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No. 5--10--0304WC

Order filed April 21, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ROGER CRITES,	)	Appeal from the Circuit Court
	)	of the 3rd Judicial Circuit,
Appellant,	)	Madison County, Illinois.
	)	
v.	)	No. 09--MR--476
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION <i>et al.</i> (U.S. Steel Corporation,	)	Honorable
Appellee).	)	Clarence W. Harrison II,
	)	Judge, Presiding.

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

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**ORDER**

*Held:* The Commission's finding that the claimant's current condition of ill-being did not arise out of his employment because he was exposed to no greater danger of injury than that of the general public was not against the manifest weight of the evidence.

The claimant, Roger Crites, filed an application for adjustment of claim under the Illinois Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2004)), alleging injury to his lower

back arising out of an industrial accident on June 15, 2006. The case went to arbitration on December 4, 2007. On January 11, 2008, the arbitrator denied the claimant's claim for benefits, determining that the claimant had failed to prove that he suffered injuries arising out of his employment. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission, with one dissent, affirmed the decision of the arbitrator. The claimant then sought review in the circuit court of Madison County, which confirmed the decision of the Commission. The claimant then appealed to this court.

The claimant raises three issues on appeal: (1) whether the circuit court erred in affirming the Commission's finding that the claimant failed to establish that his injuries arose out of his employment; (2) whether the Commission's finding that the claimant failed to establish that his injuries arose out of his employment was against the manifest weight of the evidence; and (3) whether this court should remand the case to the Commission for further proceedings to determine the sufficiency of the evidence in support of an award of TTD, PPD, and medical benefits.

## BACKGROUND

The claimant, a 57-year-old overhead crane operator, testified that he had been employed in that capacity by U.S. Steel Corporation for approximately 20 years. His duties required him to climb a ladder to get into the cab of the crane, which was approximately three feet in width and contained a seat located on top of a metal box approximately one foot above the floor of the cab. The claimant testified that, in order to be seated in the cab, he must put his left foot onto the

platform floor of the cab, hold onto the controls while pulling himself into the cab, and swing his body toward the right, over the entranceway and into the seat.

On June 15, 2006, after completing work on the midnight shift, the claimant attempted to exit the overhead crane cab. In so doing, he pulled himself forward while hanging onto the controls, slid down the seat toward the right, put his right hand on the armrest, and swung his body while lowering his right foot onto the floor of the cab -- a distance of approximately one foot. His left foot remained in place on the floor and, as he lowered his body toward his right foot, he felt a sharp pain in his lower back. The claimant stood up and remained standing for a few minutes until the pain subsided. He then exited the cab, climbed down the ladder, and proceeded home. The claimant further testified that he could not get out of bed the next morning. The claimant sought treatment at the employer's medical clinic. The claimant filled out an accident report, which was entered into evidence, reporting that "[claimant] was sitting in the operator's chair when he turned to his left and stepped down [and] felt a sharp pain in his lower back."

The claimant sought treatment from Dr. Richard C. Coy, a chiropractor. Dr. Coy's treatment notes entered into evidence indicated that the claimant presented on June 16, 2006, complaining of low back pain that radiated into his right lateral posterior thigh. The treatment notes further indicated that the claimant gave a history of back pain symptoms which began "insidiously" the prior day while at work and had subsequently worsened. Dr. Coy's notes further indicated that the claimant was 5' 9" tall, weighed approximately 300 pounds, and had a history of back problems.

Dr. Coy testified by evidence deposition that the claimant reported his symptoms had begun the day before while at work and had gotten progressively worse since that time. Dr. Coy explained that his treatment notes contained the word "insidiously" to indicate that the symptoms described by the patient were not attributable to any single event. Following a physical examination of the claimant, Dr. Coy diagnosed a lumbar disc problem and developed a plan to first address the acute pain and then begin treatment to improve the claimant's range of motion and gradually return him to normal activities. Dr. Coy also referred the claimant for an MRI of the lumbar spine.

On June 19, 2006, the claimant underwent an MRI of the lumbar spine. The MRI report was read by Dr. Coy to reveal a moderate right posterolateral disc protrusion at L3-4 and a mild right posterolateral disc protrusion at L4-5.

The claimant was off work from June 16, 2006, to August 14, 2006, at which time he was released by Dr. Coy to light duty or 4-hour shifts per day. In accordance with Dr. Coy's restrictions, the claimant was also granted a parking permit allowing him to park closer to the job site. A report dated July 28, 2006, from Dr. Coy to the employer indicated that the claimant should avoid sitting in the crane cab as the vibrations would irritate the claimant's back. On September 12, 2006, Dr. Coy released the claimant to regular 8-hour shifts but with restrictions on bending, stooping, squatting, and climbing.

When given a hypothetical scenario by the claimant's attorney which encompassed the facts testified by the claimant regarding the circumstances of his injury, Dr. Coy opined, with a reasonable degree of chiropractic certainty, that the claimant suffered a lumbar strain coinciding with the claimant's history of a single event of climbing out of the cab.

On cross-examination, Dr. Coy opined that the constant vibrations experienced in the cab had caused the claimant's discs to swell, and the twisting motion the claimant undertook getting out of the cab exacerbated or inflamed the swollen discs. The record also contained a claim for disability insurance benefits for the claimant on which Dr. Coy indicated that the claimant's injury had occurred through repetitive trauma. Dr. Coy admitted that the facts describing a single incident of injury while exiting the cab, as described in the hypothetical presented by the claimant's attorney, had not been given by the claimant in the initial office examination on June 16, 2006. However, he did recall hearing that set of facts at some time during the course of treating the claimant.

Dr. Coy further testified that he had treated the claimant on one occasion in 2002 or 2003 for complaints of neck and upper back pain. Dr. Coy's treatment records indicated a history of back pain dating back several years. The claimant's last treatment with Dr. Coy prior to the hearing date was on April 17, 2007, at which time the claimant reported 90% to 95% improvement in his low back.

The office notes from the claimant's primary care physician, Dr. Rodney Lupardus, indicated that the claimant had treated for back pain in 2002. The claimant denied a history of back pain prior to June 15, 2006, and testified that Dr. Lupardus's record was inaccurate.

The arbitrator found that the claimant had failed to prove that he sustained injuries which arose out of his employment. The arbitrator noted that the accident as described by the claimant was the result of the claimant merely turning in his chair and stepping down a distance of less than one foot and, as such, presented a risk no greater than that to which the general public is exposed. The arbitrator further noted that Dr. Coy's office notes did not contain a description of

the accident as testified to by the claimant, and Dr. Coy's description of the injury as "insidious" contradicted a finding that the act of turning in the chair and stepping down gave rise to the injury. The arbitrator also noted the contradiction between the medical records, which indicated that the claimant had suffered prior incidences of low back pain, and the claimant's denial of previous low back pain.

The Commission, with one dissent, affirmed and adopted the decision of the arbitrator. The dissenting commissioner would have reversed the arbitrator and found that the claimant had proven compensable injuries based upon a finding that the claimant's height and weight, combined with the contortions necessary to enter and exit the confined workspace of the cab, exposed the claimant to a risk of injury greater than the risk to which the general public is exposed.

The circuit court confirmed the decision of the Commission, albeit erroneously stating that the claimant was in the act of sitting when the injury occurred, but nonetheless finding that decision of the Commission was not against the manifest weight of the evidence.

## DISCUSSION

### 1 - 2: Injuries Arising Out of Employment

The claimant points out, and the employer acknowledges, that the circuit court erred in noting that the claimant was simply sitting in the seat of the cab when he felt a sharp pain in his lower back. The court, in affirming the decision of the Commission, noted that the act of sitting constituted a "neutral" risk which exposed the claimant to a risk of injury no greater than that to which any member of the general public would be exposed. Noting that whether an injury caused by a neutral risk arises out of the claimant's employment is a question of fact to be

resolved by the Commission, the court held that the Commission's finding was not contrary to the manifest weight of the evidence.

While the circuit court's description of the mechanism of the accident was erroneous, the ultimate question before this court is whether the Commission's finding that the claimant's condition of ill-being did not arise out of his employment was against the manifest weight of the evidence. *Joiner v. Industrial Comm'n*, 337 Ill. App. 3d 812, 815 (2003). Whether an accidental injury or the mechanism of the injury arose out of the claimant's employment is a factual determination for the Commission which will be affirmed upon review unless the determination is found to be against the manifest weight of the evidence. *Cassen Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 331 (1994). A finding is not against the manifest weight of the evidence unless an opposite conclusion is clearly apparent. *Gary-Wheaton Bank v. Meyer*, 130 Ill. App. 3d 87, 91 (1984). Further, a reviewing court must accept all reasonable inferences from the facts drawn by the Commission, even if the court would have drawn contrary inferences from those facts. *International Harvester Co. v. Industrial Comm'n*, 93 Ill. 2d 59, 66 (1982).

The "arising out of" component of establishing entitlement to benefits is primarily concerned with causal connection such that it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). If the claimant is exposed to a risk to a greater degree than the general public, the injury is considered to have arisen out of the employment. *O'Fallon School District v. Industrial Comm'n*, 313 Ill. App. 3d 413, 416 (2000). If, on the other hand, the claimant's exposure to risk is equal to that of the general public, the injury is not compensable. *Id.* In order to find that a claimant's employment exposes him to a risk greater than that to which

the general public is exposed, the hazards, dangers, or risks must be distinctive to the employment. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 153 (2000).

Here, the Commission adopted the arbitrator's conclusion that the claimant's injury was the result of his merely turning while stepping down to get out of his seat. The arbitrator noted that the step down was no more than one foot and that the mere act of turning and stepping down less than a foot presented a risk of injury that was no greater than that to which the general public is exposed when getting up from a seat or chair. The arbitrator also noted the conflicting opinions of Dr. Coy, who responded to a hypothetical question by opining that the claimant's injury was caused by arising from his seat, but who later opined in a deposition that the claimant's condition of ill-being was related to repetitive trauma. Finally, the arbitrator noted that the claimant's claim that he had never suffered previous back pain was contradicted by the medical records of Drs. Lupardus and Coy.

The claimant suggests that the facts herein are strikingly similar to those in *O'Fallon School District*, wherein a school teacher on hall monitor duty injured her back while twisting and turning to pursue a student who was running in the hall. *O'Fallon School District*, 313 Ill. App. 3d at 417. We note, however, that the differences between the circumstances giving rise to the school teacher's injury and the claimant's circumstances in the instant matter are significant. In *O'Fallon School District*, the teacher was assigned the specific task of stopping children from running in the hallways. The teacher was "ordered specifically to undertake the risk of pursuing a running student." *Id.* Moreover, "[t]he need to turn, twist, and pursue a child, thereby stressing her back, [was] a risk that would not have existed but for [the] claimant's employment

obligations as hall monitor." *Id.* The court compared the school teacher's activities to a claimant who sustained a back injury while removing his coat (*Branch v. Industrial Comm'n*, 95 Ill. 2d 268, 271 (1983)) and a claimant who dislocated her shoulder while bending down to pick up papers that had fallen on the floor (*Greater Peoria Mass Transit District v. Industrial Comm'n*, 81 Ill. 2d 38, 41 (1980)), both of whom were found to have been injured as a result of risks faced equally by the general public. *O'Fallon School District*, 313 Ill. App. 3d at 417.

Here, according to the Commission, the claimant was engaged in the "mere action of turning in his chair and stepping down a foot or less." The Commission determined that there was nothing in particular to establish that the claimant's injury resulted from something specific about the size of the cab, the claimant's height or weight, or the nature of the claimant's job duties. Rather, it found that the claimant's injury was the result of the same risk that a member of the general public might be injured while getting up from a seat. Given the facts as presented, we cannot say that the Commission's determination was against the manifest weight of the evidence.

The claimant points to the dissenting commissioner's finding that the claimant's height and weight, along with the contortions necessary for him to enter and exit the confined workspace, exposed the claimant to a risk greater than that to which the general public would be exposed in merely getting up from a chair. While this is certainly one inference which might have been drawn from the record, it cannot be said that this conclusion, opposite that reached by the Commission, is clearly apparent. There was no expert medical testimony supporting the conclusion that the claimant's height and weight, combined with the confined workspace, was a cause of the claimant's injury. While the dissent chose to make this inference, it cannot be said

that the Commission's decision not to infer causation from those facts was against the manifest weight of the evidence.

### 3. TTD, PPD, and Medical Benefits

The claimant next maintains that the matter should be remanded to the Commission for an award of temporary total disability (TTD) benefits, permanent partial disability (PPD) benefits, and medical expenses. However, since these arguments are based solely upon the premise that the Commission's causation finding is erroneous, a premise which is rejected in the analysis above, this contention need not be addressed further. See *Tower Automotive v. Workers' Compensation Comm'n*, No. 1--09--3161WC, slip op. at 7 (Ill. App. Jan. 31, 2011).

### CONCLUSION

For the foregoing reasons, the judgment of the Madison County circuit court, which confirmed the Commission's decision, is affirmed.

Affirmed.