

NOTICE

Decision filed 12/27/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 Il App (1st) 102679WC-U

Workers' Compensation
Commission Division
Filed: December 27, 2011

No. 1-10-2679WC

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
FIRST JUDICIAL DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

LINDA BARTOLOMEO,)	APPEAL FROM THE
)	CIRCUIT COURT OF
Appellant,)	COOK COUNTY
)	
v.)	No. 10 L 50386
)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	
(COOK COUNTY SHERIFF'S DEPARTMENT,)	HONORABLE
)	SANJAY TAILOR,
Appellee).)	JUDGE PRESIDING.

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

ORDER

- ¶ 1 *Held:* The Commission's decision is lacking in findings which make a meaningful judicial review possible.
- ¶ 2 The claimant, Linda Bartolome, appeals from a judgment of the Circuit Court of Cook

County confirming a decision of the Illinois Workers' Compensation Commission (Commission) which denied her benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)), for injuries she allegedly received on October 11, 2007, while in the employ of the Cook County Sheriff's Department (County). For the reasons which follow, we vacate the judgment of the circuit court, vacate the Commission's decision, and remand this cause to the Commission with instructions to issue an amended decision containing specific findings as to the risk to which the claimant was exposed that caused her to fall.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing.

¶ 4 On October 11, 2007, the claimant was employed by the County as a deputy sheriff and assigned to the Rolling Meadows courthouse. Her job duties included providing security at the front door of the courthouse located on the building's main level and screening individuals entering the building. At approximately 9:15 a.m., the claimant left her post at the front door to use the restroom on the main level of the building. However, because custodians were cleaning the women's restroom on the main level, she proceeded to the women's restroom on the lower level of the courthouse. To reach the lower-level restroom, the claimant began descending a public staircase located in the middle of the courthouse's foyer. The claimant described the stairs as being made of marble with yellow "non-skid strips" affixed to each stair. There was a hand railing on the left side of the stairs.

¶ 5 The claimant testified that, as she walked down the stairs, her right foot got stuck on what she thought was gum or candy located on a stair, causing her to lose her balance and fall. She stated that, as she began to fall, she threw the radio she was carrying to the ground and tried to grab the hand railing. As a result of her fall, the claimant fractured her left ankle and injured her right shoulder, neck and back. She was taken to the Northwest Community Hospital by ambulance for treatment. The ambulance report states that the claimant gave a history of twisting her ankle while walking down the stairs at work. The hospital's emergency room records contain

a history of the claimant having slipped on stairs and twisted her ankle.

¶ 6 According to the claimant, she had used the staircase before and had always noticed trash and debris on the steps. At the time of her fall, the claimant was wearing her uniform, including her duty belt which supported her gun, telephone and handcuffs. She stated that she had gym shoes on and was carrying a two-way radio in her left hand.

¶ 7 Following her discharge from the hospital, the claimant returned to the Rolling Meadows courthouse and completed an accident report in which she indicated that she had caught her foot on the non-skid tape located on one of the stairs, causing her to lose her balance and fall. She testified that, at the time she completed the report, she was under the influence of pain medication, and was assisted by her union steward, Deputy Pete Kennedy. According to the claimant, it was Kennedy who told her to report that she had caught her foot on the non-skid tape.

¶ 8 The claimant's supervisor, Lieutenant Thomas Collins, also completed a report of the incident in which he wrote that, although the claimant reported that she had tripped on a loose piece of tape located on the stairs, he found no loose tape, deficiencies, or other flaws on the stairs.

¶ 9 The record also contains an unsigned, transcribed witness statement from Deputy sheriff Marc Kaplan, stating that he saw the claimant catch the sole of her shoe on the non-skid tape located on the 4th or 5th step from the bottom of the staircase, lose her balance, and fall.

¶ 10 Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b)(West 2006)), the arbitrator found that the claimant sustained injuries to her left ankle arising out of and in the course of her employment with the County on October 11, 2007, and that her right shoulder condition as of February 4, 2007, is causally related to the incident. The arbitrator awarded the claimant 31 4/7 weeks of temporary total disability (TTD) benefits, covering the period from October 11, 2007, through May 18, 2008. In addition, the arbitrator ordered the County to pay \$33,415.39 for necessary medical services rendered to the claimant.

¶ 11 The County filed a petition for review of the arbitrator's decision before the Commission.

In a unanimous decision, the Commission reversed the decision of the arbitrator and denied the claimant any benefits under the Act, finding that the claimant failed to prove that she sustained injuries arising out of and in the course of her employment. In relevant part, the Commission's decision states that:

"Although Petitioner [the claimant] testified gum, candy or debris on the stairs contributed to her fall down the stairs, and that her two-way radio in her left hand also contributed to her falling, the ambulance report, Petitioner's own accident report, the statement of Petitioner's supervisor and the co-worker who witnessed the fall, as well as the initial treating records strongly suggest Petitioner's fall on the stairs was a result of a neutral risk to which the general public was equally exposed."

¶ 12 The claimant filed a petition for judicial review of the Commission's decision in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 13 In urging reversal of the circuit court's judgment, the claimant argues that the Commission's finding that she failed to prove that she sustained injuries arising out of and in the course of her employment is against the manifest weight of the evidence. She asserts that the record is void of any evidence that she fell as a result of any personal risk or idiopathic condition. According to the claimant, the record supports a conclusion that she "fell either as a result of her foot sticking to debris on the step or stumbling on the non-skid strip on the top of the step." In either case, her "fall was explained as being due to a condition of the step" and, therefore, compensable under the Act.

¶ 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 1998). 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, 546 N.E.2d 603 (1989). A 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. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980).

¶ 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, 362 N.E.2d 325 (1977). Injuries sustained on an employer's premises are generally deemed to have been received in the course of the employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57, 541 N.E.2d 665 (1989); *Wise v. Industrial Comm'n*, 54 Ill. 2d 138, 142, 295 N.E.2d 459 (1973). It is undisputed that, in this case, the claimant sustained her injuries in the course of her employment. The issue to be resolved is whether she sustained her burden of proving that her fall and resulting injuries arose out of her 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 Tractor Co.*, 129 Ill. 2d at 58:

"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.]"

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. L. Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921 (1991).

¶ 17 The question of whether an employee's injury arose out of her employment is generally one of fact and the Commission's determination of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *O'Dette*, 79 Ill. 2d at 253. For a finding

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of fact to be contrary to 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). 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 against 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, 440 N.E.2d 90 (1982).

¶ 18 In order to determine whether the claimant's injury arose out of her employment, we must first categorize the risk to which she was exposed. Risks are categorized into three groups: risks distinctly associated with the employment, such as the risk of tripping on a defect at the employer's premises; risks personal to the employee, such as idiopathic falls; and neutral risks that have no particular employment or personal characteristics and to which the general public is equally exposed. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105-06, 853 N.E.2d 799 (2006); *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 352-53 (2000)(Rakowski, J., concurring).

¶ 19 In reversing the arbitrator and denying the claimant benefits under the Act, the Commission found that the claimant's "fall on the stairs was a result of a neutral risk to which the general public was equally exposed." However, the Commission never identified the risk to which it was referring or the cause of the claimant's fall and, therefore, we have no means of determining whether its finding in this regard is against the manifest weight of the evidence.

¶ 20 When, as in this case, the Commission's decision is lacking in findings which make a meaningful judicial review possible, the appropriate remedy is to vacate the judgment of the circuit court and remand the matter to the Commission with directions to make the necessary findings. See *Reinhardt v. Board of Education of Alton Community School District No. 11*, 61 Ill. 2d 101, 103-04, 329 N.E.2d 218 (1975); *R&D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870 (2010); *Illinois Campaign rfor Political Reform v.*

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Illinois State Board of Elections, 382 Ill. App. 3d 51, 63, 886 N.E.2d 1220 (2008).

¶ 21 For this reason, we vacate the judgment of the circuit court, vacate the Commission's decision, and remand this matter back to the Commission with directions to issue an amended decision containing specific findings as to the risk to which the claimant was exposed that caused her to fall.

¶ 22 Circuit court judgment vacated; Commission decision vacated and cause remanded with instructions.