2024 IL App (4th) 230681WC-U

Order filed

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

FILED
May 17, 2024
Carla Bender
4th District Appellate
Court, IL

WORKERS' COMPENSATION COMMISSION DIVISION

STEVEN STIMELING,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois.
Appellant,	)	
	)	
v.	)	Appeal No. 4-23-0681WC
	)	Circuit No. 22 MR 57
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (Peoria Public School District 150, Appellees.)	)	Honorable Katherine Gorman, Judge, Presiding.

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

ORDER

¶ 1 (1) The claimant forfeited any argument that the Commission improperly considered the opinion testimony of certain physician witnesses given in response to hypothetical questions during cross examination; (2) such testimony was not the basis of the Commission's ruling, so the Commission's alleged consideration of that testimony did not render the Commission's decision against the manifest weight of the evidence; (3) the employer was not collaterally estopped from arguing that the claimant was able to return to work as a security officer; and (4) the Commission's decision not to award the claimant permanent total disability benefits under the "odd lot" category was not against the manifest weight of the evidence.

¶ 2 The claimant, Steven Stimeling, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for injuries to his neck, shoulder, arms, hands, and right eye that he allegedly sustained on November 17, 2009, when he was assaulted by a student while he was employed by respondent, Peoria Public School District 150 (employer) (Case No. 10 WC 33570). The claimant filed a second application for adjustment of claim under the Act (Case No. 10 WC 33571) seeking benefits for injuries to his back (including a herniated disc), both legs, buttocks, and both feet that he claimed to have sustained on June 24, 2010, during a physical therapy session prescribed by his physician. The claimant alleged that the physical therapy session was prescribed to treat the conditions of ill-being that had been caused by the November 17, 2009, work accident. The two cases were consolidated for hearing and decision before an arbitrator.

¶ 3 The employer stipulated that the claimant had sustained an accidental injury arising out of and in the course of his employment on November 17, 2009, but contested causation and other issues related to that injury. The employer denied that the claimant had sustained an accidental injury arising out of and in the course of his employment on June 24, 2010.

¶ 4 Following a hearing, an arbitrator found that the claimant had failed to establish that he had sustained an accidental injury arising out of and in the court of his employment on June 24, 2010. The arbitrator therefore denied benefits in case No. 10 C 33571.

¶ 5 In case No. 33570, the arbitrator found that the claimant had failed to establish that his current conditions of ill-being were causally related to the November 17, 2009, work accident. The arbitrator found that the claimant had reached maximum medical improvement (MMI) for his work-related injuries on June 24, 2010. She awarded the claimant medical expenses from the date of the accident through June 24, 2010, but denied the claimant’s request for medical

expenses incurred thereafter. The arbitrator also denied the claimant's claim for temporary total disability (TTD) benefits for periods after June 24, 2010. She further awarded the claimant permanent partial disability (PPD) benefits to the extent of 10% loss of use of the person as a whole pursuant to section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2008)).

¶ 6 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission affirmed and adopted the arbitrator's decision.

¶ 7 The claimant appealed the Commission's decision to the circuit court of Peoria County, which confirmed the Commission's ruling.

¶ 8 This appeal followed.

¶ 9 FACTS

¶ 10 The claimant worked for the employer as a security officer. His job was to protect the students, teachers, and other occupants of the School District facility and to safeguard the property.

¶ 11 On November 17, 2009, the claimant was making his rounds when he was attacked by a combative student who had recently been transferred from the Department of Corrections. The claimant took the student to the floor and handcuffed him. In the process, the student hit the claimant's right eye with his elbow, causing the claimant's head to snap back. The claimant testified that he was temporarily blinded in his right eye, which became black and blue and very tender to the touch.

¶ 12 The claimant immediately reported the incident to the employer. The employer sent him to Dr. Dru Hauter, an internist at the Illinois Work Injury Resources Center (IWIRC). The claimant saw Dr. Hauter later that day. The IWIRC records note that the claimant presented with a right eye injury and complained of a constant headache, pain around his right eye and blurred

vision. The claimant rated the severity of his right eye pain as 6/10. The assessment was contusion and hemorrhage in the right eye and questionable right orbit fracture. The claimant was referred to Dr. Raymond Heyde, an ophthalmologist at the Hyde Eye Center.

¶ 13 The claimant saw Dr. Heyde the following day. Dr. Heyde examined the claimant and took x-rays of his right eye. He found no damage to the claimant's right eye, no orbit fracture and hemorrhage. Dr. Heyde gave the claimant eyedrops and told him to return for a follow-up appointment in two weeks.

¶ 14 The claimant returned to IWIRC on November 19, 2009, complaining of continued vision loss in his right eye and continued pain on the outer portion of the orbit. He was taking Vicodin and Naprosyn as needed for pain relief. The claimant rated his current pain level at 3/10, and 1/10 with pain medication. The assessment was: "(1) right eye contusion--slow improvement"; (2) questionable right orbit fracture--x-rays were read as no fracture by ophthalmology; and (3) right eye hemorrhage-improved."

¶ 15 The claimant went back to IWIRC on November 30, 2009. He reported continued vision loss and pain at a level of 2/10. He also complained of neck pain. He was assessed as having a mild neck sprain with full range of motion. He was working without restrictions. The treating physician recommended that the claimant have an MRI of the right orbit to rule out an orbit fracture. The doctor imposed work restrictions of "no altercation or combat risk activity." He noted that the claimant's right eye contusion and hemorrhage continued to improve slowly.

¶ 16 The claimant returned to the IWIRC three days later complaining of continuing problems with his vision, headaches with a pain level of 2/10, sharp orbital pain with a pain level of 2/10 and sharp, stabbing neck pain with a pain level of 5/10. The medical record reflects that the claimant had undergone an MRI that was negative for an orbit fracture. The treating physician

prescribed physical therapy to treat the claimant's neck sprain and maintained the claimant's work restrictions.

¶ 17 The claimant followed up at IWIRC on December 7, 2009. He reported experiencing neck pain radiating into both arms with numbness and tingling. He rated the pain at 5/10, but noted that the pain increased with movement of the neck. He was also experiencing back pain that began when he bent over to wash his daughter's hands. He confirmed that the back pain was not work-related. He stated that his other prior symptoms had not improved. The assessment was right eye contusion (unchanged) and a neck sprain that was "suspicious for a C6-C7 radiculopathy." The doctor prescribed a cervical MRI, told the claimant to follow up with ophthalmology, and restricted the claimant to sedentary work.

¶ 18 The claimant underwent an MRI of his cervical spine on December 7, 2009. The films were interpreted as revealing diffuse degenerative disc disease throughout the cervical spine, including but not limited to foraminal stenosis at all levels (severe in some places), +osteophyte compression on the C6 nerve root and an osteophyte complex that was flattening the spinal cord at C6-C7. It was noted that no focal acute disc herniation was present.

¶ 19 On December 11, 2009, Dr. Hauter referred the claimant to Jeffrey Klopfenstein, a neurosurgeon, for a surgical consultation. The claimant first saw Dr. Klopfenstein on December 31, 2009. Dr. Klopfenstein noted that the claimant's physical therapy had been aborted because the claimant had had some "non-specific visual complaints" following physical therapy. Dr. Klopfenstein described the claimant's symptoms as "paraspinal neck pain radiating into the occipital region as well as the shoulders and both arms in a "non-dermatomal fashion." ("Non-dermatomal" sensations are "nonorganic," *i.e.*, they are not caused by any underlying neurologic pathology.) Dr. Klopfenstein suspected that the claimant's symptoms were primarily

"myofascial" in origin (*i.e.*, involving some muscles and the thin cover of tissue that holds the muscles in place) given the bilateral symptoms "and the lack of clear cut substantial acute pathology in the cervical spine MRI." Dr. Klopfenstein noted that it was "conceivable" that there was some radicular pain involved. However, he did not believe that surgery was warranted at that time. He prescribed epidural steroid injections and possible trigger point injections to manage the claimant's pain, and he recommended that the claimant resume physical therapy.

¶ 20 The claimant returned to the IWIRC on March 10, 2010. The claimant reported that his neck symptoms had improved. He rated his pain at a level of 2/10. He stated that he had received injections at the pain clinic that relieved the pain in his neck. He denied having any headache or any numbness or tingling in his hands or fingers. However, the claimant was still unable to see out of his right eye. The claimant was given work restrictions and was expected to return to work in one month.

¶ 21 The claimant's conditions continued to improve thereafter. On a March 30, 2010, visit to the IWIRC, the claimant rated his neck pain level as 1/10. He had not taken any pain medication for the previous 5 days, and he had not visited the pain clinic in 20 days. He reported no pain in his neck or numbness and tingling down his arms into his hands or fingers. He had canceled his last appointment at the pain clinic because he was pain free. He was taking pain medication. The claimant was told to continue receiving injections. He was issued work restrictions and was to return to work in three weeks.

¶ 22 The claimant returned to Dr. Klopfenstein on March 31, 2010. Dr. Klopfenstein noted that the claimant had made significant progress and now graded his pain level at 1/10. Dr. Klopfenstein did not believe that surgery was required. He recommended that the claimant continue receiving injections at the pain clinic and cleared him to resume physical therapy.

¶ 23 The claimant went back to IWIRC for a follow-up on April 20, 2010. He noted that his symptoms had improved, and he rated his current pain level at a 0/10 for the neck strain. He reported that he had experienced increased pain with numbness and tingling in his shoulders and arms on April 15, 2010, which improved after the injection. He noted that Dr. Klopfenstein had released him from care and that the eye specialist had released him to work regular duty.

¶ 24 During a physical therapy session on May 10, 2010, the claimant stated that his neck soreness persisted, but he felt good overall. When he returned to the IWIRC four days later, the claimant reported that his symptoms had not changed since his last visit. He was experiencing intermittent neck pain that he rated at a level of 4.5/10. His vision remained the same. He stated that he was doing better, that he had been doing physical therapy three times per week, and that he had minimal neck discomfort and no numbness or tingling in his arms or hands. It was recommended that the claimant do work conditioning. He was to return to work in one month.

¶ 25 When the claimant returned to the IWIRC on June 11, 2010, he stated that his symptoms had worsened since his last visit. He complained of intense pain that radiated between his shoulder blades all the way down his back. The vision in his right eye was the same and was blurry. He reported that his neck pain had improved significantly after the injections but it had returned, with tingling over his shoulders with certain movements. The doctor issued work restrictions and recommended that the claimant continue work conditioning and return to work in two weeks.

¶ 26 The physical therapy and work conditioning records from mid-May through late June of 2010 indicate that the claimant's conditions continued to improve. The claimant had no new complaints during the May 14, 2010, physical therapy session. During the May 27, 2010, session, he stated that he felt good and was ready resume work conditioning sessions.

¶ 27 The record of the claimant's June 3, 2010, work conditioning session indicated that he continued to improve. During his June 10, 2010, session, the claimant stated that his neck pain persisted. However, he noted that he had a markedly improved tolerance of work conditioning activity compared to the initial session, and that he was feeling better with less fatigue overall. Although the claimant reported experiencing overall fatigue during the June 16, 2010, work conditioning session, he reported feeling better during the June 21, 2010, session. The record of the claimant's June 23, 2010, work conditioning session notes that the claimant had no change in his cervical symptoms.

¶ 28 During the June 24, 2010, work conditioning session, the claimant stated that he felt strong and that his cervical symptoms were unchanged. At that time, the plan of care was for the claimant to return to the doctor with a recommendation for discharge from work conditioning and for a return to work full duty.

¶ 29 The claimant testified that he injured his low back while lifting weights during his June 24, 2010, work conditioning session. He returned to IWIRC on July 8, 2010, complaining of constant low back pressure and sharp neck pain. He rated the pain level as 6/10. A lumbar MRI was ordered which revealed a herniated disc at L4-L5.

¶ 30 On July 21, 2010, the claimant returned to Dr. Klopfenstein complaining of low back and leg pain, numbness in the right leg and buttock, and some issues with bladder incontinence. Dr. Klopfenstein opined that the claimant's lumbar MRI showed a small right foraminal disc herniation at L4-L5, but nothing to explain incontinence. He referred the claimant to see Jan Boerke, an advanced practice nurse, to assess bladder function and to arrange conservative care.

¶ 31 The claimant saw Boerke on February 3, 2011. Boerke's record of that visit indicates that the claimant reported that he felt a pop in his back while doing work conditioning, and that

he was experiencing pain in his low back that was radiating into his into his right buttock, thigh, and calf. He rated the pain level as 5/10 while on pain medication. The claimant also stated that he was having stool incontinence and problems with urination. He was unable to return to work. The claimant also complained of increased axial neck pain radiating to his shoulders and down his right arm and right hand. A repeat cervical MRI was ordered to assess the possible source of these symptoms. The claimant was told to return to Dr. Klopfenstein for a follow-up appointment.

¶ 32 The claimant saw Dr. Klopfenstein on February 23, 2011. Dr. Klopfenstein noted that the repeat cervical MRI showed multi-level degenerative changes throughout the claimant's cervical spine. However, the claimant's symptoms were non-dermatomal and were inconsistent with some of the degenerative conditions shown on the MRI. Dr. Klopfenstein did not believe that surgical intervention was warranted without further evaluation. He prescribed a bone scan and an EMG nerve conduction study and ordered the claimant to return after taking the tests to further discuss possible surgical intervention.

¶ 33 The claimant returned to Dr. Klopfenstein on April 6, 2011. After reviewing the results of the claimant's bone scan, Dr. Klopfenstein did not believe that the claimant's degenerative disc disease or facet arthropathy was the source of the claimant's axial neck pain. Although he noted that the pain could be arising from an osteophyte complex on the left and the foraminal stenosis on the right, Dr. Klopfenstein noted that this was not likely given the claimant's nonspecific pain complaints.

¶ 34 When the claimant followed up with Dr. Klopfenstein on May 18, 2011, Dr. Klopfenstein noted that a CT myelogram confirmed that the claimant had multi-level degenerative changes in his cervical spine. The doctor reiterated his conclusion that the claimant's continued complaints

of axial neck pain, upper arm pain and paresthesias were non-dermatomal. Nevertheless, he recommended that the claimant consider cervical discectomy and fusion surgery. Although he told the claimant that the surgery had only a 50-60 percent chance of success, the claimant decided to have the surgery.

¶ 35 On June 8, 2011, Dr. Klopfenstein performed a three-level surgical fusion with plating. The claimant had some initial improvement after the surgery, but complained of neck and back pain and other symptoms thereafter. On August 5, 2013, Dr. Richard Kube, a spinal surgeon, performed bilateral hemilaminotomy microdiscectomy surgery on the claimant's lower back. On November 3, 2015, Dr. Todd McCall, a spinal surgeon and neurosurgeon, surgically implanted a dorsal column stimulator to reduce the claimant's continuing pain.

¶ 36 On May 25, 2012, the Peoria Board of Education conducted a vote to determine whether the claimant was permanently disabled from working as a security officer. The Board voted that the claimant was permanently disabled and terminated his employment.

¶ 37 The claimant subsequently filed a claim against the employer for benefits under the Public Employee Disability Act (PEDA) Act (5 ILCS 345/0.01 *et seq.* (West 2012)). The employer chose Dr. Rick Garrels to conduct a fitness for duty evaluation to determine whether the claimant was physically fit enough to perform his job duties without threatening his own safety or the safety of the members of the public. After examining the claimant and reviewing his medical records, Dr. Garrels opined that the claimant could not safely perform the functions of his job because, in his experience, individuals who have multi-level fusion surgery on their spine are commonly unable to sustain moderate to heavy levels of physical exertion "without significant aggravations to the spinal condition[,] especially radicular symptoms resulting in the loss of feeling and strength in an extremity." Dr. Garrels noted that, if that were to happen to the

claimant, it could put the claimant and members of the public in harm's way, especially if the claimant was unable to control his firearm.

¶ 38 The claimant introduced Dr. Garrels' fitness for duty evaluation into evidence to support his claim that he is permanently and totally disabled, and therefore entitled to PTD benefits.

¶ 39 Dr. David Fletcher served as the claimant's independent medical examiner. After examining the claimant on March 13, 2017, and reviewing the claimant's medical records, Dr. Fletcher opined that: (1) the claimant's neck and low back complaints and his eventual medical care was work-related; (2) the medical care and treatment of the claimant, including all of the claimant's surgeries, were reasonable and necessary medical procedures; (3) the claimant is disabled from returning to his previous occupation; and (4) the claimant is "virtually unemployable" due to his two work injuries and his present chronic pain complaints. During his May 8, 2017, evidence deposition, Dr. Fletcher was asked his opinion as to whether the claimant's neck and low back complaints are causally related to the November 17, 2009, work accident. Dr. Fletcher responded, "[b]ased on the work history, I thought there was a causal relationship assuming that the history is correct."

¶ 40 However, at times during his deposition, Dr. Fletcher called the claimant's credibility into question. When asked whether, upon his examination of the claimant, he was concerned about symptom magnification, Dr. Fletcher responded that he thought that there was overreporting in his situation. Dr. Fletcher also testified that he indicated in his report that the claimant's pain drawing was not consistent with an anatomical pattern, *i.e.*, it was not consistent with any known medical condition, and that that would be a "red flag" for someone doing a dorsal column stimulator not to have a distinctive nerve root dermatomal problem. Dr. Fletcher further testified that the fact that the claimant had global anterior and posterior leg pain was a

major inconsistency.

¶ 41 Dr. Morris Marc Soriano, a neurosurgeon, served as the employer's independent medical examiner. After examining the claimant and reviewing the claimant's medical records, Dr. Soriano issued a report on August 30, 2010. In his report, Dr. Soriano opined that the claimant's current back, neck, and right eye conditions were not causally related to either the November 17, 2009, work accident or the June 24, 2010, work conditioning incident. He noted that the claimant had had an objectively normal eye exam and that the claimant's subjective complaints of vision loss had no foundation in physical examination findings or in ophthalmological testing.

¶ 42 Dr. Soriano issued an addendum report on June 30, 2015, after re-examining the claimant. In the addendum report, Dr. Soriano stated that his opinions in his prior report remained unchanged. He noted that the claimant had exhibited three Waddell signs during his recent examination and that there were no objective findings or radiological studies supporting the claimant's subjective complaints. He concluded that there was no known disease that would cause the symptom complex the claimant had. Dr. Soriano opined that the claimant was dramatically magnifying his symptoms. He further opined that the back surgery performed by Dr. Kube was clearly done to repair degenerative changes, not acute trauma-related disc herniations. The surgery had no relationship to the claimant's exertion during physical therapy or the injury he claimed to have sustained from physical therapy. Dr. Soriano concluded that the current problems with the claimant's neck and back were not caused by the alleged incident at work.

¶ 43 Dr. Soriano further opined that the claimant was at MMI for his low back and neck surgeries, that the claimant has not and will not suffer any further impairment from his injuries, and that the claimant is capable of performing all work activities without restriction. Dr. Soriano

strongly disagreed with Dr. Garrels' contrary opinion, which he found to be based on Dr. Garrels' personal experience rather than scientific, evidence-based medicine.

¶ 44 Dr. Soriano issued three other addendum reports, none of which changed his prior opinions that the claimant's current conditions of ill-being and his surgical procedures were not causally related to the November 2009 work accident or the June 2010 incident. However, after reviewing additional medical records, Dr. Soriano supplemented his causation opinion by opining that the claimant's fall from a ladder in 2012 was the cause of the claimant's subsequent back pain and need for back surgeries.

¶ 45 At the employer's request, Dr. Martin Lanoff performed a medical records review and issued a report of his findings. Dr. Lanoff opined that the claimant had no preexisting condition and no medical malady whatsoever. He found the claimant's subjective complaints to be out of proportion with the objective findings and not connected to any medical malady. He noted that none of the treating doctors could find a medical malady. Dr. Lanoff concluded that the soft tissue injuries that the claimant sustained in the initial accident or the physical therapy incident would have resolved without treatment within 6-8 weeks, at which point the claimant would be at MMI. Dr. Lanoff opined that the claimant needed no further treatment and could return to work without restrictions.

¶ 46 During the arbitration hearing, the claimant testified that, as a result of the injuries to his right eye, neck and back, he is unable to perform the critical functions of his job. He is also unable to engage in some of his hobbies, including playing sports, playing the drums, and hiking. He is still blind in his right eye. He remains under ongoing medical care, including treatments for pain.

¶ 47 The arbitrator found that the claimant had failed to prove by a preponderance of the

evidence that he sustained a work-related accident on June 24, 2010, or that his current conditions of ill-being are causally related to the November 17, 2009, work accident. The arbitrator noted that she was "gravely concerned by the number of physicians *** that have suggested that the [claimant's] complaints were not supported by the objective findings or were considered to be non-dermatomal and/or non-anatomical in nature." Specifically, the arbitrator noted that: (1) Dr. Klopfenstein concluded that the claimant's symptoms were non-dermatomal; (2) the examining treater at the Hyde Eye Center noted in December 2009 that it was expected that claimant's visual acuity would return to normal and that the claimant's decreased visual acuity was not consistent with the examination findings; and (3) both Dr. McCall and the treaters at the pain clinic noted that the claimant's leg symptoms were difficult to explain.

¶ 48 The arbitrator further noted additional incidents that led her to question the claimant's credibility. For example, at the time of the December 9, 2013, pain therapy session it was noted that the claimant was able to walk into the pain clinic without using any assistive device and without any noticeable gait deficit. However, during the FCE on January 28, 2014, the claimant walked with an antalgic gait and a cane. On February 6, 2014, it was noted that the claimant walked with a normal gait on arrival but with a severe antalgic gait on departure and alternated which leg was being favored. The arbitrator also found it extremely significant that the claimant's own IME physician, Dr. Fletcher, noted his concerns that the claimant was engaging in symptom magnification.

¶ 49 The arbitrator further found that the initial post-accident medical treatment showed that the claimant was improving with conservative care. His pain level steadily decreased to point where he rated it as 0/10 on April 20, 2010. At that time, Dr. Klopfenstein released him from care. The eye specialist released the claimant to full duty work on April 16, 2010. He canceled

his last appointment at the pain clinic because he was pain free. During his June 24, 2010, work conditioning session, the claimant reported that he felt strong and that he was ready to return to full duty. It was further noted that the claimant's work conditioning goals had been achieved and that the claimant had achieved heavy/extra heavy physical demand range for material handling.

¶ 50 The arbitrator found that the claimant had reached maximum medical improvement (MMI) for his work-related injuries on June 24, 2010. She awarded the claimant medical expenses from the date of the November 17, 2009, accident through June 24, 2010, but denied the claimant's request for medical expenses incurred thereafter. The arbitrator also denied the claimant's claim for TTD benefits for periods after June 24, 2010. She further awarded the claimant PPD benefits to the extent of 10% loss of use of the person as a whole pursuant to section 8(d)(2) of the Act.

¶ 51 The arbitrator further found that the claimant had failed to prove by the preponderance of the evidence that he had sustained a work-related accident on June 24, 2010. In so holding, the arbitrator reiterated her concerns with the claimant's non-dermatomal symptoms and the other matters that cast doubt upon the claimant's credibility.

¶ 52 In addition, the arbitrator found it of "great significance" that the records of the June 24, 2010, work conditioning session are "completely void of any notation whatsoever of any injury having occurred." The arbitrator found this particularly striking because the claimant had testified that he was brought to his knees due to pain at the time of the alleged June 24, 2010, injury, that he was unable to move thereafter, and that he had to be wheeled to Dr. Hauter's exam room. Moreover, the June 24, 2010, records reflect that the goals of the claimant's work conditioning had been achieved and that the claimant was feeling strong and ready to return to work full duty.

¶ 53 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission affirmed and adopted the arbitrator's decision.

¶ 54 The claimant appealed the Commission's decision to the circuit court of Peoria County, which confirmed the Commission's ruling.

¶ 55 This appeal followed.

¶ 56 ANALYSIS

¶ 57 As a preliminary matter, we note that the claimant has flagrantly violated the requirements of Illinois Supreme Court Rule 341 in preparing his brief. Rule 341(h)(6) provides, in pertinent part, that an appellant's statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal[.]" Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). The claimant's statement of facts is rife with argument and commentary. It reads more like an extended argument than a statement of facts. The claimant seems to be aware of this because the arguments he presents in the argument section of his brief are far less developed than the corresponding arguments in his "statement of facts." The argument section reads like a short summary of the arguments presented in the statement of facts. It often fails to cite to the record or even to reference the facts upon which the claimant's arguments are based.

¶ 58 Moreover, the table of contents to the record on appeal in the claimant's appendix is deficient. Illinois Supreme Court Rule 342(a) requires an appellant's brief to include "as an appendix, * * * a complete table of contents, with page references, of the record on appeal." Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). "The table shall state: (1) the nature of each document, order, or exhibit, e.g., complaint, judgment, notice of appeal, will, trust deed, contract, and the like; (2) in the case of pleadings, motions, notices of appeal, orders, and judgments, the date of filing or

entry; and (3) the names of all witnesses and the pages on which their direct examination, cross-examination, and redirect examination begin." *Id.* The claimant's skeletal table of contents does not comply with Rule 342(a). It does not state the names of the witnesses and the pages on which their direct examination, cross-examination, and redirect examination begin. Nor does it identify the parties' exhibits, including the medical records and all the other documentary evidence presented in the case. The table of contents consists almost entirely of multiple entries labeled "Transcripts of Arbitrator Proceedings," each of which is followed by a page number range (*e.g.*, "C177-C327"). The claimant does not identify any specific documents or testimony contained within these page ranges. These useless entries in the appendix span almost the entire length of the record, from C25-C4914. That is grossly inadequate. Although the claimant has perfunctorily acknowledged the requirements of Rule 342(a), he has made virtually no effort to satisfy those requirements.

¶ 59 Taken together, these violations of Rule 341 have made it extremely difficult for us review the record in this case. The problem is compounded by the parties' failure to identify the volume of the record in which each cited document appears and by their occasional citations to entire depositions or group exhibits instead of the specific pages that are relevant.

¶ 60 Our supreme court's rules governing the format and content of appellate briefs are mandatory rules of procedure, not mere suggestions. *Menard v. Illinois Workers' Compensation Comm'n*, 405 Ill. App. 3d 235, 238 (2010); *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 8. When a party's brief fails to comply with Rule 341(h)(6), we may dismiss the appeal, strike the statement of facts, or disregard the noncompliant portions of the claimant's statement of facts. *In re Marriage of Moorthy and Arjuna*, 2015 IL App (1st) 13207729, ¶ 2, n. 1; *Szczesniak*, 2014 IL App (2d) 130636, ¶ 8. We may also dismiss the appeal where a party's

brief fails to follow the requirements set forth in Rule 342(a). *Fender v. Town of Cicero*, 347 Ill. App. 3d 46, 51 (2004). We choose to exercise our discretion and address the issues on their merits. Nevertheless, we admonish the claimant's counsel to comply fully with all applicable supreme court rules in future cases.

¶ 61 Turning to the merits, the claimant contends that the employer's counsel improperly elicited damaging opinion testimony from some of the expert witnesses during their depositions by means of improper hypothetical questions that lacked foundation in the evidence. For example, the employer's counsel asked several of the experts to render a causation opinion based upon the assumption that the claimant had preexisting conditions in his neck and back and had been treated for such conditions prior to the November 2009 work accident. Counsel also asked the experts whether a fall from a ladder onto one's buttocks could cause or aggravate a preexisting back injury. This was done to suggest that the claimant's fall from a ladder in 2012 was an intervening injury that broke the causal chain between the claimant's prior work injuries and his current conditions of ill-being. The claimant argues that any testimony given in response to these questions, and any expert opinions based on unsupported and unsubstantiated facts about the claimant's alleged preexisting conditions or intervening accidents, must be stricken. He maintains that, when all such evidence is removed from consideration, the remaining evidence is insufficient to support the Commission's finding of no causation.

¶ 62 To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Whether a causal

connection exists between an injury and employment is a question of fact for the Commission to decide. *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999).

¶ 63 We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence. *Swartz*, 359 Ill. App. 3d at 1086. Factual determinations are against the manifest weight of the evidence only "when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the [Commission]." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). The test is whether the evidence is sufficient to support the Commission's finding, 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).

¶ 64 As an initial matter, the claimant fails to specify precisely what evidence should be removed from consideration. He cites a few instances of improper hypothetical questions, but he does not identify any witness statements or expert witness's conclusions that should be stricken. His argument is insufficiently developed and inadequately supported by specific citations to the record. Accordingly, we could find that the clamant has forfeited his argument on this issue. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (providing that the argument section of a brief "shall contain the contentions of the [party] and the reasons therefor, with citation of the authorities *and the pages of the record relied on*." (Emphasis added)); *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 33 ("The failure to properly

develop an argument and support it with citation to relevant authority results in forfeiture of that argument.").

¶ 65 Forfeiture aside, the claimant's argument fails on the merits. Even assuming *arguendo* that the hypothetical questions referenced by the claimant (and others like them) had no foundation in the evidence and that some of the experts improperly relied upon them in finding no causation, the claimant's argument is unavailing. Although some of the expert witnesses relied, in part, on the alleged existence of preexisting conditions or intervening accidents, that was not the sole basis of any expert's opinion. In rendering his opinion that the claimant's current conditions of ill-being had no causal relationship with the work accidents, Dr. Lanoff relied entirely on his review of the medical records. Although Dr. Soriano relied in part on the claimant's fall from the ladder in one of his addendum reports, he relied extensively on other evidence, including the medical records and the claimant's lack of credibility.

¶ 66 The basis for the Commission's decision had nothing to do with the hypothetical questions posed in this case. Rather, the Commission based its decision on 1) the number of physicians in this case who suggested the claimant's complaints were not supported by the objective findings or were considered non-dermatomal and/or non-anatomical in nature, 2) the fact that the claimant's own IME physician, Dr. Fletcher, opined that he thought the claimant was overreporting his symptoms, 3) Dr. Flecther's notation of several "red flags" and inconsistencies in the claimant's case, 4) the claimant's overall lack of credibility, 5) the claimant's reporting to his treating doctors on June 24, 2010, that he felt strong and was ready for discharge and a return to work full duty, and (6) the absence of any reference in the June 24, 2010, physical therapy record that the claimant had sustained an accident. The Commission's decision does not reference the deposition testimony or any hypothetical question and answer as

the basis for its conclusions.

¶ 67 Accordingly, even when all reference to the claimant's alleged preexisting conditions or intervening accidents is set aside, there remains ample evidence to support the Commission's decision.

¶ 68 The claimant further argues that the employer should be collaterally estopped from arguing that the claimant is capable of returning to full-duty work because it took the contrary position in the PEDA action. We disagree.

¶ 69 The doctrine of collateral estoppel "bars relitigation of an issue already decided in a prior case." *People v. Tenner*, 206 Ill. 2d 381, 396 (2002). There are three requirements for application of collateral estoppel: "(1) the issue decided in the prior adjudication is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication." *Gumma v. White*, 216 Ill. 2d 23, 38 (2005). For collateral estoppel to apply, a decision on the issue must have been necessary for the judgment in the first litigation, and the person to be bound must have actually litigated the issue in the first suit. *Talarico v. Dunlap*, 177 Ill. 2d 185, 191 (1997). We review *de novo* the applicability of the collateral estoppel doctrine as a question of law. *In re A.W.*, 231 Ill. 2d 92, 99 (2008); *People v. Sutherland*, 223 Ill. 2d 187, 197 (2006).

¶ 70 Collateral estoppel does not apply in this case because the degree of the claimant's disability and his ability to return to work was not litigated in the PEDA action. The issue addressed in that case was whether the employer had hired the claimant as a "law enforcement officer" entitled to benefits under the Disability Act and Benefits Act. The parties filed cross-motions for summary judgment on that issue, and the trial court ruled in favor of the employer.

The trial court's finding that the claimant had not been hired as a "law enforcement officer" was the sole basis of the trial court's ruling and of our appellate court's holding affirming that ruling. Accordingly, the employer is not barred from arguing in this case that the claimant was capable of returning to work full duty after his work-related accident.

¶ 71 The claimant further argues that the Commission's decision not to award the claimant PTD benefits under the "odd lot" category is against the manifest weight of the evidence. An employee is totally and permanently disabled when he is unable to make some contribution to industry sufficient to justify payment of wages to him. *A.M.T.C. of Illinois v. Industrial Comm'n,* 77 Ill. 2d 482, 487 (1979). However, the employee need not be reduced to total physical incapacity before a permanent total disability award may be granted. *Ceco Corp. v. Industrial Comm'n,* 95 Ill. 2d 278, 286–87 (1983). Rather, the employee must show that he is unable to perform services except those that are so limited in quantity, dependability, or quality that there is no reasonably stable market for them. *Alano v. Industrial Comm'n,* 282 Ill. App. 3d 531, 534, (1996). If the claimant's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is upon the claimant to prove by a preponderance of the evidence that he fits into the "odd-lot" category-one who, though not altogether incapacitated to work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market. *Valley Mould & Iron Co. v. Industrial Comm'n,* 84 Ill. 2d 538, 546–47 (1981); *Alexander v. Industrial Comm'n,* 314 Ill. App. 3d 909, 915–16 (2000). The claimant ordinarily satisfies his burden of proving that he falls into the odd-lot category in one of two ways: (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market. *Alano,* 282 Ill. App. 3d at 534–

35. Once the claimant establishes that he falls into the "odd-lot" category, the burden shifts to the employer to prove that the claimant is employable in a stable labor market and that such a market exists. *Waldorf Corp. v. Industrial Comm'n,* 303 Ill. App. 3d 477, 484 (1999).

¶ 72 Whether a claimant falls into the odd-lot category is a factual determination to be made by the Commission. *Westin Hotel v. Industrial Comm'n,* 372 Ill. App. 3d 527, 544 (2007). In resolving disputed issues of fact, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny,* 397 Ill. App. 3d at 675. We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence. *Swartz,* 359 Ill. App. 3d at 1086. Factual determinations are against the manifest weight of the evidence only "when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the [Commission]." *Durand,* 224 Ill. 2d at 64.

¶ 73 There was ample evidence in this case to support the Commission's determination that the claimant was not permanently and totally disabled. The medical records suggest that the claimant was capable of returning to work full-duty on March 24, 2010, that he did not sustain an injury on that date, and that his subsequent subjective complaints were non-dermatomal and not supported by the objective test findings. Although Dr. Fletcher opined that the claimant was permanently and totally disabled, and Dr. Garrels opined that the claimant was incapable of returning to his duties as a security officer, Drs. Lanoff and Soriano reached the opposite conclusion. The Commission was entitled to credit their opinions over those of Drs. Fletcher and Garrels. In addition, there was ample evidence in the record that the claimant was exaggerating or inventing his symptoms after June 24, 2010, including Dr. Soriano's opinion to that effect, the

medical records of Dr. Klopfenstein and other treaters, and the observed inconsistencies in the claimant's behavior mentioned in the Commission's decision. Accordingly, the Commission's decision to award PPD benefits instead of PTD benefits is not against the manifest weight of the evidence.

¶ 74 CONCLUSION

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

¶ 76 Affirmed.