2016 IL App (4th) 151003WC-U

NO. 4-15-1003WC

FILED
September 27, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MARLA JIMERSON, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (St. John's Hospital, Appellees).	)	Appeal from Circuit Court of Sangamon County No. 14MR1290 Honorable Leslie J. Graves, 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 did not arise out of and in the course of her employment was not against the manifest weight of the evidence.

¶ 2 Claimant, Marla Jimerson, filed an application for adjustment of claim seeking benefits from her employer, St. John's Hospital, pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2012)), for injuries sustained to her knee, leg, neck, and back after being struck by a co-employee's vehicle while crossing a public street. Following a February 2014 hearing, the arbitrator awarded claimant benefits under the Act, finding that her injuries arose out of and in the course of her employment and were causally connected to a February 2013 work accident. On review, the Illinois Workers' Compensation Commission (Commission) reversed the arbitrator's decision, finding that claimant's injuries did not arise out

of and in the course of her employment. On judicial review, the circuit court confirmed the Commission's decision.

¶ 3 On appeal, claimant challenges the Commission's finding that she failed to prove an accident arising out of and in the course of her employment. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The following evidence relevant to the disposition of this appeal was elicited at the February 14, 2014, arbitration hearing.

¶ 6 Claimant worked for the employer at its hospital in Springfield as a part-time kitchen cook. She typically worked on Wednesdays and every other weekend, but had recently picked up a Thursday shift as well. Claimant always parked her car in the employee parking lot located on the east side of Ninth Street, a public street running between the hospital and the parking lot. Claimant testified she had been instructed by her employer to park in the employee parking lot and had been provided with a parking badge to keep in her car.

¶ 7 According to testimony, the hospital is located directly to the west of Ninth Street and the employee parking lot is located directly to the east of Ninth Street. Ninth Street consists of five lanes including two northbound lanes, two southbound lanes, and a middle turn lane. The employee parking lot is separated into two lots by Mason Street, which runs east and west and ends at Ninth Street. There is a stop sign at the intersection of Mason Street and Ninth Street which regulates traffic on Mason Street. The main employee entrance for the hospital faces Ninth Street and includes a secured gate.

¶ 8 Claimant testified that she worked at the hospital until 8 p.m. on February 27, 2013. After clocking out, she exited the hospital through the main employee entrance with two coworkers. She walked into Ninth Street but paused in the middle turn lane to allow two

northbound cars to pass. Her coworkers did not wait and crossed the street in front of the oncoming cars. According to claimant, "once [the cars] passed [her] *** [she] started to continue to cross the street and a lady, an employee came out of the employee parking lot onto Mason and came onto Ninth Street and hit [claimant] with her car." According to claimant, the vehicle that struck her exited the employee parking lot, turned north onto Ninth Street and struck her a few feet away from the employee parking lot.

¶ 9 Claimant further testified that the area of Ninth Street where she crossed the street did not contain a marked crosswalk. She acknowledged marked crosswalks were present at the intersections of Madison Street and Ninth Street as well as Carpenter Street and Ninth Street, but she testified she would have had to walk a block in either direction to get to one of the marked crosswalks. According to claimant, "pretty much anybody who parks [in the employee parking lot] goes across Ninth Street into the employee gate" as she did on the night of the accident.

¶ 10 Following the accident, claimant was taken by ambulance to the hospital's emergency department where she was given pain medication and advised to follow up with her primary care physician. Thereafter, claimant underwent therapy for pain in her neck, low back, right knee, right hip, and left shoulder. At the time of arbitration, claimant continued to have pain only in her low back.

¶ 11 On April 8, 2014, the arbitrator issued his decision and awarded claimant benefits under the Act. On October 23, 2014, the Commission reversed the arbitrator's decision, finding claimant failed to prove her injuries arose out of and in the course of her employment. Specifically, the Commission found "that crossing a public street twice a day is not a special risk or hazard to which [claimant] was exposed to a greater degree than the general public and that the facts of this case and applicable law do not support a finding that her injuries are

compensable." On October 27, 2015, the circuit court confirmed the Commission's decision.

¶ 12 II. ANALYSIS

¶ 13 On appeal, claimant challenges the Commission's finding that she failed to prove an accident arising out of and in the course of her employment.

¶ 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). "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that [s]he has suffered a disabling injury which arose out of and in the course of h[er] employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). An injury occurs "in the course of employment" when it "occur[s] within the time and space boundaries of the employment." *Id.* An injury "arises out of" employment when "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.*

¶ 15 Our supreme court has consistently held that, subject to two exceptions, injuries sustained by an employee off of the employer's premises are not compensable under the Act. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483-84, 546 N.E.2d 603, 605 (1989). The two exceptions to this rule include (1) off-premises injuries sustained by an employee when his presence at the site of the accident was required in the performance of his duties and he was subjected to a common risk to an extent greater than the general public and (2) injuries sustained by an employee in a parking lot provided by and under control of the employer. *Id.* at 484, 546 N.E.2d at 605-06.

¶ 16 Whether an injury arose out of and in the course of one's employment is generally

a question of fact and the Commission's determination will not be disturbed unless it is against the manifest weight of the evidence. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 19, 10 N.E.3d 403. "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009).

¶ 17 In this case, it is undisputed claimant's injuries were sustained on a public street rather than on the employer's premises or in a parking lot under the control of the employer. Thus, the relevant inquiry is whether claimant's presence on the public street at the time of the accident was required in the performance of her duties and, if so, whether she was subjected to a common risk to an extent greater than the general public. This is a factual question which we review under the manifest-weight-of-the-evidence standard.

¶ 18 Claimant argues that her injuries are compensable under the Act because she walked from the employee parking lot to the employee entrance at least twice per shift, 3 shifts per week, for a total of 24 times per month, thereby exposing her to the risk of being struck by a vehicle on a more frequent basis than members of the general public. We note that the employer disputes the frequency of claimant's traverses, asserting the evidence only suggests claimant crossed Ninth Street eight days per month resulting in 16 monthly crossings. Claimant also claims she faced an enhanced risk due to the "mass exodus" of her fellow employees at the time of the accident.

¶ 19 Claimant cites *Chmelik v. Vana*, 31 Ill. 2d 272, 201 N.E.2d 434 (1964), and *Bommarito v. Industrial Comm'n*, 82 Ill. 2d 191, 412 N.E.2d 548 (1980), and asserts the Commission erred in its application of these decisions in the instant case. We disagree with

claimant and find the Commission did not err in its analysis.

¶ 20 In *Chmelik*, the claimant was walking to his car at the end of his shift when he was struck by a vehicle driven by a co-employee in an employee parking lot furnished and maintained by his employer. *Chmelik*, 31 Ill. 2d at 274, 279, 201 N.E.2d at 436, 439. The supreme court found the claimant's injuries compensable under the Act, concluding that "[t]he regular and continuous use of the parking lot by employees, most particularly at quitting time when there is a mass and speedy exodus of the vehicles on the lot, would result in a degree of exposure to the common risk beyond that to which the general public would be subjected." *Id*. at 280, 201 N.E.2d at 439. In this case, however, claimant was not injured in a parking lot furnished and maintained by her employer. Instead, she was injured on a public street while on her way to the employee parking lot. Further, unlike in *Chmelik*, there was no evidence here of a "mass and speedy exodus" of vehicles resulting in an increased risk as compared to the general public.

¶ 21 In *Bommarito*, the claimant was walking through an alleyway on her way to work, when she stepped in a hole and fell. *Bommarito*, 82 Ill. 2d at 193, 412 N.E.2d at 549. The supreme court concluded that although the location of the accident was not on the employer's premises, the claimant's injuries were compensable under the Act because the accident occurred within eight feet of the only entrance the employees were allowed to use. *Id*. at 196, 412 N.E.2d at 550. Specifically, the court found as follow:

> "This case does not present a situation where a claimant freely chooses to use a certain route and is injured in doing so. [Citation.] Instead the claimant was directed to enter through one door for the convenience of the [employer] and, considering the

> hazardous and congested condition of the alley, to the substantial detriment of the employees. [Citation]. We think the special risks or hazards encountered by the claimant, as a result of the [employer's] order to enter through the rear door only, must be deemed to arise out of her employment. Moreover, the claimant's obedience to that order operates to place the claimant's consequent injuries within the course of her employment. If she had not obeyed the order, she could not have gained admittance to her place of employment." *Id*. at 196-97, 412 N.E.2d at 551.

¶ 22 Unlike in *Bommarito*, the accident here did not occur within a few feet of the employee entrance. Rather, claimant had exited the hospital and already traversed two lanes of traffic and a turning lane when she was struck by the vehicle in the northbound lanes of Ninth Street. Further, the evidence shows that, unlike in *Bommarito*, claimant could have chosen among several different paths to reach her destination. For example, claimant could have walked north or south and crossed Ninth Street at marked crosswalks located at Madison Street or Carpenter Street. Instead, claimant chose to cross Ninth Street in an unmarked area of the street for her convenience because the employee entrance was located directly across from the parking lot. In addition, unlike in *Bommarito*, claimant failed to establish a defect or other hazardous condition which resulted in her injuries.

¶ 23 We further reject claimant's contention that the Commission erred by considering claimant's ability to access the employee parking lot from several directions, and we find the cases she cites in support of such a proposition are either distinguishable or inapplicable. For example, in *Gray Hill, Inc. v. Industrial Comm'n*, 145 Ill. App. 3d 371, 373, 495 N.E.2d 1030,

1032 (1986), the Commission found a compensable accident where the claimant exited the employer's building through the doorway she had been instructed to use and, while walking on a sidewalk toward the employee parking lot, she slipped on a patch of ice. *Id*. at 375, 495 N.E.2d at 1034. In that case, the Commission determined that particular doorway was the required access for employees, and that, coupled with "the flurry of exiting employees, combined with the icy sidewalk conditions, created a risk to which claimant was more susceptible than the general public." *Id*. On appeal, the court concluded the Commission's finding was not against the manifest weight of the evidence. *Id*.

¶ 24 Contrary to claimant's contention, *Gray Hill* does not support her position. In this case, claimant was not required by her employer to cross Ninth Street where she did. In addition, claimant was not faced with a similarly hazardous condition as in *Gray Hill*. Here, the Commission found "that crossing a public street twice a day is not a special risk or hazard to which [claimant] was exposed to a greater degree than the general public." We agree with the Commission's finding and conclude it was not against the manifest weight of the evidence.

¶ 25 The other cases cited by claimant are inapplicable as they involve injuries sustained as a result of defects on the respective employer's properties. See *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App. 3d 486, 488, 812 N.E.2d 401, 403 (2004) (the claimant tripped on a defect in the employer's sidewalk while walking from the parking lot to the employer's building); *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 5, 10 N.E.2d 403 (the claimant fell after her heel became caught in a defect on the employer's stairs); *Hiram Walker & Sons, Inc. v. Industrial Comm'n*, 41 Ill. 2d 429, 430, 244 N.E.2d 179, 180 (1968) (the claimant slipped on ice and fell in the employer's parking lot); *De Hoyos v. Industrial Comm'n*, 26 Ill.2d 110, 112, 185 N.E.2d 885, 886 (1962) (the claimant

slipped and fell on ice in a parking lot provided by the employer for its employees).

¶ 26 We agree with the employer that the facts of this case more closely resemble those in *Osborn v. Industrial Comm'n*, 50 Ill. 2d 150, 277 N.E.2d 833 (1971). In *Osborn*, the employer owned a parking lot located across the street from its factory. *Id*. at 151, 277 N.E.2d at 833. At the conclusion of her shift, the claimant left the factory and was crossing the public street en route to the employee parking lot when she was struck by an automobile driven by a coworker. *Id*. at 151, 277 N.E.2d at 833-34. The supreme court found the accident did not arise out of and in the course of the claimant's employment because "the street where the injuries occurred was not under the control of the employer, nor was the claimant acting at the direction of her employer when she crossed the street, or for his benefit or accommodation." *Id*. at 151-52, 277 N.E.2d at 834. The supreme court reached the same result in *Hess v. Industrial Comm'n*, 79 Ill. 2d 240, 402 N.E.2d 620 (1980). In that case, the employer's plant and the employee parking lot were separated by a public street. *Id*. at 241, 402 N.E.2d at 621. After parking his car in the employee parking lot, the claimant was walking across the public street in a designated crosswalk when he was struck by a vehicle. *Id*. The court declined to find a compensable accident, even though the claimant was struck while walking in a designated crosswalk which other employees also used, because there was no evidence the claimant was acting under the employer's direction to use the crosswalk or that the crosswalk was under the employer's control, nor was there any evidence that the crosswalk was for the accommodation of claimant or other employees. *Id*. at 242, 402 N.E.2d at 621.

¶ 27 Here, as in *Hess* and *Osborn*, claimant was crossing a public street at the conclusion of her workday en route to the employee parking lot when she was struck by a vehicle. The employer did not direct her to cross the street in the location that she chose.

Rather, claimant chose to cross Ninth Street at that specific location.

¶ 28 Based on our review of the relevant facts and authority, we conclude that claimant's presence on the public street at the time and in the location of the accident was not required in the performance of her duties for the employer, nor was she exposed to a common risk to a greater extent than the general public. See *Illinois Bell*, 131 Ill. 2d at 484, 546 N.E.2d at 605-06. Accordingly, we conclude the Commission's finding that claimant's injuries did not arise out of and in the course of her employment was not against the manifest weight of the evidence.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision.

¶ 31 Affirmed.