

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
FOURTH JUDICIAL DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

PARKLAND COLLEGE,)	APPEAL FROM THE
)	CIRCUIT COURT OF
Appellant,)	CHAMPAIGN COUNTY
)	
v.)	No. 210 MR 780
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, et al.,)	
(ALBERT LIKE,)	HONORABLE
)	THOMAS J. DIFANIS,
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

HELD: The Commission's finding that the claimant's injuries arose out of his employment is not against the manifest weight of the evidence.

¶ 1 Parkland College (Parkland) appeals from an order of the Circuit Court of Champaign County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) awarding the claimant, Albert Like, benefits pursuant to the Workers Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2006)), for injuries he sustained on

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October 4, 2008, when he was stung by an insect while working as a janitor. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 2 The following factual recitation is taken from the record of the arbitration hearing held on October 21, 2009, as well as the remainder of the record on appeal.

¶ 3 The claimant was employed by Parkland as a janitor/custodian. On October 4, 2008, he was assigned to clean Parkland's theater. The claimant testified that, as he raised the lid of a garbage dumpster in the rear of the theater in order to dump a trash can full of waste, he felt "a sting" in his left leg. He scratched the area throughout the day, and his ankle began to swell. The claimant testified that, as he was leaving work, he informed his supervisor, James Harden, that "something bit" his leg. The claimant stated that, over the following two days, the burning and tingling in his leg increased.

¶ 4 The claimant first sought medical attention for his leg on October 6, 2008. On that day, he presented at the emergency room of the Provena Covenant Medical Center and reported having noticed a bump on his leg which he "popped." The claimant was diagnosed with a left leg abscess. The emergency room physician drained the abscess, prescribed medication, and advised the claimant to follow up with a general surgeon.

¶ 5 On October 9, 2008, the claimant was seen by Dr. Douglas Jones at Christie Clinic. A culture taken of the abscess on the claimant's leg revealed MRSA. On that same day, Dr. Jones performed a debridement of the wound while the claimant was under a general anesthetic.

¶ 6 The claimant continued under the care of Dr. Jones. In addition, at Parkland's request, the claimant was examined on October 14, 2008, at the Department of Occupational Medicine at the Carle Clinic (Carle), where he reported having suffered a "bug bite" while working on October 4, 2008. At that visit, the claimant's wound was cleaned and packed, and he was authorized to remain off of work. When the claimant returned to Carle on October 16, 2008, his wound was again packed, and he was referred to the Wound Center for treatment of ulcerative

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cellulitis in his leg. At the Wound Center, the claimant again gave a history of a “bug bite” while working.

¶ 7 Dr. Jones released the claimant from his care on October 30, 2008, and on November 6, 2008, he was released by Carle to return to full-duty work, without restrictions.

¶ 8 At the arbitration hearing, the claimant testified that, before October 4, 2008, he had seen insects surrounding the dumpster in the rear of the theater. There was no evidence introduced at the hearing which contradicted the claimant’s version of events.

¶ 9 Following the hearing, the arbitrator found that the claimant sustained injuries that arose out of and in the course of his employment with Parkland and awarded him 4 6/7 weeks of temporary total disability (TTD) benefits and 16.125 weeks of permanent partial disability (PPD) benefits for a 7.5% loss of use of his left leg. In addition, Parkland was ordered to pay \$14,190.59 for the medical expenses incurred by the claimant.

¶ 10 Parkland filed a petition for review of the arbitrator's decision before the Commission. In a decision with one commissioner dissenting, the Commission affirmed and adopted the arbitrator's decision subject to some minor modifications.

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

¶ 12 Prior to addressing the merits of Parkland's argument that the Commission's finding that the claimant's injuries arose out of his employment is against the manifest weight of the evidence, we find need to comment on the briefs filed in this case. Both Parkland and the claimant have cited Commission decisions in support of their respective arguments. Time and time again, however, we have admonished litigants that decisions of the Commission are not precedential and should not be cited. See *Global Products v. Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 413, 911 N.E.2d 1942 (2009); *S&H Floor Covering, Inc. v. Workers'*

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Compensation Comm'n, 373 Ill. App. 3d 259, 266, 870 N.E.2d 821 (2007).

¶ 13 Other than decisions of the Commission, Parkland has not cited any authority in support of its argument that the claimant's injuries did not arise out of his employment. Having failed to cite any "relevant authority" in support its argument in this regard as required by Supreme Court Rule 341(h)(7), the argument has been forfeited for purposes of this appeal. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); Vallis Wyngroff Business Forms, Inc., v. Workers' Compensation Comm'n, 402 Ill. App. 3d 91, 94, 930 N.E.2d 587 (2010).

¶ 14 Forfeiture, however, is a limitation on the parties, not on the court. Village of Lake Villa v. Stokovich, 211 Ill. 2d 106, 121, 810 N.E.2d 13, (2004). When necessary to maintain a sound and uniform body of precedent, we may overlook forfeiture and address the merits of the issue. Village of Lake Villa, 211 Ill. 2d at 121; In re Marriage of Holthaus, 387 Ill. App. 3d 367, 377-78, 899 N.E.2d 355 (2008). In this case, we elect to address Parkland's argument in order to maintain a sound body of precedent concerning the "arising out of" element of section 2 of the Act.

¶ 15 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 2006). 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). In this case, Parkland concedes that the claimant's injuries were incurred in the course of his employment, and its argument on appeal is addressed solely to the "arising out of" element.

¶ 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. v. Industrial Comm'n, 129 Ill. 2d 52, 58, 541 N.E.2d 665 (1989):

"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). However, more is required than the fact of an occurrence at the claimant's place of work. *Greater Peoria Mass Transit District v. Industrial Comm'n*, 81 Ill. 2d 38, 43, 405 N.E.2d 796 (1980). The mere fact that an employee is present at the place of injury because of his employment is not enough to sustain a finding that his injury arose out of his employment (*State House Inn v. Industrial Comm'n*, 32 Ill. 2d 160, 163, 240 N.E.2d 17 (1965)), as Illinois has rejected the positional risk doctrine (*Brady*, 143 Ill. 2d at 552).

¶ 17 In this case, there is no disputing the fact that, at the time of his injury, the claimant was performing acts he was instructed to perform by his Parkland supervisor. Additionally, the Commission adopted the arbitrator's findings that the claimant was exposed to "a greater risk than the general public in that he would be exposed to a greater risk of insects and unsanitary conditions that a normal everyday visitor to Parkland" and that the area where the claimant was injured is not an area where the general public was allowed to, or would normally, go. These conclusions are factual in nature.

¶ 18 The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d

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38, 44, 509 N.E.2d 1005 (1987). For a finding 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).

¶ 19 We believe that the Commission could reasonably conclude that requiring the claimant to deposit trash in a dumpster which insects had been known to surround exposed him to the risk of a bug bite beyond that to which the general public is exposed. We find, therefore, that the Commission's finding that the claimant's injury arose out of his employment is not against the manifest weight of the evidence, and we, therefore, affirm the judgment of the circuit court which confirmed the decision of the Commission.

¶ 20 Affirmed.