2014 IL App (4th) 130456WC-U
No. 4-13-0456WC
Order filed April 11, 2014



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IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

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| CHARLES TINER, | ) | Appeal from the Circuit Court of |
| | ) | Sangamon County. |
| Appellant, | ) | |
| | ) | |
| v. | ) | No. 11-MR-414 |
| | ) | |
| THE ILLINOIS WORKERS' | ) | |
| COMPENSATION COMMISSION, et al., | ) | Honorable |
| | ) | John P. Schmidt, |
| (Nelson Tree Service, Appellee). | ) | Judge, Presiding. |

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JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Harris concurred in the judgment.

## ORDER

¶ 1 *Held*: The Commission's finding that the claimant failed to prove that he suffered from an accidental injury that arose out of and in the course of his employment was not against the manifest weight of the evidence where the evidence supports the Commission's finding that the claimant was the aggressor in a physical altercation with another employee.

¶ 2 The claimant, Charles Tiner, worked for the employer, Nelson Tree Service, as a foreman out of its Decatur, Illinois, branch office. The claimant was involved in a physical altercation with another employee of the employer and sustained a rotator cuff injury to his left shoulder. The claimant filed a claim under the Illinois Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2010)), and the matter proceeded to an expedited hearing pursuant to section 19(b) of the Act. At the hearing, the employer maintained, among other issues, that the claimant was the aggressor in the physical altercation with the other employee and, therefore, under the aggressor defense, his injuries did not arise out of his employment. The arbitrator ruled in favor of the claimant, finding that he did not initiate the physical altercation with the coworker, but "was injured as a result of being assaulted by a subordinate employee when he attempted to confront that employee about a racial harassment issue while acting within the scope of his duties as a foreman and in accordance with [the employer]'s non-harassment policy." The arbitrator awarded the claimant temporary total disability (TTD) benefits and medical expenses.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission), and the Commission reversed the arbitrator's decision. The Commission found that "based on the totality of the circumstances, [the claimant] was the aggressor, and it was his actions as such, that brought about the confrontation that led to his injury." Accordingly, the Commission found that the claimant failed to prove that "an accident occurred as contemplated under

the Act." The circuit court confirmed the Commission's decision, and the claimant appeals.

¶ 4 BACKGROUND

¶ 5 The issue before this court is whether the Commission's finding that the claimant was the aggressor in a workplace fight with another employee is against the manifest weight of the evidence. This factual issue centers on a physical altercation that took place between the claimant and another employee, Jeremy Fenton, on the employer's parking lot at the end of the workday. The physical altercation concerned a confederate flag license plate that Fenton displayed on his vehicle and that the claimant, an African-American, found to be racial harassment in violation of the employer's harassment policy.

¶ 6 The claimant began working for the employer in November 2004 as a tree trimmer trainee, and he was quickly promoted to a foreman position. As a foreman, the claimant was in charge of one of the employer's bucket trucks during the workday and managed a crew that consisted of himself and a subordinate. When he was promoted to a foreman position, the employer gave claimant a copy of its foreman's manual that described his duties as a foreman. He testified that his duties as a foreman included assisting in the implementation of company rules, regulations, and policies.

¶ 7 On November 3, 2009, he arrived at work at approximately 6:45 a.m. When he arrived, he parked his personal vehicle in the employer's parking lot, transferred his personal belongings to the employer's truck, and started the truck. On some mornings, the employer conducted meetings called "stand down" before workers left for their

respective job sites. The claimant could not remember whether there was a stand down meeting on November 3, 2009.

¶ 8 When the claimant arrived at work on November 3, 2009, he saw a confederate flag license plate on the front of a vehicle that had been driven by another employee, Jeremy Fenton. Fenton was a crewmember who was assigned to work with a different foreman that day. Fenton parked his vehicle in the employer's parking lot where the workers parked before heading to their job sites. The claimant believed that the confederate flag license plate violated the employer's harassment policy. Specifically, the employer's harassment policy provided as follows:

> "[The employer] is committed to maintaining a professional and courteous work environment that is free of discrimination and harassment based on a person's sex, race, color, age, religion, disability, ancestry, or national origin, consistent with applicable federal and state laws.
>
> All employees should respect the rights, opinions, and beliefs of others. Harassment of any person because of sex, race, color, age, religion, disability, ancestry, or national origin is strictly prohibited, whether directed at an employee, vendor, or customer. Any such harassment is prohibited by this policy without regard to whether it also violates any equal employment opportunity laws. This policy applies to all employees, officers, and directors of [the employer] *** and applies to the workplace, to job assignments out of the office, and at [the employer's] sponsored meetings or functions."

¶ 9 The policy further provided that if any employee believed that he had been subject to harassment, he is "requested and encouraged to make a complaint to [the employer]." The employee was not required to complain to the person who engaged in the harassment but was "encouraged to do so" if the employee "would like." The employee could make a complaint directly to his "supervisor, the supervisor of the harasser, the Vice-President of Risk Management, or any management employee." The policy outlines an investigation procedure that the employer will follow when a complaint or report of harassment is made and that, during the investigation process, measures would be taken to prevent any further contact or interaction between the person who believes he has been subject to harassment and the alleged harasser.

¶ 10 The claimant believed that Fenton's confederate flag license plate constituted harassment because he knew that the confederate flag was used by the Ku Klux Klan during rallies and that it represented opposing the abolition of slavery.

¶ 11 On the morning of November 3, 2009, the employees who gathered at the employer's parking lot loaded onto six or seven different bucket trucks and proceeded to a fueling station. The claimant and Fenton worked on different trucks that day. The claimant's crewmember working from his truck was an employee named Neil Elliott. The claimant testified that when the trucks met at the fueling station that morning, he approached Fenton and politely told him that he needed to speak with him at the end of the workday. He stated that he then left with Elliot in his work truck to his assigned work area.

¶ 12 Elliott testified that the claimant was "pretty furious" about Fenton's license plate. He did not hear what the claimant said to Fenton at the fueling station but saw him talking to Fenton and believed that he looked a little angry. He testified that after they left the fueling station, the claimant drove back to the employer's parking lot and moved his personal vehicle so that it was parked in front of Fenton's vehicle to block him in. During his testimony, the claimant denied that he returned to the employer's parking lot at any time until the end of the workday.

¶ 13 At the work area, the claimant reviewed the employer's harassment policy in his handbook and highlighted what he believed he needed to speak to Fenton about. Elliott also testified that the claimant went through his foreman manuals at the worksite looking for a way to approach Fenton about the license plate without getting into trouble.

¶ 14 The claimant testified that sometime during the morning hours, he called an acquaintance, Robert Dorsey, who was one of only three or four African-Americans in the claimant's union. The claimant wanted to let Dorsey know that he was going to talk to Fenton about the license plate at the end of the day and asked Dorsey to be there at the employer's parking lot at that time to witness the events. He wanted Dorsey to witness his conversation with Fenton. The claimant testified that Fenton was a convicted felon and had been in fights at the workplace in the past. According to Dorsey, the claimant called him in the afternoon, not in the morning, and told him to come by the employer's parking lot because he was having a problem at work, but that the claimant did not tell him exactly what the problem was.

¶ 15 Toward the end of the working day, around 3:15 p.m., the claimant and the rest of the employees returned to the employer's parking lot in their work trucks. The claimant testified that when he returned to the employer's lot, he secured his work truck and observed Fenton talking with their supervisor, Don Zola. Zola was the claimant's immediate supervisor and the employer's general foreman of all the employees working out of the Decatur branch office. After Fenton finished speaking with Zola, he walked to his vehicle.

¶ 16 According to Elliot, when they returned to the employer's parking lot, the claimant saw that Fenton had pulled his car away from where he had him blocked in and was upset because he believed that Elliot had called Fenton during the day to alert him that the claimant had blocked him in the parking lot. In describing the parking lot, the claimant explained that the parking area was small and that vehicles often blocked other vehicles. Although he denied purposely parking his vehicle in a way to block Fenton's vehicle, he stated that his vehicle was initially parked in a way that blocked Fenton's vehicle and three other vehicles. However, at the end of the day, Fenton could drive off by maneuvering around to the right side of the vehicle in front of him.

¶ 17 The claimant testified that when they arrived back at the employer's parking lot, he did not consider going to Zola and report the offending license plate because he had previously reported incidents of racial harassment to Zola, including racial slurs and jokes, and he felt that Zola "did not do what he needed to do to rectify the situations." According to the claimant, on one occasion he complained to Zola about confederate flag jewelry. Zola called a meeting and told everyone not to wear jewelry anymore, but did

not discuss the harassing aspect of the jewelry. The claimant believed that had Zola discussed the harassment issue, Fenton's license plate would not have become an issue. He testified that he did not feel the need to report the plate to Don Zola or to Zola's superior, John Reis.

¶ 18 Fenton sat in his vehicle with his window down. The claimant approached Fenton's vehicle with a copy of the harassment policy in his hands, reached down, and removed the confederate flag license plate from the vehicle. According to the claimant, Fenton's confederate flag license plate was secured to his vehicle by a groove on his original license plate and that he was able to slide the confederate flag license plate free from Fenton's vehicle without the use of any force. As he took the license plate off, he told Fenton, "I need you to put that away." At that time, Fenton's vehicle was idling. The claimant testified, "He was sitting in his [vehicle] at the time idling, and he did one of these numbers, his head reared back and he slammed on his gas pedal and literally ran through me." He testified that Fenton's reaction occurred immediately when he pulled the plate off the vehicle.

¶ 19 The claimant testified that he "jumped up, came over the car, landed on [his] left shoulder, rolled off the vehicle on its left side, and landed on the driver's side, landed on [his] feet." The claimant said that Fenton then slammed on the brakes, opened the vehicle's door, got out, and started hitting and pushing him. The clamant knew that his shoulder was hurt and attempted to block Fenton's blows the best he could. The claimant had grabbed Fenton with his right arm and put him on the ground when the other employees came and broke up the fight.

¶ 20 The claimant's eyewitness, Dorsey, testified that after he received the call from the claimant that afternoon, he drove to the parking lot. From his vantage point inside his car, he saw the claimant near a vehicle in the parking lot. He saw the claimant reach down for something and was talking when the vehicle "came right at him." He saw the vehicle hit the claimant and saw the driver jump out. They both threw a couple of punches before the other employees broke up the fight.

¶ 21 Another employee, Rodney Aten, testified that when the workers returned to the employer's parking lot on November 3, 2009, he saw Fenton talk with Zola about something and then walk to his vehicle and get into his car. The claimant then "came up and ripped the license plate off the front of the car, one of them, and then jumped over the hood of the car and [Fenton] jumped out of the car and *** pushed him." Aten testified that they both starting "going at it with each other" and that he jumped in and grabbed the claimant off of Fenton. He stated that everyone was yelling but eventually calmed down and left.

¶ 22 Aten explained that the confederate flag license plate was located on the top of Fenton's regular license plate and that the claimant "just yanked it off." He did not know how the plate was fastened to the car and stated that it could have been held in place by screws or magnets. He did not believe that Fenton tried to run over the claimant but, instead, was backing up trying to get away from him. According to Aten, the claimant jumped over the hood of Fenton's car and went to his door. At that time, the car was moving in reverse. When Fenton got out of his car, he pushed the claimant back and that

was "when they started yelling and throwing punches at each other." Fenton pushed first, and the claimant punched first.

¶ 23 The claimant's crewmember, Elliott, testified that he rode to work that day with Aten and was sitting in Aten's van when the fight started. He stated that he saw the claimant come across the parking lot and rip the license plate off Fenton's car. He testified: "When [Fenton] went to take off [the claimant] had jumped on the hood of the car, over it, [Fenton] hit his brakes which skidded and then [the claimant] went to the driver's side of the car where [Fenton] got out, pushed [the claimant], [the claimant] took a swing at [Fenton] and then that's when me and [Aten] jumped out and broke them up." According to Elliott, Fenton's vehicle was in forward motion when the claimant "jumped on the hood of the car." He landed on his feet on the driver's side. Fenton opened the car door, pushed the claimant with two hands, and the claimant took a swing at Fenton.

¶ 24 Another employee, Steven Rapinac, testified that when he returned to the employer's parking lot at the end of the day, he stood by his truck and "heard a bunch of yelling and screaming going on." Rapinac turned around and saw Fenton jump out of his car and push the claimant. They started fighting, and "quite a few people tried to break it up." Rapinac did not see the claimant take the license plate off the car and did not see Fenton's vehicle moving.

¶ 25 Zola testified that he was in a supervisory capacity over the claimant. The claimant's job title was foreman which meant that he was in charge of his truck and a crewmember who was assigned to the truck for that particular day. The claimant was in charge of the bucket truck and whichever crewmember was assigned to him. His

supervisory responsibilities did not extend beyond his truck and the crewmember assigned to his truck. According to Zola, the claimant had no responsibilities over Fenton on November 3, 2009.

¶ 26 Zola testified about the previous incident involving an employee wearing confederate flag jewelry. He testified that an employee wore a necklace that had confederate colors in it and that the claimant brought it to his attention. The employee was also wearing earrings, and he told the employee that he was not allowed to wear jewelry at the workplace. Zola explained that employees were not allowed to wear jewelry because they worked around electricity and jewelry was a conductor that could cause electrical shock. A lot of employees did not even wear their wedding rings. He also testified that on another occasion, the claimant reported the use of a racial slur by another employee. Zola stated that he spoke with the employee, and the employee denied saying it.

¶ 27 Zola testified that he was present at the parking lot on the morning of November 3, 2009, and that no one reported the confederate flag license plate to him. He was also present at the parking lot at the end of the day. Zola sat in his truck as the employees came back to the lot at the end of the day; he was working on his computer. Fenton came up to his truck window and told him that his mother had sent him a confederate license plate for his birthday and that he did not want any problems over it. Fenton then walked to his vehicle which was 40 to 50 feet from Zola's truck. At the time, Zola was preoccupied with the work he was doing on his computer, and he returned his attention to his computer work. A short time later, he heard "all this yelling and fussing going on."

¶ 28 Zola did not see the claimant pull Fenton's license plate off the vehicle and did not see the start of the fight. When Zola got out of his truck, Fenton was on the ground and the claimant was kicking at him. He testified, "How he got there or what happened prior to that I do not know." Both the claimant and Fenton were suspended as a result of the fight. He testified that if the confederate flag license plate had been brought to his attention on the day of the incident, he would have called his supervisor, John Reis, to ask him what should be done about it.

¶ 29 The claimant testified that he had to jump onto the hood of Fenton's vehicle in order to avoid being hit and that he suffered from a torn rotator cuff in his left shoulder when he impacted the hood of the car. The injury required surgery on January 4, 2010. At the time of the arbitration hearing, the clamant was undergoing work conditioning physical therapy.

¶ 30 At the conclusion of the arbitration hearing, the arbitrator ruled in favor of the claimant on the issue of whether he sustained an accidental injury that arose out of and in the course of his employment. The arbitrator found as follows: "Just prior to the end of the workday the [claimant] approached the employee's vehicle to retrieve the ornamental license plate. When the [claimant] reached down in front of the employee's car to remove the plate, the employee revved up his engine and literally ran [the claimant] down with the vehicle." The arbitrator noted that the confederate flag license plate invoked offensive and harassing racial implications, particularly with African-Americans, that the claimant was the only African-American employee working at the location, that the employer's policies prohibited racial harassment and encouraged employees to bring

complaints of harassment directly to the source of the harassment, and that the claimant was a foreman who was charged with implementing the employer's policies in the workplace.

¶ 31 The arbitrator, therefore, concluded that the claimant "acted not only with the proper authority from his employer in his capacity as foreman when he addressed what he perceived as the harassing nature of Mr. Fenton's license plate, but was encouraged to do so as an employee *** by his employer via its non-harassment policy." The arbitrator stated that the claimant "did not initiate a physical altercation with another of the [employer]'s employees, rather [the claimant] was injured as a result of being assaulted by a subordinate employee when he attempted to confront that employee about a racial harassment issue while acting within the scope of his duties as a foreman and in accordance with [the employer]'s non-harassment policy."

¶ 32 The arbitrator awarded the claimant TTD benefits and medical expenses.

¶ 33 The employer appealed the decision to the Commission, and the Commission unanimously reversed the arbitrator's decision. The Commission found, "based on the totality of the circumstances, that [the claimant] was the aggressor in the physical altercation that brought about his injuries." The Commission believed that the arbitrator "focused too narrowly on the events of the afternoon of November 3, 2009."

¶ 34 The Commission noted the testimony of Elliot that the claimant seemed angry about the confederate flag license plate on the morning of November 3, 2009, used his personal vehicle to block Fenton's vehicle in the parking lot, and appeared upset when they returned to the parking lot at the end of the work day and saw that Fenton had

moved his vehicle from its original spot. The Commission also noted the testimony of Aten that the claimant ripped the license plate from Fenton's vehicle and jumped over the hood of the vehicle as the vehicle was moving in reverse and without first talking to Fenton.

¶ 35 The Commission found that the claimant's testimony was not credible and that the claimant's own actions "put him in the situation in which he was injured." The Commission questioned why the claimant would not have taken the opportunity at the fueling station to explain to Fenton that he found his license plate offensive. It also found it significant that the claimant had the opportunity to report the license plate to Zola but elected not to do so. Although the employer's harassment policy encouraged an employee feeling harassed to confront their perceived harasser, the Commission found that the policy "also encouraged the one feeling harassed to notify management and/or the harasser's supervisor." Finally, the Commission found that the claimant could have discussed the offensive license plate with Fenton without removing it from his vehicle.

¶ 36 The Commission believed that the claimant put Fenton in a "fight or flight" mindset. The Commission stated:

> "Evidence of the provocative steps were the [fueling] station conversation that disturbed Fenton to the extent that he told Zola that he did not want any trouble over the plate, the blocking in of Fenton's vehicle in the 'show up' lot and the removing of the plate from Fenton's vehicle. The culmination of these events was that [the claimant] was either struck by or leapt onto Fenton's vehicle as it was either being driven forwards or backwards before being physically engaged by

Fenton. The Commission concludes that if [the claimant] had taken a less confrontational approach to addressing the issue his injury could have been avoided."

¶ 37 The Commission concluded that the claimant "failed to prove that an accident occurred as contemplated under the Act." The claimant appealed the Commission's decision to the circuit court, and the court entered a judgment that confirmed the Commission's decision. The circuit court stated that it could not say that "an opposite conclusion is clearly apparent." The claimant now appeals the circuit court's judgment.

¶ 38 ANALYSIS

¶ 39 In order to recover benefits under the Act, a claimant has the burden to show by a preponderance of the evidence that he suffered a disabling injury that arose out of and in the course of his employment. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 194, 775 N.E.2d 908, 912 (2002). "Whether a work-related accident occurred, and whether it caused a worker's condition of ill-being are questions of fact for the Commission." *Pryor v. Industrial Comm'n*, 201 Ill. App. 3d 1, 5, 558 N.E.2d 788, 790 (1990).

¶ 40 The Commission's findings with respect to factual issues are reviewed under the manifest weight of the evidence standard. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434, 943 N.E.2d 153, 160 (2011). "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009). "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." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009).

¶ 41 The present case involves an injury that occurred as a result of a workplace physical altercation between two employees of the employer. "When a fight at work arises out of a purely personal dispute, resulting injuries do not arise out of the employment." *Franklin v. Industrial Comm'n*, 211 Ill. 2d 272, 279, 811 N.E.2d 684, 689 (2004). However, when a fight at work arises out of disputes concerning the employer's work, it is a risk that is incidental to the employment. *Id*. at 279-80, 811 N.E.2d at 689. The resulting injuries are compensable unless the injured employee is the "aggressor." *Id*. Illinois courts refer to this rule as the "aggressor defense." *Id*. at 280, 811 N.E.2d at 689.

¶ 42 Illinois courts first set out the aggressor defense in *Triangle Auto Painting & Trimming Co. v. Industrial Comm'n*, 346 Ill. 609, 178 N.E. 886 (1931), and the court reasoned that the aggression negates the causal connection between the work and the injury so that the work is not "the proximate nor a contributing cause of the injury." *Triangle Auto Painting & Trimming Co.*, 346 Ill. at 617, 178 N.E. at 889. Instead, the cause of the injury is the aggressor's "own rashness." *Id*. at 618, 178 N.E. at 889. The "aggressor defense" arises from the requirement that compensable injuries must arise out of the employment. *Franklin*, 211 Ill. 2d at 280, 811 N.E.2d at 689. "Thus the aggressor defense is part of Illinois workers' compensation law because of the need to determine

whether an act of fighting is causally connected to the employment." *Id.* at 281, 811 N.E.2d at 690. The aggressor defense arises because the Act is not intended to protect an employee from the consequences of a fight in which he was the aggressor. *Triangle Auto Painting & Trimming Co.*, 346 Ill. at 618, 178 N.E. at 889.

¶ 43 The determination of whether the injured employee was the aggressor is made from the totality of the circumstances, and which person made first physical contact is not necessarily decisive. *Franklin*, 211 Ill. 2d at 282, 811 N.E.2d at 690. "[W]hether a claimant's conduct rises to the level that triggers the aggressor defense depends in large part on the degree to which the other participant in the dispute has provoked [him]." *Id.* The issue is a question of fact to be determined by the Commission, and its finding with respect to the aggressor defense will not be reversed unless it is against the manifest weight of the evidence. *Id.* at 282, 811 N.E.2d at 691.

¶ 44 In *Franklin*, the court stated as follows with respect to the aggressor defense:

> "A typical fight involving two employees has only one aggressor. When one employee escalates the dispute, he changes the circumstances and typically makes it reasonable for the other employee to respond in kind. This is not to condone answering violence with violence. It is to acknowledge that a claimant's conduct must be judged in light of the circumstances, and the circumstances include the conduct of others." *Id.* at 284, 811 N.E.2d at 692.

¶ 45 In the present case, we must determine whether the Commission's finding that the claimant was the aggressor of the fight with Fenton was against the manifest weight of the evidence. In order to reverse the Commission it must be readily apparent that the

claimant was not the aggressor. If the record contains sufficient evidence to support the Commission's determination, then we must affirm. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010).

¶ 46 The dispute between the claimant and Fenton was not purely personal. The dispute involved conduct by Fenton (use of a confederate flag license plate) that the claimant believed violated the employer's harassment policy. However, the Commission found that the claimant acted as the aggressor when he approached Fenton's vehicle and ripped the offending license plate off of his personal vehicle.

¶ 47 The Commission made several findings in reaching this conclusion based on the totality of the circumstances: (1) the claimant engaged in a conversation with Fenton at the fueling station about the plate, but did not politely tell Fenton that the plate was inappropriate; (2) one witness, Elliott, observed that the claimant looked a little angry during the conversation at the fueling station; (3) the claimant left the fueling station and, before proceeding to his assigned worksite, returned to the employer's parking lot and repositioned his personal vehicle in order to bock Fenton from leaving; (4) the conversation at the fueling station alarmed Fenton to the point that he told their supervisor, Zola, upon returning to the employer's parking lot that he did not want any trouble about his plate; (5) the claimant elected not to report the harassment to Zola who was present at the parking lot both in the morning and in the afternoon when the physical altercation took place; (6) the employer's policy encouraged the claimant to report the harassment to a supervisor; (7) the claimant was not Fenton's foreman on the day of the dispute and, according to Zola, had no authority over him; (8) the claimant appeared

upset about the plate during the workday; (9) when the claimant returned to the parking lot, he was mad that Fenton's vehicle had been moved and believed that Elliott had warned Fenton that he had him blocked in; and (10) the claimant did not first speak to Fenton or Zola about the license plate upon returning to the parking lot at the end of the workday, but instead approached Fenton's vehicle and physically removed the plate as Fenton sat inside his vehicle, two witnesses saying that he ripped it off the vehicle.

¶ 48 Based on these findings, the Commission determined that the claimant was the aggressor because if the claimant "had taken a less confrontational approach to addressing the issue his injury could have been avoided" and that the claimant's aggressive actions put Fenton in a "flight or fight" mindset.

¶ 49 We believe the facts presented at the arbitration hearing could support more than one inference with respect to whether the claimant was the aggressor. "[A] reviewing court cannot disregard permissible inferences drawn by the Commission merely because different inferences may be drawn from the same set of facts." *Chicago Park District v. Industrial Comm'n*, 263 Ill. App. 3d 835, 842, 635 N.E.2d 770, 775 (1994). Had the Commission determined that the claimant was not the aggressor, we would be required to affirm that finding as that finding is supported by inferences that could be drawn from the evidence. The Commission, however, concluded that the claimant acted as the aggressor based on the totality of the circumstances. This finding is also supported by inferences drawn from the record and is not completely unreasonable. Therefore, we must affirm the Commission's decision.

¶ 50 CONCLUSION

¶ 51 For the foregoing reasons, we affirm the judgment of the circuit court which confirmed the decision of the Commission.

¶ 52 Affirmed.