2017 IL App (3d) 160372WC-U

Order filed August 2, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

LAWRENCE DIXON,	)	Appeal from the Circuit Court
	)	of the Tenth Judicial Circuit
	)	Peoria County, Illinois
Petitioner-Appellant,	)	
	)	
	)	
v.	)	Appeal No. 3-16-0372WC
	)	Circuit No. 15-MR-630
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*, (ADM,	)	Honorable
	)	Katherine Gorman,
Respondents-Appellees).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's finding that the claimant failed to prove that he sustained an accidental injury arising out of and in the course of his employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Lawrence Dixon, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)), seeking benefits for a work-related injury to his right great toe that he allegedly sustained on May 21, 2013, while he

was working for ADM (employer). Following a hearing, an arbitrator found that the claimant had sustained an accident that arose out of and in the course of his employment with the employer. The arbitrator awarded the claimant temporary total disability (TTD) benefits, a scheduled permanent partial disability (PPD) award under section 8(e) of the Act (820 ILCS 305/8(e) (West 2012) for the 100% loss of use of the claimant's right great toe, and medical expenses.

¶ 3 The employer sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). The Commission unanimously reversed the arbitrator's decision, finding that the claimant had failed to prove that he sustained accidental injuries arising out of and in the course of his employment with the employer. Accordingly, the Commission denied the claimant's claim for compensation and medical expenses.

¶ 4 The claimant then sought judicial review of the Commission's decision before the circuit court of Peoria County. The circuit court affirmed the Commission's decision.

¶ 5 This appeal followed.

¶ 6 BACKGROUND

¶ 7 The claimant began working for the employer as a general laborer on May 13, 2013. Before he was hired, the claimant was required to undergo two physical examinations, including a physical endurance test and a general physical. The claimant passed both examinations. The claimant disclosed to the employer that he had been diabetic since 1993, when he was 23 years old. He took insulin injections to treat his diabetes.

¶ 8 The claimant's job duties included cleaning the employer's feed house (which required a lot of sweeping), filling diesel trucks with feed, filling pumps, and driving a "Bobcat." These duties required the claimant to climb ladders, walk up and down stairs, and walk or stand on

concrete floors on a regular basis. The claimant was required to wear steel-toed boots while he worked.

¶ 9 While working on May 21, 2013, the claimant noticed that he had developed blisters on both of his great toes. Because he was a diabetic, the claimant was aware of the importance of caring for blisters and he knew that he would need to "call a doctor right away" if the blisters progressed. Initially, he tried to treat the blisters on his own by applying peroxide and triple antibiotic and putting Band-Aids on them. Despite these efforts, the blisters worsened.

¶ 10 The claimant sought medical treatment at the Heartland Clinics on May 30, 2013. He was diagnosed with a foot abscess and was instructed to keep his feet clean and dry. He was told to go to the emergency room if the blisters worsened. The claimant returned to work and his blisters grew worse throughout the following week.

¶ 11 On June 5, 2013, the claimant went to the emergency room at Methodist Hospital. At that time, the blister on his left great toe had started healing, but the blister on his right great toe had become infected and he could see the bone. The emergency room records indicate that the claimant's "chief complaint" was "cellulitis[1] to his big right toe." Upon examination, the claimant was found to have a decubitus ulcer approximately four centimeters in diameter over the great toe on his right foot. Inflammation and redness was noted to right big toe with delayed capillary refill. According to the hospital's records, the claimant stated that he had developed blisters ever since he "began wearing steel toe boots on May 13." Although the claimant stated that his current symptoms began "approx[imately] 14 days ago," he also stated that his right big toe had been numb for approximately one year. An x-ray revealed a soft tissue ulcer in the medial distal first digit with additional soft tissue swelling in that digit (presumably from

[1] "Cellulitis" is a potentially serious bacterial infection. It appears as a swollen, red area of skin that feels hot and tender.

cellulitis) and various degenerative changes, including advanced arthritis of the first metatarsophalangeal joint and milder arthritis in the claimant's second and third digits, midfoot, and forefoot. The claimant also had atherosclerotic disease, but there were no findings of osteomyelitis. The claimant was diagnosed with cellulitis of the right foot, decubitus ulcer, diabetes mellitus type 1, and septic shock. The claimant was admitted to the hospital for three days.

¶ 12 While he was hospitalized, the claimant was given intravenous antibiotics and was treated by Dr. Kevin Brattain, a podiatrist who specialized in wound care. On June 6, 2013, Dr. Brattain performed a debridement and other conservative treatments on the claimant's right great toe. That same day, the claimant was also examined by Dr. Asim Jaffer. Dr. Jaffer noted the following history:

> "The patient started a new job where he has to wear steel toed boots. His boots are small and he is on his feet for 12 hours for his shift. He noticed about a week ago that he started getting a blister at the base of the right great toe. The wound has not improved after outpatient antibiotic treatment and he says it appears to be getting worse although he has no feeling in that toe. The patient also noted a closed blister on the left great toe. The patient admits to both great toes being numb. The patient says that the pain in his right leg is approximately halfway up where he ties his boots tightly and stops above his boots. The pain is described as just a soreness that also started one week ago when he started wearing steel toed boots."

Dr. Jaffer also noted the claimant's past medical history of insulin-dependent diabetes mellitus, hypertension and hyperlipidemia. Dr. Jaffer's assessment was a diabetic grade-1 ulcer on the

claimant's right great toe. He prescribed antibiotics and recommended that the claimant consult with a wound care specialist.

¶ 13 By the next day, the ulcer on the claimant's right toe was looking better. Dr. Jaffer again noted in the hospital medical record that the claimant had recently started a new job that required him to wear steel-toed boots, that the claimant's "boots were small," and that the claimant felt like his toes were "hurting all the time." The claimant's right foot was placed in a postoperative shoe to alleviate the pressure on his wounds. He was discharged from the hospital on June 7, 2013, with instructions to continue taking intravenous antibiotics at home and to follow up with his a wound care specialist and with his primary care doctor. Thereafter, the claimant began treating with Dr. Brattain once per week on an outpatient basis.

¶ 14 Before returning the claimant to work, the employer required him to see Jeff Buckinham, a physician's assistant, for a fitness-for-duty evaluation. The claimant saw Buckinham on June 11, 2013. Buckinham noted that the claimant reported developing blisters on both of his great toes after wearing steel-toed boots at work. The claimant told Buckinham that he worked a shift on June 5, 2013, and noted his right sock was full of blood when he removed his boots. He reported that he was still experiencing pain and swelling his right foot and was unable to stand for long. Upon examining the claimant's right foot, Buckinham noted a three-to-four-centimeter full thickness ulcer to the plantar surface of the great toe with purulent drainage on the dressing. Buckinham's assessment was a full-thickness ulcer to right great toe; and "diabetes, poorly controlled." Buckinham opined that the claimant was unfit for work at that time and that he should not be bearing weight on the foot until it healed. Buckinham would recheck the claimant after his foot had healed and after he was released to return to work regular duty by his wound specialist.

¶ 15 On June 14, 2013, the claimant saw Dr. Brattain at his office. According to Dr. Brattain's record of that visit, the ulcers on the claimant's toes were getting smaller at that time. Dr. Brattain's medical record reflects that the history he obtained on June 14 suggested that an aggravating factor for the claimant's blisters was that the claimant was wearing "incorrect shoes."[2] Dr. Brattain applied Plasticor material into the claimant's surgical shoe at the pressure points "to further take pressure off the wounds." He prescribed medication and kept the claimant off work pending a follow-up examination scheduled for the following week.

¶ 16 The claimant returned to Dr. Brattain on June 21, 2013. At that time, Dr. Brattain noted that the claimant's right toe condition had worsened and was not going to heal with conservative treatment. The wound had deepened and had become more fibrous (but not necrotic), and it looked like there was some active infection at least peripherally in the wound. Dr. Brattain discussed with the claimant the possibility of performing some type of surgery.

¶ 17 The claimant saw Dr. Brattain again on June 27, 2013. At that time, Dr. Brattain found that the condition of the claimant's right toe had worsened. The wound had penetrated more deeply into the toe and was not healing. Only sixty percent of the wound showed some granular tissue.[3] There was some swelling and a high concern for underlying infection. Dr. Brattain noted that there was also some "tunneling" at that time, *i.e.* evidence of an infection progressing along a tissue plane. Dr. Brattain debrided the tissue that was not viable and ordered a right foot MRI to look for osteomyelitis and any other underlying abscess. He discussed with the claimant the possible need for surgery or amputation. Dr. Brattain kept the claimant off work.

[2] During his evidence deposition, Dr. Brattain clarified that this reference to an "incorrect" shoe meant the size or fit of the shoe, not the type of shoe the claimant was wearing.

[3] "Granular tissue" is new connective tissue and microscopic blood vessels that form on the surface of a wound during the healing process.

¶ 18 An MRI of the claimant's right foot was performed on July 2, 2013. The MRI revealed cellulitis and osteomyelitis of both bones in the great toe. On July 5, 2013, Dr. Brattain noted that the ulcer on the claimant's great right toe had worsened. He reviewed the MRI results with the claimant and told him the toe was not going to heal with debridement and conservative wound care because the tissue death had been too extensive. Dr. Brattain recommended an amputation of the right great toe. The claimant agreed. On July 11, 2013, Dr. Brattain performed the amputation.

¶ 19 The claimant returned to Dr. Brattain on July 16, 2013 for a postoperative examination. At that time, the claimant had no complaints and was walking with an operative shoe normally. During his evidence deposition, Dr. Brattain testified that he released the claimant to return to work on August 13, 2013. Dr. Brattain testified that he recommended that the claimant "adjust the shoeware" and change his work activity if possible by reducing the amount of time he spent on his feet. However, the record does not reflect that Dr. Brattain imposed any work restrictions.

¶ 20 At the employer's direction, the claimant returned to IWIRC on August 22, 2013, for another fitness-for-duty evaluation. Dr. Dru Hauter performed the evaluation. Dr. Hauter noted that the incision at the amputation site was well healed with no evidence of redness or any "open area." The claimant had a normal range of motion in his other toes and in his right ankle. His gait was normal and his balance was normal and stable. The claimant "denie[d] pain" and told Dr. Hauter that he had new inserts for his bots from his podiatrist. Dr. Hauter administered a functional test "to demonstrate the [claimant's] job requirements," which the claimant passed. Dr. Hauter released the claimant to return to work without restrictions.

¶ 21 The claimant testified that, before he returned to work, he bought a better and more expensive pair of steel-toed boots. He returned to work on August 26, 2013, wearing these new boots. However, the claimant testified that, once he returned to work, he started to develop a

blister on the toe next to the amputated great toe on his right foot. He followed up with Dr. Brattain for that blister. The employer subsequently terminated his employment.

¶ 22 The claimant testified that he stopped wearing steel-tied boots after he stopped working for the employer and now wears only tennis shoes. He stated that, since he stopped wearing steel-tied boots, the blisters on his feet had healed and he had not developed any additional blisters or sores. The claimant also testified that he never had any problems with his feet, including infections, sores, or serious blisters, prior to starting his employment with the employer.

¶ 23 During his evidence deposition, which was admitted into evidence during the arbitration proceeding, Dr. Brattain testified that he was a board certified podiatrist who specialized in wound care and operated wound clinics at Proctor Hospital and Methodist Hospital. Dr. Brattain stated that he first treated the claimant on June 6, 2013, when the claimant was a patient at Methodist Hospital. According to Dr. Brattain, the patient reported that he had recently started a new job that required him to wear steel-toed boots for the first time. One day after work, the claimant noticed that he had blisters with some bleeding in both shoes. The claimant later became concerned because the blisters did not heal. During his deposition, the claimant's counsel asked Dr. Brattain to assume that the claimant's job duties for ADM included "climbing ladders, loading/unloading grain, [and] sweeping and standing on his feet for long periods of time throughout the day." The claimant's counsel then asked Dr. Brattain if, to a reasonable degree of medical certainty, these job duties could have caused or aggravated the claimant's right toe condition that Dr. Brattain treated. Dr. Brattain responded:

> "Absolutely aggravated it, yes. I mean he had insensitivity. And anybody that has that with diabetes is going to have inability to tell when they've developed a small problem. So any time they're on their feet a lot doing aggressive activities

> that cause[] them to push, pull, or climb is going to possibly cause increased friction, irritation. That could definitely have aggravated it, yes."

Dr. Brattain further opined that the wounds on the claimant's right great toe caused the need for medical treatment (including, ultimately, the amputation of the claimant's right great toe), and that "the work [the claimant] did with his boots" "most likely" "at least aggravated" those wounds.

¶ 24 During cross-examination, Dr. Brattain described the wound on the claimant's right great toe as a "pressure wound" caused by the steel-toed boot. The employer's counsel asked Dr. Brattain if he would agree that the claimant sustained this pressure wound "because he was wearing a boot that was too small." Dr. Brattain responded, "[l]ikely, yes." Dr. Brattain stated that it was not his opinion that no one with diabetes should ever wear a steel-toed boot. The employer's counsel then asked Dr. Brattain whether he believed that the claimant would not have sustained the pressure wounds at issue if he had been wearing boots that were of the correct size. Dr. Brattain responded:

> "That would be an assumption. I see diabetics of all sizes, shapes, and types that wear steel-toed boots and don't develop ulcerations. It's a mix of their anatomy, their degree of loss of sensitivity and the size and shape of the shoe. So we could make an assumption that if he had a larger shoe, he may not have. But I've seen wounds develop in diabetics that had a normal size shoe, too."

In addition, Dr. Brattain agreed with the employer's counsel's statement that, if the claimant had seen a podiatrist six to seven days earlier than the date he first saw Dr.

Brattain, rather than "working and aggravating his toe condition," the claimant's chances for a full recovery would have been "greatly increased."[4]

¶ 25 During redirect examination, Dr. Brattain testified that, if he had seen the claimant earlier than June 6, 2013, he could not say that he could have saved the claimant's right great toe from amputation, but he thought he would have had "a good shot at it." Dr. Brattain opined that, for a diabetic with loss of sensation, it was not unusual for the claimant to seek treatment when he did. It appeared that the claimant was trying to follow as best he could what he was told to do as a diabetic. Dr. Brattain further opined that, although the size of the boots was "the cause of [the claimant'] sores," he agreed that the claimant's work duties could have been an aggravating factor in the development of those sores. Dr. Brattain explained that, "[i]n those shoes, an aggravating situation, they could make it worse the more activity you do." Specifically, Dr. Brattain agreed with the claimant's counsel's statement that "working by standing on his feet for long periods of time" and "climbing ladders and such" would aggravate the sore on the claimant's great right toe. He also agreed that someone with diabetic neuropathy (like the claimant) could work all day and not notice that the sore on his toe had worsened until he took his boot off after work and found his sock drenched in blood.

¶ 26 On re-cross-examination, Dr. Brattain agreed with the employer's counsel's suggestion that, that if a person is working and taking the boots off after work and wringing their socks out with blood on a daily basis, "that is a pretty good indication there is a problem with th[e] wound on that foot" and the person should "seek medical attention immediately." Dr. Brattain also agreed that "[i]f a person is experiencing some sort of wound on their foot and that person

[4] However, when the employer's counsel informed Dr. Brattain that the claimant had sought treatment at Heartland on May 30, 2013 (seven days before Dr. Brattain first treated him at the hospital) and that Heartland had recommended that the claimant see a podiatrist at that time, Dr. Brattain stated that "they should have picked up the phone and called."

continues to work and does not advise a supervisor or co-worker and [does not] seek immediate medical treatment," that "the work is not the aggravating factor, but the fact that the employee has failed to properly care for [himself]."

¶ 27 During further redirect examination, Dr. Brattain testified that, in the hypothetical situation presented by the employer's counsel, there would be "multiple causes" of the person's injury (including "the job duties" and "the lack of sensation"), not one single cause.

¶ 28 During further re-cross-examination, Dr. Brattain again acknowledged that the claimant's wound in this case was "caused by the boot that [the claimant] was wearing [being] too small." The employer's counsel asked Dr. Brattain if the claimant "would have sustained those injuries if he was walking down the street or of he was walking his children to school, regardless of whether he was walking performing work duties." Dr. Brattain replied, "[y]es, if the boot was too small, any activity."

¶ 29 On further redirect examination, the claimant's counsel asked Dr. Brattain, "[b]ut to the extent that the [claimant's] wound was, it took the job duties to aggravate it, correct?" Dr. Brattain responded: "That's an assumption. I mean, if we're going to say the boot is too small, the causative factor is there along with his insensitivity. Increased activity in that boot is aggravating it and making it worse, whatever that activity is." The claimant's counsel again asked Dr. Brattain whether the claimant's job duties "aggravate[d] his foot condition that necessitated the amputation in this situation?" Dr. Brattain replied,"[w]ell, I think I've said that *** the more activity you have, the more aggravation there is. And we've already stated that increased activity in that situation most likely led to severity." The following exchange between the claimant's counsel and Dr. Brattain then took place:

"Q: Where an individual was working at [the employer], climbing ladders, on his feet all day, loading and unloading grain, sweeping, those type of activities, is that in this case the aggravating factor that necessitated the amputation?"

A: I can say that that kind of activity for a diabetic with loss of sensitivity in a steel-toed boot puts him at higher risk for damage.

Q: A higher risk than walking a dog down the block?

A: Yes.

¶ 30 Dr. Dennis Vaughn, a board certified podiatrist who served as the employer's section 12 medical examiner, also testified by way of evidence deposition. Dr. Vaughn had examined the claimant at the employer's request on September 19, 2013. Upon examination, Dr. Vaughn noted an open, ulcerous lesion on the second toe of the claimant's right foot. The adjoining amputation site had healed unremarkably. According to Dr. Vaughn's examination report, the claimant was to follow up with his podiatrist for continued treatment of the second digit on his right foot and was to be measured for proper shoe gear.

¶ 31 After reviewing the claimant's medical records, Dr. Vaughn opined that the ulceration to the claimant's right great toe was a result of the claimant purchasing ill-fitting boots. Dr. Vaughn further opined that claimant lost his right great toe because he failed to seek medical attention immediately. Dr. Vaughn noted that the claimant had been undergoing diabetic counseling for years, and he referred to notes in the claimant's medical records that clearly advised him to seek medical attention immediately if he experienced any wound on his foot.

¶ 32 During his subsequent evidence deposition, Dr. Vaughn testified that the histories in the claimant's medical records indicated that the claimant was wearing an ill-fitting boot at work. Dr. Vaughn's assistant measured the claimant's feet during the section 12 examination. The claimant was found to have a foot length of 12 and one-half inches bilaterally and an arch length

of 14.5 on the right. Dr. Vaughn stated that, if he were ordering diabetic shoes for the claimant, he would "have definitely recommended that he was * * * a size 13." Dr. Vaughn testified that, when he interviewed the claimant on September 19, 2013, the claimant told him that he was "in a size 13 boot now."

¶ 33 Dr. Vaughn opined the ulceration to the great toe on the claimant's right foot "was a result of the [claimant] purchasing or wearing ill-fitting boots," which "resulted in increased and continual pressure to the wound and a repetitive trauma to the wound, resulting in the loss of his great toe." Later in his deposition, Dr. Vaughn opined that the injury the claimant sustained to his right great toe was due to the fact that he was wearing ill-fitting boots and then failed to have the blisters treated in a timely manner. Dr. Vaughn further opined that the open wound he observed on the second digit of the claimant's right foot was not in any way related to the claimant's employment with the employer. He noted that he had diabetic patients who wore steel-toed boots and that it was "perfectly appropriate" for diabetics to wear such boots so long as they fit properly.

¶ 34 On cross-examination, Dr. Vaughn testified that the claimant did not bring his steel-toed boots with him to the evaluation, so Dr. Vaughn did not inspect them. Dr. Vaughn based his opinion that the claimant's boots were ill-fitting on the claimant's statement that he was wearing a size 12 and a half shoe and the medical records which indicated that he had a smaller boot size. Dr. Vaughn had no firsthand knowledge of the boot and how it fit the claimant's foot. It was Dr. Vaughn's understanding that the claimant got a blister around May 21, 2013, but did not receive treatment for the blister until June 5 or June 6, 2013. Dr. Vaughn acknowledged that his opinions were "based on that timeline." He also acknowledged that, if the claimant had a normal blood sugar range at that time, the timing of the need for immediate medical attention might have been longer. Dr. Vaughn admitted that he did not know what the claimant's A1C or his blood

sugar levels were at the time he developed the blisters. He agreed that the steel-toed boots were an aggravating factor and that the claimant's continued wearing of the boots made the sore on his great toe worse.

¶ 35 On redirect examination, Dr. Vaughn testified that some of the claimant's medical records indicated that the claimant's boots were too small. Dr. Vaughn opined that merely walking in those ill-fitting boots caused constant pressure on the claimant's toes, which led to the development and deepening of the blister and the eventual loss of the claimant's right great toe. According to Dr. Vaughn, as to the causation of the claimant's right great toe injury, there is no difference between walking in ill-fitting boots and engaging in regular labor activities; the pressure is the same in each activity, and the repetitive pressure on the toe area is what caused the injury. Dr. Vaughn acknowledged that diabetes can play a role in this type of injury. However, he opined that the constant pressure that the claimant had in that area is what continually broke down that capillary bed, and that is why diabetics lose toes.

¶ 36 On re-cross examination, Dr. Vaughn testified that he did not know how often the claimant climbed stairs at work, how often he carried bags of grain or how much he walked at work. All he knew was that the claimant worked an eight-hour shift. Dr. Vaughn also admitted that he did not know the medical status of the claimant's diabetes at the time of the injury, which could determine how quickly his injury could develop and how severe it could become.

¶ 37 The arbitrator found that the claimant had sustained an accident that arose out of and in the course of his employment on May 21, 2013, and that the claimant's right great toe amputation was causally related to that accident. In support of these findings, the arbitrator noted that the employer required the claimant to wear steel-toed boots and that Drs. Brattain and Vaughn both opined that the claimant's wearing of steel-toed boots was a causative factor in his injury. Although the arbitrator found that the claimant's diabetes was also a contributing factor,

he noted that the employer "takes the employee as it finds him." Moreover, the arbitrator observed that the claimant's unrebutted testimony and the medical records demonstrated that the claimant did not have any foot ulcer or sore issues prior to the accident or after he was terminated by the employer. The arbitrator further noted that, after the claimant returned to work following his amputation surgery, he "changed the size of his boots and still developed sores on his toes." Accordingly, the arbitrator found that the fact that the claimant's boots were too small "was not the only reason [the claimant] developed sores on his feet." The arbitrator concluded that "wearing the steel toed boots and performing his job duties caused the injuries to [the claimant's] right great toe which was ultimately amputated."

¶ 38 The employer sought review of the arbitrator's decision before the Commission. The Commission unanimously reversed the arbitrator's decision, finding that the claimant had failed to prove that he sustained accidental injuries arising out of and in the course of his employment. The Commission noted that the claimant has a preexisting condition of diabetes and acknowledged that the claimant was required to wear steel-toed boots "as part of [the employer's] dress code." However, the Commission stated that the claimant had "[a]pparently" *** purchased steel-toed boots that were too small." The Commission found that, "[a]s a result of wearing steel-toed boots that were too small, [the claimant] developed blisters on both great toes," and the right great toe blister became infected and the toe was eventually amputated. The Commission stressed that "[the claimant] bought the boots that were too small and he then wore them, which caused his blisters." According to the Commission, it was not the fact that the boots were steel-toed that caused the claimant's injury; rather, it was that the boots were too small. The Commission noted that Drs. Brattain and Vaughn agreed that a diabetic person may wear steel-toed boots as long as they are properly fitted. The Commission found that that "buying the right-sized boots was certainly within [the claimant's] control." In sum, the Commission

concluded that the claimant had not proven a work-related accident because he "was simply wearing ill-fitting steel-toed boots which he had purchased."

¶ 39 The claimant sought judicial review of the Commission's decision before the circuit court of Peoria County. The circuit court affirmed the Commission's decision.

¶ 40 This appeal followed.

¶ 41 ANALYSIS

¶ 42 As an initial matter, we note that the table of contents to the record on appeal in the claimant's appendix is deficient. Illinois Supreme Court Rule 342(a) requires an appellant's brief to include "as an appendix, * * * a complete table of contents, with page references, of the record on appeal." Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). "The table shall state: (1) the nature of each document, order, or exhibit, *e.g.*, complaint, judgment, notice of appeal, will, trust deed, contract, and the like; (2) in the case of pleadings, motions, notices of appeal, orders, and judgments, the date of filing or entry; and (3) the names of all witnesses and the pages on which their direct examination, cross-examination, and redirect examination begin." *Id.* The claimant's skeletal table of contents does not comply with Rule 342(a). It does not state the names of the witnesses and the pages on which their direct examination, cross-examination, and redirect examination begin. Moreover, for the final six volumes of the record on appeal (Volumes II-VII), the claimant's table of contents merely provides the page number range contained in each volume without identifying and paginating any specific documents or testimony contained within that volume. (For example, the table's reference for Volume II merely states "C-00001--C-00250"). That is grossly inadequate. The problem is compounded by some improper record citations in the claimant's brief on appeal. For example, when citing to a medical record, the claimant often cites to the entirety of the medical records produced for that particular doctor or entity, (*e.g.*.

Methodist Hospital's medical records, contained at C-56-C-220) rather than to the particular medical record at issue. Taken together, these deficiencies have made it difficult for the court to review some of the record materials cited the claimant.

¶ 43 When a brief fails to follow the requirements set forth in Supreme Court Rule 342(a), we may dismiss the appeal. *Fender v. Town of Cicero*, 347 Ill. App. 3d 46, 51 (2004). Because the argument section of the claimant's brief provides references to the volume and (for the most part) the pages of the record on appeal, as required by Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), we choose to exercise our discretion and address the issues on their merit. However, we caution the claimant's counsel to comply fully with all applicable supreme court rules in future cases.

¶ 44 We now turn to the merits of the claimant's appeal. The claimant argues that the Commission's finding that he failed to prove that he sustained an accident that arose out of and in the course of his employment with the employer was against the manifest weight of the evidence. The claimant maintains that he proved a repetitive trauma injury, *i.e.*, a blister on his great right toe which resulted in the amputation of that toe, with a manifestation date of May 21, 2013.[5]

¶ 45 To obtain compensation under the Act, the claimant has the burden of establishing, by a preponderance of the evidence, that his injury arose out of and in the course of his employment. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980); *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 35. An injury "arises out of" one's employment if "its origin is in some risk connected with or incident to the employment, so that there is a causal connection between the employment and the accidental injury." *Saunders v.*

[5] Although the employer disputes accident and causation in this case, it does not argue that the claimant's job duties were insufficiently repetitive to cause a repetitive trauma injury as a matter of law.

Industrial Comm'n, 189 Ill. 2d 623, 627 (2000); see also *Kertis v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120252WC, ¶ 14. A risk is "incidental to the employment" when it "belongs to or is connected with what [the] employee has to do in fulfilling his duties." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989); *Kertis*, 2013 IL App (2d) 120252WC, ¶ 14.[6]

¶ 46 Whether an injury arose out of and in the course of one's employment is a question of fact. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, determine the weight that their testimony is to be given, and resolve conflicts in the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206 (2003); *O'Dette*, 79 Ill. 2d at 253. The Commission's factual findings will not be disturbed on review unless they are against the manifest weight of the evidence. *Shafer*, 2011 IL App (4th) 100505WC at ¶¶ 35–36. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be "clearly apparent." *Id.* at ¶ 35; see also *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). The appropriate test is whether the record contains sufficient evidence to support the Commission's decision, not whether this court might have reached the same conclusion. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011).

¶ 47 Applying these standards, we cannot say that the Commission's finding that the claimant failed to prove that he sustained an accidental injury arising out of and in the course of his

[6] "In the course of the employment" refers to the time, place, and circumstances under which the claimant is injured. *Kertis*, 2013 IL App (2d) 120252WC, ¶ 15. Injuries sustained at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work, or within a reasonable time before and after work, are generally deemed to have been received in the course of the employment. *Caterpillar Tractor Co.*, 129 Ill. 2d at 57. The employer does not appear to dispute that the claimant's injury developed in the course of his employment.

employment is against the manifest weight of the evidence. There was evidence in the medical records suggesting that the steel-toed boots the claimant was wearing at work at the time of his injuries were too small.[7] Although the claimant was required to wear steel-toed boots at work, he presented no evidence suggesting that wearing steel-toed boots *per se* increased the risk of developing sores or blisters on one's toes, even for a diabetic. To the contrary, both of the testifying experts in this case (Drs. Brattain and Vaughn) testified that they had diabetic patients who wore steel-toed boots at work, and that it was appropriate for diabetics to wear such boots so long as they were properly fitted. Both experts opined that the claimant initially developed a blister on his right great toe *because his boots were too small* and because he had insensitivity in his feet due to his diabetic neuropathy. Neither expert testified that the wearing of steel-toed boots *per se* caused the claimant's blister to form.

¶ 48 Moreover, although Dr. Brattain testified that the claimant's work duties aggravated the blister once it developed, his testimony on this point was somewhat equivocal and was contradicted by Dr. Vaughn's testimony. Dr. Brattain repeatedly opined that the claimant developed the initial pressure wound or blister that ultimately led to the amputation of his great right toe because his boots were too small. At times during his testimony, Dr. Brattain also opined that the claimant's job duties aggravated the blister. For example, at one point he stated that, "for a diabetic with loss of sensitivity in a steel-toed boot," the particular work duties the claimant performed (*e.g.*, climbing ladders, being on his feet all day, loading and unloading grain, and sweeping) put the claimant at "a higher risk for damage" (*i.e.*, a greater risk than the claimant would face by "walking a dog down the block").

[7] For example, Dr. Jaffer's June 6 and June 7, 2013, treatment records note that the claimant boots were too small, and Dr. Brattain's June 14, 2013, record reflects that the claimant was wearing "incorrect shoes" which, as Dr. Brattain later testified, meant that they were the wrong size.

¶ 49 However, at other points in his testimony, Dr. Brattain appeared to suggest that increased activity of any kind would have aggravated the claimant's blister *because his boots were too small*. For example, immediately after acknowledging that the size of the claimant's boots was the cause of his sores, Dr. Brattain acknowledged that the claimant's work duties could have contributed to the progression of the sores because "*[i]n those shoes,* an aggravating situation, they could make it worse the more activity you do." (Emphasis added.) Later in his testimony, Dr. Brattain opined that, if a steel-toed boot is too small, "[i]Increased activity *in that boot* is aggravating [the blister] and making it worse, whatever that activity is." (Emphasis added.) During re-cross-examination, Dr. Brattain acknowledged that, if the claimant's boot was too small, "any activity" would have caused the claimant's injuries, including walking down the street or walking his children to school. Importantly, Dr. Brattain never unequivocally testified that the claimant's job duties would have increased his risk for developing a blister even if the claimant had been wearing properly-fitting steel-toed boots. For the most part, his testimony appears to indicate that the claimant aggravated his blister by working *while wearing an ill-fitting boot*, not simply by working. Thus, when Dr. Brattain's testimony is read as a whole, it arguably does not suggest that the claimant's job duties causally contributed to the blister that led to the amputation of his great right toe. Rather, it arguably reinforces the conclusion that the improper size of the boot caused the injury.

¶ 50 In any event, even if Dr. Brattain did opine that the claimant's job duties aggravated his blister and causally contributed to the amputation, that opinion was contradicted by Dr. Vaughn's testimony. Dr. Vaughn opined that the claimant's right toe injury and amputation was caused by the claimant's wearing boots that were too small and by his failure to seek medical attention promptly after the blister formed. He noted that that merely walking in those ill-fitting boots caused constant pressure on the claimant's toes which led to the development and

deepening of the blister and the eventual loss of the claimant's right great toe. According to Dr. Vaughn, as to the causation of the claimant's right great toe injury, there is no difference between walking in ill-fitting boots and engaging in regular labor activities; the pressure is the same in each activity, and the repetitive pressure on the toe area is what caused the injury. Although Dr. Vaughn acknowledged that diabetes can play a role in this type of injury, he opined that the constant pressure that the claimant had in that area is what continually broke down the capillary bed, and that is why diabetics lose toes.

¶ 51 It is the Commission's province to weigh witness testimony and to resolve conflicts in the evidence, particularly conflicts in the medial opinion testimony. *Sisbro*, 207 Ill. 2d at 206; *Hosteny*, 397 Ill. App. 3d at 674. To the extent that there is such a conflict in this case, we cannot say that the Commission's decision to credit Dr. Vaughn's testimony over Dr. Brattain's testimony on this issue was contrary to the manifest weight of the evidence.

¶ 52 Thus, there is sufficient evidence supporting the Commission's finding that the claimant failed to prove an accidental injury that arose out of his employment. An opposite conclusion is not clearly apparent. Accordingly, we will not disturb the Commission's finding.

¶ 53 We acknowledge that there is some evidence in the record that arguably suggests that the claimant's job duties, separate and apart from the ill-fitting boot, played at least a contributing causal role in the development or aggravation of his injuries. It is undisputed that the employer required the claimant to wear steel-toed boots on the job. The claimant had no problems with sores, infections, or serious blisters on his feet either before he began working for the employer or after he was terminated. Moreover, when the claimant returned to work after his toe was amputated, he bought a new pair of boots and yet he still developed a blister, this time on his second digit. During the section 12 medical examination, the claimant told Dr. Vaughn that his

new boots were size 13. After measuring the claimant's feet, Dr. Vaughn opined that that size 13 was the claimant's correct shoe size.

¶ 54 Nevertheless, there is sufficient evidence in the record to support the Commission's decision. As noted above, Dr. Brattain did not clearly and unequivocally opine that the claimant's injury would have been caused or aggravated by his work duties if he had been wearing a properly-sized boot. Moreover, Dr. Vaughn opined that, because his boots were too small, the claimant would have sustained the same injuries during ordinary activities of daily life like walking. Both experts opined that it is appropriate for diabetics to wear steel-toed boots so long as they are properly fitted. Moreover, although the claimant developed another blister after he returned to work in new boots, neither expert actually examined the claimant's boots and determined that they fit properly. (Dr. Vaughn simply relied upon the claimant's statement that they were size 13). Regardless, what matters is what caused the first blister and the subsequent amputation. As noted, Dr. Brattain's opinion on that issue is somewhat equivocal, and, to extent that it conflicts with Dr. Vaughn's opinion, it was within the Commission's province to credit Dr. Vaughn's opinion.

¶ 55 CONCLUSION

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

¶ 57 Affirmed.