

2013 IL App (4th) 120800WC-U  
No. 04-12-0800WC  
Order filed June 28, 2013

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

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MICHAEL MANN,	)	Appeal from the Circuit Court
	)	of Macon County.
Appellant,	)	
	)	
v.	)	No. 11-MR-343
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <i>et al.</i>	)	Honorable
	)	James R. Coryell,
(Stratas Foods, Appellee).	)	Judge, Presiding.

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

**ORDER**

¶ 1 *Held:* The Commission's decision that claimant was not exposed to a greater risk of harm than the general public due to his use of a picnic table during breaks was not contrary to the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Michael Mann, filed an application for adjustment of claim pursuant to the

Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) alleging he sustained an injury to his left shoulder while in the employ of respondent, Stratas Foods. The Commission determined that claimant had not carried his burden of proving that his injury arose out of his employment. The circuit court of Macon county confirmed the Commission's decision, and claimant appealed. For the reasons that follow, we affirm

¶ 4

## II. BACKGROUND

¶ 5 The facts pertinent to this appeal are brief and straight forward. On January 21, 2010, claimant was employed by respondent as a forklift operator. At 9:15 a.m., he was on his regularly-scheduled break. He got a cup of coffee and went to sit down at a table in the break room. The table was a folding picnic table. As people were already sitting at the ends of the table, claimant stepped over one of the bench seats to sit down. Claimant set his coffee on the table. He then decided to slide back away from the table a little, as he felt he was sitting too close to his coffee. As he slid back, he lost his balance because, as claimant explained, "there was nothing underneath [his] rear end to hold [him] up." Claimant fell backwards and landed on his left shoulder. He suffered significant injuries to that shoulder, which subsequently necessitated surgery.

¶ 6 Both parties offered evidence about the condition of the picnic table. Claimant testified that it was a "fold up table with wheels." The bench claimant fell from was about 8 or 8 ½ inches wide and 15 to 16 inches from the floor. Claimant acknowledged having no special expertise regarding picnic tables or familiarizing himself with any relevant technical specifications. He did, however, measure the table.

¶ 7 Robert Madison, a coworker of claimant, testified on claimant's behalf. After claimant's fall, Madison assisted him. Madison described that table as "an elementary table for first, second and third graders." It looked "like a picnic table." The bench seat was about 7 ½ to 8 inches wide and

16 to 17 inches off the ground. When Madison used the table, he would straddle the bench rather than use it in a conventional manner, which he found uncomfortable. Madison stated the he had complained about the table to management in the past. The table has been removed from the break room. Madison testified that he had not measured the table and that he was not an expert in the design of picnic tables. He also acknowledged that he had never studied any standards regarding the proper design of picnic tables or benches.

¶ 8 Brain Richardson testified for respondent. He is respondent's health, safety, and environmental manager. He was familiar with the table, describing it as a "standard industrial fold up table." The bench seats was 9 or 10 inches wide. The table was manufactured by SICO and bore a label stating it was approved by Underwriter's Laboratory. The table has been moved to another break room, where it is still in use. Richardson authenticated two photographs of the table, which were admitted into evidence. He testified that he has sat at the table and that it is a "standard \*\*\* break room fold away table." No one ever informed him "that they have an issue with reference to the table or the benches." Employees use the table three times per day for breaks and lunches.

¶ 9 The arbitrator found that while claimant's injury occurred in the course of employment pursuant to the personal comfort doctrine (see *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 350 (2000)), claimant had failed to show that it arose out of his employment with respondent. Citing *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 61 (1989), the arbitrator believed that the dispositive issue was whether the table was defective or hazardous in some way. She found that claimant's testimony indicated only that the benches were 8 or 8 ½ inches wide and 15 to 16 inches from the floor. Madison was the sole witness to give testimony critical of the tables. However, his testimony that the table was like "an elementary table" was simply his opinion, and he possessed no expertise on the subject. Moreover, according to the

arbitrator, his opinion was biased, lacked credibility, and was not based on an appropriate standard of proof for establishing the table was defective or hazardous. She then found that “[t]he only credible evidence of the condition of the table was [*sic*] the photographs [citation], [Richardson's] testimony that it was a standard industrial table manufactured by SICO, and that it had been approved by Underwriter's Laboratories.” Therefore, the arbitrator concluded, claimant was not exposed to a risk greater than that experienced by the general public, and, as such, his injury did not arise out of his employment with respondent.

¶ 10 The Commission affirmed and adopted the decision of the arbitrator with several minor modifications that are not relevant here. One commissioner dissented. She explained that she “view[ed] the evidence differently.” The table, she found, was a “child-sized seating unit.” She credited the testimony of Madison that the table was appropriate for first, second, and third graders. The dissenting commissioner also incorrectly believed that Madison stated he could not sit at the table in a conventional manner. While he initially responded affirmatively when asked whether the table was “too narrow for [him] to get in and sit in a traditional manner,” he later clarified when asked if he could sit at the table that “[he] could, but [he] didn't like it.” The dissenting commissioner believed that the physical characteristics of the table increased the risk of injury to claimant.

¶ 11 The circuit court of Macon County confirmed the decision of the majority, and this appeal followed.

¶ 12

### III. ANALYSIS

¶ 13 It is axiomatic that an injury must both arise out of and occur in the course of employment to be compensable under the Act. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). The sole issue presented in this appeal is whether claimant's shoulder injury arose out of his employment with

respondent. An injury arises out of employment if it originates in some risk connected with the employment. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 676 (2009). Risks may be divided into three categories: employment-related, personal, and neutral. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Falls that occurs while a claimant is engaged in some ordinary activity are considered to result from neutral risks. See *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1014 (2011) (“Accordingly, the risk that the claimant would be injured as a result of a fall while traversing a public sidewalk and commercial driveway was neutral in nature.”); *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 353 (“In the context of falls, neutral risks include falls on level ground or while traversing stairs.”). Sitting at an ordinary picnic table is akin to walking on a public side walk or traversing stairs. As such, claimant's injury, at first blush, appears to have resulted from a neutral risk. Generally, injuries attributable to neutral risks are not compensable unless a claimant is exposed to the risk to a greater extent than the general public by virtue of the claimant’s employment. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163.

¶ 14 Claimant posits two theories for recovery. First, claimant argues that the risk in which his injury originated was not, in fact, neutral. To this end, he contends that the picnic table was too small for ordinary adults. Alternatively, he contends that he was exposed to the risk of sitting at a picnic table to an extent greater than the general public. Claimant argues that he was exposed to this alleged risk due to the regularity of his breaks (we will here assume, without deciding, that sitting at a picnic table presents some risk such that if claimant establishes that he uses a picnic table more than the general public as a result of his employment, his injury would arise out of employment). Unfortunately for claimant, neither contention is borne out by the evidence in the record. We review

such issues of fact using the manifest-weight standard, so we will disturb the decision of the Commission on these questions only if an opposite conclusion is clearly apparent. *Complete Vending Services, Inc. v. Industrial Comm'n*, 305 Ill. App. 3d 1047, 1049 (1999).

¶ 15 Evidence regarding the physical characteristics of the table was conflicting. Madison testified that the table was suitable for young, grade-school children; Richardson testified that it was a standard industrial table. Also, the Commission reviewed photographs of the table in reaching its decision. Resolving such conflicts in the evidence is primarily a matter for the Commission. *Hosteny*, 397 Ill. App. 3d at 674. Claimant points to nothing in his testimony or the testimony of Madison that is so compelling that the Commission could not have chosen to credit the testimony of Richardson. Hence, an opposite conclusion to the Commission's determination that the table was not "undersized, defective, or dangerous" is not clearly apparent. That is, the evidence showed that the picnic table was a normal table suitable for use by ordinary adults and the Commission's determination is not against the manifest weight of the evidence. Claimant's fall, in turn, resulted from a neutral risk, just as if claimant had fallen while traversing an ordinary set of stairs. See *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 353.

¶ 16 Therefore, claimant is only entitled to recover if his use of the table by virtue of his employment exposed him to a neutral risk to a greater extent than the general public is exposed to a similar risk. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163. We initially note that claimant's testimony regarding the frequency with which he used the table was somewhat equivocal. Claimant was asked, "Had you used the table and the benches before that date?" He answered, "On different occasions, yes." Additionally, Richardson testified that there were other places to sit in the break room. We recognize that there was evidence that an employee might use the table three times per day—two breaks plus lunch. However, claimant does not point

to evidence that he, in fact, used the table with such frequency. In any event, none of this evidence is sufficiently compelling to allow us to conclude that the Commission's decision is contrary to the manifest weight of the evidence.

¶ 17

#### IV. CONCLUSION

¶ 18 In light of the foregoing, the judgment of the circuit court of Macon County confirming the decision of the Commission is affirmed.

¶ 19 Affirmed.