2019 IL App (3d) 180319WC-U
No. 3-18-0319WC
Order filed February 6, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

TORRIE ASHBY,	)	Appeal from the Circuit Court
	)	of Peoria County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 17-MR-718
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION,	)	Honorable
	)	Katherine Gorman Hubler,
(Hy-Vee, Respondent-Appellee).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's decision to deny claimant benefits under the Workers' Compensation Act by reason of claimant's failure to prove that he suffered an accident which arose out of his employment when he fell down stairs as he was going to clock in for his work shift is not against the manifest weight of the evidence.

¶ 2 Claimant, Torrie Ashby, appeals from the judgment of the circuit court of Peoria County confirming a decision of the Illinois Workers' Compensation Commission (Commission)

denying his application for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2016)). The Commission found that claimant failed to establish that he sustained an accident arising out of and in the course of his employment when he fell down a flight of stairs as he was going to clock in for his work shift. For the reasons set forth below, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 4, 2016, claimant filed an application for adjustment of claim seeking workers' compensation benefits for injuries he allegedly sustained while in the employ of respondent, Hy-Vee. In particular, claimant asserted that he suffered permanent injuries to his head, back, and neck at work on January 25, 2016, when he "fell down stairs." The matter proceeded to an arbitration hearing before arbitrator William R. Gallagher. The following factual recitation is taken from the evidence presented at that hearing, which was held on October 20, 2016.

¶ 5 Respondent operates a chain of grocery stores. Late in 2015, respondent hired claimant to work as a dishwasher at respondent's location on Sheridan Road in Peoria. The store where claimant worked has two levels. The first level houses the grocery store, a restaurant, and restrooms. The second level consists of a break room, lockers, a time clock, offices, restrooms, and a "club room." There are three ways to access the store's second level: (1) a flight of stairs at the front of the store; (2) an elevator; and (3) a flight of stairs at the rear of the store. Claimant testified that he was aware of the "club room" on the second floor of the store, but that he had not worked for respondent long enough to know whether the "club room" was used by the general public. Nevertheless, when asked whether the general public accesses the second level, claimant responded that he had only seen employees go upstairs and that the public "shouldn't be

up there."

¶ 6 Regarding the circumstances surrounding the accident at issue, claimant testified that on January 25, 2016, he was scheduled to work the second shift, which begins at 4 p.m. Claimant elected to wear "high" boots to work because the area where he performs his duties gets wet. Claimant testified that he arrived for his shift at about 3:30 p.m. and that it was "storming pretty bad" that day. A weather report admitted into evidence showed that Peoria received 0.04 inches of rain on January 25, 2016. Claimant testified that when he was initially hired, he was "instructed" to use the front stairway to access the time clock. To this end, claimant entered the store through the front door. He then proceeded to the front stairway, located to the immediate right of the store's front entrance, to go upstairs and clock in for his shift. The front stairway consists of two segments, a longer flight of stairs with a landing followed by another, shorter flight of stairs going left from the landing. Claimant testified that he climbed the steps in a "normal fashion," but acknowledged that he "might take two stairs at once." When claimant reached the landing between the two flights of stairs, he turned to the left to climb the second flight of stairs. As claimant was ascending the second flight of stairs, he slipped and fell backwards down several steps onto the landing. When asked if he noticed anything unusual about the surface of the stairs or his footwear, claimant responded, "[i]t was wet." Claimant stated that he was not in a hurry to clock in because he was not late for his shift. Claimant also testified that he was not carrying anything at the time of the accident.

¶ 7 Following the accident, claimant was transported to the emergency room. Claimant was diagnosed with a closed-head injury, a cervical strain, and a thoracic strain. He was treated conservatively and authorized to return to work on July 8, 2016, with restrictions of no bending, stooping, or lifting more than 20 pounds. Claimant briefly returned to respondent's employ, but

testified that it was not worth continuing his employment because of the limited number of work hours he was scheduled. At the arbitration hearing, claimant testified that he suffers from severe headaches and stiffness in his neck, back, and shoulders. Claimant attributed these symptoms to the accident of January 25, 2016.

¶ 8 Respondent called six witnesses to testify on its behalf. Five of those witnesses testified regarding their observances of claimant, the condition of the staircase, and the weather conditions on the day of the accident. Stephanie Hascall, respondent's "health market manager," observed claimant go up the stairs when he arrived for work on January 25, 2016. According to Hascall, claimant was "skipping" the stairs and "seemed like he was kind of in a rush." Shortly later, Hascall, who was also going up the stairs, heard claimant yell "woe" and saw him fall down to the landing. Hascall asked claimant if he was okay. Claimant did not respond, so Hascall ran up the rest of the stairs to the manager's office to seek help. Hascall did not observe any water on the staircase and noted that one of claimant's boots was untied. Further, although Hascall acknowledged that store employees must go upstairs to clock in and out, she was unaware of any company rule that requires employees to take the stairs to do so.

¶ 9 Josh Schreiner, an assistant manager at the store, was called to the staircase by another employee. When Schreiner arrived, claimant was lying on the landing and holding his head. Schreiner testified that the stairs were dry and that claimant's boots were untied. Schreiner stated that there is a carpeted area at the base of the stairway and that each stair has a rubber tread. According to Schreiner, the purpose of the carpeting is to allow people to dry off their feet prior to walking on the "rubber steps." Schreiner described the weather conditions on the day of the accident as an "[o]cassional mist," but stated that it was not "down pouring."

¶ 10 Richard Allen, respondent's food service manager, confirmed that there is carpeting at

the base of the stairway and that the stairs themselves are "rubberized" with "proper dimpling" and "skid resistant areas on them." Allen arrived shortly after the accident and noted that the staircase was dry. Allen further noted that respondent's boots were not properly laced and there was rubber peeling from them. Amanda Baumann, an assistant manager at the store, was summoned to the accident scene by Hascall. When Baumann arrived, the staircase was dry and the laces on respondent's boots were untied. Chris Price, the store director, testified that the purpose of the carpeted area at the base of the stairs is to absorb moisture from people's feet as they enter the store. Price further testified that each step of the staircase has a rubberized, anti-slip tread. Price observed the scene shortly after the accident and testified that the stairs were dry and that claimant's boots were untied.

¶ 11 Respondent's witnesses disputed claimant's testimony that the general public did not have access to the second level of the store. According to store personnel, customers regularly go upstairs to use the restrooms, buy tickets to special events, and attend cooking classes, demonstrations, and wine tastings held in the "club room." In addition, store personnel testified that the "club room" is rented out to the community several times a week for functions such as business meetings, birthday parties, and baby showers.

¶ 12 Based on the foregoing evidence, the arbitrator concluded that claimant did not sustain an accidental injury arising out of and in the course of his employment with respondent on January 25, 2016. The arbitrator determined that while the evidence clearly indicated that the stairs were available for use by the public, this factor was not "the critical issue" in the case. Instead, the arbitrator tacitly applied a neutral-risk analysis. Citing *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52 (1989), the arbitrator concluded that to establish that his accident arose out of and in the course of his employment with respondent, claimant was required to prove that

his employment exposed him to a greater degree of risk than the general public. The arbitrator determined that claimant failed to meet this burden because the risk of ascending the staircase constituted "an activity of daily life also performed by members of the general public" and claimant's employment "did not expose him to a greater degree of risk than that of the general public." The arbitrator also noted that the stairs were dry and had a protective rubber coating. The arbitrator compared claimant's actions to those of an employee who is injured while walking across the floor at his workplace, noting that an accident under such circumstances has been held not to expose the employee to a risk greater than that of the general public. See *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347 (2000). Accordingly, the arbitrator denied claimant's application for benefits under the Act.

¶ 13 Thereafter, claimant sought timely review with the Commission. The Commission unanimously affirmed and adopted the decision of the arbitrator. Claimant then sought judicial review in the circuit court of Peoria County. Following a hearing, the circuit court confirmed the decision of the Commission. This appeal by claimant ensued.

¶ 14 II. ANALYSIS

¶ 15 On appeal, claimant argues that the Commission erred in concluding that he did not sustain a compensable accident on January 25, 2016. According to claimant, his injuries are compensable as a risk distinctly associated with his employment because "this is a simple case of the employee falling at his workplace explained by his boots [*sic*] he was wearing being wet from raining conditions." Claimant alternatively argues that his injuries are compensable under a neutral-risk analysis as he was exposed to the risk of traversing stairs to a greater degree than the general public both qualitatively and quantitatively.

¶ 16 An employee's injury is compensable under the Act only if it "arises out of" and "in the course of" the employment. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006); *O'Fallon School District No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413, 416 (2000). Both elements must be present to justify compensation. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006). A claimant bears the burden of proving by a preponderance of the evidence that his or her injury arose out of and in the course of the employment. *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 477 (2011); *First Cash Financial Services*, 367 Ill. App. 3d at 105.

¶ 17 The phrase "in the course of" refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Accidental injuries sustained on an employer's premises within a reasonable time before and after work are generally deemed to arise in the course of one's employment. *Caterpillar Tractor Co.*, 129 Ill. 2d at 57. In this case, claimant's injuries occurred on respondent's premises just after he entered the workplace and as he was going upstairs to clock in for his shift. Under such circumstances, we conclude that claimant's injuries occurred "in the course of" his employment. See *Caterpillar Tractor Co.*, 129 Ill. 2d at 57-58 (holding that injuries sustained by the claimant as he was walking to the parking lot after completing his shift occurred "in the course" of the employment). Indeed, the parties do not seriously dispute that claimant's injuries occurred "in the course of" his employment. Thus, we turn to the dispositive issue in this case, that is whether claimant sustained his burden of establishing that his injuries "arose out of" his employment with respondent.

¶ 18 As a general rule, the question of whether an employee's injury arose out of his or her employment is one of fact. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980);

Bolingbrook Police Department v. Illinois Workers' Compensation Comm'n, 2015 IL App (3d) 130869WC, ¶ 38. With respect to factual matters, it is within the province of the Commission to judge the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). As such, we will not overturn the Commission's decision on a factual matter unless it is against the manifest weight of the evidence. *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120411WC, ¶ 15. Claimant, however, asserts that the Commission's decision "is incorrect as a matter of law," thereby suggesting that *de novo* review is appropriate in this case. We review *de novo* the Commission's decisions on questions of law. *Otto Baum Co. v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100959WC, ¶ 13. *De novo* review is also appropriate when the facts essential to our analysis are undisputed and susceptible to but a single inference and our review therefore involves only an application of the law to those undisputed facts. *Johnson v. Illinois Workers' Compensation Comm'n*, 2011 IL App (2d) 100418WC, ¶ 17. However, where more than one reasonable inference may be drawn from the undisputed facts, the manifest-weight-of-the-evidence standard applies. *Mlynarczyk*, 2013 IL App (3d) 120411WC, ¶ 15. In this case, it is undisputed that claimant fell down the stairs on respondent's premises as he was clocking in for his shift. However, we do not believe that only a single inference may be drawn regarding whether claimant's injuries arose out of his employment. For instance, the parties presented conflicting testimony regarding the weather conditions when claimant arrived at work on the day of the accident and whether the stairs were wet or dry when claimant ascended them. Under such circumstances, we will apply the manifest-weight-of-the-evidence standard. A decision is against the manifest weight of the evidence only if an opposite

conclusion is clearly apparent. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC, ¶ 21.

¶ 19 For an injury to "arise out of" one's employment, its origin must be in some 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.*, 129 Ill. 2d at 58. To determine whether an employee's injury "arose out of" his employment, we must first categorize the risk to which the employee was exposed. *First Cash Financial Services*, 367 Ill. App. 3d at 105. Illinois courts recognize three categories of risk to which an employee may be exposed: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks that have no particular employment or personal characteristics. *Baldwin*, 409 Ill. App. 3d at 478; *First Cash Financial Services*, 367 Ill. App. 3d at 105; *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162.

¶ 20 As noted above, claimant suggests that his injuries resulted from an employment risk. Employment risks are those that are inherent in one's employment. *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring). Employment risks, which include the obvious kinds of industrial injuries and occupational disease, are universally compensated. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162; *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring). In the context of falls, employment risks include tripping on a defect at the employer's premises or falling on uneven or slippery ground at a worksite. *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring). In this case, claimant fell while traversing stairs. There is no evidence that this kind of risk is distinctly associated with claimant's employment as a dishwasher for respondent. Moreover, although claimant describes the front

staircase as "narrow and steep" in his brief, he presented no evidence that the front staircase was defective. Further, while claimant testified that it was raining on the day of the accident and the the stairs were wet when he fell, the Commission rejected claimant's testimony. For several reasons, the evidence of record supports the Commission's conclusion. First, five of respondent's employees observed the stairs shortly after the fall and they all testified that the stairs were dry. Second, weather records showed only trace amounts of rain (four one-hundredths of an inch) in Peoria on the day of the accident, thereby aligning more with Schreiner's testimony that it was misting and contradicting claimant's testimony that it was "storming pretty bad." Third, several of respondent's employees testified that the base of the stairs was carpeted so as to absorb any moisture from people's feet as they enter the store. Cumulatively, this evidence supports the Commission's finding that the stairs were dry at the time of the accident. Given the foregoing evidence, the Commission could reasonably conclude that this case does not present an employment risk since traversing stairs is not a risk distinctly associated with claimant's employment and there was evidence that claimant's fall was not attributable to a defect on respondent's premises or the result of uneven or slippery ground at the worksite.

¶ 21 Personal risks include exposure to elements that cause nonoccupational diseases and personal defects or weaknesses. *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring); see also *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63. For example, falls due to a bad knee or an episode of dizziness fall into the personal-risk category. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63; *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring). Although generally noncompensable, personal risks may be compensable

where conditions of the employment increase the risk of injury. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163, n.1. In this case, there was no evidence of record to suggest that any nonoccupational disease, personal defect, or weakness contributed to claimant's fall. Accordingly, this case does not involve a personal risk.

¶ 22 Having eliminated the first two types of risks, it necessarily follows that claimant's fall is properly categorized as resulting from a neutral risk. *Village of Villa Park v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 130083WC, ¶ 20 (noting that falling while traversing stairs is a neutral risk); *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 353 (Rakowski, J., specially concurring) (noting that in the context of falls, neutral risks include falls on level ground or while traversing stairs). Injuries from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Village of Villa Park*, 2013 IL App (2d) 130083WC, ¶ 20; *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1014 (2011). The increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. *Adcock v. Illinois Workers' Compensation Comm'n*, 2015 IL App (2d) 130884WC, ¶ 32; *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 117 (2007).

¶ 23 Claimant asserts that if this case is analyzed as a neutral risk, the evidence establishes that he was exposed to the risk of traversing stairs to a greater degree than the general public both qualitatively and quantitatively. We disagree because plaintiff did not present any evidence to establish that he was exposed to a qualitatively increased neutral risk as a result of his

employment. In this regard, claimant denied that he was carrying any work-related objects at the time of the accident. Further, although Hascall opined that claimant seemed like he was in a rush, claimant himself denied that he was in a hurry to clock in, noting that he was not late for his shift. Thus, we reject claimant's argument that he was exposed to a qualitatively increased neutral risk by virtue of his employment with respondent.

¶ 24 Claimant also asserts that he was exposed to a quantitatively increased neutral risk by virtue of his employment with respondent. Specifically, claimant argues that he went up the front staircase twice each day (once to clock in and once to clock out), whereas the general public used the front staircase only on "rare" occasions. In *Dukich v. Illinois Workers' Compensation Comm'n*, 2017 IL App (2d) 160315WC, we rejected a similar argument, explaining as follows:

> "Even assuming *arguendo* that the claimant had to traverse the same path twice or more per day to get to her car, she still could not recover benefits because there is no evidence that the wet pavement she encountered on that path was any different or more dangerous than any other wet pavement regularly encountered by members of the general public while walking in the rain. [Citation.] In *Caterpillar* [*Tractor Co.*, 129 Ill. 2d at 62-63], our supreme court denied benefits to a claimant who twisted his ankle while stepping off of a curb as he was walking from his workplace toward the employee parking lot on his employer's premises. Although our supreme court acknowledged that the claimant 'regularly crossed' the curb upon which he was injured 'to reach his car,' it denied benefits because '[c]urbs, and the risks inherent in traversing them, confront all members of the public' and there was 'nothing in the record to distinguish [the curb upon which the claimant was injured] from any other curb.' [Citation.] Thus, the supreme

> court found that the claimant was no more likely to twist his ankle at his workplace than he would have been had he been engaged in any other business." *Dukich*, 2017 IL App (2d) 160315WC, ¶ 37.

Likewise, in this case, there was no evidence presented to distinguish the stairs claimant was traversing from any other stairway. As noted above, claimant presented no evidence that the staircase was defective and his testimony that the staircase was wet at the time of the accident was rebutted by five other witnesses. Accordingly, as in *Dukich*, we find no evidence that claimant was more likely to slip and fall while traversing the front staircase on respondent's premises than he or any other member of the public would be likely to fall while traversing any other stairway.

¶ 25 In short, the Commission's finding that claimant failed to establish that his injuries arose out of his employment was sufficiently supported by the evidence of record and not against the manifest weight of the evidence. Accordingly, the Commission committed no error in denying claimant benefits under the Act.

¶ 26 III. CONCLUSION

¶ 27 For the reasons set forth above, we affirm the judgment of the circuit court of Peoria County, which confirmed the decision of the Commission denying claimant's application for workers' compensation benefits.

¶ 28 Affirmed.