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Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 180702WC-U

Workers' Compensation
Commission Division
Order Filed: April 24, 2019

No. 4-18-0702WC

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

NATHAN BENSON,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Piatt County
	)	
v.	)	
	)	Nos. 17 MR 82
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*,	)	Honorable
	)	Bradford A. Rau,
(Kirby Medical Center, Appellee).	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the judgment of the circuit court, confirming a decision of the Illinois Workers' Compensation Commission denying the claimant benefits pursuant to the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2012)).

¶ 2 The claimant, Nathan Benson, appeals from a judgment of the circuit court of Piatt County, confirming a decision of the Illinois Workers' Compensation Commission (Commission) which denied the claimant benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)). For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The facts relevant to our disposition of this appeal are not in dispute.

¶ 4 The claimant was employed by Kirby as a janitor. His duties included transporting linens to off-site locations. On September 11, 2014, he was assigned to transport linens via a company truck to the Old Kirby Hospital and a nursing home. The truck was parked by a ramp-like loading dock which had stairs at one end leading to the ground level, a wheelchair ramp on the other side also leading to the ground, and a hydraulic lift used for the movement of freight to or from the loading dock which was located on the length-wise side of the loading dock. The plaintiff testified that, when he discovered that the company truck was low on fuel, he went to the office of his supervisor, Jody Bettis, Kirby's Director of Environmental Services, to obtain a company credit card to purchase gas for the vehicle. Bettis's office was located adjacent to the loading dock. Bettis gave the claimant the credit card and told him to fill the truck with gas and return the credit card and receipt to her. According to the claimant, Bettis told him to hurry as she was about to leave work for the day. The claimant exited Bettis's office onto the loading dock. Rather than use the stairs or the wheelchair ramp to reach the ground level where the truck was located, the claimant decided to jump off of the loading dock. When he did so, his right foot and leg struck the hydraulic lift and he fell to the ground, inverting his left foot, resulting in a closed fracture of the fifth metatarsal bone. The claimant testified that jumping off of the loading dock was his routine way of exiting the dock and that he jumped off of the loading dock 3 or 4

times each day. According to the claimant, Bettis and one other supervisor, Drew Kessler, had seen him jump from the dock to reach the ground and never told him not to exit the dock in that manner. Bettis denied having ever having witnessed the claimant jump from the loading dock. The claimant admitted that no one ever told him to jump off of the loading dock to reach the ground level. A surveillance video depicting the incident was admitted into evidence. The claimant testified to the video's accuracy.

¶ 5 Following the arbitration hearing held on January 29, 2016, the arbitrator issued a written decision on March 29, 2016, finding both that, at the time of his injury, the claimant was not fulfilling the duties required by his employment and that he voluntarily exposed himself to an unnecessary personal danger solely for his own convenience. The arbitrator concluded, therefore, that no employee/employer relationship existed between the claimant and Kirby at the time of the claimant's injury and that the claimant's injury did not arise out of his employment. As a consequence, the arbitrator denied the claimant any benefits under the Act.

¶ 6 The claimant filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On November 30, 2017, the Commission issued a unanimous decision modifying the arbitrator's decision as it relates to the employer/employee relationship existing between the claimant and Kirby at the time of the accident. The Commission found that the claimant did establish the existence of an employer/employee relationship at the time of his injury. However, the Commission found, as did the arbitrator, that the claimant's injury did not arise out of his employment with Kirby and affirmed and adopted the denial of benefits under the Act.

¶ 7 The claimant sought a judicial review of the Commission's decision in the circuit court of Piatt County. On September 20, 2018, the circuit court confirmed the Commission's decision,

and this appeal followed.

¶ 8 Before addressing the claim of error raised by the claimant in this appeal, we again find it necessary to admonish a litigant for failure to comply with the requirements for briefs filed with this court. Illinois Supreme Court Rule 341(h)(9) (eff. Nov. 1, 2017) requires that an appellant's brief contain an appendix as required by Rule 342. Illinois Supreme Court Rule 342 (eff. July 1, 2017) requires that the appendix to an appellant's brief contain a complete table of contents, with page references, of the record on appeal which is to include the nature of each exhibit introduced along with the names of all witnesses and the pages on which their direct examination, cross-examination, and redirect examination appear. Rather than enumerating the exhibits introduced at the arbitration hearing with page references or setting forth the names of the witnesses and the page references of their testimony, the table of contents to the record contained in the claimant's brief contains an entry of "TRANSCRIPT" page numbers C20-C300, requiring this court to search through 280 pages of the record to find the exhibits and witness testimony relevant to the disposition of this appeal. Supreme Court rules "are not suggestions;" rather, they are rules which have the force of law, and the presumption is that they will be followed as written. *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995). This court has the discretion to strike an appellant's brief for failure to comply with the supreme court rules and dismiss the appeal. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77. We elect not to do so in this case and will address the issue raised on the merits.

¶ 9 The claimant asserts that the facts material to this court's analysis of whether his injury arose out of his employment are not in dispute and, as a consequence, our review is *de novo.* Kirby contends that the manifest-weight standard is to be applied. We agree with Kirby. When, as in this case, more than one inference might be drawn from the undisputed facts, we apply a

manifest-weight standard on review. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 549 (1991).

¶ 10 On the merits of his appeal, the claimant argues that the Commission erred in determining that his injuries did not arise from his employment. Specifically, he asserts that his employment duties required him to transport linens by a truck provided by Kirby, and he was required to go down from the loading dock to ground level to reach that truck in order to take the vehicle for fuel. He concludes, therefore, that his injury arose out of his employment.

¶ 11 Kirby argues that the claimant's act of jumping off of the loading dock was not an act incidental to his employment. Rather, the claimant voluntarily exposed himself to an unnecessary personal danger for his own convenience. It concludes that the claimant's actions took him out of the sphere of his employment, and as a consequence, his injuries did not arise out of his employment.

¶ 12 The Commission found that the claimant's injuries "did not stem from any employment requirement such as would have exposed him to risk greater (qualitatively or quantitatively) than that faced by the general public." According to the Commission, the claimant's "fall did not stem from any dangerous conditions of his employment or work-related risk of harm, but from a fluke." The Commission concluded that the claimant's injury did not arise out of his employment. Based upon the record before us, we cannot say that the Commission's finding in this regard is against the manifest weight of the evidence.

¶ 13 To obtain compensation under the Act, the claimant must establish by a preponderance of the evidence that he suffered a disabling injury that arose out of and in the course of his employment. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 591-92 (2005). Whether a causal relationship exists between a claimant's employment and his injury is a

question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). For the Commission's resolution of a fact question to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 39. Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 14 An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (West 2012). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989).

¶ 15 "In the course of the employment" refers to the time, place, and circumstances under which the claimant is injured. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366 (1977). Injuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his work duties, or within a reasonable time before and after work, are generally deemed to have been received in the course of the employment. See *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57 (1989); see also *Wise v. Industrial Comm'n*, 54 Ill. 2d 138, 142 (1973). In this case, the claimant was injured while working and on Kirby's premises. Clearly, he was injured in the course of his employment.

¶ 16 Arising out of the employment refers to the origin or cause of the claimant's injury. As the Supreme Court held in *Caterpillar*:

> "For an injury to 'arise out of' the 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. [Citations.] Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. [Citation.] A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. [Citations.]" *Caterpillar*, 129 Ill. 2d at 58.

¶ 17 The initial step in considering the "arising out of" component of a worker's compensation claim is to determine the type of risk to which the claimant was exposed at the time of his injury. *Baldwin v. Illinois Worker's Compensation Comm'n*, 409 Ill. App. 3d 472, 478 (2011). "Risks to employees fall into three groups: (1) risks distinctly associated with the employment; (2) risks personal to the employee, such as idiopathic falls; and (3) neutral risks that have no particular employment or personal characteristics." *Id.* A risk "distinctly associated" with a claimant's employment is a risk that is peculiar to the claimant's work or incurred as the result of a defect in the employer's premises. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 45 (1987); *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106 (2006). "Personal risks include nonoccupational diseases, injuries caused by personal infirmities such as a trick knee, and injuries caused by personal enemies and are generally noncompensable." *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162-63 (2000). A neutral risk is one having no particular employment or personal characteristic. "Injuries resulting 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." *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Worker's Compensation*

Comm'n, 407 Ill. App. 3d 1010, 1014 (2011). The increased risk may be either qualitative, in that some aspect of the employment contributed to the risk, or quantitative, in that the employee is exposed to the common risk more frequently than the general public. *Id.*

¶ 18 In this case, the claimant was injured when he jumped from a loading dock to reach ground level. There is no evidence that his injury was the result of a personal risk such as an idiopathic fall. Nor is there any evidence that the risk of injury from descending from an elevated platform to ground level was peculiar to the claimant's work or that the risk was the result of a defect in Kirby's premises. Rather, the risk of injury to the claimant in this case was a neutral risk as members of the general public encounter the risk of injury as they descend from elevated platforms or structures to ground level in their everyday living. See *Village of Villa Park v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 130038WC, ¶ 20 (traversing stairs is a neutral risk); *Baldwin*, 409 Ill. App. 3d at 478 (walking up stairs does not expose an employee to a risk greater than that faced by the general public). As the claimant was exposed to a neutral risk, his injury is compensable under the Act only if his employment exposed him to that risk to a greater degree than the general public.

¶ 19 Although the claimant's work duties on September 11, 2014, required that he descend from the loading dock to ground level where the truck he was to use was parked, the Commission, nevertheless, found that his injury "did not stem from any employment requirement such as would have exposed him to risk greater (qualitatively or quantitatively) than that faced by the general public." We agree.

¶ 20 The record establishes that there were stairs and a wheelchair ramp leading from the loading dock to ground level. The claimant admitted that his supervisors at Kirby did not require him to descend from the dock by jumping. He testified that he purposefully jumped off of the

loading dock, and it would only have taken him 30 seconds longer to reach the ground if he had used the stairs and 60 seconds longer if he had walked down the wheelchair ramp.

¶ 21 An injury to an employee arises out of his employment if it "has its origin in some risk so connected with, or incidental to, the employment so as to create a causal connection between the employment and the injury." *Orsini*, 117 Ill. 2d at 45. That causal connection is established when, at the time of his injury, the employee was performing acts which he might reasonably be expected to perform incident to his assigned duties. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 204 (2003). Stated otherwise, the risk that produced the injury must be causally connected to the employment. *Id.*

¶ 22 In this case, the neutral risk attendant to the claimant's descending from the loading dock to the ground level was no greater than the risk to which the general public is exposed as they descend from elevated platforms or structures to ground level in their everyday living. The risk that resulted in the claimant's injury was that of jumping off of the loading dock, an act which was not reasonably expected to be performed in connection with the claimant's assigned duties.

¶ 23 Whether the claimant's injury arose out of his employment with Kirby was a question of fact to be resolved by the Commission, and its determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Adcock v. Illinois Workers' Compensation Comm'n*, 2015 IL App (2d) 130884WC, ¶ 29. The Commission found that the claimant's injury "did not originate in any cognizable employment risk and therefore did not 'arise out of' employment." Based upon the foregoing analysis, we cannot say that the Commission's finding in this regard is against the manifest weight of the evidence.

¶ 24 For the reasons stated, we affirm the judgment of the circuit court which confirmed the Commission's denying the claimant benefits under the Act.

¶ 25 Affirmed.