2012 IL App (1st) 112389WC-U

Workers' Compensation
Commission Division
Filed: June 25, 2012

No. 1-11-2389WC

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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

DENISE ROSS, WIDOW OF NORMAN ROSS,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY
Appellant,	)	
v.	)	No. 10 L 51120
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (INTERNATIONAL TRUCK & ENGINE CORPORATION,	)	HONORABLE ELMER JAMES TOLMAIRE, III, JUDGE PRESIDING.
Appellee).	)	

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

O R D E R

Held: The Commission's finding that the death of the claimant's husband did husband did not arise out of and in the course of his employment is not against the manifest weight of the evidence.

¶ 1 The claimant, Denise Ross, the widow of Norman Ross, 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 2002)) and finding that the death of her husband, Norman Ross, did not arise out of and in the course of his employment for International Truck & Engine Corporation (International Truck). 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 48-year-old decedent, Norman Ross, was employed as a design engineer and project manager by International Truck. In that capacity, he was responsible for designing and testing computer chips installed in vehicle motors and transmissions. The testimony of the claimant indicated that the decedent typically woke up and left the house shortly after 4 a.m. to travel to the company's local headquarters in Melrose Park, and he often returned home sometime after 6 p.m. In addition, the decedent frequently brought home various types of company vehicles, which he would test after the family had dinner in the evening. The decedent drove the vehicles to a location approximately one hour away, and the testing process took a minimum of three to four hours. The decedent's daughter, Amanda, sometimes accompanied him during these test runs. When the decedent was home in the evening, he worked on a laptop computer issued to him by his employer. He also had a cell phone that he used almost exclusively for work and a pager so that other engineers and coworkers could reach him when he was away from the company headquarters. On the average day, the decedent worked on his computer and responded to phone calls and pages until he went to bed, which usually was between 10 p.m. and midnight. The decedent's practice was to leave his computer on until he was entirely finished working for the night. The decedent kept his cell phone and pager on at all times, and he responded to calls and pages even after he had gone to bed or while attending school or social events.

¶ 4 The decedent's employment also required that he travel out of state an average of two to three times per month. The week prior to his death, the decedent was working on a project in

Colorado. After returning home on Friday, June 13, 2003, he spent part of the weekend attending to work matters.

¶ 5 On Monday, June 16, 2003, the decedent left very early for his employer's facility in Melrose Park. When he returned home at around 6 p.m., he was driving a white pick-up truck owned by his employer. The decedent played baseball for 45 minutes with his youngest daughter while dinner was being prepared. After dinner, the claimant and the decedent both did office work at the kitchen table. The decedent worked on schematics on his laptop computer for approximately two hours. During that time, the decedent received two or three business-related phone calls. The claimant testified that, at approximately 9 p.m., the decedent became "fidgety" and began rubbing his head, which were things he often did when he was getting tired. Their children indicated that they wanted to make a snack, and the claimant and the decedent determined that they would go to the store for the ingredients. According to the claimant, the decedent intended to buy a cappuccino and also chose to take his personal motorcycle instead of the family van so that he could "wake up."

¶ 6 The claimant and the decedent went to the store at about 9:15 p.m. The decedent left his laptop running, and the claimant understood that he intended to continue working when they returned home. The decedent had his pager and cell phone with him when he went inside the grocery store. The claimant remained outside with the motorcycle and observed the decedent talking on his cell phone while he was in the check out line. After paying for the grocery items, the decedent came outside and indicated that he needed to return home right away, but he stated that the reason did not involve their children. The claimant and the decedent went directly home without stopping for coffee. They took the most direct route back to their house and traveled at the speed limit. As they did so, a car pulled out into the roadway and collided with the motorcycle. The claimant was severely injured, and the decedent was killed. The other driver was ticketed for failing to yield the right of way. Following the decedent's death, employees of

International Truck came to the house to retrieve the laptop computer, the pick-up truck, and a trailer.

¶ 7 Amanda Ross testified at the hearing and stated that she had just graduated from eighth grade before her father died in June 2003. Amanda's description of the decedent's work habits was substantially similar to that given by the claimant, and she corroborated the claimant's testimony that he worked on his laptop computer when he was home in the evening. She also testified that the decedent performed test runs of company vehicles a couple of times per week, and she accompanied him on these runs during the year before he died. Amanda testified that she went with the decedent because the family was concerned that he would be "too tired" during the runs. According to Amanda, when the decedent decided to go out for a cappuccino and to buy the snack ingredients on the night of the accident, he left his laptop running but said that he could not look at the computer any longer and needed a break.

¶ 8 At the conclusion of the hearing, the arbitrator found that the claimant had failed to prove that the decedent's death arose out of and in the course of his employment. In particular, the arbitrator found that the circumstances of the accident did not suggest that it was related to the decedent's employment in any way. The arbitrator also found that, although the decedent's was required to travel as part of his job, he was not a traveling employee on the date of the accident. Moreover, even if the decedent had been a traveling employee, his motorcycle trip to buy snacks for his children late in the evening was not reasonable and foreseeable, nor did it have any potential benefit to his employer. The arbitrator further found that, because there was no evidence that the decedent's home had been designated as an alternative work site, the fatal accident was not compensable under the personal-comfort doctrine on the ground that he had taken a break in order to refresh himself so he could continue his work. Also, because there was no evidence indicating that the decedent's fatigue had contributed to his accident, the arbitrator rejected the claimant's assertion that the demands of the decedent's job made him tired and

increased his risk of injury. Concluding that the link between the decedent's employment and the accident was too remote to render it compensable under the Act, the arbitrator denied the claimant's application for death benefits.

¶ 9 The claimant sought review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission affirmed and adopted the arbitrator's decision.

¶ 10 The claimant filed a petition for judicial review in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and the claimant has appealed.

¶ 11 On appeal, the claimant argues that the circuit court erred in confirming the Commission's denial of death benefits under the Act. We cannot agree.

¶ 12 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 factual question of whether a causal relationship exists 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). 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). 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. 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).

¶ 13 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. As stated by the supreme court in *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58, 541 N.E.2d 665 (1989):

> "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 accidental injury. [Citations.] Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. [Citation.] A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. [Citations.]"

In addition, an injury arises out of the employment if the claimant was exposed to a risk of harm beyond that to which the general public is exposed. *Brady v. L. Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921 (1991).

¶ 14 "In the course of the employment" refers to the time, place, and circumstances under which the claimant is injured. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366, 362 N.E.2d 325 (1977). Injuries sustained at a place where the claimant might reasonably have been while performing his 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.*, 129 Ill. 2d at 57; *Wise v. Industrial Comm'n*, 54 Ill. 2d 138, 142, 295 N.E.2d 459 (1973).

¶ 15 A "traveling employee" is one who is required to travel away from his employer's premises in order to perform his job. *Jensen v. Industrial Comm'n*, 305 Ill. App. 3d 274, 278, 711 N.E.2d 1129 (1999). The determination of whether an injury to a traveling employee arose out of and in the course of his employment is governed by different rules than are applicable to other employees. *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199, 486 N.E.2d 889 (1985). However, a finding that a particular claimant is a traveling employee does not exempt that claimant from proving that an injury arose out of and in the course of employment. *Hoffman*, 109 Ill. 2d at 199.

¶ 16 Here, although the decedent's work responsibilities required him to travel out of town with some frequency, it is undisputed that he was home on the night of the accident. Accordingly, this case is not governed by the principle that an injury sustained by a traveling employee while engaged in out-of-town recreational activities is compensable as long as those activities were reasonable and foreseeable. See *David Wexler & Co. v. Industrial Comm'n*, 52 Ill. 2d 506, 510-11, 288 N.E.2d 420 (1972); *Jensen*, 305 Ill. App. 3d at 279; *Bagcraft Corp. v. Industrial Comm'n*, 302 Ill. App. 3d 334, 338, 705 N.E.2d 919 (1998); *Bailey v. Industrial Comm'n*, 247 Ill. App. 3d 204, 208-09, 617 N.E.2d 305 (1993).

¶ 17 We find that the more applicable line of precedent is that involving injuries to employees whose employment responsibilities require them to travel within the general vicinity of their employer's premises. In such cases, an injury will be compensable if it arises out of (1) acts that the employee has been instructed to perform by his employer, (2) acts that the employee has a statutory or common law duty to perform while executing duties for his employer, or (3) acts that the employee might be reasonably expected to perform incident to his assigned duties. *Hoffman*, 109 Ill. 2d at 294; *Checker Taxi Cab Co. v. Industrial Comm'n*, 45 Ill. 2d 4, 6, 256 N.E.2d 828 (1970). In determining whether an act is one which an employee might be reasonably expected to perform as an incident to his or her assigned duties, courts considered whether the act was

"reasonable" and "foreseeable." *Hoffman*, 109 Ill. 2d at 200; *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 69-70, 338 N.E.2d 379 (1975). A deviation for purely personal reasons takes an employee out of the course of his employment. See *Checker Taxi Cab Co. v. Industrial Comm'n*, 45 Ill. 2d 4, 6, 256 N.E.2d 828 (1970); *Public Service Co. v. Industrial Comm'n*, 395 Ill. 238, 240, 69 N.E.2d 875 (1946); *Johnson v. Illinois Workers' Compensation Comm'n*, 2011 IL App (2d) 100418WC, ¶ 24.

¶ 18 In this case, the Commission found that the decedent was not a traveling employee at the time of the accident, but also determined that, even if he were considered to be a traveling employee, his shopping trip to buy snack ingredients and cappuccino was neither reasonable nor foreseeable and had no potential benefit to his employer. We must agree.

¶ 19 It is clear that, in going out on his motorcycle at 9:15 p.m. to buy snack ingredients and a cappuccino, the decedent was not acting under express instructions from his employer or a statutory or common-law duty. In addition, the decedent's shopping excursion was not an activity that he reasonably could be expected to perform incident to his assigned duties. The evidence established that, on the night of the accident, the decedent arrived home from the Melrose Park facility at approximately 6 p.m., and he did not go out in order to perform testing on a company owned vehicle. The record also indicates that the decedent's decision to work at home in the evening was his personal choice. Though the claimant testified that the decedent wanted to get the cappuccino so he could "wake up" and that he intended to continue working upon his return, there is no evidence that the decedent's employer had directed him to work on his computer while at home or had designated his home as an alternative work site. In addition, the decedent's remark that he needed to return home after purchasing the groceries is insufficient to establish that he had been instructed to perform a particular work assignment during the cell phone call that took place while he was in the store. Therefore, it cannot be said that the accident occurred while the decedent was attending to his employer's business or while he was returning

to his assigned tasks. Rather, the record demonstrates that the decedent had embarked on a family errand to purchase groceries for his children and a cappuccino for himself. The decedent's shopping trip was a purely private excursion that was not required by or incidental to his employment, nor was it something that was foreseeable by or beneficial to his employer in any way.

¶ 20 Based on the record presented, the Commission's decision that the accident resulting in the decedent's death did not arise out of and in the course of his employment is not against the manifest weight of the evidence.

¶ 21 For these reasons, we affirm the judgment of the circuit court, which confirmed the Commission’s decision denying the claimant's application for death benefits.

¶ 22 Affirmed.