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

JOSEPH DIBELLA,)	Appeal from the
)	Circuit Court of
Appellant,)	Will County
)	
v.)	No. 13-MR-75
)	
)	
ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (K.T. Richards)	Bobbi N. Petrunaro,
Construction Co., Appellee).)	Judge, presiding.

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 a workplace accident was not against the manifest weight of the evidence.

¶ 2 The claimant, Joseph DiBella, worked for the employer, K.T. Richards Construction Co., as a lead carpenter. He filed an application for adjustment of claim under the Illinois Workers' Compensation Act (the Act), 820 ILCS 305/1 *et seq.* (West

2004), alleging that he sustained a workplace accident in May 2005, that resulted in an injury to his right ankle. No one witnessed the accident. The employer disputed the claimant's assertion that he sustained a workplace accident. The arbitrator ruled in favor of the claimant, finding that the claimant met his burden of proving that he sustained an accident that arose out of and in the course of his employment and that his conditions of ill-being were causally related to the workplace accident. The arbitrator awarded the claimant temporary total disability (TTD) benefits, temporary partial disability (TPD) benefits, medical expenses, and a permanent wage differential award.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission reversed the arbitrator's decision finding that the claimant failed to prove that he sustained accidental injuries arising out of and in the course of his employment. One commissioner dissented. The claimant appealed the Commission's decision to the circuit court. The circuit court entered a judgment confirming the Commission's decision, holding that sufficient evidence supported the Commission's decision. This appeal ensued.

¶ 4 **BACKGROUND**

¶ 5 The arbitration hearing took place over the course of six different hearing dates: May 13, 2009; December 22, 2009; January 12, 2010; April 21, 2010; May 17, 2010; and June 14, 2010. The parties contested several factual issues at the arbitration hearing, but the claimant's argument on appeal centers around the Commission's finding that he failed to prove that he sustained a workplace accident. Accordingly, our factual background

focuses on the evidence and testimony presented at the arbitration hearing that is relevant to this contested issue.

¶ 6 The claimant testified that he had been a carpenter for about 28 years and began working for the employer as a lead carpenter in 2000 or 2001. He worked on residential construction projects. A typical jobsite involved the construction of two or three hundred houses, and the claimant described the terrain around a jobsite as "always uneven." He testified that there had been previous occasions when he twisted his ankles on the uneven terrain while working for the employer, but the previous incidents healed within a day or two, did not require medical attention, and did not require him to miss any work.

¶ 7 The claimant testified that on May 1, 2005, he worked at a jobsite called Marquis Estates in Bolingbrook, Illinois, assisting in the construction of single family homes and town homes. He testified that his duties that day centered around a house that was complete on the outside, but was only rough framed on the inside. According to the claimant, workers entered and exited the house by using a temporary ramp that lead from gravel inside the garage floor area up to a service door inside the garage. The ramp was ten feet wide and approximately 12 to 14 feet long and was not nailed in place.

¶ 8 His job duties that afternoon involved framing up sections of a fireplace that were to be installed in the townhouse unit next door. The claimant stated that he assembled the fireplace in two sections, and as he walked the lower half of the fireplace frame to the townhouse next door, he walked on the temporary ramp. According to the claimant, because the temporary ramp was not nailed in place, it flipped over, and his ankle scraped

the side of the ramp as he fell. He landed "real hard on the ball of the [right] ankle." He then felt "major pain" in his right ankle.

¶ 9 The claimant testified that he sat down a minute or two to catch his breath and that he looked around for help. No one witnessed the accident. He testified that he yelled and that two plumbers came to his location and told him to tell the supervisor, Chris Lieberstein, about the accident. The claimant stated that he looked for Chris Lieberstein, but could not find him. Instead, he found another carpenter, Elliot Kaye, who was in charge of the Marquis Estates jobsite when Chris Lieberstein was not present at the jobsite.

¶ 10 According to the claimant, there was approximately 45 minutes to an hour left in the workday when he told Kaye that he had just had an accident. The claimant testified that Kaye asked him if he could make it the rest of the day. The claimant told Kaye that he was going to load up his tools, sit down, and take it easy. The claimant testified that Kaye agreed to let Chris Lieberstein know or to otherwise make a report of the accident the next day.

¶ 11 The claimant's drive home was an hour and 50 minutes, and he maintained that he was in "major pain all the way home." He said that his ankle swelled on the way home, but that he did not seek medical attention because he was hoping that it would heal similar to previous times he had twisted his ankles. He claimed that his ankle still hurt the next morning and that he wrapped his ankle and went to work the next day. According to the claimant, Chris Lieberstein was at the jobsite the day following the

accident, but the claimant did not tell him about the accident. He continued to experience ankle pain throughout the day.

¶ 12 The employer presented testimony from Kaye and also submitted payroll records that contradicted the claimant's testimony. Kaye testified that he worked as a carpenter for the employer from December 2000 through September 2008, and that he worked at the same jobsite as the claimant from May 2005 through October 2005. He confirmed the claimant's testimony that he was in charge when Chris Lieberstein was not present at the jobsite.

¶ 13 Kaye testified that the employer's procedures when a work-related accident occurs at a jobsite require the injured employee to report the accident to the jobsite's foreman. The foreman is required to fill out an accident report and turn the report into the employer's front office. Kaye agreed that workplace accidents at the Marquis Estates jobsite were to be reported to him when Chris Lieberstein was not present at the jobsite. Kaye testified that during the time he worked at the Marquis Estates jobsite, the claimant never reported any injuries and never reported any problems with his right ankle.

¶ 14 The employer also presented payroll records and testimony of the employer's secretary treasurer, Jill Lieberstein. Jill Lieberstein testified that she handles all the paperwork and records in the employer's office, including workers' compensation reports and accident reports. She testified that when a work-accident occurs, the foreman of the jobsite where the accident occurred brings a workplace accident report to her and that she immediately calls the employer's workers' compensation insurance carrier to notify it of the claim. Jill Lieberstein testified that in May 2005, she did not receive an accident

report or a workers' compensation claim with respect to the claimant. In addition, she testified that the claimant's attendance at work was sporadic and that the employer's payroll records showed that for the week of May 2, 2005, through May 8, 2005, the only day the claimant worked was May 3. She testified that May 1, 2005, was a Sunday and that no work was done at any of the employer's jobsites on Sundays. In addition, the employer's payroll records admitted into evidence showed that the claimant did not work at the Marquis Estates construction site on May 3, 2005, but instead worked at the Lago Vista construction site, which was a separate jobsite that was located in Lockport, Illinois.

¶ 15 The employer presented the testimony of Matthew Streit, who was the foreman of the Lago Vista jobsite in 2005. He testified that in May and June of 2005, the claimant did not report any work injuries or problems with his ankles.

¶ 16 After the employer presented the testimony of its witnesses, the claimant's attorney recalled the claimant to testify further about the date of his accident. The claimant testified that upon further recollection, the date of the accident was May 3, 2005, rather than May 1, 2005. The claimant moved to amend his application for adjustment of claim to allege May 3, 2005, as the date of the accident, and the Commission allowed the amendment to the pleading.

¶ 17 With respect to his medical treatments following the alleged accident, the claimant testified that he initially treated his ankle with ice and heat for a couple of weeks and took Ibuprofen. However, he did not seek any medical attention for his right ankle until he went to the emergency room on July 17, 2005. The claimant testified that he told the

emergency room doctor that he had problems with his right ankle for the past two months after twisting his ankle at work. Records from the emergency room visit, however, provide a history of "right medial ankle pain" for only one month after he "twisted it." The medical records do not include a history of a work accident that occurred during the first week of May 2005.

¶ 18 The claimant testified that the emergency room doctor ordered x-rays of his ankle and prescribed an ankle brace. The doctor did not take the claimant off work, and the claimant testified that he continued working with the brace. The claimant testified that he told Kaye that he had gone to the hospital for right ankle pain. Kaye denied talking to the claimant about any condition with his ankle and testified that he never saw the claimant wear a brace on his right ankle or foot.

¶ 19 On August 15, 2005, the claimant sought treatment with his family physician, Dr. Andan Muhsin. According to the claimant, he told Dr. Muhsin how he injured his ankle at work while trying to use the ramp. Dr. Muhsin's office notes from August 15, 2005, however, state that the claimant had a history of right ankle pain and that "4 months ago probably injured" right ankle. The office notes do not indicate that the claimant reported a specific work-related incident or injury. Dr. Muhsin referred the claimant to Dr. Yeager.

¶ 20 The claimant saw Dr. Yeager on August 31, 2005. He testified that he told Dr. Yeager that he was experiencing sharp pain in his ankle and that he explained to the doctor how he injured his ankle on the ramp at work. He testified that he also mentioned twisting his ankle. Dr. Yeager's office notes from August 31, 2005, do not reflect a

history that includes a workplace accident. Instead, Dr. Yeager noted that the claimant had been experiencing pain in his right ankle for four months. According to Dr. Yeager's notes, the claimant gave a history of being "on and off his feet with uneven surfaces" and that he had "twisted his ankle multiple times in the past and has seen multiple physicians in the past with no relief of pain."

¶ 21 A patient medical history form from Dr. Yeager's office was filled out on August 31, 2005, and in describing the ankle problem and its cause, a handwritten note on the form stated that the claimant was hurting 24 hours a day for at least four months. The handwritten note states that the pain is major and that "something is wrong with it." The form does not contain any notation of a workplace accident.

¶ 22 Dr. Yeager examined the claimant's ankle, diagnosed an ankle sprain, and ordered MRIs. In September 2005, Dr. Yeager reviewed the MRIs of the claimant's ankle and diagnosed the claimant's condition as medial and lateral talar dome defects with ligamentous involvement. Dr. Yeager recommended surgery. In his office notes dated September 13, 2005, Dr. Yeager again noted that the claimant "relate[d] he has twisted this ankle multiple times."

¶ 23 The claimant testified that he told Chris Lieberstein that he needed surgery, and according to the claimant, Chris Lieberstein told him to have the surgery during the employer's "slow time." In addition, according to the claimant, Chris Lieberstein told the claimant to submit the surgery bills to his health insurance and that he could lay him off so he could collect unemployment when he had his surgery. The claimant testified that he had no choice but to agree.

¶ 24 Chris Lieberstein contradicted the claimant's testimony. He testified that during the period in question, he visited the Marquis Estates jobsite every day and usually spent three to five hours at the jobsite. He testified that his job duties included checking on employees to see that they were doing what they needed to be doing. He said that between May 2005 and October 2005, he never noticed anything unusual about the claimant. He did not see him walking or working in an unusual way. He did not notice the claimant wearing a brace on his right leg and did not receive any reports that the claimant was injured.

¶ 25 The foreman of the Lago Vista jobsite, Mathew Streit, also testified that during the period between May and October 2005, he observed the claimant on occasions and did not see him wearing a brace or any type of medical device on his right ankle and that the claimant never requested any time off during this period due to his right ankle. Jill Lieberstein testified that on October 26, 2005, the claimant and other employees were laid off because the projects that they were working on were slowing down.

¶ 26 Dr. Yeager scheduled the claimant's ankle surgery for January 2006. Prior to the surgery, the claimant saw Dr. Muhsin on January 16, 2006. In his preoperative evaluation report, Dr. Muhsin wrote that the claimant's illness was "chronic pain in his right ankle area due to injury that he sustained earlier last year, possibly at work." This is the first mention in any of the claimant's medical records that his right ankle condition was "possibly" related to his work.

¶ 27 Dr. Yeager performed the ankle surgery on January 17, 2006, and subsequently took the claimant off work. In his preoperative diagnosis report dated January 17, 2006,

Dr. Yeager wrote that the claimant first came to see him "complaining of pain in the right ankle area times approximately four months duration." The doctor noted that the claimant was a carpenter and related "that he had been on and off uneven surfaces" and that he had "twisted his ankle multiple times in the past" and had seen "multiple physicians in the past with no relief of pain." In another preoperative report dated January 17, 2006, Dr. Yeager wrote that the claimant "initially presented to my clinic complaining of right ankle pain times four months' duration" and that the claimant related that "he had attempted all conservative measures with no relief of pain."

¶ 28 Following the surgery, the claimant began a course of physical therapy which lasted throughout 2006. The claimant testified that he was on unemployment through most of 2006 and that his health insurance carrier paid for his medical treatments. The claimant further testified that when his unemployment ran out, he was still in physical therapy. He then called Chris Lieberstein, who told him that he could not return to work until his doctor gave him a release. He testified that when he saw Dr. Yeager again after speaking with Chris Lieberstein and a union representative, he told his doctor that his treatment needed to be changed to a workers' compensation claim.

¶ 29 In July 2006, Jill Lieberstein received the claimant's application for adjustment of claim under the Act with respect to the injury to the claimant's right ankle. She testified that the application was the first notice that she received that the claimant was alleging that he sustained a workplace accident. As noted above, the application for adjustment of claim alleged May 1, 2005, as the date of the accident. Jill Lieberstein testified that a few days prior to receiving the application for adjustment of claim, she received a telephone

call from the claimant's attorney, Luis Magana. Magana began the conversation by first telling her that she was probably unaware of the claimant's injury. According to Jill Lieberstein, Magana told her that the claimant was seeking sick benefits from his union and that he wanted a letter from the employer addressed to the union stating that the claimant was not injured on the job. Jill Lieberstein testified that she could not give him the requested letter because she had no knowledge of any injury. When she received the claimant's workers' compensation claim a few days later, she contacted the employer's insurance carrier and filled out an injury report. Prior to that time, no one had prepared an injury report.

¶ 30 Luis Magana testified that he began representing the claimant with respect to the workers' compensation claim in July 2006. He testified he often requests denial letters from employers or the employers' insurance companies denying workers' compensation claims so claimants would be able to get other benefits, including group insurance benefits, disability benefits, or union benefits. He testified that when he spoke with Jill Lieberstein, he was seeking a statement from the employer that it was denying the claimant's claim under the Act and that he did not suggest that she send him a letter stating that the accident never occurred. His intent was to use the letter denying workers' compensation benefits to send to the claimant's union to see if he could receive union benefits.

¶ 31 After the surgery, the claimant continued to follow up with Dr. Yeager. Following the surgery, the claimant saw Dr. Yeager nine times and none of Dr. Yeager's medical records reflected a history that included a workplace accident until August 23, 2006,

when Dr. Yeager first noted the claimant's assertion that he sustained the injury from a work accident. Dr. Yeager wrote that the claimant told him that this injury occurred when he slipped at work and that the employer needs him to be "at 100% to do the carpentry work that he was trained to do." Dr. Yeager also wrote: "When the accident occurred, [the claimant] instructed the supervisor at the time that he injured his ankle, but the supervisor was two flights up in the crane and [the claimant] told him to write it down which he never did. At this point, the supervisor is saying that [the claimant] never told the supervisor of his injury."

¶ 32 On November 15, 2006, Dr. Yeager wrote a "To Whom It May Concern" letter, in which he wrote that the claimant initially presented to his clinic "on August 13, 2005, complaining of right ankle pain times four months duration." He further wrote as follows:

"According to the [claimant], the [claimant] sustained a blunt force trauma to the right ankle area approximately four months ago prior to presenting to my clinic. The patient did talk to his supervisor which informed him that he 'needs to apply through his regular insurance' and presented to my clinic four months post injury."

¶ 33 Dr. Yeager testified at the arbitration hearing by way of an evidence deposition. He testified that he first treated the claimant for right ankle pain on August 31, 2005. According to Dr. Yeager, at that time, the claimant told him that he was a carpenter and that he was doing a lot of ladder work and work on uneven surfaces. According to Dr. Yeager, an MRI of the claimant's ankle revealed "tenosynovitis of the tibialis posterior,

flexor digitorum longus and peroneus longus tendons." The doctor described the claimant's condition as "basically *** inflammation of the tendon itself and then multiple cystic areas of the *** talus and midcalcaneus." He also described evidence of "fractures within the talor dome." The claimant was complaining of "deep pain" within his right ankle, and the doctor believed that his findings were consistent with the claimant's complaints.

¶ 34 According to Dr. Yeager, the claimant initially stated that he was not interested in surgery at that time because he needed to work. The claimant came back on December 12, 2005, and indicated that his symptoms had increased and that he was to the point where he wanted surgical intervention. Dr. Yeager testified that after the surgery, the claimant continued to follow up with him, underwent physical therapy, and showed improvement. Dr. Yeager opined that the claimant's ankle condition was consistent with blunt-force trauma. He believed that the mechanism of the claimant's injury was consistent with striking the ankle on a ramp as described by the claimant.

¶ 35 During cross-examination, Dr. Yeager testified that when he first saw the claimant, the claimant told him that he had multiple right ankle injuries in the past and had seen other doctors for those injuries. He agreed that he wrote in his office notes dated August 31, 2005, that the claimant was a carpenter who had been off and on his feet with uneven surfaces and related that he had "twisted his ankle multiple times in the past and has seen multiple physicians in the past with no relief of pain." He agreed that he did not note any history involving a specific trauma or blunt-force trauma and that his

subsequent records did not mention a specific trauma up through the time of the surgery and for a period of time after the surgery.

¶ 36 On April 5, 2007, the claimant submitted to an independent medical examination conducted by an orthopedic surgeon, Dr. George Holmes. Dr. Holmes testified at the arbitration hearing by way of an evidence deposition. He testified that the claimant told him that he injured his ankle on May 1, 2005, when a ramp he was walking on flipped over. The claimant was unsure if his ankle struck the ramp or the fireplace frame he was carrying.

¶ 37 Dr. Holmes found it significant that the claimant's emergency room records from July 17, 2005, did not state any particular injury but that the claimant reported that he worked construction as a carpenter and was always twisting and tripping on things. He testified, "[t]his is a little bit different than the definite injury report that we had that it was clearly on a specific date, and it's a little bit unusual that two months after the date when he presents for treatment of the ankle he does not report any specific injury to the ankle."

¶ 38 In his IME report dated April 5, 2007, Dr. Holmes opined that the findings in the claimant's "talus were old and did not represent an acute process and did not represent a finding consistent with an injury of May 1, 2005." He further opined that there was "no job-related injury that would account for [the claimant's] current symptoms" and that he did not attribute any of the claimant's surgical indications "to the specific date of May 1, 2005."

¶ 39 A vocational rehabilitation expert examined the claimant on September 2, 2008, and the claimant reported that he was injured on May 1, 2005. The vocational rehabilitation expert offered opinions concerning the employability of the claimant, which are not relevant to the issue of whether the claimant proved that he sustained a workplace accident.

¶ 40 At the conclusion of the arbitration hearing, the arbitrator found in favor of the claimant with respect to the factual issue that is at the center of this appeal, *i.e.*, whether the claimant proved that he sustained an accident that arose out of and in the course of his employment. The arbitrator found that the claimant testified "credibly throughout" the hearing. The arbitrator found that the claimant injured his ankle when he slipped off the temporary ramp and landed on the ball of his right ankle, possibly twisting it as well. The arbitrator found that the claimant reported the accident to Elliot Kaye shortly after it happened, that much of the testimony from the employer's witnesses was not credible, and that other testimony was either irrelevant or consistent with the claimant's testimony on the issue of accident. The arbitrator awarded the claimant TTD benefits, TPD benefits, medical expenses, and a permanent wage differential award.

¶ 41 The employer appealed the arbitrator's decision to the Commission and disputed, among other issues, the arbitrator's finding that the claimant proved that he sustained the alleged workplace accident. The Commission weighed the conflicting evidence admitted at the arbitration hearing and reversed the arbitrator, finding that the claimant failed to carry his burden of proof with respect to the occurrence of the workplace accident. One Commissioner dissented.

¶ 42 In ruling in favor of the employer on the issue of accident, the Commission concluded that "[a] review of the record as a whole does not support finding of accidental injuries arising out of and in the course of [the claimant]'s employment." Unlike the arbitrator, the Commission found that the claimant's testimony was "lacking in credibility." It found that "testimony and documentary evidence in the record significantly contradicts [the claimant]'s testimony."

¶ 43 The first issue that the Commission raised with respect to the claimant's credibility concerned his testimony relating to the date and location of the accident. The Commission noted that the arbitration hearing took place over the course of several different hearing dates. The claimant testified during the arbitration hearing on May 13, 2009, and on December 22, 2009, consistently stating that he was injured on May 1, 2005, while working on the construction project known as Marquis Estates. However, the Commission noted that the employer's secretary treasurer, Jill Lieberstein, contradicted this testimony, and the Commission found her testimony to be credible.

¶ 44 The Commission relied on Jill Lieberstein's testimony that the employer's payroll records showed that May 1, 2005, was a Sunday and that none of the employer's employees worked on Sundays. The Commission found it significant that Jill Lieberstein's testimony and the employer's payroll records established that the only day that week that the claimant worked was May 3, 2005. The Commission also noted that the employer's payroll records showed that he worked at the Lago Vista jobsite on May 3, 2005, not the Marquis Estates jobsite. Although the claimant's attorney recalled the claimant following Jill Lieberstein's testimony to clarify that the accident actually

occurred on May 3, 2005, the Commission found that the claimant's new recollection was not credible. The Commission also noted that the payroll records contradicted the claimant's testimony that he worked the rest of the week following his alleged injury on May 3, 2005.

¶ 45 The Commission also found that the claimant lacked credibility when he testified that he gave notice of his accident to Elliot Kaye the same day that he incurred the accident. The Commission noted that Kaye testified he worked on the Marquis Estates project during the relevant time period and that the claimant never reported any work accidents, never complained of any right ankle issues, and never requested any time off due to his right ankle. The Commission found Kaye's testimony to be credible, and it also relied on the testimony of Jill and Chris Lieberstein. Jill Lieberstein testified that she never received an accident report concerning the claimant's workplace accident. Chris Lieberstein worked at both the Marquis Estates and the Lago Vista jobsites and testified that he never observed anything unusual about the claimant's work performance, did not receive any reports that the claimant had been injured or had any medical issues involving his right ankle, and did not have any conversations with the claimant concerning an inability to work or walk. Chris Lieberstein's testimony directly contradicted the claimant's testimony, and the Commission found that Chris Lieberstein's testimony was credible.

¶ 46 Finally, the Commission found the "most persuasive" aspect of the record with respect to the issue of accident was the "lack of any medical treatment of [the claimant]'s right foot from May 2005 until July 17, 2005, and the fact that from the date of the

alleged injury until August 23, 2006, a period of over 15 months, [the claimant] failed to mention a work-related injury to any of his medical providers." The Commission, therefore, concluded that the claimant "failed to prove he sustained accidental injuries arising out of and in the course of his employment on May 3, 2005."

¶ 47 The dissenting commissioner believed that the arbitrator was in a better position to assess the credibility of the witnesses and "sift through" the evidence. Therefore, the dissenting commissioner would have affirmed the arbitrator's finding that the claimant sustained a workplace accident.

¶ 48 The claimant appealed the Commission's decision to the circuit court. The circuit court noted that the evidence was conflicting but there was "evidence to support the Commission's decision." The circuit court emphasized that it was "the role of the Commission to resolve conflicts in the evidence, to assess the credibility of witnesses and to assign weight to their testimony." The court, therefore, confirmed the Commission's decision. The claimant now appeals the circuit court's judgment.

¶ 49 ANALYSIS

¶ 50 The claimant first argues that the dissenting commissioner correctly recognized that the arbitrator was in a better position to evaluate the evidence because he heard the live testimony. This argument, however, is contrary to our well-established standard of review. The Commission is the finder of fact, and it is to the Commission that we owe deference on factual issues. *Edward Gray Corp. v. Industrial Comm'n*, 316 Ill. App. 3d 1217, 1222, 738 N.E.2d 139, 143 (2000). "[O]ur supreme court has consistently held that when the Commission reviews an arbitrator's decision, it exercises original, not appellate,

jurisdiction and that the Commission is not bound by the arbitrator's findings." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 483 (2009). Accordingly, we reject the claimant's request that we follow the dissenting commissioner's reasoning and give deference to the arbitrator's findings, rather than the Commission's findings.

¶ 51 Whether the claimant suffered from a compensable accident is a question of fact to be determined by the Commission. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. 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). Under this standard of review, we cannot reverse the Commission's finding that the claimant failed to prove that he sustained a workplace accident.

¶ 52 No one witnessed the claimant sustaining a workplace accident, and the Commission's decision on this issue is based on its assessment of the credibility of the witnesses who testified. In resolving issues of fact, it is the Commission's role to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine the relative weight to accord evidence, and to resolve conflicts in the testimony, including conflicting expert testimony. *Hosteny*, 397 Ill. App. 3d at 674, 928 N.E.2d at 482. "[I]t

is not our province to substitute our judgment for that of the Commission on questions of credibility." *Gallego v. Industrial Comm'n*, 168 Ill. App. 3d 259, 270, 522 N.E.2d 692, 699 (1988).

¶ 53 The Commission did not believe the claimant when he testified that he injured his ankle in May 2005 while working for the employer. In assessing the claimant's credibility, the Commission found the inconsistencies between his testimony and the employer's payroll records to be significant. The claimant continually testified that the accident occurred on May 1, 2005, until he was presented with evidence that he did not work on May 1, 2005, but only worked on May 3, 2005. When the claimant's attorney recalled him to the stand, the Commission was not impressed with his new recollection that he was, indeed, injured on May 3, 2005. In assessing the claimant's testimony, the Commission acted within its fact finding capacity in noting that the payroll records also conflicted with the claimant's testimony that he worked the rest of the week after his accident and conflicted with his testimony concerning his work location on the day of the alleged accident. This is evidence contained within the record that supports the Commission's assessment of the claimant's credibility.

¶ 54 The Commission, as the fact finder, was entitled to give significant weight to the claimant's medical records, which did not describe a specific workplace accident until sometime after he had his ankle surgery. The records from the claimants' initial medical treatments refer to past ankle problems and walking on uneven surfaces. On appeal, the claimant challenges this part of the Commission's analysis by noting that Dr. Muhsin's preoperative evaluation report dated January 16, 2006, states that the claimant's illness

was "chronic pain in his right ankle area due to injury that he sustained earlier last year, possibly at work." This vague notation in Dr. Muhsin's medical record, noted over eight months after the alleged accident, does not establish that the Commission's findings are against the manifest weight of the evidence. Although Dr. Muhsin's note references that the claimant was "possibly" injured at work, his note does not indicate that the claimant reported a specific incident that resulted in the injury.

¶ 55 The Commission also relied on the credible testimony of other witnesses, including Elliot Kaye, Chris Lieberstein, and Matthew Streit, who testified that the claimant never reported a workplace accident and never exhibited an inability to work as a result of ankle problems.

¶ 56 As the circuit court noted, the record includes conflicting evidence and opinions that could support alternative findings. However, our task is not to look for evidence to support alternative findings. Our task is to determine whether the evidence supports the Commission's findings. In addition, the supreme court has directed us not to "reverse the Commission merely because some evidence incompatible with its findings exists in the record." *Riteway Plumbing v. Industrial Comm'n*, 67 Ill. 2d 404, 409, 367 N.E.2d 1294, 1297 (1977).

¶ 57 Reviewing the record as a whole under the manifest weight of the evidence standard, we cannot overturn the Commission's finding that the claimant failed to prove that he suffered a workplace accident. The Commission's findings relevant to this issue were based on its assessment of the claimant's and other witnesses' credibility and balancing the claimant's testimony in light of the medical records admitted at the hearing.

The record, therefore, presents us with a classic manifest weight case in which we cannot usurp the Commission's prerogative. Therefore, we must affirm.

¶ 58 The claimant raised other issues on appeal concerning various rulings made by the Commission, including decisions to admit certain evidence and to allow the amendment to the application for adjustment of claim. The claimant does not challenge these rulings, but argues that the Commission's rulings were correct. Because we affirm the Commission's finding that the claimant failed to prove that he sustained a workplace accident, we need not address these other contentions on appeal as they have no bearing on our analysis of the central issue in this appeal.

¶ 59 **CONCLUSION**

¶ 60 For the foregoing reasons, we hereby affirm the circuit court's judgment that confirmed the Commission's decision.

¶ 61 Affirmed.