2011 IL App (4th) 100660WC-U

NO. 3–10–0660WC

Order filed November 1, 2011

IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

Illinois Workers' Compensation Commission Division

CATERPILLAR, INC.,	)	Appeal from
Respondent-Appellant,	)	Circuit Court of
v.	)	Peoria County
ILLINOIS WORKERS' COMPENSATION	)	No. 10MR114
COMMISSION DIVISION,	)	
(Patricia Moncelle, widow of Michael Moncelle,	)	Honorable
deceased, appellee)	)	Stuart P. Borden,
Petitioner-Appellee.	)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Hoffman and Hudson concurred in the judgment.
Justice Stewart specially concurred, joined by Justice Holdridge.

ORDER

¶ 1 *Held*: The Workers' Compensation Commission's finding that claimant failed to prove decedent's death arose out of his employment was not against the manifest weight of the evidence.

¶ 2 On November 8, 2007, claimant, Patricia Moncelle, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 through 30 (West 2006)), seeking benefits from employer, Caterpillar, Inc., for the death of her husband, Michael Moncelle (decedent).

¶ 3 Following a hearing, an arbitrator denied claimant compensation finding claimant failed to prove decedent's death arose out of his employment. Further, the arbitrator denied

claimant compensation "for the separate and independent reason that it is barred by section 11 of the Act [(820 ILCS 320/ 11 (West 2006))]." On review, the Illinois Workers' Compensation Commission (Commission) affirmed the arbitrator's decision.

¶ 4 On August 3, 2010, the circuit court entered an order reversing the Commission's decision and remanding the matter to the Commission "for a determination of just compensation and benefits." On August 24, 2010, the circuit court entered a "FINAL JUDGMENT ORDER" awarding claimant compensation and burial expenses under section 7 of the Act (820 ILCS 305/7 (West 2006)).

¶ 5 On appeal, employer argues the Commission's finding that (1) claimant failed to prove decedent's death arose out of his employment was not against the manifest weight of the evidence, and (2) decedent's death was not compensable by virtue of section 11 of the Act (820 ILCS 320/11 (West 2006)), which precludes an employee from recovering for accidental injuries incurred while participating in "voluntary recreational programs" unless the employee was ordered or assigned by the employer to participate in the activity. We reverse the judgment of the circuit court and reinstate the decision of the Commission.

¶ 6 The parties are aware of the facts taken from the evidence presented at the arbitration hearing on November 19, 2008, and they will not be reviewed in detail. Following the hearing, the arbitrator found claimant failed to prove decedent's death arose out of his employment, stating:

> "[T]he risk of another driver running a red light and injuring an employee on a highway intersection is not an increased risk. The fact that Michael Moncelle was present at the place of injury

> because of his employment duties is not by itself sufficient to establish that the injury arose out of the employment. The accident did not arise out of the decedent's employment by Caterpillar."

Further, the arbitrator denied compensation "for the separate and independent reason that it is barred by section 11 of the Act [(820 ILCS 320/11 (West 2006))]."

¶ 7 Claimant filed a petition for review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission affirmed and adopted the arbitrator's decision denying claimant benefits under the Act.

¶ 8 Thereafter, claimant filed a petition seeking judicial review in the circuit court of Peoria County. On August 3, 2010, the circuit court entered an order reversing the Commission's

decision and remanding the matter to the Commission "for a determination of just compensation and benefits." On August 24, 2010, the circuit court entered a "FINAL JUDGMENT ORDER" awarding claimant compensation and burial expenses under section 7 of the Act (820 ILCS 305/7

(West 2006)).

¶ 9 This appeal followed.

¶ 10 Although the parties did not raise the issue of this court's jurisdiction over this appeal, we are required to do so *sua sponte*. *Williams v. Industrial Comm'n*, 336 Ill. App. 3d 513, 515, 784 N.E.2d 396, 398 (2003). The appellate court's jurisdiction is limited to reviewing final judgments, subject to statutory or supreme court rule exceptions. *Williams*, 336 Ill. App. 3d at 515, 784 N.E.2d at 398-99. Generally, when the circuit court reverses a decision

of an administrative agency and remands the case to the agency for further proceedings involving disputed questions of law or fact, the order is not final for appeal purposes. *Williams*, 336 Ill. App. 3d at 516, 784 N.E.2d at 399. "If, however, the agency on remand has only to act in accordance with the directions of the court and conduct proceedings on uncontroverted incidental matters or merely make a mathematical calculation, then the order is final for purposes of appeal." *Williams*, 336 Ill. App. 3d at 516, 784 N.E.2d at 399.

¶ 11 In *A.O. Smith Corp. v. Industrial Comm'n*, 109 Ill. 2d 52, 53, 485 N.E.2d 335, 336 (1985), a surviving spouse sought workers' compensation benefits after the death of her husband caused by injuries he sustained during the course of his employment. The Commission awarded the spouse only funeral expenses, but the circuit court reversed and remanded the matter to the Commission for further proceedings. *A.O. Smith Corp.*, 109 Ill. 2d at 54, 485 N.E.2d at 336. On appeal, the supreme court addressed the issue of whether the circuit court's order was a final and appealable order. *A.O. Smith Corp.*, 109 Ill. 2d at 54, 485 N.E.2d at 336. In electing to retain its jurisdiction over the appeal, the court noted that "[t]he parties have stipulated to the facts, including the amount of the decedent's earnings and the weekly benefits payable if the statute at the time of the death is applicable." *A.O. Smith Corp.*, 109 Ill. 2d at 54, 485 N.E.2d at 336. The court stated that "[t]he calculation of the amount of the award upon affirmance is a simple mathematical process, and under the circumstances we elect not to dismiss the appeal." *A.O. Smith Corp.*, 109 Ill. 2d at 54-55, 485 N.E.2d at 336.

¶ 12 In the present case, the parties stipulated that decedent earned in excess of $142,380 for the year preceding his death and that his average weekly wage was in excess of

$2,738. In addition, employer did not contest the amount of claimant's burial expenses ($4,200). The disputed issues at the arbitration hearing were whether (1) decedent's death arose out of and in the course of his employment and (2) the claim was barred by section 11 of the Act. The arbitrator found claimant failed to prove decedent's death arose out of decedent's employment and further, the claim was barred by section 11 of the Act. The Commission affirmed the arbitrator's decision. On August 3, 2010, the circuit court entered an order reversing the Commission's decision and remanding the matter to the Commission "for a determination of just compensation and benefits."

¶ 13 On remand from the circuit court, the Commission's task would be to ascertain the proper award amount for death benefits and burial expenses. Since the parties stipulated to the deceased employee's average weekly wage, the determination of the death benefits award involves a simple mathematical calculation (820 ILCS 305/7(a), 8(b)(2) (West 2006)), as evidenced by the circuit court's order entered on August 24, 2010, awarding claimant compensation and burial expenses under section 7 of the Act (820 ILCS 305/7 (West 2006)).

¶ 14 In addition, the employer does not dispute that claimant incurred burial expenses in the amount of $4,200. The proceedings before the Commission after remand, therefore, will not involve resolution of questions of law or fact but would involve uncontroverted incidental matters and a simple mathematical calculation. Under such circumstances, the circuit court's judgment that reversed the Commission and remanded the case "for a determination of just compensation and benefits" was a final and appealable judgment. Accordingly, we have jurisdiction over this appeal.

¶ 15 Next, we address whether the Commission's finding that claimant failed to prove

decedent's death arose out of his employment is against the manifest weight of the evidence.

¶ 16 The Commission is the ultimate decision maker in workers' compensation cases. *Roberson v. Industrial Comm'n (P.I. & I. Motor Exp., Inc.)*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). The Commission must weigh the evidence presented at the arbitration hearing and determine where the preponderance of that evidence lies. See *Wagner Castings Co. v. Industrial Comm'n*, 241 Ill. App. 3d 584, 594, 609 N.E.2d 397, 405 (1993) ("it is *solely* within the province of the Commission" to weigh the evidence (emphasis in original)). A reviewing court will not set aside the Commission's decision unless its analysis is contrary to law or its fact determinations are against the manifest weight of the evidence. *Roberson*, 225 Ill. 2d at 173, 866 N.E.2d at 199.

¶ 17 In order for claimant to recover, she must demonstrate that decedent's injuries arose out of and in the course of decedent's employment. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162, 731 N.E.2d 795, 806 (2000). Both elements must be present in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 546 N.E.2d 603, 605 (1989). Whether an injury arises out of and in the course of a decedent's employment is a question of fact to be resolved by the Commission, and we will not disturb its determination unless it is against the manifest weight of the evidence. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 164, 731 N.E.2d at 808. A finding of fact is contrary to the manifest weight of the evidence only where an opposite conclusion is clearly apparent. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). The appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same

conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833, 769 N.E.2d 66, 71 (2002).

¶ 18 For an injury to arise out of a decedent's employment, it must have its origin in some risk incidental to the employment. *Eagle Discount Supermarket v. Industrial Comm'n*, 82 Ill. 2d 331, 338, 412 N.E.2d 492, 496 (1980). The risk of injury must be peculiar to the decedent's work or it must be a risk to which the decedent, by reason of his employment, is exposed to a greater degree than the general public. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 45, 509 N.E.2d 1005, 1008 (1987). When the injury results from a hazard to which the decedent would have been equally exposed apart from his work, the injury cannot be said to arise out of his employment. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 550, 578 N.E.2d 921, 924 (1991). The Commission's determination that an injury arose out of a decedent's employment involves a question of fact, and its decision on the matter will not be disturbed on review unless it is against the manifest weight of the evidence. *Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1227, 738 N.E.2d 955, 958 (2000).

¶ 19 The mere fact that a decedent was present at the place of injury because of his employment duties will not by itself suffice to establish that the injury arose out of the employment. *Brady*, 143 Ill. 2d at 550, 578 N.E.2d at 924. Rather, a claimant must demonstrate that the decedent's risk of the injury sustained is peculiar to his employment, or that it is increased as a consequence of the work. *Brady*, 143 Ill. 2d at 550, 578 N.E.2d at 924. If an accident is caused by a risk unrelated to the nature of the employment, or is not fairly traceable to the workplace environment, but results instead from a hazard to which the decedent would have been equally exposed apart from his work, the injury cannot be said to arise out of the employment. *Brady*, 143 Ill. 2d at 550, 578 N.E.2d at 924.

¶ 20 In the instant case, decedent worked as technical manager in the New Technology and Engine Components Department of LPSD, a division of employer. At the time of the collision, decedent drove from his office approximately four miles, to an intersection approximately one-half mile from the Woodcutter. Havran characterized the event as "a little social lunch before [Eddy] left us for the winter." Employer exercised no control over the location where decedent drove for lunch and gave him no instructions in that regard. Decedent's travel at the time was no different then any other person driving to the Woodcutter for lunch. Decedent was exposed to no greater risk than that faced by any other member of the general public and was not performing any duties incidental to his employment at the time he was injured. Simply having lunch with a coworker on his last day of employment does not suffice. Decedent was not conducting any work-related activity at the time. He was just driving.

¶ 21 Claimant cites multiple cases for the proposition that "injuries sustained by an employee while away from the job premises of his employer have been held compensable under the Act when the injuries occurred while the employee was acting under the direction of the employer or for his benefit or accommodation." *Osborn v. Industrial Comm'n*, 50 Ill. 2d 150, 151, 277 N.E.2d 833, 834 (1971). See, for example, *Olson Drilling Co. v. Industrial Comm'n*, 386 Ill. 402, 54 N.E.2d 452 (1944) (the supreme court affirmed the Commission's award of benefits to an employee injured in an automobile accident while carrying drilling reports as directed by the employer to be delivered to the company office); *Benjamin H. Sanborn Co. v. Industrial Comm'n*, 405 Ill. 50, 89 N.E.2d 804 (1950) (employee injured in an automobile accident where the trip or travel was made necessary by special requirements of the employment); *C.A. Dunham Co. v. Industrial Comm'n*, 16 Ill. 2d 102, 156 N.E.2d 560 (1959)

(where employee was ordered by his employer to travel to location by airplane and employee was killed when plane exploded in mid-air as result of a bomb having been placed thereon, accident was properly deemed to arise out of decedent's employment and was compensable); *Lybrand, Ross Bros. and Montgomery v. Industrial Comm'n*, 36 Ill .2d 410, 223 N.E.2d 150 (1967) (the

supreme court affirmed the Commission's award of benefits holding employee's death resulting from automobile accident while employee was returning from employer's annual golf outing was compensable as arising out of and in the course of employment, where attendance at outing was based on substantial employer compulsion); and *Givenrod-Lipe, Inc. v. Industrial Comm'n*, 71 Ill. 2d 440, 442, 376 N.E.2d 1018, 1020 (1978) (the supreme court affirmed the Commission's award of benefits where employee attended a business meeting at a private club and was killed in an automobile accident on the most direct route to his home).

¶ 22 At the time of the accident in this case, decedent was not under the direction or control of employer. On the morning of November 24, 2004, Marquis stopped by decedent's office to remind him that it was Eddy's last day. Decedent suggested they should go to lunch. Employer exercised no control over the location where decedent drove for lunch and gave him no

instructions in that regard. Claimant was not on a special mission for respondent. Decedent drove to the Woodcutter to have lunch with a coworker on his last day of employment. There was no request by employer that decedent do anything special on the day in question.

¶ 23 In sum, claimant was involved in a traffic accident which was unrelated to his employment as a technical manager for employer. Decedent's injuries did not arise out of his

employment. Claimant failed to prove a causal connection between decedent's injury and his employment. Workers' compensation is not a general all-encompassing health and accident insurance policy. The facts in this case should not be construed in such a way as to make it so.

¶ 24 As a result of our disposition of this case, we need not address whether decedent's injuries arose in the course of his employment or whether section 11 of the Act (820 ILCS 320/ 11 (West 2006)) barred the instant claim.

¶ 25 We reverse the judgment of the circuit court and reinstate the Commission's decision.

¶ 26 Circuit court judgment reversed; Commission decision reinstated.

¶ 27 JUSTICE STEWART, specially concurring.

¶ 28 I write separately because, although I concur in the result reached by the majority, I do so under a different analysis.

¶ 29 The Commission, adopting the decision of the arbitrator, found that the decedent's accident occurred in the course of his employment. However, the Commission concluded that the accident did not arise out of his employment because he was not exposed to any greater risk of being involved in a motor vehicle accident than the general public. The majority has apparently adopted this analysis.

¶ 30 In my view, if the decedent was acting in the course of his employment while operating a motor vehicle, the risk of being involved in a collision was a risk of his employment. As this court recently stated:

> "Under the 'street risk' doctrine, where the evidence establishes that the claimant's job requires that she be on the street to perform the duties of her employment, the

> risks of the street become one of the risks of the employment, and an injury sustained while performing that duty has a causal relationship to her employment. [Citations] In such a circumstance, it is presumed that the claimant is exposed to risks of accidents in the street to a greater degree than if she had not been employed in such a capacity, and the claimant will be entitled to benefits under the Act." *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1014-15, 944 N.E.2d 800, 804 (2011).

Thus, under a traditional analysis of whether this claim should be compensable, if the majority accepts that the decedent's accident occurred in the course of his employment, it should also find that it arose out of his employment.

¶ 31 Regardless, in my view, this claim cannot withstand scrutiny under section 11 of the Act. 820 ILCS 305/11 (West 2006). That section provides, in pertinent part, as follows:

> "Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program." 820 ILCS 305/11 (West 2006).

"Simply put, accidental injuries incurred by an employee while participating in a voluntary recreational program are excluded from coverage by section 11 of the Act. " *Pickett v. Industrial Comm'n*, 252 Ill. App. 3d 355, 358, 625 N.E.2d 69, 71 (1993).

¶ 32 The evidence in this case is clear that the decedent was killed in a motor vehicle collision while traveling to a restaurant to attend a luncheon in honor of a co-employee who was retiring. His attendance at the luncheon was strictly voluntary. In my view, the luncheon would be analogous to a party under the above-quoted statutory provision. Thus, regardless of whether the accident would have been compensable under a traditional analysis of whether it arose out of and in the course of his employment, the activity in which he was engaged is excluded from coverage by section 11 of the Act.

¶ 33 For the foregoing reasons, I concur in the judgment, but not the analysis, of the majority.

¶ 34 Joined by Justice Holdridge.