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2013 IL App (1st) 121481WC-U

Order Filed: June 24, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

RUSH UNIVERSITY MEDICAL CENTER,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
Appellant,	)	
	)	
v.	)	Appeal No. 1-12-1481WC
	)	Circuit No. 11-L-51371
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION <i>et al.</i> (Laura Zuckerman,	)	Robert L. Cepero,
Appellee).	)	Judge, Presiding.

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PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The Commission's finding that the claimant's injuries resulting from a fall down a stairway at her place of employment arose out of and in the course of her employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Laura Zuckerman, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)) seeking benefits for injuries to her hip, pelvis, lower back, left shoulder, and left arm allegedly incurred on May 27, 2010, while she was employed as a nurse practitioner at Rush University Medical Center

(employer). Following a hearing on December 7, 2010, Arbitrator Kurt Carlson found that the claimant proved by a preponderance of the evidence that she sustained injuries arising out of and in the course of her employment, resulting in her being temporarily and totally disabled (TTD) from May 27, 2010, until August 15, 2010, for a total of 11 3/7 weeks. The arbitrator also ordered the employer to pay reasonable and necessary medical expenses of \$120,451.78 which had been incurred up to the date of the hearing and also ordered the employer to pay future reasonable and necessary medical expenses.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission), a majority of which affirmed and adopted the decision of the arbitrator. The employer then sought judicial review of the Commission's decision in the circuit court of Cook County. The court confirmed the Commission's decision. The employer then filed a timely appeal to this court.

¶ 4 The employer maintains on appeal that: (1) the Commission's finding that the claimant sustained accidental injuries arising out of and in the course of her employment was against the manifest weight of the evidence and contrary to law; and (2) because the Commission erred in finding that the claimant's injuries arose out of and in the course of her employment and her condition of ill-being was not causally related to the risks of her employment, the Commission erred in awarding any TTD and medical benefits. We affirm.

¶ 5 **FACTS**

¶ 6 The claimant was employed as a nurse practitioner for six years. Her duties included seeing patients in the employer's outpatient clinic, prescribing chemotherapy and medications, ordering diagnostic tests, and generally managing patient care and treatment. The claimant testified that, on May 27, 2010, she had a meeting scheduled in her office at approximately 4

p.m. Before the meeting, she planned to check on two patients, one on the seventh floor and the other on the sixth floor. After checking the patient on the seventh floor, the claimant decided to use the stairway to proceed to the sixth floor. She testified that she normally uses the elevator; however, she was in a hurry to complete the patient contact on the sixth floor prior to her 4 p.m. meeting, so she decided to take the stairs because the elevators were known to be very slow.

¶ 7 The claimant testified that as she was descending the stairs, she lost her footing at the landing between floors and fell down the stairs. When she stopped falling, she was in extreme pain and unable to stand. No one was present in the stairway. She used her cell phone to call for help. The claimant was transported to the emergency department and was then admitted to the hospital, where she was placed in traction for six days. She then had surgery to repair damage to her pelvis, which had been broken in three places. She remained in the hospital from May 27, 2010, to June 9, 2010. While in traction, a venous embolism developed, which required the claimant to be on blood thinners for approximately three months. The claimant was also diagnosed with a fracture of the left shoulder and arm. As a result of the shoulder injury, the claimant could not immediately begin inpatient physical rehabilitation related to the pelvis injury. She was discharged on June 9, 2010, in a wheelchair.

¶ 8 The claimant also testified that, while in the hospital, she began to experience extreme pain in the low back. Diagnostic tests revealed disc herniation at L4-L5 and disc protrusion at L5-S1, which was causing spinal canal stenosis. The claimant was receiving lumbar epidural injections and injections for her shoulder pain at the time of the hearing. The claimant received physical therapy from July 20, 2010, until August 25, 2010. This therapy was discontinued when the claimant's group medical insurance would no longer pay for it.

¶ 9 The claimant remained wheelchair bound until the middle of July. She returned to work on August 16, 2010. At the time she returned to work, the claimant was on crutches and could only perform sedentary duties in her office. She continued to experience extreme pain, particularly in her left shoulder and her thoracic spine. At the time of the hearing, the claimant was still under medical care for her injuries and had yet to reach maximum medical improvement. She continued to suffer persistent shoulder pain and intermittent back pain. She testified to experiencing bouts of incontinence attributed to the pelvic injuries and continued to receive injections for pain.

¶ 10 The claimant further testified, that prior to the accident, she was in very good physical shape. She was a nationally competitive speed skater in the past and also participated in ultra-distance in-line skating marathons following her retirement from speed skating. She also testified that she regularly took the stairs in the building where her office was located.

¶ 11 Regarding the specifics of how the fall occurred, the record included a statement given by the claimant on June 9, 2010, on her last day in the hospital. In the statement, the claimant indicated that she did not know how the accident happened, just that she fell at the top of the flight of stairs near the landing between the sixth and seventh floors. The arbitrator noted that the record also indicated that the statement was given while the claimant was still hospitalized for her injuries and was taking several high-dose narcotic pain medications. The arbitrator further noted that the claimant's statement as to the location of her fall corresponded to photographs entered into evidence which showed the portions of the stairs in disrepair.

¶ 12 At the hearing, the claimant testified that portions of concrete were missing from the stairs at the place where she fell. She also offered into evidence several pictures of the stairs where she fell. The arbitrator described the pictures as follows:

"There is an especially large portion of concrete that is missing from the second stair; the last step [claimant's] foot was on before her fall. It is difficult to see the missing concrete when one is looking from the top of the stairs toward the bottom of the stairs. However, the missing concrete is easy to notice when one looks from the bottom of the 6th floor toward the top of the first landing."

¶ 13 The record also contained photographs of the stairway introduced into evidence by the employer. However, the arbitrator gave little weight to those photographs, finding that the photos were staged in such a way as to not accurately depict the stairway.

¶ 14 The arbitrator also determined that the accident occurred in an area generally not available to the general public. The record established that the stairway was marked with signs indicating that the stairway was for emergency use only and that an alarm would sound if the door to the stairway was opened. The claimant testified that she and most employees knew that there was a red button that could be pushed to prevent the alarm from sounding. She also testified that no member of the general public would likely know that the alarm could be disabled in this manner. She also testified that employees, herself included, did occasionally disable the alarm and use the stairway in this manner.

¶ 15 The arbitrator found that the claimant fell as a result of a defect in the stairway on the employer's premises in an area unlikely to be accessed by members of the general public. He noted that the photographic evidence established that several pieces of concrete had, over a period of time prior to the pictures being taken, dislodged from the edges of several of the individual steps, including the one that the claimant last stepped upon prior to her fall. The

arbitrator also found that nothing of an idiopathic nature caused the claimant's fall since she was in good physical shape. He further determined that the claimant was in a hurry to get to see her patients and attend a meeting, all in furtherance of her job duties. Based upon those specific factual findings, the arbitrator determined that the claimant sustained accidental injuries arising out of and in the course of her employment. The arbitrator likewise determined that the claimant sustained pelvic fractures, disc herniations and protrusions, a fractured left shoulder, and a torn tendon in her left arm as a result of the fall and that her current condition of ill-being regarding those injuries was causally related to the May 27, 2010, accident. The arbitrator found that the claimant had established a causal connection between her current injuries and the May 17, 2010, accident based upon the lack of any evidence of ill-being prior to the accident and the obvious fact that the injuries were the result of her fall, as well as the complete lack of evidence that any of her conditions predated the accident. The arbitrator found that the claimant was entitled to TTD benefits until she returned to light duty on August 15, 2010. He further determined that the claimant had incurred reasonable and necessary medical expenses of \$120,451.78 to date and would be in need of further reasonable medical care.

¶ 16 The employer filed exceptions to the arbitrator's decision with the Commission. The employer maintained that the claimant suffered an idiopathic fall and that the arbitrator's determination that the condition of the stairway caused her accident was not supported by the record. It noted that, in the claimant's first statement, given at the hospital 13 days after the accident, she was unable to remember anything about the accident, nor did she indicate that she had been in a hurry to attend a meeting at the time she fell. The employer further maintained that the risk of falling on stairs is inherent in stairway usage and the claimant's risk was no greater

than that to which the general public would be exposed in traversing a stairway. The dissenting commissioner adopted the employer's arguments.

¶ 17 The employer then sought judicial review of the Commission's decision in the circuit court of Cook County, which affirmed the Commission's decision. The employer appeals to this court from the judgment of the circuit court confirming the Commission's decision.

¶ 18 ANALYSIS

¶ 19 The employer first maintains that the Commission erred in finding that the claimant's injuries arose out of and in the course of his employment. Whether an injury arises out of and in the course of employment is a question of fact to be determined by the Commission, and its finding will not be overturned on appeal unless it is against the manifest weight of the evidence. *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 944 (2006). Factual determinations are against the manifest weight of the evidence where the opposite conclusion is clearly apparent or when no rational trier of fact could reach the same determination based upon the record. *D.J. Masonry Co. v. Industrial Comm'n*, 295 Ill. App. 3d 924, 930 (1988). The employer suggests that the claimant's injury was the result of a fall on the stairs and was thus the result of an exposure to a risk no greater than that to which the general public might be exposed. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548 (1991). Alternatively, the employer suggests that the claimant's injuries resulted from an unexplained (idiopathic) occurrence not related to her employment. *Elliott v. Industrial Comm'n*, 153 Ill. App. 3d 238 (1987).

¶ 20 Addressing the employer's contention that the claimant's injuries were the result of an idiopathic fall, we note that the Commission considered and rejected that argument. A claimant may generally not recover if the risk to which she was exposed was a risk personal to her, such as an idiopathic fall which is a fall resulting from an internal, personal weakness of the claimant.

*Stapleton v. Industrial Comm'n*, 282 Ill. App. 3d 12, 16 (1996). If the fall is idiopathic, the claimant may recover only if she can establish that the employment significantly contributed to the injury by placing her in a position of greater risk of injury from falling. *First Cash Financial v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006).

¶ 21 Here, as the Commission noted, there was no evidence that the claimant suffered from a physical condition that caused her to fall. The claimant did not testify that she blacked out or fainted. Rather, she initially testified that she had no recollection of the fall. Later, she testified that she did recall the events of the fall and also testified that the poor condition of the concrete steps caused her fall. The Commission, adopting the arbitrator's reasoning as its own, concluded that the claimant's initial lack of memory of the fall was attributed to her narcotic pain medication and that she credibly testified at the hearing to the events surrounding her fall. The Commission also adopted the arbitrator's factual finding that the step where the claimant fell was in a condition of ill repair and was the factor that caused the claimant to fall. The employer disagrees with the Commission's factual conclusions regarding the deteriorated condition of the stairs and the role the condition of the stairs played in causing the claimant's fall. However, these findings are clearly factual determinations of the Commission that will not be overturned on appeal unless they are against the manifest weight of the evidence. *Id.* Here, it cannot be said that the Commission's factual findings of a lack of evidence of an idiopathic fall and that the deteriorated condition of the stairway caused the claimant's fall was against the manifest weight of the evidence. *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 350 (2000).

¶ 22 The employer next maintains that, even if the claimant's injuries were not the result of an idiopathic fall, they were nonetheless not compensable since the risk of claimant falling while



traversing a stairway was not the risk of her employment, but was simply a neutral risk, *i.e.*, a risk to which the general public is equally exposed. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 59 (1989). Injuries caused by a neutral risk do not arise out of employment and are not compensable. *Id.* Normally, the act of walking up or down a stairway at an employer's place of business does not establish a risk greater than that faced by the general public. *Knox County YMCA v. Industrial Comm'n*, 311 Ill. App. 3d 880, 885 (2000). However, it is well settled that "the risk of tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling" are risks to which the general public would not be exposed. *First Cash Financial*, 387 Ill. App. 3d at 106.

¶ 23 Here, the Commission adopted the arbitrator's factual conclusion that the stair on which the claimant tripped was defective in that pieces of concrete on the edge of the step were missing, creating an uneven and defective surface. The Commission also adopted the arbitrator's factual conclusion, based upon the credible testimony of the claimant, that she was utilizing the stairway at the time of the accident in order to hurry between the two floors to make her patient contacts and to attend a meeting. These factual determinations were based upon evidence in the record and did not amount to mere speculation. See *First Cash Financial*, 387 Ill. App. 3d at 106. The record in the instant case established more than the "mere possibility" that a defective condition "might" have caused her fall. See *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 478 (2011); *First Cash Financial*, *Id.* at 106-07. Given the facts contained in the record, it was reasonable for the Commission to find that the claimant's fall was the result of the defective condition of the stairway and the claimant's work-related tasks.

¶ 24 It can also be noted that the Commission adopted the arbitrator's finding that the accident occurred on a stairway not generally accessible to or utilized by the general public. The parties have not cited authority holding that the lack of public access to the stairway is relevant to a determination that the risk to which the claimant was exposed was greater than the risk to which members of the general public would be exposed. While this factual determination supports the Commission's conclusion, it is not necessary to address it to find that the Commission's decision was not against the manifest weight of the evidence.

¶ 25 The employer also argues that the award of TTD benefits and medical expenses were against the manifest weight of the evidence. However, since these arguments are based upon the premise that the Commission's causation finding was erroneous, these contentions can be rejected without further analysis. *Tower Automotive v. Industrial Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011).

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the Cook County circuit court is affirmed and the matter is remanded to the Commission for further proceedings.

¶ 28 Affirmed and remanded.