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

JESUS CHAVEZ,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
)	
v.)	No. 14-MR-1082
)	
R&R PROPERTIES and the ILLINOIS)	
WORKERS' COMPENSATION COMMISSION,)	Honorable
)	Bonnie Wheaton,
Defendants-Appellees.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* Where the arbitrator conducted an extra-judicial investigation of claimant's condition of ill-being and the Commission expressly relied on that investigation, judgment would be vacated and matter would be remanded for new arbitration hearing.

¶ 2 Claimant, Jesus Chavez, appeals an order of the circuit court of Du Page County confirming a decision of the Illinois Workers' Compensation Commission (Commission) denying him benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et*

seq. (West 2010)). Claimant raises a host of issues on appeal; however, dispositive here is the fact that the arbitrator conducted an extra-judicial investigation of claimant's condition of ill-being and it formed the basis—in part—of the Commission's decision. For the reasons that follow, we vacate and remand.

¶ 3 In the course of attacking the Commission's decision regarding causation, claimant argues that it was error for the arbitrator—and, in turn—the Commission, to rely on extra-judicial observations made by the arbitrator concerning claimant's behavior outside of the hearing room. Indeed, the arbitrator's decision includes the following passage:

“The arbitrator observed [claimant] at various times before, during and after the hearing dates. Outside of the hearing room, [claimant] was observed talking comfortably and exhibiting no pain behavior like grunting, grimacing or shifting his weight from side to side as he constantly did, as if on cue, in the hearing room. Instead, [claimant] was standing without the use of his crutches or slightly leaning against a wall, sometimes placing most of his weight on his injured foot for extended periods of time. At one point, he was seen standing for nearly thirty minutes, talking casually.”

In light of these observations as noted above, we hold that the arbitrator's conduct so infected the proceedings with unfairness as to require the parties to begin anew. Quite simply, the arbitrator's and Commission's decisions were based largely on a wholesale rejection of claimant's testimony based on a lack of credibility. The arbitrator's extra-judicial observations carried with them a significant probability of affecting the Commission's evaluation of claimant's credibility.

¶ 4 In *People v. Holmes*, 69 Ill. 2d 507, 517-18 (1978), our supreme court explained:

“The law is well settled that, exclusive of certain matters of which the court may take judicial notice, the deliberations of the trial judge are limited to the exhibits offered and admitted in evidence and the record made before him in open court. Any private investigation by the court, either during the trial of the cause or while the motion for new trial is pending, constitutes a denial to the defendant of the constitutional guarantee of due process of law.”

This reasoning was extended to civil cases in *Frede v. Downs*, 101 Ill. App. 3d 812, 814-15 (1981); see also *Heaver v. Ward*, 68 Ill. App. 3d 236, 241 (1979).

¶ 5 Here, the arbitrator incorporated his own observations of claimant into his decision, which the Commission, in turn, adopted. As noted, this case turned largely on resolving conflicts in the testimony of claimant, on the one hand, and Robert and Deneen Leone, on the other. Thus, the credibility of these witnesses was a paramount issue. In *People v. Collins*, 351 Ill. App. 3d 175, 180 (2004), the Second District reversed a murder conviction where a juror made a trip to the crime scene where “[a] likely use [of what the juror learned] would seem to be evaluating the credibility of witnesses.” Those same concerns are present here.

¶ 6 Respondent argues that any error was harmless. It asserts, “The record is replete with contradictory evidence on behalf of both parties regarding the alleged injury on the date of accident.” Citing *Greany v. Industrial Comm’n*, 358 Ill. App. 3d 1002, 1013 (2005), respondent contends that the arbitrator’s observations were simply cumulative with other evidence properly in the record. We disagree. Rather, as in *Collins*, the arbitrator’s observations had the potential to influence the arbitrator and Commission regarding credibility determinations generally. Claimant asserts that had he been confronted with the arbitrator’s observations, he would have

been able to explain that “he had not taken medication at the beginning of the hearing and that he took 4 pain pills during lunch.”

¶ 7 Accordingly, in the interests of justice, we deem it best that the parties begin anew. We remand this cause to the Commission. On remand, the Commission is to assign a different arbitrator to conduct a new arbitration hearing. The order of the trial court and the Commission’s decision are both vacated.

¶ 8 Vacated and remanded with instructions.