2019 IL App (1st) 180165WC-U

No. 1-18-0165WC

Order filed: March 22, 2019

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

BEVERLY L. JOINER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 17-L-50259
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION and COOK COUNTY CLERK OF THE CIRCUIT COURT,	)	
	)	Honorable
	)	Carl Anthony Walker,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson and Cavanagh concurred in the judgment.
Justice Hoffman dissented.

ORDER

¶ 1 *Held:* The Commission erred in denying the claimant compensation under the Act where its finding that the claimant did not sustain accidental injuries that

arose out of and in the course of her employment was against the manifest weight of the evidence.

¶ 1 The claimant, Beverly Joiner, appeals from an order of the circuit court which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) finding that she failed to prove that she sustained an accident which arose out of and in the course of her employment with the Cook County Clerk of the Circuit Court (Circuit Clerk), and as a consequence, denying her benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2012)). For the reasons which follow, we reverse the judgment of the circuit court, vacate the decision of the Commission and remand for further proceedings.

¶ 2 I. Background

¶ 3 The claimant filed an application for adjustment of claim pursuant to the Act against her employer, Circuit Clerk, seeking workers' compensation benefits for injuries she sustained to her right wrist and shoulder on July 22, 2013, when she fell from a sidewalk while attempting to cross a street. The following factual recitation was taken from the record and the evidence presented at the arbitration hearing on January 27, 2016.

¶ 4 At the time of the accident on July 22, 2013, the claimant was 63 years of age and had worked for the Circuit Clerk since July 11, 1994, as an administrate assistant, specifically, a timekeeper. The claimant's primary job duties included computer work, lifting items, delivering mail and scanning reports. The claimant worked at the Leighton Criminal Court Building, located at 2650 South California Avenue, in Chicago, Illinois. The claimant testified that she normally worked 8 a.m. to 4 p.m. During the workday, she

parked her vehicle in a free parking garage that was accessible to "[e]mployees, police officers and jurors," but not open to the general public. The claimant testified that she was "told" to park in the employee parking garage, located across the street from the Leighton Criminal Court Building, when she was hired 22 years ago. Although the claimant could have paid to park her vehicle in the parking garage at "26th Street and California" or in a metered space, she testified that everyone in her department parked in the employee parking garage.

¶ 5 In July 2013, the claimant reported to two supervisors, Chief Deputy Clerk Denise Solofra (Solofra) and Assistant Chief Deputy Clerk Gary Smith (Smith). The claimant testified that on July 22, 2013, Smith directed her to run several errands, which included picking up flowers and a cake, in anticipation of Solofra's in-office birthday celebration. The claimant had clocked in for the day and was not instructed to clock out to run the errands. Sometime between 9 a.m. and 10 a.m., the claimant walked to the employee parking garage and drove her vehicle to a strip mall to pick up the requested flowers and cake. After picking up the items, she drove back to work. The claimant met a coworker at the main entrance, which was accessible to both employees and the general public, of the Leighton Criminal Court Building to drop off the items. The claimant then drove to the employee parking garage, parked her vehicle and returned to the office. Once the claimant reached the office, she went to her desk and realized she did not have her glasses because she "can't see to work on the computer without them."

¶ 6 At approximately 11 a.m., the claimant "told Gary Smith" that she was going to return to her vehicle to retrieve her glasses. The claimant did not clock out at this time.

She then walked to the parking garage and searched her vehicle. She was unsuccessful in finding her glasses. The claimant started to walk back to the office, traversing the same path she had just walked. The claimant testified that after she exited the employee parking garage, she crossed California Boulevard and walked a path near a park-like parkway, located between California Boulevard and California Avenue, until she stopped at a crosswalk on the east side of California Avenue to wait for passing cars. The claimant testified that both employees and the general public were waiting to cross California Avenue. After she "saw *** [roughly 40-50] people going across [the street], *** [she] started going across" when her right foot caught a hole in the sidewalk and she fell "forward into the street." The claimant testified that the sidewalk had been repaired since the accident.

¶ 7 The claimant was injured as a result of her fall and taken to the hospital via ambulance. At the hospital, she complained of pain in her right shoulder, right wrist, right fifth finger and underneath her right eye. A thumb spica splint was placed on the claimant's right hand after CT scans of her right wrist showed "[f]indings consistent with essentially nondisplaced fracture involving the proximal lateral trapezoid bone" and "[a]bnormal appearance of the distal radial ulnar joint raises concern for damage to distal radial ulnar ligament."

¶ 8 On July 23, 2013, the claimant presented to Dr. Prinz for treatment. Dr. Prinz reviewed the CT scan and x-rays, indicating that "[f]indings were consistent with minimally displaced trapezoid fracture ***" that could likely be treated nonoperatively.

Dr. Prinz noted that he could not exclude a "occult distal radius fracture," given "this is a somewhat unusual fracture."

¶ 9 Dr. Prinz's August 16, 2013, notes indicated that the MRI of the claimant's right shoulder revealed a large full thickness rotator cuff tear with "some degenerative change, not end stage." Dr. Prinz's notes further specified that he could not "definitely state that this fall caused the rotator cuff tear. My suspicion is that perhaps she had some shoulder pathology prior to the fall that may have been aggravated after the fall."

¶ 10 The claimant testified that she informed Dr. Prinz of her involvement in a hit and run accident in May 2012, and the subsequent pain she had experienced "up and down her right, upper arm." The claimant also informed Dr. Prinz that she had experienced some shoulder pain for months prior to the July 22, 2013, accident, although she had never received injections or surgery recommendations for her shoulder until after July 22, 2013. The claimant further testified that Dr. Prinz had informed her that he was uncertain whether her shoulder injury was the result of the July 2013 fall, given her previous injury in May 2012.

¶ 11 On October 15, 2013, Dr. Prinz administered an injection to the claimant's CMC joint for a possible focal longitudinal tear at ECU, revealed by an MRI of the right wrist. Following continued pain, the claimant received a second injection to her CMC joint on December 18, 2013, by Dr. Wysocki. Although Dr. Wysocki instructed the claimant to return for treatment in six weeks, the claimant did not return "[b]ecause [the doctors] had injected twice, and it didn't help."

¶ 12 On March 13, 2014, the claimant presented for her final appointment with Dr. Prinz, at which time, Dr. Prinz recommended the claimant receive a second opinion regarding her shoulder. The claimant did not seek a second opinion.

¶ 13 At the time of the arbitration hearing, the claimant could not bend her thumb completely, experienced tingling in her right hand and, during cold weather, felt sharp pain in her right hand. Additionally, the claimant had difficulty sleeping and reaching overhead due to right-sided shoulder pain. The claimant testified that she returned to work while she received treatment for her injuries. She took Tylenol and applied topical spray for pain, as needed. Moreover, the claimant testified that all medical bills associated with her July 2013 injuries had been paid by her group health insurance plan.

¶ 14 On February 5, 2016, the arbitrator denied the claimant compensation after finding that her injuries did not arise out of and in the course of her employment with the Circuit Clerk. Specifically, the arbitrator found that the claimant was not exposed to a risk greater than the general public because the claimant's accident occurred when she was walking along a public pathway traversed by the general public. Moreover, the claimant was not required to park in the employee parking garage but chose to do so although other options were available to her.

¶ 15 The claimant filed a timely petition for review of the arbitrator's decision. On February 14, 2017, the Commission, with one member dissenting, affirmed and adopted the arbitrator's decision. The Commission, relying on *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill. 2d 52, 62 (1989), determined that the claimant was not exposed to a risk greater than the general public because "[c]urbs, and the risks inherent

in traversing them, confront all members of the public." Specifically, the Commission found that the claimant, in her own words, was crossing California Avenue, a public street owned and maintained by the City of Chicago and traversed by the general public, when she stepped down from a curb and fell. Moreover, the Commission also found it significant that additional parking options, aside from the employee parking garage, were available. Thus, the claimant "was not required to park there and could park elsewhere."

¶ 16 A dissent, entered by one Commission member, relied on *Brais v. Illinois Workers' Compensation Comm'n,* 2014 IL App (3d) 120820WC, concluding that the claimant's condition was causally related to the July 22, 2013, accident where the facts indicated that she was a traveling employee at the time of the accident and was injured because of a special hazard that was on her sole and direct route from the employee parking garage to the entrance of her work building.

¶ 17 The claimant filed a timely petition for review. On December 27, 2017, the circuit court confirmed the Commission's decision, and the claimant filed a timely notice of appeal on January 12, 2018.

¶ 18 II. Analysis

¶ 19 On appeal, the claimant argues that the Commission erred by finding that her wrist and shoulder injuries did not arise out of and in the course of her employment. Specifically, the claimant argues that this court should apply *Brais,* 2014 IL App (3rd) 120820WC, mirroring the dissenting Commission member's decision, because the "manifest weight of the evidence shows the usual and direct route is the path [she] took"

presented a clear defect and special hazard in the sidewalk which caused her injury. We agree.

¶ 20 To be compensable under the Act, the claimant has the burden of establishing, by a preponderance of the evidence, that her injury arose out of and in the course of her employment. *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The Commission is the ultimate decision maker and is not bound by any decision made by the arbitrator. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 63 (2006) (citing *Cushing v. Industrial Comm'n*, 50 Ill. 2d 179, 181-82 (1971)). The Commission must weigh the evidence that was presented at the arbitration hearing and determine where the preponderance of that evidence lies. *Durand*, 224 Ill. 2d at 64. Reviewing courts will not reverse the Commission's decision unless it is contrary to the law or its fact determinations are against the manifest weight of the evidence. *Id*. at 64.

¶ 21 An injury "in the course of 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, 366-67 (1977). That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment. *Sisbro Inc.*, 207 Ill. 2d at 203 (citing 1 A. Larson, Worker's Compensation Law section 12.01 (2002)). Injuries sustained on an employer's premises, or at a place where claimant might reasonably have been while performing her duties, and while a claimant is at work, or within a reasonable time before and after work, are generally deemed to have been received in the course of employment. *Caterpillar Tractor Co.*, 129 Ill. 2d at 57-8.

¶ 22 Here, the undisputed evidence showed that the claimant was injured after she had clocked in at work. The undisputed evidence also demonstrated that the claimant's injuries were sustained while she was walking from the employee parking garage to the Leighton Criminal Court Building after picking up a cake and flowers, a special work-related errand directed by Smith, her supervisor. The claimant had once returned to the Leighton Criminal Court Building after delivering the requested cake and flowers to a coworker but soon discovered that she did not have her glasses. Because the claimant "c[ouldn't] see to work on the computer ***" without her glasses, she informed Smith that she was going to return to her vehicle to retrieve them.

¶ 23 Although the claimant had once returned from the special errand and did not ultimately locate her glasses in her vehicle, we find it significant that the claimant's need to return to her vehicle was clearly associated with the uncommon work-related errand she performed at the direction of her supervisor. Specifically, we note the claimant testified that her primary job duties included computer work, lifting items, delivering mail and scanning reports, all of which she likely performed within the confines of the Leighton Criminal Court Building. Because the claimant was unable to locate her glasses after returning from an unusual task that required her to leave the Leighton Criminal Court Building, it was not unreasonable for her to assume she left her glasses in her vehicle during the work-related errand. Under these circumstances, the claimant's act of retrieving her glasses shortly after returning from the special work-related errand constituted a continuation thereof. As such, the manifest weight of the evidence showed that the claimant sustained injuries at a place where her employer reasonably expected

her to be while performing her assigned duties, thus, we conclude that the claimant's injuries were sustained in the course of her employment. Thus, the sole issue is whether the claimant's injuries arose out of her employment.

¶ 24 An injury "arises out of" employment if its "origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro,* 207 Ill. 2d at 203. "Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he or she was instructed to perform by the employer, acts which he or she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his or her assigned duties." *Brais,* 2014 IL App (3d) 120820WC, ¶ 18. "A risk is incidental to employment where it belongs to or is connected with what an employee has to do in fulfilling his duties." *Id.* ¶ 18 (citing *Caterpillar Tractor Co.,* 129 Ill. 2d at 58).

¶ 25 There are three categories of risk to which an employee may be exposed; namely: (1) risks distinctly associated with employment; (2) personal risks; and (3) neutral risks which have no particular employment or personal characteristics. *Illinois Institute of Technology Research Institute v. Industrial Comm'n,* 314 Ill. App. 3d 149, 162 (2000). Neutral risks—risks that have no particular employment characteristics—"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 Workers' Compensation Comm'n,* 407 Ill. App. 3d 1010, 1014 (2011). "Such an 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." *Metropolitan Water,* 407 Ill. App. 3d at 1014.

¶ 26 Here, the claimant's right foot caught a hole in the sidewalk, causing her to fall forward on California Street. The risk of such an event is not distinctly associated with her employment, nor is it personal to her. The risk of getting your foot caught in a hole in a sidewalk is a neutral one. Consequently, the question of whether the claimant's injury arose out of her employment rests on a determination of whether she was exposed to a risk of injury to a greater extent than that to which the general public was exposed. *Illinois Institute,* 314 Ill. App. 3d at 162. The Commission found that she was not. We disagree.

¶ 27 When an employee is injured in an area which is the usual route to the employer's premises, and there is a special risk or hazard on the route, the hazard becomes part of the employment. See *Litchfield HealthCare Center v. Industrial Comm'n,* 349 Ill. App. 3d 486, 491 (2004). "Special hazards or risks encountered as a result of using a usual access route satisfy the 'arising out of' requirement of the Act." *Litchfield HealthCare Center,* 349 Ill. App. 3d at 491 (citing *Bommarito v. Industrial Comm'n,* 82 Ill. 2d 191, 195 (1980)).

¶ 28 Here, the claimant's walk from the employee parking garage to the Leighton Criminal Court Building was the *usual* path she had taken for 22 years. In fact, the claimant was "told" to park there by Chief Jerry Sharofa when she was hired 22 years prior, as it was a free option offered to all employees. As such, she continued to park

there over the course of her employment. We note that the Commission relied on the fact that the claimant could have chosen various different paths to get to her place of employment, given that she was not required to park in the employee parking garage. We find the Commission's reliance on this fact to be misplaced. Although the claimant testified that she *could have* parked elsewhere, the two other available options would have required her to personally pay for public parking in a public lot or in a metered space for eight hours a day, five days a week. Conversely, the claimant's undisputed testimony revealed that she was unaware of any employee in her department who parked elsewhere besides the free parking garage located across the street from the Leighton Criminal Court Building.

¶ 29 Furthermore, unlike the circumstances in *Caterpillar Tractor Co.*, the case relied upon by the Commission, this case does not merely involve risks inherent in walking on a sidewalk that confront all members of the public. In *Caterpillar Tractor Co.*, 129 Ill. 2d at 56, after claimant completed his shift, he exited the employer's building through doors normally used by employees. When claimant stepped off of a curb, his right foot landed on a slight cement slope, which caused his foot to land half on the cement incline and half on the driveway. *Id.* at 57. The driveway was located on the employer's premises and was used by both employees and the general public. *Id.* After the supreme court determined that there was no evidence as to the existence of holes, rocks or obstructions, the court found that the condition of the premises was not a contributing cause of claimant's injury, and there was no apparent connection to claimant's employment other than that he was injured while on the employer's premises. *Id.* at 61. Ultimately, the supreme court

determined that claimant did not prove he was exposed to a risk not common to the general public. *Id.* at 62.

¶ 30 Unlike the curb in *Caterpillar Tractor, Co.*, 129 Ill. 2d at 61, where no defect existed, and our supreme court specifically found that the curb was like any other curb, thus, not a contributing cause of claimant's injury; here, the sidewalk was defective. As the dissenting commissioner reasoned, the claimant was exposed to a "special hazard" that was on her sole or usual route from the employee parking lot to the entrance of the Leighton Criminal Court Building. As such, the facts support a finding that the claimant encountered a special hazard or risk as a result of using a usual access route to her employment. See *Litchfield Health Center,* 349 Ill. App. 3d at 491 (when " 'an injury to an employee takes place in an area which is the usual route to the employer's premises, and the route is attendant with a special risk or hazard, the hazard becomes part of the employment.' "). Thus, the evidence establishes that the claimant was using her usual route from the parking garage to the Leighton Criminal Court Building at the time of her fall. It is for these reasons that we find the claimant's injury arose out of her employment.

¶ 31 Although we are reluctant to find a factual determination of the Commission to be against the manifest weight of the evidence, we will not hesitate to do so when the clearly evident, plain and indisputable weight of the evidence compels an opposite conclusion. See *Montgomery Elevator Co. v. Industrial Comm'n,* 244 Ill. App. 3d 563, 567 (1993). Based upon the foregoing analysis, the Commission's determination that the claimant

failed to prove that she sustained an accidental injury arising out of and in the course of her employment was against the manifest weight of the evidence.

¶ 32 III. Conclusion

¶ 33 For the reasons stated, we reverse the judgment of the circuit court of Cook County confirming the Commission's decision, reverse the Commission's decision, and remand the cause to the Commission for further proceedings.

¶ 34 Reversed; cause remanded.

¶ 35 JUSTICE HOFFMAN, dissenting:

¶ 36 I disagree both with the majority's finding that the claimant's injury arose out of her employment and the dissenting commissioner's suggestion that the claimant was a traveling employee.

¶ 37 Simply put, the claimant misplaced her glasses and, during working hours, returned to her personal vehicle which was parked in an employee parking lot across a public roadway in an attempt to find the glasses. After failing to find her glasses in the vehicle, the claimant exited the parking lot, crossed California Boulevard, and waited on a public sidewalk until she could cross California Avenue. As she started to cross, her right foot got caught in a hole in the sidewalk and she fell, sustaining the injuries for which recovery under the Act was sought.

¶ 38 A traveling employee is one who is required to travel away from her employee's premises in order to perform her job. *Venture Newberg-Perini v. Illinois Workers'*

Compensation Comm'n, 2013 IL 115728, ¶ 17. Nothing in the record even suggests that the claimant was required to go to her vehicle in order to perform her job. She was not a traveling employee at the time of her injury.

¶ 39 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). Arising out of the employment refers to the origin or cause of the claimant's injury. As the Supreme Court held in *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52 (1989):

> "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 59.

In addition, an injury arises out of the employment if the claimant was exposed to a risk of harm beyond that to which the general public is exposed. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548 (1991).

¶ 40 At the time of her injury, the claimant was not performing any act which she was instructed to perform by her employer. Nor was she performing any act which she had a common law or statutory duty to perform. The question remains whether she was performing an act which she might reasonably be expected to perform incident to her employment. Only those acts which belong to, or are connected to, what an employee is required to do in fulfilling her duties are considered incidental to the employment. Going to or returning from an attempt to locate her lost glasses in her personal vehicle neither belonged to, or was connected with, what the claimant was required to do in fulfilling her job duties. The claimant was injured as the result of her right foot getting caught in a hole in a public sidewalk as she started to cross a public street. At the time of her injury, the claimant was returning to her work building from the employee parking lot. The route which she took was neither the exclusive route, nor one which the employer required her to take. See *Bommarito v. Industrial Comm'n*, 82 Ill. 2d 191, 194-196 (1980). Further, the hazard attendant to the hole in the public sidewalk which caused the claimant to fall was a hazard to which any member of the general public traversing the sidewalk would have been equally exposed.

¶ 41 The claimant was injured while walking on a public sidewalk as she was returning to work, and, as such, her injuries did not arise out of her employment. *Browne v. Industrial Comm'n*, 38 Ill. 2d 193, 194-95 (1967). Consequently, I would affirm the judgment of the circuit court which confirmed the Commission's decision denying the claimant benefits pursuant to the Act.