

No. 1-14-0931WC

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

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|--------------------------------|---|-------------------------------|
| SOUTHWEST AIRLINES, |) | Appeal from the Circuit Court |
| |) | of Cook County. |
| |) | |
| Appellee, |) | |
| |) | |
| v. |) | No. 13 L 50446 |
| |) | |
| ILLINOIS WORKERS' COMPENSATION |) | |
| COMMISSION, RICHARD JENKINS |) | Honorable |
| |) | Robert Lopez Cepero, |
| Appellant. |) | Judge Presiding. |

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

ORDER

¶ 1 *Held:* The judgment of the circuit court was reversed and the decision of the Commission was reinstated where its findings that the claimant's injury arose out of and in the course of his employment and that his current condition of ill-being was causally connected to his employment were not against the manifest weight of the evidence.

¶ 2 The claimant, Richard Jenkins, appeals from the circuit court order reversing the decision of the Illinois Workers' Compensation Commission (Commission) which determined that he was entitled to benefits under the Workers' Compensation Act (Act) (820 ILCCS 305/1 *et seq.* (West

2010)). The Commission determined that the claimant established that his right elbow injury arose out of and in the course of his employment with Southwest Airlines (Southwest) and that the current condition of his right elbow was causally connected to his workplace accident of December 7, 2009. For the reasons that follow, we reverse the circuit court judgment and reinstate the decision of the Commission.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing held on April 10, 2012.

¶ 4 At all times relevant, the claimant was employed as a pilot for Southwest. On December 7, 2009, at about 1 a.m., the claimant and his co-pilot, Michael Bonner, had landed their Boeing 737-300 airplane in Las Vegas and were completing their post-flight duties. The claimant testified that, when he was alone in the cockpit of the aircraft attempting to extract his flight bag from its space to the left of the captain's chair, he felt a "pop" accompanied by a burning or tingling sensation in his right elbow. According to the claimant, he attempted to remove the 35-lb. bag by standing with one knee on the captain's chair and pulling the bag up vertically with his right arm. The bag then became caught on the seatbelt bolt next to the captain's chair, forcing him to maneuver the bag from the space. During the arbitration hearing, the claimant was asked to demonstrate how he would normally remove his flight bag from the constricted space in the Boeing 737 300. After which, the arbitrator stated: "Let the record show that the Petitioner [claimant] has motioned with his right hand and reaching across his body and exhibiting as though he was lifting a bag straight upwards, and then presumably moving across his body over to the right side." Southwest's attorney stated: "[l]et the record show also that the Petitioner's [claimant's] palm and forearm were faced upwards when making that movement." The arbitrator replied, stating: "Which is what I noted as well." The claimant went on to testify that, when his

flight bag became snagged on the seat belt assembly, it stopped abruptly, causing his arm to stop "in a jerking motion." The claimant stated that he knew at that point that he was hurt.

¶ 5 Shortly thereafter, the claimant encountered Bonner in the jetway and informed him about his injury. In a recorded statement given to an investigator, Bonner recalled that the claimant informed him that he had hurt his arm or elbow as he was retrieving his flight bag. According to Bonner, the claimant was exhibiting symptoms of an injury to his arm by "trying to loosen it up [or] *** moving it around" in a manner consistent with an arm injury. Bonner stated that he and the claimant later completed their flight into Midway Airport, and that this was the last time he recalled ever flying with the claimant.

¶ 6 The claimant testified that, on December 8, 2009, his elbow felt stiff, but he did not attempt to report the accident to Southwest on that day. According to the claimant, he contacted his neighbor, Dr. Roland Izquierdo, an orthopedic surgeon, on December 9, 2009. Dr. Izquierdo had treated the claimant in the past for pain in his left knee, right shoulder, and right elbow. There are no contemporaneous medical records or notes of Dr. Izquierdo's examination on December 9 in the record. However, the record does contain a note from Dr. Izquierdo dated February 11, 2010, which states that he saw the claimant on December 9, 2009. That note also states that the claimant was complaining of some elbow pain and mechanical symptoms along with popping and clicking in his elbow. As a consequence, Dr. Izquierdo ordered an MRI of the elbow to assess the ligamentous structure.

¶ 7 The claimant underwent an MRI of his right elbow on December 11, 2009. The radiologist's report states that the scan revealed: joint effusion; a bone contusion involving the lateral humeral condyle; a complete tear of the lateral collateral or radial collateral ligament; thickening of the otherwise intact attachment of the lateral ulnar collateral ligament; and

thickening and increased signal within and surrounding the common exterior tendon to its humeral attachment consistent with exterior tendinopathy.

¶ 8 On December 14, 2009, the claimant returned to work and notified Deloris Jackson, a senior crew-based coordinator for Southwest, of his injury. Jackson testified that she filed a written report of the injury on December 14. She also stated she believed that the claimant had also notified her by telephone about the accident at some point prior to that date. The claimant testified that, when he resumed flying on December 14, he noticed some restrictions to his arm movement, along with some elbow pain and swelling, but he was able to perform his duties.

¶ 9 On December 31, 2009, the claimant again saw Dr. Izquierdo, reporting continued elbow pain, swelling and restricted movement. Dr. Izquierdo's notes of that visit contain a history of the claimant having suffered an injury at work when he was "lifting a bag with all of his charts *** with his right arm palm down pronated." The doctor noted that the MRI taken of the claimant's right elbow disclosed a complete tear of the right collateral ligament, and that the only solution to the problem was reconstructive surgery. Dr. Izquierdo also noted that the claimant "has never had a problem with this elbow in the past." The doctor opined that the claimant's present symptoms are directly related to his work injury of December 7, 2009. Dr. Izquierdo referred the claimant to his partner, Dr. Kelly Holtkamp, a hand and elbow specialist, for a consultation.

¶ 10 Dr. Holtkamp examined the claimant on January 20, 2010. Her notes of that visit state that the claimant complained of pain when lifting with his right arm. As to the mechanics of his injury, Dr. Holtkamp's notes state that the claimant reported feeling a pop in his right elbow when he picked up a bag of charts. She noted that the MRI of the claimant's right elbow disclosed a tear involving the lateral ulnar collateral ligament, and also "evidence of high signal

within the common extensor tendon, consistent with extensor tendonoitis/tendonopathy." Dr. Holtkamp recommended that the claimant undergo surgery to repair the lateral ulnar collateral ligament. She also noted that radiographs revealed a questionable avulsion fracture involving the lateral epicondyle. Based upon the claimant's description of the mechanism of his injury, Dr. Holtkamp opined that his injury was work-related.

¶ 11 The claimant testified that he continued working during the period following his injury, keeping Southwest regularly informed as to the recommendations of his doctors. He stated that he experienced pain and restricted motion in the performance of his duties from the days after his injury through January 2010. In particular, he lacked the full right arm extension necessary to push the airplane's throttle forward, he had to stand up to reach the overhead instrument panel, and he could not pull his bags with his right arm. According to the claimant, he had no difficulty performing any of these functions prior to his injury of December 9, 2009.

¶ 12 The claimant testified that he was informed by Vicki Sherwood, an employee of Southwest's workers' compensation carrier, that he was not being approved for surgery. He nonetheless elected to proceed with the surgery.

¶ 13 On March 8, 2010, Dr. Holtkamp operated on the claimant's right elbow, performing a full reconstruction of the lateral ulnar collateral ligament. In her operative report of that surgery, Dr. Holtkamp wrote that she found evidence of a significant amount of scar tissue and that the lateral ulnar collateral ligament demonstrated a rupture from the insertion point at the lateral epicondyle.

¶ 14 Dr. Holtkamp saw the claimant post-operatively on March 18, 2010. In her notes Dr. Holtkamp wrote that she was placing the claimant into an immobilizing cast, removing him from work duties, and ordering him to refrain from performing any activity with his right arm and to

avoid supination with his forearm. Dr. Holtkamp prescribed a protocol of physical therapy for the claimant, and instructed him to return for a follow-up examination in two weeks.

¶ 15 The claimant was next seen by Dr. Holtkamp on April 6, 2010, for a post-operative examination. In her notes of that visit, Dr. Holtkamp recorded range of motion scores for the claimant's right elbow. She ordered that the claimant continue with physical therapy for range of motion and remain off of work with no use of the right upper extremity.

¶ 16 On April 20, 2010, the claimant returned for a follow-up examination with Dr. Holtkamp. Her notes of that visit state that the claimant was doing well and that the "clicking noise" he previously experienced had improved. Dr. Holtkamp recommended that the claimant continue with his rehabilitation and that he commence progressive extension as tolerated. Regarding his work status, Dr. Holtkamp restricted the claimant from any repetitive lifting with his right upper extremity. Dr. Holtkamp's notes of the April 20, 2010, visit also included a detailed description of the mechanism of the claimant's injury. Based upon the claimant's description of his injury, Dr. Holtkamp wrote that he was "leaning over with his palm in a pronated position" attempting to lift his flight bag from the left side of the pilot seat. The bag became caught on the bolt of the seatbelt, forcing the claimant to "jerk [the bag] out" and his wrist to rotate, "coming out in a supinated position." Dr. Holtkamp opined that, within a reasonable degree of medical certainty, the above described motion was the cause of the rupture of the claimant's lateral ulnar collateral ligament.

¶ 17 According to the claimant's testimony, when he gave his description of his work accident to Dr. Holtkamp on April 20, 2010, he never used the words "pronated" or "supinated" with reference to the position of his right forearm. He stated that, instead, he merely demonstrated for the doctor the physical maneuvers he used when lifting the flight bag, and that she may have

used those terms based upon his description. The claimant also testified that he explained to Dr. Holtkamp that, because of the design of the captain's chair in the Boeing 737 300, it was not possible to lift the flight bag directly out of its space with the wrist in a pronated position.

¶ 18 At the request of Southwest, the claimant was examined by with Dr. G. Klud Miller on May 17, 2010. Dr. Miller's written reports of his review of the claimant's medical records and his examination of the claimant on May 17, 2010, along with the transcript of his deposition are contained within the record. In a written report dated April 13, 2010, following his review of the claimant's medical records, Dr. Miller wrote that he "would strenuously disagree" that the MRI of December 11, 2009, showed a complete lateral collateral ligament disruption. Rather, he believed that the disorganized tissue along the lateral aspect of the condyle is "perfectly consistent with chronic scarring from his lateral epicondylitis cortisone injection" which the claimant received in May 2009. Dr. Miller noted that all of the claimant's treating physicians, including Dr. Izquierdo, "seem to ignore his clearly pre-existing tennis elbow and cortisone injection." Dr. Miller believed that the proper diagnosis following the claimant's December 7, 2009, work injury was most likely a sprain or a muscle pull. When deposed, however, Dr. Miller admitted that he "ha[s] no reason to doubt" Dr. Holtkamp's diagnosis, given that the claimant's surgery ultimately revealed a tear of the right lateral ulnar collateral ligament. Nevertheless, Dr. Miller opined that the condition of the claimant's elbow was not caused by his efforts to extract his flight bag. As to the mechanics of the claimant's injury, Dr. Miller's report states that:

"Dr. Holtkamp clearly documents that as [the claimant] started pulling on his flight case, his forearm was pronated and that as he lifted out the case, his arm supinated. Since his arm was initially pronated, and because the flight case got stuck between the wall of a cockup (*sic*) and his seat, his arm would have had to stay pronated while the

case was stuck. It was only after the flight case was lifted out of the space that it could have supinated."

¶ 19 As of May 19, 2010, Dr. Holtkamp noted that the claimant still experienced some soreness in his elbow with increased activity but that he continued to make progress in range of motion therapy. The doctor reiterated her recommendation that the claimant refrain from any pushing, pulling or lifting with his right arm and that he remain off of work unless modified duty was available. Throughout the summer and fall of 2010, the claimant continued to treat with Dr. Holtkamp, who prescribed a protocol of physical therapy, and ultimately work-hardening.

¶ 20 The claimant testified that Dr. Holtkamp released him to return to work as of November 10, 2010. However, he was not able to immediately return to work, because he was required by the Federal Aviation Administration to submit to a Class 1 medical examination in order to be re-certified for duty. He also had to participate in requalification for his duties through Southwest. The claimant returned to work on December 5, 2010.

¶ 21 Prior to the injury giving rise to the instant claim, the claimant had a medical history which is relevant to the disposition of this case. The claimant admitted that, over the years, he has experienced mild discomfort in both of his elbows for which he had sought treatment from Dr. George Urban, his aeromedical doctor. Dr. Urban referred the claimant to Dr. Marko Krpan, who examined him on June 28, 2007, for pain in his right shoulder, right elbow, and left knee. In his report of that date, Dr. Krpan diagnosed the claimant with compensatory medial and lateral epicondylitis of the right elbow. Dr. Krpan recommended physical therapy and the over-the-counter anti-inflammatory medications for the claimant.

¶ 22 The record also reflects that in May of 2009, the claimant sought treatment from Dr. Izquierdo, primarily for pain in his left knee, but also for aches and pains in his right shoulder

and right elbow. The claimant testified that Dr. Izquierdo diagnosed him with epicondylitis and administered a cortisone injection in the site. The claimant underwent surgery for his left knee, but had no further issues with his elbow until December of 2009. On cross-examination, the claimant testified that Dr. Izquierdo administered the cortisone shot in his right elbow in May of 2007, but later testified that it could have been May of 2009. The claimant initially denied ever having received treatment for his right elbow prior to the cortisone injection administered by Dr. Izquierdo; however, he then testified that he "may be mixing up the dates."

¶ 23 In a memorandum drafted April 15, 2010, Dr. Izquierdo explained his prior treatment of the claimant's right elbow in May of 2009. The memorandum noted that, at that time, he had examined the claimant for tendonopathy or epicondylitis of both elbows. He administered a cortisone injection in the claimant's right elbow, placed him on anti-inflammatory medication, and prescribed physical therapy, after which the claimant had a complete resolution of his symptoms. Dr. Izquierdo opined that the treatment of May of 2009 was "completely unrelated" to the work injury sustained by the claimant on December 7, 2009.

¶ 24 The claimant testified that, as a result of his work accident, he is not able to completely straighten out his right arm, he has occasional popping in his elbow, and does not have maximum strength. However, he is able to fully perform his duties as a pilot.

¶ 25 Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)), the arbitrator found that the claimant suffered an accident that arose out of and in the course of his employment with Southwest on December 7, 2009, and that his current condition of ill-being is causally related to that accident. The arbitrator specifically found that the claimant's testimony with regard to the mechanism of his injury was credible. As to the mechanism of the injury, the arbitrator noted that the claimant's description at the hearing was consistent with the

assessments and opinions reported by his treating physicians, particularly that of Dr. Holtkamp, whom the arbitrator found to be particularly credible and persuasive. The arbitrator awarded the claimant temporary total disability benefits and permanent partial disability benefits for the 20% loss of the use of the claimant's right arm. Additionally, the arbitrator ordered Southwest to pay the claimant's necessary medical expenses, subject to a credit of \$11,028.71 for amounts already paid.

¶ 26 Southwest sought a review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission affirmed and adopted the arbitrator's decision.

¶ 27 Thereafter, Southwest sought a judicial review of the Commission's decision in the Circuit Court of Cook County. The circuit court reversed, concluding that the Commission's finding that the claimant's testimony regarding the mechanism of his injury was consistent with the medical evidence was contrary to the manifest weight of the evidence. According to the circuit court, the claimant's description of his injury changed several times prior to the arbitration hearing. In support of its conclusion in this regard, the circuit court stated that when the claimant first presented to Dr. Izquierdo on December 31, 2009, the doctor noted that the claimant's right arm was "palm down pronated" at the time of the injury. The court contrasted this with the April 20, 2010 report of Dr. Holtkamp, which stated that the claimant's right arm was initially in a pronated position when he attempted to extract the bag, but then twisted into a supinated position immediately preceding the injury. According to the circuit court, the claimant changed his version of events at the hearing when he testified that "his right palm and forearm were facing upwards the entire time." The circuit court also found Dr. Izquierdo's testimony not to be credible based upon his notes following the claimant's December 31, 2009, visit, in which he stated that the claimant never had prior problems with his right elbow. This contradicted the

medical evidence showing that the claimant had in fact been diagnosed with right elbow epicondylitis by Dr. Krpan in 2007. Accordingly, the court discounted Dr. Izquierdo's testimony in its entirety. In summary, the circuit court found that the Commission's finding that the claimant's testimony was credible and consistent with the evidence submitted at the arbitration hearing is against the manifest weight of the evidence. As a consequence, the circuit court concluded that the claimant "failed to satisfy his burden of proof" and reversed the Commission's decision.

¶ 28 Thereafter, the claimant filed a timely notice of appeal.

¶ 29 In urging reversal of the judgment of the circuit court and reinstatement of the Commission's decision, the claimant argues that, in reversing the Commission, the circuit court improperly reevaluated the credibility of the claimant's testimony and that of Dr. Izquierdo, and substituted its own judgment as to the weight to be given the medical evidence. We agree.

¶ 30 In a workers' compensation case, the claimant 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). 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 determination of the issue will not be disturbed on appeal 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 resolve conflicting medical evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 207 (2003); *O'Dette*, 79 Ill. 2d at 253. For a finding of fact to be against the manifest weight of the evidence, a conclusion opposite to the one reached by the Commission must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d

288, 291 (1992). Whether a reviewing court might have reached the same conclusion is not the test of whether the Commission's determination on 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).

¶ 31 In this case, the Commission explicitly found that the claimant's testimony regarding the mechanism of his injury was consistent with the assessments and opinions of his treating physicians. In finding this determination to be against the manifest weight of the evidence, the circuit court reasoned that the claimant's description of his injury had changed between the time of his December 31, 2009, visit to Dr. Izquierdo, and the April 20, 2010, visit with Dr. Holtkamp. The court pointed out that both of these reports conflicted with the claimant's description of events at the hearing, where he testified, in the words of the court, that "his right palm and forearm were facing upwards the entire time." The court also found that the claimant had contradicted himself, by stating that "one could not [possibly] remove a bag in a supinated position" on the Boeing 737 300 aircraft. Finally, the court determined that the Commission failed to address the opinions of both Drs. Holtkamp and Miller that the claimant's injury could not possibly have occurred with the right arm in a pronated position.

¶ 32 Initially, we note several flaws in the circuit court's interpretation of the claimant's testimony as to the mechanism of his injury. The claimant made clear at the hearing that he had never used the terms "pronated" or "supinated" when he described his injury to his doctors, because he was unfamiliar with those terms. Rather, the claimant testified that, on April 20, 2010, when he provided his first detailed account of the events leading up to his injury, he gave Dr. Holtkamp a physical demonstration of his efforts to maneuver the flight bag out of its space.

The doctor herself then provided the medical description, stating that the claimant's arm started off in a pronated position when he first grabbed the bag, but then rotated into a supinated position after the bag got caught on the seatbelt mechanism and the claimant was forced to "jerk" the bag out. This is consistent with her conclusion that the wrist had to be in a supinated position to cause the claimant's injury.

¶ 33 We do not agree that Dr. Izquierdo's December 31, 2009, report, is necessarily inconsistent with that of Dr. Holtkamp. Dr. Izquierdo's report included a far more truncated summary of events, making no mention of the fact that the claimant's bag became caught on the seatbelt mechanism or that the claimant had to use extra effort to disentangle it. Further, there is no indication in the record as to how Dr. Izquierdo arrived at the phrase "palm down pronated," but it is clear this terminology did not come from the claimant, as he denied understanding the meaning of the term at that point, and denied using the word when speaking with his doctors. Accordingly, we find no basis to conclude that the claimant's description of the mechanism of his injury changed between December 31, 2009, and April 20, 2010.

¶ 34 Nor do we find any support for the assertion that the claimant stated that his right palm and forearm were "facing upwards the entire time" he attempted to extract his bag. Our review of the testimony at the hearing fails to disclose any such statement. Rather, during his testimony, the claimant was asked to describe "how much room [he had] to maneuver" in order to extract his bag from the restricted space in the Boeing 737 300. The arbitrator, after observing the claimant's demonstration in response to this question, stated for the record that the "claimant has motioned with his right hand and reach[ed] across his body and exhibiting as though he was lifting a bag straight upwards." The arbitrator also concurred with counsel for Southwest that, during the claimant's demonstration, "his wrist and forearm were faced upwards when making

that movement." However, the claimant then clarified that, unlike in his demonstration, he would not normally perform this action from a seated position, but would, in fact, be standing with his knee on the seat, reaching down with his right hand, rather than across his body. Accordingly, it appears that claimant's description was not entirely reflective of the series of events of December 7, 2009, which led to his injury. The demonstration makes no reference to the fact that the strap of the bag became caught, forcing the claimant to have to rotate his arm to loosen it. In fact, immediately prior to the above demonstration, the claimant testified that he could not remove the bag "in a normal removing flow" on that day, because the bag had become "jammed."

¶ 35 There is additionally no support in the record for the court's finding that the claimant contradicted himself by testifying, on cross-examination, that "one could not remove a bag in a supinated position in the particular aircraft on which [the claimant] was injured." We find that, in fact, the claimant stated the opposite, testifying that it was not possible to lift the flight bag directly out of its space with the wrist in a *pronated* position. We therefore conclude, based upon the above analysis, that there was no basis to disturb the Commission's finding that the claimant's testimony was both credible and consistent with the medical evidence as to the causation of his injury. We further hold that, by reevaluating the claimant's credibility and substituting its judgment as to the inferences to be drawn from the testimony and evidence, the trial court improperly usurped the function of the Commission as the finder of facts.

¶ 36 In this case, the evidence sufficiently established that the claimant suffered a work-related injury on December 7, 2009, and that this injury led to the present state of ill-being in his right elbow. The claimant testified that, as he attempted to remove his flight bag, he felt a sudden "pop" and burning or tingling sensation, and knew immediately that he had been injured.

After noting mechanical symptoms and popping and clicking in the elbow on December 9, Dr. Izquierdo ordered an MRI, based upon which both he and Dr. Holtkamp diagnosed the claimant with a complete tear of the lateral collateral ulnar ligament of his right wrist. There is no evidence that such a tear was diagnosed or suspected prior to December 7, 2009. A complete and detailed description of the mechanism of the injury was provided by the claimant and recorded in Dr. Holtkamp's report of April 20, and in reliance upon the claimant's description, Dr. Holtkamp opined that his injury was work-related. Dr. Izquierdo concurred in this opinion. Further, both Drs. Izquierdo and Holtkamp recommended that reconstructive surgery was necessary as a result of this injury, and the existence of a collateral tear was in fact confirmed by Dr. Holtkamp during the procedure. After hearing the testimony and considering the evidence, including the claimant's description of the mechanism of his injury, the Commission accepted the opinions of Drs. Holtkamp and Izquierdo that a causal connection exists between the claimant's accident while working on December 7, 2009, and the injury he sustained to his right elbow. We find that the opinions of Drs. Holtkamp and Izquierdo, coupled with the claimant's own testimony, provide more than sufficient evidentiary support for the Commission's determination that the claimant sustained the injury to his right elbow in an accident which arose out of and in the course of the claimant's employment with Southwest on December 7, 2009, and that a conclusion opposite to that reached by the Commission in this regard is not clearly apparent.

¶ 37 Based on the foregoing reasons, we reverse the judgment of the circuit court and reinstate the decision of the Commission.

¶ 38 Circuit court judgment reversed, decision of the Commission reinstated.