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Carla Bender
4th District Appellate
Court, IL

2024 IL App (4th) 240319WC-U
No. 4-24-0319WC
Order filed December 23, 2024

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MECHANICAL, INC.,	)	Appeal from the Circuit Court
	)	of Ogle County.
Appellant,	)	
	)	
v.	)	No. 23-MR-23
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*	)	
	)	
	)	Honorable
	)	Anthony W. Peska,
(Richard Boyden, 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*: Claimant was a traveling employee where he worked at 29 different job sites in a year and a half, for various durations and some sites repeatedly, despite fact that he traveled directly from home to the various job sites, in turn, as employee was engaged in conduct that was reasonable and foreseeable at the time at the time of his accident, his injuries arose out of and occurred in the course of his employment; Commission's decision that claimant provided adequate notice of accident was not contrary to the manifest weight of the evidence; and Commission's award of temporary total disability and medical expenses was not against the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Employer, Mechanical, Inc., appeals an order of the circuit court of Ogle County confirming a decision of the Illinois Workers' Compensation Commission (Commission) granting claimant Richard Boyden's application for benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2018)). Employer asserts that the Commission's finding that claimant was not a traveling employee at the time he was injured, which was reversed by the trial court, was not contrary to the manifest weight of the evidence. In the alternative, employer contends that claimant failed to provide it with notice as required by the Act (see 820 ILCS 305/6(c) (West 2018)). Employer also argues, contingent on the success of either of its first two arguments, that the Commission's awards of benefits cannot stand. For the reasons that follow, we affirm and remand pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 4 Claimant filed an application for adjustment of claim on February 25, 2019, alleging he sustained work-related injuries while in the employ of employer on May 8, 2018, when he was involved in a motor-vehicle accident en route from his home to one of employer's job sites. On March 9, 2020, following a hearing, the arbitrator issued a decision finding claimant was a traveling employee at the time of the accident; he sustained injuries arising out of and occurring in the course of his employment with employer; employer was given proper notice of the accident; and claimant's injuries were causally related to the accident. The arbitrator awarded claimant medical expenses, temporary total disability (TTD) benefits and prospective medical treatment. On review, the Commission reversed, with one commissioner dissenting. It found that claimant was not a traveling employee at the time of his accident and that claimant did not prove that his injuries arose out of and occurred in the course of his employment. The circuit court of Ogle County reversed and remanded, directing the Commission to enter a finding that claimant was a

traveling employee when he was injured. On remand, the Commission entered that finding, reversed the arbitrator's award of prospective medical treatment, modified the TTD award, and otherwise affirmed (it also remanded pursuant to *Thomas*, 78 Ill. 2d 327). The circuit court confirmed the Commission's decision on remand, and this appeal followed.

¶ 5 II. BACKGROUND

¶ 6 The following evidence was adduced at the arbitration hearing on November 19, 2019. Claimant first testified that he was employed by employer as a plumber and pipefitter for two years prior to the accident at issue here. After he was laid off from a job he was working while a member of Local 596 Pipefitters Union in Chicago, a friend, Justin Lindeman, contacted him in November 2016 about working for employer, as "they had a bunch of work coming up." Claimant accepted the offer. The position was through a different union branch, Local 23. They met in Rockford at the union hall the next day, and Lindeman told claimant to report for work at Pearl Valley Eggs in Stockton on the day after that (November 16, 2016). The only equipment he was required to bring with him was a pencil, tape measure, channel locks, and torpedo level, all of which, he later explained, he kept with him as it was possible he would be called after he left a job site and sent to a different one the next day. He worked there for three or four weeks and was then sent to the Chrysler plant in Belvidere. After attending an orientation, he returned to Pearl Valley Eggs until about Christmas, at which time he returned to the Chrysler plant for a "couple months."

¶ 7 After his time at the Chrysler plant, claimant "kind of bounced all over the place." He stated, "I worked at a bank in Rockford, Illinois, for a couple days and then they had another different plant for Chrysler, and then, jeez, I think I went to Berner Foods." Claimant was asked whether, at the end of a workday, he was told where "to report the following day or was it a week by week basis." Claimant replied that it depended on the size of the job. He generally worked for

different foremen at different job sites. From November 16, 2016, when he began working for employer, to May 8, 2018, the day of the accident, claimant worked exclusively for employer. Claimant never reported to employer's shop; rather, he would drive directly to whichever job site he was assigned to. He travelled in his personal vehicle, and choosing the route was up to him. If he refused to go to a job site that he had been directed to report to, he would be laid off.

¶ 8 On May 8, 2018, claimant was traveling to a job site at Berner Foods when he was involved in a motor vehicle accident. This was claimant's first day on this particular job. He had been to Berner Foods previously, "a couple of different times," most recently for approximately a two week period. In the interim, he had worked at an ethanol plant in Rochelle for "a couple days." He was to report to work at Berner Foods at 6 a.m. that day. It was "still roughly a little dark."

¶ 9 Claimant came over a hill and "saw headlights coming toward him." The oncoming vehicle was in claimant's lane, and it collided with him. Emergency crews had to extricate claimant from his vehicle. The driver of the other vehicle was killed. Claimant was transported by helicopter to Mercy Hospital in Rockford. Claimant was diagnosed with fractures to his arms, legs, ribs, and lumbar spine.

¶ 10 Claimant identified records that documented the job sites he had worked at for employer. Sites included Pearl Valley Eggs in Stockton, the Chrysler plant in Belvidere, Bay Valley Foods in Pecatonica, Alpine Bank in Rockford, Berner Foods in Dakota, Mercy Health/Javon Bea in Rockford, Erie Foods in Rochelle, the waste-water treatment plant in Belvidere, Titan Tire Corporation in Freeport, Yanfeng in Belvidere, and Honeywell in Freeport. A number of these locations involved multiple, noncontinuous work periods.

¶ 11 On cross-examination, claimant agreed that at the time of the accident, he was traveling in his personal car from his home in Oregon to the Berner Foods job site in Dakota. Claimant

acknowledged that he was familiar with the roads he was traveling on. He was not compensated for his travel expenses, and he was not paid until he reported to the job site. He was not transporting any tools or supplies with him. Employer did not direct claimant regarding where to live. There were none of employer's logos on his vehicle. Claimant's shift was from 6 a.m. to 2:30 p.m., as set by the collective bargaining agreement (CBA). Claimant testified that he never had worked at a particular job site from "start until the job is [*sic*] completely ended." He had "been told to go somewhere else in the middle of the job."

¶ 12 Employer then called Christopher Loring, its corporate safety director. He identified a provision in the CBA that provided for "portal pay" for service employees "traveling from job to job on off time hours." Claimant did not fall under this provision. Employer provided claimant with the tools and supplies he used at the Berner Foods job site. Employer never told claimant what kind of vehicle to operate or what route to take to a job site. Loring opined that traveling was not part of claimant's job. Claimant was not compensated for travel time. Because employer did not consider claimant's accident to be work related, it did not report the accident on the OSHA log. Loring did not learn that claimant was alleging that this was a work-related accident until January 2019. He noted that this did not comply with employer's reporting rules. As a result, his investigation of the incident was "delayed," as was his report of the event to employer's workers' compensation carrier.

¶ 13 On cross-examination, Loring stated that he was told that claimant was alleging a work-related injury by Justin Lindeman in January 2019. He acknowledged that he was aware that the accident had happened on the day it occurred. Loring agreed that claimant had not been hired to work exclusively at the Berner Foods job site. Claimant worked at multiple job sites, but never at employer's primary location. Employees like claimant could be "sent to different job sites day

after day," and they would be informed by their foremen "where for report to work day to day." He stated that an employee could decline to go to an assigned job site, but he was unsure what the consequence of such a refusal would be. He acknowledged that "[t]hey could be laid off."

¶ 14 Employer next called Justin Lindeman, a regional operations manager for employer. Lindeman testified that claimant was not paid for time spent going back and forth to work. He further stated that claimant did not bring tools to the Berner Foods job site. Employer did not tell claimant what vehicle to drive or how to get to various job sites. Lindeman agreed that travel was "not an integral part of the work [claimant] performed for [employer]."

¶ 15 On cross-examination, he admitted that claimant did not work at employer's "premise or property." He did not "work at a property owned and operated by [employer]." Employer "controlled where claimant went day to day for those job sites." A foreman would tell claimant "where and when to report each day." Lindeman testified that an employee could refuse to report to a particular job site, but would be subject to discipline, including being laid off. Where claimant was to report could change on a daily basis. Although employer provided the tools at a job site, Lindeman conceded that claimant "did have to bring certain tools to every job site." He would have to take these tools with him at the end of a shift so he could "take them to the next job site that he's told to report to."

¶ 16 No other witnesses testified, though the parties submitted additional documentary evidence (including voluminous medical records). The arbitrator issued his decision on March 9, 2020. He, finding that claimant was a traveling employee, determined that claimant sustained an injury arising out of and occurring in the course of his employment with employer on May 8, 2018. The arbitrator also found that timely notice of the accident was provided to employer. Accordingly, he ordered that employer pay TTD benefits for 79 6/7 weeks at a rate of $1280 per week. He further

ordered employer to pay $583,383.49 in medical expenses and ordered employer to pay for prospective medical care. He denied claimant's request for penalties and fees.

¶ 17 The arbitrator explained that the facts of the case were undisputed and that its resolution turned on whether claimant was a traveling employee "when driving from his residence to a job site not owned or operated by [employer], as directed, when he was involved in a motor vehicle accident." The arbitrator recognized that the general rule is that injuries sustained while commuting to and from a place of employment typically are not considered to arise out of and occur in the course of employment. The arbitrator framed employer's argument that claimant was not a traveling employee as follows: "he was on his way to a job site where he had been before and knew he would be returning to at various times" while conceding "that the job site was not owned or maintained by [employer] and was not a permanent job site." Claimant countered that he was not driving to employer's location but was instead driving to a customer's location to perform work for employer. After extensively reviewing the relevant case law, the arbitrator found that claimant was a traveling employee.

¶ 18 In support, he noted that claimant was employed by employer exclusively, but did not report to employer's "premises before going to a job site." "[Employer] did not hire [claimant] to work only at one location." Both employer and claimant understood that claimant "would be sent to different locations, not owned or maintained by [employer], each day." Further, "[employer] directed [claimant] what job site to report [to] for work each day and that location changed daily." While claimant might report to the same job site for several days in a row, the parties understood that the location he was to report to on the next day could change. Employer controlled where claimant worked. Claimant chose where he lived, but not where he would be driving for work. Claimant never started working at a particular job site and continued until the job was complete;

rather, claimant "was always moved around from one place to another day to day." Between November 2016 and May 8, 2018, claimant had been sent to 29 different job sites. Because he did not know where he would be working, claimant could not "make a personal choice on where his residence is located based on a location he would be working." If claimant declined to report to a particular job, he would be disciplined.

¶ 19 Having concluded that claimant was a traveling employee when he was injured, the arbitrator then found that the accident arose out of and occurred in the course of claimant's employment, as he was engaged in an activity that was reasonably foreseeable at the time of the injury.

¶ 20 The arbitrator further found that claimant gave notice of the accident to employer. He first noted that the facts regarding notice were undisputed. Employer was made aware of the accident on the day it happened. The arbitrator noted employer's argument that "it was not notified that [claimant] was alleging that it was a work-related injury until January of 2019 when one of the supervisors, [another employee], mentioned it to [Loring]." The arbitrator observed that while the Act requires notice to an employer within 45 days of an injury, it also "mandates a liberal construction of the issue of notice." The arbitrator found that employer had suffered no prejudice from the notice it received, that is, its knowledge of the accident on the day it occurred and the subsequent filing of the application for adjustment of claim. As such, the arbitrator concluded that claimant gave timely notice of his accident.

¶ 21 The Commission, with one commissioner dissenting, reversed. The majority noted that on certain days when it was "clear that his work was still needed at a job site," claimant did not have to check with a foreman regarding where to report the next day. By changing local unions to work for employer, claimant's job sites were closer to his home. Employer did not instruct claimant

regarding how to get to the various job sites. Claimant was never assigned to two different locations on the same day. On the day of the accident, claimant was traveling from his home to Berner Foods in Dakota, where he had been working for about two weeks. He had worked at this site "a few times previously."

¶ 22 The majority stated that it disagreed with the arbitrator's conclusion that claimant was a traveling employee. It noted that under Illinois law, traveling employees are ones who travel away from their employer's premises. That is, travel must be an "essential element of the employee's employment." Travel away from the employer's premises is required for the employee to perform his or her job. The travel at issue must be more than ordinary commuting. Traveling employees are deemed to be in the course of employment from the time they leave home until the time they return. An injury sustained while the employee is engaged in an activity that is reasonable and foreseeable is considered to arise out of employment.

¶ 23 After reviewing relevant case law, the majority determined that key factors in determining whether a worker is a traveling employee are whether the employee has to travel to multiple locations in a single day, whether the employer provides the employee with a vehicle, and whether the employee is compensated for the time spent or expenses incurred traveling "from his home to the job site."

¶ 24 The majority noted that claimant never reported to employer's premises. Moreover, claimant could work at a job site for a single day or "spend weeks or months working at the same job site." When claimant's accident occurred, he had been working "regularly at the Berner Foods job site for a few months." The majority observed that on only one occasion had claimant worked on multiple job sites in a single day. Further, claimant was not compensated for daily travel,

provided with a vehicle, or directed how to drive to work. Claimant did not transport any tools or equipment owned by employer to the various job sites.

¶ 25 Therefore, the majority concluded, claimant was not a traveling employee and was engaged in ordinary commuting at the time of his accident. It expressly found that the Berner Foods job site constituted employer's premises. The majority explained the basis for this conclusion:

> "The credible evidence shows that [employer] managed its various job sites and appeared to make decisions regarding the projects and job sites. From the evidence, it appears that [employer] made the decisions regarding when and how work would occur on each job site. Further, [employer] determined which workers were needed each day on its project sites."

It further held that the fact that employer "operates various projects and job sites" did not mean that travel was an essential part of claimant's job. Rather, it noted that claimant's "only travel occurred *during his daily commute* from his home to the assigned job site and from the job site to his home." (Emphasis added.) It added that claimant's travels were not performed for employer's benefit and that claimant was not exposed to the dangers of the road to a greater degree than "the average worker who commutes each day to his job." The majority ultimately concluded that claimant was not a traveling employee and that his accident did not arise out of and occur in the course of employment.

¶ 26 One commissioner dissented, stating that he would affirm and adopt the arbitrator's decision. He noted that claimant had worked for employer for over a year, yet had never worked at employer's premises. Rather, claimant was "consistently assigned to work at different project locations." He worked at a given location until directed otherwise by a foreman. Claimant did not select at which job site he would work and had "no control over the location of [employer] 's

project sites." Claimant "spent every single day he worked for employer away from [employer's] premises." The dissenting commissioner explained:

> "It is axiomatic that Illinois courts consider a traveling employee to be a worker whose job duties require him to travel away from the employer's premises. Here, [claimant] never set foot on premises owned, rented, or managed by [employer]. Instead, each workday he left his home to drive to that day's designated job site. [Claimant] credibly testified that he could work one day at a site and then be assigned to a completely different site the next day. The majority admittedly is unable to cite to any published decision that supports its conclusion that a traveling employee's job must require the employee to travel to multiple locations in a single day. Likewise, the majority is unable to cite to any published decision supporting its determination that [employer's] job sites qualify as its premises. I believe the majority's reasoning creates a slippery slope that may ultimately disqualify countless employees as traveling employees despite the undisputed evidence that these employees must travel regularly away from the premises of their employers. These employees will continue to sustain injuries while driving to their ever-changing work sites."

He continued, "It is abundantly clear that a key element of [claimant's] job as a union plumber and pipefitter is work and travel away from [employer's] premises." As such, the dissenting commissioner determined that claimant was a traveling employee and that his injuries arose out of and occurred in the course of his employment with employer.

¶ 27 The circuit court of Ogle County agreed with the dissenting commissioner. The trial court found that the facts of the case were not in dispute, so *de novo* review was appropriate. It then found that claimant was a traveling employee and that his accident arose out of and occurred in

the course of his employment. It remanded the case to the Commission, directing the Commission to enter an order finding claimant a traveling employee and address additional pending issues.

¶ 28 On remand, the Commission, pursuant to the trial court's remand order, entered an order finding that claimant was a traveling employee and that his injuries arose out of and occurred in the course of his employment with employer. The Commission vacated the arbitrator's award of prospective medical treatment and corrected an error in the arbitrator's TTD award. It otherwise affirmed and adopted the arbitrator's decision, including the arbitrator's finding that claimant provided employer with adequate notice of the accident. Finally, it ordered "that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed."

¶ 29 Employer again sought judicial review. The Circuit Court of Ogle County confirmed the Commission's decision on remand. This appeal followed.

¶ 30 III. ANALYSIS

¶ 31 On appeal, employer raises two main issues. First, it contends that the trial court erred in reversing the Commission's decision that claimant was not a traveling employee at the time of the accident at issue in this case. Second, it contests the Commission's decision that claimant provided employer the notice required by the Act. See 820 ILCS 305/6(c) (West 2018). Employer advances a third argument, that the Commission's awards of medical expenses and TTD were improper; we need not address it, as it is entirely dependent on the success of employer's first two arguments, which we reject.

¶ 32 Before proceeding further, we note that employer cited several nonprecedential Rule 23 orders and sought to rely on one of them during oral argument. This is a plain violation of Supreme Court Rule 23. Ill. S. Ct. R. 23(e) (eff. Feb. 1, 2023). See *People v. Matous*, 381 Ill. App. 3d 918, 921 (2008) ("Initially, we note that neither defense counsel nor the trial court should have relied on our unpublished Rule 23 order in *Willock* as precedential authority."). Rule 23 plainly states that such orders are "not precedential except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case. Ill. S. Ct. R. 23(e) (eff. Feb. 1, 2023). Rule 23 orders entered after January 1, 2021, may be cited for persuasive purposes. *Id*. Supreme court rules are not mere suggestions and must be followed. *North Community Bank v. 17011 South Park Avenue, LLC*, 2015 IL App (1st) 133672, ¶ 14. Thus, employer's citations to earlier orders are improper, and we will disregard them. We note that the Commission also referenced a Rule 23 order from 2019 in its analysis, which it stated was "very similar" to the instant case while purporting to recognize that it lacked precedential value. The Commission's gratuitous citation to this case was also improper.

¶ 33 A. Traveling Employee

¶ 34 Employer first contends that claimant was not a traveling employee at the time he was injured. Perhaps the most elemental component of a workers' compensation claim is the necessity of showing that a claimant suffered an accident arising out of and occurring in the course of his or her employment. 820 ILCS 305/2 (West 2018); see also *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Regarding traveling employees, a different set of rules governs whether an injury arises out of and occurs in the course of employment. *Kertis v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120252WC, ¶ 16. Generally, traveling employees are ones whose work requires that they travel away from their employer's premises. *Id*. Employees

for whom travel is an essential element of their employment are traveling employees. *Id.* Traveling employees are those who "travel away from a regular workplace *or* whose travel is at least partly for their employers' purposes rather than simply serving to convey the employees to or from a regular jobsite." (Emphasis added.) *Pyne v. Witmer*, 129 Ill. 2d 351, 356 (1989). "A traveling employee is deemed to be in the course of his employment from the time that he leaves home until he returns." *Id.* "An injury sustained by a traveling employee arises out of his employment if he was injured while engaging in conduct that was reasonable and foreseeable, *i.e.*, conduct that 'might normally be anticipated or foreseen by the employer.' " *Id.* (quoting *Robinson v. Industrial Comm'n*, 96 Ill. 2d 87, 92 (1983)). "For a traveling employee, any act the employee is directed to perform by the employer, any act the employee has a common-law duty to perform, and any act that the employee can reasonably be expected to perform are all compensable." *Allenbaugh v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150284WC, ¶ 16. In this case, driving to a job site would certainly be an activity an employer would expect an employee to perform; the dispositive question here is whether claimant was a traveling employee in the first place.

¶ 35 Whether a claimant is a traveling employee presents a question of fact. See *Cox v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 541, 545 (2010). As such, review is generally conducted using the manifest-weight standard. *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120411WC, ¶ 15. Similarly, the manifest-weight standard applies where the facts are undisputed but multiple reasonable inferences can be drawn from them. *Id.* However, where the facts are undisputed and susceptible to but a single, reasonable inference, review is *de novo*. *Id.* Employer contends that the manifest-weight standard applies because, though it agrees that the facts are undisputed, multiple inferences are possible regarding whether the job site claimant was traveling to constituted the employer's premises (this is the only

purportedly disputed inference employer identifies in its opening brief). We disagree because, as we will explain, it is clear that it was not. In its reply brief, employer suggests that a factual dispute exists as to whether travel was an essential element of claimant's job; however, as we view the record, the only possible inference is that it was. Moreover, even if we were to apply the manifest-weight standard, we would conclude that the Commission's decision was contrary to the manifest weight of the evidence in any event. Regardless, we agree with the trial court that *de novo* review is appropriate here.

¶ 36 "A 'traveling employee' is one who is required to travel away from his [or her] employer's premises in order to perform his [or her] job." *Jensen v. Industrial Comm'n*, 305 Ill. App. 3d 274, 278 (1999). Ordinary commuting does not make one a traveling employee: "The general rule is that an injury incurred by an employee in going to or returning from the place of employment does not arise out of or in the course of the employment and, hence, is not compensable." *Venture—Newberg-Perini, Stone & Weber v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728, ¶ 16. This is because "the employee's trip to and from work is the product of his own decision as to where he wants to live, a matter in which his employer ordinarily has no interest." *Id.* (quoting *Sjostrom v. Sproule*, 33 Ill. 2d 40, 43 (1965)).

¶ 37 Additional factors inform the inquiry as to whether a claimant is a traveling employee. For example, an employee that is compensated for time spent en route is typically considered a traveling employee. *Commonwealth Edison Co. v. Industrial Comm'n*, 86 Ill. 2d 534, 538 (1981). That an employer exercises control over the method of travel weighs in favor of finding a worker to be at traveling employee. See *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687, 693 (1993) ("We agree with the employer that neither of these exceptions are applicable to the case *sub judice* where even though the claimant was given directions to the work site, he

was free to use any route he chose to reach his destination."). That an employee is operating their personal vehicle weighs against a finding that they are a traveling employee. Compare *Allenbaugh*, 2016 IL App (3d) 150284WC, ¶ 18 with *Complete Vending Services, Inc. v. Industrial Comm'n*, 305 Ill. App. 3d 1047, 1049 (1999) ("Another exception to the rule [that an ordinary commuter is not a traveling employee] exists when an employer provides a means of transportation to or from work for employer's own benefit."). Whether a claimant is a permanent employee is another relevant consideration. Compare *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 67 (1975) (finding the claimant was a traveling employee where he was a permanent employee of the employer) with *Venture—Newberg-Perini, Stone & Weber*, 2013 IL 115728, ¶ 24 (finding the claimant was not a traveling employee where he was not a permanent employee of the employer and distinguishing *Wright* on this basis).

¶ 38 We begin with the question of whether claimant was required to travel away from his employer's premises such that he was a traveling employee at the time of the accident (see *Jensen*, 305 Ill. App. 3d at 278); that is, whether travel was an essential element of claimant's job (*Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200359WC, ¶ 25). We note that generally, ordinary commuters are not traveling employees because their travels are a consequence of their choice of where to live. *Venture—Newberg-Perini, Stone & Weber*, 2013 IL 115728, ¶ 16.

¶ 39 Under the facts of this case, claimant's travel was as much a product of employer's multiple job sites as it was of claimant's choice of where to live. Loring agreed that employees like claimant were "hired by [employer] to work on jobsites that are remote for [*sic*] [employer's] premise." Claimant was sent to various job sites to perform work for employer. Thus, as claimant points out, since work could only be performed at customers' locations, travel was absolutely an essential part of his job. Moreover, given that claimant's job sites changed frequently, claimant

could not move closer to his job in order to minimize his travel. *Sjostrom*, 33 Ill. 2d at 44 ("It was not contemplated that they should change their place of residence because of that temporary assignment."). The result is that claimant, as a traveling employee was exposed to " 'the hazard of the street and to the hazards of automobile[s] *** much more than the general public.' " *Mlynarczyk*, 2013 IL App (3d) 120411WC, ¶ 19 (quoting *Illinois Publishing & Printing Co. v. Industrial Comm'n*, 299 Ill. 189, 197 (1921)).

¶ 40 Sound guidance on this point can be found in *Sjostrom*, 33 Ill. 2d 40.[1] There, our supreme court considered whether a tort action arising out of an automobile accident arose out of and in the course employment and was thus barred by the Act (Ill. Rev. Stat. 1963, ch. 48, ¶ 138.5). *Id.* at 41. At issue was whether the plaintiff was a traveling employee. The plaintiff lived in Chicago and was employed as an engineer. His employer's premises were also in Chicago. The plaintiff and another employee (who was the defendant in the tort action) were assigned to supervise the construction of a new plant in Bradley. The plaintiff had a company car, which he drove most of the time, and when he did not, he was compensated for using his personal vehicle. He received reimbursement for gas and oil used in the company car as well. The defendant had a similar arrangement with his employer. At some point, the plaintiff's company car broke down, and the two employees road together in the defendant's car. The defendant was reimbursed for the use of

[1]We recognize, as employer points out in its reply brief, that *Sjostrom* does not explicitly refer to the traveling-employee doctrine. However, its rationale is clearly pertinent, and it has been applied in cases examining the doctrine. See *Venture—Newberg-Perini, Stone & Weber*, 2013 IL 115728, ¶ 16.

his car. On the seventh day that they were riding together, the plaintiff was injured in an accident on the way to the Bradley plant.

¶ 41 The *Sjostrom* court first recognized the general rule that accidents occurring while an employee is traveling to and from work generally are not compensable. *Id.* at 43. The court further noted the rule's rationale that such trips are the product of an employee's decision as to where to live. *Id*. It then noted that this rule is not absolute:

> "But the nature of an employee's job is sometimes such that his trip is determined by the demands of his employment rather than personal factors. In the present case Bradley was not the regular place of work of either the plaintiff or the defendant. They were assigned there on a temporary basis to supervise the construction of a new plant. It was not contemplated that they should change their place of residence because of that temporary assignment. Both employees traveled to Bradley to accommodate their employer rather than themselves." *Id.* at 43-44.

The court also relied on the fact that the plaintiff and the defendant were reimbursed for travel. *Id.* at 44. The court later emphasized that there was a "critical distinction between travel that results from the employee's decision as to where he wants to live, and travel that is required by the exigencies of the job." *Id*.

¶ 42 Similarly, in this case, claimant's travels were as much a factor of employer directing claimant to frequently changing job sites as to where claimant chose to live. Like the plaintiff in *Sjostrom*, claimant would not be expected to change his residence based on his numerous temporary assignments. *Id*. This, in turn, resulted in claimant being exposed to " 'the hazard of the street and to the hazards of automobile[s] *** much more than the general public.' " *Mlynarczyk*, 2013 IL App (3d) 120411WC, ¶ 19 (quoting *Illinois Publishing & Printing Co. v. Industrial*

Comm'n, 299 Ill. 189, 197 (1921)). Unlike an ordinary employee, claimant could not simply move closer to work and mitigate his exposure to this risk. Employer points out that by taking a job with it, claimant's jobsites were closer to his home than they were with his previous employer. This is immaterial. The relevant comparison is claimant's job situation relative to an employee engaged in ordinary commuting, not what he experienced in some other job. See *Id*. We also note that since claimant's job sites changed from time to time, he was required to travel on less familiar roads than an ordinary commuter who could travel the same route for the duration of their employment with a given employer. *Cf. Erickson v. Pugh*, 268 Wis. 53, 55-56 (1954) ("Such a direct question on assumption of risk is necessary because it is clear from the evidence that the danger which plaintiff assumed upon entering the car at Port Washington may have been increased, or a new danger created, as the trip progressed and that he could have assumed such increased danger or new danger, in view of the testimony about drinking, the evidence regarding the icy condition of the road *and the fact that defendant was unfamiliar with the highway upon which she was driving*." (Emphasis added.)). We recognize that claimant sometimes worked at a given job site for an extended period; however, it is also true that he worked at 29 different job sites, which means that, at the very least, he made the initial trip to 29 sites 29 times, which is 28 times more than an ordinary commuter. Moreover, we would not expect claimant to become completely familiar with the route after one trip; rather, such familiarity would require several trips, a process an ordinary commuter would have to undergo but once. In short, the nature of employer's business that required claimant to travel to multiple job sites exposed claimant to an increased risk relative to commuters who travel to a single place of employment.

¶ 43 The increased risk claimant was exposed to is a consideration entitled to significant weight. We note that in the neutral risk analysis, it is the dispositive factor in determining whether a risk

that would otherwise be unrelated to employment are compensable under the Act. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 44. While not dispositive in the traveling-employee analysis, as other factors are relevant (s*upra* ¶ 38), given the role this consideration plays in other aspects of workers' compensation law, we conclude that it is entitled to great weight here.

¶ 44 Other considerations bear upon the question of whether claimant was a traveling employee. Claimant was continually employed by employer for a year and a half preceding his accident. That a claimant is a permanent employee weighs in favor of finding him or her a traveling employee. *Wright*, 62 Ill. 2d at 67. Admittedly, not all factors favor claimant's position. In particular, a trio of related factors suggest a contrary result. First, claimant was operating his own vehicle at the time he was injured. *Allenbaugh*, 2016 IL App (3d) 150284WC, ¶ 18. Second, claimant was not compensated by employer for his trip. *Commonwealth Edison Co.*, 86 Ill. 2d at 538. Third, employer did not prescribe how claimant was to get to the Berner Foods job site. *Chicago Bridge & Iron, Inc.*, 248 Ill. App. 3d at 693. Thus, these additional factors are mixed. We do not deem them significant enough that they should be given precedence over the fact that employer's changing job sites exposed claimant to a risk greater than that experienced by the general public. See *Mlynarczyk*, 2013 IL App (3d) 120411WC, ¶ 19. Accordingly, we hold that on the undisputed facts before us, claimant was a traveling employee at the time of his accident.

¶ 45 Employer attempts to avoid this result by arguing that the Berner Foods job site constituted its premises. The Commission relied on a similar proposition, despite elsewhere finding that "it is undisputed that [claimant] never worked or reported to any premises owned by [employer]." Indeed, this court has described an employer's premises as "a fixed workplace owned and controlled by his [or her] employer" to which the employee travels "on a daily basis." *Pryor v.*

Illinois Workers' Compensation Comm'n, 2015 IL App (2d) 130874WC, ¶ 22. Professor Larson states that the term "premises" refers to the entire area *devoted by the employer* to the industry with which the employee is associated." (emphasis added.) (Larson, *The Law of Workmen's Compensation*, § 13.04(1) (2018)). Obviously, it would be impossible for employer to *devote* a facility belonging to Berner Foods to anything. In finding that Berner Foods constituted employer's premises, the Commission noted that employer "managed its various job sites and appeared to make decisions regarding the projects and job sites." It noted that employer "made decisions about when and how work would occur on each job site" and it "determined which workers were needed each day on its project sites."

¶ 46 However, as the dissenting commissioner noted, "the majority [was] unable to cite to any published decision supporting its determination that [employer's] job sites qualify as its premises." Indeed, the facts cited by the majority would be true of any contractor or subcontractor operating a remote job site. If we were to consider such job sites an employer's premises, no one working at a remote job site could be a traveling employee, since the employee would not be traveling away from the employer's premises, regardless of what other factors suggested they were a traveling employee. The majority also found that the fact that employer maintained multiple job sites did not mean that travel was an essential part of claimant's job. However, it is not the mere fact that employer has multiple job sites, but the constellation of all of the facts of this case, where claimant always traveled directly from home to the various job sites and never worked at or reported to employer's premises, was required to carry tools with him because he might be ordered to another place every day, was a permanent employee, and was required to change job sites frequently and with little notice. All of these considerations lead to conclusion that claimant was exposed to risks

beyond those experienced by an ordinary commuter and render claimant a traveling employee. See S*upra* ¶ 43.

¶ 47 In arguing that Berner Foods was employer's premises, employer points to three provisions in the collective bargaining agreement (CBA) between it and the union that represented claimant. Most significantly, employer calls our attention to the following:

> "The term 'Employer Premises' as used in this policy includes all property, facilities, land, buildings, structures, automobiles, trucks, and other vehicles owned, leased or used by the Employer. *Construction job sites for which the Employer has responsibility are included.*"

We note that this definition appears in a section of the CBA establishing a "Joint Labor Management Uniform Substance Abuse Program." It is not surprising that the scope of the substance-abuse program would encompass any place an employee might be working, including remote job sites. However, applying it to the traveling-employee analysis would swallow the rule, essentially making all places where an employee works an employer's premises. In *Cox*, 406 Ill. App. 3d at 542, 545, this court found that a construction worker was a traveling employee where he was "assigned to work at jobsites away from [the employer's] premises." Giving effect to this provision of the CBA in this context would preclude such findings in that it would allow employers to write the traveling-employee doctrine out of workers' compensation law by labelling what was an ordinary job site as their premises. *Cf. Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 1126 (2000) (addressing whether an employee was actually an independent contractor as stated in an employment agreement, the court noted, "It would be inappropriate to allow employers to defeat the goals of the legislature, set forth in the Act, through the artifice of mislabeling what is truly employment."). Accordingly, we decline to give effect to this definition in the present context. The job site in question, Berner Food's facility, was plainly not employer's premises, and no other

inference is possible. Moreover, even if we were to give this provision effect, it would not necessarily defeat claimant's action, for in *Kertis v. Illinois Workers' Compensation Comm'n,* 2013 IL App (2d) 120252WC, ¶ 18, we held that a claimant was a traveling employee where he was required to travel between job sites owned by the employer.

¶ 48 Employer points to two other provisions in the CBA that define when claimant's workday began. Employer asserts that they establish that claimant's "workday did not commence until he arrived at the jobsite." This is immaterial. It is well-established that a traveling employee "is held to be in the course of his employment from the time that he leaves home until he returns." *Cox*, 406 Ill. App. 3d at 545.

¶ 49 Employer cites *United Airlines, Inc. v. Illinois Workers' Compensation Comm'n,* 2016 IL App (1st) 151693WC, in support of its position. That case is easily distinguishable. It involved a flight attendant injured on a flight from her residence to the airport she was based out of. *Id.* ¶ 4. Conversely, in the present case, claimant was not traveling to his base (in fact, he did not have one), but to a remote job site. Similarly, *Allenbaugh*, 2016 IL App (3d) 150284WC, which employer also relies on, is distinguishable in that it involved a police officer driving to police headquarters—obviously the employer's premises—while in this case, claimant never went to employer's location. Employer's attempt to avoid this distinction by characterizing Berner Foods as claimant's "normal workplace" is unavailing, as, by employer's logic, claimant had 29 normal workplaces unlike the police officer in *Allenbaugh*.

¶ 50 We also find *Venture—Newberg-Perini, Stone & Weber,* 2013 IL 115728, inapposite. That case involved a temporary employee who relocated to a motel to facilitate working on a job for the employer about 200 miles from his home. *Id.* ¶¶ 4, 6. The claimant was injured in a motor vehicle accident on the way from the motel to the jobsite. In this case, given that claimant, who

was not a temporary employee, worked at job sites that changed frequently, he was unable to relocate like the claimant in *Venture—Newberg-Perini, Stone & Weber*. See *Sjostrom*, 33 Ill. 2d at 44. The present is not a case where claimant took a job some distance from his home and chose to relocate there on a temporary basis; rather, here, claimant's work caused him to drive to various locations around his employer's geographic area on a regular basis. Hence, claimant's trip to work was not solely a product of where he chose to live and was determined, to an extent, "by the exigencies of the job." *Id*. As such, *Venture—Newberg-Perini, Stone & Weber* provides little guidance here.

¶ 51 Employer points out that all of claimant's job sites were within the territory of his local union. It also suggests that claimant's jobs were not "remote." There is no requirement that a claimant's travels cause him to travel some great distance. For example, in *Kertis*, 2013 IL App (2d) 120252WC, ¶ 18, the claimant was found to be a traveling employee where he traveled between St. Charles and Hoffman Estates, both Chicago suburbs. In fact, in *Venture—Newberg-Perini, Stone & Weber*, 2013 IL 115728, ¶ 23, the court characterized the travel that occurred in *Kertis* as "travel to a remote location." In *Mlynarczyk*, 2013 IL App (2d) 120411WC, ¶ 16, the claimant was found to be a traveling employee where her job duties "required her to travel to various locations throughout the Chicagoland area." Quite simply, "It is not necessary for an individual to be a traveling salesman or a company representative who covers a large geographic area in order to be considered a 'traveling employee.' " *Hoffman v. Industrial Comm'n*, 128 Ill. App. 3d 290, 293 (1984). Thus, employer's assertions about the relative remoteness of the job site at issue here are off point. Moreover, we reject the assertion that the territorial jurisdiction defined in the CBA somehow defines employer's premises, as employer cites nothing to substantiate such a proposition.

¶ 52 Both employer and the Commission majority rely on the fact that claimant (save on one occasion) only worked at one job site each day. As the dissenting commissioner correctly noted, the majority cited no authority in support of the relevance of this consideration. Employer cites cases where employees who did move from one site to another during a day were found to be traveling employees (see, *e.g.*, *Mlynarczyk*, 2013 IL App (3d) 120411WC, ¶ 16); however, it cites none where the absence of such daily travel precluded a claimant from being found a traveling employee. Indeed, cases exist where a worker was deemed a traveling employee despite the fact that he traveled to a work site on one day and then returned home on a later day, with no traveling taking place in the interim. In *Bagcraft Corp. v. Industrial Comm'n*, 302 Ill. App. 3d 334 (1998), the claimant's accident occurred after traveling to a remote location that he was not scheduled to return home from until the following day, with no intervening travel. In *Insulated Panel Co. v. Industrial Comm'n*, 318 Ill. App. 3d 100, 102-03 (2001), the claimant was injured when he slipped and broke his leg during a day long sightseeing trip on an off day after traveling to Hawaii to install an industrial freezer. In *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 69 (1975), the supreme court rejected an argument that an employee who travels to a location and remains for six months should not be considered a traveling employee. It explained, "We can find no rational basis to distinguish between the employee who is continuously traveling and one who travels to a distant job location only to return when the work is completed." *Id*. No requirement exists that an employee has to travel to multiple locations in a single day to be a traveling employee. The Commission's majority erred as a matter of law in relying on this consideration.

¶ 53 Before closing, we note that at oral argument, employer's counsel asserted that this case would work an unwarranted expansion of the traveling-employee doctrine and charged that any

rule based upon it would be unworkable. We emphasize that we adopt no novel rule here, as each case is determined on its own facts.

¶ 54 In sum, we agree with the arbitrator, the dissenting commissioner, and the trial court: claimant was a traveling employee when he was injured. Further, his accident arose out of and occurred in the course of his employment with employer.

¶ 55 B. Notice

¶ 56 Employer also contends that claimant did not provide it with the notice statutorily prescribed in the Act. See 820 ILCS 305/6(c) (West 2018). The Act states that "[n]otice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident." *Id*. The notice requirement is to be construed liberally, and a claim is barred only if no notice whatsoever has been given. *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill. App. 3d 915, 921-22 (2005). For an action to be barred where "some notice has been given, even if inaccurate or defective, the employer must show that it has been unduly prejudiced." *Id.* at 922.

¶ 57 The arbitrator found that it was undisputed that employer was made aware of the accident on the day it occurred. Indeed, Loring (employer's safety director) testified that he learned of the accident on the day it occurred. However, he also testified that he was not aware that claimant was alleging that the accident was work related until January 2019, when Lindeman told him so. The arbitrator further found that employer "failed to present any evidence at all to suggest they were prejudiced in any way by the delayed filing of the Application for 8 months." The Commission affirmed the arbitrator's findings regarding notice. Whether employer received notice is a question of fact we review using the manifest-weight standard of review. *Gano Electric Contracting v.*

Industrial Comm'n, 260 Ill. App. 3d 92, 95 (1994). Hence, we will reverse only if an opposite conclusion is clearly apparent. *Id*.

¶ 58 Employer does not contest the Commission's finding (adopting the Arbitrator's decision) that "[employer] was made aware of the accident the same day" it occurred. Of course, a employer must, in addition to the occurrence of an injury, also be given notice of its industrial nature. *White v. Illinois Workers' Compensation Comm'n*, 374 Ill. App. 3d 907, 911 (2007). Notice is sufficient if an employer can infer from the circumstances that an injury is work-related. *S & H Floor Covering, Inc. v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 265-66 (2007). Claimant was a traveling employee on his way to a remote job site when injured. As such, it was plainly inferable that claimant was within the scope of employment from the time he left home. *Pyne*, 129 Ill. 2d at 356. Employer asserts, incorrectly as we explain above, that claimant's accident occurred before his workday began. We will not visit employer's misunderstanding of the traveling-employee doctrine upon claimant. Thus, that employer was made aware of the accident on the day it occurred constitutes, at the very least, imperfect notice.

¶ 59 As the Commission found, employer offered no evidence showing it was prejudiced by the purportedly late notice it received. Employer argues that claimant's imperfect notice "caused [it] to give untimely notice of the accident to its workers' compensation insurer." However, it does not explain how this prejudiced it. For example, employer does not suggest that as a result, its insurance carrier denied it coverage. The purpose of the notice requirement is to allow an employer to adequately investigate an accident. *Gano*, 260 Ill. App. 3d at 95. Here, employer does not explain how its investigation of the accident was compromised or what other information might have been available to it. As such, the Commission's decision that employer failed to establish

prejudice is not contrary to the manifest weight of the evidence. In turn, the Commission's finding that employer received the notice required by the Act is adequately supported by the record.

¶ 60 IV. CONCLUSION

¶ 61 In light of the foregoing, the judgment of the circuit court of Ogle County confirming the decision of the Commission on remand is affirmed. We remand this cause in accordance with *Thomas*, 78 Ill. 2d 327.

¶ 62 Affirmed.