2021 IL App (3d) 200224WC-U

Workers' Compensation
Commission Division
Order Filed: August 11, 2021

No. 3-20-0224WC

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

EMERALD PERFORMANCE MATERIALS,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Tazewell County.
	)	
	)	
v.	)	No. 19-MR-243
	)	
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*,	)	Honorable
	)	Stephen Kouri,
(Glen Goddard, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The decision of the Illinois Workers' Compensation Commission awarding claimant benefits under the Occupational Diseases Act (820 ILCS 310/1 *et seq*. (West 2010)) is not against the manifest weight of the evidence.

¶ 2 Claimant, Glen Goddard, filed an application for adjustment of claim pursuant to the Illinois Workers' Occupational Diseases Act (Act) (820 ILCS 310/1 *et seq*. (West 2010)), seeking benefits for a kidney condition (membranous nephropathy) that he allegedly developed from cumulative exposure to hazardous chemicals while working for respondent, Emerald Performance Materials (Emerald). Following a hearing, the arbitrator found that claimant sustained an occupational disease and that his membranous nephropathy and associated symptomology (hypertension and diabetes) were causally related to his workplace exposure. The arbitrator awarded claimant medical expenses, temporary total disability (TTD) benefits from October 27, 2011, through February 23, 2012, and permanent partial disability (PPD) benefits, representing 40% loss of use of the person as a whole.

¶ 3 On review, the Illinois Workers' Compensation Commission (Commission) modified the arbitrator's decision and affirmed the decision as modified, with one commissioner dissenting. Specifically, the Commission found that claimant failed to prove a causal connection between his diabetes and workplace exposure and, thus, modified the arbitrator's award of medical expenses, including prospective medical, to exclude expenses for treatments relating to claimant's diabetes. On judicial review, the circuit court of Tazewell County confirmed the Commission's decision. Emerald appeals, arguing that the Commission's decision awarding claimant benefits under the Act is against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 4 I. Background

¶ 5 Emerald owns and operates a large chemical plant in Henry, Illinois. The plant, which was previously owned by B.F. Goodrich, manufactures rubber and plastic products for use in various industries. Claimant worked at the plant from 1993 to 2011. Claimant was diagnosed with

membranous nephropathy and hypertension in 2011, when he was 44 years old. Claimant filed an application for adjustment of claim against Emerald on November 11, 2011, alleging that his cumulative exposure to hazardous chemicals at the plant caused the development of his disease. He also alleged an accident date of October 28, 2011. Claimant received medical treatment for his conditions from 2011 to 2018, when he was also diagnosed with diabetes.

¶ 6 On July 19, 2018, the matter proceeded to an arbitration hearing, which was held before Arbitrator Douglas McCarthy. In addition to testifying on his own behalf at the hearing, claimant presented numerous exhibits, including, *inter alia*, the following: a "BF Goodrich Medical Disease Questionnaire" from 1999; a "Respirator Medical Evaluation Questionnaire" from 2007; the evidence deposition of his former co-worker, David Smid; medical records and a medical bill summary; Material Safety Data Sheets (MSDS) pertaining to various chemicals used at Emerald; and various documents prepared by the United States Environmental Protection Agency (USEPA), Illinois EPA (IEPA) and National Institute of Occupational Safety and Health (NIOSH). The parties also presented conflicting medical evidence. Emerald presented the reports and evidence depositions of two medical experts, Dr. Shirley A. Conibear and Dr. Amishi Desai. Claimant presented the testimony of one medical expert, Dr. David J. Fletcher,[1] along with Dr. Fletcher's supplemental report, dated July 16, 2018, and various medical research articles Dr. Fletcher relied on in forming his opinions. The following factual recitation is taken from the evidence adduced at the hearing.

¶ 7 A. Claimant's Testimony

[1] Due to the length of the hearing, the arbitrator continued the matter prior to the completion of Dr. Fletcher's testimony. The parties completed the testimony via evidence deposition on July 30, 2018. The arbitrator closed proofs after receiving the transcript of the evidence deposition on August 15, 2018.

¶ 8 Claimant testified that he was employed as a chemical operator at the plant from June 1993 to March 16, 2011, when the plant temporarily shut down due to a labor dispute. He did not return to work at the plant and currently receives social security disability benefits.

¶ 9 Claimant's primary job duties as a chemical operator included making and packaging chemical products. He made products by mixing various chemicals in a reactor, which produced 2,000-gallon chemical reactions. He used a computer to mix the chemicals and did not manually stir the mixtures. However, the packaging process required claimant to manually place finished powder or pellet products in bags. Claimant's job duties regularly exposed him to chemical vapors and airborne powders that irritated his skin and gave him "flu-like symptoms." Claimant specifically recalled having exposure to the following chemicals: toluene, morpholine, carbon disulfide, hydrogen sulfide and methylene chloride. He generally worked seven 12-hour shifts every two weeks, alternating between three or four days per week, but also usually worked overtime each week. He estimated that he worked 600 to 800 hours of overtime during his last year at the plant.

¶ 10 Claimant testified that he made various chemical products in different buildings at the plant over the years. From 1994 to 1995, claimant made product 3114, which was used in the automotive industry to maintain plastics, in building 722. Claimant recalled leaving yellow stains on his white shirts and bed sheets when he worked in building 722. Claimant also made products OBTS and MBDS in building 712. Later, from 2003 to his last date of employment in March 2011, claimant made and packaged Cure-Rite BBTS and Cure-Rite Powder in building 725.

¶ 11 Claimant testified that he used morpholine and carbon disulfide to make the Cure-Rite products in building 725. Claimant recalled experiencing a burning sensation on his skin from the

morpholine vapors and often smelled carbon disulfide, which he described as a sweet smell, in building 725. Even though Emerald allowed claimant to shower and change clothes before leaving work, he could still smell chemicals emanating from his body at home.

¶ 12 Claimant further testified that the production processes for both Cure-Rite products produced substantial amounts of airborne powder, commonly referred to as dust, that covered the building. Building 725 also had a faulty ventilation system, which increased the amount of airborne dust. Because of the faulty ventilation system, workers occasionally opened a door for added ventilation, even during the winter months. Building 725 also had a faulty 12-inch vent header line that transported chemicals from the reactors. The vent header line had multiple holes that allowed chemicals to escape, which increased the exposures in building 725. There was also a dust collector on the roof of the building, which frequently plugged and pushed dust back into the building. As a result, claimant constantly touched, tasted and inhaled the dust, despite wearing special protective equipment that covered him from head to toe. Claimant recalled one occasion in 2008 or 2009 where workers had to evacuate the building due to a buildup of fumes. He notified maintenance of the ventilation issues, but Emerald refused to make repairs due to the cost.

¶ 13 Claimant testified that he began noticing changes in his body in 2010. After experiencing increased edema, or swelling, in his legs in May 2011, he sought medical treatment with his family doctor, Dr. Arnold Faber. Dr. Faber, who was also the company doctor at Emerald until 2009, referred claimant to a nephrologist, Dr. Robert A. Sparrow. Dr. Sparrow subsequently diagnosed claimant with membranous nephropathy and provided the primary treatment for his condition.

¶ 14 Claimant first met with his attorney on October 28, 2011, due to concerns that his kidney condition was caused by chemical exposures at Emerald. Claimant later clarified that he decided

to explore a causal connection between his condition and workplace exposure after learning three other workers from building 725 had developed kidney issues. At his attorney's recommendation, claimant had an initial consultation with Dr. Fletcher on November 16, 2011. According to claimant, Dr. Fletcher expressed an opinion that there may be a causal relationship between claimant's condition and workplace exposure during the initial consultation.

¶ 15 Claimant testified that, after meeting with Dr. Fletcher, he assisted his union in submitting a request to NIOSH for an evaluation of the conditions at the plant. NIOSH eventually conducted an evaluation at the plant. It was claimant's understanding that the evaluation revealed overexposure to Cure-Rite, although Emerald was not manufacturing Cure-Rite at the time of the evaluation. Additionally, claimant was aware that the USEPA and, later, the IEPA inspected the plant and found various violations. However, he was not employed at Emerald when the IEPA conducted its inspection and found improper storage of hazardous waste. According to claimant, improper storage of hazardous waste occurred throughout his employment at the plant.

¶ 16 Claimant testified that he had no chronic health conditions, such as significant weight fluctuations, hypertension and diabetes, prior to his membranous nephropathy diagnosis. He also felt as though he was in "very good shape" because he could quickly traverse stairs and lift, carry and stack up to 40,000 pounds per day. Although his membranous nephropathy has remained in remission since December or June of 2013, claimant testified that he currently feels unwell due to low energy levels and edema in his legs. Claimant takes numerous prescribed medications for his various health conditions.

¶ 17 B. Medical Questionnaires

¶ 18 On January 22, 1999, claimant completed a BF Goodrich Medical Questionnaire, where he indicated that he had worked at the plant for six years with exposure to various chemicals for 12 hours each workday with no other chemical exposures. Claimant also reported no health conditions and denied taking any medications. Claimant admitted to smoking one pack of cigarettes a day for the last 10 years. He initially denied experiencing any adverse reactions to the chemicals at work but later indicated that he had experienced skin irritation on his hands, including itchiness, dryness, peeling or scaling and cracking or bleeding, and "OBTS Dust" had irritated his nose and throat. Later, on March 8, 2007, claimant completed a Respirator Medical Evaluation Questionnaire, where he, again, reported no health conditions and denied taking any medications. He also denied any prior use of an air respirator, but he then indicated that he sometimes used a powered air helmet/hood.

¶ 19 C. David Smid's Testimony

¶ 20 Smid testified that he occasionally bagged Cure-Rite with claimant in building 725. Smid testified that it was normal for powder to travel through the air in the building, covering workers. While working in building 725, Smid observed claimant covered in powder. He also recalled claimant complaining of headaches and becoming lethargic at work.

¶ 21 Smid next testified that he made products OBTS and MBDS in building 712. Smid explained that OBTS and MBDS were used for curing rubber in the tire industry. Smid confirmed that workers were exposed to chemical vapors and dust, which caused skin irritation, during the production process, even when wearing protective equipment.

¶ 22 D. MSDS

¶ 23 Claimant presented the MSDS for the products and chemicals present at the plant. Animal studies on each of the products or chemicals had shown various negative effects on the liver, kidney and urinary tract. According to the MSDS, the proper use of protective equipment and ventilation may reduce the negative effects of exposure for each product or chemical.

¶ 24 E. USEPA and IEPA Investigations

¶ 25 Claimant presented various documents prepared by the USEPA and IEPA following inspections at Emerald, which provided as follows. In September 2010, the USEPA imposed civil penalties against Emerald based on a January 2010 inspection, where it found that Emerald failed to properly identify, monitor and repair leaking valves and lines at the plant. Following an inspection at Emerald on November 29, 2011, the IEPA found that Emerald was improperly storing hazardous waste. On January 10, 2012, the IEPA issued a violation notice requiring Emerald to abate the violation, IEPA later concluded that that Emerald was still in violation as of February 27, 2012.

¶ 26 F. NIOSH Evaluation

¶ 27 Claimant presented various documents prepared by the NIOSH in response to a union's request for a health hazard evaluation. The union reported workers developing chronic health issues, including lung disease, kidney disease and cancer, from dust and chemical exposures in buildings 711 and 725. According to a letter NIOSH prepared following the initial plant visit (from October 22, 2012, to October 24, 2012), Cure-Rite BBTS was produced in building 725, but not Cure-Rite 18 Powder. The general air sampling from building 725 revealed the "very low concentrations" of toluene and a chemical contained in Cure-Rite BBTS. In addition, Emerald's

2010 industrial hygiene sampling revealed no overexposures to carbon disulfide, hydrogen sulfide, methylene chloride, morpholine or toluene.

¶ 28 Following plant visits in October 2012 and July 2013, NIOSH prepared a final, detailed report of the evaluation's findings and conclusions. NIOSH confirmed that workers were overexposed to a hazardous chemical used in Cure-Rite 18 Powder when compared to the recommended occupational exposure limit; workers were not overexposed to a hazardous chemical contained in Cure-Rite BBTS; some workers had eye, nose, throat and skin irritation at work that was consistent with workplace exposure to chemicals; and workers used chemicals that are known to or suspected causes of cancer. As a result, NIOSH recommended that Emerald improve respiratory protection and local exhaust ventilation, especially in areas where workers packaged Cure-Rite 18 Powder.

¶ 29 The report also summarized the hazards associated with other chemicals used at Emerald. According to the report, Cure-Rite 18 Powder is a presumed human carcinogen and an animal study found higher rates of tumors in the urinary tracts of rats fed high doses of the chemical for over two years. However, it was unknown whether the animal study was "relevant for the concentrations and routes of exposure found in the workplace" and there have not been adequate human studies regarding the health effects from exposure to Cure-Right 18 Powder. The report also referenced morpholine, carbon disulfide and other chemicals present at the plant that have been found to cause damage to the kidneys or urinary tract and liver in experimental animal studies, but that no published scientific studies have shown convincing evidence for kidney damage in humans.

¶ 30 NIOSH also reviewed the chronic kidney disease in two former plant employees. NIOSH concluded that the "kidney diseases were unlikely to be related to work exposures," because each worker had developed a different type of disease affecting a different part of the kidney.

¶ 31 G. Medical Records

¶ 32 The medical records showed that claimant presented for an initial consultation with Dr. Sparrow on May 26, 2011. Dr. Sparrow noted that claimant began noticing minimal swelling in his legs in September 2010 but had experienced "marked lower extremity edema" and "gained approximately 40 pounds over a 14[-]day period of time" in May 2011. Dr. Sparrow also noted that claimant's lab tests revealed massive proteinuria in the nephrotic range. Dr. Sparrow directed claimant to take prescribed medication and follow up after additional lab testing. At the follow-up appointment on June 9, 2011, Dr. Sparrow noted a significant decrease in claimant's edema and weight on the prescribed medication. Dr. Sparrow listed three medical issues: nephrotic range proteinuria, elevated blood pressure and Arnold-Chiari syndrome. Dr. Sparrow opined that claimant "most likely ha[d] an idiopathic glomerulopathy" but recommended a renal biopsy to confirm his diagnosis.

¶ 33 Claimant underwent the recommended biopsy procedure on June 17, 2011, and the reviewing physician, Dr. Alexis A. Harris, prepared a report regarding the specimen samples on June 20, 2011. In the report, Dr. Harris noted some mild thickening of the basement membranes of the glomerulus and "[n]umerous large subepithelial immune complex type electron dense deposits[,]" many of which were confluent and appeared to form one long subepithelial immune deposit. Dr. Harris noted that the mesangial deposits were not intramembranous in location and contained numerous immune complexes. Dr. Harris noted no tubuloreticular inclusions and

observed no segmental endocapillary hypercellularity. Dr. Harris diagnosed claimant with membranous glomerulopathy but noted the presence of mesangial immune deposits raised suspicion for secondary membranous glomerulopathy "of which etiologic agents include autoimmune disease, infection, certain drug exposure and malignancy."

¶ 34 At claimant's follow-up appointment on June 23, 2011, Dr. Sparrow noted that the "[b]iopsy revealed membranous nephropathy with some mesangial deposition suggesting possible secondary form." Claimant also had a chest x-ray, which was negative. Dr. Sparrow diagnosed claimant with membranous nephropathy and opined that the condition was "most likely idiopathic, although he does have some mesangial deposits." Dr. Sparrow prescribed Lisinopril as initial therapy. While claimant's renal function was normal at that time, Dr. Sparrow noted two poor prognostic signs—heavy proteinuria and hypertension. Dr. Sparrow opined that claimant's hypertension was "likely related to glomerulonephritis."

¶ 35 At claimant's next visit on September 22, 2011, Dr. Sparrow proceeded with cytotoxic therapy, noting that claimant had worsening renal function and had received no benefit from Lisinopril. Dr. Sparrow prescribed Solu-Medrol, Prednisone and Cytoxan. Claimant was advised of the possible health risks associated with the medications and was directed to contact the office if he experienced any negative side effects.

¶ 36 On October 19, 2011, shortly before his next scheduled appointment with Dr. Sparrow, claimant was admitted to OSF Saint Francis Medical Center due to worsening renal function and failed outpatient diuretic therapy. Physician's assistant, Holly R. Walker, noted that claimant was suffering from membranous nephropathy, "morbid obesity" and "AKI on CKD: most likely prerenal secondary to intravascular volume depletion."

¶ 37 On October 27, 2011, claimant returned for a follow-up appointment with Dr. Sparrow. Dr. Sparrow noted claimant's "recent hospitalization for acute renal failure associated with intravascular volume depletion." Dr. Sparrow also noted that claimant's renal function was back to baseline, although his urine protein levels were again high. Dr. Sparrow further noted that claimant's hypertension and blood pressures were "well-controlled." Dr. Sparrow recommended that claimant remain off work "[u]ntil seen at next office visit (2 weeks)[.]"

¶ 38 Claimant next presented for an initial consultation with Dr. Fletcher on November 16, 2011, "for the purpose of a Medical Consultation Report" regarding his "kidney failure and possible chemical exposure." Dr. Fletcher noted that claimant's symptoms developed "on an unknown date as he has been exposed to different chemicals at work." Dr. Fletcher noted three barriers to case resolution: pre-morbid obesity; lengthy time in patient role; and employer/employee conflict.

¶ 39 Claimant had follow-up visits with Dr. Sparrow in December 2011, January 2012, February 2012 and April 2012. In December 2011, claimant reported feeling "reasonably well." Dr. Sparrow noted that claimant's membranous nephropathy remained unchanged and his "malignancy screen was unremarkable." In January 2012, claimant reported feeling worse with various complaints, including chest pain, dysuria, muscle weakness, as well as increased swelling and abdominal girth. In February 2012, claimant complained of dyspnea on exertion and muscle pain and weakness. Dr. Sparrow noted, however, that claimant's membranous nephropathy was in partial remission based on the results of recent lab work. Dr. Sparrow directed claimant to continue taking Prednisone at a decreased dosage and to continue his Cytoxan treatment. Lastly, in April 2012, Dr. Sparrow

noted that claimant appeared "to be in even a more profound remission over the last couple of weeks, as his urine protein-creatinine ratios [had] been normal."

¶ 40 On May 31, 2012, claimant was seen by Dr. Fletcher "for a follow up of kidney failure" that occurred on October 28, 2011, and his chemical exposure at Emerald. Dr. Fletcher noted that his role was not to treat claimant's condition but "to investigate the work-relatedness of [claimant's] renal disease and provide input to his other treatment physicians." Dr. Fletcher indicated, however, that he was "handicapped by the lack of actual [industrial hygiene] data from [Emerald]" so he had encouraged claimant to involve his union. Specifically, Dr. Fletcher wanted the union to submit a request to NIOSH for a "Health Hazard survey" and a "proper epidemiological investigation" at Emerald. Despite the lack of data at that time, Dr. Fletcher opined that claimant's kidney failure "developed as a result of work place [*sic*] exposures." In support, Dr. Fletcher noted that claimant worked in a small, poorly ventilated building without proper personal protective equipment, and that three of the eight workers, including claimant, had developed renal failure or hematuria. In Dr. Fletcher's opinion, "[t]he percentage of workers with some prevalence of GU system related disease findings [was] more than a coincidence." Dr. Fletcher next identified various chemicals believed to be used at Emerald, including, *inter alia*, nitrosamine, various anti-freeze additives, Cure-Rite 18 Powder, Cure-Rite BBTS Accelerator and toluene. Dr. Fletcher planned to obtain additional information from Emerald and consult with claimant's treating physicians before claimant's next appointment.

¶ 41 On August 9, 2012, claimant returned for a follow-up appointment with Dr. Sparrow. Claimant reported an overall feeling of unwellness with easy fatigue, which rendered him unable to perform daily household activities. Claimant also reported worsening edema, which Dr. Sparrow

noted was not severe. Dr. Sparrow noted that claimant's urine protein-creatinine ratio was again elevated. Dr. Sparrow switched claimant from Cytoxan to CellCept and directed claimant to follow up in one month. At follow-up appointments with Dr. Sparrow in September 2012 and January 2013, claimant reported feeling well and his lab test results had improved. Dr. Sparrow also noted that his membranous nephropathy remained in partial remission on the new medication.

¶ 42 On December 20, 2013, claimant returned for a follow-up appointment with Dr. Sparrow. Claimant reported feeling "terrible" overall with severe back pain, edema and difficulty walking. Dr. Sparrow noted, however, that claimant's membranous nephropathy was in complete remission. Dr. Sparrow discontinued CellCept and warned of the possibility of relapse.

¶ 43 On May 29, 2014, claimant followed up with Dr. Sparrow. Claimant reported feeling better with no symptoms of uremia or volume overload after stopping immunosuppressants. Dr. Sparrow noted that claimant had developed noninsulin-dependent diabetes mellitus. Dr. Sparrow's medical records further indicated that claimant presented for periodic follow-up appointments for several years with no substantial change, and claimant's membranous nephropathy remained in complete remission off therapy.

¶ 44 On September 5, 2017, claimant returned to Dr. Fletcher "for evaluation and treatment of general pain and fatigue." Dr. Fletcher later noted that claimant was seen for "his work-related exposure that caused chronic renal disease described as membranous GN with focal-moderate arteriosclerosis[,]" which was "currently in remission." Dr. Fletcher also indicated that claimant suffered from an Arnold-Chiari defect, obesity and diabetes. Dr. Fletcher noted that claimant had "deconditioned from his various health conditions" and was "currently disabled." Dr. Fletcher also

opined "to a reasonable degree of medical certainty that [claimant's] condition [was] related to his exposure at Emerald." Dr. Fletcher opined that claimant was temporarily disabled from all work.

¶ 45 On May 17, 2018, claimant presented for a follow-up appointment with Dr. Sparrow. Dr. Sparrow noted that claimant's membranous nephropathy remained in complete remission. Dr. Sparrow directed claimant to continue with his prescribed medications and diet. Dr. Sparrow again directed claimant to obtain basic lab work every six months and follow up in one year.

¶ 46 On July 16, 2018, claimant returned to Dr. Fletcher for a follow up "of his work-related exposure that caused chronic renal disease secondary membranous nephropathy[,]" which was "currently in partial remission." Dr. Fletcher prepared a supplemental report setting forth the following findings and opinions. Dr. Fletcher diagnosed claimant with the following conditions: chronic kidney disease; nephrotic syndrome with diffuse membranous glomerulonephritis; obstructive sleep apnea; hypertension; morbid obesity; diabetes mellitus due to underlying condition with diabetic nephropathy; and osteoarthritis in his left knee.

¶ 47 Dr. Fletcher noted that claimant "never had diabetes or hypertension until he developed his work[-]related kidney disease." Dr. Fletcher noted that membranous nephropathy is an uncommon condition. Dr. Fletcher opined that claimant suffered from secondary membranous nephropathy based on the mesangial immune deposits noted on claimant's 2011 biopsy report. Dr. Fletcher noted that the condition is secondary to infections, autoimmune disease, certain medications or toxins. Dr. Fletcher found that claimant had no infection or disease but was exposed to multiple hydrocarbon-based chemicals at Emerald and that multiple articles in medical literature link hydrocarbon-based chemicals to the development of secondary membranous nephropathy. In Dr. Fletcher's opinion, "glomerulotoxic immune factors develop from hydrocarbon exposure" and

"hydrocarbons facilitate the deposition of these mediators of immune damage in renal tissue." Dr. Fletcher also opined that claimant's condition resulted "from 18 years [of] exposure to multiple hydrocarbons (formaldehyde, carbon disulfide, methane [*sic*] chloride, toluene, [and] Cure-Rite BTS)." In addition, Dr. Fletcher opined that claimant's medical treatment to date was reasonable and necessary, and that he "has been disabled from all gainful employment due to his workplace exposure since 2011."

¶ 48 H. Dr. Conibear's Medical Opinions

¶ 49 Emerald presented the report and deposition testimony[2] of Dr. Conibear, a board-certified occupational medicine physician. Dr. Conibear examined claimant on August 18, 2015, at Emerald's request, and reviewed certain documents, including Dr. Fletcher's May 31, 2012, progress report, Dr. Sparrow's medical records from May 28, 2011, to May 29, 2014, and documentation from the NIOSH evaluation.

¶ 50 Dr. Conibear diagnosed claimant with nephrotic syndrome due to membranous nephropathy caused by "an autoimmune reaction to an unknown inciting antigen that has damaged the membrane in the glomeruli in the kidney." Dr. Conibear noted that claimant "developed diabetes and hypertension as a result of steroids and the kidney disease." Dr. Conibear opined, however, that claimant's condition was not related to his work at Emerald. In support, Dr. Conibear first noted that "[k]idney disease caused by xenobiotic chemicals (i.e. synthetic chemicals not found in the body) most commonly occurs in the proximal tubules[,]" which "are the most metabolically active structures of the kidney and where the xenobiotics and their metabolites are

[2] Half of the pages from Dr. Conibear's evidence deposition have not been included in the record on appeal. Specifically, pages 6 through 9, 14 through 17, 22 through 25, 30 through 33, 38 through 41, 46 through 49, 54 through 57 and 62 through 65.

most concentrated;" whereas, membranous nephropathy occurs in the glomeruli and creates a distinctly different pattern in urine and on biopsy than the destruction of proximal tubules. According to Dr. Conibear, when a chemical is said to cause kidney disease, it is important to know the precise location of the kidney the damage prior to rendering a determination regarding a causal relationship. Dr. Conibear noted that "the NIOSH investigators also relied on the well-known site[-]specific nature of kidney damage to reach their conclusion that the two cases of kidney disease that they investigated were not related to one another and were not work related." Dr. Conibear next noted that "current toxicological literature on kidney damage in humans does not identify any of the products or raw materials at [claimant's] workplace as capable of causing [membranous nephropathy]." Lastly, Dr. Conibear noted that the NIOSH evaluation failed to reveal a high rate of kidney disease at Emerald.

¶ 51 While Dr. Conibear agreed that claimant may need ongoing medical treatment, she concluded that additional treatment was unrelated to his work at Emerald because his disease was unrelated to his workplace exposure. Dr. Conibear opined that claimant could perform sedentary work with limited walking, although this limitation was not related to his workplace exposure.

¶ 52 Dr. Conibear testified that she did not review the MSDS nor perform additional research on the chemicals used at the plant. She claimed, however, that she had relied on the NIOSH evaluation, which included a review of the MSDS and test results from "breathing zone samples" collected at Emerald. Dr. Conibear also admitted that she did not review the pathology report from claimant's kidney biopsy.

¶ 53 I. Dr. Desai's Medical Opinions

¶ 54 Emerald also presented the reports and deposition testimony of Dr. Desai, a board-certified nephrologist. In June 2017, at Emerald's request, Dr. Desai prepared two reports setting forth her findings and opinions regarding claimant's condition. Dr. Desai also testified regarding her findings and opinions by way of an evidence deposition on October 26, 2017. Dr. Desai based her opinions on her review of claimant's medical records, multiple MSDS, documentation from the NIOSH evaluation, Dr. Fletcher's medical records and the transcript from Dr. Conibear's evidence deposition. She did not personally examine claimant.

¶ 55 Dr. Desai testified that she currently serves as the division director of transplant nephrology and the medical director of the kidney, pancreas and living donor transplant programs at Loyola University Medical Center. Dr. Desai's report listed the following chemicals as possible workplace exposures: methylene chloride, toluene, carbon disulfide, morpholine, OBTS, Cure-Rite 18, MBTS and NaSh. Dr. Desai ultimately concluded that claimant's membranous nephropathy was not causally related to his workplace exposure.

¶ 56 In support, Dr. Desai noted that Dr. Sparrow had diagnosed claimant with idiopathic membranous nephropathy. Dr. Desai explained that membranous nephropathy most commonly occurs in primary, or idiopathic, form but may present similarly in secondary form so patients should be screened for infectious, drug-related, autoimmune and malignant disorders. Because claimant's lab work and medical history did not point to a secondary cause, Dr. Desai agreed with Dr. Sparrow's diagnosis of primary, or idiopathic, membranous nephropathy. Dr. Desai acknowledged that the 2011 biopsy report revealed mesangial deposits, which can be indicative of a secondary cause. Dr. Desai agreed that she could not rule out a secondary cause based on claimant's biopsy report; however, she opined that "the many subepithelial deposits and the

immunofluorescence staining for IGG speak more consistently with idiopathic" membranous nephropathy. Dr. Desai acknowledged, however, that only one percent of her practice involves membranous nephropathy and that she has not extensively researched or authored publications on the condition.

¶ 57 According to Dr. Desai, secondary membranous nephropathy may result from exposure to, or use of, non-steroidal anti-inflammatory drugs, gold, bucillamin and penicillamine. Although she agreed that exposure to toxins could be a secondary cause and that toluene exposure is a known cause of renal tubular acidosis, Dr. Desai was unable to find any medical literature or research linking the chemicals used at Emerald to membranous nephropathy. Dr. Desai noted that the MSDS only refer to general kidney issues. In addition, Dr. Desai noted that there was no consistent pattern of disease or diagnosis in Emerald employees. She acknowledged that two former Emerald employees had developed renal diseases but noted that one had an auto-immune disorder and the other a glomerulonephritis, vascular process. According to Dr. Desai, neither condition was similar to claimant's condition.

¶ 58 Dr. Desai also opined that claimant could return to work without restrictions. Dr. Desai noted in her report that claimant was in partial remission as of April 2012 and in complete remission as of December 2013. Dr. Desai testified that claimant is currently in remission and no further treatment is needed, aside from periodic monitoring. Dr. Desai acknowledged, however, that some patients develop irreversible kidney damage or failure years later.

¶ 59 J. Dr. Fletcher's Medical Opinions

¶ 60 Prior to presenting Dr. Fletcher's testimony, claimant's attorney made an oral motion to amend the accident date alleged in the application from October 28, 2011, to November 16, 2011.

Claimant's attorney explained that he first met with claimant on October 28, 2011, but claimant first learned of a possible casual connection between his membranous nephropathy and workplace exposure during his initial consultation with Dr. Fletcher on November 16, 2011. Arbitrator McCarthy allowed claimant to amend the accident date over Emerald's objection.[3]

¶ 61 Dr. Fletcher then testified to the following in support of his opinions regarding claimant's condition. He became board certified in occupational and preventative medicine in 1985 and had a practice in Decatur, Illinois, where he specialized in occupational medicine until 2010. In that time, he was retained by chemical manufacturers to provide medical surveillance, as well as workers' compensation services. He was also previously appointed to serve on "the medical advisory board for the Illinois Workers' Compensation Commission." At his current practice in Champaign, Illinois, Dr. Fletcher continues to specialize in occupational medicine. According to Dr. Fletcher, occupational medicine is a "very eclectic specialty" with much of the focus being in the field, or at a facility, "doing ergonomic assessments or air-quality assessments to make determination[s] about causation issues and also about ability to work."

¶ 62 Dr. Fletcher confirmed that he has previously reviewed cases for both claimant's attorney and Emerald's attorney. Most recently, Dr. Fletcher reviewed the cases of 12 Emerald workers, including claimant, at the request of claimant's attorney. Dr. Fletcher confirmed that he had not found a causal relationship in all cases and that claimant was the only worker who had developed membranous nephropathy.

[3] An amended application has not been included in the record on appeal. However, a Request for Hearing form, which was admitted into evidence at the hearing, lists a handwritten accident date of November 16, 2011, in place of October 28, 2011.

¶ 63 Dr. Fletcher first met with claimant on November 16, 2011. During the initial visit, claimant advised that he had been diagnosed with membranous nephropathy in May or June of 2011. Following the initial consultation, Dr. Fletcher began collecting necessary information "to help make a determination about the work-relatedness and also to make some recommendations about [claimant's] long-term prognosis as far as working." Dr. Fletcher informed claimant that, when looking at toxicology cases, it was very important to obtain "good data about exposure" and to review industrial hygiene studies conducted at the plant.

¶ 64 Dr. Fletcher reviewed records from claimant's last medical surveillance examination at Emerald in 2009 and concluded that claimant had no manifestations of any kind of renal disease or other chronic conditions prior to 2009. Dr. Fletcher also reviewed information pertaining to the chemicals used at Emerald, including the MSDS and various medical research articles. When asked if any of the "particular chemicals that [he] observed or researched with respect to the MSDS sheet or other means have a causative relationship" to claimant's membranous nephropathy, Dr. Fletcher testified that only two of the chemicals—morpholine and carbon disulfide—were "nephrotoxic and cause immune reactions that cause membranous nephropathy" following exposure. Because both morpholine and carbon disulfide were used in the production of Cure-Rite 18 Powder, Dr. Fletcher opined that those were the two "causative agents in the occupational disease [claimant] has."

¶ 65 When asked if any other chemicals or products had "any relationship with affecting the kidney[,]" Dr. Fletcher acknowledged there was some research showing that hydrocarbon solvents, such as methylene chloride and hydrogen sulfide, were potentially nephrotoxic. He claimed, however, that the data was not as strong as the data regarding carbon disulfide and morpholine.

Dr. Fletcher also agreed that exposure to toluene could cause proteinuria, but he explained that "toluene seems to be more causing effect on the renal tubercles, and so it causes a different condition" with no clear linkage to membranous nephropathy. Dr. Fletcher returned to the subject of hydrocarbon solvents later in his testimony, stating that he had discovered 25 to 30 research articles, some dating back decades, which supported his "opinion about the relationship of a toxic exposure specifically a hydrocarbon-based substance causing the manifestation of MN conditions." Dr. Fletcher clarified that morpholine and carbon disulfide were also hydrocarbons. Dr. Fletcher acknowledged that his opinions had changed over the years but claimed he had been able to eliminate certain chemicals after investigating the case for seven years.

¶ 66 Dr. Fletcher next testified regarding his understanding of claimant's condition. Dr. Fletcher described membranous nephropathy as "a leakiness of this membrane that protects the glomerulus filtering[,]" which causes loss of protein, low levels of protein in the blood and fluid retention. Dr. Fletcher explained that there are two types of membranous nephropathy—primary and secondary. He explained that the condition is "primary" if it is "idiopathic, or without known cause," and the condition is "secondary" if there is "some kind of infection, toxic exposure, sometimes cancer or autoimmune diseases." According to Dr. Fletcher, the secondary condition causes immune complexes to deposit on the mesangial membrane, "and that's what leaks. And so, that's what you look for when you are trying to make a difference between diagnosis."

¶ 67 Dr. Fletcher also reviewed claimant's medical records dating back to 2011. Dr. Fletcher testified that claimant's renal biopsy from June 2011 was a "key document" in confirming his opinion that claimant "has an occupational-related renal disease because he has mesangial deposits, and the biopsy states it's a secondary cause of membranous nephropathy." Dr. Fletcher

agreed that the biopsy report listed multiple potential causes of secondary membranous nephropathy, including autoimmune disease, infection, certain drug exposures and malignancy. Dr. Fletcher acknowledged that the report did not specify which etiologic agent was responsible for the secondary aspect of the diagnosis. Dr. Fletcher acknowledged that secondary membranous nephropathy could develop without exposure to chemicals. He explained that taking "excessive amount[s] of Advil, Aleve or Ibuprofen can cause it." In his opinion, however, claimant's condition developed as a result of his workplace exposure.

¶ 68 Dr. Fletcher testified that he conducted medical research and discovered various studies supporting a causal relationship between chemical exposures and membranous nephropathy. Dr. Fletcher identified six medical research articles he relied on in formulating his opinions. Dr. Fletcher claimed that several of the articles documented the role of hydrocarbons in the development of membranous nephropathy, but he admitted that none of the research articles specifically referenced morpholine or carbon disulfide.

¶ 69 When Dr. Fletcher completed his testimony via evidence deposition on July 30, 2018, he identified a new article from "the Journal of Nephrology in 2017." According to Dr. Fletcher, the article documented "a case study that came out of Asia looking at occupational exposure similar to what [claimant] had. And it was a prospective study as far as actually doing a series of kidney biopsies. And these employees were exposed to Carbon Disulphide [*sic*]." In Dr. Fletcher's view, the study "provided a very good documentation of the immunological response to Carbon Disulphide [*sic*] causing deposits on the mesangium of the glomerulus." Dr. Fletcher testified that "this is an article that actually provides an excellent immunological basis for my opinion that the reason why the biopsy was done in June of 2011 on [claimant] showed these mesangium immune

complexes was because it was workplace exposures." According to Dr. Fletcher, the article also indicated that patients exposed to carbon disulfide presented with variable degrees of proteinuria, similar to claimant. The article, which was attached to the transcript of Dr. Fletcher's deposition testimony, indicated that the case study consisted of 10 male patients with 11 to 15 years of workplace exposure to carbon disulfide at a chemical factory without the use of protective equipment. The article further indicated that the pathological findings from the renal biopsies revealed, *inter alia*, "tubular atrophy, interstitial infiltration of lymphocytes and monocytes and fibrous thickening in the afferent glomerular arterioles in all patients, while electron microscope examinations did not identify any dense deposits in the mesangial matrix." The article made no specific reference to membranous nephropathy.

¶ 70 Dr. Fletcher testified that he initiated the NIOSH investigation at Emerald after he was denied access to the plant. Dr. Fletcher explained that NIOSH assigned a medical officer, Dr. Loren Tapp, to conduct the evaluation and prepare reports regarding the conditions at the plant. However, Emerald had advance notice of the inspection dates. According to Dr. Fletcher, the report from the first inspection in 2012 revealed that NIOSH investigators were unable to complete an assessment in building 725 because Emerald was not manufacturing Cure-Rite 18 powder at that time. The report from the second inspection in 2014 was critical of the ventilation and the dust collection in building 725.

¶ 71 Dr. Fletcher acknowledged the NIOSH report concluded that the kidney diseases of Emerald workers were likely not related to workplace exposures; however, Dr. Fletcher believed that NIOSH investigators lacked a complete data base to support such conclusion. He claimed that NIOSH investigators considered only inhalation exposure without considering dermal exposure.

¶ 72 Dr. Fletcher testified that he remained in contact with claimant and examined him on several occasions over the years, including May 31, 2012, September 5, 2017 and July 16, 2018. Dr. Fletcher's most recent examination, which occurred shortly before the hearing, revealed that claimant "had not gotten worse," which, in his opinion, provided "support for my basis that being away from the exposure has helped [claimant]." Dr. Fletcher testified that claimant's improvement following removal was "a real key aspect" in making a determination about an occupational relationship. According to Dr. Fletcher, claimant's condition would have continued to progress after he stopped working at the plant if he had primary membranous nephropathy. Dr. Fletcher believed "the fact that he has remained in remission is very important in my causal relationship opinion." Dr. Fletcher clarified that, although claimant's condition has remained in remission, he has not been cured. Dr. Fletcher noted that claimant continues to experience edema and fluid retention, which requires ongoing treatment and medication. With regard to claimant's hypertension, Dr. Fletcher opined that "there was a causal relationship between the manifestation of his hypertension and his occupationally-related renal disease." Dr. Fletcher was unable to state with medical certainty that claimant's diabetes was causally related to his renal disease.

¶ 73 Dr. Fletcher agreed that claimant was at maximum medical improvement (MMI) when he reached remission in December 2012 or early 2013 and stopped his immunotherapy. He also agreed that claimant has remained in complete remission since that time. Despite this, Dr. Fletcher opined that claimant had a severe level of disability due to his fatigue, fluid balance issues and weight gain. When asked if he had an opinion as to claimant's restrictions and ability to work, Dr. Fletcher responded:

> "A. Well, I think that as an occupational medicine physician having seen [claimant] over a seven-year period of time, read all the medical records, and have interacted with

> him, I believe his ability to be gainfully employed is extremely low because one of the conditions he has with this chronic renal disease[,] though it's in remission[,] is fatigue.
>
> He has extreme problems with fatigue, he has gained weight with the condition, he has obstructive sleep apnea which is worsened by weight gain. So his ability to be gainfully employed is limited.
>
> Because of his weight gain he has had progression of his degenerative osteoarthritic condition. He is going to have a knee replacement in his left knee, so it's kind of a combination of factors that limit his ability to work."

¶ 74 Dr. Fletcher acknowledged that his May 31, 2012, progress report included a notation that he was handicapped by the lack of industrial hygiene data from Emerald. When asked if he had assessed the duration, frequency and intensity of claimant's exposure in formulating his opinion on the issue of causation, Dr. Fletcher responded as follows:

> "A. Yes. I mean that's very important in a case when you are looking at an occupational disease case.
>
> Those are the basic principles of toxicology is [*sic*] assessing those factors, that you look at the intensity of the exposure, how much is this particular substance, the duration of time, in this case 17 years, and the frequency of being [*sic*] daily.
>
> So—And this is a case where there is no doubt that he meets all the criteria for exposure to toxic agents.
>
> What we don't know is the intensity because we have limited industrial hygiene data. The employer stopped doing any air sampling in 2010. We have some data from NIOSH from 2012 and July of 2013, so we have to do a lot of it by description of what the environment was like. Just asking questions, can you smell a particular agent like hydrogen sulfide.
>
> So I don't have any doubt in my mind he meets the criteria as far as having an occupational exposure."

Dr. Fletcher clarified that "intensity is very important to get an idea of how strong of exposure there is." According to Dr. Fletcher, "intensity is the actual dose that he is exposed to, that's what air sampling does or doing biological monitoring which would correlate with the ambient exposure." Dr. Fletcher agreed that low levels of exposure are less concerning than high levels of exposure. Dr. Fletcher confirmed his opinion, to a reasonable degree of medical certainty, that

claimant's workplace exposure at Emerald between 1993 and 2011 was a cause of his membranous nephropathy.

¶ 75 Dr. Fletcher discussed claimant's condition with Dr. Sparrow the day before the hearing. Dr. Fletcher agreed that Dr. Sparrow's medical records consistently list a diagnosis of idiopathic, or primary, membranous nephropathy, despite his notations regarding the existence of mesangial deposits. According to Dr. Fletcher, Dr. Sparrow received some MSDS but did not understand the significance of claimant's exposures and was unaware of studies linking membranous nephropathy to certain chemicals. Dr. Sparrow advised that he was unfamiliar with workers' compensation cases and did not want to get involved or prepare a report for the case.

¶ 76 K. Arbitrator's Decision

¶ 77 On October 11, 2018, Arbitrator McCarthy issued a written decision setting forth his findings and conclusions of law. He found that claimant proved he was exposed to certain hazardous chemicals while working for Emerald, and that claimant proved his "membranous nephropathy, and associated resulting symptomology, including but not limited to, hypertension and diabetes, arose out of and in the course of his repetitive chemical exposure, which manifested on October 28, 2011." He also found that claimant's "neurotoxic encephalopathy and hypertension arose out of and in the course of his repetitive chemical exposure" at Emerald but noted that the amended manifestation date was November 16, 2011.

¶ 78 In so finding, Arbitrator McCarthy gave more weight to the medical opinions of Dr. Fletcher, than to those of Drs. Conibear and Desai. Specifically, he relied on Dr. Fletcher's testimony that claimant's renal biopsy confirmed he had "an occupational-related renal disease because he had mesangial deposits, which indicates secondary membranous nephropathy." He also

found persuasive Dr. Fletcher's testimony "that if [claimant] had primary, or idiopathic, membranous nephropathy and was removed from the exposure, he would expect the condition to continue to progress." He noted that the testimonies of Drs. Conibear and Desai regarding the lack of studies linking occupational exposure with secondary nephropathy were contradicted by the evidence. Specifically, Dr. Fletcher's extensive testimony "regarding his review of a wide body of literature supporting a causative link to chemical exposure and secondary membranous nephropathy." Arbitrator McCarthy reasoned that Dr. Fletcher had examined claimant on multiple occasions and exhibited a better understanding of the conditions at the plant and the chemicals to which claimant was exposed.

¶ 79 In addition, Arbitrator McCarthy relied on Dr. Fletcher's testimony in finding that claimant's medical treatment, including his treatment for hypertension and diabetes, was reasonable, necessary and related to his occupational exposure. Based on this finding, Arbitrator McCarthy ordered Emerald to pay claimant's medical expenses, to resolve any subrogation claims and to reimburse claimant for out-of-pocket payments he made for related medical expenses.

¶ 80 Arbitrator McCarthy next found that claimant reached MMI on February 23, 2012, "at which time Dr. Sparrow opined that he was in partial remission." He awarded claimant TTD benefits in the amount of $981.29 per week for a period of 17 weeks (from October 27, 2011, to February 23, 2012). Although claimant presented no evidence that he searched for work within his restrictions, Arbitrator McCarthy determined that claimant had significant work restrictions limiting his occupational base to sedentary positions. Accordingly, he denied claimant's request for permanent total disability (PTD) benefits and, instead, awarded PPD benefits of $695.78 per week for 200 weeks, representing 40% loss of use of his person as a whole.

¶ 81 L. Decisions on Review

¶ 82 Emerald and claimant filed petitions for review of the arbitrator's decision before the Commission. On August 12, 2019, the Commission, with one commissioner dissenting, issued a decision affirming and adopting the arbitrator's decision "with the exception of the finding of causal connection between [claimant's] diabetes condition to the occupational exposure" as set forth in the portion of the decision regarding medical expenses. The Commission found that claimant presented no evidence establishing a causal relationship between his diabetes and workplace exposure. Thus, the Commission modified the arbitrator's decision by ordering Emerald to pay reasonable and necessary medical services "except those medical or pharmaceutical bills related to [claimant's] diabetes condition."

¶ 83 The dissenting commissioner agreed that claimant's diabetes condition was not related to his workplace exposure but also found the evidence insufficient to show a causal relationship between claimant's other conditions and his occupational exposure. In support, the dissenting commissioner noted that claimant's treating nephrologist had opined that claimant's condition was idiopathic. The dissenting commissioner further noted that the evidence showed neither the amount and duration of claimant's exposure to a specific chemical nor the amounts of exposure required to cause membranous nephropathy. Thus, the dissenting commissioner would have denied claimant benefits altogether.

¶ 84 Emerald sought judicial review of the Commission's decision in the circuit court of Tazewell County. On June 11, 2020, the court confirmed the Commission's decision. Emerald now appeals.

¶ 85 II. Analysis

¶ 86 Emerald's primary contention on appeal is that the Commission's decision awarding claimant benefits was against the manifest weight of the evidence. In support, Emerald argues that the Commission's findings with respect to disease, causation and the date of disablement were against the manifest weight of the evidence Emerald further argues that because the Commission's findings were against the manifest weight of the evidence, the Commission erred in awarding claimant medical expenses, TTD benefits and PPD benefits. Before we address these specific arguments, we briefly address Emerald's argument that there is no jurisdiction due to claimant's failure to file an amended application prior to the expiration of the statute of limitations.

¶ 87 A. Statute of Limitations

¶ 88 At oral argument, Emerald asserted that claimant was required to file an amended application after changing the accident date to November 16, 2011, but failed to do so prior to the expiration of the applicable statute of limitations. According to Emerald, claimant's failure to timely file the amended application creates a jurisdictional issue which may be raised at any time. We disagree.

¶ 89 It is well settled that filing a claim within the statutory period of limitations is "not a jurisdictional requirement." *Pantle v. Industrial Comm'n*, 61 Ill. 2d 365, 367 (1975). Unlike a jurisdictional issue, which may be raised at any time, "a statute of limitations is an affirmative defense, which may be forfeited if not timely raised by the defendant." *McRaith v. BDO Seidman, LLP*, 391 Ill. App. 3d 565, 584 (2009). Here, Emerald did not raise the statute of limitations issue by way of motion or its appellate brief. Instead, Emerald raised the issue for the first time at oral argument without any case citation or supporting authority. Moreover, Emerald did not raise the statute of limitations issue when it objected to claimant's motion to amend the accident date during

the arbitration hearing, and it did not include the issue in its subsequent filings with the Commission (*i.e.*, the petition for review and statement of exceptions). Thus, Emerald forfeited review of this issue on appeal. See *R.D. Masonry, Inc. v. Industrial Comm'n*, 215 Ill. 2d 397, 414 (2005) ("Arguments not raised before the Commission are [*sic*] waived on appeal.").

¶ 90 Forfeiture aside, Emerald's argument is meritless. Section 6(c) of the Act generally provides that the right to file an application for compensation with the Commission shall be barred unless the application is filed within three years after the date of the disablement if no compensation has been paid, or within two years after the date of the last payment of compensation if any has been paid, whichever shall be later. 820 ILCS 310/6(c) (West 2018). Section 19(a)(2) provides as follows:

> "Amendments to applications for adjustment of claim which relate to the same disablement or disablement resulting in death originally claimed upon may be allowed by the Commissioner or an Arbitrator thereof, in their discretion, and in the exercise of such discretion, they may in proper cases order a trial *de novo*; such amendment shall relate back to the date of the filing of the original application so amended." 820 ILCS 310/19(a)(2) (West 2018).

¶ 91 Here, claimant filed a timely application for adjustment of claim on November 10, 2011, alleging a disablement date of October 28, 2011. During the arbitration hearing, Arbitrator McCarthy allowed claimant to amend the application by substituting November 16, 2011, as the date of disablement. Emerald objected but did not demonstrate prejudice. Thus, Arbitrator McCarthy acted within his discretion in allowing the amendment, and the amendment related back to claimant's timely filed application. We now address Emerald's arguments concerning the

Commission's decision.

¶ 92 B. Occupational Disease and Causation

¶ 93 As noted, Emerald challenges the Commission's findings pertaining to disease and causation. Emerald argues that claimant failed to prove membranous nephropathy was an occupational disease or that he was exposed to a workplace hazard "which would increase his risk of developing or aggravating membranous nephropathy." According to Emerald, "the credible evidence establishes [claimant] was not exposed to any chemicals which increased his risk of developing or aggravating membranous nephropathy." Emerald further argues that Dr. Fletcher's medical opinions were speculative and insufficient to support the Commission's findings. We disagree.

¶ 94 In an occupational disease case, the claimant has the burden of proving both that he suffers from an occupational disease and that a causal connection exists between the disease and his employment. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC, ¶ 21; *Anderson v. Industrial Comm'n*, 321 Ill. App. 3d 463, 467 (2001). Section 1(d) of the Act provides, in pertinent part, as follows:

> "In this Act the term 'Occupational Disease' means a disease arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result of the exposure of the employment. Such aggravation shall arise out of a risk peculiar to or increased by the employment and not common to the general public.
>
> A disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease. The

> disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence." 820 ILCS 310/1(d) (West 2010).

"Nothing in the statutory language requires proof of a direct causal connection." *Sperling v. Industrial Comm'n*, 129 Ill. 2d 416, 421 (1989). Rather, a causal connection may be based on a medical expert's opinion that an accident "could have" or "might have" caused an injury. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App.3d 830, 839 (1994). "In addition, a chain of events suggesting a causal connection may suffice to prove causation even if the etiology of the disease is unknown." *Consolidation Coal Co.*, 265 Ill. App. 3d at 839.

¶ 95 Whether an employee suffers from an occupational disease and whether there is a causal connection between the disease and the employment are questions of fact. *Freeman United Coal Mining Co*., 2013 IL App (5th) 120564WC, ¶ 21; *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 597 (2005); *Anderson*, 321 Ill. App. 3d at 467. It is within the province of the Commission to decide questions of fact, assess the credibility of the witnesses and resolve conflicting medical evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). A reviewing court will not disturb the Commission's determination on a question of fact unless it is against the manifest weight of the evidence. *Docksteiner v. Industrial Comm'n*, 346 Ill. App. 3d 851, 856 (2004). A finding of fact is against the manifest weight of the evidence when an opposite conclusion is clearly apparent. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007). "The appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion."

Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Comp. Comm'n, 407 Ill. App. 3d 1010, 1013 (2011).

¶ 96 Here, the Commission, in affirming and adopting the arbitrator's decision, found that claimant proved he was exposed to hazardous chemicals while working at Emerald. The Commission also found that claimant proved his membranous nephropathy and hypertension were causally related to his workplace exposure. After carefully reviewing the record, we cannot say that the Commission's findings are against the manifest weight of the evidence.

¶ 97 The Commission, in affirming and adopting the arbitrator's decision, provided a detailed review of the evidence it relied on in support of its findings. Specifically, the Commission relied on claimant's testimony that he was exposed to Cure-Rite Powder in building 725 from 2003 to 2011. We note that claimant provided extensive testimony regarding his exposure to multiple chemicals, including morpholine and carbon disulfide, and chemical powders while working at the plant from 1993 to 2011. Claimant also testified that he regularly touched and inhaled various chemical vapors and powders, which caused skin irritation and "flu-like" symptoms, even when wearing protective equipment and clothing. Claimant further testified that the faulty ventilation system in building 725 increased his exposure to chemicals and powders. As the Commission correctly noted, claimant's testimony was corroborated by the deposition testimony given by Smid.

¶ 98 The Commission also relied on the NIOSH evaluation report finding that workers in building 725 were overexposed to Cure-Rite Powder. The evaluation report confirms that the production of Cure-Rite 18 Powder involves the use of methylene chloride, morpholine, bleach and carbon disulfide. The evaluation report also reveals that a chemical contained in Cure-Rite Powder has been identified as a presumed human carcinogen and that prolonged exposure resulted

in renal tumors in animal studies. The evaluation report further reveals that prolonged exposure to morpholine and carbon disulfide resulted in kidney damage in animals. From this evidence, the Commission could have reasonably inferred that claimant's workplace exposure increased his risk for developing kidney disease.

¶ 99 In addition, the Commission relied on the medical opinions of Dr. Fletcher in support of its causation finding. Dr. Fletcher opined, to a reasonable degree of medical certainty, that claimant suffered from secondary membranous nephropathy and hypertension, both of which were causally related to his 18 years of workplace exposure. Specifically, Dr. Fletcher attributed claimant's secondary membranous nephropathy to his exposure to two chemicals used to make Cure-Rite Powder—morpholine and carbon disulfide. The renal biopsy report supports Dr. Fletcher's opinion that claimant suffered from secondary membranous nephropathy. Dr. Fletcher also identified various medical research articles that he relied on in forming his opinions, although Drs. Conibear and Desai concluded that existing medical literature failed to establish a link between membranous nephropathy and the chemicals used at Emerald. Drs. Conibear and Desai agreed that exposure to toxins could be a possible secondary cause of membranous nephropathy but opined that claimant suffered from primary, or idiopathic, membranous nephropathy, which was unrelated to his workplace exposure. The medical records show that Dr. Sparrow also diagnosed claimant with primary membranous nephropathy. In resolving the conflicting medical evidence, the Commission placed greater weight on the medical opinions of Dr. Fletcher than those of Drs. Conibear and Desai.

¶ 100 Emerald asserts that Dr. Fletcher's medical opinions were insufficient to support the Commission's findings. Emerald maintains that "[t]his is not a matter of deciding which doctor to

believe, it is a matter of eliminating speculative opinions after which the opposite conclusion is clearly apparent." However, Emerald does not argue that Dr. Fletcher's medical opinions lacked an adequate foundation. Emerald, instead, argues that Dr. Fletcher's medical opinions were inconsistent and "entirely based upon imagination, speculation and conjecture." While Emerald points out several specific deficiencies pertaining to the bases of Dr. Fletcher's opinions, we note that the basis for an expert's opinion is ordinarily a matter of weight, not sufficiency. See *Snelson v. Kamm*, 204 Ill. 2d 1, 26 (2003) (the basis for an expert opinion "generally does not affect his standing as an expert; such matters only go to the weight of the evidence, not its sufficiency"). Thus, Emerald's arguments essentially invite this court to reweigh the evidence and discount the medical opinions of Dr. Fletcher. We decline to do so. See *Downs v. Industrial Comm'n*, 143 Ill. App. 3d 383, 389 (1986) ("[W]here there is conflicting medical evidence as to whether a particular disability is sufficiently connected with the employment to constitute an occupational disease, it is the province of the Commission to resolve such differences.").

¶ 101 While this court might have reached a different conclusion, we cannot say that the opposite conclusion is clearly apparent. Thus, after applying the deferential standard, we conclude that the evidence, although conflicting, is sufficient to support the Commission's findings.

¶ 102 C. Date of Disablement

¶ 103 Emerald next argues that the Commission's finding that November 16, 2011, was an appropriate accident, or manifestation, date was inconsistent with the evidence. Emerald's argument is set forth in two short paragraphs in its brief, neither of which include citation to relevant authority or the pages of the record relied on. Pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), an appellant's brief must contain an argument section "which shall

contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." "The 'failure to properly develop an argument and support it with citation to relevant authority results in forfeiture of that argument.' [Citation.]" *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 33. Because Emerald has failed to comply with the briefing requirements, we deem the issue forfeited.

¶ 104 D. Benefits

¶ 105 Lastly, Emerald argues that the Commission's awards of medical expenses, TTD benefits and PPD benefits were against the manifest weight of the evidence. We note, however, that Emerald's arguments are primarily premised on its contention that the Commission's findings pertaining to disease and causation were against the manifest weight of the evidence. Having concluded that the Commission's findings were not against the manifest weight of the evidence, we find Emerald's arguments meritless.

¶ 106 We acknowledge that Emerald raises two additional arguments: (1) that the evidence, including Dr. Fletcher's testimony, does not support a finding that claimant suffers from "any permanent disability which can be causally related to his alleged workplace exposures[,]" and (2) that the Commission's award of medical expenses includes medical bills incurred prior to the amended accident date. Similar to its argument regarding the date of disablement, however, Emerald has failed to support these additional arguments with citation to relevant authority and the pages of the record relied on. It is well settled that a reviewing court " 'is not a repository into which an appellant may foist the burden of argument and research.' " *Compass Group*, 2014 IL App (2d) 121283WC, ¶ 33 (quoting *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37). As noted, the "failure to properly develop an argument and support it with citation to relevant

authority results in forfeiture of that argument." *Ramos*, 2013 IL App (3d) 120001, ¶ 37. Thus, we deem Emerald's remaining arguments forfeited.

¶ 107 III. Conclusion

¶ 108 In light of the foregoing, we affirm the judgment of the circuit court, which confirmed the Commission's decision.

¶ 109 Affirmed.