2017 IL App (2d) 170055WC-U

FILED: December 19, 2017

NO. 2-17-0055WC

IN THE APPELLATE COURT

OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MARGARITA GUERRERO, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (GKN Walterscheid, Inc., Appellee).	)))))))))	Appeal from Circuit Court of DuPage County No. 16MR727 Honorable Paul M. Fullerton, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: The issues raised by claimant on appeal are forfeited due to her failure to present proper arguments in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016). Additionally, the record demonstrates that any error by the Commission in making its evidentiary rulings was harmless.

¶ 2 In May 2010, claimant, Margarita Guerrero, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2008)), seeking benefits from the employer, GKN Walterscheid, Inc. She alleged work-related, repetitive-trauma injuries to both upper extremities. Following a hearing, the arbitrator denied claimant

benefits under the Act, finding she failed to prove accidental injuries arising out of and in the course of her employment. On review, the Illinois Workers' Compensation Commission (Commission) modified portions of the arbitrator's decision but affirmed her ultimate finding that claimant failed to establish a compensable, work-related injury. The circuit court of DuPage County confirmed the Commission's decision and claimant appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 21, 2015, the arbitration hearing was conducted. At the outset of the hearing, the arbitrator noted the various issues in dispute and that "different objections were made" during the depositions of claimant's treating doctor, Dr. Kenneth Schiffman, and the employer's examining doctor, Dr. Paul Papierski. In response to the arbitrator's inquiry, claimant's attorney confirmed that objections were at issue in connection with both doctors' depositions. The arbitrator then stated as follows: "With regard to the issues raised at the depositions of Drs. Schiffman and Papierski, the [a]rbitrator has advised the parties that the ruling on those objections will be made in the deposition transcript and that *** further argument on those objections should be made in the parties' proposed decisions."

¶ 5 Evidence presented at the hearing showed claimant worked for the employer, a manufacturing company, from December 1999, until April 24, 2010, when she was terminated from her employment. Claimant testified she worked as a bookkeeper and was responsible for "credit and collections," daily deposits, and invoicing to customers. Her day-to-day duties included "mailing statements, mailing out invoices, collection costs, covering for receptionists, bank reconciliation, monthly reports, [and] journal entries." Claimant estimated that she "would enter" 500 invoices a month and stuff 50 envelopes per day. She submitted three exhibits into evidence, which she testified set forth her various job duties. Claimant also described the office

equipment she used to perform her work duties.

¶ 6 On cross-examination, claimant testified her job duties for the employer also included writing, filing, using a telephone, light lifting, attending weekly meetings, and drafting e-mails. She agreed that the frequency with which she performed her job duties varied and that all of the various tasks that were listed in her exhibits required different hand manipulations.

¶ 7 Ernie Balogh testified on behalf of the employer. He stated he was the employer's chief financial officer and had supervisory authority over claimant while she worked for the employer. Balogh described claimant's position as "basically an accounting clerk" and stated she worked in a cubicle outside of his office. He testified he had many opportunities to observe claimant as she worked. Balogh stated claimant's job duties included opening and sorting mail, calling customers, computer work, intermittent keyboard use, using a computer mouse, adding numbers on a calculator, preparing e-mails, and stuffing envelopes and sending mail to customers. He testified claimant "had a variety of duties" and did not perform any of her duties for "an excessive amount of time." Balogh also denied that claimant had any job duties "that required her to perform the same hand manipulation consistently for longer than one hour."

¶ 8 With respect to her alleged upper extremity injuries, claimant asserted that, in 2005, she first sought medical treatment for pain in her right wrist that occurred "especially when stapling." She recalled being sent for "testing" and, although her test results were "normal," her doctor told her to avoid excessive use of her right hand and "repetitive movements." Thereafter, claimant modified the manner in which she used her right hand to staple and utilized her left hand more. Claimant stated she did not experience any further problems until 2008, when she began experiencing symptoms in her left upper extremity. Specifically, she stated she had tingling, numbness, and pain in her left wrist, hand, and thumb.

¶ 9 In September 2008, claimant sought medical treatment from Dr. Amy Hashimoto, her primary care physician, and reported left hand pain. Dr. Hashimoto assessed claimant as likely having some tendonitis with early carpal tunnel syndrome. Claimant testified Dr. Hashimoto referred her to Dr. Gene Neri, a neurologist. In October 2008, Dr. Neri performed an electromyogram and nerve conduction study of claimant's left upper extremity and diagnosed her with borderline carpal tunnel syndrome.

¶ 10 In October 2009, claimant began seeing Dr. Schiffman, an orthopedic surgeon. During the course of treating claimant, Dr. Schiffman diagnosed her with bilateral carpal tunnel syndrome, left-sided distal radial ulnar joint pain, and a ganglion cyst on her left wrist. He also recommended surgery for her bilateral carpal tunnel syndrome.

¶ 11 Further, Dr. Schiffman's medical records reflect that, in April 2010, claimant primarily complained of symptoms on her left side. He noted claimant also reported that her symptoms "developed over time and [that she] seemed to be more symptomatic as she did more activities with gripping and hand use at work." As a result, Dr. Schiffman stated he could not "rule out" the possibility that claimant's condition was work related. Later that same month, claimant followed up with Dr. Schiffman, who noted a diagnosis of left carpal tunnel syndrome and determined claimant's condition was work related "[b]ased on her history." On July 1, 2010, he opined claimant's "repetitive work tasks ha[d] at least aggravated [her] condition[s] of carpal tunnel syndrome bilaterally."

¶ 12 In February 2012, claimant was examined by Dr. Papierski at the employer's request. The employer submitted Dr. Papierski's examination report into evidence at arbitration without objection. Ultimately, Dr. Papierski diagnosed claimant with bilateral carpal tunnel syndrome, bilateral thumb carpometacarpal joint arthrosis, and right middle finger stenosing teno-

synovitis. Additionally, he opined her conditions of ill-being were not work related.

¶ 13 The record shows that, in connection with his evaluation of claimant, Dr. Papierski reviewed a "Time Motion Study" report provided to him by the employer. That report, dated November 2010, and prepared by a "Certified Ergonomic Evaluation Specialist," indicates the employer requested a study "to assist in determining if [claimant's] work activities require[d] repetitive or forceful movements of the upper extremities," and whether such activities created a risk of injury. The report included a job description for claimant's position with the employer, as well as descriptions of her workstation and work environment. Additionally, the record reflects a recording of an employee performing the "normal job duties" associated with claimant's position accompanied the Time Motion Study report and was reviewed by Dr. Papierski.

¶ 14 At arbitration, the Time Motion Study was submitted into evidence by the employer without objection from claimant. Additionally, the record shows that claimant submitted an exhibit containing Dr. Papierski's records as part of her case and those records also contained the Time Motion Study.

¶ 15 The parties further submitted the depositions of their respective medical experts into evidence. At the time claimant presented Dr. Schiffman's deposition, the arbitrator noted as follows: "Again, the Arbitrator will [be] making any rulings on objections within the dep [*sic*] transcript itself as well as in the decision should any of those issues need to be addressed in the actual Arbitration decision." The record reflects Dr. Schiffman's deposition began on February 4, 2014. During his testimony, Dr. Schiffman described his treatment of claimant and acknowledged opining in April 2010 that her condition of ill-being was causally related to her employment. He testified the basis for his opinion was that claimant's "work required frequent repetitive finger motion and keyboard use."

¶ 16 The record shows Dr. Schiffman's deposition concluded after only questioning from claimant's attorney, Debra Byrnes, and without cross-examination by the employer's counsel, Brian Kaplan. As a result, both the parties and Dr. Schiffman agreed to continue the deposition on a different date. The following discussion occurred between the parties and Dr. Schiffman when Byrnes ended her questioning of Dr. Schiffman:

"MS. BYRNES: That's it because I know, Brian, you have questions I'm sure.

MR. KAPLAN: Let me—

MS. BYRNES: Thank you, Doctor.

THE WITNESS: You are welcome.

MS. BYRNES: Thank you.

MR. KAPLAN: Let me understand, you have to be done at 3:00 o'clock?

THE WITNESS: Yes, I start seeing patients at 3:00.

MR. KAPLAN: Okay, it is 2:57. I have more than three minutes of questions.

* * *

MS. BYRNES: I will do whatever you'd like to do. How many—what do you have to ask? Like about how many?

THE WITNESS: And, yeah, sorry, but I will accommodate to reschedule to give you time to do this.

MR. KAPLAN: Yes, I don't want to start asking three questions and be done. I have much less than I wrote out, but I probably have 20 minutes of questions.

* * *

MR. KAPLAN: You ended at 2:57. I am not rushing through three minutes of questioning.

MS. BYRNES: You don't have to because I will have redirect so we will reschedule it."

¶ 17 The record shows Dr. Schiffman's deposition was continued to September 26, 2014. On that date, Kaplan made the following objection:

"To make a clear record, and so that I don't have to repeat myself on each and every question, I am objecting to any additional information, any testimony elicited from Dr. Schiffman at this time. We were here on—we weren't here, but we took Part 1 of the Doctor's deposition on February 4th of 2014. [Claimant's] counsel finished her direct examination of her treating physician and tendered the witness to me. I have not asked a question on cross-examination, so that means that any additional direct examination will clearly exceed the scope of my cross-examination which was none, and it, therefore, is improper and inappropriate at this time."

The deposition transcript shows the arbitrator overruled Kaplan's objection.

¶ 18 During Byrnes's continued questioning, Dr. Schiffman testified he did not know whether he ever recorded all of claimant's job duties in his medical records. He stated that, "[d]uring the course of the care of a patient who has a work injury, at some point [he] would document the work they did, but not necessarily all [of] their specific work duties." On questioning by Kaplan, Dr. Schiffman testified that if a patient's job duties were not described in his notes he would not really know what the person's job duties were. He also agreed that all he

knew of "what [claimant] did was that she was a bookkeeper." Further, Dr. Schiffman agreed that he did not have any opinions as to claimant's current condition and its relationship to her work duties in 2009.

¶ 19 Dr. Schiffman's September 2014 deposition transcript further shows that the parties discussed and addressed allegations by Byrnes that Kaplan and Dr. Schiffman had engaged in improper *ex parte* communications prior to the original, February 2014 deposition date. Upon examination by Byrnes, Dr. Schiffman stated he did not recall ever speaking with Kaplan or a representative of Kaplan's office at any time other than the February 2014 deposition. He also denied that he had ever previously met Kaplan or discussed claimant's case with him. Attorney Kaplan also asserted as follows: "And I will state on the record that the first and only time that I met Dr. Schiffman before today was at his February 4th deposition, and I don't believe I have ever asked you to perform an [independent medical examination] for any client of mine[.]"

¶ 20 As stated, the employer also submitted Dr. Papierski's deposition at arbitration. During that deposition, Byrnes made an objection pursuant to the "48-hour rule," noting the Time Motion Study relied upon by Dr. Papierski had been requested by claimant but not produced until the afternoon of the deposition, which occurred on November 21, 2014. Again, the record reflects that the arbitrator overruled the objection. Ultimately, Dr. Papierski provided testimony consistent with his examination report. Specifically, he reiterated his diagnoses and opined that claimant's conditions of ill-being in her upper extremities were not causally related to her employment. Specifically, Dr. Papierski testified he reviewed claimant's job activities and did not find anything that would be considered a risk factor for the development of the conditions with which he diagnosed her.

¶ 21 In June 2015, the arbitrator issued her decision, finding claimant failed to prove

repetitive-trauma injuries arising out of and in the course of her employment and denying her benefits under the Act. In so holding, the arbitrator looked to claimant's testimony and the exhibits she presented regarding her work for the employer. The arbitrator determined that "although [claimant] clearly performed work duties that required bilateral hand, finger[,] and arm manipulation, *** [claimant's] job duties were sufficiently varied throughout the work day." The arbitrator stated she was "unable to find that [the work duties as set forth by claimant] were performed with the frequency, constancy[,] or force requisite for the activities to pose a risk of work[-]related repetitive trauma ***." The arbitrator also noted the Time Motion Study supported a finding that claimant's work duties "did not pose a risk of workplace repetitive trauma." The arbitrator determined all other issues were moot.

¶ 22 In May 2016, the Commission issued its decision. It agreed with the arbitrator's determination that claimant "failed to prove a compensable work accident under the Act" and affirmed that portion of her decision. However, it reversed the arbitrator's rulings on the parties' objections to the depositions of Dr. Schiffman and Dr. Papierski and expressly addressed claimant's allegations of improper *ex parte* communications between the employer's counsel and Dr. Schiffman.

¶ 23 With respect to the employer's objection to Dr. Schiffman's deposition, the Commission found Byrnes had completed her direct examination of Dr. Schiffman on the original, February 2014 deposition date and tendered Dr. Schiffman to Kaplan for cross-examination. As a result, it determined Byrnes's continued questioning of the doctor on the September 2014 deposition date, after Kaplan elected not to conduct a cross-examination, "was inappropriate and in violation of the Illinois Rules of Evidence." The Commission, therefore, sustained Kaplan's objection and struck Dr. Schiffman's September 2014 deposition testimony "relative to the med-

ical issues presented."

¶ 24 Regarding claimant's objection to Dr. Papierski's deposition testimony, the Commission found a violation of section 12 of the Act (820 ILCS 305/12 (West 2014)) because the Time Motion Study relied upon by Dr. Papierski in conducting his evaluation was not provided to claimant at least 48-hours prior to the deposition. The Commission rejected Dr. Papierski's deposition in its entirety but found no error with respect to the admission of his examination report because claimant did not object to the report when the employer submitted it at arbitration.

¶ 25 Despite its evidentiary rulings, however, the Commission emphasized that it had considered the record in its entirety and that it did "not believe the testimony of either physician would have significantly influenced the outcome of the case." It stated that, even if it had not struck a portion of Dr. Schiffman's testimony and all of Dr. Papierski's testimony, it "would still have found that [claimant] failed to prove a compensable work accident under the Act." Further, the Commission stated that striking Dr. Schiffman's September 2014 testimony actually benefited claimant's case because, during that portion of his deposition, Dr. Schiffman "effectively withdrew his causal connection opinion linking [claimant's] current condition to her work for [the employer]."

¶ 26 Finally, the Commission addressed a petition for penalties and attorney fees claimant filed, which alleged a violation of the *Petrillo* doctrine. See *Petrillo v. Syntex Laboratories, Inc.*, 148 Ill. App. 3d 581, 588, 499 N.E.2d 952, 957 (1986) (holding that conferences between a plaintiff's treating physician and opposing counsel "jeopardize the sanctity of the physician-patient relationship and, therefore, are prohibited as against public policy"). Specifically, claimant maintained improper *ex parte* communications occurred between Kaplan and Dr.

Schiffman. The Commission rejected claimant's assertion and denied her petition. It held the record was "extremely clear that there was no [*Petrillo*] violation" and deemed claimant's continuing allegations "near libelous."

¶ 27 Claimant sought judicial review of the Commission's decision with the circuit court of DuPage County. In December 2016, the court confirmed the Commission's decision.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. Dr. Papierski's Deposition Testimony

¶ 31 On appeal, claimant first challenges the Commission's decision to exclude Dr. Papierski's deposition from the evidence in its entirety based on her objection to his testimony. She argues the Commission's ruling "erroneously excluded relevant, material, and competent medical evidence" that supported her causal connection claim. Additionally, claimant asserts that the Commission erred by allowing Dr. Papierski's report to remain in evidence after striking his deposition.

¶ 32 Initially, as the employer points out, claimant's argument as to this issue is deficient because she failed to support her challenge to the Commission's evidentiary ruling with citation to legal authority. Pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) the argument portion of an appellant's brief must "contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." A claimant forfeits his or her argument on appeal by failing to support it with citations to authority. *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 208, 904 N.E.2d 1122, 1137 (2009).

¶ 33 Here, claimant failed to present any citation to relevant legal authority in chal-

lenging the Commission's decision to exclude Dr. Papierski's deposition testimony. Specifically, she did not cite legal authority setting forth the standard of review for the Commission's evidentiary rulings, the relevant statutory provision upon which the Commission's decision was based, or any appellate court decision addressing the pertinent issues. Even more troubling, however, is claimant's failure to set forth any reasoned and logical argument as to why the Commission's ruling was erroneous. Claimant simply concludes that the Commission erred in excluding Dr. Papierski's deposition without any relevant discussion or analysis of the issue. Under these circumstances, the issue is forfeited.

¶ 34 However, even if we were to excuse claimant's forfeiture, we would find no reversible error. "We review evidentiary rulings made during the course of a workers' compensation proceeding under the abuse of discretion standard." *Jackson Park Hospital v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 142431WC, ¶ 47, 47 N.E.3d 1167. Additionally, errors in the Commission's evidentiary rulings will be held harmless where the error did not prejudice the complaining party or materially affect the outcome of the case. *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886, 559 N.E.2d 526, 530 (1990).

¶ 35 First, we note that although claimant is the one challenging the Commission's exclusion of Dr. Papierski's deposition testimony, Dr. Papierski was actually the employer's examining doctor and his testimony supported the employer's case. Second, the Commission explicitly stated that, despite its evidentiary rulings, it reviewed all of the evidence submitted, including Dr. Papierski's deposition. It concluded Dr. Papierski's testimony would not have significantly influenced its decision and the record reflects it relied most heavily on claimant's testimony and the evidence she presented regarding her job duties. Thus, even assuming the Commission erred in excluding the doctor's testimony, the error was harmless because claimant suffered no preju-

dice and the error did not materially affect the outcome of the case.

¶ 36 B. Dr. Schiffman's Deposition Testimony

¶ 37 On appeal, claimant next challenges the Commission's ruling regarding Dr. Schiffman's September 2014 deposition testimony. She argues the Commission abused its discretion by sustaining the employer's objection and excluding all of Dr. Schiffman's testimony from that date.

¶ 38 As before, the argument claimant presents on this issue is deficient based on her failure to provide citation to relevant legal authority. Ill. S. Ct. Rule 341(h)(7) (eff. Jan. 1, 2016). Specifically, she has, again, failed to identify the relevant standards under which her challenge to the Commission's evidentiary ruling is reviewed or any legal authority to support her specific contentions. Therefore, we find her claim is forfeited.

¶ 39 Additionally, even if we were to ignore the deficiencies in claimant's brief, the record reflects any alleged error was harmless. In reaching its decision, the Commission stated it considered Dr. Schiffman's excluded testimony despite its evidentiary ruling and the challenged testimony would not have altered the outcome of the case. As discussed, the record shows the Commission relied heavily on claimant's own descriptions of her work for the employer when reaching its decision and not the medical testimony. Additionally, the record supports the Commission's finding that Dr. Schiffman provided testimony on September 2014 that benefited the employer rather than claimant. Thus, assuming error occurred in the exclusion of Dr. Schiffman's September 2014 deposition testimony, claimant suffered no prejudice and the outcome of the case was not materially affected.

¶ 40 C. Causal Connection

¶ 41 Claimant next argues the Commission's finding of no causal connection between

her work for the employer and her "injury" was against the manifest weight of the evidence. In connection with this issue, her brief sets forth two paragraphs of "argument." In the first paragraph, claimant cites case law addressing the legal standards for reviewing decisions of the Commission on questions of law and fact. Her second paragraph then states as follows: "Further, both the [a]rbitrator and Commission improperly analyzed [claimant's] medical injuries as solely a carpal tunnel syndrome (CTS) case without regard to the distal radial ulnar joint (DRUJ) instability originally diagnosed by Dr. Kenneth Schiffman and connected to her work duties."

¶ 42 Again, claimant's brief is in violation of the Illinois Supreme Court Rules. As stated, an appellant's brief must have an argument section that contains "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." *Id*. "Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." *Id*. Additionally, "[a] court of review is entitled to have the issues clearly defined and to be cited pertinent authority." (Emphasis Omitted.) *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56, 4 N.E.3d 1. It "is not simply a depository into which a party may dump the burden of argument and research." *Id*.

¶ 43 In challenging the Commission's causal connection decision, claimant has presented only a single sentence of argument without setting forth sufficient reasoning for her claim, analysis of the underlying facts, or citation to relevant portions of the appellate record. As claimant has provided essentially no argument to support her claim of error, we find it has been forfeited and decline to address it.

¶ 44 D. Dr. Schiffman's Alleged Refusal of Medical Treatment

¶ 45 On appeal, claimant identifies a fourth issue presented for review as follows:

> "IV. [CLAIMANT] DID NOT WAIVE ARGUMENT WITH REGARD TO CLAIM THAT DR. KENNETH SCHIFFMAN REFUSED TO RENDER MEDICAL AND SURGICAL TREATMENT SUBSEQUENT TO THE EMERGENCE OF 'PANELS OF PHYSICIANS' AND 'PREFERRED PROVIDER PROGRAMS' POST-2011 ILLINOIS WORKERS' COMPENSATION ACT REFORM CITING 820 ILCS 305/8(A) AND 8.1(A)[.]"

However, both her initial brief and reply brief contain only a heading for this issue and no argument, citation to legal authority, or citation to relevant portions of the record. As a result, claimant's argument is forfeited for purposes of appeal and we do not address it. Ill. S. Ct. Rule 341(h)(7) (eff. Jan. 1, 2016).

¶ 46 E. Penalty and Fee Petition

¶ 47 Finally, on appeal claimant challenges the Commission's denial of her penalty and fee petition based on allegations of improper *ex parte* communications between Dr. Schiffman and the employer's legal counsel. As with all of the other issues she presents for review, claimant's argument as to this issue is deficient and in violation of the Illinois Supreme Court Rules. Specifically, claimant has failed to cite to any relevant legal authority to support her contention, does not cite to any relevant portion of the appellate record, and has presented no logical argument to support her underlying claim of improper *ex parte* communications between her treating physician and the employer's counsel. *Id*. Thus, we also find this issue forfeited.

¶ 48 III. CONCLUSION

¶ 49 For the reasons stated, we affirm the circuit court's judgment.

¶ 50 Affirmed.