2025 IL App (1st) 242467WC
No. 1-24-2467WC
Opinion filed October 3, 2025

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DANIEL RAMIREZ, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Mighty Moving, Inc., and National Van Lines, Inc., Appellees).	)	Appeal from the Circuit Court of Cook County No. 2024 L 50134 Honorable Daniel P. Duffy, Judge, Presiding.

JUSTICE MARTIN delivered the judgment of the court, with opinion.

Presiding Justice Holdridge, and Justices Mullen, Cavanagh, and Barberis concurred in the judgment and opinion.

OPINION

¶ 1 Following a traumatic ankle injury sustained while working for respondents Mighty Moving, Inc. (Mighty Moving), and National Van Lines, Inc., the petitioner, Daniel Ramirez, sought benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2022)). Following a hearing, the arbitrator granted the petitioner's request for temporary total disability (TTD) benefits and ordered the respondents to pay penalties and attorney fees for delaying or denying the payment of benefits. The Illinois Workers' Compensation Commission (Commission) reversed the arbitrator's determination of the amount of TTD benefits owed to the

petitioner and the arbitrator's assessment of penalties and fees. The Commission otherwise affirmed the arbitrator's ruling. On judicial review, the Circuit Court of Cook County confirmed the Commission's decision. The petitioner now appeals, contending that the Commission's decision reversing the arbitrator's award of TTD benefits and penalties and fees was erroneous and relied on the improper admission of evidence. We largely agree with the petitioner and set aside the Commission's decision in part.

¶ 2 I. BACKGROUND

¶ 3 The limited issues presented in this appeal require only a brief recitation of the facts surrounding the petitioner's injury and claim. At an arbitration hearing held February 3, 2024, the petitioner was the only witness to testify. He testified that on March 24, 2022, he was working for Mighty Moving as a truck driver and furniture mover. While carrying boxes down a flight of stairs, he slipped and fractured his right ankle, an injury that ultimately required surgery. Immediately after suffering the injury, the petitioner called his supervisor, Robert Seidel, and requested that Seidel send someone to take him to the hospital. Seidel refused and instructed the petitioner to arrange his own transportation. The petitioner called his sister, who picked him up. While on the way to the hospital, Seidel called the petitioner and instructed him to submit to a drug test before going to the hospital. The petitioner acquiesced and took a drug test at a clinic before then proceeding to an immediate care facility and then the hospital. The test was positive for marijuana. However, the petitioner testified that he was not intoxicated at the time of the injury and did not smoke marijuana or take any other illicit substances before work on March 24, 2022. The petitioner admitted that he possessed a medical marijuana card and had smoked marijuana on March 23, 2022.

¶ 4 The petitioner testified that he started officially working for Mighty Moving at the "beginning of March" 2022, plus "a couple of days at the end of February" that "weren't quote/unquote official." From the beginning of March to the time of his accident, the petitioner testified that he worked full-time and more than 40 hours per week. However, he explained that his schedule and hours were not formally recorded and instead communicated by text message. The petitioner stated that he typically started working at 7 or 8 a.m. and would finish between 5 and 9 p.m., ordinarily working between 8 to 12 hours per day. He testified that he was paid $21 per hour and received his paycheck in the form of a direct deposit to his bank account. The petitioner claimed that he had received three paychecks from Mighty Moving. However, records of the petitioner's bank transactions, which were admitted as "Petitioner's Exhibit 14," showed only two deposits from Mighty Moving, one for $650.03 on March 17, 2022, and one for $323.24 on March 31, 2022. The petitioner asserted that the payments he received were not complete and were for significantly less than he should have been paid based on the number of hours he had worked.

¶ 5 Regarding the payment of TTD benefits, the petitioner testified that he requested payment of TTD benefits two days after his accident, but Mighty Moving refused to pay because the petitioner had failed his postaccident drug test. For the same reason, Mighty Moving also refused to pay for the petitioner's medical expenses. The petitioner testified that he began attending physical therapy in May 2022, and Mighty Moving approved for him to attend some sessions intermittently over the next four months. The petitioner testified that he was forced to stop treatment several times because Mighty Moving was not authorizing the sessions. According to the petitioner, Mighty Moving cut him off from medical and TTD benefits entirely on September 30, 2022.

¶ 6 The petitioner testified that, in the fall of 2022, at a point when he was restricted to light-duty, ground-level work, he expressed to Mighty Moving that he was interested in coming back to work. However, he did not receive an offer that accommodated his work restrictions. The petitioner testified that he would accept a job if offered one.

¶ 7 At the conclusion of the hearing, the respondents offered several exhibits into evidence. First was "Respondents' Exhibit 1" (RX1), which was a copy of the petitioner's Mighty Moving personnel file. The petitioner objected on the grounds that the file was hearsay. The arbitrator reserved ruling on that objection until the issuance of her decision. The petitioner also objected to the admission of "Respondents' Exhibit 2" (RX2), which consisted of his payroll records with Mighty Moving, on the grounds that the records were hearsay and that the respondents had not presented testimony laying the necessary foundation for their admission. The arbitrator overruled that objection and allowed the records to be admitted as evidence of the petitioner's average weekly wage. "Respondents' Exhibit 3" (RX3) was a subpoena response from the facility that administered the petitioner's post-accident drug test. The petitioner objected to the admission of that exhibit on the grounds that the records were hearsay and that the test did not comply with statutory requirements for the admission of drug test results, and the arbitrator sustained that objection and barred the exhibit's admission. Last was "Respondents' Exhibit 5" (RX5), which was a copy of the drug test report. The report showed that the petitioner submitted a urine sample that was "positive" for marijuana but did not provide any numerical values regarding the amount or concentration of the drug present. As with RX3, the petitioner objected on hearsay and statutory-compliance grounds, and the arbitrator made the same ruling, barring admission of the report.

¶ 8 Following the hearing, the arbitrator issued a decision awarding benefits to the petitioner and assessing penalties and fees against the respondents. In particular, the arbitrator first found

that the petitioner was a credible witness and that there were no material contradictions between the petitioner's testimony and the evidence submitted that would render the petitioner unreliable. The arbitrator also sustained the petitioner's objection to the admission of RX1, the petitioner's personnel file, but the arbitrator did not explain that ruling.

¶ 9 The arbitrator found that the petitioner's accident arose out of and in the course of his employment with the respondents and rejected the respondents' intoxication defense. Specifically, in relevant part, the arbitrator found as follows:

> "Petitioner was forthright in his testimony that he smoked marijuana on March 23, 2022, the day prior to the accident. The Arbitrator notes that Petitioner credibly testified that he was not intoxicated on March 24, 2022, that he did not smoke marijuana prior to work on March 24, 2022, that he had not taken any other illegal or illicit substances on March 24, 2022, and that he was not under the influence of any drug the morning of March 24, 2022. The Arbitrator further acknowledges that Respondent offered its Exhibits 1, 3, and 5, containing the results of Petitioner's drug test. Petitioner objected to the admission of these exhibits, Petitioner's objections were sustained, and the exhibits were rejected. Even if, however, Respondent's exhibits had been admitted and there was evidence of a positive drug test, there is no evidence in the record that Petitioner was so intoxicated that the intoxication constituted a departure from the employment or that Petitioner's intoxication was the proximate cause of the injury."

The arbitrator also found that the petitioner's current condition of ill-being was causally related to his March 24, 2022, work-related accident.

¶ 10 Regarding the petitioner's earnings, the arbitrator noted that in their joint request-for-hearing form, the petitioner claimed that his average weekly wage was $840 and the respondents

contended that it was $412.50. The arbitrator found that the petitioner had received a direct deposit on March 17, 2022, in the amount of $650.03 and that he had received a direct deposit on March 31, 2022, in the amount of $323.24. The arbitrator further found that the payroll records in RX2 showed that the petitioner "earned $22.00 per hour and that he worked 37.50 hours for the period of February 28, 2022 to March 13, 2022 and that he worked 18 hours for the period of March 14, 2022 to March 27, 2022." The arbitrator observed that RX2 was consistent with the amounts reflected in the petitioner's bank records. Accordingly, the arbitrator found that the petitioner's average weekly wage was $412.50, the amount submitted by the respondents. The arbitrator did not explain or provide its method of calculating that figure. Instead, it cited *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084 (2004), for the proposition that the respondents were bound by their stipulation in the request-for-hearing form that the petitioner's average weekly wage was $412.50.

¶ 11 Addressing the petitioner's medical expenses, the arbitrator found that the petitioner's medical treatment was reasonable and necessary and that the respondents had not yet paid all appropriate charges. Accordingly, the arbitrator awarded the petitioner a total of $37,669.93 for outstanding unpaid medical expenses, with credit to the respondents for any payments made toward those expenses. The arbitrator also found that the petitioner was entitled to prospective medical care, specifically a work-conditioning program, and that the respondents were responsible for authorizing and paying for the program. As for TTD benefits, the arbitrator found that the petitioner was entitled to TTD benefits of $275 per week for 53 4/7 weeks, covering the period from March 25, 2022, through April 3, 2023, the date of arbitration.

¶ 12 Finally, the arbitrator found that the respondents had delayed or withheld payment of benefits to the petitioner from March 25, 2022, through April 3, 2023, and that the respondents

"did not offer an adequate justification for denial of payment." Consequently, the arbitrator concluded that the respondents were liable for penalties under section 19(*l*) of the Act (820 ILCS 305/19(*l*) (West 2022)). The arbitrator assessed the statutory maximum penalty of $10,000 because benefits were denied for 375 days and the $30-per-day penalty provided by the Act would have exceeded the maximum allowable penalty. Further, for the same reason, the arbitrator found that the respondents were also liable for penalties under section 19(k) of the Act (*id*. § 19(k)) and for the payment of attorney fees under section 16 of the Act (*id*. § 16). Specifically, the arbitrator found the respondents "liable for Section 19(k) penalties in the amount of $[1043.03], representing 50% of the awarded TTD benefits and considering the stipulated credit of $12,646.07 for TTD benefits paid by Respondent, and $18,834.97, representing 50% of the awarded Section 8(a) benefits, and Section 16 attorney fees in the amount of $[3975.60], representing 20% of the awarded benefits."

¶ 13 Both the petitioner and the respondents petitioned for the Commission to review the arbitrator's decision. On February 5, 2024, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision, with two modifications. First, the Commission found that, while the arbitrator had correctly determined the petitioner's average weekly wage, the arbitrator had incorrectly determined the amount of TTD benefits owed to the petitioner. Specifically, the Commission observed that the $275 TTD rate used by the arbitrator was below the statutory minimum of $320. Accordingly, the Commission recalculated the amount of TTD benefits owed based on a TTD rate of $320 for 53.571 weeks and concluded that, after accounting for credits for payments already made, the petitioner was owed $4496.65 in TTD benefits.

¶ 14 Second, the Commission modified the arbitrator's determination that the respondents owed penalties and fees for unreasonably denying or delaying benefits. In particular, the Commission

found that it was reasonable for the respondents to rely on the petitioner's failed drug test as a basis to deny or delay benefits. In reaching this conclusion, the Commission agreed with the arbitrator that RX1, RX3, and RX5 did not conform with statutory requirements and were inadmissible as evidence of intoxication. However, the Commission stated that "Section 11 and the Rules of the Commission do not explicitly prohibit the Commission from admitting and/or considering the drug test report for the limited purpose of determining whether penalties and fees are appropriate." In other words, "the drug testing report was not admissible for the truth of the matter asserted (*i.e.*, Petitioner was intoxicated), but rather as evidence of the reasonableness of Respondent's conduct regarding the delay and suspension of benefits." The Commission further found that the respondents had not acted vexatiously, as they had paid more than $12,000 in TTD benefits. Accordingly, the Commission vacated the arbitrator's award of penalties under sections 19(k) and 19(*l*) and her award of fees under section 16.

¶ 15 The petitioner filed for review of the Commission's decision in the circuit court of Cook County. In his brief, he first argued that the Commission, by virtue of having adopted the arbitrator's ruling on the matter, erred in admitting RX2 for the purpose of establishing his average weekly wage. Second, he argued that the Commission erred in admitting RX1, RX3, and RX5 for the purpose of reversing the arbitrator's award of penalties and fees. The circuit court confirmed the Commission's decision, concluding simply that the decision was "neither contrary to the law, nor against the manifest weight of the evidence." This appeal follows.

¶ 16 II. ANALYSIS

¶ 17 On appeal, the petitioner raises the same two issues that he presented in the circuit court, namely that the Commission erred (1) in admitting his payroll records and determining his average weekly wage based on those records and (2) in considering the drug test records for the limited

purpose of determining the appropriateness of penalties and fees and in reversing the arbitrator's award on that issue. We see merit to both arguments.

¶ 18 Both of the petitioner's issues concern the admission of evidence. "The rules of evidence apply to all proceedings before the Commission or an arbitrator, except to the extent they conflict with the Act." *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1010 (2005) (citing 50 Ill. Adm. Code § 7030.70(a) (2002), and *Paganelis v. Industrial Comm'n*, 132 Ill. 2d 468, 479 (1989)). We review evidentiary rulings made during the course of a workers' compensation proceeding under the abuse of discretion standard. *Id.* "An abuse of discretion occurs when no reasonable person would take the view adopted by the Commission." *Jackson Park Hospital v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 142431WC, ¶ 47 (citing *Hagemann v. Illinois Workers' Compensation Comm'n*, 399 Ill. App. 3d 197, 204 (2010)).

¶ 19 In resolving factual matters, "it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009) (citing *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 847 (1996)). A factual determination of the Commission will be disturbed on review only when it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Bassgar, Inc. v. Illinois Workers' Compensation Comm'n*, 394 Ill. App. 3d 1079, 1085 (2009). The test is whether the evidence is sufficient to support the Commission's findings, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

¶ 20 The petitioner first contends that the Commission erred in admitting into evidence RX2, his wage records with Mighty Moving, and in using those records to determine his average weekly wage. The petitioner argues that the records were inadmissible hearsay and that the respondents had not established the necessary foundation for their admission. The respondents provide virtually no argument on the admissibility of RX2 and merely state that it was admitted "under the business records rule" and that it was consistent with the petitioner's testimony regarding the wages paid to him. We agree with the petitioner that it was error to admit the records without accompanying foundational testimony.

¶ 21 The respondents argued during the arbitration hearing that the payroll records contained in RX2 were admissible as business records. See Ill. R. Evid. 803(8)(B) (eff. Jan. 25, 2023). "Supreme Court Rule 236(a) [citation] sets forth the foundational requirements for documents admissible pursuant to the business records exception to the hearsay rule." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 590 (2005). Under that rule, "[t]he party tendering the record must demonstrate that the record was made in the regular course of business and at or near the time of the transaction." *National Wrecking Co. v. Industrial Comm'n*, 352 Ill. App. 3d 561, 567 (2004). Importantly, even "[i]f a document is admissible pursuant to an exception to the hearsay rule, the proponent must still lay an adequate foundation for its admission into evidence." *Id.* (citing *Raithel v. Dustcutter, Inc.*, 261 Ill. App. 3d 904, 908 (1994)). "A sufficient foundation for admitting business records may be established through the *testimony* of the custodian of the records or another person familiar with the business and its mode of operation." (Emphasis added.) *Id.* (citing *In re Estate of Weiland*, 338 Ill. App. 3d 585, 600 (2003), and *Lecroy v. Miller*, 272 Ill. App. 3d 925, 936 (1995)).

¶ 22 The respondents in this case did not satisfy the foundational requirements for the admission

of RX2 into evidence. As explained in *National Wrecking*, the foundation for the admission of business records must be established by "testimony" from the records custodian or another person familiar with the records. See *id.*; see also *Greaney*, 358 Ill. App. 3d at 1011 (explaining that, even when a document falls within an exception to the hearsay rule, "an adequate foundation must still be laid before it is admitted into evidence" and "the proponent must present evidence to demonstrate that the document is what it claims to be"). But the respondents did not present any testimony at all regarding the payroll records in RX2. Instead, the evidence was supported only by a conclusory statement from counsel that the records qualified for the business records exception. This was plainly insufficient. See *Babich v. River Oaks Toyota*, 377 Ill. App. 3d 425, 430 (2007) (holding that a letter from an employer to an employee was not admissible under the business records exception in the absence of testimony from a witness who could authenticate the document or testify that the letter was made in the ordinary course of business); *Land & Lakes Co.*, 359 Ill. App. 3d at 591 (holding that there was insufficient foundation to admit bills from a medical provider when the only testimony regarding the bills was from the claimant, who had no familiarity with the medical provider's business practices). Given the total absence of any evidentiary foundation for the admission of the payroll records, we conclude that the Commission abused its discretion in adopting the arbitrator's admission of the records into evidence.

¶ 23 Because the payroll records in RX2 were central to the Commission's determination of the petitioner's average weekly wage and because the determination of the petitioner's average weekly wage is a question of fact for the Commission to decide, we reverse the portion of the Commission's ruling setting the petitioner's average weekly wage. We also reverse the portion of the Commission's ruling that determined the petitioner's TTD benefits based on his average weekly wage, and we remand for the Commission to reevaluate those issues without consideration

of the payroll records contained in RX2. See *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 231-32 (2001) (noting that the Commission's wage determination is a question of fact); *Labuz v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 113007WC, ¶ 40 (reversing the Commission's erroneous calculation of an employee's average weekly wage and remanding for the Commission to recalculate the average weekly wage and related benefits).

¶ 24 As to his second issue, the petitioner challenges the Commission's decisions to admit RX1, RX3, and RX5 and to rely on the drug test results contained within to reverse the arbitrator's award of penalties and fees against the respondents under sections 16, 19(k), and 19(*l*) of the Act (820 ILCS 305/16, 19(k), (*l*) (West 2022)). The Commission concluded that, while the test results were inadmissible to prove intoxication, they were nonetheless admissible for the purpose of determining whether the respondents had reasonably denied or delayed benefits and whether penalties and fees were appropriate. The petitioner contends that the test results were hearsay and did not comply with statutory requirements and were, therefore, inadmissible for any purpose. We conclude that it was proper for the Commission to admit and consider the exhibits for the limited purpose of determining the reasonableness of the respondents' actions. However, we also find that the simple positive test result, standing alone and unaccompanied by other evidence of intoxication, was insufficient to justify the delay or denial of benefits and that the Commission's reversal of the arbitrator's award of penalties and fees was, therefore, against the manifest weight of the evidence.

¶ 25 Section 11 of the Act (*id.* § 11) allows for an employer to deny benefits to an injured employee if "(i) the employee's intoxication is the proximate cause of the employee's accidental injury or (ii) at the time the employee incurred the accidental injury, the employee was so intoxicated that the intoxication constituted a departure from the employment." However, the

statute sets forth specific requirements for the drug testing of employees (*id.*), and there does not appear to be any dispute that the test conducted in the present case did not comply with those strict requirements. Accordingly, the test results contained in RX1, RX3, and RX5 were inadmissible for the purposes of establishing that the petitioner was intoxicated and, therefore, ineligible for benefits.

¶ 26 The Commission recognized this and stated that "the drug testing report offered by Respondent in RX 1, RX 3 and RX 5 does not conform to the requirements set forth in Section 11 and the Commission Rules. Therefore, the report is not admissible as evidence of intoxication, nor can it be used to determine intoxication." Nonetheless, the Commission found that the report was admissible "for the limited purpose of determining whether penalties and fees are appropriate." Before evaluating that reasoning, it is helpful to define the penalties and fees at issue.

¶ 27 A section 19(*l*) penalty "is in the nature of a late fee" and is mandatory if a benefit payment "is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515 (1998). The imposition of penalties under section 19(k) or attorney fees under section 16, on the other hand, "requires a higher standard of proof than an award of additional compensation under section 19(*l*)." *USF Holland, Inc. v. Industrial Comm'n*, 357 Ill. App. 3d 798, 805 (2005) (citing *McMahan*, 183 Ill. 2d at 514). Penalties under section 19(k) are discretionary and "are assessed when a benefit payment delay is deliberate or results from bad faith or 'improper purpose.' " *Id.* (quoting *McMahan*, 183 Ill. 2d at 515). "Section 16 applies in the same circumstances" as penalties under section 19(k). *Id.* "Generally, an employer's reasonable and good-faith challenge to liability does not warrant the imposition of penalties." *Id.* (citing *Matlock v. Industrial Comm'n*, 321 Ill. App. 3d 167, 173 (2001)). "An employer's belief is honest only if the facts in the possession of a

reasonable person in the employer's position would justify it." *Id.* (citing *Board of Education of Chicago v. Industrial Comm'n*, 93 Ill. 2d 1, 10 (1982)).

¶ 28 The petitioner contends that the drug test report at issue was not admissible because it was hearsay and did not satisfy section 11's requirements. However, as the Commission observed, the report was not hearsay because it was not being considered for the truth of the matter asserted (see Ill. R. Evid. 801(c) (eff. Oct. 15, 2015)), but rather "as evidence of the reasonableness of Respondent's conduct regarding the delay and suspension of benefits." Indeed, by petitioning for penalties and fees under sections 16, 19(k), and 19(*l*), the petitioner raised the issue of the reasonableness of the respondents' conduct in denying or delaying the payment of benefits. A reasonable belief that an employee's injury was proximately caused by his intoxication is a defense to the payment of benefits, so the respondents' possession of the positive drug test was relevant to that defense. In that context, the test result was not admitted to prove that the petitioner was intoxicated, but rather to show why the respondents denied or delayed the payment of benefits. This was a proper purpose for the admission of the exhibits at issue. See *People v. McNeal*, 405 Ill. App. 3d 647, 666 (2010) (explaining that contents of a written note were not hearsay and were admissible when offered to explain the subsequent actions of a person who read the note).

¶ 29 With the admissibility established, we turn to the Commission's decision to reverse the arbitrator's award of penalties and fees. When a delay in paying compensation has occurred, the employer bears the burden of justifying the delay. *USF Holland*, 357 Ill. App. 3d at 805 (citing *Mobil Oil Corp. v. Industrial Comm'n*, 309 Ill. App. 3d 616, 626 (2000)). "To avoid the imposition of penalties and fees, an employer must show that the facts in its possession would have lead a reasonable person to believe that a claimant is not entitled to prevail under the Act." *Lenny Szarek, Inc. v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 597, 612 (2009). "An honest,

though flawed, belief is not enough to escape liability." *Id.* at 612-13. "[T]he Commission's determination of whether a claimant is entitled to additional compensation and attorney fees is a factual question and will not be disturbed on review unless it is against the manifest weight of the evidence." *USF Holland*, 357 Ill. App. 3d at 802 (citing *Pietrzak*, 329 Ill. App. 3d at 836).

¶ 30 The Commission in this case found that the positive drug test was a reasonable basis for the respondents to delay and suspend benefits to the petitioner. Further, the Commission found that the respondents had not acted vexatiously, with the Commission noting that the respondents had paid more than $12,000 in benefits. The petitioner contends that these findings were contrary to the manifest weight of the evidence because there was no other evidence of intoxication and the drug test, standing alone, was insufficient to provide a reasonable basis to delay or suspend benefits. We agree with the petitioner's argument.

¶ 31 In *Paganelis*, 132 Ill. 2d at 481, the supreme court described the requirements for an employer to raise a successful intoxication defense. These pronouncements would later be codified in a materially identical form in section 11 in 2011. See Pub. Act 97-18, § 15 (eff. June 28, 2011) (amending 820 ILCS 305/11). The court began its analysis by quoting a leading treatise's statement of the rule that " '[v]oluntary intoxication which renders an employee incapable of performing his work is a departure from the course of employment. Otherwise, apart from special statute, evidence of intoxication at the time of injury is ordinarily no defense, at least unless intoxication was the sole cause of injury.' " *Paganelis*, 132 Ill. 2d at 480-81 (quoting 1A Arthur Larson, The Law of Workmen's Compensation § 34.00, at 6-64 (1985)). From this rule, the supreme court concluded the following:

> "[A]n employer raising the defense of intoxication could prevail on either of two separate grounds. First, an employee, though in the course of his employment, will be denied

recovery if his intoxication is the cause of the injury—that is, if the injury arose out of the intoxication rather than out of the employment. Second, excessive intoxication may constitute a departure from the course of employment, and an employee who is injured in that condition does not sustain an injury in the course of his employment. Under the latter rationale, intoxication of a sufficient degree is viewed as an abandonment of employment, or a departure from employment." *Id.* (citing 1A Arthur Larson, The Law of Workmen's Compensation § 34.21, at 6-83 through 6-84 & n.16.1 (1985)).

¶ 32 Building on the rules announced in *Paganelis*, our courts have further stated that the Act "does not preclude recovery merely on the basis of intoxication caused by the ingestion of legal or illegal substances" and that "the mere fact that the employee has ingested an illegal substance at the time of his injury will not, in and of itself, defeat a claim for benefits." *Lakeside Architectural Metals v. Industrial Comm'n*, 267 Ill. App. 3d 1058, 1064-65 (1994). Additionally, "[i]ntoxication that does not prevent the employee from following his occupation and that is only a contributing cause of the injury will not bar recovery." *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393 (1995).

¶ 33 These cases make clear that the mere consumption or ingestion of an intoxicating substance does not create a valid intoxication defense. Rather, there must be additional evidence that the employee's intoxication was the proximate cause of their injury or that the employee was so intoxicated that the intoxication constituted a departure from their employment. Indeed, on numerous occasions courts have upheld the award of compensation notwithstanding an employee's consumption of alcohol. See *Paganelis*, 132 Ill. 2d at 486 (collecting cases).

¶ 34 Nonetheless, the respondents cite several cases in support of their position that it was reasonable to deny benefits based solely on the positive drug test. The first two are *Paganelis* and *Parro,* cases in which the claimants' high blood-alcohol content (BAC) supported the

Commission's decisions to deny benefits. See *Parro*, 167 Ill. 2d at 394-96; *Paganelis*, 132 Ill. 2d at 484-86. Specifically, in *Paganelis* the court recounted that the employee, who was injured in a motor vehicle crash while traveling for work, had a BAC of 0.238% and evidence showed that such a person "would be moderately to severely intoxicated, would have clouded judgment, and would not be able to properly control a motor vehicle." *Paganelis*, 132 Ill. 2d at 485. Further, "there was no evidence *** that the injured employee was able to perform his work after he became intoxicated." *Id.* The court held that "[t]he Commission was free to infer from those circumstances that the employee was so intoxicated that he could no longer follow his employment and thus could not be said to be engaged in his employment at the time of the occurrence." *Id.*

¶ 35 Similarly, in *Parro* the BAC of the employee, who fell down a flight of stairs at her place of work, was "0.288 at the time of her admission to the hospital and could have been as high as 0.408 before the accident occurred." *Parro*, 167 Ill. 2d 392. Testimony established that "even the lower amount would have impaired the claimant's ability to function and could have been the sole cause of her fall." *Id.* at 395-96. Additionally, "[t]here was no evidence that the claimant was able to perform her job functions after she became intoxicated, assuming that she was intoxicated." *Id.* at 396. From this evidence, the appellate court concluded that the Commission's determination that intoxication was the sole cause of the employee's injury was not against the manifest weight of the evidence. *Id.* at 396-97.

¶ 36 The third case that the respondents cite in support is *Lenny Szarek*, 396 Ill. App. 3d 597. There, an employee was injured when he fell through a hole in the floor at a construction site. *Id.* at 600. A drug test taken at the hospital soon after the accident was positive for marijuana and cocaine and specifically revealed "274 nanograms per milliliter (ng/ml) of [cannabinoids]" in the employee's urine. *Id.* Based on that drug test and the opinion of a consulting expert, who testified

that the employee's intoxication would have been "significant," the employee's employer denied benefits on the grounds of intoxication. *Id.* at 599-601. The Commission, adopting the decision of the arbitrator, rejected the employer's intoxication defense, noting that a coworker and a supervisor had both testified that they had not observed any signs that the employee was intoxicated prior to the accident. *Id.* at 602. The Commission also awarded the employee penalties and fees under sections 16 and 19(k) of the Act. *Id.* On appeal, the appellate court reversed the Commission's award of penalties and fees, finding that it was reasonable for the employer to rely on the drug test, which revealed " 'severe marijuana intoxication,' " and the opinions of its expert. *Id.* at 613. Additionally, the court also found that it was reasonable for the employer to rely on the decisions in *Paganelis* and *Parro*, explaining: "Those cases are distinguishable in that they involved alcohol rather than marijuana; however, since we had not articulated this distinction with any degree of detail in the past, respondent was not unreasonable in seeking to analogize the present situation to those cases." *Id.*

¶ 37 The respondents contend that we must follow *Lenny Szarek* and affirm the Commission's conclusion that it was reasonable to deny benefits based on the petitioner's positive test for marijuana. However, in finding that the employer's denial of benefits was reasonable, the court in *Lenny Szarek* made several important points that contradict the respondents' argument. First, the court found that *Paganelis* and *Parro* were distinguishable on the grounds that they "involve alcohol rather than marijuana" and "[t]he testing for these two substances is simply different." *Id.* at 610. The court added that the employer in that case had "point[ed] to nothing to suggest that the same inferences should flow from the presence of alcohol in the blood and the presence of marijuana metabolites in the urine." *Id.* Indeed, the court observed that the employer's expert had testified that the employee's marijuana usage could have taken place up to one and a half days

prior to the accident. *Id.* Additionally, the court recounted that the employee's coworker and supervisor had testified that there was no evidence of intoxication and that the employee had been able to perform his job prior to the accident. *Id.* Further, the court stated that, "even if marijuana impairment was a contributing cause of claimant's injury, it was not the sole cause. Under *Paganelis*, it would have to be the sole cause to prevent [the employee] from recovering under the Act." *Id.* at 611.

¶ 38 Further, we see notable distinctions between *Lenny Szarek* and the present case. Unlike the drug test in *Lenny Szarek*, which provided the specific amount of cannabinoids present in the employee's system, the petitioner's postaccident drug test revealed only that it was "positive" for marijuana. Further, unlike the employer in *Lenny Szarek*, the respondents have not presented any testimony or evidence from an expert opining on the petitioner's intoxication. Moreover, the analysis in *Lenny Szarek* makes clear that the holdings in *Paganelis* and *Parro* are not applicable to marijuana cases, precluding reasonable reliance on those decisions by the respondents in this case, and it further explains that marijuana must be viewed differently than alcohol in the context of an employee's alleged intoxication. As the *Lenny Szarek* court observed, marijuana remains in a person's body much longer than alcohol, rendering test results less indicative of a person's recent intoxication. Indeed, this concept is present in the text of section 11 of the Act, which provides that there is a rebuttable presumption of intoxication if, at the time of the accidental injury, "there was 0.08% or more by weight of alcohol in the employee's blood, breath, or urine or if there is any evidence of impairment due to the unlawful or unauthorized use of *** cannabis." 820 ILCS 305/11 (West 2022). Thus, the statute places a test-based, numerical threshold for impairment from alcohol, but for marijuana it provides a more qualitative standard and requires "evidence of impairment." *Id.*

¶ 39 When we consider all these factors together, we believe that the Commission's reversal of the arbitrator's award of penalties and fees was against the manifest weight of the evidence. The only evidence of intoxication that the respondents presented was the positive drug test, which, standing alone, was insufficient to defeat a claim for benefits. See *Lakeside Architectural Metals*, 267 Ill. App. 3d at 1064. The test did not reveal the concentration of cannabinoids in the petitioner's blood, nor did the respondents present expert testimony regarding the petitioner's intoxication. Further, the respondents did not present any testimony from witnesses observing the petitioner to have been intoxicated at the time of the accident. In the absence of other evidence of intoxication, the simple positive drug test was insufficient to support an intoxication defense and was, therefore, not a reasonable basis on which to deny benefits to the petitioner. The Commission's conclusion to the contrary was against the manifest weight of the evidence and must be reversed.

¶ 40 III. CONCLUSION

¶ 41 In sum, we set aside the portion of the Commission's decision that admitted the payroll records contained in RX2 and used those records to determine the petitioner's average weekly wage, as well as the portion of the Commission's ruling that determined the petitioner's TTD benefits based on his average weekly wage, and we remand for the Commission to reevaluate those issues without consideration of the payrolls records contained in RX2. We also set aside the portion of the Commission's decision that reversed the arbitrator's award of penalties and fees under sections 16, 19(k), and 19(*l*) of the Act and remand for the Commission to reinstate the arbitrator's award. The Commission's decision is otherwise confirmed.

¶ 42 Confirmed in part and set aside in part; cause remanded with directions.

***Ramirez v. Illinois Workers' Compensation Comm'n*, 2025 IL App (1st) 242467WC**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 2024-L-50134; the Hon. Daniel P. Duffy, Judge, presiding.
Attorneys for Appellant:	Randall T. Manoyan, of Chicago, for appellant.
Attorneys for Appellee:	Peter A. Havighorst, of Hennessy & Roach, P.C., of Chicago, for appellee Mighty Movers. No brief filed for other appellee.