2018 IL App (1st) 162890WC-U

FILED: June 15, 2018

NO. 1-16-2890WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

STANLEY NEWELL,	)	Appeal from
	)	Circuit Court of
Appellant,	)	Cook County
	)	No. 16L50336
v.	)	
	)	Honorable
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (Sysco Foods, Appellee).	)	Ann Collins-Dole,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, finding claimant forfeited his claims on appeal due to his failure to comply with Illinois Supreme Court rules. The court further found that forfeiture notwithstanding, claimant failed to establish the Commission's determination that he failed to prove an injury to his left eye arising out of and in the course of his employment was against the manifest weight of the evidence.

¶ 2 On October 28, 2010, claimant, Stanley Newell, 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, Sysco Foods, alleging injuries to his head and left eye. Following a hearing, the arbitrator found claimant proved he sustained accidental injuries arising out of and in the course of his employment to the right side of his head on July

23, 2009. In awarding benefits, the arbitrator calculated claimant's average weekly wage at $1108.33, and awarded claimant 3 weeks' disfigurement benefits in the amount of $664.72 per week. The arbitrator further found claimant failed to prove he sustained accidental injuries arising out of and in the course of his employment to the left side of his head or left eye on July 23, 2009, and denied claimant benefits under the Act.

¶ 3 On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Cook County confirmed the Commission's decision. Claimant appeals, challenging the Commission's finding he failed to prove an injury to the left side of his head or left eye arising out of and in the course of his employment on July 23, 2009. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The following facts are taken from the evidence introduced at an arbitration hearing on December 5, 2014, and January 16, 2015. Appearing *pro se*, claimant offered testimony in narrative form on direct examination. The 57-year-old claimant testified he worked for the employer on July 23, 2009, delivering merchandise to a restaurant. Claimant loaded a case of merchandise onto a hand truck. When claimant stood upright, he hit the right side of his head on the corner of a freezer door. Claimant testified he grabbed his head and moved to the side of the truck. While on the side of the truck, claimant testified he struck the left side of his head, near his left eye, on the bottom of the truck. An employee of the restaurant took claimant to a hospital emergency room for treatment. Following treatment, claimant returned to work.

¶ 6 Claimant testified he next delivered a case of chicken to a Mexican restaurant. While placing the case of chicken onto the hand truck, the hand truck moved forward, striking claimant in the left eye. Claimant testified he immediately contacted a woman named Shannon

who worked for the employer in the transportation department. He told Shannon what had happened and requested a new hand truck. Claimant testified he made one more delivery and returned to the yard.

¶ 7 After work, claimant began taking Tylenol for his pain and by the next morning, the pain from his right-sided head injury had subsided but his left eye remained sore. Claimant completed a full day of work.

¶ 8 Claimant testified he met with a supervisor on July 27, 2009, and completed an accident report for his head and eye. Claimant continued to experience pain in his left eye and testified his vision was blurry. Claimant testified that on August 7, 2009, while driving for work, his vision in his left eye became very blurry and he could not see. He called the Arbor Center for EyeCare (Arbor) and was treated the following day. Claimant testified he was experiencing elevated eye pressure. Claimant testified he continued to seek treatment for his left eye through December 24, 2009, when he was released from medical care with a permanent loss of vision.

¶ 9 Claimant testified that from July 23, 2009, through December 24, 2009, he did not lose any time from work as a result of these accidents.

¶ 10 Claimant testified that on January 1, 2010, while vacationing in Florida, he suffered an injury to his left eye when he "turned in the bed" and "hit [his] eye on the corner of night table next to the bed." Claimant underwent immediate surgery and was off work for 12 weeks. In a letter dated March 23, 2010, the employer advised claimant that because he could no longer drive a truck, and there was no other available position with the employer, claimant was terminated from his employment. Claimant testified he had driven a truck for the employer for 30 years. He can no longer work due to the loss of vision in his left eye and dryness in his right eye, making it difficult to wear his contact lens.

¶ 11 On cross-examination, claimant acknowledged completing an accident report for the employer, signed on July 25, 2009. Claimant reported loading a hand truck on July 23, 2009, and striking his head on the corner of an open freezer door. The report contained a page with a diagram of two skeletons representing the right side and left side of the body. Claimant indicated he felt pain on the right side of his head by placing a corresponding mark on the diagram of the skeleton representing the right side of the body. Claimant did not make any additional marks on either diagram.

¶ 12 Claimant next acknowledged his signature on a post-injury verification form. The form states claimant "hit right side of head on side of freezer door (corner)." Claimant confirmed there was no documentation of a left-eye injury.

¶ 13 Claimant admitted he sought treatment at St. Anthony Medical Center on July 23, 2009. The medical report states claimant was treated for a puncture wound or abrasion to the head and discharged.

¶ 14 Claimant testified he signed and dated a Zurich dismemberment form on February 2, 2010. Although he did not complete the form, he admitted the information recorded on the form was accurate. The form indicated claimant last worked for the employer on December 24, 2009. Claimant suffered a left-eye injury on January 1, 2010. A description of the accident stated that "upon me awakening in bed, I turned in the bed and hit my eye on the corner of night table next to the bed. (Hyatt Regency Hotel[,] Miami, FL)."

¶ 15 Claimant next testified concerning an application for long-term disability income benefits. Although claimant admitted he signed the document, he did not date the document (April 7, 2010) and did not complete any part of the application for benefits. The application noted claimant's last day of work was December 24, 2009, and he was scheduled to go on

vacation. Claimant stopped working due to "loss of vision." According to the application, claimant's disabling condition was not work-related. With regard to claimant's disability, the application noted claimant experienced pain "after I hit eye on table." Claimant sought emergency left-eye treatment on January 1, 2010. Section IV of the application provided for an "Attending Physician's Statement of Disability." Dr. Stephen Rheinstrom identified as the primary diagnosis a left-eye injury occurring on January 1, 2010, and noted claimant's condition was not work-related.

¶ 16 Claimant sought treatment with Arbor on February 8, 2012. In the medical notes of that visit, claimant is quoted, stating: "I need to know that the injury in 2009 caused my sight to go. I still think the injury caused my eye problem." The medical provider noted he could not state the vision loss was related to an injury on July 23, 2009.

¶ 17 In medical notes from Arbor dated June 19, 2012, the medical provider states claimant "wants a letter stating injury to eye is work related. Injury was July 23, 2009[;] disability going to run out if doesn't get letter sent in[;] [patient] stated had 2 injuries to eye same day both job related." Near the bottom of this document, the medical provider wrote: "No more letters can refer to previous."

¶ 18 In a letter written by Dr. Chris Albanis, a medical doctor with Arbor, on August 6, 2012, in response to a letter sent by claimant to Dr. Albanis dated June 30, 2012, Dr. Albanis stated she examined claimant one time on August 8, 2009. Claimant experienced significantly elevated eye pressure in the left eye and was treated. Dr. Albanis was not able to determine if claimant's "history of prior trauma" caused the significantly elevated eye pressure on August 8, 2009.

¶ 19 Claimant next testified regarding a form requesting medical leave signed by claimant. Claimant testified he did not date the form (January 17, 2010) and did not complete any portion of the form. The request for medical leave states claimant's last day of work was December 24, 2009, and he underwent eye surgery on January 1, 2010. Claimant's first day off work due to his condition was noted as January 4, 2010. It was also noted claimant's condition was not caused by his work. Immediately preceding claimant's signature was a "Signature Certification," stating: "I certify that I was/am unable to work during the period for which I am claiming benefits. I also certify that all the above information provided by me on this form is true. I realize that the law provides penalties for making false statements in order to claim benefits."

¶ 20 Finally, at arbitration, Debbie Valleskey testified on behalf of employer. She is the Occupational Health Manager for the employer and has worked in that position for almost six years. Valleskey testified that one of her job duties involves handling employees' reporting of work-related accidents. Valleskey completed occupational wellness nursing notes regarding claimant's accident on July 23, 2009. The portion of the notes in quotation marks reflected claimant's actual statements while talking to Valleskey. Valleskey noted claimant was "pulling ramp out and door fell on top of head – cutting[;] 'bleeding pretty bad'[;] 'Chef is driving me to St. Anthony.' "

¶ 21 Valleskey testified claimant never reported a left-eye work injury. Valleskey noted that if the employer was aware of an employee having blurry vision, the employee would not be allowed to continue working under the Illinois Department of Transportation rules. Valleskey stated an employee would be required to pass a medical examination before returning to work if the employee did have eye issues. Although claimant had testified he met with a

supervisor on July 27, 2009, and completed an accident report for his head and left eye, Valleskey produced a time card for 2009 indicating claimant took a personal day and did not work on July 27, 2009.

¶ 22 Valleskey testified she reviewed claimant's employment file and noted there was only documentation addressing a cut to the right side of the head. Valleskey testified there was no documentation regarding a left-eye work accident.

¶ 23 On July 27, 2015, the arbitrator issued his decision, finding claimant proved he sustained an accidental injury arising out of and in the course of his employment to the right side of his head only; and awarded claimant benefits under the Act. The arbitrator based his finding on the parties' stipulation regarding the cut to the right side of the head, as well as the documentary evidence and testimony of Valleskey.

¶ 24 The arbitrator next found claimant failed to prove he sustained an accidental injury to the left side of the head, or left eye, arising out of and in the course of his employment and denied claimant benefits. The arbitrator found claimant not credible and noted claimant "completed and signed numerous forms and reports in which there is no documentation for an injury to the left side of the head," or a work-related injury to the left eye, on July 23, 2009. Further, the arbitrator noted no medical evidence or documentation in support of an injury to the left side of the head or a left eye work-related injury.

¶ 25 On April 19, 2016, the Commission affirmed and adopted the arbitrator's decision without further comment. On October 27, 2016, the circuit court of Cook County confirmed the Commission's decision.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, claimant challenges the Commission's finding that he failed to prove an injury to the left side of his head or left eye arising out of and in the course of his employment. Prior to addressing claimant's argument, we note claimant's brief violates multiple Illinois Supreme Court rules. "The rules of procedure concerning appellate briefs are not mere suggestions, and it is within this court's discretion to strike [claimant's] brief for failing to comply with Supreme Court Rule 341." *Crull v. Sriratana*, 388 Ill. App. 3d 1036, 1045, 904 N.E.2d 1183, 1190 (2009). A claimant's *pro se* status does not excuse him from complying with appellate procedures as specified by our supreme court rules. *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825, 932 N.E.2d 184, 187 (2010). Every appellant, even a *pro se* appellant, is presumed to have full knowledge of the rules and must comply with them. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528, 759 N.E.2d 509, 517 (2001).

¶ 29 In the present case, claimant's *pro se* brief does not contain a certificate of compliance (Rule 341(c) (eff. Jan. 1, 2016)); a summary statement (Rule 341(h)(1) (eff. Jan. 1, 2016)); an introductory paragraph (Rule 341(h)(2) (eff. Jan. 1, 2016)); a statement of issues presented for review (Rule 341(h)(3) (eff. Jan. 1, 2016)); a statement of the standard of review (Rule 341(h)(3) (eff. Jan. 1, 2016)); a statement of jurisdiction (Rule 341(h)(4) (eff. Jan. 1, 2016)); a statement of facts referencing pages in the record (Rule 341(h)(6) (eff. Jan. 1, 2016)); a defined argument section with citations to authority (Rule 341(h)(7) (eff. Jan. 1, 2016)); or an appendix as required by Rule 342 (Rule 341(h)(9) (eff. Jan. 1, 2016)).

¶ 30 As a reviewing court, we are entitled to have the issues clearly defined, pertinent authority cited, and a cohesive legal argument presented. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5, 960 N.E.2d 1226. Arguments that are not supported by citations to authority fail to meet the requirements of Rule 341(h)(7) and are procedurally defaulted. *Vallis Wyngroff*

Business Forms, Inc. v. Illinois Workers' Compensation Comm'n, 402 Ill. App. 3d 91, 94, 930 N.E.2d 587, 590 (2010). "The appellate court is not a depository in which the appellant may dump the burden of argument and research." *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App.3d 712, 719, 495 N.E.2d 1132, 1137 (1986). Given claimant's failure to comply with Illinois Supreme Court rules, we find his claim forfeited. Even choosing to address the merits, we find no error.

¶ 31 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). Whether the claimant established an injury arising out of and in the course of his employment has long been held to be a question of fact for the Commission, which "will not be disturbed unless it is against the manifest weight of the evidence." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 312, 901 N.E.2d 1066, 1079 (2009). "As the trier of fact, the Commission is primarily responsible for resolving conflicts in the evidence, assessing the credibility of witness, assigning weight to evidence, and drawing reasonable inferences from the record." *ABF Freight System v. Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19, 45 N.E.3d 757. On review, the Commission's finding is against the manifest weight of the evidence only when "the opposite conclusion is clearly apparent." *City of Springfield*, 388 Ill. App. 3d at 312-13, 901 N.E.2d at 1079. "[T]he appropriate test is whether there is sufficient evidence in the record to support the Commission's determination." *Dig Right In Landscaping v. Workers' Compensation Comm'n*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739.

¶ 32 In the present case, the Commission determined claimant did not establish by a preponderance of the evidence that he sustained a compensable accident to the left side of his head or left eye on July 23, 2009. The Commission found claimant was not credible noting he "completed and signed numerous forms and reports in which there is no documentation for an injury to the left side of the head," or to the left eye. Specifically, the Commission relied on the employee incident report claimant completed on July 25, 2009. Claimant made a single mark on the diagram of a skeleton showing he felt pain on the right side of his head. Claimant made no mark indicating an injury to the left side of the head or to the left eye. Although claimant testified he completed an incident report on July 27, 2009, documenting a left-eye work accident, the Commission did not find claimant's testimony credible. First, claimant provided no documentary evidence identifying a work accident on July 23, 2009, in which claimant injured his left eye. Second, the Commission found Valleskey's testimony credible where she testified, according to claimant's time card, claimant did not work on July 27, 2009. Also, Valleskey testified she spoke with claimant on multiple occasions after the accident on July 23, 2009. Claimant did not report a left-eye work accident.

¶ 33 The Commission noted further, no medical evidence established an injury to the left side of the head or left eye, from July 23, 2009, through January 1, 2010, when claimant injured his left eye while vacationing in Florida. In his application for long-term disability income, signed by claimant and dated April 7, 2010, claimant reported experiencing pain "after I hit eye on table" on January 1, 2010, causing his claimed disability. Claimant also testified he worked from July 23, 2009, through December 24, 2009, full-duty and with no restrictions. Finally, the Commission noted multiple physicians "were unable to causally relate his left eye current condition of ill-being to an alleged left[-]eye work accident of July 23, 2009." The

Commission concluded claimant failed to prove he sustained an accident to the left side of his head or left eye on July 23, 2009, and there is ample evidence in the record to support the Commission's determination. The Commission assessed the credibility of the witnesses, resolved the conflicts in the evidence, assigned the weight to be accorded the evidence, and drew reasonable inferences from the evidence. We find sufficient factual evidence in the record to support the Commission's determination. Thus, we cannot say the Commission's finding in this regard is against the manifest weight of the evidence as an opposite conclusion is not clearly apparent.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision.

¶ 36 Affirmed.