2015 IL App (4th) 140614WC-U

NO. 4-14-0614WC

FILED
November 9, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

SANDRA THOMPSON Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Mitsubishi Motors of North America, Appellee).	)	Appeal from Circuit Court of McLean County No. 12MR510 Honorable Rebecca Simmons Foley, Judge Presiding.

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 determination that no work accident arose out of claimant's employment was not against the manifest weight of the evidence.

¶ 2 On June 29, 2006, claimant, Sandra Thompson, filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2002)), seeking benefits from the employer Mitsubishi Motors of North America. She alleged to have suffered injury to her "[r]ight foot and body" following a work accident on March 16, 2005. Following a hearing, the arbitrator denied claimant benefits under the Act, finding she did not suffer an accident that arose out of and in the course of her employment and her current conditions of ill-being was therefore unrelated to a work accident. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of

the arbitrator. On judicial review, the circuit court of McLean County affirmed the Commission's decision.

¶ 3 On appeal, claimant argues the Commission's findings that she did not sustain an injury that arose out of and in the course of her employment and that her current conditions of ill-being were not the result of a work accident were against the manifest weight of the evidence. As such, claimant asserts she should be awarded full benefits under the Act. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The following evidence relevant to the disposition of this appeal was elicited at the June 14, 2011, arbitration hearing.

¶ 6 Claimant testified she worked for the employer for 16 years. In February 2005, she worked in the assembly area where she split her time between installing parts on vehicle fenders and assembling brake lines. Claimant stated her work was "[v]ery fast pace[d]" and she was required to move "[v]ery quickly" between work stations, retrieving a brake tube from a large cart, carrying the tube back to her work station to install clips, bolts, and clamps onto the tube, and then taking the assembled brake tube over to a rack where workers on the line would retrieve and install them on the cars. According to claimant, it took "41 steps to build one part and [they] were doing 60 cars [per] hour. So it was extremely fast." Claimant testified her job required her to pivot "[a]t least four" times for every brake line she assembled as she traversed the concrete floor wearing the required steel-toed leather shoes.

¶ 7 According to claimant, on March 16, 2005, she was in the process of putting a brake tube on a rack when she "went to pivot to turn back and I set it down, I pivoted, turned back and something popped in my [right] ankle and I—I thought I had been hit by a bolt or something maybe flying across the floor, but I just started limping at that point." Claimant stated

she finished the last 20 minutes of her shift and went home and iced and elevated her ankle.

¶ 8 Claimant testified she went to a therapy appointment for an unrelated shoulder injury the following morning, March 17, 2005, but "the lady [saw her] limping and sent [her] straight to medical." According to the physical therapist's office note from that date, claimant's right ankle was "very swollen and sore" and claimant reported having felt a pop, like a guitar string, in her right ankle the day before. Claimant then saw a nurse at the employer's medical department. The nurse's office note states claimant's right ankle was swollen and painful, and that claimant reported a history of non-occupational bone spurs. Later that day, March 17, 2005, claimant saw her podiatrist, Dr. Scott O'Connor, whom she had been seeing for preexisting issues related to pain and swelling in her right ankle.

¶ 9 Dr. O'Connor testified he had been treating claimant since November 2004 for pain in her right heel. According to his office notes, he diagnosed claimant with a Haglund's deformity, retrocalcaneal spur, inferior spur, Achilles tendinitis and bursitis on November 5, 2004. In January 2005, claimant began wearing orthotics. In February 2005, claimant reported her feet felt better but her right heel still hurt. Dr. O'Connor noted at that time she "ha[d] good positive Thompson's test," which he explained meant her Achilles tendon was intact. He recommended physical therapy. On March 3, 2005, claimant reported physical therapy was not helping and she was "still having quite a bit of pain, limping quite a bit" which caused her back and knee to hurt. On March 10, 2005, Dr. O'Connor noted claimant was experiencing "pain on the bottom of her foot too. Kind of a sandy feeling. She has pain to the plantar medial aspect of her plantar fascia and pain to the Haglund's deformity with calcifications." Dr. O'Connor informed claimant "that she will either be stuck living with it, with the orthotics and stretches" or she could have surgery.

¶ 10 Dr. O'Connor's March 17, 2005, office note states as follows: "[Claimant] presents early today stating that she had physical therapy on Monday and was feeling really good and very happy with it. Worked half a day on Tuesday and stepped funny and felt like something popped, almost like a guitar string in the back and it has been swollen and painful since that point." Dr. O'Connor scheduled magnetic resonance imaging (MRI). An MRI was completed and according to Dr. O'Connor, it "showed a complete rupture of the Achilles tendon." On March 24, 2005, claimant underwent surgery, primarily to repair her Achilles tendon, but Dr. O'Connor also performed a Haglund's resection and a heel spur resection at that time.

¶ 11 On October 24, 2006, claimant saw Dr. George Holmes, an orthopedic surgeon, at the request of the employer. According to an October 24, 2006, letter authored by Dr. Holmes, claimant told him "she was carrying a part [and] she took a step and felt a pain in the posterior aspect of her heel with associated burning." He testified that upon physical examination, there was no evidence of atrophy of her right calf and that her right ankle was swollen. He noted her right ankle was stable with some slight weakness in plantar flexion, consistent with having had Achilles tendon surgery. In his opinion, she had reached maximum medical improvement for her Achilles tendon injury.

¶ 12 In November 2006, Dr. Holmes received and reviewed medical records dating back to 1994, including those of Dr. Helmer, Dr. O'Conner, and Dr. John Purnell, claimant's primary-care physician, as well as an MRI report dated March 21, 2005, and the operative note of March 24, 2005. Dr. Holmes testified that after reviewing these records, he identified several risk factors that could have contributed to claimant's Achilles tendon rupture, including her obesity, history of high blood pressure, local and systematic exposure to steroids, and history of

Achilles tendonitis. According to Dr. Holmes, these infirmities compromised or reduced the circulation to claimant's Achilles tendon, weakening it over time and making it more susceptible to rupture. He did not believe walking on a hard surface, such as concrete, increases the force applied to the Achilles tendon. In a November 15, 2006, addendum report, issued after his review of the above medical records, Dr. Holmes opined claimant's March 16, 2005, Achilles tendon rupture was not causally related to her employment. In particular, he noted claimant's

> "previous traction spur, Haglund's deformity, and other systemic factors including probable obesity, and the numerous exposures she had to cortisone injections and other steroid products, not only made her tendon more prone to rupture, but was probably the underlying cause of her tendon rupture. Any normal activity of daily life could have caused the said rupture, and this could have occurred at any time, either at work or at home, or doing activities of daily living. There is absolutely no increased risk of the rupture, or aggravation of the rupture, caused by her employment."

¶ 13 On May 30, 2007, claimant saw Dr. Jeffrey Coe, a board certified specialist in occupational medicine, at the request of her attorney. In a letter of that same date, Dr. Coe, summarized claimant's version of the accident as follows:

> "[Claimant] states that she [was] at work and on March 16, 2005, was moving brake tubes. She states that this work was fast paced and required lifting and walking to carry parts. She states that she supplied five different work areas. As [she] walked, carrying a brake tube, she states that she stepped 'funny' and experienced a

'pop' in her right heel region. She states that she developed right heel pain and swelling and walked with a limp."

According to Dr. Coe's records from that date, upon physical examination, claimant walked with a mild gait, marked by right ankle stiffness and he observed mild to moderate atrophy of her right calf muscle. In addition to conducting a physical examination, Dr. Coe reviewed the treatment records of Dr. O'Connor and his predecessor (Dr. Helmer).

¶ 14 In Dr. Coe's opinion, claimant suffered a repetitive strain to her right Achilles tendon that culminated in a breakdown of the tendon and its ultimate rupture on March 16, 2005. He opined that the repetitive strain to claimant's right Achilles tendon was a contributing factor in its rupture.

¶ 15 On cross-examination, Dr. Coe agreed that claimant did not use the term "pivot" when she described her job duties to him.

¶ 16 On August 19, 2011, the arbitrator issued his decision in the matter, denying benefits under the Act. Specifically, he found claimant did not sustain an accident arising out of and in the course of her employment. The arbitrator concluded claimant was performing an everyday activity, *i.e.*, walking and stepping funny, at the time of the accident and she "presented no clear evidence of an increased risk of rupture caused by her employment" where her Achilles tendon "was so deteriorated that it could have ruptured at any moment during any activity." On November 5, 2012, the Commission affirmed and adopted the decision of the arbitrator without further comment. On May 27, 2014, the circuit court of McLean County affirmed the Commission's decision. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, claimant argues the Commission's finding she did not sustain an injury

that arose out of and in the course of her employment was against the manifest weight of the evidence.

¶ 19 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that [s]he has suffered a disabling injury which arose out of and in the course of h[er] employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). " 'In the course of employment' refers to the time, place and circumstances surrounding the injury." *Id.* For an accident to be compensable, the injury "generally must occur within the time and space boundaries of the employment." *Id.* Here, the parties do not dispute that claimant's Achilles tendon ruptured "in the course of" her employment.

¶ 20 To be compensable under the Act, an injury must also "arise out of" the employment. *Id.* "To satisfy [the 'arising out of'] requirement it must be shown 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." *Id.* In other words,

> " '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.' " *Id.* at 203-04, 797 N.E.2d at 671 (quoting

Caterpillar Tractor Co. V. Industrial Comm'n, 129 Ill. 2d 52, 58, 541 N.E.2d 665, 667 (1989)).

¶ 21 The determination of whether an injury arose out of and in the course of one's employment is generally a question of fact." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Id*. "The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence." *Mansfield v. Workers' Compensation Comm'n*, 2013 IL App (2d) 120909WC, ¶ 28, 999 N.E.2d 832. "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent." *Id*.

¶ 22 Prior to addressing whether claimant's Achilles tendon rupture arose out of her employment, we first examine the claimed mechanism of her injury. Specifically, claimant argues that the arbitrator—whose decision was adopted by the Commission—erred by finding her testimony, *i.e.*, she was "pivoting" when she felt a "pop" in her right heel, was not credible because it differed from the history she provided to her medical providers. Citing to *Young v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 1303692WC, 13 N.E.3d 1252, claimant argues the history contained in the medical records referred to throughout the Commission's decision "merely present[ed] a simplified, shortened version of the series of facts from the date of accident, and not a 'contrary' or 'different' description" as the Commission concluded.

¶ 23 Initially, we note *Young* is distinguishable. In *Young*, the employee injured his

left shoulder when, in the course of his job duties, he reached deep into a box in order to retrieve an item. *Id.* ¶ 18, 13 N.E.3d 1252. The Commission noted what it perceived to be inconsistencies between the employee's statement regarding the accident, his trial testimony, and the accident histories he provided to his treating physicians. *Id.* ¶ 13, 13 N.E.3d 1252. In particular, according to the employee's statement, he was "reaching" for an item in the bottom of the box when he felt a pop in his shoulder, whereas his testimony and the histories provided to his treating physicians indicated he had to "reach down deep" into a box, "stretch[] extra" far, and "stretch his shoulder and arm way out as far as he could." *Id.* ¶¶ 5, 8, 9, 11, 13 N.E.3d 1252. On appeal, this court concluded although the employee, in his statement, did not reference the degree to which he reached into the box, the evidence failed to support the Commission's finding that the employee embellished the accident descriptions he provided to his treating physicians. *Id.* ¶¶ 26-27, 13 N.E.3d 1252. In so finding, we noted the description of the accident contained in the employer's "Accident & Counter Measure Report" as well as the records of the employee's treating physicians prepared only days after the accident supported his testimony. *Id.*

¶ 24 Here, as noted by the Commission and in contrast to *Young*, "[n]ot a single medical record of the [claimant's] multiple physicians indicate she was walking 'extremely fast' and/or 'pivoting' when the Achilles tendon rupture occurred." In fact, until her arbitration testimony—approximately six years after the injury—claimant's account of the accident, as indicated in her medical records, was that she was walking at work when she "stepped funny." Claimant's request that we characterize the evidence as she suggests amounts to nothing more than an invitation for this court to reweigh the evidence, which is not our function. See *Chicago Transit Authority v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120253WC, ¶ 24, 989 N.E.2d 608 ("The appropriate test is whether there is sufficient evidence in the record to

support the Commission's finding, not whether this court might have reached the same conclusion."). It was the Commission's duty to assess the credibility of witnesses and resolve conflicts in the evidence. We find the Commission's determination regarding the mechanism of claimant's injury was not against the manifest weight of the evidence.

¶ 25 Having determined the Commission did not err in finding claimant's injury occurred as she was walking and "stepped funny" at work, we must now determine whether her injury was the result of a risk which was compensable under the Act.

¶ 26 There are three categories of risk to which an employee may be exposed: (1) risks that are distinctly associated with one's employment; (2) risks that are personal to the employee; and (3) neutral risks that have no particular employment or personal characteristics, such as those that the general public is commonly exposed. *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 27, 990 N.E.2d 284. Injuries resulting from a neutral or personal risk generally do not arise out of employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Id.*; *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 IL App. 3d 149, 163, n. 1, 731 N.E.2d 795, 807 (2000).

¶ 27 In this case, claimant argues her injury is compensable under the Act as it occurred as a result of a risk directly associated with her employment, or in the alternative, as a result of being exposed to a neutral risk greater than that to which the general public is exposed. Importantly, claimant's arguments are based on the premise that her injury occurred while she was walking extremely fast and pivoting. As previously noted, however, the Commission determined claimant injured her right heel while she was walking and "stepped funny." Given our finding the Commission's determination regarding the mechanism of injury is supported by

the record, our risk analysis must be undertaken premised on her injury having occurred while she was walking and "stepped funny."

¶ 28 "By itself, the act of walking across a floor at the employer's place of business does not establish a risk greater than that faced by the general public." *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105,853 N.E.2d 799, 804 (2006). Here, we similarly find claimant's act of walking did not pose a risk directly associated with her employment. Moreover, we do not find claimant established she was exposed to a neutral risk which was increased from either a qualitative or quantitative aspect. See *Springfield Urban League*, 2013 IL App (4th) 120219WC, ¶ 27, 990 N.E.2d 284 ("Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. [Citation.] Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. [Citation.]"). Claimant maintains her injury occurred as she was walking extremely fast and pivoted. In her argument section, she cites a number of cases for support, but she analogizes those cases under the inaccurate premise that her injury occurred while she was walking fast and pivoting. Claimant does not address, even in the alternative, how her injury is compensable under the Act based on the Commission's finding that her injury occurred while she was walking and "stepped funny." For these reasons, the Commission's decision denying claimant benefits because her March 16, 2005, injury did not arise out of her employment was not against the manifest weight of the evidence.

¶ 29 Having found the evidence sufficient to support the Commission’s determination of no work accident arising out of claimant's employment, we need not address the remaining

issues presented on appeal. See *Mansfield*, 2013 IL App (2d) 120909WC, ¶ 33, 999 N.E.2d 832.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision.

¶ 32 Affirmed.