

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).

NO. 3-09-0817WC

January 25, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

Workers' Compensation Commission Division

RMF DELTA/PHILLIP SERVICES)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	LaSalle County
WORKERS' COMPENSATION COMMISSION DIVI-)	No. 09MR40
SION (Barbara Caston on behalf of)	
Jimmy Ray Caston, Appellee))	Honorable
Defendants-Appellees.)	James Lanuti,
)	Judge Presiding.

PRESIDING JUSTICE McCULLOUGH delivered the judgment of the court.

Justices Hoffman, Hudson, Holdridge, and Stewart concurred in the judgment.

ORDER

Held: The decision of the Workers' Compensation Commission (Commission), finding claimant, Barbara Caston, entitled to compensation under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2000)) was neither contrary to law nor against the manifest weight of the evidence.

On July 24, 2002, claimant filed an application for adjustment of claim under the Act on behalf of her deceased husband, Jimmy Ray Caston, seeking benefits from employer, RMF Delta/Phillip Services. Following a hearing, the arbitrator determined an employment relationship existed between employer and decedent. He also found decedent sustained accidental

injuries arising out of and in the course of his employment on September 26, 1999, resulting in his death. The arbitrator awarded claimant (1) \$763.33 per week until \$250,000 had been paid or until 20 years had passed, whichever was greater and (2) \$4,200 for burial expenses. The Commission affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of LaSalle County confirmed the Commission. Employer appeals, arguing the Commission erred by finding (1) an employment relationship existed between decedent and employer and (2) the decedent's injury arose out of and in the course of his employment. We affirm.

Decedent worked as a boilermaker and was a member of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers union. Although decedent and claimant resided in Louisiana, decedent often traveled to other states for work. From September 15 to 25, 1999, decedent worked a job in Minnesota for employer. He had previously worked on a job for employer earlier in the year. A letter from employer showed decedent was laid off on September 25, 1999, at the end of his 5:30 p.m. shift. Further, an agreement to which decedent's union and employer were parties provided "that employment of all men commences and ends at the job site." On September 26, 1999, decedent and another boilermaker from Louisiana, John O'Neal, were making the return trip home in decedent's

vehicle when they were involved in an automobile accident in Illinois. Both decedent and O'Neal died as a result of injuries they sustained in the accident.

The arbitrator and Commission relied upon this court's decision in *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687, 618 N.E.2d 1143 (1993), to find both the existence of an employment relationship between decedent and employer and that decedent's accidental injuries arose out of and in the course of his employment. Employer contends that although *Chicago Bridge* is controlling precedent, the Commission's decision is based upon an erroneous interpretation of that case. It argues the Commission's decision was both contrary to law and against the manifest weight of the evidence.

On review, the Commission's decision will not be overturned unless it is contrary to law or based on factual determinations that were against the manifest weight of the evidence. *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370, 909 N.E.2d 818, 822 (2009). "On questions of law, review is *de novo*, and a court is not bound by the decision of the Commission." *Beelman*, 233 Ill. 2d at 370, 909 N.E.2d at 822. "On questions of fact, the Commission's decision is against the manifest weight of the evidence only if the record discloses that the opposite conclusion clearly is the proper result." *Beelman*, 233 Ill. 2d at 370, 909 N.E.2d at 822.

"An employment relationship is a prerequisite for an award of benefits under the Act[.]" *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 174, 866 N.E.2d 191, 200 (2007). The Act provides that an "employee" includes "[e]very person in the service of another under any contract of hire, express or implied, oral or written[.]" 820 ILCS 305/1(b)(2) (West 2006). Factors to consider when determining whether an individual is an "employee" under the Act include:

"whether the employer may control the manner in which the person performs the work; whether the employer dictates the person's schedule; whether the employer pays the person hourly; whether the employer withholds income and social security taxes from the person's compensation; whether the employer may discharge the person at will; and whether the employer supplies the person with materials and equipment." *Roberson*, 225 Ill. 2d at 175, 866 N.E.2d at 200.

Whether an employment relationship exists depends on the totality of the circumstances. *Roberson*, 225 Ill. 2d at 175, 866 N.E.2d at 200. "No single factor is determinative, and the significance of the[] factors will change depending on the work involved." *Roberson*, 225 Ill. 2d at 175, 866 N.E.2d at 200.

In *Chicago Bridge*, 248 Ill. App. 3d at 688, 618 N.E.2d at 1145, the claimant was an itinerant boilermaker-welder. He sought benefits under the Act from the employer after he was injured in an automobile accident on his way to work at an out-of-state job site. *Chicago Bridge*, 248 Ill. App. 3d at 688-89, 618 N.E.2d at 1145. With respect to the parties' relationship, evidence showed as follows:

"The claimant *** began working for the employer in 1968. He was first hired by *** a foreman for the employer. The transaction took place in *** Illinois, but the job site was in *** Indiana. The claimant continued to work exclusively for the employer and was periodically required to travel to work sites located in other States. When each job began, the claimant was placed on the payroll, and he filled out the required tax forms. When the job was completed, the claimant was terminated from the payroll." *Chicago Bridge*, 248 Ill. App. 3d at 688-89, 618 N.E.2d at 1145.

Evidence further showed the claimant was a union member and subject to an agreement that contemplated "that employment begins and ends at the job site ***." *Chicago Bridge*, 248 Ill.

App. 3d at 689, 618 N.E.2d at 1145. Employer compensated the claimant "for travel to the job site at the rate of 30 cents per mile." *Chicago Bridge*, 248 Ill. App. 3d at 689, 618 N.E.2d at 1145.

The employer appealed both the Commission's finding that an employment relationship existed between the parties and its finding that the claimant's accident arose out of and in the course of his employment. *Chicago Bridge*, 248 Ill. App. 3d at 688, 618 N.E.2d at 1145. The employer first argued the claimant was not an employee at the time of his injury because his union contract provided that his employment began and ended at the job site. *Chicago Bridge*, 248 Ill. App. 3d at 692, 618 N.E.2d at 1147. This court concluded that while the parties' contractual agreement was a factor to consider, it was not dispositive and all of the facts in the case must be considered. *Chicago Bridge*, 248 Ill. App. 3d at 692, 618 N.E.2d at 1147. We held, under the facts presented, the Commission's decision was not against the manifest weight of the evidence where (1) a contract of employment existed between the parties and (2) the claimant regularly and exclusively worked for the employer for 19 years. *Chicago Bridge*, 248 Ill. App. 3d at 692-93, 618 N.E.2d at 1147-48.

This court went on to address the employer's argument that the claimant's accident did not arise out of and in the course of his employment. *Chicago Bridge*, 248 Ill. App. 3d at

693-94, 618 N.E.2d at 1148-49. We noted several exceptions to the general rule that "an accident which occurs while an employee is traveling to or from work is not considered one that arises out of or in the course of employment." *Chicago Bridge*, 248 Ill. App. 3d at 693-94, 618 N.E.2d at 1148. One such exception "occurs where the employer agrees to compensate the employee for time spent traveling to or from work, but the exception is not applicable where the employee is only reimbursed for the expense of travel." *Chicago Bridge*, 248 Ill. App. 3d at 693, 618 N.E.2d at 1148. We found this exception inapplicable as the claimant was clearly reimbursed for his travel expenses but affirmed based upon the traveling-employee exception. *Chicago Bridge*, 248 Ill. App. 3d at 693-94, 618 N.E.2d at 1148-49.

Here, we find no error in the Commission's decision. Although the agreement between decedent's union and employer provided that decedent's employment began and ended at the job site, *Chicago Bridge* shows that such agreements are not dispositive and are only a factor to consider when determining the existence of an employment relationship. In finding such a relationship in the instant case, the Commission relied on evidence that showed decedent and O'Neal were compensated for their travel time to and from the Minnesota job site.

As stated, the existence of an employment relationship is based on the totality of the circumstances. In *Chicago Bridge*

this court noted that, although accidents occurring while an individual travels to and from work are not typically compensable under the Act, an exception exists when an employer compensates an employee for his travel time. In such instances, the employee's accident arises out of and in the course of his employment. It was not error for the Commission to rely on such circumstances when determining whether an employment relationship continued to exist between the parties in this case.

Here, the undisputed evidence showed decedent was paid by employer to work a job in Minnesota from September 15 to 25, 1999. He and another worker, O'Neal, were required to travel from their homes in Louisiana to the Minnesota job site. Decedent had previously worked a job for employer earlier in the year. On September 26, 1999, during the return trip home to Louisiana, decedent and O'Neal were killed in an automobile accident. Under these circumstances, an employment relationship existed between decedent and employer from at least September 15 to 25, 1999. The question for the Commission was whether that relationship continued while claimant traveled back to his home in Louisiana. Employer's compensation to decedent for his travel time was relevant to this question and the Commission did not err by considering it.

Additionally, the Commission's factual finding that the money paid to decedent was compensation for his time rather than

reimbursement for travel expenses was not against the manifest weight of the evidence. As noted by the Commission, both decedent and O'Neal were paid the same amount even though they traveled together in a single vehicle. Also, decedent and O'Neal were paid the same amounts both to and from Minnesota when the return trip home was much shorter due the fatal car accident. The evidence supports a finding that decedent and O'Neal were compensated for their time rather than reimbursed for expenses.

The Commission also did not err in finding decedent's accident arose out of and in the course of his employment. Decedent was required to travel from his home in Louisiana to Michigan to perform his job duties for employer. On the return trip to Louisiana, he was killed in a car accident. For the reasons expressed, the Commission's finding that decedent was compensated for his travel time was not against the manifest weight of the evidence. As such, the facts in this case fall within one of the recognized exceptions to the general rule that accidents which occur while an employee is traveling to and from work are not compensable.

The traveling-employee exception also applies in this instance.

"The traveling employee doctrine is well settled. 'Injuries to employees whose duties require them to travel away from home are not

governed by the rules applicable to other employees.' [Citations.] Under a traveling employee analysis, determination of whether an injury arose out of and in the course of the employee's employment depends on the reasonableness of the employee's conduct at the time of the injury and whether the employer could anticipate or foresee the employee's conduct or activity. [Citations.]" *Bagcraft Corp. v. Industrial Comm'n*, 302 Ill. App. 3d 334, 337-38, 705 N.E.2d 919, 921 (1998).

Decedent's travel was necessitated by his work for employer and he had worked for employer on a previous occasion. His travel from the job site to his home was reasonable conduct employer could have foreseen and anticipated. Decedent's accident and death also arose out of and in the course of his employment based upon this exception. The Commission committed no error.

For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision.

Affirmed.