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Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160531WC-U

NO. 4-16-0531WC

Order filed July 6, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

RICHARD D. THOMPSON,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Morgan County.
	)	
v.	)	No. 15-MR-112
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Christopher Reif,
(Triopia C.U.S.D. #27, Appellee).	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Hudson and Harris concurred in the judgment.
Justice Hoffman dissented. Presiding Justice Holdridge joined in the dissent.

ORDER

¶ 1 *Held*: The Commission's decision to deny the claimant benefits pursuant to the Illinois Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq* (West 2012)) was not against the manifest weight of the evidence.

¶ 2 The claimant, Richard D. Thompson, appeals the judgment of the circuit court of Morgan County which confirmed the decision of the Workers' Compensation

Commission (Commission) denying him benefits under the Illinois Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2012)), for an injury he incurred while employed by the employer, Triopia C.U.S.D. #27. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 FACTS

¶ 4 On June 5, 2014, the claimant filed an application for adjustment of claim with the Commission pursuant to the Act (820 ILCS 305/1 *et seq.* (West 2012)), alleging that a "permanent and serious" injury to his "right leg, foot" occurred on December 19, 2013, while he was "working with students in PE class." The application came before arbitrator Molly Dearing on December 10, 2014. Prior to taking testimony, and with the consent of both parties, Dearing admitted into evidence several exhibits, including medical records and medical bills offered into evidence by the claimant. On one of the medical records, "doing wall jumps" is listed as the cause of the claimant's injury to his right Achilles tendon; on another, "running, jumping and touching the wall" is listed; on still another, "[patient] reports that he hurt himself performing basketball drills."

¶ 5 Also offered by the claimant, and admitted into evidence without objection, was exhibit 8, which is a position description for the position of junior high school-senior high school teacher in the department of physical education with the employer. We note that although the exhibit includes general position description information, it is also intermixed—for reasons that are not clear from the record on appeal—with information specific to the claimant, such as the name of the institution where he got his bachelor's degree, his teacher certificate number, and the fact that he holds certificate endorsements

in PE, Safety & Drivers Education, Social Science, and History. Exhibit 8 includes a summary of the position, which states that the teacher will, *inter alia*, "establish effective rapport with pupils[,] motivate pupils to develop skills, attitudes and knowedge," and will "create a flexible subject matter program and a class environment favorable to learning and personal growth." The exhibit lists physical demands that "are representative of those that must be met by an employee to successfully perform the essential functions of this job," stating that "the employee is frequently required to stand, talk, hear, walk and sit," and "may occasionally push or lift up to 50 lb." In addition, the exhibit states that the employee will be "directly responsible for safety, well-being, or work output of other people."

¶ 6 The following relevant testimony was adduced during the hearing before Dearing. The claimant testified that he was in his eighth year serving as a physical education (PE) teacher for the employer. He testified that on the day he was injured, December 19, 2013, he began his first-hour PE class at 8:30 in the morning. He testified that after taking roll in the cafeteria, he and the students in the class went to the gymnasium, where the students went to the locker room to get dressed for class. The claimant testified that "as kids were leaving the locker room and gathering for class that day, kind of in the pre-warm-up phase[,] one young man ran and jumped and tried to touch high off the side wall." He testified that the other students thought "that was pretty cool," so he "told them that, you know, I can do that and I proceeded to do so."

¶ 7 When asked why he did what the student did, the claimant testified, "I – through teaching I like to challenge my kids, I want them to do the best they can do and I want to

be a role model that's active and competes and that's why I did what I did." When asked if one of his goals was to encourage the students to maintain physical fitness for life, the claimant testified that it was. He agreed that the goal was encouraged when the students saw someone "substantially older" than the students participate in physical activity. He testified that when he then "attempted to jump off the wall the second time," his foot hit the wall and he felt "a popping sensation." When asked why he attempted to jump against the wall a second time, the claimant testified, "because I was challenged to go a little bit higher and I wanted to prove to the kids that I could – you know, that I was active and that I could do things." Describing his injury in more detail, he testified, "when I hit the wall and tried to extend off the wall with my foot[,] I felt a popping sensation." He testified that he could not jump once that happened, and that instead he "basically just landed back on the ground." He felt pain in his right lower leg, and therefore "hobbled over and sat in the chair at that time and instructed some of the students to go get" the school principal, Mr. Dean.

¶ 8 When asked if it was "unusual" for him to participate "in such a manner with the students," the claimant testified, "I've always been a teacher that tried to lead by example in my classes and my coaching. I think it's beneficial and you can demonstrate activities in the correct manner and also show kids even at my age that being physically fit is a good thing." He continued, "yes, I do try and participate in many activities. Not every day but on occasion I will do different things." Immediately thereafter, he was asked, "Does that violate any rule or policy that the school has with respect to your educating pupils or students?" He answered, "No, I don't believe so." He then testified that he

believed it was also consistent with his job description. When asked what the wall he jumped against had on it, he testified that there was "padding for safety purposes" around the end of the gymnasium. He testified that he was the only person injured that day doing that activity.

¶ 9 Over objection, the claimant testified that based upon his experience as a PE teacher and his training, he did not think the activity was "inherently dangerous." Without elaboration, he testified that it was "[n]o more dangerous than a lot of activities we do on a daily basis." He agreed that "we have kids injured every so often in" PE class. Again over objection, the claimant testified that he subsequently told Mr. Dean that he needed to call his wife because he knew he "was injured pretty badly." He testified that Mr. Dean did not tell him at that time, or any subsequent time, that he shouldn't have been participating in the activity or that it violated school policies. He then testified extensively about his injury and recovery – issues that are not disputed and for the most part are not relevant to this appeal. With regard to whether he sought temporary total disability benefits, he testified that he did not, and that he received his full salary during the time he was gone from work, all but one day of which occurred during the school's regular holiday break. He was returned to full duty in early March of 2014. He testified about continuing soreness and pain and the inability to run the way he did before the injury. With regard to exhibit 8, the claimant testified that it was still his job description, as of the date of the hearing, and that the summary found in the exhibit accurately reflected his job. When asked, he agreed that he was "attempting to effectuate

good rapport" with students at the time he was injured. He subsequently testified that he was also "trying to motivate pupils to develop skills."

¶ 10 On cross-examination, the claimant clarified that when his injury occurred, it was during the "waiting period" for the remaining students to emerge from the locker room, at which time "the actual curriculum sets in for the day." He agreed that he had not instructed the waiting student to run up the wall, and that the activity was "not per [his] instruction." He agreed that the curriculum activity scheduled for the day was "mat ball" which he described as "a variation of kickball." He agreed that he might have described the activity in which he was injured as "Bo Jackson style running up a padded outfield wall," and that mat ball did not involve running up the padded wall. He testified that he set the curriculum for the students, and when asked, with regard to building rapport, if "there are other ways to build rapport outside of running up a padded wall," he testified, "Sure there would be." When asked if running up a padded wall was "a curriculum goal," the claimant testified, "I guess in that situation it wasn't part of that day's curriculum." He agreed that with regard to his testimony about sometimes demonstrating activities for the students, that the activities he would typically demonstrate "are part of the curriculum." He agreed that given the serious nature of his injury, it was not surprising that Mr. Dean would not be focused, at the time he came to assist the claimant, on whether the claimant had broken a school policy. With regard to his recovery, the claimant testified that he had not seen a doctor or physical therapist for the injury since March 2014, that he did not have any visits currently scheduled, and that he was not

taking any kind of pain medication for the injury. He testified that he was earning the same amount of money or more money than he did before the injury.

¶ 11 On re-direct examination, the claimant testified that in addition to a day's planned activity in his PE class, they would also "[u]sually do calisthenics and a wam-up activity." He agreed that he wouldn't list those as part of the day's curriculum. He agreed that he was injured during the regularly scheduled PE class period, in the place PE class was normally held, while he was the individual in charge of the class. He testified that usually there was a "lag time" between the taking of attendance and the time he could start "organized activities," and that sometimes during the lag time, "we do things just to keep them active." When asked if "the activity that [he] participated in that day was one of those activities that was transpiring to keep people active," the claimant testified, "Yeah, we were doing something to keep people active." When asked what other kinds of activities he would do to keep his students active, he testified, "[r]un laps, shoot baskets, throw a football around, things like that." On re-cross examination, the claimant was asked if he could "be a role model for physical fitness without running up a padded wall Bo Jackson style?" He testified, "[y]es." He also agreed he could be a good role model without challenging his students to compete with him in activities.

¶ 12 The next witness to testify on behalf of the claimant was school principal Adam Dean. Dean testified that he was the claimant's supervisor, and that as part of his job he was responsible for evaluating the work of the claimant. He testified that the claimant's job description played a role in the evaluation process because "the goals that are set forth in the job description are things" Dean would consider when evaluating the claimant. He

testified that he was not aware of any rules or violation of a policy of the employer by the claimant with the claimant's "physical involvement during this class period." He testified that he had observed the claimant in the "classroom environment" in the past, and had observed the claimant "participating in limited physical activities with the students in the past." When asked "whether or not those activities were unlike the activities that he participated in when he was injured," Dean testified, "Well, I mean, the things I can think of that I've seen him participate in is [*sic*] they're playing wiffle ball or something and he's pitching the wiffle ball, along those lines, jogging with the students warming up." He agreed that the claimant's job description had not changed since the date of the accident, and verified that exhibit 8 was the job description both at the time of the hearing and at the time of the accident.

¶ 13 When asked if he could "formulate an opinion," based upon his "position as principal and as an educator as to whether or not that activity was consistent with the mandates of the job summary that's contained in the job description," Dean testified, "Well, specifically in the summary I can see that, you know, his job is to build rapport with pupils, to motivate pupils[,] and I can see those things lining up with the activity he was performing and had performed." When asked if participating in the activity "was advancing the interest of the school," Dean testified, "[i]n some ways I can see that." He began to continue with "But," but was interrupted and asked to explain the "in some ways." Dean testified, "Building rapport. Like I said earlier, building rapport with pupils, motivating pupils, I can see those things." When asked to explain his "but," Dean testified, "but it was – it would not be an activity that I would recommend for him to do."

He testified that he had never discussed with the claimant what he would or wouldn't recommend, and agreed that the claimant was not disciplined for engaging in the activity. When again asked, he again testified that he wasn't "aware of any policies or procedures that would prohibit" the claimant from engaging in the activity.

¶ 14 On cross-examination, Dean testified that he'd never specifically pulled the claimant "aside and asked him not to run up a padded wall," and that he hadn't seen the claimant run up the wall, or encouraged him to run up the wall. When asked if he thought "running up a padded wall would be considered a dangerous activity," Dean testified, "[c]ould be." With regard to the activities he'd seen the claimant participate in with his students, Dean agreed he'd "typically" seen the claimant participate in activities that were "part of the curriculum for the day."

¶ 15 Following the hearing, on February 11, 2015, arbitrator Dearing issued her decision. Of relevance to this appeal, she found the claimant "*did not* sustain an accident that arose out of and in the course of employment," and ordered that because the claimant "failed to prove that his accident arose out of his employment, all benefits are denied." In the memorandum that accompanied her order, Dearing found, *inter alia*, that the claimant was 45 years old at the time of the accident, and she then described his testimony and the testimony of Dean in detail. With regard to her conclusions of law, Dearing found that the claimant's injury did not arise out of his employment because the injury "was resultant solely from actions personal to" the claimant. She wrote that she found it significant that the activity that caused the injury "was initiated by the students" rather than the claimant, which Dearing wrote "suggests that the activity was not incidental to

his employment." She also found it significant that the claimant "controls the curriculum of his classroom and he acknowledged that running up a wall 'Bo Jackson style' was not part of the daily curriculum for December 19, 2013." She pointed out that the class was "scheduled to play mat ball and there was no evidence presented to suggest that running up a wall was ever a part of [the claimant's PE] curriculum for his students."

¶ 16 Because the claimant was injured the second time he ran up the wall—which, Dearing noted, he did because he was challenged by the students to go higher—Dearing reasoned that "performing such a maneuver at the coaxing of the students is indicative of horseplay rather than a risk incident to his employment." She concluded that the claimant ran up the wall "for solely personal reasons," such as, for example, "to show off." Dearing acknowledged that the claimant testified that the activity in which he was injured served to build rapport with the students, challenge them, and provide them with a physical fitness role model, but concluded that because the claimant's injury "was resultant from an activity not performed at his instruction or at his initiation, and was outside of the curriculum," the claimant "exposed himself to a risk that was outside the exercise of any of his duties" with the employer. Accordingly, she concluded that the injury "was a personal risk not connected with or incidental to his employment duties," and "did not arise out of his employment." She therefore denied the claimant's claim.

¶ 17 On September 3, 2015, the Commission issued its decision and opinion on review. Therein, the Commission unanimously affirmed and adopted Dearing's decision, without modification. On September 22, 2015, the claimant sought, in the circuit court of Morgan County, judicial review of the Commission's decision and opinion. On June 22,

2016, the circuit court affirmed the decision of the Commission, ruling that "more than one inference may be drawn from the facts presented," and that the Commission's findings were not against the manifest weight of the evidence. This timely appeal followed.

¶ 18 ANALYSIS

¶ 19 We begin with our standard of review. The claimant contends we should adopt a *de novo* standard of review, because, according to the claimant, "the facts are undisputed and subject to only a single reasonable inference." That inference, according to the claimant, is that at the time of his injury, the claimant "was performing a task in the furtherance of the employer's interest or incidental thereto, as he was where he was supposed to be and doing what he is compensated by the school to do – *i.e.*, engaging his class in physical education and attempting to fulfill the requirements of the job description." The claimant contends "[t]here are simply no facts in the record which remove [the claimant] from furthering his employer's interest at the time of his injury." The employer, on the other hand, contends that we must employ the manifest weight of the evidence standard, because a dispute of fact does exist. Specifically, the employer notes that it disputes the claimant's "factual assertion" that jumping off the padded wall "falls within his job duties," and that the employer "further disputes [the claimant's] contention that his actions furthered his employer's interest." In the alternative, the employer contends that even if this court assumes, *arguendo*, that the facts are undisputed, more than one reasonable inference can be drawn from those facts. We agree

with the employer that regardless of whether we characterize the facts as disputed or undisputed, the manifest weight of the evidence standard is the proper standard of review.

¶ 20 "It is the province of the Commission to determine disputed facts and draw reasonable inferences from the evidence in workers' compensation cases," and we will not set aside the findings of the Commission unless they are contrary to the manifest weight of the evidence. *Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Com'n*, 2015 IL App (5th) 140445WC, ¶ 20 (quoting *Hiram Walker & Sons, Inc. v. Industrial Com'n*, 71 Ill. 2d 476, 479 (1978)). Thus, to the extent we are dealing in this case with disputed facts, we must employ the manifest weight of the evidence standard of review. Likewise, if the facts relating to an issue on appeal are undisputed, but nevertheless permit more than one reasonable inference, the determination of the issue presents a question of fact, and the conclusion of the Commission, as the finder of fact, "will not be disturbed on review unless it is against the manifest weight of the evidence." *Orsini v. Industrial Com'n*, 117 Ill. 2d 38, 44 (1987). That is, in part, because "[i]t is the province of the Commission to judge the credibility of witnesses, draw reasonable inferences from the testimony, and determine the weight to give the testimony." *Freeman United Coal Mining Co. v. Industrial Comm'n*, 286 Ill. App. 3d 1098, 1103 (1997). A reviewing court "will not discard permissible inferences drawn by the Commission based upon competent evidence merely because other inferences might be drawn by" the reviewing court. *Orsini*, 117 Ill. 2d at 44. "A finding of fact is contrary to the manifest weight of the evidence only where an opposite conclusion is clearly apparent." *Metropolitan Water Reclamation Dist. of Greater*

Chicago v. Illinois Workers' Compensation Com'n, 407 Ill. App. 3d 1010, 1013 (2011). A reviewing court considers "whether there is sufficient evidence in the record to support the Commission's finding, not whether [the reviewing court] might have reached the same conclusion." *Id*.

¶ 21 Accordingly, we must consider whether, in light of the relevant principles of law, more than one reasonable inference may be drawn from the evidence presented in this case. We turn to the relevant principles of law. To be compensable under the Act, a claimant's injury must be one "arising out of and in the course of the employment." 820 ILCS 305/2 (West 2012). In this appeal, the disputed issue is whether the claimant's injury "arose out of" his employment. A claimant's injury arises out of his or her employment if the origin of the injury "is in some risk connected with or incident to the employment, so that there is a causal connection between the employment and the accidental injury." *Saunders v. Industrial Com'n*, 189 Ill. 2d 623, 627 (2000). "A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling" the employee's duties. *Orsini v. Industrial Com'n*, 117 Ill. 2d 38, 45 (1987). The fact that an injury happened at the claimant's place of employment "does not automatically establish that the injury arose out of the claimant's employment." *Saunders*, 189 Ill. 2d at 628. This court has "recognized three general types of risks to which an employee may be exposed: (1) risks that are distinctly associated with the employment; (2) risks that are personal to the employee; and (3) neutral risks that do not have any particular employment or personal characteristics." *Metropolitan Water Reclamation Dist. of Greater Chicago v. Illinois Workers' Compensation Com'n*, 407 Ill.

App. 3d 1010, 1014 (2011). "[A]n 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. Moreover, "[t]he burden of establishing the necessary causal relationship between the injury and the employment rests with the claimant." *Saunders*, 189 Ill. 2d. at 628.

¶ 22 We conclude that in this case there is more than one reasonable inference that can be drawn from the evidence presented, which includes the testimony and documentary evidence described in detail above. We conclude that, at a minimum, two reasonable inferences can be drawn. The first reasonable inference is that at the time of his injury, the claimant was, as the Commission found, engaged in "horseplay" or "showing off" solely for personal reasons, and that therefore there was no causal connection between his employment and his accidental injury because the claimant was undertaking a non-compensable personal risk when injured. This inference is supported by the claimant's testimony that: (1) the injury occurred during the "pre-warmup phase" or "waiting period" for the remaining students to emerge from the locker room, before "the actual curriculum sets in for the day;" (2) he had not instructed the waiting student to run up the wall, the activity was "not per [his] instruction," and when he injured himself running up the wall the second time, he was acting in response to encouragement from the students to do better than he had done on his first attempt; (3) the curriculum activity scheduled for the day was "mat ball" which was "a variation of kickball" and which did not involve running up the padded wall; (4) there were other ways to build rapport outside of running up a padded wall; (5) running up the wall "wasn't part of that day's curriculum;" (6) activities that he would typically demonstrate for his students "are part of the

curriculum;" and (7) he could be a good role model, as required by his job description, without challenging his students to compete with him in activities.

¶ 23 The inference is also supported by Dean's testimony that: (1) although he had observed the claimant "participating in limited physical activities with the students in the past," the specific activities he had observed were "they're playing wiffle ball or something and he's pitching the wiffle ball, along those lines, jogging with the students warming up," rather than an activity such as running up a padded wall by himself to the encouragement of his students; (2) "in some ways" he could "see that" running up the wall "was advancing the interest of the school" because the claimant was "building rapport with pupils, motivating pupils," but that running up the wall "would not be an activity" that Dean "would recommend for him to do;" (3) running up the wall "could" be considered a dangerous activity; and (4) with regard to the activities he'd seen the claimant participate in with his students, he'd "typically" seen the claimant participate in activities that were "part of the curriculum for the day." The inference is also supported by the fact that the claimant's job description, exhibit 8, states that: (1) "the employee is frequently required to stand, talk, hear, walk and sit," and "may occasionally push or lift up to 50 lb," but does not anywhere state that the employee must engage in physical activities such as running up a wall; and (2) the employee will be "directly responsible for safety, well-being, or work output of other people," and that because of these two statements, no reasonable employee could have believed that in running up the wall he was doing something his job description required, or even permitted, him to do. Finally, the inference is supported by the fact that one of the medical records the claimant offered

into evidence notes that "[patient] reports that he hurt himself performing basketball drills," which could lead one to conclude that the claimant knew that the activity he was actually performing when injured—running up the wall—was not within his job duties and that he therefore intentiontially reported that his injury occurred in a different way, one that would have been within his duties.

¶ 24 The second reasonable inference is that at the time of his injury, the claimant was, as he suggests, engaging his class in PE and attempting to fulfill the requirements of the job description. This inference is supported by the claimant's testimony that: (1) he ran up the wall because "through teaching I like to challenge my kids, I want them to do the best they can do and I want to be a role model that's active and competes and that's why I did what I did;" (2) one of his goals was to encourage the students to maintain physical fitness for life and that goal was encouraged when the students saw someone "substantially older" than the students participate in physical activity; (3) even though his second run up the wall was because he "was challenged to go a little bit higher," he "wanted to prove to the kids that I could – you know, that I was active and that I could do things;" (4) he participated in the activity because he had "always been a teacher that tried to lead by example, and was "attempting to effectuate good rapport" with students and "trying to motivate pupils to develop skills" at the time he was injured; (5) in addition to a day's planned activity in his PE class, they would also "[u]sually do calisthenics and a warm-up activity" that he wouldn't list as part of the day's curriculum; (6) he was injured during the regularly scheduled PE class period, in the place PE class was normally held, while he was the individual in charge of the class; and (7) usually there was a "lag time"

between the taking of attendance and the time he could start "organized activities," and that sometimes during the lag time, "we do things just to keep them active," including running up the wall, which he testified was being done "to keep people active."

¶ 25 The inference is also supported by Dean's testimony that: (1) he was not aware of any rules or violation of a policy of the employer by the claimant with the claimant's "physical involvement during this class period" and that he did not discipline the claimant for running up the wall; and (2) with regard to the job description item that the claimant was to "build rapport with pupils, to motivate pupils[,]" Dean could "see those things lining up with the activity he was performing and had performed," and Dean believed the claimant was "in some ways" advancing the interest of the school when he was injured. In addition, the inference is supported by exhibit 8's summary of the claimant's job position, which states that the teacher will, *inter alia*, "establish effective rapport with pupils[,] motivate pupils to develop skills, attitudes and knowedge," and will "create a flexible subject matter program and a class environment favorable to learning and personal growth," which could lead one to conclude that running up a wall was a legitimate job activity for the claimant rather than a personal risk unrelated to his job. Finally, the inference is supported by the medical records on which the claimant accurately stated the circumstances under which he was injured, which could lead one to conclude that, at the very least, the claimant at that time held a good-faith subjective belief that he was injured while fulfilling his job duties.

¶ 26 Because more than one reasonable inference may be drawn from the evidence presented in this case, the appropriate standard of review is the manifest weight of the

evidence standard. See, *e.g.*, *Orsini v. Industrial Com'n*, 117 Ill. 2d 38, 44 (1987). When we consider the Commission's ruling under the manifest weight of the evidence standard, we conclude that the opposite conclusion to that ruling is not clearly apparent, and that there is sufficient evidence in the record, described in great detail above, to support the Commission's finding, regardless of whether we might have reached the same conclusion. See, *e.g.*, *Metropolitan Water Reclamation Dist. of Greater Chicago v. Illinois Workers' Compensation Com'n*, 407 Ill. App. 3d 1010, 1013 (2011). We also note that to the extent that we have referenced inferences that arise from the testimony of the claimant and Dean about their subjective beliefs about whether the injury arose out of the claimant's employment, and to the extent the claimant argues on appeal that we must accept this subjective evidence because no contrary evidence was offered and the evidence is therefore "unrebutted," the question of whether the injury arose out of the claimant's employment is an objective one, to be determined by the Commission as the finder of fact, and is not limited by the subjective beliefs of the witnesses. As explained above, it is the province of the Commission to judge the credibility of witnesses, draw reasonable inferences from the testimony, and determine the weight to give the testimony. See, *e.g.*, *Freeman United Coal Mining Co. v. Industrial Comm'n*, 286 Ill. App. 3d 1098, 1103 (1997). Finally, we reiterate that "[t]he burden of establishing the necessary causal relationship between the injury and the employment rests with the claimant." *Saunders v. Industrial Com'n*, 189 Ill. 2d 623, 628 (2000). The Commission's conclusion that the claimant failed to meet his burden in this case is not against the manifest weight of the evidence.

¶ 27 Our decision in this case is firmly rooted in our well-established standard of review of the Commission's decision, and we are mindful of the fact that the operative question is whether there is sufficient evidence in the record to support the Commission's finding, not whether we might have reached the same conclusion. See, *e.g.*, *Metropolitan Water Reclamation Dist. of Greater Chicago v. Illinois Workers' Compensation Com'n*, 407 Ill. App. 3d 1010, 1013 (2011). Nevertheless, we note that our decision in this case is buttressed by our decision in *Karastamatis v. Industrial Com'n*, 306 Ill. App. 3d 206 (1999), which examined the personal risk doctrine that was invoked by arbitrator Molly Dearing in her decision in this case – a decision that, as noted above, the Commission unanimously affirmed and adopted, without modification. In *Karastamatis*, the claimant was hired by a Greek Orthodox Church to work at the church's annual, multi-day picnic, which was held in the church's parking lot. 306 Ill. App. 3d at 208. On the final day of the picnic, the claimant served food and beer. *Id.* At 11:30 p.m., the claimant took a break. *Id.* During his break, the claimant asked the church's vice president, who was also the chairperson of the picnic, whether he could join other workers and guests who were participating in what was characterized by a witness as "a Greek line dance." *Id.* He received permission to do so. *Id.* While participating in the dance, the claimant slipped and fell backwards, injuring himself. *Id.* Subsequently, both the arbitrator and the Commission found that the claimant's injury did not arise out of his employment. *Id.* at 209. We agreed, holding that the claimant's injury resulted from a personal risk not connected with or incidental to his employment duties and did not arise out of his employment. *Id.* at 208. We noted that the claimant "was not hired to dance," and that

he "voluntarily exposed himself to an unnecessary danger entirely separate and apart from the activities and responsibilities of his job." *Id.* at 210. Participating in the Greek line dance "was a personal act, solely for his own convenience; an act outside any employment risk." *Id.*

¶ 28 Likewise, in the present case, arbitrator Dearing found—and the Commission unanimously affirmed and adopted, without modification, her finding—that the claimant "*did not* sustain an accident that arose out of and in the course of employment," and ordered that because the claimant "failed to prove that his accident arose out of his employment, all benefits are denied." In the memorandum that accompanied her order, Dearing found that the claimant's injury did not arise out of his employment because the injury "was resultant solely from actions personal to" the claimant. She wrote that she found it significant that the activity that caused the injury "was initiated by the students" rather than the claimant, which Dearing wrote "suggests that the activity was not incidental to his employment." She also found it significant that the claimant "controls the curriculum of his classroom and he acknowledged that running up a wall 'Bo Jackson style' was not part of the daily curriculum for December 19, 2013." She pointed out that the class was "scheduled to play mat ball and there was no evidence presented to suggest that running up a wall was ever a part of [the claimant's PE] curriculum for his students."

¶ 29 Because the claimant was injured the second time he ran up the wall—which, Dearing noted, he did because he was challenged by the students to go higher—Dearing reasoned that "performing such a maneuver at the coaxing of the students is indicative of horseplay rather than a risk incident to his employment." She concluded that the claimant

ran up the wall "for solely personal reasons," such as, for example, "to show off." Dearing acknowledged that the claimant testified that the activity in which he was injured served to build rapport with the students, challenge them, and provide them with a physical fitness role model, but concluded that because the claimant's injury "was resultant from an activity not performed at his instruction or at his initiation, and was outside of the curriculum," the claimant "exposed himself to a risk that was outside the exercise of any of his duties" with the employer. Accordingly, she concluded that the injury "was a personal risk not connected with or incidental to his employment duties," and "did not arise out of his employment."

¶ 30 We agree with all of the conclusions of the arbitrator and the Commission, but note in particular that running up the wall was not *ever* a part of the PE curriculum for the students, and that by undertaking that activity in response to a challenge from the students, the claimant clearly exposed himself to a risk that was outside the scope of the exercise of any of his duties with the employer in much the same way that the claimant in *Karastamatis* did when he decided, for his own personal benefit, to participate in the Greek line dancing going on at the picnic. See 306 Ill. App. 3d at 208, 210.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, we affirm the circuit court's judgment confirming the decision of the Commission to deny benefits to the claimant.

¶ 33 Affirmed.

¶ 34 JUSTICE HOFFMAN, dissenting.

¶ 35 The Commission found that the claimant was injured as the result of a "personal risk not connected with or incidental to his employment duties." It concluded, therefore, that the injuries he suffered did not arise out of his employment and denied him benefits under the Act. I believe that the Commission's conclusion regarding the arising "out of" component is contrary to the uncontradicted testimony of the claimant and the admission of the employer's agent, Adam Dean. As a consequence, I dissent.

¶ 36 The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, that his injury arose both out of and in the course of his employment. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). In this case, there is no dispute as to whether the claimant's injuries were sustained in the course of his employment. As the majority correctly observes, the disputed issue is whether his injury arose out of his employment.

¶ 37 The claimant was a high school physical education teacher in the employ of the Triopia C.U.S.D. #27. During a regularly scheduled physical education class, as the claimant's students were leaving the locker room, one student ran and jumped off the side of a padded wall, attempting to touch the ceiling. The claimant proceeded to attempt the same activity and was injured on his second attempt. According to the claimant, he attempted the jump in order to "effectuate a good rapport" with the students and to "motivate [the] pupils to develop skills." Dean, the principal of the school in which the claimant was working when he was injured, testified that the claimant's job includes building a rapport with his students. When asked whether the activity in which the

claimant was engaged when he injured himself advanced the interests of the school, Dean stated: "In some ways I can see that."

¶ 38 "[I]t does not matter in the slightest degree *** how bad [the claimant's] conduct may have been if he was still acting in the sphere of his employment and in the course of it the accident arose out of it." *Republic Iron & Steel Co. v. Industrial Comm'n*, 302 Ill. 401, 406 (1922). The claimant testified that, in attempting to jump off of the wall, he was "attempting to effectuate good rapport" with his students. Dean, the principal of the school and the agent of the employer, admitted that the claimant's job includes building a rapport with his students. I believe, therefore, that the Commission's conclusion that the claimant's injury did not arise out of his employment is against the manifest weight of the evidence as there is no evidence in the record that the claimant's job duties did not include building a rapport with his students or that the activity in which he was engaged at the time of his injury was not in furtherance of that employment goal.

¶ 39 The majority relies upon the holding in *Karastamatis v. Industrial Comm'n*, 306 Ill. App. 3d 206 (1999) to buttress its decision. However, *Karastamatis* is readily distinguishable from the circumstances present in the instant case. In *Karastamatis*, the claimant "was hired to set up and stock the picnic and serve beer and food." *Id.* at 210. He was injured while dancing, an activity which was not incidental to his employment. *Id.* at 210-11. In this case, building a rapport with his students was part of the claimant's job duties and he was injured in furtherance of that duty.

¶ 40 I would reverse the judgment of the circuit court which confirmed the Commission's decision denying the claimant benefits under the Act, reverse the

Commission's decision, and remand the matter back to the Commission with directions to award the claimant benefits for the injuries he suffered while working on December 19, 2013.