2011 IL App (4th) 100733WC-U

Workers' Compensation
Commission Division
Filed: September 22, 2011

No. 4-10-0733WC

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

DECATUR MEMORIAL HOSPITAL,	) APPEAL FROM THE
	) CIRCUIT COURT OF
Appellee,	) MACON COUNTY
	)
v.	) No. 09 MR 767
	)
ILLINOIS WORKERS' COMPENSATION	)
COMMISSION, *et al*.,	)
(CONNIE COPELAND,	) HONORABLE
	) ALBERT G. WEBBER,
Appellant).	) JUDGE PRESIDING.

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

O R D E R

HELD: The finding of the Workers' Compensation Commission that the claimant's injuries arose out of and in the course of her employment was not against the manifest weight of the evidence.

¶ 1 The claimant, Connie Copeland, appeals from an order of the Circuit Court of Macon

County, reversing a decision of the Illinois Workers' Compensation Commission (Commission) that awarded her benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2004)), for injuries she sustained after falling at work while in the employ of Decatur Memorial Hospital (Decatur). For the reasons which follow, we reverse the judgment of the circuit court and reinstate the Commission's decision.

¶ 2 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on May 27, 2008.

¶ 3 The claimant, who had worked for Decatur since 1980, most of that time as a respiratory therapist, testified that she fell while at work on December 21, 2006. Just before her fall, she was "quite busy" when she left a patient's room carrying and reading "treatment cards" for her remaining patients. She said that she "was looking at [her] cards," she "was walking, and then [she] was on the ground." The claimant testified that she had noticed in the past that the floor where she fell was "slightly uneven." She further stated that, due to remodeling over the years, the floor at the time of her fall had "little bumps and dips that it always has." On cross-examination, the claimant agreed that, after her fall, she was unable to explain the cause of her fall but denied that she had been dizzy or had tripped on an object just before the fall. She agreed that, as of the time of her testimony, she still did not know what caused her fall.

¶ 4 Joyce Highly, a nurse employed by Decatur, testified that she was working when the claimant fell and that she heard, but did not see, the fall before attending to her immediately. Highly described the floor in the area where the claimant fell as "a little uneven," and she said that "you can feel little dips in the floor." Highly also noted a larger dip in the floor near the location of the claimant's head after she fell, and another, smaller dip near the claimant's feet. In her testimony, Highly also recalled that the floor was often slippery due to water from nearby water sources.

¶ 5 Jacque Oliver, a workers' compensation specialist for Decatur, testified that the claimant

told him that she did not know the cause of her fall but that she did not trip on an object. He also said that he found no dips in the floor in an area where the claimant would have fallen.

¶ 6 On July 8, 2008, following a hearing, the arbitrator awarded the claimant temporary total disability (TTD) benefits for 4 and 2/7 weeks, additional disability benefits for 53 weeks for various permanent injuries, and medical expenses. The arbitrator found that the claimant's fall, and resulting injury, arose out of and in the course of her employment based on four factors:

> "First ***, she was doing her job for the Respondent and *** she was in a hurry. Secondly, the floor in the hallway where she fell was uneven and bumpy. Third, the floor *** was known to be slippery ***. Finally, the hallway was narrow and had various obstructions ***."

In finding that there were uneven areas in the hallway, the arbitrator relied on Highly's testimony.

¶ 7 Decatur sought review of the arbitrator's decision before the Commission, which unanimously upheld and adopted the arbitrator's decision, with some modification to her reasoning. Because the claimant testified that she did not trip on any objects, the Commission discarded the arbitrator's reliance on the idea that the condition of the hallway caused the claimant's fall. The Commission instead based its finding, that the claimant's injury arose out of and in the course of her employment, on evidence that the claimant was in a hurry and reading treatment cards when she fell. Thus, the Commission found that the claimant "was reading treatment cards while hurrying from one patient room to another, which *** was a work related task that contributed to her risk of falling."

¶ 8 Decatur filed a petition for judicial review of the Commission's decision in the circuit court of Cook County. The circuit court reversed the Commission's decision, and this appeal followed.

¶ 9 On appeal, the claimant argues that we should reverse the judgment of the circuit court

and reinstate the Commission's decision. She contends that the Commission's decision was not against the manifest weight of the evidence. We agree.

¶ 10 An employee's injury is compensable under the Act only if it arises out of and in the course of his or her employment. 820 ILCS 305/2 (West 2008). "The phrase 'in the course of' refers to the time, place and circumstances under which the accident occurred." *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 546 N.E.2d 603 (1989). "The words 'arising out of' refer to the origin or cause of the accident and presuppose a causal connection between the employment and the accidental injury." *Illinois Bell Telephone Co.*, 131 Ill. 2d at 483. Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co.*, 131 Ill. 2d at 483. Here, the parties dispute only the "arising out of" issue.

¶ 11 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 injury. *Caterpillar Tractor Co.*, 129 Ill. 2d at 58. "An injury sustained by an employee arises out of his employment if the employee at the time of the occurrence was performing acts he was instructed to perform by his employer, acts which he has a common law or statutory duty to perform while performing duties for his employer, or acts which the employee might be reasonably expected to perform incident to his assigned duties." *Howell Tractor & Equipment Co. v. Industrial Comm'n*, 78 Ill. 2d 567, 573, 403 N.E.2d 215 (1980). "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." *Caterpillar Tractor Co.*, 129 Ill. 2d at 58.

¶ 12 Whether an injury arises out of the claimant's employment is a question of fact to be resolved by the Commission, and its decision in this regard will not be disturbed unless it is against the manifest weight of the evidence. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 164, 731 N.E.2d 795 (2000). For a finding of fact to be

against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992). A reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665 (2003).

¶ 13 As this court has explained, "[e]mployment related risks associated with injuries sustained as a consequence of a fall are those to which the general public is not exposed such as the risk of tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work related task which contributes to the risk of falling." *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106, 853 N.E.2d 799 (2006). Here, the Commission found that the claimant fell while performing a work related task--hurriedly walking down a hospital corridor as she reviewed patient treatment notes--that contributed to her risk of falling. The claimant's testimony supports the Commission's finding regarding her activities at the time of the fall.

¶ 14 The remainder of the record contains sufficient circumstantial evidence to support the Commission's inference that this task contributed to the claimant's fall. The claimant denied having felt dizzy prior to the fall, thus eliminating the possibility that the fall was idiopathic. See *First Cash Financial Services*, 367 Ill. App. 3d at 105 ("The claimant testified that she did not blackout or faint but, rather, slipped and fell for an unknown reason. Accordingly, the claimant's fall was not idiopathic in nature.") The evidence did, however, present several reasonable and probable causes of her fall, most notably the perpetually uneven condition of the floor near the site of the fall. Although that defect might not have imperiled the claimant under normal circumstances, the Commission could quite reasonably have concluded that the distraction of the treatment cards prevented the claimant from guarding against those conditions

as she normally would have, or against falling generally.

¶ 15 In this respect, the current case is distinguishable from *First Cash Financial Services*, a decision upon which Decatur relies for its argument that the Commission's decision contravened the manifest weight of the evidence. In *First Cash Financial Services*, the claimant could not identify the cause of her workplace fall, but she offered that her fall may have been caused by a dirty floor. *First Cash Financial Services*, 367 Ill. App. 3d at 106. She could not establish, however, that the floor was actually dirty at the time she fell; her only evidence regarding the condition of the floor was a set of photographs taken months after her accident and testimony that there was no debris on the floor at the time of her accident. *Id.* Accordingly, the claimant could show no more than a possibility that dirt on the floor caused her fall, and her conjecture on that point could not support a claim for benefits. *Id.* Here, by contrast, the claimant established rather persuasively both that she was hurriedly traversing the hallway while reading treatment card and that the floor upon which she was walking at the time of her fall had bumps and dips.

¶ 16 Under our manifest-weight standard of review, we cannot usurp the Commission's fact-finding function and decide the case based on our own interpretation of the evidence; we must accord deference to the Commission's decision so long as its findings were reasonable. Because we conclude that the Commission's findings were reasonable here, we must reverse the circuit court's decision and reinstate the decision of the Commission that awarded the claimant benefits under the Act.

¶ 17 Circuit court reversed and Commission decision reinstated.