2013 IL App (5th) 120203WC-U

Order filed July 12, 2013

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

NATHANIEL O'BANNON,	)	Appeal from the Circuit Court
	)	of the Third Judicial Circuit,
Appellant,	)	Madison County, Illinois
	)	
v.	)	Appeal No. 5-12-0203WC
	)	Circuit No. 11-MR-59
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al*. (Agency for Community	)	Barbara L. Crowder,
Transit, Appellee).	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's finding that the claimant failed to establish that his condition of ill-being is causally related to a work-related accident was not against the manifest weight of the evidence.

¶ 2 The claimant, Nathaniel O'Bannon, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)) seeking benefits for

lower back injuries which he allegedly sustained while working for the respondent, Agency for Community Transit (employer). After conducting a hearing, an arbitrator found that the claimant had failed to prove that he sustained a repetitive trauma injury that manifested itself on May 29, 2008. The arbitrator also found that the claimant failed to prove that any alleged work-related injury was causally related to his current condition of ill-being. Accordingly, the arbitrator denied benefits.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission) which, after making certain clarifications, unanimously affirmed and adopted the arbitrator's decision.

¶ 4 The claimant sought judicial review of the Commission's decision in the circuit court of Madison County, which confirmed the Commission's decision. This appeal followed.

¶ 5 FACTS

¶ 6 The claimant alleges that he sustained a repetitive trauma injury to his lower back which manifested itself on May 29, 2008. At that time, the claimant was 49 years old and had worked for the employer as a bus driver for approximately 9 years.

¶ 7 The claimant testified that he worked 10-hour shifts, 4 days per week. Sometimes he drove over railroad tracks. The claimant admitted that his job did not require him to sit in a chair for an uninterrupted 10 hours and that he was required to get up out of the driver's seat several times per day. For example, he had to get up to assist wheelchair-bound passengers with the locks on their chairs approximately 3 or 4 times per day. He also had to help passengers get on and off the bus occasionally. In addition, he took a lunch break each day which lasted 45

minutes to an hour, and he sometimes took another break at the end of a run if he was ahead of schedule, which seldom happened.

¶ 8 Sometimes the hydraulic driver's seat of the bus would spontaneously lose its air and drop 6 to 8 inches to the floor of the bus. When this happened, the claimant would either wait to get a replacement bus or continue driving the bus while sitting in the seat on the floor.

¶ 9 The claimant had a history of back problems prior to the alleged manifestation date of his work-related injury. On December 2, 2003, he received treatment for low back pain from St. Mary's Medical Group. On October 6, 2004, the claimant was treated at Southern Illinois Healthcare Foundation for low back pain and numbness in his left foot. Two weeks later, he underwent an MRI of his lumbar spine which revealed a bulge and stenosis[1] at L4-L5.

¶ 10 On March 29, 2007, the claimant saw Dr. Brett Grebing at Washington University Orthopedics, complaining of problems with his lower extremities, especially pain and numbness in his left calf, ankle, and foot. Dr. Grebing's impression was left leg neuropathy and "questionable tarsal tunnel versus lumbar spine radiculopathy." The doctor recommended that the claimant undergo an EMG and a nerve conduction study. When these tests were performed on April 2, 2007, they revealed evidence of left acute and chronic L4 radiculopathy.

¶ 11 Approximately three weeks later, the claimant saw Dr. John Metzler, another physician at Washington University Orthopedics. According to Dr. Metzler's medical records, the claimant indicated that he had been experiencing back pain and associated pain and numbness in his legs for "many years." After examining the claimant, Dr. Metzler diagnosed progressively increasing

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[1]Spinal stenosis is a narrowing of the open spaces within the spine, which can put pressure on the spinal cord and the nerves that travel through the spine.

low back and bilateral leg pain. He recommended an updated MRI, an injection, and medication. The claimant underwent a second MRI on April 27, 2007, which revealed diffuse bulging at L4-L5 and L5-S1. The radiologist's impression was mild lumbar spondylosis.[2]

¶ 12 On April 7, 2008, the claimant went to Anderson Hospital, complaining of chronic low back pain radiating to his left leg. The attending physician diagnosed back pain with sciatica.

¶ 13 Three days later, the claimant saw Dr. Jim Hong, his regular physician, seeking treatment for his lower back and left leg pain. Dr. Hong diagnosed back pain with mild sciatic symptoms. The doctor concluded that the claimant's symptoms were benign and "probably secondary to disc bulging." Dr. Hong recommended physical therapy, but the claimant declined. The claimant asked Dr. Hong to refer him to Dr. Syed Ali, a neurologist. Dr. Hong told the claimant that he was "not an appropriate referral to neurology at this point due to inadequate work up." According to Dr. Hong's medical record, the claimant insisted that he be referred to Dr. Ali. Dr. Hong relented and made the referral.

¶ 14 The claimant saw Dr. Ali on May 8, 2008. He complained of pain in his low back radiating down to his legs and feet with occasional tingling, numbness, and burning in his legs. Although he described no discrete injury, he told Dr. Ali that he had been a bus driver for approximately 10 years and that he worked a 10-hour shift 4 days per week. He claimed that his low back pain increased with driving. Dr. Ali thought that the claimant's low back pain was most likely caused by a herniated disc, but he did not address the cause of that condition. The doctor ordered another MRI and prescribed medication.

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[2]"Lumbar spondylosis" is a general term for spinal degeneration and pain in the lower back.

¶ 15 On May 23, 2008, the claimant underwent a third MRI scan of his lumbar spine. The MRI revealed multilevel degenerative disc disease and spondylosis most severe at L4-L5 and L5-S1 with associated spinal stenosis at those levels and a left paracentric disc protrusion associated with disc bulging at the L5-S1 level.

¶ 16 On May 29, 2008, the date the claimant alleges his work-related injury manifested itself, the claimant returned to Dr. Ali, complaining of pain in his legs and feet at the end of the day after driving a bus. Dr. Ali recommended a neurosurgical referral and ordered the claimant off work for one week starting on June 2, 2008.

¶ 17 On June 10, 2008, claimant went to Anderson Hospital with complaints of back and leg pain. On June 17, 2008, he returned to Dr. Hong, complaining of chronic back pain radiating down the left leg, and told Dr. Hong he could not return to work due to his severe back pain. Dr. Hong diagnosed chronic back pain secondary to degenerative disc disease and bulging disc, and mild sciatica. Finding that the claimant's symptoms did not warrant surgery, Dr. Hong did not recommend a neurosurgical referral but, rather, prescribed physical therapy.

¶ 18 On July 2, 2008, the claimant returned to Dr. Ali and told him that he hurt too much to continue working. Dr. Ali prescribed an additional six weeks of physical therapy. At the claimant's request, Dr. Ali's office issued a note on July 14, 2008, authorizing the claimant to remain off work for the next eight weeks. The claimant signed an "Application for Adjustment of Claim" dated September 10, 2008, alleging that his injury manifested itself on May 29, 2008.

¶ 19 On November 18, 2008, the claimant's counsel sent a letter to Dr. Ali advising him that the claimant was pursuing a workers' compensation claim based upon the theory that he received an injury to his back as a result of repetitive trauma suffered though his place of employment,

and asking the doctor for a report stating whether, based on a reasonable degree of medical certainty, the injury for which he treated claimant was causally connected to his duties at work. He also inquired whether claimant required further treatment and if he was able to work. Approximately one month later, Dr. Ali issued an opinion letter stating that the claimant's injuries were related to his duties at work as a bus driver. Dr. Ali's letter also stated that the claimant required further treatment (including a follow-up examination by a neurosurgeon), was not able to be gainfully employed, and could not perform any repetitive movements or lift more than 10 pounds.

¶ 20 On March 9, 2009, the claimant returned to Dr. Ali with complaints of continuing pain. He informed Dr. Ali that he was not working. Dr. Ali found that the claimant could not drive a bus, would be off work indefinitely, and needed a neurosurgical referral. However, the claimant did not see a neurosurgeon because the employer's workers' compensation insurance carrier would not authorize the appointment.

¶ 21 Dr. Ali's evidence deposition was taken on May 22, 2009. During the deposition, Dr. Ali testified that sitting in one position for a prolonged period of time as a bus driver aggravated the degenerative condition in the claimant's back by putting pressure on his vertebrae and discs and disturbing the anatomy of his spine. Dr. Ali stated that his causation opinion remained the same as he had stated in his December 17, 2008, opinion letter. The doctor testified that the claimant remained unable to work and that he had restricted the claimant from repetitive movements and from lifting anything over 10 pounds.

¶ 22 On June 8, 2009, the claimant returned to Dr. Ali, complaining of low back pain which increased with usual driving. Dr. Ali restricted the claimant from pushing, pulling, and lifting heavy objects and again recommended a neurosurgical appointment.

¶ 23 On June 10, 2009, the claimant was examined by Dr. Andrew Wayne, the employer's Section 12 examiner. Dr. Wayne is a physiatrist, *i.e.*, a medical doctor who specializes in evaluating and treating disorders of the muscles, nerves, and spine. Dr. Wayne examined the claimant and reviewed the claimant's medical records. He also took a medical and social history from the claimant. According to Dr. Wayne's report, the claimant told Dr. Wayne that his symptoms began around 2007 as a result of his bus driving and indicated that he had received many different types of treatment for his back over the years. The claimant told Dr. Wayne that he drove his bus for 8- to 10-hour shifts with a 1-hour lunch break but got up from time to time to secure passengers' wheelchairs.

¶ 24 In his report, Dr. Wayne noted that the claimant was experiencing pain in his lower back and down both of his legs and that there was radiographic evidence of disc bulging and spinal stenosis at L4-L5 since October 20, 2004, which had worsened over time. Dr. Wayne opined that the claimant's back problem was a progressive disorder resulting from the normal aging process of his lower back, not from his work activities. Specifically, Dr. Wayne concluded that the claimant's back pain with radiating symptoms down his lower extremities was "entirely the result of the naturally progressive degenerative abnormalities in his lower back which would naturally occur over one's life regardless of what activity they are engaging in," and Dr. Wayne "did not believe that [the claimant's] work activities in any way have factored into his low back condition." Dr. Wayne reiterated these causation opinions during his August 18, 2009, evidence

deposition, and he expressly disagreed with Dr. Ali's opinion that the claimant's job activities had accelerated his back disorder.

¶ 25 In both his written report and his deposition testimony, Dr. Wayne stated that the claimant had vascular disease in both legs and a "deep vein thrombosis" in his right leg, and he opined that the claimant's symptoms of pain radiating down his legs could be attributable at least in part to these medical conditions. However, during cross-examination, Dr. Wayne admitted that he had erred in concluding that the claimant had these medical conditions.[3] He therefore repudiated his opinion that vascular disease or deep vein thrombosis could have contributed to the claimant's leg pain. On redirect examination, the following colloquy between the employer's counsel and Dr. Wayne occurred:

> "[Employer's counsel]: Dr. Wayne, would you say that despite any confusion as to the deep vein thrombosis, does that affect your conclusions that [the claimant's] lower back complaints with radiating pain are not related to his work activities?
>
> [Dr. Wayne]: That would not in any way change the conclusions that I came to in my report."

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[3]Dr. Wayne based this erroneous conclusion on a June 17, 2008, medical record relating to a 78-year-old man named Nathaniel O'Bannon, who is apparently the claimant's father. According to that medical record, "Nathaniel O'Bannon" suffered from vascular disease in both legs and a deep vein thrombosis in his right leg. Dr. Wayne reviewed that medical record, mistakenly assumed that it referred to the claimant (who has the same name), and erroneously concluded that the claimant suffered from vascular disease and deep vein thrombosis.

¶ 26 During the arbitration hearing, the claimant testified that he continues to experience back pain and wants to see a neurosurgeon. He alleged he had been unable to work from June 2, 2008, to June 9, 2008, and from July 2, 2008, to the date of the hearing. He testified that his back trouble started "3 or 4 years ago" and also claimed that one day "4 or 5 years ago" he came home and could not move because of his back. He claimed that his back pain was aggravated by no activity other than driving and that his back condition has prevented him from playing with his grandchildren.

¶ 27 The claimant also testified that he has been employed as the mayor of Brooklyn, Illinois, for approximately four years. As mayor, he attends meetings, confers with the police chief, and oversees workers in various departments of the city, among other duties. His mayoral duties during 2009 included trips to Washington, D.C., on March 26, 2009, and April 22, 2009. While in Washington, D.C., the claimant met with various officials on Brooklyn's behalf, including Congressman Costello. He also participated in a march around the Federal Reserve Building.

¶ 28 The arbitrator found that the claimant failed to prove he sustained a repetitive trauma accident which manifested itself on May 29, 2008. In support of this finding, the arbitrator noted that: (1) the claimant was unsure when he began experiencing back problems; and (2) the claimant's medical history of back complaints stretches over several years, but nothing in his medical records indicated that he or any of his treaters stated or realized that he was suffering from a back condition related to his employment on May 29, 2008.

¶ 29 The arbitrator also found that the claimant failed to prove that his condition of ill-being was causally related to his employment. The arbitrator noted that the claimant had experienced pain in his low back as long ago as 2003 and that the claimant's medical records "reveal[ed] the

long-standing, symptomatic presence of a degenerative condition in his lumbar spine." However, the arbitrator noted that there was "no evidence *** that any physician who treated or evaluated [the claimant] for that condition related his back problems to his employment except Dr. Ali," who "did not proffer that opinion until it was requested by claimant's attorney." The arbitrator found that Dr. Wayne's opinion that the claimant's back problem was caused by a progressive disorder resulting from the aging process rather than his employment activities was "in accord with claimant's medical history"[4] and was "more persuasive" than Dr. Ali's opinion. Accordingly, the arbitrator denied benefits.

¶ 30 The claimant appealed the arbitrator's decision to the Commission. The Commission agreed with the decision of the arbitrator but added a clarification. Specifically, the Commission noted that Dr. Wayne had mistakenly relied on the medical records of the claimant's father in forming some of his opinions regarding causation, and the Commission indicated that it did not rely upon those opinions. The Commission stated that, to the extent it relied upon Dr. Wayne's testimony, it relied only on those opinions that Dr. Wayne rendered based on his examination of the claimant and his review of the claimant's medical records. After making this clarification, the Commission otherwise affirmed and adopted the arbitrator's decision.

¶ 31 The claimant sought judicial review of the Commission's decision in the circuit court of Madison County, which affirmed the Commission's decision. This appeal followed.

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[4]Specifically, the arbitrator found that Dr. Wayne's causation opinion was "in accord with the April 24, 2007 report of Dr. Metzler, a physician selected by claimant, who explained that [the claimant] suffered from progressively increasing low back and leg pain."

¶ 32 ANALYSIS

¶ 33 The claimant argues that the Commission's finding that he failed to prove a causal relationship between his work activities and his current lower back condition was against the manifest weight of the evidence. We disagree.

¶ 34 To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Thus, even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. *Sisbro*, 207 Ill. 2d at 205; *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). A claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983); *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981); *Swartz*, 359 Ill. App. 3d at 1086.

¶ 35 An employee who alleges injury based on repetitive trauma must "show[] that the injury is work related and not the result of a normal degenerative aging process." *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530 (1987); *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194 (2005). In repetitive trauma cases, the claimant "generally relies on medical testimony establishing a causal

connection between the work performed and claimant's disability." *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 477 (1987); see also *Johnson v. Industrial Comm'n*, 89 Ill. 2d 438, 442-43 (1982).

¶ 36 Whether an accident aggravated or accelerated a preexisting condition is a factual question to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 206. Thus, where the claimant alleges accidental injuries caused by a repetitive trauma, it is for the Commission to determine whether a claimant's disability is attributable solely to a degenerative condition or to an aggravation of a preexisting condition due to a repetitive trauma. *Cassens Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 331 (1994). In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). A reviewing court may not substitute its judgment for that of the Commission on these issues merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence, *i.e.*, only when the opposite conclusion is "clearly apparent." *Swartz*, 359 Ill. App. 3d at 1086. The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). When the evidence is sufficient to support the Commission's causation finding, we must affirm. *Id.*

¶ 37 Applying these standards, we cannot say that the Commission's conclusion that the claimant failed to establish causation under a repetitive trauma theory is against the manifest weight of the evidence. After examining the claimant and reviewing his medical records, Dr. Wayne opined that the progressive disorder in the claimant's lower back resulted from a normal degenerative aging process and was not related to or affected by his work activities. Dr. Wayne disagreed with Dr. Ali's opinion that the claimant's job activities accelerated his back disorder. The Commission was entitled to credit Dr. Wayne's opinion over Dr. Ali's opinion.

¶ 38 The claimant seeks to discredit Dr. Wayne's opinion in several respects. First, the claimant asserts that Dr. Wayne is a "psychiatrist," implying that Dr. Wayne was less qualified than Dr. Ali to render a causation opinion in this case. Second, the claimant notes that Dr. Ali treated the claimant five times and performed several tests on the claimant, whereas Dr. Wayne examined the claimant only once and performed no tests on him. Third, the claimant notes that Dr. Wayne's initial opinion that the claimant's leg pain could be explained, in part, by vascular disease and deep vein thrombosis was erroneous because, as Dr. Wayne later admitted, the claimant does not suffer from those conditions.

¶ 39 None of the arguments raised by the claimant establish that the Commission's reliance on Dr. Wayne's opinion was improper or against the manifest weight of the evidence. Contrary to the claimant's assertion, Dr. Wayne is a *physiatrist*, *i.e.*, a board-certified doctor of physical medicine specializing in treating nerve and spinal disorders, not a "psychiatrist." Thus, Dr. Wayne was well qualified to render a causation opinion in this case. Second, the Commission was not required to rely upon Dr. Ali's opinion over Dr. Wayne's merely because Dr. Ali was one of the claimant's treaters. See, *e.g.*, *Prairie Farms Dairy v. Industrial Comm'n*, 279 Ill. App. 3d

546, 550 (1996) ("Our research has not revealed any case where this court, or the Illinois Supreme Court, has said that, as a matter of law, the Commission *must* give more weight to a treating physician's testimony than to that of an examining physician." (Emphasis in original.)).

¶ 40 In addition, Dr. Wayne's initial reliance on the erroneous conclusion that the claimant suffered from vascular disease and deep vein thrombosis did not undermine his causation opinion. After recognizing the error, Dr. Wayne testified that it did not "in any way change" his conclusion that the claimant's lower back condition and his associated leg pain were not related to his work activities. Moreover, the Commission expressly noted that it relied only upon the opinions that Dr. Wayne rendered based on his examination of the claimant and his review of the claimant's medical records, and it did not rely upon any opinions that Dr. Wayne erroneously rendered based upon a review of the claimant's father's medical records.

¶ 41 Moreover, Dr. Wayne's causation opinion was consistent with the claimant's medical records. The claimant received treatment for low back pain as early as December 2003. In October 2004, the claimant was treated for low back pain and numbness in his left foot, and an MRI of his lumbar spine revealed a bulge and stenosis at L4-L5. In April of 2007, Dr. Grebing diagnosed the claimant as suffering from "left acute and chronic L4 radiculopathy." Later that month, the claimant told Dr. Metzler that he had been experiencing back pain and associated pain and numbness in his legs for "many years." After examining the claimant, Dr. Metzler diagnosed progressively increasing low back and bilateral leg pain. An April 27, 2007, MRI revealed diffuse bulging at L4-L5 and L5-S1 and mild degeneration of the claimant's lumbar spine. On April 10, 2008, Dr. Hong concluded that the claimant's lower back pain and leg symptoms were "probably secondary to disc bulging." On May 23, 2008, six days before the alleged

manifestation date, the claimant underwent a third MRI scan of his lumbar spine, which revealed multilevel degenerative disc disease and spondylosis most severe at L4-L5 and L5-S1 with associated spinal stenosis at those levels and a left paracentric disc protrusion associated with disc bulging at the L5-S1 level. Accordingly, the claimant's medical records reveal that the claimant had a progressive, symptomatic degenerative condition in his lower back for many years prior to the alleged manifestation date. As the Commission noted, none of the claimant's treating physicians related the claimant's condition to his work activities except for Dr. Ali, who did so only after the claimant's attorney asked him to render a causation opinion. Thus, Dr. Wayne's opinion that the claimant's lower back condition was caused entirely by a progressive degenerative condition which was not aggravated or accelerated by his work activities was fully consistent with the medical records, and the Commission was entitled to rely on Dr. Wayne's opinion.

¶ 42 As noted, it is the function of the Commission alone to determine the weight to be accorded to evidence, to weigh competing medical opinions, and to draw reasonable inferences from the evidence. *Berry*, 99 Ill. 2d at 411. When different reasonable inferences can be drawn from the facts, the inferences drawn by the Commission will be accepted unless they are against the manifest weight of the evidence. *Gilster Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182 (2001). Here, the Commission exercised its proper function and simply found Dr. Wayne's opinion to be more persuasive on the issue of causation than Dr. Ali's opinion. The claimant points to certain alleged errors and inconsistencies in Dr. Wayne's report and argues that Dr. Ali's causation opinions are more credible and are entitled to greater weight than Dr. Wayne's opinions. However, it is not the function of this court to reweigh the evidence. There is nothing

in the record which would lead to a conclusion that the Commission's findings and inferences were against the manifest weight of the evidence.

¶ 43 Because we affirm the Commission's finding of no causation, we do not need to address the claimant's challenge to the Commission's finding that he failed to prove a compensable accident.

¶ 44 CONCLUSION

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

¶ 46 Affirmed.