2012 IL App (1st) 111143WC-U

Workers' Compensation
Commission Division
Filed: June 25, 2012

No. 1-11-1143WC

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

KATHLEEN MAHONEY,	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
Appellant,	)	COOK COUNTY
	)	
v.	)	No. 10 L 51167
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, et al.,	)	
(PUGH, JONES, JOHNSON & QUANDT,	)	HONORABLE
	)	JAMES C. MURRAY, JR.,
Appellee).	)	JUDGE PRESIDING.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice McCullough and Justices Hudson, Holdridge and Stewart concurred in the judgment.

O R D E R

Held: The Commission's determination that the claimant's injuries did not arise out of and in the course of her employment is not against the manifest weight of the evidence.

¶ 1 The claimant, Kathleen Mahoney, appeals from a judgment of the Circuit Court of Cook County confirming a decision of the Illinois Workers' Compensation Commission (Commission) which denied her benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq.

(West 2006)), for injuries she allegedly received on May 24, 2006, while in the employ of the Pugh, Jones, Johnson & Quandt (Pugh). For the reasons which follow, we affirm the judgment of the circuit court.

¶ 2 The following factual recitation is taken from the evidence presented at the arbitration hearing.

¶ 3 The 55-year-old claimant testified that, from 2004 until January 2009, she was employed as an office assistant for Pugh, a law firm located in downtown Chicago, Illinois. Her responsibilities included performing the functions of a file clerk, assisting paralegals, performing conflict checks, relieving the receptionist, and other office work, as needed. Pugh's offices occupied the entire 34th floor of the high-rise building located at 180 North LaSalle Street in Chicago. The building has other office tenants, as well as a number of retail businesses on the ground floor, including a coffee shop, a submarine sandwich shop, a travel agency, and a tailor. The lobby of the building consists of marble-like flooring, and carpeting mats were sometimes placed on the floor in front of the revolving doors, but the mats were not always present. The building has entrances on both LaSalle Street and Lake Street. The LaSalle Street entrance has three doors, two of which are revolving doors and are located on the north and south sides of the lobby, respectively. The third entry on LaSalle Street is equipped with a door providing access for disabled individuals or people transporting packages. The claimant stated that, in order to reach Pugh's offices, she and her coworkers had to walk through the lobby and then take an elevator to the 34th floor. The revolving door on the south side of the lobby is the exterior door that is closest to the elevator banks for Pugh's offices. The claimant testified that any person entering the building can use any one of the available doors on either LaSalle Street or Lake Street. She further testified that she had never been told by her employer that she was required to use a particular door to enter the building, and she was free to use any door she chose.

¶ 4 The claimant stated that she was employed as an hourly employee and was required to

take an hour-long lunch break, which could be taken anytime between 11 a.m. and 2 p.m. Though she did not have to "clock out" for lunch, she was required to record the time of her lunch breaks when she submitted her time sheets. The claimant further stated that she and her coworkers were permitted to either go out for lunch or take their lunch break in the office. Many employees opted to go out for lunch, while some people chose to go out and purchase a lunch that they would then bring back to the office.

¶ 5 The claimant testified that, at about noon on May 24, 2006, she planned to leave the building to pick up lunch and bring it back to the office, as was her practice. While she was walking across the lobby toward the revolving door on the south side of the LaSalle Street lobby, her foot hit what felt like a large bump in the mat that was in front of the revolving door. She fell down and hit her knees, wrists, and chest on the floor. After the accident, she took the elevator back up to the 34th floor and completed her work day. That evening, she went to the emergency room at Central DuPage Hospital, where she underwent x-rays of her left forearm and was diagnosed with a fracture of the radial head of her left elbow. She was given pain medication and instructed to put her arm in a sling.

¶ 6 Two days later, the claimant was seen by Dr. Gregory J. Fahrenbach, who took more x-rays and confirmed the diagnosis of a radial-head fracture. On Dr. Fahrenbach's advice, the claimant underwent a course of physical therapy from June 30, 2006 until August 1, 2006. Upon completion of that treatment program, the physical therapist noted that she lacked end-range elbow extension. The therapist further noted that, though the claimant's pain had decreased, she continued to have pain in her left arm, particularly after a full day of work. The claimant was instructed to continue performing stretching exercises. When Dr. Fahrenbach discharged her from his care on August 1, 2006, he advised her to continue using over-the-counter pain relievers and to follow-up as needed.

¶ 7 The claimant testified that, as of the date of the hearing, she continues to have pain and

disability in her left arm as a result of the accident. She testified that she has strength problems with her left arm. In addition, she has difficulty driving because she cannot hold the steering wheel for long periods of time or when making certain turns. She also has trouble lifting certain things, like groceries out of the car, and she relies on her husband to perform such tasks for her. She stated that she occasionally takes pain medication for her arm and takes hot showers to help alleviate the pain. She has not been able to completely straighten out her left arm since the accident. Although she can come close to straightening her left arm, that movement causes discomfort. The claimant stated that she also continues to have difficulty with her left knee. She cannot kneel in church because of the pain, and she has trouble performing activities that require her to bend down. In particular, she has difficulty cleaning her house because it requires bending movements with her knee.

¶ 8 Mary Ann Rojas testified that she is the office administrator for Pugh and, in that capacity, she is responsible for managing the office services, human resources, and marketing. Rojas stated that Pugh leases office space in the building located at 180 North LaSalle Street, but does not have any control over the lobby area, which is for the use of all of the tenants and the general public. She further stated that Pugh had no input regarding when mats or carpets were placed in the lobby, and that task was handled by the building management. Rojas confirmed the claimant's testimony that all of the building's several entrances are open to the public, and she also testified that Pugh did not direct or restrict which doors could be used by its employees. Rojas also corroborated the claimant's statement that Pugh's employees could decide for themselves whether they would leave or remain in the office during their lunch breaks.

¶ 9 Following the conclusion of the hearing, the arbitrator found that the claimant sustained a work-related accident on May 24, 2006, and the injuries to her left arm and left knee were causally connected to that accident. Based on the finding that the claimant had sustained a permanent partial disability (PPD) to the extent of 22.5% loss of use of her left arm and 2.5%

loss of use of her left leg, the arbitrator awarded the claimant PPD benefits of $415.38 per week for a period of 62.3 weeks, pursuant to sections 8(e)(10) and 8(e)(12) of the Act (820 ILCS 305/8(e)(10), 8(e)(12) (West 2006)). In addition, the arbitrator found that the claimant was entitled to $636.48 for reasonable and necessary medical expenses.

¶ 10 Pugh sought review of the arbitrator's decision before the Commission. The Commission found that the claimant's injuries did not arise out of and in the course of her employment. Consequently, the Commission reversed the decision of the arbitrator and vacated all awards of benefits under the Act.

¶ 11 The claimant filed a petition for judicial review in the circuit court of Cook County. The circuit court ruled that the claimant's accidental injuries occurred in the course of her employment, but did not arise out of the employment. Accordingly, the circuit court confirmed the Commission's denial of benefits under the Act, and the claimant has appealed.

¶ 12 On appeal, the claimant argues that the Commission erred in finding that the accidental injuries she sustained on May 24, 2006, did not arise out of and in the course of her employment. We cannot agree.

¶ 13 To obtain compensation under the Act, a claimant must show by a preponderance of the evidence that the injury arose out of and in the course of the employment. 820 ILCS 305/2 (West 2002). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 546 N.E.2d 603 (1989). The determination of whether these elements have been established is a factual question that is peculiarly within the province of the Commission, and its decision will not be set aside unless it is contrary to the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984), 958; *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910, 851 N.E.2d 72 (2006). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent.

University of Illinois, 365 Ill. App. 3d at 910. It is for the Commission to draw reasonable inferences and conclusions from the competent evidence, and a reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665 (2003). The appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833, 769 N.E.2d 66 (2002).

¶ 14 The phrase "in the course of" refers to the time, place and circumstances under which the accident occurred. *Illinois Bell Telephone Co.*, 131 Ill. 2d at 483. Injuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing her duties, and while a claimant is at work, or within a reasonable time before and after work, are generally deemed to have been received in the course of the employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57, 541 N.E.2d 665 (1989).

¶ 15 The "arising out of" component addresses the causal connection between a work-related injury and the claimant's condition of ill-being. *Sisbro Inc.*, 207 Ill. 2d at 203. For an injury to "arise out of" the employment, its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the injury. *Caterpillar Tractor Co.*, 129 Ill. 2d at 58.

¶ 16 There are three types of risks to which an employee may be exposed: (1) risks distinctly associated with the employment, (2) risks personal to the employee, such as idiopathic falls, and (3) neutral risks that have no particular employment or personal characteristics. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105, 853 N.E.2d 799 (2006). Employment risks include the obvious kinds of industrial injuries and occupational diseases and are universally compensated. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162, 731 N.E.2d 795 (2000). Personal risks include

nonoccupational diseases and injuries caused by personal infirmities, which are generally not compensable unless the claimant has established that the conditions of her employment significantly contributed to the injury by increasing the risk of falling or the effects of the fall. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63. Neutral risks consist of those risks to which the general public is equally exposed. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163. As with personal risks, compensation for neutral risks depends upon whether claimant was exposed to a risk of injury to a extent greater than to which the general public is exposed. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163.

¶ 17 It is well established that "when an employee slips and falls, or is otherwise injured, at a point off the employer's premises while traveling to or from work, [her] injuries are not compensable." (Internal quotation marks omitted.) *Illinois Bell Telephone Co.*, 131 Ill. 2d at 483-84. However, an exception to this general rule has been recognized when the employee's presence at the place where the accident occurred was required in the performance of her duties and the employee is exposed to a risk common to the general public to a greater degree than other persons. *Illinois Bell Telephone Co.*, 131 Ill. 2d at 484 (citing *Butler Manufacturing Co. v. Industrial Comm'n*, 85 Ill. 2d 213, 422 N.E.2d 625 (1981); *Bommarito v. Industrial Comm'n*, 82 Ill. 2d 191, 412 N.E.2d 548 (1980); *Deal v. Industrial Comm'n*, 65 Ill. 2d 234, 357 N.E.2d 541 (1976); *Reed v. Industrial Comm'n*, 63 Ill. 2d 247, 347 N.E.2d 157 (1976); *Gray Hill, Inc. v. Industrial Comm'n*, 145 Ill. App. 3d 371, 495 N.E.2d 1030 (1986)).

¶ 18 In this case, the claimant was on her lunch hour when she fell while walking toward the southern-most revolving door in the LaSalle Street lobby. Rojas testified that Pugh did not have any control over the lobby area and had no input regarding the placement of carpeting mats on that floor. Both Rojas and the claimant stated that all of the entry doors and the lobby area were open and available for use by anyone entering the building, including the general public. In

addition, the claimant admitted that she was not required to leave the building during her lunch break and that Pugh never directed or restricted her use of any particular door when entering or leaving the building. There was no evidence indicating that the claimant was required to use the southern-most revolving door, or indeed any of the entrance doors, in the LaSalle Street lobby. Thus, the claimant failed to prove that she was required to be in the place where the accident occurred, nor did she prove that she was injured in a place controlled by her employer or while performing tasks that were mandated by her job. Moreover, we do not agree that she established she was exposed to the neutral risk of the bump in the floor mat to a greater degree than that faced by the general public. Though it was necessary for the claimant to walk through the lobby in traveling to and from Pugh's offices, she was not obligated to leave the office during her lunch break. As a result, the claimant was required to traverse the lobby twice a day, once when she entered in the morning and again when she left in the evening. Consequently, she was exposed to the same risk as any other member of the public who might enter the building. Based on the foregoing evidence, we conclude that the claimant failed to prove that her injury arose out of her employment.

¶ 19 In reaching this conclusion, we find that the claimant's reliance on *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App. 3d 486, 812 N.E.2d 401 (2004), and *Chicago Tribune Co. v. Industrial Comm'n*, 136 Ill. App. 3d 260, 483 N.E.2d 327 (1985), is misplaced, where the decision in each of those cases was predicated on a finding that the employee's injury occurred on the employer's premises. In addition, *Bommarito*, 82 Ill. 2d 191, is not controlling here because the undisputed evidence established that the claimant's use of the revolving door on the south side of the LaSalle Street lobby was not required by her employer, nor was it the sole practical means of access between Pugh's offices and the outside. We also find that this case is not governed by *Torbeck v. Industrial Comm'n*, 49 Ill. 2d 515, 276 N.E.2d 344 (1971), and *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation*

Comm'n, 407 Ill. App. 3d 1010, 944 N.E.2d 800 (2011), because, here, the claimant was not injured while performing work that was required by her job, nor was her presence in the lobby occasioned by the demands of her employment.

¶ 20 Finally, we reject the claimant's assertion that her injuries were compensable because she was engaged in an act of personal comfort when she fell. The personal-comfort doctrine is relevant to the determination of whether an employee's injury occurred in the course of her employment. *Segler v. Industrial Comm'n*, 81 Ill. 2d 125, 128, 406 N.E.2d 542 (1980); *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 351, 732 N.E.2d 49 (2000) (Rakowski, J., specially concurring). If the injury occurs within the time period of employment, at a place where the employee can reasonably be expected to be in the performance of her duties and while she is performing those duties or doing something incidental thereto, the injury is deemed to have occurred in the course of employment. *Eagle Discount Supermarket v. Industrial Comm'n*, 82 Ill. 2d 331, 338, 412 N.E.2d 492 (1980) (citing *Segler*, 81 Ill. 2d at 128). Under the personal-comfort doctrine, an employee who is engaged in the work of her employer may do those things that are necessary to her personal health and comfort, and such acts will be considered incidental to the employment. *Eagle Discount Supermarket*, 82 Ill. 2d at 339.

¶ 21 Illinois courts have recognized that eating is deemed to be an act of personal comfort, and the personal-comfort doctrine has been applied to cases involving lunchtime injuries. See *Eagle Discount Supermarket*, 82 Ill. 2d at 339; see also *Karastamatis v. Industrial Comm'n*, 306 Ill. App. 3d 206, 211, 713 N.E.2d 161 (1999) (citing 2 A. Larson & L. Larson, Workers' Compensation Law § 21.10, at 5-5 (1998)). In cases involving injuries sustained while an employee is on a meal break, the most critical factor is the location of the occurrence. *Eagle Discount Supermarket*, 82 Ill. 2d at 339. Where an employee sustains an injury during the lunch break and is still on the employer's premises, the act of procuring lunch has been held to be reasonably incidental to the employment. *Eagle Discount Supermarket*, 82 Ill. 2d at 339.

However, injuries are not compensable if they are sustained while an employee is on a break away from the employer's premises and is not engaged in an employment-related activity. *Lynch Special Services v. Industrial Comm'n*, 76 Ill. 2d 81, 90, 389 N.E.2d 1146 (1979); *Ealy v. Industrial Comm'n*, 189 Ill. App. 3d 76, 78, 544 N.E.2d 1159 (1989).

¶ 22 Here, as set forth above, the undisputed evidence established that Pugh did not control or maintain the lobby area and had no input with regard to the placement of floor mats in front of the entrance doors. The claimant's accidental fall did not occur on her employer's premises, and she was not engaged in any employment-related activity. Thus, her decision to leave the building to obtain lunch was not incidental to her employment. See *Lynch Special Services*, 76 Ill. 2d at 90; *Ealy*, 189 Ill. App. 3d at 78.

¶ 23 Based on the record presented, the Commission's decision that the accident resulting in the claimant's injuries did not arise out of and in the course of her employment is not against the manifest weight of the evidence, and we, therefore, affirm the judgment of the circuit court, which confirmed the Commission’s decision denying the claimant's application for benefits.

¶ 24 Affirmed.