

2013 IL App (3d) 120195WC-U

NO. 3-12-0195WC

Order Filed February 8, 2013

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IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JOHNSON CONTRACTING COMPANY,	)	Appeal from
Appellant,	)	Circuit Court of
v.	)	Knox County,
THE ILLINOIS WORKERS' COMPENSATION	)	No. 11MR39
COMMISSION <i>et al.</i> (Joseph Lippens, Appellee).	)	
	)	Honorable
	)	Paul L. Mangieri,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The Commission's finding that claimant sustained accidental injuries that arose out of and in the course of his employment after falling from his work vehicle while the vehicle was parked in claimant's personal driveway was not against the manifest weight of the evidence. Also, the evidence presented was sufficient to support a finding that claimant fell within the definition of a "traveling employee."

¶ 2 On September 27, 2007, claimant, Joseph Lippens, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30

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(West 2006)), seeking benefits from the employer, Johnson Contracting Company. Following a hearing, the arbitrator determined claimant sustained accidental cervical injuries that arose out of and in the course of his employment on August 27, 2007, and awarded him (1) 28-6/7 weeks' temporary total disability (TTD) benefits from August 28, 2007, through March 16, 2008; (2) \$29,390.75 in medical expenses; and (3) 125 weeks' permanent partial disability (PPD) benefits for a 25% loss of use of the person as a whole.

¶ 3 On review, the Workers' Compensation Commission (Commission), with one commissioner dissenting, affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Knox County confirmed the Commission. The employer appeals, arguing (1) the Commission's finding that claimant's accident arose out of and in the course of his employment was against the manifest weight of the evidence and (2) the Commission erred in finding claimant was a "traveling employee." We affirm.

¶ 4 I. BACKGROUND

¶ 5 At arbitration, claimant testified he worked for the employer as a pipefitter and service technician, servicing heating, air conditioning, and ventilation components. He was also a union member. Claimant stated the employer's shop was located in Moline, Illinois and it did business within a 100 to 150 mile radius. Claimant lived in Kewanee, Illinois and the employer provided him with a service van that claimant kept at his home at night and used to travel to and from job sites. He testified he was dispatched out of his home to perform jobs for the employer. Claimant testified he was required to travel for his job and he did not usually go to the employer's shop in the morning.

¶ 6 Claimant identified Monday, August 27, 2007, as the date of his accidental injury. In the week prior to that date, he worked a job for the employer in Mendota, Illinois. At the end of that week, Kevin Richeal, claimant's supervisor/dispatcher, assigned him to a job on August 27, 2007, located in Waterman, Illinois. Claimant testified, on that date, he began preparing his work van around 5:00 a.m. to leave his home for the job in Waterman. He started the van and checked the brake lights, headlights, and turn signals as he was required to do every morning. Claimant stated his work van had been "loaded down" with material from his previous job, including four pieces of pipe on top of the vehicle that was unnecessary for his next job. For safety reasons, claimant decided to remove the pipe from the van and lay it off to the side of his garage. He noted he had to travel over an hour and a half to the job site in Waterman from his home and there had been previous occasions when pipe had come off a vehicle. Claimant testified, as he started to pull the pipe off the van, he slipped off his van's bumper, hit his left knee on the bumper, fell backwards, and hit the left side of the back of his head on the van's door. Claimant immediately felt a sharp pain in his neck and reported to Richeal that he had an accident and was unable to work.

¶ 7 Claimant stated it was customary in his trade to remove unneeded pipe from a work vehicle. On cross-examination, he testified he was not familiar with a union rule that said he was not supposed to remove company equipment at home. On re-direct, he denied ever having been informed that he had violated a company or union rule by removing pipe from his work vehicle while at home.

¶ 8 The same day as his accident, claimant sought medical treatment from Dr. Gordon

Pointer, a chiropractor, complaining of severe neck pain. On September 6, 2007, he saw Dr. John Dannenfeldt, his family doctor, who recommended a magnetic resonance imaging (MRI) of the cervical spine. On September 13, 2007, Dr. Dannenfeldt noted claimant's MRI showed abnormality that could relate to his injury and referred him to Dr. David Udehn, a neurosurgeon.

¶ 9 On September 28, 2007, claimant saw Dr. Udehn for the first time and provided a an accident history of slipping off his vehicle's bumper while unloading pipe and striking his head on the door. Dr. Udehn noted a past history of a cervical injury in 1991 or 1992 for which claimant underwent fusion surgery. Claimant testified he returned to work following his prior cervical injury without restrictions or continuing problems until his August 2007 work accident. Dr. Udehn's diagnosis was (1) cervical disc without myelopathy at C4-C5 and C6-C7, (2) cervical radiculopathy at C7, and (3) C5-C6 non-union. On November 21, 2007, following a course of conservative treatment, he performed cervical fusion surgery on claimant. On November 26, 2007, Dr. Udehn authored a letter stating claimant's August 2007 accident caused or aggravated his cervical condition of ill-being. Following surgery, claimant underwent a work hardening program. On March 17, 2008, he was released to return to work with no restrictions. Claimant testified he returned to work for the employer and continued to work for the employer as of the date of arbitration.

¶ 10 At arbitration, claimant called Richeal as an adverse witness. Richeal worked for the employer and was claimant's supervisor. He described claimant as responsible, dependable, and a good employee. Richeal testified he never had to discipline claimant and he was always satisfied with both claimant's work and the decisions claimant made.

¶ 11 Richeal agreed the employer's service technicians were given a company vehicle to use for travel and it was customary that service technicians did not go to the employer's shop every day. Instead, the technicians, including claimant, were assigned to jobs from their homes. On August 27, 2007, claimant telephoned Richeal and reported his accident. Later, Richeal completed an accident report, noting claimant "slipped while entering work truck at home" and that he "slipped while stepping on rear bumper." Richeal testified no disciplinary action was taken nor comments made to claimant with respect to his accident.

¶ 12 On examination by the employer's counsel, Richeal testified he was aware that the employer had a policy regarding scrap or overage material from a job site and that such material had to be returned to the company at its Moline shop. Richeal stated he was a member of the pipefitter's union but was not aware of any union rule regarding the storing of materials at one's home. However, he did believe such action was "frowned upon."

¶ 13 Kerry Cox testified he worked for the employer for 20 years and, in August 2007 through the date of arbitration acted as its "[v]ice president slash service manager." Cox was aware the employer had a written handbook containing policies but never saw a written policy regarding removing materials from a company truck. Upon completion of a job, a service technician was required to clean up a job site of all materials belonging to the employer. Further scrap materials were to go to the employer's shop. Cox was familiar with a union policy that stated employees were not supposed to remove company property at their home. Further, he testified there was a proper way to strap down pipes so that they did not roll around. Cox stated, in his experience, there was no reason to take pipes off at one's house.

¶ 14 On cross-examination, Cox testified claimant was a good, responsible employee and Cox had never had a reason to discipline him. Also, Cox neither disciplined nor criticized claimant for anything with respect to his August 2007 accident.

¶ 15 On February 18, 2010, the arbitrator issued his decision, finding claimant sustained accidental cervical injuries that arose out of and in the course of his employment on August 27, 2007, and awarded him (1) 28-6/7 weeks' TTD benefits from August 28, 2007, through March 16, 2008; (2) \$29,390.75 in medical expenses; and (3) 125 weeks' PPD benefits for a 25% loss of use of the person as a whole. On April 1, 2011, the Commission, with one commissioner dissenting, affirmed and adopted the arbitrator's decision. On February 9, 2012, the circuit court of Knox County confirmed the Commission.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, the employer argues the Commission erred in finding claimant's cervical injuries arose out of or in the course of his employment. It contends claimant's injury did not occur "in the course" of his employment as he was injured in his personal driveway. The employer also argues claimant's injuries did not "arise out of" his employment because claimant was performing acts outside the scope of his employment at the time of his accident. It contends that, by removing work materials from his work van and intending to store them at his home, claimant violated company and union policy. The employer maintains it could not have anticipated or foreseen the conduct which caused claimant's injuries.

¶ 19 "To obtain compensation under the Act, a claimant bears the burden of showing,

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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). "Whether an injury arises out of and in the course of the claimant's employment is a question of fact to be resolved by the Commission, and we will not disturb its determination unless it is against the manifest weight of the evidence." *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013, 944 N.E.2d 800, 803 (2011). "A finding of fact is contrary to the manifest weight of the evidence only where an opposite conclusion is clearly apparent" and the appropriate test is whether the record contains sufficient evidence to support the Commission's decision not whether this court might have reached the same conclusion. *Metropolitan*, 407 Ill. App. 3d at 1013, 944 N.E.2d at 803.

¶ 20 " 'In the course of employment' refers to the time, place and circumstances surrounding the injury" and an injury will generally be compensable if it occurs "within the time and space boundaries of the employment." *Sisbro*, 207 Ill. 2d at 203, 797 N.E.2d at 671. "The 'arising out of' component is primarily concerned with causal connection" and is satisfied by a showing "that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro*, 207 Ill. 2d at 204, 797 N.E.2d at 672.

"Stated otherwise, '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. [Citations.] 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.' [Citation.]" *Sisbro*, 207 Ill. 2d at 204, 797 N.E.2d at 672.

The employer will not be held liable under the Act " 'where the employee exposes himself to a danger which is not one arising from the employee's employment.' " *Saunders v. Industrial Comm'n*, 189 Ill. 2d 623, 630, 727 N.E.2d 247, 251 (2000) (quoting, *Lumaghi Coal Co. v. Industrial Comm'n*, 318 Ill. 151, 156, 149 N.E. 11, 13 (1925)).

¶ 21 Here, the record supports a finding that claimant sustained injuries "in the course" of his employment. The arbitrator and Commission determined that where "an employee is required to travel and is involved in the performance of reasonable services of the employer at an appropriate time and place, an injury that occurs will be considered to be in the course of the employment." In fact, "[i]njuries sustained on an employer's premises, *or at a place where the claimant might reasonably have been while performing his duties*, and while a claimant is at work, are generally deemed to have been received in the course of the employment." (Emphasis added.) *Metropolitan*, 407 Ill. App. 3d at 1013-14, 944 N.E.2d at 804.

¶ 22 Relative to claimant's situation, evidence showed the employer had a shop located in Moline, Illinois but did business within a 100 to 150 mile radius of that shop. Claimant routinely traveled away from the employer's shop to perform his work duties. The employer

provided claimant with a work van in which he transported various work materials and dispatched him to various jobs from his home in Kewanee, Illinois. Claimant kept his work van at home and did not routinely go in to the employer's shop before traveling to a designated job site. On the morning of his accident, claimant began work for the employer at 5:00 a.m. by preparing his work van to leave for the job site in Waterman. He testified he checked the brake lights, headlights, and turn signals as he was required to do every morning and then began to remove unnecessary pipe from his work van. Although claimant's van was located in his personal driveway at the time of his accident, the evidence shows he had begun performing his job duties and, given the nature of his employment, his driveway was a reasonable location for him to perform those duties. See *Becker v. Industrial Comm'n*, 308 Ill. App. 3d 278, 282, 719 N.E.2d 792, 795 (1999) (where an employer provides an employee with a means of transportation to and from work for the employer's own benefit, it expands the range of employment).

¶ 23 The record further supports a finding that claimant was acting within the scope of his employment when he was injured. The employer acknowledges that claimant's work for the employer included "offloading any excess material" from his work van. Thus, claimant's action in removing unneeded material from his work van was foreseeable by the employer. Nevertheless, the employer contends claimant violated company and union policy by unloading material at his home rather than at the employer's shop. It submitted testimony from Cox, the employer's vice president, who stated he was familiar with a union policy providing employees were not supposed to remove company property at their homes. However, the employer never submitted any written policy from either the employer or the union that prohibited claimant's conduct on the

date of his accident. Also, both claimant and Richeal, claimant's supervisor, testified they were unaware of any such rule. Claimant testified removing unneeded materials from a work vehicle was customary in his trade. Further, both Cox and Richeal testified claimant was neither reprimanded nor disciplined for his actions in removing the unneeded pipe.

¶ 24 The Commission's finding that claimant sustained accidental injuries that arose out of and in the course of his employment was supported by the record. Its decision was not against the manifest weight of the evidence.

¶ 25 The employer also argues the Commission erred in finding claimant was a "traveling employee." "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.

¶ 26 Here, neither the arbitrator nor the Commission made an express finding that claimant was a "traveling employee" or that its decision was based on the traveling-employee

doctrine. However, we find the evidence would support such a finding. Again, claimant routinely traveled away from the employer's premises to perform his job duties. He was given a work vehicle and dispatched from his home to various jobs within a 100 to 150 mile radius of the employer's shop. Although the employer argues claimant was not a "traveling employee" because he did not engage in overnight, extended travel, it cites no legal authority that expressly sets forth such requirements. Instead, the employer argues the supreme court has never applied the doctrine or deemed a claimant a "traveling employee" when the claimant returns home every night. Contrary to the employer's assertions, we note *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199, 486 N.E.2d 889, 891 (1985), wherein the supreme court found the claimant was a "traveling employee" where her employment required her to travel to various schools throughout two counties.

¶ 27

### III. CONCLUSION

¶ 28

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

¶ 29

Affirmed.