

No. 5-16-0536WC

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

RICK BAILIE,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Madison County.
	)	
v.	)	No. 15-MR-266
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION <i>et al.</i> ,	)	Honorable
	)	John B. Barberis, Jr.,
(GRP Mechanical Company, Appellee).	)	Judge, Presiding.

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

**ORDER**

¶ 1 *Held:* The Illinois Workers' Compensation Commission's (Commission) determination that the claimant failed to prove that his current condition of ill-being is causally related to his work accident is neither contrary to law nor against the manifest weight of the evidence. The Commission's denial of temporary total disability benefits and medical expenses relating to his current condition of ill-being is not against the manifest weight of the evidence. We reversed that portion of the circuit court's order which confirmed the Commission's award of a \$2,678.88 credit in favor of GRP Mechanical (GRP) and affirmed the judgment in all other respects. We reversed the Commission's award of a \$2,678.88 credit in favor of GRP.

¶ 2 The claimant, Rick Bailie, appeals an order of the circuit court of Madison County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) which denied him benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)), for injuries he allegedly sustained on January 8, 2014, while in the employ of GRP Mechanical Company (GRP) and granted GRP a credit of \$2,678.88 "for other benefits." For the reasons which follow, we: (1) reverse that portion of the circuit court's judgment which confirmed the credit of \$2,678.88 which the Commission granted to GRP and affirm the judgment in all other respects; and (2) reverse the Commission award of a \$2,678.88 credit to GRP "for other benefits."

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing conducted on May 30, 2014.

¶ 4 The claimant underwent medical treatment prior to the events giving rise to the instant claim that is relevant to the issues raised in this appeal. The claimant injured his right knee in 2012 and an MRI taken on March 22, 2012, revealed that he had a torn medial and lateral menisci. The claimant was treated for the condition by Dr. Bruce Vest through May 11, 2012.

¶ 5 On September 13, 2013, the claimant was hired as a laborer by GRP and worked in that capacity until he was laid off on November 27, 2013.

¶ 6 Prior to January 3, 2014, the claimant noticed a boil on the posterior side of his left thigh, just below his left buttocks. He showed the boil to Steve Huch, an employee of GRP, on January 3, 2014. According to Huch's written statement, the claimant had "a two inch pus filled sore on his thigh," which "looked like some sort of staff [*sic*] infection \*\*\*." The claimant told Huch that he was going to see his doctor. The records of St. Anthony's Physician Group reflect that

the claimant was seen by Dr. Prlyra Kumaraguru on January 3, 2014; although the claimant testified that he was seen by Dr. Klein. On examination, Dr. Kumaraguru noted a blemish on the back of the claimant's left leg and noted left leg folliculitis with central scabbing and cellulitis for about one centimeter. The claimant was prescribed antibiotics for the condition and advised to follow up with Dr. Klein. There is no record of any additional medical treatment for the boil. The claimant testified that it "dried up" after a "couple days," and he did not experience any problems with the boil thereafter.

¶ 7 Sometime prior to January 7, 2014, the claimant bumped his right knee on the trailer hitch of his pick-up truck. According to the claimant, the event caused no real change in his knee condition, and he sought no medical treatment as a result.

¶ 8 On January 7, 2014, the claimant was called back to work by GRP and assigned to work on a project in the oil fields near Skiatook, Oklahoma. While working for GRP on January 8, 2014, the claimant was in a trench digging underneath a 36-inch pipe. He testified that a large piece of sandstone fell into the trench, striking his right shin, five or six inches below the knee. The claimant stated that, although the stone did not tear his pants, it broke the skin on his shin. When he rolled up his pant leg, he saw that his shin was bleeding. According to the claimant, he thought that the injury was just a scrape, so he rolled down his pant leg and continued working. At the time of the incident, he was working with Huch. The claimant admitted that he did not notify his supervisor of the accident.

¶ 9 Ty Reed, a mechanic working for GRP on the Skiatook project, shared a cabin with the claimant. Reed testified that, following work on January 9, 2014, he and the claimant returned to the cabin to shower. Reed stated that, when the claimant exited the bathroom, he was wearing shorts. According to Reed, he observed a "fresh" scratch or scrape on the claimant's right shin,

five or six inches below the kneecap. When he asked the claimant what had happened, he stated that a rock fell and struck his leg while he was working.

¶ 10 According to the claimant, he continued working on the days which followed, but began to experience pain, swelling and stiffness in his right leg which got progressively worse. John Schultz, GRP's project manager and safety supervisor, testified that the claimant came to him on January 14, 2014, and stated that he was having trouble with his right knee and asked if he knew of a local doctor who could give him a cortisone injection. According to Schultz, the claimant told him that he did not injure his knee while working. After his conversation with Schultz, the claimant continued working.

¶ 11 Schultz testified that the claimant called him at 4 a.m. on January 21, 2014, complaining of pain, swelling and stiffness in his right leg and stating that he needed to see a doctor. Schultz arranged for the claimant to be seen at One Source Occupational Medicine (One Source) in Tulsa, Oklahoma.

¶ 12 On January 21, 2014, the claimant presented at One Source, complaining of right knee pain. The claimant testified that he told the physician's assistant about the injury to his right knee in 2012 and that he had bumped his knee on the trailer hitch of his truck two weeks earlier. One Source's records of that visit do not reflect that the claimant related having scraped his shin while working. The records state that, on examination, swelling was noted but no erythema or redness was found in the claimant's leg. However, the claimant testified that he was not asked to remove his pants, and his shin was never examined. The claimant was diagnosed as suffering from degenerative changes in the right knee. He was prescribed potassium and hot/cold packs and advised to follow up with his personal physician.

¶ 13 The claimant testified that he was unable to continue working and called his wife, asking her to come to Oklahoma and drive him back to Illinois. After arriving home in Wood River, Illinois, the claimant was seen by Dr. Vest on January 23, 2014. Dr. Vest's record of that visit does not reflect that the claimant reported having injured his right shin while working. On examination, Dr. Vest noted moderate joint line tenderness and swelling of the claimant's right knee, and he aspirated fluid from the knee. As of that visit, Dr. Vest diagnosed right knee pain, right knee effusion, and a history of medial and lateral menisci tears. Dr. Vest gave the claimant an injection of DepoMedrol in his right knee and sent the aspirated fluid to a laboratory for analysis.

¶ 14 The claimant was next seen by Dr. Vest on January 27, 2014, at which time Dr. Vest informed him that the fluid which he sent to the laboratory tested positive for methicillin-resistant staph aureus (MRSA). Dr. Vest's records of that visit state that the claimant gave a history of sustaining an abrasion to his right shin while working on January 8, 2014, and that his leg began to swell on January 15 or 16. According to Dr. Vest's testimony, this was the first time that the claimant reported a history of a work accident or a shin abrasion. On examination, Dr. Vest noted diffuse pain around the claimant's right knee, radiating into the groin. Dr. Vest also noted a two-centimeter by five-millimeter abrasion on the claimant's right upper shin.

¶ 15 The claimant testified that, after leaving his appointment with Dr. Vest, he called Schultz and reported his January 8 accident. Schultz testified that the claimant called him and stated that he had MRSA caused by his work accident.

¶ 16 On the instruction of Dr. Vest, the claimant reported to St. Anthony's Health Center on January 27, 2014. On that same day, Dr. Vest operated on the claimant's right knee, performing an arthroscopy with lavage and drainage, partial medial and lateral meniscectomies, and a partial

synovectomy and chondroplasty. The operative notes reflect a diagnosis of septic arthritis, chronic tears of the medial and lateral menisci, degenerative arthritis, synovitis, and chondromalacia. Dr. Vest testified that, with the exception of the partial meniscectomies, the surgical procedures were related to the MRSA.

¶ 17 Following the surgery, the claimant remained hospitalized under the care of Dr. Vest. An MRI of the claimant's right leg was taken on February 3, 2014. The scan revealed osteomyelitis of the proximal tibia.

¶ 18 On February 4, 2014, the claimant underwent a second surgery on his right leg which was performed by Dr. Vest. Dr. Vest operated on the claimant's proximal tibia, facilitating drainage of a deep abscess. He removed part of the tibia and opened the bone cortex, allowing him to scrape the interior to remove the osteomyelitis which had penetrated deep into the bone. Dr. Vest testified that the surgical site was close to the site of the abrasion on the claimant's shin.

¶ 19 The claimant remained hospitalized until February 8, 2014, when he was discharged. Dr. Vest ordered a PICC line for the administration of antibiotics intravenously to treat the MRSA and osteomyelitis. The claimant remained under the care of Dr. Vest postoperatively. On April 21, 2014, the claimant was last seen by Dr. Vest prior to the arbitration hearing. As of that visit, the claimant had completed his course of antibiotics, and Dr. Vest ordered the PICC line discontinued. On examination, Dr. Vest noted good range of motion in the claimant's right leg without effusion, although the knee remained stiff with some swelling and warmth. Dr. Vest recorded that the claimant experienced pain with side-to-side motion for which he prescribed pain medication.

¶ 20 When deposed, Dr. Vest testified that "the abrasion on the [claimant's] right leg may have caused or resulted in the staph infection" and that the septic arthritis is secondary to the

infection. Dr. Vest found the MRSA to be consistent with the claimant's right shin abrasion. According to Dr. Vest, there was no other obvious source of the infection based upon his examination of the claimant and the history he had been given. He stated that he had to rely upon what the claimant told him. Dr. Vest testified that MRSA is present in the environment and on people's skin. It can enter the body through a traumatic wound such as a break in the skin or through an orifice such as the mouth. He stated that, once the bacteria enters the blood stream, it can spread anywhere in the body or penetrate the tissue adjacent to the site of an infection. If the bacteria enters the body through the mouth, it is possible that it could travel to the leg. Dr. Vest testified that MRSA can manifest itself as cellulitis where the skin becomes red and warm and can cause boils and sores. According to Dr. Vest, the symptoms of MRSA, pain, swelling and sometimes fever, would begin to manifest within a few days to a few weeks.

¶ 21 GRP did not offer any medical evidence as to the cause of the MRSA.

¶ 22 The claimant testified that his right knee is stiff and sore, and his right leg is weak. Dr. Vest found the claimant to be disabled and excused him from work for the period of January 23, 2014, through the date of the arbitration hearing.

¶ 23 Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West Supp. 2013)), the arbitrator found that the claimant suffered an accident on January 8, 2014, which arose out of and in the course of his employment with GRP. According to the arbitrator, the claimant's testimony that he was struck by a piece of sandstone while working which caused an abrasion on his shin was corroborated by Reed and Dr. Vest. However, the arbitrator found that the claimant failed to prove that his current condition of ill-being was causally related to his work accident of January 8, 2014, and as a consequence, denied the claimant any benefits under the Act. The arbitrator noted that Dr. Vest based his testimony that MRSA is consistent with the

abrasion he observed on the claimant's right shin "on [the claimant's] history" and based on that history, "there [was] no other obvious source for the infection." However, Dr. Vest had no information about the claimant having struck his knee on the trailer hitch of his truck, the fact that the claimant had a boil on his left leg, or that he was diagnosed with cellulitis and prescribed antibiotics. According to the arbitrator, "the evidence presents multiple other possible sources [of the MRSA] not included in this history." He found, therefore, that the basis of Dr. Vest's "causation opinion is an incomplete and inaccurate statement of the evidence presented concerning the potential source of the infection." In addition to denying the claimant any benefits under the Act, the arbitrator granted GRP a credit of \$2,678.88 "for other benefits."

¶ 24 The claimant filed for a review of the arbitrator's decision before the Commission. In a decision entered on October 5, 2015, with one commissioner dissenting, the Commission affirmed and adopted the arbitrator's decision.

¶ 25 The claimant sought a judicial review of the Commission's decision in the circuit court of Madison County. On December 1, 2016, the circuit court entered an order finding that "[t]he record lacks sufficient evidence for the Court to say the Commission's determination was made against the manifest weight of the evidence when finding the \*\*\* [claimant's] MRSA infection was not causally related to his January 8, 2014 work-related accident." However, rather than confirming the Commission's decision, the circuit court's order states: "the Court DENIES \*\*\* [the claimant's] claims for [temporary total disability (TTD)] benefits, medical expenses, and prospective medical care in relation to this claim." This appeal followed.

¶ 26 Before addressing the claimant's arguments, we will first comment on our jurisdiction to entertain this appeal. The jurisdictional statement in the claimant's brief states that he is appealing from the circuit court's judgment pursuant to Illinois Supreme Court Rules 301 (eff.



Feb. 1, 1994) and 303 (eff. Jan. 1, 2015). In the procedural history contained within his brief, the claimant states that “the Circuit Court affirmed the Commission’s Decision.” For its part, GRP has not challenged this court’s jurisdiction. Nevertheless, we are obliged to examine our jurisdiction and dismiss the appeal if that jurisdiction is lacking. *In re Marriage of Gaudio*, 368 Ill. App. 3d 153, 156 (2006).

¶ 27 Although, in its order, the circuit court found that the Commission’s decision is not against the manifest weight of the evidence, the order does not state that the Commission’s decision is confirmed. We believe that, by finding that the Commission’s decision is not against the manifest weight of the evidence, the circuit court implicitly confirmed the decision. We find, therefore, that the circuit court’s order is a final order, and we have jurisdiction in this matter. However, the circuit court should be mindful that its function is not to grant or deny benefits under the Act; that is the Commission’s function. When, as in this case, the circuit court finds that a decision of the Commission is not against the manifest weight of the evidence or otherwise contrary to law, it should enter an order confirming the decision.

¶ 28 Turning next to the claimant’s assignments of error, he argues both that the Commission applied an incorrect standard in finding that he failed to prove that his current condition of ill-being is causally related to his work accident of January 8, 2014, and that the Commission’s finding in that regard is against the manifest weight of the evidence. The issues are interrelated, and as such, we will address them together.

¶ 29 The claimant in a workers’ compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O’Dette v. Industrial Comm’n*, 79 Ill. 2d 249, 253 (1980). As part of his burden, the claimant must establish that his condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm’n*,

207 Ill. 2d 193, 203 (2003). Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and determine the weight to be afforded to the witnesses' testimony. *Kirkwood v. Industrial Comm'n*, 84 Ill. 2d 14, 20 (1981). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982). Although we are reluctant to set aside the Commission's decision on a factual issue, we will not hesitate to do so when the clearly evident, plain and indisputable weight of the evidence compels an opposite conclusion. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993).

¶ 30 Contrary to the claimant's assertion, the Commission did not require him to "disprove every other cause of his condition of ill-being" or suggest "other possible causes" for the MRSA. Nor did the Commission find, as the circuit court stated it did, that the claimant's MRSA infection was not causally related to his work accident of January 8, 2014. What the Commission held was that the claimant "failed to prove by a preponderance of the credible evidence that the accidental injury sustained on January 8, 2014, caused the MRSA

infection \*\*\*.” The denial of benefits was based on a failure of proof, not on a finding of an alternate cause for the claimant’s condition of ill-being.

¶ 31 It is true, as the claimant argues, that Dr. Vest’s causation opinion is the sole medical opinion in the record. However, the Commission is not, as a matter of law, bound by unrebutted medical testimony. *Kraft General Foods v. Industrial Comm’n*, 287 Ill. App. 3d 526, 532 (1997). Although a sole medical opinion on causation may not be arbitrarily rejected, the Commission is not bound by the opinion merely because it is the sole medical testimony on the issue. *Fickas v. Industrial Comm’n*, 308 Ill. App. 3d 1037, 1042 (1999); *Kraft*, 287 Ill. App. 3d at 532.

¶ 32 The arbitrator’s decision which the Commission adopted implicitly found that Dr. Vest’s causation opinion was not credible. The decision specifically notes the claimant’s past medical history of which Dr. Vest was not aware when formulating his causation opinion and Dr. Vest’s own testimony that MRSA can enter the body through a break in the skin and can manifest as cellulitis. The evidence established that the claimant had a two-inch pus-filled sore on his left thigh on January 3, 2014, prior to his work-related accident of January 8, 2014, and was diagnosed with left leg folliculitis and surrounding cellulitis. Dr. Vest’s records are void of any reference to that condition in the history provided to him by the claimant and do not reflect that Dr. Vest was in possession of the records relating to the claimant’s medical care on January 3, 2014.

¶ 33 As the arbitrator correctly observed, “[a]n expert’s opinion is only as valid as the bases and reasons for the opinion.” *Gyllin v. College Craft Enterprises*, 260 Ill. App. 3d 707, 715 (1994). The Commission obviously discounted Dr. Vest’s testimony that, other than the claimant’s shin abrasion sustained while working on January 8, 2014, there was no other obvious

source of his infection. As noted earlier, the Commission found that Dr. Vest's causation opinion was based on an incomplete and inaccurate history of the claimant's medical condition and treatment prior to his work-related accident. Based upon the record before us, we cannot say that the Commission's determination in this regard is against the manifest weight of the evidence. In summary, we find that the Commission did not apply an incorrect standard in concluding that the claimant failed to prove that his current condition of ill-being is causally related to his work accident of January 8, 2014, nor was its finding against the manifest weight of the evidence.

¶ 34 The claimant also argues that the Commission's denial of TTD benefits and medical expenses, past and future, related to the treatment of his condition of ill-being is against the manifest weight of the evidence. However, his arguments in this regard are based upon his contention that his condition of ill-being was causally connected to his work accident. Having rejected the claimant's arguments as to causal connection, it follows that, for the same reasons, we reject his arguments addressed to the denial of TTD benefits and medical expenses.

¶ 35 For his final assignment of error, the claimant argues that the \$2,678.88 credit awarded to GRP by the Commission is contrary to law. GRP asserts that it claimed a credit for \$2,678.88 "in other benefits" on the Request for Hearing form submitted by the parties, that the claimant made no objection, and that the form was received in evidence at the arbitration hearing. It concludes, therefore, that the credit was "based on a stipulation made by the parties," citing section 7030.40 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (50 Ill. Adm. Code Section 7030.40 (2006)). However, neither GRP nor the arbitrator's decision, which the Commission adopted, has identified a statutory basis for the credit.

¶ 36 The evidence of record established that, while the claimant was hospitalized in February 2014, Tom DeClue, GRP's president, brought the claimant a document to sign which stated that the injury to the claimant's knee did not occur within the scope of his employment with GRP and that he did not sustain any injury while working for GRP on the Skiatook, Oklahoma project. In addition, DeClue gave the claimant a check in the sum of \$2,678.88. DeClue testified that he gave the claimant the check because he "needed help." The claimant never signed the document, but he did cash the check.

¶ 37 The arbitrator's decision which the Commission adopted states that GRP shall be given a credit of \$2,678.88 "for other benefits." Contrary to the claimant's assertion that the Commission awarded the credit pursuant to section 8(j) of the Act (820 ILCS 305/8(j) (West 2012)), the decision states that GRP "is entitled to a credit of \$0.00 under section 8(j) of the Act." No further mention of the credit is made in the decision.

¶ 38 Section 8(j) of the Act is the section of the statute which addresses the circumstances under which an employer or its insurance carrier is entitled to credits for benefits received by an injured employee under a group insurance plan contributed to by the employer, the payment of compensation due the employee under the Act, and for certain other payments to, or on behalf of, an injured employee other than for compensation due under the Act. The Commission determined that GRP was not entitled to a credit under section 8(j), and GRP has not cited, nor has our reading of the Act revealed, any other section of the statute which gives the Commission the authority to grant a credit to an employer. We conclude, therefore, that the Commission erred in granting GRP a credit of \$2,678.88 "for other benefits."

¶ 39 Based upon the foregoing analysis, we: reverse that portion of the circuit court's judgment which, by implication, confirmed the Commission's grant of a credit of \$2,678.88 to

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GRP and affirm the judgment in all other respects; and reverse that portion of the Commission's decision granting GRP a credit of \$2,678.88.

¶ 40 Circuit court affirmed in part and reversed in part; Commission reversed in part.