2014 IL App (5th) 130198WC-U

No. 5-13-0198WC

Order filed April 24, 2014

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

RONALD E. SCOGGINS,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Madison County.
	)	
v.	)	No. 12-MR-202
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, et al.,	)	Honorable
	)	Barbara L. Crowder,
(Richards Brick Company, Appellee).	)	Judge, presiding.

JUSTICE HUDSON delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's findings that claimant's intoxication was the sole cause of his accident or, alternatively, that his intoxication rendered him unable to perform the duties of his position and therefore constituted a departure from his employment are supported by the evidence of record and are not against the manifest weight of the evidence. As such, the Commission's denial of workers' compensation benefits would be affirmed.

¶ 2 Claimant, Ronald E. Scoggins, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2008)) alleging that he injured his right foot and ankle while employed by respondent, Richards Brick Company. Following a hearing, the arbitrator denied compensation. The arbitrator found that claimant's intoxication was the sole cause of the accident. Alternatively, the arbitrator concluded that claimant was so intoxicated at the time of the accident that he had departed from his employment, and, therefore, his accident did not arise out of and in the course of his employment. The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator. On judicial review, the circuit court of Madison County confirmed the decision of the Commission. Before this court, claimant argues that the Commission erred in denying his application for benefits. According to claimant, there was insufficient evidence to establish that his intoxication was the sole cause of the accident. Claimant also argues that the Commission erred in finding that his level of intoxication constituted a departure from his employment because there was no evidence that he was unable to perform the duties of his job at the time of the injury. For the reasons set forth below, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing on June 15, 2011. Claimant began working for respondent, a brick manufacturer, on August 4, 2003. At the time of the accident, claimant had been employed by respondent in the position of "fireman" for nearly five years. As a fireman, claimant was responsible for transferring bricks between various areas, including a holding room, a dryer, a kiln, and a cooling room. The kiln had a steel door that measured 5' by 10' and weighed approximately

1,000 pounds. The kiln door operated by sliding along a track system with rollers. Due to the extreme heat emanating from the kiln, it was necessary to occasionally oil the bearings to allow for easier operation of the door. According to claimant, the kiln door would come off the track about three times a year. This was an occurrence that claimant had witnessed prior to the accident at issue. Claimant testified that when the door jumped off of the track, it was necessary to use a jack bar to lift the door and push it back on the track.

¶ 5 Claimant testified that on July 13, 2008, he was working the 9 p.m. to 5 a.m. shift. Claimant was alone during his shift and was performing his job duties. During his shift, claimant attempted to maneuver a railroad-type car out of the kiln along a track. Claimant testified that when he tried to lock the car in, a brick fell out of the car and hit a lever, releasing the car and causing it to slip off the track. In response, claimant telephoned the acting supervisor, John Wilson, to come in to help him place the car back on the track.

¶ 6 After telephoning Wilson, claimant turned his attention to operating the kiln door. Claimant testified that he had oiled the door's rollers earlier in his shift. Sometime between 3 a.m. and 3:30 a.m., as claimant attempted to maneuver the kiln door, the back roller came off the track. Claimant tried to reattach the back roller to the track by himself. During this process, the front roller came off the track and the door began leaning toward claimant. Claimant's initial reaction was to put up his hands in an attempt to hold the door up. He then turned to run, but the door fell on him, striking his back and crushing his right foot and ankle. Claimant was able to crawl out from under the door, and at about 4 a.m., Wilson arrived and discovered claimant. Wilson loaded claimant onto a cart, and another employee, Tom Jacober, transported claimant by car to Anderson Hospital.

¶ 7 Claimant testified that when he arrived at Anderson Hospital, he provided a urine sample, but he did not recall anyone taking blood from him. He stated that the only reason he knew that the staff had drawn blood was because they told him they had, and they also informed him that his blood-alcohol level at that time was 0.194. Claimant denied drinking alcohol that night and testified that he did not know where the alcohol came from. Claimant was also told that he had drugs in his system. Claimant believed the hospital staff gave him morphine for pain control. Due to the lack of an orthopaedic surgeon to treat claimant at Anderson Hospital, he was transferred to St. Louis University Hospital, where he underwent a closed reduction of the right ankle joint. Claimant contested anything in the St. Louis University Hospital records about testing positive for alcohol because he "[didn't] know where it came from."

¶ 8 Claimant recalled a specific incident of the door coming off its track prior to the incident at issue. Claimant testified that another employee, Kirk Timmons, had experienced the door coming off. According to claimant, during that incident, Timmons required the help of a second employee, "little John," to assist in placing the door back on track.

¶ 9 Medical records show that claimant arrived at Anderson Hospital and was examined at 4:20 a.m. Blood was drawn from claimant at 4:40 a.m. and tested for the presence of alcohol. The test results showed a blood-alcohol level of 0.194 at that time. Claimant also tested positive for benzodiazepines and opiates. Claimant was given Dilaudid intravenously. An X ray of the right ankle showed a lateral talocalcaneal dislocation and medial malleolar fractures. As noted above, due to the lack of an orthopaedic surgeon, claimant was transferred to St. Louis University Hospital for treatment.

¶ 10 Claimant arrived at St. Louis University Hospital at 9:19 a.m. While taking a history of his present illness from claimant, the hospital staff noted that alcohol was a contributing factor to

the accident. Claimant admitted to the staff that he regularly consumed two to three alcoholic drinks on most days. Claimant was given more Dilaudid upon arrival. After undergoing surgery, claimant was advised that he should be admitted for observation. However, claimant "adamantly refused admission" and signed out against medical advice. Claimant testified that he refused admission because he had "a reaction to morphine" and that morphine "makes [him] agitated and [he gets] mean." Claimant admitted, however, that he had never had such a reaction before the incident at issue.

¶ 11 Dale Hackethal testified to his experience with the kiln door. Hackethal stated that when he worked for respondent as a maintenance man, he built the door at issue. Hackethal stated that the door was insulated, made of steel, and weighed approximately 1,000 pounds. Hackethal described the rollers as being two feet long and four inches in diameter with a groove in the center, allowing them to ride on a track. Hackethal was aware of problems with the kiln door coming off the track, and confirmed that a bar was necessary to hold the door up while it was being put back on the track. Hackethal also stated that, given the weight of the kiln door, "at times" it was necessary for more than one person to work on putting the door back up. Hackethal also confirmed that the firemen were aware that the door could pop off of the track and that they knew to be careful with the door for that reason.

¶ 12 Clay Funston, the plant manager for respondent, also testified to his experience with the kiln door. He confirmed that the kiln door came off the track on occasion. Funston testified that the firemen were not instructed on how to put the door back on the track and that every time the door needed to be put back on, a maintenance man was called to jack up the door with a forklift or a bar-and-lever system. Funston recalled that most of the time, he observed two maintenance men working together to put the door back on the track. He also confirmed that if the door came

off the track while claimant was alone, he would have had to call maintenance to assist him. Further, given the weight of the kiln door, Funston opined that if the kiln door came off while claimant was alone, claimant would not have been able to hold the kiln door up by himself.

¶ 13 A report authored by Dr. Christopher Long, a forensic toxicologist with St. Louis University School of Medicine, was admitted into evidence. After a review of claimant's medical records from both Anderson and St. Louis University Hospitals, Dr. Long noted that claimant's blood-alcohol concentration 1.6 hours after the accident was 0.194. Reasoning that this value was most likely a serum blood value, Dr. Long recalculated the concentration of alcohol in claimant's whole blood 1.6 hours after the accident as 0.164. Given claimant's weight of 230 pounds, a value of 0.164 indicated consumption of 9.6 12-ounce servings of beer. Dr. Long then worked backwards in time to the moment of the accident to determine claimant's whole blood-alcohol concentration when the kiln door fell. Dr. Long calculated a value of 0.179, the equivalent of 10.6 12-ounce servings of beer. Dr. Long described this result as "excessive alcohol consumption."

¶ 14 Dr. Long further discussed how a blood-alcohol concentration of 0.179 would manifest itself. According to Dr. Long, a concentration of 0.179 would result in significant impairment of vision, cognitive function (*e.g.*, decision making, memory, thought, and realization), reaction time, attention, muscular coordination, and judgment. In the instant case, Dr. Long opined that claimant would not have been able to adequately notice and comprehend what was happening with the kiln door due to his blood-alcohol concentration. According to Dr. Long, claimant was "clearly impaired while he was at work and reasonably consuming alcohol while at work." Dr. Long further opined that "the magnitude of the blood alcohol would result in very significant impairment" and that "the accident was either the cause or a very significant contribution to

[claimant's] injury." Dr. Long also noted that claimant tested positive for opiates and benzodiazepines. He opined that these compounds would only serve to worsen any impairment from alcohol ingestion.

¶ 15 Based on the foregoing evidence, the arbitrator denied compensation. Citing to *Parro v. Industrial Comm'n*, 167 Ill. 2d 385 (1995), the arbitrator noted that an injured employee's intoxication will bar recovery under the Act if the intoxication is the sole cause of the accident or is so excessive that it constitutes a departure from employment. Relying on Dr. Long's report, the arbitrator determined that claimant's level of intoxication "was so excessive that it not only constitutes a departure from employment, it was also the sole cause of the accident." As such, the arbitrator concluded that claimant failed to prove that he sustained an accidental injury arising out of and in the course of his employment with respondent. Claimant appealed to the Commission, which affirmed and adopted the decision of the arbitrator. Claimant then filed a timely petition for review in the circuit court. The circuit court confirmed the decision of the Commission, after which claimant initiated the present appeal.

¶ 16 II. ANALYSIS

¶ 17 In a workers' compensation case, the claimant has the burden of establishing by a preponderance of the evidence that his injury arose out of and in the course of the employment. 820 ILCS 305/2 (West 2008); *McKernin Exhibits, Inc. v. Industrial Comm'n*, 361 Ill. App. 3d 666, 670 (2005). For an injury to "arise out of" one's employment, it must have an origin in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the injury. *Riley v. Industrial Comm'n*, 212 Ill. App. 3d 62, 64 (1991). Typically, an injury "arises out of" one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his or her employer, acts

which the employee had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). An injury occurs "in the course of" one's employment when it occurs within the period of employment at a place where the employee can reasonably be expected to be in the performance of his or her duties and while he or she is performing those duties or something incidental thereto. *Riley*, 212 Ill. App. 3d at 64.

¶ 18 Under Illinois law, intoxication is not a *per se* bar to workers' compensation benefits. *Lock 26 Constructors v. Industrial Comm'n*, 243 Ill. App. 3d 882, 887 (1993). In *Paganelis v. Industrial Comm'n*, 132 Ill. 2d 468, 481 (1989), the supreme court explained two ways in which an employer could successfully establish an intoxication defense:

> "First, an employee, though in the course of his employment, will be denied recovery if his intoxication is the cause of the injury–that is, if the injury arose out of the intoxication itself rather than out of the employment. Second, excessive intoxication may constitute a departure from the course of employment, and an employee who is injured in that condition does not sustain an injury in the course of his employment. Under the latter rationale, intoxication of a sufficient degree is viewed as an abandonment of employment, or a departure from employment."

In assessing the second intoxication defense discussed in *Paganelis*, courts focus on whether the employee is capable of properly performing the duties of his position. See, *e.g.*, *Parro v. Industrial Comm'n*, 260 Ill. App. 3d 551, 555 (1993) (finding that the claimant, after consuming alcohol, was unable to successfully descend the stairs at her place of employment, a duty she was expected to perform in her job as a bartender), *aff'd on other grounds*, *Parro*, 167 Ill. 2d 385; *Riley*, 212 Ill. App. 3d at 65 (finding that the Commission could reasonably conclude that the

claimant was unable to perform his work after consuming alcohol where he fell asleep at the wheel and struck a utility pole while attempting to make a delivery to a customer). However, intoxication which does not incapacitate the employee from following his occupation is not sufficient to defeat the recovery of compensation although the intoxication may be a contributing cause of the injury. See, *e.g.*, *Lock 26 Constructors*, 243 Ill. App. 3d at 887-88 (upholding award where the claimant introduced evidence that he was able to perform his work after consuming alcohol); *County of Cook v. Industrial Comm'n*, 177 Ill. App. 3d 264, 271-72 (1988) (concluding that the claimant was entitled to benefits where the evidence did not show that he was unable to perform his required tasks after consuming alcohol). In other words, if the intoxication is a contributing cause of the injury but does not prevent the employee from following his or her occupation, then such intoxication is not a bar to recovery. *Parro*, 167 Ill. 2d at 393; *District 141, International Ass'n of Machinists & Aerospace Workers v. Industrial Comm'n*, 79 Ill. 2d 544, 558 (1980).

¶ 19 The *Paganelis* court explained that while prior case law indicated that, for the intoxication defense to succeed, the "ultimate conclusion" must appear as a "matter of law," such a decision actually depends on a variety of factual predicates. *Paganelis*, 132 Ill. 2d at 484. In this case, there were a number of factual disputes raised by the parties, including questions relating to the degree of the claimant's intoxication and his ability to continue properly performing the duties of his employment. Accordingly, this appeal presents questions of fact. With respect to factual matters, it is within the province of the Commission to judge the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). A court of review assesses the Commission's

findings on factual matters under the manifest weight of the evidence standard. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 949 (2011). In this regard, we are mindful that whether a court of review would have drawn different inferences or reached a different conclusion from the same record is immaterial. *Parro*, 167 Ill. 2d at 396. Instead, we must defer to the determination of the Commission as long as there is evidence to support it. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 20 On appeal, claimant argues that the Commission erred in finding that his injuries did not arise out of and in the course of his employment with respondent. Although claimant testified at the arbitration hearing that he did not drink any alcohol on the date of the accident, he now concedes that he was intoxicated at the time of his injury. Nevertheless, he maintains that there was insufficient evidence that his intoxication was the *sole* cause of his injuries. Thus, claimant asserts, respondent was required to show that his intoxication constituted a departure from his employment. According to claimant, however, there was no evidence that he was unable to perform his work duties at the time of his injury. Therefore, claimant reasons, his level of intoxication cannot be said to have resulted in a departure from the course of his employment. Claimant asserts that, at most, his intoxication was a contributing factor to his injury, but that is not enough to deny benefits under the Act.

¶ 21 We first consider whether the evidence supports the Commission's finding that claimant's intoxication was the sole cause of his injuries. Claimant asserts that it was error for the Commission to rely on Dr. Long's report in reaching this conclusion. Claimant's argument is premised on Dr. Long's statement that alcohol intoxication was "*either* the cause *or* a very

significant contribution to [claimant's] injury." (Emphasis added.) Claimant then cites to case law to the effect that if intoxication is only a contributing factor when the employee is otherwise capable of performing the tasks of his employment, then such intoxication does not constitute a departure from the employment.

¶ 22 Claimant, however, cites no requirement under Illinois law that an expert opine with complete certainty that intoxication was the sole cause of a work-related accident. In this regard, the supreme court's decision in *Parro* is instructive. There, the employee was transported to a hospital after she fell down a flight of stairs at work. The employer's expert, Dr. Kale, testified that the employee's blood-alcohol level at the time of her admission to the hospital was 0.288, but was likely higher at the time of the accident. Dr. Kale stated that a person with that amount of alcohol in her bloodstream would be lethargic, inattentive, and clumsy, would have slurred speech, and would have difficulty walking up and down stairs. Dr. Kale then opined that that the employee's intoxication level alone "*could* have caused the [employee] to fall." (Emphasis added.) *Parro*, 167 Ill. 2d at 391. Despite the fact that the expert did not opine with absolute certainty as to causation, the *Parro* court held that the Commission's denial of benefits was not against the manifest weight of the evidence. *Parro*, 167 Ill. 2d at 395-97. Significantly, the *Parro* court refused to substitute its judgment for that of the Commission even when different inferences were possible from the record. *Parro*, 167 Ill. 2d at 396-97.

¶ 23 Applying the *Parro* court's rationale to the instant case, we find Dr. Long's report sufficient to allow the Commission to conclude that claimant's intoxication was the sole cause of his accident. Dr. Long calculated that the concentration of alcohol in claimant's whole blood was 0.164 about 1½ hours after the accident, and 0.179 at the time of the accident. Dr. Long categorized this result as "excessive alcohol consumption" and testified that the amount of

alcohol in claimant's bloodstream would result in a significant impairment of vision, cognitive function, reaction time, attention, muscular coordination, and judgment. He therefore opined that claimant would be unable to adequately notice and comprehend what was happening with the kiln door. As such, Dr. Long determined that claimant was "clearly impaired while at work" and that claimant's blood-alcohol concentration was "either the cause or a very significant contribution to his injury." Based on this evidence, the Commission concluded that claimant's intoxication was the sole cause of his accident. We decline to disturb the Commission's finding as there was sufficient evidence of record to support it. Accordingly, an opposite conclusion is not clearly apparent and we conclude that the Commission's decision that claimant's intoxication was the sole cause of his accident is not against the manifest weight of the evidence.

¶ 24 Notwithstanding the Commission's conclusion that claimant's intoxication was the sole cause of his accident, the Commission also denied benefits on an alternative ground. The Commission determined that claimant's intoxication constituted a departure from his employment because the intoxication rendered him unable to perform his work tasks. Claimant also challenges this determination, asserting that the evidence does not support a finding that he was unable to follow his occupation at the time of his accident. In this regard, claimant notes that prior to the accident he had been performing various job duties for 6½ hours, including oiling the kiln doors and moving bricks between various locations on respondent's premises. Claimant also points out that a review of the hospital records reflects that he was not incoherent and that he was able to communicate with doctors and the staff regarding the nature of his injury. Accordingly, he claims the evidence is insufficient to support the Commission's finding that his intoxication constituted a departure from his employment. We disagree.

¶ 25 Although claimant asserts that his testimony supports a finding that he was able to perform the functions of his job, the Commission, as the trier of fact, was entitled to reject this testimony especially in light of his disavowal of drinking any alcohol on the night in question despite the abundance of evidence to the contrary. More important, there was sufficient evidence from which the Commission could determine that claimant was unable to follow his employment on the night of the accident. In so finding, the Commission relied on the opinion of Dr. Long. As noted above, Dr. Long testified that a blood-alcohol concentration of 0.179 would affect claimant's ability to function and render him unable to adequately notice and comprehend what was happening. Further, there was evidence from which the Commission could reasonably credit Dr. Long's opinion regarding the effect of a blood-alcohol concentration of 0.179 on claimant's ability to function. For instance, claimant testified that shortly before the accident, he was attempting to maneuver a rail car when it derailed and became stuck. Claimant had to call his supervisor to help him place the car back on track. Shortly after calling his supervisor, the kiln's roller came off its track while claimant was maneuvering the door. This latter incident occurred despite evidence that firemen had been warned to be careful with the kiln door so as to avoid the problem of the rollers coming off the track. In addition, after the roller came off the track, claimant made the decision to try to re-hang the door by himself despite evidence that the door weighed 1,000 pounds, it usually requires two men to place the door on its track, and claimant's supervisor was en route to the facility to assist claimant with the derailed car. Based on the foregoing evidence, the Commission could have reasonably concluded that claimant's decision to act alone with respect to the 1,000-pound kiln door was a serious miscalculation of judgment influenced by his excessive consumption of alcohol, and, when coupled with the

mishap with the rail car a short time earlier, constituted sufficient proof that claimant was not able to follow his employment.

¶ 26 Claimant insists that there was no specific policy regarding whether one or two men were required to re-hang the kiln door on its track. While Hackethal did testify that "at times" more than one person was needed to re-hang the door on its track, Funston testified that he observed two men replacing the kiln door most of the time. Moreover, Funston unequivocally stated that it was the maintenance men, and not the firemen, who handled the task of re-hanging the kiln door. Funston further clarified that if the door came off the track while claimant was alone, he would have needed to call maintenance for help. Indeed, claimant himself testified at the hearing as to his awareness that two people could be required to lift and re-hang the door on its track. In this regard, claimant began to tell the story of an employee who needed the assistance of a co-worker to re-hang the door on its track. Claimant's story was interrupted and left unfinished. In any event, this evidence was sufficient for the Commission to reasonably conclude that claimant was cognizant of the fact that re-hanging the door was a task that could require a minimum of two people. Indeed, claimant's admission could conceivably have influenced the Commission's decision to disbelieve portions of his testimony and to place more weight on the opinion of Dr. Long.

¶ 27 Claimant also argues that respondent failed to present two witnesses who were under its control and who witnessed claimant soon after the accident. Specifically, claimant notes that claimant was found by Wilson, the acting supervisor, and transported to Anderson Hospital by Jacober. According to claimant, respondent would likely have presented Wilson and Jacober to testify if they had any information that would have supported its position. Claimant's argument is a reference to the so-called "missing witness" rule. That rule allows the trier of fact to draw an

adverse inference from a party's failure to call a witness where (1) the missing witness was under the control of the party against whom the inference is drawn, (2) the witness could have been produced in the exercise of reasonable diligence, (3) the witness was not equally available to the party in whose favor the inference is drawn, (4) a reasonably prudent person would have produced the witness if the party believed the testimony would be favorable, and (5) no reasonable excuse for the failure to produce the witness is shown. *Board of Education, City of Peoria School District No. 150 v. Illinois Educational Labor Relations Board*, 318 Ill. App. 3d 144, 148 (2000). In this case, claimant urges us to draw an adverse inference from respondent's failure to call Wilson and Jacober, yet he fails to discuss how any of the five foundational requirements set forth above apply. Under these circumstances, we decline claimant's invitation to draw an adverse inference from respondent's failure to call these two witnesses to testify at the arbitration hearing.

¶ 28 Prior to concluding, we note that claimant also briefly argues that case law exists in which employees who had higher blood-alcohol concentrations than him were awarded benefits. Specifically, claimant cites *M & M Parking Co. v. Industrial Comm'n*, 55 Ill. 2d 252 (1973) (blood-alcohol concentration of 0.201) and *County of Cook*, 177 Ill. App. 3d 264 (1988) (blood-alcohol concentration of 0.250) to assert that because his blood-alcohol concentration was lower than that in the cited cases, he should also be awarded benefits. We have rejected similar arguments in the past. For instance, in *Lock 26 Constructors*, the employer suggested to the court that because the employee in that case had a higher blood-alcohol concentration than the claimant in *Paganelis* (who was denied benefits), he should not be entitled to benefits. This court noted, however, that the supreme court did not create a *per se* level of intoxication in *Paganelis*. *Lock 26 Constructors*, 243 Ill. App. 3d at 887. Rather, the dispositive inquiry

involved the specific facts in evidence. *Lock 26 Constructors*, 243 Ill. App. 3d at 887-88. In this case, claimant's argument similarly fails as it has been shown that the evidence supports the Commission's decision.

¶ 29 Moreover, the cases cited by claimant in support of this argument are distinguishable. It is true that the employee in *County of Cook* had a higher blood-alcohol concentration than claimant in this case. However, there was no evidence that his level of intoxication rendered him unable to perform his assigned tasks. To the contrary, there was expert testimony that a person could perform the tasks required of the employee even if intoxicated because the type of activity with which the employee was charged (shoveling gravel) required involved a "cord function," *i.e.*, a conditioned reaction. *County of Cook*, 177 Ill. App. 3d at 271-72. In addition, there was no evidence that the employee's intoxication actually interfered with his ability to perform work tasks. Thus, the employee's intoxication level alone was not probative of whether the employee was unable to engage in his employment duties. Here, in contrast, there was evidence from which the Commission could reasonably conclude that claimant was unable to perform his assigned tasks. The deceased worker in *M & M Parking Co.* also had a higher blood-alcohol concentration than claimant in this case. However, in *M & M Parking Co.*, the claimant (the decedent's wife) presented evidence from co-workers of the decedent, who directly observed him performing his job duties just prior to the fatal accident. *M & M Parking Co.*, 55 Ill. 2d at 254-56. In the present case, there was no evidence from any eyewitness who observed claimant performing his job duties prior to the accident.

¶ 30 Finally, we point out that in both of the cases cited by claimant, the Commission awarded benefits to the claimants. Thus, on appeal, the burden was on the employers to prove the Commission's rulings were erroneous. Here, in contrast, the Commission found *against*

claimant. Thus, it is claimant's burden in this appeal to prove that the Commission's decision was against the manifest weight of the evidence. As noted above, we find that claimant has failed to carry this burden.

¶ 31 III. CONCLUSION

¶ 32 For the reasons set forth above, we affirm the judgment of the circuit court of Madison County, which confirmed the decision of the Commission to deny claimant benefits under the Act.

¶ 33 Affirmed.