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

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ILLINOIS WORKERS' COMPENSATION	)	Appeal from the Circuit Court
COMMISSION and COMMUNITY UNIT	)	of Du Page County
SCHOOL DISTRICT #200	)	
	)	
Plaintiffs-Appellees,	)	
	)	
v.	)	No. 14-MR-0953
	)	
BARBARA ANDERSON,	)	Honorable
	)	Terrence M Sheen,
Defendant-Appellant.	)	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 award of benefits to third-grade teacher who was injured while demonstrating a gymnastics move for students during physical education was supported by ample evidence; the trial court's decision that teacher departed from the scope of her employment as a matter of law was erroneous.

¶ 2 I. INTRODUCTION

¶ 3 Claimant Barbara Anderson, appeals an order of the circuit court of Du Page County setting aside a decision of the Illinois Workers' Compensation Commission awarding her benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)). The trial court erroneously determined that claimant's accident did not arise out of her employment as a matter of law. Therefore, we reverse the trial court and reinstate the Commission's decision.

¶ 4 II. BACKGROUND

¶ 5 The facts of this case are relatively straight forward. Claimant was employed by respondent as a third-grade teacher. One of her duties was to escort her class to the gymnasium for physical-education class (PE). Physical education was taught by Barbara Williams, who was certified to instruct such classes. Claimant taught the general curriculum (math, English, science, etc.). Claimant had previously participated in certain aspects of the PE class, including jumping rope, bowling, and running a mile with her students.

¶ 6 On November 20, 2012, claimant escorted her class to the gymnasium, where Williams was conducting a gymnastics class. Gymnastics was an established part of the third-grade curriculum. Part of the class involved using a balance beam, which was four and one-half inches wide and about three to four feet off the ground. Safety mats were placed around the balance beam. Claimant—a former gymnast—came to retrieve her students at the end of the PE class. She was familiar with balance beams. With the assistance of Williams, claimant attempted to demonstrate a gymnastics move (a foot dip). Her students were seated, watching claimant, and according to claimant, she attempted to demonstrate the move for their benefit.

¶ 7 Claimant testified that she walked to the end of the balance beam and attempted to pivot. Her right toe “caught the surface of the balance beam.” Claimant's ACL tore. Williams helped

claimant down, and her “tibia [and] femur collided, [and she] broke [her] tibial plateau [and] tore [the] lateral meniscus of [her] right knee.” She sought and received emergency medical treatment.

¶ 8 The sole issue presented in this appeal is whether claimant’s accident arose out of her employment (it is undisputed that it occurred in the course of her employment). The arbitrator found that it did. Citing *Wise v. Industrial Comm’n*, 54 Ill. 2d 138, (1973), he first noted that an injury arises out of one’s employment if it resulted from a risk “connected with or incidental to the employment.” Respondent contended that claimant’s injury did not, as it was caused by conduct that was “unforeseen, unreasonable, and not contemplated by” it, removing claimant from the scope of her employment. The arbitrator further observed that, “[i]n order to remove an employee from the protection of the Act, the employee must have voluntarily undertaken such a course of action for his own benefit and such actions were unnecessary and inherently dangerous.”

¶ 9 The arbitrator then found that at the time of the accident, claimant was “working and present in the gymnasium where her job duties required her to be at certain times of the day.” Williams, who had taught PE for 20 years, was certified in PE, and was knowledgeable of the curriculum, was in charge. Claimant asked Williams if she could use the beam. Williams “not only consented but agreed to spot her.” The arbitrator found that claimant was not acting in her own interests at the time; rather, she was demonstrating an exercise for her students. This “was in furtherance of Respondent’s interests.”

¶ 10 Moreover, the arbitrator continued, mounting the balance beam was not unreasonable and claimant’s conduct was not inherently dangerous. He noted that the school had been allowing eight- and nine-year-old students to use the balance beam for years without incident. This

indicated that respondent did not believe the balance beam was inherently dangerous; the arbitrator reasoned, “[o]therwise, one would have to seriously question how [it] could have justified allowing eight and nine year old students to utilize the same equipment in the first place.”

¶ 11 The arbitrator rejected respondent’s argument that claimant voluntarily exposed herself to an unreasonable risk. He noted that respondent based this argument on its contention that claimant would not have been allowed to use the balance beam had she asked anyone in the administration for permission. The arbitrator characterized this as “Monday morning quarterback[ing].” He noted that claimant had been allowed to participate in other activities like bowling and running in the PE class without being reprimanded. The arbitrator emphasized that claimant “was most assuredly engaged in a task meant to further her mission as an educator, thereby benefitting her employer, and the community, in the process.”

¶ 12 While claimant may have made a “poor decision,” explained the arbitrator, she nevertheless had not engaged in an activity that was so unreasonable and unforeseeable as to remove her from the scope of her employment. Claimant was not “attempting to do something that was totally outside or unrelated to her duties, in an area that had absolutely nothing to do with the job at hand.” Rather, claimant was “engaged in the task of educating her students, on a subject they were in fact receiving instruction for.” As such, the arbitrator concluded, claimant’s injury arose out of her employment with respondent.

¶ 13 The Commission adopted the decision of the arbitrator in its entirety and affirmed. It remanded in accordance with *Thomas v. Industrial Comm’n*, 78 Ill. 2d 327 (1980). One commissioner dissented, explaining that she found claimant’s actions reckless rather than merely negligent.

¶ 14 The circuit court set aside the Commission’s decision. It began by stating that, because the facts were undisputed and susceptible to only a single inference, review was *de novo*. It stated that there was “no indication that the Commission drew any inference or did anything other than apply the law to the undisputed facts.” The trial court conceded that respondent could not prevail if the more deferential manifest-weight standard applied.

¶ 15 The court first held that claimant’s accident did occur in the course of employment. However, it then held that it did not arise out of employment. It explained its ruling thusly:

“[T]he injury did not arise out of employment because [claimant’s] responsibilities were to walk her students to and from P.E. class on a daily basis and did not extend beyond that. [Claimant] crossed the line when she entered the gym class and voluntarily climbed on the balance beam. [She] was hired to teach the third grade and its relevant subjects, not P.E. [Claimant] was supposed to pick the children up from gym class, not attempt to teach the class, demonstrate for the class, or engage in activities the class engaged in. She was not doing what she was hired to do.”

The trial court cited *Stembridge Builders, Inc. v. Industrial Comm’n*, 263 Ill. App. 3d 878, 884 (1994), in support of its decision. It added that there was no reason for respondent to expect claimant to engage in this type of activity. Finally, the trial court stated that teachers only “participate in physical activities with the children in situations previously-approved by the administration.” Claimant then appealed to this court.

¶ 16

### III. ANALYSIS

¶ 17 As noted, the sole issue before us is whether claimant’s injury arose out of her employment. Generally, an injury arises out of employment when it has its origin in some risk connected with, or incidental to, a claimant’s employment. *Potenzo v. Illinois Workers’*

*Compensation Comm'n*, 378 Ill. App. 3d 113, 116 (2007) (quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989)). This issue typically is one of fact. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 164 (2000). Accordingly, we usually conduct review using the manifest-weight standard and will reverse only if an opposite conclusion is clearly apparent. *Id.* However, if the facts are undisputed and susceptible to but a single inference, review is *de novo*. *Kertis v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120252WC, ¶ 13. Here, for reasons we will explain below, we conclude that the manifest-weight standard governs.

¶ 18 Central to our inquiry is whether claimant's decision to demonstrate a gymnastic move on the balance beam removed her from the scope of her employment. In *Stembridge Builders, Inc.*, 263 Ill. App. 3d at 884, the court, citing *Chadwick v. Industrial Comm'n*, 179 Ill. App. 3d 715, 719 (1989), found that the claimant had not left the scope of his employment where he "was supposed to be, doing what he was hired to do." The trial court found this dispositive as a matter of law, as claimant had been hired to be a third grade teacher rather than to teach physical education and, therefore was not doing what she was hired to do. The trial court further observed that nothing in the record established that Williams had authority to give claimant permission to use the balance beam. The *Stembridge Builders* court also noted that the fact that a claimant may have been negligent is not material to the inquiry. *Id.*

¶ 19 In *Chadwick*, 179 Ill. App. 3d at 717, the court cited *Imperial Brass Manufacturing Co. v. Industrial Comm'n*, 306 Ill. 11, 13 (1922) (quoting *Republic Iron & Steel Co. v. Industrial Comm'n*, 302 Ill. 401, 406 (1922)), an early decision of our supreme court, which explained:

“ ‘ “Where the violation of a rule or order of the employer takes the employee entirely out of the sphere of his employment and he is injured while violating such rule or

order it cannot be then said that the accident arose out of the employment, and in such a case no compensation can be recovered. If, however, in violating such a rule or order the employee does not put himself out of the sphere of his employment, so that it may be said he is not acting in the course of it, he is only guilty of negligence in violating such rule or order and recovery is not thereby barred. [Citation.] \* \* \* [I]t does not matter in the slightest degree how many orders the employee disobeys or how bad his conduct may have been, if he was still acting in this sphere of his employment and in the course of it the accident arose out of it.” ’ ’ ”

Thus, the inquiry focuses on whether a claimant’s activities are so unreasonable, outrageous, or unforeseeable as to remove the claimant from the scope of his or her employment. See *Saunders v. Industrial Comm’n*, 189 Ill. 2d 623, 628-30 (2000); *Scheffler Greenhouses, Inc. v. Industrial Comm’n*, 66 Ill. 2d 361, 370 (1977). Where an employee voluntarily exposes himself or herself to an unreasonable risk for the employee’s benefit, the employee is no longer acting within the scope of employment. *Segler v. Industrial Comm’n*, 81 Ill. 2d 125, 128 (1980).

Pertinent here, Principal Dianne Thornburg, claimant’s immediate supervisor, testified that claimant’s role regarding PE class was to transport the children to and from the gymnasium. After she brought the children to the gym, Williams would assume responsibility for them. No teacher had ever asked Thornburg for permission to use the balance beam, and she would have denied any such request. Thornburg was not aware of claimant’s background in gymnastics. Thornburg testified that claimant’s activities were unusual because of the degree of risk involved. Claimant’s job description did not include engaging in PE. Thornburg believed that claimant’s use of the beam constituted an “ultrahazardous” activity; however, she further testified that it was not “ultrahazardous” for students to use the beam. Moreover, on cross-

examination, when asked whether “Williams had that authority given it was her class to deny [claimant] that opportunity [to use the beam] if she didn’t want [claimant] up there,” Thornburg replied, “Absolutely.”

¶ 20 As a preliminary matter, we disagree with the trial court that the *de novo* standard of review applied in this case. Multiple inferences were possible given the state of the record, and it was primarily for the Commission to draw them (*University of Illinois v. Industrial Comm’n*, 232 Ill. App. 3d 154, 164 (1992)). For example, the trial court stated it was not relevant that claimant had been “a gymnast in her younger days; she was 55 at the time of this incident and there was no reason for the employer to expect her to engage in this type of activity as a third grade teacher.” The lack of relevance of claimant’s history of engaging in gymnastics is not clear to us; 55 is not such an advanced age as to foreclose the possibility of claimant engaging in physical activity. The record indicates that claimant had engaged in other aspects of PE class, such as jumping rope, bowling, and running a mile with her students. We simply cannot say that the evidence pointed to a single inference here.

¶ 21 Furthermore, contrary to the trial court’s findings, there was a basis in the record to conclude that Williams had authority to authorize claimant to use the balance beam in light of Thornburg’s testimony on cross examination that “Williams had that authority given it was her class” as to who had authority to grant claimant permission to use the beam.

¶ 22 It is true that Thornburg elsewhere testified that claimant would not have been allowed to engage in the demonstration had she sought permission from the administration. However, the Commission characterized this as the “administration ‘playing Monday morning quarterback.’ ” In essence, this was a comment on Thornburg’s credibility. Evaluating credibility is a matter for the Commission. *Kirkwood v. Industrial Comm’n*, 84 Ill. 2d 14, 20 (1981). As divergent

inferences were possible here, this provides another reason why the trial court should not have conducted *de novo* review. Moreover, note that this also presents an outright conflict in the evidence given Thornburg's testimony on cross-examination that "Williams had that authority given it was her class" as to who had authority to grant claimant permission to use the beam. If the latter testimony is accepted, the administration's position on the propriety of claimant engaging in the demonstration is irrelevant. Another conflict in the evidence exists between Thornburg's opinion that it was ultrahazardous for claimant to use the beam and her acquiescence in children using it. Though Thornburg attempted to explain this conflict, it still remained for the Commission to resolve.

¶ 23 In sum, given the multiple inferences, assessments of credibility, and conflicts in the record, the manifest-weight standard controls this appeal. See *Hart Carter Co. v. Industrial Comm'n*, 89 Ill. 2d 487, 494 (1982). Applying that standard, we find the evidence in the record provides ample support for the Commission's decision. The Commission found that it was not unforeseeable or unreasonable that claimant would seek to instruct her students in "the finer points of a school sanctioned activity that she happened to have personal experience in." She was not doing something "totally outside or unrelated to her duties." Rather, claimant "was a teacher engaged in the task of educating her students, on a subject they were in fact receiving instruction for and in a class that was part of their curriculum." Indeed, claimant testified that she performed the demonstration for the benefit of the students. It is further undisputed that she did so with the consent and assistance of the teacher (Williams) in charge of physical education. The record also establishes that claimant had been permitted to participate in other aspects of PE. Moreover, the Commission could have—and did—reasonably conclude that using the balance beam was not an inherently dangerous activity in light of the fact that respondent had been

permitting 9-year-old children to engage in the activity for years. Accordingly, the Commission's decision was not contrary to the manifest weight of the evidence.

¶ 24

#### IV. CONCLUSION

¶ 25 In light of the foregoing, the judgment of the circuit court of Du Page County is reversed. The decision of the Commission is reinstated. This cause is remanded for further proceedings in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 26 Trial court reversed; Commission decision reinstated; Cause remanded.