2013 IL App (3d) 120989WC-U
No. 3-12-0989WC
Order filed December 18, 2013

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DANIELLE HANSON,	)	Appeal from
Appellant,	)	Circuit Court of
v.	)	Rock Island County
THE ILLINOIS WORKERS' COMPENSATION	)	No. 11MR520
COMMISSION *et al.* (Trinity Express Care,	)	
Appellee).	)	Honorable
	)	Clarence M. Darrow,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The Commission's finding that claimant's injuries occurred in the course of her employment on January 14, 2009, but did not arise out of her employment was not against the manifest weight of the evidence.

¶ 2 On February 20, 2009, claimant, Danielle Hanson, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 through 30 (West 2008)), seeking benefits from the employer, Trinity Express Care, for "permanent" injuries suffered on January 14, 2009. Following a hearing, an arbitrator found claimant proved she sustained injuries arising out of and in the course of her employment with the employer on

January 14, 2009, and awarded claimant permanent partial disability (PPD) benefits under section 8(e) of the Act (820 ILCS 305/8(e) (West 2008)), representing a 30% loss of use of her left leg, and medical expenses in the amount of $26,741.93.

¶ 3 The employer sought review of the arbitrator's decision before the Commission. In an order entered on July 20, 2011, the Commission reversed the arbitrator's decision, with one commissioner dissenting. Thereafter, claimant filed a petition seeking judicial review in the circuit court of Rock Island County and the circuit court confirmed the Commission's decision.

¶ 4 Claimant appeals, arguing the Commission's finding that her injuries occurred in the course of her employment on January 14, 2009, but did not arise out of her employment was against the manifest weight of the evidence. We affirm.

¶ 5 I. BACKGROUND

¶ 6 The following factual recitation is taken from the evidence presented at the arbitration hearing on March 3, 2010.

¶ 7 The 35-year-old claimant testified that she began work as a front desk clerk for the employer in April 2007. On January 14, 2009, claimant reported to work approximately 20 minutes early, at the employer's request. Upon her arrival, claimant parked in a rear parking area and entered the building through the employee entrance. Claimant proceeded to her desk, clocking in by telephone. Claimant then realized she had left a bag in her car. The bag contained three computer login passwords assigned to claimant and required to access the employer's computer system and enable claimant to perform her work duties. In an effort to retrieve the bag from her car, claimant exited the building through the employee exit. Claimant did not use the sidewalk leading to the rear parking area because it was cold, "20 below outside with the

windshield [*sic*]." Instead, claimant crossed over the sidewalk, walked across a grassy area to a retaining wall, and jumped down to a grassy area below. Claimant described the retaining wall as "three retaining bricks high," with each brick measuring approximately four to six inches. Claimant testified the path negotiating the retaining wall was the most direct route to her car, "25 steps from that spot to my car versus 100 steps the opposite direction not [*sic*] using the sidewalk." Claimant testified that she retrieved the bag from her car and walked back across the parking area. She attempted to climb up the retaining wall but her left knee popped and she fell backwards.

¶ 8 Claimant testified that she negotiated the retaining wall to and from the employee parking area "almost every single time" she worked because it was the most direct route to her car, a "shortcut." She also testified that other employees negotiated the retaining wall while walking to and from the parking area and the employer had never told them not to use the "shortcut." This time, while climbing up the retaining wall, claimant felt her left knee pop and she fell backwards. When claimant attempted to stand, she felt her left knee pop again. Claimant acknowledged the sidewalk might provide a safer path to and from the rear parking area but she took the "shortcut" on January 14, 2009, because of the cold weather.

¶ 9 The employer completed an "Employer's First Report of Injury" form on January 20, 2009, stating claimant began work on January 14, 2009, at 4:30 p.m. and suffered an accident at 4:45 p.m. Claimant completed an "Employee's Report of Claim" form on January 21, 2009, stating her "Trouble First Started" on January 14, 2009, at 4:30 p.m., and she missed only one day of work, on January 15, 2009.

¶ 10 Claimant required surgical repair of a torn meniscus in the left knee, performed on

February 4, 2009, followed by a course of physical therapy. She continued to work throughout treatment.

¶ 11 Following the hearing, the arbitrator found claimant proved she sustained injuries arising out of and in the course of her employment with the employer on January 14, 2009, and awarded claimant PPD benefits under section 8(e) of the Act (820 ILCS 305/8(e) (West 2008)), representing a 30% loss of use of her left leg, and medical expenses in the amount of $26,741.93. In awarding compensation, the arbitrator reasoned that (1) claimant was injured while retrieving from her car the three computer login passwords assigned to claimant and required for claimant to perform her work duties and (2) claimant traveled her usual and customary route to and from the parking area. The employer sought review of the arbitrator's decision before the Commission. In an order entered on July 20, 2011, a majority of the Commission reversed the arbitrator's decision finding claimant's injuries did not arise out of her employment. The Commission reasoned that claimant's injuries "resulted from her voluntary decision to take an increased personal risk by taking the shortcut." Thereafter, claimant filed a petition seeking judicial review in the circuit court of Rock Island County and the circuit court confirmed the Commission's decision.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 The purpose of the Act is to protect employees against risks and hazards which are peculiar to the nature of the work they are employed to do. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005, 1008 (1987). For an injury to be compensable, however, more is required than the fact of an occurrence at an employee's place of work. *Greater Peoria Mass*

Transit District. v. Industrial Comm'n, 81 Ill. 2d 38, 43, 405 N.E.2d 796, 799 (1980). An injury is compensable under the Act only if it "arises out of" and "in the course of" one's employment. 820 ILCS 305/2 (West 2008). Both elements must be present at the time of the employee's injury in order to justify compensation, and it is the employee's burden to establish these elements by a preponderance of the evidence. *Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1226, 738 N.E.2d 955, 958 (2000). The phrase "in the course of" refers to the time, place, and circumstances of the injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57, 541 N.E.2d 665, 667 (1989). In this case, the Commission found claimant "was on the clock" at the time of the accident, and, therefore, claimant was "in the course of" her employment at the time she sustained the injuries for which she seeks compensation. Accordingly, our focus is on whether claimant's injury "arose out of" her employment with the employer.

¶ 15 The phrase "arising out of" refers to the origin or cause of an employee's injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 672 (2003). An accident is said to "arise out of" one's employment if it has its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the injury. *Orsini*, 117 Ill. 2d at 45, 509 N.E.2d at 1008. As a general rule, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts she was instructed to perform by her employer, acts which she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to her assigned duties. *Caterpillar Tractor Co.*, 129 Ill.2d at 58, 541 N.E.2d at 667. A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her duties. *Orsini*, 117 Ill. 2d at 45, 509 N.E.2d at 1008. If the employee is

exposed to a risk to a greater degree than the general public, the injury is similarly considered to have arisen out of the employment. *O'Fallon School District No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413, 416, 729 N.E.2d 523, 525-26 (2000). If, however, the injury results from a hazard to which the employee would have been equally exposed apart from the employment, then the injury does not arise out of the employment. *Orsini*, 117 Ill. 2d at 45, 509 N.E.2d at 1008. "Thus, an injury is not compensable if it resulted from a risk personal to the employee rather than incidental to the employment. " *Orsini*, 117 Ill. 2d at 45, 509 N.E.2d at 1008-09.

¶ 16 The Commission's determination that an injury arose out of one's employment involves a question of fact, and its decision on the matter will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Rodin*, 316 Ill. App. 3d at 1227, 738 N.E.2d at 958. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539, 865 N.E.2d 342, 353 (2007).

¶ 17 In the instant case, the Commission concluded claimant's injuries resulted from exposure to an increased personal risk. We agree. Claimant chose to take a shortcut to her vehicle, negotiating a retaining wall to and from a rear parking area. Claimant did so instead of proceeding down the sidewalk provided by the employer for employees' ingress and egress. This was a voluntary decision that unnecessarily exposed claimant to a danger entirely separate from her employment responsibilities. Claimant's act of negotiating the retaining wall was a personal act, solely for her own convenience; an act outside any employment risk. Accordingly, we conclude claimant failed to prove that her injury arose out of her employment.

¶ 18 In reaching this conclusion, we find claimant's reliance on *Homerding v.*

Industrial Comm'n, 327 Ill. App. 3d 1050, 765 N.E.2d 1064 (2002), and *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App.3d 486, 812 N.E.2d 401 (2004) is misplaced. In *Homerding*, the employer required the claimant to use the rear parking lot where she slipped on ice (*Homerding,* 327 Ill. App. 3d at 1051-52, 765 N.E.2d at 1066) and in *Litchfield,* the claimant tripped on an uneven sidewalk while walking from the parking lot where it had been suggested that she park her car *(Litchfield,* 349 Ill. App. 3d at 487-88, 812 N.E.2d at 403). Neither case presented a situation where a claimant freely chose to use a "short-cut" while walking from the parking lot and was injured in doing so. Also, the harm to the claimant in *Homerding* and in *Litchfield* came about as a result of a defect in the employer's premises.

¶ 19 Here, the employer did not require that claimant use the rear parking area and did not suggest where claimant should park her car. Claimant chose to park her vehicle in the rear parking area. After claimant retrieved the bag from her car, she walked back across the rear parking area. She attempted to step up onto a retaining wall measuring between 12 and 18 inches high and fell backwards. Claimant did not fall as a result of a defect in the employer's premises but, instead, felt a pop in her knee when she attempted to step up causing her to fall backwards. Claimant assumed a risk which was strictly personal in nature, and totally unrelated either to her employment duties or the condition of the employer's premises.

¶ 20 In addition, *Bommarito v. Industrial Comm'n*, 82 Ill. 2d 191, 412 N.E.2d 548 (1980), is not controlling here. In *Bommarito*, the claimant's injuries fell under the Act because the employer required that the claimant enter through a rear door *and* "the claimant was forced to dodge traffic and debris in order to gain admission to her place of work." *Bommarito*, 82 Ill. 2d at 198, 412 N.E.2d at 551. The court specifically noted that the case did not involve a situation

where a claimant freely chose to use a certain route and was injured in doing so. *Bommarito*, 82 Ill. 2d at 196, 412 N.E.2d at 551.

¶ 21 Finally, we reject claimant's contention that her injury should be deemed to have arisen out of her employment because other employees often negotiated the same retaining wall while walking to and from the rear parking area, and because the employer was aware of this practice and did not advise claimant that the route was unacceptable. "Employer acquiescence alone cannot convert a personal risk into an employment risk." *Orsini*, 117 Ill.2d at 47, 509 N.E.2d at 1009. Accordingly, Illinois courts have consistently held that "where the injury results from a personal risk, as opposed to a risk inherent in the claimant's work or workplace, such injuries are not compensable." *Orsini*, 117 Ill. 2d at 47, 509 N.E.2d at 1009. Claimant failed to prove that she was required to be in the place where the accident occurred, or that she was injured in a place controlled by her employer or while performing tasks that were mandated by her job. Based on the foregoing evidence, we conclude that claimant failed to prove that her injury arose out of her employment.

¶ 22 Claimant attempts to distinguish *Dodson v. Industrial Comm'n*, 308 Ill. App. 3d 572, 720 N.E.2d 275 (1999), relied on by the Commission, from the instant case. In *Dodson*, the claimant, at the end of her work day, left a concrete sidewalk and walked across a grassy slope to reach her car because it was raining. *Dodson*, 308 Ill. App. 3d at 573, 720 N.E.2d at 277. The claimant slipped and fell backwards, breaking her ankle. *Dodson*, 308 Ill. App. 3d at 573, 720 N.E.2d at 277. This court found the Commission's decision finding that the claimant voluntarily exposed herself to an unnecessary personal risk only for her own convenience was not against the manifest weight of the evidence. *Dodson*, 308 Ill. App. 3d at 577, 720 N.E.2d at 279.

¶ 23 Claimant contends that the claimant in *Dodson* "was not furthering the employer's interest" and walked on more "dangerous and unsafe" grass. To the extent that the facts in this case are distinguishable, the differences are of no consequence.

¶ 24 "To be sure, employees are free to choose any safe route." *Dodson,* 308 Ill. App. 3d 572, 577, 720 N.E.2d 275, 279 (1999). However, where the employee ventures from a safe sidewalk provided by the employer and instead attempts to negotiate a 12-18 inch retaining wall as part of her route, we cannot say the Commission's decision finding claimant voluntarily exposed herself to an unnecessary personal risk only for her own convenience is against the manifest weight of the evidence.

¶ 25 III. RECOMMENDATION

¶ 26 For the reasons stated, we affirm the circuit court of Rock Island County confirming the Commission's decision.

¶ 27 Affirmed.