2018 IL App (2d) 170767WC-U
No. 2-17-0767WC
Order filed June 28, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

NATIONAL EXPRESS CORPORATION, Plaintiff-Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION and RONALD EGLINTON, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Kane County. No. 16-MR-1514 Honorable David R. Akemann, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's decision that claimant's accident arose out of and occurred in the course of employment was not against the manifest weight of the evidence where claimant was injured encountering a hazard on employer's premises while moving from one work task to another.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, National Express Corporation, appeals an order of the circuit court of Kane County confirming a decision of the Illinois Workers' Compensation Commission (Commission)

awarding benefits to claimant, Ronald Eglinton, in accordance with the provisions of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2014)). For the reasons that follow, we affirm.[1]

¶ 4 II. BACKGROUND

¶ 5 The facts of this case are straightforward and largely undisputed. Claimant was employed by respondent as a school-bus aide. His duties included making sure that children behaved and getting them to their seats. He was also responsible for checking the fluid levels on buses, such as oil, anti-freeze, and transmission fluid.

¶ 6 On February 10, 2014, he started work sometime around 7 a.m., which was typical. Claimant testified that at about 9 a.m. on that day, he started checking fluid levels. He was responsible for 22 buses. Inspecting the buses required him to move around the parking lot. The buses were parked in two lines, facing each other. There was a line of snow and ice down the center of the lot between the two rows of buses. The berm of snow was about a foot high. Claimant attempted to cross over the snow and ice to get to another bus he was required to check. Claimant was wearing ice cleats. He stepped over the snow and ice with his left foot, which slipped. Claimant fell backwards to the ground and ended up straddling the snow and ice. He struck his right knee on the ground. Claimant called for help, and two other employees responded and helped him up. Claimant stated that his knee hurt; however, he kept checking

[1]We remind counsel that a proper short citation sets forth the name, *volume number*, and page number where the material relied upon appears (*i.e.*, *Smith*, 123 Ill. App. 3d at 45; not *Smith*, at 45; using "*Id.*" is acceptable after a proper short citation). Failure to include the volume number forces the reader to scour a brief to find all information necessary to look up the material cited. It would be helpful if counsel would adhere to this convention.

fluid levels. Claimant went home for lunch and returned later in the day to complete his afternoon duties. Claimant went to the emergency room at about 11 p.m. He did not report the incident until next morning. Claimant explained that when the incident initially occurred, he "didn't think it was a big deal," rather he "thought it was just a sprain and it would go away."

¶ 7 The arbitrator denied compensation, finding that claimant had voluntarily exposed himself to an unnecessary personal risk by stepping over the one-foot high berm of snow. The arbitrator found that claimant could have walked around the snow and that his decision to cross over it was done for his own personal convenience. He noted that this was not a case where claimant had simply slipped on snow or ice; rather, the pile of snow "was clearly an obstacle." The arbitrator cited *Dobson v. Industrial Comm'n*, 308 Ill. App. 3d 572 (1999), and *Hatfill v. Industrial Comm'n*, 202 Ill. App. 3d 547 (1990), in support.

¶ 8 The Commission reversed. It noted that claimant's work duties included "rudimentary maintenance" including "checking the oil, antifreeze and transmission fluid levels." It further noted that claimant, while wearing cleats, was injured as he attempted to move from one side of the bus-parking area to another in order to continue checking buses' fluid levels. There was a snow pile in the way, and buses claimant was responsible for were on the other side of the pile. Claimant's "options were to either step over the snow, or walk to the end of the row to go around it, coming back on the other side." Claimant "chose to step over the snow pile." He slipped and stuck his right knee on the asphalt surface. Pertinent here, the Commission found that claimant did not take an unnecessary personal risk for his own convenience. It observed that claimant was "engaged in an activity which benefitted his employer at the time he slipped." Though stepping over the pile may have been "personally convenient to him" it was not done solely for his own convenience. Claimant was "performing work assigned to him by [r]espondent at that time."

Moreover, claimant was not "running or acting in an unsafe manner" and the snow pile was not so high as to be an "unreasonable hazard." The Commission added, "The fact that an alternate route around the snow pile was available does not lead to the conclusion that [claimant] deviated from his employment by not taking it." The Commission then went on to resolve all remaining issues in claimant's favor and craft what it deemed to be an appropriate award. The trial court confirmed, and this appeal followed.

¶ 9 III. ANALYSIS

¶ 10 On appeal, respondent focuses its arguments on the Commission's conclusion that claimant did not expose himself to a personal risk by stepping over the berm of snow and that, in turn, his injury arose out of employment. Whether an accident arises out of employment presents a question of fact subject to review using the manifest-weight standard. *Illinois Valley Irrigation, Inc. v. Industrial Comm'n*, 66 Ill. 2d 234, 239 (1977). Though, the relevant facts are not meaningfully disputed, they are subject to multiple inferences. Accordingly, we will apply the manifest-weight standard. See *Gilster Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182 (2001).

¶ 11 To arise out of employment, an injury must be connected to some risk that is related to employment. *Sisbro v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). A personal risk is a risk unconnected to employment. *Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1229 (2000). Generally, injuries resulting from personal risks are not compensable (though there are exceptions). *Id.* Respondent contends that claimant crossed the snow pile for his own convenience.

¶ 12 Respondent cites a number of cases in support. See *Dodson*, 308 Ill. App. 3d 572; *Hatfill*, 202 Ill. App. 3d 547; *Segler v. Industrial Comm'n*, 81 Ill. 2d 125 (1980). According to

respondent, "[i]n [*Dodson*], the claimant sustained an injury when she walked across a wet and icy grassy slope, rather than using the unobstructed stairs and sidewalk." The trial court found that the injury did not arise out of employment. *Dodson*, 308 Ill. App. 3d at 574. The reviewing court affirmed, explaining that "an injury does not arise out of the employment where an employee voluntarily exposes himself or herself to an unnecessary personal danger solely for his own convenience." *Id.* at 576. However, key to the *Dobson* court's holding was that the claimant had just finished her shift and was walking to her personal vehicle. *Id*. It emphasized, "This was a voluntary decision that unnecessarily exposed her to a danger entirely separate from her employment responsibilities. [H]er choice was personal in nature, designed to serve her own convenience and not the interests of her employer." *Id.* at 576-77. *Dodson* is easily distinguishable. Unlike the claimant in *Dodson* who had finished her shift and was leaving work, claimant here was walking from one bus to another in order to carry out his duty to check their fluid levels. Thus, plaintiff was not acting for his own convenience. His actions served respondent's interests. *Hatfill* is distinguishable on the same basis. *Hatfill*, 202 Ill. App. 3d at 549, 554.

¶ 13 Respondent's reliance on *Segler*, 81 Ill. 2d 125, is similarly misplaced. In that case, the claimant was injured while heating a frozen pot pie in an industrial oven. Compensation was denied. The reviewing court affirmed, noting:

> "He was performing no job task in that area, and his actions cannot be thought of as beneficial to the employer. Instead, the claimant voluntarily undertook a course of action solely for his own benefit, thereby exposing himself to a risk greater than that to which he would have been exposed had he been pursuing his assigned duties at his designated work area 25 feet away." *Id.* at 128.

Like the previous cases, *Segler* is distinguishable in that claimant here was acting in furtherance of respondent's interests when he was injured.

¶ 14 Indeed, authority more pertinent than that cited by respondent exists. In *Chadwick v Industrial Comm'n*, 179 Ill. App. 3d 715, 716 (1989), the claimant worked on a scaffold approximately 75 feet in the air. Contrary to a safety rule, claimant was not tethered to a lifeline. *Id*. Testimony from coworkers indicated that employees sometimes violated the rule because it was " 'inconvenient.' " *Id*. The arbitrator denied compensation based on the claimant's violation of the rule. *Id*. The Commission affirmed, and the trial court confirmed the Commission's decision. *Id*. However, this court reversed, explaining that the claimant was "performing the duties for which he was hired." *Id.* at 717-18. We continued, "We find respondent's contention the failure to use the lifeline constituted 'gross misconduct' to be unavailing." *Id.* at 718. If failure to tether oneself to a scaffold when 75 feet off the ground does not render an accident unrelated to employment, surely stepping over a one-foot high berm of snow cannot either. Moreover, like the claimant in *Chadwick* who was "performing the duties for which he was hired" (*Id.* at 717-18), claimant here was engaged in checking fluid levels on respondent's buses.

¶ 15 Likewise, in *Gerald D. Hines Interests v. Industrial Comm'n*, 191 Ill. App. 3d 913, 915 the claimant was employed to maintain the respondent's heating and cooling equipment. He was injured after he locked his keys in a room in the subbasement and attempted to gain access by crawling through a hatch, which was about 20 to 30 feet above the subbasement floor. *Id*. He hooked a mop bucket to an industrial hoist to gain access to the hatch. *Id*. The claimant testified that he was embarrassed and did not wish to look foolish. *Id*. The claimant fell, injuring himself. *Id*. The reviewing court held that, while the claimant had acted negligently, his actions

were "clearly intended to gain entry to the subbasement solely for the purpose of fulfilling his employer's orders to reach the area between 4:55 and 5:05 p.m. so as to make the necessary adjustments to avoid causing damage to the chillers and other machinery and also to save energy dollars." *Id.* at 916. The court rejected the argument that the claimant took the risk with only his own interest in avoiding embarrassment in mind, as his actions were coincident with his employer's instructions. *Id.* at 917. The court emphasized that negligence did not remove the claimant from the scope of employment. *Id.* In the instant case, any risk taken by claimant in stepping over the snow berm pales in relation to the risk taken by the claimant in *Hines*. Further, like that claimant, claimant here was acting in furtherance of the duties required of him by respondent.

¶ 16 In sum, the instant case is distinguishable from the authority cited by respondent and controlled by the principles set forth in *Chadwick* and *Hines*. As such, we hold that the Commission's decision is not contrary to the manifest weight of the evidence.

¶ 17 IV. CONCLUSION

¶ 18 In light of the foregoing, the judgment of the circuit court of Kane County confirming the decision of the Commission is affirmed.

¶ 19 Affirmed.