

Workers' Compensation  
Commission Division  
Filed: February 11, 2013

No. 1-11-3644WC

**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).

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT  
WORKERS' COMPENSATION COMMISSION DIVISION

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NORTHERN ILLINOIS SPECIAL RECREATION ASSOCIATION,	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
	)	COOK COUNTY
Appellant,	)	
	)	
v.	)	No. 10 L 51151
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION, <i>et al.</i> ,	)	
(SARAH KLIMCZAK,	)	HONORABLE
	)	ALEXANDER P. WHITE,
Appellee).	)	JUDGE PRESIDING.

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

**ORDER**

¶ 1 Held: The finding of the Illinois Workers' Compensation Commission that, at the time of her injury, the claimant was a traveling employee is not against the manifest weight of the evidence.

¶ 2 Northern Illinois Special Recreation Association (NISRA) appeals from an order of the circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), awarding the claimant, Sarah Klimczak, benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2008)), for a left wrist injury she received on December 17, 2008, based, in part, upon a finding that, at the time of her injury,

the claimant was a traveling employee. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the record of the arbitration hearing conducted on August 7, 2009.

¶ 4 The claimant began working as a recreation specialist for NISRA in June 2007 but became a regional coordinator by December 2008. She said that, by December 17, 2008, her job required her to travel "about 60, 70 percent of the time" to help stage programs and activities for people with disabilities. She traveled in her own automobile, but NISRA reimbursed her based on her mileage. On December 17, the claimant was scheduled to leave NISRA's Crystal Lake office to go to a program in Woodstock, Illinois. She began by going out to a parking lot in front of NISRA's office complex, without her coat, to warm up her automobile. She testified that she generally parked her car away from the entrance, because her supervisor had asked employees to leave the closest parking spots for NISRA patrons. As she closed her car door, the claimant slipped, fell, and hurt her wrist.

¶ 5 The claimant's supervisor, Brian Shahinian, testified that NISRA leased the office property and that the land owner held responsibility for maintaining the parking lot. He expressed doubt that the claimant's 60 to 70 percent estimate of her travel obligation was accurate, but he agreed that her job required her to travel on an almost daily basis.

¶ 6 On September 1, 2009, following the hearing, the arbitrator found that the claimant's injury did not arise out of and in the course of her employment, and he denied her benefits under the Act.

¶ 7 The claimant sought review of the arbitrator's decision before the Commission. On July 6, 2010, with one commissioner dissenting, the Commission reversed the arbitrator's decision and awarded the claimant two weeks of temporary total disability benefits, permanent partial disability benefits for the 15 percent loss of use of her left hand, and medical expenses. The Commission reasoned that the claimant was a traveling employee at the time of her accident, and

it found that her conduct at the time of her fall was both reasonable and foreseeable.

¶ 8 NISRA filed a petition for review in the circuit court of Cook County. On November 9, 2011, the circuit court issued a ruling confirming the Commission's decision. NISRA now appeals.

¶ 9 On appeal, NISRA asserts that the Commission erred in concluding that the claimant was a traveling employee, and thus that the Commission applied the wrong standard to determine whether her injury arose out of and in the course of her employment.

¶ 10 An employee's injury is compensable under the Act only if it arises out of and in the course of her employment. 820 ILCS 305/2 (West 2008). 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). The determination of whether an injury to a traveling employee arose out of and in the course of employment is governed by different rules than are applicable to other employees. *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199, 486 N.E.2d 889 (1985). The test for determining whether an injury to a traveling employee arose out of and in the course of her employment is the reasonableness of the conduct in which she was engaged and whether the conduct might normally be anticipated or foreseen by the employer. *Howell Tractor & Equipment Co. v. Industrial Comm'n*, 78 Ill. 2d 567, 573-74, 403 N.E.2d 215 (1980). Under such an analysis, a traveling employee may be compensated for an injury as long as it was sustained while she was engaged in an activity that was both reasonable and foreseeable. *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 71, 338 N.E.2d 379 (1975).

¶ 11 NISRA argues that the Commission erred in applying the above test to the claimant, because, in its view, she did not qualify as a traveling employee. The parties disagree as to our standard of review on this point: NISRA argues that our review should be de novo, while the claimant argues that we should apply the manifest-weight standard of review. We agree with NISRA. In its brief, NISRA emphatically concedes the accuracy of all of the Commission's

findings. It challenges only the Commission's legal conclusion that those facts establish the claimant's status as a traveling employee. Thus, there are no disputes as to the facts of the case or the factual inferences to be drawn therefrom; all that remains for us is to determine if the agreed facts satisfy this legal standard. We apply a de novo standard of review when the facts essential to our analysis are undisputed and susceptible to but a single inference, and our review only involves an application of the law to those undisputed facts. *Uphold v. Workers' Compensation Comm'n*, 385 Ill. A99. 3d 567, 571-72, 896 N.E.2d 828 (2008).

¶ 12 A traveling employee is one who is required to travel away from her employer's premises in order to perform her job. *Jensen v. Industrial Comm'n*, 305 Ill. App. 3d 274, 278, 711 N.E.2d 1129 (1999). Such employees are afforded extra protection under the Act, in recognition of the additional risks those employees assume by virtue of their travel. See *U.S. Industries v. Industrial Comm'n*, 40 Ill. 2d 469, 474, 240 N.E.2d 637 (1968) ("injuries to employees whose duties require them to be elsewhere than in their home communities are not governed by the rules ordinarily applied to others"). There can be little dispute that the claimant qualifies generally as a traveling employee, and NISRA concedes as much in its brief.

¶ 13 Even so, NISRA argues that the claimant was not a traveling employee at the specific time of her accident, because she was merely warming up her car and, presumably, returning briefly to her office, before finally setting off. NISRA thus asserts that the claimant was not "in the act of travel" when she was injured, and it asks us not to extend the traveling employee doctrine past that threshold.

¶ 14 We disagree with NISRA's premise that the claimant was not engaged in the act of travel at the time of her accident. While it is true that the claimant had not set off on her trip, her leaving the office to warm up the car constituted at least the prefatory part of her voyage, and those actions are inextricable from the voyage itself. Put simply, warming up a car is as much a part of a trip as walking to the car and pulling the car out of its parking spot.

¶ 15 To urge the opposite result, NISRA asserts that classifying the claimant as a traveling

employee expands the doctrine to a point that invites absurd results. In NISRA's view, if this claimant is a traveling employee, so too would be "the flight attendant applying makeup in her residential bathroom" or "the paperboy enjoying a sandwich inside his parent's basement." Although NISRA marches this parade of horrors across our porch, we open the door to none of them. The workers in NISRA's examples are all engaged in activities—even non-work activities—very clearly distinct from travel. Here, as we have said, the claimant was engaged in travel at the time of her accident. For that reason, we agree with the Commission that the claimant qualified as a traveling employee.

¶ 16 NISRA does not dispute that, if the claimant was a traveling employee, the activity that led to her accident was reasonable and foreseeable. Accordingly, because the claimant was a traveling employee injured while performing a reasonable and foreseeable activity, we agree with the Commission's determination that her injury arose out of and in the course of her employment.

¶ 17 Based upon the foregoing analysis, we affirm the judgment of the circuit court, which confirmed the Commission's decision.

¶ 18 Affirmed.