

No. 1-21-0733WC

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

AMERICAN SCHOOL BUS COMPANY, LLC,)	Appeal from the
)	Circuit Court of
Appellant,)	Cook County
)	
v.)	No. 2020 L 050421
)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> ,)	Honorable
)	Daniel P. Duffy,
(Melissa Defries, Appellee).)	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 which confirmed a decision of the Illinois Workers' Compensation Commission, awarding the claimant, Melissa Defries, benefits pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2016)).
- ¶ 2 American School Bus Company, LLC, (American) 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), awarding the claimant, Melissa Defries, benefits pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2016)) for injuries to her right shoulder sustained while she was working on October 10, 2018. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following recitation of the facts relevant to a disposition of this appeal is taken from the evidence adduced at the arbitration hearing held on January 29, 2019.

¶ 4 The claimant testified that she was employed as school bus driver for American, starting in July 2013. She stated that her duties involved picking up students in the morning and driving them to school and picking the students up at school in the afternoon and driving them home. At the end of the 2017-2018 school year, she drove a small bus equipped with an automatic door opener. Timothy Poole, American's Operations Manager, testified that from August 22, 2018, until October 4, 2018, the claimant worked as the night dispatcher. The claimant stated that, starting with the school year beginning in the fall of 2018, she began driving a larger bus with a manual door opener that required the use of a handle to open and close the bus door at each stop. She testified that, beginning in October 2018, she drove two separate bus routes in the morning and two separate bus routes in the afternoon. She estimated that, when she drove two separate bus routes, she was required to manually open the bus door approximately 25 to 30 times each day. Poole testified that the claimant had to manually open the bus door 20 times in the morning and 19 times in the afternoon for the period from October 5, 2018, through October 11, 2018. According to the claimant, she used her right arm to manipulate the handle in order to open and close the bus door.

¶ 5 The claimant testified that, on October 10, 2018, she felt “[e]xtreme pain in *** [her] right shoulder” as she opened and closed the bus door during her afternoon routes. She completed her shift and did not report any injury to her supervisors that day. The claimant stated that, on her way home from work, she experienced pain in her right shoulder. When she arrived home, she took Tylenol and went to bed.

¶ 6 According to the claimant, when she woke up on October 11, 2018, she was still experiencing pain in her right shoulder. Nevertheless, she went to work and drove her four assigned bus routes. The claimant testified that, after completing her afternoon routes, she told the assistant supervisor, Rose Llanes, that she was in “extreme pain” and needed to see a doctor. The claimant stated that she then saw Patrick Davis, American’s safety compliance officer, and filled out an employee injury form. That form, which is signed by both the claimant and Davis, states that the claimant was injured on October 11, 2018. In describing how the claimant’s injury occurred, the form states the following: “I felt horrible pain in my right arm while operating my school bus / steering the wheel and opening and shutting the door for children.” In describing the injury, the form states: “Very sore discoloration on right arm.” The claimant testified that Davis sent her to Physician’s Immediate Care. Poole testified that, when an employee alleges a work-related injury, the employee is sent to Physician’s Immediate Care for treatment.

¶ 7 On October 11, 2018, the claimant presented at Physician’s Immediate Care, complaining of pain in her right upper arm. The history in the record of that visit states: “on 10/10/18 [the claimant] was opening her school bus door with the lever, when she felt a sharp pain in her right arm. She states she feels the pain between her elbow and shoulder.” The record also states: “The patient reports it was the result of an injury that occurred on 10/10/2018, which was work related,

which had a gradual onset.” Dr. Raja, the claimant’s attending physician, prescribed anti-inflammatory medication and advised her to return for a follow-up visit.

¶ 8 The claimant did not return to Physician’s Immediate Care for a follow-up visit. Rather, she sought medical treatment on October 15, 2018, from Dr. Blair Rhode at Orland Park Orthopedics. The claimant complained of shoulder pain with weakness to forward reach and lateral reach. Dr. Rhode’s record of that visit states that the claimant reported experiencing “a pulling and ripping sensation along the lateral aspect of her right shoulder as she was closing a manual door on the bus she was driving.” The record states that the claimant sustained her injury on August 10, 2018, but Dr. Rhode wrote an addendum to the record on October 26, 2018, stating that the date of the claimant’s injury was October 10, 2018. X-rays of the claimant’s right shoulder were taken during that visit. Following his examination of the claimant, Dr. Rhode injected the claimant’s right sub-acromial space with Kenalog and Lidocaine. He diagnosed the claimant as suffering from a rotator cuff sprain and acromioclavicular joint strain. Dr. Rhode prescribed medication for the claimant, ordered a radiological examination of the claimant’s right shoulder, prescribed a course of physical therapy, placed the claimant on off duty status for 2 weeks, and recommended that the claimant return for a follow-up examination in 2 weeks.

¶ 9 On October 16, 2018, the claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for injuries to her right shoulder sustained on October 10, 2018, while working for American. The application for adjustment of claim reflects that it was signed by the claimant on October 13, 2018.

¶ 10 The records of Orland Park Orthopedics reflect that the claimant commenced physical therapy on October 18, 2018, and continued receiving physical therapy treatments thereafter on

approximately a weekly basis up to the date of the arbitration hearing. The physical therapy treatment records state that the claimant was being treated for right shoulder pain.

¶ 11 The claimant next saw Dr. Rhode on October 29, 2018, complaining of severe lateral pain. The doctor's notes of that visit state that the claimant experienced temporary relief from the injection she had received. The claimant testified that she experienced "[v]ery little" relief. Following his examination of the claimant, Dr. Rhode's diagnosis remained unchanged. He again prescribed medication for the claimant, ordered an MRI of her shoulder, and placed the claimant on off duty status pending the outcome of the MRI.

¶ 12 The claimant had the recommended MRI of her right shoulder on October 31, 2018. The radiologist's report states that the scan revealed a mild subscapularis tendinosis accompanies supraspinatus and anterior infraspinatus bursal surface degeneration/tendinitis; no full-thickness retracted rotator cuff tear was seen; and no labral tear was seen.

¶ 13 The claimant remained under the care of Dr. Rhode who continued a course of conservative treatment. Following his examination of the claimant on November 30, 2018, and his review of the results of the claimant's MRI, Dr. Rhode noted that the claimant's physical therapy and injection regimen had failed, and he believed she was a candidate for surgical intervention.

¶ 14 On December 4, 2018, the claimant was examined by Dr. Ajay K. Balaram at the request of American. In his report of that examination, Dr. Balaram noted that the claimant reported difficulty with range of motion associated with her right arm, pain when lifting things, and occasional pain that radiates from her right shoulder to her neck. The report states that the claimant gave a history of using her right arm to open and close the door of the bus she drives by pulling on a handle. The report states that the claimant told Dr. Balaram that she developed increasing pain

in her right shoulder prior to October 10, 2018. According to his report, Dr. Balaram had the claimant demonstrate the mechanism of her injury, and he personally reviewed the bus door mechanism that is alleged to have caused the claimant's condition. Poole testified that he drove the bus that the claimant operated to Dr. Balaram's office so that the doctor could observe the mechanism of opening and closing the door, and that he operated the door mechanism while Dr. Balaram observed.

¶ 15 On examination, Dr. Balaram found that the claimant's right upper arm was tender to palpation over the right trapezius and deltoid, that her right shoulder was tender to palpation globally, and her active range of motion was limited by pain. Dr. Balaram recorded his belief that the claimant demonstrated symptom magnification on examination. Dr. Balaram's report states that he reviewed the X-rays taken of the claimant's right shoulder on October 15, 2018, and the MRI of her right shoulder taken on October 31, 2018. According to the report, the X-rays revealed a type I acromion, but no evidence of a fracture, dislocation, glenohumeral or acromioclavicular joint arthrosis, or of calcific tendinitis. The MRI revealed an intact subscapularis insertion as well as a seated biceps tendon, but no evidence of an articular-sided tear or of rotator cuff tendinopathy or tearing. Dr. Balaram noted the records which he reviewed, including the claimant's medical records from her visit to Physician's Immediate Care on October 11, 2018, and her visit to Dr. Rhode on October 15, 2018. According to Dr. Balaram's report, the claimant reported that she was sent to Dr. Rhode by her attorney.

¶ 16 Dr. Balaram's report states that he diagnosed the claimant as suffering from right shoulder pain. Following his examination of the claimant, a review of her medical records and radiograph studies, and his observation of the bus's door opening mechanism, Dr. Balaram opined that the

October 10, 2018 mechanism of injury reported to him would not cause, aggravate, or accelerate the claimant's condition of ill-being. Dr. Balaram found that the conservative treatment the claimant received for her right shoulder pain condition was appropriate. However, he also opined that the claimant was not a surgical candidate as her subjective symptoms outweigh her objective findings. According to Dr. Balaram's report, he found no objective findings that would preclude the claimant from performing unrestricted work.

¶ 17 On December 18, 2018, the claimant filed an amended application for adjustment of claim pursuant to the Act, alleging repetitive trauma injuries to her right shoulder sustained on October 10, 2018.

¶ 18 At the arbitration hearing, the claimant testified that her right shoulder is "[v]ery painful," for which she takes the medication prescribed by Dr. Rhode on a daily basis. She stated that, prior to October 10, 2018, she never suffered any kind of shoulder injury, never experienced right shoulder symptoms, never saw a doctor for her right shoulder, and never had surgery on her right shoulder. According to the claimant, the first time in her life that she had any significant pain in her right shoulder was on October 10, 2018. The claimant stated that she had not had the surgery recommended by Dr. Rhode, but she wished to do so.

¶ 19 Following the arbitration hearing held on January 29, 2019, pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2018)), the arbitrator issued a written decision on January 9, 2020, finding that the claimant sustained accidental injuries on October 10 2018, arising out of and in the course of her employment with American and that her current condition of right shoulder ill-being is causally related to that accident. The arbitrator did not base his decision on repetitive trauma. The arbitrator specifically found that the claimant testified credibly about how her injury

occurred and that her medical records are consistent with that testimony. On the question of causation, the arbitrator found Dr. Balaram's opinion to be speculative and that he did not take into consideration the fact that the claimant never suffered from any right shoulder ill-being prior to October 10, 2018. Finding that the claimant's average weekly wage was \$650.03, the arbitrator awarded the claimant 15 ²/₇ weeks of temporary total disability (TTD) benefits at the rate of \$433.35 per week for the period from October 15, 2018, through January 29, 2019. The arbitrator also ordered American to pay the claimant's reasonable and necessary medical expenses (\$202.48 to Physicians Immediate Care and \$18,594.96 to Dr. Rhode) and further ordered American to authorize and pay for the claimant's prospective medical care in the form of arthroscopic right shoulder surgery as recommended by Dr. Rhode along with all reasonable and necessary post-operative medical care.

¶ 20 American filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On August 21, 2020, the Commission issued a unanimous decision, finding that the arbitrator had miscalculated the claimant's average weekly wage. The Commission determined that the claimant's average weekly wage was \$407.68 and, as a consequence, modified her TTD award to 15 ²/₇ weeks of benefits at the rate of \$271.76 per week for the period from October 15, 2018, through January 29, 2019. In all other respects, The Commission affirmed and adopted the arbitrator's decision.

¶ 21 American sought a judicial review of the Commission's decision in the circuit court of Cook County. On May 26, 2021, the circuit court confirmed the Commission's decision, and this appeal followed.

¶ 22 Initially, we note that the argument set forth in American's brief contains only two citations

of authority, one of which is addressed to the standard of review and the other is addressed to the claimant's burden of proof. American cites no authority addressed to the proper analysis of the accident or causation finding by the Commission. Failure to cite legal authority in support of an argument results in a forfeiture of the issue for purposes of appeal. Ill. S. Ct. Rule 341(h)(7) (eff. Oct. 1, 2020); *Service Adhesive Co. V. Industrial Comm'n*, 226 Ill. App. 3d 356, 365 (1992). However, the rule of forfeiture is a limitation on the parties and not the jurisdiction of the court. See *In re Marriage of Sutton*, 136 Ill.2d 441, 446 (1990). In the interest of maintaining a sound and uniform body of precedent, we may address issues subject to forfeiture. *Herzog v. Lexington Township*, 167 Ill. 2d 288, 300 (1995); *Jackson Jordan, Inc. v. Leydig, Voit & Mayer*, 158 Ill.2d 240, 251 (1994). In this case, we elect to address the merits of American's arguments.

¶ 23 For its first assignment of error, American contends that the Commission's findings that the claimant sustained an injury to her right shoulder arising out of and in the course of her employment and that there is a causal relationship between the claimant's employment and her right shoulder injury are against the manifest weight of the evidence. In the 2 1/4 total pages of argument in American's opening brief, it contends that the discrepancy between the allegation of a specific trauma in the claimant's original application for adjustment of claim and the allegation of repetitive trauma in her amended application for adjustment of claim, the fact that the claimant never reported any malfunction in the door opening mechanism in the bus that she operated, and Dr. Balaram's opinions support its argument that opposite conclusions to those reached by the Commission on the issues of accident and causation are clearly apparent. We disagree.

¶ 24 To obtain compensation under the Act, the claimant must establish by a preponderance of the evidence that she suffered a disabling injury that arose out of and in the course of her

employment. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 591-92 (2005). Whether a causal relationship exists between a claimant's employment and her injury is a question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). 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).

¶ 25 At arbitration, the claimant testified that she felt "[e]xtreme pain in *** [her] right shoulder" as she opened and closed the bus door in the afternoon of October 10, 2018. Consistent with that testimony are the following: the employee injury form that the claimant completed for American on October 11, 2018; the history contained in Physicians Immediate Care's record of the claimant's visit on October 11, 2018; and the history contained in Dr. Rhode's record of the claimant's October 15, 2018 visit. In American's employee injury form that the claimant completed for American on October 11, 2018, she wrote: "I felt horrible pain in my right arm while operating my school bus / steering the wheel and opening and shutting the door for children." The history contained in the record of the claimant's October 11, 2018 visit to Physicians Immediate Care states that the claimant reported that, on October 10, 2018, "she was opening her school bus door with the lever, when she felt a sharp pain in her right arm." Dr. Rhode's record of the

claimant's October 15, 2018 visit notes that she reported experiencing "a pulling and ripping sensation along the lateral aspect of her right shoulder" as she was closing a manual door on the bus she was driving.

¶ 26 It was the function of the Commission to assess the credibility of the claimant and to determine the weight to be given to her testimony. *ABBF Freight System v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19. The arbitrator specifically found that the claimant testified credibly about how her injury occurred and the Commission adopted that finding. We find nothing in the record which could support a finding that a conclusion opposite to that reached by the Commission on the question of the claimant's credibility is clearly apparent. It follows, therefore, that the Commission's finding that the claimant sustained accidental injuries on October 10, 2018, arising out of and in the course of her employment with American is not against the manifest weight of the evidence.

¶ 27 On the question of a causal connection between the claimant's work-related accident on October 10, 2018, and her current condition of right shoulder ill-being, American relies upon Dr. Balaram's opinion that the October 10, 2018 mechanism of injury reported to him would not cause, aggravate, or accelerate the claimant's condition of ill-being. However, the arbitrator found Dr. Balaram's opinion to be speculative and that he did not take into consideration the fact that the claimant never suffered from any right shoulder ill-being prior to October 10, 2018. The Commission adopted that finding. The claimant testified that, prior to October 10, 2018, she never suffered any kind of shoulder injury, never experienced right shoulder symptoms, never saw a doctor for her right shoulder, and never had surgery on her right shoulder. She stated that the first time in her life she had any significant pain in her right shoulder was on October 10, 2018.

¶ 28 “Proof of good health prior to an accidental injury, and a subsequent condition of ill-being which develops immediately after the accident, create an issue of fact as to the causal relationship between the injury and the condition of ill-being.” *Board of Education of the City of Chicago v. Industrial Comm’n*, 96 Ill. 2d 239, 244 (1983). The claimant testified as to her good health prior to October 10, 2018, and America introduced nothing to contradict that testimony. The Commission found Dr. Balaram’s causation opinion to be speculative and that he failed to take into account the fact that the claimant never suffered from any right shoulder ill-being prior to October 10, 2018.

¶ 29 As we noted earlier, it was the function of the Commission to judge the credibility of a witness and determine the weight to be given to his to his testimony, including medical testimony. *O’Dette v. Industrial Comm’n*, 79 Ill. 2d 249, 253 (1980). The Commission is free to disbelieve a witness, even an expert witness offering medical testimony, so long as it does not do so arbitrarily. *Sorenson v. Industrial Comm’n*, 281 Ill. App. 3d 373, 383-84 (1996).

¶ 30 Although Dr. Balaram opined that the mechanism of injury reported to him would not cause, aggravate, or accelerate the claimant’s condition of ill-being, he failed to factor into his opinion the fact that, prior to her work-related accident on October 10, 2018, the claimant had never suffered any injury to her right shoulder. In contrast, the claimant, who the Commission found credible, testified that she felt pain in her right shoulder when she opened and closed the door of the bus she was operating in the afternoon of October 10, 2018. She also testified that, prior to that date, she never suffered any kind of right shoulder injury, never experienced right shoulder symptoms, never saw a doctor for her right shoulder, and never had surgery on her right shoulder. We believe that the claimant’s testimony that she injured her right shoulder on October

10, 2018, when she opened and closed the door to the bus coupled with her testimony that she had never suffered an injury to her right shoulder prior to that event was sufficient to support the Commission's rejection of Dr. Balaram's causation opinion.

¶ 31 Finding no error in the Commission's rejection of Dr. Balaram's causation opinion, we conclude that the claimant's testimony as to the mechanism of her injury and to the lack of any prior injury to her right shoulder is more than sufficient to support the Commission's finding of a causal connection between the claimant's work-related accident and her current condition of right shoulder ill-being.

¶ 32 Relying upon Dr. Balaram's opinions, American also argues that the Commission erred in ordering it to pay the claimant's medical expenses, including prospective medical care, and in awarding the claimant TTD benefits. Its arguments in that regard are based solely upon the assertion that the Commission erred in finding both accident and causation. Having found that the Commission's determinations as to accident and causation are not against the manifest weight of the evidence, it follows that we also reject American's arguments as to medical expenses and TTD.

¶ 33 For the reasons stated, we affirm the judgment of the circuit court which confirmed the Commission's decision and remand the matter to the Commission for further proceedings.

¶ 34 Affirmed and remanded