2019 IL App (3d) 180397WC-U
No. 3-18-0397WC
Order filed May 10, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

THE CITY OF PEORIA,	)	Appeal from the Circuit Court
	)	of Peoria County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 17-MR-792
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION,	)	Honorable
	)	Katherine S. Gorman Hubler,
(Bryan Grant, Respondent-Appellee).	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: (1) By making a foundational objection in the evidence deposition of the petitioner's expert witness, the respondent preserved for appellate review its contention that the testimony of the expert witness lacked a sufficient foundation, since, under section 19(e) of the Illinois Workers' Compensation Act (820 ILCS 305/19(e) (West 2012)), the Illinois Workers' Compensation Commission must review all questions of law or fact that appear from the transcript of the evidence.

(2) The Illinois Workers' Compensation Commission did not abuse its discretion by finding a sufficient foundation for the testimony of the petitioner's expert witness.

(3) By finding that the petitioner's workplace exposures to carcinogenic gases caused his kidney cancer, the Illinois Workers' Compensation Commission did not make a finding that was against the manifest weight of the evidence.

(4) By failing to cite any authority in support of its argument that even before the enactment of section 8.1b of the Illinois Workers' Compensation Act (820 ILCS 305/8.1b (West 2016)), courts used the factors therein to determine claimants' awards of permanent partial disability, the respondent has forfeited that argument.

¶ 2 The circuit court of Peoria County confirmed a decision by the Illinois Workers' Compensation Commission (Commission) to award workers' compensation benefits to petitioner, Bryan Grant, for an occupational disease, kidney cancer. Respondent, the city of Peoria (City), appeals on three grounds.

¶ 3 First, the City contends that the testimony of Grant's expert witness lacked a sufficient foundation. We are unconvinced it was an abuse of discretion to find a sufficient foundation for the testimony.

¶ 4 Second, the City challenges the Commission's finding of a causal relationship between Grant's exposures to carcinogenic gases as a firefighter and his kidney cancer. We conclude that the Commission's finding is not against the manifest weight of the evidence.

¶ 5 Third, the City argues that by failing to apply the factors in section 8.1b of the Act (820 ILCS 305/8.1b (West 2016)), the Commission arrived at an award of permanent partial disability that was excessive. However, the occupational disease in this case predates the enactment of section 8.1b, and the City cites no authority in support of its assertion that courts applied the factors in section 8.1b before that section existed.

¶ 6 Therefore, we affirm the judgment.

¶ 7 I. BACKGROUND

¶ 8 A. The Claim for Workers' Compensation Benefits

¶ 9 Since April 1990, Grant has been a firefighter for the City. He was promoted to the position of engineer in August 1999, and in October 2012, he received a further promotion to the rank of fire captain.

¶ 10 On August 19, 2008, when Grant was 51 years old, a computerized tomography (CT) scan revealed a mass on his right kidney. The mass proved to be cancerous, and on September 10, 2008, Grant had the kidney surgically removed. He filed a claim for workers' compensation benefits, alleging that being exposed to carcinogenic atmospheres as a firefighter for the City had caused his kidney cancer.

¶ 11 B. The Arbitration Hearing

¶ 12 In the arbitration hearing, Grant testified that, each year, on average, he responded to 6 structural fires, 6 dumpster fires, and from 8 to 12 car fires. He did not believe that the removal of his right kidney had impaired his ability to perform his job as fire captain.

¶ 13 When fighting fires, Grant wore a self-contained breathing apparatus (apparatus), which was comparable to scuba diving gear: a mask connected to an air tank. During "overhauls," however—after the visible fires were extinguished and as he was inspecting the ashes and debris for live embers that might reignite the fire—he typically did not wear the apparatus. The theory in his workers' compensation case was that airborne chemicals he breathed during overhauls were a cause of his kidney cancer.

¶ 14 In support of his theory of causation, Grant presented the evidence deposition of his expert witness, Peter Orris.

¶ 15 In opposition to Grant's theory of causation, the City presented the evidence deposition of its own expert witness, Scott Eggener.

¶ 16 1. *The Testimony of Peter Orris*

¶ 17 a. Qualifications

¶ 18 Peter Orris was a physician. He had practiced internal medicine at "County Hospital" for about 30 years. He was "retired from County," and his practice now was almost exclusively in occupational medicine.

¶ 19 Since 1979, Orris had been board-certified in occupational medicine, a subdivision of the American Board of Preventive Medicine. As an expert in occupational medicine, his specialty was diagnosing and treating occupational or environmentally related illnesses and formulating preventive medicine guidelines.

¶ 20 Orris was the chief of service for occupational environmental medicine at the Chicago Medical Center of the University of Illinois. He was also a professor of internal medicine at Rush University Medical College, an adjunct professor of environmental and occupational health sciences at the University of Illinois School of Public Health, and an adjunct professor of preventive medicine at Northwestern University Feinberg School of Medicine.

¶ 21 For over 30 years, Orris had taught residents (physicians in specialty training) the risk factors of disease and methods of preventing a variety of diseases. He also taught them how to assess the causation of a medical condition and whether the cause was related to the workplace.

¶ 22 b. Advisory Work

¶ 23 For many years, Orris had been an advisor to fire departments, municipalities, and the International Association of Firefighters (Firefighters Association), helping them with their health and safety programs, including the identification of carcinogenic agents and the prevention of exposure to such agents in the workplace.

¶ 24 c. Orris's Opinion on Occupational Causation in This Case

¶ 25 After examining Grant and reviewing his medical records, Orris opined, "within a reasonable degree of medical and scientific certainty," that Grant's occupation as a firefighter and his exposures to carcinogenic atmospheres since 1990 likely had "contributed to and were a cause of his renal cell cancer." Although Grant, by his own account, "religiously wore his [apparatus] during [fire] suppression," he "wore no mask routinely during overhaul," when there was still a lot of smoke from partially combusted products, including plastics. "[T]his [was] the period," Orris testified, "whe[n] [firefighters] g[o]t the primary exposures to carcinogens," such as polyaromatic hydrocarbons (PAHs), benzene, formaldehyde, arsenic, and asbestos.

¶ 26 On cross-examination, Orris agreed that being hypertensive and overweight, as Grant was, increased one's risk of getting kidney cancer, which was a rare form of cancer in the population as a whole. But he testified that according to some epidemiological studies of large numbers of firefighters, being a firefighter also increased the risk.

¶ 27 d. The Foundation For Orris's Opinion

¶ 28 When asked what was the basis of his opinion that Grant's occupation as a firefighter had been a cause of his kidney cancer, Orris answered:

> "A. The basis of the opinion was one, his history of exposure, our knowledge of what types of chemicals firefighters are exposed to in fire suppression activities. The latency period of over twenty years from when he began as a firefighter, the knowledge of the epidemiological literature with respect to firefighters, and kidney cancer, and my clinical judgment and knowledge in the field."

¶ 29 The City's attorney objected "as to foundation." The arbitrator overruled the objection—at least, so it appears from the handwritten notation "OR" above the initials "SM"

(Stephen Mathis) in the right-hand margin of the deposition transcript.

¶ 30 e. Cross-Examination Regarding the Number of Runs Grant Went on Each Year

¶ 31 In his report, Orris wrote that Grant went on "about 2100 runs a year." On cross-examination in his evidence deposition, however, Orris admitted that 2100 was an unrealistically high number of runs. But he pointed out that what mattered was the amount of Grant's fire exposures and that a run was not necessarily a fire exposure. Grant had told Orris that in an average year, he fought approximately 6 structural fires, 6 trash dumpster fires, and 8 to 12 car fires.

¶ 32 2. *The Testimony of Scott Eggener*

¶ 33 Scott Eggener was a urologist who had taken a two-month course on statistics and epidemiology. He admitted that his field of interest did not include the epidemiological effects of occupational exposures and that except in the 5% of cases in which the renal cell carcinoma was genetic, the question of what had caused the disease was irrelevant to his job as a urologist. Besides, he testified, kidney cancer was idiopathic in the remaining 95% of the cases.

¶ 34 The three most commonly accepted risk factors for kidney cancer were smoking, obesity, and hypertension, and Grant had the latter two risk factors. In Eggener's opinion, a case could be made that obesity and hypertension were causes of Grant's kidney cancer, but no case could be made that firefighting was a cause. Eggener opined, "to a reasonable degree of medical and surgical certainty," that there was "no association between [Grant's] being a fireman and his subsequent development of kidney cancer."

¶ 35 Eggener based that opinion on his review of the epidemiological literature. He testified that of the 13 studies that examined an association between kidney cancer and firefighting, 9 "showed no association," 3 "suggested an increased risk of developing kidney

cancer after being a fireman," and the remaining study "suggested a decreased risk of developing kidney cancer." How Eggener categorized a study, *i.e.*, as showing either an association between firefighting and kidney cancer or no such association, depended on whether the 95% confidence interval in the study included the relative risk of one (the number corresponding to the null hypothesis or no association). He testified that in nine of the studies, the 95% confidence interval overlapped with one, signifying "there [was] no reasonable amount of confidence that there [was] an association between being a fireman and developing kidney cancer."

¶ 36 On cross-examination, Eggener admitted that just because a 95% confidence interval overlapped with the number one, it did not follow that an association between firefighting and kidney cancer had been disproved. See Sander Greenland & Charles Poole, *Problems in Common Interpretations of Statistics in Scientific Articles, Expert Reports, and Testimony*, 51 Jurimetrics J. 113, 123 (2011); Erica Beecher-Monas, *Lost in Translation: Statistical Inference in Court*, 46 Ariz. St. L.J. 1057, 1068 (2014). In other words, as Eggener put it, "the absence of evidence [was] not evidence of absence."

¶ 37 C. The Commission's Initial Decision, Before Remand by the Appellate Court

¶ 38 On December 23, 2013, the arbitrator found that Grant's "diagnosis and treatment of kidney cancer ha[d] not been causally connected to his employment as a firefighter."

¶ 39 On December 26, 2014, the Commission disagreed with the arbitrator and found occupational causation. The City petitioned for judicial review, and on August 24, 2015, the Peoria County circuit court confirmed the Commission's decision, finding it was not against the manifest weight of the evidence.

¶ 40 The City appealed, and on September 26, 2016, the appellate court reversed the circuit court's judgment, vacated the Commission's decision, and remanded the case to the

Commission with directions to reweigh the evidence without treating the presumption in section 1(d) of the Workers' Occupational Diseases Act (820 ILCS 310/1(d) (West 2008)) as evidence. *City of Peoria v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150658WC-U, ¶ 1; see 820 ILCS 310/1(d) (West 2008) ("Any condition or impairment of health of an employee employed as a firefighter *** which results directly or indirectly from *** cancer resulting in any disability (temporary, permanent, total, or partial) to the employee shall be rebuttably presumed to arise out of and in the course of the employee's firefighting ***."); *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 461 (1983) ("[a] presumption is not evidence and cannot be treated as evidence[,]" and "[a]s soon as evidence is produced which is contrary to the presumption which arose before the contrary proof was offered the presumption vanishes entirely" (internal quotation marks omitted)).

¶ 41 D. The Commission's Decision on Remand

¶ 42 On September 25, 2017, on remand, the Commission found, upon weighing the evidence anew—and giving no evidentiary weight to the presumption in section 1(d)—that Grant "ha[d] proven both accident and causal connection by a preponderance of the evidence." Accordingly, the Commission awarded him workers' compensation benefits, including partial permanent disability in "the sum of $664.72 per week for a period of 100 weeks, for the reason that the injuries sustained caused the loss of use of 20% of the person as a whole."

¶ 43 Again the City petitioned for judicial review. On June 28, 2018, the circuit court confirmed the Commission's decision, finding it was not against the manifest weight of the evidence.

¶ 44 This appeal followed.

¶ 45 II. ANALYSIS

¶ 46 A. The Circuit Court's Finding That the City Forfeited Its Foundational Objection to Orris's Testimony

¶ 47 In its second action for judicial review, the City argued to the circuit court: "The Commission erred as a matter of law by finding there was a sufficient foundation established to support the expert testimony of Dr. Peter Orris." The court found that the City had "waived" (or forfeited) that argument because the City had never contended to the Commission that Orris's testimony lacked a sufficient foundation. See *Buenz v. Frontline Transportation Co*., 227 Ill. 2d 302, 320-21 n.2 (2008) ("While waiver is the voluntary relinquishment of a known right, forfeiture is the failure to timely comply with procedural requirements."); *R.D. Masonry, Inc., v. Industrial Comm'n*, 215 Ill. 2d 397, 414 (2005) ("Arguments not raised before the Commission are waived [*sic*] on appeal."). On appeal, the City challenges the court's finding of procedural forfeiture.

¶ 48 Because the City made a foundational objection in the evidence deposition of Orris, the circuit court erred by holding that the City had forfeited that objection. In the evidence deposition, Grant's attorney asked Orris if, in his opinion, there was "a causal relationship between Mr. Grant's occupation and his having been diagnosed with renal carcinoma," and the City's attorney interjected, "I'll just object as to foundation giving his opinion." The evidence deposition of Orris was petitioner's exhibit No. 1 in the arbitration hearing, and under section 19(e) of the Workers' Compensation Act (820 ILCS 305/19(e) (West 2012)), "the Commission is obligated to review all questions of law or fact which appear from the transcript of evidence" (*Klein Construction/Illinois Insurance Guaranty Fund v. Illinois Workers' Compensation Comm'n*, 384 Ill. App. 3d 233, 237 (2008)). Rights and remedies are the same under the Workers' Occupational Diseases Act (820 ILCS 310/1 *et seq.* (West 2008)) as under the

Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2008)). 820 ILCS 310/7 (West 2008).

¶ 49 B. The Adequacy of the Foundation for Orris's Testimony

¶ 50 1. *The Threshold Question of What Is the Standard of Review*

¶ 51 Although the circuit court found that the City had forfeited its foundational objection to Orris's testimony, the court went ahead and addressed the City's foundational argument as if there had been no forfeiture. Instead of evaluating the foundational argument *de novo* as the City requested the court to do, the court posed the question of whether it was an abuse of discretion to find an adequate foundation for Orris's testimony. The court answered that question in the negative.

¶ 52 On appeal, the City argues that the circuit court applied the wrong standard of review to the foundational issue. On the authority of *People v. Burhans*, 2016 IL App (3d) 140462, ¶ 30, the City maintains that a reviewing court should decide *de novo* whether an adequate foundation existed for an expert's testimony.

¶ 53 The supreme court repeatedly has held that an abuse-of-discretion standard of review applies to a foundational challenge. See *Snelson v. Kamm*, 204 Ill. 2d 1, 24 (2003); *City of Chicago v. Anthony*, 136 Ill. 2d 169, 186 (1990). *Snelson* and *Anthony* take precedence over *Burhans*.

¶ 54 2. *Whether the Commission Reasonably Could Have Found an Adequate Foundation for Orris's Testimony*

¶ 55 The Commission abused its discretion only if "its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by" the Commission. *Caldwell v. Advocate Condell Medical Center*, 2017 IL App (2d) 160456, ¶ 52. Therefore, a reviewing court should ask: Would it be an arbitrary, fanciful, or unreasonable view—a view that

no reasonable person (thinking reasonably) could possibly hold—that Orris's expert testimony had a sufficient foundation? See *id.*

¶ 56 The proponent of expert testimony must lay a foundation for the testimony by establishing that "the underlying facts or data upon which [the] expert bases [his or her] opinion are of a type reasonably relied upon by experts in the particular field." *Anthony*, 136 Ill. 2d at 186; see also Ill. R. Evid. 703 (eff. Jan. 1, 2011); *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 115. This foundational showing can be broken down into two parts: (1) "such items are of the type customarily relied upon by experts in the field" and (2) "such items are sufficiently trustworthy to make such reliance reasonable." (Emphasis and internal quotation marks omitted.) *Lovelace v. Four Lakes Development Co.*, 170 Ill. App. 3d 378, 384 (1988).

¶ 57 For essentially five reasons, the City maintains that Orris's testimony lacked an adequate foundation.

¶ 58 First, the City argues that because Grant was an engineer and, as such, usually was required to stay close to the fire engine and because he wore an apparatus except when he was helping with an overhaul or extinguishing dumpster fires, he could not have been exposed very often to carcinogenic atmospheres.

¶ 59 Second, the City points out that in formulating his opinion, Orris assumed that Grant made 2100 runs a year—an unrealistically high number, as Orris admitted when confronted with the math.

¶ 60 Third, the City observes that Orris "had no concrete knowledge of the specific carcinogens Mr. Grant may have been exposed to or the specific instances, if any, in which he was exposed to them."

¶ 61 Fourth, the City criticizes Orris for being unsure whether Grant had been a firefighter for more than 20 years or less than 20 years at the time he was diagnosed with kidney cancer.

¶ 62 Fifth, the City claims that "the medical literature submitted to the Commission in this matter conclusively supports a conclusion contrary to that of Dr. Orris."

¶ 63 Setting aside, for now, the merits of those five points, none of those points challenge the *type* of facts upon which Orris relied in forming his opinion. Again, the foundation for expert testimony is a showing that "the underlying facts or data upon which [the] expert bases [his or her] opinion are of a *type* reasonably relied upon by experts in the particular field." (Emphasis added.) *Anthony*, 136 Ill. 2d at 186. Orris testified that he based his causation opinion on (1) Grant's history of exposure; (2) knowledge of the types of chemicals to which firefighters typically were exposed when suppressing fires; (3) the latency period of 20 years, which was approximately the length of time Grant had worked for the Peoria fire department; (4) epidemiological literature on firefighters and kidney cancer; and (5) Orris's clinical judgment and knowledge in the field. The City does not appear to dispute that experts in occupational and environmental medicine customarily rely on those *types* of facts or data and that such reliance is reasonable. See *Lovelace*, 170 Ill. App. 3d at 384.

¶ 64 If an expert testifies—as Orris testified—that his or her opinions are based on a reasonable degree of expert certainty within his or her field, a trier of fact may infer that the facts upon which the expert expressly relied are of a type customarily relied upon in that field. See *Melecosky v. McCarthy Brothers Co.*, 115 Ill. 2d 209, 216 (1986); *Yates v. Chicago National League Ball Club, Inc.*, 230 Ill. App. 3d 472, 485 (1992). As the appellate court stated in *Yates*:

> "Where the issue is the exclusion or admission of an expert's entire testimony, the trial court should liberally allow the expert to determine the materials upon which experts in his or her field may rely in rendering an opinion. [Citation.] It is then the opposing party's responsibility to challenge the basis of the expert's opinion, with the weight of the opinion ultimately left to the trier of fact." *Yates*, 230 Ill. App. 3d at 484-85.

¶ 65 The City's five points go to the weight of Orris's testimony, not its foundation. By impliedly finding that Orris's testimony had an adequate foundation, the Commission did not abuse its discretion. See *Anthony*, 136 Ill. 2d at 186.

¶ 66 C. The Sufficiency of the Evidence of Causation

¶ 67 1. *The City's Criticism That Orris Based His Opinion on an Incorrect Assumption That Grant Went on 2100 Runs Per Year*

¶ 68 In his report, Orris wrote that Grant made about 2100 runs a year. In the evidence deposition of Orris, the City's attorney asked him what he meant by "runs" when he wrote that Grant made about 2100 runs a year. Orris answered: "It means that some vehicle from the fire house was mobilized to do something. You mean, what are the ones besides fires? Fireman go do a lot of stuff, cats in trees, [*et cetera*]."

¶ 69 When questioned further by the City's attorney, Orris agreed that 2100 runs a year was an unrealistically high number because if Grant worked 24 hours and was off 48 hours, 2100 runs a year would mean that he went on 210 runs a month. That would have to be "wrong," Orris admitted, considering that Grant was on duty only a third of the days in a month.

¶ 70 On appeal, the City argues that Orris's opinion must be rejected because, by his own admission, it rested on a false assumption that Grant went on 2100 runs a year.

¶ 71 The Commission reasonably could have decided, however, that what really

mattered was not the number of runs Grant went on but how many fires he fought each year. In his deposition testimony, Orris pointed out the difference between runs and fire exposures.

¶ 72 2. *The Medical Literature*

¶ 73 The City argues that Orris's causation opinion flies in the face of the medical literature. It appears, though, that there is *some* support in the medical literature for Orris's opinion, even if the support is not unanimous.

¶ 74 After all, one of the treatises on which the City's attorney cross-examined Orris stated that lead and PAHs were "[p]utative" risk factors for kidney cancer. "Putative" means "commonly accepted." The Merriam-Webster Dictionary 587 (2004). Another treatise on which the City's attorney cross-examined Orris stated that lead and PAHs "clearly" were "agents encountered in firefighting."

¶ 75 A report with which Eggener himself agreed stated that there was "limited" evidence of an association between firefighting and kidney cancer, and the report specially defined "limited" as meaning "a causal relationship is considered to be credible, but chance[,] bias[,] and confounding cannot be rule[d] out with reasonable confidence." Because of those potential shortcomings in the otherwise credible evidence, the report recommended that, in any given case, a causal relationship should not be inferred "automatically" but that, instead, the inference should depend on a variety of factors, such as the amount of fire exposures and the time in service, keeping in mind that the latency period for kidney tumors was 20 years, more or less.

¶ 76 Also, in his deposition testimony, Eggener himself described a study by "Guidotti, 1993," which "found that the relative risk of dying of kidney cancer if you were a fireman was 4.14 with a 95 percent confidence interval of 1.66 to 8.53." This was a "statistically significant"

study, meaning a study in which the confidence interval did not overlap with one. Eggener admitted: "That study suggests with a 95 percent level of confidence that the risk of dying of kidney cancer if you are a fireman is greater than the risk of dying of kidney cancer if you were in the general population."

¶ 77 Granted, as Eggener observed, Grant suffered from obesity and hypertension, which indisputably were risk factors for kidney cancer. But there is no necessary inconsistency between the proposition that Grant's obesity and hypertension were causes of his kidney cancer and the further proposition that his fire exposures also were causes. Grant did not have to prove that his employment was the sole cause of his kidney cancer or even the principal cause; he had to prove only that it was a cause. See *Cossident v. Industrial Comm'n*, 57 Ill. 2d 33, 37 (1974); *Wagner Castings Co. v. Industrial Comm'n*, 241 Ill. App. 3d 584, 598 (1993). Orris testified:

> "I did agree with Doctor Eggener that both obesity and overweight and hypertension were rather well[-]established risk factors, causative factors for kidney cancer, and that in this case they probably operated *as well* as causes for *** Mr. Grant's kidney cancer *along with the firefighting exposure*." (Emphases added.)

¶ 78 3. *The Believability of Eggener Compared to Orris*

¶ 79 The City argues that "Dr. Orris'[s] affiliation with the [Firefighters] Association *** and other municipal fire departments calls into question his credibility," and the City characterizes Eggener's report as being, by contrast, "credible" and "well-validated."

¶ 80 That was an argument for the trier of fact. "The Commission's determination of factual issues, including the resolution of conflicting medical evidence, and the credibility and weight of testimony, will not be disturbed unless against the manifest weight of the evidence."

McLean Trucking Co. v. Industrial Comm'n, 96 Ill. 2d 213, 219 (1983). "Fact determinations are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the agency." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006).

¶ 81 A rational trier of fact could agree with the Commission that Orris is more believable than Eggener. Orris testified that his advisory position with the Firefighters Association was unpaid except that 15 years ago the Firefighters Association paid him an honorarium for speaking at a convention and it covered his expenses whenever his advisory duties required travel.

¶ 82 Perhaps the reason why the Firefighters Association sought Orris's advice was that he had been board-certified in occupational medicine since 1979 and was the chief of service for occupational and environmental medicine at the Chicago Medical Center of the University of Illinois. Occupational medicine, as Orris described it, appears to be the most directly relevant field of expertise in the case. When asked what was the nature of occupational medicine, he answered:

> "A. The specialty is the diagnosis and treatment of occupation [*sic*] or environmentally related illness. *** [A]nd then broader speaking than that, the application of preventive medicine guidelines, either through government regulation or others relevant to workers in the work place."

¶ 83 The occupational causation of disease had been the focus of Orris's 30-year career. By contrast, Eggener testified that except in cases of genetic tumors, the question of what had caused the tumor had no practical relevance to his job. Grant's attorney asked him:

> "Q. With the exception of these genetic tumors, is your treatment

influenced by cause?

A. No."

Eggener further acknowledged that he had no degree in statistics or epidemiology, although he had taken a two-month course on epidemiology at the Harvard School of Public Health. The Commission could have chosen to believe Orris over Eggener because Orris had more training and experience in a field of expertise that was specifically relevant to this case: occupational medicine. Not every reasonable person would have to disagree with that choice.

¶ 84 D. Permanent Partial Disability

¶ 85 Kidney cancer caused by occupational exposure is an occupational disease rather than an occupational injury. Thus, Grant's remedy is under the Workers' Occupational Diseases Act (820 ILCS 310/1 *et seq.* (West 2008)) instead of the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2008)). Nevertheless, section 7 of the Workers' Occupational Diseases Act provides:

> "If any employee sustains any disablement, impairment, or disfigurement, or dies and his or her disability, impairment, disfigurement or death is caused by a disease aggravated by an exposure of the employment or by an occupational disease arising out of and in the course of his or her employment, such employee or such employee's dependents, as the case may be, shall be entitled to compensation, medical, surgical, hospital and rehabilitation care, prosthesis, burial costs, and all other benefits, rights and remedies, in the same manner, to the same extent and subject to the same terms, conditions and limitations, except as herein otherwise provided, as are now or may hereafter be provided by the 'Workers' Compensation Act' for accidental injuries sustained by employees

arising out of and in the course of their employment ***." 820 ILCS 310/7 (West 2008).

¶ 86 "Disablement" includes "an impairment or partial impairment, temporary or permanent, in the function of the body or any of the members of the body ***." *Id.* § 1(e). A member is a body part or organ. A kidney is a member of the body. Kidney cancer, necessitating the removal of the kidney, is an impairment of that member of the body. Thus, under section 7 of the Workers' Occupational Diseases Act, it is necessary to consult the Workers' Compensation Act to determine Grant's remedies.

¶ 87 Section 8(d)(2) of the Workers' Compensation Act (820 ILCS 305/8(d)(2) (West 2008)) "provides for recovery of a percentage of 500 weeks where the compensable injury involves neither a disfigurement under Section 8(c) [(*id.* § 8(c))] nor a scheduled loss under Section 8(e) [(*id.* § 8(e))]." 27 Ill. Prac., *Illinois Workers' Compensation Law* § 18:11 (July 2018 update). Although the loss of a kidney is not a scheduled loss under section 8(e), section 8(d)(2) includes a sentence addressing the loss of a kidney: "In the event such injuries shall result in the loss of a kidney, spleen[,] or lung, the amount of compensation allowed under this [s]ection shall be not less than 10 weeks for each such organ." 820 ILCS 305/8(d)(2) (West 2008). Thus, an employee who loses a kidney to occupational disease unconditionally shall receive permanent partial disability—and all section 8(d)(2) does is specify a minimum of 10 weeks. *Id.*

¶ 88 On the authority of section 8.1b of the Workers' Compensation Act (820 ILCS 305/8.1b (West 2016)), the City argues that Grant's recovery of permanent partial disability benefits corresponding to a 20% loss of the person as a whole is excessive.

¶ 89 Grant responds that section 8.1b is inapplicable because (1) his kidney disease first manifested itself on August 19, 2008; (2) the legislature passed section 8.1b on June 28,

2011; and (3) section 8.1b explicitly states that it applies only to "accidental injuries that occur on or after September 12, 2011" (*id.*).

¶ 90 In its reply brief, the City "agrees with Mr. Grant's contention that this matter is not subject to Section 8.1b of the Illinois Workers' Compensation Act." Even so, the City represents—without citation to any authority—that "the guiding factors set forth in said [s]ection have been consistently used in determining a claimant's said permanent partial disability award." "Arguments unsupported by citation to legal authority are considered as forfeited on appeal." *Neuhengen v. Global Experience Specialists, Inc.*, 2018 IL App (1st) 160322, ¶ 155.

¶ 91 III. CONCLUSION

¶ 92 For the foregoing reasons, we affirm the circuit court's judgment, which confirmed the Commission's decision.

¶ 93 Affirmed.