2024 IL App (2d) 230180WC-U
No. 2-23-0180WC
Order filed March 18, 2024

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

Workers' Compensation Commission Division

SCOTT OSMAN,	)	Appeal from the Circuit Court
	)	of Kane County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 22-MR-50
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, *et al.*,	)	
	)	
	)	Honorable
(East Aurora School District 131,	)	Kevin Busch,
Respondent-Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: Commission's decision was not void *ab initio* where arbitrator did not exceed venue limitation and was appointed in accordance with relevant statute; Commission's decision that claimant failed to establish causation between subsequent condition of ill-being and work-related accident is not against the manifest weight of the evidence; claimant forfeited additional issues by failing to adequately argue them on appeal.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Scott Osman, appeals a decision of the circuit court of Kane County confirming a decision of the Illinois Workers' Compensation Commission (Commission) awarding him permanent partial disability (PPD) benefits in the amount of $609.38 per week for 41¾ weeks in accordance with the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)). The Commission also denied his claims for compensation for additional injuries and those based on medical expenses. For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 An arbitration hearing in this matter commenced on January 17, 2020. Claimant was the first witness. He testified that he was employed by respondent, East Aurora School District 131 on December 11, 2012, as a shipping and receiving clerk and fireman. On that date, he was "[t]rying to pull orders for shipping and receiving and [he] fell from a ladder." Claimant explained that he caught his foot between a wall and two pallets and "fell backwards with [his] foot trapped," injuring his right ankle. He went to an urgent care center.

¶ 6 Claimant summarized his treatment. Following his injury, claimant was given crutches and his ankle was placed in an air cast. This caused him to walk with his right foot "splayed" to the right. Prior to the accident, he had no issues of instability with his right ankle or any problems with his knees and hips. After walking with a changed gait for a while, his "knees were hurting more." His right knee started to hurt first. He compensated by placing more weight on his left leg, and his left knee then began hurting more. No such symptoms preceded the accident.

¶ 7 Subsequently, claimant underwent ligament reconstruction "and some other stuff" of his right ankle, which was performed by Dr. Lee. After a period of physical therapy, Dr. Lee released claimant to return to work. Claimant was off work about 26 weeks and then returned to full duty. Claimant described his duties as loading and unloading trucks, maintaining the building, and

moving freight. Claimant agreed with his job being classified as a very heavy position. He would sometimes have to load equipment onto trucks that weighed in excess of 200 pounds.

¶ 8 Dr. Lee prescribed a "bilateral custom orthotic," which changed how he walked. Claimant stated that this resulted in knee pain. Claimant then saw Dr. Burgess and "followed up with a bunch of doctors." MRIs were performed on both knees as were arthrograms of both hips. Claimant testified that he suffered no additional injuries to his ankles, knees, or hips. Dr. Chudik recommended exploratory surgery on claimant's knees. Claimant did not undergo this surgery. Claimant also saw Dr. Alden, who recommended injections for his hips, but they did not provide relief.

¶ 9 Claimant then went to Dr. Chilelli. He underwent further therapy and injections, but received no relief. Claimant ultimately stopped therapy because of the pain he was experiencing. He saw Dr. Bothia, who recommended therapy and surgery to claimant's right hip. Arthrograms showed labral tears in both hips.

¶ 10 Claimant testified that he wears an Arizona Brace at work. This brace gives him stability by limiting certain movements of his foot. He described it as being like a ski boot, but tighter. He had been using the brace, which was prescribed by Dr. Lee, for years. The brace caused claimant to torque his knees and hips more when working. Claimant estimated, "conservatively," that he walked 6 to 15 miles per day, based on data taken by a Fitbit and an Apple watch.

¶ 11 On cross-examination, claimant acknowledged that he was given the option of having his orthotics adjusted. He returned and had it adjusted twice, after which they felt fine. In April 2014, claimant told Dr. Lee his orthotics were helping. Claimant agreed that there was a seven-month gap from the time he was released by Dr. Lee to the time he sought treatment from Dr. Burgess. Claimant further acknowledged that in 1997 he had surgery for a herniated disc, which was causing

sciatica and a dropped foot. When claimant began treating with Dr. Chilelli, Dr. Chilelli first thought claimant's symptoms might be related to his back. Dr. Chilelli referred claimant to Dr. Mayer, who, along with two other doctors, treated claimant's lower back. On redirect-examination, claimant stated that he had not experienced the drop foot since the 1997 surgery.

¶ 12 Claimant also submitted the evidence deposition of Dr. Brian Burgess, who testified that he is board certified in foot surgery. He first saw claimant on January 1, 2015. Claimant was seeking a second opinion regarding his right ankle, as he had been experiencing persistent pain despite prior treatments. Dr. Burgess noted that claimant walked with "an antalgic or a painful gait." Dr. Burgess also observed that claimant was experiencing "pain over the lateral ankle ligaments," "pain over the anterior medial gutter of the ankle," "instability with stressing of the right ankle," and "some pain with range of motion of the right ankle." He added, "My impression was that he had some mild ankle arthritis, had some instability of the ankle and possibly an osteochondral lesion." Dr. Burgess opined that the condition of claimant's ankle that he observed was causally related to claimant's accident of December 11, 2012. Dr. Burgess ordered an MRI, but did not place claimant under any work restrictions.

¶ 13 Dr. Burgess again saw claimant in May 2016. Claimant was wearing a brace, which he said helped with some of his symptoms. He was complaining of knee and hip pain. Given claimant's MRI, Dr. Burgess believed conservative treatment was appropriate. Claimant was too young for an ankle replacement or fusion. Dr. Burgess felt continuing with the brace was the best course. Dr. Burgess agreed that "there's a compensatory mechanism given the altered gait that he presented *** with on both occasions." Accordingly, he opined that the condition of ill-being of claimant's knee and hip were causally related to his at-work accident of December 2012. Dr. Burgess referred claimant to Dr. Burra.

¶ 14 On cross-examination, Dr. Burgess testified that claimant had a body-mass index of 29.64, which is considered clinically obese. Burgess explained that this would not typically cause arthritis of the ankle, though it might in the knee or hip. He acknowledged that it was possible that the condition of ill-being of claimant's hips and knees was caused by arthritic changes. However, he explained that given the timing of claimant's injury, the development of his antalgic gait, and his subsequent hip and knee pain, he remained of the opinion that claimant's condition was causally related to his at-work accident. He further noted that claimant may well have had a preexisting condition that was exacerbated by the accident. The fact that claimant did not complain of knee or hip pain prior to seeing Dr. Burgess over two years after the accident did not alter his opinion, as it could take that long for these symptoms to manifest. On redirect-examination, Dr. Burgess stated that it is not unusual for an antalgic gait to lead to knee and hip pain.

¶ 15 Respondent offered the evidence deposition of Dr. Anand Vora, who examined claimant on its behalf. He testified that he is a board-certified orthopedic surgeon. Dr. Vora examined claimant on June 28, 2013. Claimant's initial medical providers diagnosed him with a severe ankle sprain. Dr. Vora stated that at the time of the examination, claimant was "working restricted duty but had not missed a day." Claimant related that his ankle was unstable and his biggest concern was the pain he was experiencing on the front of the ankle. Dr. Vora diagnosed "[a]nterior ankle impingement with osteophyte, medial gutter osteophyte, [and] early ankle arthritis." He explained that these were "chronic degenerative conditions" and that they therefore had not been caused by claimant's accident, though they "could have been aggravated" by it. Claimant's subjective complaints were generally consistent with Vora's objective findings, except for claimant's reported heel pain, for which there were no coincident objective conditions.

¶ 16 Dr. Vora opined that claimant had not yet reached maximum medical improvement (MMI) at the time of his examination. He also believed claimant was capable of working and that a weight restriction and a restriction on working on uneven surfaces was warranted. Dr. Vora subsequently reviewed claimant's medical records on April 2, 2015. He noted that in January 2015, claimant sought further treatment, stating that he was "never perfect after the surgery and feels like he's getting worse." He opined that claimant's complaints to Dr. Burgess in January 2015 were not causally related to his at-work accident. In support, he pointed to "the timing," "the records from Dr. Lee suggesting that he's doing well," and "the ability to return to work without restrictions for an extensive period of time." Any aggravation from the December 2012 accident would have resolved by the time Dr. Lee released claimant to return to work. Dr. Vora further pointed out that Dr. Lee had placed claimant at MMI.

¶ 17 On cross-examination, when asked to define "reasonable degree of medical certainty," Dr. Vora stated that he could not "exactly define it other than to say it's greater than 51 percent." Claimant's attorney then asked, "Greater, like 80 or 90 precent, or can you give us a medical adjective of it?" Dr. Vora replied, "In my opinion for this—I can't tell you as a general statement, but in this particular case I would say that my opinions are based on a 95 percent certainty." Counsel then asked, "You'd have to be 95 percent certain before you would concede a causal proposition, before you would admit the causal proposition?" Dr. Vora answered, "No, no. It would have to be reasonable." He added, "I can't define the word reasonable better than reasonable."

¶ 18 Dr. Vora agreed that prior to the accident, claimant's records showed no signs of pain or instability in the ankle. Claimant did, however, have preexisting chronic arthritis. He did not know whether the arthritis was symptomatic before the accident. He also stated that claimant's chronic

condition was permanent. A note from Dr. Lee dated May 21, 2014, indicates that the orthotics were making claimant's knees ache. Dr. Vora was asked whether instability of the ankle can "lead to a different meshing of the joint in the knee." He replied, "There's actually very, very poor, if any, literature that suggests that it can cause ipsilateral knee problems or instability."

¶ 19 Claimant also submitted the evidence deposition of Dr. Shane Nho, who examined claimant on respondent's behalf. Dr. Nho testified that he is a board-certified orthopedic surgeon. He examined claimant on February 25, 2019. Claimant reported that he was suffering from bilateral hip and knee pain, which had been ongoing since December 11, 2012. Claimant stated that he suffered an injury at work that day and had no problems with his hips or knees prior to this date. Dr. Nho conducted a physical examination. He characterized claimant's gait as "non-antalgic" (*i.e.*, normal). Dr. Nho noted no symptom magnification during the examination. He did not feel any work restrictions were warranted.

¶ 20 Dr. Nho opined that there was no causal relationship between claimant's reported hip and knee pain and his work injury because he began experiencing hip pain about "five years after the alleged injury." Dr. Nho also relied on his observation that claimant's "objective findings do not demonstrate any abnormality in terms of gait." The pain claimant was experiencing was "more likely than not related to activities of daily life in this case." He further opined that claimant's use of an air splint, a CAM walker, an ASO brace, a post-surgical brace, or the orthotics could not have aggravated these conditions, nor could undergoing physical therapy. Claimant had reached MMI as of February 25, 2019, and no further treatment is necessary. He stated that claimant was not walking with an altered gait as a result of his at-work accident, so the accident would not have aggravated an underlying condition. Finally, claimant suffered no permanent injury as a result of the accident.

¶ 21 On cross-examination, Dr. Nho testified that he did not know how much he made for examining claimant. He stated that he did not see any records where claimant reported a knee problem prior to five years after the accident. However, he also stated that if such records existed, they "probably wouldn't" alter his opinion. When asked whether claimant's statement that he began experiencing knee problems shortly after the accident was true, Dr. Nho stated that he "can't take that as being more important than what the medical records have stated over the past several years." He admitted he did not see a medical note from November 5, 2013, "referencing pain in the medial side of the right knee." The doctor stated that a change in gait would be "unlikely to have a substantial impact" on the joints. According to Dr. Nho, he was applying a 99.9% level of probability to his causation opinions. He stated that even if one of the treating physicians had diagnosed claimant with an antalgic gait following the accident, it would not change his opinion that the condition of claimant's hips and knees was unrelated to his at-work accident.

¶ 22 On redirect-examination, Dr. Nho clarified that he was 99.9% sure of his opinions in this case. He acknowledged that normally, his degree of certainty could range from 51% to 100%. The parties also submitted voluminous medical records, which we will discuss as they pertain to the issues presented in this appeal.

¶ 23 The arbitrator awarded claimant PPD benefits in the amount of $609.38 per week for 41¾ weeks, but denied his claim for medical expenses and prospective medical expenses. Regarding causation, the arbitrator first noted that it was undisputed that the claimant sustained a work-related injury on December 11, 2012, to his right ankle. The arbitrator found that the condition of ill-being of claimant's ankle was causally related to this accident. He then noted that Dr. Lee's physical examination on May 21, 2014, "noted full range of motion and excellent strength." Dr. Lee opined that claimant was at MMI and released him to full-duty work at this time. Claimant sought no

further treatment until January 15, 2015, when Dr. Burgess observed some ankle arthritis, instability, and a possible osteochondral lesion and opined that this could have been caused by claimant's work accident. The arbitrator noted the testimony of Dr. Vora that claimant's condition could have been aggravated by his at-work accident. He further noted Dr. Vora's opinion that any temporary aggravation would have resolved by the time Dr. Lee placed claimant at MMI.

¶ 24 The arbitrator then found the opinions of Dr. Lee, as corroborated by Dr. Vora, persuasive. Additionally, he did not find claimant credible. He cited the fact that claimant did not seek care for seven months after being returned to full-duty employment. Also, claimant waited four months after that to seek care from another doctor, and it was not until May 2016 that he returned to Dr. Burgess, which the arbitrator pointed out was four years after the accident. Thus, the arbitrator found that claimant reached MMI with regard to the work-related injury to his right foot on May 21, 2014.

¶ 25 As for the condition of claimant's knees and hips, the arbitrator first noted Dr. Burgess's opinion that the altered gait Dr. Burgess observed during two examinations "would causally relate the knee and hip to the accident." However, Dr. Vora opined conversely that "the literature does not indicate that ankle instability would cause knee arthritis." Moreover, Dr. Nho "diagnosed degenerative or congenital conditions and opined that these conditions were not causally connected to the accident of December 11, 2012 or the various braces used by" claimant.

¶ 26 The arbitrator also found that claimant's "testimony and later medical histories are inconsistent with the medical records." Further, claimant's "claim of causation based on altered gait" is contradicted by the medical records, and he set forth numerous inconsistencies. Accordingly, "[b]ased upon the inconsistent and inaccurate information provided, the pre-existing degenerative conditions ***, and the multiple gaps in care," the arbitrator concluded that the

opinions of Drs. Vora and Nho were persuasive and that claimant had failed to prove that the conditions of his knees and hips were related to his at-work accident. He did find that claimant's initial injury to his ankle was related to his employment.

¶ 27 The arbitrator further found that respondent had paid all reasonable and necessary medical expenses. He denied claimant's request for prospective expenses as they concerned conditions not causally related to his employment.

¶ 28 Finally, the arbitrator considered the issue of PPD benefits. He noted that claimant works a heavy job and that he has successfully returned to full-duty employment. Claimant is experiencing no loss of earnings. Nevertheless, claimant continues to have complaints and wears a brace. Therefore, the arbitrator concluded that claimant "sustained permanent partial disability to the extent of 25% loss of use of the right foot."

¶ 29 The Commission affirmed, adopting the opinion of the arbitrator. The circuit court of Kane County confirmed. This appeal followed.

¶ 30 III. ANALYSIS

¶ 31 On appeal, claimant raises a number of issues. First, he contends that the Commission's decision is void *ab initio*. Second, he asserts that the Commission's decision that he failed to prove a causal connection between his subsequent condition of ill-being and his work-related injury is contrary to the manifest weight of the evidence. Third, he contends that the Commission erred in denying him certain medical expenses. Fourth, he argues that the Commission should have deferred ruling on his claim for PPD benefits.

¶ 32 A. Jurisdiction

¶ 33 Claimant first contends that the Commission's order is void for two reasons. As a preliminary matter, he asserts that the appointment of Arbitrator Friedman, who heard his case,

was not valid in that the appointment had not been confirmed by the Senate and also because that the appointment was for a two-year term, contrary to the provisions of section 14 of the Act (820 ILCS 305/14 (West 2020)). Claimant also argues that the arbitrator exceeded what he terms the "venue limitation" imposed by section 14 of the Act. "Because it is an administrative agency, the Commission has no general or common law powers. The only powers it possesses are those granted to it by the legislature. Any action it takes must be specifically authorized by statute." *Daniels v. Industrial Comm'n*, 201 Ill. 2d 160, 165 (2002), *as modified on denial of reh'g*, Aug. 29, 2002. Where an administrative agency acts outside of its specific statutory authority, it acts without jurisdiction. *Id.* Our review of questions of subject-matter jurisdiction under the Act is *de novo*. *Springfield Coal Co., LLC v. Illinois Workers' Compensation Comm'n*, 2016 IL App (4th) 150564, ¶ 11.

¶ 34 1. The Validity Of The Appointment

¶ 35 We first turn to claimant's argument that Arbitrator Friedman's appointment was defective in that he was never confirmed by the Senate before he ruled on this matter. The claimant's case was tried on January 17, 2020, and the ruling issued on April 9, 2020. Section 14 of the Act states that arbitrators shall be appointed by the governor with the advice and consent of the Senate. 820 ILCS 305/14 (West 2020). Section 3A-40 of the Illinois Governmental Ethics Act (Ethics Act) (5 ILCS 420/3A-40 (West 2020)) provides, in relevant part:

> "A person who is designated by the Governor *** to serve as an acting appointee to any office to which appointment requires the advice and consent of the Senate shall not continue in office more than 60 calendar days unless the Governor files a message with the Secretary of the Senate nominating that person to fill that office within that 60 days." *Id.*

The Senate may reject an appointment, in which case the nominated individual may not be reappointed during that term of the Senate. 5 ILCS 420/3A-40(c) (West 2020). If the Senate does not act on the appointment within 60 session days, the appointment is approved by default. Ill. Const. 1970, art. V, § 9.

¶ 36 By way of background, Arbitrator Friedman was first nominated by Governor Rauner for a term to start August 17, 2015, and end July 1, 2018. The appointment message was sent promptly and received by the Senate, which confirmed the appointment on March 1, 2016. This procedure complied with Section 3A-40(c) of the Ethics Act, which requires appointments made by the governor to be communicated to the Senate by way of a message requesting its advice and consent within 60 calendar days. 5 ILCS 420/3A-40(c) (West 2020). On August 28, 2018, Governor Rauner again appointed Arbitrator Friedman for a term to start on that date and end on July 1, 2021, and the appointment message was promptly sent. Although the appointment and message occurred after that first term lapsed on July 1, 2018, Arbitrator Friedman continued in office because Section 3A-40(a) of the Ethics Act allows a holdover for no longer than 60 calendar days. (5 ILCS 420/3A-40(a) (West 2020)). But the 100th General Assembly did not act on the appointment before its adjournment at the end of the legislation session. By virtue of the Senate rules, the appointment was carried over to the next General Assembly. 101st Ill. Gen. Assem., Senate R. 2. Governor Pritzker was sworn into office on January 14, 2019. The Governor, https://gov.illinois.gov/about/the-governor.html#:~:text=Governor%20JB%20Pritzker%20was%20sworn,14%2C%202 (last visited March 12, 2024) [https://perma.cc/4W4Q-J5AP].

¶ 37 On May 20, 2019, the appointment message of Arbitrator Friedman was withdrawn, but he was immediately appointed again by Governor Pritzker to a term to start on May 24, 2019, and end on June 30, 2021. The appointment message was promptly sent. But once again, the Senate

did not act on the appointment before Arbitrator Friedman held the hearing on this matter on January 17, 2020, and issued his ruling on April 9, 2020. To conclude the saga, after additional appointments, messages, withdrawals, and a new General Assembly, Arbitrator Friedman's appointment finally received the advice and consent of the Senate on February 16, 2023, for a term to start August 30, 2021, and to end July 1, 2024. *Bill Status of AM1020225*, *Illinois General Assembly*, https://www.ilga.gov//legislation/BillStatus.asp?GAID=17&GA=103&DocNum=1020225&DocTypeID=AM&SessionID=112&LegID=145782&SpecSess=&Session= (last visited March 12, 2024) [https://perma.cc/E4AN-MMFJ].

¶ 38 However, we are focused on the activity and procedures preceding the time of claimant's hearing and the issuance of the ruling by Arbitrator Friedman. Governor Rauner initially and validly appointed him on August 28, 2018, to his second term ending July 1, 2021, a roughly three year term, and promptly messaged the Senate. He continued in office between his first term (ending July 1, 2018) until the August 28, 2018, appointment by Governor Rauner because of the holdover provision of the Ethics Act. 5 ILCS 420/3A-40(a) (West 2020) (60 calendar days after term expires). There are less than 60 calendar days between July 1, 2018, and August 28, 2018.

¶ 39 The appointment and message were withdrawn briefly before he was again appointed, this time by Governor Pritzker on May 24, 2019, for a term to start that date and end consistent with the date of the previous appointment by Governor Rauner, that is June 30, 2021 (vs July 1, 2021, in the Rauner appointment). A message from Governor Pritzker was promptly filed. The holdover provision prevented any vacancy from occurring (5 ILCS 420/3A-40(a) (West 2020)) and because an appointment message was timely filed, Arbitrator Friedman continued in office. See 5 ILCS 420/3A-40(c) (West 2020). The Senate did not act on the appointment, so it was neither confirmed nor rejected. We note that between the time of Arbitrator Friedman's appointment (May 24, 2019)

and the time he ruled on claimant's case (April 9, 2020), only 39 session days had passed (*Available Senate Journals*, https://www.ilga.gov/senate/journals/default.asp?GA=101 (last visited 12/21/2023)), so the appointment was not confirmed by default. But, although labyrinthine, the appointment procedures were in order and comported with what is required by the law. Therefore, Arbitrator Friedman validly occupied the arbitrator's chair at the time he heard and ruled on claimant's case in accordance with the provisions of section 3A-40 of the Illinois Governmental Ethics Act. See 5 ILCS 420/3A-40(c) (West 2020).

¶ 40 Claimant also takes issue with the fact that the appointment by Governor Pritzker was designated to run for approximately two years rather than the three years specified in section 14 of the Act. 820 ILCS 305/14 (West 2020) ("[A]rbitrators shall be appointed to 3-year terms as follows"). Respondent cites nothing to establish that an appointment for a term shorter than that specified in the statute invalidates the appointment, and we can conceive of no reason why this would be true. Moreover, looking at the Act as a whole, we note that section 14 of the Act contemplates staggered appointments:

> "On and after June 28, 2011 (the effective date of Public Act 97-18), arbitrators shall be appointed to 3-year terms as follows:
>
> > (1) All appointments shall be made by the Governor with the advice and consent of the Senate.
> >
> > (2) For their initial appointments, 12 arbitrators shall be appointed to terms expiring July 1, 2012; 12 arbitrators shall be appointed to terms expiring July 1, 2013; and all additional arbitrators shall be appointed to terms expiring July 1, 2014. Thereafter, all arbitrators shall be appointed to 3-year terms." *Id.*

The only way to ensure terms remain staggered is to appoint arbitrators to fill out the balance of existing terms. Indeed, in this case, Arbitrator Friedman was appointed to a second term, initially by Governor Rauner, of approximately three years duration running from August 28, 2018, to July 1, 2021. This nomination was never acted on by the Senate and withdrawn on May 20, 2019, and Friedman was then reappointed by Governor Pritzker to the term at issue here—May 24, 2019, to June 30, 2021—ending a day prior to the day of the previous appointment. Clearly, that appointment completed the three-year term initiated by Governor Rauner. This is consistent with statute's staggering of appointments. See *Daniels*, 201 Ill. 2d at 164-65 (finding that voiding an unauthorized appointment to the Commission by the Chairperson was consistent with the Act's careful design insuring the balance of competing community interests). More importantly, we see no reason why this is inconsistent with the statute. In sum, neither of these arguments establish that the Commission's decision in this matter was void *ab initio*.

¶ 41 2. The Venue Limitation

¶ 42 Claimant also argues that the version of section 14 of the Act in effect at the time of the arbitration hearing in this case was violated. It provided, in pertinent part, "No arbitrator shall hear cases in any county, other than Cook County, for more than 2 years in each 3-year term." 820 ILCS 305/14 (West 2020)(the current version provides: "No arbitrator shall hear cases in any county, other than Cook County, for more than 4 years consecutively." 820 ILCS 305/14 (West 2022)). Claimant posits that the purpose of this provision was to prevent an arbitrator from becoming "too chummy with the local bar." He then points out that Arbitrator Friedman, who presided over this matter, had been sitting in Kane County for approximately 2½ years at the time of the arbitration hearing in this case (January 17, 2020). However, the record shows that at the time of the hearing and ruling in this case, Arbitrator Friedman sat in the venue at issue from July

2017 until the end of his first term, July 1, 2018; that is, in that county for one year in that one term. His next term then began. In that second term, by the time he heard this case and ruled in April 2020, he had served in that county for a period of approximately 22 months. Therefore because the statute only forbids an assignment to the same county for more than two years in each three year term, the statute's plain terms were not violated. And neither was its spirit, given that the legislature later amended the statute to allow arbitrators to serve up to four years consecutively in a given county. See *State v. Mikusch*, 138 Ill. 2d 242, 248 (1990)(where statutes are amended without repeal, statutes on same subject are presumed to be governed by one spirit and a single policy).

¶ 43 B. Causation

¶ 44 Claimant contends that the Commission's decision that he failed to prove a causal relationship between the conditions of ill-being of his knees and hips and his at-work accident of December 11, 2012, is contrary to the manifest weight of the evidence. As a preliminary matter, claimant contends that Illinois courts have been misapplying the manifest-weight standard of review. We will begin with this latter contention.

¶ 45 1. The Manifest-Weight Standard

¶ 46 Claimant raises a number of issues regarding how we review decisions of the Commission. First, he argues that a deferential standard of review is inconsistent with the plain language of the Act. See 829 ILCS 305/19(f)(2) (West 2020). Next, he contends that, even if such a standard is inherent in the Act, the legislature lacks the power to divest the judicial system of its constitutional role. Third, he asserts (correctly) that workers are entitled to a fair system to vindicate their interests. Fourth, he contends that specialized agencies such as the Commission are not entitled to deference due to their familiarity with the subject matter of the claims before them.

¶ 47 We note claimant's counsel raised a series of similar arguments recently in *Becker v. Illinois Workers' Compensation Comm'n*, 2022 IL App (1st) 211076WC, ¶¶ 32-35. We rejected these arguments. *Id.* Counsel does not note this occurrence here (we remind counsel of his duty of candor (see Ill. R. Prof'l Conduct R. 3.3(a)(2) (eff. Jan. 1, 2010))). Moreover, we find counsel's arguments here no more persuasive than we found them in *Becker*.

¶ 48 Regarding the substance of counsel's arguments, we initially note, as we explained in *Becker*, that the standard does not appear in the Act is of no moment. *Id.* ¶ 33. The Act had been amended numerous times since courts have been applying it, so the legislature is presumed to have acquiesced in our construction of the Act. See *Barral v. Board of Trustees of John A. Logan Community College*, 2019 IL App (5th) 180284, ¶ 32. Counsel's contention that the legislature lacks the authority to divest courts of their role in deciding such cases is misplaced, for, as counsel's first argument recognizes, the manifest-weight standard does not appear in the Act. As for his claim that workers are entitled to a fair system, we, of course, agree. However, we see nothing inherently unfair in the application of the manifest-weight standard. We note that it applies to all decisions of the Commission, both pro-worker and pro-employer. Moreover, we do not believe abandoning the traditional deference given a factfinder (see *Stapp v. Jansen*, 2013 IL App (4th) 120513, ¶ 17) or an expert decisionmaker (see *Freeman Coal Mining Corp. v. Illinois Pollution Control Board*, 21 Ill. App. 3d 157, 168 (1974)) would improve decision making. Finally, we reject, as we did in *Becker*, 2022 IL App (1st) 211076WC, ¶ 34, counsel's suggestion that we owe no deference to the Commission based on its expertise in dealing with medical matters and workers' compensation claims. As we explained, " While it is true that courts have long addressed injury claims, the Commission administers a complex statutory scheme and addresses a particular class of injuries, including determining whether injuries are related to employment." *Id.*

¶ 49 Claimant's attorney also takes issue with the mechanics of the manifest-weight standard itself. Generally, the standard is articulated as requiring a showing that an opposite conclusion is clearly apparent. See, *e.g.*, *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 312-13 (2009). Claimant's counsel asserts that " '[o]pposite conclusion' mistakenly presumes that conclusions divide into clear opposing groups." Counsel is being obtuse. The "opposite conclusion" in the context of appellate review is the one where you win instead of the one where you lose. Counsel further contends that " '[c]learly apparent' gives no additional guidance as apparent conclusions should already seem clear to the observer." That such standards are not amenable to further definition does not preclude their use; indeed, for example, it has been held to be reversible error to attempt to further define "reasonable doubt." See *People v. Downs*, 2015 IL 117934, ¶ 19. Accordingly, we again reject counsel's request that we redefine the way in which we review factual decisions of the Commission.

¶ 50 2. Causation

¶ 51 Claimant next contends that the Commission's determination that he failed to prove causation is contrary to the manifest weight of the evidence. To recover, a claimant bears the burden of proving that his or her condition of ill-being is causally related to employment. *Anderson Clayton Foods v. Industrial Comm'n*, 171 Ill. App. 3d 457, 459 (1988). Causation presents a question of fact. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995). Therefore, we apply the manifest-weight standard and reverse only if an opposite conclusion is clearly evident. *Id.* "The test is not whether this or any other tribunal might reach the opposite conclusion, but whether there was sufficient factual evidence in the record to support the Commission's determination." *Id.* at 450. "In resolving questions of fact, it is the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign the weight to be

accorded the evidence and draw reasonable inferences from the evidence." *Id.* at 449. The Commission's expertise with medical matters and the application of the Act is well recognized and entitled to great deference. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979).

¶ 52 Claimant begins by attacking the countervailing opinions of Drs. Vora and Nho. Initially, claimant asserts that Dr. Vora never "directly addressed whether the ankle was causing compensatory issues in the knee or hips." Claimant acknowledges, however, that the Commission found that Dr. Vora testified that "the literature does not indicate that ankle instability would cause knee arthritis." In fact, his testimony was, in pertinent part, as follows:

> "As a matter of fact, I'm not aware of anything that shows that [ankle] instability [causes ipsilateral knee problems], even fusions, when the ankle joint is fused. The literature is poor and very sparse and actually would suggest it does not cause adjacent joint arthritis. If fusion doesn't show it, I am not aware of any literature that shows that instability would cause it."

Claimant asserts that Dr. Vora "assumed there was no impact on knee joints because he thought the research was sparse" and characterizes this as speculation. We disagree, as the absence of literature demonstrating a connection does allow an inference that no such connection exists. Moreover, as claimant bears the burden of proof here, the absence of evidence is more a problem for him than respondent.

¶ 53 Claimant contends that Dr. Vora's opinion is "not even logical." We will not speculate on the soundness of such an opinion, which is clearly beyond the ken of laypersons. Indeed, "Although medical testimony as to causation is not necessarily required [citation], where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that claimant's work activities caused the

condition complained of." *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 478 (1987). The effect of an injury to one joint on the subsequent health of another joint is not something within the knowledge of laypersons. Thus, rejecting an expert's opinion simply because a layperson deemed it to be contrary to common sense or logic would be unsound.

¶ 54 Claimant complains of the Commission's finding that Dr. Lee's testimony was corroborated by Dr. Vora's opinions. Specifically, claimant asserts that the Commission "did not tell us what the doctors agreed on." This is incorrect. Notably, in the section leading up to this assertion, the Commission stated, "Dr. Vora opined that the temporary aggravation of the underlying degenerative condition had resolved as of Dr. Lee's release of [claimant] to unrestricted full duty and finding of maximum medical improvement." Thus, Drs. Vora and Lee were consistent on the very salient point of whether claimant's condition had fully resolved by the time claimant returned to full duty seven months prior to the time he sought further care from Dr. Burgess.

¶ 55 Regarding Dr. Nho, claimant criticizes his opinion, claiming that the doctor had applied a "wildly inapplicable standard" to his causation analysis. Claimant asserts that Dr. Nho "would not concede a causal proposition unless it met a 90% to 95% level of probability." This argument has no basis in the record. Respondent cites the following exchange in support:

> "Q. What level of probability are you applying to your causation opinions in this case?
>
> A. 99.9 percent.
>
> Q. So causal proposition would have to be 90 to 95 percent true before you would concede the proposition under the analysis you're performing in this case, correct?
>
> [Respondent's Counsel:] Objection. That mischaracterizes the doctor's testimony.
>
> * * *

A. Yes."

The objection was sustained. Claimant does not attempt to explain why the objection should have been overruled or, more importantly, why his question did not mischaracterize the doctor's testimony. Moreover, on redirect-examination, Dr. Nho explained that he was 99.9% sure of his opinions in this case and that in any given case, his level of certainty can range from 51% to 100%. Thus, claimant's argument on this point is grounded in a mischaracterization of the record.

¶ 56 Claimant further points to Dr. Nho's testimony which he paraphrases as, "If a change in gait *is causing an impact* on a joint, joint pain would be evidence of that impact." (Emphasis added.) This assertion presupposes causation. As such, Dr. Nho's affirmative response to it provides no support for claimant's position.

¶ 57 In any event, to the extent claimant has identified deficiencies in the opinions of Drs. Vora and Nho, they were presented to the Commission and the Commission elected to credit their opinions regardless. Generally, defects in the bases for an expert's opinion are matters of weight rather than admissibility. See *In re L.M.*, 205 Ill. App. 3d 497, 512 (1990). Assigning weight to evidence is primarily a matter for the Commission. *ABF Freight Systems v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 1414306WC, ¶ 19. Moreover, as this is a medical issue, we owe the Commission significant deference. *Long*, 76 Ill. 2d at 566. In short, claimant has not convinced us that the Commission's decision to accept the opinions of these two doctors was error.

¶ 58 Claimant next contends that the Commission created a "new doctrine" and applied it against him. By this, claimant contends that the Commission's reference to the fact that claimant did not seek treatment for seven months following his full-duty return to work is an unwarranted assault on his credibility. As we read the Commission's decision, it did not consider this fact to affect claimant's credibility:

> "As more fully discussed below with respect to [claimant's] conditions in the knees and hips, the Arbitrator does not find claimant a credible witness. [Claimant] was released to full duty work and did not seek any care for 7 months. Thereafter, he did not see Dr. Schroeder for an additional 4 months and did not return to Dr. Burgess until May 2016, another year and over 4 years since the accident. The Commission has considered such a gap in care in determining causal connection."

The Commission's discussion of the temporal gap concerns the issue of causation rather than claimant's credibility, which it says it will, and in fact does, discuss later. When it mentions the gap at that point, it is rejecting claimant's assertion that he began experiencing knee pain shortly after the accident, which is a legitimate point. Moreover, nothing in the Commission's decision suggests that it was announcing a new doctrine; it was simply drawing a factual inference.

¶ 59 Claimant also condemns the Commission for drawing inferences against him from neutral facts, by which he again is referring to the gap in his treatment. He contends that there may be other reasons for such a gap beyond him experiencing no intervening problems. If the gap were the only bases for this inference, we might agree with claimant. However, the record provides additional support for the Commission's decision on this point. Notably, Dr. Lee released claimant to full duty at the start of this gap. Dr. Vora opined that any temporary aggravation of his degenerative condition would have resolved by this time. Moreover, claimant was working full duty during the gap. As such, the Commission's decision is supported by more than the fact that claimant did not seek treatment during this time.

¶ 60 Claimant next argues that the timeline supports a finding of causation. It is true that a period of relative good health, followed by an accident, followed by a decline in health constitutes circumstantial evidence that supports an inference that the accident caused the subsequent decline.

Kawa v Illinois Workers' Compensation Comm'n, 2013 IL App (1st) 120469WC, ¶ 88. We are unaware of any case that states that such a chain of events *requires* the trier of fact to draw such an inference. Moreover, two things undercut this inference here. First, as pointed out above, there was evidence in this case that claimant's condition had resolved by the time Dr. Lee released him to return to work and there was a substantial gap between the accident and the manifestation of the condition for which claimant now seeks compensation. Second, claimant is aging and works a very heavy job (claimant has not brought a repetitive-trauma claim). Dr. Nho opined that claimant suffered from degenerative conditions of the knees and hips. Thus, in this case, the timeline does not militate so strongly for a finding of causation that an opposite conclusion to the Commission's is clearly apparent.

¶ 61 Indeed, claimant extensively recounts the progression of his condition as documented in the medical records. In essence, this is simply a more detailed version of his timeline argument. Indeed, the record establishes that claimant's knees and hips cause him distress and that this has progressed over time. The question, however, is whether that distress is due to his earlier work-related condition or the treatments he received for that condition. Moreover, to the extent that this progression supports claimant's position, this merely creates a conflict in the evidence with, *inter alia*¸ the opinions of Drs. Vora and Nho. Resolving conflicts in the evidence is a matter primarily for the Commission. *Setzekorn v. Industrial Comm'n*, 353 Ill. App. 3d 1049, 1055 (2004).

¶ 62 We note that claimant asserts, "There is no evidence of strenuous demands on [claimant] other than from his daily work activities." However, claimant is not advancing a repetitive-trauma claim. Repetitive trauma is a distinct theory of recovery requiring certain proofs and procedural steps. See *Peoria County Bellwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524 (1987).

¶ 63 Finally, claimant points to the opinions of Dr. Burgess, who opined that claimant's hip and knee pain was causally related to his work-related accident. We note that Dr. Burgess expressly relied on the timeline of claimant's injury and the subsequent development of his symptoms. We discussed this above and explained why the timeline did not require such a conclusion. More importantly, there were reasons the Commission could reasonably reject his opinion. Dr. Burgess is board certified in *foot* surgery. He treats neither knees nor hips. During claimant's visit with Dr. Burgess, the "main focus was his ankle pathology." He could only confirm that he reviewed, "at least, an operative report from Dr. Simon Lee." Further, he acknowledged that it was possible that the condition of ill-being of claimant's hips and knees was caused by arthritic changes. He did not recall reviewing claimant's May 2015 MRI. In short, there was an ample basis in the record for the Commission to credit the opinions of Drs. Vora and Nho over that of Dr. Burgess.

¶ 64 To conclude this section, conflicting evidence existed on the issue of causation. Claimant has not persuaded us that the Commission's resolution of this issue is contrary to the manifest weight of the evidence.

¶ 65 3. Other Issues

¶ 66 Finally, claimant's brief contains two additional brief arguments. The first states that "the employer should pay medical" and lists a number of expenses with no citations to the record or pertinent authority. The second is simply a point heading asking to defer the permanency award until treatment is complete. Both issues are forfeited. See *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 19.

¶ 67 IV. CONCLUSION

¶ 68 In light of the foregoing, the judgment of the circuit court of Kane County confirming the decision of the Commission is affirmed.

¶ 69 Affirmed.