2017 IL App (1st) 161859WC
No. 1-16-1859WC
Order filed July 28, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JAMES KENAGA, Plaintiff-Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION and THE VILLAGE OF HOFFMAN ESTATES, Defendants-Appellees.	)))))))))))	Appeal from the Circuit Court of Cook County No. 15-L-50783 Honorable Carl Anthony Walker, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Harris, and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission erred in failing to analyze case using the traveling-employee doctrine; undisputed facts showed claimant was a traveling employee and that his injuries occurred while engaging in reasonable and foreseeable conduct.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, James Kenaga, appeals an order of the circuit court of Cook County confirming a decision of the Illinois Workers' Compensation Commission (Commission)

denying him benefits under the provisions of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2012)). For the reasons that follow, we reverse.

¶ 4 II. BACKGROUND

¶ 5 The relevant facts in this case are largely undisputed. Claimant worked as a patrol officer for respondent for nearly 24 years. As a patrol officer, claimant's duties include enforcing traffic laws and responding to calls. Sometimes, he is required to appear in court and testify regarding such matters. On November 15, 2013, claimant had the day off, but he was required to testify in a case at the Rolling Meadows courthouse (where he usually testifies). Court appearances are mandatory, and claimant is required to wear his uniform to court. On his off days, claimant uses his personal vehicle to get to court, and he is not reimbursed for mileage. He is not paid for time spent travelling to and from the courthouse on his off days, but he is compensated for time actually spent in court.

¶ 6 On November 15, 2013, claimant drove to the Rolling Meadows courthouse and parked in a municipal garage. The garage had two levels of parking reserved for court personnel, attorneys, and law enforcement officers. Claimant parked in the reserved area. He testified and subsequently returned to the garage. Claimant was descending a flight of stairs into the garage when he missed a step and grabbed a handrail with his right arm to keep from falling. He immediately felt pain in his right arm. Claimant testified that the stairs were open to the general public and were not defective. He sought medical care on November 18, 2013, and it was ultimately determined that claimant had suffered a "complete tear of the distal biceps." Surgery was performed on November 27, 2013, followed by physical therapy and light duty. Claimant was returned to full duty on March 10, 2014. Claimant testified that his right arm tires more quickly and that he uses ibuprofen to manage pain.

¶ 7 The arbitrator concluded that claimant was a traveling employee. She found that claimant "falls into the 'traveling employee' category, both in terms of his ordinary duties and the specific tasks he was performing for [r]espondent at the time of his accident." She noted that the evidence that claimant's job involves patrolling the streets was uncontradicted, as was the evidence that he was sometimes required to make special trips to the courthouse. He was making such a trip to the courthouse when his injury occurred. Traveling employees are considered to be acting in the course of employment from the time they leave home until they return. As claimant had not yet returned home following his assigned task, the arbitrator concluded that he remained in the course of his employment. Further, the arbitrator observed, regarding traveling employees, injuries arise out of employment if a claimant was engaging in conduct that was reasonable and foreseeable by their employer at the time of their injury. At the time claimant was injured, he was "using stairs in order to gain access to his car and return home after making a mandatory court appearance." The arbitrator found that such conduct was reasonable and foreseeable to respondent. The arbitrator emphasized that there was no evidence that claimant was engaging in any conduct that was "out of the ordinary when he lost his footing on the stairs." The arbitrator expressly relied on *Kertis v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120252WC, in support of her decision.

¶ 8 The Commission reversed. Curiously, its opinion on review does not mention a traveling-employee theory at all. Instead, the Commission applied a conventional theory. It first found that a fall down stairs results from a neutral risk. Typically, such falls do not arise out of employment, the Commission explained. Furthermore, claimant admitted that the stairs were not defective, and he only traversed them twice on the day he was injured, which, according to the Commission, was no more than the general public would use them. It then concluded that

claimant had failed to prove his injury arose out of employment and denied claimant's claim on that basis. The circuit court confirmed, applying an analysis largely identical to that of the Commission. This appeal followed.

¶ 9 III. ANALYSIS

¶ 10 We conclude that the Commission erred as a matter of law in not applying a traveling-employee analysis. Usually, whether an injury occurred in the course of and arose out of employment presents a question of fact; however, where, as here, relevant facts are undisputed and subject to but one inference, review is *de novo*. *Kertis*, 2013 IL App (2d) 120252WC, ¶ 13.

¶ 11 Generally, accidents occurring when an employee is traveling to or from work do not arise out of or occur in the course of employment. *Venture Newberg-Perini v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728, ¶ 16. For "traveling employees," an exception exists. *Id*. at ¶ 17. An employee is considered a "traveling employee" if his or her job duties require travel away from the employer's premises. *Id*. For a traveling employee, any act the employee is directed to perform by the employer, any act the employee has a common-law duty to perform, and any act that the employee can reasonably be expected to perform are all compensable. *Id*. ¶ 18. That is, so long as an employee is engaging in conduct that is reasonable and foreseeable, any injury arises out of and occurs in the course of employment. *Robinson v. Industrial Comm'n*, 96 Ill. 2d 87, 92 (1983). Ordinary commuting is not encompassed within the doctrine. See *Pryor v. Illinois Workers' Compensation Comm'n*, 2015 IL App (2d) 130874WC, ¶ 22 ("An injury suffered by a traveling employee is compensable under the Act if the injury occurs while the employee is traveling for work, *i.e.*, during a work-related trip. However, the work-related trip at issue must be more than a regular commute from the employee's home to the employer's premises."). However, it is not necessary for an employee to "be a traveling salesman or

company representative who covers a large geographic area to be considered a traveling employee." *Kertis*, 2013 IL App (2d) 120252WC, ¶ 16. Rather, "any employee for whom travel is an essential element of his employment" is a traveling employee. *Id.*

¶ 12 The case of *Kertis*, 2013 IL App (2d) 120252WC, provides sound guidance to the resolution of this case. In *Kertis*, the claimant was the manager of two branches of his employer's bank. One was in Hoffman Estates; the other was in St. Charles. The claimant regularly travelled between the two branches to attend loan closings and other tasks. His travel schedule depended on the needs of his employer. He parked either on the street or in a municipal lot. One day, the claimant parked in a municipal lot in St. Charles. He was walking out of the lot when a car entered. He moved to avoid the car and stepped into a pothole, sustaining injuries in the process. The *Kertis* court found that the undisputed evidence established that claimant was a traveling employee and that the Commission had erred by not applying a traveling-employee analysis. *Id.* ¶¶ 18-19. It explained, "travel was clearly an essential element of the claimant's job, rendering him a traveling employee."

¶ 13 In this case, the undisputed facts establish that claimant qualified as a traveling employee at the time of the injury. At the time of the accident, he was traveling in furtherance of his employer's needs to a location other than his usual place of employment. *Morales v. Herrera*, 2016 IL App (1st) 153540, ¶ 36 ("An employee traveling to or from work is generally not within the scope of employment. *** An exception exists, however, where an employer causes its employee to travel away from a regular work place or where the employee's travel is partly for her employer's purposes, rather than for the purpose of conveying the employee to or from the regular workplace."). Hence, the Commission erred in failing to analyze this as a traveling-employee case.

¶ 14 Parenthetically, we reject respondent's reliance on *Venture-Newberg-Perini Stone & Webster v. Illinois Workers' Compensation Commission*, 2013 IL 115728, ¶ 24, in attempting to argue to the contrary, as the claimant in that case was not a regular employee of the respondent. We also reject respondent's reliance on *Allenbaugh v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150284WC. In that case, it was undisputed that claimant was traveling from his home to his regular place of duties when he was injured (though he was scheduled to continue on to another site for training later). We held that since claimant was going to his ordinary work place, he was engaged in nothing more than commuting, which is outside the scope of the traveling-employee doctrine. *Id.* ¶ 17. Here, claimant was not traveling to his usual workplace, so *Allenbaugh* is easily distinguishable.

¶ 15 The dispositive question becomes, then, whether claimant was injured while doing something that is reasonable and foreseeable to respondent. *Robinson*, 96 Ill. 2d at 92. Note that under the traveling-employee doctrine, the risk to which a claimant is exposed is not part of the inquiry. In *Kertis*, 2013 IL App (2d) 120252WC, ¶ 20, we stated, "Because we may resolve this appeal under the analysis applicable to traveling employees, we do not need to address the claimant's alternative argument that he was exposed to a neutral risk more frequently than members of the general public by virtue of his employment." In *U.S. Industries v. Industrial Comm'n*, 40 Ill. 2d 469, 473 (1968), our supreme court explained, "Deviations from the normal performance of duty which would not be viewed as reasonable under the rule that the injury 'must arise out of and in the course of' the employment when made by locally employed persons, might be quite reasonable for the employee whose duties take him to distant places and unknown areas." It added, "It is clear that injuries to employees whose duties require them to be elsewhere than in their home communities are not governed by the rules ordinarily applied to

others." *Id.* at 474. It then held, "Whether an injury to a traveling employee arises 'out of and in the course of' his employment and is therefore compensable is to be determined, as we indicated in *Ace Pest Control*, by the reasonableness of the conduct in which the employee is engaged at the time of injury." *Id.* That is, "[T]he result depends upon the reasonableness of the specific conduct and whether it might normally be anticipated or foreseen by the employer." *Id.* The rule remains the same today. See, *e.g.*, *Venture-Newberg-Perini Stone & Webster*, 2013 IL 115728, ¶ 54 ("As this court has explained, a traveling employee's injuries arose out of and in the course of his employment if he was engaged in reasonable conduct at the time of his injury and his employer might normally anticipate or foresee that conduct.").

¶ 16 Here, we have little trouble concluding that traversing a flight of stairs between the place where claimant was performing his work-related duties and the place designated for him to park his vehicle while performing those duties was both reasonable and foreseeable to respondent. See *Kertis*, 2013 IL App (2d) 120252WC, ¶ 19 ("It was both reasonable and foreseeable that the claimant would regularly park in a municipal parking lot close to the St. Charles office and walk to the office from that lot."). Respondent attempts to narrow this inquiry, citing claimant's testimony that he "tripped over [his] own feet." Respondent contends that while it may be reasonable for a claimant to injure himself when exposed to some defect, it was undisputed that the stairway in question was not defective. Thus, respondent continues, it was not reasonable for claimant to "simply lose [his] balance." Respondent also attempts to characterize this as a careless act by claimant, citing *Howel Tractor & Equipment Co. v. Industrial Comm'n*, 78 Ill. 2d 567 (1980). That case concerned a claimant who, at "about 2 a. m. in the morning and after admittedly having five drinks, *** set out on foot in an unsavory section of the town to reach his motel some three miles away without being certain which direction or how far it was." *Id.* at

574-75. That claimant was injured after he decided to walk down some train tracks in an attempt to find his motel and was struck by a train. *Id.* at 572. We fail to see how *Howell*, with such extreme facts, sheds any light on claimant's decision to walk down an ordinary flight of stairs. Moreover, even if claimant were in some way careless, respondent cites nothing that would convince us that such minor acts of carelessness are not foreseeable (indeed, this seems to us to be an attempt by respondent to inappropriately reintroduce some species of contributory negligence into worker's compensation law, which, of course, is premised on a no fault theory of recovery (*Reichling v. Touchette Regional Hospital, Inc.*, 2015 IL App (5th) 140412, ¶ 25)). In short, we do not find respondent's point persuasive.

¶ 17 IV. CONCLUSION

¶ 18 In light of the foregoing, the order of the circuit court of Cook County is reversed as is the decision of the Commission. We hold that the injury in this case arose out of and in the course of employment. This cause is remanded to the Commission for further proceedings to determine what benefits claimant is entitled to and any other proceedings, if any, which may be appropriate.

¶ 19 Reversed and remanded, with instructions.