

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (1st) 220153WC-U

Order filed: December 16, 2022

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

WILLIAM TORTORIELLO,)	Appeal from the Circuit Court
)	of the 1st Judicial Circuit
Appellant,)	Cook County, Illinois
)	
v.)	Appeal No. 1-22-0153WC
)	Circuit No. 20-L-50483
THE ILLINOIS WORKERS')	
COMPENSATION COMMISSION <i>et al.</i>)	
)	Honorable
(Cook County Highway Department,)	Daniel P. Duffy
Appellee).)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's finding that the claimant failed to establish that his left shoulder and cervical spine conditions were related to the 2012 accident was not against the manifest weight of the evidence.

¶ 2 The claimant, William Tortoriello, appeals a decision of the Illinois Workers' Compensation Commission (Commission) denying his petition for review under sections 8(a) and 19(h) of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/8(a), 19(h) (West 2014)) in which he sought an increase in permanent partial disability (PPD) benefits and the payment of

additional medical expenses. The claimant sought review of the Commission's decision before the circuit court of Cook County, which the court confirmed.

¶ 3 I. BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the hearing before the Commission on February 19, 2020, and the Commission's decision dated October 1, 2020.

¶ 5 A. The 2006 Accident

¶ 6 On January 17, 2012, the claimant was a 59-year-old laborer and driver who plowed snow and provided road maintenance. He had been employed by the Cook County Highway Department (employer) for 20 years. The claimant suffered a work accident on July 10, 2006, which resulted in a torn left rotator cuff and a long head of the biceps tendon. On November 16, 2006, the claimant underwent surgery to repair the tears. An arbitrator awarded him PPD as to his left arm to the extent of 50% loss of use, which was later reduced to 40% by the Commission. The claimant returned to work full duty on May 31, 2007.

¶ 7 B. The 2012 Accident

¶ 8 On January 17, 2012, the claimant returned to the yard to reload his truck with salt when he slipped on ice and fell, striking his back, neck, head, and both shoulders. He was taken to the hospital where he primarily complained of a head injury. Two days later, he presented to his primary care physician, Dr. John Chi Yuan Liu, reporting headaches and dizziness. Dr. Liu agreed to monitor him for concussion symptoms and provide conservative treatment for the claimant's pain in his lower back, neck, and shoulders. Dr. Liu referred the claimant to Dr. Steven Chudik at Hinsdale Orthopaedics for additional evaluation and treatment. On February 15, 2012, the claimant presented to Dr. Chudik and complained of (1) stiffness in his back, neck, head, and both shoulders and (2) left hip pain from the fall. Dr. Chudik ordered the claimant off work and prescribed

physical therapy. On April 11, 2012, Dr. Steven Bardfield, also at Hinsdale Orthopaedics, examined the claimant and diagnosed him with a dorsal spine strain along with bilateral shoulder and hip contusions. Both Drs. Chudik and Bardfield recommended physical therapy. The claimant had completed two sessions of physical therapy when the employer refused to authorize additional therapy until the claimant obtained a section 12 examination (820 ILCS 305/12 (West 2012)).

¶ 9 On March 27, 2012, Dr. Jeffery Coe at Occupational Medicine Associates performed a section 12 examination and diagnosed the claimant with a head contusion and sprain/strain injuries to the neck, back, shoulders, and left hip as a result of the January 2012 fall at work. He found that the claimant could return to work full duty but should be allowed to complete a course of physical therapy. Although Dr. Coe found that the claimant was not yet at maximum medical improvement, he estimated the claimant's permanent impairment at 1% or less of the person as a whole. The claimant returned to work full duty on April 30, 2012, and his claim was heard on January 23, 2013. At the arbitration hearing, the claimant testified that his right shoulder still stiffened and his arm fell asleep. He reported right shoulder pain with digging, plowing snow, cleaning, and mopping. His lower back and left hip bothered him with strenuous activity. He described no left shoulder complaints at that time. In April 2013, an arbitrator found that the claimant suffered multiple contusions and strains as a result of the work accident and awarded him medical expenses, temporary total disability, and PPD benefits of 5% loss of the person as a whole.

¶ 10 C. The 2015 Petition for Review

¶ 11 On March 16, 2015, the claimant filed a petition for review under sections 8(a) and 19(h) of the Act, seeking an increase in PPD benefits and the payment of medical treatment for his left shoulder and cervical spine conditions.

¶ 12 On February 19, 2020, at the hearing on his petition, the claimant testified that his left

shoulder and cervical spine continued to cause him pain following the 2013 arbitration hearing. When the pain and stiffness worsened, he sought reevaluation and treatment for both injuries.

¶ 13 The Commission summarized the medical evidence as follows. On February 25, 2015, the petitioner returned to Dr. Chudik's office complaining of left shoulder weakness dating back to his 2012 accident. On the intake form, the claimant noted he had previous problems with this area as he underwent rotator cuff surgery (for the 2006 accident). He reported to Dr. Chudik that his shoulder had seemed fully healed and functional after his rotator cuff repair and that he had no problems related to his shoulder until the 2012 accident. Although the claimant had some pain and discomfort, his primary complaint at that time was weakness. Dr. Chudik noted that the claimant's left shoulder condition was related to the 2006 rotator cuff surgery. However, six months later, Dr. Chudik revised his records to note that the claimant's left shoulder condition was "s/p" (status post), the 2012 accident. Dr. Chudik concluded that the claimant's medical condition and his need for treatment was causally related to the 2012 work injury rather than the 2006 surgery. The claimant also complained to Dr. Chudik of cervical spine and lumbar pain since the 2012 accident.

¶ 14 An MRI conducted on March 17, 2015, revealed supraspinatus and infraspinatus tendinosis with no definite evidence of rotator cuff tear, findings consistent with prior biceps tenotomy and superior labral debridement, and degenerative findings. The claimant provided to the radiologist that he had a history of pain for a year that was worsening. The radiologist noted a possible rotator cuff sprain. The next day, the claimant followed up with Dr. Chudik, complaining that his left shoulder strength was decreased compared to his right shoulder, which hampered his activities of daily living. Dr. Chudik ordered an EMG of the claimant's upper extremity to look for neurological evidence of the weakness. Dr. Bardfield noted that the EMG revealed evidence of left carpal tunnel syndrome and abnormalities limited to the deltoid and teres minor muscles, suggesting a left

axillary neuropathy. On April 15, 2015, Dr. Chudik diagnosed the claimant with left shoulder axillary neuropathy and returned the claimant to physical therapy. The claimant reported slow but steady progress in return of his muscle strength and coordination.

¶ 15 On February 3, 2016, Dr. Chudik noted that the claimant's pain and weakness had not resolved despite extensive physical therapy. Since the weakness continued, Dr. Chudik recommended surgical release of the axillary nerve. The claimant underwent surgery on January 31, 2017, by Dr. Chudik and Dr. Marc Fajardo to release the axillary and brachial plexus nerves, debride the rotator cuff and labrum, and remove the hardware from the 2006 rotator cuff repair. The procedure also entailed a capsular release, subacromial decompression, and manipulation. On February 13, 2017, the claimant reported that his pain was well-controlled and he was attending postoperative physical therapy.

¶ 16 The claimant also sought treatment for his 2012 neck strain injury. He testified that he consulted a doctor at Rush University Medical Center for his worsening neck pain, who recommended immediate surgery. However, these records were not offered as evidence. The claimant further testified that, on November 16, 2017, he sought a second opinion from Dr. Aruna Ganju at Northwestern University Medical Center, who opined that steroid injections might be necessary to alleviate his neck complaints but recommended that the claimant undergo physical therapy before receiving injections. Dr. Ganju did not offer a causation opinion and the claimant did not return to Dr. Ganju or seek any additional treatment for his neck complaints.

¶ 17 On March 7, 2019, the claimant presented to Dr. Lawrence Lieber for a section 12 evaluation regarding his left shoulder condition. Dr. Lieber reviewed the claimant's medical records, including his left shoulder x-rays and MRI, which he believed confirmed his diagnosis of moderate tendinosis of the rotator cuff. Dr. Lieber opined that the MRI showed degenerative

changes and evidence of prior biceps tenotomy and labral debridement but no evidence of any acute abnormalities. The claimant complained of persistent left shoulder problems with overhead activities, popping, weakness, numbness, and trouble sleeping. On exam, Dr. Lieber noted significant atrophy and weakness about the claimant's left shoulder as well as impingement, apprehension, and instability. He concluded that these conditions were not causally related to the 2012 accident and there was no evidence that the 2012 accident caused any injury to the claimant's axillary nerve. Dr. Lieber believed the only injury to the claimant's left shoulder that resulted from the 2012 accident would be, at most, a contusion. The claimant did not provide a history of left shoulder problems but Dr. Lieber discovered the 2006 surgery through his review of the records. Dr. Lieber found Dr. Chudik's initial evaluation in February 2012 to be reasonable, as well as Bardfield's exam and the four weeks of physical therapy to address the claimant's neck and lumbar areas. However, he asserted there was no evidence that Dr. Chudik's surgical intervention was reasonably related to the 2012 accident.

¶ 18 The Commission found that the claimant failed to establish that his left shoulder and cervical spine conditions for which he received treatment from 2015 through 2017 were related to the 2012 accident. The Commission noted that the claimant returned to work full duty on April 30, 2012, and sought no medical treatment for his left shoulder or cervical spine from that time until he returned to Drs. Chudik and Bardfield in 2015. Further, the Commission noted that the claimant did not testify during the 2013 arbitration hearing that he was having any symptoms in his neck or left shoulder, and he was diagnosed with simple strains/contusions. The Commission observed that Dr. Chudik's notes causally related the claimant's shoulder complaints to his 2006 surgery rather than the 2012 accident for the first six months of treatment. Further, no medical testimony was presented explaining how a left shoulder strain/contusion suffered in 2012 could have resulted in

the conditions described in the operative note. As to the cervical spine condition, the Commission found that there was no causation opinion presented. Therefore, the Commission denied the claimant's petition with regard to both the left shoulder and cervical spine conditions and found the claimant was not entitled to an increase in the permanency awarded for that accident.

¶ 19 The claimant sought review of the Commission's decision before the circuit court of Cook County, which confirmed the Commission's decision. The claimant appeals.

¶ 20 II. ANALYSIS

¶ 21 On appeal, the claimant argues that the Commission's finding that he failed to establish that his left shoulder and cervical spine conditions were related to the 2012 accident was against the manifest weight of the evidence.

¶ 22 The claimant filed a petition for review pursuant to sections 19(h) and 8(a) of the Act. The purpose of a proceeding under section 19(h) is to determine whether a claimant's disability has "recurred, increased, diminished or ended" since the time of the Commission's original decision. 820 ILCS 305/19(h) (West 2014). Under section 8(a), an employer is required to "provide and pay *** for all the necessary first aid, medical and surgical services, and all necessary medical, surgical, and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2014). For a claimant to be entitled to additional compensation under sections 19(h) and 8(a) of the Act, he has the burden of establishing, by a preponderance of the evidence, some causal relationship between his employment and the condition of ill-being for which he seeks additional benefits. See *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989).

¶ 23 The Commission's determinations as to whether to award expenses under section 8(a) and whether the claimant's disability has recurred, increased, diminished or ended for purposes of

section 19(h) present factual inquiries to be resolved by the Commission. *Howard v. Industrial Comm'n*, 89 Ill. 2d 428, 430 (1982). Also, whether a causal relationship exists between the claimant's employment and his condition of ill-being is a question of fact for the Commission. *Mansfield v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120909WC, ¶ 28. In resolving such questions of fact, it is the function of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded to the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). On review, we will not overturn a factual determination by the Commission unless it is against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id.* at 675.

¶ 24 The employer first correctly points out that the claimant's brief fails to comply with Illinois Supreme Court Rule 341 (eff. Oct. 1, 2020). Specifically, the claimant failed to cite any legal authority to support his argument. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020)). The employer also provides that all of the claimant's citations to medical evidence refer to statements in either the arbitration decision or Commission's decision and that none of the medical evidence that was admitted into evidence at trial is part of the record. See Ill. S. Ct. R. 341(h)(6) (eff. Oct. 1, 2020).

¶ 25 Rule 341(h)(7) requires that an appellant's brief must contain both argument and citation to relevant authority. *Vancura v. Katris*, 238 Ill. 2d 352, 369-70 (2010); see *Lake County Grading Co., LLC v. Village of Antioch*, 2014 IL 115805, ¶ 36 (courts of review are not simply depositories into which a party may dump the burden of argument and research). Failure to comply with Rule 341(h)(7) results in forfeiture. *Vancura*, 238 Ill. 2d at 369-70. Therefore, we find that the claimant's argument on appeal is forfeited for his noncompliance with Rule 341.

¶ 26 Even if we excuse the claimant's forfeiture, his argument is without merit. He argues that

the record indicates that the medical care and treatment for his left shoulder and cervical spine conditions were related to the 2012 accident. In sum, he points to the reports from the 2012 accident where it was noted that he suffered injuries to his head, neck, back, shoulders, and left hip, which were functional before the 2012 accident, and Dr. Chudik's notes that related his condition to the 2012 accident. He also contends that Dr. Lieber's section 12 examination is not credible because it ignores the claimant's sworn testimony and the medical records.

¶ 27 We disagree. The record demonstrates that, despite any injury the claimant sustained as a result of the 2012 accident, he returned to work full duty and sought no treatment related to his current conditions until he presented to Dr. Chudik nearly three years later. Further, the Commission noted that the claimant was diagnosed with simple strains/contusions related to the 2012 accident. Although Dr. Chudik's notes later reflected that the claimant's condition was related to the 2012 accident, this conclusion is not helpful because (1) Dr. Chudik did not explain the reason for changing his assessment that the claimant's condition was related to the 2012 accident instead of the 2006 surgery, (2) Dr. Chudik did not explain how a left shoulder contusion/sprain in 2012 could have resulted in a left shoulder axillary neuropathy diagnosis three years later, and (3) Dr. Chudik did not explain how a left shoulder contusion/sprain in 2012 could have resulted in multiple procedures five years later. As noted by the Commission, there is no medical testimony supporting the contention that the claimant's left shoulder contusion/strain could have resulted in the claimant's condition of ill-being. Regarding the claimant's cervical spine condition, there again is no causation opinion relating it to the 2012 accident, as explained by the Commission. We reiterate it was the claimant's burden to demonstrate, by a preponderance of the evidence, such causal relationship. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Here, with the lack of medical evidence supporting causation, he failed to satisfy this burden.

¶ 28 For these reasons, an opposite conclusion is not clearly apparent, and the Commission's finding that the claimant failed to establish that his left shoulder and cervical spine conditions were related to the 2012 accident was not against the manifest weight of the evidence.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, which confirmed the Commission's decision.

¶ 31 Affirmed.