2018 IL App (5th) 170286WC-U
No. 5-17-0286WC
Order filed May 4, 2018

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JAMES BURNS, Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (Speedco and St. Louis Auto Auction, Appellees).	)))))))))))	Appeal from the Circuit Court of Madison County. Nos. 17-MR-43, 17-MR-45, 17-MR-46 Honorable David W. Dugan, Judge, Presiding.

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

ORDER

¶ 1 *Held*: Claimant's failure to challenge the Commission's decision on causation forfeited challenge to that ruling; forfeiture notwithstanding, Commission's decision was not contrary to the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, James Burns, appeals an order of the circuit court of Madison County confirming a decision of the Illinois Workers' Compensation Commission (Commission). The

Commission reversed a decision of the arbitrator awarding claimant benefits in accordance with the provisions of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2012)). For the reasons that follow, we affirm.

¶ 4 Claimant filed three separate claims against respondents, Speedco and St. Louis Auto Auction.[1] The claims were consolidated for arbitration. The arbitrator issued three decisions. In the first (14 WC 41057), the arbitrator concluded that St. Louis Auto Auction was not liable because claimant's injuries were attributable to his employment with Speedco. In the other two (14 WC 12387; 14 WC 41044), the arbitrator awarded benefits under the Act to claimant and against Speedco. The Commission affirmed the first decision and, in separate decisions, reversed the latter two. Claimant now appeals the latter two decisions.

¶ 5 Before proceeding to the substance of this appeal, we remind the parties of the following. First, orders filed by the Commission are not precedential and should not be cited. See *S&H Floor Covering, Inc. v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 266 (2007). Second, the argument section of a brief must contain citations to the record to substantiate each and every factual claim. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017). Third, it is not proper or helpful to simply indentify an exhibit generally in support of a factual claim; again, the exact page of the record must be cited. *Id*.

¶ 6 II. BACKGROUND

¶ 7 At the arbitration hearing, two witnesses testified—claimant and Sean Miller. Miller is a manager at Speedco. Depositions of and medical records by various doctors were also submitted

[1]The latter respondent is referred to as both St. Louis Auto Auction and ABC Auto Auction throughout the record. We will use the former throughout.

into evidence. The arbitration hearing took place on September 25, 2015. Claimant first testified on his own behalf.

¶ 8 Claimant testified that he was 44 years old at the time of the hearing. On November 6, 2013, he was working for Speedco. He left Speedco on February 14, 2014. Claimant stated that he worked for Speedco for seven or eight years as a crew chief. Most of the time while working for Speedco, he was unable to take lunch breaks due to the volume of business. His responsibilities included "mak[ing] sure everything got done correctly, torqu[ing] the plugs on the trucks, mak[ing] sure everything got greased [and] mak[ing] sure the customer was happy." In the fall of 2013, all the members of a crew quit and were replaced by new employees who did not have experience performing the repairs and maintenance typically done at Speedco. This made claimant's job more difficult, in that he had to perform more rigorous inspections.

¶ 9 Speedco was in the business of changing oil and performing maintenance on "diesel trucks, big rigs." They also changed tires. The oil shop has three bays, and the tire shop has two bays. The bays are large enough to accommodate a tractor-trailer, which measure over 70 feet long. In the oil shop, there are pits under the trucks. Often, claimant was the only crew chief working. Claimant said he was doing "quite a bit" of walking during a shift. He was on his feet all day. He had to inspect each job before the truck left the shop.

¶ 10 Claimant reviewed the job description for a "technician." He stated that he began working for Speedco as a technician before he was promoted to crew chief. His job duties after the promotion were essentially the same, though some were added due to the promotion—particularly selling products and supervising other employees. The job description states that a technician will be on his or her feet 90% of the time. The floors as Speedco were made of

concrete. The stairs were mostly metallic. The job description further states that a technician had to engage in "frequent bending, stooping, squatting, [and] kneeling."

¶ 11 Oil and grease typically covered the floors. Speedco required its employees to wear slip-resistant boots. These boots were purchased through a supplier designated by Speedco. Because of the oil and grease, the boots wore out quickly—usually in about six months. As a person wore the boots, they would begin to rub. Claimant described them as "terrible." They would loosen up and one's foot would start "flopping around inside the boot." Eventually, claimant started to experience problems with the back of his ankles—the right one first. He noted a burning sensation and could not bend his foot. Claimant noted a correlation between his foot symptoms and being at work wearing the boots.

¶ 12 Claimant stated his feet always hurt when he was working at Speedco. He regarded this as normal until they stopped feeling better when he was away from work. At this point, he reported his injury, which was in November 2013. He first went to the emergency room. Claimant never received medical treatment for his feet prior to this time. Claimant was referred to Dr. Scherer, whom he saw later the same day. Claimant agreed that he told Scherer that he walked 10 miles per day, but added that he did not know if it was actually 10 miles. He advised Speedco of his injury on the same day as well. Initially, claimant's complaints primarily concerned his right foot. Scherer prescribed physical therapy and a CAM boot. Scherer also took claimant off work.

¶ 13 Scherer released claimant to return to work on December 3, 2013. Claimant returned to his same position. After about a week, claimant began experiencing symptoms in his right foot again. After three weeks, claimant also started having problems with his left foot. Claimant testified that he was favoring his right foot and putting more stress on his left foot. Eventually,

he experienced similar symptoms in his left foot as he did with his right, though not as "intense." On February 14, 2014, claimant stopped working at Speedco, as his foot and ankle pain was "too bad." He did not have another job at the time.

¶ 14 Claimant began working for St. Louis Auto Auction on March 10, 2014. He explained to the manager at St. Louis Auto Auction that he had problems with his feet. He was employed as a mechanic there. His job involved less walking, and he was able to take breaks. He did not have to wear boots like he did at Speedco. The new job "helped [his feet] tremendously." However, the symptoms he experienced at Speedco remained about the same.

¶ 15 Claimant testified that he saw Dr. Nathan Mall after he started working at St. Louis Auto Auction. Mall was the first doctor to formally diagnose a left-foot condition, though claimant added that he had been experiencing problems going back to the time he was employed at Speedco. Mall initially prescribed orthotics, physical therapy, and medication; however, these treatments were never approved. On May 6, 2014, claimant had to stop working at St. Louis Auto Auction due to the pain.

¶ 16 Claimant then found work at Jerry's Tire in June 2014. Speedco directed claimant to be examined by Dr. Schmidt, and St. Louis Auto Auction had claimant examined by Dr. Krause. Claimant believed he could no longer work the position he formerly held at Speedco or a position with similar duties.

¶ 17 On cross-examination by counsel for Speedco, claimant acknowledged that when he stated he felt like he walked 10 miles per day at Speedco, it "might have been an exaggeration." He simply meant that "it was a lot." At Jerry's Tire, the shop was smaller and cleaner, so one did not have to be careful about slipping. Though he still walked on concrete, he was able to wear comfortable shoes. He works overtime most weeks, though he is "in pain sometimes."

Claimant also had to walk on concrete at St. Louis Auto Auction. Counsel for St. Louis Auto Auction had no questions for claimant.

¶ 18 Sean Miller then testified for respondent. He stated that he is employed as a general manager for Speedco. At one time, he was claimant's supervisor. In 2012 and 2013, he held the same position as claimant. He described the physical activities of a crew chief and said they involved standing "maybe four hours [per day] tops." Miller had one of his crew chiefs wear a pedometer. On a slow day he walked about a mile and a half; on a busy day he walked three miles. Miller did not believe he had ever walked 10 miles in a day. He would crouch for up to an hour and a half, consecutively, on a given job. On most days, there were about three hours of down time. On the day claimant quit, Miller stated, claimant told him that he was "tired of Speedco and all the new guys." He did not mention problems with his feet at that time.

¶ 19 On cross-examination, Miller agreed that a number of experienced employees had left in the time leading up to when claimant quit. He further agreed that this would have made claimant's job more difficult. Miller acknowledged that he was familiar with Speedco's job description regarding the technician position. He believed it was accurate. He agreed that it stated that a technician would stand "approximately 90 percent of the time."

¶ 20 The evidence deposition of Dr. Nathan Mall was submitted into evidence. Mall testified that he is a board-certified orthopedic surgeon. He reviewed claimant's medical records. Claimant reported to Dr. Scherer that he estimated walking 10 miles per day and had no symptoms prior to being employed by Speedco. Mall first saw claimant on April 15, 2014. Claimant was "having pain over the Achilles tendon insertion on both heels." Claimant was also having "some pain over the plantar fascial insertion."

¶ 21 Mall reviewed claimant's job description. While claimant was having some symptoms prior to November 2013, it became severe at that point. Factors noted by Mall included having to walk on concrete and up and down steps while wearing work boots and with minimal breaks for the entire work day. Mall opined that, medically, such activities could cause or aggravate the sort of problem claimant was having. Mall added that the fact that claimant's symptoms lessened when he was taken off work and returned when he started working again was further proof of a causal connection between claimant's medical condition and his work at Speedco. Mall testified that claimant's activities away from work were not the types of things that would cause the problems claimant was experiencing. Mall observed that the history claimant reported to him was "exactly the same" as the one he gave to Scherer—his first treating physician. Mall diagnosed claimant with Achilles tendonitis and plantar fasciitis. A person could go his or her entire life without experiencing symptoms from such conditions even if there were radiologic findings. Mall stated that none of the treatment recommended by him had been authorized.

¶ 22 Claimant showed some improvement from Mall's recommendations, but he was never pain free. Claimant never reached maximum medical improvement (MMI). Mall had not yet arrived at a definitive recommendation regarding what surgical procedure would most benefit claimant. However, Mall noted that they had not yet attempted physical therapy, which he believed would be appropriate, and perhaps additional drugs, including steroids. If it were approved, Mall would recommend two months of physical therapy.

¶ 23 Mall noted that Dr. Schmidt diagnosed retrocalcaneal bursitis. This was a condition with similar symptoms to Achilles tendonitis. However, Mall explained, the X ray showed calcium deposits in the Achilles tendon, which is more consistent with Achilles tendonitis. In any event, Mall agreed with Schmidt's assessment that, assuming claimant had retrocalcaneal bursitis rather

than Achilles tendonitis, it was work related. Moreover, treatment for either condition would be largely the same, though the surgeries might differ to an extent. Mall opined that claimant's condition of ill being was causally related to his activities at Speedco.

¶ 24 Mall inspected a pair of the boots claimant was required to wear. He noted that though the soles were "okay," the "inner part of the boot was pretty beat up." Further, "the back area where the Achilles is sitting at was torn up." This "could potentially relate to some of [claimant's] symptoms." Mall recommended that claimant wear tennis shoes instead.

¶ 25 On cross-examination, Mall agreed that he was first board certified about 110 days before the deposition. About 5 to 10 percent of his practice involves treating the ankle. Claimant told Mall he walked about 10 miles per workday and was on his feet most of his shift. Mall stated that though claimant had not been formally diagnosed with plantar fasciitis while he was working at Speedco, he was nevertheless exhibiting symptoms of that condition. Mall first discussed surgical options with claimant in September 2014. On redirect-examination, Mall testified that the weakened state of claimant's right foot along with the use of a Cam walker boot could have caused claimant's left foot to become symptomatic. Claimant's work at St. Louis Auto Auction did not constitute a new event that created a condition different from what arose at Speedco. Had treatment been authorized, it might have resolved claimant's condition. On recross, Mall acknowledged that claimant's work at St. Louis Auto Auction could have slowed his recovery.

¶ 26 The deposition of Dr. Gary Schmidt was also submitted into evidence. Schmidt is a board-certified orthopedic surgeon. His entire practice involves treating the foot and ankle. Schmidt examined claimant on behalf of Speedco on two occasions. Claimant related his work

history. Schmidt conducted a physical examination, which was normal except for tenderness in the retrocalcaneal area. He found the Achilles tendon to be normal.

¶ 27 Schmidt examined claimant's medical records in preparation for the second examination. He noted heterotopic calcification, which indicates chronic inflammatory change. It further indicates that the disease process was longstanding, possibly having gone on for years. Unlike Mall, Schmidt did not find plantar fasciitis when he examined claimant on January 29, 2015. Schmidt felt claimant had calcific tendinitis and retrocalcaneal bursitis as well. He opined that claimant's calcific tendinitis was not related to his increased workload at Speedco. He further opined that the problems with claimant's left foot did not result from claimant favoring his right foot. However, Schmidt then opined that "any standing or walking does aggravate ongoing Achilles tendinitis." He believed surgery was not warranted. Additionally, claimant was at MMI.

¶ 28 On cross-examination by claimant, Schmidt agreed that claimant had right calcific Achilles tendinitis, right insertional tendinitis, and right retrocalcaneal bursitis. He further agreed that claimant's activities at Speedco aggravated his medical condition. Claimant was still complaining of his condition when Schmidt examined him on January 29, 2015. Schmidt opined that the condition of claimant's left ankle was the same as that of his right ankle. He also opined—"hypothetically"—that if claimant was suffering from the same condition on the left ankle as the right, the activities claimant engaged in at Speedco would aggravate it as well. Further, as long as claimant engaged in such activities, he would continue to aggravate his ankles.

¶ 29 Schmidt was not aware of any outside hobbies or activities claimant engaged in that would have been a problem for his ankles. He testified that "any standing [or] walking activities

theoretically aggravate it" and that "increasing those activities aggravate it further." According to Schmidt, claimant would likely start to see benefits from conservative treatment after about six weeks, with significant changes taking more than six months. As claimant's treatment has been delayed for an extended period, it could take even longer. Schmidt explained that calcific changes are indicative of inflammation—they develop as a result of inflammatory changes.

¶ 30 On cross-examination by St. Louis Auto Auction, Schmidt testified that calcific changes take a long time to occur. It would have been "rare, if not unheard of," for someone to have such changes occurring and been experiencing no symptoms.

¶ 31 Dr. John O. Krause examined claimant on behalf of St. Louis Auto Auction. Krause conducted an examination of claimant and authored a report containing, *inter alia*, his findings. The report was submitted into evidence. Krause diagnosed "insertional calcific Achilles tendonitis." He opined it was not causally related to his employment with St. Louis Auto Auction or Speedco. He noted no symptoms of plantar fasciitis and believed claimant was at MMI. He further opined claimant was in need of no further treatment.

¶ 32 The arbitrator issued three decisions. The first (14 WC 12387) involved claimant's action against Speedco. The arbitrator found claimant sustained a work-related accident on November 6, 2013, and that it was causally related to his condition of ill being. On the latter finding, the arbitrator cited the testimony of Mall and Schmidt. Regarding accident, the arbitrator proceeded on a repetitive-trauma theory. See *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524 (1987). He stated that injuries caused by "simply standing, walking, and climbing stairs for extended periods of times do not constitute accidents contemplated by the" Act. However, if an employee is required to engage in such activities to a greater degree by virtue of employment, a causal relationship can be established. Citing

claimant's testimony, medical records and the examinations by independent medical examiners, the arbitrator found claimant had established such a causal relationship between his condition of ill being and his employment at Speedco regarding his right foot. Further, claimant's increased reliance on his left foot as a result of the injury to his right foot established a causal relationship regarding his left foot. The arbitrator also noted the boots claimant was required to wear by Speedco. Not pertinent for the purpose of this appeal, the arbitrator also found claimant had established that he provided notice to Speedco, that he was entitled to penalties and fees, that he was entitled to certain medical expenses, that he was entitled to a period of temporary total disability (TTD), and that claimant's continued walking did not constitute an injurious practice.

¶ 33 The second decision (14 WC 41044) also involved Speedco. The arbitrator credited claimant's testimony about his activities at Speedco and the footwear he was required to use. He further noted that both Mall and Schmidt testified to a causal relationship. He made similar finding regarding both feet as in the first claim.

¶ 34 Third, pertaining to St. Louis Auto Auction (14 WC 41057), the arbitrator found that claimant established neither that he sustained an accident while employed by St. Louis Auto Auction nor that his condition of ill being was causally related to his employment there. He noted claimant's testimony regarding the job at St. Louis Auto Auction not requiring as much walking and the fact that he was allowed to take breaks. Further, claimant was not required to wear boots like he was at Speedco. Claimant's symptoms began at Speedco and never resolved. Thus, the arbitrator found that claimant's condition was caused by his employment at Speedco. Moreover, based on claimant's testimony, it did not appear that his condition deteriorated while he worked for St. Louis Auto Auction. Accordingly, the arbitrator denied the claim against St. Louis Auto Auction.

¶ 35 The Commission affirmed the third decision, but reversed the first two. As for the first two, the Commission found claimant proved neither accident nor causation. The Commission found that repetitive walking and standing, even on hard surfaces, cannot constitute a compensable accident under the Act. The Commission so held because they are activities that "members of the public engage in continually in both work and non-work circumstances alike." Further, the Commission found that claimant "did not sustain his burden of proving that his activities at work actually caused his condition of ill being." The Commission noted that Schmidt opined claimant's employment exacerbated a preexisting condition and Krause observed that claimant's work activities "likely increased his symptomology." However, the Commission stated that the mere coincidence of symptoms and work does not establish causation in the legal sense. Further, the Commission found, both Krause and Schmidt opined that calcification indicated the disease process was longstanding and even Mall agreed that claimant's condition was not acute. Schmidt opined that the activities of everyday living would aggravate claimant's condition, and Krause felt that claimant's work activities did not change the natural progression of the preexisting disease. It criticized Mall's opinion to the extent it relied on claimant's self-reported estimate that he walked 10 miles per day at Speedco.

¶ 36 Claimant appealed to the circuit court, which confirmed the Commission. This appeal followed.

¶ 37 III. ANALYSIS

¶ 38 Claimant has a fundamental problem. The Commission found against him on two issues: accident and causation. However, in his brief, he offers argument only regarding the former. It is axiomatic that a claimant bears the burden of proving every element of his or her case. *R&D Thiel v. Industrial Comm'n*, 398 Ill. App. 3d 858, 867 (2010). One element an employee must

establish is that his or her condition of ill being is causally related to a work-related injury. *Bolingbrook Police Department v. Illinois Workers' Compensation Comm'n*, 2015 IL App (3d) 130869WC, ¶ 50. Moreover, the failure to challenge a finding by the Commission renders any argument on that issue forfeited. See *Novakovic v. Samutin*, 354 Ill. App. 3d 660, 667 (2004) ("[A] party who fails to argue or cite authority in support of a point waives the issue for purposes of appeal."). Here, claimant has forfeited any argument that the Commission erred by finding his condition of ill being was not causally related to his employment with Speedco.

¶ 39 We note that claimant mentions the causation issue in his brief in the course of making his arguments on other issues. However, he simply recounts the evidence in his favor without acknowledging countervailing evidence or making any attempt to explain why the evidence in his favor is so persuasive that the Commission's decision relying on the contrary evidence is against the manifest weight of the evidence. He also cites no authority on this point. This is not argument in any meaningful sense; moreover, the failure to support the point with legal authority forfeits the issue as well (*Vallis Wyngroff Business Forms, Inc. v. Illinois Workers' Compensation Comm'n*, 402 Ill. App. 3d 91, 94 (2010)).

¶ 40 In any event, our review of the record leads us to the conclusion that claimant could not have overcome his significant burden on appeal of showing that the Commission's decision regarding causation was erroneous. Causation presents a question of fact. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). Hence, the manifest-weight standard of review applies. *Id.* Therefore, it was incumbent on claimant to show that an opposite conclusion to the Commission's is clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). The Commission—being the trier of fact—is primarily responsible for resolving conflicts in the evidence, assigning weight to evidence, assessing witnesses' credibility, and

drawing inferences from the record. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). Further, we owe heightened deference to the Commission on medical questions, as its expertise in that realm is well recognized. See *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979).

¶ 41 In this case, there was undoubtedly some evidence supporting claimant's position. For example, claimant testified that his condition arose while working for Speedco. A period of (relatively) good health, followed by some event, and a subsequent deterioration in health supports an inference of causation. See *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982). Similarly, Mall testified that the activities claimant engaged in at Speedco could cause or aggravate the sort of problem claimant was having. Schmidt opined that "any standing or walking does aggravate ongoing Achilles tendinitis." Conversely, Schmidt also testified that calcification indicated that claimant's problems were longstanding, that claimant's calcific tendinitis was not related to his increased workload at Speedco, and that the problems with claimant's left foot did not result from claimant favoring his right foot. Krause flatly opined that claimant's "employment at ABC St. Louis Auto/Speedco is not causally related to his insertional calcific Achilles tendonitis bilaterally." He also stated, "The simple fact that he developed symptoms while working does not indicate that his employment is causally related to his diagnosis." The Commission found Mall's opinion was suspect, as it was based, in part, on claimant's estimate that he walked 10 miles per day at Speedco.

¶ 42 Thus, evidence regarding causation was conflicting. Resolving such conflicts in the evidence is a matter for the Commission in the first instance. *Hosteny*, 397 Ill. App. 3d at 674. Here, where the issue is medical in nature, we must give particular deference to the Commission's resolution of the matter. See *Long*, 76 Ill. 2d at 566. In short, even if claimant

had not forfeited this issue, based upon the evidence presented, it appears to us that claimant would not have been successful in challenging the Commission's decision on causation.

¶ 43 IV. CONCLUSION

¶ 44 In light of the foregoing, the decision of the circuit court of Madison County confirming the decision of the Commission is affirmed.

¶ 45 Affirmed.