2013 IL App (2d) 101049WC-UB

NO. 2-10-1049WC

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MARK GRUSZECZKA Appellant, Cross-Appellee v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Alliance Contractors, Appellee/ Cross-Appellant).	) Appeal from the) Circuit Court of) McHenry County.)) No. 09-MR-245)) Honorable) Thomas A. Meyer) Judge, presiding.

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

ORDER

¶ 1 *Held*: The Commission's determination that the claimant did not sustain injuries that arose out of and in the course of his employment is not against the manifest weight of the evidence.

¶ 2 The claimant, Mark Gruszecka, filed an application for adjustment of claim against his employer, Alliance Contractors, seeking workers' compensation benefits for injuries to his back caused by an alleged work related accident. The claim proceeded to an arbitration hearing under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq*. (West 2006)). The arbitrator found that the claimant did not sustain injuries that arose out of and in the course of employment. The claimant appealed to the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision. The claimant filed a petition for review in the circuit court of Dekalb County. The employer filed a motion to dismiss for lack of subject matter jurisdiction and a motion to transfer venue. The motion to dismiss was denied, and the motion to transfer venue was granted. The matter was transferred to McHenry County. The circuit court confirmed the Commission's decision, and the claimant appealed. The employer filed a cross-appeal.

¶ 3 Initially, a majority of this court held that the mailbox rule does not apply to appeals from the Commission to the circuit court. Although the claimant mailed his action for judicial review of the Commission's decision within 20 days of receipt of the Commission's decision by the claimant's attorney, the documents were not received within the 20-day period required by 820 ILCS 305/19(f)(10 (West 2008). Accordingly we held that the circuit court lacked subject-matter jurisdiction, vacated the judgment of the circuit court, and dismissed the claimant's appeal. *Gruszeczka v. Illinois Workers' Compensation Comm'n,* 2012 Il App (2d) 101049WC, 966 N.E.2d 356. The supreme court allowed the claimant's petition for leave to appeal, and reversed, holding that the mailbox rule applies when a party appeals a decision of the Commission to the circuit court. *Gruszeczka v.*

Illinois Workers' Compensation Comm'n, 2103 IL 114212, ___ N.E.2d ___. The court remanded the cause to us for consideration of the other issues raised by the parties that we did not previously address. After consideration of the additional issues raised by the parties, we affirm the order of the circuit court that confirmed the decision of the Commission.

¶ 4 BACKGROUND

¶ 5 The claimant testified that he was injured on July 21, 2004, while working for the employer. He stated that on that date, he was called by the Laborers Union Local 32 to work for the employer at the union scale rate. He met with an individual named Rudy, who he believed was the foreman, and filled out some paperwork. The claimant testified that when completing the questionnaire, he wrote that he was not on any type of prescription medication. He stated that on a form attached to the tax forms, he wrote that he was taking Vicodin and Valium. He testified that prior to showing up for work on July 21, 2004, he took medication including Vicodin and Valium.

¶ 6 The claimant testified he started work at 7:00 a.m. pouring curbs and gutters. He stated that it started to rain so he covered the newly poured concrete with plastic. When that was complete, he was instructed to pull some pins holding the string lines that were placed approximately three feet from the curb. He testified that as he pulled a pin that was stuck in the mud, it gave way, his "feet went out," and he landed on top of the curb. He stated that he fell "backwards and up in the air." He landed on his lower back. The claimant testified that while he fell into concrete that had been poured at some point during that morning, he did not make an impression in it.

¶ 7 The claimant testified that another union employee, Tony Lasoya, witnessed the accident. At between 11 a.m. and 11:15 a.m., 10 minutes after the accident occurred, the claimant informed Rudy that he fell on concrete while pulling pins. He told Rudy that he needed to go to a doctor or the hospital. He stated that Rudy "just kind of shook his head and drove off." The claimant testified that Rudy acted as if he did not understand him, so he asked Mr. Lasoya to tell Rudy in Spanish about the accident. The claimant reported that Mr. Lasoya told Rudy, and Rudy said to tell the claimant there was nothing wrong with him and to be at work at 7:00 the next morning.

¶ 8 The claimant testified that Rudy left the job site and the claimant called Local 32 business agent, Reidar Jakobsen. After speaking to Mr. Jakobsen, the claimant went to the emergency room. The emergency room nurse wrote that the claimant came in after falling backward while pulling up a stake at work. He was diagnosed with back strain and told to contact his personal physician, Dr. Harry Darland, if he did not improve in two days. He was told that he could not return to work for two days.

¶ 9 Antonio Lasoya testified by evidence deposition that he met the claimant on July 21, 2004. He and the claimant poured curbing for the employer. He said that because it was raining they had to stop pouring concrete and cover up what had been poured. He and the claimant were instructed to pull the pins. He was approximately 20 to 30 feet from the claimant when he saw the claimant pull a pin, fall on the curb, and hit his back. He stated that the claimant told the foreman about the accident, but the foreman did not understand English. Mr. Lasoya testified that he told the foreman in Spanish that the claimant was injured and wanted to go to the hospital. The foreman told him to tell the claimant to go home

and return the next day. He did not recall the foreman's name. The next day, the foreman asked Mr. Lasoya if the claimant was coming to work and he responded "no, because he told me yesterday he was going to see a doctor because his back hurt."

¶ 10 A letter dated September 1, 2004, from Reidar Jakobsen, Field Representative for Laborers' Local 32, to the claimant's attorney was admitted into evidence. In the letter, Mr. Jakobsen stated that, on August 20, 2004, the claimant was dispatched by Laborers' Local 32 to work for the employer. Mr. Jakobsen stated that, at about 11:00 that morning, he received a telephone call from the claimant informing him that the claimant had been in an accident and had hurt his back. The claimant informed Mr. Jakobsen that he told the foreman about the incident. Mr. Jakobsen stated that the claimant was told that, provided the foreman had been notified, he should seek medical advice if he thought it was necessary. Mr. Jakobsen testified by telephonic deposition that the accident occurred on July 21, 2004. When asked about the discrepancy in the dates, he stated that if August 20, 2004, "wasn't the proper date, then it was probably erroneously entered."

¶ 11 Jose Ontiveros testified that he worked for the employer for 20 years. At the time of the arbitration hearing, he had been working for the employer as a foreman, and he was the foreman on the job site where the claimant was working on July 21, 2004. He stated that he requested that the claimant complete paperwork that morning. Mr. Ontiveros testified that he did not witness the claimant fall or hurt himself in any way on July 21, 2004, that the claimant never requested that he be allowed to go to the hospital, and that the claimant never told him an accident occurred that morning or that he was injured performing his job duties. Due to the rain, the employees only worked half of a day on that date. Mr.

Ontiveros testified that he saw the claimant leave and that he did not mention anything about a problem or being injured. Mr. Ontiveros did not see the claimant limp or rub his back. The claimant said "see you tomorrow" when he left. Mr. Ontiveros stated that on July 21, 2004, they poured curbing and that there was nothing unusual about the curbing that required repair the next day.

¶ 12 Rodney (Rudy) Hisel testified that he has worked for the employer for 27 years and has worked as the general superintendent for 13 years. He did not work on the crew the day the claimant worked. He stated that the employer has a standard new employee packet that each employee is given that includes tax forms and company policies. The packet has been in use for approximately 20 years. The emergency information form includes a question about whether the employee is on any medications. Mr. Hisel testified that, to his knowledge, there was no other form that asked what medications the employee was taking.

¶ 13 Mr. Hisel testified that, on July 22, 2004, he became aware that the claimant claimed he was injured while working for the employer. He stated that the other local laborer, Mr. Lasoya, told Mr. Ontiveros that the claimant would not be in because he injured his back the previous day. He contacted the claimant who stated he was injured stepping over the curb. Mr. Hisel asked Mr. Ontiveros if an accident was reported to him on July 21, 2004, and he responded negatively.

¶ 14 Mr. Hisel testified that he performed curbing work in the field for 13 years prior to becoming a supervisor. He stated that the concrete would have been deformed if the claimant had fallen on it because concrete can be marred up to 24 hours before it reaches full set, and within a four-hour period it definitely would be marred.

¶ 15 The claimant testified that he gave notice to a person he thought was named Rudy. Once he saw Mr. Ontiveros in the courtroom he realized that Mr. Ontiveros was the person he thought was named Rudy. He stated that he gave notice of the accident to Mr. Ontiveros. He stated that he never spoke with Mr. Hisel or received a phone call from him. The claimant testified that the day after his accident someone who said his name was Rudy called to see if the claimant knew where a missing curb saw might be located. He said the caller was not Mr. Hisel because the caller spoke with an Hispanic accent.

¶ 16 Sherman Harlow and Matthew Roemer both testified that they are employed by the Precision Analysis Group as private investigators. They were retained by West Bend Insurance to place the claimant under surveillance. Mr. Harlow testified that he watched the claimant on seven different dates. Mr. Roemer stated that he observed the claimant on two dates. A videotape of the surveillance was admitted into evidence which showed the claimant, among other activities, pacing and talking on a cell phone without a limp or other indication of impaired gait.

¶ 17 Dr. Harry Darland testified by evidence deposition that he was board certified in family medicine and that he first examined the claimant on December 17, 2001. At that time, the claimant complained that his arms would go numb at night, that his lower back would stiffen up, and that he had tingling in both hands. The claimant had limited range of motion in his low back. Dr. Darland prescribed Diazepam and Vicodin. Dr. Darland treated the claimant for back pain nine times between January 14, 2002, and May 20, 2004. Each time Dr. Darland renewed the claimant's various prescriptions. In treating the claimant's back pain, Dr. Darland

prescribed Vicodin, Vioxx and/or Celebrex, Diazepam, Valium, Hydrocodone, and Bextra.

¶ 18 Dr. Darland testified that occasionally he had to postdate the claimant's pain medications because he went through them too quickly. He stated that on May 30, 2003, the claimant asked for early refills of his pain medications because he had taken all of his Vicodin and Valium. Dr. Darland refilled the prescription, but postdated them to June 29, 2003. On May 31, 2003, Dr. Darland refilled the claimant's prescription for Diazepam which he postdated to June 21, 2003. On May 20, 2004, Dr. Darland refilled the claimant's prescriptions for Vicodin and Valium, and postdated them to June 6, 2004. On June 22, 2004, Dr Darland refilled the claimant's prescriptions for Diazepam and Bextra. The claimant admitted that Dr. Darland would give him prescriptions for "some point in the future" for various drugs including Vicodin and Valium.

¶ 19 A letter from Dr. Mark Myers dated July 3, 2001, to the claimant was admitted into evidence. In the letter, Dr. Myers informed the claimant that he could no longer provide him with medical care because he had learned that the claimant had been receiving sedative medications from another physician.

¶ 20 Dr. Darland testified that he examined the claimant on July 26, 2004. The claimant told him that he was injured at work on July 21, 2004, describing the accident as follows: "a pin broke loose out of grapple, legs fell back on curb. Then bent over rapidly, felt pain in the back, numbness in the arm, fingers, can hardly walk. Neck, low back pain, arms, fingers numb, tingly, then go stiff." Dr. Darland stated that he examined the claimant and found that he was tender to palpitation in the lumbar area at about L3 to L5. Dr. Darland diagnosed the

claimant with probable severe sprain or a possible disk herniation in the neck and low back.

¶ 21 Dr. Theodore Eller, Jr., a board certified neurosurgeon, testified by evidence deposition. He first examined the claimant on August 19, 2004, on referral from Dr. Darland. Dr. Eller stated that there was nothing in his notes indicating that the claimant had a problem with his neck or back prior to his alleged accident on July 21, 2004. On August 23, 2005, Dr. Eller performed a laminectomy for a herniated disc at the L4-L5 level and a diskectomy at L4-L5. Dr. Eller completed a slip on October 12, 2005, stating that the claimant could return to work on November 1, 2005. Based on his records, Dr. Eller stated that "I would see no reason why he would need additional treatment based on these records, understanding that I haven't seen him since October 31st."

¶ 22 Dr. Darland testified that he treated the claimant for follow-up care after his surgery. Dr. Darland examined the claimant five times between September 19, 2005, and June 13, 2006. He prescribed pain medication and diagnosed the claimant with "back disorder." Dr. Darland testified that the accident on July 21, 2004, was a "causative and aggravative factor" leading to the claimant's surgery and his permanent and total disability. Dr. Darland stated that after surgery, the claimant remained on the same medications he had been taking prior to July 21, 2004, that his range of motion in his lumbar area remained essentially the same after surgery as it was prior to surgery, and that the surgery had not reduced the claimant's complaints of pain. Dr. Darland testified that his plan for the claimant was to keep him on the same pain management regimen that he had been on since December 2001.

¶ 23 The claimant testified that, at the time of the hearing, his legs throbbed, and he suffered piercing pains to the right buttocks and right groin area and pain in the right side. He stated he had lower back pain at all times and that before the accident he did not have these symptoms.

¶ 24 The claimant admitted that he had been treated for problems with his upper neck and tingling in his hands in 2003, but he stated that he was able to work from 2003 until his injury in July 2004. When questioned why Dr. Darland's records reflected that there were periods of time during 2001 through 2004 that he was unable to work because of back and neck pain, he stated that the records were inaccurate. The claimant testified that he had not worked since the accident because Dr. Darland and Dr. Eller would not release him to work. On cross-examination, he was asked why Dr. Darland's records dated October 28, 2004, note that he was working part time selling siding. The claimant stated he asked Dr. Darland whether he could sell siding and Dr. Darland told him "no work period, never work for anybody." The employer's attorney went on to ask whether, in October 2004, he reported to a sheriff who pulled him over for a traffic violation, that he worked for Blackhawk Siding. The traffic violation record from the Ogle County Sheriff's office listing the claimant's employer as Blackhawk Siding was admitted into evidence. The claimant responded that he did not tell the sheriff that he worked for Blackhawk Siding, but stated that he was talking to the company about selling siding. A letter from Blackhawk Siding was admitted into evidence. In the letter, the company owner stated that he had spoken to the claimant about doing some commission sales for the company, but that it never came to fruition.

¶ 25 Dr. Morris Marc Soriano, a board certified neurosurgeon, testified by evidence deposition. On December 2, 2004, at the request of the employer, he examined the claimant. Dr. Soriano reviewed the claimant's medical records and took a history from the claimant. He stated that the claimant told him that he was working as a laborer on July 21, 2004, when he fell trying to pull a pin from the dirt. The claimant told Dr. Soriano that he struck the back of his thighs on the curb and then caught himself with his left arm in an attempt to prevent himself from falling further. His left arm then slid causing him to fall backwards on his back. He felt an immediate tingling in his left arm, in all fingers of the left hand, and in all toes of the left foot, and he felt back pain throughout his back and into both hips.

¶ 26 Dr. Soriano testified that the claimant stated he had never had back pain prior to July 21, 2004. When Dr. Soriano pointed out to the claimant that he had records from Dr. Darland and MRIs indicating the claimant had prior episodes of significant back pain, he still denied ever having back pain in the past. At the time of the exam the claimant was taking Bextra, Valium, Vicodin, and Endodan.

¶ 27 Dr. Soriano testified that he examined the claimant and found that his gait was normal, and his range of motion in his back was normal in flexion. He conducted a series of tests to see whether the claimant had organic or nonorganic disease. The tests showed that the claimant was exaggerating or portraying himself in a condition of ill-being where none existed organically. After examining the claimant and his records, he diagnosed the claimant with mild to moderate unverifiable soft tissue injury of his neck and low back unrelated to the alleged 2004 accident. Dr. Soriano stated that the claimant had long standing lumbar disk disease dating back to at least 2002 at L5/S1 and L4/5. In his opinion,

all the MRI findings were clear and consistent with classic degenerative findings on the MRI scans, none of which were related to an acute tear of the annulus, acute fracture of the facet, subluxation, or disk herniation. It was his opinion that the claimant did not require any additional medical care for his back and that he was capable of returning to his normal occupation. Dr. Soriano testified that he did not believe that the claimant suffered any permanent disability or impairment. Dr. Soriano opined that the claimant's symptoms were not consistent with his claimed work accident because his symptoms were exaggerated and not related to any known medical disease, work injury, or any radiological studies, but were symptoms that had no foundation in any exam or work-related injury.

¶ 28 The arbitrator held that the claimant did not sustain injuries that arose out of and in the course of employment. The arbitrator found that, assuming an accident did occur, the claimant failed to prove by a preponderance of the evidence that his condition of ill-being was causally related to his claimed work accident. The arbitrator found the testimony of Mr. Ontiveros and Mr. Hisel more persuasive than the testimony of Mr. Lasoya and Mr. Jakobsen. The arbitrator noted that in the report prepared by Mr. Jakobsen, he wrote that the claimant contacted him on August 20, 2004, about an accident occurring that date. The arbitrator noted that the month and day of the accident were inconsistent with the claimant's allegations. Further the arbitrator found it "difficult to believe that a man of the [claimant's] size could fall on freshly poured concrete and not make any impression on the same. This testimony was inconsistent with the testimony of Mr. Hisel." He further found that the claimant only worked one half day for the employer and that the employer had admitted to an average weekly wage of $99.36. The arbitrator found that there was nothing in the record for him to rely

upon to justify a different average weekly wage. The arbitrator found that penalties and fees were not appropriate. The Commission unanimously affirmed and adopted the decision of the arbitrator. The decision of the Commission was received in the office of the claimant's attorney on April 20, 2009.

¶ 29 The claimant sought judicial review in the circuit court of DeKalb County. The claimant's request for summons and his attorney's affidavit of payment of the probable cost of the record were file marked by the circuit clerk on May 14, 2009, 24 days after receipt of the decision of the Commission. The employer filed a motion to dismiss arguing that the circuit court did not have jurisdiction because the appeal was filed more than 20 days after the Commission's decision was received by the claimant. The employer further argued that the venue was incorrect as the employer was located in McHenry County, not DeKalb County. The claimant filed a response to the motion to dismiss, attaching the affidavits of the claimant's attorney and a clerk in the attorney's office, setting forth that all documents necessary for the appeal were mailed to the circuit clerk of DeKalb County on May 4, 2009. The claimant argued that he was diligent in perfecting and prosecuting the appeal and that he mailed for filing all necessary jurisdictional documents within 20 days. He also argued that venue was proper because he was injured working in DeKalb County. The court denied the motion to dismiss and granted the motion to transfer venue. After venue was transferred, the employer filed a motion to reconsider the order denying the motion to dismiss for lack of subject matter jurisdiction. Following oral argument, the circuit court of McHenry County denied the motion to reconsider. The circuit court confirmed the Commission's decision. The claimant filed a timely notice of appeal, and the employer filed a cross-appeal.

¶ 30 We held that the mailbox rule did not apply and that the claimant failed to commence his action for judicial review within the 20-day period mandated in section 19(f)(1) of the Act. *Gruszeczka v. Illinois Workers' Compensation Comm'n*, 2012 IL App (2d) 101049WC, ¶16, 966 N.E.2d 356. As a consequence, we vacated the judgment of the circuit court as having been entered in the absence of subject-matter jurisdiction and dismissed the claimant's appeal.

¶ 31 The claimant appealed to the supreme court, and the supreme court reversed our decision holding that the mailbox rule applies when a party appeals a decision of the Commission to the circuit court. *Gruszeczka v. Illinois Workers' Compensation Comm'n*, 2013 IL 114212, ¶28-30, ___ N.E.2d ___. The court remanded the cause to us for consideration of the other issues raised by the claimant that we did not previously address.

¶ 32 ANALYSIS

¶ 33 The claimant argues that the Commission's finding that he did not sustain injuries that arose out of and in the course of his employment was against the manifest weight of the evidence. "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). In workers' compensation cases the Commission is the ultimate decision maker. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). "The question of whether an injury arises out of employment is generally a question of fact for the Commission and we will not disturb its determination unless it is against the manifest weight of the evidence." *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d

149, 164, 731 N.E.2d 795, 808 (2000). "The Commission must weigh the evidence presented at the arbitration hearing and determine where the preponderance of that evidence lies." *Roberson*, 225 Ill. 2d at 173, 866 N.E.2d at 199. A finding of fact is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 164, 731 N.E.2d at 808. The test for whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence is not whether the reviewing court might reach the same conclusion, but whether there is sufficient evidence in the record to support the Commission's decision. *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 203, 904 N.E.2d 1122, 1133 (2009).

¶ 34 The Commission found that the claimant failed to prove by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment. It found that the testimony of Mr. Ontiveros and Mr. Hisel was more persuasive than the testimony of Mr. Lasoya and Mr. Jakobsen. The Commission attached "no credibility to the [claimant's] testimony based upon his own testimony and response to all the questions, his demeanor and inflections while under cross examination, his version of events compared to the testimony of others, and his direct avoidance of on point answers about his medical treatment prior to the alleged fall in the case at bar." The Commission noted that the claimant limped into and out of the arbitration hearing room, yet was seen on surveillance video pacing without a limp or other indication of impaired gait, and entering and exiting a pickup truck without observable pain and without adjusting his body movements to compensate for his back problems.

¶ 35 The Commission also noted that there were discrepancies in whether the claimant worked for Blackhawk Siding. When pulled over for a driving infraction, the claimant told the police officer he was employed by Blackhawk Siding. Dr. Darland's records dated October 28, 2004, reflect that the claimant worked selling siding. The claimant denied that he worked there at the arbitration hearing, and the company's owner also disputed that the claimant was employed by Blackhawk Siding.

¶ 36 The claimant testified that he was injured when he fell backwards and landed on a curb while pulling a pin that was stuck in the mud. The claimant stated that he fell backwards onto the concrete that had just been poured, but that he did not make an impression in the concrete. He stated that even though the concrete had been poured at some point that morning it had set to the point where he did not leave an impression when he fell in it. Mr. Ontiveros testified that concrete curbing was poured on July 21, 2004. He said there was nothing unusual about the curbing that required repair the next day. Mr. Hisel testified that he performed curbing work in the field for 13 years and that concrete can be marred up to 24 hours before it reaches full set, and that within a four-hour period it would definitely be marred if someone fell onto it. The Commission found it "difficult to believe that a man of [claimant's] size could fall on freshly poured concrete and not make any impression on same."

¶ 37 Mr. Ontiveros testified that he did not witness any accident on July 21, 2004. He stated that the claimant never mentioned to him that he had an accident or hurt himself in any way on that day. He testified that the employees only worked half of a day on July 21, 2004, and that he saw the claimant leave work. The claimant was not limping or rubbing his back, and he did not mention an

injury. Mr. Ontiveros stated that the claimant said "see you tomorrow" when he left. He further testified that the claimant did not ask to seek medical treatment.

¶ 38 On the paperwork required by the employer, the claimant wrote that he had not taken any medication on July 21, 2004. The claimant testified that he wrote on one form that he had not taken any medication, but that on a different form he wrote that he was taking Vicodin and Valium. He admitted taking those medications on the morning of his alleged accident. Mr. Hisel testified that the employer had used the same employee packet for 20 years and there was only one form that asked what medications the employee was taking.

¶ 39 Dr. Darland testified that he had treated the claimant for back problems starting in December 2001. Dr. Eller testified that nothing in his notes indicated that the claimant had back problems prior to his alleged accident on July 21, 2004. Dr. Soriano testified that the claimant stated he had never had back pain prior to July 21, 2004. Even after Dr. Soriano informed the claimant that he had medical records from Dr. Darland and of the claimant's MRIs that indicated the claimant suffered from episodes of significant back pain, the claimant continued to deny having had back pain prior to July 2004.

¶ 40 It is the peculiar province of the Commission to determine the credibility of witnesses and to draw reasonable inferences, and a reviewing court will not substitute its judgment for that of the Commission. *Johnson Outboards v. Industrial Comm'n*, 77 Ill. 2d 67, 71-72, 394 N.E.2d 1176, 1178 (1979). The Commission weighed the inconsistencies in the testimony and found that the claimant was not credible. It further found that Mr. Ontiveros and Mr. Hisel were more persuasive than Mr. Lasoya and Mr. Jakobsen. There is sufficient evidence in the record to support these findings.

¶ 41 The Commission's determination that the claimant did not sustain an injury that arose out of and in the course of his employment has support in the record and is not against the manifest weight of the evidence. Because the claimant did not sustain an injury that arose out of and in the course of his employment, there is no need to address the claimant's other issues.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, the judgment of the circuit court of McHenry County confirming the decision of the Commission is affirmed.

¶ 44 Affirmed.