ILLINOIS OFFICIAL REPORTS

Appellate Court

***W.B. Olson, Inc. v. Illinois Workers' Compensation Comm'n*,**
2012 IL App (1st) 113129WC

Appellate Court Caption	W.B. OLSON, INC., Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Craig Kolin, Appellee).
District & No.	First District, Workers' Compensation Comm'n Division Docket No. 1-11-3129WC
Filed	November 5, 2012
Rehearing denied	December 4, 2012
Held (*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*)	The Workers' Compensation Commission's finding that claimant's vocational rehabilitation plan was appropriate and the award of maintenance benefits while claimant was engaged in that program were not against the manifest weight of the evidence, the Commission did not err in ordering claimant's employer to pay for the services of the rehabilitation counselor, and the Commission did not err in refusing to order claimant to submit to an additional functional capacity examination.
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 11-L-50222; the Hon. Margaret A. Brennan, Judge, presiding.
Judgment	Affirmed and remanded.

Counsel on Appeal	Nyhan, Bambrick, Kinzie & Lowery, P.C., of Chicago (Daniel J. Ugaste, L. Elizabeth Coppoletti, and Richard A. Kimnach, of counsel), for appellant. Corti, Alesksy & Castaneda, of Chicago (Richard E. Alesksy and Megan C. Kivisto, of counsel), for appellee.
Panel	JUSTICE HOFFMAN delivered the judgment of the court, with opinion. Justices Hudson, Holdridge, Turner, and Stewart concurred in the judgment and the opinion.

OPINION

¶ 1 W.B. Olson, Inc. (Olson), appeals from an order of the circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), awarding the claimant, Craig Kolin, benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) for injuries to his right knee that he received while in Olson's employ. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 2 The following factual recitation is taken from the record, including the evidence adduced at the various arbitration hearings conducted in reference to the claimant's application for adjustment of claim.

¶ 3 The 56-year-old claimant is a long-time union laborer residing in Highland, Indiana. Prior to his employment as a laborer, the claimant had worked as a truck driver, but he had not maintained his commercial driver's license (CDL). On February 1, 2006, the claimant was working as a construction laborer for Olson. He was cleaning up a job site inside a building, gathering debris in a wheelbarrow and hauling it to a dumpster outside. In performing this task, the claimant was using a ramp that had been constructed of a plank that was 12 feet long and 2 feet wide. As he was moving down the plank, the wheelbarrow started to tip. When the claimant tried to pull the wheelbarrow back, he stuck his leg out and felt a "pop," before falling to the ground.

¶ 4 After the accident, the claimant began an extensive course of medical treatment. Dr. Paulino Chan performed two successive right-knee arthroscopy procedures on February 15, 2006, and May 22, 2006. After each of these procedures, the claimant was followed by Dr. Chan, attended postoperative physical therapy, and received cortisone injections.

¶ 5 During September 2006, the claimant continued to treat with Dr. Chan, who recommended use of a brace to help alleviate the claimant's ongoing pain. The claimant also

was examined by Dr. Mark Levin, Olson's section 12 examiner. Dr. Levin suggested a functional capacity examination (FCE) and possible work hardening.

¶ 6 In October 2006, Olson offered the claimant light-duty employment performing an accounts payable position in its offices in Northbrook, Illinois. The claimant drove from his home in Highland, Indiana, which took approximately two hours. After several days, the claimant returned to Dr. Chan and reported that he had experienced knee and hip pain while driving. Dr. Chan restricted the claimant to one hour of driving per day and prescribed the use of a Donjoy brace. Thereafter, Dr. Chan restricted the claimant from performing any work that involved heavy lifting and the use of stairs or ladders.

¶ 7 In January 2007, the claimant sought a second opinion from Dr. Charles Bush-Joseph. Upon examination, Dr. Bush-Joseph advised that he did not think the claimant was a candidate for meniscal transplantation. He further advised that the claimant could accept his current level of disability with some permanent restriction, or he could engage in an aggressive rehabilitation program, which may provide significant symptomatic relief. In addition, Dr. Bush-Joseph opined that major reconstruction surgery would not provide the claimant with sufficient relief to allow him to return to full duty as a construction laborer.

¶ 8 On February 5, 2007, Dr. Chan directed the claimant to begin his third course of physical therapy, after which an FCE was performed on May 16, 2007. The results of the FCE indicated that the claimant was capable of performing work at the light-to-medium level of physical demand, which fell below that required of a construction laborer, and work hardening was suggested. Upon reviewing the FCE results, Dr. Chan advised that another work-hardening program would not be beneficial because the claimant already had participated in three courses of physical therapy "with one of the best [physical] therapists in the area." When the claimant returned to Dr. Chan on July 12, 2007, he reported that Olson's workers' compensation insurance carrier required him to engage in work hardening. Dr. Chan acquiesced and allowed the claimant to undergo work hardening.

¶ 9 The claimant underwent nine work-hardening sessions during the 14-day period between July 25 and August 8, 2007. On August 8, the claimant returned to Dr. Chan, who noted that the claimant had increased knee pain, swelling, painful range of motion, tenderness to palpation, and a "noticeable to significant" limp. Dr. Chan directed the claimant to cease the work-hardening program immediately, and he authored a note to that effect.

¶ 10 Thereafter, the claimant was examined by Dr. Pietro Tonino, at the request of Olson. Dr. Tonino concluded that the arthroscopic findings were sufficient to be responsible for the claimant's clinical condition, which is related to his employment accident. Dr. Tonino opined that the claimant did not require any further medical treatment and that he should be discharged from medical care within the restriction specified in the FCE report and the work-hardening discharge summary. Dr. Tonino also opined that the claimant did not require any driving restriction. Dr. Tonino noted that the claimant may require a total knee replacement in the future, but he currently was not a candidate for such a procedure. According to the claimant, Dr. Tonino told him during the examination that a partial knee replacement would be beneficial.

¶ 11 The claimant subsequently returned to Dr. Chan, who disagreed with Dr. Tonino's

conclusions. Dr. Chan ordered the continued use of the Donjoy brace and maintained the claimant's work restrictions, including the limitation of driving no more than one hour per day.

¶ 12 In December 2007, Olson again offered the claimant light-duty employment in the Northbrook office. Although the required amount of driving exceeded the limitation imposed by Dr. Chan, the claimant was directed to attempt the commute. The claimant reported for work in Northbrook on five days, and his trip averaged two hours each way. When he returned to Dr. Chan, he reported that he was experiencing pain in his right knee and hip. Dr. Chan advised him to avoid prolonged driving to work and administered another cortisone injection.

¶ 13 An arbitration hearing was held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)) on January 29, 2008. In a decision issued on March 12, 2008, the arbitrator found that the claimant sustained an accidental injury that was causally connected to his employment and awarded the claimant TTD benefits for 104 weeks, but denied his request for penalties and fees. Neither party appealed the arbitrator's decision.

¶ 14 Thereafter, the claimant continued treating with Dr. Chan, who repeatedly noted that the claimant was a candidate for partial knee replacement. The claimant also undertook vocational rehabilitation with Thomas Grzesik. Beginning in May 2008, the claimant was to meet with Grzesik every two weeks, in addition to making at least 10 job contacts per week. Grzesik also directed that the claimant obtain his GED certificate and CDL. In preparation for the GED examination, Grzesik arranged for the claimant to participate in Ivy Technical College's Adult Learning Program. Grzesik also provided the claimant with leads for job opportunities, assisted in preparing him for interviews, and sent resumes to potential employers on the claimant's behalf.

¶ 15 On December 2, 2008, the claimant returned to see Dr. Bush-Joseph, who concluded that the claimant would benefit from a partial knee replacement. Consequently, he referred the claimant to the joint-replacement team at Rush hospital.

¶ 16 The claimant was evaluated by Dr. Scott Sporer on January 14, 2009. Dr. Sporer agreed that the claimant was a candidate for knee arthroplasty, and the procedure was performed on February 10, 2009. Following the surgery, the claimant continued to treat with Dr. Sporer and attended post-operative physical therapy beginning in late March. During his recovery from the knee arthroplasty, the claimant suspended his vocational-rehabilitation efforts with Grzesik.

¶ 17 On May 27, 2009, Dr. Sporer ordered an FCE and directed the claimant to begin a home-exercise program. The FCE was performed on June 5, 2009, and the results of that examination indicated that the claimant was capable of performing work at the light-to-medium level of physical demand. The therapist found that the claimant was able to lift up to 20 pounds frequently and 35 pounds occasionally. In addition, she found him able to sit for 6 hours, in 60-minute increments; stand for 3 to 4 hours, in 30-minute increments; and walk frequent, moderate distances for 5 to 6 hours. The therapist who administered the FCE indicated that she believed the claimant could benefit from work conditioning. After the FCE, Dr. Sporer authored a work-status slip stating that the claimant was capable of driving

an automatic tractor-trailer.

¶ 18 The claimant resumed his vocational rehabilitation efforts in the summer of 2009, and he was offered a truck-driving position by William Fritts, a long-time friend of the claimant's who owns a trucking company. However, before the claimant could accept this job, he was required to obtain his CDL and arrange to drive only vehicles with automatic transmissions, due to the restriction imposed by Dr. Sporer. Fritts agreed to purchase a truck with an automatic transmission after the claimant passed his CDL examination. The claimant spent June and July 2009 preparing for that test. On several of those days, the claimant went to Fritts' business in Melrose Park, Illinois, and practiced driving. Fritts subsequently contacted his insurance carrier in order to add the claimant to his policy. However, Fritts' insurer refused to cover the claimant because he did not have two years of driving experience within the prior three-year period. Fritts then contacted several other insurance companies, but was unable to obtain the necessary coverage. The claimant ultimately obtained his CDL in October 2009.

¶ 19 After the truck-driving job with Fritts fell through, the claimant continued his vocational-rehabilitation efforts with Grzesik. The claimant sent out 40 resumes per month, and Grzesik sent out the same number. The claimant also spent approximately 20 hours per week pursuing job contacts, in addition to the time he dedicated to studying for his GED. The claimant took the GED test and passed all but the math portion.

¶ 20 On February 8, 2010, the claimant was again examined by Dr. Tonino, at Olson's request. During that examination, the claimant reported "minimal knee discomfort," and Dr. Tonino found some restriction in the right-knee flexion, but no tenderness and no effusion. Dr. Tonino concluded that the claimant had reached maximum medical improvement (MMI). In addition, Dr. Tonino determined that the claimant had no limitations on his ability to drive, including his ability to drive a manual-transmission tractor-trailer truck. Dr. Tonino acknowledged the restrictions previously imposed by Dr. Sporer, but he recommended an FCE, based on his belief that it is "probably a more reliable objective indication" of the claimant's capability.

¶ 21 The matter subsequently proceeded to a second section 19(b) hearing, which was conducted on April 20, 2010. The claimant testified that he had not been able to find employment. He stated that "response has not been good. I guess because what I [have known] for so many years I can't really do anymore, so I'm trying to go into different fields and it's not working well for me."

¶ 22 Thomas Grzesik testified at his evidence deposition that he is a certified rehabilitation counselor and licensed clinical professional counselor and that he has worked in that field for 30 years. He first met with the claimant in June of 2008. At that time, he interviewed the claimant, tested him, and then interpreted those test results in formulating a vocational rehabilitation plan. Grzesik determined that the claimant had an average learning potential with some significant academic deficiencies. He devised a plan for the claimant, which consisted of his obtaining his GED certificate and continuing with a modified job-placement program. As part of that program, the claimant would gain experience in how to interview and consider possibilities of alternative training regarding his education. The potential areas

of alternative training consisted of construction management, depending on the claimant's performance on reading and math testing after having passed the GED. Grzesik stated that he anticipated it would take the claimant longer than usual to pass the GED, due to his difficulty in reading. As a result, Grzesik arranged for the claimant to receive individualized tutoring from the GED instructors at Ivy Technical College.

¶ 23 Grzesik described the claimant as being "very cooperative," and he stated that he never had an occasion to admonish him for not being diligent in his rehabilitation efforts. According to Grzesik, the fact that the claimant was over 50 years old was an obstacle in his attempt to obtain employment. Grzesik explained that the unemployment rate in the claimant's geographic area is 9%, with "shadow unemployment" between 16% and 17%. In addition, the unemployment situation had worsened since the claimant began his vocational rehabilitation efforts. Grzesik opined that it was not likely that the claimant would find employment in the next six months. He also stated that the possibility of the claimant's being hired as a truck driver was "remote," given his work restrictions and the physical limitations noted in the June 2009 FCE. Grzesik testified that he knows of only one company in the area that has automatic transmission vehicles. That company is U.S. Express, but it only hires drivers to do long-distance "over-the-road" trips, which exceed the claimant's driving restrictions. Grzesik also explained that, although some smaller companies have automatic-transmission trucks, those companies require the driver to load and unload, which also exceeds the claimant's employment restrictions.

¶ 24 Olson presented the testimony of Daniel Minnich, who stated that he is a certified rehabilitation counselor and licensed clinical professional counselor. Minnich further stated that he was contacted by Olson in September or October 2009 to take over the claimant's rehabilitation program, but the claimant's attorney refused to allow him to contact the claimant. Consequently, he formulated a vocational rehabilitation plan based on the claimant's medical records and Grzesik's reports. Minnich testified that the claimant would benefit from a work-conditioning plan. This conclusion was premised on the fact that the physical therapist had recommended work conditioning after the FCE performed on June 5, 2009. Yet, Minnich acknowledged that Dr. Sporer had not directed the claimant to engage in work conditioning, and he also admitted that Dr. Sporer was more qualified than a physical therapist to determine what treatment the claimant required.

¶ 25 Minnich stated that, based on the claimant's slow progress in obtaining his GED, he would have sought additional resources for training or a personal tutor or a school that has expanded hours for tutoring. Minnich testified that he was unaware of the unemployment rate for the claimant's geographic area, but he acknowledged that the job market in Northwest Indiana had gotten worse. Despite this fact, Minnich expressed his belief that the claimant was "employable," and he stated that "older gentlemen do pretty well, very well, when they look for work that they have experience doing." Minnich stated that his recent "success rate" in helping clients find employment was above 90%.

¶ 26 Minnich also testified that, if he had been assigned to assist the claimant in his vocational-rehabilitation efforts, he would have "just helped him a little more with the CDL process. According to Minnich, the insurance-coverage obstacle, based on the claimant's lack of recent driving experience, could be overcome by having the claimant enroll in a truck-

driving school. Minnich stated that the insurance problem would be eliminated because employers recruit directly through the schools which meet the minimum state requirements. Upon questioning by the arbitrator, Minnich admitted that he had never actually tried this strategy with an experienced driver who already had obtained his CDL, but he stated that he was "sure they would be better students."

¶ 27 Following the second section 19(b) hearing conducted on April 20, 2010, the arbitrator issued a decision finding that the claimant is entitled to 116 weeks of maintenance benefits (from January 30, 2008, though April 20, 2010) because he was participating in an appropriate vocational-rehabilitation program, as outlined by Grzesik. In reaching this conclusion, the arbitrator found that both the claimant and Grzesik testified credibly regarding the claimant's vocational-rehabilitation efforts. However, the arbitrator found that the testimony of Minnich was less than credible because "he did not have any definitive approaches" and because his plan is "almost identical" to that of Grzesik. In particular, the arbitrator noted that Minnich recommended that the claimant obtain a GED, which is a primary aspect of Grzesik's plan. The arbitrator also observed that, as of the date of the hearing, the claimant had passed all of the relevant tests, except for mathematics, and was undergoing tutoring at Ivy Technical College, the same school suggested by Minnich. The arbitrator further observed that Minnich's plan includes a recommendation to obtain a CDL, which the claimant had already accomplished. Moreover, the arbitrator noted the difficulty in the claimant's obtaining a truck-driving position due to the insurance-coverage impediment. In addition, the arbitrator determined that Olson was required to pay $9,078.54 for the vocational rehabilitation services previously provided to the claimant by Grzesik. The arbitrator specifically rejected Olson's assertion that the claimant's vocational-rehabilitation efforts under Grzesik's plan were proceeding too slowly, and he noted that the claimant had made progress but was hindered by the severity of his injury and the "terrible economy and job market."

¶ 28 Olson sought review before the Commission of the arbitrator's decision following the second section 19(b) hearing. On review, the Commission, with one commissioner dissenting, corrected and clarified certain misstatements in the arbitrator's decision, but affirmed and adopted the arbitrator's decision in all other respects. In so doing, the Commission found that the claimant was a credible witness and that Minnich was "less than credible." The Commission observed that Minnich's plan "was in some respects a rehash of Grzesik's plan" and that the insurance-coverage impediment had been resolved, "so as to permit [the claimant] to begin driving a semi." The Commission determined, therefore, that it was unnecessary and inappropriate to order either a repeat FCE or formal vocational rehabilitation. Accordingly, the Commission affirmed and adopted the awards of maintenance and vocational rehabilitation benefits for the services previously rendered and remanded the cause for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 29 Olson sought 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.

¶ 30 On appeal, Olson initially argues that the Commission's finding as to the appropriateness of the claimant's vocational-rehabilitation plan is against the manifest weight of the

evidence. We do not agree.

¶ 31 The determination of whether a claimant is entitled to an award of vocational-rehabilitation benefits is a question to be decided by the Commission, and its finding will not be reversed unless it is against the manifest weight of the evidence. See *National Tea Co. v. Industrial Comm'n*, 97 Ill. 2d 424, 426, 454 N.E.2d 672, 673 (1983); see also *Vestal v. Industrial Comm'n*, 84 Ill. 2d 469, 473-74, 419 N.E.2d 897, 899 (1981). In resolving such a question, it is the function of the Commission to judge the credibility of the witnesses, resolve any conflicts in the testimony, and draw reasonable inferences from the evidence presented. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 207, 797 N.E.2d 665, 674 (2003); *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 223-24 (1980). For a finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910, 851 N.E.2d 72, 77 (2006). Where the Commission's decision is supported by competent evidence, its finding is not against the manifest weight of the evidence. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90, 93 (1982); *University of Illinois*, 365 Ill. App. 3d at 911-12, 851 N.E.2d at 78.

¶ 32 Awards for vocational rehabilitation are granted pursuant to section 8(a) of the Act, which provides, in pertinent part, that an employer shall compensate an injured employee "for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee." 820 ILCS 305/8(a) (West 2010). Vocational rehabilitation may include, but is not limited to, counseling for job searches, supervising a job search program, and vocational retraining including education. 820 ILCS 305/8(a) (West 2010). Yet, section 8(a) is flexible and does not limit rehabilitation to formal training. See *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 506, 812 N.E.2d 65, 71 (2004) (citing *Connell v. Industrial Comm'n*, 170 Ill. App. 3d 49, 55, 523 N.E.2d 1265, 1269 (1988)).

¶ 33 Here, Olson concedes that the claimant could not return to his previous employment and that some form of vocational rehabilitation was necessary. Olson also acknowledges that resolution of this issue depends upon the consideration of the opinions of Grzesik and Minnich. In challenging the award of vocational-rehabilitation benefits based on the plan devised and implemented by Grzesik, Olson contends that the Commission erred in its assessment of the evidence, the credibility of the witnesses, and the weight to be accorded their testimony. Thus, Olson essentially is asking us to reweigh the evidence that was presented at the hearing. However, as noted above, it was within the province of the Commission to judge the credibility of the witnesses, resolve conflicting testimony, and draw reasonable inferences from the evidence presented. See *Sisbro, Inc.*, 207 Ill. 2d at 207, 797 N.E.2d at 674; *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 223-24.

¶ 34 In this case, the Commission affirmed and adopted the arbitrator's determination that the vocational-rehabilitation plan directed by Grzesik was appropriate. This conclusion was predicated on the finding that the claimant and Grzesik presented credible testimony as to the claimant's vocational-rehabilitation efforts. The Commission also agreed with the arbitrator that Minnich's testimony was "less than credible" and that his vocational-rehabilitation plan was not substantively different from that devised and implemented by

Grzesik. Both plans included a recommendation that the claimant obtain a GED, and, as of the date of the arbitration hearing, the claimant had passed all but the math portion of the test. The claimant also was receiving tutoring services at Ivy Technical College, the same school suggested by Minnich. In addition, Minnich's plan included a recommendation to obtain a CDL, which the claimant had previously accomplished.

¶ 35 Olson claims that the plan proposed by Minnich should have been approved because it was more focused and promised a more expedient return to the work force. Yet, the record demonstrates that, although Minnich asserted that the claimant could overcome the insurance-coverage obstacle by enrolling in a truck-driving school, he also admitted that he had never tested this strategy with an experienced driver who already had his CDL. In addition, Minnich offered vague and ill-defined suggestions, such as the proposition that he would have "just helped [the claimant] a little more with the CDL process." Moreover, we observe that Minnich testified as to his opinion that the claimant was "employable," explaining that "older gentlemen do pretty well, very well, when they look for work that they have experience doing." The record establishes, however, that the claimant cannot return to the type of employment in which he has experience: he cannot continue as a construction laborer, he would have difficulty working as a painter because he cannot climb ladders, and his weight-lifting and driving restrictions hamper his ability to apply for many truck-driving positions. Contrary to Olson's argument, we do not believe the record supports the assertion that Minnich's plan is "manifestly superior" to that of Grzesik.

¶ 36 Lastly, we note that Olson criticizes the Commission for citing statements made at oral argument. We find, however, that there is sufficient evidence to support the Commission's decision, without regard to the challenged statements.

¶ 37 Based on the record presented, we cannot conclude that the Commission's finding that Grzesik's vocational-rehabilitation plan is appropriate is against the manifest weight of the evidence. In light of our resolution of this issue, we need not address the claimant's argument that, as a matter of law, section 8(a) of the Act confers upon claimants the right to select their vocational-rehabilitation provider and precludes employers from dictating that choice.

¶ 38 Olson also contends that the Commission's award of maintenance benefits is against the manifest weight of the evidence. This argument too is unpersuasive.

¶ 39 Section 8(a) of the Act permits an award of maintenance benefits while a claimant is engaged in a prescribed vocational-rehabilitation program. *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1019, 832 N.E.2d 331, 347 (2005); *Connell*, 170 Ill. App. 3d at 55, 523 N.E.2d at 1269. As with a vocational-rehabilitation award, the determination of whether a claimant is entitled to maintenance benefits is a question to be decided by the Commission, and its finding will not be reversed unless it is against the manifest weight of the evidence. See *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1074, 820 N.E.2d 570, 576 (2004). Thus, the Commission's decision will not be reversed on review unless an opposite conclusion is clearly apparent. *University of Illinois*, 365 Ill. App. 3d at 910, 851 N.E.2d at 77. Where the Commission's decision is supported by competent evidence, its finding is not against the manifest weight of the evidence. *Benson*, 91 Ill. 2d at 450, 440 N.E.2d at 93; *University of Illinois*, 365 Ill. App. 3d at 911-12, 851 N.E.2d at 78.

¶ 40 In disputing the Commission's award of maintenance benefits for June, July, and August 2009, Olson asserts that the claimant was not pursuing any of the recommendations in Grzesik's rehabilitation plan, nor was he diligently engaged in his own self-directed plan to obtain a truck-driving position. Again, Olson seeks to have us reweigh the evidence and disregard the inferences drawn by the Commission.

¶ 41 The claimant testified that he resumed his vocational rehabilitation efforts in the summer of 2009, when Fritts offered him a truck-driving position. The claimant further testified that he spent June and July 2009 preparing to obtain his CDL and that, on several days, he went to Fritts' business to practice driving. Based on this testimony, the arbitrator and the Commission apparently drew the inference that the claimant was engaged in a self-directed plan to obtain a truck-driving position and that his efforts were sufficiently diligent to warrant granting him maintenance during the disputed months. Considering the evidence presented, we must decline to invade the province of the Commission, whose function it is to judge the credibility of the witnesses, resolve conflicting testimony, and draw reasonable inferences from the evidence presented. See *Sisbro, Inc.*, 207 Ill. 2d at 207, 797 N.E.2d at 674; *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 223-24. Consequently, we cannot say that the Commission's award of maintenance benefits is against the manifest weight of the evidence.

¶ 42 Olson next argues that the Commission erred in requiring it to pay for the services rendered by Grzesik. In support of this argument, Olson asserts that such an award is contrary to the law and against the manifest weight of the evidence, where the Commission found "it unnecessary and inappropriate to order *** formal vocational rehabilitation." However, as the claimant correctly points out, the Commission affirmed and adopted the arbitrator's award of $9,078.54 for the vocational rehabilitation services previously provided to the claimant by Grzesik. The fact that the Commission also determined that future vocational rehabilitation services were not necessary does not negate the legal or factual basis for the award of payment for reasonable and necessary services previously rendered. We note that Olson apparently has conceded this point because it did not refute the claimant's argument in its reply brief. Based on these circumstances, we find no reversible error in the Commission's finding that Olson was liable for the payment of the fees due and owing Grzesik.

¶ 43 Olson also challenges the Commission's refusal to order that the claimant submit to an FCE, as recommended by Dr. Tonino. In response, the claimant argues that this issue presents a question of statutory construction and that the Act does not provide any authority enabling the Commission to require the claimant to submit to an FCE. We must agree.

¶ 44 Statutory construction is a question of law, which is reviewed *de novo*. *Advincula v. United Blood Services*, 176 Ill. 2d 1, 12, 678 N.E.2d 1009, 1015 (1996). The primary rule of statutory construction requires that effect must be given to the intent of the legislature. *Advincula*, 176 Ill. 2d at 16, 678 N.E.2d at 1017. In determining legislative intent, we first look to the statutory language. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189, 561 N.E.2d 656, 661 (1990). Where the language of the statute is clear, we will give it effect as written. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 473, 837 N.E.2d 1, 12 (2005). In interpreting a statute, we give undefined terms their ordinary meaning. *Comprehensive Community Solutions, Inc.*, 216 Ill. 2d at 473-74, 837

N.E.2d at 12; see also *Bowes v. City of Chicago*, 3 Ill. 2d 175, 200-01, 120 N.E.2d 15, 29 (1954) (recognizing that a dictionary may be used as a resource to determine the ordinary and commonly accepted meaning of words).

¶ 45 As the claimant correctly points out, section 12 of the Act is the only statutory provision permitting an employer to require a claimant to submit to any type of medical evaluation. See 820 ILCS 305/12 (West 2010). That section provides, in relevant part, that "[a]n employee *** shall be required, if requested by the employer, to submit himself *** for examination to a duly qualified medical practitioner or surgeon selected by the employer." 820 ILCS 305/12 (West 2010). Thus, the language of section 12 expressly limits the right of an employer to demand an examination by a "medical practitioner or surgeon." A medical "practitioner" is "one who has complied with the requirements and who is engaged in the practice of medicine." Dorland's Illustrated Medical Dictionary 1248 (25th ed. 1974). A "physical therapist" is "person skilled in the techniques of physical therapy and qualified to administer treatments prescribed by a physician and under his supervision." Dorland's Illustrated Medical Dictionary 1597 (25th ed. 1974). Clearly, a physical therapist does not fall within the meaning of a "medical practitioner" as specified in section 12.

¶ 46 Also, section 19(c) of the Act grants the Commission the authority to order "an impartial physical or mental examination of a petitioner whose mental or physical condition is in issue." See 820 ILCS 305/19(c) (West 2010). Yet, that authority is similarly limited to examinations by "a member or members of a panel of physicians." See 820 ILCS 305/19(c) (West 2010).

¶ 47 Thus, neither section 12 nor section 19(c) of the Act provides statutory authority for the assertion that either an employer or the Commission may require a claimant to submit to an evaluation by a physical therapist. Accordingly, we reject Olson's contention that the Commission erred in refusing to order the claimant to submit to the FCE recommended by Dr. Tonino.

¶ 48 Finally, we reject Olson's suggestion that the preceding statutory-construction analysis results in a deprivation of the constitutional right to due process because it denies employers a meaningful hearing and a "level playing field" on which to defend claims.

¶ 49 The due process clauses of the Illinois and United States Constitutions prohibit only an arbitrary, unreasonable and improper use of the State's police power. *City of Decatur v. Chasteen*, 19 Ill. 2d 204, 210, 166 N.E.2d 29, 33 (1960). When it is determined that an evil exists which affects the public health, safety, morals or general welfare and the legislative means used to counter that evil is reasonable, the exercise of the State's police power is proper and there is no want of due process despite interference with individual property and contract rights. *Chicago Real Estate Board v. City of Chicago*, 36 Ill. 2d 530, 541-42, 224 N.E.2d 793, 801 (1967). In applying this standard, courts generally seek to ascertain whether the means selected are reasonably necessary for the accomplishment of the purposes of the statute and not unduly oppressive upon individuals. *Chicago Allis Mfg. Corp. v. Metropolitan Sanitary District of Greater Chicago*, 52 Ill. 2d 320, 327, 288 N.E.2d 436, 441 (1972). Due process includes the right to present evidence and argument in one's own behalf, a right to cross-examine adverse witnesses, and impartiality in rulings upon the evidence that

is offered. *Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008, ¶ 16, 967 N.E.2d 950 (citing *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 927 N.E.2d 88 (2010)).

¶ 50 Here, the fundamental purpose of the Act is to afford protection to employees by providing them with prompt and equitable compensation for their injuries (*McNamee v. Federated Equipment & Supply Co.*, 181 Ill. 2d 415, 421, 692 N.E.2d 1157, 1160 (1998)), which includes the employee's right to seek treatment from the doctor of his or her choice (820 ILCS 305/8(a) (West 2008)). The requirement that a claimant submit to an examination by a doctor chosen by his or her employer, under section 12 of the Act, clearly is designed to provide the employer with a meaningful hearing and a "level playing field." A doctor who performs such an examination is free to contradict or challenge the test results and opinions presented by the claimant's medical professionals. Yet, nothing in section 12 indicates that an employer's doctor is vested with the authority to order that the claimant submit to a further FCE. We conclude that the statutory scheme set forth above is reasonably necessary for the accomplishment of the fundamental purpose of the Act and does not constitute a violation of Olson's right to due process merely because a section-12 examiner lacks authority to require additional FCE testing.

¶ 51 Based upon the foregoing reasons, we affirm the judgment of the circuit court which confirmed the Commission's decision, and we remand the matter to the Commission for further proceedings.

¶ 52 Affirmed and remanded.