2011 IL App (5th) 100541WC-U

NO. 5-10-0541WC

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

BYRON LEE Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (United Technologies, Appellee).	)	Appeal from the Circuit Court of St. Clair County. No. 10-MR-77 Honorable Stephen P. McGlynn, Judge, presiding.

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

O R D E R

¶ 1 *Held*: The Commission's finding that the claimant is not permanently and totally disabled is not against the manifest weight of the evidence.

¶ 2 The claimant, Byron Lee, filed an application for adjustment of claim against his employer, United Technologies, seeking workers' compensation benefits for alleged injuries to his hand caused by a work-related accident. The claim proceeded to an arbitration hearing under the Workers' Compensation Act (820 ILCS 305/1 *et seq*. (West 2006)). The arbitrator found that the claimant sustained injuries to his left hand that arose out of and in the course of his employment. The arbitrator awarded temporary total disability benefits from September 12, 2002, through November 24, 2002, and from February 20, 2003, through August 29, 2008. The arbitrator awarded medical expenses. The arbitrator found that the evidence did not support an award for permanent total disability but found that the claimant

was entitled to a wage-differential award of $542.17 per week.

¶ 3 The claimant appealed to the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision. The claimant filed a timely petition for review in the circuit court of St. Clair County. The circuit court confirmed the Commission's decision, and the claimant appealed.

¶ 4 BACKGROUND

¶ 5 The Claimant worked for the employer as a journeyman elevator constructor. On September 11, 2002, he was wiring the top of an elevator and was injured while reaching between a conduit duct and the elevator car. He sustained an injury to his left thumb and hand.

¶ 6 The claimant received treatment at the emergency room at St. Mary's Hospital in East St. Louis. He was then transferred to Barnes-Jewish Hospital. He was treated for a laceration to his left thumb with tendon involvement. He was released the same day.

¶ 7 The claimant followed up the treatment of his injury with Dr. Thomas Tung, of the plastic and reconstructive surgery department at Washington University School of Medicine. Dr. Tung initially examined the claimant on September 20, 2002, and noted that he sustained a laceration on the dorsal aspect of his left thumb over the proximal phalanx and a laceration of the EPL tendon. Dr. Tung found that his laceration appeared to be healing satisfactorily and advised him to wear a Thermoplast splint for three to four weeks then to begin hand therapy. The claimant underwent therapy at the Milliken Hand Rehabilitation Center. On March 4, 2003, Dr. Tung examined the claimant and found that his biggest problems appeared to be persistent pain and limitation of thumb movement. Dr. Tung wrote in his office notes that there was a possible neuroma of the ulnar digital nerve of the thumb. He recommended the claimant return for blocks to his thumb nerves. On April 3, 2003, Dr. Tung released the claimant to return to limited activity work with restrictions of lifting no

more than five pounds with his left hand and no repetitive activity with his left hand.

¶ 8 In Dr. Tung's notes from April 15, 2003, he wrote that blocks of the claimant's radial sensory nerve to the dorsum of his thumb and to the ulnar digital nerve revealed that complete relief from pain would require proximal transposition of the branch from the radial sensory nerve, a neuroma excision of the ulnar digital nerve and reconstruction with a nerve graft, and a tenolysis of the extensor tendon to try to regain more mobility of the thumb. Dr. Tung saw the claimant again on April 23 and June 30, 2003, and noted, both times, that he was hesitant to proceed with the surgery. Eventually, surgery was scheduled for the fall 2005. On October 27, 2005, Dr. Tung again examined the claimant. He wrote that due to the claimant's gastric ulcers and for psychological and emotional reasons, he felt they should not proceed with the surgery. The claimant was to contact Dr. Tung when the issues had been resolved. Dr. Tung referred the claimant to Dr. Swarm for pain management. Dr. Tung examined the claimant on February 4, 2006, and recommended vocational rehabilitation because the claimant was unwilling to undergo surgery.

¶ 9 Dr. Swarm, anesthesiologist and chief of the clinical pain management department at Barnes-Jewish Hospital, testified by evidence deposition that he first examined the claimant on February 25, 2004. He diagnosed the claimant with neuropathic pain involving the left hand consistent with radial sensory neuralgia and symptoms of depression and irritability. He recommended medications to manage the symptoms. On November 15, 2004, Dr. Swarm formally diagnosed the claimant with depression. He referred the claimant to the STEPP program, which involved sessions with a pain psychologist and a physical therapist. The claimant successfully completed the program. Dr. Swarm continued managing the claimant's pain medications. Dr. Swarm stated that, in his opinion, the claimant's pain level was not going to decrease because it was a neuropathic pain and that, due to the age of the injury, any healing had already occurred.

¶ 10 Dr. Michele Koo, a board-certified plastic surgeon, testified by evidence deposition. She first examined the claimant, at the employer's request, on February 10, 2003, and she recommended he undergo a reexploration of the left dorsal thumb to break up the scar tissue or to repair his tendon and resect his possible neuroma. On August 5, 2003, she issued an addendum report that essentially restated her opinions from the February 10, 2003, visit.

¶ 11 Dr. Koo examined the claimant again in April 2005 and recommended that he undergo extensor tenolysis or a transfer of the extensor indices proprius tendon and neuroma excision. She explained that it is an outpatient procedure that is relatively straightforward, quick, and extremely common. It lasts on average 40 minutes to one hour. A regional block to the arm is used. She stated that the surgery would give him flexion and extension which he currently did not have. In a letter to the employer's insurance company dated April 22, 2005, Dr. Koo wrote that she thought the "surgery will improve his quality of life and return him to what he would have been previously doing in his occupation."

¶ 12 If the claimant chose not to undergo the surgery, Dr. Koo "didn't think he would have ever been able to really grasp and lift heavy objects *** as he used to be able to." She testified that, if he chose not to have additional surgery, she would have placed him at maximum medical improvement as of August 5, 2003, because he was far enough out from his original surgery for healing to have occurred. She stated that his hypersensitivity and discomfort had lessened since then, but she "felt he was not going to gain anymore in terms of true function." She also expressed surprise that he refused to undergo the surgery which could "improve someone's function at really practically no risk."

¶ 13 Mike McKee of Concentra Integrated Services was the claimant's first vocational consultant. In his vocational activity reports, Mr. McKee noted that, at times, the claimant had a negative outlook and poor motivation for returning to the work force and that his job search efforts were inconsistent. The claimant pursued occupations outside his vocational

capabilities and sometimes failed to contact the number of prospective employers needed to meet his job search expectations. In his vocational activity report dated January 22, 2007, Mr. McKee noted that the claimant had trouble meeting his vocational goals because he was incarcerated. On February 21, 2007, the claimant's weekly goal was amended so that he would contact 10 prospective employers in person each week. The claimant objected to the amended goal and told Mr. McKee he would contact his lawyer about the change. In the February 21, 2007, vocational activity report Mr. McKee noted that the claimant was becoming frustrated and discouraged. He expressed a hope that this case would settle for "half a mil, ($500,000.00), [so] he could invest in a fast food franchise and resolve all of his problems." Mr. McKee advised him that this may not be realistic. The claimant submitted into evidence job search forms showing the names of the prospective employers he had contacted during his job search.

¶ 14 June Blaine testified by evidence deposition. She stated that she works as a rehabilitation counselor. She said she was retained by the employer to perform a vocational assessment and to assist the claimant in returning to gainful employment. She originally met the claimant on April 24, 2007. When she met with him on May 8, 2007, he expressed interest in training. She thought that because he had a number of years experience as an elevator constructor, training to be an elevator inspector would allow him to utilize the skills he had and allow him to return to the elevator industry.

¶ 15 Ms. Blaine testified that the claimant was very interested in becoming an elevator inspector. She felt that the elevator inspector job would be a good avenue to pursue because it was a natural movement for someone in the elevator industry and it would improve his wages commensurate with what he was making at the time of his injury. She had to submit paperwork to the National Association of Elevator Safety Authorities International for approval for the claimant to take the class. In addition, Ms. Blaine made arrangements for

him to stay in Champaign, Illinois, arranged reimbursement for his mileage, arranged money for his meals, and ordered all the books for the elevator inspector class.

¶ 16 Ms. Blaine stated that the class lasted four days and the test was on the fifth day. The claimant attended the training class and took the test. Prior to going to training, the claimant indicated that his mother had been ill. Ms. Blaine instructed the claimant to tell her if there were problems taking the class or to contact her if he had problems while at the class. She did not hear from him the entire week.

¶ 17 Ms. Blaine stated that originally the claimant told her that he thought he passed the test and that he started it at 8 a.m. and finished it at 4 p.m. Individuals were given eight hours to complete the open book multiple choice test. Ms. Blaine testified that the average length of time to complete the test is between seven and eight hours. The testing records showed that the claimant completed the test in 2½ hours. The claimant did not pass the test. After speaking to the executive director of the National Association of Elevator Safety Authorities International, Ms. Blaine learned that 82% of the people who take the qualified elevator inspector test pass the first time.

¶ 18 When researching why the defendant failed the test, Ms. Blaine learned that, during the course, the claimant was in and out of the classroom taking cell phone calls. She testified that the claimant told her that looking through the books during the test bothered his thumb. She testified that, in her opinion, the claimant did not fully participate in the training and testing to become a qualified elevator inspector. She stated as follows:

> "I just didn't believe that he had made a good faith effort to get the test completed and to make himself available while he was at the program. And again, if there were issues going on, he needed to contact me to make me aware that there were problems. Maybe we would have, you know, stopped it or, you know, had him come back or something, you know, but I was not advised that there were any problems with him

when he was up there."

¶ 19 The claimant testified that because he is left hand dominant and his left hand is injured he could not thumb through the books during the open book exam. He stated that it caused his hand to cramp. He testified that he answered the questions that he knew, he guessed on the rest, and he did not use the rest of the time to look up the answers because his "hand started locking up" and he felt he "went as far as [he] could with using the books." He stated: "I did the best I could and the only other option after my hand locked up was to do what anybody else would do on a test, guess. I went as far as I could."

¶ 20 Ms. Blaine's original vocational rehabilitation plan for the claimant involved training to upgrade his basic computer skills. She arranged for him to take computer classes through the St. Louis County Library. The classes consisted of three courses focusing on different parts of the Microsoft application programs. In Ms. Blaine's vocational and assessment notes dated May 31, 2007, she described each course as consisting of three two-hour classes. The claimant completed two of the courses. He refused to attend one course because it was not offered at the same library branch as the other courses and required him to drive an additional 10 minutes. After he refused to attend the computer class, Ms. Blaine recommended that the claimant's file be put on hold because he was not cooperating with her. She stated that she felt like she was arguing with him to get him to do things:

> "[W]hen I would say, here is what we need to try to do. He would say, well, this is how I do it. Or, you know, it is almost like he was difficult in the sense that he acted like he already knew how to do a job search or that he wasn't willing to listen to the suggestions that I had for services and how I, you know–I was trying to help him. I was trying to set up and follow through on the training and the things he had requested, and then he just made it difficult in the sense that it wasn't right. That if I said this is what you need to do to contact an employer. He said well that's not how

I do it or, you know, this isn't how I am going to do it. So I just really felt that he was difficult and often times not willing to accept suggestions or my expertise."

¶ 21 Ms. Blaine testified that the claimant's job search was further hindered by some type of ongoing legal issue that made him ineligible for jobs that required him to be bonded or for security work. Ms. Blaine testified that she did not know the specifics about the legal issue. In her vocational and assessment notes dated May 31, 2007, Ms. Blaine wrote that during her May 23, 2007, meeting with the claimant they accessed his Great Hires profile and found that it was incomplete and invalid, and thus potential employers had been unable to view his qualifications for employment consideration. She assisted the claimant with updating his profile and submitting it for employers' review.

¶ 22 Ms. Blaine testified as follows:

"I don't believe that he made full use of the vocational effort or the assistance that was provided to him [or] cooperated fully to return himself to gainful employment."

She went on to state that she believed the claimant was currently employable in the open market in positions that were warehouse-related or light delivery-type jobs. To start, these types of jobs would pay $9 to $11 per hour.

¶ 23 Dr. John D. Graham, a pain management specialist, testified by evidence deposition that, at the request of the employer, he examined the claimant on December 31, 2007. Dr. Graham testified that the claimant stated that he was not able to use his left hand in any significant manner and that he used it primarily to gesture. Dr. Graham stated that he examined the claimant's hand and noted that the nails on the left hand, including the thumb, were dirty, that he had pronounced callouses on the palmar aspect of his left hand, and that there was no evidence of atrophy of the thumb, web space, or the intrinsic muscles of the left hand. Dr. Graham stated that because it had been five years since the claimant's injury and he reported that he was not able to use his left hand for anything more than gesturing, there

should have been some wasting of the tissues of the left hand. Dr. Graham stated that the claimant denied doing any yard or gardening work and could not provide him with any activity that would explain the dirty left hand nails. Dr. Graham testified that the callouses were significant because callouses are the result of stress to that part of the tissue in a repetitive ongoing manner. Callouses resolve within a few months of inactivity. Dr. Graham's physical findings were inconsistent with the level of functionality the claimant said he had with his left hand. Dr. Graham testified to a reasonable degree of medical certainty that the claimant was at maximum medical improvement on December 31, 2007.

¶ 24 Dr. Graham ordered a functional capacity evaluation of the claimant. Vic Zuccarrello conducted the evaluation on April 17, 2008. In the evaluation Mr. Zuccarrello noted that the claimant only stayed for 2.5 hours of the 3- to 4-hour test, then refused further testing. The claimant testified that he opted not to perform parts of the test because it was too painful. Mr. Zuccarrello wrote:

> "the subject's subjective complaints are out of proportion with behaviors (periodic laughing despite high c/o pain, driving independently despite high c/o pain, guarding of bilateral upper extremities). It is my professional opinion that he likely could have functioned higher than willing on this date."

After reviewing the functional capacity evaluation, Dr. Graham generated a report dated April 18, 2008, in which he wrote:

> "The patient presented with findings consistent with symptom magnification. The patient reported he was unable to participate due to his left thumb, but the patient was able to use the left upper extremity to close his vehicle door and to drive. The patient refused to do dexterity testing with the left thumb, but was then able to oppose the left thumb."

Dr. Graham released the claimant to function in a full-duty status without restriction.

¶ 25 The arbitrator found that the claimant sustained injuries that arose out of and in the course of his employment. The employer was ordered to pay the claimant temporary total disability from September 21, 2002, through November 24, 2002, and February 20, 2003, through August 29, 2008. The employer was ordered to pay $3,198.88 for necessary medical expenses. The arbitrator found that the evidence in the case did not support an award for permanent total disability because there was no medical or vocational evidence that the claimant was completely unable to work because of his injury. The arbitrator found that the claimant's injury entitled him to a wage-differential award and ordered the employer to pay the claimant $542.17 per week for life.

¶ 26 The Commission affirmed and adopted the decision of the arbitrator. The circuit court confirmed the Commission's decision. The claimant filed a timely notice of appeal.

¶ 27 ANALYSIS

¶ 28 The claimant argues that the Commission's decision that he is not permanently and totally disabled is against the manifest weight of the evidence. "The question of whether a claimant is permanently and totally disabled is one of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 203, 904 N.E.2d 1122, 1133 (2009). A finding of fact is contrary to the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Ameritech*, 389 Ill. App. 3d at 203, 904 N.E.2d at 1133. 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*, 389 Ill. App. 3d at 203, 904 N.E.2d at 1133.

¶ 29 "A person is totally disabled when he cannot perform any services except those that

are so limited in quantity, dependability or quality that there is no reasonably stable market for them." *Interlake, Inc. v. Industrial Comm'n*, 86 Ill. 2d 168, 176, 427 N.E.2d 103, 107 (1981). A person is not entitled to permanent and total disability if he is qualified for and capable of obtaining gainful employment without seriously endangering his health or life. *Interlake*, 86 Ill. 2d at 176, 427 N.E.2d at 107. An employee can establish permanent and total disability in three ways: by a preponderance of medical evidence; by showing a diligent but unsuccessful job search; or by demonstrating that, because of age, training, education, experience, and condition, there are no available jobs for a person in his circumstances. *Federal Marine Technologies, Inc. v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 1117, 1129, 864 N.E.2d 838, 848 (2007).

¶ 30 There is no medical evidence that the claimant is permanently and totally disabled. Dr. Tung released the claimant to work on April 3, 2003, with restrictions of lifting no more than five pounds with his left hand and no repetitive activity with his left hand. In February 2006, Dr. Tung recommended that the claimant participate in vocational rehabilitation.

¶ 31 Dr. Koo testified that she first examined the claimant on February 10, 2003, and at that time she thought he would be able to perform limited-duty work that did not require him to lift more than 20 pounds or to grasp repeatedly with his left hand. She testified that, given the fact that the claimant did not undergo the recommended surgery, he would have been at maximum medical improvement as of August 5, 2003. She stated that, as of that date, he would be restricted from lifting greater than 15 to 20 pounds and "[h]e certainly could have repeatedly grasped as much as he could."

¶ 32 Dr. Graham testified that the claimant claimed not to be able to use his left hand in a significant manner and that he mainly used it to gesture. His exam of the claimant revealed dirty nails on the left hand, including the thumb, pronounced callouses on the left hand, and no evidence of atrophy of the thumb, web space, or intrinsic muscles of the left hand. Dr.

Graham testified that these findings were inconsistent with the level of functionality the claimant said he had with his left hand. Dr. Graham released the claimant to function in a full-duty status without restriction.

¶ 33 Dr. Graham referred the claimant for a functional capacity evaluation. In the report, it was noted that the claimant did not stay for the entire evaluation and refused parts of the testing. Additionally, Mr. Zuccarrello, the administrator of the test, wrote that the claimant's complaints were out of proportion to his behaviors and that in his professional opinion, the claimant could have functioned at a higher level than he was willing to at the evaluation.

¶ 34 The medical evidence presented demonstrated that Dr. Tung, Dr. Koo, and Dr. Graham all felt the claimant could work. The claimant did not present any medical evidence that he was unable to work. Thus, the claimant failed to show by a preponderance of medical evidence that he was permanently and totally disabled.

¶ 35 The claimant argues that he falls into the odd-lot category. The claimant argues that he worked with both rehabilitation counselors provided by his employer and still was unable to find a job. He points out that while working with his first counselor, Mr. McKee, he applied for approximately 460 jobs. He then applied for 180 additional jobs on his own. His employer terminated the services of Mr. McKee and hired Ms. Blaine to assist the claimant with his job search. She arranged for the claimant to take a training course to become a qualified elevator inspector. The claimant attended the course, but he failed the exam. The claimant argues that because he applied for over 600 jobs, worked with two vocational rehabilitation counselors, and unsuccessfully tried retraining, he met the burden of establishing unavailability of employment. He argues that because he showed that there was no employment available to him, the burden shifted to his employer to prove there was suitable work readily and continuously available to him.

¶ 36 "If the employee's disability is limited in nature so that he is not obviously

unemployable, or if there is no medical evidence to support a claim of total disability, he may qualify for 'odd-lot' status." *City of Chicago v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 1080, 1089, 871 N.E.2d 765, 773 (2007). While an odd-lot employee is not altogether incapacitated to work, he is so handicapped that he will not be employed regularly in any well-known branch of the labor market. *City of Chicago*, 373 Ill. App. 3d at 1089, 871 N.E.2d at 773. The employee bears the burden of persuasion of proving odd-lot status. *City of Chicago*, 373 Ill. App. 3d at 1090, 871 N.E.2d at 774. "Only after the employee establishes by a preponderance of the evidence that he falls into the odd-lot category does the burden of production shift to the employer to show that the employee is employable in a stable labor market and that such a market exists." *City of Chicago*, 373 Ill. App. 3d at 1091, 871 N.E.2d at 775.

¶ 37 In *Alexander v. Industrial Comm'n*, 314 Ill. App. 3d 909, 732 N.E.2d 1166 (2000), the claimant argued that the Commission's decision, that he was not permanently and totally disabled because he failed to conduct a diligent job search and therefore failed to demonstrate he fell within the odd-lot category, was against the manifest weight of the evidence. From February 11, 1994, to May 20, 1994, the claimant, with the help of a vocational rehabilitation services company, contacted 431 employers searching for a job. He was placed with a company and terminated his job search. The claimant contended that he was then laid off after two weeks. The company owner stated that the claimant quit. The claimant began another job search and contacted approximately 86 additional potential employers. The vocational rehabilitation specialist testified that many of the jobs the claimant initially applied for were jobs for which he was not qualified. She attempted to follow up on some of his contacts and found that two of the telephone numbers had been disconnected even though the claimant allegedly contacted them one week before. As a result, she terminated his rehabilitation services. The arbitrator found that the claimant failed to meet his burden

that he fell into the odd-lot category. She found that there was no testimony that the claimant was unfit to perform any task except those for which no stable labor market existed. She further found that the claimant failed to show the unavailability of work through a diligent but unsuccessful job search. She found that his job search was of insufficient duration and quality to demonstrate no work was available for a person with his qualifications and background. The Commission affirmed. *Alexander*, 314 Ill. App. 3d at 914, 732 N.E.2d at 1169.

¶ 38 On appeal, the claimant argued that he performed an extensive job search contacting over 500 potential employers in a seven-month period. *Alexander*, 314 Ill. App. 3d at 914, 732 N.E.2d at 1169. He contended that the sheer number of contacts demonstrated that his conduct was reasonable and diligent. The court found that there was no medical evidence that the claimant was totally and permanently disabled. It further found that the claimant failed to establish that no stable labor market existed for an individual with his qualifications. In its analysis, the court noted that the Commission's decision was based primarily on the insufficient quality and duration of the claimant's contacts, rather than sheer numbers. It held that while the facts might support the conclusion urged by the claimant, there was ample evidence to support the Commission's decision. *Alexander*, 314 Ill. App. 3d at 917, 732 N.E.2d at 1172.

¶ 39 The instant case is similar to *Alexander*. The claimant showed that he made a large number of contacts during his job search. However, the Commission found that there was no vocational evidence to support a finding of permanent total disability. Throughout his reports Mr. McKee noted that he believed the claimant was capable of returning to the work force. Additionally, Mr. McKee's reports show that the claimant's efforts to find a job were inconsistent. In his report dated April 21, 2006, Mr. McKee noted that the claimant had "[a]n apparent negative outlook and poor motivation not only [for] returning to the work force, but

daily life as well" which "must be neutralized so that progress can be made." In his July 9, 2006, report, Mr. McKee noted that the claimant had fallen short of the job placement plan guidelines, he had not undergone any interviews since the previous reporting period, and he needed to increase the number of prospective employers he contacted to fully meet job search expectations. In his report dated August 14, 2006, Mr. McKee wrote, "The client seems to be meeting job search expectations, but too many times either the position has been filled or the occupation appears to be beyond his physical capabilities." In his report dated September 15, 2006, Mr. McKee noted that the claimant was pursuing jobs outside his vocational capabilities. He wrote that the claimant needed to improve his job search activities to meet previous guidelines and that he needed to increase his focus on jobs within his vocational profile. In his report dated October 24, 2006, Mr. McKee noted that the claimant had personal problems which interfered with his ability to meet any of the short-term goals set for him. Mr. McKee wrote that the claimant needed improvement to meet the previously set guidelines. In the January 22, 2007, report Mr. McKee noted that the claimant was unable to meet his previous short-term goals because he was incarcerated.

¶ 40 Ms. Blaine testified that she focused her efforts on retraining the claimant. She arranged for the claimant to take a class to be trained as a qualified elevator inspector. He failed to give the class his full attention and exited the classroom repeatedly to take cell phone calls. Additionally, he failed the open book multiple choice test, devoting only 2.5 hours to the 8-hour test. After learning that he failed the test, Ms. Blaine arranged for the claimant to take basic computer skill classes. He refused to attend one course because it required him to drive 10 minutes longer than he drove to the other courses. She testified that the claimant was difficult to work with and that she felt he did not make a good-faith effort to cooperate with her vocational rehabilitation efforts. Ms. Blaine stated that she believed the claimant was employable in the open market earning $9 to $11 per hour.

¶ 41 "Indeed, the most recent cases making an 'odd lot' determination on the basis that there is no stable job market for a person of the claimant's age, skills, training, and work history have required evidence from a rehabilitation services provider or a vocational counselor." *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 545, 865 N.E.2d 342, 358 (2007). The claimant did not provide any vocational evidence that he was unemployable in the open labor market. All of the vocational evidence established that the claimant is employable and capable of returning to gainful employment.

¶ 42 There is ample evidence to support the Commission's determination that the claimant is not permanently and totally disabled. The medical evidence presented showed that the claimant could work. There was vocational rehabilitation evidence that the claimant did not conduct a diligent job search. No evidence was presented that no stable market existed for a person of the claimant's age, with his skills, training, and work history.

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, the judgment of the circuit court of St. Clair County confirming the decision of the Commission is affirmed.

¶ 45 Affirmed.