ILLINOIS OFFICIAL REPORTS

Appellate Court

***Kertis v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120252WC**

Appellate Court Caption	LAVERNE KERTIS, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Washington Mutual, Inc., n/k/a/ Chase Bank and Specialty Risk Services, Appellee).
District & No.	Second District Docket No. 2-12-0252WC
Filed	June 18, 2013
Rehearing denied	July 19, 2013
Held (*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*)	A trial court's judgment confirming the Workers' Compensation Commission's denial of claimant's application for benefits based on its finding that the injuries he suffered when he stepped in a pothole in a municipal parking lot and fell did not arise out of his employment was reversed, since the Commission erred by failing to consider that claimant was a traveling employee, he was the manager of two branches of a bank and had to travel between the two branches regularly, he had to park in the nearby municipal lot, and he was injured while engaging in reasonable conduct that "might normally be anticipated or foreseen" by his employer, especially when the bank did not present any evidence rebutting claimant's testimony.
Decision Under Review	Appeal from the Circuit Court of Kane County, No. 11-MR-32; the Hon. Thomas E. Mueller, Judge, presiding.
Judgment	Reversed and remanded.

Counsel on Appeal	Paul W. Grauer, of Paul W. Grauer & Associates, of Schaumburg, for appellant. Dennis J. Noble, Michael E. Mahay, and Lisa K. Barbieri, all of Noble & Associates, of Naperville, for appellee.
Panel	PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court, with opinion. Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment and opinion.

OPINION

¶ 1 The claimant, Laverne Kertis, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for back injuries which he allegedly sustained while working for the respondent, Washington Mutual, Inc., n/k/a Chase Bank and Specialty Risk Services (employer). After conducting a hearing, an arbitrator found that the claimant had failed to prove that he sustained an accidental injury arising out of his employment and denied benefits.

¶ 2 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission), which affirmed and adopted the arbitrator's decision. Commissioner Mason dissented.

¶ 3 The claimant sought judicial review of the Commission's decision in the circuit court of Kane County, which confirmed the Commission's decision. This appeal followed.

¶ 4 FACTS

¶ 5 The following factual summary is taken from the claimant's testimony at the arbitration hearing, which was unrebutted.[1] The claimant worked as a branch manager for two branches of the employer's bank. One of the branch offices that the claimant managed was located in Hoffman Estates, Illinois, and the other was in St. Charles, Illinois. In the performance of his job duties, the claimant regularly traveled between these two branch offices. The claimant would go from one branch to the other to attend loan closings and to perform other employment-related tasks. His travel schedule varied according to the employer's needs. Sometimes the claimant would start his workday at the Hoffman Estates branch and drive to the St. Charles branch later in the day. Other times he would start in St. Charles and then travel to Hoffman Estates. Sometimes the claimant would travel back and forth between the

[1]The employer did not put on any witnesses. The claimant was the only witness to testify during the arbitration hearing. The employer acknowledges that the relevant facts are undisputed.

two branch offices several times per day. When asked whether there were days when he would not have to travel between the two offices, the claimant responded, "Rare. If any."

¶ 6 The employer did not provide parking for its employees or customers at the St. Charles branch office. The employees working at that office had to park either on the street or in a nearby municipal parking lot. When the claimant traveled to the St. Charles office, he "pretty much always" parked in a particular municipal parking lot that was located across the street and approximately one block away from that office. Although there were other parking lots owned and operated by the city of St. Charles, the claimant chose to park in this particular lot because of its "availability" and "closeness" to the office.[2]

¶ 7 On August 25, 2008, the claimant began working at the Hoffman Estates office at 8 a.m. At approximately 3:30 p.m., he drove to the St. Charles office to attend a loan closing. He parked in the nearby municipal parking lot, as was his custom. He exited his parked car and began walking across the parking lot toward the branch office. As he approached the parking lot's only entrance, a car drove into the lot. While attempting to avoid the oncoming car, the claimant stepped into a pothole and fell. Shortly thereafter, the claimant began experiencing increasing pain in his lower back and right hip. He was later treated for a herniated disk in his lower back and was temporarily disabled from working.

¶ 8 The arbitrator found that the claimant had failed to establish that the accidental injury he sustained in the municipal parking lot on August 25, 2008, arose out of his employment. Although the arbitrator found that the claimant's injury occurred during the course of his employment because "his job duties required him to travel to and from the two bank locations," he concluded that the claimant had failed to establish that he was exposed to a risk to a greater degree than the general public. The arbitrator noted that the accident occurred in a public parking lot and found that the risk the claimant was exposed to was "common to the general public and not unique to [the claimant]." The arbitrator observed that the claimant had "offered no evidence to suggest that the area in question represented an increased risk greater than the general public would be exposed to on a daily basis."

¶ 9 The claimant appealed the arbitrator's decision to the Commission. A majority of the Commission panel affirmed and adopted the arbitrator's decision.

¶ 10 Commissioner Mason concurred in part but dissented from the Commission's judgment. Commissioner Mason stated that she agreed with the Commission majority's determination that the claimant was a "traveling employee." However, Commissioner Mason disagreed with the arbitrator's and the Commission's analysis of the "arising out of" issue. Quoting our supreme court's decision in *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 70 (1975), Commissioner Mason observed that "[t]he test for determining whether an injury to a traveling employee arose out of the employment is 'the reasonableness of the conduct in which [the employee] was engaged and whether it might normally be anticipated or foreseen by the employer.' " Applying these standards, Commissioner Mason concluded that "it was

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[2]The claimant was not required or instructed to park in this lot. It was a public parking lot that did not contain any spaces designated for the employees of the St. Charles office. The claimant parked wherever he wanted to in the lot.

eminently reasonable and foreseeable that [the claimant], a branch manager who regularly traveled between two of [the employer's] banks, would park his car in a lot near one of the banks and then head to his destination." She further observed that, because the employer did not provide parking, it "had every reason to anticipate that [the claimant] would regularly need to use and traverse this lot." Commissioner Mason would have reversed the arbitrator's decision on this basis alone, without inquiring into whether the claimant was exposed to any risk to a greater extent than the general public. Nevertheless, Commissioner Mason concluded that the claimant "should still prevail" "even if an increased risk analysis were appropriate," because he was a traveling employee who was exposed to the hazards of the parking lot at issue to a greater degree than other individuals.

¶ 11 The claimant sought judicial review of the Commission's decision in the circuit court of Kane County, which confirmed the Commission's decision. This appeal followed.

¶ 12 ANALYSIS

¶ 13 At issue is whether the claimant's injuries, suffered while he was walking through a public parking lot en route to the St. Charles office where he worked, arose out of his employment. Whether a claimant's injury arose out of or in the course of his employment is typically a question of fact to be resolved by the Commission, and the Commission's determination will not be reversed unless it is against the manifest weight of the evidence. *Cox v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 541, 546 (2010); *Joiner v. Industrial Comm'n*, 337 Ill. App. 3d 812, 815 (2003). However, when, as in this case, the facts are undisputed and susceptible of but a single inference, the question is one of law subject to *de novo* review. *Joiner*, 337 Ill. App. 3d at 815.[3]

¶ 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 2008). An injury "arises out of" one's employment if "its origin is in some risk connected with or incident to the employment, so that there is a causal connection between the employment and the accidental injury." *Saunders v. Industrial Comm'n*, 189 Ill. 2d 623, 627 (2000); see also *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393 (1995). A risk is "incidental to the employment" when it "belongs to or is connected with what [the] employee has to do in fulfilling his duties." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989); *Stembridge Builders, Inc. v. Industrial Comm'n*, 263 Ill. App. 3d 878, 880 (1994).

¶ 15 "In the course of the employment" refers to the time, place, and circumstances under

[3]The employer agrees with the claimant that the relevant facts are not in dispute. At the beginning of the "Standard of Review" section of its brief on appeal, the employer concedes that "[t]he standard of review before this Honorable Court is de novo." However, in the following paragraph, the employer asserts that the question whether the claimant has shown that he was subject to an increased risk beyond that encountered by the general public (and therefore that his injury arose out of his employment) is reviewed under the manifest-weight-of-the-evidence standard. Despite the employer's confusing and contradictory assertions, we find that the relevant facts and inferences are not in dispute, and we therefore review the Commission's decision *de novo*.

which the claimant is injured. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366 (1977). Injuries sustained at a place where the claimant might reasonably have been while performing his 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 the employment. *Caterpillar Tractor Co.*, 129 Ill. 2d at 57; *Cox*, 406 Ill. App. 3d at 545.

¶ 16 The determination of whether an injury to a traveling employee arose out of and in the course of employment is governed by different rules than are applicable to other employees. *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199 (1985); *Venture-Newberg Perini Stone & Webster v. Illinois Workers' Compensation Comm'n*, 2012 IL App (4th) 110847WC, ¶ 12; *Cox*, 406 Ill. App. 3d at 545. A "traveling employee" is one whose work requires him to travel away from his employer's office. *Hoffman v. Industrial Comm'n*, 128 Ill. App. 3d 290, 293 (1984), *aff'd*, 109 Ill. 2d 194 (1985). It is not necessary for an individual to be a traveling salesman or a company representative who covers a large geographic area in order to be considered a traveling employee. *Id.* Rather, a traveling employee is any employee for whom travel is an essential element of his employment. *Urban v. Industrial Comm'n*, 34 Ill. 2d 159, 163 (1966). A traveling employee is deemed to be in the course of his employment from the time that he leaves home until he returns. *Cox*, 406 Ill. App. 3d at 545. An injury sustained by a traveling employee arises out of his employment if he was injured while engaging in conduct that was reasonable and foreseeable, *i.e.*, conduct that "might normally be anticipated or foreseen by the employer." *Robinson v. Industrial Comm'n*, 96 Ill. 2d 87, 92 (1983); see also *Cox*, 406 Ill. App. 3d at 545-46; *Venture-Newberg*, 2012 IL App (4th) 110847WC, ¶ 14.

¶ 17 Whether a traveling employee was injured while engaging in conduct that was reasonable and foreseeable to his employer is normally a factual question to be resolved by the Commission, and where the facts or inferences are in dispute, we should affirm the Commission's determination unless it is against the manifest weight of the evidence. *Venture-Newberg*, 2012 IL App (4th) 110847WC, ¶ 14. However, where the relevant facts and inferences are undisputed, as here, we review this issue *de novo*. See generally *Joiner*, 337 Ill. App. 3d at 815.

¶ 18 In this case, the Commission found that "[the claimant's] job duties required him to travel to and from the two bank locations." Nevertheless, when determining whether the claimant's injuries arose out of and in the course of his employment, the Commission applied the legal test applicable to nontraveling employees, rather than the special rules applicable to traveling employees. That was error. The undisputed facts establish that the claimant's job duties required him to travel between the Hoffman Estates and St. Charles offices on a regular basis. The claimant testified that there were rarely (if ever) any days that he was not required to travel between the two offices. The employer did not present any evidence rebutting this testimony. The Commission acknowledged that the claimant's job duties required him to travel between the two bank branch offices. Thus, travel was clearly an essential element of the claimant's job, rendering him a traveling employee as a matter of law. See, *e.g.*, *Urban*, 34 Ill. 2d at 163; *Hoffman*, 129 Ill. App. 3d at 293 (the director of nursing employed by school district who traveled to various schools three days per week to supervise school nurses was a traveling employee).

¶ 19 Accordingly, the dispositive question is whether the claimant was injured while engaging in conduct that was reasonable and that might reasonably be anticipated or foreseen by the employer. *Robinson*, 96 Ill. 2d at 92; *Cox*, 406 Ill. App. 3d at 545-46. The undisputed evidence establishes that both of these conditions were satisfied. The claimant was injured while walking in a municipal parking lot approximately one block from the St. Charles office. The claimant's job duties required him to travel from the Hoffman Estates office to the St. Charles office on a regular basis, and the employer did not provide employee parking at the St. Charles office. Accordingly, the claimant was required to park on the street or in a nearby parking lot. It was both reasonable and foreseeable that the claimant would regularly park in a municipal parking lot close to the St. Charles office and walk to the office from that lot. Thus, under the rules applicable to traveling employees, the undisputed facts establish that the claimant's injuries arose out of his employment.[4]

¶ 20 Because we may resolve this appeal under the analysis applicable to traveling employees, we do not need to address the claimant's alternative argument that he was exposed to a neutral risk more frequently than members of the general public by virtue of his employment.

¶ 21 The employer argues that the claimant was not a traveling employee under the law because he traveled "randomly a few times a week between different branches of the bank." This claim is contradicted by the undisputed evidence. As noted, the claimant testified that he was required to travel between the two branches on a regular basis and that there was rarely (if ever) a day that he was not required to do so. This testimony was unrebutted, and it establishes that the claimant was a traveling employee under the law. Accordingly, the employer's reliance on *Joiner*, 337 Ill. App. 3d 812, and on other authorities involving nontraveling employees is misplaced.[5]

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we reverse the judgment of the circuit court of Kane County, which confirmed the Commission's decision, and we remand the case to the Commission for further proceedings.

¶ 24 Reversed and remanded.

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[4]The claimant's injuries also occurred "in the course of" his employment because, as a traveling employee, the claimant was deemed to be in the course of his employment from the time that he left his home until he returned. *Cox*, 406 Ill. App. 3d at 545.

[5]The employer also asserts that the claimant's job duties "mainly include[d] sedentary office activity *with only an occasional trip to the other branch of the bank*." (Emphasis added.) That statement also contradicts the claimant's undisputed testimony. We therefore disregard it. The claimant asks us to strike this statement from the employer's brief, along with the statement discussed above and certain other arguably unsupported assertions. We have thoroughly reviewed the record and we have not considered any unsupported factual assertions in deciding this case. We therefore deny the claimant's motion as moot.