his right elbow on November 14, 2012, arising out of and in the course of his employment with respondent was not against the manifest weight of the evidence. Claimant further asserts that the Commission's findings on notice, causation, medical expenses, period of TTD, and prospective medical care were not against the manifest weight of the evidence. We address each contention in turn.

¶ 23 A. Accident

¶ 24 Claimant first asserts that the Commission's finding that he sustained an accidental injury to his right elbow on November 14, 2012, arising out of and in the course of his employment with respondent was not against the manifest weight of the evidence.

¶ 25 An employee's injury is compensable under the Act only if it "arises out of" and "in the course of" the employment. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006); *O'Fallon School District No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413, 416 (2000). A claimant bears the burden of proving by a preponderance of the evidence both of these elements. *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 477 (2011); *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006).

The phrase "in the course of" refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Injuries sustained on an employer's premises, or at a place where the employee might reasonably have been while performing his or her duties, and while the employee is at work, are generally deemed to have been received "in the course of" one's employment. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013-14 (2011). For an injury to "arise out of" one's employment, its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989).

¶ 26 The question of whether an employee's injury arose out of and in the course of his employment is one of fact. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 19. With respect to factual matters, it is within the province of the Commission to judge the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). A reviewing court may not substitute its judgment for that of the Commission merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We will not overturn the Commission's determination on a factual matter unless it is against the manifest weight of the evidence. *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120411WC, ¶ 15. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC, ¶ 21.

¶ 27 In the present case, the Commission determined that claimant proved by a preponderance of the evidence that he sustained an injury to his right elbow on November 14, 2012, which arose out of and in the course of his employment with respondent. After reviewing the record, we cannot say that a finding opposite to that of the Commission is clearly apparent. Significantly, the evidence presented at the arbitration hearing establishes that on November 14, 2012, claimant was working for respondent. Claimant testified that while pulling a pallet jack with materials weighing between 400 and 500 pounds, he experienced pain in his right elbow and low back. Claimant continued working for a couple of hours before advising his foreman, Chancellor. According to claimant, Chancellor told him to take a few days off. Claimant's condition did not improve with rest, so he consulted Dr. Hsu and, subsequently, Dr. Freedberg. Claimant provided a consistent history of injury to both physicians. In particular, claimant told Dr. Hsu that he injured his right arm at the elbow on November 14, 2012, following a work accident. Claimant told Dr. Freedberg that he injured his right arm at work while moving material with a pallet jack. An MRI of the right elbow taken shortly after claimant first consulted Dr. Freedberg confirmed an injury to that limb. Thus, claimant's testimony establishes an injury occurring at a place where the employee might reasonably have been while performing his duties. Claimant's testimony further establishes that the injury had an origin in some risk connected with the employment. As our supreme court has noted, an employee's testimony regarding an accident, standing alone, can be sufficient to justify an award. See *Caterpillar Tractor Co. v. Industrial Comm'n*, 83 Ill. 2d 213, 218 (1980).

¶ 28 Respondent nevertheless argues that the Commission should have rejected claimant's testimony because he lacked credibility. As the trier of fact, however, it was within the province of the Commission to judge the credibility of the witnesses, resolve conflicts in the evidence,

assign weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny*, 397 Ill. App. 3d at 674. Although respondent points to some inconsistencies in claimant's testimony, they relate principally to the alleged accident of August 2011 and the injury to claimant's back. As noted above, the Commission denied claimant benefits for these claims. Moreover, respondent cites no authority requiring the Commission to reject outright all of claimant's testimony if it finds portions of it not to be credible. Respondent also asserts that it is improper to rely on claimant's medical records as the history of injury contained in the treatment notes were provided to the physicians by claimant himself. According to respondent, "[j]ust because the [claimant] tells his treating doctors that he was hurt at work does not make it true." However, the fact that claimant sustained some type of injury to his right elbow while working was also supported by the objective medical evidence, in particular the MRI of claimant's right elbow, which was significant for a radial collateral ligament tear and a partial tear of the common extensor tendon.

¶ 29 In short, the Commission's finding that claimant sustained an accidental injury arising out of and in the course of his employment with respondent on November 14, 2012, is supported by both claimant's testimony and the contemporaneous medical treatment records, which are consistent with claimant's account of the accident of that date. Since a conclusion opposite that of the Commission is not clearly apparent, we cannot say that the Commission's finding of accident is against the manifest weight of the evidence.

¶ 30 B. Causation

¶ 31 Claimant also argues that the Commission's finding of a causal relationship between his right-elbow condition and the work accident of November 14, 2012, was not against the manifest weight of the evidence. An employee seeking benefits under the Act has the burden of proving

all elements of his or her claim. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995). Among other things, the employee must establish a causal connection between the employment and the injury for which he or she seeks benefits. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860 (2005). A causal connection can be established by circumstantial evidence. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982). Thus, for instance, a chain of events that demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability, may prove a causal nexus between a work accident and an employee's condition of ill-being. *International Harvester*, 93 Ill. 2d at 63-64.

¶ 32 Causation presents an issue of fact. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 293 (1992). In resolving factual matters, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny*, 397 Ill. App. 3d at 674. A reviewing court may not substitute its judgment for that of the Commission on such issues merely because other inferences from the evidence may be drawn. *Berry*, 99 Ill. 2d at 407. We review the Commission's factual determinations under the manifest-weight-of-the-evidence standard. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). Thus, as noted above, we will overturn the Commission's causation finding only if an opposite conclusion is clearly apparent. *Freeman United Coal Mining Co.*, 2013 IL App (5th) 120564WC, ¶ 21.

¶ 33 After reviewing the record, we cannot say that the Commission's finding that claimant's right-elbow condition is causally related to the work accident of November 14, 2012, is against the manifest weight of the evidence. Notably, the evidence supports causation based on a chain of events theory. Although claimant testified that he injured his right arm following a work accident in August 2011, he never sought medical treatment for this alleged injury and he

continued to work full duty for respondent throughout the remainder of 2011 and into 2012. The record corroborates claimant's testimony as the medical records placed in evidence do not document any medical treatment to claimant's right elbow prior to November 2012. At that time, claimant reported that he felt pain in his right elbow while using a pallet jack to move materials weighing between 400 and 500 pounds. Following the accident, claimant was off work for a few days before he was laid off, but his condition did not improve. He first sought medical treatment from Dr. Hsu and then from Dr. Freedberg. Claimant told Dr. Hsu that he began experiencing right-arm pain after reinjuring his right arm at the elbow on November 14, 2012. Dr. Hsu noted tenderness over the right lateral epicondyle, forearm extensor muscles, and lateral upper arm. Dr. Hsu diagnosed right elbow pain/strain. Similarly, claimant reported right-arm pain to due to a work-related injury when he was examined by Dr. Freedberg. Specifically, claimant related that he pulled his right arm at work in November 2012 while moving material with a pallet jack. Dr. Freedberg's assessment was right elbow lateral epicondylitis with brachialradialis strain. Further, the MRI of claimant's right elbow, taken 19 days after claimant's work accident, demonstrated a tear to claimant's radial collateral ligament and a partial tear of the common extensor tendon. Thus, with respect to the condition of claimant's right elbow, the evidence establishes a previous condition of good health, an accident, and a subsequent injury resulting in disability. Respondent failed to present any medical testimony disputing a causal connection on this basis. As such, we find that a conclusion opposite that of the Commission is not clearly apparent.

¶ 34 C. Notice

¶ 35 Claimant next argues that the Commission's finding that he provided timely notice of the November 14, 2012, accident was not against the manifest weight of the evidence. We agree.

¶ 36 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 2010). While notice may be given orally or in writing (820 ILCS 305/6(c) (West 2010)), 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.

¶ 37 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. Illinois 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 2010); *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).

¶ 38 Here, the Commission found that claimant provided timely notice to respondent of his November 14, 2012, injury to his right elbow. The Commission cited claimant's testimony that he spoke to his foreman, Chancellor, shortly after the injury and that he followed up with Chancellor on November 18, 2012, advising that his right elbow had not improved and that he was going to seek medical treatment. The evidence of record supports the Commission's determination.

¶ 39 Claimant testified that about two hours after the accident on November 14, 2012, he spoke to Chancellor on his coworker's cell phone. At that time, claimant advised that he had aggravated his right elbow and low back while working. According to claimant, Chancellor instructed him to see how he felt after taking a few days off. To that end, claimant contacted Chancellor on the evening of November 18, reporting that his condition had not improved and that he would be seeking medical care. At that time, Chancellor told claimant that he was being laid off. Although not referenced by the Commission in its decision, we note that Chancellor's testimony also supports a finding that claimant timely reported an injury in November 2012. Chancellor's testimony regarding the date he became aware of claimant's injury was equivocal. However, under either of the scenarios to which Chancellor testified, claimant provided timely notice. Chancellor initially testified that he became aware that claimant had alleged an injury "a couple of days or a couple of weeks after" claimant was laid off. Claimant was laid off on November 18, 2012. A period encompassing a couple of days to a couple of weeks after the accident clearly falls well within the 45-day time limit set forth in section 6(c) of the Act (820 ILCS 305/6(c) (West 2010)). Chancellor later testified that he first heard about claimant's

November 2012 injury when claimant filed his workers' compensation claim. Claimant filed his application for adjustment of claim on December 18, 2012, or 34 days after his claimed date of accident. Again, this was well within the 45-day time limit set forth in section 6(c) of the Act (820 ILCS 305/6(c) (West 2010)). We are cognizant that the application for adjustment of claim filed on December 18, 2012, listed the wrong date of accident. However, as noted earlier, 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 2010); *Kishwaukee Community Hospital*, 356 Ill. App. 3d at 921-22. Here, respondent makes no argument that it was unduly prejudiced. Accordingly, we conclude that the Commission's finding that claimant provided timely notice of his November 14, 2012, accident was not against the manifest weight of the evidence.

¶ 40 D. Other Issues

¶ 41 Finally, claimant argues that the Commission's award of medical bills, TTD benefits, and prospective medical care was not against the manifest weight of the evidence. At the outset, we note that the Commission's decision does not reference an award of medical expenses. In fact, at the arbitration hearing, counsel for claimant announced that he was "remov[ing] [medical] bills from issue before the Arbitrator." Moreover, the only reference in the Commission's decision regarding prospective medical care is in reference to claimant's low back, an injury which was not found to be compensable. Accordingly, we limit our discussion to the Commission's award of TTD benefits.

¶ 42 TTD benefits are available from the time an injury incapacitates an employee from work until such time as the employee is as far recovered or restored as the permanent character of the injury will permit. *Westin Hotel v. Illinois Workers' Compensation Comm'n*, 372 Ill. App. 3d

527, 542 (2007). The dispositive inquiry is whether the employee's condition has stabilized, that is, whether the employee has reached maximum medical improvement (MMI). *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005). The factors to consider in assessing whether an employee has reached MMI include a release to return to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 178 (2000). Once the injured employee has reached MMI, he is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). The period during which a claimant is entitled to TTD benefits is a factual inquiry for the Commission. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256-57 (2008). Hence, the Commission's decision will not be overturned on appeal unless it is against the manifest weight of the evidence. *Ming Auto Body/Ming of Decatur, Inc.*, 387 Ill. App. 3d at 256-57.

¶ 43 Based on its finding that the injury to claimant's right elbow was causally connected to his accident at work on November 14, 2012, the Commission awarded claimant 24-1/7 weeks of TTD benefits, encompassing the period from November 29, 2012 (when Dr. Freedberg took claimant off work after the November 2012 accident), through May 17, 2013 (the date of the arbitration hearing). The evidence supports the Commission's finding. Claimant testified that on November 14, 2012, he injured his right elbow while using a pallet jack to move materials weighing between 400 and 500 pounds. Following the accident, claimant was off work a few days before he was laid off, but his condition did not improve. On November 21, 2012, claimant was examined by Dr. Hsu, who diagnosed a right-elbow pain/strain. On November 29, 2012, claimant consulted Dr. Freedberg. Dr. Freedberg diagnosed right elbow lateral epicondylitis with brachialradialis strain. As part of his treatment regimen, Dr. Freedberg took claimant off

work. Claimant continued to treat with Dr. Freedberg and eventually underwent surgery. Dr. Freedberg continued to authorize claimant off work through the date of the arbitration hearing. There was no evidence that claimant was released to return to work by any other medical professional. Given the foregoing evidence, we agree with claimant that the Commission's award of TTD benefits from November 29, 2013, through May 17, 2013, was not against the manifest weight of the evidence.

¶ 44 IV. CONCLUSION

¶ 45 For the reasons set forth above, we reverse the judgment of the circuit court of Cook County, reinstate the corrected decision of the Commission on remand, and remand this matter for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 46 Circuit court judgment reversed, Commission's decision reinstated, and cause remanded.