2022 IL App (1st) 211137WC-U

Workers' Compensation
Commission Division
Order Filed: December 23, 2022

No. 1-21-1137WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE FINAL CALL, INC., a/k/a FCN PUBLISHING,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	Nos. 2015 L 50713
	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION and KENNETH WRIGHT,	)	
	)	
	)	
Appellees,	)	
	)	Honorable
(Illinois State Treasurer, as *ex-officio* custodian of the Injured Workers Benefit Fund, Appellee)	)	James McGing,
	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* We affirmed the judgment of the circuit court which confirmed a decision of the Illinois Workers' Compensation Commission that awarded the claimant, Kenneth Wright, benefits pursuant to the Illinois Workers' Compensation Act (Act) (820

ILCS 305/1 *et seq.* (West 2014)) for injuries sustained while working for The Final Call, Inc.

¶ 2 The Final Call, Inc., a/k/a FCN Publishing (FCN) filed the instant appeal from an order of the Circuit Court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) that awarded the claimant, Kenneth Wright, benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)). For the reasons which follow, we afform the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing held on May 24, 2014.

¶ 4 The claimant testified that FCN is the publishing arm of the Nation of Islam and publishes the Final Call newspaper, audio tapes, videos, and CDs. He stated that he had worked for FCN for about 10 years prior to the events giving rise to this claim. According to the claimant, his job title when he was hired by FCN was staff photographer. In the August 10, 2009, issue of the Final Call newspaper, the claimant was identified in the list of staff positions for the newspaper as staff photographer under the name of Kenneth Muhammad.

¶ 5 The claimant testified that his duties for FCN included covering news events, taking pictures for use in the Final Call newspaper, looking for pictures on the news wire, such as Associated Press, to be used in the newspaper, and getting caption information. Before pursuing a story for FCN, he was required to get the approval of the general manager or the editor. He stated that his duties required him to travel to take pictures for the newspaper, using his own vehicle or public transportation. According to the claimant, initially FCN reimbursed him for public transportation expenses, but then ceased to do so.

¶ 6 The claimant testified that, as part of his position with FCN, he worked 6 days per week,

received 2 weeks vacation yearly, and was allowed sick days. He typically worked from 9 or 10 a.m. until 6 or 7 p.m. The claimant stated that he was required to report to the office of FCN's newspaper where he was required to sign in and out, or he would report to wherever it was logistically practical. He stated that the front door at FCN is always locked and a security guard is posted at the door who makes sure that everyone entering the building signs in.

¶ 7 According to the claimant, FCN's editor determined his schedule, and he was required to notify either the editor or FCN's general manager, Fountain Muhammad, if he was going to be late in arriving at the office or was going to another location on an assignment. The claimant testified that it was his understanding that he could have been fired if he did not report to work. According to the claimant, he was in the office 4 to 5 days in a work week. He stated that he was on call and would have to work on his days off if a newsworthy event occurred that required covering. When he was not in the office, he would be contacted by FCN's editor or another staff member if the newspaper needed photographs of an event. He stated that FCN's editors would call him on a weekly basis and instruct him to cover an event. When he was not out on an assignment, he was in FCN's newspaper office working on his photographs or gathering photographs from other news services.

¶ 8 The claimant admitted that, during his time with FCN, he also did freelance photography for other publications such as the Chicago Crusader and the Chicago Defender. He stated that he used the cameras owned by FCN for his freelance work. According to the claimant, FCN's editors were aware of his freelance activities. He denied, however, that he ever worked out of the office of any other publication. The claimant did admit that he had taken photographs of events when he had not informed FCN. He also admitted that he offered photographs which FCN decided not to

use to other publications.

¶ 9 The claimant testified that FCN owned the photographs that he took for the newspaper. He was required to give those photographs and the negatives and memory cards to FCN's editor. FCN owned the cameras that he used to take photographs for the newspaper, and according to the claimant, FCN placed no restriction on his use of its cameras when he was freelancing for another publication.

¶ 10 The claimant initially testified that he was paid $650 every two weeks by FCN; however, when shown past paycheck stubs, he acknowledged that he was paid $630 biweekly. His biweekly checks were always for the same amount without regard to how much he worked or how many pictures he took. Although his paychecks were designated as charity, the claimant stated that it was his understanding that he was being paid for working at FCN's newspaper. According to the claimant, he was originally paid $700 biweekly, but after child support payments and repayment of a loan began to be taken out of his checks, his net biweekly checks were reduced to $630. The claimant admitted that no income taxes or Social Security taxes were deducted from the biweekly checks that he received. He also admitted that he had not filed any income tax returns for the years that he worked for FCN, including for 2009.

¶ 11 Relating the events of January 7, 2009, the claimant testified that he arrived at FCN's newspaper office at 9 or 10 a.m., signed in, and began searching for news events to cover. He found a story about the fire deaths of three infants on south 83rd street near South Shore Drive in Chicago. Prior to pursuing the story, he informed his supervisor, Tomika Muhammad, and Richard Muhammad, the editor, to get approval to cover the story. He stated that he was required to obtain approval before he left the office to pursue the story. According to the claimant, both his supervisor

and the editor said that they were interested in the story. He testified that he had hoped that FCN would provide him with transportation, but no one was available.

¶ 12 The claimant stated that he left FCN's office at 11 a.m. to cover the story of the three infants and, because he did not own a vehicle, he took public transportation to the scene. He signed out of the office and got on to an eastbound CTA bus at the stop across from FCN's office on 79th street. He rode to South Shore Drive where he transferred to a southbound CTA bus, travelling toward his destination. The claimant testified that after boarding the southbound bus he took three or four steps when the force of the bus moving caused him to fall. His left leg bent at the knee, and he hit his back and left arm on the floor of the bus. According to the claimant, he immediately felt pain in his left leg, left shoulder, and left wrist. The Chicago Fire Department was notified, and an ambulance was dispatched to the scene. When the ambulance arrived, the claimant was lying on his back. He was transported to South Shore Hospital.

¶ 13 The records of South Shore Hospital reflect that the claimant complained of left leg and left shoulder pain. According to the claimant, his leg was swollen to two or three times its normal size. X-rays of the claimant's left shoulder and left knee were taken. The x-ray of the claimant's knee revealed soft tissue swelling with suspected suprapatellar joint effusion. An emergency room physician diagnosed the claimant as suffering from left shoulder and left knee contusions. He was given pain medication, crutches, and a cane, and he was discharged from South Shore Hospital with the recommendation that he follow up with his own doctor. The claimant admitted that he had suffered two prior injuries to his left knee.

¶ 14 The claimant testified that he asked a nurse at the hospital to call his girlfriend and FCN's editor and advise them of his accident. He stated that, following that day, he told Richard

Muhammad, FCN's editor, that he was unable to walk because of his accident. According to the claimant, Richard Muhammad was aware that he was on his way to cover a story at the time of his injury.

¶ 15 The claimant testified that he followed up with a visit to a doctor whose name he could not remember. He stated that she gave him a referral for an MRI. However, he did not go for the recommended MRI due to lack of funds.

¶ 16 On February 3, 2009, the claimant sought treatment at Stroger Hospital. He testified that he was experiencing pain in his left leg, left ankle, and right arm. According to the claimant, his left leg was still swollen, and he was unable to walk. X-rays taken of the claimant's left knee at Stroger Hospital revealed soft tissue swelling.

¶ 17 Later in the month of February 2009, the claimant worked several days for FCN on an assignment at a "Savior's Day" event for which FCN provided his transportation. After that assignment, the claimant never returned to work for FCN, and he later returned FCN's cameras that he had been using.

¶ 18 The claimant testified that he saw Dr. Robert Muhammad, originally stating that he saw the doctor at his office but later testifying that he saw the doctor at the "Savior's Day" event. He stated that it was Dr. Robert Muhammad who referred him to Dr. Kermit Muhammad at Oak Orthopedics.

¶ 19 The claimant presented at Oak Orthopedics on March 20, 2009, complaining of left knee pain. On an intake form, a member of the registration staff, Dana Carnahan, recorded that the claimant was to be seen for left knee complaint sustained when he slipped going to his seat on a bus on January 7, 2009. The form contains a question: "Is this a work-related injury?"; followed

by the word "No." The claimant was seen that day by Dr. Kermit Muhammad who noted a history of the claimant having "sustained an injury during the course of his work duties when he slipped on a CTA bus in Chicago during January of this year." The doctor noted that the claimant was complaining of left knee pain and difficulty ambulating. Dr. Kermit Muhammad ordered x-rays of the claimant's left knee which showed no bony abnormality, and mild patellofemoral joint space narrowing. Following the x-rays, Dr. Kermit Muhammad ordered an MRI of the claimant's left knee to confirm the findings and to determine the amount of tendon retraction present. The claimant had the recommended MRI that same day. The MRI report states that the MRI revealed a full thickness tear of the claimant's distal quadriceps tendon with a 1.6cm fluid-filled gap, a mild sprain of the medial collateral ligament, and joint effusion. Dr. Kermit Muhammad noted that, after reading the MRI, he called the claimant and explained to him that his tendon was ruptured and retracted, and he recommended immediate left knee surgery to repair the rupture.

¶ 20 On March 21, 2009, Dr. Kermit Muhammad authored a letter addressed to Fountaine Muhammad at FCN which states that the claimant presented for evaluation of an injury to his left knee that he sustained in the normal course of his duties for FCN and informing Fountaine Muhammad that the claimant's injury was serious and would require surgical intervention and prolonged post-surgical rehabilitation. According to the letter, during the claimant's initial medical work-up, the extent of his injury was not immediately recognized and that his proposed operative procedure was exponentially more difficult due to the fact that the claimant's injury had been neglected for such a long period. In addition to reporting the extent of the claimant's left knee injury and his proposed surgical procedure, Dr. Kermit Muhammad estimated both that the claimant might be able to return to work in 6 to 9 months, depending upon his progress and that

the claimant's entire recovery period was expected to be at least 12 to 18 months if there were no complications.

¶ 21 On March 23, 2009, Dr. Kermit Muhammad executed a work status report relating to the claimant which stated: "No work until further notice."

¶ 22 On March 26, 2009, Dr. Kermit Muhammad operated on the claimant's left knee at Riverside Medical Center. Following that surgery, Dr. Kermit Muhammad continued to treat the claimant. The doctor's notes of the claimant's April 3, 2009, visit, state that the claimant had no new complaints, his leg wounds were intact with staples in place, and that he ordered a long leg splint for the claimant.

¶ 23 On April 7, 2009, Dr. Kermit Muhammad issued a work status report, stating that the claimant could begin working from home on the internet from 11:00 a.m. until 5:00 p.m. with his leg elevated. The claimant was next seen by Dr. Kermit Muhammad on April 10, 2009, for removal of his sutures. The doctor noted that the claimant's wound was intact, and he applied a dressing. Dr. Kermit Muhammad saw the claimant on April 20, 2009, at which time he noted that the claimant had no new complaints, his incision was intact with sterile strips in place, and that he had ordered a hinged knee brace for the claimant.

¶ 24 On May 1, 2009, Dr. Kermit Muhammad sent a letter addressed to Fountaine Muhammad at FCN which reported on the claimant's March 26, 2009, surgery, his post-surgical treatment, and his expectation that the claimant would begin therapy in about 2 weeks. The letter estimated that the claimant might be able to return to work in 3 to 6 months and that the claimant's entire recovery period was expected to be at least 12 to 18 months.

¶ 25 Dr. Kermit Muhammad's notes state that: on May 5, 2009, the claimant was able to perform

a straight leg test and bend his knee to some degree, and his knee brace was unlocked to 30 degrees; on May 26, 2009, the claimant was able to perform a straight leg test with some extensor lag and bend his knee to 90 degrees; and on June 30, 2009, the claimant was able to perform a "full straight leg raise without lag," he had near complete flexion in his left knee, and his knee brace was unlocked completely. The claimant admitted that, in the months of May and June 2009, he experienced improvement.

¶ 26 The claimant testified that he initially sought therapy from a physician who conducted therapy in his office. He admitted, however, that he discontinued the treatment, explaining that he had no money and the physician who was supposed to administer the treatments was never in his office when he attempted to go for therapy, but he was, nevertheless, being billed for services.

¶ 27 FCN continued to pay the claimant through September 2, 2009, but made no further payments thereafter. In a letter dated September 3, 2009, the law firm representing FCN sent a letter to the claimant via his attorney, stating that FCN was terminating all payments to him because, although he was "once employed" by FCN as a photographer, he had not been "actively working" for several months. The claimant testified that it was his understanding from the letter that he had been fired by FCN. The letter also states that all of the payments made to the claimant by FCN after his accident were gratuitous. The letter asserted that the claimant had informed FCN, "[i]n or around March of 2009," that he was injured while traveling on public transportation. When cross-examined, the claimant agreed that the sentence in the letter was "a memorialization of when [he] notified *** [FCN] of *** [his] work injury." The claimant stated that he subsequently returned FCN's cameras to its office, and FCN's assistant editor came to his home to pick up the photographs that he had stored on computer drives and compact discs.

¶ 28 The claimant testified that he still had to walk with a cane or have someone accompany him because he worried about falling when he walked. He stated that his leg was stiff and tight, and he experienced pain in his leg with motion. On March 3, 2010, Dr. Kermit Muhammad wrote an order for the claimant to receive physical therapy 2 to 3 times per week for a period of 6 weeks. Thereafter, the claimant enrolled in a physical therapy program at Accelerated Rehabilitation Center (ARC) to improve his knee. Upon entering that program, he reported that he was experiencing left-knee pain and limited active range of motion and was unable to complete a straight leg raise. According to the claimant, the therapy at ARC was successful and helped his ability to walk. The claimant was found to be at "maximum rehabilitation benefit" on April 29, 2010, when he completed the physical therapy program at ARC.

¶ 29 The claimant testified that he continues to experience weakness and buckling of his left knee when he walks and limited mobility of his left-shoulder. He stated that he had not been paid by FCN since the check dated September 2, 2009, and to the best of his knowledge, his medical bills have not been paid. The claimant also testified that FCN never offered him light duty work.

¶ 30 Following the arbitration hearing held on May 24, 2014, the arbitrator issued a written decision on September 5, 2015, finding that the claimant sustained injuries on January 7, 2009, that arose out of and in the course of his employment with FCN and a causal connection exists between the claimant's current condition of ill-being and his January 7, 2009, accident. As preliminary matters, the arbitrator specifically found that FCN was subject to the provisions of the Act, that an employer/employee relationship existed between FCN and the claimant, and that the claimant gave FCN timely notice of his accident. The arbitrator awarded the claimant 34 weeks of temporary total disability (TTD) benefits for the period from September 4, 2009, through April 29,

2010; 53.75 weeks of permanent partial disability (PPD) benefits for a 25% loss of use of the left leg; 10 weeks of PPD benefits for a 2% loss of the person as a whole; and ordered FCN to pay $34,029.54 for reasonable and necessary medical expenses incurred by the claimant. In addition, the arbitrator entered the award against the Illinois State Treasurer (Treasurer), as *ex-officio* custodian of the Injured Workers Benefit Fund (Fund), and ordered FCN to reimburse the Fund for any compensation that the Fund pays to the claimant pursuant to the award.

¶ 31 FCN filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On August 27, 2015, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision and again ordering FCN to reimburse the Fund for any compensation that the Fund pays to the claimant pursuant to the award.

¶ 32 FCN sought a judicial review of the Commission's decision in the circuit court of Cook County. On June 24, 2016, the circuit court confirmed the Commission's decision, and FCN filed an appeal from that order. *The Final Call, Inc., a/k/a FCN Publishing v. Illinois Workers' Compensation Comm'n (Final Call I)*, 2017 IL App (1st) 162030WC-U.

¶ 33 In *Final Call I*, the Treasurer argued, *inter alia*, that the circuit court was without jurisdiction to review the Commission's decision by reason of FCN's failure to establish that it filed a request for summons within 20 days of receiving notice of the Commission's decision as required by section 19(f)(1) of the Act (820 ILCS 305/19(f)(1) (West 2014)). *Final Call I*, 2017 IL App (1st) 162030WC-U, ¶ 2. As a consequence, we vacated the circuit court's judgment of June 24, 2016, and remanded the matter to the circuit court with directions to conduct a hearing on the issue of whether FCN filed its request for summons within 20 days of its receipt of notice of the Commission's decision and, in the event that FCN proved that it complied with the 20-day

requirement, to reinstate its order of June 24, 2016, confirming the Commission's decision of August 27, 2015. *Final Call I*, 2017 IL App (1st) 162030WC-U, ¶ 11.

¶ 34 On remand, the circuit court conducted the hearing as ordered on August 23, 2018. Following that hearing, the circuit court entered an order finding that FCN filed its request for summons within 20 days of its receipt of notice of the Commission's decision. However, totally absent from the order was any language reinstating the circuit court's order of June 24, 2016, confirming the Commission's decision of August 27, 2015.

¶ 35 On December 28, 2018, FCN filed a notice of appeal from the circuit court's order of June 24, 2016. On motion of the Treasurer, we dismissed that appeal on May 16, 2019, for want of jurisdiction. *The Final Call, Inc., a/k/a FCN Publishing v. Illinois Workers' Compensation Comm'n (Final Call II)*, No. 1-18-2724WC.

¶ 36 On May 23, 2019, FCN filed a motion in the circuit court titled "Motion for entry of an Order in Compliance with the Appellate Court Remand" in which it sought an order confirming the Commission's decision. When FCN's attorney failed to appear for a hearing on June 6, 2019, the circuit struck the motion "with prejudice."

¶ 37 On July 2, 2019, FCN filed a motion to vacate the June 6, 2019, order. Following a hearing on that motion, which was held on July 11, 2019, the circuit court entered an order stating that it reinstated the Commission's decision of August 27, 2015.

¶ 38 On July 16, 2019, FCN filed a notice of appeal stating that it was appealing from the circuit court's order of July 11, 2019. However, the order of July 11, 2019, stated that the circuit court reinstated the Commission's decision, not its order of June 24, 2016. Finding that the circuit court had failed to reinstate its order of June 24, 2016, this court held that no final order had yet been

entered and, on October 23, 2020, dismissed FCN's appeal of July 16, 2019, for want of jurisdiction. *The Final Call, Inc., a/k/a FCN Publishing v. Illinois Workers' Compensation Comm'n (Final Call III)*, 2020 IL App (1st) 191459WC-U, ¶ 16.

¶ 39 On July 6, 2021, FCN filed a motion in the circuit court again seeking the entry of a final order in compliance with this court's order of October 23, 2020. On August 16, 2021, the circuit court granted the motion and, on September 8, 2021, entered an order reinstating its order of June 24, 2016, which confirmed the Commission's decision of August 27, 2015. This appeal followed.

¶ 40 Before addressing the claims of error raised by FCN in this appeal, we again find it necessary to admonish a litigant for failure to comply with the requirements for briefs filed with this court.

¶ 41 Illinois Supreme Court Rule 341(h)(9) (eff. Oct. 1, 2020) requires that an appellant's brief contain an appendix as required by Rule 342 (eff. Oct. 1, 2019). Rule 342 requires that the appendix to an appellant's brief contain a complete table of contents of the record, which is to include, among other things, the nature of each exhibit in the record with page references and the names of all witnesses and the pages on which their direct examination, cross examination, and redirect examination begin. Rather than enumerating the exhibits introduced at the arbitration hearing and their page references or setting forth the pages on which the claimant's direct, cross, and redirect examinations are found in the record, the appendix filed with FCN's brief contained two entries which were labeled "ADMINISTRATIVE RECORD 1 of 2" and one entry labeled "TRANSCRIPT OF PLEADINGS AND PROCEDINGS 1 of 2." These three entries cover 910 pages of the record within which the testimony of the claimant and the exhibits introduced at the arbitration hearing are located. This court would have been required to search through 910 pages

of the record to find the claimant's testimony and the exhibits relevant to the disposition of this appeal. Rule 342 also requires that the appendix to an appellant's brief contain, among other things, copies of the order appealed from and the notice of appeal. The appendix filed with FCN's brief contained neither. In addition, when, as in this case, an appeal involves the review of a decision of the Commission, Rule 342 mandates that the appendix to an appellant's brief contain the decisions of both the arbitrator and the Commission. Again, the appendix filed with FCN's brief contained neither. As a result of the deficiencies in the appendix filed with FCN's brief, this court entered an order striking the appendix and ordering FCN to file a new appendix in compliance with the requirements of Rule 342.

¶ 42 In addition, we find need to comment on the content of FCN's brief itself. FCN fixed the issues in this appeal as whether the trial court abused its discretion when it confirmed seven specific findings of the Commission. First, the circuit court's review of a decision of the Commission has nothing to do with an exercise of its discretion. Second, and more fundamentally, when, as in this case, an appeal has been taken following the entry of a judgment by the circuit court on judicial review of a decision of the Commission, it is the decision of the Commission that we review, not the findings or reasoning of the circuit court. *Dodaro v. Illinois Workers' Compensation Comm'n*, 403 Ill. App. 3d 538, 543 (2010). Consequently, we were required to recast the seven issues to inquiries of whether the Commission's findings on each are against the manifest weight of the evidence.

¶ 43 Illinois Supreme Court Rule 341(h)(1) (eff. Oct. 1, 2020) requires that an appellant's brief contain:

> "A summary statement, entitled 'Points and Authorities,' of the points argued and the authorities cited in the Argument. This shall consist of the headings of the points and subpoints as in the Argument, with the citation under each heading of the authorities relied upon or distinguished, and a reference to the page of the brief on which each heading and each authority appear."

In FCN's brief there is a single page labeled "Points and Authorities" which contains seven headings of the points in its argument followed by two pages under the label of "Cases" which contain citations to the authority upon which it relies. Contrary to the requirements of Rule 341(h)(1) the authorities relied on do not appear under headings to which they refer, nor do the headings set forth the page reference on which each of the seven appear in the argument section of FCN's brief.

¶ 44 We remind counsel for FCN that Illinois Supreme Court Rules are not advisory suggestions; rather, they are rules which have the force of law, and the presumption is that they will be followed as written. *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995). This court has the discretion to strike an appellant's brief for failure to comply with the rules of the supreme court and dismiss the appeal. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77. We elect not to do so in this case and will address the issues raised on the merits.

¶ 45 We address first FCN's argument that it is a non-profit, religious institution and not subject to the Act. The Treasurer argues that FCN has forfeited the issue by failing to support its argument with citations to relevant authority in its opening brief as required by Rule 341(h)(7). See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). We reject the Treasurer's forfeiture argument because the issue as raised involves a question of the Commission's jurisdiction; an issue that cannot be waived or

forfeited. *Eschbaugh v. Industrial Comm'n,* 286 Ill. App. 3d 963, 967 (1996).

¶ 46 The Act provides that all questions arising under the Act shall be decided by the Commission. 820 ILCS 305/18 (West 2014). The Commission is a creature of statute, and its powers are limited to those set forth in the statute. Any authority claimed by the Commission must arise from the express language of the statute or be incident to the authority conferred by the legislature. *Textile Maintenance v. Industrial Comm'n,* 263 Ill. App. 3d 866, 869 (1994). If, as FCN argues, it is not subject to the Act, then the Commission had no jurisdiction to enter any decision or orders against it.

¶ 47 Although we have rejected the Treasurer's forfeiture argument, on the merits, we reject FCN's assertion that it is not subject to the Act. Section 3 of the Act provides, in relevant part, that: "The provisions of this Act hereinafter shall apply automatically and without election to *** all employers and all their employees, in any department of the following enterprises or businesses which are declared to be extra hazardous, namely: *** 15. Any business or enterprise in which electric, gasoline or other power driven equipment is used in the operation thereof." 820 ILCS 305/3(15) (West 2008). The claimant testified that FCN uses computers, a copy machine, and other electric equipment. His testimony was unrebutted. Further, the fact that FCN may be a non-profit, religious institution, as it alleges, does no exempt it from the Act. See 820 ILCS 305/1(a)(2) (West 2008). We conclude, therefore, that the finding of the arbitrator, which the Commission adopted, that FCN was operating under, and subject to, the provisions of the Act is not against the manifest weight of the evidence.

¶ 48 Next, we address FCN's argument that the Commission's finding that an employer/employee relationship existed between it and the claimant is against the manifest weight

of the evidence. FCN acknowledges that the question of whether an employer/employee relationship existed between it and the claimant was a question of fact to be resolved by the Commission, and its resolution of the question will not be disturbed on review unless it is against the manifest weight of the evidence. *Netzel v. Industrial Comm'n*, 286 Ill. App. 3d 550, 553. For the Commission's resolution of a fact question to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 39. Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 49 FCN contends that the evidence in this case "weighed mightily" in favor of a determination that it and the claimant shared an employer/independent contractor relationship. FCN notes that the claimant was free to take pictures for other newspapers, that it never attempted to stop the claimant from doing so, and it allowed the claimant to use its cameras when freelancing for other newspapers. FCN also notes that no taxes were taken out of the checks that it issued to the claimant. It asserts that, although its attorneys September 3, 2009, letter indicated that the claimant "was once employed by Final Call," the letter did not specify in what capacity the claimant was employed. FCN contends that the claimant controlled his own actions as evidenced by his ability to select news events to cover, his freelance photography for other papers, and the fact that the claimant was not reimbursed for travel when he was taking photographs for FCN. FCN points out that, although the claimant was required to sign in when he entered FCN's office, he acknowledged that it was a security procedure. FCN concludes that, although "a few minor points could be assigned to the employee determination, the

'manifest weight of the evidence' tilts significantly towards *** [the claimant] being an independent contractor." In support of that conclusion, FCN quotes the claimant's testimony where he stated: "I was never given any restrictions [by The Final Call] on what I could cover and not cover, do or not do[.]" We note, however, that that testimony was part of the claimant's response to a question relating to his use of FCN's cameras, and specifically to the following question: "What if anything was mentioned about the use of those cameras with regard to restrictions or your allowance whatever, you could do with the camera?"

¶ 50 Arguing in support of the Commission's determination that an employer/employee relationship existed between FCN and the claimant, the Treasurer asserts that the evidence established that FCN exercised control over the claimant's work. It controlled his choice of subjects to photograph for it, and he was required to seek approval from the editor or his supervisor before pursuing his own selection of stories to pursue. The Treasurer also contends that FCN controlled where the claimant did his work and when, noting that the claimant testified that he was required to be in FCN's office when he was not out on assignment, and when he was out on an assignment, he was required check in by phone. According to the claimant, he worked regular hours 6 days each week. The Treasurer argues that the nature of the claimant's work being an integral part of FCN's business and his receipt of biweekly checks from FCN both militate in favor of the Commission's finding of an employer/employee relationship. The Treasurer also notes that FCN owned the digital cameras and ancillary equipment that the claimant had been exclusively using from 2005 until the date of his accident.

¶ 51 It was the claimant's burden to prove, by a preponderance of the evidence, the existence of an employer/employee relationship between himself and FCN. See *Pearson v. Industrial*

Comm'n, 318 Ill. App. 3d 932, 935 (2001). There can be no liability under the Act absent an employer/employee relationship. *Id.* When the evidence on the question is conflicting and the facts subject to diverse interpretation, the question of whether such a relationship existed is one of fact to be resolved by the Commission. *Id.* Accordingly, this court will disturb the Commission's finding on this issue only if it is against the manifest weight of the evidence. *Labuz v. Illinois Workers' Compensation Comm'n,* 2012 IL App (1st) 113007WC, ¶ 29.

¶ 52 Section 1(b)(2) of the Act defines an employee as "[e]very person in the service of another under any contract of hire, express or implied, oral or written ***." 820 ILCS 305/1(b)(2) (West 2008). There is no rigid rule to determine whether a worker is an employee or an independent contractor. *Ware v. Industrial Comm'n,* 318 Ill. App. 3d 1117, 1122 (2000). "When elements of both the relationship of employee and independent contractor are present and the facts permit an inference either way, the Commission alone is empowered to draw the inference and its decision as to the weight of the evidence will not be disturbed on review." *Young American Realty v. Industrial Comm'n,* 199 Ill. App. 3d 185, 188 (1990).

¶ 53 No rule has been adopted to govern all cases when the issue is whether an individual is an employee or an independent contractor. *Roberson v. Industrial Comm'n,* 225 Ill. 2d 159, 174–75 (2007). Instead, a number of factors should be considered, namely: whether the employer may control the manner in which the person performs the work; whether the employer dictates the person's schedule; whether the employer pays the person hourly; whether the employer withholds income and social security taxes from the person's compensation; whether the employer may discharge the person at will; whether the employer supplies the person with material and equipment; and whether the employer's general business encompasses the person's work.

Roberson, 225 Ill. 2d at 175. No single factor is determinative, and the resolution of the question rests on the totality of the circumstances. *Id.* However, the single most important factor to be considered is whether the purported employer has a right to control the person's actions. *Ware*, 318 Ill. App. 3d at 1122.

¶ 54 In this case, the clamant was the only witness to testify at the arbitration hearing. The arbitrator found the claimant's testimony to be both unrebutted and credible; findings which the Commission affirmed and adopted. The claimant testified that he worked for FCN for about 10 years before his accident. He stated that he worked 6 days per week, typically from 9 or 10 a.m. until 6 or 7 p.m., and that FCN's editor determined his schedule. He was required to report to FCN's office whenever he was not out on an assignment. According to the claimant, he was required to notify the editor or his supervisor if he was going to be late or if he was going to an assignment. He was required to sign in when he arrived at the office and sign out when he left. He admitted, however, that signing in was a security procedure. The claimant testified that he had the freedom to choose the stories he would cover for FCN but, prior to pursuing a story, he was required to tell his supervisor and the editor and get their approval. These facts clearly support the conclusion that FCN exercised control over the work that the claimant was required to perform and that it dictated his work schedule.

¶ 55 FCN publishes a newspaper and the photographs which the claimant took for FCN were for insertion into that newspaper. Obtaining photographs of newsworthy events was a part of FCN's newspaper business. Further, FCN provided the cameras that the claimant used. Although no taxes were taken out of the claimant's checks, FCN paid him the same amount biweekly without regard to the number of hours he worked or the number of pictures that he took for FCN.

¶ 56 We believe that the claimant's uncontradicted testimony is more than sufficient to support the Commission's determination that an employer/employee relationship existed between FCN and the claimant on January 7, 2009, the date of his injury. And because an opposite conclusion is not clearly apparent, the Commission's determination on this issue is not against the manifest weight of the evidence. The fact that the claimant also did freelance work for other publications does not, in our judgment, compel a contrary conclusion. The issue before the Commission was the relationship between the claimant and FCN not the relationship between the claimant and any other entity.

¶ 57 FCN also argues that the claimant failed to give it notice of his accident until March of 2009, well outside of the 45-day notice requirement set forth in section 6(c) of the Act (820 ILCS 305/6(c) (West 2008)). Its argument in this regard rests upon the claimant's affirmative answer when he was asked whether the sentence in FCN's attorney's letter dated September 3, 2009, that, "[i]n or around March of 2009," he informed FCN that he was unable to work because he had injured himself while traveling on public transportation is a memorialization of when he notified FCN of his work injury.

¶ 58 FCN correctly asserts that the 45-day notice requirement set forth in section 6(c) of the Act is jurisdictional, and the failure to give notice will bar a claim. *Thrall Car Manufacturing Co. v. Industrial Comm'n*, 64 Ill. 2d 459, 465 (1976). It was the claimant's burden to prove that he gave FCN timely notice of his accident. According to FCN, the circuit court "improperly shifted the burden of establishing jurisdiction to the Final Call."

¶ 59 As noted earlier, it is the decision of the Commission which we review, not the reasoning or findings of the circuit court. The real issue before this court is whether the Commission's finding

that the claimant gave timely notice to FCN of his accident is against the manifest weight of the evidence.

¶ 60 Whether the claimant gave FCN timely notice as required by section 6(c) of the Act was a question of fact to be resolved by the Commission, and its determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Gano Electric Contracting v. Industrial Comm'n,* 260 Ill. App. 3d 92, 95 (1994). By adopting the arbitrator's decision, the Commission found that the sentence in the September 3, 2009, letter upon which FCN's notice argument rests reflected when FCN knew that the claimant could no longer work in March 2009 due to his injury on January 7, 2009. By adopting the arbitrator's decision, Commission also appears to have interpreted the claimant's testimony that, following the day of his accident he notified FCN's editor, to mean that he notified the editor of his accident on the day following his accident. In context, we are unable to conclude that the interpretation of the claimant's testi,omy was unreasonable.

¶ 61 Even if, as FCN argues, the claimant's affirmative answer that the sentence in FCN's attorney's letter dated September 3, 2009, stating that, "[i]n or around March of 2009," he informed FCN that he was unable to work because he had injured himself while traveling on public transportation is a memorialization of when he notified FCN of his work injury, the fact remains that the Commission also interpreted the claimant's testimony to mean that, on the day following his accident, he told Richard Muhammad that he was unable to walk because of his accident and that Richard Muhammad was aware that he was on his way to cover a story for FCN at the time of his injury. It was the function of the Commission to resolve conflicts in the evidence; assess the credibility of the witnesses; assign weight to the evidence; and draw reasonable inferences from the

evidence. *ABBF Freight System v. Illinois Workers' Compensation Comm'n,* 2015 IL App (1st) 141306WC, ¶ 19. In this case, the Commission characterized the claimant's testimony as unrebutted and credible.

¶ 62 The notice requirement in section 6(c) of the Act is satisfied if the employer possesses facts relating to the accident within 45 days. *Kishwaukee Community Hospital v. Industrial Comm'n,* 356 Ill. App. 3d 915, 921 (2005). The claimant's testimony, as interpreted by the Commission, to the effect that he notified FCN's editor on the day following his accident that he could not walk because of his accident and the editor knew that he was on his way to cover a story at the time of his injury is sufficient to support the Commission's conclusion that the claimant gave FCN timely notice of his injury. We conclude, therefore, that the Commission's finding that the claimant gave FCN timely notice of his accident is not against the manifest weight of the evidence.

¶ 63 As an alternative, FCN argues that, assuming *arguendo* the claimant was its employee, "the manifest weight of the evidence leans away from *** [the claimant's] claim that he was within the scope of his employment at the time of the injury." FCN reasons that it did not send the claimant to cover the story of the fire deaths of the three infants; rather, it was the claimant who chose to cover the storey. FCN also argues that, if the claimant was on an assignment for it at the time of his injury, his accident did not arise out of his employment because the risk of injury when a bus begins to move is a neutral risk common to the general public. The flaw in both of FCN's arguments is its failure to acknowledge that, at the time of his accident, the claimant was a traveling employee.

¶ 64 An employee's injury is compensable under Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (West 2008). Both elements must be present at the time of the

claimant's injury to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989). The determination of whether an injury to a traveling employee arose out of and in the course of employment is governed by different rules than are applicable to other employees. *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199 (1985). The test for determining whether an injury to a traveling employee arose out of and in the course of his employment is the reasonableness of the conduct in which he was engaged and whether the conduct might normally be anticipated or foreseen by the employer. *Howell Tractor & Equipment Co. V. Industrial Comm'n*, 78 Ill. 2d 567, 573–74 (1980). Under such an analysis, any act that a traveling employee can reasonably be expected to perform are considered to arise out of and in the course of the employment. *Venture Newberg-Perini v. Illinois Worker's Compensation Comm'n,* 2013 IL 115728, ¶ 18.

¶ 65 A "traveling employee" is one who is required to travel away from his employer's premises to perform his job. *Venture Newberg-Perini*, 2013 IL 115728, ¶ 17; *Jensen v. Industrial Comm'n*, 305 Ill. App. 3d 274, 278 (1999). The claimant testified that, prior to pursuing the story of the deaths of the infants on January 7, 2009, he informed his supervisor, Tomika Muhammad, and Richard Muhammad, the editor, to get approval to cover the story. He stated that he was required to obtain approval before he left the office to pursue the story. According to the claimant, both his supervisor and the editor said that they were interested in the story.

¶ 66 By adopting the arbitrator's decision, the Commission found that the claimant was a traveling employee at the time of his accident and concluded that his injuries arose out of and in the scope of his employment "because he engaged in conduct that was reasonable and foreseeable." We agree.

¶ 67 The claimant's unrebutted testimony established that, at the time of his injury, he was in transit to a location away from FCN's premises to cover a news story which both his supervisor and editor had approved. He stated that when, as in this case, FCN did not provide transportation

to an assignment, he took public transportation. The claimant's accident and resulting injury in this case occurred when he was on a CTA bus, traveling to take photographs of the news event. His injury was sustained while he was engaged in an activity which was both reasonable and foreseeable to FCN. We conclude, therefore, that the Commission's determination that the claimant suffered injuries that arose out of and in the course of his employment with FCN is not against the manifest weight of the evidence. The fact that the intake record of the claimant's March 20, 2009, visit to Oak Orthopedics states that his injury was not work related, as FCN points out, does not compel an opposite result. As the Treasurer notes, two other records of Oak Orthopedics dated March 20, 2022, and March 21, 2022, state that the claimant was injured during the course of his work duties. To the extent that the entries are conflicting, it was the province of the Commission to resolve the conflict. *ABBF Freight System*, 2015 IL App (1st) 141306, ¶ 19.

¶ 68 Next, FCN appears to argue that the claimant reached maximum medical improvement (MMI) as of June 30, 2009, and was, therefore, not entitled to the TTD benefits which the Commission awarded for the period from September 4, 2009, through April 29, 2010. FCN supports its contention in that regard with the record of the claimant's June 30, 2009, visit to Dr. Kermit Muhammad which states that, as of that date, the claimant was able to perform a "full straight leg raise without lag," he had near complete flexion in his left knee, and his knee brace was unlocked completely. Again, we find no merit in the argument.

¶ 69 An employee is temporarily totally disabled from the time that an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). Once an injured employee has reached MMI, he is no longer eligible for temporary total disability benefits. *Archer*

Daniels Midland Co., 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. *Nascote Industries v. Industrial Comm'n,* 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence and testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. *Nascote Industries,* 353 Ill. App. 3d at 1072.

¶ 70 As noted earlier, the claimant's treating surgeon, Dr. Kermit Muhammad, wrote a letter to FCN in March 2009, stating to that by his estimate the claimant might be able to return to work in 6 to 9 months, depending upon his progress and that the claimant's entire recovery period was expected to be at least 12 to 18 months if there were no complications. Dr. Kermit Muhammad placed the claimant on off-work status, and there is no evidence that he was ever authorized to return to full-duty work or that FCN ever offered the claimant light duty work. The claimant testified that, although his left leg was improving following his surgery, he still had to walk with a cane or have someone accompany him because he worried about falling when he walked. He stated that his leg was stiff and tight., and he experienced pain in his leg with motion. On March 3, 2010, Dr. Kermit Muhammad wrote an order for the claimant to receive physical therapy, and the claimant enrolled in a physical therapy program at ARC to improve his knee. Upon entering that program, he reported that he was experiencing left-knee pain and limited active range of motion and was unable to complete a straight leg raise. The claimant testified that the therapy at ARC was successful and helped his ability to walk. ARC's records state that the claimant had reached "maximum rehabilitation benefit" on April 29, 2010, the day he was discharged from therapy. At the arbitration hearing on May 24, 2014, the claimant testified that he continues to

experience weakness and buckling of his left knee when he walks and limited mobility of his left shoulder.

¶ 71 The period during which a claimant is temporarily and totally disabled is a question of fact to be determined 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. *Archer Daniels Midland*, 138 Ill. 2d at 119–20. In this case, the Commission awarded the claimant TTD benefits for the 34-week period from September 4, 2009, the date upon which FCN ceased paying the claimant, through April 29, 2010, the date that ARC's records state that the claimant reached "maximum rehabilitation benefit." Although there may be evidence that the claimant's condition may have been improving by June 2009, following his surgery, there is no evidence, either medical or otherwise, that his left knee had stabilized prior to April 29, 2010, or that he had been released to return to full duty work by that date. Further, there is no evidence, medical or otherwise, that the claimant had reached MMI at any time prior to April 29, 2010. For these reasons. We find that the Commission's award of TTD benefits for the 34-week period from September 4, 2009, through April 29, 2010, is not against the manifest weight of the evidence.

¶ 72 In two sections of its brief, FCN addresses the propriety of the Commission having ordered it to pay for the claimant's "rehabilitation treatment." Although FCN never specifically stated what rehabilitation treatment expenses it was referring to, we surmise that it is the $7,530 that the Commission found was due and owing to ARC. On this issue, however, FCN failed to cite any authority in support of its argument. As a consequence, FCN has forfeited the issue for purposes of appeal. See Ill. S. Ct. Rule 341(h)(7) (eff. Oct. 1, 2020); *TTC Illinois, Inc./Tom Via Trucking v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 344, 355 (2009).

¶ 73 Finally, FCN argues that the Commission's award of PPD benefits related to the claimant's

left knee injury failed to take into consideration the two prior injuries that the claimant had sustained to the same knee. FCN cited no authority in support of its argument other than a single citation relating to a chain-of-events theory for proving causation. This case has nothing whatever to do with a chain-of-events theory. Having failed to cite any authority in support of the proposition that the Commission award of PPD benefits for a 25% loss of use of the claimant's left leg is against the manifest weight of the evidence, FCN has forfeited the issue for purposes of this appeal. See *id.*

¶ 74 For the reasons stated, we affirm the judgment of the circuit court that confirm the Commission's decision awarding the claimant benefits pursuant to the Act.

¶ 75 Affirmed.