

NOTICE  
Decision filed 03/07/11. 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. 1-10-0485WC

**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  
Filed: March 7, 2011

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

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VILLAGE OF ARLINGTON HEIGHTS,	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
Appellant,	)	COOK COUNTY
	)	
v.	)	No. 09 L 50037
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <i>et al.</i> ,	)	
(GERALD COLLIGNON,	)	HONORABLE
	)	LAWRENCE O'GARA,
Appellees).	)	JUDGE PRESIDING.

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

**O R D E R**

HELD: The findings of the Illinois Workers' Compensation Commission that the claimant's cardiopulmonary disease was causally to his employment, that his disablement occurred within two years of his last exposure to stressful incidents during his career as a paramedic for the Village of Arlington Heights, and that the claimant, as a result, was unable to work from June 2, 1998, through December 31, 1998, were not against the manifest weight of the evidence.

The Village of Arlington Heights (the Village) appeals from an order of the Circuit Court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (the Commission), awarding the claimant, Gerald Collignon, benefits pursuant to the Workers' Occupational Diseases Act (Act) (820 ILCS 310/1 *et seq.* (West 2004)). For the reasons which follow, we affirm the judgment of the circuit court.

The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on December 20, 2007.

The claimant began working for the Village in August 1969, first as a firefighter and later also as a paramedic. The claimant said that he worked on a squad that answered emergency medical calls until his June 1998 retirement. In his testimony, the claimant described several stressful incidents during his career, including treating dismembered accident victims, seeing the aftermath of approximately six suicides, and a call in which he helped deliver a miscarried baby. The claimant did not provide precise dates for each incident; he instead offered only general date ranges. He also said that such incidents had caused his then-partner to vomit and eventually leave the job. The claimant described his experiencing flashbacks when he revisited the scenes of some of his more harrowing calls. He estimated that, in the last five years of his employment, he went on "at

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least three or four" calls per day and that he "saw horrendous [sights] many, many times."

The claimant testified that, in the final years of his employment, his medical check-ups, which occurred every two years, revealed worsening coronary problems. The claimant's January 8, 1998, stress test revealed what the testing physician characterized as an "abnormal" result that included "3mm ST depression V5-V6" and hypertension. The stress test also reported "[n]o new changes since the 1996 test."

On June 2, 1998, Dr. Stanley Zydlo wrote a letter to the Village stating that he had examined the claimant and the results of the claimant's January stress test and concluded that the claimant "should not be functioning as a paramedic/firefighter due to his current neurologic, cardiac and psychologic status." Dr. Zydlo's letter further stated that the claimant's "recent psychologic stressors do aggravate his physical condition and certainly enhance their effects on his capabilities."

Dr. Patrick Dicillo examined the claimant on June 8, 1998, and, in a letter sent to the Village, concluded that the claimant's abnormal stress test and Parkinson's disease precluded him from working.

On June 16, 1998, Dr. Robert Kase signed a certificate stating that the claimant was permanently disabled from firefighter service. Dr. Kase's treatment note from the same day lists his assessment that the claimant suffered from Parkinson's

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disease and "[c]ardiopulmonary disease secondary to his occupation." Dr. Kase followed up with a June 30 letter stating his diagnosis that the claimant "suffer[ed] from cardiopulmonary disease secondary to his occupation and hypertension." Dr. Kase reiterated in his letter that the claimant should not continue to work as a firefighter/paramedic.

A letter from Dr. Zydlo, dated June 26, 1998, stated that the claimant was suffering from Parkinson's disease and that the claimant's stress test results were "suggestive of Lateral sub endocardial ischemia." Zydlo wrote that the claimant "should not continue in his present line of work."

On July 24, 1998, Dr. David Stein examined the claimant and reported that he had a "20 year diagnosis of hypertension" and had had "abnormal stress tests since 1990." Dr. Kase ordered further tests to determine whether the claimant had cardiac disease.

In August 1998, Dr. Joseph Hartman examined the claimant and concluded that he had "coronary artery disease as evidence[d] by his abnormal treadmill test which has been getting progressively worse over the last several years." Dr. Hartman noted the claimant's history of hypertension and the risk that physical or mental stress would pose to the claimant, and he concluded that the claimant "definitely should not work as a firefighter/paramedic and should be disabled from that position." Dr. Hartman performed a heart angioplasty and catheterization on

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the claimant on August 25, 1998.

One of the claimant's former coworkers, William Ahlman, testified that he worked the same shift as the claimant for three years, from 1978 through 1981, and that, even until his retirement in 2000, all workers in their position performed the same duties. Ahlman estimated that, when he and the claimant worked together, they responded once per week to "catastrophic" calls requiring life-saving measures. He also estimated that, in his last year of work, he received approximately 30 "catostrophic" calls. He said that he "carr[ied]" feelings about the catastrophic calls "with [him] to this day" but that he never sought benefits for any resulting health problems.

Robert Lockhart, another of the claimant's former coworkers, testified that he responded to calls with the claimant "hundreds to thousands" of times, and he stated that approximately 33 percent of all calls required advanced life support intervention. Lockhart testified that, in 1998 and the preceding ten years, the least busy of the Village's stations received between 1000 and 1200 calls per year. Lockhart said that a 1998 evaluation from Dr. Stanley Zydlo, a man who had helped design the Village's paramedic program and who Lockhart said was very familiar with the Village paramedics' duties, "initiated the medical inquiry" that led to the Village's telling the claimant he could no longer work as a paramedic. According to Lockhart, Dr. Zydlo's evaluation led to the claimant's being put on sick leave, and

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further medical evaluations during that leave led the Village to conclude that the claimant could no longer work as a paramedic.

In a May 2007 letter entered into evidence without objection from the Village, Dr. Zydlo summarized his review of the claimant's medical history, as well as his personal knowledge of the claimant's job. Dr. Zydlo stated that the claimant had a history of hypertension dating to the 1970's. The letter concluded, however, with Dr. Zydlo's opinion "to a reasonable degree of certainty that [the claimant] ha[d] coronary artery disease \*\*\* precipitated and enhanced by his stresses as a firefighter/paramedic."

Dr. Alan Kadish, who examined the claimant at the Village's request in December 2004, wrote in his evaluation that the claimant's risk factors for coronary disease included "hypertension, smoking, borderline cholesterol" and a "markedly positive family history of coronary disease." In his testimony, the claimant denied ever having smoked, and other medical records repeat his assertion. Dr. Kadish concluded that the claimant had coronary disease that "probably began to develop in the late 1980's and progressed until 1998." On the issue of causation, Dr. Kadish opined as follows:

"Etiology of coronary artery disease is of course difficult to determine in any specific case. However, in [the claimant's] case I believe that the primary contributing factors were his strong family history, his

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history of intermittent hypertension and his LDL cholesterol of 134. There may be some effect of chronic stress in precipitating the acceleration of coronary disease by provoking hypertension. However, I believe that this is only a small, possible contributing factor \*\*\* given [the other factors]. I believe that the traditional risk factors were more likely than not the cause of his coronary disease."

Dr. Kadish further stated that he would not have recommended that the claimant continue to work as a firefighter/paramedic in 1998.

The claimant filed an application for adjustment of claim seeking benefits for his coronary condition under the Workers' Occupational Diseases Act (Act) (820 ILCS 310/1 et seq. (West 2004)). Although he later explained that he attributed his condition to continuous stress and not to a single particular incident, the claimant's application listed June 2, 1998, as the accident date.

Following a hearing, the arbitrator issued a decision in which he found that the claimant's coronary problems arose out of his employment. The arbitrator awarded the claimant temporary total disability (TTD) benefits for 30 2/7 weeks, permanent disability benefits for another 250 weeks, and \$719.90 in medical benefits. In so doing, the arbitrator found Dr. Zydlo's opinions to be less persuasive than those of Dr. Kadish because Dr. Zydlo did not physically examine the claimant and was not a

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cardiologist. To support his finding of causation, the arbitrator relied on testimony that workers in the claimant's position were exposed to catastrophic injuries on a "regular basis," as well as Dr. Kadish's opinion that "there may be some effect of chronic stress in precipitating the acceleration" of the claimant's condition. The arbitrator further noted that "all of the physicians who treated and/or examined [the claimant] opined that his job-related chronic stress, at the very least, may have contributed to the development of his coronary disease." The arbitrator further found, based on Dr. Zydlo's June 26, 1998, observation that the claimant's cardiac condition precluded his working as a firefighter/paramedic, that the claimant's TTD began on June 3, 1998, and lasted until December 31, 1998, a date the arbitrator determined allowed the claimant reasonable time to recover from his August 1998 heart procedure.

The Village sought review of the arbitrator's decision before the Commission. The Commission unanimously affirmed and adopted the arbitrator's decision.

The Village filed a petition for judicial review of the Commission's decision in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

The Village's first argument on appeal is that the Commission erred in awarding benefits under the Act because the claimant failed to establish that his disablement occurred within

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two years of his last exposure to the hazard that caused his condition, as required by the Act. As a threshold matter, the claimant asserts that the Village has waived this argument by failing to raise it below. However, as the claimant acknowledges in its brief, the waiver doctrine is a limitation on the parties, not this court. *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 505, 812 N.E.2d 65 (2004). The primary purpose of the waiver rule is to ensure that a lower tribunal has the opportunity to correct any errors before an appeal is taken. *Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342, 350, 918 N.E.2d 265 (2009). Here, the Commission and the arbitrator very clearly had that opportunity, since the arbitrator addressed this issue by articulating an explicit finding that the claimant had met the two-year requirement. Further, since both parties fully brief the issue on appeal, neither party can be surprised or unfairly disadvantaged by our reaching the issue. We therefore decline to deem the Village's argument waived.

The two-year limit on which the Village relies is located in section 1(f) of the Act, which provides as follows:

"No compensation shall be payable for or on account of any occupational disease unless disablement \*\*\* occurs within two years after the last day of the last exposure to the hazards of the disease \*\*\*." 820 ILCS 310/1(f) (West 2004).

The parties agree that the question of whether the

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claimant's disablement arose within two years of his last exposure to the workplace hazard is a question of fact to be resolved by the Commission. The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005 (1987). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992). Put another way, the Commission's determination on a question of fact is against the manifest weight of the evidence when no rational trier of fact could have agreed. *Dolce v. Industrial Comm'n*, 286 Ill. App. 3d 117, 120, 675 N.E.2d 175 (1996).

To argue that the Commission's factual finding regarding the two-year requirement contradicted the manifest weight of the evidence, the Village very strongly emphasizes the fact that the claimant was unable to establish any specific dates on which he was exposed to traumatically stressful events. Thus, the Village argues, the claimant failed to establish that he experienced such a stressful event within two years of his disablement.

The Village's argument misses the fundamental theory of the claimant's case. The claimant does not contend that his condition was caused by any single, discrete incident. Rather, he asserts that the stress of his job was a continuous hazard.

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The evidence presented at the arbitration hearing, including testimony from the claimant and two coworkers regarding the regularity of their receiving catastrophic calls, supports the claimant's assertion. Thus, a rational trier of fact could have found that the claimant's job stress was a hazard that continued uninterrupted through his final day of work. For that reason, we reject the Village's argument that the claimant, who claimed a disablement as of his last day of work, did not claim a disablement that occurred within two years of the last date of his exposure to a job-related hazard.

The Village's second argument on appeal is that the Commission erred in finding that there was a causal relationship between the claimant's employment and his heart condition. To recover compensation under the Act, a claimant must prove both that he suffers from an occupational disease and that a causal connection exists between the disease and his employment. *Bernadoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 596, 840 N.E.2d 300 (2005). An occupational activity need not be the sole or principle causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Bernadoni*, 362 Ill. App. 3d at 596. Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission, and we will not disturb the Commission's findings unless they are against the manifest weight of the evidence. See *Sperling v. Industrial Comm'n*, 129

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Ill. 2d 416, 421-22, 544 N.E.2d 290 (1989).

To press its argument that the Commission erred in finding a causal connection between the claimant's employment and his heart condition, the Village observes that the arbitrator, whose decision was adopted by the Commission, cited Dr. Kadish's opinion as support for a finding that a causal relationship existed. The Village points out that Dr. Kadish stopped short of that conclusion and instead said only that there "may be" some connection between the claimant's stress and heart condition and that, if so, the stress was "only a small possible contributing factor" among many stronger factors. The Village argues that the vague possibility to which Kadish referred was insufficient to establish a causal link between the claimant's job and his state of ill-being.

Dr. Kadish's opinion, however, was not the only evidence supporting the Commission's finding of a causal relationship. In his June 16, 1998, treatment note and June 30, 1998, letter, Dr. Kase assessed the claimant as having "[c]ardiopulmonary disease secondary to his occupation." Dr. Zydlo's letters, even if less persuasive than Dr. Kadish's opinion, also agreed with Dr. Kase's assessment of causation. Further, although Dr. Kadish minimized the causative impact of the claimant's job-related stress, he expressly declined to rule out the possibility that the stress worsened the claimant's condition. Considered in sum, the medical evidence from these three doctors provided sufficient

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basis for the Commission's finding that the claimant's job-related stress was a factor that caused his heart problems. We therefore reject the Village's argument that the Commission's findings on causation are against the manifest weight of the evidence.

The Village's final argument on appeal is that the Commission erred in finding that he was temporarily totally disabled through December 31, 1998. The time during which a claimant is temporarily totally disabled is a question of fact. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 108, 118-19, 561 N.E.2d 623 (1990). Again, we will not disturb the Commission's findings on such factual questions unless the findings are against the manifest weight of the evidence. *Orsini*, 117 Ill. 2d at 44.

The Village avers that the claimant's medical records established only that he was treated for his heart condition through December 1998, not that he was restricted from work through December 1998. The arbitrator and Commission found, however, that the claimant required a reasonable amount of time to recover from his August 25, 1998, surgery and related treatment and that the period from August 25 to December 31 constituted a reasonable recovery time. The Village does not specifically dispute that point, which, given our deferential standard of review, we conclude provides sufficient justification for the Commission's finding that the claimant was entitled to

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TTD benefits through December 1998.

Affirmed.