

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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

JOHN COLEMAN,)	Appeal from the Circuit Court
)	of Perry County
Appellant,)	
)	
v.)	No. 12-MR-23
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i>)	Honorable
)	Richard A. Aguirre,
(Thornburgh Abatement, Inc., Appellee).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* Commission's finding—which claimant does not challenge—that claimant failed to show that he gave notice of his injury to respondent is not contrary to the manifest weight of the evidence.

¶ 2 Claimant, John Coleman, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)) alleging that he sustained an injury to “bilateral lower extremities” and “depression” as a result of “chemical

exposure” while in the employ of respondent, Thornburgh Abatement. The Commission found that claimant failed to prove the existence of a causal relationship between his condition of ill-being and his employment with respondent. It also found that claimant did not establish that he gave notice of his injury to respondent, as required by the Act. Claimant does not challenge the Commission’s finding regarding notice.

¶ 3 On the issue of notice, the Commission ruled as follows:

“Claimant testified that he told his supervisor that he spilled a liquid on himself and then became sick. His testimony is disputed by Ted Holliam who testified credibly that he was never informed of any liquid spill. Mr. Holliam is now working for another employer, doing similar work and testified credibly. Claimant’s recollection of the events has not been entirely consistent, and the record shows a history of claimant becoming confused and disoriented in the past as a result of his diabetes. The medical records do not detail any updated history of accident until nearly a year after claimant first reported to the hospital for treatment. However, claimant reportedly remembered the liquid spill when he was treating at St. John’s Mercy Medical Center sometime in July 2006. The record is absent any indication that he ever informed his employer of this version of accident within 45 days of recalling the incident. Respondent was accordingly denied the opportunity to timely investigate the scene and to determine whether any witnesses could corroborate the events relayed by claimant.”

Essentially, the Commission found that Holliam (claimant’s supervisor) was credible, and claimant was not.

¶ 4 Pertinent here, section 6(c) of the Act provides that a claimant must give notice of an accident to his or her employer “not later than 45 days after the accident.” 820 ILCS 305/6(c)

(West 2006). To comply with this requirement, a claimant must place “the employer in possession of the known facts related to the accident within the statutory period.” *Gano Electric Contracting v. Industrial Comm’n*, 260 Ill. App. 3d 92, 96 (1994). Indeed, “[t]he purpose of the notice requirement is to enable the employer to investigate the employee’s alleged industrial accident.” *White v. Workers’ Compensation Comm’n*, 374 Ill. App. 3d 907, 911 (2007). The giving of notice is a jurisdictional prerequisite to maintaining an action pursuant to the Act. *Precision Universal Joint v. Industrial Comm’n*, 205 Ill. App. 3d 1, 3 (1990). Generally, whether notice was given presents a question of fact, which we review using the manifest-weight standard. *Zion-Benton Township High School District 126 v. Industrial Comm’n*, 242 Ill. App. 3d 109, 114-15 (1993). A finding is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Elmhurst-Chicago Stone Co. v. Industrial Comm’n*, 269 Ill. App. 3d 902, 906 (1995).

¶ 5 In this case, the Commission assessed and weighed the testimony of claimant and Holliman. It expressly found Holliman credible. It then questioned claimant’s testimony. The Commission noted that claimant’s account of events had “not been entirely consistent” and was uncorroborated. We perceive nothing so compelling in claimant’s testimony nor so lacking in Holliman’s testimony that we could say that the Commission’s decision on this issue is contrary to the manifest weight of the evidence.

¶ 6 Indeed, claimant does not challenge this finding of the Commission in his opening brief. He also chose not to file a reply brief. As such, we deem this 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.”).

¶ 7 Moreover, an alternative independent basis exists to find against claimant in this case. Though we need not pass on the issue in detail given our resolution of the notice issue, we also note that the Commission found that claimant failed to prove he suffered a compensable accident. The Commission's finding was based largely on claimant's credibility. Having reviewed the record, we could not hold that this finding is contrary to the manifest weight of the evidence.

¶ 8 Accordingly, we affirm the order of the circuit court of Perry County confirming the decision of the Commission.

¶ 9 Affirmed.