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2014 IL App (1st) 123314WC-U

Order filed: February 10, 2014

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

|   |   |                               |
|---|---|-------------------------------|
| RIMANTAS GUZAUSKAS,                         | ) | Appeal from the Circuit Court |
|   | ) | of Cook County, Illinois      |
|   | ) |                               |
| Appellant,                                  | ) |                               |
|   | ) |                               |
| v.  | ) | Appeal No. 1-12-3314WC        |
|   | ) | Circuit No. 12-L-50433        |
|   | ) |                               |
| THE ILLINOIS WORKERS' COMPENSATION          | ) | Honorable                     |
| COMMISSION <i>et al.</i> (303 Taxi Cab Co., | ) | Daniel T. Gillespie,          |
| Appellee).                                  | ) | Judge, Presiding.             |

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

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**ORDER**

- ¶ 1       *Held:* The Commission's finding that the claimant failed to prove an employment relationship was not against the manifest weight of the evidence.
- ¶ 2       The claimant, Rimantas Guzauskas, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2000)) seeking benefits for head injuries which he allegedly sustained while driving a taxi for 303 Taxi Cab Co. (303 Taxi).

After conducting a hearing, an arbitrator found that the claimant was an independent contractor, and not an employee of 303 Taxi, at the time he was injured. Accordingly, the arbitrator denied benefits.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling. This appeal followed.

¶ 4 **FACTS**

¶ 5 The claimant worked as a taxi driver in the Wilmette, Glencoe and Winnetka areas. On July 7, 2001, the claimant was beaten in his cab by a passenger. He suffered a comminuted, depressed skull fracture<sup>1</sup> that required surgical repair. The claimant remained in the hospital for three or four days after the surgery. After the surgery (and up to the time of the arbitration hearing), the claimant suffered from headaches on a daily basis.

¶ 6 On October 3, 2001, the claimant filed an Application for Adjustment of Claim seeking benefits for his head injuries under the Act. The claimant alleged that he had an employment relationship with 303 Taxi at the time of the assault.

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<sup>1</sup> A "comminuted" fracture is one in which the bone is splintered, crushed, or broken into pieces. A "depressed" skull fracture is a break in the skull in which bone fragments are pushed below the normal surface of the skull.

¶ 7 During the arbitration hearing, the claimant testified by way of an interpreter.<sup>2</sup> The claimant testified that he began driving a cab with 303 Taxi's company logo in 2000. The claimant leased a computer radio and credit card machine from 303 Taxi for \$500 per month. He received dispatches regarding potential passenger fares through the computer in his car. 303 Taxi retained ownership of the computer and the other equipment it leased to the claimant. The claimant owned his own car, which he operated as a cab and also used for personal reasons. He did not lease a car from 303 Taxi.

¶ 8 When the claimant began leasing 303 Taxi's computer equipment, he initially met with Anre Nisenboim, 303 Taxi's general manager. According to the claimant, Nisenboim gave the claimant a book containing work rules, instructions on how to work a computer, and other things. The claimant testified he could not read or understand everything in the book, but the person who hired him explained anything that the claimant could not understand. The claimant claimed that the book contained dress codes, directions regarding how to speak with customers, and disciplinary rules for failing to accept a passenger fare.

¶ 9 The claimant testified that, following his orientation meeting with Nisenboim, he was required to paint his car a certain color and to affix 303 Taxi's company name, logo, and phone number on the car. Although 303 Taxi did not install the computer and the credit card machine in the claimant's car, the claimant stated that 303 Taxi told him where to go to have the installation performed. The claimant obtained a chauffeur's license himself and also purchased a business license from the Village of Wilmette in the form of a sticker. In addition, he claimed

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<sup>2</sup> The claimant immigrated to the United States from Lithuania in 1998. His primary language is Lithuanian.

that he paid 303 Taxi for a license that allowed him to work in Wilmette, Glencoe, and Winnetka. The claimant stated that, once he put 303 Taxi's name and logo on his car, he could not work for another cab company.

¶ 10 The claimant testified that, while he was driving a cab with 303 Taxi's logo, 303 Taxi required him to submit to various inspections. For example, the claimant stated that, after he had his car painted pursuant to 303 Taxi's instructions, he had to bring his car to 303 Taxi's office for an initial inspection. Moreover, when he drove to O'Hare airport during the summer, the claimant had to undergo periodic inspections to ensure that his cab was clean and that his air conditioner was working during the summer. In addition, the claimant was required to bring his car once a year to 303 Taxi's office for an annual inspection. During those inspections, the cab was checked for a village license, insurance, cleanliness, and whether there was still paint on the car. The claimant also testified that 303 Taxi sent him to an independent mechanic in Wilmette for a safety inspection.

¶ 11 The claimant testified that he was subject to discipline by 303 Taxi for various infractions. Specifically, the claimant claimed that he could be fined if he did not maintain computer contact with 303 Taxi, if his cab was deemed to be unclean, or if a customer complained about him. Moreover, the claimant testified that if he refused a fare or inputted information in the computer saying he was in one town when he was actually in another, he could be suspended,<sup>3</sup> required to go to the office to explain what happened, and be charged for it.

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<sup>3</sup> The claimant initially testified that "suspended" meant that he could not work for 24 hours. However, during cross-examination, the claimant clarified that being suspended only

The claimant testified that he was suspended on one occasion because accepted an order he had received over the computer but failed to pick up the passenger. The claimant stated that he was told that next time he would have to pay a \$100.00 fine. During cross-examination, the claimant clarified that he was free to decline a dispatch order he received over the computer and that he could be suspended only if he accepted an order and then failed to pick up the passenger.

¶ 12 According to the claimant, Nisenboim and the employer's other managers had the power to terminate him.

¶ 13 The claimant testified that he was required to buy insurance from a particular insurance company and agent identified by 303 Taxi. However, the claimant could not recall the name of the insurance company.

¶ 14 The claimant testified that he received fares directly from passengers and kept all the cash fares he collected. However, if the passenger paid by credit card, the claimant would take the credit card slip to 303 Taxi's office where he was paid the amount on the slip minus a 10 percent fee. Moreover, the claimant stated that 303 Taxi required that certain preferred customers (*i.e.*, employees of United Airlines and Kraft Foods) were to be charged lower rates than other customers.

¶ 15 Nisenboim also testified during the arbitration hearing, first as an adverse witness for the claimant and then as part of 303 Taxi's case in chief. Nisenboim has worked for 303 Taxi as a general manager since 1997. Nisenboim stated that, when the claimant started driving a cab with 303 Taxi's name and logo, Nisenboim gave the claimant some literature which contained

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meant that while suspended he would not receive dispatches over the computer, but he could still drive his car and pick up passengers during that time.

"helpful hints" regarding "how the [dispatch] system was built," "some guidelines of the zone structure," "maps outlining the area," and information on senior citizen programs and on how to process a credit card. Nisenboim denied that the literature he gave the claimant contained any rules or regulations regarding a dress code or the cleanliness of cabs. However, Nisenboim acknowledged that he discussed certain rules with the claimant. Specifically, Nisenboim told the claimant that shorts and sandals without socks were not allowed in the summertime, that cabs needed to be kept clean so that the logo and cab numbers remained visible, and that dirty cabs would have to be washed.

¶ 16 Nisenboim testified that cabs were inspected once per year at 303 Taxi's headquarters and they were also inspected at O'Hare airport. If a cab was found to be dirty and the driver failed to wash the cab, a \$25 fee was collected from the driver. However, according to Nisenboim, 303 Taxi did not send the drivers to a mechanic in Wilmette for a safety inspection. Rather, the drivers took their cars to various mechanics for an inspection as required by the various villages in which they drove, not by 303 Taxi.

¶ 17 Nisenboim stated that 303 Taxi had contracts with the owners of the vehicles, not with the drivers. He estimated that, during the relevant time period, 60% of the drivers were owners of vehicles and 40 percent of the drivers leased their vehicles. However, none of the vehicles were owned by 303 Taxi. Moreover, a vehicle owner who had a contract with 303 Taxi was not required to obtain 303 Taxi's permission in order to lease his vehicle to a driver. As long as a driver had a valid chauffeur's license and the vehicle was properly licensed, he could drive a cab with 303 Taxi's logo.

¶ 18 According to Nisenboim, all fees paid to 303 Taxi were paid by the owners of the vehicles. The drivers did not pay any fees to 303 Taxi. The drivers paid the owners to lease the vehicles, and 303 Taxi did not regulate the vehicles in any way. The fees the owners paid included subscription fees, which covered the price of a phone installed at the airport (at the drivers' request), the computer, and dispatch fees. The owners also obtained the village licenses to drive the cabs and paid for the insurance on the vehicles. Nisenboim claimed that the owners of the vehicles were allowed to purchase insurance from whomever they wanted, as long as the insurance met state regulations. However, he admitted that 303 Taxi put together a list of insurance vendors for the owners and recommended certain insurers to the owners.

¶ 19 Nisenboim testified that while 303 Taxi could not terminate a driver, it could deny drivers access to the dispatch system as a result of such things as complaints and unsafe driving.<sup>4</sup> However, Nisenboim stated that the denial of access to the system was done only for cause and that 303 Taxi did not retain the right to terminate a relationship with a vehicle owner without cause.

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<sup>4</sup> According to Nisenboim, 303 Taxi dealt with passenger complaints according to a "strike system." Under this system, if a driver received three major "strikes," 303 Taxi would not provide that driver with dispatch service anymore. Nisenboim claimed that 303 Taxi did not fine drivers for passenger complaints unless there was an overcharge of a published municipal rate or a flat rate. A driver would also be fined if the driver did not turn a meter on and off at the appropriate times when picking up and dropping off a passenger.

¶ 20 According to Nisenboim, drivers did not report their earnings or their collections to 303 Taxi. Nisenboim also testified that a driver was free to work for other cab companies (such as Yellow Cab, Checker Cab, or Suburban Cab) even after 303 Taxi's logo was painted on his car.

¶ 21 David Gauer, 303 Taxi's managing partner, also testified on 303 Taxi's behalf. At the time of the arbitration hearing, Gauer had been managing partner for 17 years. In that capacity, Gauer oversees subscription services with 303 Taxi and the company's operations. Gauer testified that 303 Taxi was in the business of leasing its computer dispatch service and other equipment to owners of vehicles. He stated that the employer was "out to promote the brand \*\*\* to draw more subscribers to subscribe to the service so that they can support more cars by leasing them to additional drivers." Gauer testified that 303 Taxi derives its revenue mostly through subscription services, but he noted that the company also derives some revenue from leasing of membership certificates.<sup>5</sup> 303 Taxi has never owned any cabs and it does not own any cab medallions.

¶ 22 Gauer stated that 303 Taxi does not in any way restrict or regulate the use of vehicles that have the company's logo on them. All cabs are required to be painted the same way because some of the villages require uniformity so they can identify what company is providing services. In addition, the owners of the cabs have to purchase insurance in the amounts required by the State of Illinois in order to obtain a taxi cab (TX) plate for the cars. However, Gauer testified

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<sup>5</sup> A "membership certificate" is a document issued by a village that entitles a vehicle owner to operate his vehicle as a cab within that village. Some villages issue these certificates in order to set a specific number of cabs that will be allowed to operate in their village. The certificates may be bought or leased.



that, once a vehicle owner has obtained a membership certificate, 303 Taxi does not restrict the owners from leasing their cabs to any drivers. Moreover, according to Gauer, an owner or driver could use a cab with 303 Taxi's logo for personal reasons or for other business purposes. The owner of the vehicle is responsible for the maintenance of the vehicle and 303 Taxi does not conduct any mechanical inspections.

¶ 23 Gauer further testified that the rules and guidelines mentioned by other witnesses were established by the owners of the vehicles, not by 303 Taxi. Gauer claimed that the owners established these guidelines as a way to promote fairness among the owners in the distribution of orders and to help the drivers be successful.

¶ 24 Miron Yatsik also testified for 303 Taxi. Yatsik drove a cab with 303 Taxi's logo on it from 1998 through 2002. In 2001, Yatsik operated a cab in the Wilmette, Glencoe and Winnetka areas. He owned the vehicle at the time. Although he used the vehicle as a cab, he also used it for personal purposes, such as driving to Wisconsin and Florida.

¶ 25 Yatsik testified that if he did not want to accept a dispatch order he received over the 303 Taxi computer, he would just let it go to the next car. Moreover, Yatsik stated that he was never told what hours or days he had to drive and that he could drive the car wherever he wanted. Yatsik testified that, if he wanted to operate outside his area, he could pick up fares with the cab, and that there were times when he picked up fares without using 303 Taxi's dispatch service. However, he estimated that approximately 99 percent of his business as a cab driver came from 303 Taxi's computer dispatch service. Yatsik did not know whether he could have driven for another company while 303 Taxi's logo was painted on his car, but he stated that he did not think he could have done so.

¶ 26 Yatsik never reported his earnings to anyone at 303 Taxi in 2000 and 2001. He had to obtain a chauffeur's license from the police departments in Wilmette, Winnetka and Glencoe before starting to drive a cab. There were never any advertisements placed in the car in 2001 and he was never told by anyone where he had to have his car painted. Furthermore, Yatsik testified that he would decide when to turn in his credit card charge slips.

¶ 27 Yatsik testified that 303 Taxi directed him to take his car in to a particular company for inspections. He bought insurance from a company located in the same building as 303 Taxi because "a lot of drivers bought insurance from them." However, he was never told where he had to buy insurance.

¶ 28 Yatsik stated that 303 Taxi would suspend drivers from receiving computer dispatches for various infractions, such as failing to fix a problem with the cab discovered during an inspection. Yatsik's computer service was suspended by 303 Taxi "a couple times." Yatsik testified that, during the times he was suspended from receiving dispatches, he could still pick up fares. He stated that he had some of his own customers who would contact him for rides directly on his cell phone.

¶ 29 The arbitrator found that the claimant had failed to establish that he had an employment relationship with 303 Taxi on the date of his work accident. The arbitrator concluded that the claimant was an independent contractor operating his own business as of that date. In support of these findings, the arbitrator expressly found that 303 Taxi's witnesses (Gauer, Yatsik, and Nisenboim) were more credible than the claimant because their testimony was mostly consistent whereas the claimant "testified inconsistently with some of the evidence presented." For example, the arbitrator noted that a review of the booklet that 303 Taxi provided the claimant

"clearly show[ed] that [it] is not a booklet of rules and regulations, as the [c]laimant alleged."

The arbitrator found that the booklet contained "only a few statements \*\*\* which might be construed as a rule or regulation" and it "primarily contain[ed] \*\*\* information on zones, fares, senior programs, use of credit cards and other systems, as described by [Gauer] and [Nisenboim]."

¶ 30 Moreover, the arbitrator concluded that the evidence as a whole weighed against the finding of an employment relationship. Based on its review of the evidence, the arbitrator found that the claimant "could use the car as a cab whenever he wanted and did not have any prescribed hours or assigned days to use the vehicle as a taxi." Moreover, the claimant could lease the car to use as a cab to whomever he wanted, he could use the car for any personal or other business purpose without restriction from 303 Taxi, and he could buy insurance from whomever he wanted. He did not have to report fares to anyone at 303 Taxi, and he could pick up "whomever he wanted, whenever he wanted and wherever he wanted." The arbitrator noted that the claimant did not report his earnings to anyone other than the IRS, and that "his tax records for the year 2001 demonstrate that he reported his earnings from his cab as an independent business (Form 1040, Schedule C)." Moreover, the arbitrator observed that the claimant "maintained his own vehicle and purchased his gasoline wherever he wanted." Further, there was no evidence the car had any advertisements. In addition, the arbitrator stressed that 303 Taxi could not end their agreement with the claimant without cause. In sum, the arbitrator found that "there is no evidence that 303 Taxi exerts any control over the drivers or owners."

¶ 31 The arbitrator found that the rules or guidelines identified by the claimant (such as the ban on shorts and sandals and the requirement that drivers keep their cabs clean) do not support a

contrary conclusion because "these are all guidelines that cab owners who use the 303 [Taxi] logo have put in place, so that all drivers are treated fairly and the general public wants to ride in cabs with 303 Taxi logos." Accordingly, the arbitrator found that "this evidence does not actually demonstrate control by 303 Taxi over the drivers or cab owners, but control exerted by owners over themselves and the drivers to whom they lease their cabs."

¶ 32 Although the arbitrator found that some of the evidence suggested the existence of an employment relationship (such as the requirement that all cabs had to be painted the same way and the fact that the employer repaired the equipment it leased), it concluded this evidence was "not enough to support a finding of [an employment relationship] between the [claimant] and the [303 Taxi] \*\*\* especially when there is no evidence of control by the [303 Taxi]." Accordingly, the arbitrator found that the claimant "was an independent contractor on July 7, 2001, and on that date, \*\*\* 303 Taxi was in the business of selling membership certificates and subscription services, so that others could operate cars as taxicabs in suburban Chicago, and the [claimant] failed to meet his burden of proof that an employment relationship existed on July 7, 2001 between him and [303 Taxi]." The arbitrator denied benefits and found all remaining issues moot.

¶ 33 The claimant appealed the arbitrator's decision to the Commission. The Commission unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling. This appeal followed.

¶ 34

#### ANALYSIS

¶ 35 The sole issue raised in this appeal is whether the Commission erred when it found that the claimant failed to prove he had an employment relationship with 303 Taxi at the time of his accident.

¶ 36 An employment relationship is a prerequisite for an award of benefits under the Act. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 174 (2007). For purposes of the Act, the term "employee" should be broadly construed. *Skzubel v. Illinois Workers' Compensation Comm'n*, 401 Ill. App. 3d 263, 267 (2010). However, whether an employer-employee relationship exists is a question of fact for the Commission. *Morgan Cab Co. v. Industrial Comm'n*, 60 Ill. 2d 92, 97 (1975). Accordingly, we will disturb the Commission's decision only if it is against the manifest weight of the evidence (*Ragler Motor Sales v. Industrial Comm'n*, 93 Ill. 2d 66, 71 (1982); *Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 1122 (2000)), *i.e.*, only when "an opposite conclusion is clearly apparent" (*Skzubel*, 401 Ill. App. 3d at 267). "[W]hen the evidence is conflicting and the facts are subject to diverse interpretations, it is within the province of the \*\*\* Commission to draw inferences from the evidence, ascertain the credibility of witnesses, evaluate conflicting testimony, and resolve whether the claimant has met his burden of proof." *Ragler*, 93 Ill. 2d at 71-72; see also *Area Transportation Co. v. Industrial Comm'n*, 123 Ill. App. 3d 1096, 1099 (1984) ("[W]here elements of both the relationship of employer and independent contractor are present, the \* \* \* Commission alone is empowered to draw the inferences either way and its decision as to the weight of the evidence will not be disturbed on review").

¶ 37 There is no rigid rule of law for determining whether an employer-employee relationship exists. *West Cab Co., Inc. v. Industrial Comm'n*, 376 Ill. App. 3d 396, 404 (2007); *Ware*, 318 Ill. App. 3d at 1122. Rather, such a determination depends upon the particular facts of the case.

*Ragler*, 93 Ill. 2d at 71. Since no one factor determines the nature of the relationship between the parties, a variety of factors must be considered, including the right to control the manner in which the work is done, the nature of the work performed by the alleged employee in relation to the general business of the employer, the method of payment, the right of discharge, the skill required in the work to be done, and who provides tools, materials, or equipment. *Morgan Cab*, 60 Ill. 2d at 97–98; *West Cab*, 376 Ill. App. 3d at 404; *Ware*, 318 Ill. App. 3d at 1122. Of these factors, the right to control the manner in which the work is done is the paramount factor in determining the relationship. *West Cab*, 376 Ill. App. 3d at 404; *Morgan Cab*, 60 Ill. 2d at 98.

¶ 38 In cases involving taxicab drivers, particular weight should be given to the following factors in determining whether the employer has a right to control the manner in which the work is done: (1) whether the driver accepted radio calls from the company; (2) whether the driver had his radio and cab repaired by the company; (3) whether the vehicles were painted alike with the name of the company and its phone number on the vehicle; (4) whether the company could refuse the driver a cab; (5) whether the company has control over work shifts and assignments; (6) whether the company requires that gasoline be purchased from the company; (7) whether repair and tow service is supplied by the company; (8) whether the company has the right to discharge the driver or cancel the lease without cause; and (9) whether the lease contains a prohibition against subleasing the taxicab. *West Cab*, 376 Ill. App. 3d at 405; *Yellow Cab Co. v. Industrial Comm'n*, 238 Ill. App. 3d 650, 653 (1992).

¶ 39 In the instant matter, the majority of these factors suggest that 303 Taxi did not control the manner in which the claimant performed his work. Although the claimant received dispatch "orders" over 303 Taxi's computer, both the claimant and Yatsik testified that drivers were not

required to accept these orders and were free to ignore or decline them. Moreover, 303 Taxi owned no cabs, and Gauer testified that 303 Taxi was in business of providing a subscription service or dispatch service which allowed independent vehicle owners to access a customer base. Accordingly, the Commission could have reasonably inferred that 303 Taxi was not in the business of owning or operating cabs and that its computerized dispatch "orders" were more like sales leads than job orders issued by an employer to its employee drivers. In addition, the claimant owned the cab, was responsible for all cab repairs and maintenance, and was not required to buy gas from the employer. Moreover, the claimant was free to drive and work wherever and whenever he liked, and 303 Taxi exerted no control over the claimant's work schedule or his use of the vehicle. 303 did not have the power to refuse a driver a cab because it owned no cabs, and there is no evidence that the company provided repair or tow service for the owners' vehicles.

¶ 40 Further, Nisenboim testified that a vehicle owner who had a contract with 303 Taxi was not required to obtain 303 Taxi's permission in order to lease his vehicle to a driver, and Gauer confirmed that 303 Taxi placed no restrictions on a vehicle owner's right to lease his vehicle to any driver. Nisenboim stated that, as long as a driver had a valid chauffeur's license and the vehicle was properly licensed, he could drive a cab with 303 Taxi's logo. Moreover, Nisenboim testified that 303 Taxi could block a driver's access to the computer dispatch system or terminate its relationship with an owner/subscriber only for cause.

¶ 41 Although there is evidence suggesting that 303 Taxi exerted some control under a few of the *Yellow Cab* factors (for example, the vehicles were painted in the same color with 303 Taxi's name, logo, and phone number, and 303 Taxi repaired the computer and other equipment it

leased), the weight of the evidence suggests that 303 Taxi's control over the method and manner of the claimant's work was minimal. Because the employer's right to control the claimant's work is the most important factor in determining the nature of the employment relationship, the absence of such control in this case strongly supports the Commission's ruling.

¶ 42 Aside from the employer's right to control the claimant's work, other factors are relevant to our analysis, including the nature of the work performed by the alleged employee in relation to the general business of the employer, the method of payment, the right of discharge, the skill required in the work to be done, and who provides tools, materials, or equipment, and whether income tax has been withheld by the employer. *Morgan Cab*, 60 Ill. 2d at 97–98; *Szkubel*, 401 Ill. App. 3d at 267; *West Cab*, 376 Ill. App. 3d at 404; *Ware*, 318 Ill. App. 3d at 1122. Most of these additional factors weigh against the finding of an employment relationship in this case. Regarding the nature of the claimant's work and 303 Taxi's business, Gauer testified that 303 Taxi was in the business of providing a subscription service or dispatch service which allowed independent vehicle owners to access a customer base so that they (the vehicle owners) could provide taxicab services. The claimant was a vehicle owner who worked as a cab driver. Based on the evidence presented, the Commission could have reasonably inferred that the claimant was an end user or subscriber of 303's dispatch services, not an employee who was in the business of producing, promoting, or selling those dispatch services.

¶ 43 Moreover, the claimant was paid directly by the passengers and he did not report any of his cash earnings to 303 Taxi. He received no salary from 303 Taxi. The claimant's tax records for the year 2001 indicate that he reported his cab earnings as an independent business, and 303 Taxi did not withhold any income taxes or Social Security taxes. Moreover, as noted above, the



claimant owned his own cab and 303 Taxi did not provide or lease him a vehicle. In addition, according to Gauer and Nisenboim, 303 Taxi could terminate a relationship with an owner/subscriber only for cause.

¶ 44 We acknowledge that some of the evidence presented arguably suggests that an employment relationship existed. For example, 303 Taxi arguably exerted some control over the drivers' payment by setting flat rates for certain trips, requiring discounted rates for preferred customers, and withholding 10% for credit card payments. In addition, pursuant to the subscription agreement, 303 Taxi provided owners/subscribers with a computer which could be used to access 303 Taxi's dispatch services. Moreover, the vast majority of the claimant's and Yatsik's fares were obtained via 303 Taxi's computer dispatches, and the relatively low level of skill required of cab drivers arguably weighs in favor of finding an employment relationship. Finally, 303 Taxi's name suggests that it is a cab company, and the company's manual arguably suggests that it is in the business of providing cost effective transportation services, not merely taxi dispatch subscription services.

¶ 45 Nevertheless, as detailed above, there is ample evidence supporting the opposite conclusion. After considering and weighing all of the evidence and making credibility findings, the Commission drew reasonable inferences and found that the claimant was an independent contractor at the time of his work accident. That finding was not against the manifest weight of the evidence. We therefore affirm. See *Ragler*, 93 Ill. 2d at 71-72 ( "[W]hen the evidence is conflicting and the facts are subject to diverse interpretations, it is within the province of the \*\*\* Commission to draw inferences from the evidence, ascertain the credibility of witnesses, evaluate conflicting testimony, and resolve whether the claimant has met his burden of proof");

*Area Transportation Co.*, 123 Ill. App. 3d at 1099 ("[W]here elements of both the relationship of employer and independent contractor are present, the \* \* \* Commission alone is empowered to draw the inferences either way and its decision as to the weight of the evidence will not be disturbed on review").<sup>6</sup>

¶ 46 CONCLUSION

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

¶ 48 Affirmed.

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<sup>6</sup> The Commission's finding that 303 Taxi's witnesses were more credible than the claimant was not against the manifest weight of the evidence, and the Commission was entitled to credit the testimony of 303 Taxi's witnesses when their testimony conflicted with the claimant's testimony.