

NOTICE  
Decision filed 2/04/11. 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.

NO. 2-10-0257WC  
IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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).

WORKERS' COMPENSATION COMMISSION DIVISION

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MICHAEL BURK,

Appellant,

v.

THE ILLINOIS WORKERS' COMPENSATION

COMMISSION *et al.*

(Michael Nicholas, Appellee).

) Appeal from the

) Circuit Court of

) Kane County.

)

) No. 09 MR 357

)

) Honorable

) Michael J. Colwell,

) Judge, presiding.

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JUSTICE STEWART delivered the judgment of the court.

Presiding Justice McCullough and Justices Hoffman, Hudson, and Holdridge concurred in the judgment.

R U L E 2 3 O R D E R

*Held:* The October 18, 2007 decision of the Illinois Workers' Compensation Commission that the claimant sustained a work related injury to his ankle, knee and back arising out of and in the course of his employment when he tripped and hit his knee while lifting a balloon wall is not against the manifest weight of the evidence.

The claimant, Michael Burk, filed an application for adjustment of claim against his employer, Michael Nicholas, seeking workers' compensation benefits for alleged injuries to his right knee, right ankle, and low back allegedly sustained on April 27, 2004. The claim proceeded to an arbitration hearing under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2004)).

The arbitrator found that, on April 27, 2004, the claimant sustained an accidental injury that arose out of and in the course of his employment, and that his current condition of ill-being was causally related to his work related injury. The arbitrator found that the claimant was entitled to temporary total disability (TTD) benefits in the sum of \$608.89 per week for a period of 22 2/7 weeks, gave the employer credit for TTD paid, and ordered the employer to pay \$39,165.25 for medical services. He also ordered the employer to pay the claimant the sum of \$608.89 per week for a further period of 30 weeks because the injuries sustained caused a loss of use of 10% of the right leg and 2% of the man as a whole.

The employer appealed to the Illinois Workers' Compensation Commission (Commission). On October 18, 2007, the Commission clarified and modified the arbitrator's decision. In accordance with the parties' agreement, the Commission found that the claimant's permanent partial disability rate was \$548.00 rather than \$608.89. The Commission clarified that the claimant was temporarily totally disabled from April 28, 2004, through September 23, 2004, a period of 21 2/7 rather than 22 2/7 weeks. The Commission further modified the arbitrator's decision by finding that the claimant was not entitled to any medical expenses incurred after December 30, 2004. The total modified medical expense award was \$27,915.23. In addition, the Commission found that the award of credit for TTD

paid was in error. The Commission otherwise affirmed and adopted the arbitrator's decision.

The employer filed a timely petition for review in the circuit court of Kane County. On October 15, 2008, the circuit court entered an order stating that the decision of the Commission was "reversed and remanded back to the [Commission] for further proceedings for the reasons advanced by the [employer]." Pursuant to the circuit court's order, and "based on the arguments that [the employer] raised in its Circuit Court brief," on May 27, 2009, the Commission found that the claimant failed to prove that he sustained accidental injuries arising out of and in the course of his employment, and that he failed to establish a causal connection between the claimed injuries and his condition of ill-being. The Commission reversed its October 18, 2007, order and vacated its awards.

On February 17, 2010, the circuit court confirmed the Commission's May 27, 2009, order. The claimant filed a timely notice of appeal.

#### STATEMENT OF FACTS

The claimant worked as a carpenter for the employer. He testified that on April 27, 2004, while helping to lift a balloon wall, he tripped on a wood block and struck his right knee against the wall. When he tripped, his ankle "popped." He continued to work for the rest of the day.

That evening, the claimant noticed that his right knee and ankle were swelling and sore. The next day he returned to work and reported the accident to Greg Sima, the carpentry foreman for the employer.

An accident report was completed on April 28, 2004. The report is signed by Cheryl Techter, who is in charge of workers' compensation claims for the employer. In the report, the nature of the injury is described as a sprain/strain of the right knee and ankle. The report indicates that the claimant stepped on a block while lifting a balloon wall and twisted his ankle and hit his knee on the wall.

Later that morning, the claimant saw his family physician, Dr. Lawrence Kacmar. Dr. Kacmar's patient history indicates that the claimant told him that, while working lifting a wall, he hit his right knee. He noted that the claimant also injured his right ankle and back. While the claimant was being examined, he had a back spasm between his shoulders and down his spine. Dr. Kacmar diagnosed the claimant with a septic prepatellar bursa, knee sprain, ankle sprain, and thoracic/lumbar spasm.

Ms. Techter testified that, when she discussed the claimant's accident with him, he told her that the accident occurred on April 27, 2004. The claimant later told Ms. Techter that while at the doctor's office he had a back spasm and he wanted to add his back injury to the accident report. Ms. Techter also spoke to Mr. Sima about the claimant's accident.

Mr. Sima testified that on Friday, April 23, 2004, the claimant told him he injured his knee. The claimant said he was going to rest it for the weekend and not seek medical attention. Mr. Sima testified that he filled out an accident report on April 23, 2004. In the report he wrote that the claimant "banged his knee while working but doesn't want to seek med."

Mr. Sima testified that two or three days later, the claimant approached him and asked to seek medical attention for his knee injury. Mr. Sima stated that the

claimant said "Can we not just say I bumped it taking tools out of my truck?" Mr. Sima stated that he told the claimant "that's fraud." The claimant testified that he did not remember Mr. Sima ever mentioning fraud to him.

Mr. Sima testified that he made notes about the claimant's accident which were admitted as petitioner's exhibit six. In the notes, Mr. Sima stated that on April 23, 2004, the claimant told him he banged his knee on a different day, but did not tell anyone. He asked if he could take the day off to rest his knee over the weekend. On Monday he returned to work. On Wednesday, April 28, 2004, the claimant came to Mr. Sima complaining that he hurt his knee and ankle the previous day when he banged his knee on a wall. Mr. Sima concluded in his notes: "Again, he never told anyone, on Tues. Could be an injury from on site, or off. Not sure."

The employer also called co-workers Sean McManus and Randy Thompson as witnesses to dispute the accident. Mr. McManus was not working with the claimant on the date of the accident. Mr. Thompson testified that he did not remember the claimant ever hurting himself at work. Both men testified that the claimant told them he hurt his knee kneeling on some rocks. Neither man was certain which knee the claimant hurt kneeling on rocks. The claimant testified that he had a prior surgery on his left knee and that about a week before his accident he injured it kneeling on some rocks.

The claimant returned to Dr. Kacmar for follow up care on April 30, May 7, June 2, June 16, June 30, August 3, August 12, August 26, and September 9, 2004. Dr. Kacmar repeatedly requested that the claimant be allowed to have a magnetic resonance imaging (MRI) of his knee and lumbar spine.

The claimant participated in a work conditioning/hardening program at the Athletic and Therapeutic Institute. In an August 1, 2004, letter, Daniel Curtis, a certified functional assessment specialist, reported to Dr. Kacmar, that the claimant appeared to have reached a functional plateau and stated that, with physician approval, the claimant could return to work.

On September 23, 2004, Dr. Kacmar examined the claimant. In his office notes, he wrote that the claimant's trapezius/perithoracic spasm, lumbar spasm, and knee strain were resolved and that his ankle sprain only caused intermittent pain. Dr. Kacmar fully released the claimant to work.

On January 21, 2005, Dr. Kacmar examined the claimant for sinus and ear pain. According to his office notes, at the end of the exam, the claimant mentioned that he slipped on ice five days prior and had a sore knee and hip. Dr. Kacmar noted that the claimant had soft tissue/muscle tenderness. On February 24, 2005, the claimant finally had an MRI of his right knee which revealed a medial meniscus tear.

At the time of the hearing, the claimant testified that he no longer had any pain in his right ankle, that he still had occasional swelling in his right knee, and that he continued to get spasms between his shoulders. He stated he had random back spasms and suffered from "pins and needles" of his feet.

On August 18, 2004, Dr. Charles Mercier wrote a letter to the employer's insurance carrier stating his opinion that the claimant's medical care starting in late April 2004 was not related to a work injury. He did not examine the claimant. Dr. Mercier's opinion was based on his review of medical records, the supervisor's report, and recorded statements of various coworkers.

The arbitrator found that, on April 27, 2004, the claimant was injured in an accident which arose out of and in the course of his employment. He specifically found that in judging the credibility of the witnesses, he relied heavily on the medical records and other records most contemporaneous with the accident. He found that the claimant's testimony at trial, the testimony of Ms. Techter, the claimant's history in his initial medical visit, his statement on the employer's first report of accident, and "even, in some degree," Mr. Sima's written report, all indicate that the claimant struck his knee against a wall on April 27, 2004. The arbitrator adopted the opinion of Dr. Kacmar that the claimant's injuries were work related. He found that Dr. Kacmar ordered the claimant not to work from April 28, 2004, through September 23, 2004, and found that the claimant was entitled to the sum of \$608.89 per week in TTD payments for that time period, which he determined to be 22 2/7 weeks. The arbitrator granted the employer a credit for \$39,165.25 for TTD already paid, and awarded medical bills in the amount of \$39,165.25, giving the employer credit for any of those bills it had already paid. The arbitrator found that, because the claimant testified that his right foot and ankle no longer caused him any pain, there would be no permanency award for those injuries. The arbitrator concluded that the claimant suffered from a back strain, and further found that the claimant suffered an "unoperative tear of the medial meniscus." He ordered the employer to pay the claimant the sum of \$608.89 per week for a further period of 30 weeks because the injuries sustained caused a loss of use of 10% of the right leg and 2% of the man as a whole.

On review, the Commission clarified and modified the arbitrator's decision. It found that, in accordance with the parties' agreement, the permanent partial

disability rate was \$548, not \$608.89. The Commission also vacated the arbitrator's "stipulated" finding that the employer was entitled to a credit for \$39,165.25 for temporary total disability it had paid. The Commission found that the stipulation sheet reflected no such payment "so the credit finding is clearly erroneous." Additionally the Commission found that the claimant's temporary total disability from April 28, 2004, through September 23, 2004, was a period of 21 2/7 rather than 22 2/7 weeks. The Commission further modified the arbitrator's decision by finding that the claimant was not entitled to medical expenses incurred after his December 30, 2004, visit to Dr. Kacmar because Dr. Kacmar's January 21, 2005, office note reflects that the claimant slipped on ice and suffered increased symptoms. The total modified medical expense award was \$27,915.23. The Commission otherwise affirmed and adopted the arbitrator's decision.

The employer filed a timely petition for review in the circuit court of Kane County and the appeal was assigned case number 07-MR-617. On October 15, 2008, the circuit court reversed the Commission's decision and entered the following handwritten order, quoted in its entirety:

"This matter coming before this honorable court on plaintiff's appeal from the IWCC, with all parties being present, and with this court being fully advised in these premises, it is hereby ordered that:

The IWCC's Decision and Opinion on review (07 IWCC 1355) is hereby reversed and remanded back to the IWCC for further proceedings for the reasons advanced by the appellant."

Neither the precise basis for the reversal, nor the purpose of the remand, appears of record in this appeal since none of the proceedings in case number 07-MR-617 are



included in the record. There is nothing in the record that would suggest that the claimant appealed the decision of the circuit court.

On remand, the Commission found that the claimant failed to prove that he sustained accidental injuries arising out of and in the course of his employment on April 27, 2004, and failed to prove a causal connection between his claimed injuries and his condition of ill-being. The Commission vacated its awards of temporary total disability benefits, medical expenses, and permanency, and found that the employer was entitled to a credit in the amount of \$8,399.19. The Commission's decision on remand provided, in pertinent part, as follows:

"On October 15, 2008, Judge Colwell entered a one-page order reversing the Commission's Decision and remanding the case to the Commission for further proceedings 'for the reasons advocated (sic) by the appellant.' Pursuant to this Order, and based on the arguments that Respondent raised in its Circuit Court brief, the Commission finds that Petitioner failed to prove that he sustained accidental injuries arising out of and in the course of his employment on April 27, 2004, and that Petitioner failed to establish a causal connection between those claimed injuries and his condition of ill-being. The Commission vacates the award of temporary total disability benefits, medical expenses and permanency that it made in its Decision and Opinion on review, entered on October 18, 2007, and finds that Respondent is entitled to Section 8(j) credit in the amount of \$8,399.19 \*\*\*."

The claimant filed a timely petition for review, and the circuit court confirmed the Commission's decision and opinion on remand. This appeal followed.

## ANALYSIS

Before addressing the issue raised on appeal, we are compelled to comment on the claimant's failure to file a brief in compliance with Supreme Court Rule 341(h). 210 Ill. 2d R. 341(h). Supreme Court Rule 341(h)(1) provides, in relevant part, that the appellant's brief must contain a summary statement entitled "Points and Authorities" that consists of the headings of the points in the argument with citations to authorities relied upon, and a reference to the page of the brief on which each heading and each authority appear. 210 Ill. 2d R. 341(h)(1). A brief that does not conform to the Supreme Court Rules may be stricken. *TTC Illinois Inc./Tom Via Trucking v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 344, 353, 918 N.E.2d 570, 578 (2009). In the instant case, the claimant's brief contains a "Points and Authorities" section consisting of one short paragraph with one citation. The citation is in improper form and there is no reference to the page of the brief on which the point or authority appears. Additionally, Supreme Court Rule 341(h)(7) requires that the argument section of an appellant's brief contain the contentions of the appellant and the reasons therefore, with citations to relevant authority and the pages of the record relied on. 210 Ill. 2d R. 341(h)(7). Here the claimant's argument is less than one page and contains no citation to authority or reference to record page numbers. Failure to provide proper argument and authority may result in forfeiture of the argument. *Eisenberg v. Illinois Workers' Compensation Comm'n*, 337 Ill. App. 3d 373, 384, 785 N.E.2d 1005, 1013 (2003). Despite the claimant's failure to comply with Supreme Court Rule 341(h), we will address the issue on its merits.

Although neither party has raised the issue of jurisdiction<sup>1</sup>, we are obligated, *sua sponte*, to determine whether we have jurisdiction to entertain this appeal. *Pace Bus Company v. Industrial Comm'n*, 337 Ill. App. 3d 1066, 1068, 787 N.E.2d 234, 236 (2003). The jurisdiction of the appellate court is limited to review of final judgments, unless an exception is provided by statute or Supreme Court Rule. *Trunek v. Industrial Comm'n*, 345 Ill. App. 3d 126, 127, 802 N.E.2d 1268, 1269 (2003). "In general, a final and appealable judgment is defined as one in which the trial court has determined the merits of the parties' claim, such that the only remaining action is to proceed with execution of the judgment." *In re Estate of French*, 166 Ill. 2d 95, 101, 651 N.E.2d 1125, 1128 (1995). When the circuit court reverses a decision of the Commission, in whole or in part, and remands the matter back to the Commission for further proceedings involving the resolution of questions of law or fact, the order is interlocutory and not appealable. *Pace Bus Company*, 337 Ill. App. 3d at 1069, 787 N.E.2d at 236. "If, however, the agency on remand has only to act in accordance with the directions of the court and conduct proceedings on uncontroverted incidental matters or merely make a mathematical calculation, then the order is final for purposes of appeal." *Williams v. Industrial Comm'n*, 336 Ill. App. 3d 513, 516, 784 N.E.2d 396, 399 (2003).

The Commission's decision made pursuant to an interlocutory remanding order is reviewable by the circuit court, and if affirmed, the circuit court's decision is a final order which is appealable to this court. *Pace Bus Company*, 337 Ill. App. 3d at 1069, 787 N.E.2d at 237. "The Commission's post-remand decisions are

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<sup>1</sup> We note that the parties were ordered to address the issue of jurisdiction at oral argument.

reviewable by this court only after they have been reviewed by the circuit court." *Pace Bus Company*, 337 Ill. App. 3d at 1069, 787 N.E.2d at 237. "In reviewing the final order of the circuit court, this court is authorized to review the entire record and determine the propriety of the circuit court's order reversing the Commission's original decision and remanding the matter for further proceedings." *Pace Bus Company*, 337 Ill. App. 3d at 1069, 787 N.E.2d at 237. If the trial court erred in reversing the Commission's initial decision, its order should be reversed, the Commission's subsequent decision after remand vacated, and its original decision reinstated. *Inter-City Products Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 185, 196, 759 N.E.2d 952, 961 (2001).

In order to determine whether we have jurisdiction in this appeal, we must decide whether the order of the circuit court entered on October 15, 2008, which reversed the Commission's decision and remanded this case "for further proceedings for the reasons advanced by the [employer]" was a final judgment. If that order was a final judgment, the failure of the claimant to appeal from that order deprives this court of jurisdiction. On the other hand, if that order was interlocutory in nature, we have jurisdiction to proceed to the merits of this appeal and determine whether the original decision of the Commission was against the manifest weight of the evidence.

In the instant case, the circuit court entered a vague order which reversed the Commission's decision and specifically remanded for further proceedings. There is nothing in the order that explains whether all or part of the Commission's decision was reversed, or the purpose of the remand. It simply states that the decision is reversed and remanded "for the reasons advanced by the [employer]."

Thus, on remand, in the absence of specific directions, the Commission was required to determine the basis of the reversal in order to comply with the circuit court's order. It evidently did so, without hearing, by examining the employer's brief in the circuit court, and presuming that the circuit court agreed with all of the arguments in the brief. This was apparently a contested issue since the claimant argued in the circuit court in the appeal after the Commission's decision on remand, that the court's intent in the October 15, 2008, order was only to reverse the award of medical bills. In addition, as a result of the reversal of the award of benefits, on remand, the Commission made a factual finding of the amount of credit to which the employer was entitled. Under the peculiar circumstances of this case, we find that the circuit court's order entered on October 15, 2008, was interlocutory and not appealable. As a consequence of that order, the Commission was required to make additional findings on remand. Accordingly, we find we have jurisdiction to proceed to the merits of this appeal and examine whether the circuit court properly reversed the Commission's original decision.

The Commission originally found that the claimant was injured in an accident on April 27, 2004, that arose out of and in the course of his employment, and that his condition of ill-being was causally related to the accident. A reviewing court will only set aside the Commission's decision if its analysis is contrary to law or its fact determinations are against the manifest weight of the evidence. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). Fact determinations are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent and no rational trier of fact could have agreed with the agency. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53,

64, 862 N.E.2d 918, 924 (2006). The appropriate test for whether the Commission's determination is supported by the manifest weight of the evidence is not whether this court might have reached the same conclusion, but rather, whether there is sufficient evidence in the record to support the Commission's determination. *R & D Thiel v. Illinois Workers' Comp. Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010).

"To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). "Whether a causal connection exists between a claimant's injury and his or her employment presents a question of fact." *St. Elizabeth's Hospital v. Illinois Workers' Comp. Comm'n*, 371 Ill. App. 3d 882, 887, 864 N.E.2d 266, 271 (2007).

In the instant case, the employer called co-workers Sean McManus, Randy Thompson, and Greg Sima, as witnesses to dispute the accident. Mr. Thompson testified that he did not remember the claimant ever hurting himself at work. Mr. McManus was not working with the claimant on the date of the accident. Both men testified that the claimant told them he hurt his knee kneeling on some rocks. Neither man was certain which knee the claimant hurt kneeling on rocks. Mr. Sima testified that the claimant injured his knee before April 27, 2004, and he had doubts that it was a work injury.

The claimant testified that he had a prior surgery on his left knee and that about a week before his accident he injured it kneeling on some rocks. He testified that he injured his right knee, right ankle and back on April 27, 2004, when he

tripped while lifting a balloon wall. The accident report completed that day reflects that the claimant injured his ankle and knee while lifting a balloon wall. Ms. Techter testified that the claimant told her he injured his knee, ankle, and back on April 27, 2004. The claimant was examined by Dr. Kacmar on April 28, 2004, and in his office notes Dr. Kacmar wrote that the claimant injured his ankle, knee and back while lifting a wall. The determination of the credibility of witnesses and the weight to be accorded the evidence is the province of the Commission. *Gilster Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 183, 759 N.E.2d 979, 984 (2001). The Commission determined that the claimant was credible and there is sufficient evidence in the record to support this determination.

Dr. Kacmar treated the claimant for injuries to his knee, ankle and back. Dr. Kacmar ordered the claimant not to work from April 28, 2004, until September 23, 2004. Dr. Mercier opined that the claimant's medical care starting in April 2004 was not related to a work-related injury. The Commission decides questions of fact, judges the credibility of witnesses, and resolves conflicting evidence, including conflicting medical evidence. *Inter-City Products Corp.*, 326 Ill. App. 3d at 193-94, 759 N.E.2d at 959. The Commission adopted Dr. Kacmar's opinion that the claimant's condition was work related and this determination is not against the manifest weight of the evidence.

The record contains sufficient evidence to support the Commission's determination that the claimant injured his knee, ankle, and back in a work-related accident on April 27, 2004, and that his condition of ill-being was causally connected to that accident.

#### CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Kane County entered on October 15, 2008, is reversed, the Commission's decision entered on remand on May 27, 2009, and the circuit court of Kane County's February 17, 2010 decision confirming it are vacated, and the Commission's original decision entered on October 18, 2007, is reinstated.

Reversed in part and vacated in part; original Commission decision reinstated.