2015 IL App (2d) 131144WC-U

Order filed

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SCOTT HEINKEL,	)	Appeal from the Circuit Court
	)	of Winnebago County, Illinois.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	Appeal No. 2-13-1144WC
	)	Circuit No. 13-MR-192
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*, (Metro Medical	)	Honorable
Services, Defendant-Appellant).	)	J. Edward Prochaska,
	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's determination that the claimant's injuries did not arise out of and in the course of his employment was against the manifest weight of the evidence.

¶ 2 The claimant, Scott Heinkel, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for right ankle and leg injuries which he allegedly sustained while working for Metro Medical Services (employer) on February 29, 2008. After a section 19(b) hearing, the arbitrator found that the claimant's current condition of ill-being of his right ankle was causally related to his

employment. The arbitrator awarded temporary total disability (TTD) benefits for a period of March 1, 2008, through June 11, 2008, for a total of 14 4/7 weeks. The arbitrator also ordered the employer to pay $400 for reasonable and necessary medical expenses and permanent partial disability (PPD) benefits equal to 20% loss of use of the right foot. The employer sought review before the Illinois Workers' Compensation Commission (Commission), which reversed the decision of the arbitrator, finding that the claimant had failed to establish that his injuries arose out of and in the course of his employment. A dissenting commissioner would have affirmed and adopted the decision of the arbitrator. The claimant then sought judicial review of the Commission's decision in the circuit court of Winnebago Cook County, which held that the decision of the Commission was against the manifest weight of the evidence and ordered the arbitrator's decision reinstated. The employer then filed a timely appeal with this court.

¶ 3 **FACTS**

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on May 31, 2012.

¶ 5 The claimant was employed as a paramedic with job duties including driving an ambulance, transporting patients to and from various locations, and rendering emergency medical treatment. He testified that at least half of his time on the job was devoted to patient transportation. He had been working for the employer for slightly more than one year.

¶ 6 On February 29, 2008, the claimant and his partner were returning to the employer's Loves Park, Illinois station after transporting a patient to St. Anthony's Hospital in Rockford, Illinois. While on the way back to the station, the claimant stopped at his home to pick up some materials he needed to repair a hole in a wall at the station. The claimant testified that he had accidentally made the hole in the wall while watching a Bears game approximately four months prior. While no supervisor had ordered him to repair the damage, he felt compelled to do so.

¶ 7 The claimant testified that his home was only one block off the route from the hospital to the station and would add less a tenth of a mile to the trip. He further testified that he parked the ambulance at the curb in front of his house and went inside his attached garage to pick up the materials, which he had previously laid out. He used both hands to carry the materials back to the ambulance. While walking back to the ambulance he slipped on some ice in the driveway and fell, injuring his right ankle. The claimant also testified that, had he not fallen, the entire trip off route to pick up the materials and return on route would have taken less than two minutes.

¶ 8 The claimant testified that he had performed minor maintenance activities at the station from time to time prior to his injury. He testified that these activities included changing light bulbs and climbing a ladder to repair a garage door. The claimant also testified that paramedics often were allowed to make stops on the way back from transporting patients, including stopping for lunch and personal tasks. He stated that he had worked with several partners and made stops with all of them. He was not made aware of any policy forbidding paramedics from making stops on the way back from patient transports and he had never been disciplined for making stops.

¶ 9 Jeff Stringer, the employer's operations manager, testified that, in addition to patient care and transportation responsibilities, paramedics were responsible for housekeeping chores around the station but were not required to perform maintenance duties. He also testified that paramedics were allowed to run errands during their shifts to pick up personal items, but noted that cleaning supplies are supplied to each station by the employer. He further testified that paramedics were allowed to stop at their homes for lunch and that prior permission to do so was not required. Stringer also testified that, on the date of the accident, he had told the claimant to return to the station after transporting a patient so that the vehicle could undergo maintenance.

¶ 10 After he fell, the claimant was taken to Rockford Memorial Hospital, where diagnostic tests revealed an acute fracture/dislocation of the right ankle. On March 10, 2008, Dr. David McCarty performed a open reduction and stabilization of the lateral fracture with the installation of hardware. The claimant continued under Dr. McCarty's care and on April 9, 2008, the cast was removed and replaced with a splint. On June 3, 2008, Dr. McCarty released the claimant to return to work with restrictions to avoid or limit the use of stairs. On June 11, 2008, the claimant returned to full work activities. The clamant testified that at the time of the hearing the hardware remained in his ankle and he has some slight discomfort at times. He further testified that he has no work restrictions, but he exercises caution when running or going up and down stairs.

¶ 11 The arbitrator found that the claimant's injury was compensable. The arbitrator noted the employer's agreement that the claimant was a traveling employee and that, as a traveling employee, the claimant's injuries would arise out of and in the course of his employment if the conduct in which he was engaged at the time of the accident was reasonable and would have been normally anticipated or foreseen by the employer. The arbitrator found that the claimant's deviation from his normal route to stop at his house to pick something up was not uncommon or prohibited. He further found that whether the stop was personal or work related was irrelevant because the fact that an employee would make a brief stop at his own house on the way back to the station was both reasonable and foreseeable by the employer. The arbitrator also found that the injury occurred after the claimant had deviated from the normal route and was on the way back to the normal route. The arbitrator specifically cited *Cox v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 541 (2010), wherein this court held that a traveling employee who was injured after completing a brief stop at his bank to withdraw cash for personal reasons had ended his deviation and had thus resumed the course of his employment at the time of the injury.

¶ 12 The employer filed a petition for review of the arbitrator's decision before the Commission. A majority of the Commission reversed the arbitrator's award. The Commission majority, citing *Hoffman v. Industrial Comm'n*, 128 Ill. App. 3d 290, 294 (1984), found that the claimant's detour to his home to pick up materials to be used to repair damage that he had caused was unreasonable and unforeseeable from the perspective of the employer. The majority observed that the claimant's "duties do not include either punching a hole in a wall at the employer's place of business or fixing drywall" and the employer had not specifically ordered or required the claimant to repair the wall. The majority further noted that, as in *Hoffman*, there was no particular urgency or need to pick up the repair materials on that particular day or time, thus the claimant had no reasonable or foreseeable need to deviate from his return route to the station.

¶ 13 The dissenting Commissioner agreed with the arbitrator's finding that, as a traveling employee making a brief deviation from his normal route, the purpose of the deviation was not relevant to a finding that the a stop at his home was reasonable and foreseeable to the employer. He further noted that the Commission majority misstated the law when it found that the claimant's conduct in punching the hole in the wall had any relevance to the issue, as the conduct which must be reasonable and foreseeable is the conduct which directly gave rise to the injury. The dissenting Commissioner also noted that the employer was aware that paramedics often performed maintenance tasks around the station.

¶ 14 Thereafter, the claimant filed a petition for judicial review of the Commission's decision in the circuit court of Winnebago County. The circuit court reversed the decision of the Commission and reinstated the arbitrator's award. The employer then filed a timely appeal to this court.

¶ 15 **ANALYSIS**

¶ 16 A "traveling employee" is one who is required to travel away from his employer's premises in order to perform his job duties. *Jensen v. Industrial Comm'n,* 305 Ill. App. 3d 274, 278 (1999). Here, there is no dispute that the claimant was a traveling employee since his job duties regularly required him to travel away for the employer's location to transport patients.

¶ 17 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 (1985). 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. *Urban v. Industrial Comm'n,* 34 Ill. 2d 159, 162–63 (1966). However, a finding that a claimant is a traveling employee does not relieve him from the burden of proving that his injury arose out of and in the course of employment. *Hoffman,* 109 Ill. 2d at 199. 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 at the time of the injury and whether that conduct might normally be anticipated or foreseen by the employer. *Howell Tractor & Equipment Co. v. Industrial Comm'n,* 78 Ill. 2d 567, 573–74 (1980). 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. *Wright v. Industrial Comm'n,* 62 Ill. 2d 65, 71 (1975).

¶ 18 The question of whether an employee's injury arose in the course of his employment is a question of fact to be resolved by the Commission, and the Commission's determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Aaron v. Industrial Comm'n,* 59 Ill. 2d 267, 269 (1974). 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 (1992). Although we are reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion. *Montgomery Elevator Co. v. Industrial Comm'n,* 244 Ill. App. 3d 563, 567 (1993).

¶ 19 Here, the record evidence clearly established that the claimant made an insubstantial deviation from the normal route back to the station. The claimant's unrebutted testimony was that the deviation was less than a block (approximately 1/10 th of a mile) and for less than two minutes. His testimony was also unrebutted that the purpose for the deviation was fulfilled and he was on his way back to the station when the accident occurred. Insubstantial deviations from the least circuitous route do not take the claimant out of the course of his employment. *Cox,* 406 Ill. App. 3d at 547. This is so even if the deviation is for personal reasons. *Id.*

¶ 20 The Commission's focus on the fact that the claimant punched the hole in the wall that he was going to repair is misplaced. As the arbitrator originally observed, the purpose for the deviation was not relevant. *Cox,* 406 Ill. App. 3d at 547. The only relevant question was whether the claimant's brief deviation from the route returning him to the station was reasonable and foreseeable by the employer. The overwhelming weight of the evidence was that paramedics often made stops at their homes on the return trips from transporting patients for a variety of reasons and that these deviations were routinely done with the knowledge of the employer without the need for prior permission. The record leads to the conclusion that the claimant's deviation from the normal route to his house on February 29, 2008, was reasonable and foreseeable to the employer. The employer maintains, however, that the claimant was under strict instructions to return directly to the station without any deviations, thereby making his brief stop at his home unreasonable and unforeseeable. The record does not support such a

conclusion, as there was no specific instruction given to the claimant to return to the station without any deviation.

¶ 21 CONCLUSION

¶ 22 For these reasons, we affirm the judgment of the circuit court which reversed the Commission's decision and reinstated the arbitrator's award on the issue of causation. We remand the matter to the Commission for further proceedings consistent with the views expressed herein.

¶ 23 Affirmed and remanded to the Commission.