2015 IL App (3d) 140198WC-U
NO. 3-14-0198WC
Order filed July 29, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

J.R. AUTO TRANSPORTATION, LLC,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Will County.
	)	
v.	)	No. 13-MR-1354
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al.* (Fleet Car Lease & Anthony	)	John C. Anderson,
Stanley, Appellees).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's finding that an employer-employee relationship existed between the claimant and the respondent trucking company was not against the manifest weight of the evidence; the facts of this case established a loaned employee situation as a matter of law; and the Commission erred in denying the claimant's claim against the borrowing employer due to lack of notice when the claimant gave proper notice to the loaning employer.

¶ 2 The claimant, Anthony Stanley, suffered a slip and fall accident while loading a truck. He filed a claim under the Illinois Workers' Compensation Act (the Act), 820 ILCS 305/1 *et seq.* (West 2012), against two respondents, J.R. Auto Transportation, LLC (J.R. Auto) and Fleet Car Lease (Fleet), alleging that he had an employer-employee relationship with both respondents at the time of the accident. The respondents disputed the claim, in part, by asserting that they did not have an employer-employee relationship with the claimant at the time of the accident, but that he worked as an independent contractor instead. The arbitrator found that the claimant had an employment relationship with Fleet, but not with J.R. Auto. Therefore, the arbitrator denied the claimant's claim against J.R. Auto. Fleet disputed the claimant's compensation claim with the additional argument that the claim is barred because Fleet did not receive timely notice of the accident. The arbitrator agreed, finding that the claimant failed to give notice of the accident to Fleet. Therefore, the arbitrator denied the claimant's claim against Fleet. The claimant appealed that portion of the arbitrator's decision that found that he failed to prove an employment relationship with J.R. Auto. The claimant also disputed the arbitrator's finding with respect to a lack of notice to Fleet. Fleet appealed that portion of the arbitrator's decision that found that it had an employment relationship with the claimant.

¶ 3 The Illinois Workers' Compensation Commission (Commission) modified the arbitrator's decision by finding that the claimant proved that he had an employer-employee relationship with both respondents. The Commission ordered J.R. Auto to pay the claimant benefits under the Act as a result of the workplace accident, including

temporary total disability (TTD) benefits, medical expenses, and permanent partial disability (PPD) benefits. The Commission affirmed and adopted that portion of the arbitrator's decision denying the claimant's claim against Fleet because the claimant failed to give Fleet notice of the accident. The Commission's decision left J.R. Auto solely liable for the compensation claim.

¶ 4 J.R. Auto appealed the Commission's decision to the circuit court and challenged the Commission's finding that it had an employment relationship with the claimant. J.R. Auto also argued that if it and Fleet were both employers, then the claimant's notice of the accident was sufficient for Fleet to be liable for the compensation claim as well. The circuit court confirmed the Commission's decision, and J.R. Auto now appeals the circuit court's judgment.

¶ 5 BACKGROUND

¶ 6 Fleet is in the business of transporting automobiles from manufacturing plants and various ports of entry to automobile dealerships throughout the United States. Fleet does not own any trucks, but instead leases trucks from other companies, such as J.R. Auto, to fulfill its transport contracts with auto manufacturers. The leases require the truck owners to also furnish drivers for the trucks. As part of its leasing process, Fleet performs "certifying" steps to ensure that the drivers furnished by the truck owners are properly licensed to drive the leased trucks. The certification requirements include background and driving record checks and pre-employment verifications, which are required by the Department of Transportation.

¶ 7 In 2009, Fleet and J.R. Auto entered into a lease agreement in which Fleet agreed to lease a truck and trailer from J.R. Auto. The lease provided that J.R. Auto would provide a driver and was responsible for maintenance of the truck during the term of the lease. Pursuant to this agreement, Fleet took possession of J.R. Auto's truck and trailer and had exclusive possession, control, and use of the equipment during the term of the lease agreement. According to the vice president of finance for Fleet, Ronald Jordon, Fleet's agreement with J.R. Auto identified J.R. Auto as an independent contractor where J.R. Auto was responsible for paying all of the taxes and expenses for the equipment it owns and providing a driver to operate the equipment.

¶ 8 At some point, Fleet certified the claimant as meeting the qualifications to operate a truck on its behalf. After being certified by Fleet, the claimant started working for J.R. Auto as the driver of the truck and trailer that J.R. Auto leased to Fleet. At that time, the claimant was the only person working for J.R. Auto other than its owner, Johnny Robinson. The claimant and Robinson signed a contract entitled, "Owner/Operator Agreement." This agreement states that the claimant and Robinson have entered into an “employee-employer relationship” and identifies Robinson as the "owner/operator" and "employer." The agreement provides that Robinson will pay the claimant's compensation, federal and state income withholding taxes, unemployment taxes, and any workers' compensation insurance premiums. The language of the contract states that the claimant acknowledged and understood that when interacting with Fleet, he would be acting as his "employer's agent not as Fleet Car's employee." The document contains an

acknowledgment signed by Robinson as "owner" in which he states that he has "employed" the claimant to drive the equipment.

¶ 9 At the hearing, the claimant explained that Fleet directed him where to pick up and deliver truck loads. Fleet did not tell him what route to take for deliveries, but sometimes placed time frames on deliveries. J.R. Auto paid the claimant's compensation and paid for the fuel, maintenance, and repairs for the truck. The claimant testified that he received his paycheck from J.R. Auto and that J.R. Auto also paid him $2,000 in vacation pay each year. According to Robinson, Fleet paid J.R. Auto a percentage of the revenue generated from each load the claimant delivered using its truck, and J.R. Auto, in turn, paid the claimant a percentage of what it received from Fleet.

¶ 10 Fleet's name was posted on the side door of the truck, and Fleet gave the claimant a gas card to fuel the truck when he was on the road. Fleet deducted the amount of gas charged to the card from the amount it paid to J.R. Auto. After the claimant delivered a load, he returned to one of Fleet's terminals to pick up another load. Fleet did not prohibit him from driving for any other entity.

¶ 11 Robinson testified that he hired the claimant as an independent contractor, but the claimant's testimony established that Robinson never informed him that he was hired as an independent contractor. J.R. Auto did not take out any taxes or other deductions from the claimant's paychecks. Instead, Robinson gave the claimant 1099s for the money the claimant received. Robinson testified that the extra $2,000 in pay he gave the claimant each year was more of a gratuity than actual vacation pay. The Commission, however, found that Robinson told the claimant that the $2,000 was for vacation pay.

¶ 12 The workplace accident at issue occurred on July 22, 2009. The claimant injured his right knee when he slipped while loading the truck and trailer. Immediately after the accident, the claimant gave notice of the accident to Robinson, who advised him to seek medical attention. It is undisputed that the claimant did not give notice of the accident to anyone at Fleet. According to Jordon, Fleet first became aware of the claimant's accident after he filed his claim with the Commission.

¶ 13 The claimant initially received emergency medical treatment and then underwent a course of medical care that included surgery to repair a patellar tendon tear in his right knee and physical therapy following the surgery. The claimant was unable to work due to the accident until February 2, 2010, when his doctor released him to return to work and he began working for a different company. While the claimant was off work, he received some medical and TTD benefits through a workers' compensation/occupational insurance policy that Robinson had obtained after hiring him.

¶ 14 The parties' dispute with respect to the claimant's workers' compensation claim proceeded to an arbitration hearing on July 30, 2012. At the conclusion of the hearing, the arbitrator found that the claimant proved he had an employer-employee relationship with Fleet, but failed to prove he had an employer-employee relationship with J.R. Auto. The arbitrator reasoned that J.R. Auto did not have control over the claimant's schedule or over the truck he operated. Instead, he communicated daily with Fleet, and Fleet directed him where to pick up and deliver truck loads.

¶ 15 Although the arbitrator found that the claimant proved an employer-employee relationship with Fleet, the arbitrator further found that he failed to provide timely notice

of his accident to Fleet within 45 days of the accident, as required by section 6(c) of the Act (820 ILCS 305/6(c) (West 2012)). Therefore, the arbitrator denied the claimant's claim against both respondents.

¶ 16 The claimant and Fleet both appealed the arbitrator's decision to the Commission. The claimant challenged the arbitrator's factual finding that he failed to prove an employer-employee relationship with J.R. Auto and challenged the legal effect concerning his lack of notice of the accident to Fleet. Fleet challenged the arbitrator's finding that it had an employer-employee relationship with the claimant.

¶ 17 The Commission modified the arbitrator's decision by finding that the claimant proved he had an employer-employee relationship with both J.R. Auto and Fleet. Accordingly, the Commission found that both J.R. Auto and Fleet were employers for purposes of assessing their responsibility for the claimant's claim under the Act.

¶ 18 With respect to the Commission's finding that an employer-employee relationship existed between the claimant and J.R. Auto, the Commission focused on the Owner/Operator Agreement signed by the claimant and Robinson.

¶ 19 The Commission explained as follows:

> "[The Owner/Operator Agreement] contractually established an employee-employer relationship between [the claimant] and Johnny Robinson, owner of J.R. Auto Transportation. [The claimant] testified that when he was hired by Mr. Robinson, he was not advised by him that he was an independent contractor. Johnny Robinson testified that he hired [the claimant] as an independent contractor, yet this is contradicted by [the Owner/Operator Agreement]. Mr.

> Robinson did not withhold taxes from [the claimant's] pay, as he agreed to do in [the Owner/Operator Agreement]. In [the Owner/Operator Agreement], Mr. Robinson also agreed to pay any and all Workmen's Compensation Insurance Premiums on behalf of [the claimant], but instead he obtained an occupational accident insurance policy."

¶ 20 The Commission found that the claimant gave timely notice of the accident to J.R. Auto, but failed to give any notice of the accident to Fleet. Therefore, the Commission affirmed and adopted that portion of the arbitrator's decision that denied the claimant's claim against Fleet. The Commission wrote in its decision as follows, "The Commission affirms the Arbitrator's finding that timely notice of accident was not given to Respondent Fleet Car Lease and therefore, Respondent Fleet Car Lease is not liable."

¶ 21 The Commission ordered J.R. Auto to pay for the claimant's medical expenses, TTD benefits, and PPD benefits.

¶ 22 J.R. Auto appealed the Commission's decision to the circuit court of Will County. In its brief before the circuit court, J.R. Auto argued: "If the Commission is alleging that J.R. Auto Transportation and Fleet Car were joint employers, that is incorrect, as they have established that J.R. Auto Transportation had no direction or control over [the claimant's] activities. Therefore, there would not be joint employment. If they are alleging borrowing and loaning, then their decision finding no notice to Fleet Car Lease is incorrect, as notice given to J.R. Auto Transportation would be notice to Fleet Car Lease." The circuit court rejected J.R. Auto's arguments, held that the Commission's

"determination was not against the manifest weight of the evidence," and confirmed the Commission's decision.

¶ 23 J.R. Auto now appeals the circuit court's judgment and takes issue with the Commission's finding that it was the claimant's employer and, alternatively, the Commission's denial of Fleet's liability due to lack of notice of the accident. For the following reasons, we agree with the latter argument.

¶ 24 ANALYSIS

¶ 25 I

¶ 26 Employer-Employee Relationship

¶ 27 An employer-employee relationship is required for benefits under the Act. *Keating v. 68th & Paxton, L.L.C.*, 401 Ill. App. 3d 456, 464, 936 N.E.2d 1050, 1058 (2010). The claimant has the burden of proving the existence of an employer-employee relationship by a preponderance of the evidence, and when the evidence is conflicting and subject to diverse interpretation, the issue is a question of fact to be resolved by the Commission. *Pearson v. Industrial Comm'n*, 318 Ill. App. 3d 932, 935, 743 N.E.2d 685, 686-87 (2001). A finding of fact is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 312-13, 901 N.E.2d 1066, 1079 (2009).

¶ 28 In analyzing whether an employer-employee relationship exists, there is no rule applicable in all situations. *Morgan Cab Co. v. Industrial Comm'n*, 60 Ill. 2d 92, 97, 324 N.E.2d 425, 427 (1975). Instead, the analysis is based on all of the evidentiary facts in

connection with the applicable principles of law. *Lawrence v. Industrial Comm'n*, 391 Ill. 80, 84, 62 N.E.2d 686, 688 (1945).

¶ 29 The Act defines the term "employer" to include every firm "who has any person in service or under any contract for hire, express or implied, oral or written." 820 ILCS 305/1(a)(2) (West 2012). The Act does not define who is an "independent contractor" as opposed to an employee. The supreme court has defined an independent contractor as "one who renders service in accordance with the will of the person for whom the work is done only as to the results of the work, and who is free to exercise his own judgment and discretion as to the method or means by which it is accomplished, entirely exclusive of the control and direction of the party for whom the work is done." *Lawrence*, 391 Ill. at 85, 62 N.E.2d at 688.

¶ 30 It is often difficult to determine whether a person is an employee or an independent contractor because "there are elements pertaining to both relations which may occur without being determinative of the relationship." *Id.* at 86, 62 N.E.2d at 688-89. Because many jobs contain elements of each, there is no clear line of demarcation between the status of employee and independent contractor. *Kirkwood v. Industrial Comm'n*, 84 Ill. 2d 14, 20, 416 N.E.2d 1078, 1080 (1981).

¶ 31 No single factor is determinative concerning what the relationship is between the parties in a given case. *Morgan Cab Co.*, 60 Ill. 2d at 97, 324 N.E.2d at 428. "It may be necessary to consider a number of factors with evidentiary value, such as the right to control the manner in which the work is done, the method of payment, the right to discharge, the skill required in the work to be done, and who provides tools, materials, or

equipment." *Id*. Other factors include whether the worker's occupation is related to that of the alleged employer and whether the alleged employer deducted for withholding tax. *Lister v. Industrial Comm'n*, 149 Ill. App. 3d 286, 290, 500 N.E.2d 134, 136 (1986). The right to control the manner in which the work is performed is often cited as the most important factor in determining the relationship. *Kirkwood*, 84 Ill. 2d at 21, 416 N.E.2d at 1081.

¶ 32 In the present case, the Commission weighed conflicting factors that supported the claimant's status as both an employee and an independent contractor. J.R. Auto furnished the equipment and paid the claimant's compensation. These factors favored employee status. J.R. Auto is engaged in a business related to the claimant's occupation as a truck driver. In fact, other than the company's owner, Robinson, the claimant was the only person working for J.R. Auto. This factor favored employee status. *Lister*, 149 Ill. App. 3d at 291, 500 N.E.2d at 515 ("[C]laimant's occupation was strongly related to respondent's business. This factor favors the determination that claimant was an employee.").

¶ 33 J.R. Auto did not take any withholdings from the claimant's paychecks and, instead, issued the claimant 1099s for his compensation. This factor seems to weigh in favor of independent contractor status. However, the Commission was not required to give this evidence greater weight than other conflicting evidence, including the Owner/Operator Agreement entered into between the claimant and Robinson. This contract expressly identified the parties' relationship as an employer-employee relationship and vested Robinson with the responsibility of paying the claimant's

compensation, federal and state income withholding taxes, unemployment taxes, and any workers' compensation insurance premiums. This evidence weighs in favor of employee status.

¶ 34 The Commission found that the contract language in the Owner/Operator Agreement was compelling, and it was within the Commission's prerogative to weigh this evidence heavily in favor of the claimant's employee status. Nothing in the record allows us to conclude that the Commission gave undue weight to the express language of the parties' contract. Although Robinson claimed to have hired the claimant as an independent contractor, the language of the parties' contract contradicts this testimony, and the Commission found that Robinson never told the claimant he was an independent contractor.

¶ 35 J.R. Auto emphasizes that the most important factor in the analysis is control and that the evidence established that it did not control the claimant's work duties. Although control is an important factor in the typical employer-employee relationship analysis involving one employer and an employee, control plays a different role in the analysis when an employer loans an employee to another employer. Under the loaned-employee concept, the loaning employer relinquishes control over the employee's job duties, but remains jointly and severally liable with the borrowing employer for benefits under the Act when the loaned employee sustains a compensable accident. 820 ILCS 305/1(a)(4) (West 2012); *A.J. Johnson Paving Co. v. Industrial Comm'n*, 82 Ill. 2d 341, 347-48, 412 N.E.2d 477, 480-81 (1980).

¶ 36 Section 1(a)(4) of the Act states, "Where an employer operating under and subject to the provisions of this Act loans an employee to another such employer and such loaned employee sustains a compensable accidental injury in the employment of such borrowing employer and where such borrowing employer does not provide or pay the benefits or payments due such injured employee, such loaning employer is liable to provide or pay all benefits or payments due such employee under this Act and as to such employee the liability of such loaning and borrowing employers is joint and several." 820 ILCS 305/1(a)(4) (West 2012).

¶ 37 The facts of this case fall squarely within the loaned-employee concept encompassed within section 1(a)(4) of the Act. The analysis of whether an employee was loaned requires the court to determine (1) whether the borrowing employer had the right to direct and control the manner in which the claimant performed the work; and (2) whether a contract for hire, either express or implied, existed between the claimant and the borrowing employer. *Jay Cee Warehouse, Inc. v. Industrial Comm'n*, 129 Ill. App. 3d 89, 91-92, 471 N.E.2d 953, 956 (1984).

¶ 38 "The existence of the loaned-servant situation is generally a question of fact to be determined by [the Commission.]" *A.J. Johnson Paving Co.*, 82 Ill. 2d at 348, 412 N.E.2d at 481. However, when "undisputed facts permit but a single inference," the question is "one of law." *Id*. at 348-49, 412 N.E.2d at 481.

¶ 39 Under the facts of the present case, once we affirm the Commission's finding that the claimant was an employee of J.R. Auto, that finding permits but one single inference concerning the existence of the loaned-servant situation, *i.e.*, that, as a matter of law, J.R.

Auto loaned its employee (the claimant) to Fleet (the borrowing employer). Fleet had the right to direct and control the manner in which the claimant performed his work duties, and it certified him as being qualified to drive trucks on its behalf. The claimant, therefore, performed job duties on behalf of Fleet under an implied contract for hire. In the present appeal, Fleet does not challenge the Commission's finding that it was an employer of the claimant as defined under the Act.

¶ 40 The lease agreement between J.R. Auto and Fleet required J.R. Auto to provide a driver for the leased equipment and gave Fleet exclusive control over the equipment during the term of the lease. By necessity, such an agreement also required Fleet to have control of the driver to be furnished by J.R. Auto. The Owner/Operator Agreement between Robinson and the claimant, in turn, established their employment relationship as noted above. Therefore, by inference, the Commission's finding that the claimant was an employee of J.R. Auto also established the existence of a loaned-employee situation between J.R. Auto and Fleet. See *Reo Movers, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 216, 220-21, 589 N.E.2d 704, 708 (1992) (loaned-employee status established where borrowing employer had right to control truck driver's work).

¶ 41 Section 1(a)(4) of the Act establishes that a loaning employer, such as J.R. Auto, cannot escape liability under the Act merely because it gives up control of the loaned employee's work duties. As the loaning employer, J.R. Auto remained jointly and severally liable with Fleet for the claimant's compensable accident regardless of whether it had control over him at the time of the accident. Therefore, under the facts of the

present case, control is an inconsequential factor in determining whether an employer-employee relationship exists between J.R. Auto and the claimant.

¶ 42 Our review of the record reveals that the Commission had ample evidence to conclude that J.R. Auto and the claimant entered into an employer-employee relationship as contemplated under the Act. The Commission found the Owner/Operator Agreement to be particularly persuasive in its analysis, and nothing in the record makes it clearly apparent that the claimant was an independent contractor, rather than an employee of J.R. Auto as set forth in the Owner/Operator Agreement. Therefore, we cannot overturn the Commission's factual finding that there was an employer-employee relationship between J.R. Auto and the claimant.

¶ 43 II

¶ 44 Notice of Accident

¶ 45 Next, J.R. Auto argues, alternatively, that if it is an employer of the claimant along with Fleet, then the claimant's notice of the accident to J.R. Auto should be considered defective or inaccurate notice to Fleet, which requires Fleet to show prejudice before escaping liability under the Act. J.R. Auto asks us to reverse the Commission's denial of the claim against Fleet because Fleet did not establish any prejudice. We agree with J.R. Auto.

¶ 46 Section 6(c) of the Act requires the claimant to give notice of the accident "to the employer as soon as practicable, but not later than 45 days after the accident." 820 ILCS 305/6(c) (West 2012). The purpose of the notice requirement is to protect the employer from fraudulent claims by giving it an opportunity to promptly investigate and ascertain

the facts of the alleged accident. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 67, 11 N.E.2d 453. In addition, the notice allows the employer to minimize its liability by affording the injured employee immediate medical treatment. *Id*. The notice is jurisdictional, and the failure to give notice will bar the claim. *Id*. However, a claim is only barred if no notice whatsoever is given. *Silica Sand Transport, Inc. v. Industrial Comm'n*, 197 Ill. App. 3d 640, 651, 554 N.E.2d 734, 742 (1990). If some notice has been given, but the notice is defective or inaccurate, the employer must show that it has been unduly prejudiced. *Id*.

¶ 47 As noted above, we have determined that the Commission's finding that J.R. Auto was an employer of the claimant is not against the manifest weight of the evidence. We have also determined that, under the facts of this case, it necessarily follows from this finding that J.R. Auto was a loaning employer and Fleet was a borrowing employer at the time of the accident. Accordingly, we must analyze the notice requirement in the context of this loaned-employee situation. *Silica Sand Transport, Inc.* provides us guidance in our analysis.

¶ 48 In *Silica Sand Transport, Inc.*, the claimant, a truck driver, injured his back in a compensable accident. At the time of the accident, the claimant worked as a loaned employee. *Id*. at 648, 554 N.E.2d at 740. The claimant gave timely notice of the accident to the loaning employer but not to the borrowing employer. *Id*. at 651, 554 N.E.2d at 742. The borrowing employer argued that the claimant's claim against it was barred because the claimant failed to give it timely notice of the accident as required by section 6(c) of the Act. *Id*. at 651, 554 N.E.2d at 741-42.

¶ 49 The court rejected this argument, holding that the claimant's notice of the accident to the loaning employer served as notice to the borrowing employer and that the borrowing employer was not prejudiced by the lack of actual notice. *Id*. at 652, 554 N.E.2d at 742. In its analysis, the court noted that, in a loaned-employee situation, the "claimant cannot be expected to know the legal ramifications of which employer he should notify, and to hold that the failure of the claimant to notify [the borrowing employer] would bar the claimant's recovery would be inherently unfair." *Id*. The court, therefore, concluded that the notice given to the lending employer "must be construed to be an inaccurate or defective notice" to the borrowing employer, but otherwise properly given, and that the borrowing employer "must show that it was unduly prejudiced by the defective or inaccurate notice." *Id*.

¶ 50 In the present case, the claimant was involved in a workplace accident while working as a loaned employee. He gave notice of the accident to J.R. Auto, but not to Fleet. The analysis in *Silica Sand Transport, Inc.* establishes that we must construe the claimant's notice to J.R. Auto as defective or inaccurate notice to Fleet. Fleet, therefore, must show that its defense to the claimant's claim was prejudiced as a result of the defective or inaccurate notice. The Commission, however, never made this determination.

¶ 51 The sufficiency of notice is an issue of fact. *A.C. & S. v. Industrial Comm'n*, 304 Ill. App. 3d 875, 883, 710 N.E.2d 837, 842 (1999). Whether prejudice occurred because of a defective or inaccurate notice is also a fact question because it is an issue directly related to the sufficiency of notice analysis and usually involves weighing conflicting

evidence and/or inferences. Accordingly, the Commission in the present case, as the fact finder, is charged with the fact-finding task of determining whether Fleet suffered prejudice as a result of the claimant's defective notice of the accident. The Commission, however, did not engage in this required analysis, but simply denied the claimant's claim against Fleet. Therefore, we must remand the proceeding to the Commission for a determination of whether Fleet suffered prejudice due to the claimant's defective/inaccurate notice of the accident. If the Commission finds that Fleet cannot sustain its burden of proving prejudice, it must award the claimant benefits against both Fleet and J.R. Auto as a joint and several liability.

¶ 52 In its brief, Fleet argues that J.R. Auto has not preserved the issue of notice under the loaning employer concept for it to be considered on appeal. Specifically, Fleet argues that "neither the Arbitrator, nor the Commission, nor the Circuit Court considered or decided whether J.R. Auto and Fleet were 'joint employers.' " Fleet concludes that "[b]ecause J.R. Auto did not allege a 'joint employment' relationship below, its joint and several liability argument is not preserved for review, and should not be considered on appeal." We disagree.

¶ 53 As noted above, the arbitrator originally ruled in favor of J.R. Auto and denied the claimant's compensation claim against J.R. Auto. On appeal to the Commission, J.R. Auto attempted to defend the arbitrator's decision in its favor. As a prevailing party before the arbitrator, J.R. Auto was not required to appeal any aspects of the arbitrator's decision to the Commission. When the Commission ruled against J.R. Auto and found

that it was solely liable for the claimant's compensation claim, it appealed the Commission's decision to the circuit court.

¶ 54 As noted in the background section above, in its appeal to the circuit court, J.R. Auto argued: "If the Commission is alleging that J.R. Auto Transportation and Fleet Car were joint employers, that is incorrect, as they have established that J.R. Auto Transportation had no direction or control over [the claimant's] activities. Therefore, there would not be joint employment. If they are alleging borrowing and loaning, then their decision finding no notice to Fleet Car Lease is incorrect, as notice given to J.R. Auto Transportation would be notice to Fleet Car Lease." When J.R. Auto lost its appeal before the circuit court, it filed a timely notice of appeal for this matter to be considered by this court, and J.R. Auto has presented the same issues.

¶ 55 As stated above, whether a loaned employee status exists is a question of law in cases such as the present case when "the facts are undisputed and capable of one inference." *Prodanic v. Grossinger City Autocorp, Inc.*, 2012 IL App (1st) 110993, ¶ 15, 975 N.E.2d 658. On appeal, questions of law are reviewed *de novo*. *United Airlines, Inc. v. Illinois Workers' Compensation Comm'n*¸2013 IL App (1st) 121136, ¶ 19, 991 N.E.2d 458. At each stage of the appeals process, J.R. Auto has raised this issue. Accordingly, Fleets' argument that J.R. Auto has not properly preserved this question of law has no merit.

¶ 56 During oral argument, Fleet's counsel also argued that we lack jurisdiction to address the notice issue because no party has appealed from that portion of the Commission's decision that addressed the issue of notice. Fleets' counsel points out that

the relief J.R. Auto sought in its notice of appeal is a reversal of the Commission's decision "thereby reinstating the decision of [the arbitrator]." The arbitrator, Fleet continues, denied the claimant's claim against it due to a lack of notice. Fleet concludes, therefore, that by requesting the reinstatement of the arbitrator's decision, J.R. Auto has not appealed the notice issue contained within the arbitrator's decision. Instead, it has asked that that portion of the decision be reinstated.

¶ 57 Illinois Supreme Court Rule 303(b)(2) requires a notice of appeal to "specify the judgment or part thereof appealed from and the relief sought from the reviewing court." Ill. Sup. Ct. R. 303(b)(2) (eff. Jan. 1, 2015). However, the briefs, not the notice of appeal itself, specify the precise points to be relied on for reversal. *In re Estate of Sewart*, 274 Ill. App. 3d 298, 302, 652 N.E.2d 1151, 1155, n. 1 (1995). "The notice of appeal, which is liberally construed, serves the purpose of informing the prevailing party in the trial court that the unsuccessful litigant seeks a review by a higher court." *Id.* Strict compliance with the form of the notice is not fatal if the appellee is not prejudiced. *Id.*

¶ 58 In the present case, J.R. Auto appealed from the judgment of the circuit court "affirming the decision of the Illinois Workers' Compensation Commission of May 10, 2013." J.R. Auto sought a reversal of the circuit court's judgment and the Commission's decision, "thereby reinstating" the arbitrator's decision. Arguably, this language in the notice of appeal does not strictly comply with Rule 303(c)(2)'s requirement that the appellant specify all the relief requested, *i.e.*, it does not specify that J.R. Auto is seeking a reversal of the Commission's *and* arbitrator's decision on the issue of notice. However, under the facts of this case, this potential defect is technical in nature and is not fatal to

our jurisdiction to review the Commission's decision with respect to notice of accident to Fleet.

¶ 59 Fleet is aware that, in J.R. Auto's appellant's brief filed with the circuit court, it raised an issue concerning the legal effect of the lack of notice to Fleet. Fleet is also aware that J.R. Auto lost this issue in its appeal to the circuit court. J.R. Auto's notice of appeal, in turn, notifies Fleet that J.R. Auto is seeking a reversal of the circuit court's judgment that confirmed the Commission's decision and is seeking a reversal of the Commission's decision. Under these circumstances, the notice of appeal is sufficient to convey jurisdiction to this court to consider the merits of all of the issues raised before the circuit court, including the notice issue.

¶ 60 Also, in the proceedings before this court, Fleet has not argued that it is prejudiced by any technical defect in J.R. Auto's notice of appeal. In fact, Fleet made no objection to the notice of appeal by way of motion or in its brief. Instead, it raised the issue for the first time at oral argument and without any case citation or supporting authority. Under these circumstances, J.R. Auto's notice of appeal does not deprive us of jurisdiction to consider the merits of the Commission's decision on the issue of notice.

¶ 61 Fleet also urges us to affirm because J.R. Auto had a contractual duty to defend and indemnify it against the claimant's claim. We offer no opinion with respect to this argument because it does not establish a basis for denying the claimant's claim against Fleet. Instead, it concerns the liability of the compensation claim as between the two employers. If the Commission awards benefits against both employers as a joint and several liability, it must also determine the liability of the claim as between the two

employers. *Silica Sand Transport, Inc.*, 197 Ill. App. 3d at 649-50, 554 N.E.2d at 741. Therefore, the issue of whether J.R. Auto has a duty to defend and indemnify Fleet is an issue for the Commission to address should it award benefits against Fleet on remand.

¶ 62 CONCLUSION

¶ 63 For the foregoing reasons, we reverse that portion of the circuit court's judgment that affirmed the Commission's denial of the compensation claim against Fleet, affirm all other aspects of the court's judgment confirming the Commission's decision, and remand to the Commission for further proceedings consistent with this decision.

¶ 64 Affirmed in part and reversed in part; cause remanded.