2015 IL App (1st) 140352WC-U
No. 1-14-0352WC
Order filed: September 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

KLEMM TANK LINES, Respondent-Appellant, v. LARRY PETRAK and THE ILLINOIS WORKERS' COMPENSATION COMMISSION, Petitioners-Appellees.	)))))))))))	Appeal from the Circuit Court of Cook County. Nos. 12-L-51080 13-L-50951 Honorable Patrick J. Sherlock and Edward S. Harmening, Judges, Presiding.

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

ORDER

¶ 1 *Held*: (1) Since claimant's job had elements of both an independent contractor and an employee, the Commission's finding that an employment relationship existed between claimant and respondent was not against the manifest weight of the evidence; (2) the Commission's finding that claimant sustained an accident arising out of and in the course of his employment with respondent was not against the manifest weight of the evidence; (3) the Commission's finding that claimant established a causal connection between his current condition of ill-being and his employment was not against the manifest weight of the evidence; (4) the Commission's award of $47,978.19 as reasonable and necessary medical

expenses was not against the manifest weight of the evidence; and (5) the Commission's award of 36-1/7 weeks of temporary total disability benefits was not against the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Klemm Tank Lines, appeals from the judgment of the circuit court of Cook County confirming a decision of the Illinois Workers' Compensation Commission (Commission) awarding benefits to claimant, Larry Petrak, pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)). On appeal, respondent argues that the Commission erred in finding the existence of an employer-employee relationship between it and claimant. Respondent also challenges the Commission's findings with respect to accident, causation, medical expenses, and temporary total disability (TTD) benefits. For the reasons set forth below, we affirm and remand for further proceedings.

¶ 4 II. BACKGROUND

¶ 5 On February 23, 2011, claimant filed an application for adjustment of claim, which he later amended, seeking benefits for an injury he allegedly sustained on February 16, 2011, while working as a truck driver for respondent. An arbitration hearing on claimant's application for adjustment of claim was held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)) over various dates between July and October 2011. The following evidence relevant to this appeal was presented at that hearing.

¶ 6 Claimant owns and operates a tractor. Respondent is in the business of transporting gasoline products. In November or December of 2010, claimant attended a recruiting event held by respondent in Bolingbrook, Illinois. Soon thereafter, claimant was contacted by Jeffrey Miller, respondent's operations manager, and asked to go to Green Bay, Wisconsin, to continue the hiring process. Claimant reported to respondent's Green Bay facility on December 20, 2010,

and attended two days of training. During the second day of training, claimant met with Sarah Wolf, respondent's assistant office manager and recruiting representative. Wolf provided claimant with various forms, including a document titled "Independent Contractor Equipment Lease with Driver Service Agreement" (Equipment Lease) and an application for occupational accident insurance from the Great American Insurance Company. Claimant testified that Wolf had completed portions of the forms but did not review them with him. Claimant further testified that he did not read the documents, but simply marked boxes and signed as instructed. Thus, on the insurance application, claimant checked boxes indicating he was an owner-operator and that he wanted to be "paid by" a form 1099. Claimant also testified that Wolf informed him that he needed to be listed as a company on the Equipment Lease, so the name "Larry Petrak Company" was used on that document. After completing the paperwork, claimant returned to Illinois to await further instruction from respondent.

¶ 7 A few days later, Miller telephoned claimant to arrange on-the-road training. To this end, claimant began training with one of respondent's owner-operators on January 11, 2011. Claimant testified that he was originally told that he would have to complete only one week of on-the-road training. However, respondent later implemented a policy requiring three weeks of training. Because the training was unpaid, claimant asked Miller for permission to interrupt his training schedule to make a paid run with his tractor. Miller allowed the request and claimant hauled for a carrier known as "Multi Group." The remaining training runs were completed by late in January.

¶ 8 Claimant testified that respondent requires that tractors be inspected prior to being dispatched, so after completing the on-the-road training, claimant took his tractor to be inspected. Some issues were found at the first inspection, and the tractor was repaired at GLS Garage

(GLS), a facility recommended by respondent. Respondent paid the bill for the repairs and then deducted the amount from claimant's pay. Claimant was also required to have respondent's decals and Department of Transportation (DOT) numbers on his tractor prior to dispatch, so after his tractor was brought into compliance, he put respondent's identifiers on the side of his tractor. According to claimant, once he was under contract with respondent, he was not permitted to haul loads for another carrier.

¶ 9 Claimant was first dispatched by respondent on January 25, 2011. Claimant testified that respondent provided him with a starting time of 3 a.m. As a result, he would contact respondent's dispatcher in Green Bay between 2 and 3 a.m. to request an assignment. The dispatcher would provide claimant a delivery address and a two-hour window to pickup and deliver the load. Claimant testified that although respondent had equipped his tractor with an on-board computer for dispatching, claimant never got his assignments through the computer, and most drivers had to call the dispatch center to receive an assignment. Claimant testified that he was free to choose the delivery route, although he occasionally asked the dispatcher for instructions. Claimant further acknowledged that he was free to select times for his meal breaks. Once claimant completed a delivery, he would then call the dispatcher for another assignment. At the end of each shift, claimant would report to respondent's nearest terminal and provide copies of his logbook. Claimant was paid 70% of each load. Because he purchased his own fuel, claimant also received a fuel surcharge respondent charged its customers. Claimant acknowledged that he did not wear a company uniform while driving for respondent and that respondent deducted his insurance expenses from his pay.

¶ 10 Claimant testified that the injury for which he seeks benefits occurred on the morning of February 16, 2011, when he felt pain in the left side of his lower back while lifting a fuel hose during a delivery. Claimant explained the circumstances surrounding the injury as follows:

> "I did dispatch out to pickup [*sic*] a load in Rochelle. I picked up a load on the way back, was delivering in [*sic*] Kinder Morgan in Argo, Illinois. Delivered a load [*sic*]. The hoses, I unhooked the hoses, put them away. One of the hoses slipped from the little hill down. So I tried to bend over because that's where you lay them back down on the ground. I picked that up halfway up and my back, I just felt the whole body shook. I dropped the hose and I stood there for probably, I would say, a minute at least, because I felt a sharp pain in my back. It took me back before I started moving a little bit."

According to claimant, the fuel hoses are made of thick plastic rubber with a reinforcing coil around the outside and have a very heavy head with a lid. Claimant estimated that when the hose is full of fuel, it weighs between 60 and 70 pounds. Following the injury, claimant completed the rest of his workday, making four additional deliveries. Claimant did not report his injury when speaking to dispatch on the day of the accident and he did not immediately seek medical care. The next day, however, claimant called a dispatcher named Brian and told him that he could not work because he was in pain after getting hurt at a job the previous morning.

¶ 11 On February 18, 2011, claimant was still in pain, so his wife made an appointment with Daniel Fortuna, a chiropractor. Prior to the examination, the chiropractor's office provided a registration form. That form, as completed, indicates that claimant is self-employed and lists his wife's group health insurance information for payment. Claimant acknowledged signing the registration form, but stated that he did not complete the form himself and that he did not recognize the handwriting on the registration form. Upon seeing Fortuna, claimant provided a

history of sharp and burning pain in the low back on the left side. An examination revealed pain with range of motion, positive straight-leg raising bilaterally, and pain to palpation. Fortuna diagnosed lumbago, lumbosacral neuritis, spasm of muscle, and pain in the thoracic spine. He performed an ultrasound and electrical muscle stimulation, sent claimant for X rays, and referred him to Dr. Volodimir Markiv for pain management. Upon leaving Fortuna's office, claimant's wife drove him to MacNeal Hospital for the X rays. Claimant testified that his wife completed the registration form at the hospital, again indicating that claimant is self employed and had insurance through his wife. The X rays revealed minimal degenerative changes.

¶ 12 Claimant saw Dr. Markiv on February 18. Dr. Markiv's progress note reflects a history of severe, persistent pain in the lower part of the lumbar spine after lifting heavy hoses at work. Claimant denied any weakness, numbness, or radiation of the pain to the lower extremities. Dr. Markiv noted a similar episode of pain in the lower part of the lumbar spine six to seven months earlier. At that time, he was treated by a chiropractor with improvement. Examination revealed severe limitation of range of motion in the lower lumbar spine due to pain in all directions and positive straight-leg raise bilaterally in a sitting position. Dr. Markiv diagnosed L4-L5 versus L5-S1 disc herniation, discal tear, transitional vertebral body, lumbarization of S1, lumbar facet arthropathy lower aspect of lumbar spine L4-5, L5-S1 bilaterally worse on right side, and lower back pain. Dr. Markiv took claimant off work and ordered a lumbar MRI. He also advised claimant to wear a lumbar brace and prescribed medication for pain.

¶ 13 On February 20, 2011, claimant received a voicemail message from Miller. Claimant returned the call the following day and was told that respondent had received a complaint from a gas station owner alleging that claimant had overfilled underground tanks. Miller informed claimant that there would be a meeting to resolve the situation, but that claimant would not be

allowed to attend the meeting. Following the meeting, Miller verbally told claimant that he had been terminated. Claimant described the circumstances surrounding the alleged incident as follows:

> "I was dispatched on a load from Greg or Gary, one of those. I don't remember, one of those guys there. I was dispatched on the load. They were to give me how many gallons to load up for the station, give me the location to do it with. So I did. I would say after I loaded up, maybe 20 minutes into it, [Gary or Greg] calls me up and tells me *** to pull over on the side and wait because the load ain't gonna fit. Wait. He was going to try to find a different station to make sure the station will fit in. I waited 10, 15 minutes on the side. He calls me back. He said he couldn't find another location to go ahead and put whatever I can on that station. The rest of it we will take somewhere else *** That's exactly what I did. I went down, filled up the station, called him up. I got about, I believe 2,000, 3,000 gallons left. He gave me a different location to deliver the rest."

¶ 14 On February 24, 2011, claimant was evaluated by Dr. Mark Lorenz of Hinsdale Orthopaedics. Claimant's wife completed the intake forms. The notes from that initial evaluation document that claimant was in excellent health with no history of lower-back issues until February 16, 2011, when he was lifting up the tanker hoses from his truck. At that time, claimant experienced the onset of severe back pain and heard a pop in his lower back. Upon examination, Dr. Lorenz noted "quite a bit" of spasm in his lower back, negative Waddell signs, and positive straight-leg raise on the left. X rays showed narrowing of the L4-L5 disc space and retrolisthesis of L4 over L5. Dr. Lorenz diagnosed an L4-L5 disc herniation secondary to the lifting accident and left-sided radiculopathy. He prescribed a Medrol Dosepak and Norco for pain. He recommended an MRI and took claimant off work. The MRI revealed mild L4-L5 and

L5-S1 central and left-sided disc protrusions with no acute compression fracture or alignment abnormality. Dr. Lorenz referred claimant to physical therapy.

¶ 15 Claimant began physical therapy at ATI on March 2, 2011. Claimant followed up with Dr. Lorenz on March 23, 2011. At that time, Dr. Lorenz noted a significant reduction in pain and recommended a course of work hardening. In the interim, Dr. Lorenz recommended that claimant remain off work. Claimant attended three weeks of work hardening. On April 28, 2011, he underwent a functional capacity evaluation (FCE). The FCE was valid and placed claimant at the medium-to-heavy physical-demand level, capable of occasionally lifting and carrying 70 pounds.

¶ 16 When claimant followed up with Dr. Lorenz on June 8, 2011, he reported that therapy had made him stronger and his pain had improved somewhat. The examination revealed pain on forward flexion, mild reversal of spinal rhythm when coming to neutral, and pain going into extension, but his straight-leg raise was negative. The diagnosis was L4-5 and L5-S1 disc herniation with axial pain. Because claimant was still having pain, Dr. Lorenz kept him off work and referred him to Dr. Neeraj Jain.

¶ 17 Claimant saw Dr. Jain on June 21, 2011. Dr. Jain's notes document the onset of low-back pain after claimant lifted a hose weighing 50 to 60 pounds at work in February. Upon examination, Dr, Jain noted tenderness to palpation at the lumbosacral junction and axial pain on extension. Dr. Jain also noted that claimant's MRI revealed L4-5 and L5-S1 disc herniation. Dr. Jain agreed that claimant should be off work and recommended epidural and facet injections. On July 5, 2011, Dr. Jain administered epidural steroid injections at L4-L5 and L5-S1. On July 19, 2011, Dr. Jain administered facet injections at L3-L4, L4-L5, and L5-S1. When claimant followed up with Dr. Jain on August 3, 2011, he reported significant improvement from the

epidural injections, with no back or leg pain for the first 10 days. With the facet injections, claimant experienced only marginal improvement for the first one or two days. As a result, Dr. Jain recommended a second left-sided L4-5 and L5-S1 epidural injection. Dr. Jain noted that maximum medical improvement (MMI) was "undeterminable at this time." In the interim, claimant was to remain off work. Claimant's last visit with Dr. Jain was on September 27, 2011. At that time, Dr. Jain recommended a lumbar discogram and maintained claimant's off-work status.

¶ 18 At the arbitration hearing, claimant testified that he continues to experience discomfort and pain in his back. Claimant denied having any back problems requiring treatment by a doctor prior to February 16, 2011. Claimant identified exhibit number 13 as a list of doctors with whom he had treated and the medical expenses and bills associated with his treatment.

¶ 19 James Appleton, respondent's vice president of operations, testified regarding respondent's general policies, requirements, and procedures. Appleton explained that the DOT requires carriers with an Interstate Commerce Commission (ICC) number to use only drivers who have passed a DOT physical. Thus, respondent requires its drivers to pass a DOT physical prior to hire and has designated clinics for these physicals in each city in which it is located. Appleton testified that any individual who wishes to drive for respondent must complete a training program pursuant to federal law and that respondent mandates a pre-dispatch inspection of a driver's equipment. Appleton testified that a driver can go to any certified mechanic for the pre-dispatch inspection, although respondent has 15 vendors that it "trusts." Appleton was not aware who told claimant where to get his tractor inspected, although he acknowledged that respondent parks some of its tractors at GLS.

¶ 20 Appleton further testified that independent contractors operating under respondent's authority must display respondent's DOT numbers and lettering. Drivers can purchase their own decals with this information or respondent will provide them with a generic set at no cost. Per DOT regulations, the decals can be positioned anywhere on the tractor as long as they are visible. Appleton further explained that DOT rules limit drivers to a 14-hour work day with no more than 11 hours of driving. Appleton testified that the same rules also limit a driver to 70 hours of work over a period of 8 days. The DOT rules also require each driver to maintain a log book which is retained by respondent.

¶ 21 Appleton testified that respondent supplies liability insurance for trucking activities and mandates that each driver purchase a separate policy for "bobtailing" or non-hauling liability. Drivers can also purchase collision insurance, although it is not required as a condition of driving for respondent. In addition, respondent provides new hires with applications from Great American Insurance Company to purchase either occupational accident or workers' compensation insurance. Appleton asserted that respondent's normal hiring procedure dictates that claimant would be given written notice regarding the insurance requirements and told to get the best quote. He admitted, however, that no such document was included in the subpoenaed records.

¶ 22 Appleton testified that all drivers are dispatched via an on-board computer system known as "CADEC." CADEC also tracks the vehicle's movements via a GPS system. Appleton testified that the computer allows respondent to learn of the driver's location, although that feature is used only in limited circumstances such as if a gas station is out of fuel and the customer has inquired about the driver's location. The computers are installed in the company trucks for employee drivers and independent contractors have them installed at a facility of their

choice. Respondent will not hire a driver who refuses to install the computer. Drivers are also assigned to a dispatcher who monitors the on-board computer. Dispatchers tell owner-operators how many gallons of gasoline to deliver and provide a window of time during which the delivery must be completed. Appleton added that for an independent contractor to receive pay, he or she must turn in the paperwork to validate that the job was completed.

¶ 23 Appleton also testified to differences between respondent's driver-employees and its independent contractors. Appleton testified that unlike employees, independent contractors supply and drive their own tractors whereas driver-employees use company-owned equipment. In addition, independent contractors supply their own fuel while driver-employees obtain their fuel from respondent. Independent contractors also purchase their own insurance and are responsible for the maintenance, repair, and upkeep of their own vehicle. Appleton further testified that at the end of the workday, driver-employees park their equipment at respondent's depots whereas independent contractors are not restricted as to where to park their equipment. Moreover, independent contractors have the option to "rotate" loads by taking them out of order and they may refuse loads they deem inconvenient or insufficiently profitable. In contrast, driver-employees must complete assignments as listed on the CADEC.

¶ 24 Appleton also related that independent operators typically own "sleeper cabs" so they can take longer routes. Appleton explained that these longer routes are not available to respondent's employees since respondent has only two sleeper cabs in its fleet. Appleton also explained that independent contractors are trained by other owner-operators rather than company supervisors. Appleton stated that respondent allows its independent contractors to haul loads for other carriers so long as all of respondent's signage is removed from the tractor. According to Appleton, this usually occurs with respondent's seasonal drivers, who work for other carriers during spring and

fall. He acknowledged, nevertheless, that claimant was not hired as a seasonal driver. Moreover, although asserting that this was respondent's policy, Appleton was unsure if any provision in the Equipment Lease addresses claimant's ability to haul for other carriers. He indicated, however, that an independent contractor would have to request permission from respondent to haul for another company.

¶ 25 Appleton also testified that if a company driver is involved in an accident, respondent pays for the cost of the accident with its insurance whereas if an independent contractor has an accident, the driver's insurance pays for the cost of the collision and the driver pays any deductible on the policy. Company drivers are provided with respondent's uniforms and flame-retardant clothing at no cost to them whereas independent contractors provide their own fire-retardant clothing. In addition, Appleton noted that driver-employees and independent contractors are compensated differently. Independent contractors earn a percentage of the revenue whereas driver-employees are paid "on a piece rate, by the load, by the mile." Appleton also pointed out that since independent contractors supply their own fuel, they get 100% of the fuel surcharge that respondent charges its customers. In addition, driver-employees receive a form W-2 for tax purposes whereas owner-operators receive a form 1099.

¶ 26 Appleton also testified regarding various provisions of the Equipment Lease, which was admitted into evidence. He testified, for instance, that the Equipment Lease expressly provides that that an independent contractor is not considered respondent's employee. Appleton also noted that the Equipment Lease mandates that respondent provide written notice of termination. Appleton testified that pursuant to the Equipment Lease, respondent can terminate an independent contractor for any reason by giving a 30-day notice and it can terminate an independent contractor immediately by giving written notice if he or she commits an illegal act.

¶ 27 Appleton testified that he was informed by way of email from Miller that claimant was terminated for reckless driving as a result of an incident occurring on February 7, 2011, and for not following procedure and violating EPA regulations. The alleged EPA violation took place at a gas station where claimant is alleged to have filled an underground storage tank beyond the 95% maximum permitted by EPA regulations. Appleton later admitted that claimant had not violated either an EPA regulation or the customer's policy on that occasion. Appleton was also unaware if claimant received written notice of termination as provided by the Equipment Lease.

¶ 28 Appleton testified to his understanding of the typical unloading process at Kinder Morgan, where the injury for which claimant seeks benefits is alleged to have occurred:

> "When you pull up to that site, the hose is actually laying on the ground. It's a hose provided by the site itself. You do not utilize a hose that you have. This hose that lays there has arms or is suspended by cables kind of like a puppet. You take one end of the hose. You connect it to your trailer. You then open your valve, and you put a clamp on your trailer which begins the pump, and it sucks the product out of your trailer. Then when you're done, okay, after your trailer is empty, the hose is empty, you put the cap back in the trailer, and then you place the hose back on the ground."

Appleton testified that the hoses are composed of rubber, and he believed an empty hose without suspension weighed 15 to 20 pounds but the Kinder Morgan hose was suspended with cables that lighten its weight to about 3 pounds. Appleton acknowledged that his description of the facility was based on his observations while being at Kinder Morgan "once before." Appleton also acknowledged that he did not lift the hose on that occasion.

¶ 29 On rebuttal, claimant testified that the Kinder Morgan hoses are not suspended but in fact lay on the ground. Furthermore, the hoses there are heavier than normal hoses. They are

approximately five inches in diameter, between ten and sixteen feet long, and have large stainless steel heads.

¶ 30 Based on the foregoing evidence, the arbitrator determined that an employment relationship existed between respondent and claimant. The arbitrator noted that in determining whether an employment relationship exists, there are many factors to consider, but the single most important one is whether the purported employer has a right to control the actions of the worker. The arbitrator concluded that respondent maintained a high degree of control over claimant as evidenced by the terms of the Equipment Lease and respondent's dispatching procedures. The arbitrator also cited the nature of claimant's work in relation to respondent's business, the fact that respondent supplied materials such as tankers and hoses, and the right to discharge. The arbitrator acknowledged that there were factors suggesting independent contractor status such as the tax treatment of claimant's compensation, the fact that claimant used his own tractor while hauling for respondent, respondent's use of the term "independent contractor" in the Equipment Lease, and the fact that claimant purchased his own fuel. However, the arbitrator found these factors did not outweigh the evidence pointing to an employment relationship.

¶ 31 Citing the "credible" testimony of claimant as well as claimant's medical records, the arbitrator also concluded that claimant's back injury arose out of and in the course of his employment with respondent on February 16, 2011. Additionally, relying on a chain-of-events theory, the arbitrator concluded that claimant's current condition of ill-being is causally related to the accident of February 16, 2011. After calculating claimant's average weekly wage, the arbitrator awarded claimant 36-1/7 weeks of TTD benefits, representing the period from February 17, 2011 (the day after the accident) through October 27, 2011 (the date of the close of

proofs in the arbitration hearing). Finally, the arbitrator awarded claimant $49,978.19 for reasonable and necessary medical expenses.

¶ 32 The Commission affirmed and adopted the decision of the arbitrator and remanded the matter for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). Upon judicial review, the circuit court of Cook County, in case number 12-L-51080, confirmed the Commission's decision with respect to all matters except that it remanded the matter to the Commission for the purpose of reconsidering the calculation of claimant's average weekly wage. On September 17, 2013, the Commission issued its decision on remand which resulted in a modification of claimant's average weekly wage. Thereafter, the circuit court of Cook County, in case number 13-L-50951, entered an agreed order confirming the decision of the Commission. Respondent then filed a notice of appeal from both orders of the trial court.

¶ 33 III. ANALYSIS

¶ 34 On appeal, respondent challenges the Commission's findings with respect to the existence of an employer-employee relationship, accident, causation, medical expenses, and TTD benefits. We address each contention in turn, beginning with whether, at the time of claimant's alleged injury, an employer-employee relationship existed between the parties.

¶ 35 A. Employer-Employee Relationship

¶ 36 Respondent first challenges the Commission's finding that there is an employer-employee relationship between it and claimant. According to respondent, the Commission "failed to credit or simply misstated undisputed record facts in connection with the employee/independent contractor analysis, and it also failed to consider and make a finding on the intention of the parties in this case." As a result, respondent insists that the Commission's decision that an employer-employee relationship existed between the parties was "clear error"

and should be reversed. Claimant responds that the Commission properly concluded that he and respondent had an employment relationship. In support of this claim, claimant cites the factors typically considered in assessing the existence of an employment relationship, including the amount of control respondent exercised over claimant's activities, the nature of claimant's work in relation to the general nature of respondent's business, who provided the instrumentalities needed to conduct business, and the right to discharge.

¶ 37 Whether an individual is classified as an independent contractor or an employee is crucial, for it is one's employment status which determines whether he or she is entitled to benefits under the Act. *Earley v. Industrial Comm'n*, 197 Ill. App. 3d 309, 314 (1990); see also *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 174 (2007) (noting that an employment relationship is a prerequisite for an award of benefits under the Act). For purposes of the Act, the term "employee" should be broadly construed. *Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 1122 (2000). Nevertheless, the question of whether an individual is an employee remains one of the most vexatious in the law of workers' compensation. *Roberson*, 225 Ill. 2d at 174. The difficulty arises from the fact-specific nature of the inquiry. *Roberson*, 225 Ill. 2d at 174. Significantly, many jobs contain elements of both an employment and an independent-contractor relationship. *Kirkwood v. Industrial Comm'n*, 84 Ill. 2d 14, 20 (1981). Since there is no clear line of demarcation between the status of employee and independent contractor, no rule has been, or could be, adopted to govern all cases in this area. *Roberson*, 225 Ill. 2d at 174-75; *Kirkwood*, 84 Ill. 2d at 20.

¶ 38 To assist in determining whether an individual should be classified as an employee, our supreme court has identified a number of factors, including the following: (1) whether the purported employer has a right to control the manner in which the individual performs work; (2)

whether the purported employer dictates the worker's schedule; (3) whether the purported employer compensates the individual on an hourly basis; (4) whether the purported employer withholds income and social security taxes from compensation; (5) whether the purported employer may discharge the individual at will; and (6) whether the purported employer supplies the individual with materials and equipment. *Roberson*, 225 Ill. 2d at 175. Another relevant factor is the nature of the work performed by the alleged employee in relation to the general business of the purported employer. *Roberson*, 225 Ill. 2d at 175; *Ware*, 318 Ill. App. 3d at 1122. The label the parties place on their relationship is also a consideration, although it is a factor of "lesser weight." *Ware*, 318 Ill. App. 3d at 1122. The significance of these factors rests on the totality of the circumstances, and no single factor is determinative. *Roberson*, 225 Ill. 2d at 175. Nevertheless, the right to control the work and the nature of the work are the two most important considerations. *Kirkwood*, 84 Ill. 2d at 21; *Ware*, 318 Ill. App. 3d at 1122.

¶ 39 The existence of an employment relationship is a question of fact for the Commission. *Ware*, 318 Ill. App. 3d at 1122. In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). We will overturn the Commission's resolution of a factual issue only if it is against the manifest weight of the evidence. *Ware*, 318 Ill. App. 3d at 1122. A factual finding is contrary to the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC, ¶ 21. In this regard, a finding is not against the manifest weight of the evidence if there is sufficient factual evidence in the record to support the Commission's decision, even if this court, or any other

tribunal, might reach an opposite conclusion. *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 944-45 (2006); *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). Consequently, when the evidence is "well balanced," it is the Commission's province to weigh the evidence and decide among competing inferences, and its decision will be upheld. *Roberson*, 225 Ill. 2d at 187; see also *Kirkwood*, 84 Ill. 2d at 20 ("[W]hen the facts of a particular case are susceptible to either interpretation, the Commission alone, as the finder of fact, is empowered to draw inferences and evaluate the credibility of the witnesses in arriving at a decision."). Measured against this standard, we find that the record contains sufficient evidence to support the Commission's finding of an employment relationship between respondent and claimant.

¶ 40 Initially, we find that the manifest weight of the evidence indicates that the two most important factors—the right to control and the nature of the work—support the existence of an employment relationship between the parties. Significantly, the evidence establishes that respondent exercised substantial control over claimant's activities. For instance, the Equipment Lease provided that respondent had "exclusive possession, control and use of the leased equipment" and the right to sublease the equipment to other carriers. Respondent mandated that claimant install a computer in his tractor which could be used to track the vehicle's movements. Moreover, respondent required claimant to display its identifiers on his tractor and restricted the number of hours claimant could drive. Further, pursuant to the Equipment Lease, respondent prohibited claimant from carrying passengers without its prior consent. Additionally, while Appleton testified that claimant was free to transport goods for other companies, he could do so only after obtaining respondent's permission and removing respondent's identifiers from his tractor. See *Steel & Machinery Transportation, Inc. v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 133985WC, ¶ 33 (noting that requirement that driver seek permission prior to

hauling goods for another carrier is an indicia of control). While some of the areas in which respondent exercised control over claimant were to ensure compliance with federal rules or regulations, this court has noted that the motivation for the motor carrier's actions is irrelevant and the fact that a motor carrier was acting to ensure compliance with federal regulations does not diminish the fact that the motor carrier exercised control over its drivers. *Ware*, 318 Ill. App. 3d at 1123-24; *Earley*, 197 Ill. App. 3d at 315 ("The rules and regulations of the [ICC] are a factor to be considered as indicating that the respondent had the right to control the claimant's work, and is indicative of an employee status between the claimant and the respondent."); see also *Steel & Machinery Transportation, Inc.*, 2015 IL App (1st) 133985WC, ¶ 33.

¶ 41 We also find that defendant's dispatch and payment processes demonstrate that respondent exercised significant control over claimant. Claimant did not make delivery arrangements with respondent's customers. Rather, he was required to call prior to the beginning of his designated shift to obtain a dispatch order. Respondent issued dispatch assignments from its facility in Green Bay, Wisconsin, providing the place of delivery, the amount of product to deliver, as well as a time frame for pick-up and delivery. Moreover, the Equipment Lease provided, and Appleton confirmed, that claimant would not be compensated until he gave respondent certain documents, including a driver's log, the applicable bill of lading or delivery receipt signed by the consignee, and, if required by respondent's customer, the "wash-out ticket(s) certifying that the trailer has been properly cleaned."

¶ 42 Similarly, the nature of the work performed by claimant in relation to the general business of respondent supports a finding of an employment relationship. "Regarding this factor, our supreme court noted 'because the theory of workmen's compensation legislation is that the cost of industrial accidents should be borne by the consumer as part of the cost of the product,

this court has held that a worker whose services form a regular part of the cost of the product, and whose work does not constitute a separate business which allows a distinct channel through which the cost of an accident may flow, is presumptively within the area of intended protection of the compensation act.' " *Ware*, 318 Ill. App. 3d at 1124 (quoting *Ragler Motor Sales v. Industrial Comm'n*, 93 Ill. 2d 66, 71 (1982)). In this case, respondent is in the business of transporting gasoline products. Respondent had exclusive possession of claimant's tractor and used it in furtherance of its business of transporting gasoline for respondent's customers. Moreover, although claimant hauled goods for another carrier after seeking to be hired by respondent, he did so on only one occasion during an unpaid training period and only after obtaining respondent's permission. Accordingly, we find that this factor points to an employment relationship.

¶ 43 Several other factors also point to an employment relationship. With respect to which party provided the instrumentalities needed to conduct business, we noted in *Ware* that " 'control may be realistically inferred even when the employer owns only a part of the equipment if that part is of considerable size and value.' " *Ware*, 318 Ill. App. 3d at 1125 (quoting 3 A. Larson & L. Larson, Larson's Workers' Compensation Law § 61.07(3), at 61-20 (2000)). Thus, in *Ware*, we found evidence of an employment relationship where the motor carrier provided the trailer that the driver used to haul freight while the driver provided the tractor. *Ware*, 318 Ill. App. 3d at 1125. The circumstances of this case are similar. Although claimant drove his own tractor, he used respondent's tankers to deliver fuel to respondent's customers. Accordingly, this factor weighs in favor of an employment relationship. In addition, claimant's status as an employee was evinced by respondent's actions in terminating him. The Equipment Lease provided in relevant part that it "may be voluntarily terminated by either party, without cause, upon thirty

(30) days written notice given by mail, facsimile or other electronic means." Respondent could also terminate the Equipment Lease immediately by giving written notice under various circumstances, including the commission of illegal acts by the driver. However, instead of providing claimant of written notice of his termination, respondent simply telephoned claimant and told him that he was being discharged when it no longer wanted claimant to drive for it. The right to terminate at-will without any further redress suggests an employment relationship. See *Steel & Machinery Transportation, Inc.*, 2015 IL App (1st) 133985WC, ¶ 38; *Ware*, 318 Ill. App. 3d at 1125-26 (noting that an at-will employment arrangement, which generally permits termination for any reason, is suggestive of an employment relationship).

¶ 44 To be sure, there are also factors pointing to independent contractor status. For instance, claimant was paid a per-job fee rather than on an hourly wage. The record also suggests that, for tax purposes, claimant was paid on a form 1099. Moreover, claimant had the option to "rotate" loads by taking them out of order, he could refuse a load he deemed inconvenient or insufficiently profitable, and he could select the route to his delivery destination. Further, claimant purchased his own fuel, paid for his own maintenance and repair charges, and could schedule his own breaks. However, the two most important factors point to an employment relationship. In any case, given the conflicting evidence presented at the arbitration, and in light of the Commission's role in determining an individual's employment status, a conclusion opposite that of the Commission is not clearly apparent. Accordingly, we reject respondent's argument that the Commission's determination that an employment relationship existed between respondent and claimant at the time of the latter's injury was against the manifest weight of the evidence.

¶ 45 Respondent maintains that, in finding the existence of an employment relationship, the Commission failed to consider the intent of the parties. In support of this proposition, respondent cites to *Walker v. Midwest Emery Freight Systems*, 119 Ill. App. 3d 640, 645 (1983). We do not dispute that the intent of the parties is *a* factor to consider in determining whether an employer-employee or an independent-contractor relationship exists. See *Earley*, 197 Ill. App. 3d at 317-18. However, this is a minor consideration, and, as we stated in *Ware*, "[it] would be inappropriate to allow employers to defeat the goals of the legislature, set forth in the Act, through the artifice of mislabeling what is truly employment." *Ware*, 318 Ill. App. 3d at 1126. Indeed, the *Walker* court itself acknowledged that there are a myriad of other relevant factors to consider in determining the existence of an employer-employee relationship. *Walker*, 119 Ill. App. 3d at 645-46.

¶ 46 Respondent also argues that claimant's conduct in operating his own business demonstrates that he intended to be an independent contractor. Respondent presents no evidence that claimant advertised himself as an independent contractor or that he maintained an office of his own. See *Kirkwood Brothers Construction v. Industrial Comm'n*, 72 Ill. 2d 454, 460 (1978). Instead, respondent points out that in 2008, claimant filed a schedule C form as part of his tax return, claiming to the Internal Revenue Service that he was an owner-operator and deducting depreciation and other expenses for his business. However, the accident at issue occurred in 2011. We fail to see how claimant's conduct in 2008 reflects upon his work for respondent in 2011. In any event, claimant's tax status is but one factor to consider. See *Kirkwood Brothers Construction*, 72 Ill. 2d at 460 (noting that one's tax situation, while relevant, is not itself decisive). As noted above, given the other evidence of record, the Commission could have reasonably concluded that the parties' relationship was that of employer and employee.

¶ 47 Respondent also contends that claimant's application for occupational accident insurance benefits from Great American Insurance Company further demonstrates claimant's intent to operate as an independent contractor. We disagree. Pursuant to the Equipment Lease, respondent required claimant to purchase either workers' compensation or occupational accident insurance and to provide respondent with proof of having obtained the required policy. As this was mandated by respondent as a condition of driving for it, we find this to be a weak indication of claimant's intent to operate as an independent contractor.

¶ 48 Finally, respondent also insists that "great weight" should be placed on claimant's admissions in connection with his treating medical records. Specifically, respondent argues that these records "eviscerate" claimant's claims that he was respondent's employee on February 16, 2011, in that claimant holds himself out to his medical providers as being self-employed and lists his wife's group health insurance information for payment instead of any workers' compensation policy. The information referenced by respondent appears on medical registration and intake forms completed prior to being examined. Claimant acknowledged that he signed these forms, but testified that his wife completed some of the forms and he did not remember who completed the remaining forms. The Commission found claimant to be a credible witness and, based on claimant's testimony, could have reasonably concluded that because claimant did not complete these forms, they had little bearing on the nature of his employment status.

¶ 49 In sum, the foregoing evidence establishes that there are factors that weigh both in favor of and against a finding that claimant was an employee of respondent. However, as our supreme court has stated, in cases where the evidence is well-balanced, it is within the province of the Commission to weigh the evidence and decide among competing inferences. See *Roberson*, 225 Ill. 2d at 186-87; *Kirkwood*, 84 Ill. 2d at 20; *Earley*, 197 Ill. App. 3d at 318. The Commission

did so in this case and concluded that an employment relationship existed between claimant and respondent. Although the dissent opines that the evidence of an employment relationship is "minimal" while the evidence of an independent-contractor relationship is "overwhelming" (*Infra* ¶ 82), based on an analysis of the relevant factors, and in light of the totality of the circumstances, we find that a conclusion opposite that of the Commission is not clearly apparent. Thus, we reject respondent's argument—and that of the dissent—that the Commission's determination that an employment relationship existed between respondent and claimant at the time of the latter's injury was against the manifest weight of the evidence.

¶ 50 B. Accident

¶ 51 Next, respondent argues that the Commission erred in concluding that claimant sustained a compensable accident. An employee's injury is compensable under the Act only if it "arises out of" and "in the course of" the employment. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006); *O'Fallon School District No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413, 416 (2000). A claimant bears the burden of proving by a preponderance of the evidence both of these elements. *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 477 (2011); *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006). The phrase "in the course of" refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Injuries sustained on an employer's premises, or at a place where the employee might reasonably have been while performing his or her duties, and while the employee is at work, are generally deemed to have been received "in the course of" one's employment. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013-14 (2011). For an injury to "arise out of" one's

employment, its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989).

¶ 52 Typically, the question of whether an employee's injury arose out of and in the course of his employment is one of fact. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 19. With respect to factual matters, it is within the province of the Commission to judge the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny*, 397 Ill. App. 3d at 674. A reviewing court may not substitute its judgment for that of the Commission merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We will not overturn the Commission's determination on a factual matter unless it is against the manifest weight of the evidence. *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120411WC, ¶ 15. As noted above, a decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Freeman United Coal Mining Co.*, 2013 IL App (5th) 120564WC, ¶ 21.

¶ 53 In the present case, the Commission, in affirming and adopting the decision of the arbitrator, determined that claimant proved an accidental injury arising out of and in the course of his employment with respondent. Specifically, the Commission determined that claimant was performing an act he had been instructed to perform by his employer, *i.e.*, delivering fuel to one of respondent's customers pursuant to directions from one of respondent's dispatchers. The Commission further determined that during the course of the delivery, claimant sustained an injury to his lower back. In support of these findings, the Commission found that claimant "testified in a very clear and credible fashion with regard to the circumstances of his lower back

injury of February 16, 2011." The Commission also cited the medical records offered on claimant's behalf, which, the Commission found, "contain consistent histories documenting an acute onset of symptoms while lifting fuel hoses."

¶ 54 Respondent disputes the Commission's finding that claimant sustained a compensable accident on two principal grounds. First, respondent argues that claimant's medical records do not mention any work-related accident. In this regard, respondent submits that claimant identified himself in the medical intake forms as "self-employed" and listed his wife's group health insurance for payment information. According to respondent, had an accident occurred at work, claimant would have named respondent as his employer and advised his medical providers to contact respondent to identify its workers' compensation insurance carrier. Thus, respondent reasons, "[t]he answers [claimant] willingly provided are an accurate reflection of his true state of mind, and they unambiguously support a finding that he was not an employee and did not have an accident." We disagree.

¶ 55 Respondent reads the registration and intake forms in isolation, ignoring the history of injury claimant provided at the arbitration hearing as well as the contemporaneous medical histories contained in his treating physicians' progress notes. Claimant testified that on February 16, 2011, he was dispatched by respondent to deliver a load to Kinder Morgan. Claimant further testified that in the course of that delivery, he felt a sharp pain in his low back after picking up a fuel hose. Claimant was able to complete his shift on the date of the accident and did not report the accident at that time. Claimant testified, however, that the following day he contacted respondent, spoke to a dispatcher, and reported that he could not work because he injured himself after making a delivery to Kinder Morgan the previous day.

¶ 56 Claimant's testimony regarding the accident is consistent with the history he provided to his treating physicians. The record establishes that claimant first sought medical care two days after the accident, first with Fortuna and then with Dr. Markiv. Fortuna's progress note does not indicate how claimant's injury occurred. However, Dr. Markiv's records reflect that claimant was experiencing severe, persistent pain in the lower part of the lumbar spine after lifting heavy hoses at work. Similarly, claimant advised Dr. Lorenz that he was in excellent health with no history of low-back issues until February 16, 2011, when he experienced a severe onset of back pain upon lifting fuel hoses. Dr. Jain's records also reflect a history involving the onset of low-back pain after claimant lifted a hose weighing between 50 and 60 pounds at work in February. Claimant's testimony at the arbitration hearing and the consistent history of injury provided by claimant to his treating physicians support the Commission's finding that claimant sustained an accident arising out of and in the course of his employment with respondent. Accordingly, an opposite conclusion is not clearly apparent, and we cannot say that the Commission's finding of accident was against the manifest weight of the evidence.

¶ 57 In so concluding, we acknowledge references on the medical registration and intake forms to the effect that claimant is self-employed and he was insured through a policy procured by his wife. However, this evidence merely created a conflict in the evidence for the Commission to resolve. See *Hosteny*, 397 Ill. App. 3d 665, 674 (2009). Indeed, while claimant admitted that he signed the medical registration and intake forms cited by respondent, he stated that he did not complete the forms. Claimant could not state for sure who completed all of the forms, but testified that his wife completed some of them. Given this evidence, the Commission could have reasonably concluded that the direct histories claimant provided to his treating

physicians were entitled to more weight than the information that claimant's wife or some other unknown individual entered on the medical forms.

¶ 58 Respondent also claims that claimant was not a credible witness. According to respondent, claimant's "manner and demeanor on the stand was [*sic*] reluctant and evasive," his testimony was "inherently inconsistent," and he "sat without apparent discomfort through many hours of trial on two separate days." Respondent lists various examples of evidence which, it represents, "highlight[s claimant's] lack of credibility." However, it is the province of the Commission to judge the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny*, 397 Ill. App. 3d 665, 674 (2009). The Commission was undoubtedly aware of the alleged inconsistencies cited by respondent. Nevertheless, in affirming and adopting the decision of the arbitrator, the Commission concluded that claimant testified "in a very clear and credible fashion with regard to the circumstances of his lower back injury of February 16, 2011." The Commission noted that claimant's testimony regarding the onset of back pain was corroborated by the histories provided to his treating providers. As noted above, the evidence of record supports this finding. Accordingly, we decline to overturn the Commission's finding of accident on the basis that claimant was not credible.

¶ 59 C. Causation

¶ 60 Next, respondent asserts that the Commission's finding that claimant's current condition of ill-being is causally related to his injury of February 16, 2011, is against the manifest weight of the evidence. An employee seeking benefits under the Act has the burden of proving all elements of his or her claim. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995). Among other things, the employee must establish a causal connection between the employment

and the injury for which he or she seeks benefits. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860 (2005). Causation presents an issue of fact. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 597 (2005); *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 293 (1992). In resolving factual matters, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny*, 397 Ill. App. 3d at 674. A reviewing court may not substitute its judgment for that of the Commission on such issues merely because other inferences from the evidence may be drawn. *Berry*, 99 Ill. 2d at 407. We review the Commission's factual determinations under the manifest-weight-of-the-evidence standard. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). Thus, we will overturn the Commission's causation finding only if an opposite conclusion is clearly apparent. *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 18.

¶ 61 Respondent argues that neither the arbitrator nor the Commission cited to a single medical document or statement in the record from any treating physician that expressly offered a causal-connection opinion. However, medical testimony is not essential to support the conclusion that an accident caused an employee's condition of ill-being. *University of Illinois*, 365 Ill. App. 3d at 912. A claimant's testimony standing alone may be sufficient to support an award of benefits under the Act. *University of Illinois*, 365 Ill. App. 3d at 912. Moreover, circumstantial evidence can be sufficient to prove a causal nexus between an accident and the employee's injury. *University of Illinois*, 365 Ill. App. 3d at 912. Thus, for instance, a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury may provide sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59,

63-64 (1982). It was a chain-of-events theory upon which the Commission premised its causation finding. The record supports the Commission's conclusion.

¶ 62 Notably, claimant testified that he injured his back on February 16, 2011, as he was lifting a fuel hose during a delivery to one of respondent's customers. Claimant denied having any back problems prior to February 16. However, immediately following the incident on February 16, claimant felt a sharp pain in his back. Claimant was able to complete his shift on the day of the injury. The following day, he called one of respondent's dispatchers and told him that he would not be at work because he was in pain after hurting himself at work the previous morning. By February 18, claimant's pain had still not subsided, so he saw a chiropractor. The chiropractor referred claimant to Dr. Markiv for pain management. Dr. Markiv diagnosed various conditions, including low-back pain and disc herniations. Subsequently, claimant sought treatment with Dr. Lorenz and Dr. Jain, both of whom agreed that claimant had herniated discs. The foregoing evidence establishes a previous condition of good health, an accident, and a subsequent injury to claimant's back. In light of this evidence, we cannot say that the Commission's finding of a causal nexus between claimant's back injury and his employment was against the manifest weight of the evidence.

¶ 63 Nevertheless, respondent disputes claimant's testimony that he had not experienced any back problems prior to February 16, 2011. In fact, there is conflicting evidence on this matter. At the arbitration hearing, claimant denied having any back problems prior to February 16, 2011. Moreover, the progress notes of both Dr. Lorenz and Dr. Jain state that claimant had not experienced any previous back problems. However, Dr. Markiv's progress note indicates that claimant had a "similar episode of pain" in the lower part of the lumbar spine six to seven months prior to the work accident. Dr. Markiv's note further indicates that claimant was treated

at that time by a chiropractor "with improvement." As noted above, however, it is within the province of the Commission to assess the credibility of witnesses and resolve conflicts in the evidence. *Hosteny*, 397 Ill. App. 3d at 674. Here, the Commission, in affirming and adopting the decision of the arbitrator, resolved this conflicting evidence in claimant's favor. To this end, the Commission found claimant to be "a very forthright and credible witness" and cited claimant's testimony that he had no injuries to his lower back prior to February 16, 2011. This finding, coupled with the medical records of both Dr. Lorenz and Dr. Jain, could have reasonably persuaded the Commission to conclude that claimant did not have any back problems prior to February 16, 2011, and that it was the history contained in Dr. Markiv's progress note that was wrong. Alternatively, the Commission could have reasonably concluded that the back problem referenced by Dr. Markiv completely resolved as a result of the chiropractic treatment claimant received and it therefore played no role in claimant's work related accident. Under either scenario, and in light of the Commission's role in resolving conflicts in the evidence, we cannot say that the Commission's finding that claimant's current condition of ill-being is causally connected to the accident of February 16, 2011, was against the manifest weight of the evidence.

¶ 64 Prior to moving to the next allegation of error raised by respondent, we also note that there is medical evidence in the record to support a finding of causation. Specifically, following claimant's first examination on February 24, 2011, Dr. Lorenz wrote in his progress note that claimant's L4-L5 disc herniation was "secondary to [the] lifting accident." Although neither the arbitrator not the Commission expressly cited this passage from Dr. Lorenz's progress note in support of its finding of causation, it nevertheless provides an independent basis for upholding the Commission's causation finding. See *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 208 (2009) (noting that a court of review may

affirm the Commission's decision on any legal basis in the record, regardless of the Commission's reasoning).[1]

¶ 65 D. Medical Expenses

¶ 66 Next, respondent challenges the Commission's award of medical expenses. Section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)) governs the payment of medical expenses. That provision states in relevant part:

> "The employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2 [820 ILCS 305/8.2 (West 2010)], in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury, even if a health care provider sells, transfers, or otherwise assigns an account receivable for procedures, treatments, or services covered under this Act." 820 ILCS 305/8(a) (West 2010).

[1] Respondent also argues that the Commission's causation finding is moot because claimant has not shown an employer-employee relationship or an accident arising out of and in the course of his employment. Having rejected respondent's position on both the employment and accident issues, however, we also reject respondent's mootness argument. Respondent also raises this mootness argument with respect to the remaining issues—medical expenses and TTD benefits. We reject those claims for the same reason.

The claimant bears the burden of proving, by a preponderance of the evidence, his entitlement to an award of medical expenses under section 8(a) of the Act. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 546 (2007). Questions as to the reasonableness of medical charges, the necessity of the medical services provided, and the causal relationship between the medical services and the work-related injury are questions of fact to be resolved by the Commission. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 51; *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill. App. 3d 893, 903 (2004). A court of review will not disturb the Commission's decision on a factual matter unless it is against the manifest weight of the evidence. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Johnson v. Industrial Comm'n*, 278 Ill. App. 3d 59, 63 (1996).

¶ 67 In this case, the Commission awarded claimant $47,978.19 as reasonable and necessary medical expenses pursuant to the medical fee schedule. Respondent argues that the Commission erred in finding that claimant was entitled to these expenses. According to respondent, the Commission "did not bother to indicate or identify the actual records that supposedly support [its] finding and what those records say in regard to this issue, thereby depriving any party reading it of an understanding of the actual basis for the ruling." We disagree.

¶ 68 In support of its award of medical expenses, the Commission cited claimant's treatment records and claimant's exhibit number 13. Claimant's treatment records document his work-related back injury, the pain he experienced as a result of the same, and the medical procedures his doctors believed were necessary and appropriate to treat his symptoms. Moreover, exhibit number 13 consisted of: (1) a summary of outstanding medical bills from Dr. Jain, ATI, Fortuna, Dr. Lorenz, MacNeal Hospital, and Dr. Markiv: (2) the bills from the foregoing providers listing

the dates of service, a description of each procedure or service provided, and the charge for each procedure or service provided; and (3) a medical bill certification from each provider attesting that the charges listed represent treatment to claimant, are within the usual and customary limits of the community, and are fair, reasonable, and necessary expenses related to claimant's work injury. Respondent did not object to the admission of these medical bills. Moreover, respondent does not direct us to any evidence it offered to dispute the reasonableness of the charges or the necessity of the treatment. Under these circumstances, we cannot say that the Commission's award of $47,978.19 in medical expenses was against the manifest weight of the evidence. See *Shafer*, 2011 IL App (4th) 100505WC, ¶ 51 (noting that if the employer fails to introduce any evidence to suggest that services rendered were not necessary or that the charges were not reasonable, an award to an employee who presents some evidence in support of the award will be upheld).

¶ 69 E. TTD Benefits

¶ 70 Finally, respondent challenges the Commission's award of TTD benefits. An employee is temporarily totally disabled from the time an injury incapacitates him or her until such time as he or she is as far recovered as the permanent character of the injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990); *Westin Hotel*, 372 Ill. App. 3d 527, 542 (2007). To be entitled to TTD benefits, the employee must establish not only that he or she did not work, but also that he or she is unable to work and the duration of that inability to work. *Pietrzak*, 329 Ill. App. 3d at 832. The dispositive inquiry in determining whether an award of TTD benefits is appropriate is whether the employee's condition has stabilized, *i.e.*, whether he or she has reached maximum medical improvement (MMI). *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 148 (2010). The factors to

consider in determining whether an employee has reached MMI include a release to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005). Once an injured employee has reached MMI, the disabling condition has become permanent and he or she is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). The issue of whether an employee is entitled to TTD benefits and the period of time during which the employee is temporarily totally disabled is a question of fact for the Commission, and the Commission's decision on such matters will not be set aside on review unless it is contrary to the manifest weight of the evidence. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118-19. As noted above, a decision is against the manifest weight of the evidence only if a contrary decision is clearly apparent. *Johnson*, 278 Ill. App. 3d at 63.

¶ 71 The Commission, in affirming and adopting the decision of the arbitrator, awarded claimant 36-1/7 weeks of TTD benefits, encompassing the period from February 17, 2011 (the day after claimant's accident), through October 27, 2011 (the date proofs closed at the arbitration hearing). The Commission's award of TTD benefits for this period of time was not against the manifest weight of the evidence as the evidence clearly shows that claimant was unable to work during this time period and his condition had not stabilized. Notably, the record establishes that claimant sustained a compensable injury on February 16, 2011. The following day, claimant contacted respondent to inform it of the injury and that he would not be at work. Claimant first sought medical treatment on February 18, 2011, at which time he was taken off work by Dr. Markiv. Claimant's off-work status was thereafter maintained by Dr. Lorenz on February 24, 2011, March 23, 2011, and June 8, 2011, and by Dr. Jain on June 21, 2011, July 5, 2011, July 19, 2011, August 3, 2011, August 30, 2011, September 12, 2011, and September 27, 2011.

Moreover, no physician has concluded that claimant's back injury has stabilized. In this regard, the record establishes that as of August 3, 2011 (the date of the last progress note from a treating physician), Dr. Jain opined that claimant's date of maximum medical improvement was "undeterminable." Based on the foregoing evidence, we find that the Commission's award of 36-1/7 weeks of TTD benefits was not against the manifest weight of the evidence.

¶ 72 IV. CONCLUSION

¶ 73 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County, which confirmed the decision of the Commission. This cause is remanded to the Commission for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 74 Affirmed and remanded.

¶ 75 PRESIDING JUSTICE HOLDRIDGE, dissenting:

¶ 76 I dissent. In my view, the manifest weight of the evidence in this case establishes that the claimant was an independent contractor, not an employee. First, and most importantly, there is very little evidence suggesting that the respondent had the right to control the manner in which the claimant performed his work. To the contrary, the overwhelming weight of the evidence suggests that the claimant had the right to perform (and did perform) his work as he saw fit. The claimant did not work an assigned work shift or have loads automatically assigned to him by the respondent, as did the respondent's employee drivers. Rather, the claimant had to solicit loads on his own initiative by calling the dispatcher. The "Independent Contractor" Agreement (Agreement) executed by the parties provided that the claimant had the right to refuse to accept loads offered by the respondent and the right to prioritize the order of delivery of the loads that he did accept. James Appleton, the respondent's vice president of operations, testified that the

respondent's employee drivers had no such discretion; according to Appleton, employee drivers were required to accept all dispatches given to them or face discipline.

¶ 77 Moreover, once the claimant accepted a load from the employer, the employer did not control the manner in which the claimant delivered the load or otherwise performed his work. The claimant supplied and drove his own truck. Unlike the respondent's employee drivers, the claimant was not required to physically report to work each day, wear the respondent's uniform, or park his truck overnight at the respondent's depots. He picked his own routes and scheduled his own meals and other breaks. Although the employer provided the ultimate destinations for the deliveries and gave the claimant a two-hour window in which to complete each delivery, the details of how the deliveries were accomplished were left entirely to the claimant's discretion, as the Agreement expressly provided. Moreover, Appleton admitted that the Agreement allowed the claimant to drive for other carriers during the contract term so long as he replaced the respondent's DOT information on the tractor while doing so. The claimant exercised this right on at least one occasion during the contract period by interrupting his training with the respondent to deliver a load for another carrier.

¶ 78 In support of its finding that the respondent "exercised substantial control over [the] claimant's activities," the majority lists a handful of requirements that the respondent imposed upon the claimant. *Supra* ¶ 40. However, most these requirements were mandated by federal law.[2] As the majority notes, we have previously ruled that a trucking company's compliance

[2]For example, the majority notes that the Agreement provided that the respondent had "exclusive possession, control, and use of the leased equipment." That contract provision is mandated by section 376.12(c)(1) of the Federal Motor Carrier Safety Regulations. 49 C.F.R. §

with regulations that require it to exercise control over a driver may be taken as evidence of the company's control, regardless of the company's motivations in doing so. *See, e.g., Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 1124 (2000); *Earley v. Industrial Comm'n*, 197 Ill. App. 3d 309, 315 (1990). However, our supreme court has cautioned that a trucking company's compliance with such federal regulations, standing alone, does not compel a finding of an employment relationship. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 177-79, 182 (1997). A trucking company's compliance with federal regulations is "merely a factor that may be considered in a common law analysis of whether a driver is an employee of [the] trucking company." *Roberson*, 225 Ill. 2d at 178. It should not be deemed dispositive[3] or given undue weight particularly where, as here, there is ample evidence (including a written contract) suggesting that the parties intended the driver to be an independent contractor. *See id.* at 177-79; see generally *Early*, 197 Ill. App. 3d at 314 (holding that claimant truck driver was not respondent carrier's employee even though the parties' contract contained language required by Illinois Commerce Commission (ICC) regulations which stated that the carrier had exclusive

---

376.12(c)(1) (2005). The majority also notes that the respondent limited the number of hours the claimant could drive, required the claimant to display the respondent's identifiers on his tractor while driving for the respondent, and required the claimant's tractor to pass an inspection. These requirements were also mandated by federal law. See 49 CFR § 395.3 (2010); 49 CFR § 390.21(a), (b) (2010); 49 CFR § 396.3 (2010).

[3]The Federal Motor Carrier Safety Regulations themselves state that a trucking company's compliance with the written lease requirements prescribed by the regulations does not resolve the question of a driver's employment status. See 49 C.F.R. § 376.12(c)(4) (2005).

possession, control, and use of the truck for the duration of the agreement; ruling that, "while the ICC rules and regulations are a factor to consider in determining a claimant's employment status, these rules are not conclusive"). As the respondent notes, if the Commission may find an employment relationship based solely upon a carrier's compliance with federal law, then no truck driver could ever be found to be an independent contractor. That result would clearly contravene Illinois law. See, *e.g.*, *Roberson*, 225 Ill. 2d at 178-79, 182; *Early*, 197 Ill. App. 3d at 314.

¶ 79 Courts in other jurisdictions have taken an even stricter approach by holding as a matter of law that a trucking company's compliance with federal regulations should not be considered evidence of the company's control over a driver's work for purposes of determining the driver's employment status. See, *e.g.*, *Universal Am-Can, Ltd. v. Workers' Compensation Appeal Board*, 762 A.2d 328, 334-36 (Pa. 2000); *Hernandez v. Triple Ell Transport, Inc.*, 175 P.3d 199, 205 (Idaho 2007); *National Trailer Convoy, Inc. v. Employment Security Agency of Idaho*, 360 P.2d 994, 996 (1961); see generally *North American Van Lines, Inc. v. National Labor Relations Board*, 869 F.2d 596, 599 (1989). I find these decisions to be well reasoned. A trucking company cannot choose to disregard or negotiate its way around the requirements of federal law. Accordingly, a company's compliance with regulations that require it to exercise control over a driver do not evidence the *company's* control over the driver. Rather, they evidence the *government's* control over the both the driver and the company.

¶ 80 In addition to the employer's lack of control over the claimant's work, there is other evidence in this case which strongly suggests that the claimant was an independent contractor rather than an employee. For example: (1) the Agreement expressly identified the claimant as an independent contractor; (2) the claimant was paid a percentage of each load instead of a salary,

and he collected additional fees for expenses he incurred[4]; (3) unlike the respondent's employees, the claimant carried his own insurance policy on his tractor; (4) in the paperwork the claimant submitted to various doctors and hospitals after the alleged accident, the claimant designated himself as self-employed and never identified the respondent as his employer; (5) the Agreement provided that the claimant had a right to drive for other carriers, and the claimant did so on at least one occasion during the contract term; (6) the claimant paid taxes as an independent contractor rather than as an employee; and (7) the claimant identified himself as an "owner-operator" (rather than a "driver" or employee) on an insurance application.

¶ 81 In support of its holding, the majority stresses the connection between the nature of the work performed by the claimant and the nature of the respondent's business. *Supra* ¶ 42. The majority concludes that, because the respondent's business was transporting gasoline products to its customers and the respondent "used [the claimant's tractor] in furtherance of its business," this factor weighs in favor of finding an employment relationship. *Id.* For the reasons set forth in my dissent in *Steel & Machinery Transportation, Inc. v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 133985WC, ¶¶ 52-53 (Holdridge, J., dissenting), I disagree.

¶ 82 In sum, although there is some minimal evidence arguably suggesting an employment relationship, the overwhelming weight of the evidence establishes that the claimant was an independent contractor. The Commission's finding to the contrary (and the majority's affirmance of that finding) demonstrate that, under our court's current interpretation of the law, it has become virtually impossible for a trucking company and an independent driver/lessor to structure

[4]As the majority notes, the claimant bought his own fuel and paid his own maintenance and repair charges. *Supra* ¶ 44.

their relationship in a way that reliably precludes a finding of an employment relationship, even if that is the clear and expressed intent of both parties. Under our court's current approach, the Commission can almost always find an employment relationship and, once the Commission has made such a finding, we will affirm the Commission's determination so long as there is *any* evidence that even arguably suggests an employment relationship. Thus, we will defer to the Commission's finding of an employment relationship even if the weight of the evidence supports the opposite conclusion and even if the "evidence" in favor of an employment relationship consists primarily of acts the trucking company was required to perform by law. For the reasons set forth in my dissent in *Steel & Machinery Transportation, Inc.*, 2015 IL App (1st) 133985WC, ¶¶ 44-56 (Holdridge, J., dissenting), I do not believe that this expansive definition of "employment" or this undue deference to the Commission is mandated by Illinois law, and I find our current approach to be unwise, unsound, and unfair.

¶ 83 Justice Hoffman joins this dissent.