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

THE CITY OF CENTREVILLE,)	Appeal from the Circuit Court
)	of St. Clair County.
Appellant,)	
)	
v.)	No. 10-MR-285
)	
WORKERS' COMPENSATION COMMISSION,)	
<i>et al.</i> ,)	
)	Honorable
(Janet Henderson, as Guardian <i>ad litem</i>)	Stephen P. McGlynn,
of Orlando Staten, a Minor, Appellee).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hoffman and Stewart concurred in the judgment.
Justice Holdridge specially concurred, joined by Justice Turner.

ORDER

¶ 1 *Held:* Claimant's decedent's failure to wear a seatbelt when operating a tractor did not preclude a finding of causation; the Commission's decision regarding the existence of a surviving child and burial expenses is not contrary to the manifest weight of the evidence; the Commission did not abuse its discretion in awarding penalties and attorney fees; and the evidence did not show that the arbitrator was biased.

¶ 2

I. INTRODUCTION

¶ 3 Claimant, Janet Henderson, as guardian *ad litem* for the minor Orlando Staten, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)) alleging that claimant's decedent, Chester Staten, died while working for respondent, the City of Centreville, when he was run over by a lawn mower. The Illinois Workers' Compensation Commission (Commission), adopting the decision of the arbitrator (while modifying the decision "to state that medical expenses are awarded pursuant to the medical fee schedule" and ordering that the award of penalties under section 19(k) of the Act (820 ILCS 305/19(k) (West 2006)) and attorney fees (820 ILCS 305/16 (West 2006)) be recalculated to reflect this change—penalties under section 19(l) were exempted (820 ILCS 305/19(l) (West 2006))), awarded \$436.64 per week maintenance for the minor child, medical expenses, penalties, and attorney fees. The circuit court of St. Clair County confirmed the Commission, and respondent appealed. For the reasons that follow, we affirm.

¶ 4 As the issues raised in this appeal are largely discrete, we will discuss evidence as it pertains to the arguments presented by the parties. We set forth the following background information to facilitate an understanding of this case. Chester Staten was employed by respondent as a laborer. His duties included mowing lawns. On July 30, 2007, he was involved in an accident while mowing steep ditches with a large tractor and "brush hog." Chester was thrown from the tractor, which ran over his legs. Charles Rattler, Chester's supervisor, arrived at the scene and found Chester on the ground near the ditch. The tractor was upright, still running, and had run into a nearby row of bushes. Rattler inspected the tractor and found that it was in good operating order. Its seatbelt was fully functional. Rattler had observed Chester operating the mower without using the seatbelt in the past, which according to Rattler was both contrary to his orders and extremely dangerous (we will

accept Rattler's testimony for the purpose of resolving this appeal). Chester died as the result of his injuries on September 10, 2007. We now turn to the issues raised by respondent.

¶ 5

II. ANALYSIS

¶ 6 On appeal, respondent raises five issues. First, it contends that Chester's death did not arise out of his employment. Second, it asserts that claimant did not prove that Chester left a surviving child. Third, it alleges error in the Commission's decision to award attorney fees and penalties. Fourth, it argues that claimant was not entitled to burial expenses. Fifth, it claims that the arbitrator was biased. We find none of these arguments persuasive.

¶ 7

A. Causation

¶ 8 We first turn to the respondent's argument concerning causation. One of the elements a claimant must prove to be entitled to an award under the Act is that his or her injuries arose out of employment (respondent does not contend Chester's death did not occur in the course of employment). *Johnson v. Illinois Workers' Compensation Comm'n*, 2011 IL App (2d) 100418WC, ¶ 20. An injury arises out of the employment if some aspect of a claimant's job was a causal factor in his death. *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 742 (1994). That is, a claimant must show that the employment exposed the claimant to some risk not faced by the general public. *Becker v. Industrial Comm'n*, 308 Ill. App. 3d 278, 281 (1999). This issue presents a question of fact. *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 887 (2007). We will disturb the Commission's decision on a question of fact only if it is against the manifest weight of the evidence. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989). A decision is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315 (2009).

¶ 9 Respondent argues that Chester’s death was caused by his failure to wear a seatbelt rather than his employment. Initially, we note that contributory negligence and assumption of the risk are not defenses under the Act. *Stembridge Builders, Inc. v. Industrial Comm’n*, 263 Ill. App. 3d 878, 881 (1994). Thus, for this argument to succeed, respondent must establish that Chester’s failure to wear a seatbelt unreasonably and unnecessarily increased the risk of injury. *Cunningham v. Industrial Comm’n*, 78 Ill. 2d 256, 259 (1980). For example, an injury has been found not to arise out of employment where an employee punched the door of a van in frustration (*id.* at 258) or an employee lacerated her finger while attempting to pry the lid off a candy tin with a key (*Yost v. Industrial Comm’n*, 76 Ill. 2d 548, 550 (1979)). On the other hand, the mere violation of a safety rule or a direct order does not preclude an award of benefits under the Act. *Gerald D. Hines Interests v. Industrial Comm’n*, 191 Ill. App. 3d 913, 917 (1989). The ultimate issue is whether the claimant has exposed himself to a risk that is purely personal or whether the risk is “incidental to or connected with what the employee has to do in fulfilling his duties.” *Id.* Whether such conduct breaks the causal chain between employment and injury presents a question of fact. *Yost*, 76 Ill. 2d at 551.

¶ 10 Respondent also points out that conduct that rises to the level of willful and wanton precludes recovery under the Act. *McKernin Exhibits, Inc. v. Industrial Comm’n*, 361 Ill. App. 3d 666, 671 (2005). Therefore, “[i]n order to remove the claimant from the protection of the Act, his actions must have been committed intentionally, with knowledge that they were likely to result in serious injury, or with a wanton disregard of the probable consequences.” *Id.* We note that, in certain circumstances, the failure to operate a vehicle in a safe manner has been held, as a matter of law, to not constitute willful and wanton conduct. For instance, in *Stembridge Builders, Inc.*, 263 Ill. App. 3d at 881, the court observed that “the majority view is that excessive speeding, standing alone, does

not, as a matter of law, disqualify an employee from coverage under the applicable compensation law.” It is noteworthy that the court did not limit its holding to “speeding,” expressly referencing “excessive speeding.” Whether an employee’s conduct rises to the level of willful and wanton also presents a question of fact. *McKernin Exhibits, Inc.*, 361 Ill. App. 3d at 671.

¶ 11 We cannot conclude that the Commission’s decision that Chester’s death was causally related to his employment is contrary to the manifest weight of the evidence. Quite simply, Chester was mowing a ditch, which was part of his job, at the time he sustained the injuries that led to his death. Notwithstanding the allegation that he was performing his work in a negligent manner, he was still acting in furtherance of his job duties. Moreover, Chester’s failure to wear a seatbelt is analogous to excessive speeding, so we cannot say that the Commission’s decision that claimant was entitled to benefits under the Act is against the manifest weight of the evidence. We therefore affirm the Commission’s decision regarding causation.

¶ 12 B. Proof of a Surviving Child

¶ 13 Respondent next contends that claimant failed to prove that Chester left a surviving child. Section 7(a) provides that a surviving child may recover benefits under the Act. 820 ILCS 305/7(a) (West 2006). A claimant has the burden of proving all elements of a claim (*R&D Thiel v. Illinois Workers’ Compensation Comm’n*, 398 Ill. App. 3d 858, 867 (2010)); hence, to the extent that there is any question as to the existence of a survivor, a claimant would have the burden of proof. See *Jones v. Industrial Comm’n*, 64 Ill. 2d 221, 224-25 (1976). This is also a question of fact. *Id.* at 225.

¶ 14 Two of Chester’s sisters testified that Orlando was Chester’s son. Moreover, Demario Helm, respondent’s city clerk, testified without objection that he heard Chester “had a kid.” Hearsay that is presented without objection is to be given its natural and probative effect. *Rodriguez v. Frankie’s Beef/Pasta & Catering*, 2012 IL App (1st) 113155, ¶ 14. Against this evidence, respondent points

only to the fact that an enrollment card for a life insurance policy listed only Janet Henderson—one of Chester’s sisters—as the beneficiary. At most, this creates a weak conflict in the evidence. Resolving such conflicts is a matter primarily for the Commission. *Sisbro, Inc. v. Industrial Comm’n*, 207 Ill. 2d 193, 206 (2003). Respondent complains that claimant did not introduce more evidence, such as tax returns. We find this of no moment; our task is to evaluate the evidence that is in the record rather than the evidence that is not (respondent has not attempted to meet the foundational requirements for a missing evidence instruction that would allow an adverse inference from claimant’s failure to produce Chester’s tax returns (see *Jenkins v. Dominick’s Finer Foods, Inc.*, 288 Ill. App. 3d 827, 831 (1997))). Accordingly, we certainly cannot say that an opposite conclusion to that drawn by the Commission is clearly apparent. Thus, the Commission’s decision is not contrary to the manifest weight of the evidence. *City of Springfield*, 388 Ill. App. 3d at 315.

¶ 15

C. Penalties and Attorney Fees

¶ 16 Respondent next complains of the Commission’s imposition of penalties and attorney fees. See 820 ILCS 305/16, 19(k), 19(l) (West 2006). Whether fees and penalties are warranted is a factual matter we review using the manifest weight standard. *McKay Plating Co. v. Industrial Comm’n*, 91 Ill. 2d 198, 209 (1982). Awards under section 16 and section 19(k) are proper only if the employer’s delay in making payment is unreasonable or vexatious. *McMahan v. Industrial Comm’n*, 183 Ill. 2d 499, 515 (1998). Conversely, section 19(l) is more like a late fee, so an award under this section is appropriate if an employer neglects to make payment without good and just cause. *Id.*

¶ 17 Respondent first asserts that it did not pay benefits because it had not received notice of the pending workmen’s compensation case. Evidence in the record indicates that there was considerable delay in the delivery of an amended application for adjustment of claim and request for hearing, as

these forms were delivered to Centreville Township rather than respondent (the City of Centreville). However, there is no indication that the original application for adjustment of claim form was not properly served on respondent. The original application lists respondent's proper address. In any event, this argument is supported by citation neither to authority nor the record, rendering respondent's assertions completely unsupported (and nearly impossible to evaluate). Therefore, this issue is forfeited. *Roe v. Jewish Children's Bureau of Chicago*, 339 Ill. App. 3d 119, 125 (2003). Quite simply, we are unable to ascertain from respondent's brief relevant matters such as when respondent did learn of the claim and if or when it began making payments.

¶ 18 Respondent also argues that it had a good-faith basis for refusing payment. In essence, respondent's argument distills down to the notion that Chester's failure to wear a seatbelt raised a legitimate doubt as to respondent's liability. We note that many of the cases respondent relied on in its first argument are flatly distinguishable in that the employees were engaging in conduct that was not in furtherance of their job responsibilities. *Cunningham*, 78 Ill. 2d at 259 (employee punched the door of a van); *Yost*, 76 Ill. 2d at 550 (employee lacerated her finger while attempting to pry the lid off a candy tin with a key); *Jensen v. Industrial Comm'n*, 305 Ill. App. 3d 274, 278-79 (1999) (employee was engaged in recreational use of ATV). Moreover, in *Stembridge Builders, Inc.*, 263 Ill. App. 3d 878, 884 (1994), this court affirmed an award where the evidence suggested that the claimant was operating a motor vehicle in a negligent manner. *McKernin Exhibits, Inc.*, 361 Ill. App. 3d at 672, comes to a similar result as *Stembridge Builders, Inc.* Given the lack of legal support for respondent's position, its claim of good faith rings hollow. In other words, the Commission's decision to impose an award of fees and penalties is not contrary to the manifest weight of the evidence.

¶ 19

D. Burial Expenses

¶ 20 Respondent next argues that the Commission erred in awarding claimant burial expenses. Beyond acknowledging that section 7(f) of the Act (820 ILCS 305/7(f) (West 2006)) requires an employer to pay such expenses, respondent cites no authority in support of this argument, thus forfeiting it (*Vine Street Clinic v. HealthLink, Inc.*, 222 Ill. 2d 276, 301 (2006)). Moreover, we find respondent's argument wholly unpersuasive. Respondent contends that Chester's burial was paid for out of the proceeds of the life insurance policy it maintained for him. Thus, it concludes, it satisfied its obligation under section 7(f). We note that the beneficiary of the policy was Janet Henderson (Chester's sister). Respondent makes no attempt to explain why it should reap the benefit of an insurance policy of which it was not a beneficiary. Moreover, respondent does not address the Commission's finding that because the policy was a simple life insurance policy rather than an occupational policy, the Act makes no provision for a setoff. In sum, we reject respondent's argument on this point.

¶ 21

E. The Arbitrator's Purported Bias

¶ 22 Respondent's final contention is that the arbitrator was biased against it. It points to three statements made by the arbitrator in support of this claim. First, the arbitrator stated that she was "highly suspicious of Respondent's financial stability and ability to pay this claim." Second, she stated, "I have a lot of problems with the City of Centreville, I've tried a few cases with them, they whine, they cry and they never have any money and they always come hat in hand asking for a continuance so they don't get much favor in front of me today." Third, the arbitrator directed claimant's attorney to file a petition for penalties. Such statements are insufficient to demonstrate bias in a workers' compensation proceeding.

¶ 23 We note that the following administrative regulation governs the disqualification of

commissioners and arbitrators:

"a) No Arbitrator or Commissioner financially or otherwise interested in the outcome of any litigation, or any question connected therewith, shall participate in any manner in the adjudication of said cause, including the hearing of settlement contracts for lump sum petitions.

b) Examples of instances where disqualification by an Arbitrator or Commissioner should occur include, but are not limited to the following:

- 1) he or she has personal knowledge of disputed evidentiary facts concerning the proceedings;
- 2) he or she served as an attorney in the matter in controversy;
- 3) he or she is a material witness concerning the matter;
- 4) he or she was, within the preceding two years, associated in the practice of law with any law firm or attorney currently representing any party in the controversy;
- 5) he or she was, within the preceding two years, employed by any party to the proceeding or any insurance carrier, service or adjustment company, medical or rehabilitation provider, labor organization or investigative service involved in the claim;
- 6) he or she or his or her spouse, or a person within the third degree of relationship (pursuant to the civil law system) to either of them, or the spouse of such person:
 - A) is a party to the proceeding, or an officer, director or trustee of a party;
 - B) is acting as an attorney in the proceeding;
 - C) is known by the Arbitrator or Commissioner to have a substantial financial interest in the subject matter in controversy;

D) is to the Arbitrator's or Commissioner's knowledge likely to be a material witness in the proceeding;

7) he or she negotiated for employment with a party, a party's attorney or insurance carrier or service or adjustment company, in a matter in which the Arbitrator or Commissioner is presiding or participating in an adjudicative capacity.” 50 Ill. Admin. Code § 7030.30.

We have previously held that this rule requires a party claiming bias to show actual bias, unlike Illinois Supreme Court Rule 63(c) (eff. Apr. 16, 2007), which mandates disqualification if an adjudicator’s “impartiality might reasonably be questioned.” *Lenny Szarek, Inc. v. Illinois Workers’ Compensation Comm’n*, 396 Ill. App. 3d 597, 604 (2009).

¶ 24 Respondent suggests that we apply the standard set forth in Supreme Court Rule 63(c). This we decline to do. Generally, “supreme court rules do not apply to workers’ compensation proceedings where the Act or the Commission’s rules regulate the area or topic.” *Preston v. Industrial Comm’n*, 332 Ill. App. 3d 708, 712 (2002). Respondent notes that though supreme court rules do not apply to proceedings under the Act, they may be consulted for guidance. *Id.* While true, this is only appropriate where the Act or the Commission’s administrative rules do not regulate a subject. *Lenny Szarek, Inc.*, 396 Ill. App. 3d at 604; *Illinois Institute of Technology Research Institute v. Industrial Comm’n*, 314 Ill. App. 3d 149, 154-55 (2000). The Commission has promulgated a detailed rule regarding bias and disqualification. It would therefore be inappropriate for us to graft additional considerations onto the Commission’s standards. See also *Radaszewski v. Garner*, 346 Ill. App. 3d 696, 700 (2003) (“Where the language [of an administrative regulation] is clear, it must be given effect without resort to further aids of construction, and a court may not read into it any exceptions, conditions, or limitations that the agency did not express.”).

¶ 25 Applying the standards set forth by the Commission (see 50 Ill. Admin. Code § 7030.30), the statements respondent relies on in support of this argument are insufficient to establish bias. Quite simply, none of them show that the arbitrator was “financially or otherwise interested in the outcome” of the proceedings. 50 Ill. Admin. Code § 7030.30. We further note that the arbitrator’s expression of frustration with respondent (“I have a lot of problems with the City of Centreville”) was made during the course of a hearing in which respondent sought a continuance and the arbitrator granted respondent’s request. Finally, it also should be noted that it is the Commission, and not the arbitrator, that is the trier of fact. *Durand v. Industrial Comm’n*, 224 Ill. 2d 53, 63 (2006) (“The Industrial Commission is the ultimate decisionmaker in workers' compensation cases, and it is not bound by any decision made by the arbitrator.”). In short, respondent’s argument does not comport with the Commission’s rules concerning bias.

¶ 26 III. CONCLUSION

¶ 27 In light of the foregoing, the order of the circuit court of St. Clair County confirming the decision of the Commission is affirmed.

¶ 28 Affirmed.

¶ 29 JUSTICE HOLDRIDGE, specially concurring:

¶ 30 I concur. I write separately to state my position that this court need not address the respondent's contention that the arbitrator was biased against it. The issue was forfeited when it was not raised before the Commission. It is well settled that issues not raised before the Commission in the petition for review or statement of exceptions filed with the Commission are forfeited. *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1020 (2005), citing *Thomas v. Industrial Comm'n*, 78

Ill. 2d 327, 336 (1980). Here, the respondent is raising the issue for the first time on appeal to this court. I would find that the issue has not been properly preserved for our review and, thus, has been forfeited.

¶ 31 The majority refers to the administrative regulations which govern the disqualification of commissioners and arbitrators. 50 Ill. Admin. Code § 7030.30. Had the respondent properly raised the arbitrator's alleged bias before the Commission as a motion to disqualify the arbitrator, the Commission could have ruled on the motion, and the court could have reviewed the Commission ruling on the motion for an abuse of discretion. *Lenny Szarek, Inc. v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 597, 602 (2009). As it were, no motion to disqualify the arbitrator was presented to the Commission, so there is no Commission decision on the arbitrator's alleged bias for this court to review.

¶ 32 Moreover, the Commission, not the arbitrator, is the ultimate finder of fact. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 63 (2006). When the Commission makes a determination, it is presumed that it considered only proper and competent evidence. *County of Cook v. Industrial Comm'n*, 177 Ill. App. 3d 264, 273-74 (1988). Given this presumption, there is nothing in the record to establish that the Commission was improperly influenced by the alleged bias of the arbitrator.

¶ 33 For the foregoing reasons, I would find that the issue of arbitrator bias was forfeited when the respondent failed to raise the issue to the Commission. I, therefore, do not join in the majority's analysis of that issue.

¶ 34 JUSTICE TURNER joins in this special concurrence.