2015 IL App (5th) 140017WC-U

NO. 5-14-0017

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

THE CITY OF PINCKNEYVILLE,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Perry County.
	)	
v.	)	No. 13-MR-53
	)	
	)	Honorable
THE ILLINOIS WORKERS' COMPENSATION	)	Richard A. Aguirre,
COMMISSION *et al.* (Alan Rieckenberg, Appellee).	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's finding that the claimant's injuries arose out of and in the course of his employment with the employer was not against the manifest weight of the evidence.

¶ 2 The claimant, Alan Rieckenberg, was employed by the City of Pinckneyville in the water department. The claimant alleged that he received multiple injuries, including those to his left shoulder and head, when he tripped and fell at work. The claimant filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2010)). The claim proceeded to an

expedited arbitration hearing under section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)). Following a section 19(b) hearing, the arbitrator issued a decision awarding benefits, finding that the claimant was injured in an accident that arose out of and in the course of his employment and that his current condition of ill-being was causally related to the accident. The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission), which unanimously affirmed and adopted the arbitrator's decision. The employer then appealed to the circuit court, which confirmed the Commission's decision. The employer now appeals, arguing that the Commission's finding that the claimant's injuries arose out of and in the course of his employment was against the manifest weight of the evidence.

¶ 3 BACKGROUND

¶ 4 The following relevant evidence was presented at the arbitration hearing. The claimant had worked for the employer for approximately two years as a waste water disposal unit operator, a water operator, and a maintenance worker. As part of his duties, the claimant performed chemical tests on waste water. He also was responsible for maintenance of the employer city's water and waste water systems.

¶ 5 On the morning of September 1, 2011, the claimant went to the sewer treatment facility to perform chemical test evaluations of the waste water. In order to perform the tests, the claimant had to climb stairs to an elevated catwalk that led to the platform over the clarifier unit, which contained the waste water. The claimant described the catwalk as an aluminum structure that was approximately four feet off the ground.

¶ 6 At the arbitration hearing, the claimant testified that, on September 1, 2011, he tripped over a piece of plywood lying on the catwalk. He stated that he grabbed the handrail with his left hand and fell forward, hitting his face on the catwalk. He was wearing the required work boots on the day in question. He testified that he lost consciousness and remembered waking up in the emergency room. He testified that he was diagnosed with amnesia and short-term memory loss.

¶ 7 The claimant introduced photographs taken by him, which were admitted into evidence, depicting the waste water treatment facility. One of the photographs showed a piece of plywood lying on the catwalk where the claimant was required to walk in order to perform the chemical tests. The claimant testified that the plywood in the photograph was lying on the catwalk on September 1, 2011. He testified that the plywood was usually on the catwalk. He stated that it was not affixed to the catwalk and that he did not know why it was there. He testified that the plywood was approximately 1½ feet wide, 3½ feet long, and five-eighths of an inch thick.

¶ 8 On cross-examination, the claimant acknowledged that immediately following his fall, he could not remember how the fall occurred. He admitted that initially he reported to his medical providers that he did not know what had caused him to fall.

¶ 9 Review of the record reveals that no one witnessed the claimant fall. The emergency room record from September 1, 2011, noted:

> "The [claimant] is a 56-year-old male who was brought to the emergency room by his coworkers after apparently suffering a fall while walking on a cement surface. It is unclear if he slipped, blacked out, or lost his balance."

¶ 10 When he was brought to the emergency room, the claimant did not know the date or the current president's name. He repeated the same questions over again. He reported to the medical staff that the last thing he remembered was walking in the work area and then being in the emergency room. The claimant's principal diagnosis was "syncopal episode, unknown etiology," with a secondary diagnosis of a "concussion, supraspinatus and infraspinatus tendon tears of the left shoulder, intractable pain from shoulder, and laceration on left hand with three sutures secondary to the fall."

¶ 11 The claimant was admitted to the hospital where he was treated by Dr. J. Greg Fozard, his family doctor. The claimant testified that he had a CT scan of his head, an x-ray of his left shoulder, left forearm, and left wrist, as well as a magnetic resonance imaging (MRI) of his left shoulder. Upon discharge from the hospital on September 4, 2011, he was ordered to wear a sling as much as possible for stability and pain management and to remain off work for two weeks until he had been evaluated by an orthopedic doctor.

¶ 12 On September 8, 2011, the claimant followed up with Dr. Fozard, who referred him to Dr. Donald A. Weimer, an orthopedic surgeon.

¶ 13 On September 9, 2011, the claimant gave a recorded phone statement to a workers' compensation adjuster from the Illinois Public Risk Fund. He told the adjuster that he knew he had tripped and fallen but that he did not remember how the accident occurred or what caused him to fall. In his recorded statement that was later transcribed, the claimant reported, "I finished my chemical test. I finished the settleometer test and

wasting the mixed liquor to the clarifiers, was coming off the unit, and that's the last thing I remember."

¶ 14 On September 20, 2011, the claimant saw Dr. Weimer for treatment of his left shoulder. Dr. Weimer's medical records were admitted into evidence. By way of history, Dr. Weimer noted that the claimant was a "56-year-old left hand dominant white male with no prior problems with this left shoulder who fell on September 1st from about a 3 foot high catwalk. He apparently lost consciousness at that time."

¶ 15 Dr. Weimer diagnosed the claimant with a "frozen shoulder." He administered an injection to the claimant's shoulder and prescribed physical therapy. The doctor also diagnosed the claimant with a sprain to the inferior capsule and "most likely a tear" that he believed would resolve with time. Dr. Weimer opined that the cause of the claimant's torn rotator cuff was the fall he suffered on September 1, 2011. He scheduled the claimant to return in five weeks to determine whether surgery might be an option. Dr. Weimer released the claimant to work with the restriction that he was limited to "sedentary, desk work only."

¶ 16 The claimant testified that a few weeks after the fall he woke up and most of his memory of the events of September 1, 2011, had returned. He claimed that there were still approximately seven hours that he did not recall. The claimant testified that he called the adjuster on September 26, 2011, and reported that he had regained most of his memory and that he now knew what had caused his fall. He reported that the adjuster informed him that she would take a second recorded statement. He testified that he reported that he came around the corner, caught his foot on a piece of plywood, slipped,

and fell. The claimant denied telling the adjuster that he had experienced "a miraculous recovery of memory." He also informed his employer that he had regained his memory of how he fell on September 1, 2011. The claimant denied being aware on September 26, 2011, when he called the adjuster that his claim would be later denied.

¶ 17 Also on September 26, 2011, the claimant was evaluated by a physical therapist. The physical therapy records indicate that the claimant reported a history of slipping and falling at work. He stated that he fell while on a catwalk and reached out to catch himself with his left hand, which is his dominant hand. He reported that when he grabbed the handrail with his left hand, his body swung around and he hit his head, knocking him unconscious.

¶ 18 Medical records from Dr. Fozard were admitted into evidence. Review of the medical records reveals that the claimant called Dr. Fozard on September 29, 2011, to report that he had regained some memory of the accident on September 1, 2011. The claimant reported to Dr. Fozard that he grabbed a handrail, tripped over plywood that was bolted to the catwalk, and fell, hitting his head on the catwalk. Dr. Fozard released the claimant to return to work without restriction on October 10, 2011.

¶ 19 The claimant received a letter dated October 5, 2011, from the adjuster for the Illinois Public Risk Fund denying his workers' compensation claim. When the claimant attempted to contact the adjuster, he did not reach her and instead spoke to a different adjuster who explained that there was no recording or transcription of a second statement from the claimant.

¶ 20 On October 26, 2011, Dr. Weimer noted that the claimant was not improving and recommended that the claimant undergo a left shoulder arthroscopic capsulotomy. He again restricted the claimant to sedentary, desk work only.

¶ 21 On November 14, 2011, the claimant was admitted to the hospital with complaints of shoulder pain and spasms. Review of the admission record indicates that the claimant reported a history of "a ground level fall after losing consciousness on 9/1/11 striking the left shoulder." The claimant reported that all of the digits on his left hand were numb. An MRI of the cervical spine was ordered to determine whether the claimant had a herniated cervical disc. The MRI report revealed mild diffuse posterior bulging of the C6-C7 disc and minimal diffuse posterior bulging of the C5-C6 disc. There was no evidence of focal cervical disc herniation or cervical central spinal canal stenosis. There was a very mild narrowing of the right C4-C5 neural foramen. There was no evidence of fracture, subluxation, or definite focal bony destructive lesion identified in the cervical spine. The claimant's condition improved, and he was discharged from the hospital on November 16, 2011, in stable condition.

¶ 22 On November 22, 2011, Dr. Weimer performed the recommended surgery on the claimant's left shoulder. In December 2011, the claimant was prescribed additional physical therapy and given a cortisone injection in his left shoulder.

¶ 23 A December 1, 2011, office note reveals that the claimant reported to Dr. Fozard that he was concerned about his head injury. Dr. Fozard noted: "[The claimant] has had some improvement in memory. Two weeks after the accident he started to recall better and remembered adjusting a specific sludge valve, walking on a cat walk, and tripping on

some plywood." Dr. Fozard determined that the claimant had a "[c]oncussion with full recovery. The [claimant] has only a small lapse of memory shortly after the head injury."

¶ 24 Dr. Weimer released the claimant to return to work on January 9, 2012, with no restrictions.

¶ 25 The claimant testified that prior to September 1, 2011, he did not have a history of falling episodes, seizures, or neurological diseases that would cause him to fall. He also testified that prior to September 1, 2011, he had not experienced problems with or had medical treatment for his left shoulder. He had never had medical treatment for memory loss or neck problems prior to the day in question.

¶ 26 The claimant testified that he has been unable to sleep in his bed since September 1, 2011, because of the pain he experienced when he rolled over. He testified that he sleeps in a chair with a pillow under his left arm. He also testified that it is difficult to move his left hand higher than his shoulder.

¶ 27 At the time of the arbitration hearing, the claimant reported that he was back to full duty work and performing all of the requirements of his job. He stated that he believed his shoulder, neck, and head are better. However, he was still treating with Dr. Weimer.

¶ 28 Following the hearing, the arbitrator found that the claimant sustained an accident that arose out of and in the course of his employment and awarded the claimant benefits under the Act. The employer appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision. The employer appealed to

the circuit court, which confirmed the Commission's decision. The employer now appeals.

¶ 29 ANALYSIS

¶ 30 On appeal, the employer argues that the Commission's finding that the claimant's injuries arose out of and in the course of his employment was against the manifest weight of the evidence. The employer contends that the medical evidence did not support the Commission's finding but rather established that the claimant had an idiopathic condition, unrelated to his work activities, which caused the loss of consciousness resulting in an injury to his left shoulder.

¶ 31 "The determination of whether an injury arose out of and in the course of a claimant's employment is a question of fact for the Commission to resolve, and its finding in that regard will not be set aside on review unless it is against the manifest weight of the evidence." *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 24, 990 N.E.2d 284. "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent." *Id.*

¶ 32 In order for a claimant's injuries to be compensable under the Act, his injuries must arise out of and in the course of his employment, and both elements must be present at the time of the accident to justify compensation. *Hatfill v. Industrial Comm'n*, 202 Ill. App. 3d 547, 553, 560 N.E.2d 369, 373 (1990). The phrase "in the course of" employment refers to the time, place, and circumstances of the accident. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57, 541 N.E.2d 665, 667 (1989).

Injuries sustained by a claimant while at work or while in the performance of reasonable activities in conjunction with his employment are deemed to arise "in the course of" employment. *Springfield Urban League*, 2013 IL App (4th) 120219WC, ¶ 25, 990 N.E.2d 284. Here, as the claimant's fall clearly occurred on the employer's premises while he was working, only the "arising out of" component is at issue.

¶ 33 To determine whether a claimant's injury arose out of his employment, the Commission must first categorize the risk to which he was exposed. *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 478, 949 N.E.2d 1151, 1156 (2011). "Risks to employees fall into three groups: (1) risks distinctly associated with the employment; (2) risks personal to the employee, such as idiopathic falls; and (3) neutral risks that have no particular employment or personal characteristics." *Id.* An idiopathic fall is a type of accident which results from an internal, personal weakness of the claimant, and the resultant injuries are generally not compensable. *Stapleton v. Industrial Comm'n*, 282 Ill. App. 3d 12, 16, 668 N.E.2d 15, 19 (1996).

¶ 34 The employer argues that the claimant was injured as a result of a personal risk, rather than an employment risk. In support of that argument, the employer points out that the November 14, 2011, hospital admission record indicating that the claimant reported a history of "a ground level fall after losing consciousness on 9/1/11" is consistent with an idiopathic syncopal episode.

¶ 35 On appeal, the employer invites this court to focus on a single entry in the claimant's medical records. However, a review of the record as a whole supports the Commission's finding that the claimant's injury arose out of his employment. First, there

was no evidence presented that the claimant had a history of falling episodes, seizures, or other neurological diseases that would cause him to suffer an idiopathic fall. Next, when the claimant was brought to the emergency room by coworkers, he was unable to provide a history of his injury because he did not know what caused him to fall and no one witnessed him fall, resulting in a principal diagnosis of a "syncopal episode, unknown etiology." It was not until after the claimant's memory of the day's events returned that he contacted his medical providers and the adjuster to report the mechanism of his fall on September 1, 2011. At the arbitration hearing, the claimant testified consistent with his report to Dr. Fozard that he tripped on plywood on the catwalk and fell.

¶ 36 The employer asserts that the claimant's testimony regarding the mechanism of his fall was not based on his memory immediately following the incident, but was instead the result of "a miraculous, partial, but very detailed, recollection of the accident" a few weeks later. There was no evidence in the record that the claimant's family doctor doubted that the claimant's memory had improved over time. Dr. Fozard noted on December 1, 2011, that the claimant had experienced some improvement in his memory a few weeks after the accident. Dr. Fozard also noted that the claimant had fully recovered from a concussion, noting that the claimant was left with only a small lapse of memory.

¶ 37 The employer contends that the claimant's testimony was not credible and maintains that the sequence of events following the claimant's alleged accident was "replete with inconsistencies." Most notably, argues the employer, the claimant provided numerous differing reports to his medical providers regarding the mechanism of his fall. The initial emergency room records noted that the claimant apparently suffered a fall

while walking on a cement surface. Then the claimant reported to Dr. Weimer that he fell from a three-foot-high catwalk. After that, the claimant reported that he suffered a ground-level fall after losing consciousness. All of these reports differ from the claimant's testimony at the arbitration hearing.

¶ 38 "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." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). "A reviewing court will not reject reasonable inferences made by the Commission merely because the court might have drawn different inferences based on the same facts." *Knox County YMCA v. Industrial Comm'n*, 311 Ill. App. 3d 880, 885, 725 N.E.2d 759, 763 (2000). "If there is sufficient factual evidence in the record to support the Commission's determination, it will not be set aside on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009).

¶ 39 As noted earlier, the initial report contained in the emergency room records indicating that the claimant apparently suffered a fall while walking on a cement surface cannot be attributed to the claimant since he reported that the last thing he remembered was walking in the work area and then being in the emergency room. Although the employer identifies the inconsistency in the claimant's report on November 14, 2011, that he suffered a ground-level fall after losing consciousness, the employer chooses to ignore

the consistent histories contained in the record, which the claimant provided after he regained most of his memory.

¶ 40 Here, faced with conflicting evidence, the Commission resolved the conflicts in favor of the claimant as was its province. Based on the evidence as a whole, we find that the Commission reasonably could have found that the claimant's injuries arose out of his employment.

¶ 41 The remainder of the employer's claims of error are based on the claimant's alleged failure to prove that he sustained accidental injuries which arose out of his employment and, as such, need not be addressed.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, we affirm the judgment of the circuit court of Perry County confirming the decision of the Commission and remand to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 44 Affirmed and remanded.