# Illinois Official Reports

## Appellate Court




***Esquinca v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 150706WC**

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| Appellate Court Caption | SALVADOR ESQUINCA, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Romar Transportation Systems, Inc., Appellee). |
| District & No. | First District, Workers' Compensation Commission Division<br>Docket No. 1-15-0706WC |
| Filed | February 11, 2016 |
| Decision Under Review | Appeal from the Circuit Court of Cook County, No. 14-L-50809; the Hon. Robert L. Cepero-Lopez, Judge, presiding. |
| Judgment | Affirmed. |
| Counsel on Appeal | Paul A. Coghlan, of Paul A. Coghlan & Associates, P.C., of Hinsdale, for appellant.<br><br>Courtney M. Quilter, of Ganan & Shapiro, P.C., of Chicago, for appellee. |
| Panel | PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court, with opinion.<br>Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment and opinion. |

## OPINION

¶ 1 The claimant, Salvador Esquinca, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), seeking benefits for a low back injury which he allegedly sustained while working for the employer, Romar Transportation Systems, Inc. (employer). After conducting a hearing, an arbitrator found that the claimant was an independent contractor, and not an employee of the employer, at the time he was injured. Accordingly, the arbitrator denied benefits.

¶ 2 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission affirmed and adopted the arbitrator's decision with one Commissioner dissenting.

¶ 3 The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling.

¶ 4 This appeal followed.

¶ 5 FACTS

¶ 6 The employer is a transportation company engaged in the business of warehousing, yard storage, truck brokering, and intermodal freight transport by rail and trucking. Some of the employer's drivers are employees of the company, and some are "owner-operators" that the employer hires as independent contractors.

¶ 7 The claimant, who owned his own truck, delivered loads for the employer. On April 29, 2010, the claimant was driving his truck and a trailer belonging to the employer northbound on I-55 when he was rear ended by three other vehicles. The claimant injured his low back in the collision. He sought workers compensation benefits from the employer, but the employer claimed that he was ineligible for such benefits because he was an independent contractor, not an employee of the employer.

¶ 8 The parties' relationship began approximately 2½ years before the accident. On September 28, 2007, the claimant and the employer signed a "Contractor Service Agreement" (Agreement). The Agreement stated that "[i]t is the intention of the parties that [the claimant] shall be an independent contractor with respect to the [employer]. Neither [the claimant] nor any driver, employee, or other worker engaged by [the claimant] shall be deemed an employee or agent of the [employer] for any purpose whatsoever," including but not limited to payroll taxes, income tax withholdings, and other tax payments. The Agreement noted that the claimant owned his own truck but provided that, "[a]s required by 49 C.F.R. § 1057.12(c) and comparable state regulations," the employer shall have exclusive possession, control, and use of the truck "to the extent required by such regulation during the term of this agreement, but only during the time the [truck] is in fact operated in the service of the [employer]." The Agreement provided that the claimant shall be responsible for the entire cost of operating the truck in connection with the claimant's performance under the Agreement, including fuel, fuel taxes, tolls, permits, licenses, maintenance costs, and plate registration. The Agreement stated that the claimant "shall direct the operation of the [truck] in all respects and shall determine the method, means and manner of performance of this Agreement including, but not limited to, such matters as choice of routes, points of servicing of [the truck] and rest stops." The Agreement also required the claimant to obtain insurance, including workers' compensation

insurance in his own name for himself and his employees and "bobtail" insurance, and to pay the premiums for such insurance.

¶ 9 Affixed to the Agreement was a provision entitled Addendum "C" Insurance, which allowed that "Contractor/Claimant, Salvador Esquinca/Esquinca Trucking" either elect to be covered under the Illinois Workers' Compensation Act or waive coverage under the Act and elect coverage under an "Occupational Accident Insurance Policy." The claimant did not check either box (*i.e.*, he did not elect either option).

¶ 10 The Agreement required the claimant and his employees to abide by various federal and state laws and regulations. However, it provided that the drivers or other employees used by the claimant "shall be under the sole control and direction of [the claimant]" and that the employer "shall have no right to direct or control the hiring or discharging of such individuals, or the manner in which such individuals perform duties for [the claimant]."

¶ 11 The Agreement provided that it would remain in effect for a period of 24 months after the parties signed it on September 28, 2007. The Agreement contained a merger clause indicating that the Agreement "represents the entire agreement between the parties with respect to matters contained herein," and that "[n]o amendment or addition to this agreement will be effective unless in writing and signed by both parties." By its terms, the Agreement expired on or around September 28, 2009, approximately seven months prior to the accident. The parties never expressly renewed the Agreement, wither orally or in writing. Accordingly, no written agreement characterizing the employment relationship between the parties was in effect on the date of the accident.

¶ 12 The claimant testified that, since January 9, 2007, he has been incorporated under the name "Esquinca Trucking." The claimant was still incorporated at the time of the arbitration hearing. The claimant stated that, before he worked for the employer, he never sold his trucking services directly to the general public. However, he had previously worked as an independent contractor for other trucking companies.

¶ 13 On or about September 25, 2007, the claimant filled out a "Drivers Application For Employment" form with the employer. From that day forward, the claimant drove for the employer five days per week. The claimant testified that he owned his own truck, which he used when driving for the employer. However, the claimant claimed that he was told he was one of the employer's employees. The claimant admitted that he was responsible for paying for the license plate fees, gas, repairs and maintenance for the truck. When he drove for the employer, the claimant was told where to pick up the shipment and where to the deliver the shipment. However, the claimant acknowledged that he chose the route he would travel to make the delivery. Although the employer provided a required delivery time for each shipment, the claimant otherwise decided his own schedule for making the delivery, including when and where to make rest stops and get gas.

¶ 14 Once the claimant completed a delivery, he would submit paperwork to the employer. He would then be paid a settlement for the delivery. The claimant was paid per shipment and not paid by the hour. The employer did not deduct taxes out of the claimant's paychecks. Rather, the claimant was responsible for deducting taxes. At the end of the year, the employer would issue a 1099 to the claimant for tax purposes.

¶ 15 When driving for the employer, the claimant was required to display the employer's logo decal as well as the employer's Department of Transportation (DOT) number on his truck. The claimant stated that he never removed the employer's logo decal from his truck because it

could not be reattached after it was removed. He was not required to make any other modifications to his truck in order to drive for the employer. The employer did not require the claimant to wear a uniform. However, the employer required each person who drove for it, including the claimant, to wear a safety vest the entire time he or she was on duty. According to the employer's written policy (which the claimant signed), any driver caught without their safety vest on was subject to a $75 fine. The claimant was required to sign other written policies promulgated by the employer, including a policy restricting the claimant's use of a cell phone while driving and requiring him to report any ticket he received for illegal use of a cell phone or electronic device to the employer within 24 hours.

¶ 16 The claimant stated that, other than the manner in which he was paid, he was treated the same as all the other drivers for the employer, two of whom were classified as "employees."[1] Moreover, the claimant stated that he was treated the same by the employer as he was when he drove for other companies as an employee. For example, the claimant testified that the employer required him to: (1) undergo drug tests and federally mandated physicals with a doctor of the employer's choice; (2) take written road tests; (3) attend safety meetings; (4) keep a log book; (5) check the tire pressure on all trailers he picked up at the rail yards; (6) report accidents. He also stated that the employer told him what loads to pick up, required him to work full-time hours, five days per week, and restricted the number of consecutive hours he could drive.

¶ 17 The claimant testified that he believed that if he did not accept a load offered by the employer, he would be left off the work schedule for a day or would get a shorter trip assignment. However, the claimant admitted that he had refused loads offered by the employer and had subsequently returned to drive for the employer.

¶ 18 The claimant testified that he drove five days per week for the employer. From the time he filled out an application to work for the employer in September 2007 until the April 29, 2010, accident, the claimant never drove for any other company. The claimant testified that, during the time he had a relationship with the employer, he was not allowed to haul freight for other customers. He stated that, in order to drive for another company, he would have had to terminate his contract with the employer.

¶ 19 The claimant paid for his own liability and bobtail insurance on the truck. The premium for the occupational accident policy was deducted from the claimant's pay. The claimant was also responsible for any speeding tickets or driving citations which he incurred while driving. However, he claimed that he was required to report all speeding tickets and other citations to the employer, which the employer tracked. Moreover, the claimant parked his truck in a lot which was owned by a private entity. He paid for the expenses associated with parking the truck and was not reimbursed by the employer for the parking expenses.

¶ 20 Michael Marden, the employer's President, testified on the employer's behalf. Marden's job duties included oversight of all the employer's divisions. Marden testified that the employer's workforce is composed of approximately 22 employees and between 30 and 32 owner-operators. Marden stated that the claimant began driving for the employer in 2007. Marden believed that the claimant was an independent contractor and not an employee of the

[1]The claimant testified that, while he worked for the employer, a total of 18 drivers drove for the employer. Sixteen of these drivers were classified by the employer as "independent contractors," and two were classified as "employees."

employer. He noted that the claimant signed an Agreement prior to driving for the employer. According to Marden, if the claimant had been hired as an employee, he would not have been required to sign the Agreement.

¶ 21 Marden testified that the Agreement between the claimant and the employer began in 2007 and continued for 24 months thereafter unless it was terminated earlier. He admitted that the Agreement expired some seven months before the accident and was never renewed or extended. He further conceded that any amendments under the Agreement were required to be in writing and signed by both parties. However, he testified that, after the Agreement expired in 2009, the claimant continued to drive for the employer in the same capacity. During that time period (*i.e.*, from late September 2009 through April 29, 2010), the claimant was not added to the employee schedule, the expenses he was responsible for did not change, the way he was paid did not change, and the percentage of shipment he received did not change.

¶ 22 Regarding load assignments, Marden testified that the claimant would get notice that a load was available either by receiving a call or by calling the dispatcher. According to Marden, the only information given to the claimant regarding the load was the location of the load, the pick-up number, and where and when it was to be delivered; the claimant was not given any other information, nor was he given a schedule or route to follow. Rather, the claimant could choose the route he would travel to make the delivery and could determine his own schedule for making the delivery so long as he complied with the assigned delivery time. The claimant could also determine where to get gas and where and when to make rest stops en route. Marden stated that drivers hired as employees were given a specific schedule.

¶ 23 Moreover, Marden testified that, although all drivers received their assignments from the same dispatcher, employee drivers "have to do the work they are directed to do," whereas owner-operators "have the free choice" of either taking the work or turning it down. In sum, unlike employees, owner-operators "may choose whether they want to work or not." Marden stated that the claimant did not have to accept every load that was offered to him and that the claimant's rejection of a load did not have any effect on his ability to drive for the employer.

¶ 24 Marden testified that the claimant owned his own truck, which he used to make deliveries for the employer. Marden stated that the claimant was responsible for all operating expenses of the truck, including tires, fuel, license plates, maintenance, windshields, bumpers, and repairs. Marden noted that, if the claimant had been hired as an employee, the employer would have been responsible for the operating expenses of the truck. Marden testified that, other than repairs which were required by the DOT, the employer did not tell the claimant any repairs or maintenance that needed to be done to the truck. In addition, the employer did not tell the claimant where to park his truck or pay for any of the associated parking expenses. While driving for the employer, the claimant was required to put the employer's decals on his truck along with the employer's DOT number. This requirement was mandated by DOT regulations, and it applied both to independent contractors and to drivers hired as employees. Marden explained that the claimant was required to have the company decal on the side of his truck only when operating in the service of employer. Because the claimant owned his own truck, he could use his truck for anything he wanted, not just for driving for the employer.

¶ 25 Marden further testified that the claimant was compensated differently than the employer's employee drivers. Marden stated that the claimant was paid a percentage of the revenue received for each shipment he delivered. Marden noted that some of the employee drivers are paid on an hourly basis, while others receive a percentage per shipment. However, the

percentage per shipment received by a driver hired as an employee was lower than the percentage received by an owner-operator. (Employee drivers received 30-35% of shipments, while owner-operators received 70-75% of shipments.) Moreover, Marden noted that the claimant was personally responsible for deducting taxes out of his earnings. He indicated that, if the claimant had been hired as an employee, taxes would have been deducted from his paycheck by the employer. Similarly, Marden noted that, if the claimant had been an employee, there would have been deductions for a 401(k). The claimant received 1099s for each year from 2007 through 2010. Marden stated that 1099s are used only for independent contractors.

¶ 26 Marden also testified regarding the differences in insurance offered to drivers hired as employees versus owner-operators. He explained that the claimant was responsible for maintaining his own bobtail, truck, and health insurance. According to Marden, if the claimant had been hired as an employee, he would have been offered health, medical, dental, short-term and long-term disability insurance through the employer, and the premiums for any such insurance would have been deducted from his paycheck by the employer.

¶ 27 Marden testified that the employer offered occupational accident insurance to its owner-operator drivers through United States Specialty. The employer offered this insurance policy to the claimant. However, Marden stated that the claimant was not required to purchase the specific policy offered by the employer and could opt for a policy through another carrier. Marden testified that the employer contributed nothing toward the premium for the occupational accident policy and the claimant was responsible for the entire premium (which was deducted from his paycheck). Marden claimed that the claimant never came to him to discuss any issues or questions he had regarding the occupational accident policy. Nor did the claimant ever question the deductions taken out of his paycheck for occupational accident insurance. Marden confirmed that the employer provides and pays for workers' compensation insurance for its employees.

¶ 28 After the April 29, 2010, accident, the claimant reported the accident to the employer, who referred him to Concentra, the employer's company clinic. The claimant first sought treatment at Concentra on May 7, 2010. A Concentra intake form indicates that the claimant identified his employer as "Esquinca Company." The claimant was initially diagnosed with a lumbosacral strain and limited to light duty work. A July 2010 MRI revealed a herniated lumbar disc. From May 27, 2010, through December 2012, the claimant sought treatment intermittently from several different doctors. He was taken off work entirely for four weeks (from late May 2010 through July 8, 2010), but he worked full time with certain permanent lifting restrictions thereafter. At the time of the arbitration hearing, the claimant was working full time as a truck driver.

¶ 29 Dr. Michael Gross, the claimant's section 12 independent medical examiner (IME), opined that the claimant suffered from residual low back and thoracic spine injury that was causally related to the April 29, 2010, accident. The employer's IME, Dr. Avi Bernstein, disagreed. Dr. Bernstein opined that the claimant's MRI demonstrated nothing more than age-appropriate degenerative changes and that the objective medical findings did not support the claimant's subjective complaints, which suggested exaggeration and symptom magnification. Dr. Bernstein also opined that the medical care received by the claimant had been unindicated, unnecessary, and excessive.

¶ 30 The arbitrator found that the claimant was not entitled to workers' compensation benefits under the Act because he "failed to prove that an employee-employer relationship existed at the time of the accident." After analyzing the relevant factors, the arbitrator concluded that "the evidence clearly demonstrate[d] [that the claimant's] employment status was that of an independent contractor and not an employee of the [employer] on the accident date." For example, the arbitrator found that the employer "had minimal control over the manner in which [the claimant] performed his job duties." In support of this finding, the arbitrator noted that: (1) the claimant testified he was not told by the employer what route to take when making deliveries and he decided his own schedule for transporting the delivery, including when and where to make rest stops and to refuel; (2) Marden testified that if the claimant were hired as an employee driver, he would have had a set schedule; (3) unlike employee drivers, who were required to do assigned work, the claimant "was able to pick and choose when he wanted to drive" and "did not have to accept every load that was offered to him"; (4) the claimant owned his own truck and was responsible for all operational expenses associated with the truck as well as any speeding tickets or driving citations he incurred; (5) Marden testified that, if the claimant had been hired as an employee, the employer would have been responsible for operating expenses of the truck; (6) the employer did not tell the claimant what maintenance or repairs to perform on the truck; (7) the claimant was responsible for maintaining liability and bobtail insurance on the truck; and (8) the employer did not tell the claimant where to park his truck or pay for parking.

¶ 31 The arbitrator also found that, although the Agreement expired approximately seven months before the accident, both parties testified that they "there was no change in their actions or behaviors and they continued to conduct their business relationship as if the [Agreement] was still in effect." Accordingly, the arbitrator found that, pursuant to the Agreement, the claimant was solely responsible for the hiring, firing, payment, and job performance of any employees he hired, and for any insurance, payroll deductions, and any other labor costs associated with any such employees.

¶ 32 The arbitrator listed several additional factors supporting its conclusion that the claimant was an independent contractor. For example: (1) Marden testified that the claimant was paid as an independent contractor rather than an employee; (2) the employer did not have an unqualified right to discharge the claimant for any reason or no reason, and, instead, the parties had a mutual, limited right to terminate the contract for a breach by the other party; (3) although the claimant's trucking business was related to the employer's business, the employer was "only interested in the end result" (*i.e.*, the delivery of the shipment), and "[a]ll the details of accomplishing the shipment were left to [the claimant]"; (4) the claimant was not required to wear a uniform when he drove for the employer, and he was only required to display the employer's decal and DOT number when he was "operating in the service of [the employer]" (pursuant to DOT regulations); (5) although the claimant drove exclusively for the employer from 2007 through April 2010, Marden testified that the claimant could have driven for other companies during that time period if he had wanted; (6) the claimant testified that he was hired as an owner-operator, and the Agreement stated that it was the parties' intent that the claimant would be an independent contractor; (7) the claimant purchased occupational accident insurance on his own; (8) on the application for that insurance, the claimant "checked the box indicating that he was an owner-operator"; and (9) the Concentra medical records "indicate[d] [that the claimant] reported his employer was Esquinca Company, not [the employer]."

¶ 33 Because the arbitrator found that the claimant was an independent contractor at the time of the accident, it denied benefits and found all remaining issues raised by the parties (including accident, causation, and the claimant's entitlement to TTD benefits, medical expenses, and penalties) moot.

¶ 34 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). In a divided decision, the Commission affirmed and adopted the arbitrator's decision.

¶ 35 Commissioner Tyrrell dissented. Commissioner Tyrrell concluded that the claimant had proven that he was an employee of the employer at the time of the accident. He found that the claimant's case was factually analogous to *Earley v. Industrial Comm'n*, 197 Ill. App. 3d 309 (1990), and *Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117 (2000), both of which found the claimant to be an employee rather than an independent contractor. In *Ware*, we reversed the Commission's finding that there was no employment relationship, finding it to be against the manifest weight of the evidence. Commissioner Tyrrell stated that "[w]here the Appellate Court reverses despite the onerous nature of the standard of manifest weight, the Commission should heed this guidance and consistently find that truck drivers working with these 'independent contractor agreements' are what they are: employees." Commissioner Tyrrell found it "clear *** that 'independent contractor agreements', such as those used in *Ware*, *Earley*, and this case, seek to shift the burden of the cost of workers' compensation to truck drivers who happen to own their own trucks, despite that the actual employment tasks performed are virtually identical to employee truck drivers." Moreover, he concluded that "the testimony in this case shows how these agreements may not be at arm's length, and instead are based on 'take it or leave it' tactics."

¶ 36 Commissioner Tyrrell noted that the 24-month written Agreement between the parties had expired before the accident and, therefore, was arguably "moot" to the question of the claimant's employment status. Regardless, Commissioner Tyrrell found statements in the Agreement suggesting that the claimant was an employee rather than an independent contractor. For example, the Agreement provided that the claimant's truck was to be maintained in safe mechanical operating condition and repair, and it "stated that the delivery was to be by manner and means and over routes in accordance with schedules selected and agreed to by the contractor," thereby implying that "a route could be presented by [the employer] to [the claimant] for agreement."

¶ 37 Moreover, although the Agreement stated that the claimant was not obligated to accept every load offered by the employer, Commissioner Tyrrell concluded that "[the claimant's] testimony made it clear that there were consequences to [him] for refusing a load." The claimant testified that he was not allowed to drive for another trucking company, despite the contract language, because the contract would have been terminated. Further, Commissioner Tyrrell found it "highly relevant" that the claimant "never checked the option in the [A]greement to waive workers compensation coverage." Commissioner Tyrrell concluded that "this clearly supports [the claimant's] testimony that he was not properly informed about workers compensation coverage and which party is responsible" for such coverage, and it supports the inference "that [the employer] did not discuss this with [the claimant], and there was no meeting of the minds in this regard."

¶ 38 Commissioner Tyrrell listed several additional facts that he believed "point[ed] to [the employer's] exertion of control over the [claimant], thereby suggesting an employment

relationship. For example: (1) the employer "arranged for all of [the claimant's] work, and [the claimant] testified he never was in direct contact with any customer"; (2) the claimant "was required to deliver goods in accordance with the terms and conditions that [the employer] agreed to with the customer"; (3) the employer gave the claimant forms to complete, tracked his hours and directed which loads he was to deliver; (4) the claimant testified that, when he initially sought treatment after the accident, "Concentra did not initially want to provide medical services until [the employer's] dispatcher *** called the facility." Moreover, Commissioner Tyrrell noted that, pursuant to law, the employer maintained exclusive possession, control and use of the claimant's truck during the time it was operated to deliver a load on behalf of the employer, and the claimant was required to display the employer's signs and DOT number on his truck while delivering a load for the employer. The Commissioner observed that, in *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159 (2007), our supreme court "indicated that evidence of control, exerted or implied, based on a requirement of local or federal regulations is evidence that such control exists, and the motivation of the employer in exerting or implying such control is irrelevant."

¶ 39 Further, Commissioner Tyrrell noted that the relationship of the claimant's business to the employer's business favored the finding of an employment relationship because "both [the claimant] and [the employer] were in the identical 'business': the delivery of goods to customers by truck."

¶ 40 Moreover, Commissioner Tyrrell cited *Roberson* for the proposition that "there is a growing tendency to classify owner-drivers of trucks as employees when they perform continuous service which is an integral part of the employer's business." The Commissioner agreed with this proposition and found it "very applicable in this case," particularly given the claimant's unrebutted testimony that "he has worked for no other company other than the [employer] since *** September 2007."

¶ 41 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling.

¶ 42 This appeal followed.

¶ 43 ANALYSIS

¶ 44 1. The Commission's Finding That the Claimant Was an Independent Contractor

¶ 45 On appeal, the claimant argues that the Commission's finding that he was an independent contractor, rather than the employer's employee, at the time of the accident was against the manifest weight of the evidence.

¶ 46 Whether a claimant is classified as an independent contractor or an employee is crucial, for it is the employment status of a claimant which determines whether he is entitled to benefits under the Act. *Earley*, 197 Ill. App. 3d at 314; see also *Roberson*, 225 Ill. 2d at 174 (noting that an employment relationship is a prerequisite for an award of benefits under the Act). For purposes of the Act, the term "employee" should be broadly construed. *Ware*, 318 Ill. App. 3d at 1122. Nevertheless, the question of whether a claimant is an employee remains one of the most vexatious in the law of workers' compensation. *Roberson*, 225 Ill. 2d at 174. The difficulty arises from the fact-specific nature of the inquiry. *Id.* Many jobs contain elements of both an employment and an independent-contractor relationship. *Kirkwood v. Industrial Comm'n*, 84 Ill. 2d 14, 20 (1981). Since there is no clear line of demarcation between the status

of an employee and an independent contractor, no rule has been, or could be, adopted to govern all cases in this area. *Roberson*, 225 Ill. 2d at 174-75; *Kirkwood*, 84 Ill. 2d at 20.

¶ 47 Our supreme court has identified a number of factors to assist in determining whether a person is an employee. Among the factors cited by the supreme court are: (1) whether the employer may control the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employer compensates the person on an hourly basis; (4) whether the employer withholds income and social security taxes from the person's compensation; (5) whether the employer may discharge the person at will; and (6) whether the employer supplies the person with materials and equipment. *Roberson*, 225 Ill. 2d at 175. Another relevant factor is the nature of the work performed by the alleged employee in relation to the general business of the employer. *Id.*; see also *Ware*, 318 Ill. App. 3d at 1122. The label the parties place on their relationship is also a consideration, although it is a factor of "lesser weight." *Ware*, 318 Ill. App. 3d at 1122. The significance of these factors rests on the totality of the circumstances, and no single factor is determinative. *Roberson*, 225 Ill. 2d at 175. Nevertheless, whether the purported employer has a right to control the actions of the employee is "[t]he single most important factor." *Ware*, 318 Ill. App. 3d at 1122; see also *Bauer v. Industrial Comm'n*, 51 Ill. 2d 169, 172 (1972). The nature of the claimant's work in relation to the employer's business is also an important consideration. *Kirkwood*, 84 Ill. 2d at 21; *Steel & Machinery Transportation, Inc. v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 133985WC, ¶ 31.

¶ 48 The existence of an employment relationship is a question of fact for the Commission. *Ware*, 318 Ill. App. 3d at 1122. In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Steel & Machinery Transportation*, 2015 IL App (1st) 133985WC, ¶ 32. We will overturn the Commission's resolution of a factual issue only if it is against the manifest weight of the evidence. *Ware*, 318 Ill. App. 3d at 1122. A factual finding is contrary to the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Steel & Machinery Transportation*, 2015 IL App (1st) 133985WC, ¶ 32. A finding is not against the manifest weight of the evidence if there is sufficient factual evidence in the record to support the Commission's decision, even if this court, or any other tribunal, might reach an opposite conclusion. *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 944-45 (2006); *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). Accordingly, when the evidence is "well balanced" (*i.e.*, when the facts of the case are susceptible to more than one reasonable interpretation) it is the Commission's province to weigh the evidence and decide among competing inferences, and its decision will be upheld. *Roberson*, 225 Ill. 2d at 187; see also *Kirkwood*, 84 Ill. 2d at 20.

¶ 49 Applying these standards, we find that there is sufficient evidence in the record to support the Commission's finding that the claimant was an independent contractor at the time of the accident. Regarding the most important factor, the evidence shows that the employer did not have the right to control the claimant's work performance or work-related activities to any notable degree. The employer did not tell the claimant what route to take when making deliveries. Although the claimant had to deliver each shipment on time, he decided his own schedule for transporting the delivery, including when and where to make rest stops and to refuel. The only information the employer provided to the claimant was where to pick up a

shipment and where and when to deliver it. Marden testified that, if the claimant had been hired as an employee driver, he would have had a predetermined schedule.

¶ 50 Moreover, unlike employee drivers, who were required to do any and all assigned work, the claimant was able to pick and choose when he wanted to drive and did not have to accept every load that was offered to him. Although the claimant testified that he believed there would have been negative consequences if he refused a load, he admitted that he rejected loads offered to him by the employer and continued to drive for the employer thereafter. Marden denied that there were any consequences for the claimant's refusing a load, and the Commission was entitled to credit Marden's testimony on this issue.

¶ 51 In addition, the claimant owned his own truck and was responsible for all operational expenses associated with the truck as well as any speeding tickets or driving citations he incurred. Marden testified that, if the claimant had been hired as an employee driver, the employer would have been responsible for the operating expenses of the truck. Further, the employer did not tell the claimant when, where, or how to perform maintenance or repairs to his truck. Nor did the employer pay for parking or tell the claimant where to park his truck. The claimant paid for liability and bobtail insurance on the truck.

¶ 52 Pursuant to DOT regulations, the claimant was required to display the employer's logo decal and DOT number on his truck when, and only when, he was driving in the employer's service. The claimant was not required to make any other modifications to his truck in order to drive for the employer. Although the claimant drove exclusively for the employer during the duration of their working relationship, Marden testified that the claimant could have driven for other companies if he had wanted. The claimant disputed this, but the Commission was entitled to credit Marden's testimony.

¶ 53 In addition, although it is a factor of lesser weight, the label the parties placed on their own relationship also weighs in favor of the Commission's finding. The Agreement stated that it was the parties' intent that the claimant would be an independent contractor. In his occupational insurance application, the claimant checked the box indicating that he was an owner-operator, rather than an employee. Moreover, Concentra's medical records indicate that, when the claimant sought treatment at Concentra shortly after the accident, he identified his employer as "Esquinca Company," not the employer. During the arbitration hearing, Marden testified that the claimant was an owner-operator and that Marden therefore believed he was an independent contractor.

¶ 54 Other factors further support the Commission's finding that the claimant was an independent contractor rather than an employee. The claimant owned his own truck, which he used while driving for the employer. Thus, the employer did not furnish all the primary equipment used to perform the work. The method of payment also suggested that the claimant was an independent contractor. Marden testified that driver employees were paid either an hourly wage or 30-35% of each shipment delivered. However, owner-operators (like the claimant) received 70-75% of each shipment. Moreover, Marden testified that the claimant was personally responsible for deducting taxes out of his earnings whereas the employer deducts such taxes from its employee's paychecks. The claimant received 1099s for each year from 2007 through 2010, which Marden stated are used only for independent contractors. Marden also noted that, if the claimant had been an employee, there would have been deductions for a 401(k).

¶ 55 Further, the claimant paid for his own occupational accident insurance and health insurance. According to Marden, if the claimant had been hired as an employee, he would have been offered health, medical, dental, short-term and long-term disability insurance through the employer, and the premiums for any such insurance would have been deducted from his paycheck by the employer. The claimant's paychecks (which were admitted into evidence) showed no such deductions.

¶ 56 The claimant argues that the evidence in this case, particularly the evidence of the employer's control of the claimant's work and the nature of the claimant's work, "overwhelmingly" favors a finding of an employment relationship. As to the employer's control over his work, the claimant notes that the employer required him to: (1) undergo training; (2) undergo federally mandated physicals with a doctor of their choice; (3) submit to background checks; (4) attend safety meetings; (5) wear a safety vest (and pay a $75 fine if he failed to do so); (6) abide by the employer's policies regarding the use of cell phones while driving; (7) "semi-permanently placard his tractor with [the employer's] adhesive signs which were not able to be removed and re-attached"; and (8) make his truck available to the employer for the employer's exclusive use (pursuant to applicable legal regulations). Moreover, the employer restricted the number of continuous hours the claimant could drive, and the claimant asserts that the employer required him to give the employer written notice if he intended to drive for another company.[2]

¶ 57 The claimant argues that other factors further confirm that he was an employee. For example, the claimant's business was the same as the employer's business (hauling freight). The claimant had no customers of his own and worked exclusively for the employer 5 days per week for more than 2½ years. The employer provided equipment that was necessary for the performance of the work, such as trailers (which had the employer's logo on them) and the dispatching system. Moreover, the claimant filled out an "employment" application for the employer, and, in his occupational insurance application, the claimant did not check the box indicating that he waived his workers' compensation rights. The employer chose what trips to offer the claimant. Although the employer did not dictate the routes or require the claimant to wear a uniform, there was no evidence that the employer imposed these requirements on any of its employees. Moreover, although the claimant paid for his own bobtail and liability insurance, the employer selected and purchased the policies and then deducted the premiums from the claimant's pay. Further, the claimant argues that the fact that the employer did not dictate where the defendant could park his truck is irrelevant because the claimant drove his truck home and parked at home after his shift ended. He also argues that anything contained in the parties' former Agreement is irrelevant because it is undisputed that the Agreement had

[2]The claimant testified that he was not allowed to drive for other companies while he worked for the employer and that he would have had to terminate his contract with the employer before he did so. Marden disputed this and stated that the claimant could have driven for other companies if he so desired. Regardless, the claimant argues that, at a minimum, the employer set up substantial obstacles preventing the claimant from driving for others by mandating that the claimant affix a "semi-permanent" adhesive decal on his truck containing the employer's logo and DOT number and by requiring him to inform the employer if he drove for another company. The claimant provides no record citation for the employer's alleged notice requirement. Regarding the decal requirement, the employer counters that, if the clamant wanted to drive for another company, he could have simply covered up the employer's decal.

expired and was no longer in force at the time of the accident. Accordingly, the claimant maintains that the Commission erred in relying upon the Agreement in finding him to be an independent contractor.

¶ 58 In sum, the claimant argues that, other than how he was paid, he was treated no differently than an employee. He maintains that he was an "independent contractor" in name only. He agrees with dissenting Commissioner Tyrrell that the employer labeled several of its employees "independent contractors" in order to evade its obligations to its employees, including its legal obligation to provide workers' compensation benefits.

¶ 59 We acknowledge that there is evidence in the record that arguably suggests an employment relationship. However, as noted above, there is also ample evidence suggesting the opposite conclusion, *i.e.*, that the claimant was an independent contractor. That remains true even if all references to the parties' expired Agreement is disregarded. When the relevant evidence is capable of supporting either conclusion, as here, it is the Commission's province to weigh the evidence and decide among competing inferences, and its decision will be upheld. *Roberson*, 225 Ill. 2d at 187; see also *Kirkwood*, 84 Ill. 2d at 20; *Steel & Machinery Transportation*, 2015 IL App (1st) 133985WC, ¶ 32 (noting that it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence). There is sufficient evidence in the record to support the Commission's finding that the claimant was an independent contractor; on this record, we cannot say that the opposite conclusion was "clearly apparent." Accordingly, the Commission's finding was not against the manifest weight of the evidence.[3]

¶ 60 The claimant also argues that the Commission's finding that he was an independent contractor was erroneous as a matter of law because the parties were not operating under a valid written lease Agreement at the time of the accident. The claimant notes that federal regulations require an employer to have a written carrier lease (containing certain required provisions) with an independent contractor. 49 U.S.C. § 14102 (2006); 49 C.F.R. § 373.12(c)(4) (2010). Similarly, Illinois law requires motor carrier equipment leases to be in writing. 92 Ill. Adm. Code 1360.30(b) (1987). The Commission found, correctly, that the parties' written Agreement expired prior to the accident and had not been renewed in writing (as required by the Agreement). The claimant argues that, because the parties were not operating under a valid written lease at the time of the accident, the claimant could not have been an independent contractor as a matter of law, and, "by default," he must have been an employee operating under an implied-in-fact employment agreement.

¶ 61 We do not find the claimant's argument persuasive. The question presented in this case is whether an employment relationship existed between the claimant and the employer. Our

[3]The claimant argues that the employer's brief on appeal violates Illinois Supreme Court Rule 341(h)(6), (i) (eff. Jan. 1, 2016) by misrepresenting Marden's testimony on disputed issues as "facts" in its statement of facts. He also argues that the employer violated the supreme court's rules (presumably, Rule 341(h)(7), (i)) by failing to include any record citations in the argument section of its brief. The claimant asks us to strike the improper factual statements and argument or, in the alternative, to disregard such statement. We note that, contrary to the claimant's assertion, the employer's brief does contain record citations to most (but not all) of the factual assertions made in the fact and argument sections of its brief. Moreover, while we acknowledge that rebutted testimony may not be presented as "fact," it is appropriate for the employer to present *unrebutted* testimony as fact. We have disregarded any improper factual statements or arguments that find no support in the record.

supreme court has directed the Commission to answer this factual question by considering all of the relevant facts and circumstances, including the degree of control the employer asserted over the claimant's work performance, the nature of the claimant's business in relation to the employer's business, and several other factors our supreme court has deemed significant. *Roberson*, 225 Ill. 2d at 174-75. Since there is no clear line of demarcation between the status of an employee and an independent contractor, no rule has been, or could be, adopted to govern all cases in this area, and no single relevant factor is determinative. *Id.* at 175; *Kirkwood*, 84 Ill. 2d at 20. "[A]lthough a contractual agreement is a factor to consider, it does not, as a matter of law, determine an individual's employment status." *Early*, 197 Ill. App. 3d at 317-18; see also *Wenholdt v. Industrial Comm'n*, 95 Ill. 2d 76, 80 (1983).

¶ 62 In this case, the Commission properly considered all of the relevant facts and circumstances. Based on its consideration of all the relevant evidence (and the factors identified by our supreme court), the Commission determined that the claimant was not an employee of the employer. The fact that the parties did not properly renew their written Agreement might render that Agreement unenforceable in an action for breach of contract. However, that fact, standing alone, cannot resolve the issue of whether an employment relationship existed for purposes of the Act. The Commission found that the employer had very little right to control the claimant's work and that this fact (plus other relevant factors) weighed against finding an employment relationship. Moreover the Commission found that, after the expiration of the Agreement, nothing changed and the parties continued to act as if the terms of the independent contractor Agreement remained in effect. Reviewing the parties' actions and all the other relevant evidence in light of the governing case law, the Commission concluded that the claimant was not an employee for purposes of the Act. It committed no error of law in reaching that conclusion.

¶ 63 The claimant also argues that the Commission erred as a matter of law in finding him to be an independent contractor because the employer violated section 23 of the Act (820 ILCS 305/23 (West 2010)) by attempting to solicit him to waive his rights under the Act, thereby rendering the Agreement illegal and unenforceable. The claimant has forfeited this argument by failing to raise it before the Commission or the circuit court. See, *e.g.*, *Carter v. Illinois Workers' Compensation Comm'n*, 2014 IL App (5th) 130151WC, ¶ 31; *May v. Industrial Comm'n*, 195 Ill. App. 3d 468, 472 (1990).

¶ 64 However, even if we were to address this argument, we would reject it. Assuming *arguendo* that the alleged improper solicitation rendered the parties' Agreement invalid and unenforceable, that fact would not compel reversal of the Commission's decision. As noted above, the existence of a valid contract is only one factor among many to consider, and the absence of a valid contract does not require a finding of an employment relationship as a matter of law. In this case, there was sufficient evidence aside from the Agreement to support the Commission's finding of no employment relationship.[4]

[4]The claimant argues in passing that, because of the employer's alleged violation of section 23, the employer should be "estopped by virtue of their conduct and latches [*sic*] from claiming that *** [the claimant] was not their employee." However, the claimant cites no authority in support of this argument, and has therefore forfeited the argument. *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 208 (2009); Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 65 The claimant also contends that the Commission erred by finding that the claimant had executed a "valid waiver of his rights under the Act." We disagree. The Commission noted that, on his application for occupational liability insurance, the claimant checked a box indicating that he was an owner-operator. The Commission apparently considered this as one fact, among many, that suggested the claimant was an independent contractor, rather than an employee. However, the Commission never found that the claimant executed a "valid waiver" of his rights under the Act by checking any box in any insurance application or other document. The Commission did not base its decision on any such "waiver." Rather, as noted above, the Commission based its decision on a consideration of all the relevant evidence.

¶ 66 2. The Commission's Denial of TTD Benefits, Medical Expenses, and Penalties

¶ 67 Based on its argument that the claimant was an employee at the time of the accident, the claimant contends that we should remand this matter to the Commission with instructions to enter an appropriate award of benefits, including TTD, medical expenses, "or other benefits." Because we affirm the Commission's finding that the claimant was not an employee of the employer at the time of the accident, we also affirm the Commission's denial of benefits, including TTD and medical expenses. *Roberson*, 225 Ill. 2d at 174 (noting that an employment relationship is a prerequisite for an award of benefits under the Act); *Earley*, 197 Ill. App. 3d at 314 (ruling that a claimant's employment status determines whether he is entitled to benefits under the Act).

¶ 68 Moreover, given the evidence presented in this case, we hold that the employer acted in good faith in denying the claimant benefits (and had just cause to delay paying such benefits) because there was a genuine controversy regarding whether the claimant was an employee of the employer at the time of the accident. Accordingly, the Commission properly refused to impose penalties on the employer under sections 19(k) and 19(*l*) of the Act (820 ILCS 305/19(k), (*l*) (West 2010)).

¶ 69 CONCLUSION

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

¶ 71 Affirmed.