

NOTICE
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2011 IL App (4th) 110016WC-U

Filed 9/27/11

NO. 4-11-0016WC

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

HERITAGE ENTERPRISES, INC.,)	Appeal from
Appellant,)	Circuit Court of
v.)	McLean County
THE WORKERS' COMPENSATION COMMISSION, <i>et</i>)	No. 10MR195
<i>al.</i> (ROSE STADEL, Appellee).)	
)	Honorable
)	Scott Drazewski,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Hoffman, Hudson, Holdridge, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission committed no error in its application of the dual capacity and traveling employee doctrines and its decision that decedent's death arose out of and in the course of his employment was not against the manifest weight of the evidence.

¶ 2 On April 14, 2005, claimant, Rose Stadel, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), seeking benefits from her deceased husband's employer, Heritage Enterprises, Inc. Following a hearing, the arbitrator found decedent, Joseph Warner, died as a result of injuries that arose out of and in the course of his employment when he was killed in an airplane crash. She determined that claimant, as the decedent's surviving spouse, was entitled to death benefits in accordance with section 7 of the Act (820 ILCS 305/7 (West 2004)) and funeral expenses in the amount of

\$4,200. The Workers' Compensation Commission (Commission), with one commissioner dissenting, affirmed and adopted the arbitrator's decision. The circuit court confirmed the Commission. Employer appeals, arguing the Commission erred in applying both the dual capacity doctrine and the traveling employee doctrine to find decedent's death occurred within the course of his employment. We affirm.

¶ 3 The parties are familiar with the facts of this case and we discuss them only to the extent necessary to put their arguments in context. Employer is a corporation that owns and operates several long-term care facilities in Illinois. In July 2002, decedent acted as its President and CEO. On July 21, 2002, he was killed in an airplane crash while piloting an airplane owned by employer.

¶ 4 On July 10, 2009, the arbitrator found decedent died "in the course and scope of his employment" and claimant, as his surviving spouse was entitled to benefits under the Act. Relevant to this appeal, the arbitrator found decedent was flying on July 21, 2002, "for a business purpose incidental to his job duties as the President and CEO and pilot of [employer]."

¶ 5 On June 14, 2010, the Commission, with one commissioner dissenting, affirmed and adopted the arbitrator's decision. It provided further reasoning to support the arbitrator's award. In particular, the Commission stated the arbitrator recognized that decedent operated in a "dual capacity" by performing both executive and "worker" functions. It found that "[l]ong before the accident occurred, [employer] had come to expect that the decedent would perform the duties of a pilot and/or flight agent as well as those of a corporate officer." The Commission concluded decedent "was obligated to provide or facilitate air transportation regardless of the underlying purpose of each trip." Additionally, the Commission held claimant was also a

"traveling employee," noting (1) decedent's fatal flight was precipitated by a request from Craig Hart, one of employer's founders and chairman of its board of directors, that Hart's son and daughter-in-law be flown in employer's plane, (2) decedent had to travel away from employer's premises to comply with Hart's request, and (3) decedent's piloting of the plane was a reasonable and foreseeable activity. On December 9, 2010, the circuit court of McLean County confirmed the Commission's decision.

¶ 6 This appeal followed.

¶ 7 On appeal, employer challenges the Commission's finding that decedent's death occurred within the course of his employment. It seeks application of a *de novo* standard of review, arguing the facts of the case are undisputed. Employer further maintains that the Commission erroneously applied both the dual capacity doctrine and the traveling employee doctrine.

¶ 8 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). Generally, an injury arises "in the course of" employment when it occurs within the time and space boundaries of the employment. *Sisbro*, 207 Ill. 2d at 203, 797 N.E.2d at 671. An injury arises out of an individual's employment if, at the time of the accident, " '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.' " *Sisbro*, 207 Ill. 2d at 204, 797 N.E.2d at 672, quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52 58, 541 N.E.2d 665,

667 (1989).

¶ 9 Generally, "whether an injury arose out of and in the course of one's employment is *** a question of fact." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). On review, the Commission's decision as to whether an injury arose out of and in the course of employment will not be overturned unless it is against the manifest weight of the evidence. *Hosteny*, 397 Ill. App. 3d at 674-75, 928 N.E.2d at 482. "A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent." *Hosteny*, 397 Ill. App. 3d at 675, 928 N.E.2d at 482.

¶ 10 Initially, employer argues the appropriate standard of review on appeal is *de novo*. Where the facts of a case "are undisputed and susceptible to only a single reasonable inference, the question of whether an injury arose out of the claimant's employment is one of law to be reviewed *de novo*." *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 104-05, 853 N.E.2d 799, 803 (2006). "However, if more than one inference may be drawn from the undisputed facts, the Commission's determination will not be disturbed unless it is against the manifest weight of the evidence." *First Cash*, 367 Ill. App. 3d at 105, 853 N.E.2d at 803. Although, here, the essential facts are undisputed, they are subject to more than one reasonable inference. We apply a manifest-weight-of-the-evidence standard of review.

¶ 11 In this case, the Commission found decedent's death was compensable under the Act, referencing both the dual capacity and traveling employee doctrines. The supreme court has described the dual capacity doctrine as follows:

"Under such doctrine an officer, director or stockholder will not be denied compensation merely because he is an officer, director or

stockholder, if, as a matter of fact, at the time of his injury he is engaged in manual labor or the ordinary duties of a workman and receives pay in the capacity of an employee, or if he was engaged in employment palpably separate and distinct from the official duties falling upon him as an officer of the corporation." *B. W. Sales Co. v. Industrial Comm'n*, 35 Ill. 2d 418, 420, 220 N.E.2d 405, 406 (1966).

¶ 12 Additionally, "[a] 'traveling employee' is one who is required to travel away from his employer's premises in order to perform his job." *Cox v. Workers' Compensation Comm'n*, 406 Ill. App. 3d 541, 545, 941 N.E.2d 961, 965 (2010). "As a general rule, a traveling employee is held 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, 941 N.E.2d at 965. "The test for determining whether an injury to a traveling employee arose out of and in the course of his employment is the reasonableness of the conduct in which he was engaged and whether the conduct might normally be anticipated or foreseen by the employer." *Cox*, 406 Ill. App. 3d at 545-46, 941 N.E.2d at 966. "Under such an analysis, a traveling employee may be compensated for an injury as long as the injury was sustained while he was engaged in an activity which was both reasonable and foreseeable." *Cox*, 406 Ill. App. 3d at 546, 941 N.E.2d at 966.

¶ 13 Here, decedent worked for employer from 1969 until his death in 2002. At the time he died, decedent was employer's President and CEO. Decedent was also a licensed pilot and his love of flying was an important factor that led to employer's use of air transportation in its business. Employer owned an airplane that was used (1) for business reasons, (2) for personal

reasons by employer's owners, and (3) by decedent for his own personal use. Employer paid all costs associated with the use of its plane whether it was used for business or personal reasons.

¶ 14 The Commission determined "decedent was obligated to provide or facilitate air transportation regardless of the underlying purpose of each trip." The evidence supports its conclusion. Hart, one of employer's founders, testified that air transportation for employer and its owners was arranged through decedent. He emphasized that employer's understanding with decedent "was that [decedent] either fly [the plane] himself or he arranged for the Image Air pilots to do it depending on what worked out best." Hart agreed that employer's owners were "happiest" when being flown by decedent. In July 2002, decedent was killed while piloting employer's plane pursuant to a request from Hart that decedent arrange air transportation for Hart's son and daughter-in-law.

¶ 15 The record supports the Commission's finding that decedent operated in a "dual capacity" by performing both executive and "worker" functions. Specifically, in addition to his duties as employer's President and CEO, decedent was responsible for arranging air travel for employer and its owners and acted as employer's pilot on personal and business trips. As a result, the evidence also supports the Commission's finding that decedent was a traveling employee. As employer's pilot, decedent was required to travel away from employer's premises. Given the understanding between employer and decedent, decedent's act of piloting of employer's plane on the date of the accident was a reasonable and foreseeable activity.

¶ 16 Employer argues decedent's death is not compensable under the Act because he was not required to fly employer's plane and did so on only a voluntary basis. However, as discussed, employer had an agreement with decedent that decedent would facilitate air travel for

employer and its owners. A further part of that arrangement was that decedent would act as a pilot of employer's plane during both personal and business trips. All air travel was financed by employer. It is of no consequence that decedent was not employer's exclusive pilot or that he had discretion as to whether he would act as pilot on any given trip. The record clearly reflects an understanding between employer and decedent that there would be times decedent would act as a pilot of employer's plane. In fact, decedent frequently piloted employer's plane and his flying abilities were an integral part of employer's use of air transportation.

¶ 17 The record supports the Commission's award of death benefits to claimant based upon application of the dual capacity doctrine and its finding that decedent was a traveling employee. Its decision was not against the manifest weight of the evidence.

¶ 18 For the reasons stated, we affirm the circuit court's judgment.

¶ 19 Affirmed.