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2013 IL App (5th) 120003WC-U

Order filed: May 29, 2013

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CARLETTA RHODES,	)	Appeal from the Circuit Court
	)	of the 3rd Judicial Circuit,
Appellee,	)	Madison County, Illinois.
	)	
v.	)	Appeal No. 5-12-0003WC
	)	Circuit No. 10-MR-211
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (Beverly Farms Foundation, Appellant).	)	Honorable Clarence W. Harrison II, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's finding that the claimant's injuries did not arise out of and in the course of her employment was against the manifest weight of the evidence.

¶ 2 The claimant, Carletta Rhodes, 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 an injury to her back and lower extremities which she allegedly sustained while working for the

respondent, Beverly Farms Foundation (employer). The claimant alleged that she was injured in a fall at work on August 19, 2009. After conducting a hearing, an arbitrator found that the claimant established that she sustained injuries arising out of and in the course of her employment on August 19, 2009. The arbitrator awarded temporary total disability (TTD) benefits for a period of 11 2/7 weeks from October 6, 2009, until December 23, 2009. The arbitrator also awarded medical expenses totaling $314,874.96.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission unanimously determined that the claimant had failed to prove that she sustained accidental injuries arising out of and in the course of her employment. The Commission reversed the decision of the arbitrator and denied the claimant's compensation claim.

¶ 4 The claimant sought judicial review of the Commission's decision in the circuit court of Madison County, which reversed the decision of the Commission and reinstated the arbitrator's decision. This appeal followed.

¶ 5 The only issue on appeal is whether the Commission's finding that the claimant failed to establish that her injuries arose out of and in the course of her employment was against the manifest weight of the evidence.

¶ 6 FACTS

¶ 7 The claimant, a 44-year-old caregiver, was employed by Beverly Farms, a foundation that operated assisted care facilities for disabled and elderly clients. The employer maintained a residential facility known as Hardin Apartments where the claimant had been employed for approximately three years. The claimant's duties as a caregiver included assisting residential

clients of the employer who lived at its Hardin Apartment facility. She assisted generally with their daily living activities, such as helping them cook and bathe themselves.

¶ 8 On August 19, 2009, the claimant finished working a double shift and clocked out at 10:02 p.m. She left the building accompanied by her supervisor, Kathy Terry. Terry was still on the clock but was accompanying the claimant to her car so that she could retrieve a pack of cigarettes that she had left in the claimant's car. While walking to her car, the claimant missed her step on or near a curb or depression at the edge of the parking lot and seriously injured her thoracic spine.

¶ 9 The claimant testified that, at the time she fell, she was not carrying anything for work. She testified that she did not see the curb due to inadequate lighting. She testified that, although it was dark, there were lights at each end of the building which partially illuminated the parking lot. She testified, however, that she was toward the middle of the building when she fell, and the area was not nearly as well lit as the corners of the building. Regarding what she saw before she fell, the claimant testified that she was looking for the curb but could not see it. The claimant testified: "I missed the curb and fell off the curb, it was dark." When asked why she missed the curb, the claimant testified, "It was dark and I didn't see it." When asked if she was paying attention to where she was walking, she testified, "Yeah, I didn't want to miss it but I didn't see it."

¶ 10 Kathy Terry testified that she was the claimant's supervisor and, on the date of the incident, she accompanied the claimant to her car. She testified that she was familiar with the layout of the building and the parking lot. Terry testified that she saw the claimant fall at a point where there was a "dip" or "like a curb." There were no defects in the curb. Terry further

testified that there was sufficient light for her to see the sidewalk. On cross-examination, Terry testified that it was "nighttime and dark" when the claimant fell.

¶ 11 The employer submitted into evidence several photographs of the area where the claimant fell. Those photographs were not in the record on appeal.

¶ 12 The unrebutted testimony of the claimant established that the parking lot was adjacent to the Hardin Apartment building and that both the building and the parking lot were under the control of the employer. The parking lot was for the exclusive use of the residents, their guests, and the employees, who were specifically instructed by the employer to park in the lot.

¶ 13 After the claimant fell, she was able to drive herself home. She was subsequently diagnosed with spinal compression which aggravated an asymptomatic preexisting condition. The claimant's treating physician opined that, as a result of the fall, the claimant was in need of multi-level decompression and fusion surgery of the thoracic spine. The employer's Section 12 examining physician issued a report stating that it was "highly likely that [claimant's] work exposure did aggravate her preexisting condition." Medical expenses of $313,874.96 were entered into evidence.

¶ 14 The arbitrator concluded that the claimant proved that she sustained an accidental injury arising out of and in the course of her employment. In support of this conclusion, the arbitrator found that the claimant credibly testified that it was dark where she fell and the darkness contributed to the claimant's inability to accurately perceive the curb. The arbitrator noted that the employer's witness, Kathy Terry, was equivocal about the amount of lighting. The arbitrator noted that, normally, stepping from a curb is not a risk peculiar to employment; however, in this case, the darkness and inadequate lighting constituted an increased risk.

¶ 15 The employer appealed the arbitrator's decision to the Commission, which reversed the decision of the arbitrator. The Commission held that the claimant failed to prove that she sustained accidental injuries arising out of and in the course of her employment and denied her claim. The Commission focused on Terry's testimony regarding the sufficiency of lighting in the area where the claimant fell. The Commission noted Terry's testimony that, while it was dark when the claimant fell, there was sufficient light coming from the windows of the apartments and the corners of the building. The Commission commented without analysis that the general public was equally exposed to the same risk. The Commission denied the claim.

¶ 16 The claimant sought judicial review of the Commission's decision in the circuit court of Madison County, which found that the Commission's ruling was against the manifest weight of the evidence. The court observed that most material facts were undisputed: the claimant fell at night while walking between the building and the parking lot which was owned and controlled by the employer. The claimant was instructed to park in the lot. The claimant was with her supervisor who was still on duty. There were large lights mounted on the corners of the building, but no lights were shining directly on the area where the claimant fell. There were small lights over the doors of the apartments which illuminated those doors and the sidewalks leading to the doors, but there was no light on the middle area where the claimant fell. The court also found that there was no support in the record for the Commission's statement that "the [claimant's] testimony as to the lack of illumination of the area was rebutted by the testimony of Ms. Terry that the lights in front of each apartment provided adequate illumination to the sidewalk." The court observed that Terry never testified that the lights from the apartment doors were adequate to light the area where the claimant fell. Rather, Terry's testimony was that it was dark when the

claimant fell and the adequacy of the light "depends on where we [were] coming from." The court also noted Terry's testimony that "it's like each end of the building has a light, but not in the middle."

¶ 17 The circuit court held that the Commission's determination that the claimant was exposed to risk equal to that of the general public was also against the manifest weight of the evidence. The court noted that the claimant fell while walking in a dark parking lot at night with her supervisor after working a double shift, a risk to which the general public is not exposed. The court observed that falls on employers' parking lots due to hazardous conditions have been uniformly held to be compensable under the Act. See *USF Holland, Inc. v. Industrial Comm'n*, 357 Ill. App. 3d 798, 802 (2005) (and cases cited therein). The circuit court found that all the evidence, including Terry's testimony, supported the arbitrator's conclusion that the inadequate light where the claimant fell caused or contributed to her fall since she could not see the curb. The court found that the Commission's conclusion to the contrary was not supported by any evidence in the record, making the Commission's determination that the claimant had failed to establish injuries arising out of and in the course of her employment against the manifest weight of the evidence. This employer brought this appeal.

¶ 18 ANALYSIS

¶ 19 In a workers' compensation case, the claimant has the burden of establishing by a preponderance of the evidence that her injury arose out of and in the course of her employment. *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App. 3d 486, 489 (2004). The determination of whether an injury arose out of and in the course of a claimant's employment is a question of fact for the Commission to resolve, and its finding in that regard will not be set aside

on review unless it is against the manifest weight of the evidence. *Id.* For a finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Although a reviewing court will be reluctant to conclude that a factual determination of the Commission is against the manifest weight of the evidence, we will not hesitate to do so when the clearly evident, plain, and undisputable weight of the evidence compels an opposite conclusion. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10; *Litchfield Healthcare Center*, 349 Ill. App. 3d at 491.

¶ 20 A claimant's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (West 2008). 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 (1989). "In the course of the employment" refers to the time, place, and circumstances under which the claimant is injured. *Litchfield Healthcare Center*, 349 Ill. App. 3d at 490. Injuries sustained on an employer's premises while the claimant is working, or within a reasonable time before or after work, are generally deemed to have been received in the course of employment. *Id.* In this case, the employer concedes in its brief that the claimant's injuries, sustained while walking from the employer's building to the employee-designated parking lot, were sustained in the course of her employment. Its argument addresses the "arising out of" component.

¶ 21 A claimant's injuries "arise out of" his or her employment when the origin or cause of the injury can be traced to a risk "connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Caterpillar Tractor Co.*

v. Industrial Comm'n, 129 Ill. 2d 52, 58 (1989). In addition, an injury is said to "arise out of" the claimant's employment if the claimant was exposed to a risk of harm beyond that to which the general public is exposed. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548 (1991). There are three categories of risk to which an employee may be exposed: (1) risks distinctly associated with her employment; (2) personal risks; and (3) neutral risks which have no particular employment or personal characteristics. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Generally, the risk of tripping or falling on a sidewalk or curb is a neutral risk with no particular link to the claimant's employment. *Id.* In such cases, the question of whether the claimant's injury arose out of her employment rests upon a factual determination of whether she was exposed to a neutral risk to a degree greater than the general public. *Id*. Here the Commission found that the claimant was not exposed to risk greater than the general public. We find, as did the trial court, that the Commission's finding was against the manifest weight of the evidence.

¶ 22 In order to properly determine whether the claimant was exposed to a risk greater than the general public, it is necessary to determine whether there was a risk. Here, the claimant maintained that her route from the building to the parking lot was insufficiently lit for her to see where the curb met the parking lot. Because she could not see due to inadequate lighting, she was unable to see the curb and thus fell or tripped over it. Thus, she maintains, her injury was caused by the lack of adequate light. The Commission found that there was sufficient light on the curb and, thus, the claimant's injuries were not causally related to the lack of sufficient light for her to see. The Commission based its finding on the testimony of Kathy Terry that the lights over the apartment doors on the Hardin building provided sufficient light for the claimant to see

the curb. However, as the trial court observed from the record, Terry did not testify that the light coming from the building was sufficient for the claimant to see the curb. Rather, she testified only that it was dark where the claimant fell, that there was some light coming from the building, and that at "each end of the building has a light, but not in the middle." Both the claimant and Terry testified that the claimant fell at a point in the middle of the building. The Commission's determination that there was sufficient light for the claimant to walk from the Hardin building to her car without a heightened risk of injury was against the manifest weight of the evidence.

¶ 23 Having found that the claimant's injuries were causally related due to the hazard resulting from an inadequately illuminated parking lot, we must also determine whether the risks incidental to walking in a dark parking lot at night were greater than those to which the general public would be exposed. We find that the claimant was exposed to a risk greater than the general public, and the Commission's finding to the contrary was against the manifest weight of the evidence. We note that the claimant was instructed to use that parking lot by the employer. *Homerding v. Industrial Comm'n*, 327 Ill. App. 3d 1050 (2002). Even if the public is permitted to use the same parking lot as an employee, where the employee is instructed to use a particular parking lot, the employer has chosen the route the employee must use to get to her car from the workplace. *Homerding*, 327 Ill. App. 3d at 1057 (Hoffman, J., specially concurring). Since the employer chose the route traveled by the claimant to her car, she was exposed to a risk greater than that to which the general public would be exposed. Moreover, the defect to which the claimant was exposed, inadequate lighting, was one which posed a danger only to a person attempting to walk between the Hardin building and the parking lot at night. There is no evidence in the record to suggest that the general public would traverse this same route at night.

Thus, the Commission's finding that the claimant was subject to a risk no greater than the general public is not supported by the manifest weight of the evidence.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, we affirm the judgment of the Madison County circuit court reversing the decision and reinstating the award of the arbitrator and that the matter be remanded to the Commission.

¶ 26 Affirmed and remanded.