

**NOTICE**

Decision filed 12/19/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 Ill. App. (1st) 103799WC-U  
No. 01-10-3799WC  
Order filed: December 19, 2011

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

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

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NINA SWING,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-L-50479
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION and COMPASS GROUP USA,	)	Honorable
	)	Sanjay T. Taylor,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice McCullough and Justices Hoffman, Holdridge, and Stewart concurred in the judgment.

**ORDER**

*Held:* The decision of the Illinois Workers' Compensation Commission that claimant did not provide notice of her injury to her employer is not contrary to the manifest weight of the evidence; all other issues are moot.

¶ 1 Claimant, Nina Swing, filed an application for adjustment of claim pursuant to the Workers Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)) seeking benefits from respondent, Compass Group USA. Claimant alleged that she suffered "multiple injuries while working." The date of the accident was listed as April 12, 2006. The arbitrator found that

claimant had not provided respondent with notice as required by the Act (see 820 ILCS 305/6(c) (West 2006)). He also found that claimant had not carried her burden of proving that she had sustained an injury caused by her employment with respondent, and the Commission adopted his opinion and affirmed. As the former finding is not contrary to the manifest weight of the evidence (*Zion-Benton Township High School District 126 v. Industrial Comm'n*, 242 Ill. App. 3d 109, 114-15 (1993)) and because the failure to give notice as required by the Act is a bar to recovery (*White v. Industrial Comm'n*, 374 Ill. App. 3d 907, 911-12 (2007)), we need not address claimant's latter contention regarding causation. Accordingly, we affirm the decision of the circuit court confirming the decision of the Commission.

¶ 2 Section 6 of the Act requires that “[n]otice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident.” 820 ILCS 305/6(c) (West 2006). The Act further provides that “[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy.” 820 ILCS 305/6(c) (West 2006). Thus, where an employee provides defective notice, an action is barred only if the employer shows it was prejudiced. *Zion-Benton Township High School District 126*, 242 Ill. App. 3d at 115. Conversely, if an employee does not provide at least some degree of notice, the employer need not show prejudice. *White*, 374 Ill. App. 3d at 910. To constitute even defective notice, the employee must, at a minimum, apprise the employer that his or her condition is work related. *White*, 374 Ill. App. 3d at 911 (“Although Freeman United knew White was injured before the date in question, the record does not show appraisal of *industrial* injuries.”). Whether a claimant has given a respondent sufficient notice is a question we review using the manifest-weight standard. *Zion-Benton Township High School District 126*, 242 Ill. App. 3d at 114-15. A decision is contrary to the manifest weight of the evidence only where an opposite conclusion is clearly apparent. *Elmhurst-Chicago Stone Co. v. Industrial Comm'n*, 269 Ill. App.

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3d 902, 906 (1995). We may affirm a decision of the Commission on any basis apparent in the record. *Comfort Masters v. Illinois Workers' Compensation Commission*, 382 Ill. App. 3d 1043, 1045-46 (2008).

¶ 3 The Commission, adopting the decision of the arbitrator, found that notice had not been given to respondent. It found that claimant “did testify that she told her supervisor she was having low back pain.” It also observed that one of respondent’s managers recalled claimant “asking for and being provided a stool.” The Commission correctly concluded that these facts do not establish notice in that, while they served to apprise respondent of claimant’s condition, neither permits an inference that respondent was informed that claimant’s condition was of an industrial etiology. Indeed, we note that claimant testified that she had conversations with at least two supervisors about her condition, but did not testify that part of the content of those conversation included informing respondent that her condition was related to her employment.

¶ 4 Before this court, claimant asserts (without citation to the record in contravention of Supreme Court Rule 341(h)(6) (eff. July 1, 2008)) that other employees were aware of her condition and did what they could to assist her. She further contends (this time citing an incorrect page in the record) that “it was well known that she was having back problems while working as a bartender.” These assertions do not constitute notice as a matter of law. We initially point out that the plain language of section 6(c) of the Act requires notice of an *accident* rather than of an *injury*: “Notice of the *accident* shall be given to the employer as soon as practicable.” (Emphasis added.) 820 ILCS 305/6(c) (West 2006). Telling an employer of a condition does not put the employer on notice of the accident; after all, the injury could have occurred while the employee was not working. The purpose of the notice requirement is to allow an employer to investigate an alleged accident. *Gano Electric Contracting v. Industrial Comm’n*, 260 Ill. App. 3d 92, 95 (1994). Simply reporting one’s condition, without reference to its cause, would not put an employer on notice that there was an accident to investigate. Finally, since claimant did not

provide any notice of an accident to respondent, we have no occasion to consider whether respondent was unduly prejudiced by the lack of notice. *White*, 374 Ill. App. 3d at 911 (“We need not address whether Freeman United suffered undue prejudice because, as noted above, the prejudice inquiry does not pertain unless some notice was given in the first place.”).

¶ 5 Accordingly, the facts and testimony cited by claimant do not constitute notice. See *White*, 374 Ill. App. 3d at 911 (“Although Freeman United knew White was injured before the date in question, the record does not show appraisal of *industrial* injuries.”). Having failed to provide notice, claimant cannot now pursue this action. *White*, 374 Ill. App. 3d at 911-12. Claimant’s remaining argument that the Commission erred in finding no causal connection between her employment and her injury is therefore moot, though, our initial review indicates that the Commission’s decision on this issue was not contrary to the manifest weight of the evidence. We therefore affirm the decision of the circuit court of Cook County confirming the decision of the Commission.

¶ 6 Affirmed.