2017 IL App (1st) 162561WC-U

Workers' Compensation
Commission Division
Order Filed: December 22, 2017

No. 1-16-2561WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

LUCIO MORENO,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	No. 16 L 50068
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*,	)	Honorable
	)	Ann Collins-Dole,
(Shop-N-Save Market, LLC, Appellee).	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson, Harris, and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's finding that the claimant's post April 28, 2011, condition of lumbar spine ill-being is not causally related to his March 13, 2011, work accident and its resulting denial of an award of medical expenses incurred in the treatment of the claimant's lumbar spine after April 28, 2011, and its denial of temporary total disability and maintenance benefits after that date is not against the manifest weight of the evidence. Based upon the Commission's determination that the claimant only sustained a lumbar strain and a right ankle sprain as a result of his work accident, we cannot find that its award of permanent partial disability benefits for a 4% loss of a man as a whole is against the manifest weight of the evidence.

¶ 2 The claimant, Lucio Moreno, appeals from an order of the circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), finding that his post April 28, 2011, condition of lumbar spine ill-being is not causally related to his accident while working for Shop-N-Save Market, LLC (Shop-N-Save) on March 13, 2011, and fixing the benefits to which he is entitled pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)). For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing conducted on March 18, 2015.

¶ 4 At all relevant times, the claimant was employed by Shop-N-Save as a butcher. On March 13, 2011, the claimant slipped on a wet floor while working. He testified that, in order to avoid hitting a sink which was located behind him, he twisted with his right foot, fell, and landed on his right foot and knee. The claimant stated that, as he twisted, he felt a pop in his low back and experienced immediate pain in his low back and right foot. According to the claimant, he had never sought medical treatment for his back or right foot prior to that date.

¶ 5 Following his fall, the claimant continued working. However, the following morning he awoke with increased pain in his low back and numbness in his right foot. Nevertheless, the claimant continued working through March 22, 2011. On that date, the claimant reported the accident to his supervisor and completed an accident report.

¶ 6 On March 22, 2011, the claimant sought treatment at Marques Medicos from Dr. Fernando Perez, a chiropractor. The claimant complained of low-back pain, radiating down his right leg along with pain in his right foot and ankle. X-rays taken of the claimant's lumbar spine

and right ankle were negative for fractures. Dr. Perez diagnosed lumbar and ankle/foot strains and prescribed physical therapy. He instructed the claimant to remain off of work until he could be seen by Dr. Andrew Engel, a pain management specialist.

¶ 7 On March 30, 2011, the claimant had an MRI of his lumbar spine. The radiologist's report of the scan states that it demonstrated a 2 millimeter broad-based disc bulge at L5-S1 and also noted a congenital transitional lumbosacral vertebra with rudimentary S1-S2 intervertebral disc.

¶ 8 On March 31, 2011, the claimant was seen by Dr. Engel. On examination, Dr. Engel found the claimant's condition to be consistent with lumbar radiculopathy. He prescribed pain medication and physical therapy. Dr. Engel released the claimant to return to work with light duty restrictions and referred him to Dr. John Kane, a podiatrist.

¶ 9 The claimant worked on April 9 and 10, 2011. He was seen by Dr. Perez on April 11, 2011, at which time the claimant complained of worsening symptoms, numbness, and tingling in his legs. Dr. Perez again instructed the claimant to remain off work and ordered an EMG. On that same day, the claimant was seen by Dr. Kane. He noted significant swelling along the planter aspect of the claimant's right foot. Dr. Kane's initial impression was bilateral plantar fasciitis, with the right foot worse than the left. Suspecting a tear of the right plantar fascia, Dr. Kane ordered an MRI of the claimant's right foot and prescribed physical therapy.

¶ 10 On April 12, 2011, the claimant had an MRI scan of his right foot as order by Dr. Kane. Dr. Kane interpreted the scan as demonstrating a partial-thickness tear of the peroneus longus tendon.

¶ 11 On April 22, 2011, the claimant underwent the EMG ordered by Dr. Perez. The chiropractor-administered test was interpreted as indicating a bilateral S1 involvement due to the absence of the H-reflexes.

¶ 12 When Dr. Kane saw the claimant on April 25, 2011, he reviewed the MRI scan of the claimant's right foot and diagnosed him as suffering from a tear of the peroneal tendon. Dr. Kane prescribed foot orthotics and advised the claimant to continue physical therapy. Dr. Kane continued to treat the claimant through October 17, 2011.

¶ 13 At the request of Shop-N-Save, the claimant was examined by Dr. Mark Levin on April 28, 2011. The claimant complained of low-back pain; bilateral leg pain, greater on the left than the right, with numbness and tingling to the calf; and right foot pain. His straight-leg testing was positive, bilaterally. Dr. Levin found the symptoms in the claimant's right leg to be consistent with planter fasciitis, but opined that the condition was not causally related to his work accident. Dr. Levin reviewed the MRI of the claimant's lumbar spine and found that it demonstrated a transitional vertebra at S1-S2 and a minimal disc bulge at L5-S1 with no herniation or nerve impingement. According to Dr. Levin, his findings were unremarkable, and he found no basis for any additional chiropractic or physical therapy for the claimant. He noted a concern about the claimant's subjective complaints of pain in light of his normal diagnostic studies and recommended that the claimant have an EMG to rule out an acute verses chronic pathology and to determine if he required additional orthopedic intervention.

¶ 14 On May 11, 2011, the claimant received transforaminal epidural steroid injections at L5 and S1 which were administered by Dr. Engel. However, the injections did not provide pain relief and, when the claimant saw Dr. Engel on May 19, 2011, he reported pain at the level of 6 on a scale of 10. Dr. Engel reviewed the MRI scan of the claimant's lumbar spine and opined

that the claimant's positive EMG correlated with the neural foraminal stenosis demonstrated by the MRI. Due to the claimant's lack of response to the epidural injections, Dr. Engel referred the claimant to Dr. Robert Erickson, a neurosurgeon, for evaluation.

¶ 15 Following his review of the claimant's EMG results, Dr. Levin authored a second report on May 13, 2011. In that report, Dr. Levin noted that the test revealed "soft" findings and normal Achilles reflex. He concluded that the claimant did not have a radicular component to his pain. Dr. Levin recommended that the claimant have a functional capacity evaluation (FCE) with validity tests to assess his work capability.

¶ 16 On June 24, 2011, the claimant was examined by Dr. Erickson. During that visit, the claimant reported low-back pain and right-sided leg numbness. He gave a history of his right knee buckling. Dr. Erickson reviewed the MRI scan of the claimant's lumbar spine and noted the transitional vertebra at the S1-S2 intervertebral disc and a small disc herniation at the L4-L5 level. When deposed, Dr. Erickson stated that the L5-S1 disc, noted as abnormal on the radiologist's report of the March 30, 2011, MRI, was the same disc which he found to be herniated. Dr. Erickson instructed the claimant to remain off of work and ordered dermatomal somatosensory evoked potential (SSEP) testing which was performed that same day. The SSEP test revealed an isolated right-sided nerve problem at the L5 level. Dr. Erickson diagnosed the claimant as suffering from a small disc herniation at L4-L5 on the right side. He testified that there was a perfect correlation between the claimant's clinical presentation, his lumbar MRI, and the results of the SSEP testing. Dr. Erickson opined that there is a causal connection between the claimant's work accident and his disc herniation at L4-L5. He testified that, as of July 8, 2011, the claimant should undergo a minimally invasive hemilaminectomy at L4-L5.

¶ 17 On Dr. Levin's recommendation, the claimant had an FCE on July 22, 2011. The record of that evaluation states that the claimant was capable of working at a sedentary-light physical demand level.

¶ 18 On July 27, 2011, the claimant underwent a lumbar hemilaminectomy at the L4-L5 nerve roots which was performed by Dr. Erickson at the Ambulatory Surgical Care Facility. Dr. Erickson testified that, during the operation, he identified a disc herniation at L4-L5 with herniated fragments in the central portion of the canal beneath the posterior longitudinal ligament. Dr. Erickson stated that he relieved the findings by decompressing the L5 nerve root. According to Dr. Erickson, his operative findings were consistent with the claimant's MRI scan, his pre-operative examination, and the claimant's history. A utilization review of the claimant's surgery was performed by Dr. Kenneth Bayles. In his report of February 14, 2012, Dr. Bayles opined that the lumbar decompression at L4-L5, which Dr. Erickson performed, was not medically necessary. He based that opinion upon the clinical guidelines, the claimant's normal EMG, the fact that the claimant had a 2 millimeter disc bulge and no stenosis as reflected in the MRI of his lumbar spine, the claimant's motor strength of 5/5, his symmetric reflexes, and minimal sensory change.

¶ 19 The claimant treated with Dr. Erickson post-operatively. When he saw the claimant on August 5, 2011, Dr. Erickson reported a substantial improvement in the claimant's condition. The claimant testified that, although he noted an improvement in his symptoms, he was still experiencing low-back pain. The record of the claimant's physical therapy sessions states that he reported pain at the level of 5 on a scale of 10.

¶ 20 In his notes of August 25, 2011, Dr. Engel wrote that the claimant's pain level had improved with surgery, and he was reporting a pain at a level of 5 on a scale of 10. Dr. Engel authorized the claimant to return to work with restrictions.

¶ 21 On October 6, 2011, Dr. Engel noted that the claimant complained of low-back pain at a level of 4 on a scale of 10. Dr. Engel also noted that the claimant had negative straight leg raises, bilaterally.

¶ 22 The claimant continued physical therapy until October 12, 2011.

¶ 23 On the recommendation of Dr. Kane, the claimant underwent an FCE on October 13, 2011. The report of that evaluation states that the claimant was able to function at a sedentary demand level. The FCE documented the claimant's limitations based upon the condition of his low back, but did not document any limitation based upon his right foot condition.

¶ 24 On October 17, 2011, Dr. Kane found the claimant to be at maximum medical improvement (MMI) with reference to his right foot.

¶ 25 At the request of Shop-N-Save, the claimant was examined by Dr. Avi Bernstein on December 1, 2011. Dr. Bernstein testified that he noted no objective findings. He stated that the claimant's complaints of numbness in his left lower extremity were not in a pattern of distribution for the nerve at the L4-L5 level. According to Dr. Bernstein, the claimant's March 30, 2011, MRI was normal and his April 22, 2011, EMG was of no value. Dr. Bernstein admitted that the claimant may have suffered a lumbar strain as a result of his work injury, but stated that there is no diagnostic evidence that he suffered a herniation. He opined that the claimant's July 27, 2011, surgery was not medically necessary as there were no abnormalities noted on the March 30, 2011, MRI that would justify the surgery and there was no herniation to remove. Dr. Bernstein found the claimant to be at MMI for his low-back condition. He did find, however, that

the claimant could not work full duty and was limited to lifting 20 pounds. Dr. Bernstein recommended that the claimant have a post-operative MRI scan of his lumbar spine.

¶ 26 The MRI recommended by Dr. Bernstein was performed on January 7, 2012. The report of that scan states that the claimant had post-operative changes at the L5-S1 level due to the right hemilaminectomy and a right paracentral foraminal protrusion at L5-S1. When deposed, Dr. Bernstein testified that the scan showed minimal changes at L5-S1 with very mild bulging. He found no evidence of a disc herniation or nerve root compression. He also stated that the scan did not reveal evidence of scar tissue which would suggest that the claimant underwent a discectomy.

¶ 27 On January 16, 2012, the claimant returned to work at Shop-N-Save. Dr. Perez's records stated that, after two days of working, the claimant reported that his pain had increased to a level of 7 on a scale of 10. Dr. Perez instructed the claimant to remain off of work until he could be evaluated by Dr. Erickson.

¶ 28 The claimant presented to Dr. Erickson on January 20, 2012. Dr. Erickson noted that the claimant's recent MRI disclosed post-surgical findings with a paracentral disc herniation at the surgical cite. He suspected possible radiculopathy emanating from the S1 level and ordered a SSEP test which was conducted that same day. According to the doctor's records, the test identified an abnormality at L5 which he determined to be an unrelieved original injury or an aggravation due to exertion.

¶ 29 On March 16, 2012, Dr. Erickson ordered another SSEP test. The study was normal.

¶ 30 On April 4, 2012, the claimant was seen by Dr. Engel. The claimant complained of ongoing pain in his low back. Dr. Engel administered an epidural steroid injection. On April 19, 2012, Dr. Engel noted that the injection did not relieve the claimant's pain symptoms.

¶ 31 The claimant presented to Dr. Erickson on May 11, 2012, complaining of persistent pain which the doctor found characteristic of mechanical back pain. Dr. Erickson recommended that the claimant undergo a single level lumbar fusion. He opined that the need for the second surgery was causally related to the claimant's work accident of March 13, 2011.

¶ 32 On July 3, 2012, Dr. Erickson performed the recommended surgery which consisted of a transforaminal interbody fusion on the right at the L4-L5 level, foraminotomies over the L5 nerve root, and a facetectomy and ostectomy over the L4-L5 segment.

¶ 33 The claimant underwent post-operative physical therapy from July 25, 2012, through October 9, 2012. His physical therapy was followed by a regiment of work hardening which commenced on October 15, 2012.

¶ 34 Dr. Bernstein examined the claimant for a second time on October 18, 2012. He testified that the claimant's second surgery was successful, but opined that the second surgery was merely a revision of the July 27, 2011, surgery and was not causally related to the claimant's work accident.

¶ 35 On November 19, 2012, the claimant had an FCE which found him capable of functioning at a medium physical demand level.

¶ 36 When the claimant was seen by Dr. Engel on November 29, 2012, he had no complaints of pain and reported taking only over-the-counter medication. Dr. Engle discharged the claimant from care and released him to work with permanent restrictions as recommended by the FCE.

¶ 37 On December 4, 2012, the claimant was last seen by Dr. Erickson. The doctor's notes of that visit state that the claimant denied any ongoing radicular pain and reported that he was not taking any medication. Dr. Erickson released the claimant to return to work with a 50-pound

lifting restriction. There is no record of the claimant seeking any further medical treatment after that visit.

¶ 38 The claimant testified that he conducted a self-directed job search from December 10, 2012, through March 7, 2013, contacting 77 potential employers. According to the claimant, he was unable to secure employment within his restrictions.

¶ 39 Following the arbitration hearing, the arbitrator found that the claimant sustained injuries to his lumbar spine and right foot which arose out of and in the course of his employment with Shop-N-Save on March 13, 2011. The arbitrator awarded the claimant 5 3/7 weeks of temporary total disability (TTD) benefits for the periods from March 22, 2011, through April 28, 2011. In addition, the arbitrator ordered Shop-N-Save to pay reasonable and necessary medical expenses incurred by the claimant for treatment of his right foot through April 8, 2011, and his lumbar spine through April 28, 2011. However, the arbitrator found that Shop-N-Save is not liable for medical expenses incurred by the claimant for treatment of his lumbar spine after April 28, 2011, and his right foot after April 8, 2011. Finding that the claimant suffered a disability equal to 2% of a man as a whole, the arbitrator awarded the claimant permanent partial disability (PPD) benefits under the Act for a period of 10 weeks. In addition, the arbitrator denied the claimant's petition for penalties under sections 19(k) and 19(*l*) of the Act (820 ILCS 305/19(k), (*l*) (West 2014)), and attorney fees under section 16 of the Act (820 ILCS 305/16 (West 2014)).

¶ 40 The claimant filed for a review of the arbitrator's decision before the Commission. In a unanimous decision entered on January 5, 2016, the Commission modified the arbitrator's decision in part and affirmed and adopted it in part. In that portion of the decision which it modified, the Commission found that the claimant suffered a disability equal to 4% of a man as a

whole and awarded him PPD benefits under the Act for a period of 20 weeks. The Commission otherwise affirmed and adopted the arbitrator's decision.

¶ 41 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County. On September 1, 2016, the circuit court entered an order confirming the Commission's decision. This appeal followed.

¶ 42 The claimant first argues that the Commission's finding that his condition of lumbar spine ill-being after April 28, 2011, was not causally related to his work condition is against the manifest weight of the evidence. He asserts that, prior to his work accident of March 13, 2011, his low back was completely asymptomatic. According to the claimant, his low back and radicular symptoms continued well beyond April 28, 2011. Relying upon the causation opinions of Drs. Engel and Erickson, the claimant contends that his herniated disk and post April 28, 2011, condition of low-back ill-being are causally related to his work accident.

¶ 43 The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). As part of his burden, the claimant must establish that his condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion

must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 44 Applying these standards, we cannot conclude that the Commission's finding that the claimant's post-April 28, 2011, lumbar spine condition is not causally related to his work accident is against the manifest weight of the evidence.

¶ 45 The radiologist's report of the claimant's March 30, 2011, MRI states that the scan demonstrated a 2 millimeter broad-based disc bulge at L5-S1 and also noted a congenital transitional lumbosacral vertebra with rudimentary S1-S2 intervertebral disc. The report does not note a herniation of the L5-S1 disc or at any other level, nor does it note any nerve root impingement. According to Dr. Levin, the scan revealed only a minimal disc bulge and no evidence of a herniation or nerve impingement. He reported that the claimant's EMG of April 22, 2011, revealed "soft" findings and a normal Achilles reflex. Dr. Levin was of the opinion that there was no basis for the claimant to receive any further chiropractic or physical therapy after April 28, 2011. Dr. Bernstein admitted that the claimant may have suffered a lumbar strain as a result of his work injury, but he found that his March 30, 2011, MRI was essentially normal with no evidence of a herniation. He also found that the April 22, 2011, EMG was of no diagnostic value. According to Dr. Bernstein, the claimant's complaints of lower extremity symptoms were not in a pattern of distribution for the nerve at the L4-L5 level. Dr. Bernstein opined that the surgery performed by Dr. Erickson on July 27, 2011, was not medically necessary; an opinion

that was echoed by Dr. Bayles in his utilization review. Dr. Bernstein was of the opinion that the claimant's post-operative MRI did not disclose evidence of either a disc herniation or nerve root compression. He found no evidence of scar tissue which would suggest that the claimant had a discectomy. In addition, Dr. Bernstein opined that, although the second surgery performed by Dr. Erickson on July 25, 2012, was successful, it was merely a revision of the claimant's July 27, 2011, surgery which he and Dr. Bayles determined was not medically necessary and which was not causally related to the claimant's work injury.

¶ 46 Drs. Engel and Erickson offered contrary opinions as to the extent of the injury suffered by the claimant as a result of his work accident on March 13, 2011. Dr. Engel found that the EMG administered to the claimant on April 22, 2011, was positive for bilateral nerve root involvement at the S1 level. Dr. Erickson interpreted the March 30, 2011, MRI as demonstrating a small disc herniation at the L4-L5 level and stated that the SSEP testing of the claimant revealed a nerve problem at L5. According to Dr. Erickson, he identified a disc herniation at L4-L5, along with herniated fragments in the central portion of the canal beneath the posterior longitudinal ligament during the course of the surgery he performed on June 27, 2011, and he decompressed the L5 nerve root. According to Dr. Erickson, the condition for which he operated on the claimant was causally connected to his work accident. Dr. Erickson noted that the claimant's post-surgery MRI of January 7, 2012, disclosed a paracentral disc herniation at the surgical site attributable to an unrelieved original injury or an aggravation due to exertion.

¶ 47 Although the arbitrator's and Commission's decisions are lacking in extensive rational, it is clear that the opinions of Drs. Levin and Bernstein as to nature and extent of the injuries suffered by the claimant as a result of his work accident were relied upon and the contrary opinions of Drs. Engel and Erickson were rejected. It is also clear that the Commission relied

upon the opinions of Dr. Bernstein and the utilization review by Dr. Bayles that the claimant's surgeries were not medically necessary to support its conclusion on causation and its award of benefits. It was the Commission's function to resolve the conflicting medical evidence, and based upon the record before us, we cannot say that an opposite conclusion to the one reached by the Commission is clearly apparent.

¶ 48 Dr. Bernstein opined that the claimant may have suffered a lumbar strain as a result of his work accident and Dr. Levin found no basis justifying additional chiropractic or physical therapy for the claimant after April 28, 2011. Based upon the Commission's obvious reliance upon their opinions, we are unable to find that the Commission's conclusion that the claimant only proved a causal connection between his work accident and his condition of low-back ill-being through April 28, 2011, is against the manifest weight of the evidence.

¶ 49 The claimant also argues that the Commission's limitation of his recoverable medical expenses related to treatment of his low-back condition to those incurred through April 28, 2011, its denial of TTD benefits after April 28, 2011, and its denial of maintenance benefits for the period from December 4, 2012, through March 19, 2013, when he was conducting a self-directed job search are against the manifest weight of the evidence. However, his arguments in this regard are based upon his contention that his low-back condition of ill-being after April 28, 2011, was causally connected to his work accident. Having rejected the claimant's argument as to causal connection, it follows that, for the same reasons, we reject his arguments addressing medical expenses, TTD, and maintenance.

¶ 50 Finally, the claimant argues that the Commission's award limiting his PPD benefits to 4% of a man as a whole, is against the manifest weight of the evidence. He contends that the

Commission erroneously limited his low-back injury to a strain and failed to take into account the injury to his right foot.

¶ 51 For the reasons stated earlier, the Commission obviously accepted Dr. Bernstein's opinion that, as a result of his work accident, the claimant only suffered a lumbar strain. As to the claimant's right foot injury, the Commission found that, as the result of his work accident, he only suffered an ankle sprain, and that after April 8, 2011, he was treated for planter fasciitis, a condition which Dr. Levin opined was not related to the claimant's work accident. As a consequence, the Commission found that Shop-N-Save was not liable for any medical expenses incurred in the treatment of the claimant's right foot after April 8, 2011. Rather, he was only entitled to medical expenses incurred prior to April 8, 2011. In his brief before this court, the claimant made no argument addressed to the Commission's findings relating to his right foot injury, and as a consequence, any claim of error in relation to those findings have been waived. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 52 "The extent or permanency of a claimant's disability is a question of fact to be determined by the Commission" in each particular case. *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 506 (2004). Moreover, due to the Commission's expertise in the area of workers' compensation, its finding on the nature and extent of a disability is given substantial deference on review. *Pemble v. Industrial Comm'n*, 181 Ill. App. 3d 409, 417 (1989). Based upon the Commission's determination that the claimant only sustained a lumbar strain and a right ankle sprain as a result of his work accident, we cannot find that its award of PPD benefits for a 4% loss of a man as a whole is against the manifest weight of the evidence.

¶ 53 Based upon the foregoing analysis, we affirm the judgment of the circuit court which confirmed the Commission's decision.

¶ 54 Affirmed.